Labour Law and Development in Indonesia

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Glossary

Asosiasi Pengusaha Indonesia (Apindo)	Association of Indonesian Employers
Badan Pelaksana Jaminan Sosial (BPJS)	Social Security Executing Agency
Bupati	Regent / District Head
Burgerlijk Wetboek	The Netherlands Indies' Civil Code
Buruh	Labour / Worker
Dewan	Council
Dewan Pimpinan Cabang	Branch Leadership Council
Dewan Pimpinan Daerah	Regional Leadership Council
Dewan Pimpinan Pusat	National Central Leadership Council
Dewan Pengupahan	Wage Council
Federasi Serikat Pekerja Metal Indonesia (FSPMI)	Indonesian Metal Workers Federation
Global Union Federation	International Federation of Sector Unions
Hakim ad hoc	Ad hoc Judges (at the Industrial Relations Court)
Herziene Indonesisch Reglement (HIR)	Revised Indonesia Regulations (civil litigation procedure in Java)
Hukum perburuhan	Labour law
Kabupaten	Regency / District
Kebutuhan Fisik Minimum	Minimum physical need
Kebutuhan Hidup Layak	Decent living need
Kebutuhan Hidup Minimum	Minimum subsistence need
Keputusan	Decree
Ketenagakerjaan	Manpower
Kesehatan	Health
Koeli Ordonnantie	Coolie Ordinance
Komite Aksi Jaminan Sosial (KAJS)	Action Committee for Social Security Reform
Kuli kontrak	contract coolie
Lembaga Bantuan Hukum	Legal Aid Institute
Lembaga Kerja Sama Tripartit	Tripartite Cooperation Institution

Menteri Tenaga Kerja	Minister of Manpower
Orde Baru	the New Order
Pancasila	The Five Principles (Indonesia's national ideology)
Panitia Penyelesaian Perselisihan Perburuhan Daerah/Pusat (P4D/P)	Regional/Central Labour Dispute Settlement Committee
Pekerja	Workers
Pengadilan Hubungan Industrial (PHI)	Industrial Relations Court
Peraturan	Regulation
Perjanjian Kerja Bersama	Collective Labour Agreement
Poenale sanctie	Penal sanction
Reformasi	Reform era, starting in 1998
Rechtsreglement Buitengewesten (RBg)	Regulation for the Outer Territories (civil litigation procedure in the outer islands of Indonesia)
Rupiah (Rp)	Rupee (Indonesia's currency)
Serikat Pekerja/Serikat Buruh	Workers Unions/Labour Unions
Staatsblad	State gazette
Tim Kecil	Small Team
Undang-Undang	Act of parliament
Upah minimum	Minimum wages

This crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear.

(Antonio Gramsci, 1971: 276)

In this vision, the framework of decollectivized, deregulated, and deinstitutionalized neo-liberal labour law is here to stay because it matches the basic needs of a globalized capitalist market economy and of liberal democracy. Yet at the very moment of its apparent triumph, individualized market labour law faces political, industrial and judicial challenges.

(Bob Hepple, 1996: 626)

Labour law evolved in response to … worker resistance to injuries and injustices visited upon them by industrial capitalism … [with a] vocation 'to address and seek to relieve a fundamental social and economic problem in modern society: the subordination of labour to capital, or of employee to employer'.

(Karl Klare, 2002: 3, referring to Hugh Collins, 1989)

Introduction

This study is about the process of creation and enforcement of social and labour rights, in the form of labour law, in Indonesia; and how this has reflected the actual broader process of social and political change, and struggle, in the country. It is not a sweet and cosy process. Three decades of rapid economic growth under the so-called 'New Order' was achieved by extreme political and economic subordination and exclusion of many of those who made it happen. Low wages, poor working conditions, and high levels of informal employment marked the daily lives of millions of Indonesian workers. Indeed, Indonesia under the New Order was notorious for its harsh and unsympathetic behaviour towards working people (see, e.g., Indoc report series, 1981-1988; Harris, 1995). Seeking to provide an appropriate framework within which policies of industrialisation and economic growth could be pursued, the New Order used the concept and structures of corporatism to control labour. The strong authoritarian state managed to tame most of the resistance. Meanwhile, a corporatist labour law framework was specifically designed to assure managerial ascendancy and the restraint of labour costs, often with repressions, for the sake of 'economic growth' under the broad term of 'development'.

The fall of President Soeharto in May 1998 marked a new epoch for the country. The powerful authoritarian New Order state was suddenly no longer there, leaving the way open for different forces to influence the formation of the country's new social and political structures. Habibie, the Vice President and Soeharto's intimate, was appointed as the successor president. Despite some doubts about his government's willingness to bring about reforms, Habibie's government, mainly due to the desire to separate itself from the previous regime, initiated some reforms (Bourchier, 2000), including labour policy reform. The cabinet's Minister of Manpower, Fahmi Idris, played an important role; starting by releasing a Ministerial Decree concerning Trade Union Registration, and allowing workers more freedom to establish unions, after three decades of single and government dominated union structures. In June 1998, one month after his appointment, Habibie decided to ratify International Labour Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise. This complemented ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, which had been ratified in 1956, although without implications in practice. Within only six months of Soeharto's fall, in December 1998, the transitional government of President

Habibie launched the so-called 'labour law reform programme', under the auspices of the ILO, with the ambitious goal of changing the whole structure of Indonesia's labour law regime towards one that was more 'modern' and 'relevant' with the 'changing times' and the necessity of the 'free market economy' (ILO, 1999).

There is little doubt that Indonesian labour law reform was neo-liberal in nature, in the sense that the main aim of the reform was to make the labour law system a means by which to promote economic efficiency, by, among other things, reducing costs through a flexible labour market. It is apparent, moreover, that this reform was a requirement of economic and market liberalisation, which accelerated greatly in Indonesia (and throughout the region) with the onset of the Asian economic crisis in 1997-1998 (Rosser, 2002). This was due particularly to the need to follow the prescriptions of the international financial institutions, notably the World Bank and the International Monetary Fund (IMF), which became the main actors in Indonesia's efforts to regain its economic development and growth. Having been relatively untouched for more than three decades under the New Order,[1] Indonesia's labour law regime was thus suddenly transformed from a corporatist labour law model with a strong and powerful state behind it, towards one that was largely market-oriented. Although the development of a market-based economy had begun in the early 1980s and 1990s, it was only in the last few years, under the so-called *Reformasi* (reform) era, that the law changed dramatically. As the new political arrangement began to emerge, the Indonesian economy shifted from guided or state-led development to market-oriented reform and external liberalisation.

All of this suggests a typical neo-liberal transition, but the present research examines whether that is the whole story. Despite the neo-liberal and market-oriented labour law reforms many pro-labour regulations have actually been adopted; giving space for the development of a trade union movement within the country. While some outcomes of the reforms include the shifting of responsibility from the executive to other institutions – such as the judiciary – the government still appears to be involved in many labour relations issues. How can this development best be understood? How have these developments arisen, and why? What are the implications for labour? What challenges and opportunities come up for the country's newly (re-)established trade union movement? What lessons can we learn from the development of these changing labour laws, in regards to the relationship between labour law and economic development in Indonesia?

1 The idea of changing the labour laws had actually been discussed quite intensively in the late 1970s (Oesman, 1981), during the early phase of the New Order government's effort to further contain trade unions' activism in the country. For reasons that will be discussed further later, this did not eventuate until recently.

The present study seeks to address these questions, and to explain the labour law reform process. In so doing, it is divided into two major parts. The first section presents an empirical analysis about the development of labour law in Indonesia, historically and politically, and offers suggestions about what can be learned from the development of Indonesia's labour law. The discussion in this part of the study will be informed predominantly by theories from the fields of political economy and law; and analyses the roles of labour laws in a comparative way. Here the study will base its discussion upon various comparative labour law approaches, in order to locate and analyse Indonesia's labour laws within a wider perspective.

The second part of the study focuses on the three most important issues in labour law: (1) the trade union; (2) the minimum wage; and (3) the Industrial Relations Court. These three issues will be examined in separate chapters. The trade union is crucial in any modern industrial capitalist society, as it represents one of the few institutions capable of promoting some measure of equity and social justice in society. The minimum wage is an important subject in labour law because it is a policy tool for poverty reduction that can also be an indicator of the extent of a government's commitment to social justice. The Industrial Relations Court is important because it is the manifestation of the instrumental aspect of law; which requires enforcement as well as formal examination and adjudication in the event of a dispute. Each issue also involves the two main facets of labour law, i.e. collective labour law (trade union, minimum wage) and individual labour law (minimum wage, industrial dispute settlement), and will be examined using three different illustrative cases related to the three major pieces of labour legislation enacted since the *Reformasi*. The historical background and theoretical considerations discussed in the first section of this book will inform the discussion of these three cases. On this basis the final chapter provides provide reflections, lessons and recommendations.

1 Labour law and development: 'competing conceptions'

The main issue of the study is the relationship between what is generally known as the role of labour law and the development process. It has been argued that there is a close relationship between the two (ILO, 1974; Schregle, 1982). Traditionally and conceptually, labour law has performed a protective function, consisting of setting standards for the protection of workers in their jobs and workplaces, as well as affording them a minimum level of living conditions.[2] There is another function of labour law which may be particularly important on this regard, which is to establish a frame-

2 As we will discuss further later, the works of Hugo Sinzheimer and his disciple Otto Kahn-Freund and their supporters inspired this approach.

work within which constructive industrial relations can occur between employers and workers and their organizations, as well as the government, in order to achieve maximum benefit for the parties and society (ILO, 1974: 25).

History has shown us, however, that such 'idealistic' notions of labour law and its relationship with particularly the latter function appear difficult to realise in practice. These 'competing conceptions' of labour law (Deakin and Morris, 2001: 4) to protect the fundamental social and economic rights of the workers on the one hand, and on the other to promote economic efficiency – have often ended to the benefit of the latter. It is evident that labour law has often been used and manipulated as a tool to restrict the freedom of workers (for example their freedom to organise and to bargain collectively), furthering managerial rights and investment interests (Deery and Mitchell, 1993). This phenomenon takes place both in developed countries (e.g. Deakin and Morris, 2001: 1-55) and in developing countries (e.g., Siddique, 1989). The developing countries' workers, however, probably face more challenges than their counterparts in developed countries, due to the different histories of the development of labour legislation in the two worlds. In developing countries, labour law was already in place before the growth of industry and economic planning. Unlike in the developed countries, the labour legislative patterns there were not indigenous to the social requirements of the country but inherited, borrowed or transplanted from abroad (Cooney et al., 2002; Thiagarajah, 1986: 24).

Despite these obvious differences, there are also similarities between the two worlds' labour laws, namely the dominant notion of 'collectivisation' and 'protection' for labour, which has marked the mainstream development of labour law in the course of the 20th century.[3] Analysis of the history of the development of the legal system and labour law regimes in Indonesia supports this proposition. During the early development of labour legislation in the country, the notion of 'protective legislation' for labour was dominant. This was due partly to the influence of the mainstream labour law discourse at the time and the growing ideology of nationalism and anti-colonialism; and perhaps more importantly, due also to the involvement of many labour unions in the struggle for the country's independence. The labour influence in the legislative process continued from the 1950s to the mid-1960s. Over this period, several labour laws, which were arguably in favour of workers, were enacted.

3 See, e.g., van Peijpe, 1998 [comparing protective labour legislation in Sweden, Denmark, and the Netherlands]; Edwards and Lustig, 1997 [discussing the Latin American contexts]; ILO, 1975 [one of the early accounts of the development of labour law in Developing Countries], and ILO, 1986 [for a later account focusing on the impact of protective labour laws in the ASEAN countries].

However, after the emergence of the New Order in the mid-1960s, with its emphasis on economic stability and stable political conditions, the labour law regime severely restricted independent trade unions. This was not an abrupt effort – in fact, the Indonesian government, with the support of the military and business, systematically and effectively planned a new labour law regime over many years. Rather than developing this new regime as a means of achieving fair distributive goals, and embodying the notions of industrial justice, under the New Order the labour laws were used as a tool to promote the economic interests of the elite. Despite the fact that protective labour legislation existed formally, a big gap was evident between 'law in the books' and 'law in practice' (see, e.g., Fehring and Lindsey, 1995; Lindsey and Masduki, 2002).

Confident with his power, President Soeharto did not consider it necessary to change the labour laws; indeed, he used the law as another tool to enhance his control over society within the state's corporatist structure.[4] Thus, although the New Order's labour law was generally supportive of labour *vis-à-vis* industry, the law was often not applied, and the institutions in place were manipulated in such ways that they could not overcome the reluctance of the government to actually enforce the regulations. Meanwhile 'labour law', (*hukum perburuhan*), as a distinct field of legal research, was in hibernation for over three decades. This can be seen clearly by considering the mainstream labour law books published during the New Order era (Orde Baru): these books were trapped in merely technical explanations of the laws (in the forms of commentaries), with minimal attention directed to the context surrounding the written laws, nor any discussion of the implementation of the laws in practice.[5]

Soeharto's fall in 1998 brought some changes to the ruling elites' strategies towards labour. The 'labour law reform programme', which started in 1998 as a follow-up to the Direct Contact Mission of the ILO Geneva, resulted in the enactment of a new labour regime consisting of a package of three major laws. Together these replaced Indonesia's entire labour law system, as developed from the 1945 proclamation of independence until the mid-1960s.

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4 As further discussed later, the national ideology, *Pancasila*, or 'Five Principles', played an important role on this regard (Hadiz, 1997).

5 See, for example, Budiono, 1995; Djumadi, 1992; Djumialdji, 1987; Halim, 1987; and Kartasapoetra, 1986. Interestingly, all were published by the time labour repression reached its peak during the New Order, culminating in the murder of Marsinah, a labour activist in Surabaya, 1993 (for an historical record, particularly on the role of the military in the murder, see Supartono, 1999). Several earlier opposing efforts were also made, however, (see Masduki *et al*., 1999), and this opposition continued strongly over the last few years after the *Reformasi*, including through the efforts of a small number of Indonesian labour lawyers and activists (see, e.g., Tjandra and Suryomenggolo, 2005, Samsa, 2005, Tjandra, 2004).

Despite early criticisms of their enactment from labour activists,[6] in reality there has been some adoption of the protective notion within the laws inherited from the previous laws (see in particular Caraway, 2009).[7] As we shall see, such a situation, combined with the weakening of the state, has opened the door to democratization; which has given labour the chance to regain its influence in the political arena.

2 The political economy of law and the approach of this study

The foregoing discussion shows that labour law and development are, indeed, 'competing conceptions'. The process of making laws involves contending groups in society, which compete with each other to influence the formulation of a particular law to meet their particular interests. Further, the enforcement of those laws depends on the political and economic situation, as well as on the interactions between different actors at different levels, from the workplace level to the level of the national economy (Wever and Turner, 1995: 2; Bacungan and Ofreneo, 2002: 91-92; also Hepple, 2002). For the purposes of this study, in addition to the standard legal approach (which this study follows predominantly), this necessitates the adoption of a political economy (of law) approach, in order to better understand such dynamics. This additional approach involves analysing the development of law within the so-called 'critical legal theory' tradition. As critical legal scholars have argued, law is basically a manifestation of the economic, political and ideological conflicts in a society (see, e.g., Kennedy, 1997). This certainly applies to the field of labour law (Edie et al., 1992). It is apparent that labour law reflects not only the obvious economic balance of power, but also the political and ideological balance; in particular between the working class and the other classes in society. These other classes include not only employers and the business community, but any proponents of conservative, anti-egalitarian ideologies and supporters of the interests of the so-called 'higher' classes, – the 'neo-liberals,' to use the current term.

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6 For example the *Komite Anti-Penindasan Buruh* (KAPB – Anti-Repression of Labour Committee), a group established in 2000 and comprising more than 40 labour organizations and NGOs, criticised the new laws as a form of 'labour repression' by law, due to the absence of any notions of protection. The provision of the laws contained many problems (see Kolben, 2002; Uwiyono, 2004), and they mainly served the interests of liberalising the labour market, rather than developing a sound and fair labour relations framework in Indonesia, as they claimed to intend to do.

7 According to the OECD Indicators of Employment Protection, Indonesia has always been considered one of the most protective countries towards workers in its legislation, together with China, Brazil, Saudi Arabia, Latvia, and some OECD members such as Turkey and Germany, based on its legislative protection of regular workers against individual and collective dismissal and regulation of temporary contracts (see http://stats.oecd.org/Index.aspx?DataSetCode=EPL_R accessed in October 2013).

In this regard, labour law is, like 'economic development', a contested concept. As noted by Frederic Deyo (1997: 205), in a discussion on the relationship between labour and economic development in the Southeast Asian context:

> [E]conomic development is typically a contested process, one in which shifting and emergent groups and coalitions contend for favourable economic positions in a changing and uncertain social order and in which the very nature and extent of development is an outcome of social and class contention.

Deyo also noted that such a political economy view is useful, in order to understand the role that organised labour has played during the rapid industrialisation in the region. As he further writes:

> Of particular importance here are changes in the 'labour systems' through which labour is socially reproduced, mobilised for economic ends, utilised in production, and controlled and motivated in support of economic goals. These changes are joint products of the economically driven labour strategies of government and business elites, of global political and economic pressures and constraints, of the process of industrialisation itself, and in some cases of the individual and collective responses of workers to elite strategies and industrial pressures (1997: 205).

Such approaches to exploring labour and other laws and economic development, and their inter-relationship, lead to the theoretical position that law making is seldom a neutral process, based on rational and objective considerations. In many cases it is rather a contest between competing interests within society, and these interests are often not evenly matched. This position accords with the study of political economy which stresses the distribution and use of power in society in analysing the policy-making processes. As noted by Robison et al. (1997: 14-15):

> [S]tate policy cannot be neutral, nor can it be the outcome of a process of professional decision making based on an analysis of interest group inputs. Policy is a reflection of the nature of domination in society. The issue is not to identify 'good' and 'bad' policy choices, but to understand why it is that particular policy agendas emerge and hold sway under particular political and economic regimes.

Although the present study agrees with some of the above approach – particularly the importance of the 'why' question, in order to understand the nature of competing interests behind policy-making processes – it also takes the view that it makes sense to look at right or wrong policies, if we want to reach the goal of legal certainty and predictability. This study considers that the position stated above may be too simple, given the complexities in policy-making processes. From this standpoint, in order to understand the complexity of the evolution of labour law in Indonesia and its relationship with economic development, it is important to understand the situation and problems with Indonesia's labour law in the context of the changing economic strategies of the Indonesian government. For this reason the political economy of law approach may be useful to further our understanding

about the role of law in this specific context; namely, the role of labour law in a developing country. It is, moreover, beneficial to examine the contents of the labour policies, in order to best envisage particular regulatory solutions for particular problems. This approach is in line with the efforts of some noted law and development scholars, including Yash Ghai, Robin Luckham and Francis Snyder in their edited book *The Political Economy of Law: A Third World Reader* (1987). The main questions raised in the book are: 'to what extent may law be used as an instrument of state policy to promote social change?', and 'what roles, either intended or unintended, does law play in social processes such as the development of capitalism, the reproduction of established social relations or radical social transformation?' (Ghai et al., 1987: xi).

Taking a Marxian perspective,[8] the editors of the aforementioned book emphasise the role which law plays in relations between rich and poor nations in the world economy, and the functions of law within developing countries (p.xi). They perceive the legal situation in developing countries as a complex combination of legal systems; and their theoretical perspective begins with an analysis of the impacts of global capitalism and the legal forms which it requires. Their approach is, therefore, general rather than specific. The book also does not pay close attention to micro-political arrangements and the impact of changing government policies on these arrangements, or on people's lives. It is more concerned with the macro processes that structure micro and/or local problems, rather than the influence of micro and/or local struggle in structuring the extent of domination of the national legal system.

The approach of this study is a combination of these two perspectives of macro and micro. Although it starts with a broad general analysis of labour law and development in Indonesia, historically and politically, it also recognises the need to look closely at specific issues. For this reason the study focuses partly on the historical records of the political development of labour law in Indonesia, using the political economy of law approach; and partly on particular, specific issues and cases (namely trade union legislation, minimum wage setting and labour dispute settlement mechanism), using more of a labour law and comparative labour law approach.

8 This approach has been developed mainly since the mid-1970s, based on the theories of dependency and under-development, as critiques the early law and development on studies which, according to Ghai *et al*. (1987: xi), had been 'based on ethnocentric, ahistorical assumptions'. For discussions on the changing paradigms in law and development studies, see Newton, 2004; also Trubek, 2003. The latter scholar once proclaimed the 'crisis' and even the 'death' of the law and development movement in the USA (see Trubek and Galanter, 1974; Trubek, 1990), which led to many changes in law and development discourses. For a recent account on the debate, see Trubek and Santos (2006).

3 Focus and framework of the study

The focus of this study is the development of Indonesia's labour law, particularly during the period from 1998 to 2006 during the so-called *Reformasi* (reform) era, marked by the fall of President Soeharto in May 1998. This study also considers that an appreciation of the historical development of Indonesia's labour law system is essential, in order to understand the legal system's current form and content. The research therefore also includes the historic development of Indonesia's labour laws, from independence in 1945 and the transfer of sovereignty in 1949, through the Parliamentary Democracy period (1949-1955) and the so-called 'Guided Democracy' era (1955-1965). Most of Indonesia's labour legislation was enacted and framed during these periods. The 'New Order' era under President Soeharto gets special attention, due to its dominance in the history of modern Indonesia since the country's proclamation of independence in 1945. In power for more than three decades, the New Order presided over almost all of Indonesia's current predicaments. Even in the current 'transitional' era under the *Reformasi*, the New Order legacy remains dominant. Indeed, it has been argued that rather than reforming, the New Order's players have simply been 'reorganising' power; in a form more fitting to the current political situation (Robison and Hadiz, 2004).

The focus and approaches chosen for this study are particularly relevant because of the lack of publications on the political and economic history of the development of labour law in Indonesia, especially since the 1960s. Even more importantly in a country with a large population (Indonesia has over 245 million people), most of whom need to work to survive, labour law is an important tool for evaluating the way in which a government in a developing country treats its workers. Such an approach has been used in some other developing countries, such as South Africa (DuToit, 1979), the Philippines (Villegas, 1988; Bacungan and Ofreneo, 2002), and Chile (Ietswaart, 1978); however in Indonesia this approach has been rare. There is currently a single book on the issue: Iskandar Tedjasukmana's *The Development of Labor Policy and Legislation in the Republic of Indonesia* (1961), which is primarily a description and historical documentation of the development of Indonesia's labour law and labour policy between 1949-1959.[9] Since then, there has been no systematic work published on the issue.

This study will address the need for the systematic documentation and analysis of the evolution of labour law and policy in Indonesia, particularly during the New Order era and its aftermath; as well as the need for an analysis

9 The book has been translated into Indonesian, with the title *Menelisik Hukum Perburuhan di Indonesia: Analisa Gerakan Ekonomi Politik 1950-1960* (Tjandra (Ed.), 2012), published jointly by *Yayasan Pembangunan dan Pendidikan Dr Iskandar Tedjasukmana* and the Trade Union Rights Centre.

of the potential future role of labour law in the context of Indonesia and the globalisation of its market economy. Moreover, an important question within law and development studies is whether law can function as a stabiliser in society; and labour law is difficult to deal with, and rarely investigated. This study will contribute to addressing that question also. With regard to the aim of the study – to examine the relationship between labour law and economic development in a developing country – labour law is a field of research that involves direct economic influence; with the interests of the parties involved usually being in direct competition with each other. These parties include not only workers and their unions, but also political elites and business people at national and regional levels; not only national actors but also global players, buttressed by the globalisation of the economy.

4 Theoretical and comparative considerations

How can we understand Indonesia's labour law and its development within the wider systems of labour law in the world today? This is the main question that this dissertation would like to explore. The next section in particular will focus on the theories and debates that are helpful in explaining the genesis and implementation of the current labour law regime in Indonesia. It starts with an examination of the character (the form and content) and impact (the capacity to influence outcome) of labour law, using the theories developed by Sean Cooney et al. (2002), which focus on the East Asian countries' contexts. It then continues with a discussion of the structural limitations of labour law reform in the country. The chapter ends with an exploration of the origins of the concept of labour law, as we know it.

4.1 The character of labour law in East Asia

In its original version, labour law has been designed – and thus interpreted – in light of its goal, which is to protect employees. According to this traditional view of labour law, employees were in need of protection because they suffered from inequality of bargaining power *vis-à-vis* their employers.[10] The idea is derived from the writings of German jurists published mainly in the early decades of the twentieth century. One of the most prominent figures was Hugo Sinzheimer, the 'father' of German labour law. As noted by his student, Kahn-Freund (1981: 14), Sinzheimer saw the employment relationship as a power relationship characterised by domination and subordination, by which labour law came into its own as a new discipline as it rejected the liberal assumption that the contract of employment is a product of the parties' autonomous choices. Sinzheimer, follow-

10 For a classic account, see Davies and Freedland (1983), chapter 1, and more recently see Davidov and Langille (2009).

ing Karl Renner (1949),[11] adopted the Marxian idea that the subordination of the worker resulted from the capitalist ownership of the enterprise (or 'means of production' in Karl Marx's words). According to Renner, the assumed contractual equality between the legal persons of employer and employee was in fact a fiction, which then reinforced the employer's domination and the employee's subordination. Sinzheimer wanted to defeat this mystification of the worker's actual state of dependency, by contrasting the 'contract of employment' – in which human beings exchange themselves, – with 'ordinary contracts,' in which the transfer of things or their uses or services are promised.[12] According to Sinzheimer, by explicitly recognising these contracts in statute law, this legal mystification could be destroyed. At this point, labour law became the law of 'dependent' labour, and became an attempt to moderate the employer's power to command through the infusion of legal elements (see Clark 1993: 83, also Kahn-Freund 1981: 79).[13]

The concepts of 'subordination,' 'dependency,' freedom of association, and the right to collective bargaining together predominantly framed the development of labour law during the industrial revolution in Europe, which was the formative period of labour law (Hepple, 1986). Several general principles, with 'labour is not a commodity'[14] as the most important one provided a moral basis on which the relationship between employer and worker should stand, based on equality. The main expression of this principle was the struggle for contractual equality between the dependent or subordinated worker and the employer. This was realized in all European countries before the Second World War by protective legislation; notably for children, young persons and women (Hepple, 1986: 6-12). The legislation has been described by van der Heijden (1994: 135-36, also cited in Hepple and Veneziani, 2009: 5) as 'inequality compensation', whereby 'the legislator has considered it useful and necessary to compensate the economic inequality existing between employer and employee through law.' In a practical sense, the

11 The English version of Karl Renner's classic book, *The Institution of Private Law and Their Social Function* (1949), was edited and introduced by Otto Kahn-Freund.

12 Sinzheimer, as well as Kahn-Freund, used to exemplify this by quoting Marx's sentence in *Wage-Labour and Capital* (1847-9): 'Labour has no other container but human flesh and blood' (see Kahn-Freund 1981: 77-8).

13 This is the essence of what Kahn-Freund has called Sinzheimer's 'anthropology'; that is: '[T]he belief that the true objective of labour legislation was to advance the freedom, dignity and personality of the individual worker and workers as a whole, to assist in the emancipation of the human being as distinct from the fictional "legal person". The ultimate practical purpose of academic labour law was to promote legislative reforms to that end.' (in Lewis and Clark 1981: 39).

14 The term was coined by an Irish economist, Dr. John Kells Ingram, at the British Trade Union Congress (TUC) meeting in Dublin in 1880 (see O'Higgins, 1997: 53-54), which echoed Karl Marx's insight that capitalism has turned labour power into a commodity. Later it was adopted as the first principle of the Declaration of Philadelphia 1944, which embodied the work of the ILO (International Labour Organization), and was reflected in the 'Workers' Chapter' of Pope Leo XIII Encyclical *Rerum Novarum* (1891).

main focus of labour law is the problems emerging from the employment relationship between the employer and employee, and the relative power of the two parties, normatively ordered by the nature of the contract and conditions of employment; statutory conditions of employment; state systems for the settlement of industrial disputes; and the right to collective organization and industrial action.

In an edited compilation of articles on labour law in a number of East Asian states, including Indonesia, Cooney et al. (2002)[15] have argued that labour law in East Asia had been characterised by combining a more 'traditional' focus on the protection of employees in the employment relationship, and a focus on the broader labour market dimensions of state policy-making and regulations. Thus, apart from addressing the problems emerging from the employment relationship and the inherent inequality of power between the employer and employee, labour law has also paid attention to broader employment issues such as human resources planning, job training and replacement, and social welfare.[16] Cooney et al. (2002: 5-9) identify three important and interlinked influences that shape the contents of labour laws in many East Asian countries: (1) 'legal transplants' or borrowing from Western states and from international institutions; (2) economic development policies; and (3) strategies of political control. As they note: 'most of the developed or developing East Asian states have adopted, in broad outline at least (and some more recently than others), systems of labour law that reflect the form and content of the systems of Western countries' (Cooney et al., 2002: 3). This has been a legacy of colonial powers, and more recently the efforts of the ILO, both through standard-setting and through technical cooperation. Such borrowings from external sources, in particular the Western systems, have continued even after the countries gained independence.[17]

Concerning the influence of economic development policy on the form of labour law in East Asian countries, Cooney et al. refer to the work of Sarosh Kuruvilla (1996, 1995), who argues that a country's industrialisation strategy largely determines its industrial relations and human resources policies, or at least, that they are 'closely intertwined and mutually reinforcing' (Kuruvilla 1996: 635). Summarising his findings by comparing Singapore, Malaysia, the Philippines and India, Kuruvilla writes:

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15 In this regard and in the discussion about Cooney et al. (2002), the chapter has benefited from an article by Fenwick and Kalula (2005) which discusses labour law in East Asian and South African countries from a comparative perspective, using Cooney et al.'s (2002) approach.

16 As we shall discuss later in the chapter, the Manpower Law No. 13/2003 reflects this in its contents.

17 Cooney *et al.* (2002: 4) describe a number of reasons why this continued borrowing happens: including the need of the state (or, often, a particular political party) to secure political legitimacy or self-assessment as a 'modernizing' state; pressures from other states, in particular the US and European Union; and pressures from NGOs.

> The author finds that import substitution industrialization was associated with Industrial Relations/Human Resources policy goals of pluralism and stability, while a low-cost export-oriented industrialization strategy was associated with Industrial Relations/Human Resources policy goals of cost containment and union suppression. In countries that moved from a low-cost export-oriented strategy to a higher value added export-oriented strategy, the focus of Industrial Relations/Human Resources policy goals shifted from cost containment to work force flexibility and skills development.
>
> (Kuruvilla 1996: 365)

Another 'domestic contribution' to labour law in East Asian contexts, according to Cooney et al., is political control. Cooney et al. refer to this as the 'regime stability' strategy common to all East Asian countries that have been ruled by authoritarian regimes after World War II. As they note: 'These regimes have implemented labour laws which, to varying degrees, have been aimed at repressing and/or co-opting labour, and sometimes capital, in order to prevent challenges to their rule or to the implementation of their policies' (Cooney et al. 2002: 7). To support their argument about the use of labour law for political control in East Asian states, Cooney et al. refer to two theoretical contributions provided by Kanishka Jayasuriya and Frederic Deyo. Jayasuriya (1999), whose concerns are with the nature of state-based law in East Asia, argues that the rule of law in East Asia, different from the liberal notion of the rule of law in the Western countries, has reflected the corporatist structure of East Asian societies. It is enforced not only by specific laws but by the whole architecture of the legal system, which, he argues, has recreated the political rule established by the colonial state; particularly with respect to the ideological notions of 'security and order' (Jayasuriya, 1999: 147-173).[18]

In an earlier article, Jayasuriya (1996) has termed this 'rule through law', or 'rule by law', in his discussion on the relationship between the development of the rule of law in East Asia and the rise of capitalism. With respect to labour law, 'rule by labour law' took place in the sense that labour law – as with all laws under authoritarian regimes – became an 'instrument to pursue the objectives of the state' (Jayasuriya, 1999: 2-3). Jayasuriya's argument is in line with Deyo's explanation on the corporatist attidude towards labour in the East Asian states (Deyo, 1989).[19] Deyo's main concerns are to identify the relationship between economic and social structure, and the weakness and

18 In this regard, Jayasuriya refers to Daniel Lev's important article in 1978 about the Indonesian *Rechtsstaat* or *negara hukum*. In another article, Lev argues that the Indonesian political system, under the New Order in particular, 'shared much with that of the colony, but was even rawer in its lack of institutional controls and abuse of power' (1999: 92; also cited in Lindsey and Masduki. 2002: 38).

19 Deyo focuses his study on four countries: Hong Kong, South Korea, Taiwan, and Singapore. By corporatism he means 'authoritarian' or 'state' corporatism, as opposed to the more voluntarist 'societal' corporatism characteristic of many Western European nations, notably Germany (Deyo, 1989: 107).

subordination of organised labour in the region. He argues that East Asian states have employed either repressive or corporatist methods of controlling labour. As he notes, repressive controls aim at 'containing, demobilising and restricting' workers, while corporatist controls endeavour to 'organise, channel and encourage certain types of individual or collective behaviour on behalf of elite-determined economic or political objectives' (Deyo, 1989: 107).

Legislative measures play an important role in the mechanism of controls as discussed by Deyo. In the words of Cooney et al. (2002: 8):

> Repressive provisions include those prohibiting the formation of unions in key industry sectors; rendering strikes effectively illegal; imposing compulsory arbitration of disputes; banning union involvement in politics, and conferring extensive discretionary powers on state bureaucrats in relation to union registration and deregistration procedures; collective bargaining; and the appointment of union officials. Corporatist provisions, more common in the later phase of industrialisation, include those establishing welfare funds; conferring privileges on state-endorsed union federations; and atomising or decentralising unions to further enterprise and state paternalism.

Deyo's analysis in his 1989 work was convincing, but it has become less relevant in the 1990s (see also Frenkel, 1993: 12) as it has not placed much attention on the democratization processes that have been underway in the regions since the 1990s (Jayasuriya, 1999, Cooney, 1999; Cooney et al., 2002: 8-9).[20] Democratization has weakened the authoritarian corporatism, which further destabilised the structure of labour law and thus its effectiveness. We shall discuss this further in the next section.

4.2 The impact of labour law in East Asia

Cooney et al. (2002) want to explain the so-called 'gap' between law and practice, which they argue is an obvious phenomenon in many East Asian countries. Although extensive labour laws exist in East Asian countries (see also Cooney and Mitchell, 2002: 246-274), there remains in all cases a large gap between law and practice. According to Cooney et al. (2002: 9), labour law regimes in East Asia have not been 'invoked in the same ways or utilized to the same ends as in the West during the comparable period of economic development'. The law/practice gap in East Asia, they argue, is different not only in degree but also in nature from the law/practice gap that is the focus of socio-legal scholarship in developed countries. Several examples provide evidence for this claim: for example, despite the fact that democratization

20 Wang and Cooney (2002; see also Cooney 1996) argue in the context of Taiwan, when authoritarian corporatism of the Nationalist (*Kuomintang*) government weakened the structure of labour law has been increasingly unable to respond to the more democratic context of labour relations. This is particularly true in the context of collective labour relations, and workers enjoy greater freedom to organise themselves through unions, while strikes and other industrial actions become legal, at least in principle.

has allowed labour movements to increase their ability to challenge the state, this capacity remains well below that of their Western counterparts; and despite growing numbers of trade unions, the levels of collective bargaining remain relatively low, as does the frequency of industrial action under legal procedures.

Referring to the rhetorical question in Donald Clarke's article on China: 'What's Law Got to Do with It?' (Clarke, 1991), Cooney and Mitchell point out: '[It] is not that law doesn't exist but that it has little capacity to significantly influence other social systems, such as the state or the market.' However, they also note that labour laws are not uniform or consistent in effect; similar laws have different effects in different countries and over time. Different areas of labour law are associated with different gaps: for example the adjudication of 'interest' disputes (disputes over entitlements of future working conditions during collective bargaining) is utilised in different ways in Malaysia, the Philippines and Taiwan (Cooney and Mitchell 2002: 247-248). Similarly, laws on the formation of trade unions have influenced the shape and activity of workers' organizations to different extents in different countries: for example, laws limiting trade union formation in South Korea and Taiwan became ineffective, because most unions were actually formed outside the parameters provided by law, while in China, employment contract laws had a marked influence, radically altering that country's employment practices.

In explaining how such a gap occurs between law and practice, the work of Otto Kahn-Freund (1974) is particularly important in Cooney et al.'s (2002) analysis. Cooney et al. (2002) critically examine Kahn-Freund's notion of 'legal transplantation' as a tool in examining whether or not it is possible for laws developed in one jurisdiction to function effectively in another (Kahn-Freund, 1974: 1). Kahn-Freund argued that political factors, in particular the power structure of the state, have the biggest impact on whether or not a transplant will succeed (Kahn-Freund 1974: 11-13).[21] For Kahn-Freund, it was 'how closely [the transplanted law] is linked' with the power structure of the original system that would determine its success or failure (Kahn-Freund, 1974: 13). He considers success in legal transplants to be a process of 'naturalisation' of the foreign laws into the domestic legal system (Kahn-Freund, 1974: 18), or 'uniformity,' which other comparative legal scholars see as the main indicator of success of legal transplants (see Smits, 2002). Kahn-Freund

21 Here he referred to the three most important political differences: (1) differences between political systems (communist and non-communist, democracy and dictatorship in capitalist world); (2) differences in democratic themes and distributions of power in the government's branches (e.g., presidential type in the US, parliamentary type in the UK, and a mixture of both in France and Germany); and (3) differences in the roles played by 'organised interests' (economic and cultural) 'in the making and in the maintenance of legal institutions' (Kahn-Freund, 1974: 12).

also discusses the 'degrees of transferability'; that is, the degree to which a particular law is subject to 'rejection' by the new legal system (Kahn-Freund 1974: 5-6). In the case of labour law (see also Whelan, 1982), Kahn-Freund argues that individual labour law is much easier to transplant than collective labour law (Kahn-Freund 1974: 21). This he argues, is because collective labour law in any country is 'organised under the influence of strong political traditions' (Kahn-Freund 1974: 20). Moreover, decisions in particular cases in this area of law are often more political than those in other areas; so the allocation of decision-making power under the constitution (i.e. whether power is allocated to courts or the government) is particularly significant (Kahn-Freund, 1974: 20; also Fenwick and Kalula 2005: 198).

Cooney et al. (2002) criticise Kahn-Freund's claims that politics and the state's power structures are the determining factors in the success of legal transplantation. They base their criticisms on two arguments. Firstly, Kahn-Freund's dichotomy of collective/individual labour law has become too simplified, now that labour law scholarship is increasingly encompassing labour market regulation. Second, they contend that the reasons any particular transplant succeeds or fails should not be presumed, but should be examined empirically. As they note, (2002: 10):

> Kahn-Freund offered no supporting evidence for his contention about the relative importance of particular influences. It is true, of course, that the close interrelationship of a political power structure in a society and its laws makes such a position as that taken by Kahn-Freund intuitively plausible. Nevertheless there is no reason for supposing *a priori* that political power structure is always the dominating variable in accounting for difference. The relative influence of factors can only be addressed and resolved – if indeed it is possible to resolve such a problem – by empirical observation.

Further, drawing on Teubner (1998) and the idea of social systems,[22] Cooney and Mitchell (2002) suggest that in order to explain the law/practice gap in East Asia, there are two important applications of the law: the effectiveness of the law; and the consequences of transferring a legal concept from one system to another. The first application implies that if law is coupled loosely with a relevant social system, as is the case with labour law and labour

22 Gunther Teubner (1998) develops a more complex account of the relationship between law and its context. Teubner agrees with Kahn-Freund's notion of 'degrees of transferability', and thus law is no longer tightly bound in its entirety to its social context. However, for Teubner the different parts of the legal system vary in the intensity of their connection not only with a society's political systems, but also with its economic, technological and cultural systems (Teubner, 1998: 17–27). A central element of Teubner's approach is the concept of law as an 'autopoietic', self-distinguishing, social system (Teubner, 1993). Teubner builds his argument based on the social systems theory formulated by Niklas Luhmann (see Luhmann, 1995, which focuses on 'social system'; also Luhmann, 2004, which focuses on the 'law as social system'), by viewing the social world as consisting of systems of communication such as law, the market, politics, the various sciences and so on (see also Cooney and Mitchell 2002: 249).

markets in East Asia, its effectiveness, in the sense of 'capacity to "interfere with", or influence, them productively' will have a limited impact. The result would be 'mutual indifference' (Teubner, 1987), 'as if law speaks ("this is illegal!") and no one listens (because "this is efficient" or "this is good policy" or "this is moral").' (Cooney and Mitchell 2002: 250). The second application is particularly important, due to the fact that most East Asian labour law systems are transplanted from Western countries. This may lead to the presumption that they will operate very differently from how they did in their Western place of origin (Cooney and Mitchell, 2002: 251). Thus, this analysis of social systems suggests that a law/practice gap is inevitable; which opens up space for a more empirical investigation of the issue.

One important factor in East Asia which distinguishes it from Western states is the range of deficiencies in the internal structure of the legal systems (Cooney and Mitchell, 2002: 252-254), which lessens the law's ability to have an impact on other social systems:

> The weaknesses internal to the structure of labour law in East Asian states – unclear differentiation from policy, conceptual lacunae and low capacity to generate new norms – diminish labour law's capacity to operate as a self-sustaining system. It becomes relatively dependent on norms produced by other social systems. … These weaknesses suggest that law may have diminished regulatory capacity.
>
> (Cooney and Mitchell, 2002: 254, also cited in Fenwick and Kalula, 2005: 202)

In relation to this, Cooney and Mitchell examine three broad kinds of relationships between law and other social systems: law and politics and political structure; law and 'culture'; and law and economic structure. Of the three sets of relationships, according to Cooney and Mitchell, the relationship between law and culture is the most inconclusive,[23] while the relationship between law and politics and economic structure is the clearest. Most of the countries studied by Cooney et al. have been ruled by authoritarian regimes. The main goal of the state is to maintain regime 'stability', through policies controlling organised labour and policies of economic development and modernisation for legitimacy. Both have obviously characterised labour law in East Asia. In the most explicit cases, law 'simply translates political objectives into legal terminology: that which is contrary to the interests of the state is illegal' (Cooney and Mitchell, 2002: 256). But the law-politics relationship is more complex; in most cases it is a matter of accommodation. This includes cases involving state ignorance of the law (for example Taiwan, South Korea and particularly Malaysia); cases in which laws are expressed

23 While there is literature on China (eg. Zhu, 2002, also Peerenboom, 1993) and Vietnam (Nicholson, 2002) which suggest that indigenous legal cultures might have an impact to the functioning of Asian legal systems transplanted from Western models, analyses of Indonesia (Lindsey and Masduki, 2002), Malaysia (Sharifah, 2002) and Taiwan (Wang and Cooney, 2002) suggest the contrary.

in ways that allow the state to interpret and apply them as it wishes (the Philippines); and cases in which laws are reserved through administrative measures, with little or no opportunity for judicial review or other means to challenge the law (Vietnam, and Indonesia before 2003[24]). In these cases, law is not separated from politics to the same extent, or by the same means, as it is separated in the legal systems and countries from which it was adapted.

These variations in the relationship between law and politics have been examined in the context of the wave of democratization that has occured in the region, particularly in Indonesia, South Korea and Taiwan. There may be expectations that such development would have a positive effect on society. Cooney and Mitchell, however, observe that the impact is actually unpredictable and sometimes paradoxical. While democratic change has undermined the corporatist nature of the state and the exercise of political power in general, it may have had less impact on other social systems, such as industrial relations. In South Korea and Taiwan, although the law's capacity to influence state action has increased, and the unwillingness of labour law to accommodate state policies has been growing, in both countries collective labour law remains widely ignored. As pointed out by Cooney and Mitchell (2002: 257):

> One of the reasons for this may be that the relevant legislation is still closely linked to the superseded political form, and retains authoritarian elements incompatible with current political arrangements. The state is no longer prepared to back the law up with coercive force. Accordingly, in the world of industrial relations, they can safely be ignored.

As noted by Fenwick and Kalula (2005), one important finding from East Asia research is that labour law has been noticeably absent in the construction and functioning of labour markets. In Vietnam, it has been reported that around 80 per cent of workers in the country are not covered by relevant legal provisions, because they work in enterprises which employ fewer than the minimum number required for application of the law (Nicholson 2002: 133). In the Philippines and Indonesia, large portions of the workforce are in the informal sector,[25] and working in the informal sector means that workers are not protected by any laws (Cooney and Mitchell 2002: 259). As Cooney

24 On 15 October 2003 the Constitutional Court started to operate in Indonesia (based on Law No. 23/2003 on the Constitutional Court), providing access to Indonesian citizens to challenge the laws through judicial review.

25 As noted by Breman (1980: 4), the term 'informal sector' was first coined by anthropologist Keith Hart (1971) in his description of the part of the urban labour force which falls outside the organised labour market in Kenya (see Jolly et al. check footnotes for italics a required 1973). The term has since been greeted as a useful concept, and has been further refined by the International Labour Office (ILO) during a study of the employment situation in Kenya within the framework of the World Employment Programme (ILO, 1972). Indeed, in a recent publication, the ILO (2002) has stressed the importance of 'decent work' for workers in the 'informal economy', as a response to the proliferation of new forms of work relations that fall outside the definition of 'employee', which continues to be the basis for most labour protection legislation.

and Mitchell (2002: 258) note, it is almost to none that state-based law applies in a large portion of transactions in the labour market. A related finding is the important role played by non-state based 'informal' regulatory systems, as is the case in Indonesia and perhaps other countries, which have labour markets with large informal sectors (Cooney and Mitchell 2002: 263).[26]

Such findings require further empirical investigation in specific contexts, especially given the common criticism of labour law from neo-liberal economists that labour law has caused distortions in the labour market. Thus, legislation on minimum wages, in particular, would inhibit the effective functioning of labour markets, by, for example, raising wages higher than market rates, which may then create unemployment. The finding is significant because it directly addresses the relationship between state-based law and East Asian markets, and also contributes to a critical debate in socio-legal studies about the law's role in economic development (see, e.g., Ginsburg, 2000).[27]

According to Cooney et al. (2002), there are also other reasons why labour law has not been influential in labour markets in East Asia. One reason that they propose is ignorance: companies (and often employees) are often simply unaware of the relevant legal provisions. A second common reason is economic necessity: legal penalties may be too high for companies to bear, with the cost of compliance exceeding a company's capabilities, as is in early-1950s South Korea, and in Indonesia after the 1997-1998 crisis (Cooney and Mitchell 2002: 259). A third proposed reason is a lack of effective enforcement, with companies simply refusing to comply regardless of having the means to do so, if they know that there will be no sanctions any-

26 As indicated by Breman (1980: 4-5), the origin of the concept is linked to Julius Boeke's 'dual economy' (1953), as a classical explanation of the phenomenon of economic dualism, and of the reasons behind sustained underdevelopment in Indonesia. The concept refers on the one hand to an urban market economy, usually of a capitalist nature, and on the other hand to a rural subsistence economy characterised mainly by a static agricultural system of production. Such a position, which originated from the colonial situation, has long been dismissed as invalid, because it is based on the assumption of a particular socio-economic duality of different stages of development, and a contrast between modern and traditional, capitalistic versus non-capitalistic, industrial-urban versus agrarian-rural modes of production. As Breman (1980: 5) puts it: 'The urban dualism that is nowadays apparent in many developing countries is not due to any gradually disappearing contrast between a modern-dynamic growth pole and a traditional-static sector which has tenaciously survived in an urban environment, but rather to structural disturbances within the entire economy and society.'

27 Pistor and Wellons (1999), based on extensive studies in six countries in Asia between the years 1960-1995, conclude that there is generally a relationship between the development of legal and economic systems, although not necessarily between all parts of legal and economic systems. Jayasuriya (1999), however, argues that 'the East Asian example suggests that high levels of economic performance bear little or no relation to the development of a credible legal system' (Jayasuriya 1999: 7).

way, or if they know that there are insufficient labour inspection officials available, or that officials can be bribed (Cooney and Mitchell 2002: 260).

The option of private enforcement – such as through civil litigation procedures – as a way of curtailing opportunistic employers is perceived by average workers to be out of reach. The complexity of the law, the difficulty of undertaking legal procedures, and the high financial costs of the litigation process all hamper the opportunities for workers to use this option. Writing of the Philippines, Bacungan and Ofreneo (2002: 114) note:

> The legal complexity underlying the labour relations process … strongly favour[s] the powerful and informed who are in a position to take advantage of and manipulate the dense and detailed [regulations]. In such cases, of course, in the very large sectors of the economy in which employees are unrepresented by labour organizations, there is very little chance of employees being aware of their legal rights or having the ability to have access to them.

Cooney and Mitchell (2002) also observe that not only can law influence aspects of the economic system, such as labour markets; the economic system can also influence aspects of the law, such as the changing of the labour market structure. Malaysia, South Korea, and Taiwan have all expanded their regulatory scope of labour law to respond to the fact that their labour markets are net importers of labour; while the Philippines, and recently Indonesia, have responded to their status as labour exporters (Cooney and Mitchell 2002: 267). In the concluding remarks for their book, Cooney and Mitchell (2002: 267) point out:

> [W]hen regulators use the medium of state-based law they will, whatever their substantive objectives, encounter in East Asia configurations of relationships between law, politics, economics and other social systems which are alien to Western experience.

The findings of Cooney et al. (2002) are salient, especially when one recalls that a key function of labour law today is to contribute to the correction of market failures: on the one hand to protect fundamental social and economic rights of the workers; and on the other hand to promote economic efficiency. It is the intention of this dissertation to find out to what extent these findings are relevant to and help explain Indonesia's development since the *Reformasi* in 1998.

5 Labour law reform and its limits

The increasing exposure of countries to global free markets, in the globalization of the economy, has put national governments under pressure to relax restrictions on internal markets in order to become more competitive. The buzzword is 'deregulation', to get rid of restrictions on free market activity and lower barriers to the movement of goods and services across country

boundaries. Some prominent changes have included the removal or minimisation of tariff barriers (such as customs duties and taxes on manufacturing); free mobility of capital; rationalisation in the movement of commodities and manufacturers; and, particularly within the World Trade Organization framework, recognition of intellectual property rights. In the context of labour, market reforms mean labour market reform (Mehmet et al., 1999, Brassard and Acharya 2006), which aims at making labour markets more flexible and less expensive. The view that businesses should not have to carry the costs of labour when that labour is not fully utilised in the process of value-adding, has led to changes such as regulations to make it easier to 'hire and fire' workers (Standing, 1999; also Cook, 1998); abolishment of rigidities in wages fixing; and even the possibility of dropping wages (Brassard and Acharya, 2006). Geographical mobility of labour, however, has not been directly mentioned. There appears to be an implicit understanding, especially among the OECD economies, that free movement of labour exists, but this opportunity largely benefits highly skilled workers; which would result in developing countries being greatly disadvantaged compared to developed countries.

One risk of labour market reforms is that they may move in a direction other than that which society, workers in particular, have hoped for and expected. Reforms can threaten the livelihoods and economic security of workers, by shifting the costs of social reproduction and market risk from employers and states to families and communities. Various forms of labour market deregulation in developing countries have further weakened the already weak sources of income of millions of urban people in those countries (Deyo and Agartan 2003). As explained by Deyo and Agartan (2003: 57-58), there are two types of labour market deregulation: policy-based deregulation and structural deregulation. The first type, policy-based deregulation, refers to direct state action through regulation of labour markets and employment practices, as well as companies' efforts to casualise their 'in-house' work by outsourcing and informalising production and services previously conducted 'in-house'. The second type, structural deregulation, refers to deregulation which takes place indirectly; for example when privatisation of state-owned enterprises forces workers out of the regulated workforce into the relatively unregulated sphere of private employment; or when increasing mobile capital undermines the power of trade unions and governments' regulatory power in particular issues such as work rules and pay standards, employment benefit and severance pay; or when the expansion of export processing zones enlarges the extent of 'formal sector unprotected labour' in those zones.

Labour law plays an important role in this process, because labour law establishes the framework within which industrial relations and labour mar-

kets operate.[28] Legal change is generally by a new framework of labour law introduced in developing countries, as can be seen by the large number of laws regulating labour relations (Cooney et al., 2002). In this way, changes in labour law can indicate the nature of change in industrial relations systems in particular regions (Cook, 1998, Cordova, 1996). Since the early 1980s in East Asia (Cooney et al., 2002) and Latin America (Amedeo et al., 1995), and since the late 1990s in South East Asia (Deyo, 2006), labour law reform has occurred in conjunction with the countries undergoing a transition from authoritarian rule to democracy, along with a shift in economic development strategies away from import-substitution industrialisation toward the adoption of neo-liberal economic policies oriented toward exports. Indeed, as noted by Cook (1998: 312), democracy and neo-liberalism are the 'twin pressures' that act on the industrial relations systems. Behind labour law reform is labour market deregulation, the primary goal of which is to enhance labour market efficiency and flexibility for the sake of economic growth. The primary aim is to free labour markets, labour-protection measures, and the labour process[29] itself from the institutional rigidities imposed by government interference, trade unions and social obligations (Deyo and Agartan, 2003). In other words, the main goal of the reform is to replace existing labour market institutions with new ones, which are more efficient, and growth promoting, and which are based on market rationality free of the limitations and interventions imposed by the state and other social institutions.

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28 'Industrial relations' refers to a concept originally developed by John Dunlop (1958, 1993), describing a system which comprises three actors and their interactions with each other: management organizations; workers and their organizations; and government agencies. 'Labour markets' refers to the commodification of labour within the market function, through the interaction of workers and employers. As discussed earlier, in the last decade there have been efforts from some labour law scholars towards the 'reformulation' and 'reorientation' of labour law, to shift the focus from employment relationships towards broader labour market issues, and to see the law become 'the law of labour market regulation' (see Mitchell and Arup 2006; also Deakin and Wilkinson 2005, D'Antona 2002). It has been suggested that labour law should shift its focus from, for example, 'employees' to the broader inclusive term of 'workers'; and from 'workplace' to the 'world of work'.

29 'Labour process' theory is associated with Michael Burawoy's *The Politics of Production* (1996), which provides a thorough understanding of the transformation of labour, but highlights processes of control and expropriation in the production itself (see Burawoy, 1996, particularly Chapter 1). Deyo and Agartan (2003: 56, 75) have further suggested 'labour system' theory as an advanced interpretation of the labour process concept, that is: 'the institutionalised social processes through which particular types of labour are socially reproduced, protected, mobilised and allocated via markets or other social arrangements into productive activities, managed and motivated at sites of production, and valorised into profit or surplus'. The authors claim that this, 'offers a more balanced account of the full range of labour transforming processes including but extending beyond the site of production itself'.

Closely connected to the argument of institutional reform is the discussion about the inter-relationships between institutions, institutional change, and economic performance. These relationships have been analysed in the works of the economic historian Douglass North (1990; 1989; 1981), whose arguments strongly influenced development agencies during the so-called 'second wave' of law and development projects in the 1990s globally (Ginsburg, 2000: 833; Trubek and Santos, 2006).[30] In North's words, institutions are defined as: 'humanly devised constraints that structure human interaction'. They are made up of formal constraints (e.g. rules, laws, and constitutions), informal constraints (e.g. norms of behaviour, conventions, self-imposed codes of conduct), and their enforcement characteristics: 'Together they define the incentive structure of society and specifically economies' (North, 1994: 360, see also Rosser, 1999: 96). Since this dissertation focuses on changes in particular laws, it is the first type of institution (i.e., formal constraints) that is of primary concern here.

There is evidence that the process of instituting a free market economy has negative impacts on workers' livelihoods and economic security, in particular by 'shifting the costs of social reproduction and market risk from employers and states to families and communities' (Deyo and Agartan, 2003: 58). This process often leads to increasing institutional tensions and generates political opposition within the society (Polanyi, 1944; Everling, 1997). Other commentators have observed that the World Bank's and the IMF's debt-restructuring projects in developing countries, which have reduced state subsidies and social services, have undermined the social wage[31] of urban populations (see, for example, Everling, 1997; McMichael, 2000; Stiglitz, 2002).[32] It is also evident that in many developing countries, labour market deregulation – particularly in the form of policy-based deregulation – has

30 The 'first wave' of law and development, in the 1960s, refers to '[a] group of sociologically sophisticated, progressive academic lawyers' who wanted to help the states in developing economies to improve their legal systems, in order to help people modernise themselves (see Otto 2006: 161, referring to Newton 2004). The 'second wave' in the 1980s refers to the renewed interests of development aid agencies about law in the relationship with development, influenced by neo-liberal ideology focusing primarily on economic growth and private property (see also Trubek and Santos, 2006). Later, Trubek et al. (2006) argue that a new development wave has emerged (they prefer to use 'Moment' as a more specific term to define the moment that law and development 'doctrine' crystallises into 'orthodoxy'), which includes 'changes within the field of development economics, reactions to the failures of the neo-liberal Moment, changing policies and practice of the World Bank and other development agencies, development within legal theory in the centre, and the spread of a new legal consciousness to the periphery' (Trubek and Santos, 2006: 3).

31 Social wage refers to social benefits available to all individuals, determined by the basis of citizenship rather than employment, and funded wholly or partly by the state through taxation and received free or at subsidised cost.

32 Such criticisms come not only from outside (Everling uses a Marxist approach, and McMichael a non-Marxist approach), but also from inside; represented by Stiglitz, who was a senior adviser to the World Bank itself.

diminished the legal obligations of employers in areas such as workers' pay, benefits, job security, and pensions (Deyo and Agartan, 2003: 58).[33] This has happened through giving more power to employers to hire and fire workers, and to hire larger numbers of temporary workers rather than permanent staff. This development has had a direct impact on labour law, as it challenges the notion of labour law which held sway in industrialised market economies during the twentieth century (particularly between 1945 and the late 1970s), which was characterised by collectivisation and increasing protection for workers. Since the late seventies however, new developments in labour law have generally been taking a different course. In labour law literature, this change is described as including trends towards deregulation and increased flexibility for employers, which undermine the traditional collective-interest representation of workers, and threaten the content of labour law, as we have known it.

As Davies (2004: xv-xvi) has shown, two main perspectives are adopted to examine the subject of labour law today: the human rights perspective, and the economic perspective. These two perspectives offer different (and often contradictory) insights, yet together they can be useful to help understand the effects of labour law in practice. As noted by Dhanani et al. (2009), the key point of the debate is whether, and to what extent, labour can be treated as a commodity which can be freely traded (as with other commodities) in the market; and whether labour markets need to be regulated. In the words of Paul Krugman (1998: 15, cited in Dhanani et al. 2009: 150): 'while almost everybody concedes that, like it or not, most jobs must be supplied by private, self-interested initiatives, there is still much confusion about what this concession involves. Part of the problem is that many people are still unwilling to accept the idea that the labour market will not function well unless it is allowed to behave more or less like other markets.'

Thus, there are two different and contradictory positions regarding the need for labour market regulation: one for regulation, and one against (see also Manning and Roesad, 2007: 60-61, also Dhanani et al., 2009: 150-1). In the case of Indonesia, this debate has intensified since the economic crisis of 1997-1998. The IMF and other providers of foreign capital placed conditions on their financial injections during the crisis, putting significant pressure on the state to reform its economic and industrial policies; in particular its industrial relations system. This move towards neo-liberalism and global competition took the economy towards de-centralisation and de-institutionalisation, as state policy shifted to encourage labour market flexibility.

33 See also International Industrial Relations Association Congress reports, various years, which have discussed such trends for several years.

The situation faced by Indonesia right after the 1997-1998 Asian economic crisis was comparable to that of other developing economies in Asia at the time (Benson and Zhu, 2009)[34]: a situation characterised by declining union memberships, and the weakening of social and institutional support for workers. In an extensive volume on trade unions in Asia, Benson and Zhu (2008) examined union characteristics and related actions and strategies, in twelve economies in Asia that were facing increasing competition from globalisation and neo-liberalism during the period of their research. Using the historical-institutionalist perspective developed by Gospel (2005), Zhu and Benson (2008) identified different trajectories of institutionalisation and de-institutionalisation among these economies. They found that the ways in which different states responded to such pressures, through particular regulations and policy priorities, and the responses from trade unions varied markedly between countries (see also Frenkel and Kuruvilla, 2002).

There is, however, a converging trend; which is that trade union movements throughout Asia have generally adopted a market-orientated approach, as described in Hyman's (2001) typology. According to Hyman, who analysed the development of trade unionism in Europe, there are three models of unions, differentiated by their orientation: market unionism, class unionism, and social unionism (see also Gospel, 2008). Market-orientated unions see unions as economic actors pursuing economic goals ('business unionism') such as the welfare of members, especially through collective bargaining within the labour market. Class-orientated unions see unions as vehicles of class struggle, and their role is to promote working class interests and the transformation of society in a revolution direction. Society-orientated unions see unions as social actors and social partners, with labour pursuing constructive roles in society, such as by strengthening the voices of workers in society and acting as a force for social, moral and political integration. In practice, unions tend not to be wholly one of these three ideal models, but rather a mixture; although combining all three models would be extremely challenging within any one organization. As noted by Gospel (2008: 15), Hyman's (2001) triangulation between market, class, and social unionism is useful in mapping the trajectory of unions over time.[35]

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34 In their analysis, Benson and Zhu (2008) identify two categories of Asian economies: the 'developed Asian economies' – the more advanced economies in Asia, such as South Korea, Taiwan, Hong Kong, Singapore and Malaysia – and the 'developing Asian economies' – the less advanced economies in the region, including Indonesia together with China, Vietnam, India, Sri Lanka, and Thailand.

35 Some unions (such as in the UK, the US and Australia) started out with a strong market orientation, before moving in a more class-focused direction through the early twentieth century. Then, over the last quarter-century, some have shifted towards greater social partnership between society and the market or back towards market-focused goals. France, which had an early tradition of class-based unionism, still today provides examples of many different types of unions (market, society oriented, and class-focused), existing side by side. In Germany after the Second World War, unions moved from class to market and social orientations.

Drawing from Hyman's models, Zhu and Benson (2008: 261) argue that trade unions in East Asian developing economies 'have shifted from a political-oriented [meaning class-oriented – ST] union approach to a market-oriented form, with little society focus'. Given this shift, it may appear that Asian developing economies – including Indonesia – are following the Asian developed economies, which experienced market liberalisation earlier in the 1980s. However, Zhu and Benson (2008) warn that this apparent similarity may disguise major differences between the two sets of economies. As Zhu and Benson point out:

> [T]he developed [East Asian] economies enjoy a certain level of industrial and institutional maturity with relatively sound social, economic and industrial infrastructures in place. They exhibit strong social networks to support the basic needs of working men and women. In contrast, the developing economies have not built the necessary basic social and legal protections for vulnerable workers. The adoption of a neo-liberal policy framework so quickly, along with the abandonment of the move towards institutionalisation and social protection has meant that sustainable well-being for both society and individual citizens is less likely in the developing economies.
>
> (Zhu and Benson 2008: 261)

Here lie the limits of neo-liberal labour law reform, in which 'the framework of decollectivized, deregulated, and deinstitutionalized neo-liberal labour law is here to stay because it matches the basic needs of a globalized capitalist market economy and of liberal democracy' (Hepple 1996: 626). In the case of developing economies such as Indonesia, undertaking decentralisation and de-institutionalisation before ensuring that both industrial and institutional stability have been achieved will be more likely to put the long-term sustainable development of the society under threat. Nor is this threat one-directional: development and change will, in turn, face challenges from society. As noted by Hepple (1996: 626), 'at the very moment of its apparent triumph, individualized market labour law faces political, industrial and judicial challenges.' It is the intention of this dissertation to examine these challenges in the Indonesian context, particularly from the perspective of those groups generally considered 'the weak and vulnerable groups' in society – the workers and their unions.

1 Historical background: evolution of Indonesia's labour law

Laws to regulate the exchange of personal services or other services for monetary remuneration, have no social and cultural basis in early Indonesian society. Paid labour as a means of subsistence does not fit with patterns of early Indonesian social relationships (Wertheim, 1959: 236). Labour was either a contribution to the collective, or a service to a traditional authority. As noted by Furnivall (1944: 184), the first experiment with paid labour, under Dutch colonial rule, only occurred in 1849, in association with harbour and defence work in Surabaya, East Java. This was considered by the government to be quite successful, and in 1851 the government ordered that all state buildings should be constructed with paid labour. In 1854 a Public Works Department was established, followed in 1857 by a policy that all government works, 'in the absence of express orders to the contrary', should use paid labour.

This first foray into paid labour was, however, a short-lived phenomenon. The intensive exploitation of colonial assets demanded more labour, which 'could most readily be met by using the available Javanese farmers for unpaid compulsory services under the traditional feudal system' (Wertheim, 1959: 242). For a long time afterwards, the Dutch colonial government relied upon and maintained the society's existing traditional and feudal labour relations systems[1] as the main source of labour. Despite the fact that the government had initiated the banning of public slaves in 1854, and had made first provisions for the gradual abolition of slavery in 1860, the government's economic interests appeared to remain dominant throughout the 18th and 19th centuries, until almost the end of the colonial era. Most labour legislation during this time was intended primarily to control labour, either in domestic service or industrial production, particularly on plantations such as those established on the eastern coast of Sumatra, which relied on imported labour from Java.

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1 In the Indonesian (Javanese) traditional feudal system this was called *pancen,* which basically meant a natural tax system in the form of labour (derived from the word *panic*, meaning 'part' or partial responsibility, see Wignjosoebroto, 1995: 95-6), and comprising obligatory house and garden works for the feudal chiefs. Other types of compulsory labour were *heerendiensten* for public works (Onghokham, 2003: 29), and *desadiensten* for the village (Furnivall, 1939: 182). Despite attempts to abolish this system in 1912, and its formal abolishment in 1917 (replaced by a head tax system), these compulsory services were retained informally by government agencies for many years later, particularly for public utility works such as work on roads, bridges and aquaducts; as well as work on private estates surrounding Batavia (Wertheim, 1959: 245).

That this early development of labour policy was directed towards the provision of labour can be seen in the provisions of the Civil Code (Burgerlijk Wetboek), which regulated employment contracts among the Europeans and, later, among all groups in society. By the early 20th century, heated debate about the Coolie Ordinances and the use and misuse of the penal sanction (poenale sanctie) forced the government to consider reforming its regulations, and according to Furnivall (1939: 354), this marked the start of the Netherlands Indies' evolution of labour policy towards protection of labour. However, the Coolie Ordinances, the poenale sanctie and the actual practice of using coolies were all only abolished near the end of the colonial era.

Meanwhile, trade union activities were also growing, particularly in the more modern fields of work such as mining, railways and harbours. The growing significance of trade unions within society, and most importantly their involvement in the struggle for the country's independence, put trade unions in a special position once Indonesia gained independence. This was reflected in the early legislation established by the new country, which was characterised by the notion of protection for labour. This legislative focus continued through the 1950s and 1960s, until the rise of the 'New Order' in the mid-1960s.

1 The colonial era – the law of the lords

During the Dutch colonial era, two different types of legislation regulated the labour-employer relationship. The first comprised an employment contract provision under the Netherlands Indies' Civil Code (*Burgerlijk Wetboek*), in particular three simple paragraphs 'on the hire of servants and workers' (the articles are known as '1601-1603 old' and were amended in 1926). The second was the Coolie Ordinance (*Koeli Ordonnantie*), which was designed to manage the contract coolie labour (*kuli kontrak*), and to reinforce the positions of European managers and assistants on large estates.

a The Civil Code (Burgerlijk Wetboek)

The three paragraphs of the Civil Code (*Burgerlijk Wetboek*) on the hire of servants and workers were originally only applied to Europeans (*Staatsblad 1847 No. 23*). From 1855 they were extended to include Foreign Orientals, and from 1879 natives were also included (*Staatsblad 1879, No. 256*; Hooker, 1978: 194).[2] The primary intention was to ensure the security of the European employers of native workers. However, the relevant sections of the

2 According to Article 131 *Indische Staatsregeling* (*Staatsblad 1925, No. 415*), all persons in the Netherlands East Indies were classified into one of three groups: Europeans, Natives and Foreign Orientals (Chinese, Arab and Indian inhabitants), with each group having their own law.

Code were generic enough to be applicable to labour contracts between non-Europeans as well – although initially this did not lead to implementation, as non-Europeans remained excluded from the system (Schiller, 1946: 176).

Using the Netherlands law of 1907 as their foundation, the colonial government in 1926 added a further 80 articles under the title '7A of the Civil Code'. Together these provided a comprehensive compilation of the law governing labour contracts, adapted to the Netherlands Indies conditions (articles 1600-1603z of the Civil Code). A provision was made for the future enactment of special legislation regarding labour contracts in agricultural or industrial enterprises, in rail, trams, general transport and other services (Schiller, 1946: 177). In addition, special provisions were also enacted later for maritime personnel and workers in industrial enterprises (up until 1941); however the new law did not modify the delegation of authority to enact special laws on plantation managers and assistants.

The new labour law contained several articles which stated that if a labour contract existed between an employer who fell within the scope of 7A of the Civil Code (on contract) and an employee who did not fall within the scope of 7A, then regardless of the intention of the two parties, that labour contract was nevertheless controlled by the provisions of 7A 'if the work is such as is usually performed by workers falling within the scope of the title' (i.e., Europeans) (Schiller, 1946: 177). Further, if an employer was not within the terms of 7A, and their employee was within the terms, their labour contract was always governed by the provisions of 7A (Schiller, 1946: 177). These provisions gave rise to extensive litigation, and the courts had difficulties differentiating work that was normally performed by Europeans from work that was not. The new labour law did, however, include clear rules for managing interracial labour contracts; and there were provisions for both parties to submit voluntarily to 7A even if the work was not of a kind usually performed by Europeans (Schiller, 1946: 177). Thus, although the new law was intended to apply to Europeans, in practice it could also cover labour contracts between and among natives and foreign orientals.[3]

3 Nonetheless, Schiller (1946: 177-178) also noted the complexity of the status of labour contracts when both parties were non-Europeans; for example when non-European employees for a European employer performed non-European work, which racially divided law might still apply to the oriental and native workers. As he summarised it: 'Race, nationality, the place where the work is performed, the type of work done, the person of the employer, the land of the employer, and recently the amount of wages paid, have all been decisive of the law to be applied.' (Schiller, 1946: 179).

b The Coolie Ordinances (Koeli-Ordonnanties)

Other important regulations were the Coolie Ordinances, which were designed to manage contract coolie labour (*koeli kontrak*) and to reinforce the European managers and assistants' positions on large estates. The first Coolie Ordinance was promulgated in 1880 (*Staatsblad 1880 No. 133*) to regulate labour relations, particularly on the plantations in East Sumatra.[4] This ordinance was later expanded to cover other regions of the Outer Islands, including mining operations on Bangka, Belitung (Billiton) and Singkep islands. Further ordinances in 1884 and 1893 gave employers more effective legal control over their indentured workers, who were brought particularly from Java.

The Coolie Ordinance was stricter than the normal regulations on employment contracts. It introduced contractual work based on 'free contract' and 'free labour' systems, and importantly it introduced the use of penal sanctions (*poenale sanctie*), and other types of punishment as ways to regulate labour in the Netherlands Indies (Wertheim, 1959: 250-1; see also Breman, 1989, Stoler, 1985, Erman, 1995). Plantation managers used these systems (see Middendorp, 1924),[5] as a means to keep their labourers; given the shortage of workers in the Outer Islands. If a coolie violated his contract, he was liable for punishment, so that, '[a] labourer running away from his plantation could be arrested by the police and, after undergoing a prison sentence, be forced to fulfil his contract to the end' (Wertheim, 1959: 251).

In order to prevent labourers from returning to their homelands at the end of their contracts, plantation managements employed various means of inducing the coolies to stay: 'By encouraging gambling on pay-day, saving on the

4 The Netherlands Indies' so-called 'plantation economy' developed mainly in the sparsely-populated Outer Islands (particularly Sumatra) between 1870 and 1942 (Thee, 1977). Due to the nature of the work, plantations required extensive labour; and this became a major problem for the industry. The shortage of labour was solved by recruiting contract labourers (coolies) from China, and later, from Java (see Breman, 1989: 14-74).

5 The *poenale sanctie* system itself had been in the colony for some time. In 1829 the Police Regulation for Surabaya (*Soerabajasch Politiereglement*) was declared, giving more legal power to people over their servants 'by imposing a penalty on the non-observance of agreements' (Furnivall, 1939: 181). In 1851 this *poenale sanctie* system was extended over most of Java and part of the Outer Islands (Thompson, 1947: 151). Later, the system was replaced by the Police Penal Regulation (*Algemeen Politiereglement voor Inlanders*) of 1872, with a clause penalising the breach of an agreement to work. Due to protests in the States-General, this *poenale sanctie* was repealed in 1879 (by *Staatsblad 1879 No. 203*), and a new article (article 328a) was added to the Penal Code (*Wetboek van Straftrecht*) (see Paulus *et al.*, 1917: 360-365). However, new labour control problems emerged as interest shifted from domestic service to industrial production with imported labour, especially in the tobacco plantations of East Sumatra (Furnivall, 1939: 181-182). In 1880 this led to the promulgation of the Coolie Ordinance, and similar ordinances for other regions in the Outer Islands.

part of the workers was hampered. The *mandur* [supervisor] saw to it that the labourer, when his contract was expired, was so deep in debt that he had no choice but to sign a new contract' (Wertheim, 1959: 251). Other scholars reported similar conditions (see, e.g. Breman, 1989; Stoler, 1995; Erman, 1995; Somes-Heidheus, 1992).[6] Plantation managers, to prevent workers from building solidarity, also used the existing racial tensions among the coolies: 'Foremen were played off against the common coolies, Javanese against Chinese, the indigenous Bataks and Malays against both groups. [Also] the penal sanction made strikes impossible and thus impeded the development of a trade union movement' (Wertheim, 1959: 252).

Various forms of severe punishment were used to respond to and prevent resistance by the coolies. These included actions which today would be considered torture; as noted by Breman (1989: 218), they included:

> [I]ncarceration without food and water, running the gauntlet, tying up in various positions (standing, sitting, laying on belly or back, crouching, hanging), standing in the sun for a fortnight (*didjemoer*, 'airing'), binding them hand and foot, water immersion, bastinado in crucified position, dragging them behind a horse with the hands tied, beating them with leaves that caused itching and then drenching them with water so that the body swelled, having slivers of bamboo driven under the fingernails, rubbing finely-ground pepper onto female sexual organs, hanging Chinese coolies by the pigtail so that the victim could barely touch the ground with his toes, and clubbing them to death.

The combination of feudalistic and paternalistic attitudes within the indigenous agrarian sphere, compounded by colonial coercion, led to severe exploitation of workers. It was apparent that coolies in plantations experienced conditions that in practice were often tantamount to slavery. The situation was well articulated by Tan Malaka, an Indonesian revolutionary, in his famous memoirs *Dari Pendjara ke Pendjara* (From Prison to Prison), during his visit to Deli (December 1919 – June 1921):

> *Inilah klas jang membanting tulang dari dini hari sampai malam, klas jang mendapat upah tjuma tjukup buat pengisi perut dan penutup punggung, klas jang tinggal dibangsal seperti kambing dalam kandangnya, jang sewaktu-waktu di-godverdom-i atau dipukul, klas jang sewaktu-waktu bisa kehilangan isteri atau anak gadisnja djika dikehendaki oleh 'ndoro-tuan… adalah klasnja bangsa Indonesia, terkenal sebagai kuli-kontrak.*[7]

6 The works of Breman (1989) and Stoler (1985) were important on this regard. These authors were among the early researchers to analyse the brutal colonial labour practices towards *koeli kontrak* in the Deli plantation on the east coast of Sumatra. Erman (1995) and Somers-Heidheus (1992) provide analyses of the cases of Belitung and Bangka respectively.

7 Malaka, 1939: 49-50; translated and cited by Harry Poeze (1976: 76): 'De klasse die zwoegt van vroeg tot laat; de klasse die loon krijgt juist genoeg om de maag te vullen; de klasse die woont in een schuur zoals geiten in hun stal; die ieder ogenblik geslagen of een "godverdomme" naar het hoofd geslingerd wordt; de klasse die ieder ogenblik hun vrouw of dochter kan verliezen als de blanke man haar begeert… dat is de klasse van Indonesiërs, bekend als contract-koelis.'

> [The class that toils from early until late; the class that gets wages just enough to fill the stomach and cover the back; the class that lives in a barn like goats in their stable; with frequent beating and 'goddamns' hurled at their head; the class that can lose at any time their wife or daughter if the white man desires her ... that is the class of Indonesians known as contract koelis.]

In 1902, Johannes van den Brand, a practicing lawyer, published his famous pamphlet *De Millioenen uit Deli* (the Millions from Deli), condemning the Coolie Ordinance and the practices it encouraged, on moral grounds (see Breman, 1987). As a response, in 1903, the Dutch colonial government ordered Public Prosecutor J.L.T. Rhemrev, a member of the Council of Justice in Batavia, to investigate the allegations. The Rhemrev Report revealed the extreme cruelty of many plantations practices. This report became 'lost' in the archives, and there has been speculation that it was deliberately hidden by the Minister of Colonies, to keep it from public scrutiny (justified on the grounds that there was no opportunity for the accused to defend themselves against the charges, and the government should focus not on the past but on the future (see Breman, 1989). It was not until the late 1980s that the report was first made public (Breman, 1989: 7).[8]

Due to growing concerns about the existing law, and particularly the practices described in the Rhemrev report, there were in fact some attempts by Dutch politicians to improve the legislation. In 1909, the penal clause was weakened (*Staatsblad 1909 No. 526*); and in 1911 'free' wage labour (hiring on a contract without penal sanction) was included in the ordinance (*Staatsblad 1911 No. 540*; *Staatsblad 1916 No. 616*) (Heijting, 1925: 21-2; Touwen, 2001: 115).[9] Rhemrev himself was appointed as a temporary Labour Inspector in East Sumatra in 1904. In 1908 the government also established the Labour Inspectorate (*Arbeidsinspectie*) for the whole Netherlands Indies (*Staatsblad*

8 Jan Breman, a Dutch scholar, made the report public for the first time with his monograph in 1987 (see Breman, 1987, Dutch version). Breman's chief criticism was that the report was deliberately never made public. However, Breman's claim has been questioned on several grounds. As noted by Touwen (2001: 113), some references to the report do exist in the earlier literature (e.g. Langeveld, 1978: 298; also Pelzer, 1978: 138-9), and Breman's criticism has also been challenged for failing to consider the temporal and geographical context. We will return to this issue later.

9 This resulted in coolies falling into one of three categories: either contract coolies; 'free' coolies (*vrije arbeiders*) or casual workers (*losse arbeiders*). As noted by Houben (1999: 17): '[a] contract coolie was a person who had concluded [obtained] a contract on the basis of [the] Coolie Ordinance, i.e. a contract including the penal clause. "Free" coolies were labourers from outside the region who had concluded a contract without a penal clause on [the] basis of the amendments to the Ordinance […] Casual workers were coolies from the region itself who worked for an unspecified period of time at an enterprise but did not fall under any kind of Coolie Ordinance … [whose] position was regulated by the Civil Code and *adat* [customary] law'. Houben also noted that the word 'free' was in fact a misnomer, 'since it does not mean that a "free" coolie was one without a written contract at all but rather one working under a different type of contract'.

1908 No. 400) (Heijting, 1925: 79). This inspectorate operated as a branch of the Department of Justice, and was intended to provide protection for workers.

In 1921 a Labour Office (*Kantoor van Arbeid*) was created within the Department of Justice (based on *Staatsblad 1921 No. 813*) in Batavia, consisting of three divisions: labour legislation and statistics (in Java); the Labour Inspectorate, which was effectively included from 1923 (by *Staatsblad 1923 No. 336*); and labour unions. This Office was responsible for all matters concerning government involvement with labour issues (Houben, 1999: 16; Heijting, 1925: 79-82). However, the powers of the Office were restricted. As noted by Houben (1999: 16), the Labour Inspectorate was tasked: 'to make an official report of any irregularities which came to its notice and to initiate a criminal investigation', yet 'its function was largely preventive since the punishment of offences was left to the judiciary'. This means that the inspectorate could not impose administrative sanctions on violators, unlike their contemporary counterpart in the Netherlands. Breman (1989: xiv) also criticised the effectiveness of the Labour Inspectorate, which, in his opinion, had actually become 'an instrument with which the coolies were conditioned in accordance with the wishes and needs of their employers'. Moreover, following heavy pressure and lobbying from planters and employers, the coercive and penal conditions included in the Coolie Ordinance remained in force until almost the end of colonial rule (Breman, 1989: 273; also Stoler, 1985).

2 Labour disputes, emergence of unions, and their laws

During this time there were some other developments towards a measure of freedom for workers in Indonesia, particularly in the more recently-established industries such as mining, industry and transport. Under the considerable influence of left-wing Dutch political groups, Indonesian railway workers started the modern trade union movement with the establishment of the first labour union in Java in 1905; the State Railway Workers Union (*Staatsspoor Bond*) in Bandung, West Java.[10] European workers dominated this union though, with few members who were native Indonesians,[11] yet an 'embryonic class consciousness' was growing in the colony (Ingleson, 1981:

10 The organization's status as a 'legal person' (*rechtspersoon*) was already recognised in 1905 with Governor General Decision (*Besluit*) No. 25 of 19 October 1905; and they were able to get the organization's statute recognised in 1910, with Governor General Decision (*Besluit*) No. 28 of 14 June 1910 (see *Soewara S.S. Bond*, 8 July 1910).

11 The union's early officials, who were mainly European, were aware of this situation, and campaigned to persuade the indigenous workers to join the union. The official publication *Soewara S.S. Bond* was published in the Malay language, with the clear intention of encouraging indigenous workers to join the union (see e.g. *Soewara S.S. Bond*, 8 April 1910, which discusses the meaning of the word 'bond' [union]).

485; 499).[12] Labour unions grew significantly in the 1910s and 1920s, in support of groups of workers including teachers, railway workers, chauffeurs, dockworkers and domestic servants. The efforts of these unions to improve not only wages but also working and living conditions for their members were often successful.

The emergence of labour unions was not an entirely peaceful process. Well before the formation of labour unions, it was reported that hundreds of labour disputes had broken out spontaneously in Java – although these disputes were referred to by the Operations Manager of the *Semarang-Joana Stoomtram Maatschappij* as 'a storm in a tea cup'. It was also noted that between 1901 and 1905, the average number of strikes in the colony was 120.6 per year, rising to 137 per year in the five years from 1906 to 1910. It was further estimated that 11,882 people went on strike each year between 1901 and 1906, with an average of 7,841 people per year over the next five years (Ingleson, 1986: 62-3; see also *Locomotief*, 4 January 1913).

As Ingleson (1986: 63) has further described:

> Given the smallness of the urban workforce and the probability that the Bureau of Statistics received information from larger employers only, these figures represent a significant level of direct action by Indonesian workers. As far as can be ascertained, they were all short-lived spontaneous protests by small group of workers whose dissatisfaction with their lot was brought to the surface by some minor immediate grievance. In many cases aggrieved workers sought redress from their foremen or from European supervisors, often directly confronting European managers as a group, sometimes with their foremen as spokesmen. While successful negotiations have gone unrecorded, presumably workers were often able to resolve their grievances this way. However, when employers rejected or ignored workers' petitions, they often responded by simply walking off the job. Few of these strikes lasted beyond two or three days; many were resolved in a matter of hours.

Labour disputes during this time were marked by a lack of communication between European managers and their workers; with a lack of any concept of industrial relations. The usual response by European managers to protest actions by the workers was to inform the local Assistant Regent (called *patih* or *wedana*), who would then visit the workplace and talk to the workers: 'Usually these officials sternly lectured strikers on the serious consequences of not returning to work immediately, but as well they often acted

12 Ingleson, however, also noted that this 'embryonic class consciousness' never developed into a fully fledged class consciousness' since 'it all too easily slid into the alternative of *race* consciousness' (Ingleson, 1986). Compared to China and India, for instance, in Indonesia there was no significant indigenous capitalist class. Most of the modern sectors of the economy were predominantly in the hands of European managers or supervisors, in the service of the European capitalist class. The remainder of the economy was controlled by the Chinese (particularly the *batik* [traditional clothes] industry), or for some industries, by Arab immigrants. For Indonesian workers, the Chinese and Arab managers and supervisors were as alien as the Europeans (Ingleson, 1986: 7).

as mediators, convincing managers of the genuineness of workers' grievances and the need for them to be redressed' (Ingleson, 1986: 63). With the strikers' leadership mainly comprising older workers or foremen, and with no involvement by outsiders, these early strikes had many similarities to the peasant protest movements and uprisings. Referring to Ravanjiv Kumar (1971), Ingleson (1986: 63-4) has argued that: 'Like peasants protests, early urban strikes occurred spontaneously, were sudden outbursts of pent-up frustrations and longstanding grievances, and lacked class-consciousness, class organization or even formal leadership. Their goals were limited to redressing immediate and local grievances, with no sense of being part of a wider social movement'.[13]

The situation started to change after the establishment of the nationalist organizations *Boedi Oetomo* in 1908 and *Sarekat Islam* in 1912. Indonesians employed in private undertakings, as well as agricultural and factory workers, started to form similar organizations (Thompson, 1947: 158). Although *Sarekat Islam* did not begin to organise urban workers directly until 1917, the communists' growing influence within *Sarekat Islam* led to an increasing sense among workers that they had support. As noted by Ingleson (1986: 64): '*Sarekat Islam* offered a sense of comradeship and purpose. Urban workers, especially the skilled and the literate, flocked to the *Sarekat Islam* branches where they discussed social and economic issues, including, of course, those issues which affected them directly – wages and conditions in the workplaces.'

The local *Sarekat Islam* leaders began to involve themselves in labour disputes, 'initially as advisers and mediators, but very quickly as providers of the outside leadership which urban workers had hitherto lacked' (Ingleson, 1986: 64). Eventually, the difficult economic situation in the Netherlands Indies during and after World War I, along with the growing influence of

13 The ineffectiveness of the labour movement, according to Virginia Thompson (1947), was one of the two major 'labour problems' (the other one was labour supply) in Indonesia and Southeast Asia in general during the colonial era. Wilfrid Benson, in the preface of Thompson's book, summarised the situation: 'In Java, the maximum number of organised workers appears to have been reached in 1941 when the membership of trade unions was estimated at 123,500. […] There was little unity or continuity among the unions which existed. The Western government feared the political interests of the labour movements. The seasonal character of much of the employment, labour migration and, in some cases, the racial diversity of the labour force, were other factors making trade union organization difficult.' Something that arguably still is the main characteristic of the Indonesian labour movement today.

the communists, drove *Sarekat Islam* in a more radical direction.[14] The *Sarekat Islam*'s growing influence in urban areas was demonstrated by its successful initiatives, such as persuading employers to allow workers time off on Fridays for Muslim prayers; and persuading workers to stay at home for one day of the year (the group demanded that the prophet Muhammad's birthday in late February 1913 should be a rest day).[15] This influence at times aroused tension and panic among the Europeans in Java, as illustrated by the widespread rumours, in early August 1913, of a plan by native people to undertake mass murder of Europeans on 24 and 25 August.[16]

These tensions, and the belief that the *Sarekat Islam* was behind plans to organise a strike in 1913 by workers at the East Java Steamtram Company (*Oost Java Stoomtram Maatschappij*; the OJS), led to the company's Head of Operations, along with the Chief Representative (*Hoofdvertegenwoordiger*) of *Samarang-Joana Stoomtram Maatschappij* (the SJS; of which the OJS was an operating company), to contact the Commandant of Java's Second Military Division on 26 June 1913 and 5 July 1913, to discuss the possibility of military assistance in the event of a strike.[17] This may be the first recorded formal communication between a company and military authorities concerning labour issues; and the first clear invitation of military intervention in labour disputes. Meanwhile, government concerns were also growing regarding the possibility of a general strike in the railway industry; an industry that was crucial to the transport of export crops from the hinterland of Java, and on which the finances and the prosperity of Dutch economic interests depended.

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14 The initial programme of *Sarekat Islam* itself was very moderate politically. The the main purpose of the organization was to further the interests of Islam in Indonesia and to work for the social and economic advancement of the people in co-operation with the colonial government's Ethical welfare programme. As Tjokroaminoto, the founder of the organization, once stressed in his speech at its congress in 1916: 'Our objective is the unification of the Indies and the Netherlands, to become citizens of the self-governing "State of the Indies". We do not want to cry out: "Down with the government!" On the contrary, our motto is: "Together with the government and in support of the government to go in the right direction…' (in Penders, 1977: 257).

15 Its well-known publication, *Oetoesan Hindia*, became a useful tool for spreading the organization's propaganda to the members.

16 The *Java Bode*, a Dutch language newspaper, even felt it necessary to inform its readers that: '[t]he feelings of the natives, fired by religious frenzy, will burst out in the mass murder of Europeans. The rabble, taking advantage of the fanaticism of their fellow men and hiding behind *Sarekat Islam*, will send murder parties to their targets' (cited in Ingleson, 1986: 70).

17 See Chief Representative (*Hoofdvertegenwoordiger*) of *Samarang-Joana Stoomtram Maatschappij* to the Directors (*Directie*), 5 July 1913, *Nederlandsch-Indische Spoorwegmaatschappij en Tramwegmaatschappij NV Gemeenschappelijk Archief, 1880-1975*, *Dossier* 745b, 'Maatregelen bij Werkstakingen, 1913-1925'. See also Ingleson, 1986: 70. As we will see in Chapter 3, this became one of the main characteristics of the New Order labour practice.

According to Ingleson, this led to the issuance of an Ordinance in September 1914, which allowed 'the use of military on civil functions for the preservation of public order or the maintenance of essential services in the public or private sectors' (1986: 71).[18] Although the initial intention was merely to keep the railways functioning in the event of a strike, the new law was equally useful as a means of preventing strikes in any industry in the colony. 'This was the first major change in the colony's laws specifically designed to control urban workers', concluded Ingleson[19]:

> Strikes were neither prohibited nor restricted, and beyond bureaucratic registration rules there was nothing to stop combination [unionisation] by workers in individual industries or on a colony wide basis. The control of urban labour was primarily through administrative measures and the wide provisions of the Penal Code under which swift action could be taken against anything deemed a threat to 'tranquillity and order'. In such cases, Residents, local officials and the police had wide powers of arrest and detention. Moreover, controls over Indonesian press and ordinances controlling public speaking ensured that any Indonesian, or for that matter any European, could be arrested and hauled before the Courts for an inflammatory speech or article. … Many hundreds of journalists, editors and political activists were jailed or fined under these provisions.

Without providing details, Ingleson pointed out that between 1921 and 1926, a series of repressive laws was enacted which made it difficult for even the most moderate labour unions to remain active. As noted by Thompson (1947: 160-161), the colonial government did not favour joint negotiations by employers and employees regarding the regulation of working conditions, and regarded collective agreements as matters merely for the parties concerned. On 11 May 1923, the Penal Code of the Netherlands Indies was amended with article 161 bis, by which inciting others to strike was a crime

18 As we will see in later Chapters, the term 'essential services' was used repeatedly in the history of Indonesian labour regulations, as a means of legitimising the need to avoid strikes..

19 Ingleson referred to the 'Ordinance of 14 September 1914' or '*Staatsblad 1914 No. 614*', which seems an error as that particular Ordinance does not refer to the use of the military on civil activities as Ingleson describes. A check of the original archives (accessed at the National Archive in Den Haag, the Netherlands) shows that he may have quoted from a letter from the Chief Representative (*Hoofdvertegenwoordiger*) of *Samarang-Joana Stoomtram Maatschappij* to the Directors (*Directie*), dated 13 October 1914, which erroneously mentioned '614' when the number was instead meant to be '612', as can be seen in its appendix. The *staatsblad* discussed was actually *Staatsblad 1914 No. 612* concerning 'Regeling van de verhouding en de samenwerking tusschen de burgerlijke en militaire autoriteiten' [Regulation of the relationship and cooperation between the civil and military authorities], which amended *Staatsblad 1907 No. 261* with article 8a. See also *Nederlandsch-Indische Spoorwegmaatschappij en Tramwegmaatschappij NV Gemeenschappelijk Archief, 1880-1975*, *Dossier* 745b, 'Maatregelen bij Werkstakingen, 1913-1925'.

with a maximum sentence of 5 years in prison.[20] Through this formal adoption of provisions limiting the right to strike, any agitation which disturbed 'public order' or contravened the labour contract was liable to be penalised. This new provision, together with other penalty initiatives in some regions, effectively halted the organization of strikes. In one case study, J.E. Jasper, the Resident of Pekalongan, released a technical briefing to his staff on 12 May 1923 regarding the handling of security by the military, field and *dessa* police in the event of a strike in Pekalongan. Jasper was responding to the promulgation of *Staatsblad 1923 No. 227* the day before, which declared that article 8a of *Staatsblad 1919 No. 562* (jo. *Staatsblad 1919 No. 27*) be applied throughout Pekalongan, with public gatherings prohibited unless with prior notice.[21]

In a clear example of the lack of recognition of collective negotiations between management and employees, there was no reference to strikes in the Netherlands Indies' early labour laws. Nor were any public institutions tasked to deal with disputes between management and labour. Before 1926, the law covered only individual contracts with no provisions made for collective agreements, other than those falling within the competence of the Coolie Ordinances. Further, agreements between native employers and employees were governed by their customary laws, which in fact were not part of the central government's realm. When the Civil Code was amended in 1926, the validity of collective bargaining was finally recognised, but it was only applicable to Europeans. The official statistics below indicate how effective the provisions were: in the 1930s, strikes were few, affecting only a small number of companies and, on average, involving only a quarter of the company's workers (see table 1.1).

Table 1.1: Number of NEI Workers on Strike, 1936 – 40

Year	Number of establishments involved	Number of strikers	Percentage of strikers to total workers	Days of work lost
1936	6	872	33.7	4
1937	22	1,357	15.0	100
1938	15	741	20.8	40
1939	18	1,628	13.8	36
1940	42	2,115	22.6	32

Source: Thompson, 1947: 160

20 The article was later annulled by the independent Indonesia's transitional government, through Penal Code Act No. 1 of 1946 (see article 8). The act also repealed all the penal laws implemented by the highest military command of the Netherlands Indies or 'Verordeningen van het Militair Gezag' (see article 2 of the Act No. 1 year 1946).

21 *Nederlandsch-Indische Spoorwegmaatschappij en Tramwegmaatschappij NV Gemeenschappelijk Archief, 1880-1975, Dossier* 745I, 'Werkstakingen, 1923'.

It is important to note that until the last phase of the Dutch colonial era, there was no official machinery set up for the settlement of labour disputes. The only way workers could settle their grievances was through the regular courts, whose decisions were final. Conciliation procedures were first established in 1926; specifically, for disputes in the railway industry in Java and Madura. This so-called 'tripartite' labour dispute settlement mechanism, comprising representatives from unions, employers, and the government, was introduced by Government Regulation No. 3x of 1926 (*Staatsblad 1926 No. 224*, 12 June 1926), slightly revised in 1929 by Government Regulation No. 1x of 1929 (*Staatsblad 1929 No. 456*, 16 November 1929).[22] In November 1937 the regulation was expanded to cover the whole of the Netherlands Indies (*Staatsblad 1937 No. 624*), and in July 1939, it was expanded to include other industries.

The 1937 law provided mechanisms for government intervention in disputes, and also for voluntary settlement before cases progressed to courts. This was considered particularly important for cases involving the public interest' (see also Thompson, 1947: 161). In such cases, a committee comprising representatives from each group was established, which would attempt to arrive at a voluntary settlement, and was required to report its findings to government. From 1939, a committee comprised of officials chosen by the Director of the Justice Department, and tasked to attempt to reach voluntary settlement and to report on its actions could investigate all disputes.[23]

Following the banning of the *Perserikatan Komunis Hindia Belanda* (Netherlands Indies Communist Party)[24] after their unsuccessful uprising in November 1926 and January 1927, unions were also banned by the Dutch colonial administration in 1927 (Ingleson, 1981: 501). Despite this ban, labour unions continued to play an important role (albeit without legal protection) in

22 *Nederlandsch-Indische Spoorwegmaatschappij en Tramwegmaatschappij NV Gemeenschappelijk Archief, 1880-1975*, *Dossier* 745c, 'Regeling Verzoeningsraad, 1920-1927'; also *Dossier 745d*, 'Maatregelen tot voorkoming van arbeidsgeschillen (Verzoeningsraad), 1920-1925'.

23 As noted by Thompson (1947: 161), in the last phase of colonial rule, the Netherlands Indies government responded to the outbreak of war in Europe by enacting a labour relations law on 16 Dec 1940, which was founded on an arbitral system. Through this law, the government was entitled to involve itself in labour disputes arising out of wartime conditions, including the dismissal of workers, changes in working conditions, pension payments, and allowances. A Commission of Labour Affairs was established to hear and decide cases, and to advise the Governor General on labour matters. Firms whose output was connected with the war effort and which had more than twenty employees were obliged to obtain approval from this commission before making any changes to working conditions; and in enterprises with fewer than twenty persons, workers had the right to appeal to the commission in regard to changes in working conditions. When the disputing parties were not able to reach agreement, the Director of Justice had the final authority.

24 The Netherlands Indies Communist Party was founded in 1920, and later became the Indonesian Communist Party (*Partai Komunis Indonesia*, PKI).

increasing workers' wages; representing their grievances to employers and forcing the colonial government to pressure employers to improve wages and conditions (Ingleson, 2001). Indeed, as political parties at the time functioned relatively ineffectively, labour unions became central to the development of political consciousness, by providing places for organizational skills to develop, and by becoming involved in the emerging nationalist independence movement. As noted by Trimurti (1980), following the proclamation of independence, the so-called 'lasykar buruh' (labour brigade) was directly involved in defending workplaces against the Dutch forces, and also seized foreign-owned production facilities in the nationalist cause. Ingleson (2001: 100) concluded:

> In 1941, on the eve of the Japanese occupation, labour unions were among the strongest Indonesian organizations in the colonial towns and cities. In the aftermath of independence in August 1945 labour unions were quickly re-formed and, freed from many of the restrictions of the colonial state, recruited large numbers of urban workers. The successes and failures of the colonial labour movement were part of the collective memory of many leaders and members, influencing the direction of post-independence activities.

Although Indonesia proclaimed its independence on 17 August 1945, there were four more years of armed struggle before the Indonesian government officially took over sovereignty from the Dutch in December 1949. The labour movement participated actively in this struggle, including through revolutionary fighting, and their contribution to the gaining of independence ensured their place in post-colonial Indonesia (Hadiz, 1997).

3 The early independence – protective legislation (1945-1949)

Given the influence and prestige of its role in the independence struggle, Indonesia's labour movement was in a strong position to influence the new nation's labour laws, particularly the policies related to the improvement of wages and salaries. It is not surprising that in early independent Indonesia there were several new labour laws that could be considered 'progressive', in the sense that they were based on the notion of protection for workers. As we will see, many provisions were actually transplanted from abroad, as early political leaders became inspired by international policies while formulating new systems for their new nation. The concept of labour protection by law had been promoted in the colony since 1920, with the establishment of PPKB (*Persatuan Pergerakan Kaum Buruh*, United Labour Movement) by union leaders, including several (such as PPKB's chair Semaoen, vice chair Surjopranoto, secretary Agus Salim and assistant Alimin) who were to become well-known figures in the labour and independence movement (Trimurti (2007: 143-4). PPKB fought, among other issues, for minimum wages, maximum working hours (8 hours during the day, 6 hours at night), annual holidays of 14 days, formal recognition of labour unions in the work-

place, and the establishment of a tripartite council for labour dispute settlement, pensions and social security schemes. Although the PPKB itself did not survive long, with differences among the leadership causing its dissolution in 1921, its chair Semaoen and other leftists including Tan Malaka and Bergsma immediately formed a new federation, RV (*Revolutionaire Vakcentrale*, Union Federation), and by 1922 they had re-joined other ex-PPKB leaders to form PVH (*Persatuan Vakbond Hindies*, Indies United Unions). In 1927 PVH became a victim of the failed coup by the Netherlands Indies Communist Party, however, with some of its leading figures gaoled.

In the early years after Indonesia's proclamation of independence, the Ministry of Social Affairs handled labour issues. Then, on 3 July 1947, under the provisional government of Prime Minister Amir Sjarifuddin,[25] a special Ministry of Labour was established, whose main functions were to handle labour issues in general, including protection of workers and job opportunities, social security, labour disputes, workers' organizations and representatives, and unemployment (based on Government Regulation No. 3/1947 on 25 July 1947). The first Minister of Labour appointed was Soerastri Karma Trimurti (known as S.K. Trimurti).[26] As noted by Nasution (1996: 33), many of these early leaders were committed strongly to the popular aspirations of the new Republic and its people, while also realizing the importance of making a good impression internationally, to gain support for the new country. Their commitment was reflected in the enactment of laws, which were considered 'pro-people', and with respect to labour laws, Trimurti and in particular Soetomo Martopradoto (head of the legal drafting department within the Ministry) played important roles in ensuring the enactment of protective labour legislation during this time.

25 Amir Sjarifuddin was a socialist and a leading figure in the new Republic. Born into Sumatran aristocracy in the city of Medan, he was educated in Haarlem and Leiden in the Netherlands before gaining a law degree in Batavia (now Jakarta) (Vickers, 2005). In the Netherlands he studied Eastern and Western philosophy. He succeeded Sjahrir's parliamentary cabinet after the proclamation of independence. He was later executed in 1948 by Indonesian Republican officers following his involvement in a Communist revolt, the so-called 'Madiun Affair,' in Madiun, Central Java.

26 S.K. Trimurti was a well-known journalist, leader of the Labour Party and war heroine in the struggle for independence since the 1930s. She had been arrested by the Dutch colonial government in 1936 due to her political activism, and later became a journalist and closely involved in the struggle for independence. Although she was a founder of 'Gerwis' (later 'Gerwani'; a women's organization associated with the PKI or Indonesian Communist Party) – she survived the 1965 atrocities with the killings and arrests of the PKI supporters because she had left Gerwis just before. She later became a strong critic of the authoritarian New Order government, by joining the 'Petisi 50' ('Petition 50'), which comprised 50 leading political figures including Abdurrachman Wahid and Ali Sadikin. She died in 2008 at the age of 96 and was buried at the Heroes Cemetery in Jakarta (see Henky et al., 2007; also Blackburn, 2004: 176).

On 18 October 1947, just two years after the proclamation of independence, the *Safety at Workplace Law* was promulated (Law No. 33/1947).[27] This law signalled a significant shift in the labour policy of the new country. Previously the regulations concerning relationships between employers and employees were ruled by Articles 1601-1603 of the colonial Civil Code, which was more concerned with 'private' contracts between parties, including the liberal notion of 'no work no pay'. The new focus on workers' rights continued in 1948 with two further Laws: the *Workers' Protection Law* (No. 12)[28] and the *Labour Inspectorate Law* (No. 23). Law No. 12 covered many aspects of labour issues including the prohibition of discrimination at work; 40-hour and six-day working weeks[29]; employers' obligations to provide housing for workers, and an article prohibiting the employment of children under the age of fourteen. It also guaranteed women the right to take menstruation leave (two days per month) and three months' maternity leave, as well as a strict restriction of night work for women. Law No. 12/1948 became the prime labour law of the time, setting the tone for labour regulations and protection in the new nation.

As noted by Iskandar Tedjasukmana (1961), this protective notion of labour originated from abroad. As he pointed out (1961: 10):

> To a great extent – especially with regard to the rights of workers, labour protection, social security, and workers' participation in management – the elements of Indonesian public labour policy were derived from the ideas, experiences, and achievements in Western countries, or from international sources, either directly, or through the intermediary of Indonesian social movements of which are mentioned here the pre-war nationalist movement, and the Republican labour movement and political parties.

These international sources were acknowledged by Soetomo Martopradoto,[30] the head of the Ministry of Labour's legal drafting department in 1946-47 under Minister Trimurti, who initiated and drafted the Law. Martopradoto explained that his law combined various policies from other countries, as well as a number of existing protective provisions from the Dutch colonial period. The menstruation leave for women workers provision,

27 Declared applicable throughout Indonesia through Law No. 2/1951.

28 Declared applicable throughout Indonesia through Law No. 1/1951.

29 Or it may also be a five-day, eight-hour working week. According to Manning (1998: 202), the 40-hour working week was shorter than the common prescription in many countries in the region at that time, which was either 44 or 48 hours.

30 For this information, the author is indebted to Dr. Kosuke Mizuno of the University of Kyoto, Japan, who shared his interview with Soetomo Martopradoto on 12 November 2001. Martopradoto was not affiliated with any political party, however he had strong leanings towards labour. Later he became Minister of Labour under President Soekarno (1964-66). When Soekarno was ousted by the military under the leadership of General Soeharto, Martopradoto was imprisoned for his alleged close ties to the PKI.

for example, was adopted from the regulations in plantations.[31] Provisions concerning working hours were originally set at 44 hours per week, but were amended by parliament to eight hours per day and 40 hours per week. The intention was that if the parties involved – employers and unions – wanted to adjust these hours to meet individual company requirements, they could make these adjustments through collective bargaining agreements. Thus, while protecting labour through the law, there was also a clear intention to empower unions, which were believed by Martopradoto and others to be an important institution to balance the power of the employers and to develop sound industrial relations in the new country.[32] Although there are no records of enforcement levels of these laws during the Revolution (1945-1949), and although fighting against the Dutch may have made these ambitious new laws almost impossible to implement during that time, these laws have become the foundation of Indonesia's labour law, eliminating the old colonial labour laws and policies and providing the legal basis for labour protection in modern Indonesia.

4 Parliamentarian democracy and 'guided democracy' – the beginning of a conflict (1949-1965)

After the official take-over from the Dutch in 1949, Indonesia's labour unions continued to grow. By the mid-1950s the union movement was significant, with an estimated membership of around 2 million in 13 different federations, predominantly in the formal employment sector. Union density (the proportion of employees in unions) reached around 20 percent, which was high for developing countries' standards (Manning, 1998: 203). The unions also maintained close links with political parties, assisted by the prevailing political climate in which the emerging political parties were built generally on mass support; with labour unions able to act as effective tools to gain this support.[33] The largest union federation was SOBSI (*Sentral Organisasi Buruh*

31 He referred to Staatsblad 1911 No. 540 of the Coolie Ordinance, the latest revision of the original Coolie Ordinance of 1889 (Staatsblad 1889 No. 138), which abolished the penal sanction provisions from the ordinance.

32 Martopradoto explained that when he visited workers, he always encouraged them to form unions whenever possible. These views were shared by a large number of staff within the Ministry, many of whom had been labour activists before joining the Ministry.

33 The Indonesian political system at that time (1949 – 1957) is considered to have been democratic in the real sense, with strong respect for the constitution ('constitutional democracy'). During this time (in 1955), Indonesia held its first general elections following independence, which it stated were 'fair, free and secret'. Four major political parties emerged: the PNI (*Partai National Indonesia*, Indonesian National Party); the Masjumi (*Majelis Syuro Muslimin Indonesia,* Modernist Muslim Party); the NU (*Nahdlatul Ulama,* Islamic Scholar Party); and the PKI (*Partai Komunis Indonesia,* Indonesian Communist Party). See Feith, 1962: 434-5.

Seluruh Indonesia, All-Indonesia Central Labour Organization),[34] a left-wing union with close ties to the PKI (*Partai Komunis Indonesia*, Indonesian Communist Party), which claimed half the country's formal-sector workers as its members (Manning, 1998: 203).

Although raising tensions in some areas of government and business, the emergence of strong labour unions was so closely tied to the enactment of labour laws during this time that the government had no choice but to accept the unions. These new laws included the regulation of industrial accident compensation procedures, labour inspections, and annual leave. Industrial conflict was regulated through the *Collective Bargaining Law* No. 21, which was promulgated in 1954 and gave labour unions a stronger legal position when dealing with employers. This law provided for direct negotiation between unions and employers, and also included restrictions on the rights of employers to dismiss workers without prior approval from the government. Two years later, in 1956, the Indonesia government ratified ILO (International Labour Organization) Convention No. 98 on the right to organise; which gave trade unions an even stronger legal status.

In 1957, the government enacted Law No. 22/1957 on Labour Dispute Settlement, which replaced Emergency Law No. 16/1951 on the same subject, and introduced a compulsory arbitration system through the tripartite mechanism managed by either the Regional or Central Labour Dispute Settlement Committee (*Panitia Penyelesaian Perselisihan Perburuhan*).[35] Law No. 12/1964 on Termination of Employment in Private Undertakings complemented this Law. In 1969 Law No. 14/1969 on Basic Labour was enacted, reaffirming Law No. 12/1948 which guaranteed the rights of workers to join unions, as well as bringing about collective agreements and achieving basic labour standards in both health and safety and workers' compensation. These laws remained the pillars of the legislative protection for Indonesian workers, even during the New Order period (although then usually without implementation in practice).

During this time, although collective bargaining had been legally recognised since at least 1956 as a means of determining wages and working conditions, in practice its application was limited. According to Richardson (1958: 68) this may have been due to the unions' legacy before independence, in that most labour union activists were 'agitators' who regarded strikes and threats of strike – rather than negotiations and agreements – as the way to achieve their goals. This approach led to labour unrest, reflected in large-

34 Founded in 1946, SOBSI became the largest union in the new country by taking a militant approach in organising and campaigning for the interests of working people. This approach attracted many workers to join, especially from the plantations (see SOBSI, 1962).

35 Law No. 22 of 1957, however, incorporated many of the features of the 1951 Emergency Law; the main differences were on the tripartite structures of the Committees, which consisted of government officials and unions' and employers' representatives.

scale strikes, particularly on plantations; and it raised the tension between the labour movement and the early Indonesian governments, contributing eventually to the changing policy of labour relations in Indonesia in general.

The government found it difficult to reconcile union freedoms and industrial disputes with the goals of economic stability and growth. Strike activity was frequent in the post-independent period. The number of strikes has been estimated at 400 during 1951 to 1956, involving 5 per cent of all wage employees and close to 20 per cent of regular employees, and targeting foreign companies (mainly Dutch) as well as some state-owned enterprises (Richardson, 1958: 67-9; Manning, 1998: 204). In 1956 alone it was reported that 144 strikes were registered, involving more than 3 million workers and over one million days of lost work (Hess, 1997: 40-1). As noted by Hess (1997: 41), this labour unrest represented 'cries for help' from a workforce seeking their government's attention to redress grievances, rather than a 'full-scale assault' on employers or state authority. The government, however, saw the unrest as a threat to economic stability and the economic outlook of the new country. This view drove the government to establish stricter anti-worker regulations for industrial conflict.

The growing anxiety within government and some parts of society (notably the urban middle-class) regarding labour unrest led to strong support for the government to prevent or end strikes as soon as possible (Richardson, 1958: 69). The government achieved this primarily through the arbitration committees provided by the 1957 *Labour Dispute Settlement Law*. Richardson (1958: 72) notes that these committees were largely effective – many disputes brought to them could be settled by mediation and arbitration without strikes. As Richardson notes 'In this, the government has had considerable success, though often by awarding the workers many of their demands. Often the arbitration committees have awarded substantial increases in money wages to offset the consequences of inflation' (1958: 69). The law indeed gave power for the government to intervene in labour disputes; nevertheless, soon after the enactment of the law, the military authority issued an additional regulation, reintroducing anti-strike measures for 'essential' industries (1958: 72).

This intervention by the military was probably driven by its interest in establishing peaceful industrial relations, given that so many military personnel had assumed senior management positions in the former Dutch industries after nationalisation (Hadiz, 1997: Chapter 4). It was also likely influenced by their conflict with the union SOBSI,[36] which was campaigning strongly

36 As we will see, this conflict between the military and the SOBSI became a conflict between the military and the PKI, with roots in the so-called 'Madiun affair' of 1948, when military forces loyal to Soekarno–Hatta (the country's first President and Vice President) annihilated the PKI, whose leader, Musso, had challenged their authority (Hadiz, 1997).

in the late 1950s for the nationalisation of foreign enterprises such as oil and plantation companies (which were likely considered essential industries by the military). The initial idea was that these companies would be run by worker-led councils; however, they became military-run enterprises, at which point the military became a large employer in its own right, with a vested interest of peaceful industrial relations.

The situation changed again as Soekarno's 'Guided Democracy' came into effect in July 1959. Arguing that Western liberalism during the 'Parliamentary Democracy' (1955 – 1959) had been 'not satisfying Indonesian society' (cited in Nasution, 1996: 39), Soekarno, with support from the military, urged a form of corporatism to unify the major political forces at the time – nationalists, religious groups and communists – into a central, cooperative decision-making process. Though never directly stated, Soekarno based his idea on the ideology of an organic state, as developed by the Javanese nationalist aristocrat intellectual Soepomo; the notion of the organic, 'integralist' state became a way to legitimatize Soekarno's authoritarianism.[37]

While the Soekarno government sought greater control over Indonesian society, the political and economic situation became increasingly worse. Conflict between the army and the PKI escalated. Although Soekarno's power enabled him to manage the conflicting interests between the two major forces and prevent open conflict, both the PKI and the military continued to consolidate themselves behind the scenes.[38] The Indonesian people also realised that their domestic economy was deteriorating. By the mid-1960s, foreign investment was fleeing Indonesia and domestic income and taxes were declining, at the same time as the government was facing increasing deficits to cover its foreign military expenditures (with Malaysia), and inflation was soaring to over 600 per cent per year (Budiman, 1991: 47). Soekarno himself called 1965 'a year of living dangerously' (*vivere pericoloso*), a premonition perhaps of his loss of power only a few months later.

37 After reinstating the 1945 Constitution, which gave more power to the President than the 1950 Constitution had provided, Soekarno dissolved the national parliament in 1960 and formed a new parliament whose members were appointed by him. Under this new system, political power was confined to Soekarno and the military, and political parties (which had been the dominant players during the 'parliamentary democracy') were ousted and scapegoated as the causes of the national economic problems (Vatikiotis, 1993: 105; Nasution, 1996: 46-8).

38 As noted by Budiman (1991: 34-40), the PKI consolidated itself through mobilisation and radicalisation of marginalized people such as peasants and workers, mainly through its BTI (*Barisan Tani Indonesia*, Indonesian Peasants Front) and SOBSI; whereas the military developed links with the Islamic groups who had been involved in conflict with the PKI/BTI due to their campaigns on land-reforms, and with the ousted 'parliamentary democracy' politicians who were disadvantaged by Guided Democracy.

These problems generated high levels of dissatisfaction within Indonesian society, and eventually brought an end to Soekarno's Guided Democracy and his rule. On 30 September 1965, some factions in the military, (particularly *Tjakrabirawa*, the President's guards), reportedly kidnapped and killed six leading generals accused of conspiring against Soekarno, while some supporters of the military claimed that the PKI was behind the kidnappings (see Notosusanto and Saleh, 1989). The military, under the leadership of Major General Soeharto – a US-trained Chief Commander of the KOSTRAD (*Komando Strategis Angkatan Darat*, the Army Strategic Reserve Command) – then took charge. In a few hours, he assumed control of the army and crushed the 'coup'.[39] He declared a state of emergency and immediately banned the PKI and its affiliates, including the SOBSI and all other leftist groups, whether or not they were related to the PKI. Their leaders were killed or gaoled without trial. In the purges that followed, estimates of the number of people killed range from 100,000 to 1 million.[40] General Soeharto took full power on 11 March 1966, forcing Soekarno to sign the *Supersemar* Decree (*Surat Perintah Sebelas Maret*, Letter of Instruction of 11 March), by which Soekarno transferred full presidential authority for the restoration of security and government control to General Soeharto.

The forces that supported General Soeharto (predominantly from the Islamic/religious groups and urban mercantile capitalists) then established the so-called 'New Order' regime, with the army as the dominant player.[41] During the New Order, the previously quite active and political labour movement was heavily curtailed. The bloodbath which accompanied the establishment of the New Order made it possible for state planners to be insulated from the demands of organised labour, when charting development strategies (Hadiz, 1997).[42] We will discuss this further in subsequent chapters.

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39 Whether there was in fact a coup is highly debatable, with questions in particular surrounding the role and whereabouts of General Soeharto himself during the hours when the *Tjakrabirawa* kidnapped and killed the generals (e.g. Crouch, 1988; Anderson and McVey, 1971; see also Roosa, 2006 for a recent account).

40 Cribb (1990) estimated that half a million people were killed in the first six months after 30 September 1965.

41 Indeed, the term 'New Order' (*Orde Baru*) came from an army seminar in 1966, which referred to the new regime by this label to distinguish it from the 'Old Order' (*Orde Lama*) of Soekarno's 'Guided Democracy' era (1959–1965).

42 In a comparison between Latin American and East Asian countries, Deyo (1987) suggests that in Latin America, states pursued import substitution industries that fostered broad populist coalitions – including organised labour – because the states confronted strong labour movements that could not be easily repressed. In contrast, the East Asian developmentalist states – Singapore, South Korea, and Taiwan – were insulated from the need to accommodate worker demands, because organised labour was already effectively subordinated and repressed before these countries embarked on export-led development strategies based on low-wage manufacturers. This was apparently also the case with Indonesia under the New Order (see also Hadiz 1997, Beeson and Hadiz 1998).

5 Summary

The setting of labour standards through legislation has been the main mechanism by which the Indonesian government has sought to safeguard the welfare of paid labour. From the early evolution of Indonesia's labour legislation during the Dutch colonial era, to the periods after independence in 1945 and through to the rise of the New Order regime in the mid-1960s, this approach has been dominant. Such an approach does not fit with the pattern of early Indonesian social relationships; and as described above, for many years the Dutch colonial government continued to rely upon and maintain the existing traditional and feudal system of labour relations in Indonesian society. The colonial government's labour legislation during the 18th and 19th centuries also reflected its principal economic interests, with legislation intended primarily to control labour in both domestic service and industrial production on plantations. The shift towards labour policy aimed at protection of labour began in the early 20th century, triggered by debates over the use and misuse of the penal sanction (*poenale sanctie*) under the Coolie Ordinances, forcing government to make some effort to reform those regulations. However, the *poenale sanctie* – and the coolie practice in general – continued until almost the end of the colonial era.

Gradually the more modern industries and fields of work, including mining, railways and harbours, became fertile grounds for the development of trade unions as important social groups. Their later involvement with the struggle for the country's independence put trade unions in a special position in the newly-independent Indonesia, as reflected in the country's early labour legislation, which was characterised strongly by the notion of protection for labour. Inspired and then transplanted into domestic legislation by leading figures in the independence movement, strong protection through legislation became the main feature of Indonesian labour laws. However, growing labour unrest in the 1950s, mainly on the plantations, raised tensions between the labour movement and early Indonesian governments, which found it difficult to reconcile union freedoms and industrial disputes with the desire to achieve economic stability and growth.

These concerns contributed eventually to the changing policy of labour relations in Indonesia in general; most importantly with the introduction of compulsory arbitration through the Labour Dispute Settlement Committee. The military also acquired a direct interest in labour policy, after senior military personnel assumed key management positions in the former Dutch industries following nationalisation; positioning the military in direct conflict with the largest trade union of the time, SOBSI, an affiliate to the Indonesian Communist Party. This led, during the early New Order period, to the destruction of what had been an active and political labour movement; and the purge accompanying the early New Order days made it possible to insulate industrial relations policies from the demands of organised labour.

This situation became the root of labour law and labour relations during the New Order, as we will discuss further in the next chapter.

2 The New Order era: 'rule by (labour) law' (1965 – 1998)

Most developing countries have identified industrialisation as the most important step towards economic development after their independence from colonial rule. For this reason, in many cases, the state has played an important role in fashioning major industrialisation programmes to improve the economy (Jilberto & Mommen, 1996). The state's intervention in industrialisation inevitably leads to its involvement in the industrial relations system. Thus, in the Third World the government's control over the industrial relations system is closely related to the interests of economic development of the country (Siddique, 1989: 386). This chapter examines the ways in which the changing economic strategies of the New Order state were reflected in corresponding labour policies, and the responses of workers to those policies. It will be shown that the authoritarian New Order state played an influential political and economic role during its rule, by providing the conditions for the development of industrial capitalism and the disciplining of low-wage labour; and that the Indonesian labour movement appears to have been unable to challenge these strategies effectively. Since this chapter is based on the argument that the authoritarianism of the New Order regime was closely related to its choice of economic and industrial strategies, the chapter will look at this important link between industrialisation and authoritarianism, particularly in the late industrialising countries, in order to help understand the case of Indonesia during the New Order era.

1 The political economy of labour and development: 1965 – 1998

Post-independence, the economic history of Indonesia has been characterised by the strong role, which the state has played in economic life. Since the early days of the Republic, in the absence of a significant domestic bourgeoisie capable of replacing the former Dutch entrepeneurs or forming a new industrialisation system after the take-over in 1949, the Indonesian state has been deeply involved in economic activities (Robison, 1986: Chapter 2). The nationalisation of former Dutch firms in 1957 added to the state's influence over economic life. Although the initial efforts to support these firms were from the labour movement, most of these companies eventually became military-run companies. The 'Guided Economy' of President Soekarno, introduced in 1960, further entrenched the centralisation of economic planning in the state's hands. At that point the political and economic power of the ABRI (*Angkatan Bersenjata Republik Indonesia*, Indonesian Armed Forces) had

also increased considerably (Crouch, 1988: 47). From then on, the army, as an integral part of the New Order state, dominated modern Indonesian political and economic life.

1.1 Industrialisation and the authoritarian state

It has been argued that there is a relationship between the timing of a country's industrialisation and the emergence of a strong state. The later a country has industrialised (relative to the industrial revolution in England) the more likely it is that a strong state will have emerged. Gerschenkron (1962), for example, in his study of six major countries in Europe, argued that the state achieved greater dominance in the 'late industrialiser' countries than in those that industrialised earlier. Hirschman (1968) extended this theory to Latin American countries, which he called 'the late-late industrialisers', and reported a similar pattern (see Kurth, 1979: 321-6; also Robison *et al*., 1993: 25).

Gerschenkron observed that for the 'late industrialisers', the state's greater involvement was required to direct the industrialisation, due to the more complex technologies used in later industrialisation, and thus the need for more capital to industrialize. Moreover, as noted by Kurth (1979: 325): 'Of the three sources of entrepreneurs and capital – private domestic corporations, state corporations, and multinational corporations – the late-late industrialisers have depended heavily upon the second and the third'. When multinational corporations have invested their capital, it has usually been on the condition that the state is strong enough to settle problems such as political unrests, which could threaten the corporation's assets. In other words, a strong state has been considered a necessity to the development of a capitalist state in late industrialising countries.

At this point some will refer to the 'bureaucratic-authoritarian state' model developed by O'Donnell (1979; see also Budiman, 1991). O'Donnell argued that the *bureaucratic-authoritarian* state emerges during times of economic crisis, particularly during a country's transition from *import-substituting industrialisation* (ISI) to *export-oriented industrialisation* (EOI). In the ISI strategy, the state works together with domestic entrepreneurs, using domestic capital to develop the domestic market. Although there is foreign capital, this is not significant. The 'popular sector' (*lo popular*), specifically 'the urban and rural lower class and lower middle class' (Collier, 1979: 401) benefit since they can earn sufficient income through the government's income distribution programmes (for example, minimum wages) to enable them to spend money to buy domestic products; which further supports the national industries.

The ISI strategy, however, according to the model often reaches a limit. The domestic market becomes surfeited, while industry needs to continue to expand, to avoid stagnating the economy. The country's way out of this challenge is to export. Thus, the government needs to change its strategy from

ISI to EOI, and industrial production is expanded beyond consumer goods to include the intermediate and capital goods used in the production process (O'Donnell called this: 'the deepening of industrialisation'; see also Collier, 1979: 400). For this, foreign capital is a must, and foreign investors will only come in if a state can guarantee political stability. One of the most significant effects of such changes to the world economy has been an increase in the 'structural' power of capital (Strange, 1988). The enhanced mobility of productive and financial capital has greatly increased its power, relative to predominantly immobile labour forces and national governments. As noted by Beeson and Hadiz (1998: 292): 'Not only does footloose capital have the opportunity to play off one state against another, but it has the potential to demand "favourable investment climates," which in many cases has meant disciplining or placing restrictions on the activities of labour.'

In the case of developing countries such as Indonesia, there is another challenge: the chronic over-supply of labour, which makes it difficult to develop an effective labour movement. Indeed, the attractiveness of many developing countries to transnational capitalists lies in their cheap labour and relatively unorganised labour forces; any changes to these conditions could simply result in the capitalists' relocation to another country. This further highlights the importance of timing in the industrialisation process, particularly in the context of developing countries such as Indonesia:

> While industrialization unfolded in the North [of the world], most of the rest of the world either was excluded or took part as colonized suppliers of raw materials or consumers of imported goods. This arrangement not only fueled the wealth of the North but also permitted labour to struggle against capital over the surplus from production (not to mention reshaping the broader political-legal milieu) without having to contend with direct competition from an almost endless supply of workers in the colonies who were far poorer and had no hope of gaining wider political leverage. Colonies and colonizers were deeply intertwined and yet in important respects were quite insulated from each other. The great strides northern labourers made both economically and politically were promoted by this insulation.
>
> (Winters 1996: 218-9, also cited in Beeson and Hadiz 1998: 293)

Such a situation, faced by the labour sector and other popular sectors, has led to political and social exclusion, amounting to 'consistent governmental refusal to meet the political demands made by the leaders of [the popular] sector… [and denial] to this sector and its leaders [of] access to positions of political power from where they can have direct influence on national policy decisions' (cited in Collier, 1979: 401; see also Budiman, 1991: 7). Arguably, this is what happened during the authoritarian New Order.

Based on the above discussion, we may propose at least three theoretical consequences. First, the change in economic strategies, notably from ISI to EOI, is usually characterised by the emergence of a bureaucratic authori-

tarian state, in which the state strengthens its power to refute the political and social demands of the people, especially the labour sector. Second, foreign investors are in a position to encourage local governments to impose wage and union controls as a condition for further investment. And third, the legitimacy of the regime is based largely on its capacity to deliver economic growth and development; if this evaporates, so does the legitimacy of the regime. Such considerations are useful to keep in mind when examining the relationship between labour and development in Indonesia during the authoritarian New Order regime.

1.2 Economic agenda of the early New Order[1]

Coming to power in 1965, Soeharto's New Order regime faced the difficult task of rebuilding a rapidly decaying economy. Inflation was as high as 600-1000 percent, foreign exchange reserves were at an all-time low, and the agricultural/rural sector was collapsing leading to food shortages among other major economic issues (Budiman, 1991: 47-8). The crisis presented a serious problem for the New Order regime, but it also offered an opportunity to establish its legitimacy. In fact, by resolving the immediate problems, the new regime sought to compare favourably with the previous government (Crouch, 1988). Soeharto was not formally installed as the second president of Indonesia until 1968; nevertheless, during 1965-1967 he introduced reforms to address domestic and international political issues. He declared martial law and outlawed the PKI and Marxist-Leninist teachings, and thus removed the main obstacle to a private propertied class, capitalist markets and foreign investment (Robison, 1986). He then took rapid steps to reintegrate the Indonesian economy with the West. He cut diplomatic ties with China and the Soviet Union, while strengthening the country's ties with the US and other Western nations.

Following the advice of a group of Indonesian technocrats trained in America, known as the 'Berkeley Mafia' (from the University of California), Indonesia rejoined the World Bank and the IMF (International Monetary Fund).[2] Moreover, the Foreign Capital Investment Law was enacted in January 1967,

1 The works of Robison (1986; 1997) have been particularly useful for this section and the subsequent ones. See also MacIntyre, 1990, Hill, 1996, and Schwarz, 1994.

2 Soekarno had announced Indonesia's withdrawal from the IMF and World Bank in August 1964 and declared that the coming year would be 'a year of self-reliance'. As a gesture to such liberalisation steps, Soeharto granted $174 million in ad hoc funds to tide Indonesia over the crisis, and arranged for rescheduling of debts through the 'Paris Club' members (US, UK, Japan, Australia, France, West Germany, Italy, the Netherlands, World Bank, OECD and IMF). Another source of aid was the IGGI (Inter-Governmental Group on Indonesia), which was formed in 1967, favoured by the US to persuade capitalist nations to share the aid burden, which would be calculated proportionately to the benefits in investment and trade that these countries would derive from the host country Indonesia (see Lobo, 2004: 123-161; also Posthumus, 1971).

and one of its main provisions was 'a guarantee that there is no intention to nationalise foreign assets and a guarantee of compensation payments if nationalisation does occur' (Balassa, 1991: 125). The government also provided foreign firms with an exemption from import duties, and free transfer of profits. Indonesia became the founder of the Association of South-East Asian Nations (ASEAN) in 1967, diffusing the long-running tensions with Malaysia. One of the main tasks of the New Order in its early years was to reverse the economic deterioration and stagnancy prevalent during Soekarno's Guided Democracy. Indeed, Soeharto's government based its legitimacy on its promise of future economic development. Understandably, as noted by Dwight King (1986), the labour policies of the New Order were driven strongly by its economic goals:

> The economic stabilisation program launched in 1966 required wage restraint and the contraction of credit, which inhibited the expansion of domestic business, and curtailed the creation of new employment. In addition, the government policy of rationalisation of the bureaucracy, which called for steady across the board salary increase for civil servants, assumed smaller increments in the private sector, which caused wage 'pressures' there. Finally, the door had been reopened to foreign investors further adding to the potential for labour unrest. No doubt each of these factors contributed to the government's sense that a controlled labour force was more important than ever (cited in Hadiz, 1996: 4).

Job creation became one of the objectives of the government's economic policies, based on import-substituting industrialisation, by encouraging private enterprise from both domestic and foreign investors. This emphasis on economic stability required tighter labour control. Moreover, since the army had earlier assumed managerial functions over state enterprises, it had developed a vested interest in the maintenance of industrial peace. At the same time, the unions were effectively tamed; since the biggest union prior to the New Order, SOBSI (*Sentral Organisasi Buruh Seluruh Indonesia*, All-Indonesia Central Labour Organization) – a union close to the Indonesian Communist Party (PKI) – was caught up in the destruction of the PKI in 1965-66. The control of Indonesia's labour movement became an important objective of the New Order government, to ensure its economic development could continue as planned. In 1973, the remaining labour organizations were goaded into establishing the FBSI (*Federasi Buruh Seluruh Indonesia*, All-Indonesia Labour Federation) as the sole, state-sanctioned labour organization, to replace the MPBI (*Majelis Permusyawaratan Buruh Indonesia*, Indonesian Labour Consultative Council) – the non-communist unions' alliance. Meanwhile, government employees were contained within the KORPRI (Indonesian Government's Employees Corps), which was a 'functional group' rather than a union. These new organizations were directed towards more 'socio and economic' realms, instead of politics (Hadiz, 1996: 7-8).

The bipartite and tripartite[3] dispute resolution systems under the 1957 Labour Dispute Settlement Law, inherited from the Soekarno era, were further institutionalised and used to draw unions closer to government policy objectives. In 1974, the *Pancasila* [the Five Principles] Industrial Relations system was introduced, as a further effort to contain the labour movement under state corporatism. The government's efforts seemed quite successful. Interestingly, as reported by Hadiz (1997: 35), some labour leaders were even optimistic that a relatively independent labour movement could be developed within the New Order framework. A belief that was later proved wrong.

The state's strengthening of its industrial powers and corresponding labour policies continued until the end of the 1970s, facilitated by the country's strengthening economy, in association with the boom in world oil prices. Also apparent was the growing integration of the political interests of the New Order's bureaucrats (so called 'politico-bureaucrats') with the country's economic policies (Robison, 1986: 164-9; Crouch, 1988). Although there was a brief crisis in the mid-1970s, stemming from the failure of the state-owned oil company *Pertamina* to meet certain foreign obligations and its embroilment in a corruption scandal, the government resolved the crisis rapidly by dismissing the Director of *Pertamina*, General Ibnu Sutowo, an old ally of Soeharto (Liddle, 1991: 420). The country's economic situation changed dramatically, however, in the early 1980s, in association with the collapse of world oil prices.

1.3 Collapse of oil-prices and export-oriented industrialisation

During the first two decades of the New Order, sustained economic growth was established, and tens of millions of Indonesian were lifted out of at least the worst extremes of poverty, without international aid (Henley, 2008: 2-3). The most important economic changes were those in the agricultural sector. These changes, known as Indonesia's 'green revolution', involved small farmers and the mediation of trade using market mechanisms and strong private sector involvement, with the state setting the economic goals and providing the agricultural technologies and investments to reach those goals. In total, government spending was more than 30 times higher in real terms than it had been during the late colonial period (van der Eng, 1996: 160). Such strategies were made possible not through rural taxation, which remained low, but through revenues from oil and, to some extent, aid, whereby oil and gas provided about half of all government revenues and foreign aid around 20 percent (van der Eng, 1996: 162, Henley, 2008: 4).

Thus, the 1970s' surging oil-prices and consequent boom in state revenues had enabled the state to finance ambitious programmes of industrialisation,

3 Bipartite refers to union and employer (association) cooperation; tripartite refers to government, employer and union cooperation.

and to further integrate its political, ideological and economic goals (Robison, 1986). In 1982, however, oil prices plunged from about $35 a barrel to a low of $12 (in 1986), resulting in a fall in export earnings from oil and gas by almost 70 percent from 1981 to 1985 (MacIntyre, 1990: 57). In response, Soeharto again called on the technocrats for advice. The government then began a wide-ranging programme of reform and deregulation, including tax reform to increase revenue and trade, and financial market liberalisation to attract foreign investors to replace state investment as the engine of economic growth. The industrialisation strategy was also switched from import-substituting industrialisation (ISI) to export-oriented industrialisation (EOI). The purpose of these changes was to substitute oil as a source of state revenue, with a focus on maintaining previous levels of development rather than alleviating poverty (Henley, 2008: 4-5). The government also opened the way for foreign investment in areas long regarded as strategically sensitive, such as power generation, telecommunication, ports and roads (Robison, 1997: 34). This shift toward a less protected national economy integrated Indonesia more closely into the world market. The implementation of the EOI strategy attracted more foreign investments, particularly in low-wage export production, as well as some mega-projects in large upstream industrial projects (Robison, 1997). Indonesia thus entrenched itself more deeply in the position adopted by many Third World countries, within the neo-liberal and the 'new international division of labour' frameworks (Fröbel *et al*., 1980).

These structural adjustments by the New Order government led to even more severe policies toward labour issues, including greater involvement by the military. Military interventions in labour matters during the 1980s and 1990s can be explained by the military's efforts to maintain its political influence and economic benefits from government structures, which seemed threatened by the collapse of oil prices. Between 1979-1984, less than half the annual government revenue from oil and gas was used to finance development projects (MacIntyre, 1990). The larger portion of revenue, especially that which came from state-owned oil and gas enterprise *Pertamina*, was allocated to the military and its individual generals. It was reported that the official military budget was only one-third or one-half of its actual spending; the rest of its cash came mainly from this oil revenue. As noted by Irwan (1989: 406): 'The reason for this was the necessity of giving the impression that the government's priority was economic development, not the military'. After the collapse of *Pertamina*, the government and the army saw a need to remain in control and exercise greater influence over possible sources of opposition, especially labour.

In this context, the Political Party Law was promulgated in 1983, requiring all political parties (there were actually only three, including one state-party: the GOLKAR) to adopt *Pancasila* as their sole ideological basis (known as '*asas tunggal*' or 'one foundation' doctrine). Additional legislation was enacted in 1985, in which the *asas tunggal* principle was extended to all non-gov-

ernmental organizations, including trade unions, under the term of '*organisasi kemasyarakatan*' or community organizations (Lubis, 1993: 166-72). Further, with regard to labour unions, in 1985 the government-controlled union FBSI was restructured into an even more centralised, hierarchical and therefore easily controlled organization, the SPSI (*Serikat Pekerja Seluruh Indonesia*, All-Indonesia Workers' Union) (Hadiz, 1997). The *Pancasila* Industrial Relations concept was also brought into effect by a newly-appointed hard-line Minister of Manpower, Admiral Sudomo,[4] who released several ministerial regulations legitimising military involvement in labour disputes. Military intervention reached a peak in 1993 with the murder of Marsinah, a woman labour activist who was raped and killed while involved in a workers' strike in her factory in East Java, with the reported intervention of the military in the dispute and involvement in her murder (YLBHI, 1994). Repressive legislation and ministerial-level regulations passed during this time resulted in a decline in strike actions, which remained low for the rest of the 1980s (Manning, 1998: 212).

During this time, the Indonesian government followed governments of other developing countries in establishing economic processing zones (EPZs), as a 'way out' to survive in the free and tough competition of the world market, by using their only benefit of 'comparative advantage' of low wages for their labour in the 'global production sharing'.[5] They believed that EPZs would give them benefits through increasing manufactured exports, foreign exchange earnings and employments.[6] Until the late 1980s, Indonesia had

4 The heads of the Ministry of Manpower during the New Order tended to have backgrounds either in the military or as technocrats, and were therefore concerned principally with security problems or the economic reconstruction of the country (Hadiz, 1996: 7). Sudomo himself was a general in the navy. He used to be the Head of Kopkamtib (*Komando Operasional Pemulihan Keamanan dan Ketertiban*, Operational Command for the Restoration of Order and Stability), and later became the Coordinating Minister of Politics and Security.

5 Developed by David Ricardo, the theory of comparative advantage focuses on differences among nations owing to climate or technology. However, as examined by Krueger (1995), 'Ricardo could as easily have ascribed the productive differences to differing "social climates" as to physical or technological climates.' Taking all 'climatic' differences as given, the theory of comparative advantage argues that free trade among nations will maximize global welfare. This has become the prescription developed by international financial institutions such as World Bank and the International Monetary Fund when assisting developing countries to escape from economic crisis.

6 There are many names for EPZs, depending on the countries where the EPZs are set up. In China they are called 'special economic zones'; in Indonesia, 'bonded zones'; in Mexico, 'maquiladoras'; in Korea, 'free export zones'; and many more such as: 'bonded warehouse', 'technology and science parks', 'financial services zones', 'free ports', etc. Despite the wide variety of the zone formats, one of the universal features of EPZs is that there is almost complete absence of either taxation or regulation of imports of intermediate goods into the zones (Warr, 1990). These privileges are subject to the condition that almost all of the output produced is exported and that all imported intermediate goods are utilised fully within the zones or re-exported

only one EPZ, known as a 'bonded zone', established in Jakarta in 1972 (Ariff & Hill, 1985: 22). In 1979, a second bonded zone was established in Batam, an island near Singapore, which expanded to become a 'bonded island' in 1986. The establishment of bonded zones continued in other regions throughout the country, including Bekasi, Karawang, Purwakarta, and other industrial satellites of Jakarta.[7] Indonesia's low-wages policy also helped to promote the entire country as a low-cost labour market.

1.4 Structural adjustments and 'Soeharto Inc.'

During the 1980s and 1990s, the Indonesian government continued with the structural adjustments to reform its macro-economic policy. In 1982, the current account deficit had grown to $7.2 billion, and in the mid-1980s, on the advice of the World Bank, the Indonesian government undertook steps to control this deficit through monetary and fiscal policy adjustments. On the monetary side, capital markets were deregulated, interest rates controls and sectorial credit ceilings were removed, and subsidized credit was done away with. On the fiscal side, government expenditure was curtailed, tariff rates were lowered, and foreign investment was encouraged (Prawiro, 1998). These policies were directed at increasing production and lowering inflation. In 1986, the government promulgated a series of deregulation packages to further liberalize the Indonesian market for foreign capital. In trade, reforms were driven by the requirement that Indonesia develop international competitiveness in a range of non-oil sectors, particularly manufacture.

Ironically, this deregulation process did not result in the creation of a generalized system of open markets and free competition. On the contrary, it reinforced rather than undermined the importance of state power in determining markets and the concentration of corporate power (Robison, 1997). This paradox is explained by the relations between the New Order bureaucrats and military officials and the business sector ('politico-business'), manifested in the so-called 'Soeharto Inc.' (*Time*, 24 May 1999), known in Indonesia as 'KKN' or '*korupsi, kolusi dan nepotisme*' (corruption, collusion and nepotism).[8] Soeharto-related companies dominated the privatization of the former state monopoly sectors, such as ports, roads and airports. Similarly, the operation and management contracts for state-owned companies, such as satellites and the clove trade, were held mainly by Soeharto's children (Robison, 1997: 45-7). In particular, Soeharto's family members acquired substantial fortunes from their roles as intermediaries. A firm seeking to invest in Indonesia would seek out members of the family to be shareholders in

7 As we will see later, Bekasi and other industrial satellites surrounding Jakarta have become hotspots for the labour movement in Indonesia today.

8 Soeharto came to power by promising to end corruption, yet tackling corruption proved not to be one of the priorities of the regime; under his rule KKN thrived while protesting voices were silenced (see Robertson-Snape, 1999).

a project, in order to obtain protection and, more importantly, information (Schwarz, 1994). It was reported that most important business deals in Indonesia would not be successful without bringing in 'at least one of the children' (Schwarz, 1992: 34). In 1999, *Time* magazine (24 May 1999) estimated that the family wealth had reached at least US$ 15 billion, and identified Indonesia as one of the most corrupt countries in the world.

As noted by Robison (1997: 40-44), investors either adjusted to these new conditions (as in the case of the Japanese, British, US, Australian and European companies mainly involved in 'mega-projects' such as chemicals, pulp, metal goods, power generation and construction), or cleverly exploited the politico-business networks within Indonesia (as in the case of Taiwanese and Korean investors, in low-wage export production including textiles and garments, footwear, plastic products and sporting goods). Despite the lack of transparency in macro-economic policy, a substantial flow of state bank credit was provided to leading conglomerates and politico-business families – even though some of them had been listed in banks' bad or doubtful loan categories (Robison, 1997: 40). The mega-projects raised the demand for borrowing from state banks and international institutions, which led to uncontrolled foreign debt that reached US$ 100 million in 1995 (Robison, 1997: 43). Together these problems led to Indonesia facing major challenges at the macro-economic level, which contributed eventually to the fall of the New Order after the economic crisis in 1997-98.

Meanwhile, the 1990s saw a resurgence in labour activism in Indonesia. Workers, often in conjunction with labour-based NGOs, began to establish new unions to challenge the government-backed SPSI's monopoly. In 1990, the SBM Setiakawan (*Serikat Buruh Merdeka Setiakawan*, Solidarity Independent Labour Union) was founded by several human rights NGO activists[9]; followed in 1992 by the founding of the SBSI (*Serikat Buruh Sejahtera Indonesia*, Indonesian Prosperity Labour Union)[10]; and in 1994 by the PPBI (*Pusat*

9 Many of these unions were initiated, and indeed led, by NGO activists rather than workers, as the lack of trade union roles under the authoritarian regime made it very difficult for workers to undertake those tasks. For an extensive analysis on the relationship between workers and NGOs in Indonesia, before and after the *Reformasi*, see Ford, 2009.

10 SBSI was established on 25 April 1992, as a result of the Pertemuan Buruh Nasional (PBN, National Labour Meeting) on 24-25 April 1992 in Bogor, West Java, attended by more than 100 pro-democracy activists including several leading figures such as Abdurrahman Wahid (who became the fourth President of Indonesia in 1999), Sabam Sirait and Asmara Nababan. Mochtar Pakpahan, a lawyer from North Sumatera, was elected as its first chairperson (SBSI, 1992; also Pakpahan, 1997). He was a critical opponent of the New Order regime, and in 1996 he was arrested for his involvement with the Majelis Rakyat Indonesia (MARI, Indonesian People's Assembly), and was convicted along with several PRD leaders for subversive actions against the government.

Perjuangan Buruh Indonesia, Central of Indonesian Labour Struggle)[11] and the AJI (*Aliansi Jurnalis Independen*, Alliance of Independent Journalists)[12] These unions could not operate effectively, however, due to the ongoing strict government policies and repression (see Hadiz, 1997). After 1994, no further new unions were established, and the number of collective labour agreements remained low. This situation continued for the remainder of the decade, without significant challenges from labour organizations, until the economic crisis hit Indonesia in July 1998 and led to the 'Reformasi' (reform) era.

Due to the New Order's increasing repression of the labour movement in the early 1990s, Indonesia's labour practices became the focus of strong criticism, both domestically and internationally. The most important official criticism was the petition sent to the United States Government in 1992 by Asia Watch and the International Labour Rights Education and Research Fund, concerning workers' rights and the (non-)existence of independent trade unions in Indonesia. Because of these concerns, Indonesia was placed under review by the US Trade Representative for its facilities for tariff concessions on some of its exports to the US under the GSP (generalised system of preferences) (see Fehring & Lindsey, 1995: 7; Human Rights Watch/Asia, 1994: 22-7).[13] Threatened by the possible loss, the Indonesian government increased the minimum wages for workers – but maintained its repressive labour policies (Tjandra, 2002; see also Chapter 5).

To summarise this section: the authoritarian New Order state served several important political and economic functions, by providing the conditions for the development of industrial capitalism while disciplining low-wage

11 Several student activists founded PPBI in November 1994. The first chairperson was Dita Indah Sari, a former student of the Faculty of Law, University of Indonesia. Dita Indah Sari was arrested in July 1996 due to the labour demonstration she led in Surabaya, East Java, which was considered to be the largest labour demonstration held during the New Order era, attended by 15,000 workers from 10 factories (see also Balowski, 1997). Later in 1999, the PPBI changed its name to FNPBI, the Front Nasional Perjuangan Buruh Indonesia (National Front for Indonesian Labour Struggle).

12 AJI was founded by journalists following the 1994 ban of *Tempo* magazine by the New Order government (see Utami, 1994). It intended to challenge the monopoly of the government-backed journalists' association PWI (*Persatuan Wartawan Indonesia*, Indonesian United Journalists) and to become the independent organization for young journalists in the country. Officially, AJI was a union, as it was affiliated with the IFJ (International Federation of Journalists), a member of the GUF (Global Union Federations); although in practice it struggled to fully accept itself as a union as opposed to a 'professional organization'. In response to this internal conflict, in 2011 some AJI activists established the FSPMI (*Federasi Serikat Pekerja Media Indonesia*, Indonesian Media Union Federation), as the 'union wing' of the AJI (personal communication with Abdul Manan, General Secretary of AJI, June 2012).

13 The GSP is an autonomous, country-specific policy that permits tariff reductions or possibly duty-free entry of certain imports from designated developing countries. For more discussion see Ujiie, 2006.

labour. Indonesia's labour organizations were unable to challenge these strategies effectively. The weakness of the labour movement was due largely to its political exclusion, as established and maintained by the authoritarian New Order regime; rooted initially in the imperatives of the regime's survival, and subsequently in the requirements of its economic strategies. Part 2 of this chapter will explore in more detail the arguments developed in this first section, by examining the practice of labour law and industrial relations in New Order Indonesia.

2 Labour law and industrial relations in practice

This section examines labour law and industrial relations practice during the New Order era. It first discusses the notion of state corporatism in labour relations as developed in Indonesia, particularly the *Pancasila* Industrial Relations doctrine and how this doctrine has influenced industrial relations practice in the country. It then considers three of the most important fields in labour law – trade unions, minimum wages, and labour disputes settlement mechanisms – and their practices under the New Order. As Hess (1986: 225) has argued, there may be problems with the emphasis on formal machinery, since it has 'obscured the basis of the actual social relations active in the work environment'. Yet in the Indonesian context, the reverse may also apply (Ford, 1999). Labour repression under the New Order was legitimised, based on this formal machinery. The discussion in this following section is based mainly upon the formal machinery that was established under the New Order industrial relations system, and also examines particular labour laws and regulations that had direct effects on working conditions in particular fields of work.

2.1 State corporatism and Pancasila Industrial Relations

As mentioned earlier, the New Order state adopted the concept and structures of corporatism in order to control Indonesian workers. This had its roots in Soekarno's Guided Democracy, which was based on the notion of the organic or integralist state as developed by Ki Hadjar Dewantoro and Soepomo, two prominent Javanese political thinkers. Soekarno, however, never linked his Guided Democracy concept to this theory; whereas Soeharto's New Order explicitly acknowledged Soepomo's theory and its application, to help legitimise the state's authoritarianism (Nasution, 1996: 47). The government policies towards labour that were developed during the New Order period were based heavily on this theory, particularly the concept of the *Pancasila* Industrial Relations.

Schmitter (1974: 96) defines corporatism as: 'a system of interest representation, in which the constituent units are organised into a limited number of singular, compulsory, non-competitive hierarchically ordered, and func-

tionally differentiated categories recognised or licensed (if not created) by the state, and granted a deliberate representational monopoly within their respective categories, in exchange for observing certain controls on their selection of leaders and articulation of demands and supports.' As noted by Robison (1993: 42), the main features of corporatist state theory are 'its functional concepts of social structure and organization' and 'its view of the state as transcending particular vested interests within society but embodying its common interests'. Rather than addressing the needs of the interest group concerned, the single, state-sanctioned body of interest representation aims to prevent social conflict and maintain government power. This is the antithesis of bourgeoisie liberalism, which has also become an ideal legitimation, for many national ruling elites, of their authoritarianism; with the denial of legitimate political activities outside structures defined by the state. In Indonesia under the New Order, the state ideology of *Pancasila* played an important role in this process.

Pancasila, literally meaning 'five pillars', consists of five ideals: Belief in One God; Humanitarianism; Indonesian Unity; Popular Government by Consultation and Representation; and Social Justice. Developed by Soekarno, it is part of the Preamble of the 1945 Constitution. Its proponents argue that it is rooted in the Indonesian people's philosophy and way of life; namely, the '*prinsip kekeluargaan*' (family principles). According to this concept, the relationship between the state and the people should be considered as a relationship between 'father and sons', in which the state is the 'wise father'; therefore the relationship between state and people should be always in 'harmony,' and the two elements should trust each other. With such a broad and bland generalisation, *Pancasila* is open to a wide range of interpretations, but only through and by the state. As noted by Robison (1993), it may not be the blandness of the ideals that makes *Pancasila* important, but because it gives legitimacy to authoritarianism as a mechanism, which 'achieves the common will of society through consensus under the tutelage of a state in the possession of its own officials' (1993: 44). In Indonesia daily life under the New Order, *Pancasila* was frequently used to cover and to repress conflicts. Any attempts to establish legitimate political organization outside the framework defined by the state were considered 'anti-*Pancasila*', and therefore against the people's will. The promulgations of the Political Party Law in 1983 and the Community Organizations Law in 1985 were examples of the state's efforts to contain alternative political activities outside the state's framework by using *Pancasila* (Lubis, 1993: 166-72).

As mentioned earlier, in the context of Indonesian labour policy, state corporatism was developed primarily through the concept of *Pancasila* Industrial Relations. Introduced in 1974 by General Ali Moertopo of the Special Oper-

ation Office (OPSUS),[14] the *Pancasila* Industrial Relations was formulated as a manifestation of values consistent with *Pancasila* ideology, and rooted in the cultural life of the Indonesian people. It is said that within *Pancasila*, the role of bipartite and tripartite dispute resolution mechanisms in negotiating the differences between the interests of labour and capital should be supported by the 'family principle' and the 'traditional' values of 'mutual help' and 'deliberation to reach consensus' (Djulmiati & Soedjono, 1982). There were no exact regulations concerning this doctrine; nevertheless, it was an effective tool to contain labour within the government framework.

Due to the decline in oil prices, and the government's increasing need to redirect its economic policy toward manufacturing and export-oriented industrialisation, the government intensified its labour controls in the 1980s and the *Pancasila* Industrial Relations gained momentum. The original *Pancasila* Industrial Relations system came into real effect in the early 1980s, when Admiral Sudomo was in charge as the Minister of Manpower. Sudomo gave the concept a more precise formulation, and set up the structures that made it more practical. He concluded that the system should be conducted in the contexts of 'partnership' in production, profit and responsibility, towards 'God the almighty, nation and state, the community, fellow employees and family' (cited in Fehring & Lindsey, 1995: 3). This formulation may seem obscure and insipid. Nevertheless, it became an ideological – and to a certain extent a practical – framework to enable both tight industrial control and military involvement in labour disputes, based on the notion of 'industrial security' and the subordination of labour to state policy. As noted by Fehring and Lindsey (1995: 3):

> [the *Pancasila* Industrial Relations] operates at all levels of industrial relations within Indonesia and it is more than an over-riding ideological formulation. HIP's application to individuals and families means that its practical ramifications reach down from cabinet level to day-to-day aspects of employer/employee relationships. At the national level […] there is the *Departemen Tenaga Kerja* [Department of Manpower], the SPSI [*Serikat Pekerja Seluruh Indonesia*, All-Indonesia Workers' Union – the government backed trade union] and the *Panitia Penyelesaian Perselisihan Perburuhan Pusat* (P4P) [Central Labour Dispute Resolution Committee] and various national employer bodies. […] [R]eproduced at the regional levels […] [it] involve[s] the *walikota*, or mayor, as well as the military forces represented by Kodim [*Komando Daerah Militer*, District Military Command] and Polres [*Kepolisian Resort*, local police]

14 General Ali Moertopo, a Soeharto intimate, was the Chief of the Special Operation Office (OPSUS) and was known as the architect of the New Order. Through the OPSUS, Moertopo implemented numerous initiatives to assure the continuity of the new regime. He was in charge of taming the political parties with the so-called 'floating mass' doctrine, by which political parties lost their ties to the masses; he was also deeply involved with the creation of GOLKAR, a state political party used to contest elections and to take parliamentary seats on behalf of the state; and he was also responsible for the establishment of a sole, state-sanctioned labour union, the FBSI, in 1973 (Hadiz, 1997: 90-104).

These organizations were coordinated by *Bakorstanas* (*Badan Koordinasi Bantuan Pemantapan Keamanan dan Stabilitas Nasional*, the Coordinating Body for National Stability and Security), which also involved *Koramil* (*Komando Rayon Militer*, Regional Military Command) and *Polsek* (*Kepolisian Sektor*, the sub-district police). Such policies and structures led to repressive, and quite often agressive, government approaches towards labour during the 1980s to 1990s, which reached their peak in the aforementioned murder of the labour activist Marsinah. The situation was relaxed slightly in the early 1990s, due to growing international pressure on the Indonesia government to address its repressive labour practices. Nevertheless, from the time of the abolition of the relatively active and political labour movement of the 1960s, the labour movement in Indonesia has been kept tame and weak through restrictive labour laws at both the enterprise and national levels. The next section of this chapter will further the discussion by examining Indonesian labour law in its practical application during the authoritarian New Order regime, in three important fields of labour law: trade unions; minimum wages; and labour dispute settlement.

2.2 Labour law in practice

2.2.1. Trade unions

After the abolition of the SOBSI (*Sentral Organisasi Buruh Seluruh Indonesia*, All-Indonesia Central Labour Organization) in 1965, all labour unions were depoliticised and rendered powerless. The unions could not continue their activities and existence as unions, because the military would repress any attempts at active labour organizations and representation. With the establishment of the government-backed union FBSI, the traditional link between trade unions and political parties was also severed, and redirected toward more socio-economic realms (Hadiz, 1996: 7-8). The FBSI was further restructured in 1985, into an even more centralised, hierarchical and therefore easily controlled organization, the SPSI. Despite another restructuring and renaming in 1995, to become the FSPSI (*Federasi SPSI*, All-Indonesia Workers' Union Federation), the organization remained the same weak, government-controlled union (Hadiz, 1997). Indeed, it is evident that particularly during the 1980s, the organization was involved with assisting the security apparatus to identify and address any potentially state-destabilising developments in the labour area (Tanter, 1990; also Hadiz, 1997).

Although trade union rights were formally recognised by legislation in Indonesia,[15] in practice, this legislation was ignored – the only labour-based regulations with any influence were the anti-labour regulations issued at the ministerial level, through the Minister of Manpower. During the 1980s,

15 By that time, Indonesia had ratified ILO Convention No. 98, on the Right to Organize and Bargain Collectively in 1956, while the Basic Law No. 14 of 1969 explicitly confirmed 'the right to set up and to become a member of a trade union'.

after the collapse in oil prices, several Minister of Manpower regulations were released which together severely restricted trade union rights. Minister of Manpower Decree No. 5/1987, for instance, required that for a union to obtain recognition it must have representation in at least 20 provinces, 100 district level organizations, and 1000 workplaces. Such provisions were almost impossible to satisfy in a very strict labour environment, and further buttressed the existence of SPSI against any competitors. Due to the increasing criticism of the government's practices in labour matters in the early 1990s, registration requirements were relaxed marginally via Minister of Manpower Regulation No. 3 of 1993, and Minister of Manpower Regulation No. 1/1994. Despite these, the conditions for unions to obtain recognition were still restrictive.

The restrictive conditions ensured that through the 1990s unions were not recognized formally unless they had representation in 100 workplaces, 25 regions and 5 provinces. Although workers were able to establish plant-level unions in companies with more than 25 workers, this was permitted only if no unions had already been established (one union per company), and only after obtaining the approval of more than 50 percent of the workers. Further, staff in management positions were forbidden from joining these plant-level unions. Other ministerial-level articles advised that the corporate unions could 'establish cooperation with or be affiliated to the All-Indonesia Workers' Union' (SPSI)', and more explicitly, that they were 'recommended to join the All-Indonesia Workers' Union of relevant business sectors' within 12 months of their establishment' – raising strong questions about the independence of these unions and their ability to genuinely represent workers. Such provisions still clearly favoured the government-backed SPSI.

Although the slight relaxation in government policy in 1990 allowed a few new unions to establish themselves, the government's ongoing strict policies and repression prevented these from operating effectively. After 1994, practically no new unions were established; and collective labour agreements remained few. This situation continued for the rest of the decade. We will return to this situation in the next chapter, as part of the analysis of trade union legislation.

2.2.2 Minimum wages

Although minimum wage regulations were introduced in Indonesia in the early 1970s as part of a socially-oriented wage policy (Manning, 1998: 207), the minimum wage figure remained under government control, without significant consultation with either businesses or unions and workers' organizations. During the New Order era, the rate was based on a scale known as

Kebutuhan Fisik Minimum (KFM, Minimum Physical Needs)'[16] which varied between regions, as determined by the *Dewan Penelitian Pengupahan Daerah* (DPPD, Local Wage Research Council). According to Minister of Manpower Regulation No. 131/1971, the DPPD was to comprise ten public servants, three trade union members and three company representatives. The trade union representatives were only to be drawn from the SPSI, and the public servant representatives were drawn from a range of government agencies. DPPD meetings were conducted in secret, and submissions were not allowed. Minister of Manpower Regulation No. 20/1971 further specified that the minutes of DPPD meetings would only be made available to its members.

This situation, as noted by Fehring and Lindsey (1995: 6), led to 'the extraordinary situation where perhaps the most important condition of employment for workers is decided without public scrutiny or public knowledge of either the factors that have led to the decision or how such decisions are reached'. And it further 'reflects [the New Order government's] consistent policy of restraining industrial reforms so that economic development can proceed on the government's terms'. In labour relations literature, such a policy is known as 'wage repression' (to distinguish from 'labour repression'); and represents a government's efforts to repress wages and labour costs to boost economic gains, through tight controls over trade unions and the absence of proper minimum wage legislation (Deyo, 1989: Chapter 2). While some have argued that there is little evidence of wage repression in newly industrializing countries (Fields, 1994), including Indonesia (Manning, 1998: 212), it would appear that wage policy was an effective tool to enable the New Order government to control labour. The New Order government, with or without pressure from international financial institutions and human rights organizations, was likely keen to either repress or increase wages and labour costs, depending on the situation and if considered necessary to promote economic development – as was evident in the 1990s.

Following the growing international criticism of Indonesia's labour practice in the early 1990s, the New Order government responded with highly publicized efforts to improve labour standards by boosting minimum wages. Minimum wages in all provinces were raised significantly – by about one-third in 1994, and by a further 21 percent in 1995 (Manning, 1998: 212). Real minimum wages rose by approximately 15 percent in real terms and by 10-20 percent in most provinces during 1988-94, including a 25 percent real increase over the next six years in the rapidly industrializing districts of West Java surrounding Jakarta and Bandung. As a result, the wage dis-

16 In 1997, *Kebutuhan Fisik Minimum* was replaced by *Kebutuhan Hidup Minimum* (KHM, Minimum Subsistence Needs) by Minister of Manpower Regulation No. 3/1997, and in 2003 the enactment of Manpower Law No. 13/2003 linked minimum wages to the notion of 'decent wage'. We will discuss this in more detail in Chapter 5.

parity between the highest and lowest wages also increased. According to a 1996 World Bank study (Rama, 1996), minimum wages in Indonesia tripled in nominal terms and doubled in real terms during the first half of the 1990s, leading to an overall 10 percent increase in average earnings and a 2 percent decrease in wage employment, with only a 5 percent decrease in investment. The study found that the unemployment effect was particularly marked in small firms, while employment may have increased in large firms.

This was a great step forward for Indonesian workers, who had been listed by the World Bank in 1994 as being at the extreme end of the international ranking for differences between lowest and highest wages for paid workers, with a differential of 1:50 (World Bank, 1994: 52-4). However, in 1996 the World Bank downplayed the significance of these wage changes, arguing in an influential report that the rapid rise in regional minimum wages, particularly since 1989, was 'beginning to have a negative effect on the creation of employment, especially of women and young workers' (World Bank, 1996: 81). The report went on to warn that 'caution must be exercised in raising them [wages] further for fear of eroding competitiveness, lowering employment growth and paradoxically of increasing poverty and labour unrest' (cited in Islam & Nazara, 2000: 4). This study was influential because, as noted by Islam and Nazara (2000), it provoked the Indonesian government to reconsider its policy on minimum wages. Bappenas (the National Planning Development Agency), for instance, in its White Paper outlining the medium-term outlook for the Indonesian economy (Bappenas, 1999), remarked that minimum wages had distorted the relative pay structure and inhibited labour market flexibility in Indonesia. Moreover, in July 1999, an ILO-supported tripartite working group had heeded the warning issued in the aforementioned World Bank study. The working group put forward a recommendation to replace the minimum wage setting process with a new one, which would enable a clearer description of the criteria for specifying minimum wages and strengthen the government's implementation capacities. Neither group, however, offered strong evidence to support the validity of their proposals. Indeed, as noted by Islam and Nazara (2000: 25): 'There is no evidence to suggest that minimum wage induced increases in domestic labour costs erode business profitability in large and medium-scale manufacturing'.

Hence, no matter what the controversies among scholars as to whether there was indeed wage repression in Indonesia during the 1990s, it seems apparent that wages – and minimum wages policy in particular – were one set of tools used by the Indonesian New Order government to maintain its control over labour, in the perceived interests of economic development. During the import-substituting industrialization phase in the 1980s, low-waged labour had given a 'comparative advantage' in the context of international competition; and in the 1990s, minimum wages became the new tool for the government to counter international pressures. The roles of employers and unions

in the setting of minimum wages were minimal; while the government dominated almost all of the process.

2.2.3 Labour dispute settlement

As noted earlier, labour dispute settlement mechanisms were provided for during the New Order by at least two laws, which remained on the books throughout the New Order period: the Labour Dispute Settlement Law of 1957 (No. 22) and the Procedures for Dismissal of Workers in Private Undertakings Law of 1964 (No. 12). The 1957 law was enacted predominantly as a response to the escalating labour unrest in the mid-1950s. Its main purpose was to limit strikes and lockouts, by providing a 'compulsory arbitration' mechanism in labour disputes. Nonetheless, both laws also provided protection for workers in labour relations, by emphasizing job security. The most important provision was the provision which stated that in all cases of retrenchment, the decision must be discussed with the worker and his or her union first; and that the employer must obtain permission for retrenchment from the regional Ministry of Manpower office, otherwise the retrenchment would be considered 'null and void'. The Laws provided a system for the settlement of disputes at various stages, including via corporate or bipartite level settlement; via mediation by an official appointed by the Minister of Manpower; and via settlement by the tripartite Regional Committee (P4D) and Central Committee (P4P). Although the Laws acknowledged the right to strike, legal strikes were only permitted if conciliation efforts had failed, or if employers refused to negotiate. Workers were required to follow a set of procedures before they could strike, including notifying their employer, and notifying the Mediator in the Regional Ministry of Manpower office, who would then visit the location and attempt to negotiate with the parties first.

There were several problems with this system in the context of New Order Indonesia. First, in order to function effectively, such a system will depend heavily on the abilities of all parties (employers, unions and government) to legitimately represent their interests (Hess, 1997: 41) – which was not possible during the New Order, as trade unions had been weakened and kept weak since the late 1960s. Second, the labour disputes settlement process has been criticized as ineffective due to its long and complicated procedures, combined with a high frequency of corrupt officials with a strong biased towards employers (Gallagher, 1994). As Manning noted (1998: 215), the increase in labor unrest during the late seventies and early eighties was caused at least partly by the ineffectiveness of the dispute resolution mechanisms, alongside a lack of confidence in the SPSI. Finally, the close involvement of the military in labour disputes raised further problems, which undermined the credibility and effectiveness of the system.

In the early 1980s, as the New Order government sought even more control over labour, it released the Minister of Manpower Decree No. 342/1986, concerning General Guidelines on Labour Dispute Settlement. This regula-

tion stated that the Ministry of Manpower office must co-ordinate with the Regional Government, Police Resort or Military District to overcome possible physical violence in the case of a strike.[17] This regulation was widely relied upon by the military to justify its involvement in labour disputes. Minister of Manpower Regulation No. 4/1986, which permitted an employer to dismiss workers if they were absent for six consecutive days, was another example of the increasing attack on labour rights; and was used to justify the dismissal of striking workers.

3 Concluding remarks

This chapter has discussed the economic strategies of the New Order state, and its corresponding policies toward labour. It has shown that the authoritarian New Order state served important political and economic functions, by providing the conditions for the development of industrial capitalism, while also disciplining labour. Indonesian labour organizations were unable to challenge the strategies effectively. This labour weakness related largely to the political exclusion of labour groups by the New Order government, rooted initially in the imperatives of the regime's survival, and subsequently driven by the perceived requirements of the economic strategies. These issues were reflected in the changing labour policies, which followed the changing economic strategies. This chapter's analysis of the practices of labour law in New Order Indonesia, specifically in three key fields in labour law – trade unions, minimum wages, and industrial dispute settlement mechanisms – supports these observations. In New Order Indonesia, labour law, rather than becoming a tool to restrain public and private power over workers, was used to legitimise labour repression through formal machineries. The protective legislation inherited at the country's independence, and which prevailed until the mid-1960s, was simply not applied in practice – as this option was dependent on the government's willingness to apply the laws, and such willingness was clearly lacking.

The situation discussed in this chapter continued throughout the 1990s without significant challenges from labour organizations; only changing dramatically when the economic crisis hit Indonesia in 1997-98, as will be discussed later. Interestingly, prior to the economic crisis, the World Bank's 1996 evaluation of Indonesian labour law already advised that '[Indonesian] workers are overly protected', but that 'the government should stay out of industrial dispute[s]' (*The Jakarta Post*, 4 April 1996). This statement was released in an effort by the World Bank to create 'industrial harmony between workers

17 Other provisions were provided in Minister of Manpower Regulation Nos. 1108/1986 and 120/1988. In January 1994, in response to the threat of losing GSP facilities from the US. All these regulations were repealed and replaced by a new decree, Ministerial Decree No. 15A /1994.

and employers,' due to the rise in labour unrest in the country, which in the World Bank's opinion was not favourable to business and investments.[18] The New Order government, by this stage under financial pressure, responded to the World Bank's comments by introducing a new bill, the *Manpower Bill*, which was designed to replace all previous labour laws and regulations. The new Bill came under strong criticism from many labour groups and NGOs, who saw it as an anti-worker law in every sense (YLBHI, 1997).[19] Nonetheless, the Bill was eventually enacted as the Manpower Law No. 25/1997 on 3 October 1997. Although it had to some extent adopted the workers' demands, labour protests became widespread around the country.[20]

Meanwhile, the currency crisis in Thailand had become an economic crisis throughout Asia, including Indonesia, and the Indonesian economy was severely damaged. By May 1998, the country's economic growth had fallen to minus 7%; unemployment hit 12%; interest rates climbed to 75%; and the country's currency, the *Rupiah*, slumped from 6,000 to the US dollar, to a catastrophic 18,000 (Godement, 1999: 12). The ILO (1999) reported that the Asian financial crisis had added 10 million new unemployed in Thailand, Malaysia, Indonesia and the Philippines; while numbers of people living on

18 This was consistent with the Bank's general diagnoses and prescriptions regarding how developing countries should commence business, as seen in the series of 'Developing Business' reports which it publishes yearly. In 'Doing Business 2005: Removing Obstacles to Growth' (World Bank 2004), which 'benchmarks regulatory performance and reforms in 145 nations'. Legislation regarding the hiring and firing of workers was considered one of heavier regulatory burdens on business in developing countries (compared to developed countries); along with access to credit, enforcing contracts, registering property, and protecting investors (see Engel, 2010). Such an approach is challenged by the work of Ha-Joon Chang (2002: 116-7), who considers the historical role of institutions in the now-developed countries. His analysis suggested that the institutions of today's developing countries are, in general, far ahead of where those same institutions were in the now-developed countries, when the latter were at similar levels of development. He also points out that good institutions take time to develop, and must be affordable for the country and socio-politically acceptable. He argues (2002: 135) that international standard property rights and corporate governance are the two areas that are most problematic for developing countries, as they require large investments (for example accountants and lawyers) for limited returns; and, as a result, reduce the availability of funding for education or essential infrastructure.

19 One major criticism was related to the right to form a labour union. Under the new Bill, labour unions could only be formed by a decision of the 'majority' of workers in the firm, which could be interpreted as 50 percent plus one, which made it harder to form a union except in very small firms. Moreover, the Bill had been drafted and approved during secret meetings, without sufficient consultation with unions and individual workers. These secret discussions were held in a five-star hotel in Jakarta, in order to avoid the massive labour demonstrations in front of the parliament building protesting against the new draft. (Radio Nederland, 24 November 1997).

20 After being postponed several times, and under pressure from labour demonstrations in front of the Parliament Building in Jakarta, the Plenary Meeting of the Indonesian Parliament on 23 September 2002 agreed to annul Manpower Law No. 25/1997, and replace it with two new Bills – one on industrial relations dispute settlement, and one on guidance and protection for workers (*Tempo Interaktif*, 23 September 2002).

less than a dollar a day were estimated to have risen from 40 million in 1997, to 100 million in 2000. In Indonesia, the poverty rate tripled from 22.5 million in 1996, to 79.1 million in June 1998 – almost 40% of the total population (*Kontan*, 7 December 1998). Economic growth of 7% per year since the 1970s was wiped out within days. The crisis fractured the legitimacy of the New Order, leading to growing unrest throughout the country. Student and middle-class protests, united by the word *reformasi* (reform), had given way to rioting and looting in the capital, which eventually forced President Soeharto to resign on 21 May 1998. Soeharto then appointed his deputy and intimate, Habibie, as the new president, and ended his 32 years in power. The post-Soeharto era, known as the *Reformasi*, marked a new phase in the country's history. This will be the topic of the next chapter.

3 The Reformasi: neo-liberalism, democracy, and labour law reform (1998 – 2006)

Labour law plays an important role in labour reform, since it establishes the framework within which industrial relations and labour market operate. Changes in labour law may indicate the nature of change in industrial relations systems in general. Such changes often occur in parallel with a nation's transition from authoritarian rule to democracy, and tend to be accompanied by a shift in economic development strategies away from import-substitution industrialisation to neo-liberal economic policies oriented toward exports. Indeed, these two pressures – democracy and neo-liberalism – are the 'twin pressures' for change that work on a country's economic system (Cook, 1998). This chapter describes and analyses the changes in labour laws during the *Reformasi* era, after the fall of President Soeharto in May 1998,[1] with particular attention to the enactment of the package of three new labour laws: the Manpower Law No. 13/2003, the Trade Union Law No. 21/2000, and the Industrial Relations Dispute Settlement Law No. 2/2004.[2] The aim is to explain how and why such changes in labour law in Indonesia have occurred, and what have been the implications for labour. To this end, the chapter will investigate the context that structured the changes, i.e. democratization and neo-liberal economic reform, as well as the contents of the package of the three new labour laws, including comparing them with previous laws and analysing their impact on labour[3] and the responses to these changes.

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1 The *Reformasi* era is associated with the post-Soeharto era, following Soeharto's resignation on 21 May 1998. Since that time, Indonesia has had five Presidents, three of whom were each in power for fewer than four years: President Habibie (May 1998 – 2000), President Abdurrahman Wahid (2000 – 2001), and President Megawati Soekarnoputri (2001 – 2004), and Susilo Bambang Yudhoyono or SBY (2004 – 20014). In 2014 Joko Widodo was elected president.

2 In total there were five new labour laws enacted; the other two were Law No. 40/2004 on the National Social Security System, and Law No. 39/2004 on the Instalment and Protection of Indonesian Workers Abroad. These latter two laws will be referred to when needed in this discussion, but they will not be the focus of the dissertation.

3 Here labour refers to individual labour and/or organised labour, it is used interchangeably with the terms 'labour unions' and 'trade unions'.

1 Democratization and neo-liberal economic reform

In common with many labour law reforms in developing countries, particularly since the emergence of the so-called 'globalisation' of the world's economy, labour law reform in Indonesia has been neo-liberal in character, with 'flexibilisation' (or 'deregulation', which is seen by many countries as a requirement for economic and occupational growth, by increasing the so-called 'atypical' or 'non-standard' forms of employment while leaving the regulation of existing employment relations largely unchanged) as the thrust of the reform (Bronstein, 1997; Cook, 1998). Given the extensive regulations on labour in most developing countries, and their protective nature, it is typically the state and its labour laws, which are the main targets for the reform. In this way, labour law reform is seen predominantly as a tool for promoting economic efficiency and encouraging exports; while at the same time the countries undergo economic liberalisation and transition from authoritarian rule to democracy. The twin pressures of democratization and neo-liberal economic reform act on industrial relations systems not only in developing countries but also, to some extent, in developed countries (Cook, 1998; see also Kuruvilla, 1996 and Kochan et al., 1994).[4] Under these pressures, governments may either implement legislative reform, or facilitate de facto flexibility of the labour market through non-enforcement of existing labour legislation and other practices. In the case of Indonesia, due to the wave of democratization following the economic crisis in 1997-8, the weakened Indonesian government could not ignore labour law as it had done before (as this requires a strong state); so it began to implement reforms by adopting flexibilisation, while alo facilitating democratization by providing more space for organised labour. The result was a combination of neo-liberal labour law, with the intrusion of flexible labour markets and labour relations (for example through the adoption of fixed-term contracts and outsourcing of work), while maintaining protective views towards labour (such as through minimum wages regulations) and the government's role in industrial relations. Although the government's involvement in labour dispute settlement was reduced through the establishment of the Industrial Relations Court, its role in industrial relations continued via compulsory arbitration, in which the government acted as mediator.

4 Cook discusses the Latin America contexts. In Southeast Asia, Kuruvilla (1996) shows that the shifts in states' economic strategies have driven most of the changes in industrial relations arenas. In contrast, in the United States, as Kochan et al. (1994) have shown, it is employers rather than the state which are the driving forces of change in industrial relations structures.

After the fall of President Soeharto in May 1998, Indonesia's third President, Habibie, initiated limited reform aimed at changing the image of Indonesia as an authoritarian regime (Bourchier, 2000). Some examples of these unexpected 'Habibie's interregnum' reforms[5] included the immediate release of political prisoners held captive under the Soeharto era on charges of subversive activities – many of whom had been in prison for decades – the annulment of the press and publication license to make press freedom possible; and the revision of the five key political laws (on elections, parliament, political parties, social organizations, and referenda), making it possible to set up political parties and participate in elections.[6]

With regard to labour policy, in June 1998 – one month after his appointment – Habibie used his executive discretion to ratify ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise with a 'Presidential Decree' (Law No. 83/1998). This was an extraordinary initiative, as it bypassed the normal procedures through Parliament. The ratification complemented the ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, which had been ratified since 1956 (Law No. 18/1956), although without implications in practice during the New Order era. Prior to this, the Minister of Manpower of Habibie's cabinet, Fahmi Idris, released a Ministerial Regulation concerning Trade Union Registration, giving more freedom to workers to establish unions. This was followed by the government's orders to release key union activists from prison, including Muchtar Pakpahan of the SBSI, the leading figure of the alternative (non-government) union movement during the New Order government's time, and Dita Indah Sari of the PPBI; who were released on 25 May 1998 and 4 July 1999 respectively. Due to the relaxation of laws on the establishment of unions, the number of national

5 Habibie was Soeharto's former Vice President, and had been a close ally and long-serving minister in Soeharto's cabinets. It is widely considered that Habibie made these initial reforms in order to survive the political transition process, and to keep him in power (Robison and Hadiz, 2004). He was facing a difficult situation: while he had to demonstrate an ability to protect the interests nurtured under the New Order in order to guarantee his own political survival, this was not possible without democratizing the political arena, which opened the door to new actors and forces. Indeed, as Malley (2000) has observed, democratization did not end at this point, but was replaced by a 'protracted transition,' in which authoritarian enclaves remained in place and competing elites struggled over the main state institutions and the direction of reform. A rather different view is provided by Lanti (2010), who argues that Habibie's actions were not entirely for his own political survival, but were also influenced by his political views as a modernist Muslim and representative of an outer island (*seberang*), which arguably favours a democratic political system.

6 In less than a year, between May 1998 and February 1999, 160 political parties were established; far more than the three official parties which had been allowed to compete in elections since 1973. In June 1999, the first election of the *Reformasi* era was held. This election saw 48 political parties participating, and was praised by many as the first free and fair election since 1955 (Feith 1971, see also Castles 1999).

trade unions registered and recognised by the government rose from one in early 1998, to almost 50 two years later, and continued growing until it peaked at around 100 in 2009. Some of these unions were new, but most were offshoots from the New Order-supported SPSI union (Mizuno et al., 2007).

It appeared that Habibie was trying to change the prevailing image of labour practices in Indonesia during the New Order, in the hope of impressing the international community and in particular the International Monetary Fund (IMF). By this time, Indonesia was already tied to the IMF's prescriptions for economic recovery; as the first Letter of Intent with the IMF had been signed on 31 October 1997. On 15 January 1998, President Soeharto signed a deal with the IMF for another bailout package (Godement, 1999: 69). As part of this deal, the IMF required the immediate closing of sixteen banks, the dismantling of the monopoly on cloves, and the withdrawal of governmental support for both the national aircraft industry and the Timor national car projects; all of which businesses involved people very close to President Soeharto (see Soesastro et al. 2010; also Letter of Intent, 31 October 1997[7]). The IMF-supported programs for Indonesia extended over a six-year period, under four different *Reformasi* governments, with the last program terminating in December 2003.

The *Reformasi* governments continued the efforts which the New Order government had begun in 1996, just before the economic crisis, to change the country's labour law system, making it less protective, more flexible and market-friendly. What is important here, however, is that although the IMF apparently supported labour market flexibility, at the same time it could not say no to the policies which supported freedom of association for trade unions, which were adopted as part of the new system. This is an inherent tension, even if only indirectly, in neo-liberal policies. The early involvement of the ILO in the labour law reforms may have played a part in the adoption of these seemingly contradictory new policies.

In August 1998, the government welcomed the ILO's 'Direct Contact Mission', the purpose of which was to evaluate Indonesian labour law and draft a programme for labour law reform (ILO Jakarta, *Press Release*, 25 August

7 Accessed at the IMF website, http://www.imf.org/external/np/loi/103197.htm).

1998).[8] According to one ILO Report, this labour law reform program sought to reformulate Indonesian labour laws 'with a view to modernising and making them more relevant to and in step with the changing times and requirements of a free market economy' (1999: 19). This is confirmed by earlier comments by an ILO official in Jakarta:

> The ILO stands ready to provide technical assistance requested by the Government in redrafting its labour legislation… We will provide whatever support we can to help create a sound labour relations framework that will promote economic development while giving effect to ILO Conventions ratified by Indonesia.
> *(ILO Jakarta, Press Release, 28 August 1998)*

On 23 December 1998, the ILO Jakarta Director, Iftikhar Ahmed, and the Minister of Manpower, Fahmi Idris, signed a Letter of Intent that was witnessed by President Habibie, regarding the Indonesian government's commitment to ratifying the remaining three core ILO Conventions. This commitment would make Indonesia the first country in the Asia-Pacific to ratify all eight of the ILO's core conventions, and included the provision of technical assistance from the ILO to the Indonesian government to conduct the reforms; and the establishment of 'the Tripartite Indonesian Task Force' as a follow-up to the agreement (ILO Jakarta, *Press Release*, 23 December 1998). As noted by Iftikhar Ahmed 'the immediate ILO technical assistance will focus on national legislation on labour law reform, awareness raising on the fundamental human rights conventions of the ILO and their compliance in practice'.

It is noteworthy in this regard that when the Asian financial crisis hit Indonesia in 1997-8, the state's role changed dramatically, as the crisis fractured the very foundations of the New Order state. Following the crisis, the changes in labour law were part of a broader push to liberalize Indonesian economic and political life. Although Indonesia's economy had begun taking small

8 The Mission was conducted due to an invitation from the Indonesian Minister of Manpower, Fahmi Idris, earlier in June 1998, following Idris' attendance at the ILO Conference in Geneva. This conference was chaired by Professor Paul van der Heijden of the University of Amsterdam, a member of the Expert Committee and later the Chair of the Committee of Freedom of Association of the ILO. During the Mission's subsequent six-day visit in Indonesia, ILO officials met with representatives of various Indonesian groups, including from government; employers; unions; military leaders; the World Bank; and the International Monetary Fund (IMF). They also visited Dita Indah Sari, who was still in prison at that time. According to Paul van der Heijden (interview 14 March 2005), the two most important issues discussed were the new Manpower law, and the issue of military interference in labour disputes. The aim was to assess how the ILO could help the Indonesian government bring the new laws in line with ILO standards, and halt military interference as soon as possible; including through repealing the restrictions imposed on free collective bargaining and urging the government to ensure full protection of workers against acts of anti-union discrimination, and protection of workers organizations from interference.

steps towards a market-based economy in the early 1980s, it had otherwise remained relatively untouched for more than three decades, so the changes in the first years following the start of *Reformasi* were significant, with the transformation from a corporatist model backed by a strong and powerful state, to one based mainly on market principles (Feridhanusetyawan and Pangestu 2003; Lee 2003). During this time, the developmentalist state weakened significantly, and the economy shifted from guided or state-led development to market-oriented reform and external liberalization (see Rosser 2002).

In an article in 2004, Teri Caraway has argued that during the *Reformasi's* labour reform process, Indonesia's unions were able to successfully defend their rights – unlike the experiences of unions in many other countries during labour reforms (Caraway, 2004). According to Caraway, what made the Indonesian case different was the 'protective repression' character of the labour relations system inherited from the New Order period,[9] which was a 'blessing in disguise' for Indonesian workers. Caraway contended that although the reforms challenged and corrected the repressive aspects of the previous law, they maintained its protective elements, which 'created a favorable starting point and a strategic edge for unions [in Indonesia] in the ensuing battles over labour reform' (Caraway, 2004: 32). In Caraway's view, this protective legacy, combined with international pressure and institutional design, provided an 'unexpected source of strength for weak labour unions'.

Caraway's argument is based on the view that important 'protective aspects' of the labour legislation were preserved under the reform process. This chapter challenges Caraway's conclusion, arguing that even though some protective aspects of the old legal system were preserved indeed, in fact there had been a high degree of *de facto* flexibility[10] in labour law practice in Indonesia during the New Order, due to lack of enforcement. Moreover, since *de jure* flexibility had also been built into the new laws, this limited both the scope of protection available, and the capacity to implement what protection was mandated in the new framework. An analysis of the development of the new labour law regime – a product of the labour law reform program from 1998 to 2006[11] – shows that it dismantled many of the protective aspects of the previous labour legislation. This increase in flexibility has limited the ability of unions and workers to maintain their rights as previously contained in the

9 As Caraway explained, 'the repressive aspects of the law [were those which] violated international labor standards and were seen as a legacy of the brutal Suharto regime… [while] the protective aspects of the law were a product of Suharto's predecessor, Sukarno ... [which] did not violate international labour standards' (Caraway, 2004: 32).

10 For a thorough discussion on 'flexibility' and how it has been applied in various countries, see Gouliquer (2000); who argues that this notion has often been misused.

11 In this dissertation the author defines Indonesia's labour law reform program as beginning with the signing of the Letter of Intent on 23 December 1998, and ending with the official operation of the newly-established Industrial Relations Court on 14 January 2006.

law; and this chapter argues that this has become the main challenge for the development of genuine, strong unionism in Indonesia.

Since the birth of democracy in Indonesia coincided with an economic crisis, there was little financial gain available for workers anyway; which contributed to the generally weak position of organised labour. As similarly noted by Cook (1998: 315) for Latin America:

> In many cases, however, the return to democracy occurred in the context of economic crises — especially high inflation, indebtedness, and wage decline — so that restored political rights for labour did not always translate into the ability to advance in material gains. In addition, these fragile political transitions often required union restraint in voicing pent-up demands. Despite the obvious benefits of democracy, unions in many countries entered this new political period from a position of significant weakness.

Such a situation, combined with the destruction of the militant section of organized labour at the start of the New Order (see Hadiz, 1997), and the legacy of systematic and often brutal disorganization and demobilization during Soeharto's rule which unions still struggled to overcome (Hadiz, 2000), ensured the continuing relative weakness of the union movement, despite the new freedoms of the *Reformasi* era. In this context, reforms that facilitated freer union formation did not strengthen unions, but instead increased union fragmentation; while the initial labour law reforms that followed the neo-liberal economic reforms did not contemplate the need to strengthen labour law enforcement mechanisms that had been left unclear in the law. Thus, the fall of the authoritarian New Order, and the democratization of the country, have in general been marked by an absence of one of the most important organizations representing the interests of lower classes – labour unions – which have remained practically excluded from political decision-making processes.

However, as we will see further in later Chapters, this broad general situation can include many individual variations. An analysis of specific cases shows that the dynamics of labour reform are often more nuanced than the simple explanations above. Although it is true that there has been generally an inability of the union movement to transform their democratic freedoms into power in the political decision-making arena, in certain cases unions have arguably played a role not only in defending the rights of their members, for example in setting minimum wages, but also in asisting society in general; for example their efforts to ensure the enactment of the social security law in 2011. This will be explored in detail in later Chapters.

2 Labour law changes

On 23 December 1998, the 'Labour Law Reform Program' became the formal working agenda of the Department of Manpower, marked by the signing of the Letter of Intent between the Department of Manpower and the ILO, with the ILO committing to provide technical assistance to support the program (ILO Jakarta, *Press Release*, 23 December 1998). The reform process was funded by the US Department of Labour through the 'ILO/USA Declaration Project,' with a budget of over US$ 1 million (ILO, 2007: 58), a starting date of 2001, and a completion time in August 2006 (www.usembassyjakarta.org, n.d.), which was later extended for two years, to 2008. Under the reform program, the Indonesian government drafted three new labour bills: the Trade Union Bill (later the Trade Union Law No. 21/2000), the Guidance and Protection for Workers Bill (later the Manpower Law No. 13/2003), and the Industrial Relations Dispute Settlement Bill (later the Industrial Relations Dispute Settlement Law No. 2/2004).[12] Apart from facilitating the formulation of the new bills, the ILO/USA Declaration Project also facilitated several other activities, including the publication of an information booklet which compiled the new laws into a single book, as well as support for several of Indonesia's trade union confederations to undertake training in collective labour agreements, negotiations and leadership (Sinaga, 2005).

The aim of Indonesia's labour law reforms, as outlined in the Letter of Intent with the ILO, was to change the existing labour law system substantially, to create more flexible labour regulations which support business interests, while also meeting basic universal labour rights as written in the ILO conventions. As noted by Indonesia's National Development Planning Body Bappenas, one crucial problem for the Indonesian economy was the high rate of unemployment. To tackle this, Bappenas argued, there should be a 'trade off between job security and job opportunities'. To this end, one particular document, *Labour Market Analysis: Employment Friendly Labour Policy* (2003) (also known as the 'White Book' in Indonesian government circles), became an important guide for the government in their development of policies concerning labour market regulations (see also Widianto, 2003). The resulting policies offered a combination of some protection for workers, alongside pro-employer flexibility in labour relations. For employers and some factions of the government, particularly Bappenas, the new labour laws were considered less flexible than intended, as they still had provisions of high severance payments; while labour groups and their supporters saw them as too flexible. In effect, the new labour laws did maintain several protective aspects, such as the requirement for permission for workers' dismissal, and new legislation regarding the functions of trade unions; while

12 For a more detailed story about the dynamics behind the enactment of these three laws see Suryomenggolo (1994, 2008).

also adopting several broad provisions to facilitate flexible work practices for employers, through legalisation which facilitated outsourcing of work.

As we have seen earlier, the labour movement played a key role in Indonesia's labour law reform process from the beginning. However, this influence stemmed predominantly from small sections of the labour movement, including PPBI, KAPB, and several other small, relatively militant labour unions and individual activists, whose activities were supported by labour-focused NGOs (in particular the LBH Jakarta). The larger union force, including the SPSI, which had the largest membership in the formal union sector, remained practically silent. This was because the SPSI, and particularly its leader Jacob Nuwa Wea, was already incorporated into the labour law reform process. Formerly a Member of Parliament from the PDI-P (Partai Demokrasi Indonesia Perjuangan, the Indonesian Democratic Party of Struggle) of the Commission VII of the Parliament (responsible for labour issues), Nuwa Wea was later appointed Minister of Manpower by President Megawati, and was in charge of formulating the new labour bills; in particular the Guidance and Protection for Workers Bill and the Industrial Relations Dispute Settlement Bill. Employers were initially concerned about this appointment and about whether a union leader could maintain impartiality towards employers and unions (Kompas, 11 August 2001); while several union leaders were suspicious that his appointment was intended to tame the rising labour movement. Under Nuwa Wea's influence, several union leaders were selected to involve in the formal decision-making process, through the establishment of the 'Tim Kecil' (Small Team), facilitated by his colleague at Commission VII, Rekso Ageng Herman. Herman was also successful at bringing representatives from employers associations and a number of academics onto the Tim Kecil. Despite efforts by the union representatives on the Tim Kecil to insert stronger pro-labour content into the draft laws, in general this was unsuccessful; the Laws that were enacted were predominantly the same as Parliament's original drafts, disregarding in large part the Tim Kecil's recommendations (see also Suryomenggolo, 2004). Nuwa Wea maintained his position until President Megawati lost the presidential election on 20 October 2004.[13]

13 Thus, it was under Megawati's administration that most of the new labour laws since the *Reformasi* were enacted. These included the Manpower Law No. 13/2003 and the Industrial Relations Dispute Settlement Law No. 2/2004. Another law that Megawati's administration managed to enact, the National Social Security System Law No. 40/2004, was, quite extraordinarily, signed by her during a special ceremony at the Presidential Palace which was attended by almost all ministers of her cabinet on 19 October 2004 – just one day before she ceded power to President-elect Susilo Bambang Yudhoyono (interview with Sulastomo, the chair of the National Social Security System Team established by President Megawati which drafted the Law, on 30 July 2010).

As discussed elsewhere (Tjandra, 2007), several union leaders who were not part of the Tim Kecil used other opportunities provided by the law after *Reformasi*, to challenge the reform process. In June 2003, 37 union federations filed a judicial review against the Manpower Law No. 13/2003, with the Constitutional Court of Indonesia. Their argument was that the Law violated citizens' basic rights as guaranteed by the 1945 Constitution, through the flexibilisation of labour relations; specifically, the promotion of contract-based work and outsourcing, which undermined Indonesian workers' livelihoods by diminishing job security and protection for weaker workers. The hearings started in November 2003, and the Constitutional Judges reached a decision in October 2004 which overruled most of the unions' demands, and accepted only some minor revisions to the law (see Constitutional Court Decision No. 012/PUU-1/2003 on 28 October 2004). Two judges from the panel of nine judges wrote a dissenting opinion, arguing that the labour law reform through the Manpower Law No. 13/2003 was 'unfriendly to humanity and offered less protection, especially towards labour'. Nevertheless, most of the provisions of the law challenged by the labour movement were maintained.

2.1 The Trade Union Law No. 21/2000

The first labour law passed after the fall of Soeharto was the Trade Union Law (No. 21/2000, promulgated on 4 August 2000). Despite this law being the first in Indonesia's history to establish a legal basis for the existence and functioning of trade unions (we shall return to this later in the following chapter on trade union legislation), during deliberations about the Trade Unions Bill in parliament it was criticized by several union and labour groups; particularly by the *Forum Solidaritas Union* (FSU, the Unions Solidarity Forum), an alliance of trade unions established since the *Reformasi* era (*Kompas*, 6 March 2000).[14] The critics argued that the Law still allowed the government to intervene in internal union issues; for example, it contained a requirement for unions to report their constitutions to the government or otherwise face government sanctions, including the abolishment of the union itself. Other criticisms related to the absence in the Law of the right to strike; and the provision that in order to initiate collective bargaining the union needed to be supported by a minimum of 50 percent of all workers from the company or workplace to express interest in being involved in the collective bargaining in question.

14 The FSU consisted of several members of the FSPSI Reformasi, which split from the New Order supported trade union FSPSI (interview with Indra Munaswar). The FSPSI Reformasi consisted of, among others, ASPEK Indonesia (*Asosiasi Serikat Pekerja Indonesia*, Indonesian Association of Trade Unions), FSP KEP Reformasi, FSP TSK Reformasi, Farkes Reformasi, FSPMI, etc. Later on the FSU was transformed into a new peak organization KSPI (*Konfederasi Serikat Pekerja Indonesia*, Confederation of Indonesian Trade Unions), which was then affiliated to the ITUC (International Trade Union Confederation).

The critics also argued that in its provisions, the bill neglected to overturn the New Order's exclusion of civil servants from being allowed to join a union (*Kompas*, 6 March 2000). In article 44 of the Law, civil servants were given the right to organize, but this right was restricted by a ruling which stated: 'civil servants shall enjoy freedom of association and that the implementation of this right shall be regulated in a separate Act', which left the position and rights of civil servants unclear.[15] Similarly, police and the military were explicitly excluded from the Law, leaving them unable to establish their own unions.[16] Other criticisms were related to provisions in the Law concerning the finances and assets of trade unions (*Kompas*, 21 June 2000), including the obligation of union officials 'to report in writing to the government agency responsible for manpower affairs according to prevailing laws and regulations' whenever the union received financial assistance from overseas parties (now Article 31 of the Trade Union Law). This provision was problematic for some unions, since many were dependent on financial support from overseas donors. Especially at the beginning of *Reformasi*, when unions had not yet established effective mechanisms for collecting membership dues, there was a strong need to develop viable union financial structures and

15 The State Owned Enterprises (BUMN) employees, who – like the civil servants – used to be members of KORPRI, have now been much freer to organise though, as seen in the establishment of the BUMN Union in 2004. Around 92 of 164 BUMN belong to this union (*Tempo Interaktif*, 17 Juni 2004). The teachers, many of whom are civil servants united in the PGRI (*Persatuan Guru Republik Indonesia*, the United Teachers of the Republic of Indonesia), however, still face difficulties for their union to be recognized by the Department of Manpower office, since the officials consider them as professionals and 'not workers' (*Pikiran Rakyat*, 4 March 2005).

16 ILO Convention No. 87 guarantees the right to organise for 'all workers whatsoever'; yet there is one class of employees that States may, without offending their commitment to the Organization, deny entirely the right to organize and bargain collectively, i.e., the police and military. The official justification for this exclusion is that unionization might compromise the responsibilities that police and the military have for the 'external and internal security of the State' (Rubin, 2005: 126). In Indonesia, however, such a regulation was extended to private security guards, whose rights to form unions were annulled based on a 'telegram letter' to the Head of National Police in August 2002, which ruled that any violations carried sanctions, including removal and dismissal. This policy was protested against by a hotel union for which 20 percent of its members were security guards. (*The Jakarta Post*, 30 September 2002). In practice, however, only a few security guards could join unions anyway, since most of them were trained by companies whose owners include former senior officers in the police force and the military.

institutions.[17] Despite the concerns, this provision was retained, although in practice unions have remained able to receive money from overseas donors without significant restrictions.

The Trade Union Law contained some improvements in comparison to the previous ministerial-level regulations on trade unions, which it replaced. It allowed any group of ten workers to form a new trade union, and it allowed workers from one enterprise to associate with workers from another enterprise or workplace in support of industrial action. A number of unions in different workplaces might together establish one federation, and several federations in different regions might become one confederation, registered at the national level. The law did not use the word 'registration' but rather 'recording', to refer to the legal requirement for trade unions to inform the Department of Manpower and Transmigration of their existence. This is probably due to the fact that the word 'registration' was misused during the New Order era to prevent the operation of free trade unions. Several provisions in the new law also protected trade union officials from unfair dismissal by employers – such dismissal was considered 'anti-union conduct' and carried a criminal sanction of between one to five years' imprisonment or a heavy fine.

Following the reform and relaxation of the regulations governing union formation, the number of unions in Indonesia increased from one in early 1998 to become around 100 national federations registered in late 2009, including five national confederations. In 2005, the latest official data available at the time of writing, there were 11,464 plant-level trade unions registered, mostly affiliated with one of the three largest confederations (KSPSI, KSPI, and KSBSI). Although Indonesia had become the first country in the Asia Pacific to ratify all core conventions of the ILO, including Conventions No. 87 and 98

17 The aforementioned *Forum Solidaritas Union* (FSU), for instance, was supported by the ACILS (American Center for International Labour Solidarity), an international support wing of the United States' AFL-CIO (American Federation of Labor- Congress of Industrial Organizations), during the FSU's earlier protests against the new labour bills. When later the FSU became the FSPSI Reformasi, its first new office was funded by the ACILS in Cikini district in Jakarta; and was indeed located in the same building as the ACILS. According to Dan La Botz (2001: 307), from 1997 onwards ACILS received around $1 million a year from the USAID (US Agency for International Development) for its projects in Indonesia, to achieve goals such as increasing the number of freely negotiated collective bargaining agreements; improving shop stewarding and grievance-handling performance; developing union capacity in due collection; and developing effective alternative dispute resolution processes. There was also another goal: to integrate the SPSI (the state-controlled union) into the overall framework of the projects. However, after the fall of Soeharto in May 1998, ACILS switched its support from the SPSI and focused instead on supporting the three major unions established after the Reformasi: SPSI Reformasi, SBSI, and FNPBI (the Indonesian National Front for Labour Struggle, a left-wing union estalished by mainly student activists) (Botz, 2001: 308).

on the rights to associate and collective bargaining,[18] the level of unionization has remained relatively low, with only 6-7 percent union density in the formal sector. Official reports show that although the number of registered unions has increased, the number of workers belonging to unions has actually been decreasing every year. In May 2002, 45 national federations were registered, comprising 8,281,941 members; by mid-2005, the Ministry of Manpower's verification results for union registrations showed an increase to around 90 unions registered, but a total of only 3,338,597 members (see verification results by the Ministry of Manpower, with 2005 being the latest report available at the time of writing). Some scholars have, however, challenged these numbers as inaccurate due to problems associated with the union membership verification process, which relies on information provided by unions without conducting independent checks of numbers (e.g., Juliawan, 2009).

Although the situation cannot be compared to the three decades of unions suppression under the New Order, in today's Indonesia there remain frequent examples of workers who have formed unions only to be denied their rights to collective bargaining by the employer, leading in some cases to the dismissal of union leaders and intimidation of union members (see, e.g., Saptorini and Tjandra, 2005). Despite the enactment of the Trade Union Act No. 21/2000 as a special law on trade unions, with provisions to protect trade union officials from dismissal due to anti-union conduct, such dismissals are still frequent. One factor in this is the generally weak bargaining position of unions in Indonesian society, associated with society's low recognition of unions as a social organization in the workplace. The state's recognition of the existence of unions, at least formally, following the *Reformasi* in 1998, has not necessarily been followed by a broader acceptance, by employers and society, of the role of unions in the workplace.

Nonetheless, Indonesian trade unions have at least some legal basis that supports their traditional objectives of improving workers' pay and conditions. In Articles 28 and 48, the Law clearly prohibits a number of specific anti-union behaviours, such as unfair termination of employment, demotion, wage repression, intimidation, and anti-union campaigns. The Law considers such conduct to be a 'grave criminal offence', which is subject, as mentioned above, to criminal sanction of one to five years' imprisonment and/or a fine of Rp 100 million to Rp 500 million. One rare case occurred in 2007 in Pasuruan, East Java, with the imprisonment of a general manager for his misconduct against trade union officials. We will discuss this case in detail in the following Chapter on trade union legislation.

18 The latest one was Convention No. 185 on Seafarers' Identity Documents.

2.2 The Manpower Law No. 13/2003

The second labour law to be passed during *Reformasi* received a similarly mixed reception to the first, with the plan to ratify the Manpower Bill triggering significant controversy. Hundreds of workers and activists, particularly those affiliated with the KAPB (*Komite Anti-Penindasan Buruh*, Committee Against Labour Oppression), used demonstrations and media releases to protest againt the endorsement of the Manpower Bill by the House of Representatives (DPR) on 25 February 2003, on the grounds that the bill was against workers' interests and that it was strongly influenced by the IMF and the World Bank (*The Jakarta Post*, 26 February 2003). The endorsement only went followed one month after Daniel Citrin, the IMF Assistant Director for Asia and Pacific Department, publicly questioned its delayed promulgation (*The Jakarta Post*, 20 January 2003). The demonstration ended in clashes between the police and demonstrators. Nonetheless, President Megawati officially signed the Manpower Law No. 13/2003 on 25 March 2003.

This new Law replaced almost all previous laws and regulations that covered the basic principles governing labour relations in Indonesia, including the Employment Law No. 1/1951 and the Basic Principles of Manpower Law No. 14/1969, augmented by several government regulations, ministerial-level regulations and circulation lettters.[19] It contained a bulk of provisions with 18 chapters, 193 articles and around 500 clauses, covering a number of labour issues before, during and after the employment period.[20] These issues ranged from the regulation of children who have to work to the regulation of manpower planning, placement and training; and from equal opportunity to the government's obligation to provide employment. The Law included basic guidelines for industrial relations, such as collective labour agreement negotiations, mechanisms by which to select union representatives for negotiations, and mechanisms to enable notification of the collective labour agreements once concluded.

19 Law No. 1/1951 provided details of basic protections for workers, including working hours and restrictions on employment for women and children, whereas Law No. 14/1969 was a short document stating broad principles guiding employment, health and safety norms and labour protection.

20 Articles 158 and 159 were later declared null and void, based on Constitutional Court Decision No. 012/PUU-I/2003 on 24 October 2004.

The Law also included the requirement to establish 'bipartite cooperation institutions' in enterprises employing 50 or more workers,[21] and for 'tripartite cooperation institutions' at the national, provincial, and district (*kabupaten/kota*) level. The bipartite cooperation institution is a forum for 'communication, consultation and deliberation' on 'matters pertaining to industrial relations' at the company level,[22] and members of the institution are the employers and registered trade unions in the company. The tripartite cooperation institution has the same functions, but in the broader regional and national context; and its members comprise representatives from employers' groups, trade unions and the government.[23] The law also provides for the right to strike, but only as a 'last resort'; meaning that unions are required to attempt to reach a consensus in a bipartite forum, and if this fails, a mediator is called in to settle the conflict. If these efforts remain unsuccessful, a 'peaceful' and 'disciplined' strike is permissible, provided notice of the intention to strike is communicated to the Minister of Manpower in advance. The right to strike, however, is limited in enterprises that serve the 'public interest' and/or enterprises 'whose types of activities [if curtailed] will lead to the endangerment of human lives'. Moreover, the law decrees that strikes shall be 'arranged in such a way so as not to disrupt the public interest and/or endanger the safety of other people'. Nonetheless, in practice strikes have often occurred without following these provisions; by referring instead to a separate law on the freedom of expression in public (Law No. 9/1998). In such cases the notification of the intent to strike is sent not to the Manpower Office, as regulated by the Manpower Law, but to the police.

21 The idea of having some form of 'worker-management cooperation' was not without precedent in Indonesia. In 1960-1964, on the basis of Government Regulation in Lieu of Law No. 45/1960 on Worker-Management Councils (*Dewan Perusahaan*), worker-management councils were established in the state's employment enterprises (the regulation only applied to state-owned operations). However, there is a huge difference between the 'Worker-Management Councils' established under Government Regulation No. 45/1960, and the 'Bipartite Cooperation Institutions' described in the Manpower Law. Government Regulation No. 45/1960, unlike the Manpower Law, provided detailed mechanisms for the work of the councils: the Management was represented on these councils by a top executive of the enterprise, who also served as chairman of the council, and provided the organization with a manager who was able to make decisions without outside consultation. The councils had to include a representative of the union associated with the enterprise, and, if the enterprise operated in the agricultural field, a representative of the farm; or if the enterprise was not in the agricultural field, another labour representative. This meant there were always at least two pro-labour representatives out of four members of the councils; a relevant 'expert' was also required (for more discussion about worker-management councils in Indonesia in the 1960s, see Panglaykim, 1965).

22 Article 1 section 18 the Manpower Law No. 13/2003.

23 Article 1 section 19 the Manpower Law No. 13/2003.

Although there is greater recognition of the existence of different interests in labour in post-New Order laws than in those of the 1980s and 1990s, the *Pancasila* ideology is still influential in Indonesian law; leading to the continuing perception in legal and government circles that legal conflict is 'inappropriate' and should be avoided, if not suppressed.[24] The establishment of the 'bipartite cooperation institution' has tended to reduce the need for collective bargaining and trade union representation. This seems similar to the concept of the 'work council' in some European countries, notably Germany, which has a labour system in which trade union activity in workplaces is relatively limited (Biagi, 2001: 495). In Indonesia, some union factions were concerned that the mandatory requirement for all grievances to be discussed initially within a 'cooperation institution' would reduce union power, and would weaken the effectiveness of collective bargaining; as happened, for example, in South Korea (Park, 1993).

Of all the provisions of the Manpower Law, the most highly debated in public have been the clauses on labour protection, concerning severance payment and dismissals, fixed-term contract labour and outsourcing, and minimum wages (see Manning and Roesad, 2007; Dhanani et al., 2009). These clauses are contained in three chapters: Chapter 9 (Employment Relations, articles 50-66); Chapter 10, (Protection, Wages and Welfare, articles 67-101); and Chapter 12 (Termination of Employment, articles 150-172); which together cover 73 of the Law's articles. These chapters are the most controversial because they are seen as indicative of the level of rigidity and inflexibility of the Manpower Law and labour market regulations in general in Indonesia; which ties closely to the debate about employment creation and business climate.[25] The controversy includes provisions concerning fixed-term contractual work and sub-contracting (or 'outsourcing,' as it is more commonly called in industrial relations practices in Indonesia[26]), which is contained in Chapter 9 of the Manpower Law (see Manning and Roesad,

24 The first sentence in the 'Considering' part of Law No. 2/2004 on Industrial Relations Dispute Settlement is: 'That harmonious, dynamic, and fair industrial relations need to be put into practice in an optimal manner in accordance with *Pancasila* values'.

25 See for example the annual Doing Business Reports of the IFC (International Finance Institution)/World Bank provide international comparative data on the difficulties in doing business in various countries; based on, among other things, the rigidity of a country's employment regulations. Since the first report on Indonesia in 2004, the country has ranked highly with regard to its restrictive employment regulations (IFC, 2004-2010).

26 The term 'outsourcing' is not actually used in Article 64-66 of the Manpower Law No. 13/2003, which covers such practices; which instead uses the term 'subcontract'. However, many elements in the Law are in line with the general definition of 'outsourcing' as used in management theory and practice, which is: 'an act of transferring some of a company's recurring internal activities and decision rights to an outside provider, as set forth in a contract', or 'the contracting out of functions, tasks, or services by an organization for the purpose of reducing its process burden, acquiring a specialised technical expertise, or achieving expense reduction' (Indrajit and Djokopranoto, 2003).

2007; also Tjandraningsih and Nugroho, 2008). Contract work and outsourcing is part of what is referred to in industrial relations literature as 'labour flexibility'. Developed especially in the 1980s, the flexibility concept and its twin, the 'core/periphery employees' concept, grew in popularity as management strategies became more competitive and management became less inclined to employ full-time or permanent employees (Salamon, 1998: 515). The two concepts developed into the so-called 'flexible firm model', which became the foundation of the labour flexibility concept that subsequently dominated human resource management discourses, and legitimised the reduced protection of workers.[27]

27 Salomon (1998: 515-6) describes several important features of this 'flexible firm' model, including the need for modern enterprises to become more responsive, adaptive, and competitive with respect to performance, quality, and services. To this end, companies need 'numerical flexibility' and 'time flexibility' (the ability to easily adapt labour inputs in facing the changes of needs); 'functional flexibility' (the flexibility to transfer workers between tasks); and 'pay flexibility' (more individualization of work and wage differentiation based on individual performance, other organization-specific variables, and labour market conditions). Implementing this flexibility leads to the creation of different groups of workers. First is the core group: those workers with full time, permanent status, who become the company's future. This group enjoys relatively secure work, and is the group in which the company invests training and, development, and implemented functional, time and wage flexibilities. Second is the 'peripheral group,' which becomes the companies' supporting group. This group tends to comprise a mix of (1) full-time workers whose skills are obtained easily from the labour market, with limited access to career opportunities, little investment in training, and which tends to feature a high employee turn-over; and (2) workers with casual employment contracts, whose non-permanent status fits short term business needs and who have very low job security. A third group comprises workers who are not direct employees of the company, but who can be considered part of its human resources; including ex-employees whom the company has made 'self-employed' in the same area of work as before, and those involved through 'contracting out' of non-core business activities. Numerical flexibility is at the heart of this flexible firm model, by creating different levels of job security and different levels of attachment to a company, which produces the fundamental differences between the core and peripheral workers. A key question is the the level of freedom a company is given to determine the types of employment contract it offers, and to replace (hire and fire) workers to meet perceived company needs. The protective labour legislation provisions concerning hiring and firing of workers tend to be counterproductive to a company's needs for labour flexibility, as the legislation restricts a company's ability to cull its workers based on perceived need, while substantially increasing the amount required to be paid as compensation for dismissal. This discourages companies from employing permanent workers, and makes them more inclined to employ non-permanent part-time workers, especially in times of market uncertainty.

Various workers' groups in Indonesia rejected the Manpower Law's provisions concerning contract and outsourcing work. The *Komite Anti-Penindasan Buruh* (KAPB, the Anti-Repression Workers' Committee),[28] for example, argued that the outsourcing practices outlined in the Law's provisions would relieve employers of their responsibility to ensure fair wages and other allowances for workers; making workers mere commodities in transactions between the employer company and the firm recruiting outsourced workers. The workers serving these sub-contracting firms were hired on a contract basis, so that there was no employment security or labour insurance – a situation that KAPB described as a tendency towards 'modern slavery'. In contrast, Bappenas and its neo-liberal economist supporters argued that provisions were not flexible enough; and that such a rigid policy on hiring and firing, and the high severance pay for dismissing workers, not only went against the international trend but were likely to limit job creation in the formal sector (Bappenas, 2003; Basri, 2008). This argument clearly influenced the government, in 2006 when it attempted to revise the Manpower Law's provisions, particularly the controversial articles concerning contractual and outsourcing work, and the articles concerning severance payments (Manning and Roesad, 2006, 2007).

In this regard it is interesting to examine the role of the *Tim Kecil* ('Small Team'), which was established under the Special Committee of Parliament and comprised several union leaders brought together to obtain a pro-labour view on the drafts of the new bills. Of the three new bills, only two (the Manpower Bill and the Industrial Relations Dispute Settlement Bill) actually included the *Tim Kecil* during the draft deliberations.[29] Despite concerns from some parts of the union movement – particularly the KAPB – that the *Tim Kecil* was 'not democratic' and 'exclusive' (Suryomenggolo, 2004, KAPB, 2003), union representatives within the *Tim Kecil* were able to ensure that several labour interests were formulated within the Law (Mizuno 2008). We will discuss this further in the chapter on trade union legislation.

28 The KAPB consisted of 15 unions, incuding the *Asosiasi Serikat Pekerja* (ASPEK, Trade Union Association) Indonesia; *Front National Perjuangan Buruh Indonesia* (National Front for the Indonesian Labour Stuggle); *Serikat Buruh Jabotabek* (Jakarta and Surround Trade Union); and was formed specifically to gather together unions and labour NGOs which were critical of the labour law reform processes. Their meetings and plans of action were facilitated largely by the Labour Division of the Jakarta Legal Aid Institute (LBH Jakarta), a Jakarta branch of the leading human rights NGO Indonesian Legal Aid Foundation in Jakarta (YLBHI), which became the headquarters of pro-labour activities at the time.

29 The establishment of the *Tim Kecil* was initiated by several members of parliament, in particular Rekso Ageng Herman, who was from Commission VII (from the PDI-P) and member of the Special Committee for the formulation of the new labour bills. Herman facilitated the council's initial meeting on 6 November 2002, with the names of union invitees put forward by Jacob Nuwa Wea). According to Suryomenggolo (2004), invitees from the unions were selected specifically to help give the council legitimacy.

2.3 The Industrial Relations Dispute Settlement Law No. 2/2004

The main provisions of the third law, the Industrial Relations Dispute Settlement Law (No. 2/2004, promulgated on 14 January 2004)[30] reflected the provisions of the cancelled Manpower Law of 1997 (see Article 57): namely, the transfer of the labour dispute settlement mechanism away from the Regional and Central Labour Dispute Settlement Committees (or 'P4', *Panitia Penyelesaian Perselisihan Perburuhan*), under the Department of Manpower, to the 'Industrial Relations Court,' which is under the judical branch of the state. As noted by Mizuno (2008), the idea of having an industrial relations court was not without precedent in Indonesia. In the 1920s, the Railway and Tram Workers Association had argued that such an arbitration court was necessary to ensure legal certainty and justice within the industrial dispute resolution processes (see also McVey, 1965). However, the government had emphasised mediation, rather than court action, as the most appropriate means by which to resolve disputes. This had been adopted by the Soekarno government and maintained by the Soeharto government through the Labour Dispute Settlement Law No. 22/1957, which introduced the tripartite compulsory arbitration mechanism.

The proposal to establish an industrial relations court was raised again during deliberations on the Industrial Relations Dispute Settlement Bill in 2003. Muchtar Pakpahan, the head of the Indonesian Prosperous Labour Union (SBSI), brought the idea back to the table through the Union Solidarity Forum (FSU) Team for the Reforms of Labour Law. The team launched a campaign for the reform of labour laws including Law No. 22/1957, emphasizing the need for an effective, efficient industrial dispute mechanism to replace the problematic compulsory arbitration mechanisms operating under the P4 (see Mizuno, 1998; Suryomenggolo, 2008).[31] When eventually the Industrial Relations Court was adopted by the new Law in 2004, this appeared to be a compromise – an earlier draft of the bill showed that the government wanted initially to abolish not only the P4 system but also the requirement (under Law No. 22/1957) for employers to obtain permission before dismissals; which the government wanted to be replaced by a stronger bipartite system between unions and employers, with less government involvement (Mizuno, 2008: 2).

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30 This Law was supposed to be implemented on 14 January 2005, a year after its enactment. However, problems with staffing, structure and infrastructure within both the executive and judiciary during the Law's planning stages led to the its postponement for a year, until 14 January 2006, based on Government Regulation in Lieu of Law No. 1/2005.

31 Criticisms of the Labour Dispute Settlement Committee process included that it took too long to resolve (often years at the regional and national levels); and that decisions could then challenged before the Administrative Court, which could lead to several more years before a final, binding decision was reached. Gallagher (1997) studied the Labour Dispute Settlement Committee's performance and effectiveness between 1990-1994, and reported that the Labour Dispute Settlement Committee suffered institutional weaknesses and 'battled against itself', as demonstrated by its inconsistent decisions on similar issues and by its ongoing corruption problems.

The *Tim Kecil* again played a role in securing workers' interests during the development of this law (Mizuno, 2008). Several of the Law's final provisions reflected lobbying by the *Tim Kecil*, including: (1) the provision that cases valued at less than Rp 150 million would not incur a charge; (2) the provision to allow unions and employers to represent their members during trial; (3) the provision to allow the appointment of ad hoc judges (associate judges) who do not hold law degree in order to give more chances for unions to nominate their own officials; and (4) the provision to enable courts to issue injunctions against employers who failed to meet their legal obligations. Despite the establishment of an industrial relations court, the government's direct role in labour disputes was maintained; as the Law retained the obligation for mediation, which would be facilitated by mediators from regional Manpower offices (a provision which had been omitted from earlier drafts of the Law).

Under the new Law, the dispute settlement process is entirely subject to the procedures of the civil court. With the abolition of the P4, the requirement that employers seek permission to dismiss workers under the Labour Dispute Settlement Law of 1957 was also abolished. The new Law accommodated workers' and employers' organizations through the introduction of the ad hoc judges system representing workers' and employers' interests. Under the new law, most grievances are first handled through 'voluntary arbitration' rather than 'compulsory arbitration'; in particular in the workplace through the 'bipartite cooperation institution' (see Article 106 of Law No. 13/2003 and Article 3 Law No. 2/2004). The creation of these alternative channels for individuals to redress their grievances has tended to reduce the need for trade union representation (see Tjandra and Suryomenggolo, 2004). Although the law covers disputes between unions and employers, unlike before, there is no clear obligation for employers to recognise or bargain with a trade union. In a similar situation in Hong Kong, the lack of such a legal provision discouraged collective bargaining, and most agreements between workers and employers were negotiated under informal or ad hoc bargaining procedures (Levin & Ng, 1993). Some observers have also raised concerns that the introduction of an industrial relations court will lead to more problems than solutions, given the extent of corruption in the judiciary and the lack of fairness in Indonesian civil courts (Tjandra, 2003; see also Pompe, 2004[32]).

32 Pompe argued that the newly-established Commercial Court in fact helped increase unemployment in Indonesia, due to its inefficiency and failure to provide reliable services, which were associated with corruption. Interestingly, Pompe was also one of the main drafters of the Commercial Court Law, through his job as the IMF Resident Legal Advisor in Jakarta, Indonesia. According to information provided by those involved with the formulation of Manpower Law No. 13/2003, the Commercial Court was the model adopted when discussing the establishment of an Industrial Relations Court (see Suryomenggolo, 2004).

In addition, the tendency to use 'pure' civil litigation procedures in the Industrial Relations Court would further limit the access of workers to fair outcomes (Tjandra, 2007).

3 The aftermath and further efforts towards change

Although the labour law reform program succeeded to some extent in softening the notion of protection within the Indonesian labour law system, with the intrusion of the labour market flexibility concept, in general the laws were considered not flexible enough. There have therefore been ongoing efforts to amend the law further, to increase its flexibility. The debates in which stakeholders voiced concern about provisions in the Law had started before the Law's enactment[33]; but not until 2004/5 was the issue formally placed on the government's policy agenda. As noted by Manning and Roesad (2007), this was precipitated by a series of reports from the World Bank – in particular the 'Doing Business' reports, which are highly publicised in Indonesia – and a report by the University of Indonesia in 2006 (see also Bird, 2005), which highlighted the negative impacts of stringent labour legislation on investment climate and employment creation. Soon after these reports were published, the revision of the Manpower Law was flagged by the government: on 27 February 2006 President Susilo Bambang Yudhoyono released Presidential Instruction No. 3/2006, the 'Investment Climate Recovery Policy Package', which included a statement (in Part IV, on 'Manpower' p.16) that the government's policy was to 'create an industrial relations climate which will increase job opportunities', and which involved revising the Manpower Law No. 13/2003. Some of the articles in the draft revision[34] proposed the recruitment of contract-based workers and outsourcing into core business; the restriction of severance and service payments to dismissed workers with monthly salaries of Rp 1.1 million (around US$110) or less; and the free flow of expatriates. Such proposals were clearly a direct threat to several of the protective provisions of the Manpower Law, which had been preserved during the reform process.

The attempts to again revise the Manpower Law prompted massive labour protests across Indonesia. These began on 1 May 2006, in conjunction with International Labour Day celebrations; and reached a climax two days later when thousands of workers from KSPSI (All-Indonesian Workers Union

33 See, for example, debates between Dita Indah Sari – leader of left-wing union FNPBI, Bambang Widianto – senior official of Bappenas, and Jacob Nuwa Wea – then the Minister of Manpower (*Van Zorge Report*, 8 October 2002).

34 It was not clear how the draft came about and was publicly distributed among union officials, but it was widely believed among union people that it was Bappenas that prepared it, as it had prepared many provisions of the Manpower Law of 2003 before. Interview with Sjaiful DP, the National Council of the KSPI, September 2006.

Confederation, formerly SPSI) pushed down the metal fence at the House of Representatives. Some attacked police, which responded by firing tear gas and water cannons at the workers. Dozens of workers and security personnel were injured (*Kompas*, May 4, 2006). After the incident, President Yudhoyono stated that such harsh actions would only harm Indonesia's image internationally (*The Jakarta Post*, 4 May 2006). Union leaders argued that protesters were frustrated by what they considered an indifferent response from the legislature and government officials to their demand for a guarantee of no revisions to the Manpower Law. Unions continued their protests by boycotting the government-initiated National Tripartite Council (*LKS Tripartit*); those that boycotted included the country's three major trade union confederations (KSPI and KSPSI), and several other large national unions including the SPN.[35] The boycotts prompted intense media debate, and the government cancelled the planned revisions soon after, following the findings of an independent report by experts from five state universities assigned to review the labour law, which found that major changes to the law were not necessary (*The Jakarta Post*, 2 September 2006).

The team of experts commissioned to review the law included fourteen lecturers from five state universities, i.e., the University of Indonesia (Depok); the University of North Sumatra (Medan); Hasanuddin University (Makassar); Gadjah Mada University (Yogyakarta); and Padjajaran University (Bandung). The team was weighted heavily towards economics lecturers and included just four law lecturers; and only one of them, i.e., Professor Aloysius Uwiyono of the University of Indonesia, was actually a specialist in labour law. Uwiyono had also been involved in deliberations over the Manpower Law No. 13/2003, and the Industrial Dispute Settlement Law No. 2/2004. Professor Armida S. Alisjahbana from the University of Padjajaran Faculty of Economics, a well-known economist who also led the USAID/Growth through Investment, Agriculture, and Trade (GIAT-USAID) research project, chaired the independent review. In 2004 she led the preparation of a report titled 'Indonesia's employment protection legislation: swimming against the tide?', arguing that the protective measures within Indonesian labour legislation had hampered employment creation in the formal sector, and went against global trends toward flexibilisation of labour relations (see also Manning and Roesad, 2007). In October 2009, Alisjahbana was appointed by President Susilo Bambang Yudhoyono as Head of Bappenas, a position equal to a Minister.

35 This boycott also had an impact in regional areas, particularly with regard to the formulation of minimum wages, which normally took place in the Regional Tripartite Councils; and this produced unrest in several regions (interview with with Bambang Wirahyoso, President of the KSPI, September 2006, Hafuri Yahya, FSP KEP union branch in Banten province).

Table 3.1: Independent Academic Analysis Team (Tim Kajian Akademis Independen)

No.	Name	University	Faculty	Team's Position
1	Prof. Dr. Armida S. Alisjahbana	University of Padjadjaran, Bandung	Economics	Chair and member
2	Dr. Suahasil Nazara	University of Indonesia, Jakarta	Economics	Secretary and member
3	Prof. Dr. Aloysius Uwiyono	University of Indonesia, Jakarta	Law (Labour law)	Member
4	Prof. Dr. Safri Nugraha	University of Indonesia, Jakarta	Law (Administrative law)	Member
5	Dr. Jossy P. Moeis	University of Indonesia, Jakarta	Economics	Member
6	Prof. Dr. Sutyastie Soemitro Remi	University of Padjadjaran, Bandung	Economics	Member
7	Dra. Ira Irawati, M.Si.	University of Padjadjaran, Bandung	Social and Politics	Member
8	Dr. T. Hani Handoko	University of Gadjah Mada, Yogyakarta	Economics	Member
9	Dr. Bagus Santoso	University of Gadjah Mada, Yogyakarta	Economics	Member
10	Drs. Sukamdi, M.Sc.	University of Gadjah Mada, Yogyakarta	Geography	Member
11	Prof. Dr. Bismar Nasution	University of Sumatera Utara, Medan	Law (Economics law)	Member
12	Prof. Dr. Ningrum Natasya Sirait	University of Sumatera Utara, Medan	Law (Competition law)	Member
13	Prof. Dr. Tahir Kasnawi	University of Hasanuddin, Makasar	Social and Political Science	Member
14	Prof. Dr. Muh. Yunus Zain	University of Hasanuddin, Makasar	Economics	Member

Following the unsuccessful attempt to revise the Manpower Law in 2006, the Indonesian government's plans to increase the Law's flexibility gained momentum again due to concerns associated with the growing financial crisis in the United States in 2008. In a Joint Regulation released by four

ministers on 22 October 2008,[36] the Government reiterated the importance of maintaining economic growth, particularly in anticipation of the global economic crisis. The government stipulated that ministers should respond to the crisis by addressing the risks to their individual portfolio areas. The Minister of Manpower, for example, should 'consolidate workers and employers elements through the National and Regional Tripartite Cooperation Institution with National and Regional Wage Councils', particularly with regard to the determination of minimum wages, to try to avoid job losses associated with wages being too high for companies to maintain. In addition, Article 3 of the Joint Regulation stated that '[the] Governor in determining minimum wage shall try not to reach beyond the national economic growth'.

These proposed new labour provisions provoked the anger of workers in major cities throughout the country. Most workers' groups and unions claimed the new regulations were a manifestation of the government's panic, and an over-reaction to the economic crisis. Unions argued that the Joint Regulation discriminated against workers, by victimising workers for the sake of economic and investors' interests. They claimed that the proposed increase in regulatory flexibility, as outlined in Article 3, would leave workers in a worse situation than they already faced, with lower wages, less purchasing power, and poorer working conditions. While workers rejected the new regulations, their implementation was endorsed by the Association of Indonesian Employers (Apindo).[37] Apindo supported the Temporary Tripartite Cooperation Institution (LKS Tripnas-S)[38] by participating actively in all meetings and supporting the institution's agenda, to the point that Apindo was almost successful at persuading the institution to promote the proposed revision to the Law. Apindo representative Hasanudin Rachman claimed repeatedly that the plan to revise the Manpower Law in mid-2006 to early

36 The four ministers were the Ministers of Manpower and Transmigration, Internal Affairs, Industry, and Trade.

37 Since its congress in 2003 that elected Sofjan Wanandi, a well-known business tycoon, the Apindo had systematically encouraged 'real' employers to be active in all levels of Apindo structures, to replace the human resources managers that previously dominated the structures. Wanandi, long considered as the 'spoke-person' of the Indonesian conglomerates since the Soeharto era, had led the Apindo to become rather modern and articulative organization of employers in Indonesia. Never in the history of Apindo, the organization has played a role as an advocate of employers' interest in industrial relations as it has today, by involving, very actively, in almost all national initiatives concerning industrial relations, either with the government and unions through tripartite institution, or with the unions through bipartite institution.

38 LKS Tripnas-S members consisted of official delegates of the Government, employers and unions. The unions' delegates were chosen based on the verification result of the numbers of the members of the unions. Having legal basis from article 107 of the Manpower Law, the LKS Tripnas-S was established by Government Regulation No. 8/2005 dated 26 February 2007, which duty was to 'provide considerations, recommendations and opinions to the government and other parties involved in policy making and problem solving concerning labour issues/problems.'

2007 was supported by the LKS Tripnas-S (interview with Hasanudin Rahman in May 2007). However, this proved to be not entirely true – union leaders who were members of the LKS Tripnas-S strongly refuted Rachman's claim (statement by Sjaiful DP, President of FSP KEP union and member of the LKS Tripnas-S, on 22 June 2007).

Having failed to garner sufficient support from the LKS Tripnas-S for the Manpower Law revisions, Apindo instead advocated bipartism as the new model of industrial relations in Indonesia, to replace the existing tripartite model. This proposal was initially supported by just one of the three union confederations, KSBSI – the third largest confederation, with around 200,000 members.[39] However, after several intensive meetings between Apindo's Chairman Sofjan Wanandi, and the leaders of the three confederations – Rekson Silaban of KSBSI, Thamrin Mosii of KSPI, and Sjukur Sarto of KSPSI – an agreement was reached on 21 February 2008 to form a National Bipartite Forum, comprising Apindo and the three union confederations (see the National Bipartite Forum 'Joint Statement', 21 February 2008). In an unprecedented move, some of these meetings were held in the confederations' offices; previously, the unions had always been required to come to the Apindo office. To accommodate the new Forum, an office was rented in the Jamsostek Building, four full-time staff were employed (one from each organization), and Apindo provided operational costs of Rp 10 millions/month to cover the rent and staff salaries. The Forum's main task was to facilitate meetings among the four organizations and, importantly, to 'synchronize' or attempt to reach agreement whenever differences arose among members concerning the interpretation of labour law (interview with Sofyan – Vice General Secretary of the KSPI in June 2008). This initiative was initially questioned by the Minister of Manpower, Erman Suparno, who reportedly felt 'overstepped' (sidelined) because he was not informed about the Forum (interview with Sjaiful DP – President of FSP KEP union in June 2008). However, the Forum was supported by President Susilo Bambang Yudhoyono, who reportedly mentioned during a cabinet meeting that the initiative was a 'smart intervention'.[40] Despite the hopeful start, after several months the initiative lost steam and the Forum quietly disbanded, due largely to Apindo's frustrations over not obtaining union support for their interpretations of labour law, and the fact that the unions depended so highly on Apindo's facilitation to make the Forum work.

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39 KSBSI and other groups initiated a meeting with the Apindo, to find a solution to the differing views concerning the proposed Manpower Law revisions (*Kompas*, 9 Mei 2006). KSBSI also hosted the first National Bipartite Meeting on 11 May 2006 at the Sahid Hotel, Jakarta (although this inaugural meeting was attended only by KSBSI and the Apindo, as the other confederations chose not to attend, .in part because they felt that the meeting's agenda was being driven by the Apindo, and they had hoped the could meet among themselves prior to meeting with the employers' organization (interview with Sahat Butar Butar – KSPI in June 2008; see also Tjandra, 2008).

40 Personal communication with Bambang Widianto of Bappenas in June 2008.

4 Concluding remarks

Despite the freedom that unions in Indonesia have enjoyed since the *Reformasi*, in general they have remained in a relatively weak position. Indonesia's democratization process was initiated while the country was dealing with a major economic crisis; which left little for workers to gain anyway. This situation, combined with the destruction of organized labour during the New Order era, and the inability of unions to overcome the legacy of systematic repression during Soeharto's rule, ensued the continuing relative weakness of the union movement as a whole. In this context, the reforms that were intended to facilitate freer union formation did not strengthen the unions, but instead increased their fragmentation. The initial labour law reforms which followed the neo-liberal economic reforms were a reflection of this situation: characterized by the intrusion of flexible labour market concepts without sufficient appreciation of the need for enforcement mechanisms to be strengthened, to ensure real implementation of the laws – which is arguably the real problem in the Indonesian context.

This chapter, however, has shown that despite the union movement's general inability to transform their greater freedom into increased political power, a deeper examination of some actual cases, particularly at the regional level, reveals that labour has sometimes managed to play a key role in reform nonetheless – a rather different position from the generally accepted view. Some observers cite these examples as evidence of increasing union influence in Indonesia (Juliawan, 2009, Tjandra, 2007; see also Teitelbaum, 2008 for a similar argument in India); and argue that the strength of organized labour has been largely misjudged, due to the lack of attention to examples of strong trade union dynamics. Examples of stronger union organization include, for instance, a reduced reliance by labour groups on their previous 'key sources', such as business, political and trade union elites, and instead more reliance on their grassroots support. The present chapter, although sharing this general conclusion, has demonstrated that trade union dynamics in Indonesia are even more complex and nuanced than previously suggested. This observation becomes the background for our discussion in the second part of this dissertation, which considers cases associated with the three most important issues in labour law in Indonesia: trade union legislation; minimum wage setting; and the Industrial Relations Court.

4 Trade unions and the law in Indonesia

With all their faults, trade unions have done more for humanity than any other organization of men that ever existed. They have done more for decency, for honesty, for education, for the betterment of the race, for the developing of character in man, than any other association of men.

Clarence Darrow (1909), *The Railroad Trainman*

1 Introduction

The evolution of labour regulations under the authoritarian New Order (1965-1998) was a reflection of the changing economic and political strategies of the regime; while, the evolution of labour regulations during the *Reformasi* (from 1998 onwards) is generally considered the result of liberalising the labour market, a reflection of the government's lack of active enforcement of legislation, and employers' disinclination to comply with labour laws. Such development, it is argued, is rooted in the general weakness of the labour movement, which prevented it from having a significant influence.[1] The smaller, yet essential, chapters in the Indonesian labour and trade union movements history,[2] however, sometimes tell a different story. Having benefited from the protective legislation and having survived the changes to labour law since the *Reformasi*, the Indonesian labour force and its unions have continued to fight. This fight has not been easy, and has been less about large successes than about many small achievements. Yet it demonstrates the efforts and willingness of organized workers in Indonesia to participate in the implementation and enforcement of social and labour rights, after a long

1 Some researchers cite the legacy of the authoritarian New Order as a reason why many labour activists have failed to take advantage of the opportunities available post-reform. The high level of fragmentation within the trade union movement is also proposed as a weakening factor, with personal rivalries between a handful of elite unions helping to make unions split. Both these factors contribute to the labour movement remaining weak in Indonesia, despite the recent increase in freedom (see, e.g., Hadiz 2007; also Chapters 1 and 2 of this study).

2 The term 'labour movement' is used here as 'a broad term for the development of a collective organization of working people, to campaign in their own interest for better treatment from their employers and governments, in particular through the implementation of specific laws governing labour relations' (Wikipedia.org). Trade unions are 'collective organization within societies, organized for the purpose of representing the interests of workers and the working class.' Both terms are used in the chapter to encompass and explore the rights-related activities of workers and trade unions and their supporters, including intellectuals, NGOs and some sections of government (see Spooner, 2004 for a general discussion of the labour movement; and Ford, 2009 for the case in Indonesia).

hibernation under a harsh and sometimes violent repression by the state. This is an achievement worth exploring and understanding.

This chapter discusses labour law in practice in Indonesia since the *Reformasi*, focusing on the legislation of trade unions, and the legal, social and political implications of this legislation for labour. It examines the trade union as one of the few institutions capable of promoting some measure of equity and social justice in Indonesia, and the role they have played in organizing their collective powers and strategies in support of the country's new democracy. In doing so, this chapter is divided in two parts. The first part, sub-chapter 2, examines developments since the enactment of the Trade Union Law No. 21/2000; a law which provides a legal basis for the development and functioning of independent trade unions. The chapter's second part, sub-chapters 3, discusses recent findings concerning the unprecedented growth in trade union movements at both regional and national levels, as unions seek to use new opportunities to position themselves more strongly in the political and social arenas.

The Trade Union Law No. 21/2000 was the first legislation focused specifically on unions enacted in Indonesia in more than three decades, over which time unions had been restricted and controlled under state corporatism (see the previous chapters). Although this law has provided new foundations for the development of trade unions in the country, their position is still generally weak. The state's recognition of the existence and rights of unions in law does not necessarily lead to sufficient acknowledgement by employers, there is a lack of enforcement of the law by government, and ignorance or deliberate disregard of the law by employers. In addition, conflict and fragmentation among unions themselves remains a problem, hampering the strengthening of the position of unions within Indonesian society.

While the overall observation has been one of continuing trade union weakness following the enactment of Law No. 21/2000 on the Trade Union, field research has also revealed some extraordinary developments within the union movement, at both regional and national levels. At the regional level, this has included the development of regional trade union alliances; and at the national level, Indonesia has seen the formation of an alliance of unions, the KAJS (*Komite Aksi Jaminan Sosial* – Action Committee for Social Security Reform). The various regional alliances have served to unite unions, and have filled the gaps left by weak central union organizations, which have struggled to function as uniting forces. The KAJS's struggle to promote reforms in Indonesia's social security system also highlights the potential for unions to develop greater unity at the national level, and reflects a paradigm shift within the trade union movement, from a 'market' or 'business' approach towards a more 'social' orientation and focus (see also Chapter 1). These developments are timely after the decades of state suppression and cooptation of the trade union movement under the New Order, whose legacy

lasted for more than a decade following the *Reformasi*. The new developments provide the strongest indication yet that the trade union movement has a strong future and an important role to play in Indonesian society.

2 The regulation of trade unions

The regulation of trade unions in Indonesia has evolved in an *ad hoc*, confused and unstructured way. Various provisions pertaining to the regulation of the role of unions in labour relations have appeared over the years, in various pieces of legislation and government regulations, and in a number of ministerial decrees and regulations.[3] At the level of legislation and government regulations, changes to the provisions were infrequent – but at the ministerial level, regulatory changes occurred often, with provisions replacing one another in quick succession, as a reflection of changing government strategies and the social and political situation at the time. During the New Order era in particular, ministerial level regulations determined almost every aspect of labour relations in the country; changes at this level were considered more effective by the regime, given that such changes could be made at the discretion of the minister, without the need to consult Parliament. The New Order government's heavy hand also ensured that new regulations were enforced with little resistance. Since the reforms of 1998, however, the tendency to use ministerial level regulations has subsided, as they are no longer backed by such a controlling state, and there is strong encouragement for workplace regulations to be negotiated directly by the parties involved – the employers and trade unions. This section of the chapter will examine the evolution of trade union regulations in Indonesia, and the corresponding situations for trade unions; in particular the situation since the enactment of Law No. 21/2000 on Trade Unions, one of the most important outcomes of the labour law reforms between 1998 and 2006.

2.1 Trade unions and their regulation before 1998

The first legislation to define the legal position of trade unions in Indonesia was Law No. 21/1954 on Labour Agreement between Trade Unions and Employers. This law was based on articles 36 and 89 of the Provisional Constitution of 1950,[4] and established the first rules of agreement regarding the terms of labour between trade unions and employers. The law was

3 Here the term 'decree' correlates with the Indonesian term 'keputusan', and 'regulation' correlates with the Indonesian 'peraturan'.

4 The Provisional Constitution of United Indonesia in 1950, which replaced the Constitution of Federal Indonesia in 1949, is considered the most democratic constitution that Indonesian has had, and contained many chapters on human rights and the welfare of Indonesia's people. President Soekarno later abrogated it in 1959, under pressure from the military (see Ricklefs 2001: 285).

considered democratic, and reflected the situation in Indonesia of the time: a time in which multi-unionism existed and ideological contestations among unions were very much alive. The two implementing regulations of the Law were Government Regulation No. 49/1954 on guidance for making and managing labour agreements; and Minister of Labour Regulation No. 90/1955 on labour union registration. The latter was important, as it stipulated that any trade union or combination of trade unions could be registered, with few formal or material requirements that could hinder the freedom of workers to form and register their unions. To be registered, a union simply needed to provide its constitution, its leadership structure and a list of members' names; there were no minimum requirements associated with numbers of members, coverage of regions, or organizational structure (see also Rajagukguk, 2002: 44).[5]

This early positive approach to trade unions did not last. By the time Soeharto took power in 1965-6, and with the formal establishment of the New Order government in 1968, the government's policy towards the trade union movement was to remove it from politics, and force unions to focus only on small-scale social and economic issues. The government sponsored several national seminars on 'the renewal of labour movement paradigms and the labour relations system in Indonesia', which resulted in a number of plans for the future of the trade union movement (Cahyono, 2003). These included that the labour movement should be united in one independent structure, free from the influence of political parties; and that the personal political interests of union officials should not be brought into the unions, but should be channeled through political parties (Soegiri, 2003). Further, the labour movement should be financially independent, rather than dependent on other sources of finance, especially from abroad.[6] With regard to this last point, it was stated that union members' fees would be collected through a check-off system (COS), which would facilitate unions' financial security[7] and free the labour movement to determine and implement the organizations' policies (see Sofyan, 2009). However, as argued by Herlina (2001: 75), the COS system was not in fact intended to support unions, but to give more

5 According to Kertonegoro (1999: 12-15), this regulation was also influenced by the fact that the country's first general election was approaching (in 1955), and political parties were looking for support from labour groups, including forming labour unions as their *onderbouw* (substructure) in order to recruit members which could deliver votes.

6 In 1969, Minister of Manpower Regulation No. 1/1969 concerning Foreign Assistance for Labourer/Worker/ Employee Organization in Indonesia was released, which set new rules to control and restrict foreign assistance to trade unions.

7 A 'check-off system' is defined as: 'a system whereby an employer regularly deducts a portion of an employee's wages to pay union dues or initiation fees' (www.legal-dictionary.com). Invented in the early nineteenth century by anthracite mine operators in the US (Córdova, 1969), the COS is attractive to unions, as the collection of dues can be costly and time-consuming. It prescribes the manner in which dues are paid by deductions in earnings rather than through individual cheques sent directly to the union. Unions are thereby assured of the regular receipt of their dues.

power to employers by allowing employers to manage unions' sources of income and further entrench the government's grip on the unions.

Following these new proposals for unions, the MPBI (*Majelis Permusyawaratan Buruh Indonesia*, Indonesian Labour Consultative Council) was established on 1 November 1969, supported by 21 sector unions. This council was the first attempt to unite different federations under a single national leadership. Two years later, on 21-28 October 1971 in Tugu, Yogyakarta, a seminar which aimed to establish a single national labour organization was organised by the MPBI, with the support of the Indonesian Manpower Foundation (YTKI – *Yayasan Tenaga Kerja Indonesia*) and the Friedrich Ebert Stiftung, a German foundation. The seminar provided the opportunity for the MPBI to be transformed into the FSBI (*Federasi Buruh Seluruh Indonesia*, the All-Indonesian Labour Federation), the first united union federation since the New Order, which was established on 20 February 1973.[8] Agus Sudono and Soewarto were elected as the first President and General Secretary respectively,[9] with a term of office between 1973-1980. On 11 March 1974, the FBSI was confirmed as a single union by the Director General of Manpower Protection and Maintenance of the Ministry of Manpower (Cahyono, 2003: 36).

The government's efforts to unify trade unions had remained gradual to this point. In particular, the laws and regulations established during the 1950s and 1960s, which supported a multi-union system and were in essence pro-labour and pro-union, still existed. To address this, in 1975 the government released a new regulation to revoke Minister of Labour Regulation No. 90/1955. This new regulation, the Minister of Manpower, Transmigration and Cooperatives Regulation No. PER-01/Men/1975 on the Registration of Labour Organizations, stated that union federations were only permitted to organize collective agreements if the federation included at least 20 provinces and at least 15 trade unions. The corporatist ideology of 'Pancasila Labour Relations' (*Hubungan Perburuhan Pancasila*) was, moreover, introduced in the form of a regulation for the first time – although the concept had been dominant since the beginning of the New Order in the mid-1960s.[10] The next regulation, Minister of Manpower, Transmigration and Cooperatives Regu-

8 Presidential Decree No. 9/1991 stated that 20 February was to be 'Indonesian Workers Day', and that this 'represents a milestone of the united workers in Indonesia,' and would replace International Labour Day (1 May), which was associated with the leftist labour movement.

9 Agus Sudono was the former President of Gasbiindo, a Moslem union; Soewarto was an ex-official for the Opsus OPSUS (or 'Operasi Khusus' - Special Operations) (see Cahyono 2003: 35-36). The inclusion of former security personnel in the unions was aimed at identifying and dealing with any potential destabilizing developments in the labour movement, and became a common feature of the New Order's treatment of unions (see Tanter, 1990).

10 See also Chapter 2 of this dissertation.

lation No. PER-2/MEN/1978 concerning company regulations and negotiations on the drafting of collective labour agreements, stipulated that only registered trade unions could undertake collective bargaining. These two regulations together did much to support the government's plan to reduce the number of registered unions.

During this time, public servants were in most cases prevented from joining unions, and Presidential Decree No. 82/1971 further stipulated that there was to be one single organization for civil servants, the KORPRI (*Korps Pegawai Negeri Republik Indonesia*, the Republic of Indonesia Public Servant Corps).[11] Three years later, Government Regulation No. 6/1974 further stipulated that the definition of 'public servants' had been expanded to include all state employees at both national and regional levels, as well as all employees working in enterprises owned wholly or partly by the State. This definition was expanded again, by Presidential Decree No. 3/1984 on the approval of KORPRI's constitution and KORPRI's rules and statutes, which stated that public servants also included all persons working in private companies in which the Government owned a share. This resulted in public servants having no opportunity to organize themselves into unions, and as the situation extended to workers in state-owned enterprises, it led to situations in which organizations such as the PGRI (*Persatuan Guru Republik Indonesia* – Teachers United of the Republic of Indonesia) – the only organization to which public and private school teachers were able to belong – had no rights to negotiate terms and conditions of employment.[12]

International influences

The international community saw Indonesia's new policies towards collective bargaining as a violation of the international standards to which Indonesia was a signatory.[13] In December 1987, the International Confederation of Free Trade Unions (ICFTU) officially complained to the International Labour Organization (ILO) about the violations, arguing that the policies were 'in conflict with obligations placed on the Government under the provisions of Article 4 of Convention No. 98, namely to encourage and promote collec-

11 This regulation has never been repealed, and is still valid at the time of writing.

12 The PGRI had been one of the founders of the MPBI and the FSBI, but the PGRI's 12th congress in Jakarta in 1973 ruled to forbid PGRI members from joining unions, and the PGRI became merely a professional, rather than a workers', organization. From that point, the PGRI's national leadership was guided in its duties by an advisory council, consisting of the Minister of Education and Culture, the Minister of the Interior, and the Ministry of Religion (accessed at http://www.scribd.com/doc/10758374/Kesimpulan-Kongres-PGRI).

13 At this time, Indonesia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); but it had ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

tive bargaining.'[14] The complaint forced the Indonesian government to reply at the next ILO conference, at which it claimed that Indonesia had its own system, '*Pancasila* Industrial Relations', which was based upon 'globally acceptable principles adapted to meet the national ideals, cultural heritage and overall policies of the Republic and its indigenous population,' whereby 'a mutual working agreement or collective agreement should be developed as the means of implementation for all rules and regulations.' The government further stated that in the context of trade union mandates for public servants, collective agreements were not applicable because 'the conditions of employment, including wage structures, for public sector workers are regulated by special laws and regulations.'[15]

The ILO's committee of experts generally accepted these claims, but recommended that 'all workers, without distinction whatsoever, should enjoy the right to establish organizations to further and defend their interests'. The ILO also requested the Indonesian government 'to supply more information on the activities of the KORPRI, the PGRI and any other associations set up for public and para-public servants to protect their interests, e.g., in collective bargaining, grievance procedures' and 'to review the legislative monopoly situation establishing KORPRI as the sole association for civil servants so as to permit civil servants to join organizations of their own choosing.'[16] This international pressure forced the Indonesian government to address the issues, at least on paper. In 1990, the Minister of Manpower, Cosmas Batubara, on behalf of the Indonesian government, asked the PGRI and KORPRI to register as the 'teachers' union' and 'public servants union', to free the Indonesian government from the ILO's pressure and demonstrate that democracy was supported in Indonesia (Ramadhona, 2009). However,

14 See 'Complaint Against the Government of Indonesia Presented by the International Confederation of Free Trade Union (ICFTU),' Report No. 259, Case No. 1431.

15 All quotations in this and the following paragraph with regard to the Indonesian government's responses to the ILO are from the 'Complaint Against the Government of Indonesia Presented by the International Confederation of Free Trade Union (ICFTU),' Report No. 259, Case No. 1431.

16 According to Presidential Decree No. 82/1971 on KORPRI, KORPRI 'is the only place to gather and develop all government employees outside their official duties' and its goal was to 'maintain and strengthen the political stability and social dynamics in the country.' In practice, however, under the Soeharto government, KORPRI became a political tool to support the regime. In Law No. 3/1975 on Political Parties and Functional Groups, and Government Regulation No. 20/1976 on the Membership of Public Servants to Political Parties, KORPRI was forced to become the main supporter of the government's political party, Golkar (Golongan Karya – translated as Functional Groups), with the introduction of the 'mono-loyalty' concept of civil servants to GOLKAR. Later, after the 1988 reforms, Government Regulation No. 5/1999 forbade the participation of public servants in political parties, and in its congress in 2003 the KORPRI took a neutral political position (www.korpri.or.id).

this is generally considered to have been merely an attempt to deflect international pressure.[17]

In 1980, the first FBSI congress led to the establishment of a more definitive structure for the organization over the next five years. Agus Sudono was re-elected as President. In the second FBSI congress in 1985, several radical structural changes occurred (Sofyan, 2009), the objectives of which were to turn the unions into a single, hierarchical organization that could control the grassroots workers. The term 'buruh' (labourer), which was considered too 'radical', was changed to the more neutral term of 'pekerja' (worker). The name FBSI was also changed, to 'SPSI' (*Serikat Pekerja Seluruh Indonesia* – All-Indonesian Workers Union), and the structure was transformed from federated to unitary, with a single central command established at the DPP (*Dewan Pimpinan Pusat* – Central Leadership Council); while the leadership of the 21 sector unions within the federation was transformed into nine departments. Between the nine departments and the various subdepartments (bureaus and sections) of the national leadership, there was no effective coordination or links to the councils at the provincial level or to those at the district level, let alone any links to the plant level unions. Moreover, the authority of the sector unions to run their own administration was abolished; while at the plant level, the unions were transformed to become a 'work unit' (*unit kerja*) under the command of the council at the district level.[18] In 1985, Agus Sudono, who had led the FBSI since 1973, was replaced by Imam Soedarwo,[19] a businessman who obtained the position with the support of Minister of Manpower, Sudomo (*Tempo*, 7 December 1985). These changes were resisted by the sector unions who established the 'Joint Secretariat' (*Sekretariat Bersama*) of the SBLP (*Serikat Buruh Lapangan Pekerjaan* – Industrial Field Labour Union), to which we will return later.

The government's efforts to control unions through regulations continued throughout the 1980s. Minister of Manpower Regulation No. Per-05/Men/1984, for example, gave employers the right to collect union members' dues

17 In fact, it was not until the 1998 reforms that the PGRI dared to declare itself again as teachers' union (www.pgri.or.id). In 2003, the PGRI was involved in the establishment of the KSPI (*Konfederasi Serikat Pekerja Indonesia* – Confederation of Indonesian Trade Unions). KORPRI, in contrast, has continued not to declare itself as a union, and government employees have remained unable to join unions, with the exception that workers of the BUMN (*Badan Usaha Milik Negara* – state owned enterprises) – also by definition members of KORPRI – are generally able to join unions.

18 These changes made it easier for the government to control union leadership from top to bottom, reducing the potential for unions to organize strikes. Prior to the changes, the government could only effectively control the national leadership, which allowed the sector unions some autonomy in administering their activities.

19 Imam Soedarwo was a member of parliament for Golkar, the New Order political party, as well as the Director of PT Karwell Indonesia, a garment factory established in 1979 and operated in the Bonded Warehouses Indonesia (BWI), Tanjung Priok, Jakarta. He also chaired the Indonesian Textile Association (*Tempo*, 7 December 1985).

via the check-off system, enabling employers to control unions by administering unions' sources of income from dues. Minister of Manpower Decree No. Kep-1109/Men/1986 limited the establishment of unions at the plant level, forcing discussions about union formation to be conducted through 'counseling' sessions; to be held with government officials, the SPSI branch, and the employers association Apindo. Moreover, Minister of Manpower Regulation No. Per-05/Men/1987 further increased the difficulty of registering unions and bargaining collectively, by requiring labour organizations to have at least 20 provincial level structures, 100 district level structures, and 1,000 plant level unions before they could be registered. Together these regulations entrenched the position of the government-sanctioned union SPSI as the dominant union, and made it almost impossible for alternative unions to compete, or even exist.

In 1986 the government's control to labour union activities was expanded further, through the implementation of new labour dispute settlement mechanisms.[20] Minister of Manpower Decree No. 342/Men/1986 on the Guidelines/General Instructions for Conciliation of Industrial Relations Dispute, explicitly permitted government mediators from the Regional Manpower Office to collaborate with the Regional Government and Police Resort or Military District, to deal with any physical violence in the case of a strike (this approach was also confirmed by a military regulation, the Commander of Bakorstanas Decree No. 02/Satnas/XII/1990 on the Guidelines for Countermeasuring Industrial Relations Cases[21]). Two further decrees were Minister of Manpower Decree No. Kep.1108/Men/1986, which required all disputes to go through a dispute resolution procedure, overseen by the Manpower Office and Minister of Manpower Decree No. Kep.120/Men/1988, which established a 'code of conduct' for workers which forced striking workers to go back to work or face sanctions and police or military interventions. Together they greatly restricted the right to strike and entrenched the

20 The procedure for resolving disputes during collective bargaining was outlined in Law No. 22/1957 on Labour Disputes Settlement. This law was promulgated to limit strikes and lockouts, and in effect also established compulsory arbitration. As noted earlier, Law No. 22/1957 was replaced by Law No. 2/2004, which introduced the Industrial Relations Court – which will be examined in detail in Chapter 6.

21 The Bakorstanas (*Badan Koordinasi Bantuan Pemantapan Stabilitas Nasional* – the National Stability Establishment Aid Coordinating Body) was established by President Soeharto through President Decree No. 29/1988. The organization's tasks were 'to coordinate the efforts of government's departments and agencies in the recovery, maintenance, and establishment of national security, in response to any obstacles, challenges, threats and harassment (article 2 (1)). The organization was headed by the Chief of the Army, with a secretariat consisted of representatives from the Coordinating Ministry of Security and Defense, the Army, the Police, the Attorney General Office, and the National Intelligence Agency (article 4(2)). Its broad powers ensured that the Bakorstanas could become involved in any issue that it considered to relate to 'national stability', including labour issues. After the *Reformasi*, President Abdurrahman Wahid, through Presidential Decree No. 38/2000, dissolved the Bakorstanas in 2000.

military's intervention in labour affairs, and further undermining the capacity of workers to organize and act collectively (see Caraway, 2004, also Nayar, 1993). Arguably the most shocking outcome of these policies was the murder, reportedly by the military, of a female worker and activist from Marsinah in 1993; an event which led to global protests (see previous chapters).

Indonesia's policy of military intervention in labour disputes generated strong criticism from both the local and international community. The Indonesian Legal Aid Foundation (YLBHI) conducted an investigation into the Marsinah murder, and filed a judicial review against Decree No. 342/Men/1986 to the Supreme Court. Internationally, Asia Watch and the International Labour Rights Education and Research Fund sent a petition to the United States Government in 1992 citing Indonesia's gross violation of workers' rights and concerns about the non-existence of independent trade unions in the country. This petition led to Indonesia being placed under review by the US Trade Representative through the US's Generalised System of Preferences (GSP) program.[22] Facing the threat of a possible loss of tariff concessions on some of its exports to the US under the GSP, the Indonesian government responded by increasing the minimum wage for workers, but maintained its other repressive labour policies (Tjandra, 2002). The above ministerial decrees were later repealed and replaced by Minister of Manpower Decree No. Kep.15A/Men/1994, concerning the Industrial Relations Dispute and Dismissal at the Plant Level and the Minister of Manpower Mediation Procedures, which abolished direct intervention by the military in labour disputes.

However, the Indonesian government persisted with its single-union policy into the early 1990s, retaining its efforts to ensure that the SPSI was the only legal union in the country. Minister of Manpower Regulation No Per-03/Men/1993 on Registration of Workers' Organization reinforced this, particularly with Article 2 of the regulation, which stated that unions and combined unions could only register if they comprised at least 100 plant level unions, spread across at least 25 districts and at least 5 provinces. For more localized or area-restricted industries and types of work, such as mining, unions needed required at least 10,000 members prior to registration. Article 1a of the regulation also stated that a union must be set up only 'by and for workers', which was intended to deny recognition to groups which included members or organizers who were considered by the Ministry of Manpower to be non-workers, in particular lawyers or human rights activists who may have

22 See Fehring & Lindsey, 1995: 7; also Human Rights Watch/Asia, 1994: 22-7. For further discussion of the GSP process, see Glasius, 1999.

been supporting the group.[23] In addition, as stipulated in Minister of Manpower Decree No. Kep-438/Men/1992, for workers to form a trade union at the company level they were required to obtain written permission from an existing workers' organization at the branch level – which in effect meant the SPSI, given there was no other 'existing trade union'; and the SPSI would be unlikely to grant permission. In yet another constraint on unions, the enactment of Law No. 8/1985 on Social Organization meant that in order to be recognized as a union, a workers' organization was required to register as a 'social organization' with the Department of Home Affairs – and all social organizations in Indonesia were required to adhere to the Government's official ideology of *Pancasila*.[24]

Nevertheless, provisions in Regulation No. Per-03/Men/1993 and Decree No. Kep-438/Men/1992 did offer the possibility of changes to the SPSI's structure. In September 1993, the SPSI claimed to be initiating a transformation from a unitary (centralized) structure to a federated (decentralized) structure (although in fact changes had started with the SPSI's 3rd Congress in November 1990, when its nine departments were altered to become 13 sectoral unions, each including a chairman and a general secretary who were elected during the congress). The SPSI's further changes in 1993, however, were not significant; the union's structure remained effectively centralised. In October 1993, the union reported that 12 of its 13 industrial sectors were registered as independent unions. In response, in 1994 the US Department of State's review on Indonesia's human rights situation during 1993 observed: 'However, [for registration of unions] to become final, the SPSI's constitution must be altered. This can only be done at a SPSI congress; the next one is scheduled for 1995, or a special congress could be convened before then.' Apparently responding to this US report, the SPSI's Leadership Meeting on 3-8 October 1994 committed to reform and restructure the SPSI, from a unitary structure back to a federation. The name SPSI was changed to FSPSI (Federation of SPSI), and the 13 sectors within the union were developed into 13 industrial field workers' unions. The union's transformation was confirmed officially through the amendment of its constitution, during the 4th Congress on 14-19 November 1995, to acknowledge the new FSPSI and its 13 Member Unions (DPP SPSI, 1995).

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23 This was no doubt related to the fact that NGO labour activists had played a large part in establishing the two other unions of the time, *Serikat Buruh Setia Kawan* (the Solidarity Labour Union, also known as *Serikat Buruh Merdeka* or the Free Trade Union); and *Serikat Buruh Sejahtera Indonesia* (SBSI, Indonesian Workers Welfare Union). Although both unions were well established unofficially, government regulations prevented their registration and they were therefore illegal.

24 The Law gave the government the power to disband any organization it believed to be acting against *Pancasila*, and forbade any organization from accepting funds from foreign donors without prior government approval – a regulation that greatly hindered the work of many local humanitarian organizations.

Both Regulation No. Per-03/Men/1993 and Decree No. Kep-438/Men/1992 had been strongly criticized by various countries and international institutions. In June 1993, the International Confederation of Free Trade Unions (ICFTU) filed an official complaint against the Indonesian Government, to the ILO. The ILO's Committee on Freedom of Association, which had already sent a direct contact mission to Indonesia on 21-27 November 1993[25] to examine these issues, noted in its 1994 Committee of Expert on Freedom of Association's report that 'there was an absence of specific and detailed legislative provisions to protect workers against acts of anti-union discrimination at the time of recruitment and during the employment relationship, as well as acts of interference by employers to their organizations.' (ILO, 1994: 268). The report concluded: 'Legislative measures should be taken to repeal the provisions, and in particular article 2 of [Minister of Manpower] Regulation Per-03/Men/1993, which prevent workers from engaging voluntarily in collective bargaining and concluding collective labour agreements through freely chosen representatives.' (ILO 1994: 268). The Indonesian government responded to this suggestion by issuing Minister of Manpower Regulation No. Per-01/Men/1994 concerning the Establishment of Trade Unions at the Enterprise Level**.** This regulation appeared on the surface to provide a concession, by allowing company level unions to be established outside the structure of SPSI – but any concession was immediately negated by the regulation's requirement for such unions to affiliate with the SPSI within 12 months. The single-union regulations were therefore retained, until the wave of reforms hit Indonesia in 1998.

Despite such government resistance, the 1990s also saw a resurgence of labour activism in Indonesia. Several labour-based NGOs and activists established new unions in the early 1990s, to challenge the government-backed SPSI's monopoly,[26] despite these unions being unable to operate properly under the government's strict policies and repression (Hadiz, 1997). After 1994, no new unions were established, but Indonesia saw a rise in related groups and activities, including labour-oriented NGOs, pro-labour students and community groups in industrial areas; and awareness-raising about labour issues through education, cooperatives, and training and discussion groups for workers (Ford, 2001). The establishment of work-

25 The direct contact mission was initiated as part of the Indonesian government's efforts to calm international pressures, especially those associated with the GSP. Its task was 'to advise on better implementation of the Convention [No. 98, which Indonesia had ratified].'

26 Unions established in the 1990s include the SBM Setiakawan (*Serikat Buruh Merdeka Setiakawan*, Solidarity Independent Labour Union), founded in 1990; the SBSI (*Serikat Buruh Sejahtera Indonesia*, Indonesian Prosperity Labour Union), in 1993; and the PPBI (*Pusat Perjuangan Buruh Indonesia*, Central of Indonesian Working Class Struggle) and AJI (*Aliansi Jurnalis Independen*, Independent Journalists' Alliance), in 1994. For an extensive analysis on the relationship between workers and NGOs in Indonesia, before and after the *Reformasi*, see Ford, 2009. We will return to this topic later.

ers' groups and their activities helped to enhance workers' 'class' identity, and gave them at least some sense of unity and purpose, which sometimes manifested in organized strikes (Hadiz, 1997: 137-8). This was only possible for groups at the local and community level, where the New Order government had much less control; and this became the only organizing vehicle available for workers under the authoritarian regime. Following the 1998 reforms, these informal workers' groups retired from their roles as substitute unions, and some of them transformed into unions at the enterprise and regional levels (Ford, 2001: 111-12). These unions gave workers the chance to become more independent, including from the NGOs, which had helped to organise them before.

2.2 Trade unions and their regulation after 1998

The fall of President Soeharto on 20 May 1998 led to many progressive changes in Indonesia, including changes to the government's policies towards unions. On 27 May 1998, one week after Soeharto's fall, The Minister of Manpower of the transitional government released Regulation No. Per-05/MEN/1998 on the Registration of Workers' Organizations, which repealed and replaced the previous regulations on the same subject, and provided a foundation for any workers' organization to register. According to this regulation, even the SPSI had to register within a period of 90 days from the issuance of the regulation. The regulation initiated Indonesia's formal ratification of ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, with ratification of the convention occurring on June 5, 1998, in conjunction with Presidential Decree No. 83/1998. Previously, in 1956 Indonesia had ratified ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively by Indonesia. These two conventions were the most important conventions for the right of workers to form unions and bargain collectively.

On August 4, 2000, Indonesia enacted Law No. 21/2000 on Trade Unions.[27] Despite criticism from labour unions and NGOs during its formulation (see Chapter 3), the Law incorporated many of the requirements stipulated in ILO Conventions Nos. 87 and 98. Under the new law, Indonesian trade unions were given a legal basis that supported their traditional objectives of improving pay and conditions for workers in a 'free, open, independent,

27 The official name of the Law is 'Workers Unions/Labour Unions' (*Serikat Pekerja/Serikat Buruh*). As noted by Quinn (2003: 17), the name is an attempt to acknowledge the differences among workers' organizations as to the appropriate terminology. The New Order discouraged the use of 'serikat buruh' (labour union), which it considered to have a leftist/radical connotation. In the post-1998 era, the term began to be used again, especially by small new unions, while the more larger and more established unions tended to use the term 'serikat pekerja' (workers' union).

democratic, and responsible' environment.[28] The new law provided for two kinds of workers' organizations: trade unions within and trade unions outside enterprises. The law also provided for three levels of union organization: trade unions; federations of unions; and confederations of unions. The law permitted workers the right to form and become members of a trade union, and required only 10 workers to establish a union; membership of which must be open to all workers.[29] The law also protected union members from being discriminated against by employers, and made it easier to form a union; facilitating competition with SPSI. According to the law the functions of unions included the development of collective labour agreements; settlement of industrial disputes; representation of workers on councils and institutes dealing with labour issues; and defence of the rights and interests of their members.[30] According to Law No. 13/2003 on Manpower, only registered unions can conduct collective bargaining, and for these unions to act as the sole bargaining agent, they must represent 50 percent or more of the workers at the enterprise.[31]

Despite the early concerns about the new Law, its problems turned out to be far fewer than feared (see Quinn, 2003: 19). The requirement for the Regional Manpower Office to notify unions as part of the registration process, for example, had led to claims of bias and concerns that the office would refuse to register new unions; but in practice the office issued notifications smoothly once unions had fulfilled their formal requirements. One union, the PGRI, was reportedly refused registration as a teachers' union on the grounds that its members were 'not workers', since many of them were civil servants who were also members of KORPRI and therefore could not become union members (*Pikiran Rakyat*, 4 March 2005); but in general such reports were few (Quinn, 2003: 18). The PGRI, in fact, could have joined the KSPI confederation; and could also have become the only Indonesian member of Education International (the international union federation for teachers, which is also a member of the Global Union Federation). Under the new law it remained true, however, that workers in state owned enterprises, who were also members of KORPRI, were freer than civil servants to organize into unions.[32] Another early concern about Law No. 21/2000, regarding the provision to allow any group of 10 workers to form a union, which it was feared would lead to the problem of union multiplicity within a workplace, also turned out to be unfounded (Quinn, 2003: 19). The Law also ensured that once unions obtained their legal status from the government, which in practice

28 'Introductory part' of Law No. 21/2000.
29 Article 5 Law No. 21/2000.
30 Article 1(1) Law No. 21/2000.
31 Article 119 Law No. 13/2003 on Manpower.
32 When the BUMN Union was established officially in 2004, their members already included 92 of the 164 state owned enterprises (BUMN) in Indonesia (*Tempo Interaktif*, 17 June 2004).

was relatively easy, they remained legal and valid entities and could not be dissolved by anyone but themselves – or, in the exceptional case where they were found to breach 'the interests of the State and the general public', by a court decision.[33]

Although both the Trade Union Law and the Manpower Law were formulated with the involvement of trade unions and employers' organizations (Suryomenggolo, 2009), for different reasons both unions and employers experienced some disappointment with the laws, particularly in relation to outsourcing, contract workers, and severance payment and dismissal procedures (Isaac and Sitalaksmi, 2008: 242). The unions and their supporters argued that even though some protective aspects of the old legal system were preserved under the labour law reform program, the high degree of flexibility which was built into the new laws has limited both the scope of protection available and the capacity to implement what protection is mandated in the new framework (Tjandra, 2009). Employers and their supporters, on the other hand, complained that the Law granted workers a high severance payment, which made it more expensive for employers to dismiss their workers, and reduced labour flexibility (Manning and Roesad, 2006).

2.2.1 Legacy unions

Under at least some level of ongoing pressure from both employers and unions, and certainly from the international community, post-reform Indonesian governments have adopted a range of different and sometimes ambiguous positions to workers and their organizations; applying policies and approaches which vary depending on who holds the position of Minister of Manpower at the time. Under the presidencies of Abdurrahman Wahid and Megawati (1999-2004), although the government prioritized the need for economic recovery through such practices as reforming labour markets to increase flexibility, both governments tended to be relatively pro-labour in nature; with the Minister of Manpower playing an important role. Wahid's first Minister of Manpower, Bomer Pasaribu,[34] for example, was the Minister who released the controversial Decree No. Kep-150/Men/2000; while Megawati's Minister of Manpower, Jacob Nuwa Wea,[35] was the mas-

33 See Article 37 Law No. 21/2000. In one interesting case, a union was established within a workplace and then most of the union's founders were dismissed by the employer, leaving a single member (who was also the union leader). Despite this, the union remained legal and could not be dissolved; and later the union acquired new members and became active again (personal communication with Jejen Kaschev, referring to a case at PT Indonesia Monti in West Java).

34 Bomer Pasaribu was one of the SPSI leaders after the centralisation of the SPSI in 1985. In 1995 he became Chairman of the SPSI and was also a member of the national leadership of GOLKAR.

35 Jacob Nuwa Wea was the Chairman of SPSI who replaced Bomer Pasaribu in 2000. He was also a member of the national leadership of President Megawati's PDI Perjuangan political party.

termind behind the successful incorporation of several protective provisions within the new Manpower Law and the Industrial Relations Disputes Settlement Law (see Suryomenggolo, 2009; also Mizuno, 2005). In contrast, during Susilo Bambang Yudhoyono's presidency (2004-2014), the Ministers of Manpower[36] were not so influential in determining government policy towards labour; instead, they generally exemplified the power sharing approach of Yudhoyono's so-called 'rainbow cabinet'.

Despite the many differences between Wahid's and Megawati's Ministers of Manpower, Bomer Pasaribu and Jacob Nuwa Wea, both were Chairman of the KSPSI (Conferation of SPSI),[37] a position which they retained during their respective terms as Ministers. Both men also managed to ensure the survival and continuing dominance of the KSPSI, their 'legacy union', which they led under the new democracy (Caraway, 2008). As an example of Nuwa Wea's efforts to maintain the SPSI's dominance, in early 2002 he insisted on government verification of the number of national unions, and exact numbers of members. This led to a report in May 2002 which stated that there were 45 national unions registered in Indonesia, with a total membership of 8,281,941 workers, more than half of which (4,576,440 workers) belonged to the KSPSI. The report was unofficial, and did not clarify how the data had been collected. Despite this, its contents were circulated widely among national union leaders, and used by the government to allocate union representation on the tripartite national institutions – with, of course, the KSPSI gaining the most.[38] It was not until 2005 that the Department of Manpower, under Minister Fahmi Idris, undertook to verify the numbers, based on an investigation by the Manpower Office in the regions.[39] This official research showed that there were only 80 national unions, with a much lower total membership of 3,338,597 workers. The largest proportion still belonged to the KSPSI (1,657,244 workers), followed by the other two pre-reform unions, the KSPI with 793,847 workers, and the KSBSI with 227,806 workers.

It has been argued that it is important to understand the role of these 'legacy unions' in new democracies, in order to assess the extent to which independent trade union movements have developed since democratic reforms. As noted by Caraway (2008: 1372), the legacy unions are the 'state-backed unions inherited from the previous non-democratic regimes'. They normally maintain their non-democratic aspects and they can also be part of the reason why labour movements remain weak after democratic reform. As

36 There have been three Ministers of Manpower during this period: Fahmi Idris (2004-2005); Erman Suparno (2005-2009); and Muhaimin Iskandar (2009-2014).

37 As a way to accord with Law No. 21/2000 on Trade Unions, the FSPSI Federation of SPSI (FSPSI, Federation of SPSI) was transformed into the KSPSI (Confederation of SPSI, KSPSI). Similarly, the FSBSI (Federation of SBSI) became KSBSI (Confederation of SBSI).

38 Personal communication from Sahat Butar Butar, KSPI, 10 May 2006.

39 See Minister of Manpower Regulation No. Per.06/Men/IV/2005; this was the first regulation ever on this subject in Indonesia.

Caraway (2008: 1393) pointed out: 'Their dominant position in many new democracies provides part of the explanation for why labour movements are so weak. By crowding out new organizations and holding members captive, they limit the promise that democratization holds for unions to vigorously pursue improved working conditions and workers' welfare.' In Indonesia, several of the new unions established since 1998 attempted to challenge the SPSI's dominance, but as with previous efforts since 1992, these attempts were unsuccessful. Even when the KSPSI split in 2007, their dominance survived, having benefited from the well-structured organization from national to regional level that was developed during the New Order, as well as the established access to government officials, and access to funds from the check-off system and other sources; particularly from Jamsostek Ltd.[40] We shall discuss this further in the following section.

2.2.2 NGO supported unions

It is interesting to consider, at this point, the relationship between labour NGOs and the unions they facilitated prior to the *Reformasi* era; particularly given their later split due to the changing situation after the reforms. In some cases, the split was a relatively smooth process, such as in the case of the union GSBM (*Gabungan Serikat Buruh Mandiri* – Independent Labour Union Alliance) and its NGO organizer, the LPBH FAS (a labour advocacy NGO based in Jakarta). In other cases, the split caused direct conflict between the NGO leaders and the workers in the new unions, who were demanding more authority over their organization. The best known example was probably the disagreement between the SISBIKUM, a labour NGO based in Jakarta, and the GSBI (*Gabungan Serikat Buruh Indonesia* – Indonesian Labour Union Alliance), a union established from workers' groups in 1999 and previously organized by the SISBIKUM.[41] The workers, inspired by the reform movement, demanded more freedom in conducting their activities. Led by several former workers, they declared the establishment of a new union

40 Jamsostek Ltd. is a state owned company established under Law No. 3/1992 on Workers Social Security, and tasked to administer the compulsory social security scheme for Indonesia's formal workers, in which dues are collected from workers and employers. In 2010 the scheme's membership was around 9 million of the 30 million workers in the formal sector in Indonesia, with assets valued at more than Rp 100 trillion. With such huge assets and practically no government contributions, Jamsostek Ltd. has become a 'cash cow'for political groups, including some trade unions, which obtain financial support through so-called 'KSO' (*kerja sama operasional* – operational cooperation) between the company and unions. As reported by Joko Hariyono of the SPN union – one of the KSO's beneficiaries – a union could get Rp 1,500 per year for each member; meaning that the SPN, with around 400,000 members as verified by the Ministry of Manpower, could receive around Rp 600 million/year, sent to the national leadership. The money is used primarily for the union central operations (office rent and salaries for full-time staff) and for activities organised by the national centre; with some funds distributed to the union's branches around Indonesia. According to one SPN branch level leader in Jakarta, SPN has received around Rp 2 million/month from this scheme, or Rp 12 million/year.

41 Interview with Emilia Yanti from the GSBI union, Jakarta, June 2010.

called GSBI, supported by 27 workers' groups formerly organized by the SISBIKUM. They demanded the new union's independence from the NGO, or at least an equal partnership between the two, which involved sharing responsibility for the training and education of workers, as well as the organizing of work. According to workers, these demands followed after SISBIKUM's Director, Aris Merdeka Sirait, became involved with a political party: the Labour Party established by Muchtar Pakpahan for the 1999 election. The workers did not want to be 'used' by the NGO for political reasons. Aris Merdeka Sirait responded by threatening to stop supporting the union if it persisted with its demands. Following Sirait's threat, only 5 workers' groups from the original 27 chose to continue with the new union, given that it would face severe financial problems after splitting from the NGO.

Despite the potential financial problems, the new union GSBI managed to continue to work through the networks it had established. GSBI also benefited from its links with international NGOs, including close ties with consumer groups in Europe such as the Netherlands' Clean Clothes Campaign, which was working with workers to campaign against labour rights violations by *Adidas*, *Nike* and other famous brands in the shoe and garment factories in Indonesia (see also Sluiter, 2009). The GSBI survived by using these networks, which also enabled them to keep their members focused on several strategic enterprises, such as protesting against Panarub Ltd. in Tangerang, a producer of *Adidas*; and indeed expanding their membership into other sectors as well. In the context of international campaigns, despite their relatively small membership (a self-reported 12,000 members in 2010), the GSBI managed to compete well with the larger unions, such as SPN (*Serikat Pekerja Nasional* – National Workers Union), which had a membership of 400,000 and represented a similar sector to the GSBI. International NGOs considered the latter as an alternative organization, and preferable to work with; given that it combined the legitimacy of a workers' organization with the manoeuverable flexibility of an NGO, due to its relative small membership and simple organizational structure.[42]

But such survival stories are rare. More often, workers' groups established by labour NGOs disappeared if their NGOs ceased being able to continue their activities due to loss of donor support.[43] An example is the case of the SBK (*Serikat Buruh Kerakyatan* – People Labour Union) in Surabaya, which disappeared following the insolvency of the *Yayasan Arek* (Arek Founda-

42 Emilia Yanti, the General Secretary of the GSBI, is a well-known figure in international labour activism; she is often invited to international meetings of women activists, due to her role in campaigning for garment women workers' rights in factories producing international brands in Indonesia.

43 Since the 1998 reforms, fewer donor organizations have continued to support labour NGOs in Indonesia. Instead, funds tend to be directed to international unions that can actually work directly in Indonesia with their Indonesian affiliations

tion), which had supported the union. Similarly, the SBSU (*Serikat Buruh Sumatera Utara* – North Sumatera Labour Union) in Medan, North Sumatera, disappeared once its supporter, the KPS (a labour NGO based in Medan), shifted its focus from industrial workers to plantation workers. Some other unions managed to survive after losing their NGO support. These included the FSBKU (a union in Tangerang, formerly supported by the *Institute Sosial Jakarta* – Jakarta Social Institute, an NGO dealing with urban issues including labour); the GSBM (a union in Jakarta, formerly supported by LPBH FAS); and FSBI and SBJ (unions in Jakarta, formerly supported by Yakoma PGI, a labour NGO in Jakarta with close links to the Protestant Church). In 2002, some of these unions that had started with NGO support formed the KASBI (see also Ford, 2009). Althouth the GSBI was initially involved with the formation of the KASBI, in 2003 it withdrew its KASBI membership, citing concerns about the KASBI's growing alliance with a political party, the PRP (*Persatuan Rakyat Pekerja* – United Working People; later *Partai Rakyat Pekerja* – Working People's Party). It is interesting to note that of all the unions in the KASBI, which had previously been supported by NGOs, only the GSBI was able to survive independently; and as KASBI has developed, most of its member federations have declined.

2.3 Challenging the SPSI dominance

The SPSI's dominance among unions had been challenged several times since its peak in the early 1990s, both from within the labour movement and from without; but most challenges have ended with the SPSI's victory. As mentioned earlier, the first challenge to the SPSI occurred in 1985, with the establishment of the Joint Secretariat (*Sekretariat Bersama* – Sekber) of the SBLP (*Serikat Buruh Lapangan Pekerjaan* – Industrial Sector Labour Union) by union leaders whose unions had been forced to merge with the more centralized SPSI. The Sekber SBLP was led by Adolf Rahman, chairman of the SBE (*Serikat Buruh Elektronik* – Electronics Labour Union) and former Vice General Secretary of the FBSI (1980-1985); who was also a member of the board of the WCL (World Confederation of Labour). The Sekber SBLP conducted various union-related activities; but according to Komarudin (2009) they obtained particular success by campaigning abroad about how the SPSI had destroyed independent unions, which put international pressure on the SPSI and led eventually to reforms to the SPSI in the early 1990s. The Sekber SBLP's activities ended at that point, as many of its leaders re-entered the new SPSI leadership, following the third SPSI congress and associated reforms in 1990.

NGO activists and some sectors of the student movement led other challenges to the SPSI's dominance. In 1990, for example, the rival union SBMSK (*Serikat Buruh Merdeka Setia Kawan* – Solidarity and Freedom Labour Union) was established by several NGO leaders, including HJC Princen (the director of a human rights NGO in Jakarta) and Saut Aritonang (a former activist

of Sekber SBLP). SBMSK positioned itself as a competitor for SPSI's dominance. Two year's later, in 1992, several leading NGO figures including Abdurrahman Wahid[44] and Asmara Nababan[45] agreed to establish another rival union, the SBSI (*Serikat Buruh Sejahtera Indonesia* – Indonesian Prosperous Labour Union),[46] and Muchtar Pakpahan was appointed as its first President. Further, in 1994, several groups of leftist students, led by Dita Indah Sari, formed the PPBI (*Pusat Perjuangan Buruh Indonesia* – Centre for Indonesian Labour Struggle),[47] which similarly tried to to challenge the SPSI. But these three groups, SBMSK, SBSI and PPBI, were unable to pose a significant threat to the SPSI, since the strict government pressure imposed upon them restricted their activities. Indeed, both Muchtar Pakpahan and Dita Indah Sari were later jailed for several years because of their union activities.

After the 1998 reforms, several leaders from the industrial sector unions challenged the SPSI again. This challenge was significant because the challengers came from within the national structures of the SPSI itself, and they had strong support from international labour NGOs who were keen to promote the development of independent unions in Indonesia after the *Reformasi* (Caraway, 2008; La Botz, 2001). In a trade union workshop organized by the International Labour Organization on 21-23 August 1998, factions within 11 of 13 member unions affiliated with the FSPSI[48] declared that they and their entire plant level union membership would break away from the FSPSI and form a new federation, called the 'FSPSI Reformasi'. The leaders of the FSPSI responded by sending a warning letter to all unions that supported the withdrawal, threatening that they would be dismissed and could

44 At the time, Wahid was the leader of *Nahdlatul Ulama*, the largest Muslim organization in the country.

45 Asmara Nababan was a well-known human rights activist and member as well as Secretary General of Komnas HAM (National Commission on Human Rights) from 1993-2002.

46 In 2000, the SBSI became the KSBSI (Confederation of SBSI), in accordance with the new Trade Union Law.

47 After the 1998 reforms, the PPBI was changed to the FNPBI (*Front Nasional Perjuangan Buruh Indonesia* – National Front for Indonesian Labour Struggle), and became part of the PRD (*Partai Rakyat Demokratik* – Democratic People's Party). For more discussion about PPBI, FNPBI and its chairperson Dita Indah Sari, see La Botz (2001: 229-251).

48 The eleven unions which supported the reforms were: The KPI (Indonesian Seafarers Union); the SP LEM (Metal, Electronics and Machinery Workers Union); the SPTI (Indonesia Transport Workers Union); the SP RTMM (Cigarettes, Tobacco, Food and Beverage Workers Union); the FSP PP (Agricultural and Plantation Workers Union); the FSP KEP (Chemical, Energy and Mining Workers Union); the FSP TSK (Textile, Clothing and Leather Workers Union); SP KAHUT (Timber and Forestry Workers Union); SP PAR (Tourism Workers Union); SP FARKES (Pharmacy and Health Workers Union); and SP PP (Printing and Publication Workers Union). The two unions that rejected the reform initiatives were the SP NIBA (Commercial, Bank and Insurance Workers Union) chaired by Bomer Pasaribu; and the SP BPU (Building and Public Works Union) chaired by Sjukur Sarto. These latter two Chairs became the Chairman and General Secretary, respectively, of the old FSPSI in 2000.

not use any facilities belonging to the FSPSI for that purpose. The threat worked: supporters of the FSPSI Reformasi realized that being independent would mean financial problems, as the government would cease to support them. For the mid-level officials of the FSPSI Reformasi – many of who were retired Golkar or military officials – such a situation was not preferable. As a result, of the original 11 unions that had supported the FSPSI Reformasi, five returned to the FSPSI,[49] and only six continued to support the proposed new union[50] (Sofyan, 2009). As noted by La Botz (2001: 174), the support from the ACILS (American Center for International Labor Solidarity) was particularly vital at this time for the survival of FSPSI Reformasi. The ACILS provided funds to run the organization and an office, which was located in the same building as the ACILS office, in the Cik's Building, Cikini, Jakarta.

The FSPSI Reformasi was established officially at a congress in Cipanas, West Java, on 3-6 October 1998. Describing the new union's first congress outside the SPSI structure, La Botz (2001: 175) wrote:

> In a dramatic break with the past practice, about half of the delegates were plant level union representatives, rather than just middle- and top-level union staffers. Several international labour representatives also attended the founding congress, including Bill Jordan of the ICFTU's Brussels office, Takashi Izumi of the ICFTU-APRO office, several International Trade Secretariat representatives, and the Indonesia Director of the German Friedrich Ebert Foundation. Japanese, German, and US labour federations gave their blessings to the new independent SPSI Reformasi.

The congress elected Hartono of the SP PP (Plantation Workers Union) as the President, and Muhammad Rodja from the SP TSK (Textile Garment and Leather Workers Union) as the General Secretary; and a new constitution was adopted, to confirm the breakaway from the SPSI. Nevertheless, the success of the founding congress was followed by the reality of internal problems within the FSPSI Reformasi leadership. Despite the appointment of some lower level workers to the leadership of the new union, many of its leaders were former leaders of the previous government-backed union, bringing along with them the culture and tradition of bureaucratic and corporatist views of trade unionism (La Botz, 2001: 176). Many of them also faced issues of corruption and internal transparency from their time in the SPSI (Ford, 2006; Caraway, 2008: 1381). These problems led to rumours in 1999 about the possibility of amalgamating the larger union federations of

49 These five unions were: KPI (Indonesian Seafarers Union); SP LEM (Metal, Electronics and Machinery Workers Union); SPTI (Indonesia Transport Workers Union); SP RTMM (Cigarettes, Tobacco, Food and Beverage Workers Union; and SP PP (Agricultural and Plantation Workers Union).

50 These were: SP KEP (Chemical, Energy and Mining Workers Union); SP TSK (Textile, Clothing and Leather Workers Union); SP KAHUT (Timber and Forestry Workers Union); SP PAR (Tourism Workers Union); SP FARKES (Pharmacy and Health Workers Union); and SP PP (Printing and Publication Workers Union).

the FSPSI Reformasi into a new confederation, which was encouraged by the ICFTU (International Confederation of Free Trade Unions), especially the Asia Pacific Regional Office, controlled largely by the Japanese Trade Union Confederation (Ford, 2000: 8).

FSPSI Reformasi's rumoured need to amalgamate became reality, as one by one its supporters fell away. Two years later, on February 2, 2002, at a National Convention in Bogor, West Java, seven of the unions which had originally supported the FSPSI Reformasi, together with five other unions – PGRI (Teachers' Union); SP BUMN (State Owned Enterprises Workers Union); ASPEK (Indonesian Workers Union); SP ISI (Cement Industry Workers Union); and GASBIINDO (Amalgamated Indonesian Muslim Union) – declared the establishment of the new KSPI (*Kongres Serikat Pekerja Indonesia* – Congress of Indonesian Trade Unions), which was presented as the new national alternative to the SPSI. Rustam Aksam, the President of the SP TSK (textile, garment, leather) union, was elected the first President of KSPI. The SP BUMN and GASBIINDO later withdrew from the KSPI, and became independent federations without national affiliations. At the KSPI's second congress in February 2007, the union changed its name from 'Congress' to 'Confederation', following its formal acceptance as an affiliate of the ICFTU (later the ITUC or International Trade Union Confederation), in Indonesia. The KSBSI is also an affiliate of the ITUC, and its president normally sits as the Indonesian union representative at the Governing Body of the ILO.[51]

Despite the establishment of new unions and associated changes, none of the new confederations has become a champion of labour rights. The FSPSI Reformasi continues to exist, although it has not developed significantly since the split; while the KSPI is also stagnant, due to weak national leadership since its formation in 2002. The other confederation, the KSBSI, appears similarly inert. Despite relatively generous support from international unions and labour NGOs,[52] including support for the KSPI from the Japan Trade Union Confederation, and support for the KSBSI from the Belgium Christian Confederation of Trade Unions (ACV-CSV) and Dutch Christian

51 The ITUC is a merger of the ICFTU and the WCL (World Confederation of Labour), declared on 1 November 2006 in Vienna, Austria. Despite the amalgamation, in practice each confederation has still maintained its established structure and resources. For example, for union representatives in the Governing Body of the ILO from the Asia Pacific region, the WCL could have one union representative from the Asia Pacific countries that are part of the WCL. Since the KSBSI in Indonesia was the only WCL affiliate in the Asia Pacific region, the President of the KSBSI was normally also a member of the ILO's Governing Body for the region – despite the KSBSI's membership being smaller than the membership of KSPI, another affiliate of the ICFTU (personal communication with Shigeru Wada, the International Transport Workers Federation; see also Traub-Merz and Eckl, 2007).

52 See the Draft Concept Trade Union Support Solidarity Organizations – Global Union Federation Coordination Meeting Indonesia, Jakarta, April 27-28th, 2010.

Confederation of Trade Unions (CNV),[53] the unions have not played an important role as national centres.[54] Instead, their activities have remained limited, and have not had a significant influence on national policies or society. Part of the explanation may be that most of the unions' activities appear designed to follow agendas dictated by the government, or the agendas of donors – most of which come from outside Indonesia.[55] Even when the unions run activities focused on domestic labour issues, these activities usually stem from initiatives of either the Indonesian government or the ILO Office in Indonesia, which defines most of the unions' issues and agendas. This is due to the failure to collect membership dues from each union's member federations, so the national centres presently obtain funds from other sources, such as overseas donors. The lack of sufficient membership fees to support union activities is now becoming a problem, as many international donors, particularly from Europe and Japan, have started to reduce their financial support to the Indonesian confederations, due to economic crises in their own countries.[56]

When considering the relationships that the KSPI and KSBSI have with their member federations, it is clear that the two confederations are very different. In the case of the KSPI, its national centre has very little grip on its member federations, which seem more empowered than their central organization. One explanation for this may be that most of the KSPI's member federations are derived from industrial sector unions, which have direct member workers and therefore member dues to help pay for activities; while the national

53 The KSBSI has been a long-time partner of various Christian unions in Europe, particularly those from Belgium and the Netherlands. This is probably related to the fact that the union was founded by NGO activists who were also active in the Protestant churches in Indonesia, in particular the PGI (Indonesian Churches United). Many of the activists were from a Christian Batak background. There is an unwritten convention in the KSBSI that if the President of the union is from a Christian background, then the General Secretary, the second level of leadership, should be a Muslim, and vice versa.

54 Here I refer to the statement by Isaac and Sitalaksmi (2008: 249): 'The main function of the confederation or peak level is to formulate union policy and strategy, and to engage in political dialogue with the government, singly or in conjunction with other confederations. Discussions on legislation, the minimum wage and other matters affecting industrial relations take place at this level.' Confederations are tasked to do this because: '[They] are better equipped to handle national issues, using international links for advice and assistance. In some cases, where major sector-specific issues are in dispute with employers, the confederation may step in to provide stronger leadership than might be available at the regional level in resolving a dispute, often using government leverage and protests marches of workers in the process.'

55 One union activist from the KSPI, for example, questioned the direct benefit of a series of workshops about HIV-AIDS in relation to Indonesian migrant workers, given that the KSPI has no members who are migrant workers. Apparently the ILO funded the workshops, and the KSPI's involvement was due to a request from the ILO. Similar examples have been reported for other confederations, including the KSBSI.

56 The KSPI, for example, has had no office space since 2010, because the national leadership has not had sufficient funds to pay the rent.

centre does not. In addition, many of these member federations have their own financial support from international donors, especially through affiliations with the GUF (Global Union Federation).[57] In two of many examples of KSPI member federations which receive strong support, the FSPMI receives support from the International Metal Workers Federation and the FNV Mondiaal[58]; and the Kahutindo receives support from the International Building and Wood Workers Union and LO Finland (the Confederation of Trade Unions of Finland). Since member federations are generally able to work by themselves, the need for a national centre is also reduced. In the case of the KSPI, this has resulted in the same union having two categories of activists – those who are mostly active in the member federations, and those most active in the confederation – often without strong coordination between them.

In contrast to the KSPI, the KSBSI's national centre has more authority over its member federations, because in the case of the KSBSI, it is the national centre rather than the federations, which is the body with the authority to deal with international donors. This has led to the KSBSI having relatively weak member federations, relative to the KSPI; which influences their performance.[59] The KSBSI's national centre is at risk if international donors pull their support, as this would leave the national centre with the burden of running the entire organization given that the member federations are not sufficiently empowered.[60] The differences between the two confederations

57 The GUF Global Union Federation – GUF (see www.global-unions.org) is an international federation of national and regional trade unions, organized into specific industry sectors, and previously known as the International Trade Secretariats (ITSs). This generous level of international support is only bestowed upon federations that are GUF affiliates. Funds normally go through the GUF, particularly the regional offices, which then organize activities in collaboration with their national affiliates in each country. Few national unions are able to collaborate directly with donors, as the GUF encourages donors interested in supporting union activities in a particular country to work through the GUF, and discourages direct collaboration between donors and the unions in that country.

58 FNV Mondiaal is an international NGO belonging to the Dutch Confederation of Trade Unions (FNV).

59 For example, the Lomenik of KSBSI is much less influential than the FSPMI of KSPI, although both are with the same affiliates with the International Metal Worker Federation. Likewise the Kahut of KSBSI is much less empowered that the KAHUTINDO of KSPI, although both are members of Building and Woodworker International.

60 In 2010 and later, despite Europe's financial troubles, the KSBSI has continued to receive strong and exclusive support from the Christian confederations from Europe, particularly the Belgium ACV-CSV and the Dutch CNV. In the case of the Dutch CNV, this support may have derived from its competition with the other major Netherlands confederation, the Dutch FNV, which had long-standing contacts and networks with Indonesian labour activists, facilitated by well-known figures Tom Etty on the Dutch and Fauzi Abdullah on the Indonesian side. These figures were very active in campaigning against Indonesian labour rights violations during the 1980s and 1990s (see for example Etty 1990, 1994). The Dutch CNV's support of KSBSI may also be related to concerns that reducing support for Indonesian unions would mean that the European Christian unions have fewer contacts and less influence in a country with one of the world's largest Muslim populations.

discussed above demonstrate that there are also internal challenges within the confederations, which need to be addressed to enable them to reach their potential as functional national centres.

The existing weaknesses of the national centres and the fragmentation of the trade union movement since the reform, along with the new unions' inability to challenge the legacy unions of the SPSI, have contributed to the generally weak labour movement in post-reform Indonesia, despite the potential presented by the new system. Violations to labour rights have remained widespread (see Caraway et al., 2011 for the most recent report); and unions have generally struggled to challenge them. Law No. 13/2003 on Manpower, for example, limits contract-based employment to a period of no longer than two years, with an extension for no longer than one year. With regards to outsourcing work, the law provides 'minimum requirements' that this work must be separate from the core business – it must be limited to supporting operations. The law also stipulates that when such requirements are not fulfilled, the worker must become a permanent employee. In practice, however, there are massive violations of this law by employers (Isaac and Sitalaksmi, 2008: 247). Since the regional autonomy policy devolved responsibility for labour issues from the national to the district levels, the problems of weak labour inspection has also been exacerbated, and unions are not in a position to demand that the law's conditions be fulfilled (Hanggrahani and Tjandra, 2007; also Ford and Tjandra, 2008).

The current situation presents the need for a careful way forward. The weakness of the national centres currently limits the potential for labour groups to influence national labour policy-making, since it is the national centres, which usually have the legitimacy to represent Indonesian workers at national and international forums, such as the ILO conference. However, empowering member federations without also empowering the national centres could easily result in a similarly overall weak situation by further increasing the fragmentation of the union movement outside the SPSI, with each group focusing on its own issues at the expense of the whole. This would further weaken the national centres, with flow-on effects for the member federations and Indonesian workers in general. A solution may lie not within formal mainstream union structures, but somewhere outside those structures; while still retaining a connection to the formal structures, to enable internal reforms while at the same time being sustained. The following two case studies illustrate the trade unions' efforts to resolve Indonesia's problem of a weak trade union movement. The case studies highlight the complexities of the post-1998 Indonesian trade union movement, and their efforts to increase both their bargaining power with employers and government, and their influence in society. The first case study focuses on the growing trade union movement at the regional level, and presents some contrasts with the situation at the national level. The second case study focuses on the struggles of several national unions, united in the KAJS (*Komite Aksi Jami-*

nan Sosial – Action Committee for Social Security), to demand social security reforms for all Indonesian citizens. Before continuing with the case studies, it is useful to summarise the key features of trade unions following 1998, to enable data from the case studies to be put into context.

2.4 Post-1998 trade unions in Indonesia: key features

According to the figures available at the time of writing of this research, published by the Ministry of Manpower in 2007, there were 69 national federations and three confederations registered in Indonesia. The total membership of the three confederations together was 2,397,393. The KSPSI held the biggest membership, with 1,601,378 workers; followed by the KSPI with 458,345 workers; and the KSBSI with 337,670 workers. When combined with a number of national federations that were not affiliated with any confederations (with a total of 920,318 workers), and plant level unions that were not affiliated with federations (with 97,924 workers), the overall total number of Indonesian workers belonging to trade unions was 3,415,635 in 2007. In a more recent 2010 report, the number of national federations registered increased from 69 to 90, and the total union membership declined minimally, from 3,415,635 to 3,414,455 workers.[61]

Table 4.1: Membership statistics for Indonesian trade unions (2007)

No.	Name of trade union peak organization (e.g. confederation)	Number of federations	Number of enterprise unions	Members
1	KSPSI[62]	16	6,779	1,601,378
2	KSPI	7	973	458,345
3	KSBSI	12	1,559	337,670
4	Trade union federations not affiliated with confederations	34	2,028	920,318
6	Plant-level unions not affiliated with federations	–	437	97,924
TOTAL		69	11,776	3,415,635

Source: Ministry of Manpower 'Report of the Development of Workers Organizations 2007' (signed and stamped but never published)

61 See 'Worker/Labour Organizations July 2010', www.depnaker.go.id accessed in July 2010). This report does not provide the level of detail about confederation memberships that is provided in the 2007 report.

62 These figures represent the KSPSI as one organization. After the split in 2007, the two KSPSI still have similar structures and, indeed, similar names. In several sector unions the old KSPSI is bigger than the new KSPSI, and the other way round. It is not clear though, how many members each confederation actually has after the split, as the Ministry of Manpower has not provided such information yet.

Total union membership in Indonesia in 2010 represented 3.18 percent of the total labour force of 107.41 million people, and 10.1 percent of the total workers working in the formal sector, which included 33.74 million people.[63] Although union membership of 10.1 percent of formal sector workers is not small relative to other countries, the number of workers working in the formal sector is very low (the formal sector represents only 31.42 percent of the total labour force, while the other 68.58 percent or 73.67 million workers are in the informal economy) – and a much lower proportion of informal sector workers join unions, leading to the low overall level of union membership in the country. This low level of unionization may be related to the inhospitability of Indonesian labour law to unions. Although the law guarantees the right to join unions and includes penalty for violations of these rights, the legal process associated with investigating alleged violations is lengthy and complex (as exemplified by the King Jim case concerning the imprisonment of an employer for trade union rights violations – see Tjandra, 2010). Low levels of union membership may also be related to concerns that employers sometimes treat union-member workers more harshly, and this treatment often goes without sanction (Isaac and Sitalaksmi, 2008). Low union membership is also typical of less-developed countries, which tend to have high unemployment (the Indonesian unemployment rate was estimated at 6.7 percent in 2012), high levels of self-employed workers in the non-formal economy, and low productivity. These conditions will clearly influence the prospects for the development of trade unions in Indonesia.

As of 2007, the KSPI consisted of seven member federations, primarily from the industrial sector, six of which were affiliates of GUFs. The KSBSI had eleven member federations, six of which were affiliated with GUFs. The KSPSI had seventeen national federations, but only one of them, the KPI (*Kesatuan Pelaut Indonesia* – Indonesian Seafarers Union), was affiliated with the ITF (International Transport Worker Federation). International unions and donors have generally tended to avoid the KSPSI, out of concern that it is not an independent union.[64] Most international unions under GUFs work in Indonesia through their affiliates, but in some cases they also work directly; and some even have their own representative offices in Indonesia, such as the UNI (Union Network International (UNI), with ASPEK Indonesia) and the IUF (International Union of Food (IUF), with FSPM (*Federasi Serikat Pekerja Mandiri* – Federation of Independent Workers Unions). Each GUF member has its own policy concerning its relationship with its affiliates. The IUF, for instance, allows only one affiliate at the national federation (the FSPM), whose members range from hotel workers to plantation work-

63 See 'Keadaan Ketenagakerjaan Indonesia, Februari 2010' [Labour Situation in Indonesia, February 2010] (http://www.bps.go.id/brs_file/tenaker-10mei10.pdf)

64 Personal observations during the Trade Unions Support and Solidarity Organizations Coordination Meeting in Jakarta, 27-28 April 2010.

ers unions.[65] In contrast, the PSI (Public Service International (PSI) has Indonesian affiliates from many different sector unions at plant to national level, including plant-level unions SP Angkasa Pura (Airport Workers Union) and SP PDAM (Public Water Companies Union); and at the national level, the FSP Farkes (Federation for Pharmacy Workers Union). Each union is largely independent, and does not necessarily interact with the other affiliates of the PSI in Indonesia.

In 2007, the KSPSI split into two, following conflicts between the leaders of the organization.[66] Thus, the three major confederations at the start of the reforms grew to four in 2008. Apart from the four major confederations, there is also another union, KASBI (*Konfederasi Aliansi Serikat Buruh Indonesia* – Confederation of the Indonesian Labour Union Alliance), which claims to be a confederation. According to a report by the Ministry of Manpower in 2007, this group had 1,428 member workers, in 68 plant-level unions, primarily across Java.[67] Although their membership is much smaller than that of the other four confederations, they often gain media attention due to their radical approach to actions and demands. The KASBI is the most political of the confederations, openly supporting a socialist ideology and with close links to the PRP (*Perserikatan Rakyat Pekerja* – Working People Association),

65 The FSPM does not belong to any national confederation. It was founded following a series of pro-union activities organised in Indonesia by IUF officials Gerard Greenfield and Hemasari.

66 Sjukur Sarto, the Vice President, and several other leaders of the KSPSI wanted to replace Jacob Nuwa Wea, the incumbent President, before the end of his term in February 2008, due to his deteriorating health. Sjukur Sarto, supported by several other leaders, held an 'extraordinary congress' on 24-26 August 2007 in Jakarta, at which he was elected President. Jacob and his supporters rejected the result, and insisted that Jacob continue in his position until the end of his term. Following the congress, there were clashes at the national office (Secretariat) of the KSPSI in Pasar Minggu region, Jakarta, involving hundreds of people. Later, the office was sealed by the building's owner, Jamsostek Ltd. (a state-owned enterprise dealing with formal workers' insurance), to prevent its destruction by the protesting groups. After several years of lobbying, Jacob won use of the building, having benefitted from his networks as a former Ministry of Manpower. In the 2008 congress, Jacob was re-elected as President, while Sjukur continued as president of a separate faction, which also retained the name KSPSI. From that point there were two KSPSIs, with the split occurring from national to regional level, and both continued to use the same organizational structures, name, and logo. Informally, the two organizations were known as 'KSPSI Pasar Minggu' and 'KSPSI Kali Bata', referring to the location of their offices. Initially, the government was reluctant to recognise either of the divided organizations, but later both were recognised, and invited to return to the government's national tripartite meetings. The ILO, the main partner of Indonesia's confederations, followed the government's approach. This story is an example of the fragility of trade unions in Indonesia, with personal conflicts among leaders potentially resulting in the splitting of the whole organization.

67 This number was disputed by KASBI activists, who claimed that when the KASBI was established there was already a requirement, by the federations that joined them, that KASBI needed to have at least 5,000 members (personal communication with Emilia Yanti, General Secretary of GSBI, one of the founders of KASBI, June 2010).

a left-wing political organization supported predominantly by student activists affiliated with the international socialist movement. In 2011, the Indonesian government recognised the KASBI as a confederation, but, it remains relatively alienated from the activities of the government's national tripartite bodies, due to its small representation – although its members sometimes join the regional tripartite institutions.[68]

In addition to the confederations, the 2007 data show that there were another 34 national unions and federations that did not belong to any higher-level federations or confederations. The total membership of these groups was 920,318. There were also 437 enterprise-level unions, with a total of 97,924 member workers. Thus, while employers have been able to speak with a single collective voice – through Apindo[69] -, unions have remained fragmented in the form of tens of national unions and thousands of plant-level unions, often highly separated from one another (Quinn, 2003: 9). No national or industrial collective bargaining agreements have ever been concluded; most agreements continue to be made at the enterprise level. The number of collective bargaining agreements is also low relative to the number of unions: with 10,959 cumulated collective labour agreements concluded, compared with 44,149 cumulated company regulations registered at the Ministry of Manpower in 2010 (Ministry of Manpower, 2010). Further, the minimum wage has not functioned as a wage floor for workers at the lowest level; and formal workers in general remain dependent upon legislation to raise their wages – highlighting the continuing weakness of unions in collective bargaining for fair working conditions.

These political conditions, combined with the weakness of the unions' peak organizations and their inability, to date, to strengthen their political positions against government and employers through use of government leverage and protests (the 'political driving force of the trade union movement' [Isaac and Sitalaksmi, 2008: 249]), have prolonged the lack of influence of

68 In one example in East Java in 2009, a KASBI representative became a member of the tripartite body at the provincial level; but this was only after the KASBI had formed a coalition with several other small unions.

69 Although on paper any employer in Indonesia can have its own organization, there is only one employers' organization actively dealing with industrial relations issues: Apindo (*Asosiasi Pengusaha Indonesia* - Association of Indonesian Employers), as the industrial relations wing of the Indonesian Chamber of Commerce (KADIN). In a biography, Apindo's Chairman Sofjan Wanandi is reported to enjoy being referred to as a 'real activist' ('*aktivis sejati*', which is also the title of the book by Sanda et al., 2011). His activism included his direct involvement in the two big changes in Indonesian political history: the change from Soekarno to Soeharto while he was a student activist, and the change from Soeharto to democracy while he was a senior political activist. Never before in the history of Apindo has the organization played as strong a role as an advocate of employers' interests as it does today; it is now actively involved in almost all national initiatives concerning industrial relations, either with the government and unions through tripartite institutions, or with the unions through bipartite institutions.

trade unions in Indonesia, despite all the potential for improvement since the 1998 reforms. The challenges faced by Indonesian trade unions today remain twofold: to develop a united movement, and to strengthen their political and social bargaining power in society; with the second aim dependent on the first. To this end, as noted by Isaac and Sitalaksmi (2008), the present generation of Indonesian trade unions has several major goals that they want to achieve: 'to engage in collective bargaining, to obtain favourable terms of employment for workers, to be able to process worker grievances effectively, to secure a growing membership, and to influence the government to enact terms favourable to these objectives.' (Isaac and Sitalaksmi, 2008: 247). On this basis, Isaac and Sitalaksmi conclude that since 1998, the Indonesian trade union movement has been predominantly 'business' or 'market' unionism, as per Gospel's definition (see Introduction of this dissertation; also Gospel 2005, 2008; Zhu and Benson, 2008). It is in this context of Indonesia having had a form of 'market unionism' since 1998 that we will consider the two levels of the trade union movement, below.

3 The two levels of the trade union movement in Indonesia

There has been much debate about the reasons why organised labour in Indonesia has remained relatively weak, despite the opportunities presented since the 1998 reforms. Some researchers point to the legacy of the New Order's authoritarian atmosphere, which they suggest discourages union activists from taking advantage of the freedom of the existing post-*reformasi* situation (see, e.g., Hadiz, 2000), and maintains the dominance of the less democratic legacy unions (Caraway, 2008). Others blame the high levels of fragmentation within the trade union movement, exacerbated by personal rivalries among small numbers of union leaders that can split unions apart as in the case of KSPSI's split described earlier. Both issues likely contribute to the labour movement's ongoing weakness. Among activists and academics who are sympathetic to the labour movement, there is also a consensus that employers' violations of trade union rights as guaranteed by law may be a primary reason for the decreasing levels of participation in unions by workers (see, e.g., Saptorini and Tjandra, 2005; also Caraway, 2011). Anti-union actions by employers, including the (illegal) refusal to allow workers to form unions and negotiate collective labour agreements, along with intimidation and other pressure by employers on union activists, generates fear which discourages non-unionised workers from joining unions, and encourages those who have joined to withdraw their membership. Some observers have expressed concerns about the future of the trade union movement in Indonesia, at least in the short-term: '[the movement] may not grow much beyond its present infant stage for some time to come' (Isaac and Sitalaksmi, 2008: 253).

However, recent observations at both the regional and national level indicate the presence of unprecedented development of the trade union movement, despite the challenges. At the regional level, this is exemplied by the development of regional trade union alliances in several regions; and at the national level, an important development has been the formation of an alliance of unions, the KAJS (*Komite Aksi Jaminan Sosial* – Action Committee for Social Security Reform). These regional and national-level developments reveal that a new kind of trade unionism is emerging in Indonesia. At the regional level, unions are starting to recognize the needs to unite and form alliances, in order to fill the holes caused by the failure of their national-level, central organizations to function as uniting forces, and to raise the political bargaining power of the working classes at the local level. At the national level, the KAJS's efforts to reform the social security system reveal a paradigm shift within the trade union movement – from 'market-' or 'business-based' towards a more social orientation. These are timely developments, after decades of state suppression and the prolonged legacy of the New Order in the years since democratization. These developments, as discussed below, give cautious hope of a brighter future for the trade union movement and its role in Indonesian society.

3.1 Regional level: towards political trade unionism?

As described earlier, one factor contributing to the relative weakness of trade unions in Indonesia is likely the ineffectiveness of the peak organizations (confederations); including their inability to perform their duties as umbrella organizations. This in turn has generated mistrust in the leadership, by those at lower levels. Although in recent history the national unions have struggled with various internal problems, and have not demonstrated the ability to build a strong labour force for advocacy, in very recent years there have been examples of exactly the opposite occurring at the regional level, in a number of regions (Tjandra, 2010). At regional and local levels, the proximity to real problems, as well as the stronger communication and trust which are often inherent at those levels, have likely facilitated the observed increase in union networks and alliances. Increasing numbers of trade unions, from disparate organizations and backgrounds, are now uniting in regional alliances to advocate for common issues and support workers' interests in their regions.[70]

70 The field research in the regions was conducted in two provinces: East Java (the cities/districts of Surabaya, Sidoarjo, Pasuruan, Mojokerto and Malang); and the Riau Islands (cities/districts of Batam, Tanjung Pinang and Tanjung Balai), over a total period of 4 weeks in May, June and July 2007, together with Dr. Michele Ford from the University of Sydney whose observations have been incorporated into this section. Observations and interviews with the trade union alliances from various regions were conducted in February and March 2010. I also obtained information from a series of workshops titled 'Trade Union Movement Workshop', organized by the Trade Union Rights Centre on 26-28 February and 10-13 April 2010.

Although these alliances are not formally established organizations, and are largely self-financed and run without strict regulations and systems, they appear able to bring significant changes in their regions – unlike the branches of the confederations which exist in these regions. For example, in 2009 in Yogyakarta in Yogyakarta province, and Serang in Banten province, the local alliances ABY (*Aliansi Buruh Yogyakarta* – Yogyakarta Labour Alliance) and FSBS (*Forum Solidaritas Serikat Buruh* - Serang Labour Solidarity Forum) have lobbied successfully for the enactment of special regional regulations on employment; as implementing regulations of Law No. 13/2003 on Manpower, adapted to their regions. In Tangerang in 2010, pressure from the local union alliance *Aliansi Serikat Pekerja/Serikat Buruh Tangerang* (Tangerang Trade Union Alliance) led the Regent of Tangerang to increase the minimum wage to bring it closer to the figure demanded by workers – even though the wage figure had already been set for the year. In Pasuruan in East Java province in 2009, a massive campaign by an alliance of workers and unions against PT King Jim Indonesia produced an important precedent when, for the first time since the enactment of Law No. 21/2000 on Trade Unions a businessman was convicted and jailed for obstructing such activities.[71]

Most of these regional alliances have been established to address common issues of workers in the particular region. Common issues include minimum wage fixing processes (including actual wage figures and compliance); the unions' desire to jointly control their representatives on the Wages Councils[72]; and the implementation of minimum wages provisions. The operational financing of the alliances has mainly involved using the pre-existing resources from their own unions; for example, meeting locations are rotated between the offices of the unions involved. Alliances have also tended to include a wide variety of trade unions local to the area, regardless of their backgrounds, including independent unions which exist only at enterprise level; regional-level unions; and those affiliated with various confederations and national federations, including many representatives from branch leadership. For example, the local alliance *Forum Komunikasi Serikat Pekerja/Serikat Buruh Depok* (Communication Forum of the Trade Union of Depok), in Depok, near Bogor, was originally formed merely to facilitate meetings of plant-level unions affiliated with the FSP KEP (Chemical, Energy and Mining Workers Union). There was already a FSP KEP branch in the Bogor district, but this was considered less effective than a local alliance, as its scope was too wide, and there was a need for more effective communication among board members of the plant-level unions of this federation. During the development of the alliance, the FSP KEP affiliates in Depok formed a separate branch from the Bogor branch, and the 'Communication Forum' was extended to the various trade unions in the district of Depok, including

71 I have discussed this in detail elsewhere, see also Tjandra (2010).

72 The Wage Councils are tripartite institutions at both the national and regional levels. We will discuss these in detail in the next Chapter.

the FSPMI, the KSPSI and others.[73] Similarly in the Pulogadung Industrial Area in Jakarta, the alliance 'FOKUS' (*Forum Komunikasi Serikat Pekerja* – Communication Forum of Trade Unions) was established by the various plant level unions belonging to KSPSI Pasar Minggu in the area. Despite concerns that some of these unions would not work together because their national leaders were in conflict with each other, at the regional level the unions recognised the importance of uniting to raise their collective bargaining position. This was exemplified at the regional *Forum Buruh DKI* (Jakarta Labour Forum), where the two KSBSI and SBSI 1992, despite national-level conflicts, were present at the same forum.

Regardless of the variety of organizational and ideological backgrounds of the union supporters, most of these alliances have been established with a shared focus on the importance of mass action and direct participation. Joint action as part of an alliance is considered most beneficial, as this would strengthen the bargaining position of the unions collectively, especially when dealing with government authorities. A demonstration by a large number of workers from a single union is considered less influential than a demonstration by fewer workers but which includes representatives from several trade unions. In Semarang, an activist from the SPN union, which was part of the alliance 'Gerbang' (*Gerakan Serikat Buruh Semarang* – Semarang Labour Union Movement), explained that when SPN organized a demonstration they always requested the alliance members from the other unions to attend, even in small numbers; and to carry their own union flags. As he explained: it is a strategy. The goal is to demonstrate the involvement of various unions in the actions, which appears from the variation of the flags carried in the actions.'[74] Activists from Tangerang, Serang, Bekasi and Jakarta shared similar stories.

The initiative to establish the alliances has usually come from grassroots union members; often reformist union activists who believe that the inability of the central organizations to facilitate unions in the regions had led to the weakness at the regional level, especially against the government.[75] As stated by one union activist from the KSPSI in Yogyakarta: 'It is the failure of the confederations that makes us weak; instead of providing ways for different unions to work together in the regions, they merely focus on their own needs and have less attention for building unity among unions.'[76] Workers who had occupied positions in plant-level unions or in the branch-level organiza-

73 Interview FSP KEP, Depok, in August 2011.

74 Interview Gerbang, Semarang, in August 2011.

75 As mentioned earlier, due to the weak position of the trade unions in collective bargaining, many of them rely upon government protection, through the law and regulations, to fulfil workers' needs. Thus, pressure on the government is considered safer than direct confrontation with employers, which could end with the dismissal of union leaders.

76 Interview FPP Kahut – ABY, Yogyakarta in August 2011.

tions also initiated many of the regional alliances; they therefore already had some experience interacting with other unions. The top level of the unions (DPP), however, seemed reluctant to support such initiatives from the grassroots. They saw the formation of the alliances in the regions, outside their own structures, as potential threats; including the risk that their members may move to other organizations.[77] This concern was especially prominent in the legacy union, KSPSI[78]; but was also felt by the new unions established post-1998. One new national federation established in 1999, for example, found it necessary to request a 'notice' in advance, if any members wanted to invite their affiliates into the area for collaborative activities.[79]

Nonetheless, the growing confidence of the local leadership to challenge their top leadership has forced the latter to adapt to this new development in the regions. Instead of imposing sanctions against the alliance initiatives, the wiser leaders have accepted this reality, and simply request 'better coordination' between their affiliates in the alliance, with respect to structure. As noted, most regional alliances were informal in structure, without strict systems of works. According to the activists, such a liquid system was considered more useful, because it reduced unnecessary tension between union members of the alliance and their superior organizations; and more importantly it minimized potential conflicts within the alliance regarding, for example, who should become the leaders. Leadership was normally held collectively, through a 'presidium', and not hierarchical. Most of the 'system' within an alliance was built through personal ties between the activists themselves, enhanced by sharing the same regional area and holding frequent meetings, especially when there were issues to address, such as local minimum wage fixing.

One exceptional alliance structure was the structure of the FSBS (*Forum Solidaritas Buruh Serang*, Serang Union Solidarity Forum, or simply the forum), in Serang, Banten province, and its twin organization, the 'Serang Trade Union Alliance' (or the alliance). The alliance was considered the 'official' leaders of the affiliated unions in the region, and its members were the leaders of the unions, which supported it. It also represented local organi-

77 Sjaiful DP of FSP KEP, for example, complained about this alliance, accusing it of eroding the central organization's authority (personal communication with Sjaiful DP in August 2011).

78 It is interesting to note that of the three strategies employed by the legacy union KSPSI to maintain their dominance, ('stick', 'carrot', and internal reform; each of which is employed depending on the strength or weakness of the union's position at a particular place and time, Caraway [2008]), the latter strategy, internal reform, is currently the most frequently employed – pointing to a decline in the dominance of KSPSI's central organization at various level and regions.

79 Interview with TURC activists in August 2012. The TURC was very active in organising these alliances to meet and discuss national and regional issues, through its series of 'Trade Union Movement Workshops'.

zations of workers, helping to increase their bargaining position with the local authorities. In contrast, the forum was a more informal organization, in which various union officials may be involved in researching regional labour issues to support the alliance, either individually or in collaboration with relevant NGOs.[80] This strategy was deemed necessary to maintain the 'independence' and 'integrity' of the trade union organizations.[81] Of the two organizations, the alliance was the one which interacted with the political powers and authorities; while when dealing with other parties and networks, such as NGOs; it was the forum that appeared (see also Cahyono, 2010).[82]

Although there tend to be few strict rules within the union alliances, a generally acknowledged unwritten 'code of ethics' includes the point that unions within an alliance are not allowed to recruit new members from other unions within the alliance. On occasions when this may occur, for example if any union member at the enterprise level wishes to move to another union in the same alliance, the leadership of the union targeted tends to refrain from accepting the move, as they consider that the moving of members between unions within an alliance could harm its stability and integrity. This informal policy against taking another union's members is not shared by the non-alliance unions in the same region, which frequently practice 'fishing in the same pond'.[83] Given this, the existence of an alliance of unions may also be useful for the existing union structures, to help them maintain their membership and power. The problem is that sometimes such reformists' initiatives can be hijacked by the existing unions' oligarchs, who do not genuinely want reform, as noted by one labour activist.[84] One alliance leader from Semarang and Bekasi mentioned the need of the alliance union leadership to take over the oligarchs' positions through independent election within their unions, so that reforms can be more systematic.

80 The FSBS, for example, in 2010 had an agreement with national human rights NGO, *Demos*, to conduct a series of political education workshops for workers in Serang. For these activities the FSBS could obtain financial support, which could be used concurrently to support the alliance's activities.

81 Interview Kahar Cahyono, Secretary of the FSBS, August 2012.

82 Cahyono (2010) provided a case study of regional alliances in Serang region, Banten province.

83 This term was coined by Indrasari Tjandraningsih to explain this phenomenon in the Indonesian trade union movement post-1998 (personal communication in August 2012).

84 A labour NGO activist from TURC mentioned this.

Below is a list of the regional alliances established in fifteen regions of Indonesia as of 2012:

Table 4.2: Regional union alliances and their member unions (2012)

No.	Regional union alliance	Members
1	*Forum Buruh DKI Jakarta* (Jakarta Labour Forum)	FSPMI, ASPEK Indonesia, SPN, FSP LEM KSPSI, FSBI, SBSI 1992, KSBSI
2	*Aliansi Buruh Kawasan* (Industrial Zone Labour Alliance), Jakarta	FSBI, SPN, FNPBI, SBSI 1992, KSBSI
3	*Aliansi Serikat Pekerja/Serikat Buruh* (Trade Union/Labour Union Alliance), Depok	FSP KEP, FSPMI, FSP LEM, FSP FARKES Reformasi, FSP RTMM SPSI, SPN
4	*Aliansi Buruh Yogyakarta* (Yogyakarta Labour Alliance), Yogyakarta	Regional federations: SPN, FSP FARKES Reformasi, FSP KAHUT SPSI, FSP NIBA SPSI, FSP LEM SPSI, FSP RTMM SPSI; Plant level unions: SP Inna Garuda, SP Lintas Media; NGOs: Sekolah Buruh Yogyakarta (Labour School of Yogyakarta), Serikat Pekerja Rumah Tangga (Domestic Workers Union), FPPI, Sekretariat Bersama Perempuan Yogyakarta (Women Solidarity)
5	*Koalisi Buruh Sukabumi* (Sukabumi Labour Coalition), Sukabumi	Regional federation: FSP RTMM SPSI, KSBSI; Plant level union: SP Danone Aqua
6	*Aliansi Serikat Pekerja/Serikat Buruh Serang* (Serang Trade Union/Labour Union Alliance) *and Forum Solidaritas Buruh Serang* (Serang Labour Solidarity Forum), Serang	Regional federations: FSP KEP Reformasi (KSPI), FSPMI, SPN, FSP TSK KSPSI, KSBSI
7	*Buruh Bekasi Bergerak* (Bekasi Labour Movement), *Bekasi*	FSPMI, FSP KEP, PPBI, FKI Bekasi
8	*Forum Komunikasi dan Informasi (FKI* – Communication and Information Forum*) SPSI Bekasi*	Plant level unions belonging to the FSP KEP SPSI in Bekasi; also supported by other sectors such as commerce (FSP NIBA), metals and electronics (FSP LEM)
9	*Gerakan Buruh Semarang (Gerbang* – Semarang Labour Movement*),* Semarang	Plant level unions belonging to SPN
10	*Aliansi Buruh Menggugat (ABM* – Labour Accused Alliance*) Jawa Timur, Surabaya*	Regional union: FSPMI, KASBI; plant level: SP KFC
11	*Forum Komunikasi (Fokus* – Union Communication Forum*) SP Pulo Gadung, Jakarta*	Plant level unions belonged the KSPSI in the Pulo Gabung Industrial Zones
12	*Forum Komunikasi Buruh Bogor (*Bogor Labour Communication Forum*), Bogor*	FSP TSK SPSI, SPN, FSPMI, Gaspermindo
13	*Aliansi Buruh Bandung (ABB* – Bandung Labour Alliance*), Bandung*	FSP KEP SPSI, FSP TSK SPSI
14	*Perjuangan Rakyat Karawang (Perak* – Karawang People Struggle*), Karawang*	FSP KEP KSPI, SPOI, KASBI
15	*Aliansi Buruh Jember (*Jember Labour Alliance*), Jember*	Sarbumusi, SP Productiva, Serbuk, SBI PGTebu, SPKAI IX, Sarbupage, SP Mitra Tani.

With regard to advocacy, the regional unions' alliances have usually started by limiting themselves to labour issues, such as violations of minimum wages or union busting. But in some regions, such as in East Java, the unions alliance has lobbied not only on these traditional labour issues but also on broader social issues, such as the rights of disabled people and the state's obligation to provide health care.[85] In other regions there have been efforts to expand the alliance's activities for political purposes; such as in Serang, Banten province (Tjandra, 2010; Cahyono, 2010), where the alliance called for the abolition of anti-labour policies in the regions. In the case of Batam, several unions developed networks with political parties for the general election, and several union leaders became parliamentary candidates (Ford and Tjandra, 2008). This development is particularly interesting, as only a few years ago the separation between the labour movement and politics was still wide, and 'wage labourers, and many trade union activists too, [did] not see any relations between struggles in the workplace and those over politics' (Törnquist, 2004: 392; also cited in Ford, 2009: 179). Recent findings at the regional level, however, show that this separation has become more fluid. The increased regional autonomy since 2000, when authority over labour and various other issues was devolved from Jakarta to the district/city levels,[86] has forced unions to face more direct political realities and contests at the local level, encouraging union leaders to learn to cope with the current situation and opportunities. Indeed, trade union strategies to raise labour interests have shown increasing levels of political participation, particularly since the 2004 general election (Ford, 2009: 179). These developments have likely been triggered by the growing realisation, among political parties, that trade unions are an increasingly important political force in the regions.

Many trade union leaders who became well known publicly and among workers have been approached by political parties, to be drawn into party cadres, either as 'vote-gatherers' or as genuine legislative candidates. The most notable trade union to be approached by a political party was the FSPMI (Indonesian Metal Workers Federation), which was approached by the PKS (Justice Welfare Party)[87] in several regions, such as in Batam, Riau Island province.[88] In 2004, in an effort to avoid being seen as a substructure of the political party, but interested in an affiliation, the FSPMI Batam formed the JAS METAL (*Jaringan Simpul Pekerja Metal* – Metal Workers Network), which

85 The work of the ABM Jawa Timur (*Aliansi Buruh Menggugat* – East Java Labour Struggle Alliance) has been remarkable in this regard.

86 For further discussion on the social and political impacts of the regional autonomy policy in Indonesia, see Schulte Nordholt and van Klinken (2007).

87 The PKS gained the number four position in the 2009 election results, after the Democratic Party (President Yudhoyono's party), Golkar (formerly the New Order party) and PDI Perjuangan (former President Megawati's party).

88 Said Iqbal, the President of the FSPMI, was later a candidate for the PKS in the 2009 election for Riau Island. Several FSPMI leaders in other regions, such as Batam, Serang, and Bekasi, were also running for the PKS. This was agreed through a 'Memorandum of Understanding' between the presidents of the FSPMI and the PKS.

was designed as a kind of 'political wing' of the FSPMI Batam, to negotiate agreements with political parties.[89] In 2005, the JAS METAL was directly involved in the campaigns for the Mayor and Deputy Mayor of Batam city, supporting Ria Saptarika and Ahmad Dahlan, who were nominated by the Golkar Party and the PKS, and went on to win the election. Although the union claimed that this result would not directly benefit its workers, the union's involvement in the campaign clearly gave them more access to the elected Mayor and his Vice Mayor.[90] In the 2007 Jakarta regional election, the PKS put forward Adang Dorodjatun and Dani Anwar as candidates for Governor and Vice Governor. During the election, the FSPMI became part of the so-called 'Labour Work for Jakarta Coalition', in collaboration with other unions, such as ASPEK Indonesia, SPN, SBPMI (Ports and Maritime Union Indonesia), SBTNI (Indonesia's National Transport Labour Union), and FSP LEM KSPSI. On 16 July 2007 these organizations produced a political contract, signed by the two candidates and the leaders of the unions, which included a promise by the candidates that if elected, they would set the provincial minimum wage in Jakarta at Rp 1-1.5 million,[91] with housing for workers and other perquisites (*Koran Perdjoeangan*, July 2007). However, the two candidates were not elected.

It is important to note that the FSPMI's 'political experiment'[92] in Batam in 2005 was an initiative of the FSPMI alone, without links to other unions in the regions, although many activists from other local unions were also running as candidates for various political parties.[93] In contrast, the involvement of several unions in the Jakarta elections in 2007 was primarily an initiative of the PKS, which gathered the unions to stand for it in the election; rather than an initiative of the unions to gather themselves and negotiate with the PKS.[94] However, the increasing ability of the trade unions to make political demands and lobby strategically against political powers in the regions seems to have sometimes been a liability for the union regional alliances. In the case of the Jember Labour Alliance, for example, the alliance was almost

89 Interview with Ridwan Monoarfa, June 2007.

90 Interview, Nefrizal, June 2007.

91 The minimum wage in Jakarta at the time was only Rp 900,560 (USD 90).

92 This term was used by Said Iqbal, President of the FSPMI, personal communication in June 2007.

93 Said Iqbal of FSPMI had to compete against Eduard Hutabarat of Lomenik KSBSI, as both were running in the same election district but for different political parties; Hutabarat was from the Labour Party. Neither was elected.

94 It was reported that in 2006 seven union leaders, including Bambang Wirahyoso of SPN, Said Iqbal of FSPMI, Khairul Anam of Kahutindo, and Harjono of FSP LEM SPSI, were brought to the city of Mecca using PKS funds, to take the *Umrah* – the minor pilgrimage. Some labour activists were concerned about this initiative by the PKS, which 'however noble it is' was considered a form of 'bribery' to the union leaders, for the party's political interests (personal communication with several labour activists in Jakarta). In 2007 these union leaders were all involved in supporting the PKS candidates for Governor and Vice Governor of Jakarta.

destroyed when one of the union leaders 'sold' the alliance for his own political gain, by supporting a candidate for the Regent elections and claiming that he led an alliance of labour unions with thousands of members – meaning potential votes. The labour activists in Jember reacted against this event so strongly that they blocked future attempts to rebuild the union alliance in the region.[95] This exemplifies the challenges that unions that become involved in politics may need to appreciate (see also Ford, 2009: 180).

Despite the early successes of the regional union alliances, several challenges have been clearly evident. One has been the reluctance of the central organizations to support the development of regional alliances and their subsequent initiatives, which may be perceived as threats to the organization as a whole. Regional union alliances have tended to be initiated and driven by local union leaders, who may be seen by their superiors in the central organizations as dissidents. In the absence of strong leadership in the regions, these concerns from central organization may be sufficient to end the initiatives. Another challenge has been the different approaches to strategies within the alliance, which can become obstacles for further development of the alliance, and sometime even lead to its breakdown. Within many alliances there is also still a high dependency on individual leadership by reformist union leaders, who take the initiative and act as the driving force; these alliances need a system to ensure they are strong irrespective of individual players, and can be maintained over time. A final challenge is often the absence, within an alliance, of a clear and common goal; such a goal is often essential to maintain an alliance's direction and unity, and to ensure it supports the wider goals of the trade union movement. On this point, it is interesting to note that many regional union alliances have embraced the issue of social security reforms, especially since the enactment of Law No. 40/2004 on the National Social Security System and the deliberation over the Social Security Provider Bill in the parliament. This may therefore become a common issue that unites the trade union movement, and links their goals to those of a broader segment of Indonesian society. The presence of the KAJS (*Komite Aksi Jaminan Sosial* – Action Committee for Social Security), an alliance of various national trade unions specifically campaigning on this issue, is likely to encourage this unity and shift the orientation of the Indonesian trade union movement towards a new concern: social justice. We will discuss this in the next section.

3.2 National level: the battle of paradigms?

It has been argued that the trade union movement in Asia, in both developed and developing countries (see Introduction), has generally adopted a market orientation ('business' or 'market' unionism), in which unions are seen as

95 Interview with Mashur Saifudin of Jember Labour Alliance, February 2010.

economic actors pursuing economic goals, such as the economic welfare of members, especially through collective bargaining within the labour market; and that there has been much less focus on social welfare more broadly (Zhu and Benson, 2008: 261). However, unlike the situation in developed Asia, in developing Asia the market-focused approach has been adopted in the absence of basic social and legal protection for workers; and this leaves individual workers and society more vulnerable. Hence the importance of efforts by the trade union movement, particularly in developing Asia, to reconsider their commitment to the market-focused paradigm, and to advocate more strongly for sound social policies. Such efforts would demonstrate the extent to which the trade union movement has positioned itself strongly in society. With regard to unions shifting towards a social orientation, it is interesting to consider the situation in Indonesia since the enactment of Law No. 40/2004 on the National Social Security System, and the formulation of its implementing legislation, the Social Security Providers Bill. This period corresponded with the emergence of a new kind of trade union initiative, the *Komite Aksi Jaminan Sosial* (KAJS – Action Committee for Social Security), a national-level union alliance dedicated to pushing reforms for a comprehensive social security system. This new orientation within the trade unions movement, and the associated conflict between unions following market-oriented versus social paradigms, is described below.

3.2.1 The SJSN Law, the BPJS bill, and the KAJS

In response to the economic crisis which eroded the New Order and highlighted the need for a domestic source of funds, and at the same time to demonstrate their difference from the New Order, Indonesia's post-1998 reform governments advocated a new, more thorough social security system for all citizens. This was born out of a proposal by the *Dewan Pertimbangan Agung* (Supreme Advisory Council), in the 2002 General Session of the Indonesian People's Assembly, to amend the 1945 Constitution to specify the people's right to social security, and the state's obligation to provide it. Indonesia's subsequent presidents – Habibie, Abdurrahman Wahid and Megawati – each played a role in ensuring the eventual enactment of Law No. 40/2004 on the National Social Security System (the SJSN Law), which was signed by President Megawati on October 19, 2004, one day before the newly-elected President Susilo Bambang Yudhoyono (SBY) came into office.[96] The enactment was a considerable achievement, as the law had generated strong reservations within several interest groups, most notably Jamsostek Ltd. (the state company responsible for the social security for formal workers), and

96 In total it took four years (2000-2004) to draft the Bill through to enactment, including 56 revisions between the first and final draft. Sulastomo, the former Head of the SJSN Team assigned to draft the academic paper associated with the social security law, reported that the signing of the new law included an unprecedented special ceremony at the Presidential Palace, to which President Megawati invited everyone directly involved in the making of the law.

Taspen Ltd. (the state company responsible for managing pension funds for public servants), which both saw the Law as a threat to their existing corporations.[97]

The SJSN Law was ground-breaking. It is the first law to rule that all Indonesians must be covered by social security, through five mandatory universal programs — healthcare benefits, occupational accident benefits, old-age risk benefits, pension benefits and death benefits.[98] The Law aimed to correct the existing discriminatory and limiting social security schemes: for example, of Indonesia's 230 million people, 139 million or 60 percent did not have access to healthcare schemes; and further, only public servants, the military and police officials were able to access pension schemes. To address these issues, the Law requires an implementing law and a set of government regulations. Although the Law regulates and specifies the basic principles of the new social security system to be developed, it does not specify the ways in which the system must be implemented and administered – it provides no information about the kinds of public institutions to be established to facilitate the new system, nor how these should be run. These practical points were left to be resolved by the Bill on Social Security Provider (the BPJS Bill).[99]

The three most important features of the SJSN Law are: (1) the transformation of the existing four companies which administered social security, from state-owned companies to public institutions[100]; (2) universal healthcare for all Indonesian people; and (3) the establishment of a pension scheme for formal workers in the private sector, to complement the existing pension schemes for public servants. The system would be administered through a mechanism of social insurance, that is 'a mechanism of collecting funds from compulsory contribution to be used to provide protection against social economic risks that befall participants and/or their family members', while the state would be responsible for covering the contributions of poorer people.

97 Personal communication with Hasbullah Thabrany, an academic professor and expert on Indonesia's social security system, who was also one of the early drafters of the SJSN Bill.

98 See *Handbook on Social Security Reform in Indonesia* (Coordination Minister for People's Welfare, 2006).

99 In addition to the requirements of the BPJS Bill, the SJSN Law also required the government to issue 11 government regulations and ten presidential instructions by October 2009, to implement five mandatory universal social security programs.

100 These were: (1) Jamsostek Ltd., responsible for social security for formal workers in the private sector (established in 1992, based on Law No. 3/1992 on Manpower Social Security); (2) Taspen Ltd., responsible for managing pension funds for public servants (established in 1981, based on Government Regulations No. 25 and 26/1981); (3) Asabri Ltd., responsible for managing pensions and healthcare for military and police officials and their families (established in 1981, based on Government Regulations No. 25 and 26/1981); and (4) Askes Ltd., responsible for healthcare for public servants and their families (established in 1992, based on Government Regulation No. 6/1992).

The Law was a major progressive step, but its implementation faced challenges from President SBY's government, which cited concerns such as the potential fiscal impacts of the system, and the capacity of infrastructure to support it.[101] While such concerns were important, other reports suggest that the government's reluctance to accept the Law may have been related largely to its impending loss of direct access to the social security funds administered by the existing four state social security companies; and to pressure from private insurance companies concerned about losing their markets.[102] In President SBY's first term (2004-2009), his cabinet prepared various scenarios and 'road maps' for the Law to be implemented by 19 October 2009 at the latest. SBY's second term cabinet (2009-2014), however, stalled or reversed most of these. Until just before the October 2009 deadline, the government had not submitted anything to the DPR. The DPR then initiated the submission of a draft bill on Social Security Providers (the BPJS Bill),[103] to be discussed in the House in the 2010 legislative program. During

101 See various statements by the Indonesian government representative during the negotiations with the House of Representatives Special Committee on the BPJS Bill, especially the meeting on 9 February 2011 (transcript prepared by Andriko Otang and Surya Tjandra).

102 According to Sulastomo, the former Head of the SJSN Team assigned to draft the Bill, when the SJSN Law was drafted there had already been strong criticism of the Law, particularly from foreign insurance companies. Sulastomo explained that the SJSN Team received a letter from USAID rejecting the SJSN Bill, on the grounds that it would harm the operations of many American private insurance companies in Indonesia. Sulastomo also said that when the Law was finally enacted, he received a comment from a World Bank official in Jakarta that such a law was 'too good to be true´ for Indonesia (interview August 2010). See also Afirianto (2006), arguing that there were some flaws in the SJSN Law, which would worsen Indonesia's labour market conditions, decreasing financial sustainability and adding pressure to the state budget. In contrast, employers tended to adopt the position of 'wait and see', although they worried that the new system would burden them more, as healthcare premiums would rise (personal communication with Djimanto, Chairman of Apindo – Indonesian Employers Association in August 2010).

103 On this point, the role of *Prakarsa*, an NGO based in Jakarta, was crucial, as this was the organization which submitted the original draft of the BPJS Bill; and persuaded the PDI Perjuangan party faction at the House to officially submit the initiative Bill in 2009, to be deliberated in 2010. The PDI Perjuangan was persuaded partly by several members of parliament from the PDI Perjuangan, in particular Surya Chandra Surapaty; who was previously both Chairman of the Special Committee on the SJSN Bill (1999-2004) and Vice Chairman of Commission IX of the Parliament, responsible for welfare, manpower, and health issues. Surapaty was therefore personally interested in the issue; he also had substantial knowledge on the issue through holding a PhD in public health, with a focus on public healthcare (personal communication with MP Surya Chandra Surapaty, June 2011). Another key factor in the PDI Perjuangan's decision to submit the Bill was likely the common understanding that the SJSN Law was one of President Megawati's most important legacies at the end of her administration in 2004 (personal communication with MP Rieke Diah Pitalokaof the PDI Perjuangan, member of the Special Committee on BPJS Bill in June 2011). In order to be accepted as a House initiative Bill, the Bill first required the support of all the political parties, through the opening plenary session of the House of Representatives, which was scheduled on 5 April 2010. This support was received.

later discussions about the issue in the House, the government continued to be obstructive, including by impeding negotiations with the Parliament.[104] It was in response to these delaying tactics that dozens of national labour unions and NGOs, as well as farmers, fishermen, student organizations and individuals, formed the KAJS, as a civil society organization established specifically to push the implementation of social security reforms.

The establishment of the KAJS was agreed formally at a meeting facilitated by the FSPMI (Federation of Indonesian Metal Workers Union) at the Hotel Treva, Jakarta, on 6-8 March 2010.[105] This meeting was important, because in order to strengthen the workers' demands, the union leaders agreed to merge all the groups and individuals supporting the social security reforms, into a single 'action committee'. The chairmen and secretary-generals of the confederation and federations were to be the main supporters of the KAJS, with a collective leadership. It was also agreed that the KAJS would be coordinated by the Presidium, which was to comprise several union and NGO leaders,[106] including Said Iqbal (FSPMI) as the Secretary-General,[107] and

104 The debate was over whether the BPJS Bill would be 'mengatur' (regulating) or simply 'menetapkan' (ruling). The government wanted the Bill to be merely a 'ruling', which would create a new institution without transforming the existing state companies that administered social security; while the House wanted it to be 'regulating', which would give the Law legitimacy to force the transformation of the existing companies. Some experts, however, argued that this debate was simply about semantics issues; as any laws would contain both 'regulating' and 'ruling' components within it; and they suggested that this highlighted the government's deeper unwillingness to support the Bill. See Minutes of the Meeting between the government and the House Special Committee on the BPJS Bill, which ended with a deadlock on 9 February 2011.

105 This activity was supported by the German labour support NGO, Friedrich Ebert Foundation Jakarta Office, which had been working with various labour unions and NGOs in Indonesia since the early 1970s.

106 These included R. Abdullah (FSP KEP KSPSI), Joko Hariyono (SPN), Achmad Mundji (FSP PP KSPSI), Indra Munaswar (KOBAR), Ali Akbar (FSP PPMI KSPI), Timbul Siregar (OPSI), Abdullah Sani (KSBSI), Said Iqbal (FSPMI), and Surya Tjandra (TURC).

107 Said Iqbal is the most important actor in the KAJS's involvement in pushing the social security reforms towards their eventual success, with the enactment of the Law on BPJS in 2011. He is a charismatic leader with strong public speaking skills, and was able to persuade people through a series of public gatherings held by his union, FSPMI, on behalf of the KAJS; in addition to his strong conceptual understanding of the issue. In acknowledgement of this, Said Iqbal and the FSPMI were awarded the 2013 FNV (The Dutch Confederation of Trade Union) Febe Elizabeth Velasquez Award. The award included a statement that he 'mobilized a rally, during which millions of people took to the streets demanding higher wages, a restriction on flexi labour as well as the introduction of statutory social security. As a result, access to health care for the very poorest and a pension for all working people was assured.' (http://www.industriall-union.org/fnv-trade-union-award-goes-to-said-iqbal). Iqbal also is one of the two central figures, together with a union leader from Colombia, in the FNV documentary 'Working Class Heroes', which premiered on 16 May 2013.

Surya Tjandra (TURC) as the NGO representative.[108] In the process there were some changes to the presidium membership: the representatives from SPN, FSP PP KSPSI and KSBSI withdrew their involvement, and Muhamad Rusdi from ASPEK Indonesia became a member. In addition, it was agreed that trade union/labour union alliances would be established in the regions to support the national leadership of the KAJS, and would undertake tasks including organizing mass actions, lobbying and preparing concepts from the unions perspective, conducting seminars, workshops and public meetings about social security reforms, and expanding the network of the KAJS to other unions and workers' organizations, to advocate for both the implementation of the SJSN Law and the enactment of the BPJS Bill.

To encourage national-level and regional governments to support the social security reforms, tens of thousands of workers participated in demonstrations across Indonesia, accompanied by direct public campaigns in industrial areas and through the media, to mobilise workers' support. On April 5, 2010, a national day of action in support of the reforms was held in conjunction with the opening of the House of Representatives plenary session,[109] followed by similar actions across the regions. These culminated in a demonstration on International Labour Day, May 1, at the Presidential Palace in Jakarta, when an estimated 150,000 workers marched from Hotel Indonesia Square to the State Palace and office of the President in Central Jakarta, to demand the immediate implementation of the SJSN Law and the enactment of the BPJS Bill. Demonstrators called for a new national social security system, based on the SJSN Law and the BPJS Bill, and including three key goals: healthcare for all Indonesian people; pensions for all Indonesian people; and ensuring that social security providers were public legal entities, based on a 'trustee' system. These three goals would be manifested in the BPJS Bill that was under deliberation by the House of Representatives. Despite the demonstrations, the government continued to stall, and so on June 10, 2010, the KAJS filed a citizens' lawsuit at the Central Jakarta District Court against the Indonesian President, the Vice President, the Speaker of the House, and eight associated ministers, for negligence and a failure to meet their obligations to

108 Surya Tjandra, the author of this dissertation, of the TURC (Trade Union Rights Centre), was the only NGO representative in the presidium. The presence of TURC, whose activities focused on trade union empowerment and advocacy for legal issues, gave the KAJS confidence, especially when entering into court proceedings. As an NGO, TURC was also able to present a different perspective from the trade unions, and was able to work with flexibility and creativity without the concerns about organizational rivalry that often arises between unions.

109 The opening of House of Representatives plenary session on April 5, 2010 was crucial, as it coincided with the deadline for whether the parliament would agree to continue to discuss the Bill. Pressure from workers, who initiated a large demonstration in front of the House, combined with direct lobbying of the leaders of the House, led the plenary session to agree to accept the Bill.

implement the people's constitutional rights to social security.[110] These legal actions by the KAJS clearly disrupted the government, and posed challenges for President Yudhoyono.[111] The court sessions were held weekly, and drew considerable media attention to the issue of social security reforms. The court sessions were typically attended by tens or even hundreds of workers, who sometimes demonstrated outside or inside the courtroom. The eventual victory of the plaintiffs on 13 July 2011 boosted the confidence of the unions and workers in general, and set a strong legal precedent for the legitimacy of their demands.[112]

After the court ruling, the special committee of the House began intense deliberations about the BPJS Bill, and the KAJS monitored these special committee sessions closely, placing several people daily on the balcony of the House meeting rooms to observe the debate.[113] This monitoring frequently included providing direct input, including sending text messages directly to legislators' mobile phones, particularly in response to comments from other legislators that were considered misleading or attempts to hinder the discussion. This strategy proved valuable; legislators were aware that they were being monitored, and the KAJS was able to influence directly each of the Special Committee members on particular issues raised during the discussion. To maximise the effectiveness of the messages to the legislators,

110 Although Indonesian legislation does not formally recognise the so-called 'citizen lawsuit' – in which citizens have rights to sue the government if it fails to meet its obligations to its citizens – such lawsuits are repeatedly accepted by the courts.

111 Personal communication with a lawyer from the government's legal team, August 2010.

112 The KAJS citizens' lawsuit was filed on behalf of 120 people from a number of civil society organizations and professions, including trade unions, NGOs, domestic workers organizations, migrant workers, lawyers, informal workers, journalists, other professionals and students. The TURC was the lead institution supervising all activities related to the lawsuit; including drafting the lawsuit, attending the court hearings, and coordinating around 20 legal representatives from the unions' advocacy divisions. The judgment, Central Jakarta District Court Judgment No. 278/PDT.G/2010/PN.JKT.PST, was reached over a year later, on 13 July 2011. The judgment stated: 1. Court sees the Defendants (President, Vice President, Spokeperson of the Parliament and eight related Ministers) guilty and derelict in their duty to implement Law No. 40/2004 on the National Social Security System; 2. Court declares that the defendants have to implement the social security law by: a. implementing immediately the UU BPJS – law on transforming the implementing body for social security system; b. drafting the regulation and presidential decree according to the UU SJSN; c. making adjustment of the four existing social securities companies according to the National Social Security System Law No. 40/2004; 3. Court declines other accusation against defendants (Rp 1 compensation for the government's negligence); and 4. Court is sanctioning defendants to pay the proceeding cost of 2.1 million rupiah (USD 230).

113 Among the KAJS activists they were known as the 'fraksi balcon' (balcony fraction), as an informal watchdog for the formal political processes in the House. One member of the KAJS presidium, Indra Munaswar, was the most active one attending almost all meetings held at the House and he was the one informing all KAJS leaders about any development during the deliberations.

often hundreds were sent at the same time.[114] KAJS instructed its observers on how to best send the messages, including suggested wording of texts, through its Facebook Group account, which was established to support the organization's activities. The Facebook account was also used to consolidate and update KAJS's supporters in various regions, providing them instantly with any developments in the House, including the minutes of the parliamentary meetings, and instructions for preparing responses and action. The Facebook account was administered collectively by approximately twenty core members of the KAJS team, and with membership exceeding 6,000 by mid-2011, the site was also an effective vehicle for debates and the sharing of knowledge and experiences related to social security and broader labour issues. Given that many workers had regular access to the internet, particularly Facebook,[115] which could be accessed easily through their mobile phones, Facebook proved to be a highly effective tool for mobilizing workers,[116] and clearly contributed to KAJS's eventual victory, when the House and the government agreed to pass the BPJS Bill into law on 28 October 2011.

Prior to the victory, however, the government attempted some final tactics to oppose the Bill. Following the court verdict, the government appealed to the High Court of Jakarta, further prolonging the reform efforts.[117] In addition, during the parliamentary sessions the government's representatives rejected several key points in the SJSN Law and demanded a revision of the SJSN Law prior to continuing with the BPJS Bill – in direct contradiction to the directives in the court ruling. In particular the government strongly opposed the transformation of the four existing state-owned social security companies; arguing that this would harm the state's economy (*Media Indonesia*, 20 September 2010). These delaying tactics led the KAJS to increase

114 Several legislators were complaining about this, saying that their mobile phones were hanged because of hundreds of text messages with the same contents pouring into them at the same time. 'I am with the workers, trust me, just please don't send me any more messages. I've got your point already,' said one legislator overwhelmed during the break of the session.

115 According to digital marketing agency iCrossing, in 2011 Indonesia was the second largest facebook user in the world at just over 35 million, second after the US at 150 million (*The Guardian*, 6 April 2011).

116 A similar story might be found in relation with the demonstration to support the Corruption Eradication Commission (KPK) and its open conflict with some high-ranking police officials alleged of corruption, whereby thousands of people gathered to defend the KPK.

117 In the early October 2013 the High Court of Jakarta released its decision annulling the decision of Central Jakarta District Court based on the argument that 'the Central Jakarta District Court was not authorized to examine such matter because the formation of the Act concerns the legislative authority and the Government', and that 'the BPJS Law was already promulgated by the legislative on 28 October 2011 and signed on 25 November 2011.' Although the decision would not affect the validity of the BPJS Law, the KAJS Lawyers Team nonetheless applied for cassation to the Supreme Court on 10 October 2012 arguing that the Higher Court of Jakarta had 'wrongly applied the law'.

its own efforts, including planning the largest labour demonstration since the reform, which was set for October 2011 and would close several industrial areas. Fifty thousand workers and people from supporting organizations were expected to participate. A second plan involved marching to and potentially occupying the House building and the nearby Indonesian Stock Exchange in Jakarta for a few days. The deadline for the DPR to finish its sessions was 28 October 2011, at which time a lack of resolution on the Bill would mean a deadlock, with further deliberation being postponed until after the next election. Thus, for the KAJS this was a point of no return. A week out from the deadline, a meeting scheduled for 21 Oct 2011 between the government and the special committee was cancelled due to a planned government cabinet reshuffle – during which time President Yughoyono forbade ministers from making any 'strategic decisions' (*Republika*, 12 October 2011) – however, this was the third recent cabinet reshuffle, and suspecting delaying tactics, the KAJS decided to use all its resources to increase its push for reform. At this point, aware of the demonstration plans, the House agreed that 28 October 2011 would be the final date at which a decision about the passing of the BPJS Bill would be made.

After a dramatic week of internal and external lobbying between the House leaders, political party leaders, and the government's representatives, and a parallel show of support for the Bill by thousands of workers who camped overnight in order to gather at the parliament building on 28 October, late that evening the the Indonesian parliament and government finally agreed to pass the BPJS Bill (*Tribunenews*, 28 October 2011).[118] This was a historic moment for all Indonesian citizens and an important step towards universal social security coverage. The new Law on Social Security Providers (BPJS) No. 24/2011, which was officially signed a month later on 25 November 2011, stipulated that there would be two social security providers running all social security schemes for Indonesians: the BPJS I on healthcare and the BPJS II on manpower. The BPJS I on healthcare would involve the transformation of the existing Askes Ltd., and would manage universal healthcare for Indonesian people, starting with the transfer of Askes Ltd.'s assets, members, and currently-managed healthcare programs (including those managed by Jamsostek Ltd. for formal workers; and by Asabri Ltd for military personnel). The Law stipulated that the BPJS I on healthcare should begin operation on 1 January 2014. The BPJS II on manpower would involve the transformation of the existing Jamsostek Ltd., and would manage occupational accidence, death, old age and pension benefits for all workers in the

118 The day after the BPJS Bill was, it was reported that Vice President Budiono held an extraordinary meeting at his official house in the afternoon of 29 October 2011, gathering together all the ministers involved in the process, including the PDI Perjuangan chairperson, former President Megawati (*Tempointeraktif*, 29 October 2011). The meeting was to discuss the consequences of the new Law for the government, and to consolidate the responses needed from the government.

formal sector; and was stipulated to begin operating on or before 1 July 2015 (*Kompas*, 28 October 2011; *The Jakarta Post*, 28 October 2011).

3.2.2 The KAJS: union support and opposition

As an organization trying to consolidate the powers of the trade union movement, and with such an ambitious agenda as universal social security for Indonesian people, the KAJS naturally encountered people and organizations with vested interests in opposing their agenda. The most significant opponent was the national government itself, which had enjoyed direct access to social security funds administered by the state-owned enterprises (SOEs) during the previous decades. Most prominent of the SOEs was Jamsostek Ltd., which had accumulated assets from workers' premiums of more than Rp 109 trillion in 2011, providing substantial income for the government. In 2011, it was estimated that the company's total assets were around Rp 648 trillion (*Detikfinance*, 12 August 2011). Among the other groups to oppose the KAJS were a few national union federations and confederations which had been receiving financial support from Jamsostek Ltd. through the so-called 'kerja sama operasional' (operational cooperation).[119] The most prominent of these union groups were SPN, KSPSI (Kali Bata) and KSBSI. In fact, KSPSI's Chairman, Sjukur Sarto, and KSBSI's President, Rekson Silaban, were also commissioners of Jamsostek Ltd., appointed by the government as 'representatives' of workers on the company's Board of Commissioners. These three unions were the ones most active in opposing the BPJS Bill, as the KSO schemes from which they benefited were not guaranteed under the new system, which included a more transparent monitoring system in which the BPJS (including the one formed from Jamsostek Ltd.) could be scrutinized by the public with regard to administration of their public trust funds.

Some confederation leaders were also antagonistic towards the KAJS because they perceived that it had upstaged and commandeered earlier joint efforts to consolidate the national confederations. An important meeting had

119 As explained by one SPN union leader, each of their members was valued at Rp 1,500 by Jamsostek Ltd. Therefore, the national headquarters of the SPN –a union with 400,000 members – received Rp 600 million a year, which went towards headquarters administration costs and was also distributed to the branches. Officially, the money was supposed to be used for the 'socialisation' of Jamsostek programs targeting the union's members, settled through a Memorandum of Understanding between the leader of the union and Jamsostek Ltd. directors. Most of the larger unions received this funding from Jamsostek Ltd., including the mainstream legacy unions (KSPSI, KSBSI, and KSPI); one small leftist union (KASBI) was also a beneficiary.

been held on 23-25 November 2009 in Sukabumi[120]; the Trade Union Meeting for Political Consensus (TUMPOC). Following this meeting, in February 2010 many unions and activists agreed to establish the *Forum Rembug Nasional* – National Assembly Forum (FreN) as a continuation of TUMPOC. However, one month later the KAJS was formed, and many activists and donors who had supported TUMPOC shifted their allegiance to KAJS, citing concerns about FreN's leadership and sources of operational funds.[121] FReN's proposed leadership structure had involved the leaders of the confederations automatically becoming the leaders of the alliance; and this approach was rejected by several leaders of the national federations, who believed that federation-level leaders wielded more power and direct influence over workers, and were therefore more appropriate as leaders of the alliance. This power battle between confederation and federation leaders may also help explain the lack of enthusiasm for the KAJS among the majority of confederation leaders. As noted above, certain confederation leaders also had vested interests in opposing reforms to the existing social security system for private formal workers, such as the workers associated with Jamsostek Ltd; with KSPSI's Chairmen, Rekson Silavan and Sjukur Sarto, directly appointed by government commissioners of Jamsostek Ltd. This position gave them bonuses of hundreds of millions of rupiahs every year, with little perceived benefit for workers.[122]

The differences between the various confederations' responses towards the KAJS led, in turn, to major differences in workers' responses towards both the KAJS and the struggle for social security reform. The KSPSI and its members, especially those allied with Sjukur Sarto, remained predominantly separate from the KAJS, although a few individual leaders from the KSPSI did choose to join. The KSPI and its members were more evenly split between those who did and did not support the KAJS; the KSPI's President, Thamrin Mosii, was ambivalent about supporting the initiative, but some federations within the KSPI, in particular the FSPMI, engaged actively with the KAJS. Within the third confederation, the KSBSI, only one federation chose to affiliate with the KAJS; the Lomenik (metal and electronics sectors). This federa-

120 This meeting was initiated by the KSBSI and organized jointly with the KSPI and the KSPSI. It was supported financially by the Friedrich Ebert Foundation (FES), and the American Center for International Labor Solidarity (ACILS). Around 50 activists from a number of union organizations attended. The meeting aimed to build a more solid labour movement (*Kompas*, 23 November 2009), and discussed issues such as social security reforms, labour inspection, and resistance to the existing contract and outsourcing system. A merger of the three confederations was also discussed (*Kompas*, 24 November 2011). This meeting was the first time, since the 1998 reforms, that mainstream unions had met to directly discuss political issues (see also Tjandra, 2009).

121 Of TUMPOC's original two main supporter organizations, FES and ACILS, FES was strongly supportive of the KAJS, and provided funds for the promotion of the KAJS's agenda to the regions and for national seminars in Jakarta. In contrast, ACILS remained uninvolved with the KAJS and associated social security issues.

122 Meeting between KAJS leaders and Jamsostek Ltd. Management, August 2010.

tion was willing to put its name as plaintiff in the lawsuit filed by the KAJS; while the KSBSI's other federations initially refused. Later, however, in early 2011, the KSBSI's founder and Chairman of the Advisory Council, Muchtar Pakpahan, managed to coerce the entire leadership of KSBSI's federations (with the exception of the President – Rekson Silaban) to apply to the Constitutional Court for a judicial review of Law No. 3/1992 on Workers' Social Security (*Jamsostek*). This led to a modest shift in the KSBSI's views towards social security reform, and the organization began to participate more actively in KAJS activities. Rekson Silaban and Sjukur Sarto, however, were able to persuade the KSPI's president, Mosii, to reject the BPJS Bill, by urging him to prioritize revising the Jamsostek Law, rather than supporting the BPJS Bill (*Rakyat Merdeka*, 2 June 2010). This proposal was very similar to the delaying tactics by the Government, Jamsostek Ltd. and Taspen Ltd.; and led to criticism of Mosii by those within the KSPI who were concerned that he had been influenced by Silaban and Sarto.[123]

Despite the inter-union politics described above, the KAJS proved able to consolidate the labour movement to push for social security reform. Their successful deployment of thousands of workers during the Labour Day protests of May 1, 2010, and repeated on Labour Day 2011, generated wide media coverage and ensured that the issue of social security reform went from being misunderstood and unsupported by union leaders and the public, to holding a central place in public debate. In the absence of a political party ideologically supportive of a social and political agenda like social security, the presence of the KAJS proved vital in the political arena, especially in parliament where it acted as a social watchdog. When some members of parliament expressed frustration at the government's unwillingness to discuss the BPJS Bill before the end of the second parliamentary session in early 2011, the KAJS organised a fortnight-long 'People's Forum for Social Security', which became a means by which to consolidate and coordinate reform efforts in the lead up to Labour Day, and included the demand: 'Implement social security now, or SBY down!' This level of resistance would not have been considered possible by the mainstream labour unions in earlier years; although they became KAJS's main supporters. The demands were well timed politically, coinciding with the voicing of concerns by interfaith religious leaders that the government was deceiving the public on poverty rates (*Waspada*, 13 July 2011), and the controversial Wikileaks report revealing the abuse of power by President SBY and his family (*Sydney*

123 As explained by one KSPI leader, the rejection of the three confederations' leaders was delivered at a press conference sponsored by Jamsostek Ltd. at a hotel in Jakarta (personal communication with Agus Toniman of the KSPI, June 2010).

Morning Herald, 11 March 2011).[124] In the wake of such revelations, strong union demands combined with the threat of industrial strikes were highly influential in the existing political constellation.

The KAJS also scored an important breakthrough with respect to expanding Indonesian workers' awareness, from the historic narrow focus on traditional interests such as wages and uncertain employment status, towards broader social issues. Unlike the action committees that had previously arisen in Indonesia, the KAJS was able to survive over the long term and remain vibrant and consistent on the same issue. With no other groups focused on the same issue or using the same methods, KAJS's success inspired many innovative trade unionists to adopt KAJS's struggle as their own; not because their superiors had directed them, but through personal choice. Responding to criticisms from the opponents of the SJSN Law and the BPJS Bill, the KAJS Secretary-General, Said Iqbal, who was then the President of FSPMI, said: 'Who am I to force so many trade unions to join the KAJS, who themselves want to struggle for social security? Surely there is some level of rationality to our demands, so as to produce this massive movement at such a scale, involving tens of trade unions across various regions.' The existence of KAJS also encouraged direct consolidation between labour activists in the central organizations and those at the grass roots level; and trade unions, at some point, managed to put common social interests above their organizational ego and interests.[125] This was a particularly important development for the trade union movement in Indonesia.

3.2.3 Battle of paradigms?

Within a relatively short time, the KAJS cemented its influence as a social and political force. Its success at persuading the parliamentary plenary meeting to approve the BPJS Bill as a House initiative, and its ability to unite the labour movement from national to local levels, allowed it to act as a catalyst to end the political stagnation prevalent in the House during the BPJS

124 Indonesian Vice-President Boediono visited Canberra on 10 March 2011 for talks with acting Prime Minister Wayne Swan and other relevant officials about reforming Indonesia's corrupt bureaucracy. At the same time, secret US diplomatic cables – obtained by Wikileaks and later reported in the *Sydney Morning Herald* – implicated Indonesian President Susilo Bambang Yudhoyono in extensive corruption and abuse of power, including intervening to influence prosecutors and judges to protect corrupt political figures, and pressuring his adversaries while using the Indonesian intelligence service to spy on political rivals – including a senior minister in his own government. The reports also accused the President's wife and her family of seeking to enrich themselves through their political connections.

125 One KAJS leader from Bekasi noted that after the organization's success with respect to getting the House and government to pass the BPJS Bill, many grassroots-level unions approached the KAJS to 'synchronize the perceptions' on various labour issues, such as social security and wages. This leader noted: 'Many people brought their hopes to us, and we hope that we can fulfil theirs.' (personal communication with Obon Tabroni, the FSPMI leader, October 2011).

Bill deliberations. As the influence of the KAJS grew, so did the influence of trade unions in Indonesian society. However, not all unions appreciated the KAJS's achievements. Several unions, most notably the SPN, had committed to opposing the social security reforms on the grounds they would harm workers' interests.[126] When the BPJS Bill was finally passed by the House, these groups swore publicly to continue to fight the reforms (okezone.com, 3 November 2011), including by filing a judicial review against them. This continued resistence was due in part to the vested interests mentioned earlier, and potentially also a reflection of the different paradigms and orientations held by different unions – whether they were class-oriented, business/market-oriented, or more socially focused.

Information in documents produced by the unions opposed to the KAJS, as well as statements in newspaper articles and direct personal communication with several of their leaders,[127] indicates that the resistance to the BPJS Bill was associated in particular with concerns about the transformation of Jamsostek Ltd. from a state-owned enterprise to a public institution monitored by a board of trustees. Some of these unions, seemingly inspired by Marxist arguments, argued that social security should be covered by, and the sole responsibility of, the state. They argued that instead of collecting money from the people, all social security costs should be covered by the national budget, from taxes collected; and they argued that without these costs being covered by the national budget, 'social insurance' was simply a way of camouflaging the state's denial of its obligations to the people. Thus, the unions argued, the only way for workers and Indonesian people in general to enjoy full protection was through the nationalisation of foreign assets and the government-take over of all natural resources to be used for the common good.[128] Some other unions argued that such changes would harm work-

126 In addition to SPN, other unions, which opposed the social security reforms were KSPSI (Kali Bata); Sarbumusi; SBSI 1992; FSP BUMN (SOEs trade union); and some factions within the KSBSI, FNPBI, KASBI and GSBI. Several other non-union groups also opposed the reforms for their own ends, including the DKR (*Dewan Kesehatan Rakyat* – People's Health Council), an NGO established by the former Minister of Health, Siti Fadilah Supari. The DKR had acted as a watch-dog organization for the implementation of the 'jamkesmas', a free healthcare program for the poor which was established as part of the implementation of Health Law No. 36/2009 (article 171 subsection (1)), and which stipulated that five percent of the annual federal budget for healthcare should go to the Ministry of Health. This equated to around Rp 60.1 trillion in 2011; a huge amount of money for a single institution. Under the proposed reforms this funding would cease, as the health budget would be redirected to the newly-established BPJS, as part of the new universal healthcare system.

127 See, for example the 'Joint Statement of Indonesian Trade Union/Labour Union on the BPJS Bill', signed by ten union leaders from eight unions on 7 October 2011. It is interesting to note that this statement was read out at a press conference held jointly by unions and Apindo, at the Apindo's headquarters in Jakarta – such collaboration was highly unusual practice at the time.

128 The unions that adopted this position were FNPBI, KASBI, and GSBI.

ers' interests, as the money collected would then be used for all Indonesian people, rather than exclusively for the benefit of workers who had paid their premiums. This position might best be expressed in a statement of one SPN regional leader: 'Should we workers and our money at Jamsostek Ltd. also be used for the benefit of the poor? Shouldn't the poor be the responsibility of the government? Aren't we, the workers, actually the poor itself?'[129]

The KAJS adopted a different position – but this evolved markedly during the struggle. To start with, many KAJS leaders supported a 'business' or 'market' orientation to unionism. Although they strongly supported the transformation of the existing state social security companies into public institutions controlled by the public, their main concern was Jamsostek Ltd. and its responsibility for workers in the formal sector. Their original demands, therefore, focused on the transformation of Jamsostek Ltd. into BPJS 'Jamsostek', with the establishment of just one additional pension program, for formal workers in the private sector. They had little interest in supporting pension schemes for other social groups, such as workers in the informal economy; nor any interest in reforming the problematic pension schemes for public servants. Only as the parliamentary deadline neared did the KAJS publicly support a new universal pension system for all citizens, which meant that formal workers would contribute to others; as well as the 'mutual cooperation' principle in the SJSN Law. The KAJS did, however, always publically support the proposed universal healthcare scheme for Indonesian citizens, based on a belief that 'workers have families too, and they are not protected by any social security programs. Thus it is our duty to fight for them too.'[130]

The range of arguments for and against the social security reforms, by both the KAJS and other union groups, highlights the range of orientations held by trade unions in Indonesia today. These vary from those that focus on people's rights to social security and the state's responsibility to provide those rights, for example through nationalising foreign assets in Indonesia (class-oriented); to those that focus on union members' interests while keeping unions separate from broader society concerns (business-oriented); to an increasingly-popular focus on the positive roles of workers and unions in broader society (social-oriented). The growing social orientation of Indonesia's trade union movement is important, as it provides the foundations for building basic social and legal protection for vulnerable workers, with the

129 The unions which adopted this position were: SPN; KSPSI (Kali Bata); Sarbumusi; SBSI 1992; FSP BUMN (SOEs trade union); and some factions in the KSBSI. This quote was from Rachmat of SPN Tangerang (October 2011), and referred to the old age funds paid by workers during the employment, which could be accessed after they were dismissed or retired.

130 Personal communication with Said Iqbal and Indra Munaswar, Secretary-General and member respectively of the KAJS Presidium (July 2010).

goal of ensuring sustainable well-being for Indonesian society and individual citizens – especially in the context of the adoption of a neo-liberal policy framework characterised by decollectivism and individualisation of labour relations (see Chapter 1).

In the lead-up to the passing of the BPJS Bill, the KAJS's efforts, while sufficient to disturb the government's plans, were not necessarily sufficient to induce the government to implement the social security reforms agenda. The biggest challenge for the KAJS in the future – and for the Indonesian trade union movement in general – remains how to transform its movement into a strong political force. This will require strong leadership; trust from member unions and individual members; and sufficient energy to sustain the battle over the long term. This is not a simple task; particularly for a relatively informal and flexibile organization like KAJS; the battle would arguably be better fought by a political party, but none of Indonesia's existing political parties has fully supported progressive social concepts such as social security.

Following the passing of the BPJS Bill on 28 October 2011, the KAJS immediately set up the 'BPJS Watch' to monitor the implementation of the law (*Kompas.com*, 29 October 2011). The first task of BPJS Watch was to ensure that there was no manipulation of the formulation of the provisions, between when the Bill was passed on 28 October 2011 and when it was signed on 28 November 2011 – as had occurred sometimes in the past.[131] BPJS Watch was also tasked to monitor the implementation of the BPJS Law, in particular the operation of the BPJS I on healthcare in 2014, and the BPJS II on manpower in 2015 (*Pelitaonline.com*, 2 November 2011). At the same time, many activists in the KAJS began to question the future of the KAJS. As one member of the KAJS presidium queried: 'The struggle of KAJS might continue, but what is really the ultimate goal of all this?'[132] This was a big question, and one which was not answered directly by the KAJS. The answer was relatively simple, although not easy to achieve: the goal was to maintain and strengthen the unity of the labour movement, both within itself and with the popular political and social agendas.

131 On this point, the KAJS referred in particular to an incident that occurred during the passing of Law No. 36/2009 on Health, in which certain references to tobacco disappeared from the final version of the law. The originally agreed wording of the law included, in article (2) Section 113, the words: 'addictive substances as referred to in paragraph (1) include tobacco, products that contain tobacco, solids, liquids, and gases that are addictive and which if used can cause harm to the user and/or the community around them'. The absence of this provision from the final version of the law was reportedly due to the actions of the chairperson of the House special committee on the Health Bill, Ribka Tjiptaning, following intense lobbying from the tobacco industry (*Tribunenews.com*, 20 Juli 2011).

132 Personal communication with Indra Munaswar, November 2011.

The establishment of the Council of Indonesian Labour (*Majelis Pekerja Buruh Indonesia*, the MPBI) on 1 May 2012, in association with the International Labour Day celebrations, was originally intended to help address the questions about Indonesia's labour movement's long-term goals. Said Iqbal, the Secretary General of the KAJS and Chairman of both the FSPMI (Indonesian Metal Workers Federation) and KSPI (Confederation of the Indonesian Trade Unions), approached the chairs of the two other largest confederations, the KSPSI (Pasar Minggu) and the KSBSI,[133] to develop an informal umbrella organization to represent Indonesia's labour movement, by uniting the largest confederations and several national-level federations. The announcement of the formation of the MPBI and the declaration of the confederations' united front occurred at the Bung Karno National Stadium, the largest stadium in Jakarta, in front of 80,000 workers.[134] An office for the MPBI, with two full-time staff, was established in the most important district in Jakarta – Thamrin street – in the historic *Sarinah* Building, 'so that labour could have its own pride,' as explained by Andi Gani Nena Wea, President of the KSPSI.[135] Since its establishement the MPBI has overseen several unprecedented achievements, including a successful national strike involving over two million workers from 14 industrial districts on 3 October 2012, and many rallies which have brought tens of thousands of workers onto the streets of Jakarta, to draw the public's attention to labour issues and goals.

The MPBI's success at mobilising massive labour demontrations has also strengthened labour's position with the government. Following the demonstrations, the government agreed to revise several existing regulations, including revising one Minister of Manpower regulation on acceptable living standards to include 14 more components, based on market surveys[136]; and releasing another Minister of Manpower decree to limit outsourcing practices to only a few categories of work.[137] Meetings between the MPBI and the Minister of Manpower became more frequent; and the MPBI also promoted labour issues to key international institutions in Jakarta; including the US Embassy, whose ambassador invited the MPBI leaders to meet with

133 Like the KSPI, the KSBSI is also an affiliate of the ITUC (International Trade Union Confederation). The KSPSI is not.

134 See 'Manifesto MPBI', 1 May 2013.

135 Personal communication with Andi Gani Nena Wea, President of KSPSI, May 2012. Andi Gani Nena Wea is a son of Jakob Nuwa Wea and also an entrepreneur in the coal mining industry.

136 See Minister of Manpower Regulation No. 13/2012 on the Components and Implementation of the Steps to Achieve Decent Living Conditions.

137 See Minister of Manpower Regulation No. 19/2012 on the Terms for Subcontracting Components of Work to Other Enterprises.

him.[138] Arguably the MPBI's most significant early achievement was when President Susilo Bambang Yudhoyono invited the council, and several other union leaders, to the President's Palace on 29 April 2013 to discuss labour issues. At this event, the President gave a 'present' to the delegates – in the form of an announcement that 1 May would become an official holiday in Indonesia, starting in 2014 (*Kompas*, 30 April 2013). This decision was formalised on 29 July 2013, through President Decision No. 24/2013.

Unlike the KAJS, the MPBI established a more formal leadership structure, with leadership controlled largely by the chairmen of the three confederations, and with leaders of the smaller unions being placed on the organising committee. This rigid hierarchical structure was critcized from the beginning by several union leaders within the MPBI, who were concerned that it threatened the 'togetherness' and 'collegiality' of the alliance, given that most decisions were imposed from above rather than decided collegially like in the KAJS.[139] These fears appeared validated when conflicts emerged between MPBI's three leaders, especially between Said Iqbal and the other two, associated with different ideological perspectives concerning demands for higher wages,[140] as well as direct personal competition.[141] These conflicts threatened to end the MPBI, particularly as Said Iqbal and his union were the largest force driving the MPBI, as their ability to mobilise members was much greater than that of the other two confederations. Although never formally dissolved, after these conflicts the MPBI gradually became inactive.

138 The increasingly strong bargaining position of the labour movement has also generated interest from the American Chamber of Commerce in Indonesia. Its website, under the title 'Newsmaker Interviews', has presented a series of interviews with the three Presidents of the three confederations, consecutively: Mudhofir (http://www.amcham.or.id/nf/features/4225-newsmaker-interview-mudhofir), Andi Gani Nena Wea (http://www.amcham.or.id/nf/features/4208-newsmaker-interview-andi-gani-nena-wea), and Said Iqbal (http://www.amcham.or.id/nf/features/4256-newsmaker-interview-said-iqbal).

139 Personal communication with Indra Munaswar of SP TSK Reformasi and Timboel Siregar of OPSI. Both were active in the KAJS as presidium members, and in the MPBI as organising committee members.

140 At the time of writing, Iqbal wanted to continue to take a more 'militant' approach, by demanding a wage increase of 50 percent in 2014, while the other two wanted to take a softer approach, by leaving such decisions to be made at the company level. In an interview with *The Jakarta Post* (1 May 2013), Iqbal clearly advocated 'the militant way' in order to raise labour interests under the current system, as he was quoted: 'Labor unions have forcibly taken the militant way because other ways and roads to settle unresolved major labor issues have been closed down.'

141 Said Iqbal was recently awarded the Febe Elizabeth Velasquez (FNV) Award in combination with the production of the documentary film about the labour movement in Colombia and Indonesia. In the documentary, Iqbal was presented as the main labour movement figure for Indonesia, which increased tensions among the MPBI presidium. The other two members of the presidium accused Iqbal of claiming undue credit by not acknowledging, in the documentary, the contributions of the other two leaders to the union movement. Although these allegations were rejected by Iqbal, arguing that the film was made by the FNV and he had no control over the content, the issue led to deep cracks in the MPBI leadership.

In 2013, its role as an umbrella organization was replaced by a new alliance, the National Labour Movement Consolidation (*Konsolidasi Nasional Gerakan Buruh*, the KNGB), again initiated by Said Iqbal and his unions. The new organization was officially announced on 30 September 2013, in Jakarta's historic *Gedung Joang* ('Struggle Building'), a monument to Indonesia's revolution for Independence.

Despite the recent progress, the future of the Indonesian labour movement remains uncertain. Said Iqbal has proposed the idea of establishing a 'rumah rakyat' (people's house), as a venue and an organization for facilitating and consolidating advocacy between labour organizations and other civil society organizations.[142] According to Iqbal, the organization associated with the 'rumah rakyat' would be a political mass organization but not a political party – although it would consider the possibility of becoming one if needed. Iqbal also mentioned that 2014 would be an appropriate year for the rumah rakyat to commence. Iqbal explained his vision as: "[Unlike political parties] we will focus on advocacy and addressing people's problems, rather than focusing on acquiring power. But we could only become such an advocate if the people we help support us to do so.'[143] The question as to whether the efforts of the KAJS, the MPBI, the KNGB, and perhaps the proposed rumah rakyat and the labour movement supporting it, will together prove capable of transforming labour into a long-term social and political movement, will need more time to be assessed.

4 Conclusion

Labour law has long emphasized the protection of the individual, through trade union membership and collective bargaining. This means that while recognizing the importance of collective bargaining, based on the collective strength of unions to determine the rules applicable in their workplace or

142 The term 'rumah rakyat' was inspired by the existence of a similar gathering place in Bekasi (an industrial city near Jakarta) which was established primarily by the local FSPMI members . This site, named 'Rumah buruh', was located on an unfinished bridge which was intended to link two industrial zones, EJIP and MM 2000, but which was abandoned by the government and the zones management, due to ongoing conflict over the land with the community surrounding the bridge. The site has been used by the local unions as a place for consolidation, training, planning of demonstrations and other activites, and has become a symbol of the labour movement in Bekasi and other regions. The term 'rumah buruh' originates from the terms 'omah tani' and 'rumah tani' (peasants' house), from Batang, Central Java – where similar peasants advocacy movements have occurred previously.

143 Personal communication with Said Iqbal, June 2013

industry,[144] the law also emphasizes the need for effective statutory protection, in order to protect workers and their unions from undue power from their employers.[145] Consequently, labour law is often designed with provisions to protect workers: for example, protection from unfair dismissal; a requirement to employ 'good faith' during collective bargaining; and the involvement of workers and union representatives in labour dispute settlement mechanisms. Trade union law in particular might contain provisions to protect union autonomy from encroachment by employers and the state (Hepple, 1995), including: provisions to support collective bargaining, such as providing unions with legal avenues if an employer refuses to recognize the union for collective bargaining despite strong workplace support; provisions to ensure that strike action is protected from liability in tort; and provisions to ensure that regardless of strike action, union funds are safeguarded during any subsequent legal actions. In many countries, labour legislation often also includes provisions on the 'closed shop' system, a term used to describe a workplace in which all employees are required to be members of a particular trade union (Davis, 2004: p.11-12).[146]

In Indonesia, however, trade union regulations have been used to control labour, rather than support labour as a collective power for sound industrial relations. This control occurred particularly during the three decades of the authoritarian New Order era, during which time, the government supported a single union, SPSI, which functioned as the state's subordinate. The *Reformasi* in 1998 provided opportunities for new independent unions to develop alongside the legacy union SPSI; and numbers of unions mushroomed from the single union in early 1998, to 90 national unions registered in 2010. Despite this, the position and influence of the unions is considered to have remained weak, hindered by the ongoing dominance of the legacy unions and the inability of new unions to challenge them, due to internal structural problems, which discourage unity and coordinated action. This study's recent findings, however, have highlighted recent positive developments for trade unions at both regional and national levels, offering hope

144 This is related to the so-called 'collective *laissez faire*', coined by Kahn-Freund to explain the situation in Britain, where labour law played a relatively minor role in managing labour issues (compared to its role in other industrialized countries), and where instead most workplace and industry rules were left to be decided through bargaining between trade unions and employers.

145 These values associated with labour law are found in various publications written by key scholars in the field, including for example Hepple (1995), with his famous article 'The Future of Labour Law'; Wedderburn (2000); Barnard *et al*. (2004); and Klare (2004).

146 These long-held values of labour law are, arguably, being challenged by the globalization of economies, which, according to some, requires a more flexible labour market to enable companies to compete globally (Conaghan *et al*. 2004). In many developed and developing countries, a more global market focus and associated claims about the need for flexibility have forced recent changes to labour law systems, generally characterized by a decline in trade union strength, and a reduction in collective bargaining (Hepple 1995; also Dae-oup 2006).

for the future of the trade union movement in Indonesia. Having learned that the solution might not lie within the structures of the existing national workers federations and confederations, several unions at both regional and national levels have developed alternative strategies, through the formation of regional and national alliances. The various regional alliances are dealing with local labour issues, such as regional minimum wage determination, as well as with local politics and how political involvement can be used to benefit labour. The national alliance with the KAJS extends even further beyond traditional workers' issues, focusing its struggle on reforming Indonesia's social security system for the benefit of all citizens. Together these alliances represent the recent and unprecedented development of the trade union movement in Indonesia, lending hope that the future includes the more active participation of unions in Indonesian society.

Change does not come from Jakarta, change comes to Jakarta. The presence of various alliances of trade unions across different regions raises optimism for more involvement of unions in developing regional and national-level policies. Change may begin in the regions, but it will never be enough if it is confined to the regions. Therefore the empowerment of union alliances in the regions should be combined with empowerment of trade union centres, especially at the confederation level. The confederations would be ideally positioned to become the voice for the union movement when negotiating with the state. However, for this function to be realized, the trade union movement requires real and genuine unity within itself, at both regional and national levels. To this end, the regional alliance of unions and the national union alliance of the KAJS and the MPBI, despite recent challenges, could be important starting points. One crucial agenda for the trade union movement in Indonesia is to develop its social and political powers, to act as a countervailing force in society against the existing powers of employers and capital. Any changes in favour of labour and society will depend largely upon the effective political organization of these forces, and these changes may involve, as they did in Europe, a long and potentially violent process, including a struggle for law reform.

5 The law and politics of minimum wage setting

[M]inimum wage is not about economic models, but about how some economic models can be put to the service of political interests.

(Levin-Waldman, 2001: xiii)

1 Introduction

This chapter focuses on the relationship between labour law and the labour market in Indonesia, in the context of the country's most heatedly-debated labour issue: minimum wage policy.[1] The concept of a minimum wage policy emerged soon after Indonesia's independence in 1945, and began to receive serious government attention in the late 1950s. Despite this early interest, a policy was not adopted formally until the late 1960s; and only implemented in the early 1970s, during the New Order. During the following 40 years, in particular since the 1998 reforms, minimum wage policies in Indonesia have been problematic – developing into a complex nexus of legislative texts, practices and processes which often differ not only between government institutions, employers and trade unions, but also from one region to another, influenced by a diverse range of national and regional-level social, economic, political and ideological factors. To help workers and unions negotiate such complex policy issues, the regional union alliances (see Chapter 4) became important vehicles for workers; while Wage Councils were formed to serve as the institution tasked with researching and recommending minimum wage figures to the heads of regents and cities. Wage Councils are the places within which the interests of workers and employers are contested; and the dynamics of the struggles within these institutions offer a clear illustration of the challenges of minimum wage policies in practice, within the existing labour law framework in Indonesia.

1 The term 'minimum wage(s)' has several definitions. In this chapter, we follow the definition used in most frequently in ILO publications – i.e., the legally enforceable lower limit(s) of wages, fixed by a process invoking the authority of the State, and excluding the limits that have only the force of recommendation, and the lower limits to wages fixed in collective agreement (see for example Starr, 1981: vii).

It may be argued that laws and regulations are manifestations of the economic, political and ideological conflicts and compromises which arise naturally between diverse groups in the pluralistic society; and this chapter argues that the issue of minimum wage policies should be viewed no differently. The chapter's argument will be informed by the political approach to the study of minimum wage, developed by, among others, Levin-Waldman (2000, 2001, 2005), who challenges the dominance of the prevailing economic approach in studying minimum wage. As Levin-Waldman noted (2001: xii):

> The minimum wage is not about some losing their jobs so that others can receive an immediate increase in pay. Rather it is about what we as a political community believe the end product of work ought to be. Do we believe that we have an obligation to ensure that those who work, even in the least attractive jobs, will earn wages sufficient for subsistence? The minimum wage raises the question: What do we, as a community owe to those who work?

As explained by Levin-Waldman (2001: 2-4), this approach does not reject the usefulness of the economic model in analyzing minimum wage policies and related issues; rather, it stresses the importance of considering politics as part of the analysis, in combination with the dominant economic approach. To date, the minimum wage has been studied largely through an economic lens, with a focus on economic models, which have been considered responsible for driving the policy process. Levin-Waldman suggests that this misses the political point that the minimum wage is a crucial aspect of state policy, designed to protect particular sectors of society; and that an understanding of how state policies are formed is critical to a larger understanding of minimum wage issues. As Levin-Waldman (2001: 3) notes: '[the minimum wage] issue involves the interaction between economic forces and public institutions, for state policy is inevitably a response to those forces and/or to a particular group of interests seeking to make an issue out of them.'

This chapter will demonstrate that one major difference between the *Reformasi* era and the earlier, authoritarian New Order era is that under *Reformasi*, unions have more opportunities to become involved in the minimum wage setting processes, especially through the Wage Councils established in the regions. However, unions have remained relatively weak, so their involvement in wage setting has not necessarily resulted in a better position for workers in general. Lack of compliance by employers, and lack of enforcement by government, have further eroded the positive impact that minimum wage policies might otherwise have achieved. The existing minimum wage is also set too low to offer effective protection for workers. Despite ongoing efforts to achieve better wages in Indonesia, wages remain at a level at which 40-50 percent of average salaries are used to meet minimum food

requirements (Merk, 2009).[2] The situation is worsened by the lack of a social security scheme in Indonesia, and the minimum wage has not been used as a 'social floor'.[3]

This chapter analyses the history and practice of minimum wage setting in Indonesia, particularly the situation in regional areas since regional autonomy has increased; and the roles and influence of organized labour on wage-setting decisions. The evidence presented here suggests that despite the challenges that trade unions have faced (see Chapter 4), unions and labour activists have learned effective strategies for positioning themselves strongly, when bargaining for better wages for workers. In situations where the minimum wage setting processes established in various regions have prevented unions from using collective bargaining mechanisms at the company or industry level, the Wage Councils have become the main avenue by which labour can participate in the wage setting process, with unions relying on a combination of legal and political activities to assist their struggle. The decentralization of minimum wage setting to the regions has presented both benefits and challenges for labour's efforts to develop minimum wages as a social policy tool and as a benchmark for collective bargaining. Competition and differences in local political dynamics between regions, combined with the fragmentation of unions, weak central union organizations, and challenges associated with the existing surplus of labour in Indonesia, have resulted in a wide range of outcomes with respect to minimum wage setting, between different regions and industry sectors. In the absence of clear support, at the national government level, for the existence of unions and their right to undertake collective bargaining; and in the absence of employers' interest in working constructively with unions, minimum wage setting has remained largely an area of conflict without significant agreement. This chapter will explore these issues in two parts. The first part of the chapter, sub-chapters 2 and 3, will analyse the legal-institutional aspects of minimum wage setting in Indonesia, and the second part, sub-chapters 4 to 6, will present and analyse a representative case study, in order to illustrate minimum wage setting in practice.

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2 The definition of a 'decent wage' or 'living wage' is quite broad, but it is generally accepted that a decent wage should enable the earner and their family to meet the most basic costs of living, without the need for direct government financial support or poverty programmes. The Living Wage Action Coalition, for instance, considers a living wage to mean that 'an individual can take pride in her work and enjoy the decency of a life beyond poverty, beyond an endless cycle of working and sleeping, beyond the ditch of poverty wages' (www.livingwageaction.org).

3 The minimum wage is used as a 'social floor' if minimum wage policy is linked to the social security of vulnerable groups – such as retirement benefits for pensioners, with minimum wages increasing as required to maintain the purchasing power of the very poorest – and/or linked to economic growth, with the aim that society as a whole will benefit from the fruits of progress brought about by economic development (see Eyraud and Saget, 2008: 107-8). Neither of these links has been established in Indonesia.

2 The evolution of minimum wage policies

Particularly since the end of World War II, the minimum wage has become an attractive policy tool for poverty reduction and social justice, in both developed and developing countries. As a policy, the minimum wage has several benefits for governments: it does not require significant direct government expenditure; it is a relatively simple and highly-visible way for a government to demonstrate its commitment to social justice, by directly targeting the poorest workers; and it enables the government to remain directly involved in labour market operations (avoiding the neo-liberal approach of minimizing government involvement in market mechanisms, Starr, 1981). Alternative social programs, such as poverty reduction through cash transfers or public works, tend to be less attractive for government as they may be more difficult to target and monitor; may often include high non-labour costs; and may create political-economic disputes about, for example, which groups in society should be beneficiaries, and to what extent (Cunningham, 2007). Thus, the characteristics of the minimum wage, including self-targeting worker incentives and a direct labour market-focus, make it an attractive social protection tool for many countries.

For developing countries in particular, there are other reasons why the minimum wage may be appealing, or readily accepted. The principle of minimum wage regulation may have been transplanted to them, from the former colonial powers with which they had historical ties. In addition, more proactive newly independent countries may want to align their labour legislation closely with the international labour standards; due either to concern for their citizens' rights, or concern about international perceptions. There may also be more fundamental reasons, related to labour market conditions and the general orientation of government policies. The low living standards of many wage earners, and the scarcity of jobs, may intensify pressure on new governments to take action, and a minimum wage policy is a visible and simple way to provide the required protection; while also retaining direct government involvement in the labour market – especially in countries where strong industrial relations systems for unions and employers have not yet developed.

In Indonesia, the first attempt to develop processes for determining wage rates was in the mid-1950s, when the Indonesian government requested the ILO for technical assistance on two issues: wage policy and industrial relations (ILO, 1958). This request was in response to growing labour unrest in Indonesia, which was aggravating the country's economic situation. The government hoped to receive the ILO's advice on wage-fixing standards, and on the most appropriate methods for the social and economic conditions of the time. It also hoped to receive advice about the organization and operation of Indonesia's existing labour dispute settlement mechanisms, developed earlier as Emergency Law No. 16/1951 on labour dispute settle-

ment (see Chapter 2). In response to this request, the ILO sent an advisor, W.J. Hull, to Indonesia between 1 October 1955 and 26 December 1956, who submitted a report to the Indonesian government in 1958. The report not only provided an analysis about the existing situation, but also made recommendations about an appropriate wage-fixing system and institutional and organizational reforms to improve the existing mechanisms for labour dispute settlement. Drafts of appropriate wage-related legislation were also included, along with comments on the then draft law for settlement of labour dispute.[4]

The report included an explicit statement of the principles behind wage setting: 'the ultimate goal of wages policy should be to ensure that all wage earners earn at least a living wage from their principal employment' (ILO, 1958: 3). The 'living wage' was defined in the report as 'a wage, which will provide the basic essentials for supporting a man, wife and two children in a standard of life commonly accepted as tolerable in the society of which they form part'.[5] This was an important and ambitious target for a country that had only recently developed an industrial relations system. Despite this report, and despite Indonesia's strong labour movement in the 1950s, the government did not pass minimum wage legislation until early 1970s.

Similar to the situation in other developing countries, the wage system in Indonesia was initially developed not only as part of the market mechanism to enable the efficient allocation of resources; it was also assigned an important social policy function, to protect the weak by relating wages to needs. As noted by Arndt and Sundrum (1975: 369), the wage system that evolved after Indonesia's independence in 1945 was originally weighted towards social security objectives, and this was reflected in key features of the system, including: the importance of a high proportion of wages in kind other than financial ones; the practice of linking wage levels to the 'needs of the worker' such as the number of dependants; and the protective labour legislation, which limited an employer's right to dismiss.[6] One important reason for such a policy in Indonesia, in the early years of independence, was the

4 The Labour Dispute Settlement Law No. 22/1957 was, however, already enacted before the report was officially submitted to the Indonesian government.

5 This principle is clearly a reflection of the Preamble to the ILO Constitution of 1919, which notes that peace and harmony in the world requires 'the provision of an adequate living wage'; and reflects also the ILO Convention No. 131 on Minimum Wage Fixing, which was adopted in 1970 and which states that a minimum wage should consider 'the needs of workers and their families'. For further discussion on the history and practice of the living wage concept, see Waltman (2004), also Shelburne (1999).

6 This involved particularly the provisions requiring employers to obtain the government's permission prior to dismissing employees, as contained in Labour Dispute Settlement Law No. 22/1957 and the Dismissal at Private Undertakings Law No. 12/1964. The Industrial Relations Dispute Settlement Law No. 2/2004 later replaced both laws, and the aforementioned provisions were weakened with the establishment of the Industrial Relations Court. We will discuss this further in Chapter 7.

lack of effective alternative policy instruments (Arndt and Sundrum, 1974: 369-70). Government resources were limited, and largely already allocated to other purposes; leaving social security and welfare services inadequately provided for, relative to the situation in more socially developed states. Further, as we have seen, for various historical and political reasons the trade unions had failed to establish a strong role to participate in collective bargaining and wage negotiations. Under these circumstances, 'a wage system designed to reconcile the demands of economic efficiency and social security is a necessary compromise' (Arndt and Sundrum, 1975: 370).[7]

In 1969, Indonesia established the first *Dewan Penelitian Pengupahan Nasional* (DPPN, National Wage Research Council), based on President Decree No. 58/1969[8] and later regulated by Minister of Manpower Regulation No. 20/Men/1971. This was followed two years later by the establishment of the *Dewan Penelitian Pengupahan Daerah* (DPPD, Regional Wage Research Council), which was based on Minister of Manpower Decision No. 131/Men/1971 (see also Djarwadi, 1996: 112 and Manning, 1998: 207). According to these regulations, the Council was to comprise mainly of government officials: of the Council's 18 members, 16 were representatives from various government institutions (including academics from the state university), with the remaining 2 members being one union representative, and a representative from the employers' organization.

Although minimum wage levels which are set below or too far above existing wage levels will be ineffective, leading respectively to wage reductions or to employer disregard for minimum levels (or, if high minimum wages are enforced, to the risk of workers losing their jobs), these considerations are irrelevant if a country's wage regulations are merely cosmetic. This was the case in Indonesia during the 1970s and 1980s, when the Indonesian government not only avoided intervening in wage determination despite minimum wages being insufficient to protect workers from poverty, but also avoided enforcing the regulations which it had set up to protect workers from unfair dismissal (see Manning, 1994). In addition, during this time the government kept tight control of the trade union movement, by allowing only a single, government sanctioned union. As a result, there was little effective government or union involvement in wage setting; and the institutional context,

7 As noted by Arndt and Sundrum (1975), this 'double-job' of wage policy in Indonesia had a price. First, it could discourage the promotion of efficient use of labour and other sources provided by the operation supply and demand of labour within the labour market. And second, since the meaning of 'need' is to an extent subjective, using this criterion in a policy without including a tight definition may lead to confusion, discrimination of workers, and may primarily benefit those in waged employment, while the large numbers of 'self-employed' and the informal sector may be excluded regardless of the need for social assistance. These concerns remain real for wage policy in Indonesia even today.

8 Replaced 35 years later by President Decree No. 107/2004 on Wage Councils.

which governed wage determination, involved haphazard mechanisms that varied depending on industry sector and activity. In a review of findings from other scholars, Manning (1994: 80-81) described the existence of two extremes in wage practices in Indonesia at this time: a very loose mechanism for determining wages in the semi-formal and informal sector; and a very rigid, strict set of rules in the public sector and for government employees:

> 'At one extreme, casual wage rates are often negotiated on an individual basis in rice agriculture and construction, and may vary from person to person depending on the relationship between the employer and employee (Stoler, 1977; Tjondronegoro, 1977; Hart, 1986). Wage agreements for one activity in rice may involve commitments to work on other tasks in the agricultural cycle (as in the case of *kedokan* contracts). In many construction activities, the exact wage paid to a particular individual is difficult to determine because it is at the discretion of the head of the labour team (the *mandor*) (Sjahrir, 1993). At the other extreme, government wages are rigidly determined according to educational level, years of service and position. Here, non-basic wage emoluments (both official and unofficial) play an important role in determining total labour incomes (Gray, 1979). In between, permanent and semi-permanent wage contracts in manufacturing may be based on rigid formulae such as those applied to civil servants, or among more skilled persons they may vary considerably according to skill, experience and relationship to the employer. Depending on the type and size of firm, unskilled workers have a wide range of employment contracts; these may be informal, casual arrangements or formal permanent contracts drawn up in accordance with labour legislation.'

In the late 1980s, Indonesia witnessed two important developments for its labour market. The first was the rise in labour unrest and the establishment of several independent trade unions, despite government efforts to maintain strict control and labour repression. The second development was the government's decision to attempt to enforce the implementation of minimum wage regulations – the first such effort since the regulations were established in the early 1970s. This new effort to enforce wage policy has been seen by some as an attempt by the government to compensate for the policy's restriction of labour rights, and to appease workers (see, e.g., Harrison and Scorse, 2005). Indonesia's new approach to wages also coincided with growing internal and external pressure for change (Suryahadi et al., 2003, Manning, 1994). Internal pressure came partly from domestic labour rights activists and NGOs, with support from international human rights activists; and partly from individuals within government and other policy makers concerned that the growing labour unrest could hamper economic growth. External pressure came particularly from anti-sweatshop activists in the United States, who demanded better conditions for workers in Indonesia (Harrison and Scorse, 2005: 145-148; Dhanani et al., 2009: 155-167). These activists lodged complaints with United States Trade Representatives, citing Indonesia's systematic violation of labour standards, and recommending the

removal of Indonesia's preferential trade status under the GSP (Generalised System of Preferences) for its exports to US markets.[9]

The Indonesian government, concerned about the potential loss of its GSP status, increased minimum wages through legislative changes, while doing little to improve other labour rights. In 1989, the government released Minister of Manpower Regulation No. 5/Men/1989 on Minimum Wages, which aimed to redesign the mechanism for setting minimum wages in the regions, with reference to minimum physical needs, the cost of living, and labour market conditions.[10] According to this regulation, the rate of *Kebutuhan Fisik Minimum* (KFM, Minimum Physical Needs) was determined differently from one region to another, by the Regional Wage Research Council established earlier. The KFM standard was designed in 1956 under the Djuanda Cabinet, and included estimates of various costs for food, drink, clothing and shelter for the physical sustenance of workers (Djarwadi, 1996: 111). The basis of the KFM standard was the consumer price index of the nine basic foods, and the daily calorie requirement for a single male worker (2600 calories/day) with a maximum of three dependants (K-3).[11]

In 1995, a broader consumption bundle aimed at satisfying 'subsistence' instead of only 'physical needs', and known as *Kebutuhan Hidup Minimum* (KHM, Minimum Subsistence Needs), was introduced through Minister of Manpower Decree No. 81/Men/1995, and confirmed by Minister of Manpower Regulation No. 3/Men/1997, to be used in the regional minimum wage setting. Minister of Manpower Regulation No. 3/Men/1997 was later replaced by Minister of Manpower Regulation No. 1/Men/1999 on Minimum Wages. Both KFM and KHM are bundles of consumption items needed for the subsistence of a single worker. The KHM costs 15 percent to 20

9 As noted by Harrison and Scorse (2005: 145) there were seven issues related to labour rights violations: 'obstruction of the right to organize, restrictions on civil servants, the right to strike, the intervention of security authorities in labor disputes, restrictions of workers' access to appeal, limited sanctions against employers, and unfair restrictions on the right to work.'

10 Under this regulation, minimum wage was defined as the lowest basic salary *excluding* other fixed benefits accepted by workers. In 1990, the government revised this regulation by releasing a new regulation, Minister of Manpower Regulation No. 01/Men/1990, in which minimum wage was defined as the lowest basic salary *including* fixed benefits, based on *daily* payment.

11 For example, a single male worker is targeted to receive 2600 calories/day; a worker with a wife (K-0) 4800 calories/day; a worker with a wife and a child (K-1) 6700 calories/day; a worker with a wife and two children (K-2) 8100 calories/day; and a worker with a wife and three children (K-3) 10000 calories/day. Despite this complex system of minimum wage calculations, the resulting purchasing power, if it delivers 2600 calories/capita/day (equal to 234 kg of rice per person annually) is too low for subsistence, according to the well-accepted 'Sayogyo's poverty line' calculations, in which total energy expenditure divided by local rice prices and number of family members gives a minimum annual food requirement equivalent to 480 kg (rural areas) and 320 kg (urban areas) of rice per person (Sayogyo, 1971).

percent more than the former KFM, and provides a broader consumption bundle of 43 items, ranging from food, clothing and housing to transport, health and recreation. It represents an increased likelihood of meeting basic human needs, compared with the KFM; for example the food bundle of the KFM was set to 2600 calories/capita/day, wheras in the KHM it is set to 3000 calories/capita/day.[12]

Until 2000, at the provincial level a single minimum wage would be set, which would apply throughout the entire province. The only exceptions were the regions that included 'special economic zones' and 'export processing zones' (for example Riau, South Sumatera, West Java and Bali); for which different minimum wages applied. A few provinces also applied different minimum wages for different sectors in the economy, but these wages were not allowed to be lower than the general minimum wages, which applied in the region. Until the end of 2000, these regional (provincial) minimum wages were established by a decree issued by the Minister of Manpower, following recommendations from the provinces' Governors. Although the Governors were obliged by law to take advice from the tripartite provincial Wage Councils, in practice the employee (and employer) representatives on the Councils were usually government appointees; and as most Council deliberations were conducted in secret, it is unlikely that any true union representation was achieved (Masduki et al., 1998).

Since the beginning of 2001, following the adoption and implementation of the regional autonomy policy,[13] the task of minimum wage setting was handed over to provincial governors.[14] Although the central government retained the task of specifying the criteria for setting minimum wages, the governors were put in charge of determining the actual minimum wages to be set in their province. In some cases, governors then delegated this responsibility to the mayors and regents in their regions. In addition to the previous, relatively simple mechanism for determining minimum wages, wages are now set by considering the following workers' needs; the consumer index; the current performance, development potential and sustainability record of the company; average wages in specific regions and between regions; labour market conditions; economic growth; and income per capita. In addition to minimum wages at the regional level, there are now also sectoral-level wages, whereby wages set by individual companies can be compared against others in the same sector.

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12 This legally recognized figure is now the highest in Asia, comparing favourably to, for example, India (2700 calories), Sri Lanka (1900 calories), and Bangladesh (1700 calories) (see Merk, 2009).

13 This policy was based on Regional Governance Administration Law No. 22/1999 and Fiscal Balancing Law No. 25/1999. Law No. 32/2004 later revised Law No. 22/1999. For a critical overview on these laws, see Bunte and Ufen, (2009: 111-2).

14 Based on Minister of Manpower and Transmigration Decree No. 226/Men/2000.

The new regulations also add several provisions, which indicate progress towards the establishment of minimum wage setting mechanisms. According to the new regulations, the value of the minimum wage at the district level must be higher than the value at the provincial level; and the value of the sectoral provincial/district minimum wage must be at the least 5 percent higher than the provincial/district minimum wage. The minimum wage must be set at least 40 days before it is implemented, (implementation happens on January 1 every year); and must be revised every year. Following the enactment of Law No. 13/2003 on Manpower, the goal for minimum wages is to increase until they reach the *Kebutuhan Hidup Layak* (KHL, or 'decent living needs').[15] This goal takes into account productivity (GDP; workforce numbers during the same period); economic growth; and marginalised industries.[16] The 'components of the KHL calculations' (i.e. the list of items to be included in the cost calculations, such as food, rent and power), and the specific stages to work through to determine KHL, are regulated by Minister of Manpower and Transmigration Regulation No. 17/MEN/VIII/2005. This regulation replaced Minister of Manpower and Transmigration Decree No. 81/MEN/1995, with the addition of three new components (numbers 43 to 46), as well as the establishment of a stronger legal basis for Wage Councils at the national and regional levels.[17]

In 2009, the Indonesian Government enacted the Special Economic Zones Law No. 39/2009. This implementing law of article 13 of Investment Law No. 25/2007 replaced a host of earlier laws, and applies to particular zones that are 'designated to carry out an economic function, and are granted certain facilities and incentives',[18] in several regions in Indonesia. It has been argued, however, that such a law is a typical 'way out' for developing countries; allowing them to survive economically in the tough competition of the free world market, by using the benefit of 'comparative advantage' in 'global production sharing'. Despite the many differences between the features of economic zones worldwide, one of the universal features of 'special economic zones' is that there is an 'almost complete absent of either taxation or regulation of imports of intermediate goods into the zones' (Warr, 1990: 130). These privileges are subject to the condition that almost all of the output produced is exported, and that all imported intermediate goods are utilised fully within the zones or re-exported; these zones are therefore often also called 'export processing zones'. Although, in general, labour law remains applicable, there are often concerns about potential 'anti-union' behavior

15 See article 89 subsection (2) of Manpower Law No. 13/2003.
16 See article 88 subsection (4) of Manpower Law No. 13/2003.
17 Based on President Decree No. 107/2004 on Wage Councils.
18 See article 1 subsection 1 of the Special Economic Zone Law No. 39/2009.

and views in such zones.[19] In the case of Indonesia's Special Economic Zones Law, there is a provision regarding minimum wage-setting within the zones which seems to overrule the minimum wage regulations described earlier.

Unions in Indonesia have raised concerns about this provision. They argue that it is counterproductive to the stated goal of minimum wage efforts, which is to gradually achieve decent living needs for all workers. In particular, these concerns have been voiced by metal workers unions, many of whose members work in Special Economic Zones in Bekasi, West Java, and in Batam, Riau Island.[20] These unions refer to Article 45 of the Law, which states that the local governor should determine the minimum wage in the zones, but then includes a section that in setting the minimum wage, the governor must consider at least three conditions: (1) minimum wage as a 'safety net'; (2) the capacities of small and medium enterprises; and (3) decent living needs. Studies and reports about the impact of Special Economic Zones Law on workers have shown that they have no significant influence on reducing unemployment (as was officially promoted during the formulation of the law), and that they have the potential to reduce workers' rights within the zones.[21] However, since 2009, reports have shown no negative impacts of the Special Economic Zones Law on wages; suggesting that in practice, the law might not be effective, as the special economic zones are generally required to follow the general minimum wage setting.

In summary, there are at least four different sources of the criteria for setting minimum wages; as described in table 5.1 below. Each complements the other in different ways. The Manpower Law provides general provisions for the minimum wage and its link with decent living needs (KHL); the Minister of Manpower Regulation No. 1/Men/1999 gives the basic implementing rules about minimum wages; the Minister of Manpower Regulation and Transmigration No. 17/Men/VIII/2005 lists the essential components of KHL to be surveyed for cost (i.e. the basic items and services required for living, including food, housing and power), and the Special Economic Zones Law

19 In 2001, for example, the International Confederation of Free Trade Unions (ICFTU), in its *Annual Survey of Violations of Trade Union Rights 2001*, noted that 'export-processing zones' had transformed their meaning to 'rights-free zones' (ICFTU, 2001). In the case of Sri Lanka, the country's Board of Investment is using an Employees' Council to substitute for a union; and sometimes a union is reorganized into an Employees' Council. In addition, companies are giving workers the impression that if they establish a union, the factory will be closed, which increases negative perceptions of unions.

20 Interview with Obon Tabroni and Jamaludin of the FSPMI, June 2009.

21 In the case of Batam, Riau Island, Burmansyah's research (2009) shows that the total private investment in Batam in 1998 was around US$ 5,166 million, and that it rose to US$ 5,351 million in 1999, and to US$ 6,113 million in 2000. This growing trend in private investment, however, was not followed by the capacity to absorb workforces. In 1998, the workforce absorption was 53.02 percent, but this fell to 41.76 percent in 1999, and fell again to 34.01 percent in 2000.

provides special rules for the implementation of the minimum wage system as it is applied in specific economic zones.

Table 5.1: Various criteria for minimum wage setting[22]

Minister of Manpower Regulation No. 1/ Men/1999 on Minimum Wages	**Law No. 13/2003 on Manpower**	**Minister of Manpower Regulation and Transmigration No. 17/Men/ VIII/2005 on the components of KHL calculations [essential items to be costed] and the stages toward the achievement of KHL**[23]	**Law No. 39/2009 on Special Economic Zones**
1. Minimum subsistence needs (KHM) 2. Consumer price index 3. Companies' capacities 4. Surrounding regional wages 5. Labour market condition 6. Economic growth	1. Decent living needs (KHL) 2. Productivity 3. Economic growth	1. Productivity 2. Economic growth 3. The weakest enterprises	1. Minimum wage as safety net 2. The capacities of small and medium enterprises and cooperatives 3. Decent living needs (KHL)

Based on the series of regulations outlined above, and as frequently emphasized by the government, the primary aim of minimum wage setting is to to ensure that all wage earners receive decent living wages. In the words of Manpower Law No. 13/2003 (article 88 subsection 2), the aim of minimum wages is: 'to enable the worker to earn a living that is decent from the viewpoint of humanity.' In practice, however, there are several obvious problems still to resolve in Indonesia. One major issue is that the prescribed minimum wage is only paid in the formal sector. Even in the formal sector, a considerable proportion of small businesses pay less than the minimum wage, either due to ignorance or because they take advantage of the provisions available for exemption – which are generally handed out freely by the government (Isaac and Sitalaksmi, 2008). In the informal sector, the situation is

22 I am grateful to Obon Tabroni for providing input for the table, especially for the information on the Special Economic Zones Law.

23 Minister of Manpower and Transmigration Decree No. 13/2012, with revision of the number of components of the workers' needs and their prices to be surveyed in the market, later replaced this.

even worse; as the minimum wage is effectively excluded from application – and the informal sector includes around 70 percent of the workforce (Bird & Suryahadi, 2002, Basri, 2008). The few minimum wages that have been set for the informal sector are very low, and their effectiveness is therefore considered insignificant.[24] According to Saget (2006), around 30 percent of full-time workers and 50 percent of full-time casual workers in Indonesia earn less than the minimum wage. Attempts by unions to secure the minimum wage through collective bargaining are often rejected, and such rejections often include threats of dismissal of workers, or even plant closure (Isaac and Sitalaksmi, 2008). Thus, as noted by Dhanani et al. (2009: 149), 'minimum wages and other imposed labour standards turned out to have limited impact, due largely to low compliance.'

This situation has been exacerbated by the weak bargaining position of unions, as a result of low levels of unionization, the dominance of legacy unions, fragmentation of new alternative unions, the lack of strong central organizations and other factors outlined in Chapter 4. In general, unions do consider the minimum wage rate to be too low, and have called for it to be at least equal to 'decent living needs' (*kebutuhan hidup layak* – KHL) – as stated by the Manpower Law (article 89). Many unions say that without this change, the law is meaningless. Other unions want to change the minimum wage setting system entirely, pointing out that it is 'out of date', as it is based on items for calculation that are no longer relevant to workers' actual needs today. In either case, the unions appear at present to lack of power to push effectively for such changes.

However, recent observations – particularly in conjunction with the development of regional alliances since regional autonomy – suggest that unions may be starting to exert their influence more strongly, and may play a more effective role in defending their members' rights; in particular with respect to better wages. Regional Wage Councils have become a magnet for various unions united in regional alliances; with councils acting as a hub within which the unions' legal and political concerns and strategies can be aired. Within the Wage Councils, unions can present their positions against employers and government, and work to support their interests and achieve

24 In its *Global Wage Report* (2010), the ILO notes that in several countries, including Indonesia, the proportion of people on low pay (i.e., those who earn less than two-thirds of median wages) has increased to more than two-thirds since the mid-1990s. This has contributed directly to the rising of wage inequality, characterised by the 'rapidly increasing wages at the top and stagnating wages at the median and bottom of the distribution.' (ILO 2010: 31). In this situation, the ILO (2010: 70-80) concludes: 'In these and other countries with high or growing rates of low pay, there is a risk that a large number of people will feel left behind. This, in turn, may lead to increased social tensions, particularly if certain groups of people consider that they have paid a high price during the crisis while the benefits of the earlier expansionary period – and perhaps future recovery – have been unevenly shared.'

their aims. The dynamics within and surrounding the Wage Councils represent the very essence of minimum wage policies in practice, under the existing labour law in Indonesia. I will discuss this further in the second part of the chapter.

3 Minimum wage setting

Minimum wage setting in Indonesia has been institutionalized in the form of the Wage Councils, which exist at both the national and district levels. The National Wage Council, based in Jakarta, does not play a major role in wage setting, but instead focuses mainly on policy monitoring. It is in the Wage Councils at the district level, in cities and regencies that the real wage-setting work is done; in particular by undertaking wage surveys which form the basis for minimum wage setting for the coming year. According to recent data, as of January 2009 Indonesia has 497 cities and districts, in 33 provinces (Department of Internal Affairs Basic Data, 2010[25]); but not all districts have minimum wages. In those that do not, the Governor sets a proxy 'minimum wage' at the provincial level.[26] According to recent Ministry of Manpower data, the 33 provinces have 33 different provincial-level minimum wages; but there is no information available about the exact number of regional minimum wages in place at the district level.

3.1 Wage councils

The Wage Councils are tripartite institutions made up of (1) representatives from government, and academic/experts; (2) employers' organizations; and (3) the trade unions, with a ratio of 2:1:1 respectively. Minister of Manpower and Transmigration Regulation No. 3/Men/I/2005 outlines the requirements for the establishment, operation and membership of the National Wage Council. The National Wage Council has 23 constituent members, including ten government representatives, five trade union representatives, five employer representatives, and three academics and economic experts. The ten government representatives are: three from the Department of Manpower and Transmigration, and one representative each from the Coordinating Minister of Economy, the National Development Planning Agency, the Central Bureau of Statistics, the Department of Industry, the Department of Trade, the Department of Agriculture, and the Department of Energy and Mineral Resources.

25 Accessed at http://www.depdagri.go.id/basis-data/2010/01/28/daftar-provinsi (November 2010).

26 One example is South Sulawesi, which applies provincial-level minimum wages to all of its districts.

The employers' on the National Wage Council are represented by Apindo. Various registered national confederations and federations, whose proportional representation on the council is based on the relative size of their membership, represent the trade unions. The Director General for Industrial Relations Development of the Ministry of Manpower and Transmigration heads the National Wage Council; he or she is also counted as a Council member. The Council's deputies are representatives from the Director of Wages, Social Security and Welfare of the Department of Manpower and Transmigration; and representatives from the employers' organizations and trade unions. The main task of the National and Regional Wage Councils is to provide advice to the government, at the national and regional level respectively, regarding minimum wage setting.

As noted above, the National Wage Council works primarily on general policy monitoring, and the Regional Wage Councils, in cities and regencies, bear the responsibility for conducting the wage surveys, which form the basis for data on which the regional government set their minimum wages for the coming year. However, the Regional Wage Councils are currently missing key regulations to ensure that they are standardized. For example, there are no national-level regulations that specify which parts of a regional government should be included as members in the Regional Wage Council. Regional government representatives come from a variety of offices within regional government, dealing with labour, the economy, and social issues; and the Head of the Regional Manpower and Transmigration office is *ex officio* the chairperson of Regional Wage Councils (also doubling as a member). Another concern is that the existing national-level regulations do not clearly define how the Regional Wage Councils should operate. In the absence of such standard regulations, the Councils' operation tends to be based on particular *tata tertib* (rules of conduct) formulated and agreed by the members of each individual Regional Wage Council at the start of council sessions every year (council sessions normally start in early August and end in early December).

Once a governor decides the minimum wage for the districts in his or her province, this minimum wage becomes a rule. Article 90 (1) of the Manpower Law No. 13/2003, in conjunction with articles 13 subsections (1) and (2) of the Minister of Manpower Regulation No. 1/Men/1999, prohibits employers from paying wages lower than the minimum wages, including for those workers under probation. Violations of these provisions, based on Article 185 of the Manpower Law No. 13/2003, may be punished by a minimum of one year and a maximum of four years in jail, and/or a fine of a minimum

of Rp 100 million and a maximum of Rp 400 million.[27] However, employers who are 'unable' to pay minimum wages may be allowed to postpone payment at the official minimum-wage level.[28] Applications for such postponement (including the reasons why the employer found him- or herself unable to pay the minimum rate; details of how the employer is overcoming this situation; the proposed alternative rate to be paid; and for what duration) must be submitted at least ten days before payment of wages is due. The application should be supported by the original written agreement between the employer and the trade unions, as registered at the Regional Manpower Office; or, if there are no unions in the company, the agreement of the majority (>50 percent) – of the workers eligible for minimum wages, as well as the company's financial report for the last two years.[29] Following the submission of such an application for postponement of minimum-wage payments, the governor should give his or her decision within one month; although, if the one-month period expires and the governor has not communicated the decision, then the application is automatically considered to have been 'accepted'. During the one-month period, the employer should continue to

27 There have been efforts by unions to bring employers who violate such provisions to prosecution, but these efforts almost always fail. The first-ever case of a successful prosecution for such violations occurred in Surabaya in 2013, with a guilty verdict reached against Mrs Tjioe Christina Chandra, owner of the company Terang Suara Ltd., Surabaya, East Java province. Chandra was accused of not paying her 53 employees the minimum wage (the payment they received was Rp 800,000 rather than the minimum wage of Rp 948,500). She was originally acquitted by the Surabaya District Court in 2011, but the decision was overruled by the Supreme Court in 2012 (Decision No. 687 K/Pid/2012), and she was sentenced to jail for one year with a fine of Rp 400 million (*Lensa Indonesia*, 17 September 2013). The case attracted attention because Chandra was arrested shortly after she completed the review hearing of her case in the Surabaya District Court, on 17 September 2013. Member of Parliament, Rieke Diah Pitaloka had visited the Public Prosecutor a day before, to urge him to execute the Supreme Court ruling (*Detik.com*, 17 September 2013). According to Pitaloka, the case could be a milestone in efforts to dismantle the existing impunity with which some employers operate in Indonesia, and dismantle the existing repressive and discriminatory laws against labour: 'The verdict is expected to give a deterrent effect against other entrepreneurs who are still doing a lot of violations.' (*Detik.com*, 19 September 2013). The execution of the case represented a long struggle for the union involved, FSPMI. FSPMI organised the workers who were the victims of the underpayment, and also campaigned strongly during the case, including lobbying the prosecutors, the Surabaya Court and even the Supreme Court – reminding all parties about a similar case in Pasuruan, East Java, involving a Japanese subsidiary, King Jim Indonesia Ltd., whose general manager was jailed because he dismissed union leaders who were merely carrying out their functions (see Tjandra 2011, also Chapter 6 of this study).

28 Based on Article 90 (2) of the Manpower Law No. 13/2003. The explanatory note of the article states: 'The postponement of the payment of minimum wages by an enterprise that is financially not able to pay minimum wages is intended to release the enterprise from having to pay minimum wages for a certain period of time. If the postponement comes to an end, the enterprise is under an obligation to pay minimum wages that are applicable at the time but is not obliged to make up the difference between the wages it actually paid and the applicable minimum wages during the period of time of the postponement.'

29 See Minister of Manpower Decree No. 231/Men/2003.

pay wages as normally received by the workers, and the maximum postponement should not exceed 12 months.

3.2 Regional minimum wage setting

The first step in the process of determining the minimum wage for districts is the selection of the representatives to sit on the Regional Wage Council; from the nominations put forward by the employers' organizations and trade unions.[30] The employers' organization representatives are always from Apindo, as this is the only employers' organization registered to deal with labour relations issues; while the unions' representatives are selected so as to achieve a proportional representation by union size, according to the membership verification result in the regions. When the selection is finished, the candidates are appointed, either by the governor (for membership of provincial wage councils) or the mayor/regent (for membership of district wage councils).[31] As noted above, at the first meeting for the year each Wage Council determines its 'tata tertib' (rules of conduct), and agrees on key issues such as: the KHL components to be cost-surveyed (the items and services essential for living); the number of traditional markets targeted; the number of surveys to be conducted; the time-table of the survey; and the membership of the survey teams. In the absence of specific national-level regulations regarding the details of 'tata tertib', the rules are decided based on consensus among the members of each of the Wage Councils. In many cases, this means that the 'tata tertib' is merely a reflection of the existing power balance within the Wage Councils.

After the rules of conduct are established, the council conducts the market survey to obtain the required KHL (decent living needs) figures.[32] The surveys are normally conducted in groups, divided proportionately between the Wage Councils' members who do the data collection themselves, and conducted at traditional markets near where workers live.[33] The aim is to

30 See Minister of Manpower Regulation No. 6/Men/IV/2005, in conjunction with Director General of Industrial Relations Decree No. 12/DPHI/IV/2005, concerning membership verification within the trade unions.

31 See President Decree No. 107/2004 on Minimum Wages.

32 Minister of Manpower and Transmigration Regulation No. 17/MEN/VIII/2005 on the components of calculation and the stages toward the achievement of KHL

33 The decision to choose traditional markets as survey locations has been criticised as outdated and misleading by some labour unions, as, they argue, most workers now shop predominantly at retailers; either small retailers (many of which are located nearby workers' housing), or more often big retailers such as Carrefour – at which prices are normally significantly higher than at traditional markets. Trade union representatives point out that to reflect these changes in shopping behavior and ensure accuracy of data, surveys would need to be conducted at these retailers. Despite these arguments, to date the unions have failed to have the new approach included in the 'tata tertib'; with government and employers representatives usually rejecting the proposal (FGD with DKI Labour Forum in August 2010).

obtain the actual costs of goods that workers consume daily. The number of surveys to be conducted depends on the agreement reached within the Wage Council; usually surveys are conducted at least three times per year, at the same location each time, with the aim of obtaining the comparisons needed to calculate the KHL. Following completion of the surveys, the Wage Council members hold meetings to discuss the results, including clarification on inconsistencies, classification of the survey results, and so on. Meetings are then held to discuss and decide on the district minimum wage to be recommended for the year.[34] This process involves political negotiations, where unions and employers, as well as the government, try to influence the results. In some cases unions also use 'mass pressure' to influence the process, with two aims: to monitor their representatives within the Wage Councils; and to directly influence the nominal rate of KHL for the year.[35]

Once the KHL figure for the year is agreed, the Wage Council then submits this proposed figure as a recommendation to the head of the district.[36] The heads of the districts send their recommendations to the provincial governor for a final ruling. Generally, the governor will accept the recommendation without reservation. In some cases, union leaders consider the governor's influence to be more important than the district head's; as in the case of Bekasi, in which the Regional Wage Council in Bekasi was still determining its KHL figures when some unions' leaders traveled to Bandung, in an attempt to influence the West Java Governor.[37] In other cases, governors are required to consider many issues before accepting their district heads' recommendations, including any employers' objections which have been submitted through lobbying – which often takes place at this level rather than at the lower district level. According to one union leader, this is a deliberate strategy by employers, who are aware that regional unions who are active in pressuring the Wage Councils at the regional level do not have the financial or human resources to travel to plead their case at the provincial level.[38] Once the new minimum wage has been decided, the Regional Wage Councils are often involved in efforts to ensure the community accepts the decision, especially in cases where the decision has been marked by controversies.

34 See Minister of Manpower Regulation No. 1/Men/1999 on minimum wage setting.

35 Union leaders from various regions confirm this; most notably those from Jakarta and Bekasi, which in the last few years have launched a series of major demonstrations to influence the minimum wage setting in their Wage Councils, exterting pressure from outside - in addition to the representatives from their unions who are already there. We shall return to this later.

36 See Minister of Manpower Decree No. 226/Men/2000.

37 Personal communication with Obon Tabroni of FSPMI union, Bekasi, in August 2010.

38 Personal communication with Abdullah of the KSPSI union, Bekasi, in August 2010.

Table 5.2 below summarizes the process of minimum wage setting at the district level.[39]

Table 5.2: Minimum wage setting processes in cities/regencies, 2010

No.	Steps	References	Notes
1	Selection of prospective representatives nominated by the employers' organization and the trade unions.	Minister of Manpower Regulation No. 6/Men/IV/2005, in conjunction with Director General of Industrial Relations Decree No. 12/DPHI/IV/2005 concerning the membership verification of the trade unions.	The employers' organization representatives are always from the Apindo (Indonesian Employers' Association); the unions' representatives are proportionally from various unions, dependent on the membership verification data in the regions.
2	Appointment of the members of Regional Wage Councils by the heads of cities/regencies.	President Decree No. 107/2004 on Minimum Wages.	By the governor (for provincial wage councils) and by mayors/regencies (for district wage councils).
3	Formulation of 'tata tertib' (rules of conduct) by the Wage Councils members.	Consensus.	To agree on issues such as: the KHL components be cost-surveyed (i.e. items and services essential for living); number of markets targeted; number of surveys conducted; timetable of the survey, etc.
4	Implementation of market survey to get the KHL (decent living needs) figure.	Minister of Manpower and Transmigration Regulation No. 17/MEN/VIII/2005 on the components of calculation [essential items and services to be costed] and the stages toward the achievement of KHL.	The surveys are normally conducted in groups, divided proportionately between the Wage Councils' members who do the data collection themselves at traditional markets nearby workers live. The aim is to get the actual costs of goods that workers consume.
5	Meetings to discuss and calculate KHL for the year.	The results of market surveys.	This includes classification of survey results, clarification on inconsistencies, etc.

39 In Jakarta, Indonesia's capital, there are no district Wage Councils and thus no district-level minimum wages; all minimum wage setting is conducted by the provincial Wage Council. The steps explained are, however similar; just at a different level.

6	Meetings to discuss and decide on the figure for the district minimum wage to be recommended for the year	Minister of Manpower Regulation No. 1/ Men/1999 on minimum wage setting.	This includes political negotiations in which the unions and employers, as well as the government, try to influence the results. In some cases unions also use 'mass pressure' to influence the process.
7	Submission of recommendation agreed at the Wage Councils on the minimum wages figure in the district.	Minister of Manpower Decree No. 226/ Men/2000.	The recommendation is submitted to the head of the district, who sends it to the provincial governor to be decided.
8	Waiting for the decision of the governor on the new minimum wages for the coming year.	Minister of Manpower and Transmigration Decree No. 226/ Men/2000.	Generally the governor will accept the recommendation without reservation. In some cases the Regional Wage Councils are also involved in the socialization (efforts to encourage community acceptance) of the new minimum wage decision.

From the discussion above, we can see that beside the technical mechanisms of wage setting, such as price surveys, the minimum wage represents a set of political considerations by the district head, who provides a recommendation to the governor, who will then decide the new minimum wage. In providing their recommendations, they often tend to put political considerations ahead of the technical process and data from the Wage Councils, such as the price survey data. Despite this, the Wage Councils have become the main sites of political struggle and contest among different interest groups: employers, unions, and the government. The discussions in the second part of the this chapter, and the two case studies below about minimum wage setting processes in Sukabumi, West Java and Jakarta will provide more evidence to support this observation.

4 Wage councils and the workers' struggle for better wages

During the authoritarian New Order era, Wage Councils, although tasked with conducting market surveys based on workers' needs and providing recommendations to the government regarding regional minimum wages, were in practice used as a tool for the government to restrain industrial reforms, so that economic development could proceed on the government's terms (see Chapter 2 of this dissertation). The New Order-sanctioned union, SPSI, played a role as the government's 'rubber stamp' – being the only union represented on the Wage Council (see Chapter 3). After the 1998

reforms however, other unions have been able to join, engage with and influence the Wage Councils at the national and particularly the regional level, bringing different dynamics to them.

Several regional unions' alliances have been very active in recent years advocating for better wages through the Wage Councils.[40] Minimum wage setting faces five major challenges that trade unions are working to address. The first challenge is that the government, as the institution primarily responsible for the welfare of workers, still tends to view minimum wages as a formality, rather than as a tool to extend social welfare to the most vulnerable workers. From the unions' perspective, the government appears to be ambivalent on the issue of minimum wages: although the government is keen to retain control over the setting of minimum wages (and thus control over labour), it is also reluctant to place wages fully in the hands of collective bargaining – which would require clear protection and facilitation for the development of stronger trade unions as important actors in the collective bargaining process. The second challenge still facing minimum wage setting is the urgent need to reform the representation system in the Wage Councils, as many union representatives on the councils are considered, by the unions, to be either 'too old' (out of touch or ineffective) or 'too close' to employers and government, with the risk of perceived or real corruption. A third, related challenge is the urgent need to equip the unions' representatives on the Wage Councils with sufficient knowledge about the law and the technical details of minimum wage setting, to enable them to compete effectively with the other parties within the Wage Councils. In addition, the methods associated with designing, implementing and analysing the KHL (decent living needs) rate surveys, and calculating appropriate annual rates, are important skills for union members to master, to enable them to monitor and, if necessary, argue persuasively for changes to the process.

The fourth challenge facing minimum wage setting is that unions are not currently effective at lobbying and negotiating on wage issues, and need to improve their methods, including developing strategies that combine active lobbying and negotiation efforts with effective mass actions and workers mobilization. The final challenge is that although the minimum wage system is important, there is a growing realisation among union leaders that minimum wages should be treated as a springboard from which to develop a new, better wage system, to be determined by collective bargaining between unions and employers. Through advocating for minimum wages, unions want to gradually develop their bargaining position, in order to negotiate with employers for wages above the existing minimum wages, based on employers' and/or industries' financial capabilities. Consideration of these five major challenges facing trade unions in relation to minimum wage set-

40 Focus group discussion with various regional unions alliances, 27 December 2010.

ting is particularly useful, when examining how unions have struggled to defend the rights of workers for better wages through minimum wage setting in the regions, where the Wage Councils are the main arena.

4.1 Union involvement: influencing from within and without

Union representation on Wage Councils is usually determined by the quota dependent on the number of members in each union. As an example, in one case a single union member in the Wage Council represented a union with 15,000 members; therefore unions whose membership reached 40,000 would be represented by two people. The same mechanism applies to determine the union representation in the tripartite cooperation institutions, as required by Law No. 13/2003 on Manpower, both at the national and regional level. One exception is found in the Jakarta Special Capital Region, which instead applies 'the largest seven' system, in which the seven unions with the largest memberships in Jakarta are permitted to have one representative each. This means that a union with 70,000 members, and a union with only 10,000 members, will each get the same number of reserved seats (one), and equal voting power in the Wage Council. According to one SPN union leader in Jakarta, this system may be problematic, as employers and government can potentially split the union representatives by coopting the largest unions' representatives: 'With such a representation system, it is easier for the government and Apindo to condition the Wage Council as desired by them, by just holding one to three members from the biggest three unions.'[41] On the other hand, as observed by one FSPMI union leader in Jakarta, such a system can also make union representation more equitable, and thus give more control to the unions' representatives on the Wage Council.[42] As the union leader explained, 'The main problem with the Jakarta Wage Council is that it is dominated by mostly old unions' activists from particular unions. They have been there for too long, and thus have built inappropriate closeness with both the government officials and the employers' representatives. Therefore, the first thing unions must do is replace them with new and fresh union representatives. This can only be done if there are opportunities for involvement of other unions in the Wage Council.' Both the SPN and FSPMI, along with several other unions in Jakarta, formed the *Forum Buruh DKI* (Jakarta Labour Forum) to synergize the unions' efforts to monitor the performance of the Jakarta Wage Council. We shall return to this later.

In some cases, small unions without a large membership can also become members of the Wage Council, by forming a coalition with other small unions. In one case in Surabaya, the SBK (*Serikat Buruh Kerakyatan* – Popular Labour Union), a small independent union in Surabaya city affiliated with the left wing national union KASBI, became a member of the Surabaya Wage

41 Interview with Ramidi of SPN Jakarta, 27 December 2010.
42 Interview with Joko Wahyudi of FSPMI Jakarta, 27 December 2010.

Council through a coalition with several other small unions in the region. This coalition was achieved through an agreement that these small unions would share the positions they received when they had the chance to sit on any tripartite institution in the Surabaya region, not only the Wage Council. Thus, while a SBK representative became a member of the Wage Council, a member of one of the other unions in the coalition became the union representative on the regional tripartite cooperation institution.[43] According to Jamaludin, an SBK leader, his union deliberately chose to join the Wage Council instead of the tripartite cooperation institution because in their view, the former was more strategic than the regional tripartite institution. As he explained, 'The Wage Council is really related to the workers' main issue, that is, minimum wages; whereas the tripartite cooperation institution is merely ceremonial, and its activities are often not directly related to workers' interests.' He also added that the tripartite institution was preferred by some of the other union leaders in the coalition, predominantly the old activists, who saw it as 'more prestigious' as 'they could sit at the same table with the government and employers representatives'. 'For us it is not the prestige we're looking for, but whether we can actually use the available institutions for the workers' benefit. And we think the Wage Council is more useful for now.' Jamaludin argued that such a strategy was beneficial, as many of their activities there could be covered by the media, and it thus became a KASBI strategy to widen their influence in the East Java region.[44]

In another case in Malang, the SPBI, another KASBI affiliate, used a strategy of combining struggles from within and from outside the system, including by joining the Wage Council in 2005 to influence other union members on

43 This is an institution stipulated under Article 107 of Law No. 13/2003 on Manpower. Its stated task is to 'provide considerations, recommendations and opinions to the government and other parties involved in policy making and problem solving concerning labour issues/problems.'

44 Interview with Jamaludin, Surabaya, June 2009. It is interesting to note that in addition to being the SBK official, Jamaludin was previously already active in the FBS (*Forum Buruh Surabaya* – Surabaya Labour Forum), a non-union workers' group founded by Jamaludin and his co-workers at the Kentucky Fried Chicken outlet in central Surabaya. This group's activities in Surabaya, and in East Java in general, were quite remarkable – as the group developed into a political power in Surabaya by becoming a successful advocacy organization for labour issues in the regions. As argued by Ford and Tjandra (2009), regional autonomy in Indonesia has created increasing media interest in local issues, including labour; thereby creating opportunities for groups like FBS – as well as opportunities for individuals like Jamaludin, who emerged as a worker activist with the instinct and skills to be a labour politician, and who used these skills to promote the labour movement cause. Jamaludin took various strategic public relations positions related to the organization of labour, while maintaining positive relations with the press by providing regular updates on labour issues. Through these efforts, Jamaludin was offered opportunities to run as legislative candidate for several political parties, and he became an important figure in the development of the trade union movement in the region. In 2009, he was recruited to work as an expert staff member for a Member of Parliament in the PDI Perjuangan party in the National Parliament, and moved to Jakarta.

the council.[45] According to one SPBI leader, the strategy was useful because the union could obtain direct access to information concerning the process of minimum wage setting in the region, which is not normally publicly available. 'Even if we failed to persuade others to fight for raising the minimum wages, we would let other unions that are not Wage Council members know the problems with the Wage Council, by disclosing anything from the meetings. So the pressures would come from within and from outside the Wage Council,' he explained. This strategy was apparently quite effective, as in October 2005, the Regent of Malang proposed a minimum wage rate for Malang district to the East Java Governor which was even higher than that proposed by Surabaya, forcing the East Java Governor to reduce the rate of the proposal from Malang at his discretion on December 8, 2005.[46] As the SPBI leader noted, 'We were not successful at raising the wages then, but we nonetheless showed that there was a possibility for independent unions to influence from within the Wage Council system.' Similar stories can be found in other districts around industrial areas, in particularly Java, Sumatera, and Sulawesi, where unions from a variety of backgrounds have attempted to use the opportunity of Wage Council membership and influence the councils from within and without.

4.2 Union strategies: targeting the KHL, pressuring the government

As noted earlier, the main task of the Wage Council is to conduct market surveys to help determine the KHL (decent living needs) rate.[47] The law states that the KHL rate should be the basis on which the Wage Council should determine the minimum wage rate, which is then submitted by the councils to the heads of districts, who then recommend this rate to the provincial Governor for final confirmation. Thus, according to many union leaders, the processes of conducting the market surveys, and the determination of KHL within the Wage Council, are vitally important processes which relate directly to the minimum wage that will be set by the Governor. This is the reason that many regional union alliances identify the KHL as the primary target and focus in their struggle to influence the Wage Councils to achieve fair wages. Their request is simple yet strategic: minimum wages should be equal to the (appropriately determined) KHL. This is already required by law, which gives the unions a strong position from which to present their case, improving the likelihood that the request will be successful. In other

45 Interview with Andi Irfan, May 24, 2007.

46 In East Java there was an unwritten rule that the minimum wage in cities/districts in the so-called 'ring one' regions (the districts surrounding Surabaya, the provincial capital), might not exceed the minimum wage in Surabaya as the largest city. Such an act by the Governor was unprecedented, as the Governor would normally accept any minimum wage rates recommended by the Regents/Mayors.

47 Article 1(1) of Minister of Manpower and Transmigration Regulation No. 17/MEN/VIII/2005 on the components of calculation and the stages toward the achievement of KHL.

words, by simply calling for legal enforcement of minimum wages, the unions are managing to open more space for negotiations on wages within the Wage Councils.

Apart from considering the KHL, the process of minimum wage setting is also required to take into account 'productivity' and 'economic development'.[48] In practice, however, as explained by one union leader in Jakarta, 'the dominant tendency within the Wage Council is to refer predominantly to the inflation rates, consumer price index, and similar figures. In other words, data related to economic considerations, rather than the real workers' needs, as the minimum wage is supposed to be all about.' Observations from several regional Wage Councils confirm that council members – from all three membership groups – generally do not see the KHL as important. The employers' and government's representatives seem to see the KHL as merely a formality, and focus mainly on the actual minimum wage rate, by simply considering the relative increase from the previous year's minimum wage rate, rather than heeding the price survey results. Interestingly, most union representatives appear to do likewise; supporting the previously-mentioned union concerns that union representatives on the councils tend to follow the process blindly, without criticism. Interviews with council members reveal how members, particularly the employers' representatives, tend to ignore the market surveys processes partly to avoid visiting the 'muddy and dirty' traditional markets to undertake the survey; or because they are 'too lazy' to follow the detailed steps required to conduct the market surveys.[49]

According to one union representative on the Jakarta Wage Council, the disinterest in the KHL by council representatives from employers' groups and government is actually advantageous for the unions; as it offers the opportunity for the unions to conduct more accurate surveys, which would greatly increase the fairness of the KHL calculations.[50] One explanation that has been offered to account for council members' disinterest in the KHL surveys is that they are confident that the Wage Council would be unlikely to set a KHL that was 'too high' (from the employers' perspective), based on the generally 'harmonious' environment which exists within Wage Councils. This presumption may account for the shock felt by employers when the *Forum Buruh DKI*, in close strategic collaboration with their representatives in the Jakarta Wage Council, managed to obtain a high KHL rate for Jakarta

48 Article 88 (4) of Law No. 13/2003 on Manpower.

49 Interview with Rusmiatun of the FSPMI union, member of the Jakarta Wage Council in August 2010. She also explained that she and her union representatives sometimes encouraged the Wage Council members from the employers' group, who were usually quite old, to wander around the markets before the survey. This resulted in these representatives tiring, and appearing to be even more disinterested in following the survey properly.

50 Interview with Joko Wahyudi of the FSPMI Jakarta branch in August 2010.

in 2010 (the basis for setting the minimum wage in 2011). They achieved this by conducting careful and detailed market surveys, combined with close monitoring of Wage Council meetings and holding a series of demonstration and a workers' strike on 25 November 2010 in Cakung Bonded Zone, North Jakara; the first major strike focused specially on the minimum wage issue since the 1998 reforms.

The case of *Forum Buruh DKI* in Jakarta provides an example of how unions have managed to combine both legal and political strategies, by targeting the KHL as well as conducting mass actions to pressure the Wage Council and the provincial government; resulting in higher than expected minimum wage rates in 2011. Similar strategies were repeated in Jakarta in 2012, in an attempt to improve the minimum wage for 2013. This time, the strategies were intertwined with the consolidation of the trade union movement at the national level, as well as the successful national strike on 3 October 2012 and the changing political landscape following the election of reformed politicians as the new Governor and Vice Governor of Jakarta. We shall return to this in the next subsection.

5 The case of Sukabumi and the KBS

One case study of the political struggle of unions for better wages for their members, and for workers in general, occurred in Sukabumi and involved particularly the efforts of *Koalisi Buruh Sukabumi* (KBS, Sukabumi Labour Coalition), an alliance of unions in Sukabumi Regency. Despite its lack of resources, this coalition used every opportunity available and was successful at raising the monthly minimum wages from Rp 671,500 in 2010 to Rp 1,201,020 in 2013. This effort, representing an increase of almost double in just three years of campaigning, marked the biggest ever increase in West Java province since the implementation of the minimum wage policy. This case is particularly important, as it shows how even a small group of dedicated union activists can play a significant role in achieving progressive change, simply by using all possible political opportunities effectively to gain better wages for their members.

5.1 The background of the case study

Sukabumi has been a well-known region of Indonesia since Dutch colonial times; popular as a leisure and tourist destination with its cool climate and scenery, including mountains, forests and beaches. The climate is well suited to tea plantations and dairy farms, and Sukabumi also boasts one of the largest natural water reserves in Indonesia, making it a strategic destination for bottling water industries. With such a variety of assets, Sukabumi hosts a range of industries, both labour-intensive and capital-intensive; from simple industries run by unskilled workers to those with high-tech pro-

cesses requiring skilled workers. Although Sukabumi Regency had been in place for centuries, in 1955 Sukabumi city was officially formed, developing quickly into a services-oriented city focused on tourism. The regency, the area of which was much bigger than the city (in fact, the vastest district in Java and Bali, with 416,404 hectares and 47 sub-districts), maintained its rural characteristics and industries, which were dominated by plantations, water bottling, and later labour-intensive garment industries which had relocated from other regions.

With such characteristics, the minimum wages in Sukabumi Regency tended to be below those of Sukabumi city, although the two regions had relatively similar conditions regarding their costs of living. The minimum wage rates in Sukabumi were considered far from 'decent', as they were consistently ranked the lowest of all the minimum wages set in West Java province. In 2009-2010, for instance, reports showed that garment workers who had worked for more than 15 years in Sukabumi Regency received wages similar to minimum wages plus *sundulan* (adjustment wages);[51] in total receiving only Rp 1,500,000 per month. Even with the addition of overtime, a worker would receive only around Rp 2,500,000 to Rp 3,000,000 – a very low figure. Similar conditions occurred in Sukabumi's capital-intensive industries as well, including the dairy industry, where workers received relatively higher salaries compared with others in Sukabumi, but still lower than expected, particularly when taking into account their large production output.

5.2 The struggle

The vision and strategy of a 'united front', to assist their struggle for better wages, had been discussed among Sukabumi union activists for years. The idea tended to be dismissed by the conservative unions that existed in Sukabumi at the time, characterised by the strong influence of the legacy unions, notably the SPSI.[52] 'They [the legacy unions] have dominated the Wage Council for many years, and the council always recommended low KHL (decent living needs) rates, which would determine the low minimum wages set in the regency,' explained Dadeng Nazarudin,[53] an apparently-dissident member of the SPSI, and also a member of the Sukabumi regency Wage Council. Nazarudin's main concerns were related to a particular minimum wage practice, which involved a bias for some industries over others, with workers in more capital-intensive industries, such as the water-bottling company, receiving much higher salaries than those in labour-intensive industries, due to the much higher than normal variation between sectoral

51 *Upah sundulan* are wages that have been adjusted based on the length of work in one company and the percentage of the adjustment is normally based on the percentage of increase of the minimum wages set in the year.

52 For more discussion about legacy unions and the SPSI see Chapter 4 of this dissertation.

53 Interview with Dadang Nazarudin, Sukabumi in December 2009.

minimum wages for the different sectors in the region (see table 5.3: Minimum wages and sectoral minimum wages in Sukabumi Regency – 2010).

To illustrate the magnitude of the differences between minimum wages by sector: there were at least 12 sectoral minimum wages in Sukabumi Regency in 2010. The unions and the employers' representatives from each sector had negotiated these wages. The negotiations were held separately from the negotiations for the general minimum wage; in many cases without equal bargaining positions among the union representatives, due to the particular characteristics of their sectors. Some higher-level sectors, such as tobacco, food and beverages, might get higher sectoral minimum wages; as they were better represented on the Wage Council because their large employee numbers in Sukabumi allowed them to have more than one representative on the Wage Council. Several other sectors had no representatives on the council at all; despite the fact that some of their workforces, such as in the garment industry sector, had been expanding rapidly in recent years. With regard to the garment industry in particular, 'It is predominantly for this sector that we need to reform our minimum wage setting mechanism,' argued Dadeng Nazarudin. Nazarudin himself previously worked for *Dua Tang Group*, a well-known food and beverages company in Indonesia, whose workers' salaries were higher that other sectors.

Table 5.3: Minimum wages and sectoral minimum wages in Sukabumi Regency (2010)

General minimum wages	**Rp 671,500,-**
Sectoral minimum wages:	
1. Plantation and cattle breeding	Rp 672,500,-
2. Hotel and other business	Rp 672,000,-
3. Textile, Garment, shoes industry, elektronic industry	Rp 675,000,-
4. Poultry farm	Rp 770,000,-
5. Mining and digging	Rp 825,000,-
6. Transport for oil and gas	Rp 950,000,-
7. Machineries and Metal	Rp 780,000,-
8. Wood	Rp 672,250,-
9. Pharmacy and cosmetics	Rp 674,500,-
10. Dairy industry, Supplement/Isotonic and Ice Cream	Rp 1,015,500,-
11. Bottled water industry ('non-makloon')	Rp 962,500,-
12. Bottled water industry ('makloon')	Rp 842,500,-

As further explained by other KBS activists, the problem of resolving such disparate sectoral minimum wages was complicated by the fact that most workers in Sukabumi Regency were not unionized, and those who were, tended to have no access, in practice, to policy making decisions such as minimum wage setting, due to the ineffectiveness and corruption of union

officials. 'It is common in Sukabumi that union officials are in fact offering to "guarantee" that their members will not demand higher salaries other than minimum wages, with the expectation [in return for this guarantee] of receiving some money from the employers,' said Ade Rukmana, another KBS activist, who worked for the largest water-bottling company in the country, *Danone-Aqua*, whose main processing factory is in Sukabumi. When asked about the motivations behind his decision to leading the KBS and effect change, Nazarudin explained: 'It may not be in our direct interest to struggle for better wages in Sukabumi Regency, as we are coming from relatively higher level industries, but if we don't do this, who else will?' The KBS was eventually established after a workshop in December 2010; we will return to this later.

Nazarudin also argued that Sukabumi had become one of the most popular destinations for factories relocating from other regions, particularly Tangerang (Banten province), where minimum wages were much higher compared with Sukabumi. The KBS claimed that Sukabumi's wages policies were leading to significant increases in the numbers of lower level manufacturing industries in the region, including garment manufacturing industries moving from Tangerang to Sukabumi; and that these industries' workers were not being protected by those supposed to protect them. 'We could see with our own eyes on the streets that there have been increasing numbers of new factories in the regency, mostly labour-intensive industries. The problem is that their workers receive very low salaries compared to those who work in the city,' said Nazarudin. 'It is not fair, as we who work in the regency with lower wages are actually the ones who are supporting the city, as we always shop in the city. What we want is simply a more balanced situation.'

Table 5.4: Minimum wage in Sukabumi Regency and Sukabumi city (2009-2013)

Year	Sukabumi Regency	Sukabumi city	Difference
2009	Rp 632.500,-	Rp 770,000,-	Rp 137,500,-
2010	Rp 671.500,-	Rp 850,000,-	Rp 178,500,-
2011	Rp 850,000,-	Rp 860,000,-	Rp 10,000,-
2012	Rp 885,000,-	Rp 890,000,-	Rp 5,000,-
2013	Rp 1,201,020,-	Rp 1,050,000,-	Rp 151,020,-

As explained by KBS activists, their actions to improve the situation began by gathering together all existing unions in Sukabumi Regency, to discuss the issue and obtain a commitment to take action. The first meeting was held on 19-21 December 2009, facilitated by the Trade Union Rights Centre (see Chapter 4 of this dissertation). At the meeting, all participants agreed with the establishment of KBS, to serve as an informal vehicle for unions in Sukabumi Regency to struggle for better wages. KBS activists then approached the regent on 24 April 2010, requesting an official declaration of the KBS's

official acknowledgement as mass organization. Coincidentally, a regional election for the regent was looming in early 2011, and the incumbent Regent, Mr Sukmawijaya, aimed for re-election; which may have influenced his willingness to support the workers' demands. As explained by Nazarudin, with agreement from other activists: 'We have a bargain too, as we do not get any money from the Regent. Our demand was simply that he would give workers better salaries'.[54]

The KBS used this political opportunity effectively, and negotiated for the Regent to sign a 'political contract' with the KBS. This included an agreement to set minimum wages at equal to the KHL from the price survey conducted by the Wage Council. Although this was already required legally, in practice the Regent had always previously recommended minimum wages that were lower. The Regent's new agreement and declaration were high profile events that were covered by some local media, assisting the KBS as it continued its struggle to raise minimum wages. 'We could not simply depend on the Regent's approval; we still had to do so many other actions to realize our demands,' explained Dadeng. Their next actions were to organize a public rally on the occasion of International Labour Day, 4 May 2010, combined with audiences with the Regent, the Head of the Manpower Office of the Regentcy and members of the regional parliament. Again, the aims of these activities were to raise public and official awareness and focus attention on the issue of fair minimum wages. At the same time, the KBS formed an advocacy team on wages, whose first act was to conduct an alternative, independent and academically rigorous price survey, to challenge the official price survey conducted by Wage Council members. 'Our price survey was methodologically and academically valid, as we worked together with the Labour Law Study Centre at the University of Pasundan in Bandung, the capital of West Java province; and with a research NGO in Bandung as well,' argued Dadeng.[55] 'As an example [of improvements to the survey – author] we conducted the survey four times in the middle of the month, not at the beginning of the month [when prices tend to be at their highest – author] or the end of the month [when prices tended to be lowest – author]'. Dadeng also explained that the traditional markets chosen for surveys were selected because they were known as markets where workers in Sukabumi Regency were actually going to buy goods for their daily needs: Cicurug, Cibadak, Pangleserandan, and Pelabuhan Ratu. These were also markets near to where most industries were located. The survey results were brought to the Regional Parliament on 13 July 2010, with a request to carefully monitor the minimum wage setting process. As explained by Nazarudin, KBS's

54 Focus Group Discussion with KBS activists, 19 December 2009.

55 KBS activists considered the involvement of independent academics to be very important, as it would give objectivity and rigor to the survey they conducted. It was important that the public saw that the survey was objective and accurate, rather than just being perceived as merely workers' demands without a sound basis.

approach to the regional parliament was also an effort to gain support from other political powers, in addition to the support from the Regent.

The KBS's lobbying strategy outlined above was combined with efforts to influence the minimum wage setting through direct involvement with this Wage Council. Dadeng Nazarudin himself was already a member of the Wage Council. He was also Chairman of the SPSI RTMM (tobacco, food and beverages union), Sukabumi branch; the largest sector union in Sukabumi Regency. With his influence, Nazarudin initiated changes in the Wage Council, including opening council positions to people from unions that were not yet members, such as from the garment sector unions. 'So we could have a stronger position when negotiating within the Wage Council,' Nazarudin explained. Nazarudin enabled these new union members to join the council through a series of careful steps. First, he withdrew himself and all other representatives from his union from the Wage Council. This move caused all negotiations within the Wage Council to deadlock, as the Wage Council's rules of conduct included the rule that if a quorum of members was not available, the meeting must be halted. In response, the government approached the union and requested the union to fill the abandoned seats, so that Wage Council negotiations could continue. Nazarudin and the KBS used this opportunity to suggest some changes to the Wage Council, including that the Wage Council should include industry sectors other than those already represented; in particular, they recommended inclusion of representatives from the garment and textile industry. These recommendations were adopted, allowing several new members to join the Wage Council.

The involvement of the KBS in these Wage Council changes was immediately resisted by Apindo and also by some other labour union members of the Wage Council. The Apindo members on the Wage Council refused to sign the results of the surveys which had been conducted with close monitoring by the KBS from both inside and outside the Wage Council. The employers' representatives on the Council also refused to negotiate on the sectoral minimum wages; an activity which usually occurrs after the minimum wage is set. The Wage Council negotiations became deadlocked again, with employers insisting that the new minimum wage for 2011 should only be Rp 730,000, (a 7 percent increase from the previous year), while the unions sought for it to be Rp 925,723,- based on the results of the KHL survey. As no agreement could be reached within the Wage Council, the Regent stepped in and recommended a rate of Rp 850.000. This recommendation was put to the Governor of West Java and was set as the new minimum wage for Sukabumi Regency in 2011. This rate, which was only Rp 10,000 lower than the rate for Sukabumi city, represented a wage increase of up to 26.6 percent – the highest rise in the country for that year – and was a long-awaited leap in wages for many workers.

Employers, however, continued to resist the changes, leading to a prolonging of negotiations over sectoral minimum wages. As well, the increase in the nominal minimum wage in Sukabumi Regency resulted in several applications by employers to postpone payment of minimum wages. By some reports (see *Antarasumbar.com*, 10 December 2010), 40 companies filed to postpone the implementation of the new minimum wage in their factories – although one Manpower Office official reported that the office actually only received three applications.[56] This indicates that the new minimum wages were largely accepted. This was considered a significant victory for many workers in the region, and in response, the union movement relaxed its efforts during the subsequent year, allowing the minimum wage rate to be increased by only Rp 5,000 (from Rp 880,000 to Rp 885,000) in 2012; which widened the gap between this rate and the minimum wage in Sukabumi city. Nazarudin justified this relaxation of effort in the following way: 'We decided to slow down a bit of our movement, as all parties should adapt themselves to the new arrangements concerning minimum wages, but we will continue to struggle in 2012 [for the minimum wage in 2013].'

As promised, the KBS did redouble their efforts in 2012. They faced some challenges. Membership of Wage Councils is reviewed annually, and the KBS lost some of their supporters from the previous years' council, as many of those who had been supported by KBS were not nominated as council representatives by their own unions this year. Dadeng Nazarudin had also left his position as the branch leader of his union, losing his direct influence over the appointments of union representatives to the Wage Council. Nazarudin chose instead to work from the outside. 'The strategy involved particularly the close monitoring of the surveys conducted by the members of the Wage Council.' Nazarudin explained. 'We joined them [Wage Council members] in any surveys conducted, using our own money, and recorded anything relevant found in the survey, particularly the actual value of the KHL components [essential items and services] that were surveyed.'

Based on the 2012 surveys, closely monitored by KBS activists, the Wage Council initially found the new KHL rate to be Rp 1,434,353,-[57] However, the Wage Council soon reduced this figure, recommending instead Rp 1,035,000,- . This new amount was suspiciously similar to that obtained through the surveys undertaken by the Wage Council in Sukabumi city – which had not been independently monitored by anyone. The Sukabumi Regency Wage Council arrived at their new lower figure by reducing the renting room cost component of their calculations, and by deleting the electrical and water cost components entirely. Concerned about these actions, the KBS immediately met with the Regent, who had previously supported the KBS's requests, and

56 Personal communication with Aam Ammar Halim of the Manpower District Office of Sukabumi regent, 10 December 2010.

57 Interview with Dadeng Nazarudin and KBS activists on 27 November 2012.

explained their own findings to him. The Regent reviewed the results again, and initially arrived at a new figure of Rp 1,377,331,-. Soon after, the Regent decided to continue to refer to the Wage Council's revised recommended figure, but to this he added additional figures to account for the components that had been reduced or excluded. He increased the renting room figure to Rp 320,000,- (the Wage Council had reduced this to Rp 220,000,-), and added back in the electrical and water components, to arrive at a new recommended minimum wage rate of Rp 1,201,020,-. This figure was accepted by the Governor of West Java and set as the new minimum wage for Sukabumi Regency for 2013 (*detikfinance.com*, November 2012). The new minimum wage of Sukabumi Regency now exceeded, quite significantly the rate in Sukabumi City (which was Rp 151,020,-), and represented a success for KBS and workers of similar magnitude to the success in 2010.

It is interesting to note that KBS's actions in this case study did not include mass actions, but focused primarily on developing a close relationship with Regent Sukmawijaya. According to some critics, the KBS's reliance on this relationship suggests that despite their success with respect to increasing minimum wage in the region, their real contribution to the development of the labour movement in the region is questionable.[58] Nazarudin's involvement with the KBS, in particular, raised tensions among SPSI leaders in Sukabumi Regency, who accused him of aiming to popularize his own name among workers and use his close relationship with the Regent for his own personal political interests.[59] Nevertheless, the Sukabumi case clearly demonstrates how union activists in Indonesia have been able to use a combination of legal and political actions to achieve fairer wages for their members. The case highlights the capacity for a small group of union activists, operating in a small regional area, to achieve great benefits for their members. The case of Jakarta in the following section will provide a very different set of insights, as it will reveal the dynamics operating in a much larger region, and one which is also much closer to the central government.

6 The case of Jakarta and the national government response

The laws and regulations on minimum wage setting stipulate that the authority to set minimum wages is in the hands of provincial governors, whose duty it is to decide the minimum wages in all regencies and cities in

58 Personal communication with Mohamad Popon, SPSI TSK Sukabumi Regency branch official, in August 2011.

59 When Dadeng Nazarudin finished his term as the chairman of the SPSI RTMM branch in 2012, he decided also to quit from the SPSI, and to focus on his work with the KBS. Although the KBS has maintained its activities, more recently Dadeng has joined the GSBI union, and prepared himself to run for regional legislative in 2014 election. He failed in the effort.

their province. In practice however, minimum wages are also a key interest of the national government, especially the economic ministries – in particular the Ministry of Manpower, whose main duties include providing implementing regulations on minimum wages. Thus, although minimum wages are set in the regions, the central government sometimes needs to intervene; especially when extraordinary events occur, as the case of Jakarta described below will show.

The struggles of Jakarta workers and their representative group, (the *Forum Buruh DKI* or Jakarta Labour Forum), occurred against the backdrop of struggles at the national level, through the MPBI (*Majelis Pekerja Buruh Indonesia*, the Council of the Indonesian Labour. These struggles included the MPBI's organization of Indonesia's first ever general strike, on 3 October 2012 under the banner of 'HOSTUM' (*hapuskan outsourcing tolak upah murah*, abolish outsourcing and reject low wages) (see also Chapter 4). The strike attracted around two million workers from at least 14 industrial cities across Indonesia, highlighting the success of national-level efforts. This was the first time in Indonesia that national union confederations had successfully united in a single action for the interests of their members, as well as for workers in general in Indonesia. The national government responded reluctantly to these efforts, but could not deny the urgency of reviewing all minimum wages set in the past few years. There appeared to be an agreement among the relevant national authorities, including the Coordinating Ministry of the Economy, the Ministry of Industry, and the Ministry of Manpower, that a significant increase in wages was needed for formal workers, through the vehicle of minimum wage setting.

Soon after the general strike, the national government announced the release of a new regulation to facilitate wage increases, namely Minister of Manpower and Transmigration Decree No. 13/2012 (back-dated to 10 July 2012). This new regulation kept many aspects of the old system, but revised and added to the list of KHL components (items and services essential for living) required to be considered in the calculations, specifically the components numbered from 46 to 60. The employers responded as expected, by threatening to file a judicial review against the new regulation even before it had been realized. Theunions accepted the regulation, albeit with reservations – in particular, they pointed out that despite the increase in survey components, in practice the total value to workers would not improve markedly. In their opinion, many of the newly-added components were not essential to most workers (they cited deodorant as an example); and they were concerned that the value of some other, more essential components had been reduced – for example the fuel component had been changed from kerosene to gas. The price of gas is much lower; yet kerosene is widely relied upon by

Indonesian workers.[60] Nonetheless, the unions recognized that this initiative demonstrated some level of central government effort to appease the labour demands for fairer wages.

On 2 November 2012, by his own initiative, the Minister of Manpower Muhaimin Iskandar brought together the three governors of the most industrialized provinces in Indonesia: the Governor of Jakarta, Joko Widodo; the Governor of Banten, Ratu Atut Chosiyah; and the Governor of West Java, Ahmad Heryawan. Together they agreed on several issues in relation to the setting of minimum wages in their three provinces (*Tribunenews.com*, 2 November 2012). The Minister of Manpower fronted a news conference in his Jakarta office to declare: 'Before the setting [of minimum wage] through the Governors' decrees, we will continue to do the coordination. Today is the first coordination, and we agree to continue to monitor the talks on the Wage Councils.' The Minister also stated that the governors had agreed that apart from the KHL survey, they would also consider other key factors in minimum wage setting, and that the results of these considerations would be coordinated between the governors and factored into their decisions. This strong claim by the Minister was later revealed not to have been taken seriously by the governors, who disregarded it and made their own decisions without coordinating with each other.

In 2013, minimum wages in Jakarta increased significantly, as did those in the surrounding industrial regions including Bekasi, Karawang and Cikarang in West Java, and Tangerang and South Tangerang in Banten. The newly-elected Governor of Jakarta, Joko Widodo, decided that the minimum wage for Jakarta would increase from Rp 1,529,000 to Rp 2,200,000, representing a 43.87 percent increase in just one year (see table 5.6; *Detikfinance.com*, 2 December 2012). Following this move, the Governor of West Java, Ahmad Heryawan, decided on similarly significant increases to minimum wages in Bekasi, Karawang, Cikarang, Depok, Bogor and Sukabumi; in agreement with the recommendations submitted by the Wage Councils in those regions. The Governor of Banten, Ratu Atut, followed suit with a significant increase in minimum wages in Serang, Tangerang and Tangerang Selatan. It is important to note that in all these regions, the union movement was already relatively strong. Similar increases in minimum wages did not occur in other regions, where there was no strong union movement. It is also notable that the Wage Councils in those regions, with active union involvement, had recommended each of these significant increases in minimum wages in 2013 and the Governors were simply abiding by the recommendations that had been discussed and decided within the Wage Councils.

60 As kerosene is no longer subsidized by the government, it has become even more expensive than subsidized fuel gas.

In response to the increase in provincial minimum wages in Jakarta, Indonesia's President Susilo Bambang Yudhoyono appeared to criticize Joko Widodo at the National Congress of Apindo (Indonesian Employers Association) on 8 April 2013; commenting that minimum wages should not be exploited for political purposes to the extent that it becomes a populist issue. One day later at the same forum, the Coordinating Minister for the Economy, Hatta Rajasa, made a similar statement. Both argued that the setting of minimum wages should involve a consideration of economic factors but not politics; with the implication that politics had influenced Widodo.

The case of Jakarta's wage struggles is in many ways unique. The trade unions were strongly active in the Wage Council, as well as successfully targeting the KHL. They also organised mass actions to pressure the Jakarta provincial government; including the successful national strike action on 3 October 2012. In addition, it must be acknowledged that the new leadership duo in Jakarta at this time[61] – especially the Vice-Governor Basuki Tjahaja Purnama – played a significant role in the wage increases. The Vice-Governor appeared sympathetic to the workers' calls for more decent wages, especially their request to ensure that minimum wages should not be less than the KHL. Indeed, Jakarta provided a significant breakthrough in minimum wage setting mechanisms, through processes that are interesting to consider. The Vice-Governor personally led the Jakarta Wage Council's final meeting of the year in 2012, instead of the usual chair, the Head of the Department of Labour and *ex officio* Head of the Wage Council. The purpose of this final meeting was to determine the KHL figure that would be recommended to the governor. Under the direct leadership of the Vice-Governor, the Jakarta Wage Council implemented a new regression system to calculate the value of KHL, which became the basis of the new minimum wage.

The new regression system required that the KHL value during the remaining months of the current year (since the last survey; in this case in October 2012) should be taken into account when calculating the new KHL value. Following these calculations, a KHL value of Rp 1,979,789,- was obtained. For the first time ever in Jakarta, and indeed in Indonesia, projections of future 'decent living needs' for the following year were also taken into account when recommending the next year's minimum wages (in this case, projec-

61 Joko Widodo and Basuki Tjahaja Purnama represent a new bind of reformist politicians in Indonesia today. Widodo used to be the Mayor of Surakarta in Centra Java, he is well-known for his humble and clean reputation so that several international media called him 'Jakarta's Obama' (*BBC News*, 23 January 2013). Purnama, the first Indonesian of Chinese descent to become Vice-Governor in Indonesia ever, was the Regent of Belitung Timur before he became member of parliament for Golkar, well-known because of his motto 'bersih, transparan, profesional' – from the acronym of his own name 'BTP', meaning: 'clean, transparent, professional'. He consistently lives up to this slogan, among others by disclosing his salaries and other benefits as public official to public, an extraordinary act in the current Indonesian political culture.

tions of needs from January to December 2013). With the inclusion of these new considerations, it was determined that the minimum wage would be set at Rp 2,216,000,- or 112 percent of the KHL. When this recommendation was agreed to by the majority of council members, the representatives from the employers' association, Apindo, walked out – even though they had been actively involved in all phases of the price surveys conducted since early 2012. However, the Head of the Provincial Manpower Department decided that Apindo's absence did not invalidate the Wage Council's recommendation, because the council still retained a quorum.

Following this decision, Governor Joko Widodo ruled that the provincial minimum wage for Jakarta in 2013 would be set at Rp 2,200,000; which was a reduction of Rp 16,000 from the KHL recommended by the Wage Council. The employers in Apindo, who considered it to be too high, immediately questioned this figure. Workers, on the other hand, considered the increase of 43.87 percent from the previous year as simply a long awaited and much needed closing of the gap between the minimum wage and the KHL (see table 5.5 and table 5.6), given that minimum wages in Jakarta had always been significantly below the KHL figures.

In response to the new figures, the areas surrounding Jakarta set their minimum wages at roughly equal rates: Rp 2,042,000 in Depok; Rp 2,002,000 in Bekasi and Bogor; Rp 2,200,000 in Tangerang (equal to Jakarta); and Rp 2,202,000 in South Tangerang (slightly higher than Jakarta). The same did not happen, however, in Central Java. In Semarang, the capital of Central Java province, the minimum wage was set at Rp 1,209,000; only slightly more than half the Jakarta minimum wage. Apindo claimed that this situation has led to the departure of 90 companies from Jakarta to Central Java (*Liputan6.com*, 18 March 2013); although unions have questioned this claim.[62] If Central Java is indeed becoming a new hub for industry, from the unions' point of view this opens up a whole new arena of struggle, with the workers of Central Java now in need of help to raise their wages.[63]

Table 5.5: KHL and Minimum Wage in Jakarta (2001-2010)

	2001	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**
KHL	426,000	519,931	699,710	746,749	759,953	831,336	991,988	1,055,276	1,314,059	1,317,710
UMP	426,250	591,266	631,554	671,550	771,843	819,100	900,560	972,605	1,069,865	1,118,009
% UMP thd KHL	100.06%	113.72%	90.26%	89.93%	101.56%	98.53%	90.78%	92.17%	81.42%	84.84%

62 It was difficult to confirm this claim, as at the time of writing, there was no data available. Reports from union activists based in the Cakung Bonded Zone in North Jakarta, where most of Jakarta's labour intensive companies are located, did not support the claims; the union members stated that in fact no factories were moving from their zone.

63 Interview with Obon Tabroni, FSPMI union leader, in Bekasi in August 2012.

Table 5.6: KHL and Minimum Wage in Jakarta (2009-2013)

	2009	2010	2011	2012	2013
KHL	1,314,059	1,317,710	1,401,829	1,497,838	1,979,789
% KHL increase		0.28%	6.38%	6.84%	32.17%
UMP(Provincial minimum wage)	1,069,865	1,118,009	1.290.000	1,529,150	2,200,000
%UMP increase		4.50%	15.38%	18.53%	43.87%
%UMPtoKHL	81.42%	84.84%	92.02%	102.09%	111.12%

As discussed earlier, under Indonesia's regional autonomy regime, the regional governors, on the recommendation of the district heads, set minimum wages. As a result, the minimum wage will differ from district to district, often influenced heavily by location-specific social, economic, political and ideological variables. As an example of this, areas with relatively strong labour movements tend to have higher minimum wages; while areas with weak labour movements tend to have correspondingly lower minimum wages. The minimum wage is often also influenced by local politics. Political maneuverings in the lead up to local elections can result in relatively substantial minimum wage increases, such as the aforementioned increase in Sukabumi in 2011. However, the atmosphere ahead of local elections can also have the opposite effect, as happened in West Java in 2012. The Governor of West Java, despite the absence of any high minimum wage increase in the region, chose to grant a suspension of the minimum wage to hundreds of companies prior to the elections; just one more example of how political the setting of minimum wages can be.

As mentioned at the beginning of this chapter, it is not the intention of the author to entirely reject economic models as a means of analyzing and understanding minimum wage policy. Rather, this chapter aims to highlight the importance of political science research, as an analytical tool to balance the economic approach when looking at wage policy. Understanding the way in which government policy is formed is important for a better understanding of minimum wage issues. Government policy is nothing if not a response to the political dynamics of the various forces that exist in society and between its players. For now, workers have a bit of wind in their sails; at least, the workers in Jakarta and surrounding industrial areas. Change has not, however, arrived in all regions. The central government still has an important role to play in establishing a more equitable balance of wages across the country; and this has yet to happen.

7 Discussion

When minimum wage policies were first becoming established – largely in the developed world – at the beginning of the 20th century, the dominant argument among scholars and policy makers was that an appropri-

ate minimum wage would produce strong benefits for society; particularly with regard to efficiency gains. One prominent figure in industrial relations research, Sidney Webb, argued that a minimum wage would have the beneficial effect of increasing overall economic activity by increasing productivity (see Webb, 1912; also Palley, 1998). Webb believed that employers would not want to pay higher wages unless they could be assured that they would achieve greater return for their new cost, and since minimum wages were fixed by law and imposed on all employers, they could also be protected from dishonest and disloyal competitors (Webb, 1912: 975-6). Similarly, workers would have an added incentive to become more productive, so that they would be in a position to command higher wage rates, by stimulating 'the invention and adoption of new processes of manufacture' (Webb, 1912: 982). Only a few efficient industries and workers could profit from the absence of a mandatory wage floor. The idea behind such a consensus was related to the broader theory of the state's social obligations to its people, to provide prosperity through, for example, full employment. Webb believed that all government policies should be directed toward this effort.

Since the 1970s, however, there has been a shift in the policies of many governments, from full-employment policies toward anti-inflationary policies; particularly by pursuing a low-wage strategy. As argued by Thomas Palley (1998), in the case of the United States, the political dominance of business and the intellectual dominance of laissez-faire ideology have meant that the economic policy of the United States' government has consistently favoured business at the expense of labour. Economists have played an important role in this, by convincing the government that the market should be freed from government intervention, and that under the economic model of competitive markets, unemployment is caused in part by high and rigid wages. Under this ideology, since unions and minimum wage policy serve to raise wages, they are both seen as forces that drive up unemployment (Palley, 1998: 19-21). With the domination of the United States in the world's economy, and its political influence on international financial institutions including the International Monetary Fund and the World Bank, such policies and ideologies have also been brought to the many countries that are required to work with the United States through loans and financial assistance (Palley, 2004).[64]

As a striking example of the United States' potential influence on minimum wage policy in other countries, since 2003 the World Bank's private sector wing – the International Finance Corporation (ICF) – has published an annu-

64 This was done particularly through the so-called 'Washington Consensus,' consisting of a set of relatively specific economic policy prescriptions which together constituted the 'standard' reform package promoted for crisis-wracked developing countries by institutions based in Washington, D.C., such as the International Monetary Fund (IMF), the World Bank, and the US Treasury Department (see John Williamson, 1989, who coined the term).

al ranking of countries based on their 'ease of doing business' [with the United States]. The IFC also ranks each country for its 'difficulty of hiring,' by measuring: '(i) whether fixed-term contracts are prohibited for permanent tasks; (ii) the maximum cumulative duration of fixed-term contracts; and (iii) the ratio of the minimum wage for a trainee or first-time employee to the average value added per worker.' The score is between 1 and 0, with a score of 1 representing the most 'difficult' countries, and a score of 0 representing the most 'easy' countries with which to do business. In the explanation for its methodology, the IFC report says[65]:

> [A] score of 1 is assigned if the ratio of the minimum wage to the average value added per worker is 0.75 or more; 0.67 for a ratio of 0.50 or more but less than 0.75; 0.33 for a ratio of 0.25 or more but less than 0.50; and 0 for a ratio of less than 0.25. A score of 0 is also assigned if the minimum wage is set by a collective bargaining agreement that applies to less than half the manufacturing sector or does not apply to firms not party to it, or if the minimum wage is set by law but does not apply to workers who are in their apprentice period. A ratio of 0.251 (and therefore a score of 0.33) is automatically assigned in 4 cases: if there is no minimum wage; if the law provides a regulatory mechanism for the minimum wage that is not enforced in practice; if there is no minimum wage set by law but there is a wage amount that is customarily used as a minimum; or if there is no minimum wage set by law in the private sector but there is one in the public sector.

Under this definition, in the view of the IFC and the World Bank, the less a state is involved with or regulates how wages are set, the better. In fact, the non-existence of a minimum wage, and/or the moderation of the minimum wage and its setting, are considered the 'best' from the IFC's and the World Bank's perspective. The best policy, according to this ranking system, is to leave wage setting entirely to supply and demand and, maybe, to collective bargaining, without any recourse to legislation or other regulatory measures to establish a minimum wage. As noted by Berg and Kucera (2008: 1): 'The belief [of the *Doing Business* publication] is that onerous regulations concerning hiring workers on temporary contracts, paying large amounts of severance on dismissal, restrictive working hours and too high payroll taxes have hampered investment and stalled job growth, causing the poor to suffer more than they already do.' The blame is placed squarely on the rigidity of labour markets, and in particular on the setting of minimum wages by the state rather than the market; and deregulation is seen as an answer. This is typical of the 'neo-liberal' view of macro-economic policy, whereby the focus is primarily on engendering price stability by controlling inflation, while allowing market-driven 'supply-side factors' to determine real wages and employment.

65 See http://www.doingbusiness.org/methodology/employing-workers (in September 2013).

It has been argued that such a neo-liberal approach to policy making has had a negative impact on the balance of the global wage share and growth rates during the neo-liberal era of the post-1980s. The ILO's *Global Wage Report* 2012-2013 (2012) shows the dramatic decline in the share of wages in GDP in both the developed and developing world, accompanied by lower growth rates at the global level as well as in many individual countries. A simultaneous increase in the profit share by 1% point in the major developed and developing countries has led to a 0.36% decline in global GDP (ILO, 2012). In a report submitted to the International Labour Office, Onaran and Galanis (2012) show the vicious cycle generated by the decades long 'race to the bottom', with the global multiplier effects of a simultaneous decline in the wage share leading to a decline in global growth.[66] According to Onaran and Galanis (2012), the main caveat of this neo-liberal view is to treat wages merely as a cost item, but not its impact on demand. As noted by Onaran (2013) in explaining their research:

> We estimate the effect of a change in income distribution on aggregate demand (i.e. on consumption, investment, and net exports) in the G20 countries. Consumption is a function of wage and profit income, and is expected to decrease when the wage share decreases, since the marginal propensity to consume out of capital income is lower than that out of wage income. Investment is estimated as a function of the profit share as well as demand, and a higher profitability is expected to stimulate investment for a given level of aggregate demand. Finally, exports and imports are estimated as functions of relative prices, which in turn are functions of nominal unit labour costs, which are by definition closely related to the wage share. The total effect of the decrease in the wage share on aggregate demand depends on the relative size of the reactions of consumption, investment and net exports. If the total effect is negative, the demand regime is called wage-led; otherwise the regime is profit-led. Mainstream economic policy assumes that economies are always profit-led, whereas in the post-Keynesian models the relationship between the wage share and demand is an empirical matter, and depends on the structural characteristics of the economy.

Mainstream, United States-led economics continue to guide policy towards further wage moderation, along with austerity, as one of the major responses to the Great Recession. This is the 'vicious cycle' generated by the decades-long race to the bottom, whereby the main caveat of this common wisdom is to treat wages merely as a cost item (Onaran, 2013). Nonetheless, the alternative view maintains that, in the real world, there are indeed institutional rigidities, as well as social norms and conventions, which make the labour market different from the market for goods (see Berg and Kucera, 2008). As noted by Dhanani et al. (2009: 1): 'In such an institutional context, a short-run trade-off between inflation and unemployment is the norm rather than the exception. A preoccupation with controlling inflation is thus counterpro-

66 Onaran and Galanis (2012) analyze the interactions among different economies in the G20, and calculate the global multiplier effects of a simultaneous decline in the wage share in Germany, France, Italy, UK, US, Japan, Turkey, Korea, Canada, Australia, Argentina, Mexico, China, India, and South Africa.

ductive.' Indeed, a judiciously set minimum wage can make a contribution to meeting social goals, without much distortion of employment patterns. This is described as the 'new Keynesian' view of macro-economic policy. According to this new view, wages have a dual role; affecting not just costs but also demands. They represent a cost of production for employers, and they are a primary source of income for wage employees and their families. In other words, wages are both a cost of production and an essential source of effective demand, i.e., they represent needs or desires backed with purchasing power.

This discussion shows that minimum wages, including their setting and practices, cannot be seen merely through the single lens of neo-liberal economic theory. Instead, minimum wages are also – if not predominantly – about political policy choices, based on the ideologies and interests of those who make the policies and regulations at particular times, and in particular places. As we have seen in the discussion above, in Indonesia the minimum wage has become a highly contentious political issue. Although Indonesia has adopted one of the most sophisticated systems of minimum wage setting in the Asian region since the early 1970s, surviving both the authoritarian New Order regime and now the *Reformasi*, the system still has problems; due to the lack of full implementation; and the system's failures to protect the living standards of low wage workers. Instead of providing a floor for the most vulnerable workers in the informal economy, the minimum wage in Indonesia has become the effective wage for workers in the formal modern private sector, with much less influence in the informal sector. As well, the minimum wage setting processes within the Wage Councils have tended to become the forum for collective bargaining on wages between unions and the employers, facilitated by the government; which also highlights the failures of employers and organized workers to develop effective collective bargaining mechanisms at workplaces.

This situation with respect to minimum wages in Indonesia is typical of what the theorist Saget refers to as a 'maxi minimum wage' situation (Saget, 2008). According to Saget (2008), a considerable number of countries worldwide set minimum wages at levels that seem to be either far too low, or far too high, to be considered reasonable. Using data from more than 130 countries, including industrialized, developing and transitional countries, Saget identified anomalies in some countries to the effect that their minimum wages are so low in the wage structure that the minimum wage is not a significant constraint for enterprises (the so-called 'mini minimum wage'). On the other hand, in some other countries the minimum wage appears to be very high in the wage distribution – to the point that it is in fact too high to be considered a genuine minimum wage (and is referred to by Saget [2008] as a 'maxi minimum wage'). Saget (2008) considers Indonesia to be among the latter countries, which she claims are characterised by poorly developed collective bargaining. As Saget notes (2008: 26): 'if minimum wage consultations are

the only forum where trade unions can make their demands known, there is a danger that the resulting minimum wage is not a genuine threshold, but rather the actual wage earned by most formal workers.'

The *Reformasi* era in Indonesia has made it possible for unions to be more involved in the minimum wage setting processes, and now at least provides unions with a chance to practice collective bargaining and develop their capacity, with the facilitation of the state. Moreover, there is a growing understanding among union leaders that minimum wage setting, particularly through the Wage Councils, is largely a political process, and thus should be responded to politically; through the organization of their collective powers. Such an understanding is beneficial in the current situation in Indonesia, as it provides both insights and opportunities for Indonesian unions to analyse the problems they are facing and identify their positions; providing further evidence for the the proposition in this study that labour law is part of a historical process and the outcome of struggle between different social groups and of competing ideologies. In the longer term, however, Indonesia's unions should understand that the minimum wage must also be combined with other considerations, to ensure it remains reasonable and avoids the problems typical of 'maxi minimum wage countries', such as widespread non-compliance and under-developed collective bargaining. This is a challenge Indonesia needs to tackle, and it requires positive contributions from all parties in the industrial relations process, including the unions, the employers, and the state. For the time being, as we have seen in the case studies above, the mainstream trade union movement, at both the regional and national levels, has chosen political strategies to effect change; frustrated by what they see as the continuing ignorance of both the state and employers, and the continuing lack of respect for their concerns.

8 Conclusion

Instead of being a wage floor, the minimum wage in Indonesia has generally become the effective wage for most workers in the absence of an effective collective bargaining system. Indeed, the minimum wage setting process within Wage Councils is the only forum through which the newly-developed trade union movement can demonstrate what they are doing to defend their members and workers in general; especially given that attempts to negotiate wages at the plant level run the risk of resulting in the dismissal of the unions' officials. With social dialogue dealing mainly with the fixing of a minimum wage, considerable pressure is exercised within the arena of the Wage Councils, leading to demands for increases that may seem excessive. In sum, minimum wage setting in Indonesia has become a serious source of conflict. Although during the New Order era the state pursued a low wage strategy in order to attract investment, and thus used the minimum wage as a tool by which to control labour unrest, during the *Reformasi* the state seems

to be more ambiguous with respect to minimum wages, and has considerably weakened. On the one hand, the state would be keen to retain control over the setting of minimum wages (and thus to some extent control over labour); but on the other hand, the state is reluctant to place wage setting fully in the hands of collective bargaining, which would require clear protection and facilitation for the development of stronger trade unions as important actors in collective bargaining, alongside employers' organizations.

It is the opinion of the author that in the current situation, it is better for labour groups in Indonesia to use political strategies to achieve their ends, as such strategies appear at present to provide the best opportunities. Taking into account the recent successes and challenges associated with the political approach to addressing minimum wages in Indonesia, there appear to be at least three benefits of adopting such an approach, which are likely to be useful for the Indonesian labour movement. The first benefit of a political approach is that it gives unions the opportunity to critically analyze wage policies both in theory and in practice, outside of the free market and competitive economic paradigms that have reigned over government policies for more than four decades. By seeing minimum wage issues as largely political issues, rather than merely economic ones, unions can identify the political interests of key influential players, by employing or testing particular economic models to assist with the setting of minimum wages. This does not mean that the traditional economic approach to minimum wages has no place; only that such an approach will be more useful when it is situated within local political contexts, and is tempered by the understanding that public policy processes are a function of different variables, many of which are highly contingent on the wide range of interests, motivations and actions of the actors involved.

The second benefit of adopting a political approach to minimum wages is that a decline in the minimum wage, seen through a political lens, can more readily be recognised as a sign of a decline in union power. Minimum wage policies thus become useful indicators of the unions' level of influence in society and in the workplaces. In countries and locations where pro-labour forces are weak or in decline, arguments in support of increasing the minimum wage focus mainly on the issue of relieving poverty, particularly for low-skilled workers. Although this may be a useful social policy goal, looking at labour issues through a political lens will enable activists to consider whether or not this argument is likely to produce the level of political support that a more traditional labour issue may generate – especially in situations where the identified target group (for example, low-skilled workers) is highly stigmatized and thought of in pejorative terms; as is arguably the case in Indonesia. By considering the persuasiveness and power of one's current argument from a political point of view, the argument can be amended as required.

The third benefit of taking a political approach is that when minimum wage policies are seen as a political issue, this perspective may also give unions a useful broader view: that labour policies and legislation, especially minimum wage policies, are in fact the outcomes of struggles between different social groups, and between competing ideologies and interests at both the group and individual level. That view, which is also the view arrived at through the analyses in this study, leads to another potentially useful conclusion: that in the future, as in the past, the crucial element in the making of labour policies will be the power of capital, and the countervailing power of organized labour.

6 The Industrial Relations Disputes Court, quo vadis?[1]

Is it possible to legalize the class system in a class-divided society and to make it a component of the legal system? Can the state recognize the idea of class and yet remain 'neutral'? Must not the conflict eventually break up the legal system or the legal systems suppress the conflict?

(Kahn-Freund, 1981: 190-1; cited in Hepple, 1986: 30)

1 Introduction

The instrumental aspect of labour laws requires enforcement and, in the event of a dispute, a formal examination and adjudication process. Indeed, while labour inspection and prosecution have developed as means of enforcing protective legislation,[2] the enforcement of employment contracts is very much dependent upon an effective labour dispute settlement mechanism.[3] In the case of Indonesia, the mechanism for settling industrial disputes was originally marked by excessive government involvement; particularly during the authoritarian New Order regime. This led some observers to call for the establishment of special court to deal with industrial relations issues, (see, e.g., Boulton, 2002, Mizuno, 2009). In particular, two benefits were claimed. First, the establishment of such a court would provide the opportunity to develop greater legal certainty – as the labour dispute settlement would not be directly controlled by the executive branches of government, thereby reducing the political influence that had plagued labour law practices in the country over recent decades (see Chapter 3). Second, there would be an important benefit in having a clear and accessible history of court deci-

1 Some parts of this chapter draw on Tjandra (2007) 'The Industrial Relations Court in Indonesia, Quo Vadis? Some Notes from the Courtroom'; an article presented at the Conference on Current Issues in Indonesian Law: In Honour of Professor Daniel S. Lev, University of Washington School of Law in Collaboration with the University of Indonesia, Faculty of Law, Seattle, February 27-28, 2007.

2 For a discussion on the development of labour inspection and prosecution in Europe, see Ramm, 1986: 73-113.

3 As noted by Ramm (1986: 270-274), one of the most important developments in labour law was the establishment of special courts, designed to overcome the problems commonly encountered in ordinary courts, including the judiciary's class bias and lack of industrial experience; and the costs, delays and formalities of the courts which made the legal process inaccessible to the majority of workers. The first labour court was established in France (1806 – the *conseils de prud'hommes*), followed by Belgium (1809), Italy (1893 – *magistratura non togata*, literally meant 'gownless' courts) and Germany (1890, 1904, 1926 – *Arbeitsgerichte*). Ramm (1986) also outlined the major problems normally found in ordinary courts.

sions; in order to establish precedent and thus provide the opportunity for a self-sustaining labour law system to develop, in which matters involving labour relations are handled independently and fairly (see also Cooney and Mitchell, 2002: 254).

However, such a proposal may face challenges in its implementation – as this Chapter and the case of Industrial Relations Court in Indonesia will demonstrate. Indonesia's Industrial Relations Court ((*Pengadilan Hubungan Industrial*, PHI), which was established as a special court within the scope of the general court, has seen major challenges to its operations from the beginning; both from within the system and from without. These challenges include ongoing internal problems related to the generally high levels of corruption within the Indonesian judicial system; the problematic relationship between 'special' and 'ordinary' civil procedural laws predominant in the PHI; problems related to the technical competence and legal integrity of career judges, ad hoc judges and registrars; and external problems including the workers' lack of competence in civil litigation procedures and thus access to the court's litigation processes. Together these problems have led to declining public confidence in the performance of the PHI; a situation which has a greater adverse effect on employees and trade unions than on employers. Given this situation, it is clear that the PHI needs to be reformed; for example, by turning it into a special court equal to the civil court as suggested by several ad hoc judges from union circles (see Tjandra, 2014). Such progressive reforms, however, require strong political commitment both from the judiciary and government; both of which appear currently to be mired in the past.

1 The Industrial Relations Court (PHI)[4]

The Industrial Relations Court is a 'special court' within the scope of the court of general jurisdiction, commonly referred to as the District Court (*Pengadilan Negeri*).[5] According to former Chief Justice of the Supreme Court, Bagir Manan, the term 'special court' refers not only to the special case objects of focus – namely, labour disputes in labour relations – but also to the special composition of the panel of judges in this particular court, and the use of special procedures. Uniquely, this court uses a judging panel which comprises one ordinary judge (a career judge) and two ad hoc judges (so-called expert judges, sourced from within union and employers' circles respectively); and special procedures including the waiving of case fees for certain cases, as well as strict time limits for court hearings (a maximum of 50 working days in the PHI, plus 30 working-days in the Supreme Court),

4 See Tjandra and Suryomenggolo, 2004, which provides critical notes on Law No. 2/2004, especially from the perspective of labour unions. See also Tjandra, 2006 and 2009.

5 Article 55.

and a restriction on appeals in certain types of dispute.[6] During the establishment of the PHI, the initial selection of ad hoc judges began with the nomination of tens of potential candidates by the employers' organization(s) and trade unions, for consideration first by the Ministry of Manpower, and then by the Supreme Court; with the latter responsible for assessing the nominees' credentials with respect to relevant legal knowledge and technical skills. The Supreme Court was then also responsible for training the ad hoc judges in the specifics of civil procedural law, finalizing the the selection process, and submitting the names of the accepted ad hoc judges to the President for formal appointment. The Supreme Court was also responsible for preparing the career judges who were to be assigned to the PHI.[7] This selection process presently continues to occur on an occasional basis, as required to replace judges in the system.

1.1 Birth of the Industrial Relations Court

As stipulated by Law No. 2/2004 on Industrial Relations Dispute Settlement, the Industrial Relations Court should have become effective and commenced operations one year after its enactment.[8] This was postponed, however, due to delays in building the infrastructure,[9] and the PHI only began official operations on January 14, 2006. On the same date, the ad hoc judges, half from labour organization circles and half from employers' organization circles, were symbolically 'inaugurated' by President Susilo Bambang Yudhoyono, in Padang, West Sumatera province, in the presence of the Chief Justice of the Supreme Court, Bagir Manan. PHIs were to be established in 33 District Courts in 33 provincial capitals throughout Indonesia (*Kompas*, January 15, 2006). Effective operation of the PHIs commenced in April-May 2006, with the release of Presidential Decree No. 31/M/2006, which appointed a total of 155 ad hoc judges for the PHIs in the provincial capitals, and an additional four ad hoc judges for the PHI at the Supreme Court.

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6 'The Chief Justice of the Supreme Court inaugurates 33 Industrial Relations Courts', *Tempo Interaktif*, January 14, 2006.

7 Nine career judges from the Supreme Court, and an additional 90 career judges from 33 District Courts around Indonesia, were trained for this purpose (Suparno, June 2006).

8 Article 126 of Law No. 2/2004. Hereinafter, unless otherwise stated, all articles referred to in footnotes are articles from Law No. 2/2004.

9 Based on Government Regulation In Lieu of Law No. 1/2005; also Law No. 2/2005 regarding the Delay in the Implementation of Law No. 2/2004 concerning Industrial Relations Dispute Settlement.

In conjunction with Law No. 2/2004 coming into effect, two other laws were annulled – Law No. 22/1957 on Labour Dispute Settlement, and Law No. 12/1964 on Termination of Employment in Private Enterprises.[10] Also annulled was the existing labour dispute settlement system, which has been known as the 'P4P/D' (*Panitia Penyelesaian Perselisihan Perburuhan Pusat/Daerah*; Central/Regional Labour Dispute Settlement Committee). The P4P/D system was considered no longer suitable to meet the community's needs for a 'fast, precise, fair, and cheap' dispute settlement mechanism (Introduction, Law No. 2/2004). The Director of the ILO in Jakarta, Alan Boulton, assessed the future of Indonesia's labour relations structure as follows: 'the needs felt by the new economic, social, and political environment with respect to the formation of a legal framework for the development of a fair and effective industrial relation that is capable of assisting the settlement of industrial disputes' (Boulton, 2002: 5).

The decisions to annul Law No. 22/1957, Law No. 12/1964 and P4P/D-based labour dispute settlement mechanism were based on three main arguments (see Hanartani, n.d., also Boulton, 2002). First, after Law No. 5/1986 concerning the State Administrative Court came into effect, the decisions reached through P4P/D, which had previously been final and binding, could be challenged by submitting a lawsuit to the Administrative Court (*Pengadilan Tata Usaha Negara*), and in addition, could subsequently be appealed via the Administrative Appellate Court and the Supreme Court. This process took considerable time, which was not considered ideal for labour cases (labour relations); where quick settlement would benefit employment and the production process. The establishment of the PHI was expected to tackle these problems by providing a new system of labour dispute settlement.

The second argument to support the annulment of the two laws and the existing settlement system involved the recognition, under Law No. 22/1957, of the authority (or 'veto' right) of the Minister of Manpower to delay or cancel the decisions of P4P. Supporters of the annulments considered this veto right by the Minister to be an example of excessive government interference in labour issues and labour dispute settlement, which, they argued, should be abolished.[11] The third argument concerned the application of Law No. 21/2000 on Trade Unions. This law was originally inspired by ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, which was ratified by Indonesia in 1998; based on which all workers should have the same opportunity to form or participate in any organization. However, as a consequence, the rights of workers *not* to participate in an organization should be respected as well; and this right was not currently recognized. Thus, Law No. 22/1957, which required that the

10 Article 125.

11 See also Bappenas' 'White Book' (2003) on 'Employment Friendly Labour Policies.'

disputing party be a worker/labour union,[12] was considered unsuitable for the 'new paradigm' in the field of labour relations; namely, the 'democratization at the workplace' (Boulton, 2002). The preservation of Law No. 22/1957 would have meant that individual parties in labour disputes could only seek assistance through the general court, based on civil law procedures.[13]

1.2 The industrial relations dispute process

As a special court, the PHI is authorized to examine, adjudicate, and decide on 'industrial relations dispute' cases, defined in Law No. 2/2004 as: *a difference of opinion resulting in a dispute between employers or an association of employers with workers/labourers or trade unions due to a disagreement on rights, conflicting interests, a dispute over termination of employment, or a dispute among trade unions within one company.*[14] By this provision, the Law limits its jurisdiction, and therefore the PHI's authority, to four types of labour disputes; namely disputes over rights,[15] disputes over interests; disputes over termination of employment (PHK); and disputes among worker/labour unions within a company.[16] Before a case can be brought before the PHI, the parties concerned are required to attempt a bipartite (two party) negotiation between worker and employer.[17] This negotiation must be completed within 30 days,[18] and minutes of each negotiation meeting must be drawn up

12 Law No. 22/1957 (article 1 subsection 1.c.) defined a 'labour dispute' as: *conflict between employers or employers' associations with a combined trade union or trade union in relation to the lack of understanding regarding the employment agreement, terms of employment, and or labour circumstances*. Thus, Law No. 22/1957 was concerned with collective disputes between employers/employers' organizations and unions, rather than disputes between employers and individual workers; and only organizations (not individuals) could be parties to the dispute with the P4P/D as the settlement institution. Some argued that such provisions encouraged individual workers to join unions, and emphasized that unions were essential to defend the interests of individual workers (Tjandra and Suryomenggolo, 2004).

13 In practice, however, with the enactment of Law No. 12/1964 on the Termination of Employment at Private Enterprises, most individual cases concerning termination of employment could be brought before the P4D/P. Indeed, few such cases were brought to the civil court as a tort action. This was related to the expense of the civil court system for plaintiffs (in particular for the dismissed workers who brought the cases), while the P4D/P was generally free of charge (see Tjandra and Suryomenggolo, 2004).

14 Article 1 subsection (1).

15 As noted by Mizuno (2009), with reference to Soepomo (1994: 177), before the establishment of the PHI few disputes over rights were brought to the regular courts. Instead, any claims that companies were not meeting their normative obligations would be investigated by labour inspectors, who would issue a report based on their investigation if necessary. If a rights dispute was passed onto the P4P/D, a labour inspector would be appointed to handle the case, and dismissals would not be permitted if they were in contravention of the law.

16 Article 2.

17 Article 3 (1).

18 Article 3 (2).

and signed by the parties concerned.[19] If no resolution can be obtained, the PHI's Panel of Judges will use these minutes during their consideration into whether to accept or reject a case.[20]

In the event that the bipartite negotiation fails, or a decision is not reached within 30 days, one or both parties are required to register their dispute with the Regional Manpower Office at the district level, including providing the minutes of their bipartite negotiation as evidence.[21] In the event that the complainant fails to provide this evidence, the Regional Manpower Office, to be completed within seven days, may return the case file to the complainant.[22] After receiving the written complaint, the Manpower Office is required to offer both parties the option of a settlement through either conciliation (through a private institution), or arbitration (through a private institution with the authority to make final and binding decisions).[23] The parties have seven days in which to select either conciliation or arbitration, after which time, if a decision has not been reached, the Manpower Office will refer the dispute to mediation (by a government institution).[24] According to Law No. 2/2004, labour disputes may be settled in different ways, depending on the type of dispute in question. The first and second type of disputes (disputes over interest, and disputes among the trade unions in one company) may be settled through mediation, conciliation or arbitration. The third type of

19 Article 6 (1).

20 Article 83 (1). The use of the term 'minutes' in this article sometimes leads to confusion over whether the 'minutes' in question are those from the bipartite negotiation between the employer and worker(s), or the written records of the mediation undertaken by the Regional Manpower Office. Technically, the term 'minutes' is reserved for the records produced through the bipartite negotiation, while those produced during the mediation at the Regional Manpower Office are referred to as 'written recommendations'. This distinction can prove difficult however, with some panels of judges requesting to see the 'written recommendation' from the mediator or conciliator, while other panels request instead to see the minutes from the bipartite negotiations.

21 Article 4 (1). As noted by Mizuno (2009), such a requirement as established under Law No. 22/1957 and maintained in Law No. 2/2004, is unique. It differs from the labour laws of many countries, in that in Indonesia, workers and employers can request help if they cannot resolve a dispute; and the government can intervene if the dispute is seen to threaten the national interest (see also Hanami and Blanpain, 1984: 81-106).

22 Article 4 (2).

23 Article 4 (3).

24 Special officials in the local Manpower Office (regents/cities) are assigned to undertake the mediation. Many of these officials were previously members of the abolished P4P/D. The provision to make mediation compulsory using these nominated officers is an interesting aspect of the new general labour dispute settlement system developed through Law No. 2/2004. According to one government official, the provision arose largely as a concession during the Law's formulation; in order to appease the many former mediators from the abolished P4P/D who faced the loss of their jobs once the new Law on labour dispute settlement was enacted (Personal communication with Syaiful Bahri, Ministry of Manpower, Jakarta, 9 January 2010). Mizuno (2009) notes that the requirement for mediation using the appointed mediators is one of the main weaknesses in Law No. 2/2004, because it will just prolong the process of reaching a final decision.

dispute, disputes over termination of employment, may be settled through either mediation or conciliation; while the last type, dispute over rights, may only be settled through mediation. In each dispute, the mediator, conciliator or arbiter must complete their duties within 30 working days after receiving the transfer of responsibility for settlement of the dispute (see the Dispute Settlement Scheme, based on Law No. 2/2004, below).

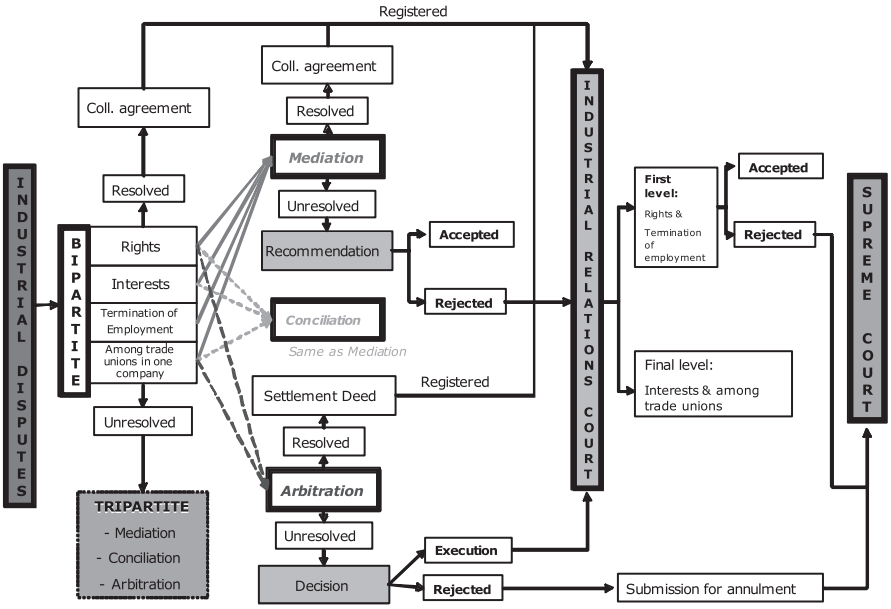

Image: The Dispute Settlement Scheme, based on Law No. 2/2004

When an industrial relations dispute can be settled through mediation, a collective agreement is drawn up and signed by the parties involved, witnessed by the mediator, and registered at the PHI in the District Court within the relevent jurisdiction; whereupon the parties can obtain a registration deed.[25] If no agreement can be reached through mediation, the mediator will issue a written recommendation, and the parties are required to provide a written answer to the mediator within 10 working days after receiving the recommendation, to indicate whether they accept or reject it. If one of both of the parties fail to provide their answer within the allotted time period, this is taken as a rejection of the written recommendation,[26] and either of the parties may then file to continue with settlement of the dispute through the PHI in the local District Court.[27]

25 Article 13 (1).
26 Article 13 (2).
27 Article 14 (1).

Law No. 2/2004 on the Industrial Relations Dispute Settlement states that the PHI has the duty and is authorized to examine and make a decision at different stages in the dispute settlement process, depending on the type of dispute in question. For cases involving disputes over rights and disputes over termination of employment, the PHI is the deciding authority at the first stage of the process; while for cases involving conflicts of interest and disputes among the worker/labour unions in a company, the PHI may be the deciding authority at both the first and final levels of the process.[28] As stipulated in article 100 of Law No. 2/2004, the judges must take into account all relevant laws, existing agreements, customs and justice in reaching a verdict.[29] The procedural law which is applied at the PHI, is the Civil Procedural Law, which is also used in the courts of general jurisdiction.[30] Law No. 2/2004 also stipulates that for lawsuits worth not more than Rp 150 million (based on the figure requested as compensation when the lawsuit is filed), there will be no case fee, including for execution.[31] The Law stipulates that a PHI is to be established in each District Court within the capital city of each province, with the court having jurisdiction over the particular province.[32] Subsequently, PHIs are also to be formed under Presidential Decree in certain other regencies/cities, especially those that are heavily industrialized.[33] Below is the summary of dispute settlement roles of mediator, conciliator, arbiter, Industrial Relations Court, and the Supreme Court, as provided by Law No. 2/2004 on the Industrial Relations Dispute Settlement.

One important strength of the PHI's dispute settlement process is the right of unions and employers' organizations to act as attorneys to represent their members during litigation at the PHI.[34] A similar provision was included in Law No. 21/2000 on Trade Unions, specifically article 25 paragraph (1) point b.[35] Another important new development is the composition of the panel of judges at the PHI, comprising the single career judge and two ad hoc judges[36] as nominated by the employers' association and trade unions respectively.

28 Article 56.
29 For the P4P/D there was one more consideration: 'Interest of the State'.
30 Article 57.
31 Article 58.
32 Article 59 subsection (1).
33 Article 59 subsection (2). The elucidation of the Law states that 'immediately' is 'within 6 (six) months after the Law comes into effect', or in July 2006.
34 Article 87.
35 This paragraph states: 'A trade union/labour union, federation or confederation of trade unions/labour unions that has a record number has the right to: […] represent workers/labourers in industrial dispute settlement.'
36 The composition of the panel of judges at the PHI is very different from the P4P/D, which consisted of government officials and representatives of the unions and the employers' association, each five persons, and was headed by an official from the Department of Manpower.

The term of office of the ad hoc judges is five years, following which they may be reappointed for another five years.[37]

Table 6.1: Summary of the Typology of Mediator, Conciliator, Arbiter, Industrial Relations Court (according to Law No. 2/2004)

	Mediator	**Conciliator**	**Arbiter**	**Industrial Relations Court**	**Supreme Court**
Status	Government employees	Registered private	Registered private	– Career judge – Ad hoc judge	– Career judge – Ad hoc judge
Type of resolution	Compulsory if not choosing	Voluntary	Voluntary	Compulsory	Compulsory
Type of submission	Written/oral	Written	Written	Written (legal lawsuit)	Written (appeal/ cassation)
Type of disputes	– Rights – Interests – Termination of employment – Among trade unions	– Interests – Termination of employment – Among trade unions	– Interests – Among trade unions	First level: – Rights – Termination of employment Final level: – Interests – Among trade unions	Final level: – Rights – Termination of employment – Annulment of arbiter's decision
Final result	– Collective agreement – Written recommendation	– Collective agreement – Written recommendation	– Settlement deed – Arbiter's decision	Decision	Decision
Time	30 working days	30 working days	30 working days	50 working days	30 working days
Number of officials	Not regulated	One or more	One or more	Three (one career judge, two ad hoc judges)	Three (one career judge, two ad hoc judges)
Jurisdiction	District/city	Province	All Indonesia	Province	All Indonesia
Type of hearings	Not regulated	Not regulated	Close	Open	Close
Appearance of attorneys	Not regulated	Not regulated	Allowed	Allowed	Allowed

37 All ad hoc Judges appointed for the first term (2006-2011) were reappointed for the second term, excepting those who had resigned or reached the stated maximum age of 62 (interview with Saut Manalu, ad hoc judge at the PHI Jakarta, June 2011).

Concerning the time limit for examination of disputes, Law No. 2/2004 states that a PHI's Panel of Judges must pronounce a judgment within fifty working days from commencement of the first PHI hearing.[38] The PHI's Substitute Registrar must then issue the copy of the decision within fourteen days after the signing of the decision.[39] This copy must be delivered to the parties within seven days.[40] An appeal may be made by submitting a written request to the substitute registrar's office of the PHI, which will forward the request to the Court of Cassation.[41] The brief must be conveyed to the Head of the Supreme Court within fourteen days following the appeal application receipt date.[42] The Law also sets forth that in disputes over rights, or disputes over termination of employment, the examination of the case at the Supreme Court must be concluded within thirty days following the date of the receipt of the appeal application.[43] The composition of the panel of judges (one career Judge and two ad hoc judges) also applies to the Supreme Court.[44] The ad hoc judges at the Supreme Court will have been nominated and will have followed the same recruitment procedures as those at the district level; but the judges directly apply for their position at the Supreme Court.

Under the aforementioned system, the proponents of Law No. 2/2004 claim that the Law can provide a 'fast, precise, fair, and cheap' labour dispute settlement mechanism.[45] Key questions include: does the system work in practice? How do we understand the practice of Indonesia's new labour dispute settlement mechanism, with the PHI as the core; and its impact upon labour? How do labour groups respond to this system? These questions will be the focus of the discussion in the following section of the chapter.

1.3 Key aspects of administration of the dispute process

The PHI system commenced operations officially on 14 January 2006, and the ad hoc judges began examining cases between May and June 2006. However, the Presidential Decree on allowances and other rights for ad hoc judges in the PHI was not released until 7 December 2006; and the disbursement of the state budget for honorary payments for ad hoc judges was not issued until around two years later, in 2008. This means that for over two years after PHI operations commenced, ad hoc judges were required to work without

38 Article 103.
39 Article 106.
40 Article 107.
41 Article 111.
42 Article 112.
43 Article 115.
44 Article 113.
45 See specifically the section on 'Consideration'.

payment.[46] One ad hoc judge from union circles complained, 'How can we work properly and not commit corruption if our most basic rights are not even fulfilled?'[47] He described how difficult it was for him to refuse offers from employers to go out for 'lunch' or accept 'gifts' from one of the parties in a case being handled by him. 'I am only human, I also have needs,' he stated.[48] The lack of payment led several ad hoc judges to threaten to conduct public action if they were not paid soon, including to go on strike by refusing to attend court hearings in the PHI Tanjung Pinang, Riau Islands, causing delays to court hearings (*Batam Pos*, 23 November 2006). When asked about the issue, the Director of Law and Judicature of the Supreme Court, Suparno, said: '[The issue] is still with the State Secretary.'[49] One problem was that a partial budget for the infrastructure development of the PHI had already been disbursed while the budget for the salaries of the ad hoc judges was in limbo. This budget included funds for an official vehicle for the chief justices of the district courts, *ex officio* chief justice of the PHI, who were able to enjoy their new cars (a Toyota Kijang Innova or Toyota Vios) soon after PHI operations began in May 2006.[50]

For the ad hoc judges who came from employer circles, this discrepancy in disbursement of funds was not usually a significant hardship, as most retained their previous paid positions while acting as judges part-time. But for ad hoc judges from labour unions, the ongoing lack of funds posed a serious problem, as many had quit their previous jobs to become ad hoc judges full-time (*Tempo Magazine*, 12 November 2006). As reasons for choosing a full-time role, some cited their new position as a 'noble responsibility', or a 'calling to fulfill their duties',[51] while for others, becoming a judge was an opportunity to upgrade their social status and position in society. One ad hoc judge in the PHI Jakarta, for example, prior to his appointment as a judge, worked as a 'barefoot lawyer' at the legal aid office in the Jakarta District Court, with no certainty of income.[52] For him, becoming a judge significantly raised his income and his social position in the eyes of his neighbours

46 Several ad hoc judges from larger district courts, such as Jakarta and Bandung, did actually receive their salaries, which in these cases were paid directly from the district court budget at the discretion of the Chief Judge of that particular district court.

47 Interview Muhamad Mushlih, an ad hoc judge at the PHI Serang, June 2006.

48 Among ad hoc judges, one widely-circulated joke about their missing allowance held that there were 'three phases of one's career': 'mantab' ('makan tabungan', or living from one's savings); 'matang' ('makan utangan', or living from debts); and 'makar' ('makan perkara', living from cases).

49 Stated in the Workshop of Ad Hoc Judges from Labour Union circles (so-called Labour Judges) throughout Java, organized by the Trade Union Rights Centre, June 2006.

50 Interview with Asmiwati, an ad hoc judge at the PHI Banjarmasin, South Kalimantan, June 2008. Other ad hoc judges from various PHIs confirmed this, joking that 'Our chief judges are driving cars with two wheels,' (as the chief judge had previously enjoyed official cars as chief judge of the district courts as well).

51 Interview with Saut Manalu, ad hoc judge at the PHI Jakarta, June 2008.

52 Interview with Tri Endro, ad hoc judge at the PHI Jakarta, June 2008.

and colleagues, and he felt proud when people called him 'Pak Hakim' ('Mister Judge'). Similar sentiments were expressed by ad hoc judges from employer circles, but to a lesser extent than by those from union circles. Once working in the position full time, most ad hoc judges were highly dependent on the salaries they were entitled to: Rp 3,750,000,-/month for ad hoc judges at the district level, and Rp 7,500,000,-/month for ad hoc judges at the Supreme Court level (based on Presidential Decree No. 96/2006).[53] This amount was relatively small, and less than the salaries some ad hoc judges received in their jobs before joining the PHI; particularly those from employer circles. Several chose to resign after a couple of years of working with the PHI.[54] This led to a shortage of ad hoc judges from employer circles in some regions.[55] In response, after five years of PHI operations, in 2011 the President raised the salaries of ad hoc judges at the PHI to Rp 5,5 million/month, and those at the Supreme Court to Rp 10 million/month (Presidential Decree No. 20/2011). These new salaries were enjoyed immediately by newly recruited ad hoc judges, but not by the original cohort. In January 2013, a new salary scheme was implemented, with ad hoc judges at the PHI receiving Rp 17.5 million/month, and those at the Supreme Court receiving Rp 25 million/month, regardless of whether they were new or earlier recruits. As explained by one ad hoc judge from union circles, these significant increases of salaries encouraged many people to apply for the position of ad hoc judges at the PHI.[56]

The salaries received by the ad hoc judges still required a deduction of 15 percent income tax, which was controversial, given the existing government regulation which ruled that 'state officials' were exempt from income taxes

53 This district level amount was smaller than that received by ad hoc judges at various other special courts, such as the Fisheries Court, which was Rp 4 million/month (see Presidential Decree No. 23/2008). Even more was received by ad hoc judges at the Corruption Court, which equated to Rp 10 million/month at the district level, Rp 12 million/month at the higher court level, and Rp 14 million/month at the Supreme Court level (see Presidential Decree No. 49/2005).

54 Personal communication with Abdul Khakim, an ad hoc judge from PHI Samarinda, who later resigned and then worked with an oil company in Kalimantan as Human Resources Manager. While he was a judge he wrote several books on industrial relations dispute and also undertook university teaching; activities he gave up after his resignation from the PHI.

55 One ILO report (Fajerman, 2011: 17) noted that in some PHIs there were no ad hoc judges available from employer circles at all, leading to the Supreme Court having to transport ad hoc judges from nearby provinces to hear cases. As the report detailed: 'In Denpasar, there are five career and four trade union-nominated ad hoc judges, but no employer-nominated ad hoc judges. In Semarang there are seven career and seven trade union-nominated ad hoc judges and no employer-nominated ad hoc judges, and in Bengkulu there is one career judge, four trade union-nominated ad hoc judges and no employer-nominated ad hoc judge.' The ILO report expressed concerns that the Supreme Court apparently did not engage in greater efforts to recruit ad hoc judges from employer circles for these regions.

56 Personal communication with Joko Ismono, ad hoc judge at the PHI Surabaya, September 2013.

(which were covered by the government as the employer). Ad hoc judges were concerned that they were not recognized as 'state officials' by the government, despite the fact that they were appointed by the President with Presidential Decrees published in the State Gazette, as per normal procedures for 'state officials'. Indeed, the ad hoc judges at the Supreme Court even held the right to stay at 'the official apartment for state officials' in Kemayoran region, Jakarta.[57] Some ad hoc judges, particularly from union circles but also from employer circles, brought the issue to the attention of the Tax Offices in their regions, as well as to the Ministry of Finance in Jakarta, arguing that they should be exempt from taxes and treated as full 'state officials'. These efforts failed: in late 2010, the Minister of Finance issued a letter stating that ad hoc judges were not 'state officials' and thus not exempt from taxes. The letter did not provide any explanation.

Initially the Supreme Court seemed to support the formation of the PHI, at least to a degree. This was despite the fact that the PHI was considered to be 'a project of the Ministry of Manpower,' which had drafted Law No. 2/2004 without close consultation with the Supreme Court. This lack of consultation was considered to be a factor in the subsequent problems with payment of ad hoc judges. As the Director of Law and Judicature of the Supreme Court, Suparno, observed later regarding the year-long delay in payments, '[The situation] would not be this messy if we had been involved since the beginning'. Given these issues, it is clear that at the beginning, both the government and the Supreme Court were unprepared to provide the full infrastructure to enable the PHI to operate effectively; and with the previous institution which had handled labour disputes (the P4P/D) no longer functioning, many labour dispute cases were cancelled without proper resolution.[58]

During their early days as ad hoc judges at the Industrial Relations Court, while waiting for payment, many people survived through their incomes from side-jobs or other side-activities. Some ad hoc judges, for example, ran small shops at home, while others worked part-time as human resources consultants at the companies where they had previously worked. One common side-job was the position of resource person for training workshops about PHI procedures. Such training was held frequently by companies in the PHIs' early days, and was referred to by ad hoc judges as 'socialization,' in reference to the formal activities of the Supreme Court during the

57 This unclear status of ad hoc judges at the PHI was similar to that experienced by ad hoc judges from other special courts. The most outspoken were the ad hoc judges at the Corruption Court, who voiced public complaints several times (*Detiknews*, 16 June 2011)

58 Personal communication with Sahat Butar Butar, a union activist who had been a member of the P4P/D before the establishment of the PHI, June 2007. Butar claimed that during this transition period, many workers he knew had to 'give up', and chose instead to accept their employers' offers, although these offers were below those required by law.

early stages of PHI operations.[59] One human resource manager from a private bank in Jakarta, who frequently organized such workshops for his staff, referred to the training instead as 'networking', observing that the primary intention was to develop closer contacts with judges from the PHI and the Supreme Court.[60]

These 'socialization' activities were preferred, by some ad hoc judges, to their primary task of ruling on disputes – as the training tasks were straightforward and therefore relatively 'easy money', requiring only that the trainer explain the contents of the law. The financial returns were reasonable: for a two-hour presentation, focusing mostly on normative parts of the Law, ad hoc judges at the district level could expect to be paid around Rp 6 million; almost double their monthly PHI salaries, while career judges, especially those from the Supreme Court, could expect up to around Rp 8 to 10 million per session.[61] Such opportunities for side-incomes, however, could be problematic, for several reasons. First, these opportunities were distributed inequitably among the ad hoc judges, with those from big cities such as Jakarta or Surabaya receiving higher income than those from smaller, less industrial cities. Second, despite the claims from organizations that the 'socialization' and training were focused on legal issues, it is doubtful that the companies' motives were purely related to capacity building. Instead, they may have been interested in influencing judges, and the important question emerged as to whether the ad hoc judges and career judges recruited by companies to run their training would be able to maintain their impartiality in future cases involving those companies – or would they then feel, as one ad hoc judge confessed, 'morally obliged' (*berhutang budi*) to the company.

59 The Supreme Court, as the institution responsible for the operation of the PHI, conducted a series of socialization activities around Indonesia to introduce the new court to the public and to respected parties such as employers and workers. Interview with Tri Endro, ad hoc Judge at the PHI Jakarta, June 2008.

60 Personal communication with Sigit Bintoro, HRD Manager in Jakarta, June 2008.

61 This discrepancy led some career judges at the district and Supreme Court levels to preferentially offer training to companies rather than unions, given that the latter could not pay the same as the former. One Supreme Court judge complained that he only received Rp 750,000 for a training session organized by a labour NGO in Jakarta, and observed that he could get much more from companies (interview by Dela Feby, Secretary of TURC, June 2008). The director of the NGO in question heard about the complaint second hand (from an ad hoc judge who had been speaking with the disgruntled Supreme Court judge), and immediately wrote an official letter to explain why his organization could only pay a limited amount. The letter also referred politely to the duty of judges to socialize or introduce the new law to all parties indiscriminately. This letter was copied in to all the key related authorities, including the Chief Judge of the Supreme Court, the Minister of Manpower, and the Director of the ILO Office in Jakarta. The judge who had expressed the complaint did not respond to the letter (interview Tri Endro, ad hoc judge at the PHI Jakarta, June 2008).

The conditions described above in relation to salaries and other challenges left many ad hoc judges discouraged. One ad hoc judge explained why he felt discriminated against: 'maybe because we're considered as "contract judges", therefore they don't feel it necessary to treat us well, or at least as equal to other state officials.' Another said, 'I feel really like the ordinary worker that I used to be. I just have to demand my own rights just to gain what I deserved.' This statement was in reference to his new obligation to pay income tax for his PHI work, once the Minister of Finance had revoked the exemption which had been granted by the Chief Judge of the PHI. 'I don't know how I can pay all those taxes, as my salary [including taxes] has already been used up.'[62] Some confessed that they thought of quitting their PHI roles because of the taxes issue, but kept working for the PHI due to what they referred to as a 'higher calling'. As one ad hoc judge explained, 'I just thought that the job was honourable, and I wanted to prove to myself that I could stay at least until the end of my term in 2016.'[63] For other ad hoc judges, who received additional income from side-jobs and other side-activities, their role as an ad hoc judges was not a negative experience at all, but rather an opportunity to make a better income than before. This was particularly the case for some ad hoc judges from union circles, many of whom had been working previously as union advocates, whose income is uncertain. For these individuals, becoming an ad hoc judge was seen as a stepping stone to enable access to new payment opportunities, such as the aforementioned 'socialization' training.

The difficulties encountered in the recruitment of ad hoc judges to the PHIs were mirrored by similar challenges in recruiting career judges, as summarized in a report on the issue by the ILO (Fajerman, 2011: 16-18). With reference to the Jakarta Legal Aid Institute, the ILO report noted critically that not only were many ad hoc judges merely job seekers, but the career judges applying for the positions were of similarly questionable quality – often recruited from mid-level law faculties in Indonesia, while the best graduates instead chose careers as lawyers or in private business. The report also noted that for the most recent recruitment of ad hoc judges, so few applicants were put forward from employer circles that the Ministry of Manpower and the Supreme Court were required to lower the recruitment standards for employer-nominated candidates. Despite this, only 11 candidates were appointed from 23 applicants. Overall according to the ILO report, there was a shortage of judges in the PHIs, with only eight of the country's 33 district-level PHIs having an adequate quota of both career and ad hoc judges. Similarly, at the Supreme Court level there were only eight ad hoc judges available, who were expected to deal with over 400 cases a year. As another example, the PHI in Jakarta had only four career judges to deal with over 30 new cases per month (which would add to the burden of the ongoing cases).

62 Interview with Bahal Simangunsong, ad hoc judge from the PHI Palu, July 2010.
63 Interview with Juanda Pangaribuan, ad hoc judge at the PHI Jakarta, December 2010.

The report further observed that many career judges were reluctant to be appointed to the PHI, 'due to the highly sensitive nature of labour disputes, frequent demonstrations outside of the courtroom and the (often) inconvenient distance between the IRC and the District Court.' (Fajerman, 2011: 18).

Another concern with respect to the operations of the PHIs was related to the working hours of the ad hoc judges. Although the PHIs operated officially from 8 am to 4 pm, Monday to Friday (the same hours as the District Court opening hours) in practice the PHI's court hearings were only held two or three days per week. In the PHI in Jakarta, for example, hearings were held from Monday to Wednesday only; while in the PHI Tanjung Pinang, Riau Islands, hearings were only scheduled on Thursdays and Fridays. According to the ad hoc judges, the other days were used by the judges to conduct internal examinations among the judging panel, and to make decisions.[64] They also claimed that the typing of judgments was often performed by them personally, rather than being undertaken by substitute registrars[65]; while the career judges were too busy to carry out their primary duties in the district courts (that is the handling of civil, criminal and commercial cases). Various parties from the unions also claimed that non-hearing days during the week were sometimes used to extend case registrations. For example at the PHI Jakarta, a case could be registered on Monday, but it would be forward-dated the subsequent Thursday, when the ad hoc judges were working. According to one plaintiff, he agreed to this practice of changing registration dates in order to ensure that the hearing period, at least formally, did not take too long and did not exceed the 50-day limit of the PHI.[66]

In sum, it is clear that when the PHI commenced operations in 2006 (one year later than the date stipulated by Law No. 2/2004), the operational infrastructure was not fully prepared; a situation exacerbated by the lack of communication between the Ministry of Manpower, which had drafted the law, and the Supreme Court, whose duty it was to run the court. This lack of preparedness led to several problems, most critically the delaying of payment of salaries for ad hoc judges; the uncertainty surrounding the status of ad hoc judges as 'state officials' (or not) and the consequences with regard to tax exemption; and the lack of clarity or consistency around working hours. Together these issues had a negative impact on the performance of the ad hoc judges, and thus on the performance of the PHI as an institution. Fortunately, as described above, after five years of operation the PHI was subject

64 Interview with Saut Manalu, ad hoc judge at the PHI Jakarta, December 2010.

65 In the early period of the PHIs' operations, many ad hoc judges, especially those from union circles, expressed their reluctance to assign their typing work to substitute registrars (*Panitera Pengganti*, who were officially supposed to perform such work), out of concern that their decisions could be 'sold' by the substitute registrars through bribery and corruption.

66 Personal communication with a lawyer at the PHI Jakarta, December 2010.

to a number of changes with the goal of improving the courts' effectiveness, including regular and higher salary payments for the ad hoc judges; and revisions to other administrative issues. It remains to be seen to what extent these administrative changes will result in a better performance of the PHIs. We will return to this question later.

1.4 Effects of the PHI on unions

To examine the effects of the PHI on unions, it will be useful to begin with a summary of the relationship between the PHI, trade unions, and the ad hoc judges from union circles. As stipulated in Law No. 2/2004 (article 1 subsection [19]), both unions and employers' organizations have special roles in the PHI system: in particular, they have the right to propose candidates to selection as ad hoc judges. In practice, however, proposing candidates to be ad hoc judges simply required a piece of paper from the union or employers' organization, stating that the organization supported the person concerned in their application to become an ad hoc judge at the PHI. It was only at the subsequent stages of the application process – the administrative selection by the Ministry of Manpower, and the testing of legal knowledge by the Supreme Court,[67] that the candidates were assessed in a more impartial manner. These latter two stages of (relatively) independent assessment, in combination with the doctrine of impartiality of judges as emphasized by the Supreme Court, may go some way to explaining the relative detachment of ad hoc judges from the unions which had originally nominated them.

Despite concerns from certain observers that some unions might not be able to nominate candidates as ad hoc judges (see Fenwick *et al*., 2002), currently any union which has met its legal requirement to be a union, and has been registered as a union in the Regional Manpower Office, is officially able to nominate a candidate – regardless of the union's background, number of members, level (regional or central organization), location of their domicile or other variables. The selection committees, both within the Ministry of Manpower and within the Supreme Court, have demonstrated their willingness to select ad hoc judges from a wide variety of different unions and backgrounds. Only on occasion has this led to unexpected situations, for example since ad hoc judges can be nominated by either national- or regional-level unions (the latter sometimes with no affiliates in other regions), on one occasion an ad hoc judge in the PHI Medan had been nominated by a union from the local Medan area, yet after he became a judge, that particular union's activities declined to the point that it was barely operating as a union anymore.[68]

67 Article 64 (g) requires that ad hoc judges at the PHI have a relatively high level of education: they must have at least a university degree (S1) which at the district level can be from any discipline, and at the Supreme Court level, must be a law degree.

68 Interview with Christina Tobing, an ad hoc judge from union circles at the PHI Medan, August 2008; she was nominated by the union KBM (*Kesatuan Buruh Marhaenis*, the Marhaenist Labour Union).

Most ad hoc judges from union circles were people who were already well known to the unions; either former union officials, or legal advocacy practitioners for the unions; or NGO activists and academics who supported the unions.[69] With such backgrounds, many of these ad hoc judges, particularly with the support of the Trade Union Rights Centre (TURC), have been active in pushing for PHI reforms, including through the judgments they make, and through activities designed to advance the judicial system. Such efforts, however, have not led to significant reforms to date, due to structural obstacles from within the judiciary itself. We shall return to this in later sections of this chapter.

According to Law No. 2/2004 (article 67 subsection [1f]), unions have the power, if they so choose, to request the removal of the ad hoc judge they originally proposed, by requesting the court to 'honorably discharge' the particular judge. This power has, to date, only been exercised once, according to Supreme Court judges quoted in an ILO report (Fajerman, 2011: 17). The request was granted, but the report does not mention the details of the case. The same report noted that two other ad hoc trade union-nominated judges at the Supreme Court had been at risk of being recalled by their trade union confederation, KSPSI, due to internal disputes that had split the confederation into two. This discharge did not, in the end, eventuate. Even in cases where unions may request that a judge be removed, this may not be implemented as the Supreme Court has the final authority as to whether to discharge the judge, and according to one Supreme Court official, it would usually decline to do this.[70] Indeed, the Supreme Court has been particularly critical of this provision in the Law, calling it a violation of the principle of judges' freedom, whereby judges should only be discharged if they have committed a criminal act, not merely because their performance is not considered acceptable to the organization which nominated them. Ad hoc judges from union circles also expressed some concern about this provision, but to a lesser extent, tending to avoid controversy on this issue and stating that such a 'recall' mechanism should not be implemented arbitrarily.[71]

69 There were, however, exceptions, such as the ad hoc judge from union circles in the PHI Surabaya, East Java province. Although he was nominated by a union in East Java, (FSP KEP; an affiliate of the KSPSI), his background was from the employers' organization Apindo. Union officials claimed that he had bribed the union to give him the recommendation letter, after he failed to obtain one from his own organization (interview with Pujianto and Jamaludin, union officials in East Java, August 2009). When asked directly about this allegation, the ad hoc judge, Hardi Purwanto, replied 'It was just a ticket to the nomination. I didn't bribe the union, just gave them an expression of gratitude' (interview with Hardi Purwanto, January 2010).

70 Presentation by Suparno, the Director of Law and Judicature of the Supreme Court, December 2010. See also article 68 subsection (1.a) of Law No. 2/2004.

71 Personal communication with Junaidi, ad hoc judge at the PHI Jakarta, December 2010.

The impartiality of ad hoc judges is a point of particular concern in this system. During the 21-day training and selection process for ad hoc judges at the Supreme Court, the principle of impartiality is the most emphasized issue.[72] The judges are told that from the moment they are appointed and begin to work for the PHI, they must 'take off their clothes' as union's or employers' representatives, and become totally independent and free from any intervention from their organizations. Ad hoc judges from both union and employer circles stated this in interviews, and emphasized that there was no obligation whatsoever for them to continue serving either the unions or the employers organizations which had nominated them.[73] One ad hoc judge from union circles, for example, said: 'I understand the union would expect us to work for their interests, but I am bound by the principle of impartiality. At the time we serve as judges, we have to take off our labour status.'

It is obvious from interviews that at the start of their appointment as judges, most ad hoc judges from union circles are concerned about this requirement. On the one hand, they feel they must take the side of the workers; on the other hand, they recognize their obligation to be impartial. This issue, appears to be less of a concern for ad hoc judges from employer circles, who often appear happy to remain more tightly associated with their employers' organization. They gather regularly at annual 'development conferences' organized by Apindo, in order to ensure their 'maintenance' as their employers' representatives at the PHI.[74] As explained by Hasanuddin Rahman, Head of the Central Leadership Board of the Apindo, 'They [the ad hoc judges from employer circles] need to be fostered as our representatives at the PHI.'[75] Having learned that the ad hoc judges from employers' circles were still acting as 'representatives' of Apindo's interests in the PHI, some ad hoc judges from union circles became more relaxed and certain about maintaining their own impartial position. As noted by one ad hoc judge from union circles, 'We in fact become partial when we pretend to be impartial. So what I do is simply look at the law and try to do my best to apply it in my judgments.'[76]

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72 The first training for ad hoc judges was held in August 2005, at the Bidakara Hotel in Jakarta. The 240 candidates competing to be ad hoc judges were trained from 9 am to 5 pm during weekdays, with weekends free. At the end of the training, 215 contenders were accepted as ad hoc judges, and distributed to 32 PHIs in 32 provinces in Indonesia. At the same time, in July and August 2005, 90 career judges from 32 District Courts were also trained to become PHI judges.

73 Interview with various ad hoc judges from union and employer circles, at the PHI Jakarta, March 2006, just after the appointment ceremony at the PHI Jakarta.

74 2006 Activity Plan of the Industrial Relation Permanent Committee of the Indonesian Chamber of Commerce and Industry', undated, presented by Hasanudin Rahman of Apindo, August 2008.

75 Stated in the workshop of ad hoc judges from the Labour Union (Labour Judge) throughout Java and Sumatra, in Jakarta, organized by the Trade Union Rights Centre, August 2008.

76 Interview with Daulat Sihombing, ad hoc judge at the PHI Medan, June 2008.

The issue of impartiality in the special courts, with workers and employers both seeking representation, is often problematic. As noted by Cordova (1984: 236), the experience of Latin American countries shows that attempting to have fair representation of employers and workers in the composition of judging panels is, in practice, useless, because in most cases it leads to judges systematically awarding their votes on behalf of their own organization, and any claim to impartiality is merely a formality. In the case of Indonesia, however, one could argue that despite the inherent problems with respect to the position of the ad hoc judges at the PHI, the system is nonetheless better and fairer than not having the ad hoc judges at all. We shall return to this point later.

In the first half of this chapter, we have discussed the PHI in general, including its origin, the processes of labour dispute settlement through the PHI, its administration and associated problems, and the involvement of the unions and Apindo. The second half of the chapter will focus on how the court functions in practice, by looking at the context in which the court operates, including the daily activities of the judiciary, the transitional issue of the cases bestowed from the previous labour dispute settlement institution to the PHI, key problems associated with its procedures, the costs of cases, the length of time for handling case, and the consequences of these problems for labour.

2 The Industrial Relations Court (PHI) in practice

Law No. 2/2004 on Industrial Relations Dispute Settlement has been criticized since it first appeared as a draft Bill, not only by labour unions and NGOs, but also by academics contracted by the ILO. Various labour unions, for example, argued that Law No. 2/2004 had been formulated based on 'false assumptions' (see Tjandra and Suryomenggolo, 2004). First among these is the assumption that the opportunity to provide work (of any kind) for workers was considered 'fortunate,' due to the existing high levels of unemployment in the country. According to this assumption, it was acceptable to boost the economy by increasing 'flexibility' in the labour market – including by relaxing regulations to make it easier to hire and fire workers, and by adopting efficient and cheap dispute settlement mechanisms.[77] Second is that the public judicial system was already reliable, unbiased, and 'clean' of corruption; when in fact the court institutions had never been reformed from either within or without, and corrupt practices were still the norm. A third false assumption was that workers and labour unions had sufficient legal skills to take part in litigation processes at the court; when

77 This assumption was closely related to the so-called 'trade-off between job security and job opportunity' policy, developed by the Indonesian government after the economic crisis in 1998 (Bappenas 2003, see also Chapter 4).

in reality many workers and unions did not understand the complex civil litigation mechanisms. Together, these false assumptions resulted in the impairment of the role of labour unions in the process of labour dispute settlement; and many union officials became so busy handling cases that they had insufficient time to organize their members; which is arguably the most important task to be undertaken by Indonesian labour unions.

Some labour law scholars, including those hired by the ILO to assess the draft Bill, expressed early concern about the Bill's lack of conceptual clarity (see Fenwick et al., 2002: 65-74). One example is that in the provisions for bipartite negotiations, the Law did not include a provision to specify how any agreed outcome of negotiations was to be enforced. Nor did the Law specify either a requirement of good faith negotiation, or any negative incentives to discourage either side from failing to implement the agreed outcome.[78] Likewise, the decision to classify disputes about termination of employment ('PHK') in a separate category from disputes over rights has led to confusion; specifically, as to whether a dispute arising from dismissal is a 'dispute over rights' or a 'dispute over termination of employment'. This problem, scholars argued, needed to be considered carefully, because the PHI would have the 'first and final' jurisdiction for disputes over rights, but not for disputes over termination of employment. Fenwick et al. (2002: 79-80) have described several additional shortcomings in the Bill. These included the lack of clarity around the power of the Court to give orders, which is arguably critical for the court to function.[79] The Bill was also limited with respect to the types of labour disputes over which the PHI had jurisdiction, with five important types of disputes left out of it, including disputes between a labour union and its members; disputes between workers and the government; disputes between employer organizations; disputes between an employer organization and its members; and internship disputes.[80] Many of these early criticisms of the Bill were not heeded, with the points of concern remaining as part of the final Law that was enacted. These concerns

78 The 'good faith negotiation' concept is stipulated in the explanatory notes of Article 116 (2) of Law No. 13/2003 on Manpower, stating that collective labour agreements 'must be made in good faith'. The Law, however, does not state any requirement of good faith in relation to individual work agreements.

79 As noted by Fenwick et al. (2002: 80), the question of remedies was important particularly in disputes over termination of employment, whereby there were international labour standards that made specific provision for particular remedies in the case of unfair dismissal, i.e. reinstatement. There was not, however, any clear provision as to whether the court had the power to undertake this reinstatement, nor how it could be exercised.

80 Much of the subject matter of industrial disputes in Law No. 2/2004 is dealt with in other legislation, in particular in Law No. 13/2003 on Manpower. However, none of the issues described here are covered by Law No. 13/2003. There is no report, as yet, concerning disputes between employers' organizations and their members; or between employers' organizations, and there is only one report regarding a dispute between trade unions in Tangerang, which was brought to the PHI (see Rokhani, 2008).

have posed challenges for the PHI in practice and have the potential to affect confidence in the effectiveness of the new court.

2.1 Cases bestowed from the P4P/D

As described earlier, the PHI was established to replace the earlier P4P/D (Central/Regional Labour Dispute Settlement Committee), the government's institution to resolve labour disputes based on Law No. 22/1957. As stipulated by Article 124 (1) of Law No. 2/2004, the P4P/D was required to continue to carry out its function until the PHI was established. Further, based on Article 124 (2) of Law No. 2/2004, once the PHI was established any disputes over industrial relations or termination of employment which had already been submitted to the P4P/D, but not yet adjudicated were to be settled by the PHI at the local district court. Any disputes from the P4P/D that had already been rejected but were in the process of being appealed by one or both of the parties were to be settled by the Supreme Court. The new Law, however, did not provide clear guidance as to how exactly this transition from the P4P/D to the PHI would be managed. The transition posed a significant problem, given that thousands of unresolved cases were put on hold after the official dissolution of the P4P/D, while waiting for the PHI to become fully operational.

The numbers of unresolved cases bestowed on the PHIs by the P4P/D varied by region, but were frequently high. Those on the PHI Jakarta, for instance, during the transitional time between January and September 2006, reached approximately 138 cases. This was in addition to around 130 newly submitted cases, bringing the total to around 268. In 2007, only 100 cases were decided. The problem, as explained by a substitute registrar at the PHI Jakarta, is that cases bestowed from the P4P/D were not prioritized by the PHI. Instead, priority was given to newly submitted cases; because the newly established PHI wanted to be sure to meet the 50-day time limit for examination of newly submitted cases, to be sure that decisions were issued on time. No limitation of deliberation was imposed for cases that had been bestowed from the P4P/D, either in Law No. 2/2004 or in the Technical Instructions for the Implementation of Law No. 2/2004 as issued by the Supreme Court later on.[81] This led to very long delays for the parties concerned.

81 Decisions of the Chief Judge of the Supreme Court Nos. 034 and 035 in 2006. It was only in 2009 that the Supreme Court started to pay attention to this issue, by limiting the time for judgments to be reached (see the Supreme Court Annual Report 2009).

According to a 2010 report from the Bandung District Court,[82] during 2006 the PHI Bandung received 125 cases from the P4P/D Bandung region. Cases that had been decided by the P4P/D's regional committees but had been appealed, along with all cases awaiting either decision or appeal through the P4P/P's central committee, had [as of the time the report was published] never even been bestowed. During this time the PHI Bandung received a large number of review applications for P4P/D decisions, and in response, on 17 July 2006 the PHI Bandung, sent a letter to the Head of Manpower Office Bandung, requesting that the mentioned cases be bestowed immediately. The aforementioned 2010 report from the Bandung District Court, however, did not mention whether or not the Manpower Office met the request. Either way, the cases formerly handled by the P4P/D were left in limbo, with no clarity as to when, how or even if they would be addressed, given the dissolution of the previously-responsible institution and the ongoing issues with regard to the PHI not having received the cases, let alone examined them.

For new cases being handled by the PHI, disputes over termination of employment were the most frequent, as shown for instance in table 6.2 below for cases submitted to the PHI Tanjung Karang, Lampung. As can be seen, very few disputes over interests, or disputes over rights, were submitted to the PHI; and not a single dispute among trade unions. By far most cases (90%) were submitted by workers. A similar situation existed for PHIs in other regions; which had also been mirrored the situation in the P4P/D, where the majority of cases submitted by workers rather than employers. The confusion and delays associated with the transition between the two institutions placed workers – most of whom were disputing their dismissals – in an extremely difficult situation.

Table 6.2: Cases at the PHI Tanjung Karang, Lampung (2006 – 2010)

Year	Number of cases	Type of disputes				Workers as plaintiffs	Employers as plaintiffs
		Rights	Interests	Termination of employment	Among unions		
2006	9	-	1	8	-	8	1
2007	19	1	-	18	-	17	2
2008	10	1	-	9	-	9	1
2009	13	-	1	12	-	11	2
2010	11	-	-	11		10	1
TOTAL	**62**	**2**	**2**	**58**	**-**	**55**	**7**

82 Accessed through http://pn-bandung.go.id/uploads/profil%20phi%20bandung2.pdf in December 2010. This report is exceptional, as in general, Indonesian courts have not yet developed such transparency in policy.

2.2 Which procedural laws?

With a few exceptions as specifically set forth in Law No. 2/2004, the procedural law applicable in the PHI is civil procedure (Article 57). The legal basis for the procedures at the PHI, based on both Law No. 2/2004 and the Decision of the Chief Justice of the Supreme Court (as the implementing and case administration guidelines during the transition between the old and new systems), consists of four key instruments, namely:

1. The *Herziene Indonesisch Reglement* (HIR) or the Revised Indonesian Regulation (*Staatsblad* 1848 No. 16; *Staatsblad* 1941 No. 44), applicable in Java and Madura;
2. The *Rechtsreglement Buitengewesten* (RBg) or the Outer Islands Regulation (*Staatsblad* 1927 No. 227), applicable in areas outside Java and Madura[83];
3. Law No. 2/; and
4. Decision of Chief Justice of the Supreme Court No. KMA/034/SK/IV/2006 regarding the Instructions for the Implementation of Law No. 2/2004, and Decision of the Chief Justice of the Supreme Court No. KMA/035/SK/1V/2006 concerning the Guidelines for the Implementation of Case Administration at the Industrial Relations Court, both issued on April 19, 2006.

In practice, there has been significant variation between different PHIs, and even among different panels of judges within the same PHI, with respect to interpretation and implementation of procedural law. With respect to differences between judges, career judges tend to comply closely with the civil procedural law from het HIR or the RBg, while ad hoc judges are more likely to make 'adjustments': ad hoc judges from union circles favouring workers' interests, and ad hoc judges from employers circles favouring employers. Key issues, which were decided differently by different PHIs, include the question as to whether particular Heads of Personnel, or Human Resources Development (HDR) officials, are entitled to represent their employer organization at the PHI (as regulated under Article 87 of Law No. 2/2004).[84] Some panels of judges in the PHI (including the PHI Bandung) rejected any HRD officials from representing their employers if they could not present a membership card to the Indonesian Bar Association[85]; while other PHIs (such as the PHI Jakarta) were content to accept the officials, with the intention of 'expediting and facilitating the examination process at the PHI', and considered their actions to be 'an existing practice in the civil litigation

83 The HIR and RBg were the main procedural law used in the civil and criminal court in the Netherlands Indies. In content they were generally the same. After Indonesia's independence they continued to be used as part of the colonial legal legacy. In 1981, Law No. 8/1981 on the Code of Criminal Procedures replaced the criminal procedure part of the HIR.

84 This issue had previously been complained about by Apindo, see statement by Djimanto, Apindo Vice President, as quoted in *HukumOnline*, 24 September 2007.

85 Interview with Tony Suryana, ad hoc judge at the PHI Bandung, July 2007.

mechanism'.[86] Similarly, some PHIs prohibited trade union officials at the branch level from representing their members at the plant level, even when no plant level union existed. Another issue that was addressed differently by different PHIs was whether or not workers who were still working for their employer could become witnesses for the same employer in the PHI. Some PHIs chose to allow workers to be a witness for their employer, although as a witness the employee was not sworn in on the ground that they were dependent and potentially under the influence of their employer. Other PHIs did allow workers to be sworn in; while still other PHIs prohibited such witnesses entirely. As stated by Djimanto, Apindo's Vice-President, 'This ambiguity has created confusion in practice' (*HukumOnline*, 24 September 2007).

In relation to these issues, it is interesting to look at the Supreme Court and its role in promoting uniform interpretation of the law. Despite being considered generally to have played a role in this regard, the Supreme Court has also been criticized for being too 'formally legal' in its approach – for instance by sticking closely to the civil litigation procedural laws, while neglecting the actual social conditions surrounding the cases.[87] In the case of whether or not branch level union officials could represent their members at the plant level, for instance, panels of judges in the PHI Jakarta held different opinions. Some judges allowed the representation, based on the argument that in the current situation it remained difficult for workers to establish unions at plant level, and thus they were likely to become members of the union at the branch level instead; and besides, the Trade Union Law No. 21/2000 stipulated that workers could become members of unions at both levels. Other judges, however, did not allow such representation, based on the argument that branch level union officials had no direct responsibility for plant level workers. The Supreme Court generally took the latter position, and cases that supported the former position were normally overruled at the casation level. Despite this, some judges, mostly from union circles, urged each other to stand by their decisions to allow such practice, even though they knew the Supreme Court would likely reject the decision. As one ad hoc judge from the PHI Jakarta explained: 'This is not merely procedural law we hold, but also justice. I think the Supreme Court is wrong on this issue, and it also concerns our principles.'[88]

86 Interview with Juanda Pangaribuan, ad hoc judge at the PHI Jakarta, August 2007.

87 I am grateful to Juanda Pangaribuan, ad hoc judge at the PHI Jakarta, who brought this issue to my attention.

88 Interview with Juanda Pangaribuan, August 2009.

2.3 Law No. 2/2004 versus HIR/RBg?

Compared to the regular civil litigation procedural laws applied in the civil court (HIR/RBg), there are several procedures stipulated in Law No. 2/2004 which in practice have led to problems; especially when judges have emphasized the HIR/RBg rather than the Law. One of the most controversial issues for workers and employers is related to the injunction as specified in Article 96 of Law No. 2/2004. This article states: 'If in the first court session it is decidedly proven that the employer is not performing his/her obligations as meant in Article 155 (3) of Law No. 13/2003 concerning Manpower, then the Chair of the court session should immediately pass the injunction in the form of an order to pay the wage and other rights that are normally received by the concerned worker/labourer.' Article 155 of Law No. 13/2003 guards against arbitrary termination of employment, stipulating that any termination of employment without the decision of the industrial relations dispute settlement should be considered 'null and void' (subsection (1)); and as long as there is no such decision, both employers and workers should continue to perform their obligations (subsection (2)): workers to work; and employers to pay their wages. However, the employer is allowed to suspend a worker who is in the process of having his/her employment terminated, although until a decision is reached, the employer must continue to pay the worker's wages and other entitlements that he/she normally receives (subsection (3)).

The problem in practice is that there are not many injunctions passed, as judges normally rely on what is stipulated in article 185 (1) of the HIR, which states: 'Decisions of judges that are not the final verdict, though they be stated in the trial, are not made separately, but only recorded in the minutes of the trial.' Such a provision could be interpreted to mean that the civil court does not recognise the injunction; and since the PHI is under the jurisdiction of the civil court, Article 96 of Law No. 2/2004 is effectively not applicable in the PHI. This special procedure in Law No. 2/2004 is slightly different from the one recognized in the HIR and others; but according to many union activists, the PHI judges tend to adhere relatively strictly to the HIR, rather than trying to implement the procedures in Law No. 2/2004 – which arguably is more protective towards labour. Many ad hoc judges from union circles confess that they have difficulties in implementing the provision on injunction, because other judges, both career judges and ad hoc judges from employer circles, tend to avoid it. 'So it's like two against one, and I always lose,' said one ad hoc judge. Some other judges, as reported by the ILO (Fajerman, 2011: 20), justified their reluctance to implement the provision on injunction by reasoning that there may be little practical impact either way, and such an attempt may be costly and time consuming, as 'employers generally ignore such decisions and workers are forced, due to the PHI's lack of execution powers, to petition to the district court to ensure enforcement.'

Another issue of concern is the debate as to whether or not a *dwangsom* (daily fine) should be imposed in the PHI's decisions. The *dwangsom* was considered a way by which the law enabled the enforcement of the court decision. One viewpoint on this issue, held for instance by a Chief Justice from the PHI Tanjung Pinang, Riau Islands, was that a *dwangsom* could not be imposed through the PHI's decisions, because a rule existed which stated that a *dwangsom* could not be imposed in cases of monetary claims. This rule referred to Article 606a Rv (*Rechtsvordering*),[89] which provides reference on such cases in civil litigation procedures.[90] It may be true that many PHI cases and judgments deal with monetary claims for compensation or severance payment; but not all cases do. Some ad hoc judges from union circles held the opinion that a *dwangsom* could be imposed through the PHI's decisions, arguing that not all claims in labour disputes were related to money; for example the claim for reinstatement in cases of the arbitrary termination of employment. They were aware that companies were often reluctant to implement verdicts to reinstate their workers unless they were forced to do so, even in unfair dismissal cases.[91] Yet, even in such cases judges remained less than enthusiastic about the *dwangsom* and to the present, PHI judgments with *dwangsom* in them remain rare.[92]

2.4 'The case is free, but costly'

In accordance with Article 58 of Law No. 2/2004, in litigation processes at the PHI the litigants whose lawsuits are worth not more than Rp 150 million are not subject to payment of any expenses, including execution expens-

89 This states: 'All of a judge's decision contain a penalty for something other than paying some amount of money, then it can be determined that all or any times the sentenced does not meet the punishment, to him should be handed over an amount of money which amount set out in the decision of the judge, and the money called *dwangsom* (daily fine).' This translation will not be understood clearly by English readers – a better translation may need to be provided. In particular, there are several grammatical errors.

90 Rv (*Reglement van de Rechsverordering, Staatblad 1849 No. 63*) was a regulation for civil litigation procedures during the Dutch colonial time specially applied to European and Foreign Orientals in the court. Indonesian civil courts still use it as a supplement to HIR/RBg.

91 See the ILO Termination of Employment Convention No. 158, adopted in 1982, which entering into force on 24 November 1985; and the Termination of Employment Recommendation No. 166 in 1982.

92 One of the first such decisions was a judgment from the PHI Serang, Banten. Apart from the order of reinstatement of the worker, the ruling also imposed a 'dwangsom' to the amount of Rp 400,000.-/day for each day the company was not willing to implement the verdict voluntarily (see PHI Serang Judgment No. 18/G/2006/PHI.SRG, in Tjandra and Pangaribuan (Eds.) 2007: 987-1027) One ad hoc judge from union circles who played a key role in this decision claimed that he had to 'really struggle' to ensure the verdict. This judge observed that his colleagues in the panel of judges (the career judge and the ad hoc judge from employers circles) were both inclined to reject the worker's claims before looking closely at the case (interview with Hotlan Pardosi, July 2007).

es.[93] Based on an *a contrario* interpretation, if a lawsuit is worth more than Rp l50 million, it is subject to payment of certain expenses. Problems arise in practice, however, because for lawsuits worth more than Rp 150 million, the actual amount of expenses to be paid was not set forth expressly in the Law; leading to ambiguity and frequent examples of discrimination. According to the Technical Instructions for the Implementation of Law No. 2/2004, issued by the Supreme Court, the amount is to be stipulated by the Chief Justice of the PHI (*ex officio* the Chief Justice of the District Court), and this instruction has often led to differences in interpretation among PHIs in different regions. Problems also arose for cases worth less than Rp 150 million. Although these are supposed to be exempt from fees, field observations indicate that in practice, fees are are being imposed unlawfully on the person filing the case, varying from Rp 1 million to at least Rp 1.5 million. One lawyer from a law firm in Jakarta claimed that he was forced to pay case fees of Rp 1.8 million for one labour case handled by himself (although the case was worth less than Rp 150 million), simply because he represented an employer.[94]

Although the intention of the law is to assist workers by not imposing case fees for many cases, the law appears far from achieving its goal. The value of Rp 150 million is relative, depending on the individual payee. For cases submitted by individual workers, or small numbers of workers, the aforementioned figure is substantial. However, if a labour case involves hundreds or even thousands of workers, the total value will reach well beyond Rp 150 million, although the individual contributions, divided among many, will be small. Therefore, cases involving large numbers of workers are subject to case fees. One strategy often used by union officials is to split a case into several lawsuits, with each lawsuit not exceeding the maximum value allowed for exemption from case fees. The problem is that then these lawsuits are distributed among different panels of judges, and there is the risk that the judgments may different from one panel to another.[95] There are no data available to indicate how often this approach is actually adopted in the PHI, but one ad hoc judge at the PHI Jakarta claimed it occurred 'quite often', and one union official said that he always used the strategy in cases involving many workers (where the amount exceeds the limit of Rp 150 million). This official claimed that since 2006, he had filed lawsuits using this strategy for about 20

93 According to Franky Tan (interview in June 2008), who was one of the workers' representatives involved in the 'Tim Kecil' ('small team') during the formulation of the Law (see Chapter 4), such an exemption from case fees for cases worth a maximum Rp 150 million was a result of a compromise during the deliberation process, as there had been no such provision in the original draft. In the beginning, workers wanted the amount to be Rp 300 million, arguing that under the previous system of the P4P/D, there had been no fee at all for cases to be submitted. The amount of Rp 150 million was proposed by the Minister of Manpower, Jacob Nuwa Wea, as a 'third way,' to reach a balance between what workers demanded, and the regular practice in the civil court.

94 Interview with a lawyer from RSD Law Firm on September 28, 2006.

95 Interview with union advocate Timboel Siregar, July 2007.

cases, to various PHIs; and he claimed that many other union officials, as well as employers in mass dismissal cases, often used similar strategies.[96] Some ad hoc judges, especially those from busy PHIs like Jakarta, have labeled these strategies as 'cheating'; and have attempted to deal with such practices by holding regular meetings between panels of judges to coordinate their approach and avoid inconsistencies in their judgments for split cases.[97] Interestingly, in some PHIs with relatively few cases to adjudicate, for example PHI Yogyakarta, the strategy of splitting cases seems to be well liked by ad hoc judges who even suggest that the plaintiffs split their case.[98] One reason for this may be, that the ad hoc judges get extra income for each case they handle; receiving Rp 250,000,- in 'case support' ('tunjangan perkara').

To date, the regulation of fees for civil cases in Indonesia is set forth in Article 121 (4) of the HIR or Article 145 (4) RBg, which state that the listing of the case in the case registry may only occur if the parties have paid a sum of money to cover registration fees, summoning fees, and fees for notification to the parties. The article does not, however, mention a specific amount for case fees nor a sanction imposed on parties committing case fees manipulation. As specifically ruled for the PHI, and as further conveyed by the Supreme Court Junior Chairman for Civil Law, the state had provided funds amounting to Rp 7.5 million for each industrial relation dispute case submitted to and examined by the PHI.[99] In practice, however, various additional fees needed to be paid by the parties, such as fees for the legalization of the power of attorney and legalization of evidence (the official amount being Rp 11,000,-[100]), and several other 'unofficial' charges such as: 'folder fees' (for folders for the case documents), 'typing fees' (charge for typing the decisions[101]), 'electricity fees' (for typing the decision at home), 'copying fees' (for the copying of decisions when asked by parties), fees for 'delivering briefs to the Supreme Court', and other non-specific fees.

The total figure for unofficial fees varies highly between cases, and depends on who the litigants are, and who handles the case. If, for example, the case was filed by a worker and was handled by the worker him/herself person-

96 Personal communication with Timboel Siregar, August 2008.
97 Interview with Junaedi, ad hoc judge at the PHI Jakarta, July 2007.
98 Interview with ad hoc judge at PHI Yogyakarta. The PHI Yogyakarta receives only some 5 cases every year.
99 'MA: Biaya Perkara Bukan Pungli' ['Supreme Court: Case Fee is not a Bribe'] (hukumonline.com 16 August 2006)
100 In June 2005, Pos Indonesia Ltd. issued a Circular Letter stating that the fee for the legalization of items of evidence at Court was Rp 5,000.- per item, in addition to a Rp 6,000,- stamp duty for each item of evidence.
101 In reality, the substitute registrar only asks for the soft-copies of the documents submitted by the parties, which are subsequently merged to be included in the judgment. In addition, the ad hoc judges usually typed the main points of the judgment personally, not the registrar.

ally, or if he/she was accompanied by a union official, the unofficial fees would be relatively small, or even zero. However, for cases filed by employers, especially if handled by professional lawyers, higher unofficial fees were likely imposed. As one professional lawyer at the PHI explained, the substitute registrars were the primary drivers of this practice. According to a substitute registrar at the PHI Jakarta,[102] no unofficial fees were imposed for duties such as legalization (see table 6.3 below). However, for some cases, the registrar admitted that fees were allowed, insofar as parties paid them 'voluntarily'. In his own explanation: 'to help cover the operational costs of the court.' These remarks were made as part of a complaint about the lack of attention to the new court from the District Court, with the registrar giving examples that the ad hoc judges' room still had no air conditioner, although it had at that point been in use for a couple of years already.

Table 6.3: Details of official and unofficial fees at the PHI Jakarta (September-October 2006)[103]

Types of Expenses	Official Fee	Unofficial Fee
Legalization of power of attorney	None	Up to Rp 50,000,-
Legalization of evidence at post office	Rp 11,000,- per piece of evidence	Often requested again at the court
'Folder Fees'	None	Rp 50,000,-
'Typing Fees'	None	
Fees for the copying of the decision, by the registrar ('for electricity' because the registrar types the Decision at home)	None	Rp 100,000,- (or more, depending on the person taking the copy; e.g. lawyers pay more than workers)
Fee for delivering appeal brief to the Supreme Court	None	Rp 50,000,-
'Miscellaneous' Fees	None	Rp 159,000,-

For some parties, especially workers, the establishment of PHIs in provincial capitals only was a major handicap. For workers who live in Bekasi, West Java, for example, their homes are closer to Jakarta than to Bandung, (Bekasi is 30 km east of Jakarta). However, they have to file their lawsuits in Bandung, (180 km from Bekasi), since the PHI in West Java is located in Bandung, the capital of West Java. The travel costs from Bekasi to Bandung to attend hearings are about nine times higher than to Jakarta. This is obviously burdensome, especially when compared to the previous dispute settlement mechanism under the P4P/D, which was free and was always held near the parties' own domiciles. These financial, travel and time costs associated with the PHI system are discouraging workers from bringing their cases to the

102 Interview with Asri Tajudin, substitute registrar at the PHI in Jakarta, September 2006.
103 Data collected at the PHI Jakarta (September-October 2006).

PHI, instead often forcing them to choose bipartite resolution directly with the employers, although the amount they tend to receive in compensation through this avenue is typically much lower that that stipulated by law.[104] Thus, as one union official observed, 'Although the case fee is free, bringing cases to the PHI is costly and burdensome, especially for workers.'[105]

2.5 Time for case proceedings

As stipulated by Articles 103 and 115 of Law No. 2/2004, the PHI must settle an industrial relations dispute within less than 50 working days after the date of the first court session; while the Supreme Court must settle the case within 30 working days. Almost all the parties involved with the PHI, however, report much more time for a case to reach a final decision, both at the PHI and, in particular, the Supreme Court. In an evaluation of the PHI's performance, the Chairman of Apindo, Sofyan Wanandi, blamed the large number of cases at the PHI, observing that this will 'create conflicts between employers and unions, and may create a mess [in the system].' (*Kompas*, 6 February 2008). In contrast, Junior Chairman of Special Civil Cases of the Supreme Court, Kaddir Mappong, blamed Law No. 2/2004 itself, which he stated: added an additional burden of cases to the already overloaded Supreme Court (*Hukumonline*, 29 September 2007). He claimed that 'The 30 days requirement of case-handling at the Supreme Court is impossible. Even for the commercial court, which gave us 60 days, we could not reach decisions on time'. To resolve this problem, Mappong suggested an amendment of Law No. 2/2004 to extend the time limit, which he claimed would be more realistic for the court.

Further investigations into the situation at the PHIs and the Supreme Court indicated that case handling at the district court level was relatively on schedule (approximately 30 days per case); but that it was at the Supreme Court that cases tended to take very long. This was due to time delays in internal case administration within the Supreme Court itself. A conservative estimation suggested that it would take at least eight months for one case to go through the full process, from registration to decision, in the Supreme Court (see table 6.4 below). Such an amount of time was considered normal at the Supreme Court, and despite efforts to cut time and accelerate the process, there appeared to be little that Supreme Court judges could do to avoid

104 Interview with Machmud Pedmana, a union official in Karawang, West Java, September 2007. See also the 'Joint Statement' resulting from the Labour Law Practioners' Conference, Cipayung, 5 March 2007, organized by the TURC and ACILS (American Center for International Labor Solidarity), gathering around 50 labour law practitioners from various unions, labour NGO activists, ad hoc judges, etc. claiming that labour dispute settlement under Law No. 2/2004 is 'not quick, inappropriate, unjust, and expensive', causes widespread labour rights violation and forces many workers to reach 'under the table agreement' with employers.

105 Interview with Indra Munaswar, August 2008

the delays, as they involved established stages; the same stages as other cases in the Supreme Court.[106] Some union activists claimed that in many cases, the time needed at the Supreme Court was even longer than eight months (see Munaswar, 2008).

Table 6.4: Stages and times for case handling at the Supreme Court

No.	Stages	Time lenght
1	Administration	Two months
2	Directorate for Civil Case (analyzer and registrar)	
3	Special Civil Case Registrar	
4	Junior Chairman of the Supreme Court on Special Civil Cases (choosing the member of the panel of judges – consisting of three people: one career Supreme Court Judge and two ad hoc judges)	
5	Chair of the panel of judges (career Supreme Court Judge)	Two months
6	Reader 1 (*Pembaca 1* – P1) – member of the panel of judges (ad hoc Judge from employer circles)	
7	Reader 2 (*Pembaca 2* – P2) – member of the panel of judges (ad hoc Judge from union circles)	
8	Reader 3 (*Pembaca 3* – P3), Chair of the panel	
9	Meeting of the panel for case deliberation and the reading of the decision	Two months
10	Operator (typing the decision)	
11	Registrar (correction of the decision)	
12	Operator (revision of the decision)	
13	Reader 1 and Reader 2 (further revision of the decision)	
14	Chair of the panel (further revision of the decision)	
15	Signing (Reader 1, Reader 2 and Reader 3)	
16	Decision finalization (by the Special Civil Case Registrar)	Two months
17	Expediting the decision to parties through the PHI/District Court (Directorate for Civil Case)[107]	
TOTAL		**Eight months**

But even at the PHI of first instance there are delays. Article 106 of Law No. 2/2004 stipulates that the substitute registrar must have produced a copy of the judgment within 14 working days after it is signed. Article 107 then requires the registrar of the district court to dispatch the copy to the parties within seven working days after receipt of the judgment. In practice, as noted by one union activist (Munaswar, 2008), two months after a judgment

106 Interview with Fauzan, an ad hoc judge at the Supreme Court from union circles, May 2009.

107 The time needed to expedite the decision from the district court in which the case was registered to the parties takes twp additional months.

has been read, it has often still not been signed by the judges – sometimes because the chair of the panel is too busy with his duties as a career judge.[108] As Munaswar has noted, 'This situation is detrimental to workers, because it hampers the preparations they need in order to prepare for cassation or a counter memory cassation. If you encounter this problem, then the only way to resolve it quickly is to ask for "good service" from the substitute registrar, of course with some money, in order to get a photocopy of the unsigned judgment, to be able to draft the cassation document.'

The problems with time delays continue once an appeal is made. As noted by an ad hoc judge at the PHI Tanjung Pinang, Riau Islands, after an appeal has been requested, the person requesting the appeal must wait at least four months before the documents are sent from the PHI Tanjung Pinang to the Supreme Court (see Agung 2009: 89). Indeed, in one case at the PHI Tanjung Pinang the documents were only sent to the Supreme Court after a 1.5 years delay. The reasons given were a lack of substitute registrars at the PHI Tanjung Pinang, combined with unwillingness on the part of the substitute registrars available to work on the PHI cases.[109] For them, handling the PHI cases was an additional burden and cost, over and above their regular work. One judge observed that 'Going to the PHI, which was located far from the District Court where they have to go every morning, requires extra costs for transportation; and there were no subsidies from the District Court for this.'[110]

Many ad hoc judges and union activists from various regions shared the experiences and opinions described above with respect to time delays. The Indonesian judiciary is notorious for lengthy processes (see Pompe, 2005); and delays are clearly the norm. But arguably many cases, especially those involving workers, are also bound by requirements and standards devel-

108 Ad hoc judges cannot sign the judgement, as according to the guidelines, the chair of the panel of judges is required to sign the form first.

109 According to Article 77 (1) Law No. 2/2004, registrars at the PHI are appointed from 'Civil Servants of Government Agencies that are responsible in the manpower sector', i.e., the P4P/D in the regions, particularly the former registrars (*panitera*) there. In practice, not many former P4P/D registrars wanted to be assigned to the PHI. One key reason mentioned by them was lower allowances. In the P4P/D they had been 'registrars' and employees of the Regional Government; whereas in the PHI they were only 'substitute registrars'.

110 According to Agung (2009: 88-90), an ad hoc judge in the PHI Tanjung Pinang, this situation, combined with the high travel costs for ferries between Batam city on Batam island (where most of industries were located) and Tanjung Pinang city (Bintan Island; where the PHI is located) contributed to the declining number of cases brought to the PHI Tanjung Pinang. This judge also explained that local unions had sent a petition to the Minister of Manpower and the Supreme Court about this issue, and asked for a PHI to be established in Batam instead of Tanjung Pinang, or for trials to be held on site by judges who could visit Batam. The Minister replied that this could not be done, since the Law stated that 'the PHI had to be in the capital of the province' (as did the Supreme Court). The Minister did not address the possibility of amending the Law to address this obvious problem.

oped internationally, for example by the ILO, through its conventions and recommendations. ILO Convention No. 151 (1978) concerning Labour Relations, for example, emphasizes that labour dispute settlement procedures need to be 'established in such manner as to ensure the confidence of the parties involved'. Likewise, ILO Recommendation No. 92 (1952) concerning Voluntary Conciliation and Arbitration states that 'The procedure should be free of charge and expeditious', and adds that 'such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.' PHI practices in relation to the time for case handling clearly deviate greatly from these international standards, which, eventually, will be felt most severely by Indonesia's workers.

3 Consequences of the PHI for labour

In addition to the problems discussed above, the PHI system has experienced other problems as well. One significant issue involves the rules of evidence and the burden of proof, and associated problems with the execution of the PHI's decisions. While this will be discussed in detail later, one important initial point here is the question of whether 'pure' civil procedural law must be applied in labour dispute settlement. As the founders of the PHI system emphasized from the beginning, as a discipline, labour law is an effort to surpass the dichotomy between private law and public law (see also Hepple, 1996). Unlike common private law labour law and labour relations are about human work, which cannot be separated from workers as human beings. Therefore, if the labour law courts focus too much on civil litigation procedures, this could hamper the disputing parties' access to a fair and sound labour dispute settlement; particularly for the weaker party (usually the workers). The following discussion will provide a more detailed analysis of the consequences for labour if such is the case.

3.1 Conceptual inadequacy and enforcement issues

As described earlier, Law No. 2/2004 is conceptually inadequate in some respects, and contains several confusing provisions. One of the most obvious and recurring problems has been the law's separation of disputes into different categories; specifically, the distinction between disputes over termination of employment, and disputes over rights – which has given rise to confusion over jurisdiction, with judges uncertain whether a dispute arising from termination of employment should be considered a 'dispute over rights' or a 'dispute over dismissal of employment'. Actual practices indicate that cases brought before the PHI that initially involve disputes over rights can suddenly be transformed into disputes over termination of employment. As reported by one union alliance, labeling a dispute as 'a dispute over termination of employment' has become an easy way for a company to prevent its workers from fighting directly for their rights (see, for example, KSN,

2009). This situation has forced workers and their unions to find other ways to redress their grievances, such as through initiating criminal legal procedures, in preference to the regular industrial dispute settlement mechanism.

One well-known case that exemplifies this issue is one involving a Japanese subsidiary company, King Jim Indonesia Ltd., located in Pasuruan, East Java. This employer dismissed four union leaders over a strike they had led, and when the case was brought before the criminal court, the court found the employer guilty of violation of trade union rights, leading to imprisonment of the company's director (Tjandra, 2010). This is a clear example of how workers and unions can become 'fed up' with the problems inherent in the regular (PHI) dispute settlement mechanism, and choose alternative strategies, which they claim to be more effective and practical. Using mass action as a tool to enforce the rights they enjoyed based on the existing laws, workers and unions have often avoided the standard mechanisms for 'dispute' (*perselisihan*) resolution, and instead chosen to attempt to enforce the law through focusing on rights 'violation' (*pelanggaran*) cases. This strategy allowed them to alleviate their concerns around enforcement; with the labour rights enforcement system seen as problematic and not to be trusted. Workers believed that focusing on 'violation' procedures was a safer and more reliable approach than focusing on 'dispute' mechanisms, not least because there are stricter penal sanctions associated with violations of law.

According to the workers, the involvement of the PHI in the rights violation cases would have distorted the enforcement of labour law, and diverted attention away from the real issue at stake: the violation of trade union rights manifested in the dismissal of four union leaders. This would have allowed the company to hide behind the dispute process at the PHI, while its crimes continued with impunity. To prevent this, the workers focused on the police and the public prosecutor and succeeded; the employer was eventually jailed for 18 months for unlawfully dismissing union leaders in contravention of the Trade Union Law No. 21/2000.

But a major dilemma remains. Despite the unprecedented success of getting an employer into jail for misconduct against union officials, the four union leaders who had been unfairly dismissed were unable to get their jobs back, and, in addition, the initial problem of collective bargaining rights remained unresolved. The criminal justice system can not provide solutions to issues involving the dismissal of workers and the collective bargaining rights of union' – these require resolution through the system of labour dispute settlement with the PHI as the main institution. This system, as already noted, is seen as highly problematic by workers, partly due to its conceptual inadequacy, and partly because of the problems surrounding the enforcement of workers' and trade unions' rights.

3.2 'Pure' civil procedural law?

As already noted, civil litigation procedure, as regulated in the HIR/RBg and applied in the general civil court, also covers all court hearings in the PHI. One of the most important principles in the HIR/RBg is the passivity of the judge: the judges should be passive with respect to the evidence brought before them, and are not allowed to be proactive with respect to giving input and advice to the disputing parties. This passivity must be upheld even when it is clear to the judge that workers are not familiar with the civil litigation procedures applied at the PHI, and their case risks being annulled (see Batserin, 2009: 27-43).[111]

Field observations have shown that when ad hoc judges first examine the briefs of labour lawsuits, the main challenge they face is the incomplete procedural and standard requirements for a civil lawsuit. These include issues concerning power of attorney and formulation of lawsuits, i.e. consistency between *posita* (legal facts) and *petitum* (legal remedies); litigation techniques and techniques for raising questions; as well as incomplete lawsuit requirements with respect to evidence, witnesses and the like. The lack of understanding surrounding these formalities and requirements often results in the annulment of lawsuits by the court. As noted by an ad hoc judge at the Supreme Court, of 1000 appeal cases brought to the Supreme Court in 2008, the majority, particularly those filed by workers or unions, were overruled and annulled, due only to accidental errors in formalities (Fauzan, 2009: 95). Although in cases of annulment based on formalities, the procedural law allows the plaintiffs to file the lawsuits again (after revision), this tends not to happen, because from the workers' perspective this only means further time in the attempt to reach resolution through the courts. Most appealsare filed by employers; indicating that workers win most cases at the PHI, and

111 Batserin (2009: 35) also notes that the PHI Manado, North Sulawesi, once held a so-called 'dismissal process' – a set of pre-trial hearings aimed at informing and guiding the plaintiffs on formalities. These hearings were considered to be extremely helpful in avoiding the risk of annulment of lawsuits due to procedural errors: 'Especially those [lawsuits] applied by workers directly, without legal representation.' These hearings were justified by reference to Article 83 (2), which states that 'The judge is required to examine the contents of the petition, and if there are shortages, then the judge should request the plaintiff to complete his/her petition'; and also to the Explanatory Notes, which state that 'During the process for completion of a legal action, the Registrar or Alternate Registrar may assist in drawing up/completing the legal action.' The practice of pre-trial hearings did not, however, continue for long; as cases began to be more frequently handled with the assistance of unions' legal aid officers, or professional advocates; and other judges in the PHI Manado panel eventually rejected the pre-trial concept on the basis that workers already had their own legal assistance.

suggesting that for some employers, lodging an appeal serves as another tactic to avoid or delay the implementation of the PHI's decisions.[112]

Field observations also indicate the risk of bias by career judges against labour disputes, in comparison to their views on 'pure' civil law disputes. One career judge in the PHI Tanjung Pinang, for instance, confided that he believed that unlike civil lawsuits, lawsuits at the PHI were 'not real'[113] – since the disputes were about rights and interests, which, according to him, were 'vaguer' than regular damage claims. Another career judge in the PHI Jakarta stated that handling PHI cases was a burden for him, with his work becoming 'more intensive' but with 'less incentive.' He compared his work at the PHI to his other work at the Corruption Court and the Commercial Court (both special courts like the PHI); at the latter two courts he could obtain additional income for additional work, to the value of more than Rp 10 million above his regular salary.[114] This situation has apparently reduced the interest of career judges in pursuing PHI work, and act as a greater disincentive than 'the highly sensitive nature of labour disputes,' as reported by the ILO (see Fajerman, 2011: 17). This may also explain the observation that most of the work required to draft judgments at the PHI is handled not by the career judges but by the ad hoc judges.

The presence of ad hoc judges on the judging panel appears to be helpful to address the problem of the bias towards 'pure' civil litigation procedures, but, as pointed out by one ad hoc judge, only if 'career judges do not feel that they have to demonstrate their "authority" as Presiding Judge in the Panel'.[115] Indeed, statements from several ad hoc judges from labour union circles indicate that at least some career judges disapprove of the use of ad hoc judges in the general court system, which they apparently deem to be an intrusion in the established general court system. Consequently, some career judges referred to ad hoc judges using insulting nicknames, such as 'contract judge'.[116]

112 One ILO report (Fajerman 2011: 21) estimates that around 90 percent of labour dispute cases at the PHI have been and continue to be appealed to the Supreme Court. This reflects the lack of trust in PHI decisions, and 'serves as a tactic for (mostly) employers to circumvent and delay the implementation of court orders.'

113 Statements from career judge Ratmoho, in 'Labour Judges Workshop', Batam, 26 November 2006.

114 Interview with Heru Pramono, career judge at the PHI Jakarta, November 2008.

115 Interview with Daulat Sihombing, ad hoc judge at the PHI Medan, November 2006.

116 Bedner (2010: 212) noted a similar bias against ad hoc judges during the formation of the Administrative Court, during which ad hoc judges were perceived by some in the legal establishment to be a threat to the 'closed-shop' nature of the Indonesian judiciary. Later, ad hoc judges were removed altogether from the administrative court system.

3.3 Problems of judicial corruption

While ad hoc judges face a range of structural challenges, the most concerning one is probably the issue of corruption within the PHI; an issue which directly affects the performance and the existence of the new institution. According to one union official from Karawang, West Java province, corruption is typically seen in cases related to disputes over interests, and in cases of collective dismissal, which involve large amounts of money. The union official claimed that he was once approached by an ad hoc judge (from employer circles) in the PHI Bandung who asked him to provide some money for the judges in return for a promise to help the workers win the lawsuit. The union official said that he was very worried, as the consequences of losing the case would be serious for the workers involved, because the case was related to the annual wage increases in the company. 'We wanted to give the [requested] money, for the sake of our members, and the risk was too high of losing the case. The problem was that our union did not have money for such purpose.' The union officials were therefore unable to give the money to the judge, 'But I've told the [ad hoc] judge that later if we win the case we would not forget about her and her colleagues [the panel of judges].' In the end, the official and his union did win the case, and the court decided to award a wage increase of 14.8 percent – 4.8 percent higher than the employer had originally accepted. The union then gave the ad hoc judge an amount of money, which the union official believed would be divided among the members of the panel of judges. 'It was not really a bribery' the union official rationalized 'As we only gave them our expression of gratitude.'

Various union activists in various regions have reported similar corrupt practices, although very few were made public. One exception was a case involving a cement factory, PT Semen Kupang, in East Nusa Tenggara; which gained widespread media attention. During the case, union officials claimed that one of the ad hoc judges at the Supreme Court, Arief Sudjito, had accepted a bribe of Rp 2 billion from the company, and claimed that they had lost their case after failing to give the judge a requested 'handling fee' of Rp 300 million. The union admitted their involvement in the bribery, that they could only afford Rp 150 million, and that this was the figure that had been handed to the ad hoc judge. The union said they had been approached by the ad hoc judge who had advised that if the union wanted to win the case, they needed to give him the other half of the 'handling fee'; the judge told the union that he had been offered Rp 2 billion by the company to find in its favour. After losing the case, the union officials said that the ad hoc judge returned the union's money. 'We suspect the judge had [also] received a bribe from the company Semen Kupang,' the union leader was quoted in the media (*Koran Tempo*, 5 May 2010). The company denied the allegation (*Koran Tempo*, 6 May 2010), while the ad hoc judge in question was later investigated and monitored by the Judicial Commission (*Koran Tempo*, 7 May 2010). Although the Supreme Court said they would investigate this

judge for a possible violation of ethics, and although they had questioned the union officials (*Kupang Metro*, 7 May 2010), no follow-ups were reported, and the judge, Arief Sudjito, continued to work without any penalty.

The name Arief Sudjito appeared a year later in conjunction with a corruption claim involving another ad hoc judge. Imas Dianasari, an ad hoc judge from employer circles at the PHI Bandung, West Java, was arrested on 30 June 2011 while taking a bribe, along with a lawyer representing the company PT Onamba Indonesia. The case was dealt with by the Indonesian Eradication Commission (*Komisi Pemberantasan Korupsi*, KPK), and received extensive media attention (*Kompas*, 1 July 2011, *Koran Tempo*, 1 July 2011). Imas Dianasari claimed that she had contacts who assisted with corrupt activities, including contacts in both the PHI and the Supreme Court. Importantly, she named ad hoc judge Arief Sudjito as her contact at the Supreme Court who helped preparing the cases she handled in the PHI Bandung which went to appeal. In response to these allegations, the KPK summoned Sudjito for interrogation as a witness (*Inilah.com*, 18 July 2011). He denied the allegations (*Metronews.com*, 26 July 2011), claiming that he only knew ad hoc judge Dianasari because they were both ad hoc judges at the PHI. 'It is normal that we know each other from work,' he explained. According to several union officials who were often involved with cases at the PHI Bandung, ad hoc judge Imas Dianasari was widely known for corrupt practices. 'We could feel it, but it is also very difficult to prove,' said one union official, while mentioning several 'big cases' handled by ad hoc judge Dianasari he had lost in the PHI Bandung.[117] Ad hoc judge Dianasari was later suspended by the President (*Jakarta Post*, 7 September 2011); however, ad hoc judge Sudjito continued to work.[118]

The above and similar reports suggest that the so-called 'court mafia' (*mafia peradilan*), common and widespread in other courts in Indonesia, has also infiltrated the PHI. Some complainants compare the situation to that of the commercial court, which they consider has 'committed suicide'; such is the level of acute corruption taking place there.[119] Given this reputation, the

117 Personal communication with Saepul Tavip, union leader, July 2011.

118 Sudjito's reputation preceded him even before he became an ad hoc judge at the Supreme Court. He had been chairman of the Plantation and Farm Union – an affiliate to the All-Indonesia Trade Union Confederation, a former New Order government-sanctioned union – and obtained positions on several national tripartite institutions. Prior to his appointment as an ad hoc judge, he was also a union-backed member of the P4P/D. During that time he was already notorious among workers and union officials for his handling of disputes. One union official described Sudjito as the key actor behind the so-called 'death chamber' – a particular chamber of the P4P/D in which, for cases that were brought before it, all workers could be sure they would lose the case (personal communication with Timboel Siregar, June 2006).

119 Interview with Muhamad Hafidz, August 2010; a union official who had filed several judicial reviews against Bankruptcy Law No. 37/2004, for constitutional violation of labour rights.

number of people willing to use the commercial court for case settlements has been decreasing; people are unwilling to deal with the court's inefficiency and corruption (see also Pompe, 2004).[120] It is particularly interesting, and perhaps ironic, that the commercial court was the source of 'inspiration' for legislators when they established the Industrial Relations Court.[121]

3.4 Solutions outside the PHI

In most cases, it is the workers rather than the employers who file lawsuits to the PHI. In some locations, including Jambi, Bengkulu, Gorontalo and Palu, between 2006 and 2009 all lawsuits brought to the PHI were filed by workers or unions. When asked why workers file the large majority of claims, one career judge in Jambi said that it was understandable, as a labour issue more often disadvantages workers than employers. Despite this, the number of cases brought annually to the PHI has stagnated, and in some places has declined (see table 6.5 below). According to some ad hoc judges, this is worrying, and provides clear evidence of the need to amend Law No. 2/2004 (Agung, 2009), to increase the effectiveness of the court and thereby increase confidence in the system.

Most disputes continue to be resolved by means other than the PHI. One survey conducted by the Research and Development Division of the Ministry of Manpower in 2009 indicated that around 20 percent of disputes were settled through bipartite negotiation; 20 percent through mediation; and 50 percent through bipartite negotiation and mediation. It was not clear, however, whether the remaining 10 percent of labour disputes were actually being handled by the PHI. Research conducted by an alliance of labour NGOs and unions in East Java confirmed the findings above (see Jamaludin et al., 2008). Mediation in particular has proved a popular way of redressing disputes, in particular mediation by government officials. Indeed, many cases involving violations of labour laws, are being channeled to mediators instead of labour inspectors. Numbers of mediators, and their budgets, currently far exceed the numbers of and budgets for labour inspectors. Research also shows that despite some doubt about mediators from workers, who sometimes accuse

120 The commercial court has often been in the spotlight due to the relative ease with which corruption can occur. As explained by a commercial court practitioner, businesses tend to have confidence in this court not because it is free of corruption but because of its relative 'predictability' and, to some extent, 'certainty'. Most people reportedly accept the corrupt practices of the court as granted, and are not concerned, as long as the court can provide them with decisions that enable them to continue with their business. There is little consideration for the point that in disputes between businesses, there are workers who may lose their jobs if their employer goes bankrupt (personal communication with Santy Kouwagam, October 2013).

121 Interview with Indra Munaswar, July 2006; a member of the 'Tim Kecil' (Small Team) of union leaders involved in the formulation of the new labour bills in 2002-2004 (see Chapter 4, also Suryomenggolo, 2008).

them of being 'in favour of the employers', the workers and unions still prefer mediation to conciliation or arbitration, due to the relatively cheap and easy procedure, reminiscent of the practice of the P4P/D.

Another reason for the workers' and unions' preference for mediation according to the Ministry of Manpower survey, was that the time frames were considered reasonable – the mediator's 'recommendation' is given within 30 days. Another valid reason is, of course, that according to Law No. 2/2004, mediation is a compulsory 'second step' in the dispute resolution process.[122] If agreement cannot be reached during the initial bipartite negotiations, the parties are required to see a mediator before progressing to the PHI. One professor of labour law at the University of Indonesia, Aloysius Uwiyono, argues that this highlights a problem with the formulation of the law; which prohibits arbiters from handling disputes over terminations of employment, even though this type of dispute accounts for, in the professor's estimate, 98 percent of cases.[123] As Professor Uwiyono noted, 'As a consequence, all disputes over termination of employment are pooled to the mediation and mediators [and then the PHI], and [eventually] will end up in the Supreme Court, causing a backlog of cases that cannot be resolved fast.' He recommended for the law to be amended to make it possible for arbiters to handle disputes over termination of employment, and in addition, to facilitate alternative dispute resolution mechanisms to help resolve labour issues outside the courts.[124] Unlike arbitration about other issues, such as trade agreements, arbitration in the context of labour issues seldom occurs – sometimes not once in a year, according to the Ministry of Manpower's statistics for 2005-2010.[125] The situation is similar for conciliation, which seems not to have contributed much to the dispute resolution process, despite efforts to increase recognition of the role of conciliators and encourage their use.[126]

122 Some ad hoc judges from union circles have expressed their disappointment in mediators, who reportedly often counsel workers not to go to the PHI, telling them that the PHI system will take a long time and that it will be expensive for workers to get a resolution.

123 Interview in the Indonesian Voice of Human Rights radio station, 26 July 2006.

124 Uwiyono may have vested interests in the the role of arbitration in labour disputes: apart from teaching labour law in universities and running a law firm, Uwiyono is also the Chairman of the Indonesian Labour Arbitration Association.

125 See 'Data on Industrial Relations and Workers Social Security: 2005-2010', which also revealed that most labour disputes were resolved during the bipartite negotiation.

126 One attempt to increase the profile of conciliators was made by the Communication Forum of Conciliators of Jakarta, which placed a list of their members' names and addresses on the announcement board at the Regional Manpower Office of Jakarta. This seemed not to be effective, as parties attending the Regional Manpower Office continued to attend mostly to see mediators (personal communication with Ekalaya Halim, chairman of the communication forum).

Mediation, although the primary choice for workers looking to resolve labour disputes (as discussed above), has a major flaw: there is no provision in Law No. 2/2004 which stipulates that the settlement achieved through mediation is legally binding. Although Article 13 requires that the parties sign a written agreement, no part of the law gives unequivocal, legally binding force to the decision reached (see also Fenwick et al. 2002: 70). This is in contrast to the Law's directives on arbitration: for which Article 51 (1) states specifically that the arbiter's decision is legally binding. This difference means that the Law does not, in its present form, give any positive incentive to the disputing parties to use mediation to resolve their disputes. Nor does the Law include any useful disincentives for non-compliance; the Law does not specify any consequences if one party chooses not to implement the recommended agreement – instead, Article 14 (1) states that 'the parties may continue to file settlement of the dispute to the PHI'. By making mediation a necessary part of the process without ensuring that decisions reached are binding, the Law as it currently stands has ensured that the mediation process prolongs the time that disputes take to settle, when arguably labour disputes, because of the risks for workers, are the kinds of disputes for which it is most important that settlement times are kept to a minimum.

Employers have reportedly not hesitated to take advantage of the loopholes in the current Law. Union activists across several regions have reported there is now a tendency for employers to choose not to abide by the settlement agreement following disputes – especially when dealing with individual workers, who have neither unions nor lawyers to assist them.[127] In many reported situations, once the first stage (bipartite negotiation) fails, and workers bring the dispute to mediation, the mediator often gives a recommendation in favour of the workers, in which case the employer often ignores the recommendation and does nothing – neither files the dispute to the PHI, nor implements the recommendation voluntarily. This leaves the workers in limbo. If they manage to negotiate with the union to push the employer to respond, the employer may eventually file the dispute to the PHI, but will often ensure that it is filed in such a confused and incomplete state that the PHI can be expected to reject it. As a last step, the employers often take the option of filing an appeal to the Supreme Court, which, as explained earlier, can take years. This practice has reportedly been repeated in several cases, including by several companies that were assisted by one particular lawyer.[128]

127 Interview with various union activists in East Java, November 2008.
128 Interview with Pujianto and Jamaludin, union activists in East Java, November 2008.

Table 6.5 below presents some key statistics of cases brought to the PHI in the first four years of its existence (2006-2009). Many of the data will likely reflect the current situation at the PHI. The majority of cases were brought by workers and/or unions, rather than by employers, and the PHI's Jakarta and Bandung received most claims. The most active PHI outside Java was the PHI Medan, while the most inactive were the PHI Papua and the PHI Banjarmasin. Despite the increasing number of cases brought to the PHI in some regions, such as Jakarta and Bandung, in general the trend was for the number of cases to be decreasing – even in PHI based in areas with large numbers of workers and industries (and, presumably, disputes), such as Semarang, Serang, and Makassar.

Table 6.5: Number of cases (lawsuits) brought to the PHI (Java, Sumatera, Kalimantan and Papua, 2006-2009)[129]

No.	Industrial Relations Court *(PHI – Pengadilan Hubungan Industrial)*	Year	Number of cases (lawsuits)	Number of cases submitted by employers	Number of cases submitted by workers/ unions
1.	PHI Jakarta[130] (Java)	2006 2007 2008 2009	224 384 351 362	19 36 41 46	205 348 310 316
2.	PHI Bandung[131] (Java)	2006 2007 2008 2009	250 196 190 196	22 32 38 31	228 164 152 165
3.	PHI Semarang[132] (Java)	2006 2007 2008 2009	57 90 140 89	6 2 4 4	51 88 136 85
4.	PHI Serang[133] (Java)	2006 2007 2008 2009	57 92 84 82	17 7 16 7	40 85 68 75

129 There are no public data available concerning the number of cases brought to each of the 33 PHIs around Indonesia. The Supreme Court data, as accessible through its website www.mahkamahagung.go.id mentioned only the total number of judgments of the PHI in the Supreme Court. Data shown here were collected from ad hoc judges at the PHI from various regions. Numbers of cases bestowed from the P4P/D were not included in the figures.

130 Source: Juanda Pangaribuan, ad hoc judge at the PHI Jakarta.

131 Source: Lela Yulianti, ad hoc judge at the PHI Bandung, West Java.

132 Source: Daryono, ad hoc judge at the PHI Semarang, Central Java.

133 Source: Hotlan Pardosi, ad hoc judge at the PHI Serang, Banten.

5.	PHI Medan[134] (Sumatera)	2006	142	2	140
		2007	208	3	205
		2008	140	2	138
		2009	108	17	91
6.	PHI Palembang[135] (Sumatera)	2006	32	0	32
		2007	25	1	24
		2008	37	0	37
		2009	52	2	50
7.	PHI Tanjung Pinang[136] (Sumatera)	2006	56	2	54
		2007	70	3	67
		2008	37	0	37
		2009	45	1	44
8.	PHI Jambi[137] (Sumatera)	2006	18	0	18
		2007	13	0	13
		2008	31	0	31
		2009	25	0	25
9.	PHI Pekanbaru[138] (Sumatera)	2006	70	24	46
		2007	57	19	38
		2008	41	9	32
		2009	62	11	51
10.	PHI Tanjung Karang[139] (Sumatera)	2006	9	1	8
		2007	19	2	17
		2008	10	1	9
		2009	13	2	11
11.	PHI Bengkulu[140] (Sumatera)	2006	8	0	8
		2007	5	0	5
		2008	2	0	2
		2009	23	0	23
12.	PHI Gorontalo[141] (Sulawesi)	2006	12	0	12
		2007	14	0	14
		2008	13	0	13
		2009	6	0	6
13.	PHI Palu[142] (Sulawesi)	2006	54	0	54
		2007	29	0	29
		2008	11	0	11
		2009	15	0	15

134 Source: Christina Tobing, ad hoc judge at the PHI Medan, North Sumatera.
135 Source: Hermawan, ad hoc judge at the PHI Palembang, South Sumatera.
136 Source: Agung Widiyono, ad hoc judge at the PHI Tanjungpinang, Riau Islands.
137 Source: Hery Simanjuntak, ad hoc judge at the PHI Jambi, Jambi.
138 Source: Sardo Manullang, ad hoc judge at the PHI Pekanbaru, Riau.
139 Source: Janter Nababan, ad hoc judge at the PHI Tanjung Karang, Lampung.
140 Source: Charisman, ad hoc judge at the PHI Bengkulu, Bengkulu.
141 Source: Tommy Haras, ad hoc judge at the PHI Gorontalo, West Sulawesi.
142 Source: Bahal Simangunsong, ad hoc judge at the PHI Palu, Central Sulawesi.

14.	PHI Makassar[143] (Sulawesi)	2006	19	0	19
		2007	32	4	28
		2008	14	2	12
		2009	16	0	16
15.	PHI Banjarmasin[144] (Kalimantan)	2006	15	2	13
		2007	20	3	17
		2008	17	-	17
		2009	20	2	18
16.	PHI Jayapura[145] (Papua)	2006	-	-	-
		2007	-	-	-
		2008	16	1	15
		2009	12	5	7

3.5 All parties disappointed

The PHI's performance appears to have disappointed all parties involved. Workers and unions are complaining about the inaccessibility of the PHI, particularly given the lack of litigation skills among workers. They also complain also about the official and unofficial costs of the court, a well as about judicial corruption, and the lengthy and uncertain court processes just to obtain the first decision (so not even including the time and uncertainty associated with appeals). In particular, workers and unions have criticized the tendency of the PHI to apply civil procedural law in a strict manner. Some union officials[146] also criticize employers for being deliberately obstructive by using various techniques such as choosing not to conduct bipartite negotiations; not attending mediations meetings organized by mediators (thereby preventing workers from obtaining the minutes of bipartite meetings required in order to take further legal action); ignoring the mediator's recommendations if those recommendations support the workers, and choosing instead to 'do nothing' – neither accepting and implementing the recommendations nor filing to the PHI. These tactics, left unchecked, obviously discourage workers from using the PHI as a forum through which to resolve labour disputes. Workers instead have tried to find other ways to redress their grievances, such as through using criminal procedures. Or, even more concerning for justice, they have simply given up, and accepted the employers' offers of pay or conditions, even if these are lower than those stipulated by the law.[147]

143 Source: Chandrayana, ad hoc judge at the PHI Makassar, South Sulawesi.

144 Source: Asmiwati, ad hoc judge at the PHI Banjarmasin, West Kalimantan.

145 Source: Delima, ad hoc judge at the PHI Jayapura, Papua. The PHI Jayapura only operated during 2008, therefore there were no lawsuits in the PHI Jayapura in 2006 and 2007.

146 Interview with FSPMI union officials, Surabaya, East Java, August 2009.

147 I have discussed these in detail elsewhere (see Tjandra 2010). Galanter and Krishnan (2009) conducted a study in India which showed a similar decline in the number of cases brought to court, indicating the declining confidence of ordinary people in the court system, due largely to 'massive problems of delay, cost, and ineffectiveness' (Galanter and Krishnan 2009).

The employers have their own complaints about the PHI. Apindo has raised concerns about the inconsistencies between individual PHIs, and judges within them, in decisions on issues such as who can represent employers or whether their own staff is allowed to appear as a witness for them (*Hukumonline*, 24 September 2007). One Apindo official was also concerned by what he called acts of 'kidnapping' and 'contempt of court' by unions, when they pressured the PHI by mass demonstrations during the court hearings. The official referred in particular to an incident in the PHI Jakarta, when hundreds of workers who just found out that they had lost their case ransacked the courtrooms, leading to the judges fleeing from the angry masses through ventilation shafts (*Hukumonline*, 30 March 2007).

The Supreme Court has voiced its own concerns about the PHI. In an opening speech for the National Workshop of the Supreme Court in Makassar, South Sulawesi, on 2-6 September 2007, the Chief Judge of the Supreme Court, Bagir Manan,[148] called for a 're-examination of the PHI.' This, he argued, should cover several key issues. First, labour disputes would be resolved more effectively if not conducted by judiciaries but instead by an institution other than a court, such as the National Mediation Body for Labour Dispute Settlement. Second, if the judiciary remained involved, the use of ad hoc judge representing both the unions and employers' organizations should be abolished, and case deliberation should be handled by regular judges only. Third, the state should not be burdened with the costs for labour disputes; *pro bono* services (legal services performed free of charge for the public good) should be sufficient.

These negative perceptions towards the PHI from workers and unions are particularly interesting, because many cases brought to the PHI were actually won by workers. Apparently it is the overall system of dispute settlement mechanisms, including in the Supreme Court, that workers are concerned about[149] (*Batam Pos*, 16 May 2007). Investigations did, however, identify a few ad hoc judges from union circles who were positive about the PHI. We will discuss this further in the following section.

4 Reformers from within?

Before making an assessment of the PHI based on the discussions above, I will be discuss the role of ad hoc judges, particularly those from union circles. Despite at least one instance of a corruption case involving an ad hoc judge from union circles (as discussed above), the performance of the ad hoc

148 The complete opening speech of Bagir Manan can be found at in *Varia Peradilan* (No. 263, October 2007), the official publication of the Indonesian Supreme Court.

149 Various union officials and ad hoc judges from various regions confirmed this point, during the 'Labour Law Practitioners Conference,' Cisarua, 2-5 March 2008.

judges has been reported as relatively sound, both with respect to their judicial integrity and their level of knowledge and skills. Their roles are arguably crucial for the future of the PHI, and in particular for efforts to reform the judiciary to help it become more effective at resolving labour disputes. If this is the case, then efforts to remove their role may lead to additional problems for the PHI.

A consideration of the characteristics typical of ad hoc judges from union circles in the PHI suggests that in comparison to their counterparts in other special courts established in Indonesia,[150] union-nominated judges at the PHI have some unique characteristics. Most are from trade union backgrounds,[151] and have had previous experiences with labour advocacy. Thus, most bring with them some form of idealism, to 'defend workers' rights'.[152] In a meeting of ad hoc judges from various regions organized by the Trade Union Rights Centre on 7-9 April 2006 in Jakarta,[153] just a few months after their appointment, ad hoc judges from union circles generally reported that being an ad hoc judge at the PHI was a 'challenge'; a new 'mandate'; and a 'new stage' in the struggle for workers – with the option to work 'from within'.

The ad hoc judges from union circles also expressed pride at being chosen for what they considered to be an 'honourable job', with great responsibility. However, there was also some concern at being 'new people' in the system, which they perceived to carry a risk of being easily 'forced' to go along with existing systems and customs in the court. Some ad hoc judges voiced concern about the many points of confusion at the start of the PHI's operations, including the overdue salaries. There was in particular concern about the widespread corruption practices in the judiciary. They were also worried about their perceived unofficial duty to 'side with the workers', while at the same time needing to be impartial as judges. Nonetheless, many expressed hopes of being able to learn and exchange knowledge on the subject of labour law, and some even showed interest in pursuing further studies in the field.[154] They mentioned the need to have solid networks among

150 For a discussion of the special courts in Indonesia, see Arsil (2009).

151 Being union members has given these ad hoc judges direct experience with the problems faced by workers, enabling them to establish sensitivities toward workers and union interests, and appreciate the roles that workers and unions play in society. Often the ad hoc judges reported a perception of their ability to effect social change through the decisions they make.

152 Various statements made by ad hoc judges from various PHIs, at the opening of 'Labour Judges Workshops', organized by the Trade Union Rights Centre, on 17-20 August 2006.

153 The official title of the meeting was 'Empowering Ad Hoc Judges, Towards Fair and Trustable Decisions.' The meeting was designed as a planning workshop to draft a series of further workshops for ad hoc judges from union circles.

154 Indeed, many ad hoc judges have actually been taking post-graduate studies while working at the PHI. Most of them choose labour law for their theses, in particular aspects of dispute settlement mechanisms. This enables them to gather data and information from their daily work on cases at the PHI. Some have gone on to become lecturers, teaching labour law subjects at various universities in their regions.

the ad hoc judges, including some kind of 'information centre' along with 'supporting systems', to help them to support each other and work properly. All these sentiments were nurtured during the series of workshops that followed and will be discussed further below.

While working within the PHI system, many ad hoc judges from union circles continue their contact with unions, albeit informally.[155] One ad hoc judge from union circles in Pekan Baru, for example, explained that although she was no longer registered as an official of her union, she continued to attend regular meetings with her former colleagues, mainly to discuss cases and to provide input if they wanted to file a case to the PHI. The judge commented: 'I have to do that, since many of my colleagues are unfamiliar with processes at the PHI. And it is important that they will not be misled by the mediator, who seems to scare workers not to bring cases to the PHI.' In this way she justified her continued contact with the union, despite her awareness of the requirement for judges to be impartial. Another ad hoc judge, from Palembang, justified his continued contact with unions by referring to the non-permanent nature of his work as an ad hoc judge. 'When I finish my term, it is likely that I go back to my own union. So it is important to maintain my communication with them.'

Where ad hoc judges from union circles maintained contact with unions, this was at their own initiative. The unions, even those that had nominated the ad hoc judges, seemed disinclined to take the initiative and left it up to the ad hoc judges to decide what they would do.[156] This led to disappointment on the part of some ad hoc judges. One ad hoc judge from Medan complained that his union seemed disinterested in his work, since there had never been any effort to contact him. 'We need to be watched by unions, otherwise we could become a "wild ball" [*bola liar*] in the court,' he said, referring to the notorious corruption problem in the judiciary, which, he believed, had started to infect the PHI as well.

In order to provide support for the ad hoc judges from union circles, a series of training workshops has been held in Jakarta annually since 2006, and it is likely to continue. The main organizer has been the TURC, but the trainings were usually facilitated by two ad hoc judges chosen by the ad hoc judges'

155 Similarly, all ad hoc judges from employer circles are brought together regularly at the headquarters of their organization, Apindo (the Indonesian Employers' Association), to discuss and share cases which have been heard at various PHIs. The Norwegian Employers Association, in cooperation with Apindo, has funded the gathering.

156 Some unions, e.g., SBSI – Indonesian Prosperous Labour Union, once gathered togethere several of ad hoc judges, which they had nominated, in a meeting to coincide with their national congress. Some of these judges responded negatively because, while other union officials attending the congress had their transport costs covered by the organizer, the ad hoc judges were asked to cover their own travel costs to attend the congress (interview with Juanda Pangaribuan, ad hoc judge at the PHI Jakarta).

collective itself – normally one judge from the district PHI, and one from the Supreme Court. Selected ad hoc judges from union circles from various PHIs across Indonesia are invited. The subjects discussed include recent developments and issues in the PHI, including those related to court administration (undue salaries, tax, facilities and the like), and issues arising from actual cases handled by the PHI. The ad hoc judges are also asked to bring their recent verdicts to be shared and discussed with other ad hoc judges, and in this manner they often obtain new perspectives and insights. Since ad hoc judges at the Supreme Court sometimes came to the training workshops as well,[157] an exchange of ideas between the two levels withing the judiciary can take place, which provides an opportunity to address differences among PHIs and between the district PHIs and the Supreme Court.[158] Later on, the ad hoc judges participating in the training also drafted an academic paper on proposed reforms for the PHI and amendments to Law No. 2/2004 (Tjandra, 2013).[159]

The training of ad hoc judges by TURC was well received according to an independent evaluation (see Ford, 2007: 8). Many of the participants said that the program was 'a top priority' for them, and that 'they would put aside other activities in order to be able to attend the training sessions for ad hoc judges.' The evaluation showed that as well as increasing their confidence 'the training had resulted in tangible improvements in their [ad hoc judges] practice, in particular on their ability to think critically about particular cases and to develop and apply an understanding of the labour law framework as a whole to particular cases.' There was another important and unexpected benefit from this training: it generated the view among ad hoc judges that they were 'being watched' by an 'outsider' (TURC), as well as by other colleagues.[160] This both directly and indirectly deterred them from

157 The TURC normally invites three ad hoc judges from union circles at the Supreme Court, but only one always attends: His name is Fauzan, and he is also one of the two facilitators of the workshops.

158 Two books were produced as a result of the workshops: a compilation of early PHI decisions, and a book with 'critical notes' about the PHI written by ad hoc judges (see Tjandra and Marina (Eds.), 2007 and Tjandra (Ed.), 2010.). The compilation book in particular was praised by the ILO as an important step to more accessible and consistent decisions of the PHI, especially when neither the Supreme Court nor the Ministry of Manpower took the initiative. The same book was popular with unions' officials, as it gave them access to key examples of legal documents needed to draft lawsuits, based on particular issues that are often found in labour disputes. In fact, union officials sometimes used the book as 'evidence' to convince the Panel of Judges at the PHI about certain issues, and about certain interpretations of issues (statement by Jazuli, a union activist from Pasuruan, East Java, August 2009).

159 After being postponed for several years since 2012, finally the amendment of Law No. 2/2004 on Industrial Relations Disputes Settlement has become a priority in the parliamentary session in 2015; at the time this dissertation was submitted the parliamentary discussions had not yet started.

160 Personal communication with Tri Endro, ad hoc judge at the PHI Jakarta, June 2007.

becoming corrupt. As Dela Feby of TURC explained, 'Ad hoc judges who attended our training could be said to be relatively "clean" compared to those who did not. We received confirmation of this from our union networks in various regions. In fact, those who were reported by unions to be "problematic" normally chose not to attend the training, although they were still invited.'[161] She also explained that it was at TURC's full discretion to choose which ad hoc judges were invited to the training. 'If we think he/she is not appropriate anymore, or we suspect his/her judicial integrity, based on our direct knowledge or as reported by our networks, we simply won't invite them anymore.'

The training thus subjected the ad hoc judges to some level of social control for their behaviour and integrity. The training coincided with several positive breakthroughs in PHI practices, with the initiatives driven largely by the ad hoc judges from union circles. One of the most important of these was an increased sensitivity to labour perspectives, which were mentioned by members of the panel of judges before passing judgement. This resulted in a range of notable judgements, including those regarding 'dwangsom' discussed earlier; and efforts to relax some of the procedural laws in order to increase access for ordinary workers. The increased sensitivity to labour issues also led to initiatives uncommon in Indonesian judicial procedures – such as 'dissenting opinions.' Some judges even sent a 'petition letter' to the President of Indonesia regarding the overdue salaries for ad hoc judges.[162] This letter in generated concern among some career judges at the PHI, who stated that it was a 'direct attack' on the 'harmonious' environment of the courts.[163]

On another occasion, the same innovative ad hoc judges who sent the petition letter also submitted a petition to the Chief Justice of the Supreme Court, regarding 'improvement of the PHI's performance'.[164] This letter summarized their evaluation of the PHI's performance in the first year after it commenced operation, and included suggestions for reforms. More recently, these same ad hoc judges drafted amendments to Law No. 2/2004, including various reforms, which they considered would make the PHI

161 Interview with Dela Feby, Executive Secretary of TURC, June 2007.

162 See the 'Batam Petition for President Susilo Bambang Yudhoyono: Resolve the Overdue Ad hoc Judges' Salaries,' dated 25 November 2006, signed by 16 ad hoc judges from the union circle in Sumatra. In part, the petition claimed that the government's lack of attention to the matter 'had led to speculation about asystematic effort to undermine ad hoc judges and damage the PHI.' This was quite a strong statement; unusually strong for members of the judiciary.

163 Noted by Eko Pristiwantoro, ad hoc judge at the PHI Semarang.

164 The petition, dated 11 June 2007, was signed by 38 ad hoc judges from 26 district PHIs, and one ad hoc judge from the Supreme Court. It was submitted to the Director of the Special Civil Case Division of the Supreme Court, after a three-day workshop facilitated by TURC on 9-11 June 2007 in Jakarta.

more effective.[165] These included ensuring that the burden of proof lies with those most capable of finding the resources to present the evidence (employers, rather than workers); the establishment of a special chamber for labour disputes at the Supreme Court; the empowerment of the Court of Appeal at the provincial level, to become he final instance; the revision of the complicated procedural mechanism in the PHI; the establishment of PHI in industrial dense areas; and the appointment of full-time career judges to the PHI.

All these recommended amendments were based on the judges' own experience of real problems faced by the PHI during its daily work; which, combined with their expertise in the field, gave the judges' recommendations credibility and quality. It remains to be seen whether the government and the judiciary (the Supreme Court) will support the recommendations. According to the Indonesian government's Legislative Program 2012, parliamentary discussions about the recommendations were to be conducted during 2012. However, parliament ended up not discussing the document or associated issues during 2012, citing that it was caught up with other 'urgent' matters,[166] and the deliberation about amendments to Law No. 2/2004 were postponed until 2015 at the earliest. This indicates a lack of political will and attention to issues of justice in labour law, from both the executive and the legislature. As with the judiciary, as reflected in the speech of the Chief Justice of the Supreme Court, Bagir Manan,[167] the political will to resolve the problems has not been as strong as hoped. In this situation, removing ad hoc judges from the system would arguably only cause new problems, rather than resolve the existing problems.

165 These were compiled at the ad hoc judges' workshop on 27 March 2010.

166 An example of the lack of support includes the controversial bill on 'community organizations' and 'national security,' which recently raised concern and protests from civil society organizations. The bill was promulgated as Law No. 17/2003, and was immediately considered by civil society groups to be a setback for justice in Indonesia, and a real threat to democracy and popular participation; its aims were considered to be based more on meeting the pragmatic needs and interests of the government on the eve of the 2014 elections, than on meeting any needs of the people. Some large civil society organizations, including Muhammadiyah – the second largest Moslem organization in the county with millions of members – have filed a judicial review against the Law to the Constitutional Court (for the resume of the judicial review see http://www.mahkamahkonstitusi.go.id/index.php?page=web.Resume&id=1&kat=1&cari=82%2FPUU-XI%2F2013; and for a critical review from the civil society perspective, see www.yappika.or.id/uuormas; accessed in October 2013).

167 See *Varia Peradilan* (No. 263, October 2007).

5 Conclusion

The establishment of special courts and tribunals, with workers' representation has been an approach taken first by European and then by other countries worldwide, to overcome some of the problems found within ordinary courts (Ramm, 1986: 270), Problems special courts intend to address include the resentment harboured by some groups toward the 'spirit' or aims of labour legislation; the inaccessibility of legal processes to most workers; the class bias of many career judges; the lack of experience by the judiciary in labour issues; and the burdensome cost, delays and formalities normally found in ordinary courts. Addressing these issues formed a large part of the motivation behind the establishment of the Industrial Relations Court (PHI) in Indonesia as well. However, once established as a special court within the scope of general court, the Industrial Relations Court in Indonesia has found itself in a difficult position since the beginning of its existence. Issues such as conceptual inadequacy and the obscurity of some of the provisions in Law No. 2/2004; the problematic relationship between the PHI and the district court it is a part of; and corruption from the lowest level of substitute registrar at the District Court right through to the ad hoc judge at the Supreme Court, have all combined to increase the challenges for the disputing parties – particularly workers – in their efforts to maintain confidence in the court and resolve their disputes adequately.

It is important to mention that there have been some efforts, particularly from ad hoc judges from union circles, to be sensitive to labour needs; and to try to optimize dispute resolution within the PHI, as originally intended. Examples do exist of PHI practices and case decisions that represent fresh interpretations and the courage to maintain integrity. These include the decision about *dwangsom* (daily fine); the initiative to maximize pre-trial hearings in order to explain to litigants the administrative requirements of lawsuits, and thus reducing the risk of annulment of lawsuits based on small errors during submission; and the efforts to reduce corruption in the court by preventing any person from taking case documents home to type the decisions. As discussed, many of these efforts were challenging, as the existing judiciary apparatus, which saw the changes as an attack on the 'internal harmony' of the judiciary, and may have often held an unconscious bias against, or a sense of superiority over, the non-permanent judges, did not support most initiatives.

Any positive, creative initiatives and proposals have also been overshadowed by the structural problems, which continue to plague the Indonesian judiciary in general, and the PHI in particular. Inconsistencies and sometimes obscurity in the court's practices, low levels of technical knowledge and legal integrity of both career and ad hoc judges as well as the court's registrars, and the lack of competence of workers and labour unions to conduct litigation, have all contributed to the declining confidence in the court.

Further ongoing problems include the long duration of the process before a verdict is reached, when a quick resolution is so crucial in labour disputes. The tendency of the Supreme Court to act merely as a guardian of procedural law has also contributed to the growing distrust and disappointment in the PHI among workers. The absence of an effective enforcement mechanism has moreover encouraged unethical employers to ignore the court's decisions, knowing that they are unlikely to face negative consequences. The existence of ad hoc judges, particularly those from union circle, may provide the foundation for future reforms of the PHI. For this to happen strong political commitment will be required from both from the judiciary and government; and this may arguably be unlikely in the near future.

Just as courts cannot work well when they are overwhelmed with cases, courts cannot function properly without the confidence of the parties who are using them to resolve conflicts. Thus, perception plays a very important role in the success of the court system: courts must not only be able to perform their main duties – conflict resolution, social control, and lawmaking – ; they must also be perceived to be doing so (Shapiro, 1981). The case of the PHI in Indonesia is a story about Indonesia's effort to channel labour disputes into a legal mechanism, and while labour dispute resolution is much needed, to date these efforts have tended to fail. The PHI courts still operate in Indonesia, but until reforms are tackled to ensure consistently fair and effective outcomes, the PHI will be as unlikely to elicit confidence in the system, as any other court in Indonesia today (cf. Bedner, 2009).

Conclusion: In search of the right balance

Men make their own history, but they do not make it as they please.

(Karl Marx)

This dissertation has presented and described the struggles of Indonesian workers and unions for better working conditions, within the context of the creation and enforcement of labour law. After almost three decades of suppression under the authoritarian New Order regime, workers organized in the form of trade unions have thrived since the 1998 *Reformasi*, assisted by the changing social and political situation in the country. Trade unions are now important actors in the application of Indonesia's labour law, working to ensure employers' compliance with the law, and encouraging the spirit of the law in the workplace. As discussed in this dissertation, Indonesia's trade unions have advanced to the point that they have also become law-makers; pushing pro-workers' legislation and regulations, as demonstrated in the case of the social security reforms in 2010-2011.

This final chapter summarizes the findings of this research, and addresses the study's primary questions – how has labour law changed the institutional landscape in Indonesian workplaces since the *Reformasi*, and what roles have organized workers played in these changes. The chapter starts with summarizing the findings of this dissertation's analyses of the three most important issues in labour law in Indonesia: trade union legislation; minimum wage setting; and the Industrial Relations Court; and how these have influenced and been influenced by the new industrial landscape. The chapter ends with suggestions for further research, and summarizes this study's contribution to the socio-legal debate concerning labour law enforcement, including the tension which labour law faces between the demand for efficiency-prosperity on the one hand, and social justice-fair distribution on the other.

1 The new institutional landscape: changes and continuities

As discussed in detail in the previous chapters, Indonesia's new institutional landscape includes both changes and continuities. The 1998 *Reformasi* has had a wide range of impacts on Indonesian society. Overall, there is now much greater individual freedom *vis à vis* the state, and Indonesia has developed into a relatively open society. In the context of labour law, there have been dramatic changes, in particular since the enactment of Law No. 21/2000 on Trade Unions/Labour Unions, which have provided opportunities for the development of independent trade unions in Indonesia. Workers,

individually as well as collectively, are now relatively free to speak out publically about their concerns and grievances. They can usually do this without significant hindrance – although employers may still not respond as the workers may hope or expect. The organization of workers, in the form of national federations of trade unions, has mushroomed from only one federation in early 1998, to more than one hundred federations registered at the national level in 2014. In addition, thousands of plant-level trade unions are registered at the district level. Workers can now also exercise their influence through demonstrations and strikes, which have become regular activities of trade unions today. In conclusion, trade unions have become important actors in the social and political landscape in Indonesia's democracy today. However, in other ways the traditional practices of labour relations have continued, to the detriment of workers.

Despite the state's recognition of trade unions, particularly through the enactment of Law No. 21/2000 on Trade Unions/Labour Unions, employers at the factory level still tend not to accept or readily accommodate trade unions. In particular, there have been many reports of the harassment and dismissal of trade unionists due to their union activities (see, e.g., LBH Jakarta, 2014, also Tjandra, 2014c). Essentially, there remains a lack of trust between unions and employers; which helps explain the low number of collective bargaining agreements at the factory level (Isaac and Sitalaksmi, 2008). This situation leads to workers having to continue to depend on the state to guarantee their welfare, rather than being able to rely on industry self-regulation through direct negotiation with employers. This is particularly obvious in the case of minimum wage setting (see Chapter 5 of this dissertation). The situation is likely due to the previous history, and ongoing influence, of authoritarianism in Indonesia – during which time the state and employers treated unions predominantly as threats to economic stability and development, while workers saw the state and employers primarily as oppressors. As a result of these perceptions, too much energy continues to be spent on fighting between the parties. This conflict accelerated during the period 2010-2015, particularly in relation to the annual minimum wage setting processes.

Concerns have also been that too much focus on minimum wage setting as the only way to increase wages for workers might undermine the primary role of minimum wage policies -to provide a social safety net for workers at the lowest levels of work – and that it might increase the disparity between formal workers and the majority of the workforce in the informal economies (Papanek, 2014). In the short term, strikes and demonstrations, including those targeting the Wage Councils, may be useful as tools to obtain immediate results; such as increasing the nominal value of wages, and educating members about their rights. Longer-term change will, however, likely require dialogue between the parties to develop more sustainable support mechanisms for workers.

The challenge for Indonesia today with regard to the workplace is how to harness the energy of workers and employers to develop a more productive system of negotiation, either between workers and employers alone, or with the facilitation of the state. It will be important to appreciate that Indonesian living standards are still very low by international standards, and that it will take a lot to increase workers' conditions to the level currently expected by some workers. In addition, Indonesia's labour market is still comprised largely of workers in the informal economies, who remain outside the protection of labour law. While no country is likely to perceive that it could bring around 250 million people quickly into the formal economies, to date Indonesia has not appeared to make the effort it could readily make, to introduce positive changes gradually, as it arguably has occurred in Europe (see Hepple, 1986, 2002, 2009). The challenge which remains for Indonesia is how to develop a system which strikes the right balance with regard to the two aims of labour law: efficiency-prosperity on the one hand, and social justice-fair distribution on the other (see also Collins, 2000).

Given this context, the discussion below will highlight the major findings of this dissertation with regard to the three key issues of labour: trade union legislation; minimum wage setting; and the Industrial Relations Court; and the changes and continuities in these issues in Indonesia in the recent past.

1.1 Trade union legislation

Chapter 4 of this dissertation explained how the enactment of Law No. 21/2000 on Trade Unions/Labour Unions facilitated the rise and development of trade unions in Indonesia. One of the most important provisions in the Law is that any group of 10 or more workers may freely form a trade union and register their union at the regional manpower office, where the registration is usually accepted without reservation. Likewise, any group of five or more plant-level unions may establish a union federation; and five or more union federations may form a confederation. These provisions in the law have led to a significant increase in the number of trade unions, at both regional and national levels, and an associated increase in the political influence of organized workers. Trade unions have mushroomed, from only one national federation during the New Order, to over a hundred registered today, not including the thousands of plant level unions. As collective organizations of workers, the unions are now able to voice their demands with relatively few restrictions, including through strikes and public demonstrations, which have become common phenomena, particularly in the large industrial cities such as Bekasi, West Java, and Jakarta. The unions also celebrate International Labour Day on May 1st every year and since 2012 the state has recognized Labour Day as an official public holiday. In regional areas, union alliances have grown to become important pressure groups, promoting better condition for workers and society in general.

One of the trade union movement's most important achievements over the last few years was their success, in collaboration with various NGOs and individuals, in pushing for the enactment of Law No. 24/2011 on the Social Security Executing Agency (*Badan Pelaksana Jaminan Sosial*, the BPJS Law), as implementing legislation of Law No. 40/2004 on the National Social Security System (*Sistem Jaminan Sosial Nasional*, the SJSN Law). These two laws are important in that they provide the foundation for the development of universal social security coverage for all people in Indonesia; not only for those working in the formal sector, who traditionally formed the backbone of the trade unions, but also those working in the informal economies. The trade unions, united in a front organization called the Action Committee for Social Security Reforms (*Komite Aksi Jaminan Sosial*, the KAJS) comprising trade unions, labour NGOs, students' groups, peasants' groups and others, emerged as a key pressure group during the parliamentary deliberations and eventual enactment of the BPJS bill (see Chapter 4). The KAJS's combined strategy of litigation through court and non-litigation through lobbying and demonstrations, and its cooperation with several reformist politicians within the parliament, enabled it to be the most important pressure group behind the enactment of the BPJS Law, to the point that without the efforts of this group, the enactment of the Law may not have been achieved (see also Thabrany, 2014).

These efforts, in particular the success of the KAJS in its efforts to encourage the Indonesian government and parliament to pass the BPJS Law, inspired the trade union movement and demonstrated its potential, encouraging unions to advocate for their rights through more advanced political manoeuvers. These included, first, the establishment of the Council of Indonesian Labourers (*Majelis Pekerja Buruh Indonesia*, the MPBI) and the National Labour Movement Consolidation (*Konsolidasi Nasional Gerakan Buruh*, the KNGB), which led two national strikes in 2012 and 2014 and pushed the government to develop several new regulations that were pro-workers, such as the regulations regarding the additional components to be surveyed during minimum wage setting; and the further restrictions on outsourcing practices at the company level. The national-level unions' alliances were, however, a short-lived phenomenon; due to internal competition and conflict among the leaders, and loss of focus on common goals as a coalition of unions. Despite their transience, the national-level response and its success with respect to positioning trade unions, as important social and political groups in Indonesia were noteworthy developments for a new democracy like Indonesia.

Although the movement as a whole disbanded, some parts of the movement, in particular the Federation of Indonesian Metal Workers Unions (*Federasi Serikat Pekerja Metal Indonesia*, the FSPMI), and the Confederation of Indonesian Trade Unions (*Konfederasi Serikat Pekerja Indonesia*, the KSPI), which had been key elements of the KAJS, remained active and took further steps, including entering the legislative and presidential elections in 2014,

during which they sent their cadres to run in the elections, and supported one particular candidate for the Indonesian President. As we will discuss later, these endeavours have led to both gains and losses for the trade unions' struggle for political influence in Indonesia, and lessons learned from these efforts may change the future course of the union movement in the country.

1.2 Minimum wage setting

As discussed in detail in Chapter 5, since its rise to power in the early 1970s the authoritarian New Order government used the process of minimum wage setting as a tool to control workers. Only after the *Reformasi* were workers and their unions able to negotiate with employers about their welfare in the forms of wages, particularly in regional areas, following the increase in regional autonomy. Where the specific wage setting processes established in various regions have continued to prevent unions from using collective bargaining mechanisms at the company or industry level, the Wage Councils have now become the main avenue by which labour can participate in the wage setting process, with unions relying on a combination of legal and political activities to assist their struggle. This is considered the preferred option for the unions, in comparison to the difficulties they faced in the past when wage setting was done through direct negotiation with workplace employers; a process that often led to the unfair dismissal of the union officials involved. The reliance on Wage Councils has, however, led to pressure being placed on the Wage Councils in regions where minimum wages are negotiated, often exacerbated by conflict between the trade unions and employers' association, and by the politicization of minimum wage setting by both the employers' organization and the unions.

Union leaders today (2014-2015) tend to perceive minimum wage setting through the Wage Councils at the district level to be primarily a political process, to which they respond politically through the organization of their collective powers. They tend to use the process as entrance means by which to encourage the government to develop new regulations that support workers. As this dissertation has argued in Chapter 5, treating minimum wage setting as a political process (which in fact it is) has had some benefits. It is through a political lens that trade unions and all the parties involved in negotiations, may be able to widen their perspectives away from the more narrow economic focus that has dominated the minimum wage discourse for so long, which has missed the crucial political aspect of state policy through minimum wage; that is, to protect particular vulnerable sectors of Indonesian society.

Although political approach may be beneficial in the short term, providing new perspectives on the current situation and new directions for the future, in the longer term the sustainability of the political approach (as a dominant tactic) is questionable. It will likely be necessary for unions to start to consider other factors related with minimum wage setting, including the

need to develop collective bargaining between unions and employers: particularly on the issues of wages; increasing inflation and it effects on minimum wages; unemployment and job creation; and the increasing disparity between formal sector workers and those working in the informal economies, who have still not received the support of minimum wages.[1] To succeed, this broader approach will require willingness and a commitment from the union movement to reconsider and move beyond its political strategies, which have been the focus over the last few years.

1.3 Industrial Relations Court

Chapter 6 discussed the dynamics within the Industrial Relations Court (*Pengadilan Hubungan Industrial*, the PHI) and argued that the PHI, established as a special court within the scope of the general court, has been in a difficult position since its establishment; due to latent internal problems of the corrupt judicial system in Indonesia, as well as the conceptual inadequacy and confusion surrounding some of the provisions of Law No. 2/2004 on the Industrial Relations Dispute Settlement, under which law the PHI was established. All parties involved appear to have reservations about the PHI. Workers complain about the PHI's tendency, especially in the Supreme Court, to focus predominantly on civil procedural law, which causes difficulties for workers without knowledge of procedural law. Employers, in their turn, are concerned about the lack of clarity around a number of the procedures directing the PHI's operations, including whether or not legal staff of the company involved are permitted to represent the employer, and the consistency of the PHI, given that the decisions of PHIs often differ between regions. Even the Supreme Court has voiced concerns, with one former Chief Judge of the Supreme Court stating that they system needs to be 're-examined', including by abolishing the ad hoc judge system representing unions and the employers' organization, and the *pro bono* services of the PHI.

The PHI has also demonstrated a tendency to deny the abundance of examples which point to the structural limitations which the individual courts face (as discussed in Chapter 6); and in addition the Supreme Court has tended to act like a guardian of the civil procedural law, including by annulling some of the breakthrough decisions made by the PHI at the lower levels. As Chapter 6 has argued, these tendencies have emerged as major obstacles preventing the PHI from functioning, as it was intended to function. Never-

1 Indeed, as observed by leading US economist Gustav Papanek (see Transformasi.org, 2014, also Papanek, 2011), although in the last six years (2008-2014), the average provincial minimum wage in Indonesia has increased by 115 percent (more than doubled), only 20 percent of workers have enjoyed such an increase in the average provincial minimum wage. The remaining 80 percent of workers, in particular the agricultural and informal sector workers, have not received this benefit. On the contrary, their average wage has gone down. As a result, Papenek argued, 'labour prosperity in Indonesia becomes more unequal.'

theless, the involvement of ad hoc judges in the PHI system, especially the judges from the trade unions, gives some hope for reform from within the PHI, especially given the ad hoc judges' efforts to make decisions and rulings that are progressive, and which could resolve some of the problems in both the procedural and material aspects of the law. However, the structural problems faced by the PHI, as described in Chapter 6, have overshadowed and continued to hamper these initiatives and efforts. This demonstrates clearly that no amount of good court decisions alone will resolve the PHI's structural problems, without also implementing reforms to the PHI's existing structure and system; including focusing on amending the Law No. 2/2004 concerning Industrial Relations Dispute Settlement. Concerningly, an agenda for the amendment of Law No. 2/2004 had been listed on the national parliament's legislative program for the years 2009-2014, but each year has failed to proceed, as parliament has chosen not to make it a priority. The agenda is again on the list of the new legislative program of 2014-2019, and it is therefore expected that there may be deliberations on the matter in the parliament during this current term. In the meantime, several evidence-based recommendations have recently been published regarding the content of the amendments of Law No. 2/2004 (see, for example, Tjandra [2012], which provides evidence-based recommendations for the law's amendment based on input from the PHI's ad hoc judges from various regions; also Isnur et al., [2014], which provides insights into the Supreme Court's decisions in industrial relations disputes). These recommendations, based on direct research, should prove to be useful references to inform the official processes when they commence in parliament, and to guide best-practice decision-making.

2 The re-emergence of the labour movement: opportunities and challenges

It has been argued that there are two key features which differentiate Indonesia's contemporary institutional landscape, in structural terms, from that of many countries in Western Europe a century ago: first, the absence of a social democratic movement and strong organized working class which can influence politics; and second, the relative deficiency of the rule of law (Aspinall, 2013). Thus, any manifestation of a systematic involvement of organized workers in politics in a developing country like Indonesia, and any effort by organized workers to uphold the rule of law, in particular through the enforcement of labour law, is very important for helping to understand the broader political and social change occurring in the country, as well as the opportunities and challenges which arise from these efforts. The labour movement, in the broader sense of the collective organization of working people campaigning for their interests – specifically, for better treatment from their employers and government through the implementation of labour related legislation – is not without precedent in Indonesia (see Chapter 1 of this dissertation). Yet only after the *Reformasi* has the labour

movement, particularly through the Action Committee for Social Security Reforms (*Komite Aksi Jaminan Sosial*, the KAJS), been able to undertake strong rights-related activities involving organized workers and their supporters (intellectuals, NGOs, and some sections of government), in order to represent the interests of the working class (see Chapter 4, also Tjandra, 2014b). The KAJS, with the Indonesian Metal-Workers Union Federation (*Federasi Serikat Pekerja Metal Indonesia*, the FSPMI) as its backbone organization, is perhaps the best example available of how far trade unions can advance, in their efforts to play important, beneficial roles in Indonesian society. The recent history of the KAJS and the FSPMI signal an important paradigm shift in the focus of Indonesian trade unions, from an economic to a social orientation (see Chapter 4); and has given trade unions both inspiration and confidence in their capabilities and potential to influence future progress.

As a sequel to the KAJS's success in pushing for the enactment of the BPJS Law as the implementing legislation of the SJSN Law, the FSPMI developed confidence as a rising political group, and continued to involve itself in practical politics through the general elections for parliament and president in 2014.[2] The intention behind the decision to become involved was to use the existing momentum to increase the bargaining position of workers and unions, especially at the state level; and through this, to demonstrate that workers were fighting not only for the interests of workers, but for all of society – a concept captured during the elections by the colloquial phrase '*dari pabrik ke publik*' ('from factory to public') (see *Koran Perdjoeangan*, 9 April 2014, the FSPMI's official media). These efforts involved sending the unions' cadres, mostly union officials, to run as regional members of parliament; and by supporting a particular candidate for president. The unions' strategies for winning votes from their members also provided the opportunity to educate workers on their political rights, and their opportunity to contribute to the country's development and positive change. The unions and members believed that by joining parliament, they could become more effectively involved in changing the country's policies and regulations, to ensure they are fair to workers and all Indonesia's population in general.

In the legislative elections, these efforts were well supported in that the majority of the unions' officials and members were supportive or participated directly. The initiative to participate so directly in the elections in fact came largely from below; involving members at the grass-root level. In addition, several individuals and activist groups from outside the union joined the efforts, including academics from Gadjah Mada University, Yogyakarta, and labour and peasant NGOs including the Trade Union Rights Centre (a labour service NGO based in Jakarta), and *Omah Tani* (a peasants' group based in Batang, Central Java); and these individuals and groups were able

2 The discussion in the following section is based on Tjandra, 2014a.

to undertake activities that could not be done by the union itself. These activities included training workers on the processes of voting, election monitoring, and political campaign strategies. These collaborative efforts between the unions, academics and NGOs were successful; following three months of effort, the FSPMI managed to win two seats for its legislative members, from the important industrial regency of Bekasi, West Java. This achievement was significant not only for the FSPMI, but for Indonesia's labour movement in general; as it was the first time that a union had successfully obtained seats for its candidates in parliament through coordinated efforts between the union and its supporters, rather than through the candidate's individual efforts.

In the presidential elections, however, the union's approach was very different. The decision to support a particular candidate for president came from the union's most senior leader, with little if any consultation with other union leaders, let alone with ordinary members, who were simply expected to obey their leader's decision. There were reports that the FSPMI leaders undermined and even aggressively suppressed their members' concerns; and other reports that many union officials had different opinions from their leader, and held concerns about his decision (see Tjandra, 2014a, also Solidaritas.net for various reports during the campaign in April-July 2014). The situation was worsened as there were only two candidates running for president, with very different backgrounds and characters. One candidate was Prabowo Subianto, a representative of the military who came from a political dynasty with close ties to President Soeharto's family and the former authoritarian New Order regime; and who, despite allegations of links to human rights violations while he was commander of the Indonesian Special Forces was supported by the largest political parties in parliament. The other candidate was Joko Widodo, who represented ordinary civilian politicians from a younger generation. Joko Widodo came from a region with no links to any political dynasty, and was supported only by the opposition party and some smaller parties, but gained strong support from middle-class groups in the so called 'Jokowi's volunteers,' which became an an interesting phenomenon in Indonesian politics in 2014 (see Samah and Susanti, 2014, also Nugroho and Setia, 2014).[3]

3 As noted by Samah and Susanti (2014), the 2014 Indonesian presidential election showed a different phenomenon in the political history of Indonesia. Public participation to support Joko Widodo and Jusuf Kalla as the President and Vice President candidates ahead in the presidential election appeared so massive. Called 'volunteers', it comprised of individuals and communities who were engaged in the 2014 presidential election motivated to see a 'better Indonesia'. Several volunteer groups were indeed driven by cadres of the political parties, but many more new groups were born because of the fear that the authoritarian regime of the New Order would return, as represented by the other President and Vice President Candidates, i.e., Prabowo Subianto and Hatta Rajasa (see also Aspinall and Mietzner, 2014). Nugroho and Setia (2014) even called this phenomenon 'people power', describing the unprecedented movement of some of groups in society and political passions that occurred exactly when the public's trust in the performance of political parties had almost collapsed.

As there were only two candidates for President (and two for Vice President), the competition was fierce and even brutal, causing polarization in society, which according to some observers placed Indonesia's young democracy in grave danger (Aspinall and Mietzner, 2014). The situation was worsened by the strategy of using negative campaigns, including sectarian and hate messages, particularly from Prabowo Subianto's camp attacking Joko Widodo (Supriatma, 2014). The polarization also occurred within the trade unions. The FSPMI and its confederation, the Confederation of the Indonesian Trade Union (KSPI), decided to support Prabowo Subianto, and this support was declared in front of around eighty thousand members during International Labour Day celebrations, held at Indonesia's largest football stadium *Gelora Bung Karno* in Jakarta on 1 May 2014, and covered by almost all Indonesia's media (Ford and Caraway, 2014). Other groups of unions, including the All-Indonesia Workers Union Confederation (KSPSI) and the Indonesian Prosperity Labour Union (KSBSI), supported Joko Widodo. Both groups claimed that their preferred candidate was better for labour rights than the opposing candidate, and asserted that they were running the best campaign for the candidate they supported. A consideration of campaign strategies indicates that at least the FSPMI-KSPI, in its support of Prabowo Subianto, became very deeply involved in the election campaign, although perhaps with questionable integrity, as discussed directly below.

Observers of Indonesia's 2014 presidential election have argued that the heavy use of negative campaigning appears to have encouraged the rise of 'groupthink' in society (Poerwandari, 2014); a phenomenon whereby those with different views and values may experience psychological and social pressure to such a great extent that they eventually choose to be silent, or even unconsciously begin to deny their own values and instead express the views of the group, because they find it too difficult to withstand the pressure to conform. This phenomenon was reported to occur within the FSPMI during the election campaign, with many of the union's members who held different views reporting intimidation by their own group, and choosing to keep silent to avoid further intimidation. The FSPMI's leaders allowed the widespread use of negative campaigns, including sectarian and hate messages, both by and directed towards their members (see *Solidaritas.net*, 31 December 2014). Although some may argue that this policy helps to achieve a decision-making consensus within a union, especially when the organization is interested to choose a particular, single political options, such actions were clearly not democratic, and therefore directly contradicted the founding principles of trade unions as democratic organizations of workers (see Michels, [1911] 1962). These events have demonstrated that even the FSPMI had not yet been able to find the right balance between the needs for organizational efficiency and internal democracy. There was also a strong tendency for the union to focus merely on the sectorial interests of the workers, even when these interests may not be in line with the interests of society as a whole (as was arguably the case during this presidential election) (see Tjandra, 2014a).

This situation may be an example of what Robert Michels calls 'the iron law of oligarchy' (Michels, 1962). Drawing on his own experiences as a member and supporter of a social democratic party in early 20th century Germany, Michels described a number of conditions and processes that inevitably impel even the most democratically-committed organizations to become divided into a set of elites or oligarchs – each with their own set of distinctive interests within the organization – and the rest of the membership; whose labour and resources were exploited by the elites, especially through the hierarchy and bureaucracy of the organization. Michels' argument has been criticized for being too deterministic and over-critical to bureaucracy (Lipset, 1962, in Michels, 1962); yet it can still provide useful reflections, and can encourage observers to consider the level of internal democracy that may be present in voluntarily social organizations such as political parties and trade unions. This is especially valuable in countries like Indonesia, which have only recently embraced democracy with the view that that freeing the country from an authoritarian regime will lead to better, more equitable standards of living (Bhakti, 2004). Meeting these aspirations remains a challenge for Indonesia's government, and for all supporters of democracy who seek to persuade electorates that a democratic system of government is better than surviving under an authoritarian regime (Ghoshal, 2004).

The FSPMI was arguably the most advanced trade union in Indonesia, in terms of its ability to mobilize its members; a necessary prerequisite for becoming an influential political power (see Ford and Caraway, 2014). Indeed, this union was the backbone of the KAJS movement, driving the eventual enactment of the BPJS Law (see Chapter 4). The KAJS movement was the first successful, systematic engagement of Indonesia's labour movement in the development of alternative policies, outside the frames constructed and maintained by elitist parties and leaders. With support from a trade union such as FSPMI, from a modern and relatively strong industrial sector, there was a good opportunity for the KAJS (and the FSPMI) to become an alternative political power and develop transformative policies -policies to improve the capacity of ordinary people and progressive actors, including trade unions and other people-oriented organizations, to strengthen democracy and pro-people development (see Stokke and Törnquist, 2013). Despite this potential, as described above, in the 2014 elections the FSPMI categorically failed to become the alternative political power many in Indonesia were looking for.

3 Theoretical considerations: the effectiveness of the labour law

Several observers have argued that in many East Asian countries, labour law has been beset by problems of ineffectiveness (see Introduction of this dissertation, also Cooney and Mitchell, 2002, and Frost, 2002), and that these problems are manifested in the relative absence of the law from the construc-

tion and functioning of labour markets (Fenwick and Kalula, 2005). With some exceptions in the developed East Asian countries, in particular Singapore and Japan, most of the developing East Asian countries, including Vietnam, the Philippines, China, India, and Indonesia, have experienced these problems. Two main explanations are postulated for the problems besetting labour law: (1) ongoing deficiencies in the wider legal systems of the countries in question, and (2) the hindering influence of other social systems, such as the political, economic and social systems prevalent in the countries (Cooney, 2006: 38-45). The first explanation lays the blame on the ineffectiveness of the legal institutions that are meant to implement labour law, with reasons for the ineffectiveness including inadequate staff and uncontrolled corruption, particularly among judges and labour officials. This will lead in turn to mistrust by the main stakeholders (employers and workers) and a lack of expectation that the law will be interpreted and applied reasonably and fairly. The second explanation lays the blame for the ineffectiveness of labour law on the interactions between the law and other social systems, in which the law does not have enough autonomy, and has become subordinate to other social systems, particularly the country's political and economic systems. This tends to occur during authoritarian rule in countries that have incorporated workers and labour law into the political strategies and development goals set by the state.

The wave of democratization that swept Southeast Asia in the 1980s and 1990s, particularly South Korea, Taiwan, and Indonesia, weakened authoritarian corporatism and may have been expected to strengthen society and thus the rule of law (Dorsen, 2001). However, the impact of democratization on the social system of any country is unpredictable and sometimes paradoxical (Cooney and Mitchell, 2002). Although democratization may undermine the system of state corporatism and the exercise of political power by the state, it often has less impact on other social systems, including industrial relations. Indonesia's recent history is an example of this. The efforts to change the corporatist nature of labour law through the Indonesian government's labour law reform program, with the assistance of the International Labour Organization – in particular the relaxation of trade union registration – did not necessarily encourage collective labour agreements, which were still widely ignored in the country (Isaac and Silalaksmi, 2008). This demonstrates that the unions were still relatively weak, and that in general, employers have remained unwilling to respect unions and comply with the law.

The situation described above explains the relatively high dependency of Indonesian workers and their unions on the state to increase their welfare; as the example of minimum wage setting demonstrated. Dialogue between employers and workers has not developed effectively, due largely to a lack of trust between the two parties. The establishment of the Industrial Relations Court in 2006 has not addressed the significant problem of the lack of enforcement of labour law; partly because when the court was formed

it inherited problems from the previous judicial system. There seems to be a vicious cycle with respect to the enforcement of labour law in Indonesia, with all enforcement processes tending to lead to new problems rather than solutions. Then the question that presents itself is: how can the enforcement of labour law in Indonesia be made more effective? The following discussion will focus on the debate surrounding this question, which may suggest some possible solutions to the problem.

3.1 Effective labour law enforcement

Labour law, referring both to collective labour law and to individual employment standards, will always face challenges with respect to compliance and enforcement (Davidov, 2010). Labour laws usually include the options of both self-enforcement and state enforcement; the latter through civil, criminal and administrative procedural laws and institutions. However the laws can suffer from inherent difficulties which hinder compliance and enforcement: in particular, employers often have a strong incentive for non-compliance; employees often face various barriers to self-enforcement; and effective enforcement by the state is often costly and complicated. Nevertheless, as suggested by Malmberg (2003, 2009), a threefold strategy can be effective, comprising (1) an industrial relations strategy through collective bargaining and industrial action; (2) a state-oriented strategy, based on administrative measures; and (3) a judicial strategy, based on the procedures and decisions of courts and tribunals, as well as the implementation of these decisions.

To examine this tripartite strategy in detail: first, the industrial relations strategy should deal with the distinctions between different kinds of negotiations, such as negotiations about the regulation of labour and employment relations; negotiations aimed at influencing managerial decisions; and negotiations about the application of rules. It is important to analyze whether the negotiations are supported in the national labour laws; including whether there is a duty to negotiate; whether there is recognition of representatives; whether there is disclosure of negotiations; and whether there is competence to start negotiations (see also van Peijpe, 2003: 105). As the second component of the tripartite strategy, administrative processes need to provide a non-judicial way to control and enforce the application of labour law, at both central levels, and decentralized to lower levels. These administrative processes should, if required, fulfill a complementary role ahead of or instead of judicial procedures. In some cases, there might be an eventual need for administrative intervention, especially when there is a lack of individual or collective action (see Chapter 6 of this dissertation); although administrative processes alone will not be effective as a means of enforcement (see also Laulom, 2003: 111). As the third component of the tripartite strategy, the judicial processes must deal with the legal conditions for initiating a judicial enforcement procedure, such as the requirements

derived from the rules and principles of law. The judicial processes should consider such questions as: the extent to which individuals, interest groups and representative bodies (including unions) are entitled to initiate judicial procedures; questions about interim decision-making powers such as which party has priority of interpretation without waiting for the court's decision; the time limit for claiming a right in court; the burden of proof; and the judicial interim measures in litigation, as an important element of equilibrium until the ruling. It is important to analyze the evolution of these three processes – industrial relations, administrative, and judicial – including the relationships between them in particular contexts, in order to understand the nature of the enforcement of labour law. Together, the intended functions of these processes are to ensure an effective enforcement of labour standards (Malmberg, 2003).

With respect to industrial relations processes, Indonesia's labour law is ambiguous on the issue of the obligations of trade unions and employers to negotiate with each other. Trade union-employer negotiation is formally recognized by Law No. 13/2003 on Manpower (the Manpower Law), especially article 111 subsection (4), which states: 'During the validity of the [term of the] company regulations, if the trade union within the enterprise requests a negotiation of the drafting of the collective labour agreement, the entrepreneur is obligated to do so.' The problem is that there are no sanctions if companies refuse to comply to this provision; and indeed, if there is no negotiation (even if one party wants to negotiate), the law states that 'the existing company regulations shall remain valid until their expiration' (article 111 subsection (5)). Moreover, the Manpower Law links the unions' right specifically with 'failed negotiations'; article 137 states: 'Strike is a fundamental right of workers/labour and trade/labour unions that shall be staged legally, orderly and peacefully as a result of failed negotiations.' Thus, while the Manpower Law provides no encouragement for negotiation between trade unions and employers, and no sanctions for employer's non-compliance, the same law limits the contexts under which trade unions may exercise their legal right to strike. This leads to even less incentive for negotiations between trade unions and employers.

With respect to administrative processes, as this dissertation has observed, there has been strong criticism of the public authorities who are tasked to supervise and enforce labour standards in Indonesia, due to the many examples of dysfunction in the performance of this task (see also Ford and Tjandra, 2007). Labour inspection, for example, is hindered by the regional autonomy policy, which devolved many of the inspection tasks to the regions, where regional officials often lack relevant skills and knowledge about labour standards. Moreover, attempts to exercise workers' rights, as set forth in Law No. 21/2000 on Trade Unions/Labour Unions, often lead to dismissal of the workers, leading some labour activists to advocate for stricter penal sanctions – particularly for the violation of the freedom of associa-

tion as stated in the Trade Unions/Labour Unions Law[4] – and to demand the establishment of a special unit at the Police office to handle relevant cases (Hutabarat et al., 2013). These issues highlight the problems associated with labour law enforcement mechanisms being managed through Indonesia's public institutions, which seem caught up with their own problems. There is an immediate need, for example, to build the capacity of labour inspection officials in the regions, as these officials are the ones directly handling cases in their daily work. And this needs to be conducted in collaboration with national government, which has the capacity and responsibility to provide supervision and control over the observance of labour law, as suggested by ILO Convention No. 81 concerning Labour Inspection in Industry and Commerce (ratified by Indonesia through Law No. 21/2003). Adding such a criminal provision in the Trade Union/Labour Union Law would add to the provisions already set in the Law, and would likely increase company compliance with the law. However, the transfer of labour enforcement to criminal procedures and the police may not resolve the problems, as this new responsible agency would have very different functions and capacities, due to the repressive character of criminal law enforcement. When compared with regular labour law enforcement mechanisms through labour inspection, which encourages social dialogues through negotiation between the disputing parties, the alternative of criminal punishment for non-compliant parties may not be the most effective alternative.

In relations to the third set of processes within the tripartite strategy – judicial processes – as discussed in Chapter 6, one of the most important arguments for setting up a special court to deal with labour disputes was to achieve a more accessible, fast, and cheap procedure than that which was on offer through the ordinary courts; especially given the new court's specialist jurisdiction and composition. The assumption was that the concepts and principles of the private law usually applied by the ordinary courts were based on individualism and freedom of contract; while the trade unions advocated collectivism and solidarity within the working class. Thus, in establishing a special court, there was a desire to create and maintain the labour law as autonomous from civil law principles, and also as independent from the ordinary courts (see also Hepple, 1986). The establishment of the Industrial Relations Court (PHI) in Indonesia was based on this assumption. In its current version, however, the PHI has continued to face structural problems from both inside and outside the legal system, for example the obligation to follow civil procedural laws purely (in contrast to the approach of labour law); and the dominant conservative views of the Supreme Court, which has often over-ruled regional PHI decisions, even decisions that have provided breakthroughs in terms of labour law interpretation in the regions (see also Tjandra, 2014c). This is of particular concern, given that the impacts

4 The author has discussed such a case in Indonesia in detail elsewhere (see Tjandra, 2010).

of dispute resolutions and rulings are not limited to the actual disputes in question, and that judicial processes in particular have the potential to be formative of the content of the law. The involvement of the ad hoc judges from unions and employers in the PHI, in order to give the court their relevant knowledge and expertise, has not proven to be effective at solving other underlying problems. The PHI has not yet fulfilled the expectations for 'accessible, speedy, and cheap' labour dispute settlement mechanisms. Although both workers and employers are represented in the court, both parties have reservations about the PHI. In particular, the ad hoc judges have often reduced their effectiveness by becoming caught up in corruption within the regional district court, which has further limited the court's capabilities to contribute to effectively labour law enforcement (see also Tjandra et al., 2012, Tjandra, 2014c, and Isnur et al., 2014). So, how can labour law be made more effective?

3.2 How can labour law enforcement be made more effective?

The discussions in this dissertation have confirmed that there are at least two direct challenges faced by Indonesia (and other developing countries) to make labour law enforcement more effective (see Cooney et al., 2002). The first challenge is at the level of content, with many aspects of existing labour law applying only to certain categories of workers, while most of the labour market comprises vulnerable workers (including home-based workers, casual and part-time workers, and those in informal economies), who remain excluded from the scope of labour law and its protection. The second is at the level of results: at present, even many of the workers whose protection falls within the scope of labour law are seeing that labour law is not currently enforced properly, and is being weakened by the social, political and economic forces surrounding it. It is important to address both the content issues and the results issues, in order to find ways of making labour law enforcement more effective; as both issues are interrelated. Focusing on reforming content alone will not render labour law more effective – as in many cases, as this dissertation has revealed, employers will simply ignore the basic protections demanded by the law, because they have the power to do so. This will lead many workers to accept the conditions they are offered, as they are faced with the prospect of losing their jobs if they do not agree. Based on these observations, some scholars have suggested four strategies for making the enforcement of labour law more effective (see, e.g., Cooney, 2006, Malmberg et al., 2003, Malmberg, 2009, and Dickens, 2012), and these strategies are highly relevant for this dissertation. The discussions that follow will highlight each of the strategies in turn, and relate them to this dissertation's findings, along with a discussion as to whether each strategy is likely to work in the current Indonesian context.

The first strategy that has been proposed to increase the effectiveness of labour law enforcement is through diversification of the enforcement strate-

gies (Malmberg et al., 2003, Malmberg, 2009). This proposition states that it is not be enough anymore to rely on traditional forms of 'command and control' law, given the globalization of economies, and the growing power of private firms and economic markets. In the traditional 'command and control' form of law, the law will mandate standards, and will direct employers and employees to comply with it or be subject to sanction (Cooney, 2006: 46-47, referring to Teubner, 1987). Although the command and control model can be crucial in sanctioning extreme labour abuses, it can also produce unexpected consequences, such as resistance from companies through various forms. It might not be realistic to expect a developing country like Indonesia, which has ineffective inspection mechanisms due to limited numbers of labour inspectors and widespread breaches of the law, to police company violations and enforce compliance. Further, over-policing might lead to resistance from the companies; including potential falsification of documents, coaching of workers under threat of dismissal, and even bribing of inspectors (see for instance the report by LBH Jakarta, 2014).

Given these concerns, Cooney (2006: 47-48) proposes the use of Ayres and Braithwaite's 'enforcement pyramid' (Ayres and Braithwaite, 1992, see also Braithwaite, 2011). The enforcement pyramid approach proposes that a regulator will be most successful at inducing a regulated party to comply with regulations; by starting with less formal (and less expensive) interventions such as dialogue, and only progressing to more serious measures such as fines and termination of business if the firms in question maintain their resistance. Regulators, to ensure the success of their approach, would be expected to be responsive to individual circumstances and selective in their use of available sanctions: selecting sanctions higher up the 'pyramid' in order of severity when a firm fails to respond, but quickly de-escalating when a firm shows cooperation. Despite Cooney's proposition, one immediate hurdle that comes to mind when considering the use of these strategies in Indonesia – particularly the use of the enforcement pyramid – would be the ongoing inconsistencies in the country's labour inspection mechanisms. As observed in this dissertation, since the implementation of regional autonomy in early 2000, labour inspection has been the responsibility of regional governments, and this has led to the implementation of very different policies and practices from one region to another. Further, regional-level labour inspectors are no more excluded than other officials from the serious corruption problems in Indonesia. Even those inspectors who demonstrate integrity against corruption will often lack the requisite skills and knowledge, or find that they do not have sufficient staff and resources to conduct their tasks, due to the inadequate budgets in the regions for labour inspection resources and training.

The second strategy proposed to increase the effectiveness of labour law enforcement is to involve trade unions directly as labour law enforcers (Cooney, 2006: 48-49, also Colling, 2012). This strategy aims to overcome the issue of limited resources within enforcement agencies, and in some

cases the issue of corruption; as well as helping to overcome the law's lack of flexibility, given that flexibility is particularly important in the realm of employment issues, with views about rights are likely to remain complex and subject to dispute and change. This need for flexibility is exemplified in collective bargaining agreements, in which employers, workers, unions, and representatives for each group need to be able to adapt and develop context-specific measures which they can agree upon, and therefore feel more bound by and committed to (Colling, 2012: 183). The evidence indicates that the presence of a trade union during bargaining leads to greater compliance with labour law, especially on the issue of occupational health and safety, with unions helping to focus attention on the importance of legislation in the workplace (Cooney, 2006: 49).

With this proposed strategy too, however, there would be some hurdles to overcome in the Indonesian context, as this dissertation has demonstrated. One hurdle would be the local trade unions' capacity to fulfill such compliance functions. This capacity currently varies markedly between regions: in some areas the unions would perform this function effectively, but in others they would not. These differences are related partly to the number of unions in an area; – in low-union-density areas where unions may not even exist at some of the workplaces, compliance-related tasks could clearly not be performed by unions within those workplaces. Another problem is related to the membership composition within the unions themselves. Even in regions which have high numbers of unionized workers, most unions will be comprised largely of regular workers, and their membership will still not include the more vulnerable workers, such as home-based and casual workers, who will remain unable to access the unions' monitoring and protection. A third problem to overcome will be the corporatist character of some unions, which may be too close to employer groups or the state, potentially leading to a reduced willingness to enforce the law; as happened, for instance, during the authoritarian New Order. Despite these challenges, the development of Indonesia's labour movement over the last few years give hope for an increase in the effectiveness of labour law enforcement. The re-emergence of the labour movement in some regions, notably in the industrial area of Bekasi, West Java, has clearly contributed to higher rates of compliance by firms, particularly with regard to provisions on outsourcing practices at workplaces (see also Mufakhir, 2014).

The third strategy proposed to increase the law's effectiveness is through self-regulation and internal compliance by firms and employers themselves (Cooney, 2006: 48-49, also Arthurs, 2008, Estlund, 2008). This strategy suggests that firms are encouraged to comply with labour law through their internal compliance processes. One well-known version of such processes is the codes of conduct adopted by employers, workplaces and organizations, particularly in developed countries, including well-developed management systems; and including requirements for their sub-contractors to comply with stipulated labour standards (including, for multi-national organizations, the

sub-contractors working in developing countries such as Indonesia). Labour standards feature frequently in these codes, which often encompass environmental practices, commercial honesty, consumer protection, and integrity when dealing with government officials (Arthurs, 2001). The use of voluntary codes has become widespread, especially since the early 1980s. One reason that has been proposed for the development of voluntary codes is that the codes represent the principled acceptance by firms of their social obligations (with the implication that firms will indeed accept these obligations); another proposed reason is that such codes simply fill a regulatory gap left by a state's inability to regulate the actions of corporations outside their own boundaries (see Arthurs, 2008, also Estlund, 2008). A third reason suggests that the voluntary codes represent an innovative shift in the means by which markets are regulated: from a pure-state-based command method, to a hybrid models involving a mix of public and private initiatives. It is important to note, moreover, that the early 1980s saw the rise of the non-governmental organization movement, especially in Europe and the United States, with the involvement of consumers' groups concerned about exploitation and abuse of workers both at home and abroad, and other groups concerned about environmental and social justice impacts of particularly multinational firms' activities in developing countries. These groups pressured governments and firms through the strategy of 'naming and shaming', using media campaign and lobbying (see, e.g., Meernik et al., 2012). Confronted by such public accusations, one of the responses by organizations was to adopt a code of conduct, which declared the organization's commitment to core values – including the commitment to respect fundamental labour rights such as freedom of association, safe work environments and the absence of coercion and discrimination (Arthurs, 2008: 21). Thus, so-called voluntary codes have often not been purely 'voluntary'; rather, organizations have chosen to develop codes in response to intense public pressure from the civil society organizations, and the codes have become available not merely to become the firms' 'public relations ploy,' but also to act as 'workers' tools' (Wick, 2005).

The obvious challenges associated with this strategy include monitoring for compliance, and evaluation of effectiveness of individual codes, with both tasks depending very much on the firms themselves (Cooney, 2006: 49). In an assessment of Indonesia's corporate social responsibility practices, Kemp (2001) identified several problems with this particular strategy. The use of the codes was found to be flawed, as the codes may place corporations outside the national regulatory system, bypassing the tripartite negotiation system that has been one of the country's major labour reforms. The process of monitoring, and associated outcomes, were usually confidential, with workers in particular never involved in the process, and left without knowledge of the results. Sanctions for non-compliance were generally weak or non-existent, while codes were usually developed at the head office, rarely in consultation with trade unions or others. Finally, corporations often insisted that affiliates and sub-contractors improve conditions, but provided limit-

ed if any resources to support such changes. In the last few years, however, there have been some interesting improvements to this strategy across Asia, including in Indonesia, through the Asia Floor Wage Alliance, which focuses on the issue of decent wages for garment workers (see Merk, 2009). The initiative has been driven by a union in India, meaning that trade unions have been involved in the entire process – from the initial drafting to monitoring and evaluation, including negotiating with brand-name multinational corporations. Another initiative has emerged in a form of the Play Fair Alliance, which on using the the momentum behind the Beijing Olympics in 2008 to raise issues of shoe workers. One important result of such efforts has been the first ever written 'protocol' on freedom of union association, which has been jointly signed by the representatives of the brand- name multinational corporations, sub-contractor firms, and trade unions (see Hutabarat, 2012). Both initiatives are relatively new, and the success or otherwise of their efforts is still unclear, but they represent important developments in this strategy which are worth noting.

The fourth strategy to improve the effectiveness of labour law enforcement is the use of multi-stakeholder regulations, by involving private and non-governmental stakeholders in negotiating labour, health and safety, and environmental standards, as well as monitoring compliance with these standards, and establishing certification and labeling mechanisms which provide incentives for firms to meet the standards (O'Rourke, 2006). Some examples of initiatives which employ this strategy in Europe and the United States are: the Worldwide Responsible Apparel Production (WRAP) certification program; Social Accountability International (SAI); the Fair Labor Association (FLA); the Ethical Trading Initiative (ETI); the Fair Wear Foundation (FWF); and the Workers Rights Consortium (WRC). All these initiatives operate as private internal monitoring initiatives, often with government support. The Ethical Trading Initiative (www.ethicaltrade.org), for instance, is supported by the British government, and brings together major firms, unions and community organizations to develop practical strategies to improve workers' conditions; providing a model for developing countries. Some observers argue that this strategy may be appropriate for Indonesia, as it integrates the enforcement functions of state agencies, trade unions and other non-governmental organizations, as well as the self-regulatory efforts of firms, and therefore has the potential to be more flexible, efficient, democratic, and effective than traditional methods of labour regulation (Cooney, 2006: 50). Others criticize the strategy as an attempt both to free industry from state regulation, and to hinder union organizing efforts and the current role of trade unions (O'Rourke, 2006, also Justice, 2001). Both arguments have strong points, and a consideration of both is useful when developing the evaluation criteria for multi-stakeholder regulation processes, including criteria for evaluating both their general effectiveness, and their accountability to local stakeholders. O'Rourke (2006) concludes that several factors are important to support more effective non-governmental regulations such

as these, including: substantive participation of local stakeholders; public transparency of methods and findings; and mechanisms that bring market pressures to bear on multi-national corporations, while simultaneously supporting the processes of multi-stakeholder problem-solving within factories and global supply chains (O'Rourke, 2006: 900).

The four strategies and approaches discussed above have been developed and applied in various contexts, with the aim of developing more systematic and effective methods of labour law enforcement. Each strategy depends partly on traditional forms of law enforcement, through state apparatus and mechanisms, but also diversifies into alternative enforcement strategies involving trade unions (to highlight the spirit of the law in workplaces); as well as the regulations and initiatives of non-governmental actors, including firms, non-governmental organizations, and trade unions. Each of the four strategies and approaches, however, requires one basic and very important action from the state: that is, the state must set supportive social goals, and uphold the freedom of civil society actors to organize and mobilize (see Graham and Woods, 2006). Thus, although the strategies for making labour law more effective may seem to be being shared among actors other than the state, in the end it is necessary to ensure the state is closely involved, and ready to intervene through its regulatory power to set the required standards. In these efforts, the state should be supported and monitored by non-state actors to ensure that it fulfils its roles correctly. In other words, these proposed initiatives are not intended to replace the role of the state, but rather to strengthen the role of the state in new ways, with more opportunities for participation and involvement of all stakeholders in labour law, while also allowing various stakeholders to maintain their original roles as protectors of citizens. This is the balance that Indonesia needs; and, as this dissertation has demonstrated, the foundation of such a balance lies in the union-based organization of working people themselves.

4 Suggestions for further research

This dissertation is a systematic study of the changes to Indonesia's labour law, exploring the historical circumstances of labour law from colonial times to the *Reformasi* era. Particular attention has been paid to the *Reformasi* era, including examining closely the changes during that time, and the impacts of those changes empirically. Further research will be required to give a fuller picture of these changes and continuities within Indonesia's labour law reform. This dissertation provides the foundations for doing so. Following are several suggestions for further research that could be conducted to better understand labour law reforms and their associated social and political changes; both in Indonesia and in other developing countries. For further research, it may be beneficial to consider the threefold strategy for labour law enforcement as suggested by Malmberg (2003, 2009); that is the indus-

trial relations strategy, the state-oriented strategy, and the judicial strategy, and use this framework to consider the impacts and effectiveness of labour law and its enforcement in Indonesia. The question of the enforcement of labour law is probably the most interesting and challenging question from a socio-legal perspective, which is the perspective taken by this dissertation; and is an uncommon perspective, currently, in the literature on Indonesian labour law.

One important question to investigate in further research will be: to what extent, during the enforcement of labour law, is the role of negotiation recognized and enabled within the Indonesia's labour law system? This question is interesting from a comparative perspective, when comparing the many different roles and kinds of negotiation in the enforcement of labour law, particularly in different contexts. For instance, often the predominant type of negotiation used during restructuring processes is a negotiation, which aims to influence managerial decisions. In the context of other workplace processes, such as when managing equality in the workplace, the more relevant type of negotiation may be one about the application of rules; while when making decisions about working hours, one's negotiations should focus bargaining about labour and employment relations regulations (see van Peijpe, 2003: 105). Other questions to be explored relate to administrative processes: for example, to what extent do administrative processes help the enforcement of labour law in Indonesia? When considering individual administrative processes, such as: the inspection mechanism; or the obligation to inform the authorities about collective redundancies, or the provision of assistance to victims of discrimination, or the promotion of equal treatment in firms, to what extent is each of these administrative processes effective at present? What types of administrative intervention may be needed, to improve the effectiveness of labour law enforcement in Indonesia? Investigating these questions would be beneficial; for instance it would provide empirical evidence about the role of the state in labour inspection mechanisms in Indonesia, which currently appears to be relatively weak and ineffective.

Another useful research focus concerns the judicial process of enforcement. It would be useful to investigate the role of collective bargaining by unions, during disputes over the rights of individual workers. It would also be useful to investigate the extent to which the Indonesia's labour law system recognizes interim decision-making power; that is, which party has priority of interpretation, without awaiting the decision of a court? Further, if recognition is granted, which party is awarded priority, and what are the relevant processes? The point of departure for these questions is that each of the parties may, at their own risk, rely on their own interpretation of their legal duty. However, if the interpretation is wrong, the party makes itself liable to breach of contract. This is very much related to the time limit to claim a right in court, and the burden of proof among the parties, which are important in labour law. One may also want to analyze the importance of the develop-

ment of 'social law' in Indonesia, which links labour law with social security law, as is common in Europe (see, e.g., Hervey, 1998). This may be particularly of interest given the enactment in Indonesia of the two social security laws (Law No. 40/2004 on National Social Security System and Law No. 24/2011 on Social Security Executing Agency), which complement the three labour laws enacted following the 1998-2006 labour law reforms (Law No. 21/2000 on Trade Unions/Labour Unions; Law No. 13/2003 on Manpower and Law No. 2/2004 on Industrial Relations Dispute Settlement).

Finally, in the broader context of the legal, social, and political changes in Indonesia, it is crucial to identify clearly how the law is actually constructed, and how it influences the position of workers in practice; as well as investigating how certain process escapes the law's purview. The research question here is: how does labour law evolve in a relatively democratic and developing country, where establishing the rule of law requires much work and struggle, and where development is generally defined in economic terms? In considering this question, researchers could focus on the influence of key international actors such as the International Labour Organization and other international organizations and standards; in particular their influence on framing the new labour laws, and how their standards are reflected in the laws. Researchers could also consider the government's efforts to introduce effective enforcement institutions; and the role of trade unions and other workers' organizations in promoting their members rights and developing welfare policies for broader society. These questions all require an interdisciplinary approach to research, including linking the normative and non-normative aspects of law making and enforcement, and focusing on the law while also considering the other social sciences. An interdisciplinary approach is likely to achieve a fuller and more nuanced understanding of the current problems, leading in turn to potentially effective solutions to these problems.

5 Final remarks

The main theoretical position of this dissertation is that labour legislation in Indonesia is part of an historical process, and is the outcome of a struggle between different social groups and competing ideologies (see Introduction of this dissertation, also Hepple, 1996, 2009). The making and the transformation in labour law are closely related, and influenced by various factors, including economic developments and policies; the changing nature of the state; the character of employers and the labour movement; the growing influence of civil society; and shifts in ideology (see also Hepple, 2011). This dissertation provides substantial evidence for this position, and argues that labour law in Indonesia is also best understood as the result of the struggles between different social groups and competing ideologies, which change with time and historical circumstance. This dissertation contends

that despite of all the challenges and problems, hope remains for the development of a sound and effective labour law in Indonesia, due particularly to the development of the trade union movement in the country. There is considerable evidence that the presence of unions in both developed countries (for a classical account see Rubble, 1977) and developing countries (see Daniel, 1957) may lead to the enactment of important social legislation and greater compliance with labour law. Similarly, as this dissertation has shown, Indonesia since the *Reformasi* includes some encouraging developments: trade unions have started to play a role not only as a countervailing power against employers for the sake of member workers, but also as law enforcers and advocates of the welfare state, with benefits for society as a whole (see Chapter 4 of this dissertation).

Despite these positive developments, there remains a clear need for both unions and employers to have strength and integrity, so that industrial relations can develop effectively and fairly in Indonesia. It is important for both parties to respect to each other, and for demands to be reasonable. In some European countries this respect was facilitated by reforms among employers, who needed to cooperate with workers in the wake of the impacts of the most recent world war on workplaces (see Hepple, 1996). Indonesia has had no such impact from a major war, and the potential benefit to be gained from a temporary post-war surge in the working-age proportion, along with the possibility of benefitting from the implied human endowment via appropriate development strategies, is arguably questionable (see Bappenas, 2005). This confirms the urgent need for strong alternative labour powers, which can influence politics and encourage government and employers to consider further reforms toward policies and practices that are both pro-worker and pro-people. Trade unions can play important roles in this process, by being the countervailing power against capital and corporate power, so that the results of development are redistributed fairly throughout society, and by being agents of education; for example their efforts to develop new labour laws and enforce labour standards provide an excellent opportunity for unions to show their their member-workers their rights, raise their awareness, and develop a broader understanding about legal culture.

The Indonesian trade union movement must however, resolve several key problems that they currently face. Some of these problems are internal; such as low membership for most unions; tensions between organizational efficiency and internal democracy; and the low proportion of collective bargaining agreements that are concluded successfully, closely related to the lack of effective dialogue between social partners such as trade unions and employers. There are also problems from outside of the unions, including the high number of workers in the informal economies, the high levels of unemployment, and the issue of workers' productivity. One particular challenge that may need extra attention is the tension between organizational efficiency and internal democracy; as the political exercises during the 2014 legislative

and presidential elections have demonstrated the strengths and liabilities of the trade union movement. The union movement needs to find the right balance for these dilemmas, so that unions can become an important alternative and much needed power in the new democracy of Indonesia, to help develop better pro-workers legislation, and to contribute to the development of a better Indonesia. These are not easy tasks, yet the foundations are there.

Finally, with regard to the aims of this study – to examine the relationship between labour law and economic development in a developing country – this dissertation has demonstrated that labour law in Indonesia is one of the best examples of the most conflicting terrains of law for many conflicting interest groups in society. Labour law involves not only workers and their unions, but also business people and political elites; not only local actors but also global players, buttressed by the so-called 'globalization' of economy. This dissertation has been concerned with the ways in which labour law protects through labour rights, and thus constrains some of political power of the capital. In this context, the exercise of these rights, like war, is 'politics by other means' (see Abel, 1995, cited in Hepple, 2002: 16); that is, we are able see the twin roles of law in the struggle against oppression: 'law as the sword of the oppressor, and law as the shield for the oppressed' (Dyzenhuis, 2008). With this view, and to end this dissertation, it is enlightening to contemplate the writing of leading labour law scholar, Bob Hepple (2002: 16):

> [R]ights are not simply the reflection of the existing distribution of power in society. Study of the process of creation and enforcement of social and labour rights helps us to understand how far law can act relatively autonomously to restrain public and private power for the benefit of at least some of the people for some of the time. This is an integral part of processes of social and political change.

Summary

Labour Law and Development in Indonesia

The creation and enforcement of social and labour rights in Indonesia reflects the broader processes of social and political change in the country. The making of labour law has been a struggle rather than a smooth and cosy process. Three decades of rapid economic growth under the authoritarian 'New Order' era were marked by political and economic subordination of many of those who made it happen. The New Order was notorious for its harsh and unsympathetic treatment of workers. Seeking an appropriate framework for the pursuit of industrialisation and economic growth, the New Order used corporatist structures to control labour, and by and large managed to overcome resistance. The corporatist labour law framework assured managerial ascendancy and the restraint of labour costs, often with repression, for the sake of economic growth under the broad term of 'development'.

The fall of President Soeharto in May 1998 marked a new epoch for the country. It opened the door for different forces to influence the formation of the country's new social and political structures. The Habibie government needed to distance itself from the previous regime and initiated many reforms, including new labour policies. This started by a new Ministerial Decree concerning Trade Union Registration, which allowed workers more freedom to establish unions. This step was followed by the ratification of International Labour Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, which complemented ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, which Indonesia had already ratified in 1956. Within seven months of Soeharto's fall, in December 1998, the Habibie government launched the so-called 'labour law reform programme', under the auspices of the ILO, with the ambitious goal of changing the entire structure of Indonesia's labour law regime.

The main aim of the reform, however, was to make the labour law system a tool for promoting economic efficiency, among other things by reducing costs through a flexible labour market. This was one of the measures which Indonesia was forced to implement after the Asian economic crisis of 1997-1998 in order to liberalise its economy. Indonesia's labour law regime was thus transformed from a corporatist labour law model organised by a strong state, towards one that was largely market-oriented. As the new political arrangement began to take shape, the Indonesian economy shifted from guided or state-led development to market-oriented reform and external liberalisation.

This suggests a typical neo-liberal transition, which, however, is not the entire story. Despite their neo-liberal orientation, labour law reforms included the adoption of many pro-labour regulations, which created new space for the development of a trade union movement. The reforms likewise shifted some responsibility from the executive to other institutions – such as the judiciary – but maintained an important role for the government in regulating labour relations.

How can this development be understood and explained? What are the implications for labour? What challenges and opportunities has the country's newly (re-)established trade union movement to face? What lessons can we learn from the development of these changing labour laws, in the relation between labour law and economic development in Indonesia? The study addresses these questions by first providing a general overview of the development of labour law and by then looking at three case-studies concerning (1) trade unions; (2) minimum wage; and (3) the Industrial Relations Court.

These topics correspond to the three major pieces of labour legislation enacted since the start of *Reformasi* in 1998 and constitute key elements of labour law. Trade unions are a crucial institution in any modern industrial capitalist society. They represent one of the few institutions capable of promoting some measure of equity and social justice. Minimum wage is important in labour law as a policy tool for poverty reduction, but also as an indicator of the extent of a government's commitment to social justice. Finally, the Industrial Relations Courts are important because they represent the instrumental aspect of law in their role as adjudicator and enforcer. Together they also cover the two main facets of labour law that have been examined in this study, i.e. collective labour law (trade union, minimum wage), and individual labour law (minimum wage, industrial dispute settlement).

As regards the trade union, the study finds various positive developments both at the national and the regional level. Several unions at both regional and national levels have developed alternative strategies to overcome the stagnation embodied in the structures of the existing national workers federations and confederations. Through the formation of regional alliances they now deal with local labour issues, such as regional minimum wage determination, and with local politics in its relation to labour. The national alliance with the KAJS (Action Committee for Social Security Reforms) even looked beyond traditional workers' issues, and focused its struggle on reforming Indonesia's social security system for the benefit of all citizens. Such alliances represent an unprecedented development of the trade union movement in Indonesia, and they lend hope that the future will include the more active participation of unions in Indonesians' social struggles.

Concerning the minimum wage in Indonesia, the study shows how instead of being a wage floor it has generally become the effective wage for most workers. In the absence of a collective bargaining system these are still very much dependent on a raise in the minimum wage for getting higher wages. The minimum wage setting process within wage councils is where the newly-developed trade union movement has to demonstrate its zeal in defending members' and other workers' interests. This focus is reinforced by the risk of dismissal of union officials when they attempt to negotiate wages at the plant level. As a result considerable pressure is exercised on the wage councils, and demands for increases that may seem excessive have turned minimum wage setting into a site of conflict. During the New Order the state pursued a low wage strategy in order to attract investment, and thus used the minimum wage as a tool by which to control labour unrest. Since 1998 the state has become more ambiguous with respect to minimum wages: on the one hand, the state would like to turn minimum wages into the wage floor, but on the other hand officials are reluctant to leave wage setting to processes of collective bargaining. They also fear the stronger trade unions required for effective collective bargaining.

As regards the Industrial Relations Courts, the study finds that their establishment has raised concerns from labour about their inaccessibility to most workers as a result of high costs, delays, formalities, and a class bias of some career judges. These problems can be explained in part from the conceptual inadequacy and the obscurity of some of the provisions in Law 2/2004, the problematic relationship between the court and the court of appeal, and corruption from the lowest level of substitute registrar to ad-hoc judges at the Supreme Court. The efforts from ad hoc judges from unions to overcome such problems have to a large extent been outdone by the structural problems plaguing the Indonesian judiciary in general.

The study further shows how the making and transformation of labour law is influenced by various factors, including economic developments and policies; the changing nature of the state; the character of employers and the labour movement; the growing influence of civil society; and shifts in ideology. It provides substantial evidence for the position that labour law in Indonesia is best understood as the result of struggles between different social groups and competing ideologies, which change over time. Despite the challenges and problems, hope remains for the development of a sound and effective labour law in Indonesia, due particularly to the development of the trade union movement in the country. Since *Reformasi* some encouraging developments have taken place: trade unions have started to play a role not only as a countervailing power against employers for the sake of member workers, but also as law enforcers and advocates of the welfare state, with benefits for society as a whole.

Nonetheless, there remains a clear need for reinforcement of union and employers organisations so that industrial relations can develop effectively and fairly. It is important for both parties to respect each other, and for demands to be reasonable. Trade unions can play important roles in this process, as a countervailing power against capital and corporate power, as redistributors of developmental results in society, and as agents of education. Their efforts to shape new labour laws and enforce labour standards have helped unions in making their members aware of their rights, and to develop a broader understanding about the role of law as a tool for development -not only for labour but also for society more generally.

Summary (in Dutch)

Arbeidsrecht en ontwikkeling in Indonesië

De ontwikkeling en versterking van sociale rechten en rechten van arbeiders in Indonesië weerspiegelt de bredere processen van sociale en politieke hervormingen in het land. De ontwikkeling van het arbeidsrecht is eerder een strijd dan een vloeiend proces. Dertig jaar sterke economische groei onder de autoritaire 'Nieuwe Orde' van president Soeharto werd tevens gekenmerkt door politieke en economische onderdrukking van juist die groepen die een bijdrage leverden aan het realiseren van die groei. De 'Nieuwe Orde' was berucht om zijn harde aanpak van arbeiders. In de zoektocht naar een passend kader voor het realiseren van industrialisatie en economische groei, hanteerde de 'Nieuwe Orde' ideologische structuren om arbeid te controleren en slaagde zij er veelal in om weerstand te overwinnen. De corporatieve vorm van het arbeidsrecht verzekerde bestuurlijk overwicht en beperking van arbeidskosten, vaak door middel van repressie omwille van economische groei, onder de noemer van 'ontwikkeling.'

De val van president Soeharto in mei 1998 luidde een nieuw tijdperk in voor Indonesië. Het maakte de weg vrij voor verschillende groepen om de vorming van de nieuwe sociale en politieke omstandigheden in het land te beïnvloeden. De nieuwe regering van president Habibie wilde zich distantiëren van het voorgaande regime en initieerde veel hervormingen, waaronder ook een nieuw arbeidsbeleid. Dit begon met een nieuwe ministerieel besluit met betrekking tot de registratie van vakbonden, dat arbeiders meer vrijheid gaf om vakbonden op te richten. Deze stap werd gevolgd door ratificatie van Conventie No. 87 van de Internationale Arbeidsorganisatie (*International Labour Organization* (ILO)) betreffende de Vrijheid van Vereniging en de Bescherming van het Recht zich te Organiseren. Conventie No. 87 was een aanvulling op Conventie No. 98 van de ILO betreffende de Toepassing van de Beginselen van het Recht zich te Organiseren en Collectief te Onderhandelen die Indonesië al in 1956 had geratificeerd. Binnen zeven maanden na het aftreden van Soeharto, in december 1998, lanceerde de regering Habibie het zogenaamde 'arbeidsrechthervormingsprogramma,' onder auspiciën van de ILO, met de ambitieuze doelstelling om de gehele structuur van het arbeidsrecht in Indonesië te herzien.

Het belangrijkste doel van de hervormingen was nochtans om het systeem van arbeidsrecht instrumenteel in te zetten voor het bevorderen van economisch rendement, onder andere door kostenvermindering als gevolg van flexibilisering van de arbeidsmarkt. Dit was één van de maatregelen die

Indonesië genoodzaakt was in te voeren na de economische crisis in Azië van 1997-1998, teneinde de economie te liberaliseren. Het Indonesische systeem van arbeidsrecht werd getransformeerd van een corporatief model, georganiseerd door een sterke staat, naar een grotendeels marktgeoriënteerd model. Toen het nieuwe politieke beleid vorm begon te krijgen, transformeerde de Indonesische economie van een staatsgeleide ontwikkeling naar een marktgeoriënteerde hervorming en externe liberalisering.

Dit duidt op een typisch neoliberale transitie, maar er is toch meer aan de hand. Een flink aantal hervormingen werkte gunstig uit voor de arbeidsbeweging. Zo werd onder meer nieuwe ruimte gecreëerd voor de ontwikkeling van vakbonden. Bovendien werd een aantal verantwoordelijkheden wel verschoven van de uitvoerende macht naar andere instituties – zoals de rechterlijke macht – maar de rol van de overheid bij het reguleren van arbeidsrelaties bleef toch voor een belangrijk deel gehandhaafd.

Hoe kan deze ontwikkeling begrepen en verklaard worden? Wat zijn de consequenties voor arbeid? Met welke uitdagingen en kansen worden de nieuw opgerichte vakbonden geconfronteerd? Welke lessen kunnen getrokken worden uit de ontwikkeling van deze veranderende arbeidswetgeving, in de relatie tussen arbeidsrecht en economische ontwikkeling in Indonesië? Dit proefschrift richt zich op deze vragen door eerst een algemeen overzicht van de ontwikkeling van het arbeidsrecht te geven en vervolgens te kijken naar drie casus betreffende (1) vakbonden; (2) minimumlonen; en (3) de arbeidsrechtbanken.

Deze onderwerpen zijn gerelateerd aan drie belangrijke onderdelen van de arbeidswetgeving die zijn vastgesteld aan het begin van de *Reformasi* in 1998 en die de belangrijkste elementen van arbeidsrecht omvatten. Vakbonden zijn cruciale instituties in een moderne industriële, kapitalistische maatschappij. Zij vormen één van de weinige instellingen die in staat zijn om maatregelen ter bevordering van gelijkheid en sociale rechtvaardigheid af te dwingen. Het minimumloon is belangrijk binnen het arbeidsrecht als een beleidsinstrument om armoede te bestrijden en tevens als indicator van de mate van de betrokkenheid van de overheid bij het bevorderen van sociale rechtvaardigheid. Ten slotte zijn de arbeidsrechtbanken belangrijk omdat zij het instrumentele aspect van het recht vertegenwoordigen in hun rol als arbiter en handhaver. Samen bestrijken zij ook de twee belangrijkste facetten van het arbeidsrecht die in deze studie zijn onderzocht, namelijk collectief arbeidsrecht (vakbonden, minimumlonen) en individueel arbeidsrecht (minimumlonen, arbeidsgeschillenbeslechting).

Met betrekking tot de vakbonden heeft dit onderzoek verschillende positieve ontwikkelingen geïdentificeerd, zowel op nationaal als op regionaal niveau. Verscheidene vakbonden hebben alternatieve strategieën ontwikkeld om stagnatie, belichaamd in de structuren van bestaande nationale

arbeidsfederaties en confederaties, te overwinnen. Door het opzetten van regionale samenwerkingsverbanden, houden de vakbonden zich nu bezig met lokale kwesties van arbeidsrecht, zoals het bepalen van het minimumloon en lokaal beleid in relatie tot arbeid. De nationale alliantie met de KAJS (Aktiecommissie voor Hervorming van de Sociale Zekerheid) keek zelfs verder dan de traditionele arbeidskwesties en richtte zich op de hervorming van het Indonesische sociale zekerheidsstelsel. Zulke allianties betekenen een ongekende ontwikkeling voor de vakbeweging in Indonesië en bieden hoop dat in de toekomst een actievere participatie van de vakbonden plaats zal vinden in de sociale strijd in Indonesië.

Met betrekking tot het minimumloon in Indonesië toont het onderzoek aan dat het minimumloon in plaats van een 'bodemloon' voor het merendeel van de werknemers een effectief loon is. Door het ontbreken van een systeem van collectieve arbeidsovereenkomsten is men nog steeds sterk afhankelijk van een verhoging van het minimumloon om loonsverhoging te realiseren. Tijdens het proces van vaststelling van het minimumloon in de 'loonraden', zal de nieuwe vakbeweging moeten tonen in staat te zijn de belangen van haar leden en andere arbeiders effectief te behartigen. Het belang hiervan wordt versterkt door het risico dat vakbondsleiders en -medewerkers worden ontslagen wanneer zij proberen te onderhandelen over lonen op bedrijfsniveau. Als gevolg hiervan wordt er een aanzienlijke druk gelegd op het loonoverleg. Tijdens de 'Nieuwe Orde' streefde de staat een lage lonen strategie na om investeringen aan te trekken en gebruikte het minimumloon als middel om arbeidsonrust onder controle te houden. Vanaf 1998 is het overheidsbeleid ten aanzien van minimumlonen meer ambigu: aan de ene kant zou de overheid het minimumloon om willen zetten in een bodemloon, maar aan de andere kant zijn overheidsfunctionarissen niet bereid om het vaststellen van lonen te laten bepalen in collectieve arbeidsonderhandelingen. Tevens vrezen zij de sterkere vakbonden die vereist zijn voor collectieve arbeidsovereenkomsten.

Met betrekking tot de arbeidsrechtbanken is in dit onderzoek naar voren gekomen dat zij niet goed toegankelijkheid zijn voor de meeste arbeiders vanwege hoge kosten, vertragingen, formalisme en in het geval van sommige rechters een vooroordeel ten aanzien van maatschappelijke klasse. Deze problemen kunnen deels verklaard worden door de conceptuele tekortkomingen en de onduidelijkheid van een aantal bepalingen in Wet 2/2004, de problematische relatie tussen de rechtbank en het hof van beroep, en door corruptie – vanaf het laagste niveau van de gerechtssecretaris tot rechterplaatsvervangers bij het Hooggerechtshof. De inspanningen van rechterplaatsvervangers van vakbonden om zulke problemen aan te pakken, worden belemmerd door de structurele problemen waar de Indonesische rechterlijke macht mee te kampen heeft.

Dit onderzoek laat verder zien hoe het ontwikkelen en transformeren van arbeidsrecht beïnvloed wordt door verscheidene factoren, zoals economische ontwikkelingen en beleid, het veranderende karakter van de staat, het type werkgever en arbeidersbeweging; de toenemende invloed van de maatschappelijke middenklasse en ideologische verschuivingen. Er is substantieel bewijs voor de stelling dat arbeidsrecht in Indonesië het best begrepen kan worden als het resultaat van strijd tussen verschillende sociale groeperingen en rivaliserende ideologieën, die in de loop der tijd veranderen. Ondanks de uitdagingen en problemen blijft er hoop voor de ontwikkeling van een gezond en effectief arbeidsrecht in Indonesië, wat vooral te danken is aan de ontwikkeling van de vakbeweging in Indonesië. Sinds de *Reformasi* zien we een aantal bemoedigende veranderingen.Vakbonden zijn een rol van betekenis gaan spelen als tegenwicht voor werkgevers in het behartigen van de belangen van vakbondsleden, maar ook als handhavers van de wet en verdedigers van de welvaartsstaat.

Desalniettemin bestaat er nog steeds een duidelijke behoefte aan versterking van vakbonden en werkgeversorganisaties, zodat arbeidsrelaties zich effectief en op rechtvaardige wijze kunnen ontwikkelen. Vakbonden kunnen een belangrijke rol spelen in dit proces als tegenwicht tegen de macht van het kapitaal, in de herverdeling van welvaart binnen de maatschappij, en als behartigers van het bevorderen van bewustwording. De inspanningen van vakbonden om nieuwe arbeidswetten te ontwikkelen en arbeidsnormen te versterken hebben er toe bijgedragen dat vakbondsleden zich nu bewust zijn van hun rechten en ze hebben een breder begrip gekweekt voor de rol van het recht als instrument voor ontwikkeling – niet alleen met betrekking tot arbeid maar ook voor de maatschappij in het algemeen.

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Curriculum Vitae

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In the range of books published by the Meijers Research Institute and Graduate School of Leiden Law School, Leiden University, the following titles were published in 2014 and 2015:

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