

Chapter 25

Labour law and practice in post-Soeharto Indonesia

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Only in growth, reform, and change,
paradoxically enough, is true security to be found.

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Indonesian labour law is undergoing an unprecedented upheaval. By virtue of a number of factors, including an economic crisis and subsequent political reforms, Indonesia has now repealed the bulk of its labour-related legislation and is in the process of replacing it with labour laws that are underpinned by markedly different principles of labour regulation. In 2000, Indonesia became the first Asian nation to ratify all eight of the International Labour Organization (ILO)'s Fundamental Conventions,² and many reforms to its labour laws have sought to implement international labour standards. Most notably, Indonesia has completed an 'about turn' on freedom of association, transforming itself from a state criticised for brutally suppressing organised labour to one accommodative of a mushrooming independent union movement. Other legislative reforms have sought to modernise the employment relationship and the settlement of industrial disputes.

Given how recently these changes have taken place, there is very little literature on them. There is, however, much written on the 'gap' between Indonesian labour law on paper and in practice (see, for example, Lindsey and Masduki, 2002). It certainly cannot be doubted that such a gulf exists and that there is often a disconnect between law and other Indonesian social systems such as the state and the market.³ This is because Indonesian labour law, like labour law throughout Asia, has not yet attained a high degree of 'self-reference' (Cooney and Mitchell, 2002: 252). In other words, there is not yet an established labour law system that consistently and comprehensively guides its stakeholders, thus exposing Indonesian labour law to outside influences from cultural, historical, economic and political forces. We should

1 The author would like to express his thanks to all those who assisted in the development of his understanding of labour law and relations in Indonesia – in particular Tim Lindsey, Richard Mitchell and the team at ILO Jakarta. All views expressed in this chapter are, of course, my own.

2 There are two Conventions on each of Freedom of Association, Forced Labour, Child Labour and Discrimination. Cooney et al point out that Indonesia, like every East Asian state, has ratified more ILO Conventions than the United States (Cooney et al, 2002: 4-9). The impact of international standards on Indonesia's domestic labour law will be addressed below.

3 For a theoretical overview of the relationship between law and other social systems, see generally Teubner (1987).

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employed in the formal sector will enjoy better wages, most of which they will spend on their families and less fortunate workers in the informal sector. This is the choice that currently lies before Indonesian policy-makers. The most important thing is that the choice be made after consultation with all stakeholders and with a coordinated approach by all relevant institutions. This will necessarily entail specifying guidelines for cooperation between the central government, provincial governments and district/municipal governments. It is hoped these guidelines will acknowledge that the central government is in the best position to conduct economic analyses, while the lower-level governments are more capable of understanding the micro-level environment in which their employers and workers pay and receive minimum wages respectively.

Conclusion

This chapter has looked at the various contexts in which Indonesian labour law has been produced and practiced. An examination of Indonesian culture and history in relation to labour law has revealed that a variety of forces have different, and in some cases contradictory, influences on labour law. Indonesian labour law is also influenced by the range of economic and political challenges confronting Indonesia, including its large labour surplus; the majority of its workforce being engaged in informal work arrangements; integration into free trade zones; fiscal and political deregulation from the centre to the regions; violent and illegal intervention in industrial relations; political reshuffling as a result of the *reformasi* process; and judicial corruption.

Amid all of this, Indonesia has enacted three Laws covering trade unions, the employment relationship and the settlement of industrial disputes. A significant amount of implementing regulations is still being created pursuant to these Laws, and further reform is likely on related issues such as social security, migrant labour and human trafficking. Government policy on issues such as minimum wages is likely to remain a highly contentious topic. Indonesia's cultural, historical, economic and political landscape will continue to play a role in shaping the content of all of these laws, determining how they are practiced and influencing how this bears upon the lives of Indonesian workers, employers, government and society at large.

The process of legislative reform on the core labour law issues in Indonesia is virtually over. A recent Minister of Labour has stated, however, that he believes there will not be an established practice of labour law in Indonesia for another ten to 15 years (Nuwa Wea, cited in Sijabat, 2003). There are likely to be further legislative changes within this time, but for now the greatest challenge for employers and workers is to become accustomed to the new Laws and establish the most effective strategies to further their respective interests within the new systems. For government, the task is to ensure competing interests are dealt with in a way that improves the quality of life of all Indonesians. For all stakeholders, the progress made on labour law in the years since the end of Soeharto's reign warrants a degree of praise, some cautious optimism, and a good dose of patience. In Churchill's famous words, this is only, perhaps, the end of the beginning.

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