DOES THE LAW REALLY MATTER?:
Labour and the Law in "Labour Law Reform" Perspective*

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Abstract

This paper seeks to describe the interaction between the Law as a product of political contest and the Indonesian unions as an actor in an industrial relation's setting. Since the fall of Soeharto in 1998, the government of Indonesia has launched a program, known as "Labour Law Reform" which up to 2004 has enacted at least four new labour Acts. Pros and cons about those labour Acts existed during and still continued after the enactment, as the unions were consciously active engaging themselves on the debate and even some are trying to incorporated their ideas. This situation is compounded as the government tries to implement the Acts as dead-letter policy while the employers faced by international market competitions in the high wave of globalization, undertake drastic company arrangement searching for more flexibility in their management strategies. Contrarily to popular belief, the unions are actually in a weak position as they are highly fragmented among themselves and still have not had enough infrastructure capacities (such as "adequate" membership) to show their roles in engraving "protective labour regulation". This in return raises a problem whether the unions have wasted their energy focusing on the Law, rather than organizing their member-workers.

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> I regard law as a secondary force in human affairs, and especially in labour relations.
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> (Otto Kahn Freund, *Labour and the Law*, 1977:2)

The Context: "Labour Law Reform" program

The "Labour Law Reform" program began at the same time when workers just started to obtain their freedom to form unions. With the fall of Soeharto in May 1998, many workers saw the opportunity to establish genuine trade union, the one that they had been dreamed of.

Most of the unions formed at that time such as SBJ (Serikat Buruh Jabotabek), were based on several company-unions in the same area/region, and generated by the help of some NGO activists. The establishment of unions outside the government-sponsored union SPSI (Serikat Pekerja Seluruh Indonesia) was later found formal impetus with the ratification of ILO Convention no. 87 on June 5,1998. Despite the image of labour-friendly the Habibie government wanted to build, workers saw this ratification as a legal basis to formalize what had already happening in the labour movement itself. Strategically workers used this legal instrument to back up their newly formed unions.

At this time when many of the unions were still in their earliest stage of organizing, they faced the issue how to respond with the so-called "Labour Law Reform" program launched by Department of Manpower. Fahmi Idris, then Minister of Manpower, had signed technical assistance agreement with the ILO soon after the visit of ILO Direct Contact Mission in August 1998, in order to "review, revision, formulation or reformulation of practically all labour 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). In this new sudden situation, when the unions internally still needed time to consolidate among themselves, they were drawn whether against or be acquiesced with the government Reform program. The challenge unions had to deal with this Reform program was not easy while they also had to confront with brutal employers' tactic and premanisme (thugs). Certainty was also the last thing they could find from the general situation. In this period of confusion and euphoria, just like the experience of many other transition economies, political adventurers and free riders are the prime actors. Many of them use labour unions as their political vehicle since establishing a union is lot of easier comparing any other type of organizations.

The Trade Union Act (Act no.21/2000, promulgated on August 4, 2000) as the first outcome of Reform program, was not warmly welcomed by many unions. Some of them, joined together as a coalition, KAPB (Komite Anti Penindasan Buruh), considered that the Act is merely none other limiting genuine freedom of association the unions had used to perceive with the loosely-defined ILO Convention. History records only SBSI (Serikat Buruh Sejahtera Indonesia) welcomed the Act due to the fact that it was the only union involved in the drafting process. SBSI even claimed that some articles of the Act came from their recommendations

(Kompas, 20 July 2000). One may cynical on SBSI's involvement but the fact is at that time, only SBSI, among any other newly formed unions, which had firmly established its organizational structure and moreover had the skill of lobbying since one of SBSI's co-founder, Jacobus Majong, was a parliament member.

Although the Trade Union Act was a new issue deserved to get more consideration, the unions' attention was absorbed to the Labour Act (Act no. 25/1997), a legacy from Soeharto's ruling. Even though they disliked Trade Unions Act, the unions considered the implementation of Labour Act was more threatening. After postponed twice since its promulgation in 1997, the unions still insisted for its annulment. But the Habibie government seemed to have different considerations, another postponed was granted instead, a month after the promulgation of Trade Union Act. For the moment the unions could take a rest.

First Encounter: Mass Opposition

Unlike the drafting process of Trade Union Act which was unknown to the unions, this time they were quite informed about another drafting process of two other labour bills. As part of the Reform program, the government had drafted the Manpower Guidance and Protection bill (PPK- *Pembinaan dan Perlindungan Ketenagakerjaan*) and the Industrial Dispute Settlement bill (PPI - *Penyelesaian Perselisihan Industrial*). Aside from ratifying five fundamental ILO Conventions over the period of June 1998 to May 2000, the government had drafted the two bills and by May 8, 2000 the drafted bills were handed over to the Parliament House. However, the two bills were poorly drafted and more than 70% of the PPK bill's content was simply an adoption from the Labour Act. Over the time the Department of Manpower had revised the bills with several versions.

These different versions of draft bills were accessibly circulated among union organizers and NGO activists. The unions had headed their noses right to the Parliament and seems did not want to be ignorance with the Reform program. They were aware that the Parliament had agreed in July to enact the Trade Union Act without the presence of any unions (*Kompas,* 20 July 2000), and did not want to make the same mistake for these new bills. They felt that this time the Parliament should had listened to their opinions. In many various internal and

alliance meetings, unionists were discussing the bills either as a topic or in the sideline. Some even went further by producing "counter draft bills" (*draft tandingan*), partly because they were falsely informed that having a "counter draft bill" was a kind of "ticket" to meet with the Parliament members. As the discussion among union organizers getting more and more intense, surprisingly the process in parliament seemed to cease. The reason probably simply because many of the Parliament members knew nothing about labour issues. Until June 2002, there wasn't any news regarding the process, whether the two bills were going to be promulgated or not. In this situation, many unionists had stopped talking about the bills although the issue was not completely abandoned. Some minor expressions of demanding amendment of the bills were still articulated (*Jakarta Post*, 04 July 2002) but formulating a "counter draft bills" was not a priority work anymore.

Out of the sudden, three months later the issue raised up again as the parliament intended to enact the bill. This time the unions were quite shocked knowing the news and many unionists were eager to do something with drastic effects after tons of lead-to-nowhere discussions among themselves. Without any hesitations, the unions were agreed calling for a general demonstration in front of the Parliament building (*Waspada*, 14 September 2002). By September 23, 2002 the unions finally showed their claws as the demonstration was so massive that the Parliament decided to postpone the enactment (*Media Indonesia*, 24 September 2002). At that moment, the unions seemed to be united in common negative response for any draft bills coming from the government which were intended to be enacted by the Parliament.

"Tim Kecil": The thin line between Participation and Cooptation

The September 23 demonstration caused waves of opposition to other cities. In Semarang, Central Java, workers united to form coalition to oppose the enactment of both bills (*Bernas*, 25 September 2002). Even unions in Sidoardjo, East Java, successfully pressed the local parliament (DPRD) to sign agreement to reject the bill (*Kompas*, 26 September 2002). Facing this widespread negative response, the Parliament was in no better position insisted to enact the bills. Knowing that they could not pass the bill without any larger opposition, another strategy was set. Less than a week, an "informal meeting was conducted after having a mandate from the Chairman of *Pansus* (Parliamentarian team for the bill) Surya Chandra

Surapaty" simply in the purpose "to approach the unions and employer association… to find solutions concerning the Manpower bill" (*Kompas*, 02 October 2002).

"Informal meeting" may function as a channel for the unions to express their voice and concern over the bills, but the limited space and political terrain they had to deal with made them difficult to comprehend where this "informal meeting" would lead to. Jacob Nuwa Wea, a member of the President's party PDIP who were appointed as Minister of Manpower, had set this idea of "informal meeting" for his personal accomplishment in the cabinet. Under his input, certain union leaders were invited for the subsequent informal meeting on November 7 and by November 12 the names which later known as "Tim Kecil", were fixed (see Table 1). With this in hand, his fellow PDIP's cohort, Herman Rekso Ageng as the parliament member who received the "mandate", arranged and facilitated eight continuing meetings during November-December 2002 and January 2003 in various five star hotels. He further had listed four issues "to be discussed together" for the meeting: the right to strike, dismissal procedure, outsourcing and contractual working system.

Table 1. Members of "Tim Kecil" for Manpower bill

Name	Union
1 Ari Sunarijati	FSPSI Reformasi, Bureau of Women and Children
2 Arief Soedjito	FSP Pertanian dan Perkebunan, KSPSI, Chairperson # 2
3 Chaerul Bey	FSP Kimia, Energi dan Pertambangan, KSPSI, Chairperson on Advocacy
4 Indra Munaswar	FSP Tekstil, Sandang dan Kulit, Secretary General
5 Kusharyanto	Serikat Buruh Sejahtera Indonesia.
6 Martin Sirait	Serikat Buruh Maritim dan Nelayan Indonesia, General Chairperson
7 Muhammad Rodja	FSPSI Reformasi, Secretary General
8 Rekson Silaban	Serikat Buruh Sejahtera Indonesia, Chairperson
9 Said Iqbal	FSP Metal Indonesia, Secretary General
10 Sebastian Salang	Perserikatan Buruh Independen, Secretary General

From what the "Tim Kecil" did and how the discussion had flowed during the meetings, one could easily notice the shift of these ten union leaders' response from being reluctant discussing the four issues to calm moderation of accepting the importance of enacting Manpower bill with some minor changes and corrections. The discussion about the right to strike in the end turned out to be on the subject of the mechanism and procedure to limit the excess of a strike, instead of the protection unions needed when and after exercising their right to strike. Similar moderation also occurred on the subject of outsourcing, from repudiation of outsourcing practice to the incorporation of some articles specially drafted on its mechanism.

By January 03, 2003, the so-called "consented draft" (*naskah kesepahaman*) as the final result of "informal meeting" was handed to the Parliament house. It was said to be an agreement (*kesepahaman*) on particular articles between unions and employers under the guidance of Herman Rekso. Although other unions joined in KAPB had declared their rebuff to the bill and also denied the existence of "Tim Kecil" as union representation (*Kompas*, 08 February 2003), this time the Parliament, without reluctance and any difficulties, enacted the bill.

Succeed in the establishment of "Tim Kecil" as an extra-parliamentary institution in formulating Manpower bills, Herman Rekso went for the Labour Dispute Settlement bill. Although wanted to be done soon, deliberately he waited after the May Day celebration which as expectedly, was crowded by workers protesting the Manpower Act. But soon after that, in May 31 he arranged the first "informal meeting" for the bill. Afraid of facing further accusation for not being fairly represented, this time the members of "Tim Kecil" were selected among and by the attending unions (see table 2).

Table 2. Members of Tim Kecil for Labour Dispute Settlement bill

Name Union

1 Abdul Hakim Persaudaran Pekerja Muslim Indonesia, Secretary General

2 Abdul Salam Daude Gasbiindo, Chairperson

3 Buyung Marizal FSP Rokok,Tembakau, Makanan dan Minuman,KSPSI, Secretary General

4 Firman Hadi FSP Kependidikan Seluruh Indonesia, KSPSI, General

Chairperson
5 Franky Tan FSPSI Reformasi, Research Division
6 Lainsamputty Fritz FSP Bangunan dan Pekerjaan Umum, KSPSI
7 Makmur Komaruddin FSP Metal Indonesia, Vice Chairperson
8 Miyadi Suryadi Gaspermindo Baru, General Chairperson
9 Nurdin Singadimedja FSP Tekstil, Sandang dan Kulit, KSPSI, Chairperson
10 Ruslan Effendy Serikat Pekerja Rakyat Indonesia, General Chairperson
11 Sebastian Salang Perserikatan Buruh Independen, General Secretary
12 Shamiri Sandja FSP Pariwisata, KSPSI, Chairperson

Additionally he also set up another group known as "Resource persons" (*Narasumber*) whose members were derived from the previous "Tim Kecil" (see table 3). The function of this group was far from clear, obscurely defined by its members and actually in practice, often blurred out with the members of "Tim Kecil". Probably it was because none of its members really know what the actual purpose of this group. For its members, it seems that so long they still can play a part in the process in whatever roles set by Herman, that would be enough for them in claiming "participation" during the process.

Table 3. Members of Resource persons.

Name Union
1 Arief Soedjito FSP Pertanian dan Perkebunan, KSPSI, Chairperson
2 Indra Munaswar SP Tekstil, Sandang dan Kulit, FSPSI Reformasi
3 Kusharyanto Konfederasi Serikat Buruh Sejahtera Indonesia,
4 Said Iqbal FSP Metal Indonesia, General Secretary

After having a sketchy draft bill formulated from three-day-discussion in July with three labour law professors, Herman Rekso started to arrange informal meetings in August with the "Tim Kecil" and the "Resource persons". The continuing discussions then were based on that draft bill. The difference in this process with the previous one is the absence of active debate among the "Tim Kecil" members since the discussion went on some legal technicalities that none of them were familiar with. They just left it behind to the two labour law professors who were accompanying them during the discussions. This in the end made the process shorter and

within only two months, the final "consented draft" (naskah kesepahaman) was produced. By November it was handed over to the Parliament house.

Institutionalized the Law: Unions in Legal Politics

The creation of "Tim Kecil" showed parliament's need for unions' legitimization in the drafting process. They knew that they needed some sort of approval and consent from the unions. The parliament sought to ensure support from the unions for their economic and labour policy which was actually doomed for the unions itself. It is done through direct agreement and with the manufacturing of special procedural arrangement which they labeled as "participation". And this kind of mechanism is fully acknowledged and even documented in the parliament's Rapat Paripurna (General Meeting) (see Laporan Ketua Pansus 2003). One might regard the "Labour Law Reform" as a grotesque example of 'juridification' process which "steered the unions into a binding legal framework, securing continuous control over them, as well as their adaptation to the government's economic policy" while "[t]he advantage, for both government and parliament, is rather obvious. They can successfully avoid involvement in ongoing conflicts and assume a spectator's role while the juridification process continues" (Simitis, 1987). Unions were becoming incorporated into the political arena not as policy maker but simply as the device to make sense of the whole process.

On the other hand, "Tim Kecil" also showed how fragile and fragmented the labour movement itself. Union leaders who became its members were taking part and actively engaged in formulating some articles of the law, while others were standing outside. From other countries studies, what was happening to Indonesian unions during the labour law reform process is actually not unique. The Korean Confederation of Trade Union (KCTU), the independent union in South Korea, at first also faced similar situation of whether to join in or not when the Korean government launched labour law reform after the 1998 financial crisis (Lim et al., 2003). And when it decided to join in, "the KCTU leaders were severely criticized by its rank-and-file members for accepting the layoff clause" (Koo, 2001). Likewise, during the country's labour law reform in early 1990, the New Zealand unions later were heavily pushed to be involved in the process. Despite the union's persistent resistance in the early stage, the government had succeeded influenced and made the unions believed that the reform itself was needed for the economy recovery (Danning, 2001). As Danning shows, this was

done through various rhetoric campaigns, opinion polls, and also mythmaking before the reform process began. The unions in the end could not oppose the neo-liberal designed reform when actually opposition would have been expected by their rank-and-file.

The difference in Indonesian case lies on the diverse profile of union leaders involved in the labour law reform process, i.e. members of the "Tim Kecil". Structurally, they are high-rank level persons of their organization but they have different background. Many of them have long credibility in front of their members but some others do not even have ample experiences in labour issues as their organizations were newly established after 1998. Some of the members who have idealist views and good vision but with little reference what really happening inside, just jumped into the political arena and disposed soon after their "participation" was over. While others, more opportunistic in purpose, dreamed to be an active players, instead were drawn into the spinning "oligarchy political pluralism" (Okamoto 2005) of Indonesian parliamentary situation. This diversity in background and interest, in a sense reflects the fragmentation of Indonesian labour movements, has made them unable to articulate and voice the same belief over an issue.

With this history, the Indonesian labour unions are challenged to define the future of their fragmented movement. The real challenge actually just begins as it is related to the broader labour market situation and in what potential roles the unions should and could play. Once the new labour law was institutionalized which starts with the enactment of Trade Union Act, Indonesian unions confront a new problem how to cope with the "global labour flexibility" (Standing 1999).

Vulnerable Workers, Nervous Employers and Clawless Unions

One newspaper report gives some hints what kind of problems the ordinary workers are facing in the current Indonesian labour market situation (*Jakarta Post*, 06 May 2005):

> As workers across the country observed Labor Day by holding street rallies on Sunday, bringing their aspirations into the spotlight, Haryono joined in. The father of two has been working as a cleaning service employee in the same factory for seven years, but after all this time, he's still a contract worker. He's never actually seen the contract himself. "I know there's a contract, but I've never seen

> it," he said, adding that it did not matter much to him anyway. "The most important thing for me is that I get paid. That's good enough for me."
>
> The senior high school graduate admitted that he did not earn enough money for his family. His basic monthly salary is Rp 626,000 (US$65), and in addition to Rp 1,800 per day meal money and Rp 1,300 per day for transportation expenses. Haryono said whenever he gets paid, the money disappears very quickly….
>
> As a contract worker, Haryono is not protected by health or social insurance from his factory. If he falls sick, it means he has to find extra money in order to get medical treatment, forcing him to opt for cheaper herbal medicine instead.

The problem faced by ordinary workers like Haryono, as illustrated by the report above, shows how fragile their living is due to the insecurity of work they have to face. As "one of 16 million workers who earn their living in 870,000 companies across the 37 regencies and municipalities of East Java" (ibid.), what hampered Haryono actually also confronted by "million workers" especially those who work in the cleaning service companies. More than what people might label as "the gloomy same old story of sad working condition", the problem itself is a result of the broad structural economic situation. It is about how workers are valued in the labour market. What Haryono experienced is the outcome of two year fabrication of contractual working system as Teguh Wahyu Sejati, the Chairman for Association of Cleaning Service Companies (*Asosiasi Perusahaan Jasa Kebersihan Indonesia*) had boldly stated not long after the enactment of Manpower Act, that "almost none of the cleaning service companies had their employees as permanent workers" (*Kompas*, 23 August 2003). He even continued that "our service companies can't give wages in accordance with the provincial minimum wage and still have to impose contractual working system [to the cleaners]"(ibid.).

For the last two years, many unions have been reporting the same account that companies they work for are gradually replacing their union members, the permanent employees, with a less protected and contractual-based workers. One union of a big company in East Java, has reported that almost half the workers working inside are those in the monthlycontractual system. The composition of permanent workers and contract workers are approaching the same amount of fifty percent as the company no longer employ new permanent workers but

instead prefer to recruit outsourcing workers from a labour supplier agency (*Kompas*, 01 July 2002). The fact is that the use of contractual-based and outsourcing workers is made easier by the increasing number of employment agencies in industrial cities such as Tangerang, Banten and Sidoardjo, East Java. After conducted an investigation on how flexible workers are hired, KASBI (*Kongres Aliansi Serikat Buruh Indonesia*), a coalition of 18 regional unions from 8 provinces, reported that many of the employment agencies are actually operating in shadow business and owned by local Manpower Office staffs. (KASBI, 2004).

Besides that, low wages in a contractual working system is the common shared-problem workers have now. Rather than being unemployed, most workers do not have the choice to find better job in the growing informal economy. Even hired for only a few months, contractual working system is the only thing offered in the labour market. On the other hand, most workers like Haryono, are turning to be docile once they are employed, fear of being sacked, because they aware that others are ready to replace them instantly when they start to complaint about the working condition. They have no other choice nonetheless have to accept it. Although they may not understand what the law says or how government has set labour market policy, it does not mean those workers do not know or "lack of awareness of their rights" as one commentator explained the situation (*Jakarta Post*, 06 May 2005). Instead, being "docile" is their only existing strategy of survival, part of "the everyday form of resistance" of the vulnerable working class. Although practically in the end as final result, workers are hegemonized to be permissive (*pasrah*) by and with the widespread contractual-outsourcing working system. For the employers, outsourcing offers the best suitable scheme for their company competitiveness. Faced by international market competition of the cheap labour cost from China and Vietnam, one textile businessman stated that he has no other choice to reduce his employees' wage because "labour cost is only thing I can suppressed down, instead of production cost or 'bureaucracy' cost, in order to gain profit" (TURC, Minutes of Symposium, 2004).

Moreover, as Djimanto, the General Secretary of Indonesian Employers Association (APINDO-*Asosiasi Pengusaha Indonesia*), stated that in search for more efficiency "many employers had begun recruiting casual or contract-based workers to cut down their labour costs and avoid paying compensation when they had to dismiss workers"(*Jakarta Post*, 27

August 2004). Furthermore he adds that outsourcing system was preferred by many employers and has become the rational choice for the business "not just because of efficiency since the labour cost can be pressed down as minimum as it can be, but also the work result itself will be optimal because the exertion is handed to the labour contracting company" (*Kompas*, 30 November 2004). Economically speaking, risk-sharing is also part of outsourcing business since the cost of hiring and firing are shifted to be the burden of employment agency. The minute outsourcing workers start to complaint, employers can ask for a change for more submissive ones. The flexibility of contractual working system has become the dogma for domestic business to endure in the international pressure by creating cheaper labour.

Outsourcing working system is also campaigned for by the government, with different reason from the efficiency-driven domestic employers, in order to attract new foreign investors. Since Indonesian economy still depends on foreign investment, the main purpose for government endorsement of outsourcing implementation is the creation of the so-called "investment climate". As affirmed several times in mass-media by Bambang Widianto, Director for Manpower and Economic Analysis of BAPPENAS (National Development Planning Board), the government are strained to draw national policy that is suitable for flexibility in the labour market (*Kompas*, 17 February 2005). The most publicized reason is that the current investment rate is no longer enough to stop the growing rate of unemployment. Drawn conclusively from neo-liberal economic analysis, the formulation of labour market flexibility policy to attract foreign investors is believed to create more jobs in the internal market (See, Manning 2003). The analysis boldly prescribes more flexibility for Indonesian labour market on the reason that protective labour market has caused inefficiency and does not suitable for the growing informal economy. It even includes a warning that Indonesia would become the next Philippines in term of economic condition unless precautious policy is implemented to unleash the "labour market rigidities".

It was believed that the recruitment of peripheral workforce is meant to create more flexible labour condition that can adapt easily to the general unpredictable Indonesian labour market situation. Besides flexibility in the labour market, Bambang Widianto also avowed the need for rule of conflict diminution (*tidak rawan konflik*) as one of the prerequisites to attract

foreign investors. Haunted with the spectre of "philippinesation" of Indonesian economy, the creation of more jobs becoming the main objective in national policy and this inevitably neglects the promotion of employment-security of the existing jobs. Supporting further this logic, Muzni Tambusai, Director for Industrial Relation of the Manpower Department, argues unswervingly that "the implementation of outsourcing working system, from the labour law aspect point of view, does not blur the industrial relation" even though aware with its deviant implementation in the field
(Informasi Hukum 01/VI/2004).

It's not that national unions do not know this gloomy situation of their members being sacrificed in the name of company competitiveness and employment creation. They do alert of the rise and widespread of contractual working system as one outspoken national union leader even regards contractual working system is merely an "exploitative situation in the modern slavery" (Tavip, 2003). They can even easily mobilize their members as shown during the massive September 2002 demonstration, based on the issue of opposing contractual working system. The problem of contractual working system is fully acknowledged. But not the key to solve it. This is exactly where the national union leaders start to have different opinions how to cope with the problem. Those who were part of "Tim Kecil" pleaded that their "participation" in the drafting process was meant to regulate and limit the excess of contractual working system. Others, associated with the KAPB, totally opposed its implementation by standing outside the parliamentarian political arena, calling for massdemonstration and unyieldingly, have put efforts which end up with unsatisfactory result, asking for annulment of the Manpower Act to Constitutional Court.

Unfortunately, contractual working system has not been viewed as a threat to union's activities. While the national union leaders were busy looking for accessible political space, their local member unions hardly able try to catch up with the rapid company flexibility arrangement. Whatever the steps taken by national union leaders as appropriate solutions, the fact is that for the last two years local unions have found it difficult to organize workers who work under this so-called "atypical employment". Since most unions still focus on permanent workers and overlook contractual workers, many union organizers are trapped in dilemma whether to include them into the union while also recognize that those contractual workers are

the ones who actually need more protection from union. As union membership is declining, the problem is getting complicated. Dita Indah Sari admits that FNPBI (Front Nasional Perjuangan Buruh Indonesia), a left-wing- associated union she presided over, has lost almost half of its membership during the last two years (*Kompas*, 02 March 2005). The result is labour bargaining power is weaken, not only in the company level but also affects the national level. The newly obtained freedom of association seems had lost its momentum since at the same time unions have to face the problem to keep survive by maintaining their membership under the gunfire of flexibility.

The Last Battle Field Worth Fighting for?

The critical part of "Labour Law Reform" program was the sequencing of rapid changes it brings along while workers were just starting to organize themselves. While still have to focus organizing the unorganized, the unions still had to spare their energy into it. Either becoming part of it in "Tim Kecil" or standing outside in opposition, the unions had been magnetized to its process. And during that time, the Reform program has revealed that contemporary labour law is mere an instrument of economic policy where the government has structured the labour market as advocated by the neo-liberal economic advisers. It has developed itself to be "a different labour law, perhaps very different [from the protective labour regulation], yet labour law still" (D'Antona 2002).

More importantly, it has forced the unions to adjust with the "Industrial Relations" design it had defined. In this way, the tripartite governance of labour market could be regarded as one of labour

law's elusive promise since unions are being structured, not by force but in conformity, to the labour market policy. Recent competition for seats on various tripartite bodies or even for the labour courts (*Hukum Online*, 28 April 2005), confirms this elusive promise union leaders have in their minds. And once they are seated in, by then the unions are being more intensively integrated into the regulatory system of labour law and adjusted to government's general economic policy. In Indonesia case, without strong collective voice due to the highly fragmentation, the unions could harmfully represent "the working class" as "Tim Kecil" had shown during the Reform process.

Poorly positioned in political arena and the rapid changes their member-workers have to face due to the increasing flexibility, unions confront a new round of challenges in their efforts to build and sustain a collective industrial and political voice. In the situation of state desertion, the only way for union is to build itself based on active membership and focus more on workers with problems rather than on the workers' problems. For the last five years unions in the midst of high expectations for change, have been dragged in and by the "Labour Law Reform" process but with disappointing result. With this experience, by then unions should realize "that the effectiveness of the law depends on the unions far more than the unions depend on the effectiveness of the law" (Kahn Freund, 1977).

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