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Review Article

Access to Justice and Labor Law Reform in Asia

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ABSTRACT

The existence of fair guarantees of national labor law system is one of the purpose of the legal reform to achieve access to justice. This study aims to analyze whether the system of labor law has provide access to justice as the basis for labor relations practice in Asia. This study using normative legal research method with statute approach. The results support that there is an inconsistency on the substance of the legal structures that affect the low legal culture. The substance of the national labor law systems not applying the comprehensive International Labor Organization (ILO) conventions. This Less robust system of national labor laws affecting access to justice of labor in the region.

Keywords: labor law system; access to justice; international labor relations; labor law.

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ABSTRAK

Adanya jaminan keadilan pada sistem hukum tenaga kerja nasional adalah salah satu tujuan reformasi hukum untuk mencapai akses terhadap keadilan. Penelitian ini bertujuan untuk menganalisis apakah sistem hukum tenaga kerja telah menyediakan akses keadilan sebagai dasar pelaksanaan hubungan tenaga kerja di Asia. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan undang-undang. Hasil penelitian mendukung adanya ketidakkonsistenan pada substansi struktur hukum yang mempengaruhi budaya hukum yang rendah. Substansi dari sistem hukum tenaga kerja nasional yang tidak menerapkan konvensi Organisasi Buruh Internasional (ILO) secara komprehensif. Kurang kuatnya sistem undang-undang Ketenagakerjaan nasional mempengaruhi akses terhadap keadilan tenaga kerja di daerah.

Kata kunci: sistem hukum ketenagakerjaan; akses terhadap keadilan; hubungan ketenagakerjaan lintas negara; hukum ketenagakerjaan.

1. Introduction

Legal protection is the sign of Indonesia as a state of law. Legal protection is a part of human rights and legal basis of the country. A fair trial is one condition of the legal process concept. As the law country, access to justice in Indonesia is the purpose of legal

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development. The application access to justice merely based on The 1945 Constitution of The State of Republic of Indonesia¹, namely:

1. Without any exception, all citizens shall have equal positions in Law and Government and shall be obliged to uphold that Law and Government.
2. Every citizen shall have the right to work and to a living, befitting for human beings.

Equality before law itself is the access to justice. Understanding access to justice is "*opportunities or ability every citizen of his background (regardless of their race, religion, the seed, education, or the cradle) to receive justice through judicial institution*"². The access to justice is to protect weak (economic) citizens when judicial process to undergo or receive information related to the judicial institution.

The judiciary in Indonesia comprises the Supreme Court and all courts under its jurisdiction and the Constitutional Court. The courts below the Supreme Court includes the General Courts (PN), the Military Court (PM), the Religious Court (PA), and the State Administrative Court (PTUN). The Industrial Relation Court (PHI) is the part of the General Court.

PHI is the court to handle industrial relation dispute problem. The industrial relation legal subject is a corporation, workers, and the government. PHI should be served as a judicial institution in all cases labor. In fact, there are still labor cases that can be solved through an independent judiciary, for example is the cases about dispute over a minimum wage³.

Access to labor justice related to labor legal system, are composed of substance of the law, structure of the law and the culture of the law. Substances labor law is the labor regulations. There is needed a full harmony to the rule of law, both national and international norms based on International Labor Organization (ILO) and United Nations (UN) conventions. Foreign labor rights for example, Indonesia already sign and ratification foreign

¹ Indonesia, *Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945* (The 1945 Constitution of The State of Republic of Indonesia, 1945). Article 27 paragraph (1) and (2). [View Item](#).

² J. Djohansjah, "Pelatihan Hak Asasi Manusia Untuk Jejaring Komisi Yudisial RI," in *Akses Menuju Keadilan (Access To Justice)* (Bandung: Pusham UII, Komisi Yudisial RI, and NCHR, 2010), 1–37. [View Item](#).

³ Eko Adi Susanto, "Labour Rights Protection in Industrial Relations Issues," *Rechtsidee* 2, no. 2 (December 1, 2015): 109–20, doi:10.21070/jihr.v2i2.78. [CrossRef](#). [Google Scholar](#).

rights convention by enactment of Law No. 6 of 2012. However, there is no local regulation support that law⁴.

Legal substance is good if fulfill 8 principles⁵, namely:

1. *a failure to achieve rules at all, so that every issue must be decide to do an ad hoc basis;*
2. *a failure to publicize, or at least to make available to the affected party, the rules he is expected to observe;*
3. *the abuse of retroactive legislation, which not only cannot itself guide action, but under cuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change;*
4. *a failure to make rules understandable;*
5. *the enactment of contradictory rules;*
6. *rules that require conduct beyond the powers of the affected party;*
7. *introducing such frequent changes in the rules that the subject cannot orient this action by them;*
8. *a failure of congruence between the rules as announced and their actual administration.*

The labor law of regulations/institutions structure, authorized to deal with the labor situation, and The extent on the community for the Law will. The existence of a fair guarantee labor law system was one form for the legal reform to achieve access to justice. The main problem of this text is whether labor law systems have already given space to achieve access to justice as a basis for their labor international relations in Asia or not. This study using statute approach as a method.

2. Discussion

Indonesia as a part of Asia and member of Association of Southeast Asian Nations (ASEAN). Required an understanding legal relationship between members of ASEAN/ Asian countries in the field of labor. A common understanding would be easy to be achieved if based on universal concepts. ILO has issued the convention and recommendations. In 1998, the ILO had declared about Declaration on Fundamental Principles and Rights at Work was signed on June 19, 1998 said that all members including that have yet to ratify the convention of the convention, oblige that arise from the fact membership in the Organization to respect, promoting and provide, in good faith, the principles of basic rights that is the subject of the Convention (core convention), are:

⁴ Rifqi Ridlo Phahlevy, Mochammad Tanzil Multazam, and Noor Fatimah Mediawati, "Labour Rights Protection of Foreign Workers After Enactment of Law Number 6 of 2012 in Sidoarjo Regency," *Rechtsidee* 2, no. 1 (June 15, 2015): 21–52, doi:10.21070/jihr.v2i1.3. [CrossRef](#). [Google Scholar](#).

⁵ Lon L Fuller, *The Morality Of Law* (New Haven: Yale University Press, 1975). p. 39. [View Item](#).

1. Freedom of Association and Protection of the Right to Organise Convention (C. 87) and Right to Organise and Collective Bargaining Convention (C. 98);
2. Forced Labor Convention (C.29) and Abolition of Forced Labor Convention (C. 105);
3. Minimum Age Convention(C. 138); and
4. Equal Remuneration Convention (C. 100) and Discrimination (Employment and Occupation) Convention (C. 111)

Core convention is the core of basic rights fought by ILO in achieving social justice to become the basis for peace world.

The labor law system is good if it has implemented core convention in the national law. The substantial of labor law must be good and have aligned/ synchronization vertical and horizontal between the rule of law labor. The similarity, must be based on a layer on knowledge law to the theory of the rule of law and philosophy of law. This article limitation only 3 problem inconsistency in the substance of labor law, as:

1. The legal subjects of working relationship
2. A minimum wage
3. Labor Supervision

There be different legal subjects in the labor agreement, labor relationship, the industrial relationship, and industrial relation disputes. As the table below:

Table 1. Labor Regulations Subjects

Labor agreement (Article 1/14 Act 13/2003)	Labor relationship (Article 1/15 Act 13/2003)	Industrial relationship (Article 1/15 Act 13/2003)	Industrial relation of dispute (Article 1/15 Act 13/2003 jo. Article 56 Act No. 2/2004)
<ol style="list-style-type: none"> 1. Worker 2. Entrepreneur 3. Employer 	<ol style="list-style-type: none"> 1. Entrepreneur 2. Worker 	<ol style="list-style-type: none"> 1. Entrepreneur 2. Worker 3. The government 	<ol style="list-style-type: none"> 1. Entrepreneur-worker 2. Entrepreneurs- workers 3. Entrepreneur- trade union 4. Entrepreneurs-trade union 5. trade union-trade union

Legal consequences of these subjects legal Industrial Relation Court is they could not handle cases, such as:

1. Workers who work at employers are not entrepreneurs (if based on Article 1:15 Indonesian Labor Law);

2. Labor regulations generally;
3. Disputes among businessmen and entrepreneurs.

The rule of law on a minimum wage, are narrowing to the scope only base on the needs for life is suitable for workers as a single worker, not worker and his family. Nevertheless, based on the constitution, everyone may work and get rewards and treated fairly and worthy in labor relations⁶. An elaboration wage, fair and appropriate in labor relations is money that is suitable for humanity⁷. In addition, wages are defined as⁸:

“Workers who received and revealed as money as rewards from entrepreneurs or employers to workers who nominated are paid according to a working agreement, the agreement or rules and regulation as well as benefits for workers/labor and his family for a job and/or services that has to be done”.

This law is not discussed further in the rules. A minimum wage depending on the needs live decently (KHL). KHL was the standard needs a worker to live as a single woman is physically fit for needs 1 (one) months⁹. Inconsistency vertical was also caused the violations' theory of law concerning a proper wage. The ILO Convention states:

“The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

- (a) The needs of workers and their families, taking in to account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;*
- (b) Economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment”.*

Indonesian government use labor supervision to supervise that. Labor supervision task is to monitor and regulate established field labor¹⁰. Supervision shore up his country's supervisor by civil servants who have a job-order to ensure that it works in independent and based on labor regulation. This supervisor nominated by the Minister or state officials who were carried out by work units in its own government agencies that scope duty and

⁶ Indonesia, *Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun 1945*. Article 28D Paragraph (2).

⁷ Indonesia, *UU Nomor 13 Tahun 2003 Tentang Ketenagakerjaan* (Law Number 13: SG No. 39, 2003). Article 88 Paragraph (1). [View Item](#).

⁸ Ibid. Article 1 Number 30.

⁹ Minister of Manpower and Transmigration of Indonesia, *Permenakertrans No. 13 Tahun 2012 Tentang Komponen Dan Pelaksanaan Tahapan Pencapaian Kebutuhan Hidup Layak* (Ministerial of Manpower and Transmigration Regulation No. 13 Year 2012: SR No. 707, 2012). Article 1 Number 1. [View Item](#).

¹⁰ Indonesia, *UU Nomor 13 Tahun 2003 Tentang Ketenagakerjaan*. Article 1 Number 32.

responsibility in the field employment in government, the provincial government, and the regency/city¹¹.

Official labor supervisors is part of the Labor system. An institution that has executive function. Official labor supervisors is a Civil which is raised and commissioned in functional position under law and regulations¹². As Indonesia has been ratified ILO Convention No. 81 concerning Labor Inspection in industry and commerce in the Law No. 21 Year 2003¹³. The functions of the system of labor inspection shall be:

- (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labor inspectors;*
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;*
- (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.*

Any further duties which may be entrusted to labor inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers¹⁴. Thus, as is compatible with the administrative practice of the Member, labor inspection shall be placed under the supervision and control of a central authority¹⁵.

Based on the regulation, stated Article 3 and 4 of the Convention 81 seem that a labor supervision has not implemented the third function to bring notice of the competent authority defects or abuses not specifically covered by existing legal provisions. In addition, failure based on article 4 the Convention 81 that are not under control of central government, will be no overlapping authority between Minister of Labor and the Minister of Home Affairs in the field labor related to regional autonomy.

The structure of labor law, have still a problem. The case on labor, it was not yet clear. Labor, have civil case labor can be sued PHI or arbitration, with conditions have been negotiating (bipartite, mediation/conciliation that failed to). For criminal cases, it should be

¹¹ Ibid. Article 176-179.

¹² Indonesia, *Perpres No. 21 Tahun 2010 Tentang Pengawasan Ketenagakerjaan* (Presidential Regulation Number. 21, 2010). Article 1 Number 5. [View Item](#).

¹³ Indonesia, *UU No. 21 Tahun 2003 Tentang Pengesahan ILO Convention No. 81 Concerning Labour Inspection In Industry and Commerce (Konvensi ILO No. 81 Mengenai Pengawasan Ketenagakerjaan Dalam Industri Dan Perdagangan)* (Law Number 21: SG No. 91, 2003). [View Item](#).

¹⁴ International Labor Organization, *Convention Concerning Labour Inspection in Industry and Commerce* (Number 81: Geneva, 30th ILC session (11 Jul 1947), 1947). Article 3. [View Item](#).

¹⁵ Ibid. Article 4.

labor unions can answer the investigators to be an investigation and in arrears in PN. It happens investigators were reluctant to investigate because labor is only limited industrial relation problems in the area. The criminalization toward often labor, reports the exist of the allegation offense labor.

The note of labor supervisor that given to the entrepreneurs who do criminal violations, can be in charge in the State Administrative Court and that memorandum in bringing them to mediation to be resolved by win-win solution. Criminal cases have been transformed into a civil case. Inconsistency vertical horizontally over substance and the structure of the law that influence to the low culture law. Workers preferred to “*shopping forum*” of judicial institution as an effort to solve cases labor

National labor legal system that have yet to adopt ILO conventions, basic principles should be immediately in reform. Reform is changes drastically to improve a community or country. Labor legal system reform in Indonesia is very important for international relations basic he did. Legal system reform labor must provide access to justice for worker, employers and community. ILO conventions as the basis for international relations labor is enough to protect workers if applied in the substance national law.

Access to justice legal reform in labor must be started from national law. Career or ability each person to get service Judgments. Access to justice in the field labor law can through this openness information Judgments and equal treatment in legal process. Anyone who reported the existence of the allegation offense on labor, should be immediately investigated, if there is evidence that was enough. Access to justice is easy in theory, it is hard in practice. Joshua Rozenberg¹⁶ holds that:

“Few of us give it a second thought. We assume justice will somehow be available, on tab, whenever we need it, but when the time comes to enforce our rights, many of us will find it very difficult – if not downright impossible–to obtain true justice from the courts”.

According Joshua opinion, workers required a legal assistance. In addition to relief legal process. For example the interests suspect defense, which can be provided legal aid¹⁷. Criminal act with death sentence or fifteen years sentence or more or for those who could not which was threatened with criminal five years or more who have no legal advisor itself, legal

¹⁶ Joshua Rozenberg, *The Search For Justice An Anatomy of the Law* (London: Hodderand Stoughton Ltd., 1994). p. 171. [View Item](#).

¹⁷ Indonesia, *UU No. 8 Tahun 1981 Tentang Hukum Acara Pidana* (Law Number 8: SG No. 76, 1981). Article 54. [View Item](#).

advisor must be appointed for them by authorities, with free of charge¹⁸. This law only for poor people¹⁹. However, no sanction recorded for offender. Therefore, access to justice cannot be maximized.

3. Conclusions

The vertical and horizontally inconsistency over substance and the structure of the law. Influence to the low culture law. The labor law national system could not accommodate ILO conventions. Less national labor law systems have an effect to a weak access to justice in the field labor in the Asian region. Recommendation is to revised national labor law system based on ILO conventions comprehensively/

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¹⁸ Ibid. Article 56.

¹⁹ Government of Indonesia, *PP No. 83 Tahun 2008 Tentang Persyaratan Dan Tata Cara Pemberian Bantuan Hukum Secara Cuma-Cuma* (Government Regulation Number 83: SG No. 214, 2008). Article 1 Number 4. [View Item](#).

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