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BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 3 (2022)
ISSN 2029-0454

Cite: *Baltic Journal of Law & Politics* 15:3 (2022): 943-953
DOI: 10.2478/bjlp-2022-002068

Legal Protection Of Workers' Human Rights Through Ratification Of The Ilo Convention

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Received: August 14, 2022; reviews: 2; accepted: November 29, 2022.

Abstract

The ratification of the ILO convention on the basic rights of workers has made a commitment to the Government of Indonesia to consistently implement workers' human rights. The commitment is basically a guarantee of protection for workers to be free from forced labor, guarantees of the right to associate, guarantees against the elimination of discrimination. Human rights and democratization are issues that have received sharp attention from the international community, because they have penetrated into various aspects of social, national and state life. This issue is a complement to globalization and market liberalization which is directly related to the employment aspect. As for this type of research is normative, the research specifications used in this paper are descriptive analytical, with a normative juridical approach, which is a method carried out by examining library materials or secondary data, and the results of this study explain that, the development of labor law politics It is impossible to be separated from this world trend and on the other hand, in the reform era in Indonesia, there has also been a very basic paradigm shift that has a direct impact on the world of employment. The combination of international influence and national political developments has brought about a very significant paradigm shift in the field of employment in the protection of workers' rights.

Keywords

Workers' Rights – Conventions – Enforcement

Introduction

Constitutional labor law has found its legal basis in the 1945 Constitution, which we can first see in the Preamble to the 1945 Constitution, the fourth paragraph reads: "Then from that to form an Indonesian State Government that protects the entire

Indonesian nation ...". Generally, until now, people have relied on the word "all nations", so it is taken as the principle of the unity of the entire Indonesian nation (principle of national unity). In addition, from the word "protect", according to Az. Nasution, it also contains the principle of protecting (law) for the entire nation. Legal protection for all nations, of course, for all nations, without exception.¹

In fact, if a person's life is disturbed or disturbed by another party, then the state apparatus will intervene, whether requested or not, to protect or prevent the disturbance from occurring. A decent living for humanity is the right of citizens and the rights of all people and is a basic right for the people as a whole as regulated in the provisions contained in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution.

The protection of rights for citizens in a legal state, including Indonesia must be carried out, this is in view of Article 1 paragraph (3) of the 1945 Constitution which states that The Indonesian state is based on law (*rechtsstaat*) not based on mere power (*machtsstaat*). Therefore, the state should not carry out its activities based on mere power, but must be based on law. Ismail Sunny, in his brochure: "Mechanism of Pancasila Democracy", said that the rule of law contains elements of:²

1. There is recognition and protection of human rights.
2. The existence of a judiciary that is free from other influences or impartiality.
3. The existence of legality in the sense of law in all its forms.
4. The existence of a state administrative court (administration).³

It was stated above that one of the elements of the rule of law is the recognition and protection of human rights. Talking about human rights is very broad and complex, because one of the things discussed is the human rights of workers as enshrined in the 1945 Constitution. Human rights are basic rights that humans are born with as a gift from God Almighty. In order that these human rights are not abused, the state is obliged to regulate its implementation by providing guarantees and protections as well as placing certain restrictions in the public interest. Restrictions here do not mean that there is an emphasis, but because in a state of law, the state is actively involved in efforts to create public welfare. Therefore, it is necessary to regulate the balance of the interests of the people and the interests of individuals. This is where the limitation lies, because on the one hand the state must protect human rights, while on the other hand the state carries out the public interest.

Based on the description above, it is clear that the direction of manpower development has been clearly contained in the 1945 Constitution, namely as regulated in Article 27 paragraph (2) jo. Article 28D paragraph (2) which states that every citizen has the right to work and a decent living for humanity. "Work" is a basic right of every person, because basically the existence of work is not only to

¹ Az. Nasution, *Hukum Perlindungan Konsumen (Suatu Pengantar)*, Diadit Media, Jakarta, 2002, hlm. 31.

² Ismail Sunny dalam C.S.T. Kansil, *Latihan Ujian HTN (untuk Perguruan Tinggi)*, Sinar Grafika, Jakarta, 1993, hlm. 171.

³ Bahder Johan Nasution, & Sri Warjiyati, *Hukum Perdata Islam (Kompetensi Peradilan Agama Tentang Perkawinan, Waris, Wasiat, Hibah, Wakaf, dan Shodaqoh)*, Mandar Maju, Bandung, 1997, hlm. 8.

earn income, but more than that, self-esteem and human dignity are also assessed from the work activity concerned. Work is not just carrying out an activity on a regular basis, but work brings meaning to the person concerned to increase his human dignity. Human dignity is not merely a physical aspect in the form of wages, but every worker needs to be fully treated as a human being. Furthermore, Article 28 of the 1945 Constitution provides direction on freedom of association and expression of opinion which in the context of employment, is related to the implementation of the right to association for workers and all kinds of implications.

In the last decade of the 21st century, human rights and democratization are issues that have received sharp attention from the international community, because they have penetrated into various aspects of social, national and state life. This issue is a complement to globalization and market liberalization which is directly related to the employment aspect. Thus, the development of labor law politics in the protection of workers cannot be separated from this world trend. On the other hand, during the reformation era in Indonesia, there was also a very basic paradigm shift that had a direct impact on the world of employment. The combination of international influence and national political developments has brought about a very significant paradigm shift in the employment sector.

Method

The type of legal research carried out is normative, so the research specifications used in this paper are descriptive analytical, namely describing various applicable laws and regulations associated with legal theories and positive law enforcement practices related to the problems studied. According to Soerjono Soekanto, descriptive analytical research is research that is intended to provide data that is as accurate as possible about humans, circumstances or other symptoms. The approach method used in this study is a normative juridical approach, which is a method in normative legal research that is carried out by examining library materials or secondary data. There are at least three data collection techniques used in this study including, literature study, observation (observation), and interviews. The three data collection techniques were used to collect secondary data, either through searching laws and regulations and related regulations as well as scientific literature and the results of research by experts related to the problem under study, namely the legal protection of workers' human rights through the ratification of the ILO convention. Researchers also conducted observations and interviews with related parties to find facts on decisions that were appropriate and related to the object of research.

Discussion

1. Conception, Existence, and Implementation of Workers' Rights to Work

The term human rights was introduced by Roosevelt when the Universal

Declaration of Human Rights was formulated in 1948 as a replacement for the term the Rights of Man. The term human rights in several foreign languages is known as the following: *droit I*, home (France), which means human rights, human rights (English) or *mensenrechten* (Dutch). In other literatures the term basic rights is used which is a translation of "basic rights" in English and "grondrechten" in Dutch. Some people call it fundamental rights as a translation of "fundamental right" in English and "fundamental rechten" in Dutch..⁴

Another term as put forward by Philipus M. Hadjon, in the English literature uses the term "natural right" and in Dutch the term "rechten van den mens", while in the Indonesian language literature there are terms, such as natural rights. and basic rights,⁵ human rights or human rights.⁶ Human rights are essentially natural rights that are inherent in every human being since birth. This understanding implies that human rights are a gift from God the Creator to His servants. Considering that human rights are a gift from Allah, then no body can revoke these rights from the hands of their owners. Likewise, no one is allowed to seize it, and no power can bind it.⁷

Based on the terminology above, it is necessary to distinguish the understanding between human rights and basic rights. The main difference between the two terms is that human rights refer to rights that are recognized internationally, whereas basic rights are recognized through national law. The connotation of human rights is closely related to ideal and political principles, while basic rights are part of basic law. Furthermore, human rights are used in political documents, so they are more dynamic in nature compared to basic rights as outlined in juridical documents such as the Constitution (constitution) and in international conventions.⁸

Judging from the level of recognition of the rights mentioned above, human rights in general have obtained the scale of international recognition, while basic rights are related to the recognition of national law, and become legislation. The recognition of national law can be in the form of a constitution and can also be in the form of other laws and regulations.⁹

Historically, the struggle for integrated human rights began in England with the formulation of human rights in the Marga Charta charter in 1215, the petition of rights in 1628, the Habeas Corpus Act in 1679 and the Bill of Rights in 1689, followed by the Act of Settlement in 1701. Developments that occurred in England were then followed by America by formulating the Virginia Bill of Rights and Declaration of Independent in 1776. Further developments occurred in France, which was pioneered by J.J. Rousseau and Lafayette in 1798. This struggle gave

⁴ Bahder Johan Nasution, *Hukum Ketenagakerjaan Kebebasan Berserikat Bagi Pekerja*, Mandar Maju, Bandung, 2004, hlm. 98.

⁵ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Bina Ilmu Surabaya, 1987, hlm. 90.

⁶ Subandi Al Marsudi, *Pancasila dan UUD'45 dalam Paradigma Reformasi*, RajaGrafindo Persada, Jakarta, 2001, hlm. 83.

⁷ Lampiran angka I huruf D butir 1 Ketetapan MPR RI Nomor : XVII/MPR/1998 tentang Hak Asasi Manusia.

⁸ Bahder Johan Nasution, *Op. Cit.*, hlm. 98-99.

⁹ *Ibid.*, hlm. 99.

birth to La Declaration des Droit de l'Homme et du Citoyen. The culmination of the struggle finally gave birth to The Universal Declaration of Human Rights, *which is a statement on world human rights that it's universal* and adopted by acclamation by the General Assembly of the United Nations (UN) in 1948.¹⁰

This universal declaration contains 30 articles on human rights which are broadly grouped into: personal rights, economic rights (property rights), social and cultural rights. Political rights and legal rights, which include rights of legal quality and procedural rights. The United Nations Declaration on Human Rights does not have legally binding force, but only serves as a guideline, recommendation or moral obligation for countries in the world to implement human rights in their respective countries in accordance with the intent and content and objectives of the Declaration. the.

Starting from the grouping of human rights in question, this paper is limited to the group of personal human rights and socio-economic rights, as referred to in the provisions of Article 23 of the 1948 United Nations Declaration on Human Rights as follows:

- a. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to unemployment protection.
- b. Everyone without any discrimination has the right to equal pay for equal work.
- c. Everyone who works has the right to just and favorable remuneration which ensures an existence worthy of human dignity for himself and his family, and is provided for, when necessary, by other means of social protection.
- d. Everyone has the right to form and join trade unions to protect his interests. Philosophically, the essence of freedom (including the right to freedom of association) lies in the human capacity for self-determination. Freedom is existential because it is something that unites with humans, meaning that includes their existence as humans. Freedom is an ability to give meaning and direction to life, as well as the ability to accept or reject the possibilities and values offered to humans by life..¹¹

In order to further solidify attention to the development of human rights in Indonesia, by various groups of people (organizations and institutions), it has been proposed that the MPR Decree which contains a charter of human rights be issued. Finally, the MPR RI decree which is expected to contain human rights can be realized in the Reform Order, namely during the MPR Special Session which took place from 10 to 13 November 1998, it was decided to issue the MPR RI Decree Number: XVII/MPR/1998 concerning Human Rights. . Then the stipulation became one of the basic references for the birth of Law Number 39 of 1999 concerning Human Rights which was ratified on September 23, 1999.¹² This law was then followed by the issuance of Perpu No. 1/1999 which was later refined and enacted

¹⁰ *Ibid.*, hlm. 100.

¹¹ Nico Syukur Dister, *Filsafat Kebebasan*, Kanisius, Yogyakarta, 1996, hlm. 51.

¹² Subandi Al Marsudi, *Op. Cit.*, hlm. 98.

into Law No. 26/2000 on the Human Rights Court.

The fact shows that human rights issues in Indonesia have always been in the spotlight and the subject of continuous discussion, both because the basic concepts derived from the 1945 Constitution and in practical reality on the ground are suspected to be full of violations. The causes of human rights violations include the arrogance of the authority and power of an official in power, which makes it difficult to control himself so that violations of human rights are violated others.¹³ Especially in the last ten years, the issue of human rights in Indonesia has moved quickly and in very conspicuous numbers.

2. Implementation of Legal Protection of Workers' Rights Through Ratification of ILO Conventions

Globalization and economic liberalization are conditions that are unavoidable, because this issue continues to develop and is increasingly felt, especially in the last years of the 90s, its impact on the world economy is also increasingly visible, this is supported by the rapid development of communication technology that penetrates to all fields,¹⁴ including in the field of employment. On the one hand, globalization is an opportunity when you are ready to face it, but on the other hand it is a challenge in a very tight competition. Therefore, for the first time in the world a new paradigm has emerged, namely hyper competition. This competition does not only take place on a macro basis between economic actors, between regions, between cities and villages, but also on a micro basis, namely "super tight" competition between companies, between management and even between workers themselves.¹⁵

One of the biggest threats to economic liberalization, especially if it is not accompanied by commensurate institutional economic development, is the tendency to increase inequality. In order to prevent this possibility, the free-market economy system requires some kind of correction through market and institutional mechanisms to make it more humane. In the era of market economy liberalization, institutional development is increasingly needed to be the equivalent of economic development itself. Thus, it definitely remains based on the objectives that have been framed, such as justice, equal rights of men and women through the enforcement of economic paradigms that must be increasingly institutionalized.

The development of economic institutions to complement the market economy system is basically not just an economic process, but rather a political process or a democratic process. This is to achieve the goal of more humanizing and equitable shared welfare and prosperity, while reducing exploitation between one group of economic actors by another group of economic actors.¹⁶ The final

¹³ Lies Sugondo, *Perkembangan Pelaksanaan HAM di Indonesia (Kapita Selekta Hak Asasi Manusia)*, Puslitbang Diklat MARI, 2001, hlm. 129.

¹⁴ Asril Sitompul, *Pasar Modal (Penawaran Umum & Permasalahannya)*, Citra Aditya Bakti, Bandung, 2000, hlm. 1.

¹⁵ Bomer Pasaribu, "Membangun Politik Ketenagakerjaan dari Aspek Hak Asasi Manusia", <http://www.tempointeraktif.com>.

¹⁶ *Ibid.*

Uruguay Round agreement has been ratified by Law No. 7 of 1994 concerning Ratification of the WTO Agreement, so that it can be said to be an "Economic Liberalization Law". The implication is that if Indonesia's competitiveness cannot be doubled, so that it is balanced with the competitiveness of other countries, it can lead to increased unemployment, both overt and covert.

The old paradigm, that "cheap labor wages as a comparative advantage" has proven "very successful worker sacrifice" in contributing and subsidizing the business world and Indonesia's development. The workers have contributed greatly to the development of the national economy. In the context of healthy liberalization of the market economy, it is necessary to have a compatible political democratic process that interacts with each other so that all forms of freedom always lead to increased efficiency and competitiveness, welfare maximization, while preventing the possibility of economic "exploitation or oppression".¹⁷

The international community recognizes the existence of a number of ILO conventions which are conventions on the protection of basic workers' rights. The convention is one of the aspects of workers' rights that must be respected and implemented by all member countries. Indonesia has ratified all nine conventions as an effort to protect workers' human rights, apart from declarations and conventions, but also in the form of covenants, such as the International Covenant on Civil and Political Rights.) of 1966. The Covenant is often referred to as the First Generation Covenant.¹⁸ Furthermore, through UN General Assembly Resolution No. 2200 A (XXI) dated December 16, 1966 initiated the birth of the Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights) which is open to the process of binding itself through signing (signature), ratification or accession, and declared effective since January 3, 1976. This Covenant is often referred to as the Second Generation Human Rights Covenant.¹⁹

The Second Generation Covenant requires that everyone is guaranteed to work as one of the important economic and social rights in supporting the guarantee of one's right to life. The rights to work (the right to work) and the rights to work (the rights in work) are not only socio-economic rights, but are also fundamental human rights. The development of the concept of human rights is associated with the concepts of the right to work and the right in work, as can be seen from the existence of international arrangements in terms of the following: (1) freedom from slavery and similar practices (freedom from slavery and similar practice), contained in The Slavery Convention of 1926 and its amendments through the Protocol Amending the Slavery Convention of 1953; (2) Freedom from forced and Compulsory Labor, contained in the Forced Labor Convention (No. 29) of 1930; (3) The Right to free employment services, contained in Convention (No.2) of 1919 concerning Unemployment; Convention (No. 88) of 1948 concerning the Organization of the Employment Service, Convention (No. 26) of 1949

¹⁷ *Ibid.*

¹⁸ Nurul Chotidjah, "Perlindungan Hak Asasi Manusia Mengenai Hak-hak Ekonomi, Sosial, dan Budaya Kaitannya dengan Lingkungan", *Litigasi Volume 4 Nomor 3*, Fakultas Hukum UNPAS, Bandung, 2002, hlm. 223.

¹⁹ *Ibid.*

concerning Free-Charging Employment Agencies; (4) The Right to employment is contained in the 1948 UNDR, ICESCR, and the African Charter of Human and Peoples Rights; (5) The Right to Protection of Employment, contained in the Convention (No. 158) of 1982 concerning the Termination of Employment at the Initiative of the Employer; and (6) The Right to Protection against unemployment, contained in the ILO Convention (No. 168) of 1988 concerning Employment and Protection against Unemployment.

With these national and global developments, there has been a very basic paradigm shift in the field of employment, especially with regard to the protection of workers' basic rights, so that the new paradigm that forms the basis for the development of labor politics is the right to associate and workers' human rights, democratization of trade unions, and expansion of the workforce. employment opportunities while still taking into account the gender aspect of workers. Expansion of job opportunities is not possible to rely solely on existing job opportunities in the country. We have to fight hard to be able to fill job opportunities abroad, especially in the formal sector by sending skilled workers. In order to achieve this wish, The main obstacle faced is the low quality of Indonesian workforce from a technical point of view and mastery of foreign languages, especially English. In this case, we must acknowledge the weakness of our competitiveness with neighboring countries which are also sending workers abroad, such as the Philippines.

Improving the quality of the workforce is not an easy job, it is closely related to the level and our education system in general. Therefore, improving the quality of Indonesian people requires systematic, sustainable efforts and needs to take a long time. Realizing this, the main market that can be filled by Indonesian workers is the informal sector and certain formal sectors that do not require high skills. Especially for the informal sector, especially housemaids, the obstacles faced are related to protection. Therefore, the government's attention at this time is maximum efforts to provide protection for TKI who work in the informal sector.

Until now, the government still believes that it will not stop TKI in the informal sector, with a note that maximum efforts are needed to provide protection. The consideration for continuing the delivery is that the existing job opportunities in the country are very inadequate. By terminating the informal sector TKI, the result will be much worse than still sending them. Official termination will not reduce their interest in working abroad, and they will take all means, including illegal ones. Therefore, it is necessary to create more jobs/employment opportunities.

To create employment opportunities in the country, various breakthroughs need to be developed, such as the development and guidance of independent businesses, small and non-formal businesses, especially in the agricultural sector, special attention and incentives need to be given, such as access to credit, marketing, and technical guidance. If worked on conceptually and systematically, this effort will create quite large job opportunities, "on to" from the job

opportunities created as a result of macroeconomic growth. In addition, with the success of the agricultural sector, the labor force will remain in the village, thereby reducing the rate of urbanization.

Seen naturally, workers as human beings with all their dignity need to receive protection of their basic rights as stipulated through various ILO conventions or also called "core conventions" which basically regulate fundamental rights. These basic rights have been agreed upon by the international community and must be respected and implemented, including the right to associate. The experience of other countries that are more developed than Indonesia shows that freedom of association for workers will ensure the achievement of social justice. Therefore, the ILO is very interested in the implementation of the right of association, which is one of the basic rights contained in the United Nations Declaration on Human Rights in 1948. Since its establishment in 1919 until 2005 or over 86 years, the ILO has formulated more than 180 conventions, and recommendations with a larger number. Conventions were initially only binding on member countries if the convention was ratified by the country concerned. By ratifying a convention, it means that the country is bound to implement the relevant convention. In 1995 with the results of the High-Level Meeting on Social Development in Copenhagen, there was an obligation for each member state to implement conventions categorized as conventions on basic workers' rights.

Several conventions which are categorized as basic workers' rights are also recognized as protection of human rights which have been ratified by Indonesia as many as 9 conventions. If examined more deeply, there are indeed similarities or differences between the alignment of several points of human rights contained in the United Nations Universal Declaration of Human Rights in 1948. Among the nine conventions are:

1. With regard to forced labour, it consists of 2 conventions, namely:
 - a. Convention No. 29 of 1930 concerning Forced Labor, ratified by Ned.Stbl. Number 26 of 1933.
 - b. Convention Number 105 of 1957 concerning the Abolition of Forced Labor, ratified by Law Number 19 of 1999.
2. Regarding freedom of association, there are 2 conventions, namely:
 - a. Convention Number 8 of 1948 concerning the Right to Association and the Protection of the Right to Organize (Freedom of Association and Protection of the Right to Organise), ratified by Presidential Decree No. 83 of 1998.
 - b. Convention No. 98/1949 concerning Right to Organize, and Collective Bargaining was ratified by Law No. 18/1956.
3. Regarding discrimination, there are 2 conventions, namely:
 - a. Convention Number 100 of 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified by Law Number 80 of 1957.
 - b. Convention No. 111 of 1958 concerning Discrimination in Respect of

- Employment and Occupation, ratified by Law No. 21 of 1999.
4. Regarding child labor, there are 2 conventions, namely:
 - a. Convention Number 138 of 1973 concerning Minimum Age for Admission to Employment which was ratified by Law Number 20 of 1999.
 - b. Convention Number 182 of 1999 concerning The Worst Forms of Child Labor, which was ratified by Law Number 1 of 2000.
 5. Those relating to labor inspection are:
 - a. Convention No. 81/1999 on Labor Inspection of industrial and trade, which was ratified by Law No. 21/2004.

The implementation of the ILO convention is not only binding on member countries that have ratified it, but also other member countries that have not ratified it, however, to strengthen a convention in a country usually requires an institution of ratification (ratification) by the state if you want to be bound by an international treaty, then every country is obliged to ratify to become national legislation as positive law, even though the country concerned is given the freedom to determine when to ratify,²⁰ however, all of these conventions have been ratified by Indonesia and to ensure the implementation of these conventions, various laws and regulations are currently being drafted as rules for implementing these conventions.

The ratification of the entire convention on basic rights is a protection carried out by the Government of Indonesia in implementing its commitment to consistently implement workers' human rights. The commitment is basically is a guarantee of protection for the employees to be free from forced labor, guarantees of the right to association, guarantees against the elimination of discrimination including gender respect and protection of children. To achieve the manpower development, it is necessary to do it in stages, namely the reform of labor law which is currently in the process.

A. Closing

Global developments have influenced the occurrence of a very basic paradigm shift in the field of employment, especially with regard to the protection of workers' basic rights, so that the new paradigm that forms the basis for the development of labor politics is the right of association and workers' human rights, democratization of trade unions, and the expansion of job opportunities by keep in mind the gender aspect of workers. Workers as human beings with all their dignity need to get basic rights. The protection of these basic rights has been established through various ILO conventions which basically regulate fundamental rights and have been agreed upon by the international community that must be respected and implemented. Therefore, with the ratification of the entire convention on basic rights, the Government of Indonesia has committed to consistently upholding the

²⁰ Edy Suryono, *Praktik Ratifikasi Perjanjian Internasional di Indonesia*, Remadja Karya, Bandung, 1988, hlm. 4.

rights of workers.

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