



Universiteit
Leiden
The Netherlands

Perspectives on the regulation of working conditions in times of globalization

Hu, Q.

Citation

Hu, Q. (2018, June 28). *Perspectives on the regulation of working conditions in times of globalization*. Meijers-reeks. s.n., S.l. Retrieved from <https://hdl.handle.net/1887/63155>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/63155>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The following handle holds various files of this Leiden University dissertation:

<http://hdl.handle.net/1887/63155>

Author: Hu, Q.

Title: Perspectives on the regulation of working conditions in times of globalization

Issue Date: 2018-06-28

Perspectives on the Regulation of Working Conditions
in Times of Globalization

Challenges & Obstacles Facing Regulatory Intervention

To my beloved parents, G. Hu & Y. Tian

Perspectives on the Regulation of Working Conditions in Times of Globalization

*Challenges & Obstacles Facing Regulatory
Intervention*

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op donderdag 28 Juni 2018
klokke 10.00 uur

door

Qiuyin Hu

胡 蚯 蚓

geboren te Shaanxi, China

in 1987

Promotoren: Prof. dr. G.J.J. Heerma van Voss
Prof. dr. B. Barentsen

Promotiecommissie: Prof.dr. P.F. van der Heijden
Prof. dr. A.C. Neal (University of Warwick, UK)
Dr. M. Gong (Kurume University, Japan)
Prof.dr. K.P. Goudswaard
Dr. M.Y.H.G. Erkens

This research project is funded by the China Scholarship Council (CSC).

ISBN: 978-94-028-1096-7

Lay-out: AlphaZet prepress, Bodegraven

Printwerk: Ipskamp Printing

© 2018 Qiuyin Hu

Behoudens de in of krachtens de Auteurswet van 1912 gestelde uitzonderingen mag niets uit deze uitgave worden veeelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieën, opnamen of enig andere manier, zonder voorafgaande schriftelijke toestemming van de auteur.

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission of the author.

Acknowledgments

It would be impossible for me to finalize my doctoral dissertation but for the support of many individuals and institutions in the past five years. I am grateful to them all. It was the China Scholarship Council that sponsored the research. I am also indebted to the Leiden Law School of Leiden University, in particular the Social Law Department, for providing the best environment and resources for PhD students. Special thanks go to my promotors, Guus J.J. Heerma van Voss and Barend Barentsen. They made every effort to keep the research on the right track. Their great contribution to the completion of this book is sincerely appreciated. I also thank prof. dr. P.F. van der Heijden, prof. A. Neal, prof. L. Compa, dr. M.Y.H.G. Erkens, M.E. Claproth-Usmany and other supportive colleagues in our department.

I wish to thank my beloved parents for their encouragement and years of unconditional support. Their devotion to helping me pursue higher levels of education put me where I am. In particular after my son was born in 2015, my parents spent much time and energy taking care of him, due to which I could focus on the research. I also want to express gratitude to my parents-in-law. Treating me as their own daughter, they gave lots of support during my study in the Netherlands. Boyang, my dear husband, accompanied me throughout, helping me regain confidence whenever I felt frustrated. His love made me a better person. Our common five years living in Leiden will be the best memory of my life.

I was lucky enough to make friends with a lot of wonderful people during my stay in the Netherlands. Their kindness helped me out of countless predicaments. In particular Junling He, Zhan Xiong, Jing Shen, Liang Zhou, Song Wu, Dejian Kong, Zhenjie Li, Lalin Kovudhikulrungsri, Feng Zhang, Jingxian Wang, Yanming Guo, Chen Wang and Jian Yang supported me a lot. Within the Leiden Law School, I wish to thank my fellow PhD students: Linlin Sun, Yudan Tan, Xuechan Ma, Xiang Li, Weidong Zhang, Anran Zhang, Shuai Guo, Evelien Campfens, Feng-an Jiang, Wanlu Zhang, and many others.

Finally, I would like to extend my thanks to Victoria Laws, who proof-read the manuscript.

Table of Contents

ACKNOWLEDGMENTS	V
LIST OF ABBREVIATIONS	XI
1 INTRODUCTION	1
1 Labor Law in the Era of Globalization	1
2 Regulation of Working Conditions	3
3 Research Aim & Central Questions	4
4 Research Methods	5
5 Book Structure	6
2 GAINING A FOOTHOLD: WORKING CONDITIONS LAW IN GLOBALIZATION	9
1 Introduction	10
2 The Intrinsic Foundation	11
2.1 Mainstream Approaches with Vulnerabilities	11
2.2 An Alternative Interpretation Inspired by Kant	12
3 Doubting the Economists' Doubts	14
3.1 Making No difference? Examples from China and the US	14
3.2 Harming Competitive Power? Incentives to Provide Good Working Conditions	16
3.3 Reducing Employment? The Connection Remains Unclear	19
4 The Real Foothold of Working Conditions Legislation	22
5 Final Remarks	24
3 A LEGISLATIVE PERSPECTIVE ON CONSTRUCTION SAFETY IN CHINA, AGAINST THE BACKDROP OF AN INDUSTRY-WIDE LABOR SHORTAGE	27
1 Background: A Tricky Situation for China's Construction Industry	28
2 Major Defects of the Chinese Legislation in Terms of Construction Safety	29
2.1 Impractical Rules	30
2.2 The Labor Contract Law and the Impact on Construction Safety	32
2.2.1 The Malfunctioning of the Labor Contract Law in the Construction Industry	32
2.2.2 The Impact on Construction Safety	34
2.3 Legislation on Work-Related Injury Insurance May Worsen the Predicament	35
2.4 The Undermining of the Responsibility System	38

3	New-Generation Migrant Workers are Fleeing the Dangerous Construction Industry: Legislative Possibilities and Challenges	40
3.1	Mandating an Real-Name IT System for Construction Labor Management	41
3.2	A Two-Pronged Strategy to Guide Building Enterprises	42
3.3	Creating Adaptable Unions	43
3.4	Making Procedures for Post-Accident Remedies ‘Worker-Friendly’	44
3.5	NGO Training and Supportive Interventions	46
4	Final Remarks	47
	Charts and Tables	48
4	AN INCOMPLETE BREAKTHROUGH: QUESTIONING THE MOMENTUM AND EFFICIENCY OF GERMANY’S MINIMUM WAGE LAW	53
1	Introduction	54
2	A Strong ‘Bite’? Evaluations on the Entry Point of the German Minimum Wage	56
2.1	Kaitz Index	56
2.2	Purchasing Power Standard	57
2.3	Magnitude of Potential Beneficiaries	58
2.4	Efficiency Derogated from by the Income Support System	60
3	The German Model of Flexibility within the General Wage Floor: Rate Diversity and Coverage	61
3.1	Rate & Coverage	61
3.2	Pros and Cons of the German Model	64
4	Germany’s Potential Loss of Efficiency Adjusting the National Minimum Wage	67
4.1	Adjustment Method	67
4.2	Adjustment Frequency Tied up with the Adopted Method	68
4.3	The Lost Efficiency: A Diminutive Growth of 0.34 Euros Costs Two Years	69
5	An Implementation System Flawed by Inadequate Preparation of Essential Rules or Conditions	70
5.1	Provisions on Calculating Hourly Remuneration and Recording Working Hours	71
5.2	The Major Monitoring Authority and ‘Risk-Oriented’ Approach	73
5.3	Sanctions	75
5.4	Viability of Minimum Wage Litigation	77
6	Final Remarks	77
	Chart and Tables	79

5	A TALE OF TWO MODELS: IDEAS AND RESULTS OF THE SWEDISH AND AMERICAN LEGISLATION ON PARENTAL LEAVE	83
1	Introduction	84
2	Different Models Erected by Sweden's Parental Leave Act & Social Insurance Code and the United States' FMLA	85
2.1	The Swedish Model	85
2.2	The American Model	88
3	Ideas Underlying Route Selection	89
4	What Happens in the Real World?	91
4.1	In Sweden	91
4.1.1	Consistent Participation and Employment of Women	91
4.1.2	Effects of the High Labor Participation on Economic Growth	93
4.1.3	Generosity Breeds 'Policy Abuses'?	94
4.2	In the US	95
4.2.1	American Families are not Less in Need of Paid Parental Leave	95
4.2.2	Increasingly More Employers Favor Paid Parental Leave	96
4.2.3	Financially Feasible	99
5	Final Remarks	101
6	COORDINATING THE 'THREE CHANNELS' OF EMPLOYEE PARTICIPATION? FOCUSING ON THE BRITISH PRACTICES	103
1	Introduction	104
2	British Patterns of the 'Three Channels'	105
2.1	RP	105
2.2	DP	107
2.3	FP	109
3	A tendency to interlock the DP and RP in a binary system	110
3.1	Defects of RP	110
3.2	DP Complements RP by Adding Flexibility and Diversity	111
3.3	The Merits <i>versus</i> the Achilles' Heel of DP	112
3.4	RP Underpins the 'Healthy' Growth of DP	113
4	The Necessity to Incorporate FP into the 'Alliance'	115
4.1	FP Helps Relieve the Fading Redistributive Function of Unions	115
4.2	Employee-Owned Shares with Voting Rights May Make up for the Lack of A Statutory Right to Board-level Representation	116
4.3	FP May Enhance Employees' Enthusiasm for DP	117
4.4	FP Is More Effective When Combined with DP	118
4.5	RP Drives the March of FP	119
5	Coordination Rests on the Overlap between the Three Channels	120
6	Legislative Difficulties	122
7	Final Remarks	123

7	CONCLUSION	125
1	Main Findings	125
2	Messages behind the Kaleidoscopic Scene of the Current Global Impasse	128
	SUMMARY	131
	SAMENVATTING (DUTCH SUMMARY)	135
	REFERENCES	139
	CURRICULUM VITAE	153

List of Abbreviations

ACFTU:	The All-China Federation of Trade Unions
BAG:	Bundesarbeitsgericht (The Federal Labour Court)
BIS:	The Department for Business, Innovation & Skills
BMAS:	Bundesministerium für Arbeit und Soziales (the Federal Ministry of Labour and Social Affairs)
BMF:	Bundesministerium der Finanzen (The Federal Ministry of Finance)
CSOP:	Company Share Option Plan
CSR:	Corporate Social Responsibility
DP:	Direct Participation
ECJ:	The European Court of Justice
EMI:	Enterprise Management Incentives
EPOC	Employee Direct Participation In Organizational Change
EU:	The European Union
EWCS:	European Working Conditions Survey
FDI:	Foreign Direct Investment
FKS:	Finanzkontrolle Schwarzarbeit (The Financial Inspectorate of Undeclared Employment)
FLA:	The Fair Labor Association
FLI:	Family Leave Insurance
FMLA:	The Family and Medical Leave Act of 1993
FP:	Financial Participation
GDP:	Gross domestic Product
GSP:	Generalized System of Preferences
HMRC:	HM Revenue & Customs
ICER:	The Information and Consultation of Employees Regulations
ILO:	International Labour Organization
JCC:	Joint Consultative Committee
LoWER:	European Low-Wage Employment Research Network
MiLoG:	Mindestlohngesetz (the German Act Regulating a General Minimum Wage)
MOHRSS:	The Ministry of Human Resources and Social Security
MOHURD:	The Ministry of Housing and Urban-Rural Development
NGO:	Non-governmental Organization
OECD:	The Organisation for Economic Co-operation and Development
OSH:	Occupational Safety and Health
PEA:	Pre-existing Agreement
PFL:	Paid Family Leave
PLA:	Parental Leave Act
PPS:	Purchasing Power Standard

PRP:	Profit-Related-Pay
RP:	Representative Participation
SAWS:	The State Administration of Work Safety
SAYE:	Save-as-You-Earn
SDI:	State Disability Insurance
SIC:	Social Insurance Code
SIP:	Share Incentive Plan
SME:	Small and Medium-sized Enterprise
SPD:	Sozialdemokratische Partei Deutschlands (The Social Democratic Party of Germany)
TCI:	Temporary Caregiver Insurance
TDI:	Temporary Disability Insurance
TFP:	Total Factor Productivity
TQM:	Total Quality Management
UK:	The United Kingdom
US:	The United States
WERS:	Workplace Employment Relations Survey