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Summary

Labour Law and Development in Indonesia

The creation and enforcement of social and labour rights in Indonesia reflects the broader processes of social and political change in the country. The making of labour law has been a struggle rather than a smooth and cosy process. Three decades of rapid economic growth under the authoritarian 'New Order' era were marked by political and economic subordination of many of those who made it happen. The New Order was notorious for its harsh and unsympathetic treatment of workers. Seeking an appropriate framework for the pursuit of industrialisation and economic growth, the New Order used corporatist structures to control labour, and by and large managed to overcome resistance. The corporatist labour law framework assured managerial ascendancy and the restraint of labour costs, often with repression, for the sake of economic growth under the broad term of 'development'.

The fall of President Soeharto in May 1998 marked a new epoch for the country. It opened the door for different forces to influence the formation of the country's new social and political structures. The Habibie government needed to distance itself from the previous regime and initiated many reforms, including new labour policies. This started by a new Ministerial Decree concerning Trade Union Registration, which allowed workers more freedom to establish unions. This step was followed by the ratification of International Labour Organization (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, which complemented ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, which Indonesia had already ratified in 1956. Within seven months of Soeharto's fall, in December 1998, the Habibie government launched the so-called 'labour law reform programme', under the auspices of the ILO, with the ambitious goal of changing the entire structure of Indonesia's labour law regime.

The main aim of the reform, however, was to make the labour law system a tool for promoting economic efficiency, among other things by reducing costs through a flexible labour market. This was one of the measures which Indonesia was forced to implement after the Asian economic crisis of 1997-1998 in order to liberalise its economy. Indonesia's labour law regime was thus transformed from a corporatist labour law model organised by a strong state, towards one that was largely market-oriented. As the new political arrangement began to take shape, the Indonesian economy shifted from guided or state-led development to market-oriented reform and external liberalisation.

This suggests a typical neo-liberal transition, which, however, is not the entire story. Despite their neo-liberal orientation, labour law reforms included the adoption of many pro-labour regulations, which created new space for the development of a trade union movement. The reforms likewise shifted some responsibility from the executive to other institutions – such as the judiciary – but maintained an important role for the government in regulating labour relations.

How can this development be understood and explained? What are the implications for labour? What challenges and opportunities has the country's newly (re-)established trade union movement to face? What lessons can we learn from the development of these changing labour laws, in the relation between labour law and economic development in Indonesia? The study addresses these questions by first providing a general overview of the development of labour law and by then looking at three case-studies concerning (1) trade unions; (2) minimum wage; and (3) the Industrial Relations Court.

These topics correspond to the three major pieces of labour legislation enacted since the start of *Reformasi* in 1998 and constitute key elements of labour law. Trade unions are a crucial institution in any modern industrial capitalist society. They represent one of the few institutions capable of promoting some measure of equity and social justice. Minimum wage is important in labour law as a policy tool for poverty reduction, but also as an indicator of the extent of a government's commitment to social justice. Finally, the Industrial Relations Courts are important because they represent the instrumental aspect of law in their role as adjudicator and enforcer. Together they also cover the two main facets of labour law that have been examined in this study, i.e. collective labour law (trade union, minimum wage), and individual labour law (minimum wage, industrial dispute settlement).

As regards the trade union, the study finds various positive developments both at the national and the regional level. Several unions at both regional and national levels have developed alternative strategies to overcome the stagnation embodied in the structures of the existing national workers federations and confederations. Through the formation of regional alliances they now deal with local labour issues, such as regional minimum wage determination, and with local politics in its relation to labour. The national alliance with the KAJIS (Action Committee for Social Security Reforms) even looked beyond traditional workers' issues, and focused its struggle on reforming Indonesia's social security system for the benefit of all citizens. Such alliances represent an unprecedented development of the trade union movement in Indonesia, and they lend hope that the future will include the more active participation of unions in Indonesians' social struggles.

Concerning the minimum wage in Indonesia, the study shows how instead of being a wage floor it has generally become the effective wage for most workers. In the absence of a collective bargaining system these are still very much dependent on a raise in the minimum wage for getting higher wages. The minimum wage setting process within wage councils is where the newly-developed trade union movement has to demonstrate its zeal in defending members' and other workers' interests. This focus is reinforced by the risk of dismissal of union officials when they attempt to negotiate wages at the plant level. As a result considerable pressure is exercised on the wage councils, and demands for increases that may seem excessive have turned minimum wage setting into a site of conflict. During the New Order the state pursued a low wage strategy in order to attract investment, and thus used the minimum wage as a tool by which to control labour unrest. Since 1998 the state has become more ambiguous with respect to minimum wages: on the one hand, the state would like to turn minimum wages into the wage floor, but on the other hand officials are reluctant to leave wage setting to processes of collective bargaining. They also fear the stronger trade unions required for effective collective bargaining.

As regards the Industrial Relations Courts, the study finds that their establishment has raised concerns from labour about their inaccessibility to most workers as a result of high costs, delays, formalities, and a class bias of some career judges. These problems can be explained in part from the conceptual inadequacy and the obscurity of some of the provisions in Law 2/2004, the problematic relationship between the court and the court of appeal, and corruption from the lowest level of substitute registrar to ad-hoc judges at the Supreme Court. The efforts from ad hoc judges from unions to overcome such problems have to a large extent been outdone by the structural problems plaguing the Indonesian judiciary in general.

The study further shows how the making and transformation of labour law is influenced by various factors, including economic developments and policies; the changing nature of the state; the character of employers and the labour movement; the growing influence of civil society; and shifts in ideology. It provides substantial evidence for the position that labour law in Indonesia is best understood as the result of struggles between different social groups and competing ideologies, which change over time. Despite the challenges and problems, hope remains for the development of a sound and effective labour law in Indonesia, due particularly to the development of the trade union movement in the country. Since *Reformasi* some encouraging developments have taken place: trade unions have started to play a role not only as a countervailing power against employers for the sake of member workers, but also as law enforcers and advocates of the welfare state, with benefits for society as a whole.

Nonetheless, there remains a clear need for reinforcement of union and employers organisations so that industrial relations can develop effectively and fairly. It is important for both parties to respect each other, and for demands to be reasonable. Trade unions can play important roles in this process, as a countervailing power against capital and corporate power, as redistributors of developmental results in society, and as agents of education. Their efforts to shape new labour laws and enforce labour standards have helped unions in making their members aware of their rights, and to develop a broader understanding about the role of law as a tool for development -not only for labour but also for society more generally.