

The Making of a New Social Contract: Labor Law in Indonesia after *Reformasi**

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Abstract

This paper discusses the development of labor law in Indonesia after the 1998 *reformasi*. The end of the authoritarian regime and the subsequent introduction of democratic institutions in the country have opened up new spaces to restructure labor relations. The government promulgated a set of new labor laws that has brought tremendous changes to the employment system and the system of labor disputes settlement. In the face of the challenges these changes have created, labor unions are using alternative means to defend their members' interests. This paper shows how labor law reform has set a new social contract between the government, employer associations, and the labor movement.

Key Words: labor law reform, Reformasi, Indonesia, institutional change, Constitutional Court, minimum wage

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For many developing countries in Asia, formulating a national economic policy, including policies around the domestic labor market, is key to reaching development targets. Such a policy is often designed according to industrial and macro-economic preferences, with the general idea to integrate resources, including labor, for an economic development that is believed will bring welfare for the nation's entire population. In practical terms, it involves how the working population is utilized and later regulated to run the nation's economy. However, as most of these countries are still struggling to overcome a number of institutional problems in policy formulation, the road to transform the national economy is not smooth. Indonesia is a case in point (Dhanani et al. 2010).

This article discusses the changes in labor laws after the 1998 *reformasi* in Indonesia as a process of integrating and regulating labor within the nation's economic program. These changes are part of the nation's attempt to reform all of its legal institutions to address the chronic problems of corruption and cronyism, and to cut down its notorious time-consuming and expensive legal procedures (Gray 1991) under a general program of "good governance." They were also an attempt to respond to the demand of the market forces to integrate Indonesia into the global economy. Specifically in terms of labor law, these changes included a re-arrangement of institutions that neutralized the labor movement and ensured a business-friendly environment.

The pattern of change that took place in Indonesia is not an unusual one; it can be observed in other developing countries in Asia (and in other regions, as well) where there is a need to reform labor law

and its “outdated” institutions to obtain some fresh features of “transparency” in the legal system (Gallagher and Dong 2011; Mitchell et al. 2014; Tekle 2010). At the same time, there is also a political pressure to make post-war labor law more responsive to the liberalization of the market economy (Carse and Njoya 2015; Novick et al. 2009). In that sense, labor law after *reformasi* 1998 was transformed not merely to install some elements of “good governance,” but also, and primarily, to answer the economic challenges that Indonesia began—and continues to—face in the globalized market. Davies and Feedland (2007: 5) sum up the pattern of reform this way:

“...labour law began to move out of the zone of ‘social law’ and worker protection, and became part of a larger and rather different vision of labour market regulation in the interests of a free market economy.”

As has also been observed in other countries, these changes to labor law are not only considered to be addressing contemporary economic challenges, but are also used to rationalize the state and its apparatus to uphold certain values under “democracy promotion”¹⁾ and to provide the state with necessary legal foundations to regulate the economy—including, to restrain labor—within the rhetoric of the “rule of law” (Teitelbaum 2011). Initially, Indonesian unions, similar to labor movements in post-authoritarian societies elsewhere, welcomed the democratic opening of the *reformasi*. As these legal

1) For general discussion on “democracy promotion,” see Murphy (2012); Sukma (2011).

changes unfolded, however, unions started to question the reform's liberal trajectories and market oriented agendas. Therefore, this paper argues that the changing nature of labor law after the 1998 *reformasi* needs to be seen as a negotiation (albeit, an unequal one) between the state and its working population for a new social contract. This new social contract operates under a liberal conception of law, which exists, to quote Klare (1982: 65), "to promote an ideology and evolve a set of institutions that legitimate and reinforce socially unnecessary hierarchy in the workplace."

This article starts with a description of the institutional changes around labor that began a few months after the *reformasi* 1998 and continued until 2006 under a program known as "Labor Law Reform." The program brought tremendous changes in how labor, and labor relations, are regulated, managed, and controlled. These changes, as noted in previous studies (Lindsey and Masduki 2002; Tjandra 2003; Isaac and Silalaksmi 2008), are not without problems. This article sees these problems as part of the process of negotiating how new legal institutions are introduced, perceived and implemented in a newly democratizing Indonesia. It deals with the state's capacity to govern labor and at the same time, respond to the contemporary needs of the market (Breining-Kaufmann 2007; Vranken 2009). It then discusses how the labor movement has been resisting these changes from both within and outside of formal institutions, with limited success. Unions are forced to develop strategies in facing the uncontrollable forces of globalisation that are not economically friendly to their collective power. Meanwhile, as the negotiation over new laws gradually comes to be considered finalized, a new social

contract, which is legally binding, emerges; new institutions are starting to operate and are slowly taking shape to manage labor relations.

Institutional re-arrangement: 1998-2006

Once considered by the World Bank as an example of the “East Asian Miracle,” Indonesia’s New Order began to crumble with the 1997 Asian economic crisis. The economic growth rate plummeted, bringing down the government with it. In September 1998, just three months after the resignation of the authoritarian president Suharto, the Ministry of Manpower adopted Labor Law Reform as its formal working agenda. Fahmi Idris, the then Minister of Manpower in the Habibie interregnum cabinet, signed a technical assistance agreement with the International Labour Organization (ILO) soon after an ILO Direct Contact Mission to Indonesia in August 1998. The technical assistance was for a “review, revision, formulation or reformulation of practically all labor legislation with a view to modernizing and making them more relevant to and in step with the changing times and requirements of a free market economy...” (ILO 1999:19).

With the ILO’s technical assistance, Indonesia’s new government quickly ratified five main ILO conventions and by 2000, the country had become the first in Asia to ratify all eight fundamental ILO conventions (see Table 1). It was seen as an accomplishment and was soon followed by a bigger assistance project financed by the United States Department of Labor.²⁾ The ILO/USA Declaration Project

Indonesia lasted for almost 5 years (February 2001-December 2006) and can be viewed as an endeavor to “transplant” laws (Watson 1996) or to advance the “legal culture” of human rights principles from developed (Western) nations to a developing one. The project has, indeed, introduced progressive concepts and institutions whose purpose is to protect workers’ rights in Indonesia. However, as a technical assistance project, it has had limited impacts on the drafting and formulation of domestic laws. Furthermore, the institutionalization of human rights principles and workers’ rights as the ILO conventions define them may be seen as part of what Cook (1998) calls a “democratic round.” The ratification of the ILO conventions and introduction of Western concepts and institutions constituted the first phase of the Labor Law Reform.

Table 1. List of ILO fundamental conventions ratified by Indonesia

	ILO convention	Date of ratification
1	Convention no. 29 on Forced Labour	March 31, 1933
2	Convention no. 98 on The Right to Organize and Collective Bargaining	August 29, 1956
3	Convention no. 100 on Equal Remuneration	December 19, 1957
4	Convention no. 87 on Freedom of Association	June 9, 1998
5	Convention no. 105 on Abolition of Forced Labour	May 7, 1999
6	Convention no. 138 on Minimum Age	May 7, 1999
7	Convention no. 111 on Discrimination	May 7, 1999
8	Convention no. 182 on the elimination of Worst Forms of Child Labour	May 8, 2000

- 2) The multi-purpose project was implemented in Phase 1 (2001-2002) and Phase 2 (2003-2006) through pilot projects in major industrial cities in Jakarta, West Java, East Java, North Sumatra, Riau, Banten, and East Kalimantan. Its diverse agendas included a number of trainings and workshops for government officials, trade union officials, and employers, as well as an 18-month initiative of “promoting and realizing ILO’s fundamental principles and rights at work” to the Indonesian national police.

After the ratification of the ILO conventions, the Indonesian government drafted three new labor bills, on trade unions (Law no. 21 Year 2000), on manpower and industrial relations (Law no. 13 Year 2003), and on labor dispute settlement (Law no. 2 Year 2004). The creation of domestic legislation constituted the second phase of the Labor Law Reform. There is no clear evidence as to why the reform included these three different laws as they were, but they were certainly formulated in order to substantially replace previous legislation that protected labor, especially Law no. 12 Year 1948, Law no. 22 Year 1957, and Law no. 14 Year 1969. Notwithstanding the controversial nature of the drafting process and promulgation of these laws, there are serious concerns about their content as well.

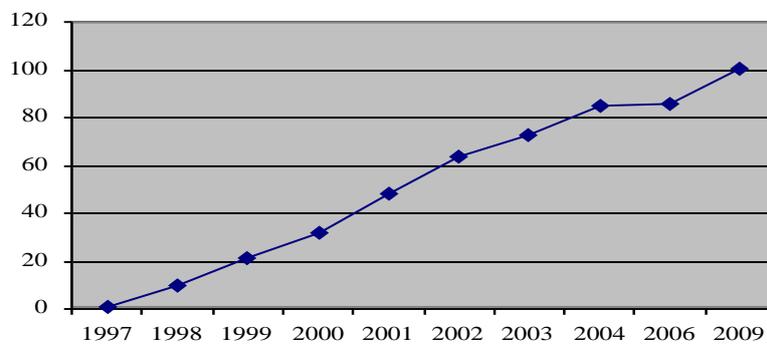
Law no. 21 Year 2000 encourages and protects the freedom of association of workers, allowing them to form and join unions of their own choice. As such, it has given rise to multiple unions in contemporary Indonesia. The number of unions listed with the Department of Manpower jumped from one monopolistic union in 1997 to 30 federations comprised of multiple unions in 2000 and 100 federations by 2009 (see Table 2).³⁾ The Law also obligates employers to grant union officials and members leave from their work obligations to perform union activities (Article 29).⁴⁾ Moreover, as prescribed in Articles 28 and 43, it prohibits employers to obstruct

3) By 2005, 11,464 factory-level unions were registered; they were mostly affiliated with one of the three largest confederations: Konfederasi Serikat Pekerja Seluruh Indonesia (KSPSI), Konfederasi Serikat Pekerja Indonesia (KSPI), and Konfederasi Serikat Buruh Sejahtera Indonesia (KSBSI).

4) Article 29 (1) states that an employer must provide opportunities for officials and members of a trade union to carry out trade union activities during working hours that are agreed upon by both parties and or arranged in a collective labor agreement.

union activities by means of dismissal, suspension, reduction of wages, intimidation, and campaigning against the formation of a union, and also contains a criminal penalty of up to five years imprisonment and/or a 500 million Rupiah fine for such violations.⁵⁾ In this regard, all these provisions of the laws are in accordance with the ratified ILO conventions to guarantee workers' basic rights to organize. The provisions create a more democratic environment for unions to foster and develop, while at the same time make employers aware of their legal obligations. By passing these laws, the interregnum government succeeded in building an image of itself as committed to democratic ideals and supportive of legal reform, wholly different from the former authoritarian regime.

Table 2. Increasing number of registered union federations



Meanwhile, Law no. 13 Year 2003 confirms the basic legal

5) Article 28 prohibits anyone from preventing or forcing a worker from forming or not forming a trade union, becoming or not becoming a union official, becoming or not becoming a union member, and or carrying out or not carrying out trade union activities.

framework for workers' rights within an extensive range of issues, such as wages, working hours, occupational health and safety, and child labor. It declares the basic workweek as forty hours long, with overtime wages to be paid for work in excess of it, and regulates rest time and holiday leave (Articles 77 and 79).⁶⁾ It prohibits child labor, defined as any employment of any person under thirteen years of age and the employment in dangerous or full-time work of any person under eighteen years of age (Articles 69 and 74).⁷⁾ These provisions are also in accordance with the ratified ILO conventions to eliminate the worst forms of child labor and protect workers' rights to rest.

In addition to protective provisions similar to the previous law (Law no. 12 Year 1948),⁸⁾ Law no. 13 Year 2003 legalizes contract-based employment relations and introduces the outsourcing system. Accordingly, employers are permitted to employ workers on a contract basis with a specified term of up to two years that is renewable for another term of up to one year (Articles 57, 58, and 59).⁹⁾ It also allows firms, in certain industries, to hand over

6) Article 77 states that any employer is under obligation to observe the regulation on working hours. Working hours are arranged as follows: 7 hours per day and 40 hours per week for 6 working days in a week, or 8 hours per day and 40 hours per week for 5 working days in a week. Article 79 states that any employer is under obligation to allow its workers to take a rest and leave.

7) Article 69 states that the employment of children aged between 13 years old and 15 years old for light work shall be permitted as long as the job does not stunt or disrupt their physical, mental, and social development. Article 74 states that it is forbidden to employ and involve children in the worst forms of child labor.

8) It is worthy to note that in certain areas (such as working hours, occupational health and safety, and child labor), Law no. 12 Year 1948 also provides the same protective provisions as Law no.13 Year 2003.

9) Article 57 states that a work agreement for a specified period of time shall be made in writing and must be written in the Indonesian language with Latin alphabets. Article

“auxiliary activities” to other firms, under outsourcing practices (Articles 64, 65, and 66).¹⁰⁾ Although contract-based employment relations and outsourcing were not new in Indonesia prior to 1998, these provisions are controversial because they legalize, instead of prohibit, the spread of an atypical—and less regulated/regulatable—labor system in the formal sector. Notwithstanding this issue, these provisions were, and are, deemed necessary in order to make the labor market “more flexible,” which in turn will “solve manpower issues” and “create economic growth that produces employment” (Ikhsan 2004).

As the final piece of the Labor Law Reform, Law no. 2 Year 2004 on Industrial Dispute Settlement establishes a new system of formal judiciary courts, known as Pengadilan Perselisihan Hubungan Industrial (PPHI or Industrial Dispute Court). By abolishing the existing Panitia Penyelesaian Perselisihan Perburuhan (P4D/P or Labor Dispute Settlement Committees), which operated under Law no. 22 Year 1957, the new law tasks the Industrial Dispute Court with examining and settling all labor disputes regardless of the nature of the dispute’s origins. Unlike the P4D/P system that operated on an informal set of procedures, the Industrial Dispute Court is established as part of the Pengadilan Negeri (District Civil Court) and

59 (4) states that a work agreement for a specified period of time can be made for a period of no longer than 2 years and can only be extended once for one period no longer than 1 year.

10) Article 64 states that an enterprise may sub-contract part of its work to another enterprise under a written agreement of contract of work or a contract to supply labor. Article 66 (1) states that workers from a labor supplier must not be employed to carry out the enterprise’s main activities or activities that are directly related to the production process, with the exception of auxiliary service activities or activities that are indirectly related to the production process.

is staffed by judges (with a composition of one career judge and two ad-hoc judges, respectively representing labor and employer associations).¹¹⁾ Accordingly, its litigation procedure is based on formal civil procedures (with slight modifications),¹²⁾ which positions individual workers as common laypersons who need legal assistance from lawyers or experienced paralegals. Thus, under this new dispute settlement system, workers are forced to seek legal expertise that many unions are still lacking.

The new system also promotes the individualization of labor relations by granting access to any individual worker to bring a case to the court without having to be represented by a labor union. This is contrary to the previous dispute settlement system under P4D/P, which acknowledged the organizational standing of the union to represent and defend individual workers. Therefore, the new system undermined the ability of labor unions to defend the collective interests of workers just as they were beginning to develop institutional capacities in the post-1998 environment.

On paper, the legal frameworks and institutions established by both

11) Article 1 (17) states that an Industrial Relations Court is a special court established within the aegis of the District Court that has the authority to review, bring to court and provide a verdict concerning an industrial relations dispute. Article 63(1) states that ad-hoc judges in the Industrial Relations Court are appointed with a Presidential Decree upon proposal of the Head of the Supreme Court. Article 63 (2) states that the nomination of ad-hoc judges is proposed by the Head of the Supreme Court from the names approved by the Minister of Manpower upon proposal of the trade unions and employer's association.

12) Article 57 states that prevailing legal proceeding in the Industrial Relations Court is based on the Civil Law proceeding as prevails at the General Court, unless otherwise regulated. Article 58 states that the parties in the legal proceeding are not charged with any cost for the trial process at the Industrial Relations Court, including the execution cost which value of suit is below 150 million rupiahs.

Law no. 13 Year 2003 and Law no. 2 Year 2004 seem progressive and coherent with an agenda of protecting labor rights. They are designed to guarantee the basic rights and freedom of workers within a democratic environment that the government seeks to cultivate. They are also created to establish legal foundations that enable Indonesia's working population to compete in the regional and global economies. However, while such an analysis of the letter and structure of the laws contains some valid points, it fails to evaluate several crucial aspects of the laws regarding their formulation, content, and impacts on labor—the sector these laws precisely wish to govern.

The labor movement has raised concerns about the formulation of these laws, despite the participation of some unions in some of the consultation sessions organized by the government and the chair of the parliamentary commission on labor issues. The main concern is that labor's voices were not heard or taken into consideration during the drafting process of these laws.¹³⁾ Even when some labor leaders attended meetings, their participation was merely used to justify provisions they were not aware or informed of earlier. The formulation process therefore clearly puts into question the representation and legitimacy of the laws.

In terms of the content of the laws, a number of economic analyses, notwithstanding their neo-classical background,¹⁴⁾ have pointed out contradictions in the assumptions that Law no. 13 Year 2003 makes

13) There was no debate in the Parliament when the laws were promulgated. Most of the changes were related to specific wording and technicalities of the bills.

14) Mishra (2004) notes that the "combination of market liberalization and the minimalist state which lies at the heart of traditional neo-classical economic thinking, although already under attack by mainstream economists, still dominates professional thinking on economic affairs in Indonesia today."

about the labor market (Manning 2004; Manning and Roesad 2007). For example, the provisions on hiring and firing of workers are considered biased toward formal employment, thus ignoring the vast majority of Indonesia's working population in the informal sector and creating legal barriers for low paid workers and the unemployed. Formal sector-workers are "overly protected" and it makes a "rigid" labor market in Indonesia to create employment for all.¹⁵⁾

Response of the labor movement: Negotiating the changes

Although the labor movement celebrated Indonesia's ratification of ILO conventions, it continues to oppose the Labor Law Reform on specific grounds. As mentioned earlier, the labor movement questions the representation and legitimacy of the formulation of the laws. Since the very beginning of the Labor Law Reform, unions were not involved in the drafting process. The labor movement has therefore been actively opposing the laws, especially Law no. 13 Year 2003 and Law no. 2 Year 2004.

Foreseeing the negative impacts of Law no. 13 Year 2003 to workers, the labor movement has consistently voiced its opposition of the law since its initial drafting. It staged a number of protests and eventually organized a massive demonstration on September 23, 2002, when the Parliament was scheduled to approve the bill (see

15) Interestingly, prior to the 1997 Asian economic crisis, World Bank made similar assessment (see *Jakarta Post*, April 4, 1996).

Kompas, September 24, 2002). The democratic opening of that time provided the unions with enough space to intervene and demand legal participation in the drafting of the law-an opportunity that unions never had during the New Order regime's "Pancasila industrial relations."¹⁶⁾ The social pressure of the demonstration by the labor movement was so strong that the enactment of the bill was postponed.¹⁷⁾ As such, labor's demand to be involved in the drafting process of the law was acknowledged not due to its legal standing, but rather its social power. After the 2002 demonstration, some union leaders were informally invited to be involved in the drafting process of the bill as a means to obtain their consent and support.

The enactment of the law in 2003 did not, however, settle the issues of representation and legitimacy. Despite the involvement of some union leaders in the drafting process, the content of the law poses institutional threats to the labor movement and has the potential to endanger labor's collective power. The main objection to the law is its provisions on contract and outsourcing practices (Articles 50-66). Unions find that the law leaves them with no practical means of addressing the widespread casualization of employment at the factory level. In addition, unions found it difficult to accept provisions in the law on dismissals and severance payment (Articles 150-172), which do not provide adequate legal protection for their members, especially in cases of unjust dismissal by employers.

16) For discussion on "Pancasila industrial relations", see: Hadiz (1997); Ford (1999).

17) The last time the parliament was forced to postpone the enactment of a bill happened more than two decades ago in 1974 regarding the Marriage Law. Thus, it was such a rare experience that a social group could pose a strong pressure, and considered as a political threat, against the parliament to enact a bill.

It was thus not a surprise when, upon the law's promulgation on March 25, 2003, a number of union leaders collectively requested for a judicial review to the Constitutional Court, regarding provisions of the law that they considered unconstitutional. Their challenge was partially accepted, setting a precedent and providing some level of encouragement for others to follow. Since then (until 2016), union activists and various local unions, although not in a coordinated manner, have submitted at least thirteen requests for judicial review regarding various provisions in the law. Nine of them were accepted, resulting in the annulment or adjustment of some articles of the law (see Table 3). It is interesting to note that there are more judicial review submissions on Law no. 13 Year 2003 than on any other laws in Indonesia.¹⁸⁾

Table 3. List of Constitutional Court decisions on Law no. 13 Year 2003

	Constitutional Court Cases	Decision
1.	Case no. 12/PUU-I/ 2003 (October 28, 2004), regarding Articles 64-66, 106, 119-121, 137-145, 158-159, 170-171, 186. Submitted by Saepul Tavip (Asosiasi Serikat Pekerja Indonesia), Hikayat Atika Karwa (Federasi SP Logam, Elektronik dan Mesin SPSI), Ilhamsyah (Front Nasional Perjuangan Buruh Indonesia), et. al.	Partially accepted: Articles 158 and 159 on the employer's right to layoff; Articles 170-171 on the procedure of lay-off related to Article 158; Article 186 on legal sanction of a strike are given limited interpretation.
2.	Case no. 115/PUU-VII/ 2009 (November 10, 2010), regarding Articles 120-121. Submitted by Ronald Ebenhard Pattiasina and Puji Rahmat (Serikat Pekerja BCA Bersatu)	Partially accepted: Article 120 on union's right to collective bargaining is modified.

18) As of 2015, the employers' association (APINDO) has submitted two requests for judicial review on Law no. 13 Year 2003: case no. 96/PUU-XI/2013 (May 7, 2014) submitted by National-level APINDO, and case no.11/PUU-XII/2014 (March 19, 2015) submitted by APINDO of East Java. Both requests were dismissed.

3.	Case no. 61/PUU-VIII/2010 (November 14, 2011), regarding Articles 88, 90, 160 (3), 162 (1), 171. Submitted by M. Komarudin and Muhammad Hafidz (Federasi Ikatan Serikat Buruh Indonesia)	Dismissed
4.	Case no. 19/PUU-IX/2011 (June 20, 2012), regarding Articles 150-172 (especially Article 164) Submitted by Asep Ruhiyat, Suhesti Dianingsih, Bambang Mardiyanto, et. al.	Partially accepted: Article 164 on factory closure is given limited interpretation.
5.	Case no. 27/PUU-IX/2011 (January 17, 2012), regarding Articles 59, 64-66. Submitted by Didik Suprijadi (Aliansi Petugas Pembaca Meter Listrik Indonesia)	Partially accepted: Articles 65 and 66 on fixed-term contracts are given new interpretation.
6.	Case no. 37/PUU-IX/2011 (September 19, 2011), regarding Article 155. Submitted by Ugan Gandar and Eko Wahyu (Federasi Serikat Pekerja Pertamina Bersatu).	Accepted: Article 155 on the phrase “yet determined” is given new interpretation.
7.	Case no. 58/PUU-IX/2011 (July 16, 2012), regarding Article 169. Submitted by Andriyani (workers of PT Megahbuana Citramasindo)	Accepted: Article 169 on dispute settlement is given new interpretation.
8.	Case no. 100/PUU-X/2012 (September 19, 2013), regarding Article 96. Submitted by Marten Boiliu (former security guard of PT Sandhy Putra Makmur)	Accepted: Article 96 on worker’s right to claim unpaid wages is annulled.
9.	Case no. 117/PUU-X/2012 (October 31, 2013), regarding Article 163 on worker’s rights under a company merger. Submitted by Dunung Wijanarko and Wawan Adi Dwi Yanto (workers of PT. ABB Transmission & Distribution)	Dismissed
10.	Case no. 67/PUU-XII/2013 (September 11, 2014), regarding Article 95 (4). Submitted by Otto Geo Diwara Purba, Syamsul Bahri, Eiman, et al. (workers of PT Pertamina)	Partially accepted: Article 95 (4) on preferential rights of workers during a company bankruptcy is given limited interpretation.
11.	Case no. 69/PUU-XI/2013 (May 7, 2014), regarding Article 160 (3) on worker’s rights during	Dismissed

	a criminal investigation by the police. Submitted by Jazuli and Anam Supriyanto (Federasi Serikat Pekerja Metal Indonesia, Pasuruan)	
12.	Case no. 7/PUU-XII/ 2014 (November 4, 2015) regarding Article 59 (7). Submitted by M. Komarudin (Federasi Ikatan Serikat Buruh Indonesia), Agus Humaedi Abdilah (Federasi Serikat Pekerja Singaperbangsa), Wahidin (Persaudaraan Pekerja Muslim Indonesia, Karawang) et al.	Accepted: Article 59 (7) on the phrase “bylaws” is given limited interpretation.
13	Case no. 8/PUU-XIV/ 2016 (September 7, 2016) regarding Article 88 (4). Submitted by Aliansi Buruh Tanpa Nama, representing 123 workers.	Dismissed

Source: compiled from the decisions of Constitutional Court
(<http://www.mahkamahkonstitusi.go.id/index.php?page=web.Putusan&id=1&kat=1&menu=5>)

Although winning these legal battles provides some pathway for unions to demand a change, the labor movement is still far from concluding the war against the widespread casualization of employment. Since 2003, contract and outsourcing practices have become the norm in employment relationships in Indonesia, instead of the exception, as prescribed in the law. Across various sectors, unions have been reporting similar accounts of companies gradually replacing union members, the permanent workers, with less protected and contract-based ones. Many factory workers now are only offered short-term jobs for less than six months (in some cases for just three-months), with continuous renewals (or extensions, depending on the company’s rules) for more than two years—contrary to the provision of the law. Obviously, this is an issue of proper enforcement of the law. This gap between the law on the books and the law in

action is caused on the one hand by the general tendency among employers to evade the law and on the other hand, the institutional weakness of the government's labor inspectors.¹⁹⁾ Although the labor movement had raised concerns that the law would lead to an increase in contract-based jobs and outsourcing, it was enacted before sufficient enforcement system were in place. In practice, then, under the new law, workers receive less protection. Most jobs now do not offer full protection as required by the ILO conventions, and workers have little options in the labor market. Worse, to avoid being unemployed, workers are forced to take jobs that pay below the minimum wage, and they have to take overtime works to sustain a decent life. For unions, therefore, the term "labor market flexibility" —where hiring and firing are made legally efficient for firms— is the equivalent of a loss of employment security and the complete opposite to the ideal of creating employment for all.

Meanwhile, as noted earlier, unions argue that Law no. 2 Year 2004 on labor dispute settlement (which came into effect on January 14, 2006) promotes the individualisation of labor relations. While the avenues for workers to advocate for collective interests are neutralized, individual settlement between management and a worker is fostered. Although individual workers may hypothetically use the court system (and are encouraged to do so), it is difficult for s/he

19) Union leaders have complained that most of the reports by the Directorate General of Labour Inspectorate on company infringements or violations at the factory level simply remain on paper without any further follow-up. They also note that workers doubt the credibility and ability of some regional labor inspectors to do their job, as they are not fully aware of their specified responsibilities and in their ignorance, tend to "exploit the case" (to extort money from the employers to be on their side), instead of investigate it properly.

to have an equal footing in defending his/her interests alone before the Industrial Dispute Court without being backed up by a union's organizational power.²⁰⁾ Although the system has proven to reach decisions quickly and in time (see Caraway 2010), many workers find its formal civil procedure, which forces them to be represented by a lawyer or someone with practical legal experiences, as inaccessible and inexplicable. This situation, which creates dependency on legal professionals and comprises the empowerment of workers, may be seen as part of the consequences of the judicialization of labor dispute settlement (Hurst 2014a). Unions have also raised concerns about the credibility of the court, a chronic problem in Indonesia's judicial system.²¹⁾ Workers' low expectations and distrust of the judicial system lead them to seek alternative means to settle disputes outside the court—means that allow them to more effectively use their collective power.

It is interesting to note that the labor movement does not submit any request for a judicial review on Law no. 2 Year 2004. Unions must have calculated that it would be a futile effort. As of 2015, two requests for judicial review on Law no. 2 Year 2004 have been submitted by Mr. Agus, a corporate lawyer, and they were dismissed (see Table 4).

20) A number of ad-hoc judges of the court have critically noted their concerns regarding the court process. See Tjandra (2009).

21) In late June 2011 and mid-September 2013, respectively, the Komisi Pemberantasan Korupsi (KPK, Anti-Corruption Agency) investigated and detained one ad-hoc judge and one court clerk from the regional Industrial Court in Bandung. These incidents have lowered workers' trust in the Industrial Court generally.

Table 4. List of Constitutional Court decisions on Law no. 2 Year 2004

	Constitutional Court Cases	Decision
1.	Case no. 99/PUU-XI/ 2013 (March 20, 2014), regarding Articles 97. Submitted by Agus (Lawyer, PT Bukit Muria Jaya company)	Dismissed
2.	Case no. 84/PUU-XII/ 2014 (November 11, 2014), regarding Articles 59(2). Submitted by Agus (Lawyer, PT Bukit Muria Jaya company)	Dismissed

Source: compiled from the decisions of Constitutional Court
(<http://www.mahkamahkonstitusi.go.id/index.php?page=web.Putusan&id=1&kat=1&menu=5>)

It is in this context that since 2006, Indonesia has experienced an intensification in union street protests that demand justice in on-going labor disputes (see Juliawan 2011). These protests take place in public spaces (on the main streets of a city, in front of government buildings, blocking the highways, and so on), demonstrating worker frustration with the conventional settlement channel under Law no. 2 Year 2004 and their need to take unconventional routes to make their voices heard and their presence visible for the public.²²⁾ In some areas, like in Bekasi - a major industrial city near Jakarta, this direct action strategy gave rise to the “grebek pabrik” (factory raid), a strategy to sanction employer’s legal infringements and/ or settle labor disputes informally (Mufakhir 2014). Factory raid combines and includes various direct actions by the union to pressure employer to comply with the law (upon their infringements) and accept union’s demands for improvements at the workplace.²³⁾ Street protest and factory raid

22) In a comparative study of Chinese workers, Lee (2007:232) notes that “(m)any incidents of workers blocking traffic, demonstration outside government buildings, or marching through downtown streets have their origins in mass outrage against official failure to redress legal and legitimate grievances.”

are the most common strategies unions use as “alternative ways” to settle disputes.²⁴⁾

These “alternative ways” offer a window on how the new institution of labor dispute settlement under Law no. 2 Year 2004 really works in the socio-political context of Indonesia. It shows that the new institution in reality reinforces social hierarchy despite its rhetoric to guarantee “equality before the law.” Unions are constrained under legal conditions that are unfavourable to their cause. Undoubtedly, this fundamental limitation has caused dissatisfaction for the labor movement when seeking justice in the court and hence, forced them to rely on non-legal strategies that are based on organisational muscle.

From here we could understand why unions why unions take the risk of using alternative ways to settle labor disputes rather than utilize the law: to attract public attention to labor conditions, the lack of government assistance to workers, and to the labor cause more broadly. A cause that, unfortunately, has been undercut in the context of globalisation that redefines—not reduces—government roles in social issues, including labor dispute settlement. Unlike under Law

23) Despite offering immediate outcomes to settle a dispute, there is a deep concern that the overuse of the factory raid as a strategy may cause disputes to be left unsettled and bring backlash against union activism. There has been a steady decrease in cases of factory raids since late 2013.

24) In this context, it is not a surprise that the labor movement shows its contempt against the Gubernatorial Regulation of Jakarta no. 228 Year 2015 (Peraturan Gubernur Provinsi Daerah Khusus Ibukota Jakarta) on the management of public expression of opinions in open spaces. The regulation restricts the location of all kinds of demonstration, including those organized by the labor movement, to three designated public areas (Article 4) only and limits when they can take place to within a specific timeframe (from 6 a.m. until 6 p.m.) (Article 5).

no. 22 Year 1957, in which government played a distinctive role in a perceived welfare state of the post-war period, Law no. 2 Year 2004 adopts the main principle of the independence of the judiciary under a “rule of law” that does not acknowledge or allow government intervention—at any cost. Hence, unions’ “alternative ways” do not merely seek to instigate government intervention for their cause, but more fundamentally, to unmask the neoliberal ideology behind the labor reform laws—an ideology that considers the invisible hand of the market as necessary for society and desires a minimalist government.

The on-going battle: Setting the minimum wage

The 1998 *reformasi* also brought a change in how the minimum wage is set. Unlike during the authoritarian regime, when the minimum wage was centrally set without any substantial participation of the labor movement, the democratic opening of *reformasi* allowed labor unions to participate in the process of setting the minimum wage through the Dewan Pengupahan (Wage Council).²⁵⁾ Given the decentralization of politics since 1999, regional and provincial-level Wage Councils have become an important institution where the minimum wage is negotiated and decided. It is in this context that unions have been concentrating their organisational energy on monitoring and intervening in the work of their local Wage Councils to annually set the minimum wage.

25) Labor representation usually comes from the three major confederations.

A number of studies have noted that although there is a considerable gender disparity in the minimum wages across the country's provinces, the nominal minimum wage has increased annually since 2005 across the country (Alatas and Cameron 2008; Bird and Manning 2008; Dhanani et al. 2010). As stipulated in Law no. 13 Year 2003 (Article 88),²⁶⁾ the minimum wage should be based on *Kebutuhan Hidup Layak* (Decent Living Needs, KHL) and also take into consideration productivity and economic growth. Union and employer representatives who sit on the Wage Councils often argue on the determinants and components of the Decent Living Needs (KHL), including where and when the survey for it is conducted. The final decision on the annual minimum wage, however, lies with the governor (or, mayor) who signs it based on the recommendation of the Wage Council. Over the years, unions have been vehemently – and publicly – pressuring this decision-making process with mass protests and demonstrations, both at the national and local levels. For the government, however, such union actions are considered a security issue that has social and political costs.²⁷⁾

Unwilling any longer to bear the costs of the unions' actions during the annual minimum wage setting, on October 23, 2015, the central government promulgated Government Regulation no. 78 Year 2015. The regulation states that the provincial minimum wage will be set

26) Article 88 (4) states that the government shall set minimum wage based on decent living needs, by taking into account productivity and economic growth.

27) To boost its comparative advantages in the regional competition, the Indonesian government has been campaigning for cheap labor and thus, the issue of workers' demonstrations may hinder the government's efforts to provide the best climate for foreign investors to consider the country as a desirable destination. Within the business community, there is indeed a fear of labor militancy.

in accordance with inflation and national economic growth rates. Since it is only the (central) government that determines both these rates (based on the report of the Central Bureau of Statistics), the regulation effectively put the role of setting the minimum wage squarely in the hands of the government, no longer relying on the Decent Living Needs (KHL) as negotiated in the Wage Councils. Unions instantly protested the Regulation and organized a national strike to force the government to revoke it. Undeterred, the government continues to stand by the Regulation, presenting the labor movement with a new challenge on the issue of setting the minimum wage. Since then, provincial governors across the country have followed the central government's position to set provincial minimum wage based on their province's inflation and economic growth rate.

Less than two months after the promulgation of the Regulation, on December 8, 2015, a unknown group of 123 workers, Aliansi Buruh Tanpa Nama (Workers' Alliance of No-Name), submitted a request to the Constitutional Court for a judicial review on Law no. 3 Year 2003, especially regarding article 88 (4) (see Table 3, no.13). It reasoned that article 88 (4) of the Law is the root cause of the Regulation, as it provides a legal basis for the government to enact the regulation to set the minimum wage. The Constitutional Court, on its decision dated September 7, 2016, dismissed the request on the ground of different interpretation.

On a different path, a coalition of 13 union-federations submitted a request to the Supreme Court for a judicial review on the Regulation, on March 31, 2017.²⁸⁾ It reasoned that the Regulation

28) The union-federations are: Konfederasi Serikat Pekerja Indonesia (KSPI), Serikat

violates a number of provisions of the Law no. 13 Year 2003 on Manpower. On its decision dated June 19, 2017, the Supreme Court dismissed the coalition's request on the ground that the Law no. 13 Year 2003 was currently under reviewed in the Constitutional Court and hence the Supreme Court did not have the authority to review the Regulation any further.²⁹⁾ With this decision, the labor movement does not have any further legal means to challenge the Regulation. They are forced to accept it, and the government has closed further talks with the labor movement on this issue.

The challenge for the movement is not simply a matter of how to force the government to revoke the controversial regulation, however. Unions must develop and strengthen organisational capacities for collective bargaining at the factory level in order to enforce the law in cases of employer non-compliance with minimum wage regulations, and, indeed, to raise the wage bar above the minimum wage.³⁰⁾

Buruh Sejahtera Indonesia (SBSI), Konfederasi Persatuan Buruh Indonesia, Federasi Serikat Pekerja Aneka Sektor Indonesia (FSPASI), Federasi Sektor Umum (FSUI), Federasi Serikat Pekerja Metal Indonesia (FSPMI), Federasi Serikat Pekerja Kimia, Energi, Pertambangan, Minyak Gas Bumi dan Umum (FSP-KEP), Federasi Serikat Pekerja Industri Semen Indonesia, Federasi Serikat Pekerja Farmasi dan Kesehatan Reformasi (Farkes-R), Federasi Serikat Pekerja Pariwisata Reformasi, Asosiasi Serikat Pekerja Indonesia (ASPEK), Serikat Pekerja Nasional (SPN), and Rumah Rakyat Indonesia (RRI0).

29) We are not really sure why the Supreme Court was in the opinion that the Law no. 13 Year 2003 was under reviewed by the Constitutional Court.

30) Although Article 185 (1) of Law no. 13 Year 2003 requires legal sanction for non-compliance (a maximum of 4 years imprisonment or a 400 million Rupiah fine), over the years no legal measure has been taken against employers who pay workers below the minimum wage. In one instance, the regional Department of Manpower office in Jakarta district stated that during the year 2004, approximately 100 companies operating in the district paid their workers below the minimum wage, but no sanction against them was decided (*Harian Jakarta*, February 1, 2005).

Conclusion

After *Reformasi* in 1998, Indonesia entered a new socio-political landscape that included new economic growth goals and the establishment of a number of democratic institutions. As part of this change, the Labor Law Reform (1998-2006) established a new set of rules of engagement in industrial relations. On paper, these rules respect freedom of association while introducing new employment relationships to integrate Indonesia's labor force into the global market. They also introduce a new labor dispute settlement system that rationalizes the state's institutions under the ideology of the "rule of law." The democratic opening of the reform has provided enough space for the labor movement to exercise its basic rights, but the ensuing process of these legal changes has frustrated the labor movement's efforts to overcome the negative impacts of the global market demands. Thus, despite the participation of union leaders in the formulation of this set of laws, the labor movement has found it difficult to accept them when left to bear and cope with the socio-economic burdens of their implementation (and, non-enforcement).³¹⁾ Unions have started losing faith in the reform as something that will protect their collective interests.

Indonesia's experience of labor law reform shows that the negotiation between the government and the labor movement to establish labor regulations is an unequal one. The results of it, albeit with labor's participation in the process, are laws with less protection for workers. Instead of providing workers with job security and social

31) This trend is similar in other countries. See French 2004; Novick et al. 2009.

protection, the reform enacted these laws to feed the need of global companies for cheap labor, in the name of “economic growth”, and the kind of employment such “growth” creates are less secure jobs, i.e. contract-based or outsourcing jobs.

Nonetheless, as this article has shown, the reform does not stop unions from crafting a path to defend member interests. Unions have been trying to moderate the negative impacts of these changes through legal challenges at the Constitutional Court and have developed “alternative ways” to settle disputes, enhance their legal standing, gain social support, and attract the attention of government. Although they are reaping some results from these efforts, the market-oriented legal reform has gradually been stripping their collective power of its ability to pose a meaningful threat to the demands of the global market for cheap labor. Having just begun to organize after 1998, the socio-political landscape of *reformasi* is not providing the best environment for unions to develop their autonomy and progress. Yet in the face of structural barriers under the new laws and the current globalized market, Indonesia’s labor movement is still actively seeking new ways to extend their organizing capacities and transform their solidarity to meet future challenges.

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<국문초록>

레포르마시(*Reformasi*) 이후의 인도네시아 노동법: 새로운 사회계약의 형성

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이 논문은 1998년 레포르마시(*Reformasi*) 이후 인도네시아에서 이루어진 노동법의 발전에 대해 논의한다. 권위주의 정권의 종식과 이에 따른 민주적 제도의 도입은 노사 관계를 재구성하기 위한 새로운 공간을 열었다. 정부는 고용제도와 노동분쟁해결 체계에 엄청난 변화를 가져온 새로운 일련의 노동법들을 공포했다. 이러한 변화가 창출한 도전에 직면한 노동조합들은 구성원들의 이익을 방어하기 위해 대안적 수단을 사용하고 있다. 이 논문은 노동법 개혁이 정부, 기업인단체들과 노동운동 사이에서 어떻게 새로운 사회적 계약을 수립하였는지 보여준다.

주제어: labor law reform, *Reformasi*, Indonesia, institutional change, Constitutional Court, minimum wage

