INDONESIAN LABOUR LAW DEVELOPMENT AND REFORM: THE YEARS OF RATIFYING FUNDAMENTAL HUMAN RIGHTS AS DEFINED WITHIN THE ILO CORE CONVENTIONS

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INTRODUCTION

Labour law, which is also the so called social law, occupies a peculiar place in the national legal system due to its significant role as a set of rules that include in the space of both public law and private law as well. It has an intermediate nature in serving those dual objectives i.e.: firstly, introduced to rectify injustice as a result of freedom of contract includes principles that revise the civil law precepts, and secondly designed to settle conflicts emanating from the class confrontation between capital and the labor. It is, therefore, labour law had a rather strong policy-oriented structure.

Recently, however, labour law reflecting the demise of major socialist regimes and the overall trend of non-unionization in industrialized countries, no longer serves industrial relations based on class confrontation. It tries to transform production activities to adjust to the ecological system by enhancing law, and the definition depicts the characteristics of the modern labour law. However, labour law was not able to realize its objectives by revising civil law without questioning some of the fundamental principles of rights and property as well.

It is fair to say that labour law with its initially regulatory nature, possesses a particular space in the development process of a nation. In this respect, if the notion of development is narrowly defined and confined to the only economic terms, the primary concern of a developing nation is obviously economic growth, and the objective of attaining social justice will be less given emphasis before the imminent need for economic development.

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In many Asian developing countries, including Indonesia, labour legislations and policy enacted by the Government that are restrictive in nature and sometimes even repressive against free exercise of trade union rights, and the existence of labour law obviously repressive one. In other words, the State law tends to served to control the performance of trade unions, as well as to be used to managed conflicts between employer and workers. It means that the law tends to be employed as a machinery to achieve their imminent policy that is economic growth and political stability, rather than to reach social justice of the workers. It is the so called the Corporatist Model or Regulatory Model in industrial relations in which the role of the Government is very dominant in labor-management relationships. In this sense, all employment terms and working conditions are defined and regulated by the Government within labour policy and legislations. Hence, the labor law of a country will be a legal compulsory and becomes part of the public law.\(^4\)

In the case of Indonesia, the development and reform of labour policy and legislations can be observed into two period of time namely before the reformation era of 1998 and after 1998.\(^5\)

In the period of prior 1998\(^6\) the industrial relationships that established by the Government was the corporatist model or regulatory model. It meant that intervention of the Government in labor relations and its regulations was very dominant, and that was why the development of Indonesian labor legislations in this era defined as part of public law. In this respect, the regulations should be implemented and obeyed by both employees and

\(^4\) It is in contrary with the so called the Contractual Model in industrial relations where the role of Government is limited particularly in the enactment of employment terms and working conditions within the labor policy and legislations. Those employment terms and conditions of working should be freely negotiated by the employer and the employees or their labor union representatives. It means that in the contractual model, the majority of labour law principles based on contract in which the parties have freedom to define and regulate employment terms and conditions based on their respective interest and need. Hence, the above mentioned model in the labour law point of view is voluntary and becomes part of private law. See Aloysius Uwiyono, “Indonesian Labor Law Reform Since 1998”, In Naouyuki Sakamoto and Hikmahanto Juwana (Eds), Reforming Laws and Institutions in Indonesia: An Assessment, IDE-JETRO, Faculty of Law University of Indonesia Press, Jakarta, 2007, p. 187.

\(^5\) It should be informed that the period of legal reform in Indonesia followed the fall of the dictatorial rule of the former President Soeharto. Legal development undertaken in this period of reformation since 1998 can be said as the broadest series of legal reforms in which hundred of laws and legislations enacted and repealed as Indonesia strives to put in place a functioning, viable and fair legal system, including labour laws and institutions.

\(^6\) The time before 1998 is in particular to mention after Indonesia proclaimed its independence in 1945.
employers otherwise they will be punished either with terms of imprisonment and or substantial fines.

The paper attempts to outline the development and reform of Indonesian Labor Law which is interesting to be observed in relation to the dynamic of economical, social and political changes, the changes of which bring about the implication of Indonesian legal reform and development includes the labour law, which taken place starting from the year of 1998 which is the so called the reformation era of Indonesia.

THE YEARS OF PRIOR 1998

The first labor law that enacted by the Government was Act No. 1 of 1951 concerning Employment which regulated working hours, annual leave, long service leave, rights such like menstruation leave and maternity leave, child labor rights, and working environment conditions, expressed the dominant role of the Government in industrial relations in order to control rights and obligations of stakeholders namely employer and the workers. It was followed by the enactment of Act No. 2 of 1951 concerning Employment Accidents. The Act of which obligated the employers to pay compensation to any worker who suffers a work-place accident irrespective, as well as to report such accident to officials of Department of Labor in 24 hours the occurred accident of whether the accident is the fault of the employee itself. In case of failure to report the work-place accidents will make the employer liable to terms of imprisonment or fines.

In the Act No. 3 of 1951 on Labor Supervision, it was defined that the official authority mandated to Labor Inspectors to supervise the enforcement of the labor law in order to in one hand actively prevent potential breaches of the provisions of the labor law and legislations, and on the other hand in particular to investigate punishable offences and prosecute breaches of the labor law and related regulations. In 1954 the Government enacted Act No. 21 of 1954 regarding Collective Labor Agreements. The Act of which stipulated that the only accredited and registered worker unions given a right to conduct collective bargaining negotiation with the employers on behalf of their interest members in relation to the draft of collective labor agreements. In accordance to the said Act of 1954, the Ministerial Regulation No. 90 of 1955 concerning Trade Union Registration defined that all unregistered and unaccredited trade unions were deemed to be illegal unions. Furthermore, according to Ministerial Decree No. 1 of 1975 on Trade Union Registration, it
was confirmed that a trade union would be able to be registered if the respective union has one Union Chapter at the National Level and completed by at least 15 branches of the Union at the District Level. The objective of such restrictive conditions was to ensure the Government in controlling activities and aggressive worker unions in industrial relations and development in the country. This was meant that the over control of the Government restricted rights of the worker associations freedom and their activities in industrial relations in the country.

In 1957 again the Government enacted the Act No. 22 of 1957 regarding Labor Dispute Settlement. The said Act stipulated that all labor dispute should be resolved amicably as can as possible between parties. However, in case the amicable negotiations fail down, the parties was recommended to secure the services of an accredited mediator to settle the dispute. In the event that the mediator fails to resolve the case then the parties bring the dispute to the Labor Dispute Settlement Committee (LDSC) at the regional level for a consideration and official decision. For LDSC decision, in the event one of the parties was not satisfied with decision of the Committee at regional level, the unsatisfied party may appeal to the LDSC at the national level. Both the Committee namely LDSC at the regional and national levels were chaired by representatives of the Government i.e. Department of Labor Affairs. In addition, the Act No. 22 of 1957 further regulated that all planned strikes or lock out of the workers should at first obtain official permission from the Government that is the Labor Dispute Settlement Board at the regional level. If not, any strike without the official permission classified as an illegal lock out as well as illegal industrial action in the eyes of the Government.

In order to fulfill industrial rights of the workers, in the year of 1964 the Government enacted Act No. 12 of 1964 concerning Termination of Employment in the Private Sector. The said Act defined that employers were prohibited from terminating an employee due to illness and or the involvement of the workers in an industrial action or with respect to the completion of an obligation to the State. According to the Act No. 1 of 1970 on Labor Safety that employers has an legal obligation to provide occupational health and safety equipments to their workers in industrial relation. Those such like safety tools, shoes, masks, as well as goggles and safety helmets, and such like healthy and safety industrial equipments in order to control and prevent working accident and occupational illness of the employees. In relation to the workers right of wages, it was defined within Government Regulation No.
8 of 1981 concerning Wages Protection that employers should pay wages of their workers proportionally eventhough they were absent from work in case the mentioned absence caused of certain conditions that beyond of the workers control. Those includes sickness, marriage, death, complete an official duty of the Government, and such like. In addition, according to the Act No. 3 of 1992 regarding Social Security that employers obliged to officially register their employees, particularly who employs more than 10 workers or paid salary of more than Rp. 1.000.000,00 (one million rupiah) per month, become members of the Social Security System that managed by the Government.

PERIOD OF POSTERIOR THE REFORMATION ERA 1998

Legal reform in Indonesia followed the fall of the some 32 years dictatorial rule of the former President Soeharto. It was started under the former President Habibie who succeeded Soeharto when the latter resigned from presidential office in May 1998. The reforms found their legal basis within the Broad National Policy Guidelines (GBHN 1999 – 2004), the National Five Year Development Plan (REPELITA), and the Act No. 25 of 2000 concerning National Development Program (PROPENAS 2000 – 2004). According to the first program of the said PROPENAS the basic activities of enacting laws and regulations were concentrated to the following items: (a) to compile laws that will make it possible to accommodate aspiration and interests of society, considering and taking into account religious laws and customary law or adapt laws of the communities; (b) to establish mechanisms between the Government and the People Representative Board (DPR) through establishing laws based on Article 5 (1) and Article 20 of the amended 1945 Constitutional; (c) to enhance the role of the National Legislation Program (PROLEGNAS); (d) to develop laws that can be supported decentralization programs and enable the people access to information; (e) to revise economic laws to encourage economic programs and activities especially in a liberalized economic era, and establish laws that will protect the acosystem, function of the environment, and life of the local communities in the region; (f) to ratify international conventions including those related to human rights; (g) to increase coordination and collaboration on legal research between central and regional institutions; (h) to establish laws concerning legal services; and (i) to improve quality and quantity of the professionally legal drafters in the respective Governmental institutions and organizations.
Legal reform, which is called reformasi hukum in Indonesia language, in the posterior 1998 can be characterized as the largest reform, almost all field of the Indonesian law, undertaking in the history of Indonesia including the pre-independence Dutch colonial period up to 1945. One of the largest changes and impacts of legal reform was the series of four amendments to the 1945 Constitution between 1999 to 2002. There have been a tremendous number of legislations and regulations enacted during the time of reform. The 1945 Constitutional amendment has brought about dynamic changes and reforms to the core of the Indonesian legal system included in the areas of the labour law system.

In the period of time between 1994 to 1997, Indonesia was under the increasing level of domestic and internationally pressure from International Labor Organizations (ILO) to recognize and enforce the application of the 8 ILO Core Convention regarding the Fundamental Rights of the Workers, what was considered to be a fundamental industrial labor and human rights, and the right to freedom of trade unions and associations in particular. The said labor movements had considerable success in socializing the right of workers to take part a trade union as well as the right to bargain collectively for better employment terms and working conditions in industrial relations. Consequently, the domestic and international pressure should naturally be able to ensure the movement model in industrial relations from corporatist model or regulatory model into the contractual model.

In the period after 1998 under the increasingly pressure of international labour movements, Indonesia had finally ratified some 5 of the ILO Core Conventions. Those were as follows: (1) Convention No. 87 on Freedom of Association and Protection of the Rights to Organize (ratified in Presidential Decree No. 83 of 1998); (2) Convention No. 105 concerning the Abolition of Forced Labor (ratified in the Act No. 19 of 1999); (3) Convention No. 138 regarding Minimum Age for Admission to employment (ratified in the Act No. 29 of 1999); (4) Convention No. 111 on the Discrimination in Respect of Employment and Occupation (ratified in the Act No. 21 of 1999); and (5) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Forms of Child Labor (ratified in the Act No. 1 of 2000).

It should noted that long time prior 1998 Indonesia had actually ratified three of ILO Core Conventions namely (1) Convention No. 29 on Forced or Compulsory Labor (ratified firstly within the Act No. 261 of 1933); (2) Convention No. 89 regarding the Application of the Principles of the Right to Organize and to Bargain Collectively (ratified in the Act No. 18
of 1956); and (3) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ratified in the Act No. 80 of 1957). That was why then Indonesia could fairly be mentioned as the first country in Asian region which was completely ratified all 8 of the ILO Core Conventions.

In accordance to the reformation era, in the year of 2000 the ratification of ILO Core Convention No. 87 followed by the promulgation of Act No. 21 of 2000 concerning Trade Unions which defined that every worker possesses a right to freely form and become member of trade union. In this sense, registration of a new established trade union was remain an official requirement to the Department of Labor Affairs. Implication of the enactment of the said provision was that a Company may has a multitude of trade unions operating concurrently within its work place. If compare with the prior of 2000 there was no single trade union could be legally established except for SPSI (All Indonesian Labor Union) or the former one namely FBSI (All Indonesian Labor Federation) that all under the sponsorship and strictly control of the Government. It means that under the Act No. 21 of 2000 Indonesia on Trade Unions, Indonesia started to implement the multi trade unions system instead of the single trade unions system in industrial relationships.

Following the above Act of 2000, in the year of 2003 the Government enacted a new labour law namely the Act No. 13 of 2003 regarding Labor. The recent law provides controversial for a number terms and conditions contained therein due to the Act tended to be pro-employer’s business interests then to protect needs of the employees in industrial relations, and the law seemed to be used as a means the only for consolidating profits and improving margins of the employers. Those were primarily reflected in the employment terms and working conditions such like:

1. Legalizing out-sourcing system that could bring an negative effect of reducing job security for the official workers;
2. Legalizing specified time of working contract which could be enforced to a temporary or non-permanent work contracts for the workers;
3. Legalizing the restriction of the right to strike to a particular types of labor disputes;
4. Legalizing the right of employers to terminate their workers who became a convicted person due to a criminal case without the need to await a binding penal decision made by Judge in criminal justice process; and
(5) legalizing *inconsistence and legal uncertainty* in a number of articles defined in the Act of 2003 due to explicitly adopted and repeated employment terms and working conditions that have previously been regulated in a number of legislations.\(^7\)

In addition, the enactment of the Act No. 13 of 2003 was followed by the promulgation of the Act No. 2 of 2004 concerning Industrial Relations Dispute Settlement. The latter Act defined a significant reformation in term of dispute settlement framework and mechanism in industrial relations. It was in particular defined that the parties is required to attempt as can as possible to achieve an amicable dispute resolution by using firstly negotiation mechanism. If negotiation could not worked out, the parties directed to employ mediation or conciliation mechanism to settle their conflict in industrial relations. These option mechanisms in handling such like dispute are a compulsory steps that should be followed prior to the matter of bring the dispute before the Industrial Relations Court institution.

Another new labor law that enacted by the Government in the posterior time of reformation era was the Act No. 39 of 2004 regarding Migrant Workers Protection. It could be observed that in terms of substances reflected in most articles within the mentioned Act were honestly derived from the provisions that contained in the Ministerial Decree No. 104A of 2002 on Migrant Worker Protection. Hence, it is fair to say that articles of the Act of 2004 were mostly legal restatements of the said Ministerial Decree of 2002 which defined principles that migrant workers remained subject to law, and therefore their rights need to be protected in relation to the working conditions and terms of employment.

In order to manage and control the increasingly number of Indonesian workers need to find employment in the neighboring countries such as Singapore, Malaysia, Hong Kong, Taiwan, Korea and Japan as well Arabia and a number of middle-east countries, the Government should regulate a better recruitment and placement management of the migrant workers in the country. That is why the Act of 2004 defined that the PJTKI (the

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Private Labor Placement Companies) mandated to organize migrant workers starting from labor recruitment, skilled training activities, and design labor placement into an employment management and setting to the receiving countries. It means that the PJTKI has been given an authority and legal obligation to design and manage the needed migrant workers before placement, during placement, and after labor placement under the supervision and control of the Government namely Department of Labor Affairs in the national, province and the district levels included the respective Regional Government.

For the purpose of securing a needed social security for prosperity improvement of the hole people of Indonesia including of the domestic and migrant workers, in 2004 the Government established a new Act No. 40 of 2004 concerning the National Social Security System. The Act mandated to develop a National Social Security Board in order to supervise, evaluate and control social security programs and their implementation in the both national and regional levels. According to the said Act of 2004 the main task of the Social Security Board are as follows: (1) to observe and conduct research on the implementation of social security programs; (2) to propose and design policies on the investment of national social security funds; (3) to propose budget of donations for receivers of social security dues, and the operational budget for the Government; and (4) to harmonize the social security programs which being implemented by a variety of care takers of social security in the national and regional levels.

**CLOSING NOTE**

What can be concluded from the above outline and description is that the Indonesian labor law development and reform is fairly intended to accommodate the fundamental human rights as defined within the ILO Core Conventions by ratifying of the conventions. This brings a consequence of changing paradigm in industrial relations in the country that is to implement *the contractual model* instead of *the corporatist model or regulatory model*, as well as the use of *multi-union system* instead of *a single union system* in term of labor institution and worker association. Those particularly based on the legally basis of ILO Convention No. 87 and No. 98 related to the Law No. 21 of 2000 regarding Trade Unions.

Ironically, the new Act No. 13 of 2003 concerning Labor that established in the time of reformation era reflected a set back regulations due to the reasons that most of articles contained therein adopted from the old legislations enforced prior to 1998 meaning that
intervention of the Government in determining employment terms and working conditions remains a dominant factor. Consequently, legal position of the Trade Unions disregarded and found ignorance especially in the process of collective bargaining within industrial relations. It could considerably be understood in the eyes of the Government the existence and orientation of the Trade Unions mostly political in nature than economical purposes.

In relation to the Law No. 2 of 1004 regarding Industrial Relations Dispute Settlement provides unsufficient broader opportunity to the disputing parties in exploring option for other dispute settlement mechanisms. Similarly, it could observed that the Act No. 39 of 2004 on Migrant Worker Protection regulates unappropriate legal protection in term of after the placement of migrant workers. The system seems to heavily prejudice against and anti-migrant workers. It is, therefore, the Act defines less-provisions explicitly directed to ensured protection after placement of the migrant workers in the receiving countries. Finally, for the Act No. 40 concerning the National Social Security, its system does not make any significant a better changes with regards to the prosperity of Indonesian workers as a hole due to the in fact that most articles therein reflected a restatement of the previous regulations.
REFERENCES


