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Labour law and development in Indonesia

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Citation
Tjandra, S. (2016, February 4). *Labour law and development in Indonesia*. *Meijers-reeks*. Retrieved from https://hdl.handle.net/1887/37576

Version:	Corrected Publisher's Version
License:	Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden
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Note: To cite this publication please use the final published version (if applicable).

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Title: Labour law and development in Indonesia
Issue Date: 2016-02-04

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.