



Paradigm of Employment Law Protection in Indonesia between Legal Certainty, Justice, and Utility

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Article Info

Article History

Received : 2024-07-19

Revised: 2024-07-22

Published: 2024-09-30

Keywords:

*employment law;
industrial relations;
legal protection;
workers.*

Abstract

Labor law is an important instrument in realizing fair industrial relations through a balance between the interests of workers and employers. The dynamics of changes in labor regulations in Indonesia, especially after the amendment of the Labor Law through the Job Creation Law, have various consequences for the effectiveness of legal protection for workers as well as legal certainty for the business world. This study aims to analyze the paradigm of legal protection in the Indonesian labor system, identify the problems of implementing legal norms in industrial relations, and examine the direction of strengthening labor policies in realizing harmonious and sustainable industrial relations. The research uses a normative juridical method with a regulatory approach, a conceptual approach, and an analytical approach. Data was obtained through literature studies of laws and regulations, court decisions, legal doctrines, and various relevant scientific literature, then analyzed qualitatively. The results of the study show that Indonesia's labor law already has an adequate normative basis to protect workers' rights, but its implementation still faces various obstacles in the form of inequality of bargaining position between workers and employers, weak labor supervision, low legal compliance, and non-optimal industrial relations dispute resolution mechanisms. Regulatory changes also show a shift in orientation between worker protection and the need for labor market flexibility, so that a balance of policies is needed that is able to ensure legal certainty, protection of workers' rights, and the sustainability of the business world. Thus, the effectiveness of labor law is not only determined by the quality of the substance of the regulation, but also by the institutional strengthening, law enforcement, and legal culture of all industrial relations actors.

I. INTRODUCTION

The transformation of employment relations in Indonesia in the last two decades shows that employment law faces increasingly complex challenges. Changes in economic structure, increasing investment, digitalization of the business world, labor market flexibility, and regulatory reforms through Law Number 11 of 2020 concerning Job Creation have changed the paradigm of industrial relations from being originally oriented towards worker protection to finding a balance between the interests of workers and the sustainability of the business world. These changes do provide a wider space for investment growth and increase in national productivity, but at the same time they also raise various issues regarding the effectiveness of legal protection for workers. This condition shows that employment development is no longer only related to job creation, but also concerns the ability of the law to maintain a balance of interests

of all industrial relations actors (Arifuddin Muda Harahap, Rahmad Efendi, 2023).

These various dynamics show that employment problems in Indonesia are not solely caused by a lack of regulation, but are more influenced by the weak implementation of legal norms in industrial relations practices. Disputes over wages, termination of employment, the use of contract and outsourcing workers, employment social security, freedom of association, and the implementation of workers' normative rights are still recurring problems. On the other hand, business actors also face the demands of production efficiency and global competitiveness which demand flexibility in workforce management. This condition puts labor law in a dilemmatic position, which must be able to protect workers without hindering economic growth and investment (Oktafianto & Fatmawati, 2023).

Philosophically, labor law was formed to correct the imbalance of bargaining positions

between workers and employers. Employment relationships are essentially legal relationships that are not fully in an equal position because employers have greater economic power, access to capital, and managerial authority than workers. Therefore, the state is obliged to present legal instruments that are able to ensure the fulfillment of the constitutional rights of workers as mandated by Article 27 paragraph (2), Article 28D paragraph (2), and Article 28I of the 1945 Constitution of the Republic of Indonesia. The protection is not only intended to ensure the welfare of workers, but also to create harmonious, productive, and equitable industrial relations (Hanifah, 2020).

Although Indonesia already has various legal instruments that regulate industrial relations, ranging from Law Number 13 of 2003 concerning Manpower and various amendments through the Job Creation Law to various implementing regulations, the existence of these regulations has not been able to fully reduce the intensity of industrial relations disputes. Various labor conflicts show that there is a gap between legal norms (*Das Sollen*) with the reality of its implementation (*Das Sein*). Not a few legal provisions have normatively provided protection to workers, but in practice they have not been implemented effectively due to weak supervision, low compliance of business actors, limited access of workers to dispute resolution mechanisms, and not optimal functions of industrial relations institutions (S W Madjid et al., 2023).

Another problem that is no less important is the lack of a partnership paradigm in industrial relations as mandated by Article 102 of the Manpower Law. The relationship between workers and employers still tends to be seen as an antagonistic relationship so that the settlement of various employment problems often leads to disputes, strikes, and litigation processes. In fact, healthy industrial relations can only be realized if the law is not positioned solely as an instrument of control, but also as a means of building a balance of rights, obligations, and responsibilities of all parties. From the perspective of the modern state of law, the effectiveness of labor law is not only measured by the number of regulations that are formed, but also by the extent to which these regulations are able to create legal certainty, realize substantive justice, and provide benefits for workers, employers, and the state simultaneously (Dahlan & Anggoro, 2021).

Based on these conditions, this study aims to analyze the effectiveness of Indonesian labor law in building fair industrial relations through the study of the principles of legal protection, the balance of rights and obligations of the parties, and the implementation of labor norms in labor relations practices. This study is expected to make an academic contribution to the development of national labor law as well as a conceptual basis for strengthening industrial relations policies that are able to ensure legal certainty, justice, and proportionate utility.

II. RESEARCH METHODS

This study uses a normative legal research method (normative juridical) with a legislative approach (*Statute approach*) and conceptual approaches (*conceptual approach*). This approach is used to examine and analyze the legal norms that govern labor relations in Indonesia, especially regarding legal protection, the rights and obligations of workers and employers, and industrial relations based on the provisions of applicable laws and regulations (Jonaedi Efendi & Rijadi, 2022). The legal materials used are in the form of primary legal materials, including the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower and its amendments, Law Number 6 of 2023, and other implementing regulations. Secondary legal materials consist of books, scientific journals, research results, and doctrines of relevant experts, while tertiary legal materials are in the form of legal dictionaries and legal encyclopedias. All legal materials were analyzed in a qualitative descriptive manner using deductive reasoning methods to obtain conclusions about the effectiveness of labor law in realizing fair industrial relations in Indonesia.

III. RESULTS AND DISCUSSION

A. Legal Protection Paradigm in the Indonesian Employment Law System

Employment law is one of the branches of law that has experienced the most dynamic development because it is always influenced by changes in economic, social, political, and business developments. In contrast to civil law which puts the parties in a relatively equal position, employment law is born from the fact that the relationship between workers and employers is essentially never in a balanced position. Workers are in a position that is economically dependent on employment

opportunities, while employers have greater authority in determining company policies, capital management, and the sustainability of employment relationships. This inequality gives birth to the need for state intervention through the establishment of legal norms that aim to create a balance of rights and obligations of the parties (Zairudin, 2022).

In the perspective of the welfare law state (*welfare state*), the state does not only function as a regulator (*Regulator*), but also obliged to ensure the fulfillment of the social and economic rights of citizens. Work is part of the constitutional right that cannot be separated from human dignity because through work a person earns income, builds family life, and participates in national development (Rahman Halim, 2021). Therefore, the protection of workers is not solely a matter of the private relationship between workers and employers, but it is the constitutional responsibility of the state to ensure that every citizen has the opportunity to work and fair treatment in employment relations.

This constitutional foundation is expressly reflected in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every citizen has the right to work and a decent livelihood for humanity. This provision was then reaffirmed in Article 28D paragraph (2) which provides guarantees to everyone to work and receive fair and decent remuneration and treatment in employment relationships. Both provisions show that the protection of workers is not only a government policy, but also a constitutional mandate that binds all state administrators. Thus, any employment policy must be directed at achieving a balance between economic growth and respect for the basic rights of workers.

Legal protection in the field of employment is then realized through various regulations, ranging from Law Number 13 of 2003 concerning Manpower to amendments through Law Number 11 of 2020 concerning Job Creation, which was subsequently stipulated to be Law Number 6 of 2023. These changes show that labor law is a dynamic and responsive legal field to changes in national and global economic structures. Globalization, the industrial revolution 4.0, economic digitalization, and increasing investment mobility are factors that encourage the government to make adjustments to labor policies (Anugrah & Ruslie, 2024). However, the change in regulations has also given rise to

various academic debates regarding the political direction of Indonesian labor law, especially related to the balance between investment interests and protection of workers.

From a legal political perspective, changes in labor regulations show a shift in orientation from a protective protection model to a more flexible model (*Labour market flexibility*). The government seeks to create a conducive investment climate through simplification of labor regulations in the hope of increasing labor absorption and strengthening national competitiveness. However, such flexibility is often perceived as a form of reduced protection for workers, particularly with regard to the fixed-time employment agreement system, outsourcing (*outsourcing*), the calculation of severance pay, as well as the mechanism for termination of employment. This debate shows that the development of labor law is always at the point of balance between economic interests and the protection of workers' rights (Pratiwi & Andani, 2022).

When viewed from the perspective of justice theory, the existence of labor law is a form of correction to the inequality of bargaining position (*Bargaining Position*) between employees and entrepreneurs. The principle of freedom of contract as known in civil law cannot be applied absolutely in employment relations because workers generally do not have the flexibility to negotiate all the contents of the employment agreement equally. In practice, most of the terms of employment are predetermined by the employer so that workers only have the option to accept or reject the job. Therefore, the state sets minimum standards that must not be kept, such as provisions on minimum wages, working hours, rest periods, occupational safety and health, employment social security, protection of women and child workers, freedom of association, and industrial relations dispute resolution mechanisms. The minimum standard is a form of restriction on the freedom to contract in order to realize substantive justice in the employment relationship (Febrianti et al., 2022).

Furthermore, the paradigm of legal protection in the Indonesian labor system is no longer only oriented towards providing normative rights to workers, but is also directed to build harmonious, dynamic, and equitable industrial relations. The ideal industrial relationship is not built on the basis of dominance of one party, but through a mutually beneficial *partnership*. Entrepreneurs

obtain legal certainty and stability in carrying out business activities, while workers obtain protection for the economic, social, and legal rights inherent to them. This balance is an important prerequisite in creating company productivity while maintaining national economic stability.

However, the legal protection paradigm still faces quite complex challenges at the implementation level. The development of the digital economy, the increasing use of platform-based labor (*The Gig Economy*), flexible working system (*Flexible working arrangement*), as well as artificial intelligence-based automation have changed the character of the previously conventional working relationship. This condition raises various new legal problems that cannot be fully accommodated by existing labor regulations. As a result, there is a gap between the development of labor relations practices and the legal ability to provide adequate protection for workers (OCTA, 2023).

Thus, the paradigm of Indonesian labor law today can no longer be understood only as a set of rules that govern the employment relationship between workers and employers. This paradigm has developed into a constitutional instrument that functions to maintain a balance between the protection of workers' rights, legal certainty for the business world, and the interests of national economic development. Therefore, the effectiveness of labor law is not enough to be measured by the number of regulations that have been formed, but must be assessed from the ability of the legal system to create industrial relations that are fair, adaptive to changing times, and able to provide sustainable legal protection for all industrial relations actors. In other words, the success of labor law does not lie solely in the strength of its norms, but in its ability to present a balance between social justice, legal certainty, and economic benefits as the three main goals of law formation in Indonesia.

B. Problems of Implementation of Labor Law Norms in Industrial Relations

The success of an employment law system is not only measured by the completeness of the regulations it has, but especially by the ability of these norms to be effectively realized in the practice of industrial relations. Indonesia actually has a relatively comprehensive legal apparatus, starting from the Constitution of the Republic of Indonesia in 1945, Law Number 13 of 2003

concerning Manpower, Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes, Law Number 24 of 2011 concerning the Social Security Administration, to amendments through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation becomes a Law along with various implementing regulations. However, the existence of these layered regulations has not been able to eliminate various fundamental problems in the practice of industrial relations. In other words, the main problem of Indonesia's labor law today no longer lies in the normative gap, but in the gap between the aspired laws (*Das Sollen*) with the law that takes place in reality (*Das Sein*) (Moertiono, 2023).

The implementation problem shows that industrial relations are still dominated by the inequality of economic power between workers and employers. Theoretically, an employment relationship is indeed born from an agreement based on the principle of freedom of contract as known in civil law. However, in practice this principle does not run in a balanced manner because workers generally do not have a bargaining position (*Bargaining Position*) which is equivalent to the employer. Limited job opportunities, high unemployment rates, and economic dependence on wages cause most workers to be in a position to accept the working conditions that have been unilaterally determined by the company. As a result, employment agreements that formally appear to be the result of agreement between the parties are in fact often a form of standard contract (*Standard Contract*) which has minimal negotiation space for workers (Rivai & Nugrahini, 2022).

The imbalance in the bargaining position then gives rise to various forms of violations of workers' normative rights. Disputes regarding wage payments below minimum provisions, late payment of wages, abuse of the Fixed-Time Work Agreement (PKWT) system, outsourcing practices that reduce job security, violations of leave rights, non-registration of workers in the employment social security program, and termination of employment without legal procedures are still a phenomenon that is widely found in industrial relations practices. This condition shows that the legal protection that has been formulated in various laws and regulations has not been fully able to provide real protection for workers as

parties who are socio-economically weaker (Avianto et al., 2022).

The problem of implementing labor law is increasingly complex after the birth of the regulatory reform policy through the Job Creation Law, which was later strengthened through Law Number 6 of 2023. From a political and legal perspective, the formation of these regulations is part of the government's strategy to increase the ease of doing business (*ease of doing business*), attract investment, expand job opportunities, and increase national economic competitiveness in the midst of global competition. Flexibility of employment relationships is seen as one of the important instruments in creating a conducive investment climate. However, from the perspective of worker protection, these various changes in norms have raised criticism because they are considered to shift the orientation of labor law from the paradigm *Ploughing Protection* Towards the Paradigm *Labour market flexibility* (Mulia & Ahmad, 2024).

Changes in PKWT regulations, expansion of the scope of outsourcing, adjustment of severance formulas, and simplification of termination procedures are clear examples of how the interests of economic efficiency are often confronted with the principle of protection of workers. Normatively, flexibility is indeed needed so that companies are able to adapt to global economic dynamics. However, if this flexibility is not balanced with the strengthening of social protection mechanisms, then economic risks will actually be borne more by workers. Under such conditions, labor law loses its main function as a corrective instrument against employment inequality and turns into an instrument that is more oriented towards labor market efficiency (Davin, 2024).

Another problem that is no less important is the weak effectiveness of the labor supervision function. Supervision is the main instrument to ensure that legal norms do not stop as texts in laws and regulations, but are actually implemented by all industrial relations actors. In the concept of a welfare law state, labor supervisors have a strategic position as a state representative in protecting workers' rights while maintaining legal certainty for the business world. However, in practice, the effectiveness of supervision still faces various structural obstacles, including the limited number of supervisors compared to the number of companies that must be supervised, the size of the

work area, the limited operational budget, the lack of use of supervision technology, and the lack of optimal coordination between the central government and local governments. As a result, various violations of labor norms are often only discovered after they have developed into industrial relations disputes that require resolution through legal channels.

On the other hand, the mechanism for resolving industrial relations disputes also still faces various problems of effectiveness. Although Law No. 2 of 2004 has provided for settlement stages through bipartite negotiations, mediation, conciliation, arbitration, and Industrial Relations Courts, the dispute resolution process in practice is often long, requires a lot of money, and does not provide equal access for all workers. Many workers, especially informal sector workers and workers with low levels of education, choose not to fight for their rights due to limited legal knowledge, fear of losing their jobs, and limited economic ability to participate in the litigation process. These conditions indicate that access to justice (*access to justice*) is still a serious challenge in Indonesia's employment system (Mantili, 2021).

The problem of legal implementation also cannot be separated from the legal culture (*Legal Culture*) industrial relations actors. Some companies still view compliance with labor regulations as a burden on production costs (*cost of compliance*), not as part of corporate social responsibility (*Corporate Social Responsibility*). On the other hand, some workers also do not fully understand their rights and obligations so that they are often unable to provide legal protection for themselves. Low literacy in labor law causes various violations to take place without effective social supervision mechanisms. In this context, legal culture is as important a factor as the substance of the law because the success of a regulation depends heavily on the level of legal awareness of the people who implement it (Zairudin, 2022).

When analyzed using Lawrence M. Friedman's legal system theory, Indonesia's employment problems show that the three elements of the legal system are the substance of the law (*Legal Substance*), legal structure (*Legal Structure*), and legal culture (*Legal Culture*) has not worked harmoniously. The substance of the law has actually provided quite extensive protection for workers, but the legal structure through supervision and law enforcement has not been

able to implement the norms optimally. On the other hand, the legal culture of industrial relations actors has also not fully supported the creation of compliance with the law. The insynchronization of these three elements causes labor law to often only be normatively effective, but not empirically effective (Al Kautsar & Muhammad, 2022).

Therefore, it is not enough to improve Indonesia's labor system through regulatory changes alone. Legal reform must be directed more comprehensively by strengthening the institutional capacity of supervision, improving the professionalism of labor law enforcement officials, accelerating the resolution of industrial relations disputes, expanding access to legal aid for workers, and building an industrial relations culture based on the principles of partnership, justice, and good faith. Thus, labor law not only functions as an instrument of controlling labor relations, but also as an instrument of social development that is able to create a balance between the interests of worker protection, business sustainability, and sustainable national economic growth.

C. The Effectiveness of the Employment Law System in Realizing Industrial Relations Justice in Indonesia

The effectiveness of a legal system cannot be measured only by the number of laws and regulations that are formed, but by the ability of the law to achieve the goals to be realized. In the context of labor law, this goal is not only to create legal certainty for workers and employers, but also to build harmonious, fair, productive, and sustainable industrial relations. Therefore, the analysis of the Indonesian labor law system does not stop at the normative aspect, but must assess the extent to which these norms can be implemented in labor relations practices (Prawesti & Rizal, 2024).

Normatively, Indonesia actually has a relatively complete legal apparatus. Provisions regarding labor relations, workers' rights and obligations, wage system, social security, occupational safety and health, freedom of association, and industrial relations dispute settlement mechanisms have been regulated in various laws and regulations. The amendment to Law Number 13 of 2003 through Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law shows the government's efforts to adapt the labor law

system to national and global economic dynamics. The changes are basically directed at creating labor market flexibility, increasing investment competitiveness, and expanding employment opportunities. However, the change in regulations also raises debates about the reduced level of protection for workers in some aspects of employment relations (Yitawati et al., 2024).

The fundamental problem that is still facing Indonesia's labor law actually lies not in the lack of regulations, but in the weak implementation of legal norms. Many companies still ignore their normative obligations, such as paying wages according to the provisions, providing social security, protecting occupational safety, fulfilling severance rights, and respecting freedom of association. On the other hand, workers often do not have an adequate bargaining position to claim their rights because employment relationships depend on the continuity of work as the main source of livelihood. This inequality of position causes the principle of freedom of contract in employment relationships to never really be in an equal position.

This condition shows that labor law is still facing the classic problem of the gap between *das sollen* and *das sein*. Legal norms have provided quite comprehensive protection, but the reality of industrial relations shows that the number of violations of workers' rights is still high. From the perspective of legal sociology, the success of a norm is greatly influenced by the legal culture of the society and the effectiveness of the law enforcement structure. Therefore, good regulation will not produce optimal protection if the labor supervisory apparatus has limited resources, the supervision mechanism has not been run effectively, and sanctions for violations have not provided a deterrent effect.

If analyzed using Lawrence M. Friedman's theory of the legal system, the effectiveness of Indonesian labor law is influenced by three main components, namely the substance of the law (*Legal Substance*), legal structure (*Legal Structure*), and legal culture (*Legal Culture*) (Al Kautsar & Muhammad, 2022). From the aspect of substance, regulatory changes show that there are efforts to reform the law to answer the development of modern industrial relations. However, changes in the substance of the law must be balanced with the strengthening of institutional structures, especially labor supervision, industrial relations mediation, and industrial relations justice. Meanwhile, from the

aspect of legal culture, there is still a tendency for some employers to view worker protection as a burden on production costs, not as an investment in creating company productivity. On the other hand, some workers also do not understand optimally their rights and obligations, so dispute resolution often develops into prolonged conflicts.

Furthermore, the development of the industrial revolution 4.0 and economic digitalization presents new challenges for Indonesian labor law. The emergence of digital platform-based workers, flexible *working arrangements*, remote *working*, and the use of artificial intelligence in human resource management have given rise to employment relationships that cannot be fully explained using conventional labor paradigms. Regulations that have been more oriented towards traditional employment relationships have the potential to create a legal vacuum for these new forms of work. Therefore, labor law reform is not only aimed at resolving existing labor relations problems, but must also be able to anticipate changes in labor relations patterns in the future.

From a political and legal perspective, labor law should ideally not be in absolute favor of workers or employers. The state must position itself as a regulator that maintains the balance of interests of both parties. Excessive worker protection can reduce the flexibility of the business world and reduce investment competitiveness, while the liberalization of labor relations without borders has the potential to eliminate the social and legal functions and weaken the protection of workers' rights. Therefore, the concept of Pancasila industrial relations remains relevant as the basis for the development of Indonesian labor law because it places workers and entrepreneurs as strategic partners who need each other in realizing national productivity (Nasution et al., 2026).

Strengthening the labor law system must ultimately be directed at the creation of *legal certainty with justice*. This can be realized through the harmonization of labor regulations, the optimization of supervisory functions, the strengthening of industrial relations dispute resolution mechanisms, the improvement of company compliance with labor norms, and the development of a worker protection system that is adaptive to the transformation of the digital economy. Thus, labor law not only functions as an instrument of social control, but also as a means of

national development that is able to create a balance between economic productivity, protection of workers' rights, and the sustainability of the business world. This paradigm is the main measure of the success of the Indonesian labor law system in realizing fair, sustainable, and legal relations as mandated by the 1945 Constitution of the Republic of Indonesia.

IV. CONCLUSIONS AND SUGGESTIONS

A. Conclusion

Labor law in Indonesia is basically formed to create a balance between the protection of workers' rights and the interests of the business world through fair, harmonious, and sustainable industrial relations. Normatively, various provisions in the Labor Law and their amendments have comprehensively regulated the rights and obligations of the parties, ranging from labor relations, wages, social security, occupational safety and health, to the settlement of industrial relations disputes. However, the effectiveness of the labor law system still faces various obstacles at the implementation level. The inequality of bargaining positions between workers and employers, weak labor supervision, low compliance with legal norms, and the emergence of new forms of employment relations due to the development of the digital economy show that legal protection has not been fully running optimally. Therefore, the success of labor law is not only determined by the quality of the substance of the laws and regulations, but also by the effectiveness of law enforcement, institutional strengthening, and the legal culture of industrial relations actors. Thus, the labor law system must continue to be developed adaptively in order to be able to provide legal certainty, justice, and benefits in a balanced manner for workers and employers in accordance with constitutional values and national development goals.

B. Suggestions

The government needs to strengthen the effectiveness of labor supervision, improve regulations to accommodate the development of modern labor relations, and increase law enforcement against violations of workers' rights. On the other hand, companies and workers need to build a culture of industrial relations based on partnership, legal compliance, and constructive dialogue so as to create a balance between

business productivity and the protection of workers' rights.

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