

## THE PRACTICE OF THE RIGHT OF WORKERS TO ORGANIZE IN POST-REFORMATION ERA

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### *Abstrak*

Serikat Pekerja di Indonesia seolah menemukan kembali “semangat”nya setelah masa reformasi. Aktifitas Serikat Pekerja yang di rejim sebelumnya sangat terbatas mulai bangkit dan kembali menyuarakan hak-hak pekerja. Namun demikian, kebangkitan Serikat Pekerja ini tidak berarti tanpa kendala, terutama apabila pelaksanaannya disandingkan dengan pedoman yang diberikan dalam hukum internasional khususnya dalam Konvensi-konvensi ILO. Dalam artikel ini dibahas berbagai bentuk kendala yang dihadapi Serikat Pekerja di Indonesia seperti kriminalisasi aktivis Serikat Pekerja dan pengerahan massa dalam menghadapi aksi-aksi Serikat Pekerja. Serikat Pekerja sebagai ujung tombak pemenuhan hak-hak dasar pekerja di Indonesia menjadi penting di tengah menurunnya kondisi ekonomi yang seringkali dijadikan alasan banyak pengusaha untuk tidak memenuhi hak pekerja. Metode yang digunakan adalah studi pustaka dan analisa media. Dari studi ini ditemukan beberapa ‘tren’ sikap diskriminasi anti-serikat pekerja, meski beberapa diantaranya bukan merupakan bentuk yang baru seperti kriminalisasi aktivis serikat pekerja, pembentukan serikat pekerja “bayangan”, penyerangan terhadap aktivis serikat pekerja, intimidasi pada pekerja, mekanisme registrasi yang masih berbelit, dan respon pasif atas laporan-laporan tindakan diskriminatif yang diterima aktivis dan anggota serikat pekerja.

Keyword: Worker Union, the Right to Organise, Indonesian Labour.

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## A. Introduction

Trade unions in Indonesia have a long and intriguing history. At the beginning of Indonesian independence, trade unions developed mostly under the wing of political parties.<sup>2</sup> In the late 1950s, there were approximately 150 national unions and hundreds of affiliated local unions.<sup>3</sup> Besides in delivering their worker members' socio-economic interests, trade unions at that time were also very active in the political sphere.<sup>4</sup> At that time, Indonesia has only ratified the International Labour Organisation's Convention No. 98 on Collective Bargaining and the Right to Organise 1958. Thus, the right to organise and collective bargaining have been incorporated into Indonesian law. However, after its involvement in a radical political movement in 1965, trade unions were effectively banned by the transitional government under the military and General Soeharto.<sup>5</sup> It was an onerous time in the history of the trade unions movement in particular and freedom of association in general.

When the New Order regime under former president Soeharto came to power, the politics of mass-depoliticization being practised by the New Order regime had forced many political parties and mass organisations, including trade unions, to merge under 'legal' organisations.<sup>6</sup> In the 1980s, trade unions were also 'forced' to join into one trade union, namely the Indonesian Workers' Federation (FBSI - *Federasi Buruh Seluruh Indonesia*). The situation in which there was only limited number of ratified international treaties related to the right of workers,<sup>7</sup> excessive control to trade unions, and the absent of freedom of association have made the workers' movement becoming unproductive. There was no civic education for trade unions and its

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<sup>2</sup> Vedi R. Hadiz, *Workers and the state in the New Order era* (1997) at 49.

<sup>3</sup> Ibid. Also in Payaman J. Simanjuntak, *Trade unionism in Indonesia* (1995) at 5.

<sup>4</sup> Ibid, at 48-52.

<sup>5</sup> Ian Fehring, *Unionism and workers' rights in Indonesia: The future*, in Timothy Lindsey (ed), *Indonesia: Law and Society* (1999) pp. 367-380 at 367.

<sup>6</sup> Simanjuntak, above n 2, at 7.

<sup>7</sup> The Indonesian government only ratify the ILO Convention No. 98 and leave the other ILO's core conventions unratified until the end of the New Order regime.

worker members, and more importantly, trade unions did not represent their workers members. Bipartite and tripartite consultative processes were basically controlled by the employer and the Government.<sup>8</sup> The regime was also feared that trade unions movement would impede the economic and industrial development.<sup>9</sup> For that reason, the government sent some trade unions activists, such as Agus Sudono, to some European countries in the early 1970s, to 'ensure' the international society that trade union in Indonesia 'would not pose a threat to the security of foreign investment'.<sup>10</sup> This promise that trade union would not pose a threat to foreign investment had been proven in the history of the New Order regime.

The economic crisis, which led to the fall of the New Order regime, became the entry point to the reformation era in Indonesia. The reformation era has been characterized by the strengthening civil society, which one of its demand is to protect human rights all across Indonesia.<sup>11</sup> The ILO and also some international non-government organisation, such as the ICFTU,<sup>12</sup> Amnesty International, Human Right Watch and other international organisations have been vigorously criticised workers' right violations in Indonesia. The strengthened civil society and the demand for human rights protection have made transitional government under former President Habibie, made significant reforms including labour law reform. The milestone of the labour law reform was the ratification of the International Labour Organisation (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organise in June 1998. This ratification was followed by the signing of Letter of Intent to 'prove' Indonesian government good intention to ratify all the remaining core conventions of the ILO. The relation between the Indonesian government and the ILO was also strengthened by the acceptance of the ILO Direct Contact Mission in December 1998.

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<sup>8</sup> After the ratification of the ILO Convention No. 98, Indonesian labour law has recognised and adopted the concept of bipartite and tripartite consultative process.

<sup>9</sup> This attitude had shown in the life of the New Order regime, see Colin Fenwick (et.al), *Labour dispute settlement in Indonesia* (2002) at 5-6.

<sup>10</sup> Hadiz, above n 1 at 64.

<sup>11</sup> Frank Feulner, *Consolidating democracy in Indonesia: Contributions of civil society and state Part One: Civil Society* (2001) at 13-19.

<sup>12</sup> International Confederation for Free Trade Unions.

The successor of Habibie, Abdurrahman Wahid, continued to reform labour law by establishing the Trade Union Act No. 24 of 2000. This Act was stipulated as a reaction of the rapid growth of trade unions or workers organisations after the ratification of the ILO Convention No. 87. To illustrate, the number of trade unions were increased from only one in 1998 to almost 45 when the Act was stipulated. At that time the civil society movement was raising. In the Abdurrahman Wahid's era, the state was 'weak' while the civil society grew so profoundly, and trade unions were one of those that reap the impact of the reformation.<sup>13</sup>

Nevertheless, the ratification of an international law in Indonesia always finds difficulty when it comes to implementation. The effectiveness of a ratified international law is still a subject of debates. There are many obstacles in implementing international law in Indonesia. Firstly, implementing international treaties into domestic law depends on the government's political will. Secondly, implementing a foreign law into domestic sphere will have to face administrative or bureaucratic barriers, and thirdly, implementing it will certainly face a law-enforcement culture which is in most of the time does not give adequate support. Basically, implementing 'foreign' labour relation concept in Indonesia carries even greater burden of unstable political condition, also of unfinished economic reform and extensive social problems.<sup>14</sup>

These, in the end, lead to a question, to what extent is Indonesian law consistent with the right of workers to organise, particularly the right to form and join trade unions, according to international law? What are the obstacles and limitations to implement these regulations? And what does the Indonesian experience show about the implementation of the right to organise in real practice, especially after 1998, or the post-New Order era?

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<sup>13</sup> Feulner, above n 10.

<sup>14</sup> Sean Cooney (et.al) (eds.), *Labour law and labour market regulation in East Asian States: Problems and issues for comparative inquiry* (2002).

## **B. Implementing the ILO Conventions on the right to organise in the Indonesian context**

The first and most important objective of the International Labour Organisation (ILO), as written in its Preamble of Constitution, is to contribute to universal and lasting peace through the promotion and development of social justice. This objective is also stated in the Preamble of the 1945 Indonesian Constitution concerning the Pancasila as the ideological framework of the Unitary State of Republic Indonesia. Principle number four of the Pancasila, states that there should be social justice for all Indonesian people. Thus, the ILO objective is in line with the Indonesian state to provide social justice for all Indonesian people generally and for workers particularly. Accordingly, there should be no fundamental contradiction between the State of Indonesia and the ILO. The problem now is how the ILO conventions might work in an Indonesian context and how it might be applied in real life.

In relation to the implementation of the ILO Convention No. 87 and Convention No. 98, the problems relating to the right to organise as recorded by the ILO Jakarta Office, are: (1) lack of awareness from the employer of the role of worker organisations; (2) employers have been accustomed to a single trade union for more than 25 years and it would be difficult for them to become accustomed to more than one trade union; (3) lack of bargaining training and education among the trade union leaders and members made them mostly choose to strike as the main form of union action;<sup>15</sup> (4) many employers are still coping with the last economic and financial crisis and have not yet been able to fulfil workers' demands.<sup>16</sup>

The very first step for Indonesian law to be fully compliant with the ILO Conventions on the right to organise, is legislative reform. Even though some Acts have already been established with a tripartite consultative process, there are still numerous Presidential Instructions, Ministerial Decrees or Ministerial Regulations or other regulations dating back to the 1950s which are still valid. Some of these regulations are still used widely amongst public authorities and government agencies dealing with labour relation activities. For this reason I agree

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<sup>15</sup> ILO Jakarta, above n 14 at 46.

<sup>16</sup> Ibid at 45.

with Boulton that, “labour law developed in an ad-hoc manner in Indonesia.”<sup>17</sup> The Indonesian Government keeps making new legislation reflecting their interest at a certain time. When the policy of the ruling government is changing, legislation will be made to comply with the new policy. Cooney (et.al) in their study on labour law in the Asia Pacific has given a clear explanation of how the ‘law-practice’ gap arises in Southeast Asia labour law. They agree that the experience from the Southeast Asian countries (including Indonesia) shows that, “labour law will remain in force only as long as it suits the purposes of the present regime.”<sup>18</sup> That is why “political will” will always be the most important requirement for the Indonesian government to carry out the labour reform programme, with or without the assistance of the ILO.

Many important events have changed the face of Indonesian labour law, namely the ILO’s Direct Contact Mission in Indonesia, which created a new labour relation by strengthening the relationship between employers, the workers and the Government, also encourage the ratification of all the ILO core conventions, and strengthened the civil society in Indonesia. All these events have moved the Indonesian labour law to a new level and for this reason, as Boulton said, Indonesia requires “a new legal framework”<sup>19</sup> to carry out the labour reform program. This means, labour law reform must be done in a comprehensive and extensive way. The new legal framework as Boulton mentioned is actually has been released by mean of strengthening the labour relations constituents through social dialogue as being promoted by the ILO in Indonesia. If the new relation of bipartite and tripartite mechanism has been formulated, creating the subsequent law and policies of labour relations will be much easier.

The second step for Indonesia is related to implementation. No matter how impressive the legislation in protecting workers’ right to organise, it will just become another ‘written document’, which will not have any legal consequences in real practice. This step probably requires the most pain-staking effort in the Indonesian context. Many studies have shown the gap between “law” and “practice” in

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<sup>17</sup> Alan J. Boulton, *The future structure if industrial relations in Indonesia* (2000) at 3.

<sup>18</sup> Cooney (et.al) above n 13 at 16.

<sup>19</sup> Boulton, above n 101 at 6.

Indonesia.<sup>20</sup> Nevertheless, ‘black’ marks and complaints from many international organisations, such as the ICFTU, Oxfam Community Aid, Amnesty International, Human Right Watch and many other organisations have somehow influenced the Indonesian government to follow the demand of international society towards the protection of the right of workers.

I would argue that despite a different effort, the supervision and pressure from international society and from non-government organisations, whether at the national level or international level, would be favourable for Indonesia. ILO assistance to raise the consiousness of all Indonesian state’s constituents is still needed. Strict supervision and assistance would benefit Indonesia in complying with its international obligations. Most of these efforts have been fulfilled by the ILO.

The ILO Direct Mission in Indonesia has made some significant effort to help the Indonesian government implement Convention No. 87 and Convention No. 98. These efforts include: (1) promoting the incorporation of the right to organise into Indonesian law; (2) empowering workers’ organisations through leadership development and organisational management from the central level to the enterprise level; (3) promoting an effective bipartite consultative process at the enterprise level to meet the interest of the workers and the employer; (4) promoting a tripartite dialogue in policy and law making at the central level of government.<sup>21</sup> According to the supervisory procedure under the ILO Convention, the government must give a report on the status of the application of ILO Conventions in law and in practice.<sup>22</sup> A special procedure has also been developed to investigate complaints if there is violation of the workers’ rights.<sup>23</sup> To obtain such complaints, the ILO relies on non-government organisations report, such as the ICFTU, Amnesty International, Human Right Watch, and many other organisations, nationally or internationally.

The new government of Indonesia has been urged to reform not only the legislation relating to labour relations, but also to reform the

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<sup>20</sup> Cooney, above n 13. Also in Tim Lindsey and Howard Dick (eds), *Corruption in Asia: Rethinking the governance paradigm* (2002).

<sup>21</sup> ILO Jakarta Office, above n 14 at 45-47.

<sup>22</sup> Ibid, at 45.

<sup>23</sup> Ibid.

law enforcement culture.<sup>24</sup> Theoretically, the Indonesian government has been proven to be more than ready to implement ILO Conventions. Furthermore, the Indonesian government has been able to create a good relationship with the ILO, and has been able to use the ILO's assistance to carry out a domestic labour reform.<sup>25</sup>

Above all, reforming labour relations in Indonesia relates not only to the reform of Indonesian labour law. There are also other factors, which need to be reformed as well. These factors are not only derived from the culture of Indonesian industrial relations, which have been established for many decades, but also relate to other structural and administrative factors. A comprehensive legislative reform must be followed by consolidation and cooperation with other departments related to the implementation of the protection of workers' rights, such as the Police and the Court. In other words, enforcing these labour reforms must also contain plans to change the attitudes of workers and employers, as well as those of the public authorities.

What the ILO and the ILO Direct Contact Mission have done in building tripartite relations between worker organisations, employer organisations and also the Government, is one positive step in building a new and healthy relationship in labour matters. Besides, enforcing the law is also an important matter for comprehensive labour reform. New laws and regulations established based on tripartite consultation such as the Manpower Act of 2003 or Trade unions Act Of 2000, reflect this new relationship between the three parties. However, these new relationship shall also be reflected in realities, where the three parties practise their rights and obligation in real life. After this has been achieved, then the new reform laws are not only a "document" but also become a new milestone in the new relationship between workers, employers and government.

Therefore, the remaining question is in what ways can Indonesia implement the right of workers to organise? The answer would be: *firstly*, what the ILO has carried through social dialogue is one significant step to give a sound understanding for the relevant parties related in labour relation – workers, employers and the government – hence they understand their position, their rights and their

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<sup>24</sup> Ibid, at 64.

<sup>25</sup> Ibid, at 65.



obligations towards one to another. *Secondly*, sufficient information must also be given to other constituents of the State of Indonesia, including the Indonesian people (whose majority are also workers) and non-government organisations to carry out media and educational campaigns, researches, and legal support for the continuing labour reform.<sup>26</sup> *Thirdly*, there needs to be stricter supervisory mechanisms, whether it is done by the government or by society through non-government organisations. *Fourthly*, the press is also playing an important role in highlighting labour rights violations, in particular, and human rights violations in general. An active mass media in democratization will support the protection of human rights. Support from Indonesian leaders is also an important step for labour reform programmes to support the full implementation of freedom associations.<sup>27</sup> Social dialogue is also one of the most important mechanisms to ensure Indonesia law to be compatible with international law, particularly related to the right of workers to organise.<sup>28</sup> It is essential for the ILO to continue its work and assistance to Indonesians in labour reform programmes.<sup>29</sup>

### **C. Indonesian trade unions in the reformation era: Case study**

After the fall of Soeharto, the number of workers organisations have been increasing, and the ratification of the ILO Convention No. 87 has encouraged the establishment of more trade unions. The development of trade unions is shown in the chart below.

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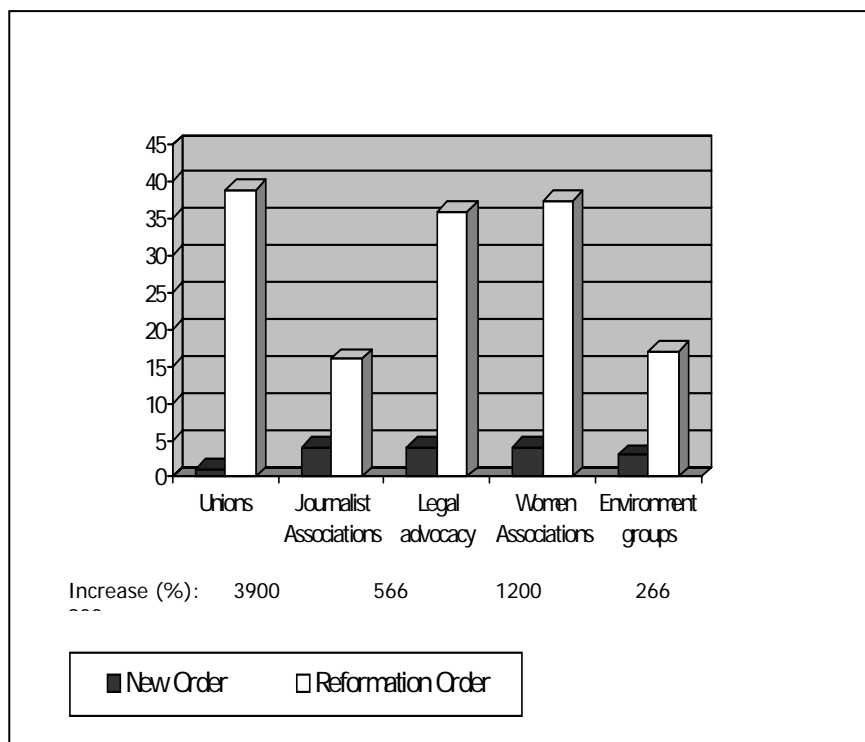
<sup>26</sup> Ibid at 66.

<sup>27</sup> Ibid at 65.

<sup>28</sup> See also Inayatul Islam, above n 16 at 28.

<sup>29</sup> ILO Jakarta Office, above n 14 at 65.

Chart 1  
 Increase in Selected Civil Society Sectors from New Order to  
 Reform Order<sup>30</sup>



Source: Chart based on Masindo 2000 and UNSFIR

In line with the development of trade unions, industrial relations in Indonesia have been bustling with demands for workers' rights protection. Workers through newly established trade unions or non-governmental organisations have begun to demonstrate more forcibly that employers have not yet provided them with adequate standards for their working and living conditions. The reformation era has seen an increase in workers movements and they have begun to make their complaints heard. However, the development has not been able to bring improvement of workers' conditions. There are still many violations of

<sup>30</sup> Feulner, above n 10 at 17.

workers' right in many places, as being recorded by the Indonesian Legal Aid Centre (PBHI or *Pusat Bantuan Hukum Indonesia*).

Table 1  
Violation to the rights to work and labour's right

No	Problems	Number of victims
1	Open unemployment	8,100,000
2	Dismissal	12,976 cases
3	Payment and work allowance	57 cases
4	Working conditions	42 cases
5	Right to organize and strike	347 cases
6	Forced labour	5 cases
7	Criminalization of labours' right	3 cases
8	Migrant workers deportation	80,000 cases

Source: PBHI Documentation, 2002<sup>31</sup>

The Table 1 shows data from one non-government organisation in Indonesia, according to the observance of the PBHI and cases they have received in year 2002. To find out the answer on why the violation of workers' rights is still high we must first see several issues.

After 1998, the number of workers' organisations has increased significantly, however, this number is still unequal with the employers' organisations. In 2002, according to the data collected by Masindo there were 555 employers organisations recorded compare to only 20 trade unions.<sup>32</sup> Even though the number of trade unions later increased to 66 in 2003, this numbers are still uneven compared to the strong employer organisations. Besides, this high number of trade union does not always represent the higher bargaining position that unions have.

<sup>31</sup> PBHI, *Catatan HAM PBHI (Bagian 2-Habis): Hak-Hak Sipil dan Politik: Ancaman Kesewenang-wenangan Negara – PBHI Human Rights Record (Part 2-End); Civil and Political Rights: The threats of state's despotism* (2002) SINAR HARAPAN, Tuesday, 31 December 2002, retrieved from <<http://www.sinarharapan.co.id/berita/0212/31/opi03.html>> at 4 September 2003.

<sup>32</sup> United Nations Support Facility for Indonesian Recovery (UNSFIR), Monitoring Database, Socio-political data, retrieved from <[http://www.unsfir.or.id/monitoring/socio-political%20data/political\\_tabel02.htm](http://www.unsfir.or.id/monitoring/socio-political%20data/political_tabel02.htm)> at 4 September 2003.

Employers create their organization based on strategic objectives, therefore they lead in numbers and their organizations are usually have stronger bound. This somehow shows the reality of how the employers have stronger relation among themselves; consequently, this has made the employer organisations have a stronger position in the tripartite consultative process with the Government.

Besides the uneven organisational numbers, there are also wide ranges of problems, which must be faced by trade unions or workers' organisations in Indonesia. To recognise the problems of the implementation of the right to organise, I have collected some cases after 1998, which show the type of violation on workers' right to organise (Table 2).

Table 2  
Type of anti-union actions in the post-New Order era

Case	Year	Type of anti-union actions	Status
<i>Rumah Sakit Pondok Indah</i> (Pondok Indah Hospital)	2002	<ul style="list-style-type: none"> <li>- suspension (leading to dismissal) to trade unions activists</li> <li>- criminalizing trade unions activists, Edy Waluyo, according to Art. 335 Criminal Code</li> <li>- "yellow union" or "puppet union" establish by the employer</li> </ul>	- Edy Waluyo was sentenced to 4 months imprisonment
Muhammad Opu <sup>33</sup> (PT Intracawood Mfg. Tarakan)	2002	- Criminalizing trade unions by Art. 335 Criminal Code	- Opu was sentenced to 6 months imprisonment.
Independent Electronic Labour Union (SBEI) – PT Dwidaya Mandrasakti Bandung	2002	- Dismissal of 13 trade unions activists after establishing the SBEI	
Serikat Pekerja Bank Panin (Panin Bank)	2001	- Transfer and relocation of trade unions activists to	- still in court's process

<sup>33</sup> ICFTU, *Indonesia: Annual Survey of Violations of Trade unions Rights* (2003) retrieved from <<http://www.icftu.org/displaydocument.asp?Index=991217720&Language=EN>> at 4 September 2003.

Trade unions) <sup>34</sup>		<ul style="list-style-type: none"> <li>- oter company's branches</li> <li>- suspension (leading to dismissal) of trade unions activists</li> <li>- criminalizing trade unions activists: Imam Sutrisno and Tata Zoelakraen), according to Art. 335) Criminal Code</li> </ul>	
Serikat Buruh Nusantara - PT Dwinagasakti Abadi Tangerang <sup>35</sup>	2001	<ul style="list-style-type: none"> <li>- sequent dismissal and suspension leading to dismissal of trade unions activists</li> <li>- criminalizing trade unions activist: Sofyan Bedot and Sujito</li> </ul>	- the case was dismissed in 2002
Serikat Pekerja PT Setia Kawan Motor Cilegon	2001	- suspension (leading to dismissal) of trade unions activists	
Serikat Pekerja PT Koinus Jaya Garment Tangerang	2001	- suspension leading to dismissal of trade unions activists	- annulment of suspension after trade unions report to Ministry of Manpower in Tangerang District.
Ngadinah's case <sup>36</sup> (PT Panarub Tangerang)	2000	- Criminalizing trade unions activists by Article 160 and Art. 335 Criminal Code	- Ngadinah was sentenced to jail, but later she was released in 2002 after many pressures to

<sup>34</sup> Legal Aid Institute Jakarta (LBH-Jakarta), *Kaleidoskop LBH Jakarta Desember 2001-November 2002- LBH Jakarta Kaleidoscopes Desember 2001-November 2002* (2002) at 14.

<sup>35</sup> Legal Aid Institute Jakarta (LBH-Jakarta), above n 86 at 2.

<sup>36</sup> See Oxfam Community Aid Abroad, *Just Stop It: Respect for the right to freedom of association*, retrieved from <[http://www.caa.org.au/campaigns/nike/reports/machines/freedom\\_association.html](http://www.caa.org.au/campaigns/nike/reports/machines/freedom_association.html)> at 20 August 2003.

			the Indonesian government.
Nike's case <sup>37</sup>	2000	- intimidation and suspension leading to dismissal of trade unions activists	
Front Nasional Perjuangan Buruh Indonesia - FNPBI	2000	- rejection of trade unions registration by reason that the trade unions constitution is not the Pancasila and it stated the union is a political based instrument	- rejected twice until accepted after 2001
Shangri-La Hotel	1999	- civil suit for trade unions activists after mass dismissal of 799 workers	- won at appeal to the Supreme Court, but the employer refuse to apply the court's decision

From the Table 2, it can be seen that there are still actions, by employer organization or by government officials which impede the trade unions to voice the interest of the workers. Such actions are sanctions given by the employers for workers who join trade unions, criminalizing trade union activists, intimidation, civil suit against trade union activists, and rejection of trade union registration. In the explanation afterwards, these actions will be categorized as “trends” of anti union discrimination.

#### **D. Trends on the Practice of the Right to Organise in the Post-Reformation Era**

Based on the cases mentioned in Table 2 above, there are several ‘trends’ of anti union discrimination or anti union conducts by employers and government official. Some of the actions against the right to organise are quite novel, while the others has been recognized since the ruling of New Order regime.

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<sup>37</sup> Ibid.

#### **a. Criminalizing trade union activists**

This type of violations has become the most worrying since the numbers of labour relation cases connected to the criminalisation of trade union activists have increased in the last two years. This type of violation has become the most 'endangering' development in the trade unions movement in Indonesia. In many cases, trade union activists are being convicted before the court by using the articles in the Indonesian Criminal Code such as Article 160 about inciting others to break the law and Article 335 about unpleasant conduct toward others. These articles were largely used in the Soeharto regime era to oppress the trade union movement in particular and freedom of association in general.

#### **b. 'Shadow' trade unions**

If in the New Order era there was only one trade union, which was officially and legally recognised, the mode has been changing since the reformation era by numerous 'puppet unions' or 'yellow unions'. After 1998, there is no way to control number of trade unions after the stipulation of the Trade Unions Act of 2000, therefore, the resistance mode of the employers to muffle trade unions movement has been changing. In many cases, employers try to establish a rival union which can be steered by them. In the case of Pondok Indah Hospital and Panin Bank, for example, the employer was trying to make 'a yellow union' to compete and to gain voices from the workers.

#### **c. Attacks on trade union activists**

If in the New Order era, trade union activists were being oppressed and intimidated by the Police or the Army, the mode has been changing by using paid paramilitary groups or street gangs (known as '*preman*'). In Indonesia, trade union leaders or activists are the main assets for trade unions. They have been playing an important role in trade union movement and according to one research carry out by SMERU<sup>38</sup>, "the effectiveness and professionalism of an enterprise union

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<sup>38</sup> SMERU is a non-government organisation in Indonesia which carry out researches on Indonesian social and economic development.

depends on the capabilities of its union leaders...<sup>39</sup>. Therefore, if trade union activists or leaders are resigning from their role because of intimidation, it will be easier to ‘control’ the other workers.

#### **d. Intimidations for workers who join trade unions**

Prohibitions for workers to join or to form a trade union can be carried out in several ways. At the corporate level, the prohibition usually takes place by removing or transferring trade union activists to another company branches (for example, the Panin Bank case) or by intimidating workers who join trade unions like in the Nike’s case. The most explicit and severe violations usually takes place by dismissal of trade union activists or trade union members.<sup>40</sup>

#### **e. Registration mechanisms**

At the Government level, registration has been for so long seen as the way which might hamper the development of trade unions. Not only to obtain legality in order to be able to represent their worker members in the collective bargaining process or in many other areas of manpower, but also to keep the registration status, trade unions are bound to some requirements on pain of losing their official status. An example is the FNPBI case. The FNPBI was rejected two times by the Ministry of Manpower office to obtain its registration status because FNPBI put “democratic-socialism” as their fundamental principle and placed its organisation as a political struggle instrument beside as an economical struggle instrument.<sup>41</sup> The answer of the Ministry of Manpower office is that “labour organisations have nothing to do with political struggle”.<sup>42</sup> This case proved that even though their function are only as a registrar office, the Ministry of Manpower Registration

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<sup>39</sup> SMERU, *Industrial relations in Jabotabek, Bandung, and Surabaya during the freedom to organise era* (2002) Research Report, at 43.

<sup>40</sup> ICFTU, above n 85.

<sup>41</sup> KOMPAS, Tuesday, 12 September 2000, *Legalitas Serikat Buruh Tergantung Pemerintah – The Legality of Trade unions in the Hands of Government*, <<http://www.kompas.com/kompas-cetak/0009/12/utama/lega01.htm>> retrieved at 4 September 2003

<sup>42</sup> Ibid.



Office has a quite extensive power which would limit the trade unions in the registration process because the office has been using its power to interpret a higher law.

#### **f. Passive responses of anti-union conduct**

Other related departments such as the Police department, who suppose to react to carry out the process if there is an anti-union conduct presented before them, are in many cases give passive responses. For example, four cases handled by the Legal Aid Institute (LBH – *Lembaga Bantuan Hukum*) Jakarta in 2002, which was reported to the Police did not get any proper handling.<sup>43</sup> These cases related to the employer's conduct, which prohibit the establishment of trade union in their company.<sup>44</sup> The main reason given to anyone who reported an infringement of the right to organise is that "there is no technical guidance for such a case".<sup>45</sup> Yet, the Police do react quickly if it is the workers are being indicted by the employers according to the Indonesian Criminal Code.

These problems show the combination between the new and the old type of the infringement of the right to organise in Indonesia. Some problems might seem similar to those in the New Order regime era, such as intimidation, passive responses from other departments and implicit prohibition of trade union movement. The uses of Pancasila as ideological weapon have also been 'maintained'. Fehring, in which I also agreed to, observes that Pancasila has been used to 'restrict and control' trade unions, particularly the right to strike.<sup>46</sup>

#### **E. Conclusion**

The right to organise is a basic right for workers, in order to strengthen their bargaining power with the employer. Basically, to ensure that trade unions can function as workers' representatives in order to improve their working and living condition, there should be no

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<sup>43</sup> LBH Jakarta, *Hukum dalam cengkeraman kaum merkantilis -- The law under the grip of the merchantilists* (2002) at 5.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Fehring, above n 4 at 373.

restrictions or excessive interference from the government and the employers to the workers who wish to exercise their right to organise.

Although the Indonesian government has ratified the ILO Convention No. 87 and Convention No. 98 concerning the right to organise, in practice there are still numerous violations taking place in different forms, whether it is a legacy from the previous regime or a new type of violations. There are at least three steps that must be taken to make Indonesian law compatible with its international obligations under the ILO Conventions: (1) comprehensive legislative reform, not only within the authority of the Ministry of Manpower, but relating to other sectors which have a strong connection with the implementation of industrial relations such as the law enforcement agencies (the Police and the Court); (2) strict supervision, together with continuing assistance in implementation of the reformed legislations. Sanctions can also take the forms of international pressure to Indonesia for implementing the protection of the right of workers to organise, whether from the United Nations or the ILO, or from national or international non-government organisations; lastly and most importantly (3) a reform of the law enforcement culture by wide educational promotion or other educational programmes to increase the awareness of human rights protection in general and the right of workers in particular.

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