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Labour law and development in Indonesia

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Conclusion: In search of the right balance

Men make their own history, but they do not make it as they please.

(Karl Marx)

This dissertation has presented and described the struggles of Indonesian workers and unions for better working conditions, within the context of the creation and enforcement of labour law. After almost three decades of suppression under the authoritarian New Order regime, workers organized in the form of trade unions have thrived since the 1998 *Reformasi*, assisted by the changing social and political situation in the country. Trade unions are now important actors in the application of Indonesia's labour law, working to ensure employers' compliance with the law, and encouraging the spirit of the law in the workplace. As discussed in this dissertation, Indonesia's trade unions have advanced to the point that they have also become law-makers; pushing pro-workers' legislation and regulations, as demonstrated in the case of the social security reforms in 2010-2011.

This final chapter summarizes the findings of this research, and addresses the study's primary questions – how has labour law changed the institutional landscape in Indonesian workplaces since the *Reformasi*, and what roles have organized workers played in these changes. The chapter starts with summarizing the findings of this dissertation's analyses of the three most important issues in labour law in Indonesia: trade union legislation; minimum wage setting; and the Industrial Relations Court; and how these have influenced and been influenced by the new industrial landscape. The chapter ends with suggestions for further research, and summarizes this study's contribution to the socio-legal debate concerning labour law enforcement, including the tension which labour law faces between the demand for efficiency-prosperity on the one hand, and social justice-fair distribution on the other.

1 The new institutional landscape: changes and continuities

As discussed in detail in the previous chapters, Indonesia's new institutional landscape includes both changes and continuities. The 1998 *Reformasi* has had a wide range of impacts on Indonesian society. Overall, there is now much greater individual freedom *vis à vis* the state, and Indonesia has developed into a relatively open society. In the context of labour law, there have been dramatic changes, in particular since the enactment of Law No. 21/2000 on Trade Unions/Labour Unions, which have provided opportunities for the development of independent trade unions in Indonesia. Workers,

individually as well as collectively, are now relatively free to speak out publically about their concerns and grievances. They can usually do this without significant hindrance – although employers may still not respond as the workers may hope or expect. The organization of workers, in the form of national federations of trade unions, has mushroomed from only one federation in early 1998, to more than one hundred federations registered at the national level in 2014. In addition, thousands of plant-level trade unions are registered at the district level. Workers can now also exercise their influence through demonstrations and strikes, which have become regular activities of trade unions today. In conclusion, trade unions have become important actors in the social and political landscape in Indonesia's democracy today. However, in other ways the traditional practices of labour relations have continued, to the detriment of workers.

Despite the state's recognition of trade unions, particularly through the enactment of Law No. 21/2000 on Trade Unions/Labour Unions, employers at the factory level still tend not to accept or readily accommodate trade unions. In particular, there have been many reports of the harassment and dismissal of trade unionists due to their union activities (see, e.g., LBH Jakarta, 2014, also Tjandra, 2014c). Essentially, there remains a lack of trust between unions and employers; which helps explain the low number of collective bargaining agreements at the factory level (Isaac and Sitalaksmi, 2008). This situation leads to workers having to continue to depend on the state to guarantee their welfare, rather than being able to rely on industry self-regulation through direct negotiation with employers. This is particularly obvious in the case of minimum wage setting (see Chapter 5 of this dissertation). The situation is likely due to the previous history, and ongoing influence, of authoritarianism in Indonesia – during which time the state and employers treated unions predominantly as threats to economic stability and development, while workers saw the state and employers primarily as oppressors. As a result of these perceptions, too much energy continues to be spent on fighting between the parties. This conflict accelerated during the period 2010-2015, particularly in relation to the annual minimum wage setting processes.

Concerns have also been that too much focus on minimum wage setting as the only way to increase wages for workers might undermine the primary role of minimum wage policies -to provide a social safety net for workers at the lowest levels of work – and that it might increase the disparity between formal workers and the majority of the workforce in the informal economies (Papanek, 2014). In the short term, strikes and demonstrations, including those targeting the Wage Councils, may be useful as tools to obtain immediate results; such as increasing the nominal value of wages, and educating members about their rights. Longer-term change will, however, likely require dialogue between the parties to develop more sustainable support mechanisms for workers.

The challenge for Indonesia today with regard to the workplace is how to harness the energy of workers and employers to develop a more productive system of negotiation, either between workers and employers alone, or with the facilitation of the state. It will be important to appreciate that Indonesian living standards are still very low by international standards, and that it will take a lot to increase workers' conditions to the level currently expected by some workers. In addition, Indonesia's labour market is still comprised largely of workers in the informal economies, who remain outside the protection of labour law. While no country is likely to perceive that it could bring around 250 million people quickly into the formal economies, to date Indonesia has not appeared to make the effort it could readily make, to introduce positive changes gradually, as it arguably has occurred in Europe (see Hepple, 1986, 2002, 2009). The challenge which remains for Indonesia is how to develop a system which strikes the right balance with regard to the two aims of labour law: efficiency-prosperity on the one hand, and social justice-fair distribution on the other (see also Collins, 2000).

Given this context, the discussion below will highlight the major findings of this dissertation with regard to the three key issues of labour: trade union legislation; minimum wage setting; and the Industrial Relations Court; and the changes and continuities in these issues in Indonesia in the recent past.

1.1 Trade union legislation

Chapter 4 of this dissertation explained how the enactment of Law No. 21/2000 on Trade Unions/Labour Unions facilitated the rise and development of trade unions in Indonesia. One of the most important provisions in the Law is that any group of 10 or more workers may freely form a trade union and register their union at the regional manpower office, where the registration is usually accepted without reservation. Likewise, any group of five or more plant-level unions may establish a union federation; and five or more union federations may form a confederation. These provisions in the law have led to a significant increase in the number of trade unions, at both regional and national levels, and an associated increase in the political influence of organized workers. Trade unions have mushroomed, from only one national federation during the New Order, to over a hundred registered today, not including the thousands of plant level unions. As collective organizations of workers, the unions are now able to voice their demands with relatively few restrictions, including through strikes and public demonstrations, which have become common phenomena, particularly in the large industrial cities such as Bekasi, West Java, and Jakarta. The unions also celebrate International Labour Day on May 1st every year and since 2012 the state has recognized Labour Day as an official public holiday. In regional areas, union alliances have grown to become important pressure groups, promoting better condition for workers and society in general.

One of the trade union movement's most important achievements over the last few years was their success, in collaboration with various NGOs and individuals, in pushing for the enactment of Law No. 24/2011 on the Social Security Executing Agency (*Badan Pelaksana Jaminan Sosial*, the BPJS Law), as implementing legislation of Law No. 40/2004 on the National Social Security System (*Sistem Jaminan Sosial Nasional*, the SJSN Law). These two laws are important in that they provide the foundation for the development of universal social security coverage for all people in Indonesia; not only for those working in the formal sector, who traditionally formed the backbone of the trade unions, but also those working in the informal economies. The trade unions, united in a front organization called the Action Committee for Social Security Reforms (*Komite Aksi Jaminan Sosial*, the KAJS) comprising trade unions, labour NGOs, students' groups, peasants' groups and others, emerged as a key pressure group during the parliamentary deliberations and eventual enactment of the BPJS bill (see Chapter 4). The KAJS's combined strategy of litigation through court and non-litigation through lobbying and demonstrations, and its cooperation with several reformist politicians within the parliament, enabled it to be the most important pressure group behind the enactment of the BPJS Law, to the point that without the efforts of this group, the enactment of the Law may not have been achieved (see also Thabrany, 2014).

These efforts, in particular the success of the KAJS in its efforts to encourage the Indonesian government and parliament to pass the BPJS Law, inspired the trade union movement and demonstrated its potential, encouraging unions to advocate for their rights through more advanced political manoeuvers. These included, first, the establishment of the Council of Indonesian Labourers (*Majelis Pekerja Buruh Indonesia*, the MPBI) and the National Labour Movement Consolidation (*Konsolidasi Nasional Gerakan Buruh*, the KNGB), which led two national strikes in 2012 and 2014 and pushed the government to develop several new regulations that were pro-workers, such as the regulations regarding the additional components to be surveyed during minimum wage setting; and the further restrictions on outsourcing practices at the company level. The national-level unions' alliances were, however, a short-lived phenomenon; due to internal competition and conflict among the leaders, and loss of focus on common goals as a coalition of unions. Despite their transience, the national-level response and its success with respect to positioning trade unions, as important social and political groups in Indonesia were noteworthy developments for a new democracy like Indonesia.

Although the movement as a whole disbanded, some parts of the movement, in particular the Federation of Indonesian Metal Workers Unions (*Federasi Serikat Pekerja Metal Indonesia*, the FSPMI), and the Confederation of Indonesian Trade Unions (*Konfederasi Serikat Pekerja Indonesia*, the KSPI), which had been key elements of the KAJS, remained active and took further steps, including entering the legislative and presidential elections in 2014,

during which they sent their cadres to run in the elections, and supported one particular candidate for the Indonesian President. As we will discuss later, these endeavours have led to both gains and losses for the trade unions' struggle for political influence in Indonesia, and lessons learned from these efforts may change the future course of the union movement in the country.

1.2 Minimum wage setting

As discussed in detail in Chapter 5, since its rise to power in the early 1970s the authoritarian New Order government used the process of minimum wage setting as a tool to control workers. Only after the *Reformasi* were workers and their unions able to negotiate with employers about their welfare in the forms of wages, particularly in regional areas, following the increase in regional autonomy. Where the specific wage setting processes established in various regions have continued to prevent unions from using collective bargaining mechanisms at the company or industry level, the Wage Councils have now become the main avenue by which labour can participate in the wage setting process, with unions relying on a combination of legal and political activities to assist their struggle. This is considered the preferred option for the unions, in comparison to the difficulties they faced in the past when wage setting was done through direct negotiation with workplace employers; a process that often led to the unfair dismissal of the union officials involved. The reliance on Wage Councils has, however, led to pressure being placed on the Wage Councils in regions where minimum wages are negotiated, often exacerbated by conflict between the trade unions and employers' association, and by the politicization of minimum wage setting by both the employers' organization and the unions.

Union leaders today (2014-2015) tend to perceive minimum wage setting through the Wage Councils at the district level to be primarily a political process, to which they respond politically through the organization of their collective powers. They tend to use the process as entrance means by which to encourage the government to develop new regulations that support workers. As this dissertation has argued in Chapter 5, treating minimum wage setting as a political process (which in fact it is) has had some benefits. It is through a political lens that trade unions and all the parties involved in negotiations, may be able to widen their perspectives away from the more narrow economic focus that has dominated the minimum wage discourse for so long, which has missed the crucial political aspect of state policy through minimum wage; that is, to protect particular vulnerable sectors of Indonesian society.

Although political approach may be beneficial in the short term, providing new perspectives on the current situation and new directions for the future, in the longer term the sustainability of the political approach (as a dominant tactic) is questionable. It will likely be necessary for unions to start to consider other factors related with minimum wage setting, including the

need to develop collective bargaining between unions and employers: particularly on the issues of wages; increasing inflation and it effects on minimum wages; unemployment and job creation; and the increasing disparity between formal sector workers and those working in the informal economies, who have still not received the support of minimum wages.[1] To succeed, this broader approach will require willingness and a commitment from the union movement to reconsider and move beyond its political strategies, which have been the focus over the last few years.

1.3 Industrial Relations Court

Chapter 6 discussed the dynamics within the Industrial Relations Court (*Pengadilan Hubungan Industrial*, the PHI) and argued that the PHI, established as a special court within the scope of the general court, has been in a difficult position since its establishment; due to latent internal problems of the corrupt judicial system in Indonesia, as well as the conceptual inadequacy and confusion surrounding some of the provisions of Law No. 2/2004 on the Industrial Relations Dispute Settlement, under which law the PHI was established. All parties involved appear to have reservations about the PHI. Workers complain about the PHI's tendency, especially in the Supreme Court, to focus predominantly on civil procedural law, which causes difficulties for workers without knowledge of procedural law. Employers, in their turn, are concerned about the lack of clarity around a number of the procedures directing the PHI's operations, including whether or not legal staff of the company involved are permitted to represent the employer, and the consistency of the PHI, given that the decisions of PHIs often differ between regions. Even the Supreme Court has voiced concerns, with one former Chief Judge of the Supreme Court stating that they system needs to be 're-examined', including by abolishing the ad hoc judge system representing unions and the employers' organization, and the *pro bono* services of the PHI.

The PHI has also demonstrated a tendency to deny the abundance of examples which point to the structural limitations which the individual courts face (as discussed in Chapter 6); and in addition the Supreme Court has tended to act like a guardian of the civil procedural law, including by annulling some of the breakthrough decisions made by the PHI at the lower levels. As Chapter 6 has argued, these tendencies have emerged as major obstacles preventing the PHI from functioning, as it was intended to function. Never-

1 Indeed, as observed by leading US economist Gustav Papanek (see Transformasi.org, 2014, also Papanek, 2011), although in the last six years (2008-2014), the average provincial minimum wage in Indonesia has increased by 115 percent (more than doubled), only 20 percent of workers have enjoyed such an increase in the average provincial minimum wage. The remaining 80 percent of workers, in particular the agricultural and informal sector workers, have not received this benefit. On the contrary, their average wage has gone down. As a result, Papenek argued, 'labour prosperity in Indonesia becomes more unequal.'

theless, the involvement of ad hoc judges in the PHI system, especially the judges from the trade unions, gives some hope for reform from within the PHI, especially given the ad hoc judges' efforts to make decisions and rulings that are progressive, and which could resolve some of the problems in both the procedural and material aspects of the law. However, the structural problems faced by the PHI, as described in Chapter 6, have overshadowed and continued to hamper these initiatives and efforts. This demonstrates clearly that no amount of good court decisions alone will resolve the PHI's structural problems, without also implementing reforms to the PHI's existing structure and system; including focusing on amending the Law No. 2/2004 concerning Industrial Relations Dispute Settlement. Concerningly, an agenda for the amendment of Law No. 2/2004 had been listed on the national parliament's legislative program for the years 2009-2014, but each year has failed to proceed, as parliament has chosen not to make it a priority. The agenda is again on the list of the new legislative program of 2014-2019, and it is therefore expected that there may be deliberations on the matter in the parliament during this current term. In the meantime, several evidence-based recommendations have recently been published regarding the content of the amendments of Law No. 2/2004 (see, for example, Tjandra [2012], which provides evidence-based recommendations for the law's amendment based on input from the PHI's ad hoc judges from various regions; also Isnur et al., [2014], which provides insights into the Supreme Court's decisions in industrial relations disputes). These recommendations, based on direct research, should prove to be useful references to inform the official processes when they commence in parliament, and to guide best-practice decision-making.

2 The re-emergence of the labour movement: opportunities and challenges

It has been argued that there are two key features which differentiate Indonesia's contemporary institutional landscape, in structural terms, from that of many countries in Western Europe a century ago: first, the absence of a social democratic movement and strong organized working class which can influence politics; and second, the relative deficiency of the rule of law (Aspinall, 2013). Thus, any manifestation of a systematic involvement of organized workers in politics in a developing country like Indonesia, and any effort by organized workers to uphold the rule of law, in particular through the enforcement of labour law, is very important for helping to understand the broader political and social change occurring in the country, as well as the opportunities and challenges which arise from these efforts. The labour movement, in the broader sense of the collective organization of working people campaigning for their interests – specifically, for better treatment from their employers and government through the implementation of labour related legislation – is not without precedent in Indonesia (see Chapter 1 of this dissertation). Yet only after the *Reformasi* has the labour

movement, particularly through the Action Committee for Social Security Reforms (*Komite Aksi Jaminan Sosial*, the KAJS), been able to undertake strong rights-related activities involving organized workers and their supporters (intellectuals, NGOs, and some sections of government), in order to represent the interests of the working class (see Chapter 4, also Tjandra, 2014b). The KAJS, with the Indonesian Metal-Workers Union Federation (*Federasi Serikat Pekerja Metal Indonesia*, the FSPMI) as its backbone organization, is perhaps the best example available of how far trade unions can advance, in their efforts to play important, beneficial roles in Indonesian society. The recent history of the KAJS and the FSPMI signal an important paradigm shift in the focus of Indonesian trade unions, from an economic to a social orientation (see Chapter 4); and has given trade unions both inspiration and confidence in their capabilities and potential to influence future progress.

As a sequel to the KAJS's success in pushing for the enactment of the BPJS Law as the implementing legislation of the SJSN Law, the FSPMI developed confidence as a rising political group, and continued to involve itself in practical politics through the general elections for parliament and president in 2014.[2] The intention behind the decision to become involved was to use the existing momentum to increase the bargaining position of workers and unions, especially at the state level; and through this, to demonstrate that workers were fighting not only for the interests of workers, but for all of society – a concept captured during the elections by the colloquial phrase '*dari pabrik ke publik*' ('from factory to public') (see *Koran Perdjoeangan*, 9 April 2014, the FSPMI's official media). These efforts involved sending the unions' cadres, mostly union officials, to run as regional members of parliament; and by supporting a particular candidate for president. The unions' strategies for winning votes from their members also provided the opportunity to educate workers on their political rights, and their opportunity to contribute to the country's development and positive change. The unions and members believed that by joining parliament, they could become more effectively involved in changing the country's policies and regulations, to ensure they are fair to workers and all Indonesia's population in general.

In the legislative elections, these efforts were well supported in that the majority of the unions' officials and members were supportive or participated directly. The initiative to participate so directly in the elections in fact came largely from below; involving members at the grass-root level. In addition, several individuals and activist groups from outside the union joined the efforts, including academics from Gadjah Mada University, Yogyakarta, and labour and peasant NGOs including the Trade Union Rights Centre (a labour service NGO based in Jakarta), and *Omah Tani* (a peasants' group based in Batang, Central Java); and these individuals and groups were able

2 The discussion in the following section is based on Tjandra, 2014a.

to undertake activities that could not be done by the union itself. These activities included training workers on the processes of voting, election monitoring, and political campaign strategies. These collaborative efforts between the unions, academics and NGOs were successful; following three months of effort, the FSPMI managed to win two seats for its legislative members, from the important industrial regency of Bekasi, West Java. This achievement was significant not only for the FSPMI, but for Indonesia's labour movement in general; as it was the first time that a union had successfully obtained seats for its candidates in parliament through coordinated efforts between the union and its supporters, rather than through the candidate's individual efforts.

In the presidential elections, however, the union's approach was very different. The decision to support a particular candidate for president came from the union's most senior leader, with little if any consultation with other union leaders, let alone with ordinary members, who were simply expected to obey their leader's decision. There were reports that the FSPMI leaders undermined and even aggressively suppressed their members' concerns; and other reports that many union officials had different opinions from their leader, and held concerns about his decision (see Tjandra, 2014a, also Solidaritas.net for various reports during the campaign in April-July 2014). The situation was worsened as there were only two candidates running for president, with very different backgrounds and characters. One candidate was Prabowo Subianto, a representative of the military who came from a political dynasty with close ties to President Soeharto's family and the former authoritarian New Order regime; and who, despite allegations of links to human rights violations while he was commander of the Indonesian Special Forces was supported by the largest political parties in parliament. The other candidate was Joko Widodo, who represented ordinary civilian politicians from a younger generation. Joko Widodo came from a region with no links to any political dynasty, and was supported only by the opposition party and some smaller parties, but gained strong support from middle-class groups in the so called 'Jokowi's volunteers,' which became an an interesting phenomenon in Indonesian politics in 2014 (see Samah and Susanti, 2014, also Nugroho and Setia, 2014).[3]

3 As noted by Samah and Susanti (2014), the 2014 Indonesian presidential election showed a different phenomenon in the political history of Indonesia. Public participation to support Joko Widodo and Jusuf Kalla as the President and Vice President candidates ahead in the presidential election appeared so massive. Called 'volunteers', it comprised of individuals and communities who were engaged in the 2014 presidential election motivated to see a 'better Indonesia'. Several volunteer groups were indeed driven by cadres of the political parties, but many more new groups were born because of the fear that the authoritarian regime of the New Order would return, as represented by the other President and Vice President Candidates, i.e., Prabowo Subianto and Hatta Rajasa (see also Aspinall and Mietzner, 2014). Nugroho and Setia (2014) even called this phenomenon 'people power', describing the unprecedented movement of some of groups in society and political passions that occurred exactly when the public's trust in the performance of political parties had almost collapsed.

As there were only two candidates for President (and two for Vice President), the competition was fierce and even brutal, causing polarization in society, which according to some observers placed Indonesia's young democracy in grave danger (Aspinall and Mietzner, 2014). The situation was worsened by the strategy of using negative campaigns, including sectarian and hate messages, particularly from Prabowo Subianto's camp attacking Joko Widodo (Supriatma, 2014). The polarization also occurred within the trade unions. The FSPMI and its confederation, the Confederation of the Indonesian Trade Union (KSPI), decided to support Prabowo Subianto, and this support was declared in front of around eighty thousand members during International Labour Day celebrations, held at Indonesia's largest football stadium *Gelora Bung Karno* in Jakarta on 1 May 2014, and covered by almost all Indonesia's media (Ford and Caraway, 2014). Other groups of unions, including the All-Indonesia Workers Union Confederation (KSPSI) and the Indonesian Prosperity Labour Union (KSBSI), supported Joko Widodo. Both groups claimed that their preferred candidate was better for labour rights than the opposing candidate, and asserted that they were running the best campaign for the candidate they supported. A consideration of campaign strategies indicates that at least the FSPMI-KSPI, in its support of Prabowo Subianto, became very deeply involved in the election campaign, although perhaps with questionable integrity, as discussed directly below.

Observers of Indonesia's 2014 presidential election have argued that the heavy use of negative campaigning appears to have encouraged the rise of 'groupthink' in society (Poerwandari, 2014); a phenomenon whereby those with different views and values may experience psychological and social pressure to such a great extent that they eventually choose to be silent, or even unconsciously begin to deny their own values and instead express the views of the group, because they find it too difficult to withstand the pressure to conform. This phenomenon was reported to occur within the FSPMI during the election campaign, with many of the union's members who held different views reporting intimidation by their own group, and choosing to keep silent to avoid further intimidation. The FSPMI's leaders allowed the widespread use of negative campaigns, including sectarian and hate messages, both by and directed towards their members (see *Solidaritas.net*, 31 December 2014). Although some may argue that this policy helps to achieve a decision-making consensus within a union, especially when the organization is interested to choose a particular, single political options, such actions were clearly not democratic, and therefore directly contradicted the founding principles of trade unions as democratic organizations of workers (see Michels, [1911] 1962). These events have demonstrated that even the FSPMI had not yet been able to find the right balance between the needs for organizational efficiency and internal democracy. There was also a strong tendency for the union to focus merely on the sectorial interests of the workers, even when these interests may not be in line with the interests of society as a whole (as was arguably the case during this presidential election) (see Tjandra, 2014a).

This situation may be an example of what Robert Michels calls 'the iron law of oligarchy' (Michels, 1962). Drawing on his own experiences as a member and supporter of a social democratic party in early 20th century Germany, Michels described a number of conditions and processes that inevitably impel even the most democratically-committed organizations to become divided into a set of elites or oligarchs – each with their own set of distinctive interests within the organization – and the rest of the membership; whose labour and resources were exploited by the elites, especially through the hierarchy and bureaucracy of the organization. Michels' argument has been criticized for being too deterministic and over-critical to bureaucracy (Lipset, 1962, in Michels, 1962); yet it can still provide useful reflections, and can encourage observers to consider the level of internal democracy that may be present in voluntarily social organizations such as political parties and trade unions. This is especially valuable in countries like Indonesia, which have only recently embraced democracy with the view that that freeing the country from an authoritarian regime will lead to better, more equitable standards of living (Bhakti, 2004). Meeting these aspirations remains a challenge for Indonesia's government, and for all supporters of democracy who seek to persuade electorates that a democratic system of government is better than surviving under an authoritarian regime (Ghoshal, 2004).

The FSPMI was arguably the most advanced trade union in Indonesia, in terms of its ability to mobilize its members; a necessary prerequisite for becoming an influential political power (see Ford and Caraway, 2014). Indeed, this union was the backbone of the KAJS movement, driving the eventual enactment of the BPJS Law (see Chapter 4). The KAJS movement was the first successful, systematic engagement of Indonesia's labour movement in the development of alternative policies, outside the frames constructed and maintained by elitist parties and leaders. With support from a trade union such as FSPMI, from a modern and relatively strong industrial sector, there was a good opportunity for the KAJS (and the FSPMI) to become an alternative political power and develop transformative policies -policies to improve the capacity of ordinary people and progressive actors, including trade unions and other people-oriented organizations, to strengthen democracy and pro-people development (see Stokke and Törnquist, 2013). Despite this potential, as described above, in the 2014 elections the FSPMI categorically failed to become the alternative political power many in Indonesia were looking for.

3 Theoretical considerations: the effectiveness of the labour law

Several observers have argued that in many East Asian countries, labour law has been beset by problems of ineffectiveness (see Introduction of this dissertation, also Cooney and Mitchell, 2002, and Frost, 2002), and that these problems are manifested in the relative absence of the law from the construc-

tion and functioning of labour markets (Fenwick and Kalula, 2005). With some exceptions in the developed East Asian countries, in particular Singapore and Japan, most of the developing East Asian countries, including Vietnam, the Philippines, China, India, and Indonesia, have experienced these problems. Two main explanations are postulated for the problems besetting labour law: (1) ongoing deficiencies in the wider legal systems of the countries in question, and (2) the hindering influence of other social systems, such as the political, economic and social systems prevalent in the countries (Cooney, 2006: 38-45). The first explanation lays the blame on the ineffectiveness of the legal institutions that are meant to implement labour law, with reasons for the ineffectiveness including inadequate staff and uncontrolled corruption, particularly among judges and labour officials. This will lead in turn to mistrust by the main stakeholders (employers and workers) and a lack of expectation that the law will be interpreted and applied reasonably and fairly. The second explanation lays the blame for the ineffectiveness of labour law on the interactions between the law and other social systems, in which the law does not have enough autonomy, and has become subordinate to other social systems, particularly the country's political and economic systems. This tends to occur during authoritarian rule in countries that have incorporated workers and labour law into the political strategies and development goals set by the state.

The wave of democratization that swept Southeast Asia in the 1980s and 1990s, particularly South Korea, Taiwan, and Indonesia, weakened authoritarian corporatism and may have been expected to strengthen society and thus the rule of law (Dorsen, 2001). However, the impact of democratization on the social system of any country is unpredictable and sometimes paradoxical (Cooney and Mitchell, 2002). Although democratization may undermine the system of state corporatism and the exercise of political power by the state, it often has less impact on other social systems, including industrial relations. Indonesia's recent history is an example of this. The efforts to change the corporatist nature of labour law through the Indonesian government's labour law reform program, with the assistance of the International Labour Organization – in particular the relaxation of trade union registration – did not necessarily encourage collective labour agreements, which were still widely ignored in the country (Isaac and Silalaksmi, 2008). This demonstrates that the unions were still relatively weak, and that in general, employers have remained unwilling to respect unions and comply with the law.

The situation described above explains the relatively high dependency of Indonesian workers and their unions on the state to increase their welfare; as the example of minimum wage setting demonstrated. Dialogue between employers and workers has not developed effectively, due largely to a lack of trust between the two parties. The establishment of the Industrial Relations Court in 2006 has not addressed the significant problem of the lack of enforcement of labour law; partly because when the court was formed

it inherited problems from the previous judicial system. There seems to be a vicious cycle with respect to the enforcement of labour law in Indonesia, with all enforcement processes tending to lead to new problems rather than solutions. Then the question that presents itself is: how can the enforcement of labour law in Indonesia be made more effective? The following discussion will focus on the debate surrounding this question, which may suggest some possible solutions to the problem.

3.1 Effective labour law enforcement

Labour law, referring both to collective labour law and to individual employment standards, will always face challenges with respect to compliance and enforcement (Davidov, 2010). Labour laws usually include the options of both self-enforcement and state enforcement; the latter through civil, criminal and administrative procedural laws and institutions. However the laws can suffer from inherent difficulties which hinder compliance and enforcement: in particular, employers often have a strong incentive for non-compliance; employees often face various barriers to self-enforcement; and effective enforcement by the state is often costly and complicated. Nevertheless, as suggested by Malmberg (2003, 2009), a threefold strategy can be effective, comprising (1) an industrial relations strategy through collective bargaining and industrial action; (2) a state-oriented strategy, based on administrative measures; and (3) a judicial strategy, based on the procedures and decisions of courts and tribunals, as well as the implementation of these decisions.

To examine this tripartite strategy in detail: first, the industrial relations strategy should deal with the distinctions between different kinds of negotiations, such as negotiations about the regulation of labour and employment relations; negotiations aimed at influencing managerial decisions; and negotiations about the application of rules. It is important to analyze whether the negotiations are supported in the national labour laws; including whether there is a duty to negotiate; whether there is recognition of representatives; whether there is disclosure of negotiations; and whether there is competence to start negotiations (see also van Peijpe, 2003: 105). As the second component of the tripartite strategy, administrative processes need to provide a non-judicial way to control and enforce the application of labour law, at both central levels, and decentralized to lower levels. These administrative processes should, if required, fulfill a complementary role ahead of or instead of judicial procedures. In some cases, there might be an eventual need for administrative intervention, especially when there is a lack of individual or collective action (see Chapter 6 of this dissertation); although administrative processes alone will not be effective as a means of enforcement (see also Laulom, 2003: 111). As the third component of the tripartite strategy, the judicial processes must deal with the legal conditions for initiating a judicial enforcement procedure, such as the requirements

derived from the rules and principles of law. The judicial processes should consider such questions as: the extent to which individuals, interest groups and representative bodies (including unions) are entitled to initiate judicial procedures; questions about interim decision-making powers such as which party has priority of interpretation without waiting for the court's decision; the time limit for claiming a right in court; the burden of proof; and the judicial interim measures in litigation, as an important element of equilibrium until the ruling. It is important to analyze the evolution of these three processes – industrial relations, administrative, and judicial – including the relationships between them in particular contexts, in order to understand the nature of the enforcement of labour law. Together, the intended functions of these processes are to ensure an effective enforcement of labour standards (Malmberg, 2003).

With respect to industrial relations processes, Indonesia's labour law is ambiguous on the issue of the obligations of trade unions and employers to negotiate with each other. Trade union-employer negotiation is formally recognized by Law No. 13/2003 on Manpower (the Manpower Law), especially article 111 subsection (4), which states: 'During the validity of the [term of the] company regulations, if the trade union within the enterprise requests a negotiation of the drafting of the collective labour agreement, the entrepreneur is obligated to do so.' The problem is that there are no sanctions if companies refuse to comply to this provision; and indeed, if there is no negotiation (even if one party wants to negotiate), the law states that 'the existing company regulations shall remain valid until their expiration' (article 111 subsection (5)). Moreover, the Manpower Law links the unions' right specifically with 'failed negotiations'; article 137 states: 'Strike is a fundamental right of workers/labour and trade/labour unions that shall be staged legally, orderly and peacefully as a result of failed negotiations.' Thus, while the Manpower Law provides no encouragement for negotiation between trade unions and employers, and no sanctions for employer's non-compliance, the same law limits the contexts under which trade unions may exercise their legal right to strike. This leads to even less incentive for negotiations between trade unions and employers.

With respect to administrative processes, as this dissertation has observed, there has been strong criticism of the public authorities who are tasked to supervise and enforce labour standards in Indonesia, due to the many examples of dysfunction in the performance of this task (see also Ford and Tjandra, 2007). Labour inspection, for example, is hindered by the regional autonomy policy, which devolved many of the inspection tasks to the regions, where regional officials often lack relevant skills and knowledge about labour standards. Moreover, attempts to exercise workers' rights, as set forth in Law No. 21/2000 on Trade Unions/Labour Unions, often lead to dismissal of the workers, leading some labour activists to advocate for stricter penal sanctions – particularly for the violation of the freedom of associa-

tion as stated in the Trade Unions/Labour Unions Law[4] – and to demand the establishment of a special unit at the Police office to handle relevant cases (Hutabarat et al., 2013). These issues highlight the problems associated with labour law enforcement mechanisms being managed through Indonesia's public institutions, which seem caught up with their own problems. There is an immediate need, for example, to build the capacity of labour inspection officials in the regions, as these officials are the ones directly handling cases in their daily work. And this needs to be conducted in collaboration with national government, which has the capacity and responsibility to provide supervision and control over the observance of labour law, as suggested by ILO Convention No. 81 concerning Labour Inspection in Industry and Commerce (ratified by Indonesia through Law No. 21/2003). Adding such a criminal provision in the Trade Union/Labour Union Law would add to the provisions already set in the Law, and would likely increase company compliance with the law. However, the transfer of labour enforcement to criminal procedures and the police may not resolve the problems, as this new responsible agency would have very different functions and capacities, due to the repressive character of criminal law enforcement. When compared with regular labour law enforcement mechanisms through labour inspection, which encourages social dialogues through negotiation between the disputing parties, the alternative of criminal punishment for non-compliant parties may not be the most effective alternative.

In relations to the third set of processes within the tripartite strategy – judicial processes – as discussed in Chapter 6, one of the most important arguments for setting up a special court to deal with labour disputes was to achieve a more accessible, fast, and cheap procedure than that which was on offer through the ordinary courts; especially given the new court's specialist jurisdiction and composition. The assumption was that the concepts and principles of the private law usually applied by the ordinary courts were based on individualism and freedom of contract; while the trade unions advocated collectivism and solidarity within the working class. Thus, in establishing a special court, there was a desire to create and maintain the labour law as autonomous from civil law principles, and also as independent from the ordinary courts (see also Hepple, 1986). The establishment of the Industrial Relations Court (PHI) in Indonesia was based on this assumption. In its current version, however, the PHI has continued to face structural problems from both inside and outside the legal system, for example the obligation to follow civil procedural laws purely (in contrast to the approach of labour law); and the dominant conservative views of the Supreme Court, which has often over-ruled regional PHI decisions, even decisions that have provided breakthroughs in terms of labour law interpretation in the regions (see also Tjandra, 2014c). This is of particular concern, given that the impacts

4 The author has discussed such a case in Indonesia in detail elsewhere (see Tjandra, 2010).

of dispute resolutions and rulings are not limited to the actual disputes in question, and that judicial processes in particular have the potential to be formative of the content of the law. The involvement of the ad hoc judges from unions and employers in the PHI, in order to give the court their relevant knowledge and expertise, has not proven to be effective at solving other underlying problems. The PHI has not yet fulfilled the expectations for 'accessible, speedy, and cheap' labour dispute settlement mechanisms. Although both workers and employers are represented in the court, both parties have reservations about the PHI. In particular, the ad hoc judges have often reduced their effectiveness by becoming caught up in corruption within the regional district court, which has further limited the court's capabilities to contribute to effectively labour law enforcement (see also Tjandra et al., 2012, Tjandra, 2014c, and Isnur et al., 2014). So, how can labour law be made more effective?

3.2 How can labour law enforcement be made more effective?

The discussions in this dissertation have confirmed that there are at least two direct challenges faced by Indonesia (and other developing countries) to make labour law enforcement more effective (see Cooney et al., 2002). The first challenge is at the level of content, with many aspects of existing labour law applying only to certain categories of workers, while most of the labour market comprises vulnerable workers (including home-based workers, casual and part-time workers, and those in informal economies), who remain excluded from the scope of labour law and its protection. The second is at the level of results: at present, even many of the workers whose protection falls within the scope of labour law are seeing that labour law is not currently enforced properly, and is being weakened by the social, political and economic forces surrounding it. It is important to address both the content issues and the results issues, in order to find ways of making labour law enforcement more effective; as both issues are interrelated. Focusing on reforming content alone will not render labour law more effective – as in many cases, as this dissertation has revealed, employers will simply ignore the basic protections demanded by the law, because they have the power to do so. This will lead many workers to accept the conditions they are offered, as they are faced with the prospect of losing their jobs if they do not agree. Based on these observations, some scholars have suggested four strategies for making the enforcement of labour law more effective (see, e.g., Cooney, 2006, Malmberg et al., 2003, Malmberg, 2009, and Dickens, 2012), and these strategies are highly relevant for this dissertation. The discussions that follow will highlight each of the strategies in turn, and relate them to this dissertation's findings, along with a discussion as to whether each strategy is likely to work in the current Indonesian context.

The first strategy that has been proposed to increase the effectiveness of labour law enforcement is through diversification of the enforcement strate-

gies (Malmberg et al., 2003, Malmberg, 2009). This proposition states that it is not be enough anymore to rely on traditional forms of 'command and control' law, given the globalization of economies, and the growing power of private firms and economic markets. In the traditional 'command and control' form of law, the law will mandate standards, and will direct employers and employees to comply with it or be subject to sanction (Cooney, 2006: 46-47, referring to Teubner, 1987). Although the command and control model can be crucial in sanctioning extreme labour abuses, it can also produce unexpected consequences, such as resistance from companies through various forms. It might not be realistic to expect a developing country like Indonesia, which has ineffective inspection mechanisms due to limited numbers of labour inspectors and widespread breaches of the law, to police company violations and enforce compliance. Further, over-policing might lead to resistance from the companies; including potential falsification of documents, coaching of workers under threat of dismissal, and even bribing of inspectors (see for instance the report by LBH Jakarta, 2014).

Given these concerns, Cooney (2006: 47-48) proposes the use of Ayres and Braithwaite's 'enforcement pyramid' (Ayres and Braithwaite, 1992, see also Braithwaite, 2011). The enforcement pyramid approach proposes that a regulator will be most successful at inducing a regulated party to comply with regulations; by starting with less formal (and less expensive) interventions such as dialogue, and only progressing to more serious measures such as fines and termination of business if the firms in question maintain their resistance. Regulators, to ensure the success of their approach, would be expected to be responsive to individual circumstances and selective in their use of available sanctions: selecting sanctions higher up the 'pyramid' in order of severity when a firm fails to respond, but quickly de-escalating when a firm shows cooperation. Despite Cooney's proposition, one immediate hurdle that comes to mind when considering the use of these strategies in Indonesia – particularly the use of the enforcement pyramid – would be the ongoing inconsistencies in the country's labour inspection mechanisms. As observed in this dissertation, since the implementation of regional autonomy in early 2000, labour inspection has been the responsibility of regional governments, and this has led to the implementation of very different policies and practices from one region to another. Further, regional-level labour inspectors are no more excluded than other officials from the serious corruption problems in Indonesia. Even those inspectors who demonstrate integrity against corruption will often lack the requisite skills and knowledge, or find that they do not have sufficient staff and resources to conduct their tasks, due to the inadequate budgets in the regions for labour inspection resources and training.

The second strategy proposed to increase the effectiveness of labour law enforcement is to involve trade unions directly as labour law enforcers (Cooney, 2006: 48-49, also Colling, 2012). This strategy aims to overcome the issue of limited resources within enforcement agencies, and in some

cases the issue of corruption; as well as helping to overcome the law's lack of flexibility, given that flexibility is particularly important in the realm of employment issues, with views about rights are likely to remain complex and subject to dispute and change. This need for flexibility is exemplified in collective bargaining agreements, in which employers, workers, unions, and representatives for each group need to be able to adapt and develop context-specific measures which they can agree upon, and therefore feel more bound by and committed to (Colling, 2012: 183). The evidence indicates that the presence of a trade union during bargaining leads to greater compliance with labour law, especially on the issue of occupational health and safety, with unions helping to focus attention on the importance of legislation in the workplace (Cooney, 2006: 49).

With this proposed strategy too, however, there would be some hurdles to overcome in the Indonesian context, as this dissertation has demonstrated. One hurdle would be the local trade unions' capacity to fulfill such compliance functions. This capacity currently varies markedly between regions: in some areas the unions would perform this function effectively, but in others they would not. These differences are related partly to the number of unions in an area; – in low-union-density areas where unions may not even exist at some of the workplaces, compliance-related tasks could clearly not be performed by unions within those workplaces. Another problem is related to the membership composition within the unions themselves. Even in regions which have high numbers of unionized workers, most unions will be comprised largely of regular workers, and their membership will still not include the more vulnerable workers, such as home-based and casual workers, who will remain unable to access the unions' monitoring and protection. A third problem to overcome will be the corporatist character of some unions, which may be too close to employer groups or the state, potentially leading to a reduced willingness to enforce the law; as happened, for instance, during the authoritarian New Order. Despite these challenges, the development of Indonesia's labour movement over the last few years give hope for an increase in the effectiveness of labour law enforcement. The re-emergence of the labour movement in some regions, notably in the industrial area of Bekasi, West Java, has clearly contributed to higher rates of compliance by firms, particularly with regard to provisions on outsourcing practices at workplaces (see also Mufakhir, 2014).

The third strategy proposed to increase the law's effectiveness is through self-regulation and internal compliance by firms and employers themselves (Cooney, 2006: 48-49, also Arthurs, 2008, Estlund, 2008). This strategy suggests that firms are encouraged to comply with labour law through their internal compliance processes. One well-known version of such processes is the codes of conduct adopted by employers, workplaces and organizations, particularly in developed countries, including well-developed management systems; and including requirements for their sub-contractors to comply with stipulated labour standards (including, for multi-national organizations, the

sub-contractors working in developing countries such as Indonesia). Labour standards feature frequently in these codes, which often encompass environmental practices, commercial honesty, consumer protection, and integrity when dealing with government officials (Arthurs, 2001). The use of voluntary codes has become widespread, especially since the early 1980s. One reason that has been proposed for the development of voluntary codes is that the codes represent the principled acceptance by firms of their social obligations (with the implication that firms will indeed accept these obligations); another proposed reason is that such codes simply fill a regulatory gap left by a state's inability to regulate the actions of corporations outside their own boundaries (see Arthurs, 2008, also Estlund, 2008). A third reason suggests that the voluntary codes represent an innovative shift in the means by which markets are regulated: from a pure-state-based command method, to a hybrid models involving a mix of public and private initiatives. It is important to note, moreover, that the early 1980s saw the rise of the non-governmental organization movement, especially in Europe and the United States, with the involvement of consumers' groups concerned about exploitation and abuse of workers both at home and abroad, and other groups concerned about environmental and social justice impacts of particularly multinational firms' activities in developing countries. These groups pressured governments and firms through the strategy of 'naming and shaming', using media campaign and lobbying (see, e.g., Meernik et al., 2012). Confronted by such public accusations, one of the responses by organizations was to adopt a code of conduct, which declared the organization's commitment to core values – including the commitment to respect fundamental labour rights such as freedom of association, safe work environments and the absence of coercion and discrimination (Arthurs, 2008: 21). Thus, so-called voluntary codes have often not been purely 'voluntary'; rather, organizations have chosen to develop codes in response to intense public pressure from the civil society organizations, and the codes have become available not merely to become the firms' 'public relations ploy,' but also to act as 'workers' tools' (Wick, 2005).

The obvious challenges associated with this strategy include monitoring for compliance, and evaluation of effectiveness of individual codes, with both tasks depending very much on the firms themselves (Cooney, 2006: 49). In an assessment of Indonesia's corporate social responsibility practices, Kemp (2001) identified several problems with this particular strategy. The use of the codes was found to be flawed, as the codes may place corporations outside the national regulatory system, bypassing the tripartite negotiation system that has been one of the country's major labour reforms. The process of monitoring, and associated outcomes, were usually confidential, with workers in particular never involved in the process, and left without knowledge of the results. Sanctions for non-compliance were generally weak or non-existent, while codes were usually developed at the head office, rarely in consultation with trade unions or others. Finally, corporations often insisted that affiliates and sub-contractors improve conditions, but provided limit-

ed if any resources to support such changes. In the last few years, however, there have been some interesting improvements to this strategy across Asia, including in Indonesia, through the Asia Floor Wage Alliance, which focuses on the issue of decent wages for garment workers (see Merk, 2009). The initiative has been driven by a union in India, meaning that trade unions have been involved in the entire process – from the initial drafting to monitoring and evaluation, including negotiating with brand-name multinational corporations. Another initiative has emerged in a form of the Play Fair Alliance, which on using the the momentum behind the Beijing Olympics in 2008 to raise issues of shoe workers. One important result of such efforts has been the first ever written 'protocol' on freedom of union association, which has been jointly signed by the representatives of the brand- name multinational corporations, sub-contractor firms, and trade unions (see Hutabarat, 2012). Both initiatives are relatively new, and the success or otherwise of their efforts is still unclear, but they represent important developments in this strategy which are worth noting.

The fourth strategy to improve the effectiveness of labour law enforcement is the use of multi-stakeholder regulations, by involving private and non-governmental stakeholders in negotiating labour, health and safety, and environmental standards, as well as monitoring compliance with these standards, and establishing certification and labeling mechanisms which provide incentives for firms to meet the standards (O'Rourke, 2006). Some examples of initiatives which employ this strategy in Europe and the United States are: the Worldwide Responsible Apparel Production (WRAP) certification program; Social Accountability International (SAI); the Fair Labor Association (FLA); the Ethical Trading Initiative (ETI); the Fair Wear Foundation (FWF); and the Workers Rights Consortium (WRC). All these initiatives operate as private internal monitoring initiatives, often with government support. The Ethical Trading Initiative (www.ethicaltrade.org), for instance, is supported by the British government, and brings together major firms, unions and community organizations to develop practical strategies to improve workers' conditions; providing a model for developing countries. Some observers argue that this strategy may be appropriate for Indonesia, as it integrates the enforcement functions of state agencies, trade unions and other non-governmental organizations, as well as the self-regulatory efforts of firms, and therefore has the potential to be more flexible, efficient, democratic, and effective than traditional methods of labour regulation (Cooney, 2006: 50). Others criticize the strategy as an attempt both to free industry from state regulation, and to hinder union organizing efforts and the current role of trade unions (O'Rourke, 2006, also Justice, 2001). Both arguments have strong points, and a consideration of both is useful when developing the evaluation criteria for multi-stakeholder regulation processes, including criteria for evaluating both their general effectiveness, and their accountability to local stakeholders. O'Rourke (2006) concludes that several factors are important to support more effective non-governmental regulations such

as these, including: substantive participation of local stakeholders; public transparency of methods and findings; and mechanisms that bring market pressures to bear on multi-national corporations, while simultaneously supporting the processes of multi-stakeholder problem-solving within factories and global supply chains (O'Rourke, 2006: 900).

The four strategies and approaches discussed above have been developed and applied in various contexts, with the aim of developing more systematic and effective methods of labour law enforcement. Each strategy depends partly on traditional forms of law enforcement, through state apparatus and mechanisms, but also diversifies into alternative enforcement strategies involving trade unions (to highlight the spirit of the law in workplaces); as well as the regulations and initiatives of non-governmental actors, including firms, non-governmental organizations, and trade unions. Each of the four strategies and approaches, however, requires one basic and very important action from the state: that is, the state must set supportive social goals, and uphold the freedom of civil society actors to organize and mobilize (see Graham and Woods, 2006). Thus, although the strategies for making labour law more effective may seem to be being shared among actors other than the state, in the end it is necessary to ensure the state is closely involved, and ready to intervene through its regulatory power to set the required standards. In these efforts, the state should be supported and monitored by non-state actors to ensure that it fulfils its roles correctly. In other words, these proposed initiatives are not intended to replace the role of the state, but rather to strengthen the role of the state in new ways, with more opportunities for participation and involvement of all stakeholders in labour law, while also allowing various stakeholders to maintain their original roles as protectors of citizens. This is the balance that Indonesia needs; and, as this dissertation has demonstrated, the foundation of such a balance lies in the union-based organization of working people themselves.

4 Suggestions for further research

This dissertation is a systematic study of the changes to Indonesia's labour law, exploring the historical circumstances of labour law from colonial times to the *Reformasi* era. Particular attention has been paid to the *Reformasi* era, including examining closely the changes during that time, and the impacts of those changes empirically. Further research will be required to give a fuller picture of these changes and continuities within Indonesia's labour law reform. This dissertation provides the foundations for doing so. Following are several suggestions for further research that could be conducted to better understand labour law reforms and their associated social and political changes; both in Indonesia and in other developing countries. For further research, it may be beneficial to consider the threefold strategy for labour law enforcement as suggested by Malmberg (2003, 2009); that is the indus-

trial relations strategy, the state-oriented strategy, and the judicial strategy, and use this framework to consider the impacts and effectiveness of labour law and its enforcement in Indonesia. The question of the enforcement of labour law is probably the most interesting and challenging question from a socio-legal perspective, which is the perspective taken by this dissertation; and is an uncommon perspective, currently, in the literature on Indonesian labour law.

One important question to investigate in further research will be: to what extent, during the enforcement of labour law, is the role of negotiation recognized and enabled within the Indonesia's labour law system? This question is interesting from a comparative perspective, when comparing the many different roles and kinds of negotiation in the enforcement of labour law, particularly in different contexts. For instance, often the predominant type of negotiation used during restructuring processes is a negotiation, which aims to influence managerial decisions. In the context of other workplace processes, such as when managing equality in the workplace, the more relevant type of negotiation may be one about the application of rules; while when making decisions about working hours, one's negotiations should focus bargaining about labour and employment relations regulations (see van Peijpe, 2003: 105). Other questions to be explored relate to administrative processes: for example, to what extent do administrative processes help the enforcement of labour law in Indonesia? When considering individual administrative processes, such as: the inspection mechanism; or the obligation to inform the authorities about collective redundancies, or the provision of assistance to victims of discrimination, or the promotion of equal treatment in firms, to what extent is each of these administrative processes effective at present? What types of administrative intervention may be needed, to improve the effectiveness of labour law enforcement in Indonesia? Investigating these questions would be beneficial; for instance it would provide empirical evidence about the role of the state in labour inspection mechanisms in Indonesia, which currently appears to be relatively weak and ineffective.

Another useful research focus concerns the judicial process of enforcement. It would be useful to investigate the role of collective bargaining by unions, during disputes over the rights of individual workers. It would also be useful to investigate the extent to which the Indonesia's labour law system recognizes interim decision-making power; that is, which party has priority of interpretation, without awaiting the decision of a court? Further, if recognition is granted, which party is awarded priority, and what are the relevant processes? The point of departure for these questions is that each of the parties may, at their own risk, rely on their own interpretation of their legal duty. However, if the interpretation is wrong, the party makes itself liable to breach of contract. This is very much related to the time limit to claim a right in court, and the burden of proof among the parties, which are important in labour law. One may also want to analyze the importance of the develop-

ment of 'social law' in Indonesia, which links labour law with social security law, as is common in Europe (see, e.g., Hervey, 1998). This may be particularly of interest given the enactment in Indonesia of the two social security laws (Law No. 40/2004 on National Social Security System and Law No. 24/2011 on Social Security Executing Agency), which complement the three labour laws enacted following the 1998-2006 labour law reforms (Law No. 21/2000 on Trade Unions/Labour Unions; Law No. 13/2003 on Manpower and Law No. 2/2004 on Industrial Relations Dispute Settlement).

Finally, in the broader context of the legal, social, and political changes in Indonesia, it is crucial to identify clearly how the law is actually constructed, and how it influences the position of workers in practice; as well as investigating how certain process escapes the law's purview. The research question here is: how does labour law evolve in a relatively democratic and developing country, where establishing the rule of law requires much work and struggle, and where development is generally defined in economic terms? In considering this question, researchers could focus on the influence of key international actors such as the International Labour Organization and other international organizations and standards; in particular their influence on framing the new labour laws, and how their standards are reflected in the laws. Researchers could also consider the government's efforts to introduce effective enforcement institutions; and the role of trade unions and other workers' organizations in promoting their members rights and developing welfare policies for broader society. These questions all require an interdisciplinary approach to research, including linking the normative and non-normative aspects of law making and enforcement, and focusing on the law while also considering the other social sciences. An interdisciplinary approach is likely to achieve a fuller and more nuanced understanding of the current problems, leading in turn to potentially effective solutions to these problems.

5 Final remarks

The main theoretical position of this dissertation is that labour legislation in Indonesia is part of an historical process, and is the outcome of a struggle between different social groups and competing ideologies (see Introduction of this dissertation, also Hepple, 1996, 2009). The making and the transformation in labour law are closely related, and influenced by various factors, including economic developments and policies; the changing nature of the state; the character of employers and the labour movement; the growing influence of civil society; and shifts in ideology (see also Hepple, 2011). This dissertation provides substantial evidence for this position, and argues that labour law in Indonesia is also best understood as the result of the struggles between different social groups and competing ideologies, which change with time and historical circumstance. This dissertation contends

that despite of all the challenges and problems, hope remains for the development of a sound and effective labour law in Indonesia, due particularly to the development of the trade union movement in the country. There is considerable evidence that the presence of unions in both developed countries (for a classical account see Rubble, 1977) and developing countries (see Daniel, 1957) may lead to the enactment of important social legislation and greater compliance with labour law. Similarly, as this dissertation has shown, Indonesia since the *Reformasi* includes some encouraging developments: trade unions have started to play a role not only as a countervailing power against employers for the sake of member workers, but also as law enforcers and advocates of the welfare state, with benefits for society as a whole (see Chapter 4 of this dissertation).

Despite these positive developments, there remains a clear need for both unions and employers to have strength and integrity, so that industrial relations can develop effectively and fairly in Indonesia. It is important for both parties to respect to each other, and for demands to be reasonable. In some European countries this respect was facilitated by reforms among employers, who needed to cooperate with workers in the wake of the impacts of the most recent world war on workplaces (see Hepple, 1996). Indonesia has had no such impact from a major war, and the potential benefit to be gained from a temporary post-war surge in the working-age proportion, along with the possibility of benefitting from the implied human endowment via appropriate development strategies, is arguably questionable (see Bappenas, 2005). This confirms the urgent need for strong alternative labour powers, which can influence politics and encourage government and employers to consider further reforms toward policies and practices that are both pro-worker and pro-people. Trade unions can play important roles in this process, by being the countervailing power against capital and corporate power, so that the results of development are redistributed fairly throughout society, and by being agents of education; for example their efforts to develop new labour laws and enforce labour standards provide an excellent opportunity for unions to show their their member-workers their rights, raise their awareness, and develop a broader understanding about legal culture.

The Indonesian trade union movement must however, resolve several key problems that they currently face. Some of these problems are internal; such as low membership for most unions; tensions between organizational efficiency and internal democracy; and the low proportion of collective bargaining agreements that are concluded successfully, closely related to the lack of effective dialogue between social partners such as trade unions and employers. There are also problems from outside of the unions, including the high number of workers in the informal economies, the high levels of unemployment, and the issue of workers' productivity. One particular challenge that may need extra attention is the tension between organizational efficiency and internal democracy; as the political exercises during the 2014 legislative

and presidential elections have demonstrated the strengths and liabilities of the trade union movement. The union movement needs to find the right balance for these dilemmas, so that unions can become an important alternative and much needed power in the new democracy of Indonesia, to help develop better pro-workers legislation, and to contribute to the development of a better Indonesia. These are not easy tasks, yet the foundations are there.

Finally, with regard to the aims of this study – to examine the relationship between labour law and economic development in a developing country – this dissertation has demonstrated that labour law in Indonesia is one of the best examples of the most conflicting terrains of law for many conflicting interest groups in society. Labour law involves not only workers and their unions, but also business people and political elites; not only local actors but also global players, buttressed by the so-called 'globalization' of economy. This dissertation has been concerned with the ways in which labour law protects through labour rights, and thus constrains some of political power of the capital. In this context, the exercise of these rights, like war, is 'politics by other means' (see Abel, 1995, cited in Hepple, 2002: 16); that is, we are able see the twin roles of law in the struggle against oppression: 'law as the sword of the oppressor, and law as the shield for the oppressed' (Dyzenhuis, 2008). With this view, and to end this dissertation, it is enlightening to contemplate the writing of leading labour law scholar, Bob Hepple (2002: 16):

> [R]ights are not simply the reflection of the existing distribution of power in society. Study of the process of creation and enforcement of social and labour rights helps us to understand how far law can act relatively autonomously to restrain public and private power for the benefit of at least some of the people for some of the time. This is an integral part of processes of social and political change.