

INDUSTRIAL RELATIONS INSTRUMENT IN THE CONCEPT OF LAW STATE (*RECHTSSTAAT*) WHICH BASED ON PANCASILA IN INDONESIA

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ABSTRACT

The purpose of this article is to analyse the relationship between the concept of a legal state and industrial relations within the scope of Pancasila as the basis of the State in Indonesia. Thus, the conclusion of this article is that Indonesia is a country that adheres to the concept of a democratic rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the legal system and legislation for industrial relations are not a goal, but a reflection of aspirations. The rights, interests of the parties in industrial relations or constitute a bridge to bring all parties to the aspired idea in the form of shared prosperity, regulate the relations of industrial relations peacefully, protect the parties whose interests, create peace of work and strive (Industrial peace). For this reason, the legal system or legislative products must have a responsive or populist character whose manufacturing process provides a large role or full participation to all parties so that the results are responsive to demands and reflect a sense of justice and fulfil the expectations of all parties in industrial relations.

Keywords: Democratic *Rechtsstaat* (Law State), Pancasila, Constitution, Legal System, Labour.

INTRODUCTION

Pancasila as the Basic Law of Indonesian state is formulated in the fourth paragraph of the 1945 Constitution. Pancasila is Indonesian positive law that juridically and constitutionally valid, applicable and binding all the Civilized Organization, Civil Society Organization, and every Indonesia citizen without exception (MPR RI, 2016). Pancasila must be implemented in imperative manner by every Indonesia citizen in their social and state life in Indonesia. The Pancasila formula is put in the preamble to the 1945 Constitution, where the preamble act as the supreme law which cannot be amended by positive law, then Pancasila as the Basic Law of Indonesian is final and binding all the state organizers and all Indonesian citizens (Azahary, 1995).

The fourth paragraph of the preamble to the 1945 Constitution and Article 1 Paragraph (3) of the 1945 Constitution states that Indonesia is a *rechtsstaat* (law state) based on Pancasila. According to Azahary (2010), the main elements of Indonesia as *rechtsstaat* (law state) which based on Pancasila, can be seen in the general explanation of the 1945 Constitution, Section III which states:

“The Constitution gives form in its articles to the fundamental ideas contained in the Preamble. The above fundamental ideas pervade the spiritual background of the Constitution of the State of Indonesia. These fundamental ideas give rise to those legal aspirations (Rechtsidee) which dominate the Fundamental Law of the State, both written law (the constitution) and unwritten law”.

The fundamental ideas referred by Azhary's is the Pancasila, thus Pancasila is the legal aspirations (*Rechtsidee*) which dominate the Fundamental Law of the State, both “*written law*” (*the constitution*) and “*unwritten law*”. According to Padmo Wahjono (1984), the main issues should be regulated under the fundamental law or constitution only. The fundamental law includes: legal aspirations (*rechtidee*) which dominate the written and unwritten fundamental law.

The Constitution (the 1945 Constitution) is a supreme and most fundamental law since it is the source of legitimacy or the basis of authorization for other forms of law or legislation which is in accordance with the universally prevailing principle. Thus, the regulations under constitution may apply and be applied. However, it should be noted that those regulation shall not be contrary to the supreme law, example the 1945 Constitution. In line with that, according to Oemar Senoadji in Azhari (2010), Indonesian is *rechtsstaat* (law state) based on Pancasila, where Pancasila should be appointed as the basic law and the source of law.

Indonesia is a country which adopted democratic system. This can be seen from Article 1 paragraph (2) of the 1945 Constitution, which states:

“Sovereignty is vested in the people and implemented pursuant to the Constitution”.

The term democracy is derived from two Greek words: Demos which means “*People*” and Kratos which means “*Power*”. Thus, democracy is government “*of the people, by the people, for the people*” or “*government by those who governed*”. It is a pattern of government in which the power to rule comes from those governed. It actively involves all society members in the decision taking by the authorized (Hakim, 2011), including the formulation of the legislation. Indonesia is not only a democratic state, but also a *rechtsstaat* (law state). This can be seen from the Article 1 paragraph (3) of the 1945 Constitution, which states “*Indonesia is a state based on law (rechtsstaat)*”. According to Sudargo Gautama (1983), one of the characteristics of a *rechtsstaat* (law state) is the existence of principle of legality. According to this principle, “*every action taken by the state (citizen: the author) should be based on the prevailing law (laws and regulations) which must be obeyed by the government and its apparatus*” as well as by every Indonesia citizen.

Indonesia that adopted the concept of democratic *rechtsstaat* (law state) with Pancasila as the legal aspiration (*rechtsidee*) and based on the 1945 Constitution, implemented a government pattern in which it actively involves all Indonesian citizen in the decisions taken by those authorized by the government (Tanti, 2017). Therefore, the legal system and the legislation product should be responsive/populist, i.e., legal product (legal system, law and legislation) that reflects the sense of justice and met the people expectation. It provides the same chance for the party's involved-social organization or every individual in the society to have full participation during the making process. The legal product shall be responsive to the demands of the social organization or individual in the society (Mahfud, 2009). The making process is participatory. It

means that during the making process of the legal product, it will draw as much as possible participation from the society through social organization or individual in the society, and it is “*aspirative*”, i.e., it contain materials that generally in accordance with the aspirations or the society will. Thus, the legal products (legal system, law and legislation: the author) can be seen as the crystallization and the will of all Indonesian people, namely to create a just and prosperous Indonesian society which based on Pancasila and the 1945 Constitution.

RESULTS AND DISCUSSION

Indonesia Legal system and Industrial Relation Law

Referring to the aforementioned opinion of the jurists and based on Indonesia identity as democratic *rechtsstaat* (law state) which based on Pancasila and the 1945 Constitution, the legal system and industrial relations instrument law is not the final objective to be achieved. Instead, it is a reflection of the aspirations, rights, and interests of the parties in the industrial relations or the bridge to bring the whole party together to realize the things aspired, i.e., the welfare of all parties in the industrial relations (Suwanto, 2003). This objective is in line with the objectives of Indonesian which is stipulated in the fourth paragraph (4) of the preamble to the 1945 Constitution, namely “*to advance general prosperity*”.

The objective of the legal system and industrial relations instrument law is to regulate the association in the industrial relations peacefully by: improving the parties (employers, workers/labourers, government) welfare and protecting their interests, such as their pride, independence, soul, property, etc. From other things that may damage it so that the industrial peace can be created, namely the dynamic conditions in the working relationship in a company. To create this industrial peace, there are 3 (three) important elements that should be met, i.e.:

1. Rights and obligations (of the parties: the author) are guaranteed to be implemented;
2. If there are disputes arise (industrial relations disputes: the author), it will be settled internally;
3. Strike and lock-out do not need to be done to impose one’s will since the disputes (industrial relations disputes: the author) can be settled amicably (Suwanto, 2003).

The product of the legal system and industrial relations instrument law should reflect a sense of justice and meet the expectation of all the parties involved in the industrial relations. The making process of this legal product shall be responsive, *participatory*, and draw as much as possible participation of the interested parties. It making process will contain many aspirational materials, i.e., the material generally in accordance with the aspirations as well as the crystallization of the will of all parties in industrial relations.

Industrial relations is a relation system among the parties involved which consists of the employers, workers or labourers and government in the process of producing goods or services which based on the Pancasila and the 1945 Constitution or it is also known as the Industrial relations with Pancasila as the legal aspiration and based on the 1945 Constitution.

Industrial relations with Pancasila as its legal aspiration is a system based on the socio-cultural values of the nation (Indonesia), in order to meet the expectations of all parties and achieved the industrial peace as well as to improve the welfare of the workers (labourers).

Labour relations with Pancasila as its legal aspiration is a system which is based on Pancasila as the philosophy of the nation (Indonesia) and is based on the spirit of kinship, mutual cooperation, togetherness, and deliberation to reach consensus among the parties involved in the production process in order to avoid the emerge of any conflict of interest among the parties in the labour relation.

Meanwhile, Satjipto Rahardjo (2000) states that the law binds itself to the society as its social base. It means that law should pay attention to the needs and interests of the society members as well as provide its service for the creation of justice in the society. Referring to the aforementioned opinion, then it can be said that the legal system and labour relations law with Pancasila as its legal aspiration shall bind itself to the internal parties as the basis of labour relations. Labour relations law with Pancasila as its legal aspiration should pay attention to the needs and interests of the parties involved and provide services for the creation of justice in working condition.

Work condition is the level of employment situation viewed from the regulation of rights and obligations between the workers or labourers with the employer or the head of the company which is outlined into two, namely: labour legislation and term of employment. Basically, labour legislation is the regulation of rights and obligations between workers/labourers with the employer or the head of the company as stipulated in the legislation. This norm is imperative/ must be implemented, mandatory, and binding on all companies, or macro-minimal. Macro means this norm binds all companies without exception whether it is in terms of place, size, type of business and nature of legal entity. While the minimum means that in its practice this norm depends on the ability and willingness of the each company (Suwanto, 2003).

Terms of employment is the regulation of the rights and obligations for the workers or labourers and employers or the head of the company regarding every aspect of employment relationships that have not been regulated or not regulated by the labour legislation? This regulation is a micro-conditional regulation. Micro means that this regulation is set for certain companies individually, while conditional means that this regulation is adjusted to the conditions of each company. The terms of employment consists of employment agreement, company regulation and collective labour agreements (Suwanto, 2003).

Work condition justice is the fulfilment of level industrial relations to be achieved, namely the arrangement of the rights and obligations between workers or labourers and employers or the head of the company in the labour legislation and term of employment. The principles of work condition justice are: spirit of kinship, mutual cooperation, togetherness and deliberation to reach consensus. The term *asas* (principle) is derived from the Arabic language *asaasun* which means base, principle, fundamental rules (Musthafa, 1979). Based on Indonesian dictionary, principle is the basis (the base of thought or opinion), base of aspiration (association, organization) and basic law.

Referring to the aforementioned definition of principle, then it can be concluded that the spirit of kinship, mutual cooperation, togetherness, and deliberation to reach consensus is the basis, principles, fundamental rules, base of thought, opinion and the aspiration of the parties involved in the industrial relations to achieve *work condition justice*. Work condition justice is the fulfilment of rights and obligations of the parties both in the labour legislation and terms of employment category in order to create harmonious industrial relations, namely the increase in

productivity of the company that correlates with the welfare of workers or labourers and their families. Productivity is "*the ability to produce something (goods or services)*". Right is advantages and benefits for the person (the party) who received the benefit, obligation is the task and duty which deemed to be hard for the person (the party) who should accomplish it. The law creates the rights for the person (the party) and at the same time create equal obligations for other people (the party) (Bentham, 2006). The legal system of industrial relations creates equal rights and obligations for the parties so that the productivity of the company correlates with the welfare of workers or labourers and their families and harmonious industrial relations can be achieved. According to the Indonesian dictionary, instrument is "*all the things that can be used as a tool in order to achieve the purpose and objective*".

Industrial relations is a relation system among the parties involved which consists of the employers, workers or labourers and government in the process of producing goods or services which based on the Pancasila and the 1945 Constitution. The Pancasila values (which are the basis of industrial relations in Indonesia) are pyramidal and qualify each other. The divine life also upholds the sense of humanity, unity, democracy and social justice. Similarly, humanity is a humanity that upholds the divine life, sense of unity and so on. Social justice is justice that upholds the divine life, sense of humanity, unity and democracy (Hyronimus, 2011).

The legal system and legislation that can be used to manage the conflict interests so that harmonization in the form of industrial peace can be maintained and industrial relations disputes can be settled by considering the circumstances and/or interests of each party, are: Trade Unions, Employer's Association, Bipartite Cooperation Institutions, Tripartite Cooperation Institutions, Company Regulations, Collective Labour Agreements, labour Law, Industrial Relations Dispute Settlement Institutions.

Legal System and Law on Trade Unions

One of the characteristics of Indonesia as the democratic *rechtsstaat* (law state), is the recognition, protection of human rights by the prevailing law and legislation in Indonesia. Freedom of expression and association as stipulated in Article 28 of the 1945 Constitution is (Law, 1945):

"Freedom of association and assembly, freedom of thought expressed verbally and in writing and the like, shall be prescribed by law".

One of the proofs of the manifestation of the human rights can be seen in Law Number 39 Year 1999 on Human Rights, which states "*Everyone has the right to peaceful assembly and association*" (Law, 1999).

Trade union is one of the industrial relations instrument. It is regulated under Law Number 21 of 2000 on Trade Unions (Law, 2000). In addition to improve the welfare of its members, the trade union also aims to regulate the association in the industrial relations so as to create an *industrial peace*, i.e., a dynamic condition in the working relationship at the company (Utami, 2015). For that reason, the trade union and employer association should have the same basis, principle, foundation, the base of thought:

1. The workers (labourers: The author) with their trade union are well aware of the difficulties faced by the employers in managing/leading the company. They also realize the difficulties faced by employers in finding, establishing and using the capital keep the company running;
2. The employers are well aware of the difficulties faced by the workers (labourer's: The author) to establish a decent life with their families. They also realize that a decent life will spark the workers' (labourers: writers) work spirit that may help the company keep running (Kartasapoetra, 1992).

Law on Employer's Association

According to Suwanto, Employer's Association is an "*Organization formed by employers which aims to participate in the development of industrial relations in general and as suppliers of employer's association in the Industrial relations*". The organization cannot be separated from its function, i.e., to protect the interests of the employers against the pressures arising from other parties and to deliver the employer's aspirations regarding the industrial relations. In addition, the organization also serves to provide balance to the existence of trade unions. The well-known employer's association in Indonesia is APINDO (Indonesian Employer's Association) and on an international scale there is an organization called the *International Employers Organization (IEO)*, where APINDO also becomes the member (Suwanto, 2003).

APINDO plays an active role in the national development i.e., to realize a just and prosperous society and also actively strengthen its role in the economic sector (Husni, 2007). APINDO is a place where the employers unite to realize the social welfare in the business world through a unified and harmonious cooperation between government, employers and workers.

"The Indonesian Employers Association (APINDO) is an employer's association established on the basis of the roles and responsibilities of the employers in the national development, and also to realize the welfare in the business world. Therefore, the role of APINDO is as a place for the employers or as communication forum to exchange information and experiences, holds dialogues, and exchange ideas on industrial relations issues and gather the suggestions and inputs from the employers and delivered it to the Government to be established as national or regional policies. Thus, Apindo is demanded to create harmonious industrial relation through unified and harmonious cooperation between government, employers and workers" (Suwanto, 2003).

The company is a source of livelihood and common welfare for not only the company owners and management but also for workers/labourers and even other stake holders i.e., the society, raw material suppliers, distributors, the state and others. Therefore, the company must managed professionally and rationally to ensure the survival, progress, competitiveness of the company.

Law on Bipartite Cooperation Institutions

According to Suwanto (2003), Bipartite Cooperation Institutions is a form of cooperation and communication between the workers/labourers with the employers at the company level. The materials that being shared and communicated include various aspects of life in the company, especially those related to the employment and industrial relations in the framework of production process. This bipartite cooperation cannot be interpreted as physical cooperation. It engaged more in the conception of thought and equation perception.

According to Suwanto (2003), the workers or labourers or the trade union and the employer or employer's association has the same objective on one hand, and there are also some objectives that may spark disputes on the other hand. Regarding the same objectives, then cooperation between the workers or labourers and the employers may be established. On the other hand, regarding the different objectives that may spark disputes, then both parties need to consciously approach this potential so as to prevent from happening. If this conflict really happens, it will cause the company to shut down or close down which will not only harm the company, but also the workers. They will lose their livelihood sources which means they will lose their source of income (Kartasapoetra, 1992). One of the preventive measures that can be taken to avoid conflicts that may arise due to interests differences is through communication and consultation held through Bipartite Cooperation Institution forums.

Bipartite Cooperation Institution (LKSB) is:

"One of the instruments for the implementation of Industrial Relations. It functions as the forum of communication, consultation and deliberation between the representatives of workers and employers of the company to discuss the Industrial Relations issues and the general working conditions". LKSB act as "the means of communication and consultation to discuss the working condition, both in term of the labour legislation and term of employment in order to realize industrial peace" (Hakim, 2011).

Law on Company Regulations

One of the characteristic of Indonesia as a *rechtsstaat* (law state) is the existence of principle of legality. In the principle of legality, *"every action taken by the state (citizen) should be based on the prevailing law (laws and regulations) which must be obeyed by the government and its apparatus"*. Similarly in industrial relations, every action taken by the parties involved in the industrial relations shall be in accordance with the prevailing law. The objective of the company's regulation is to regulate the association in the industrial relations peacefully, by improving the parties' welfare, protecting their interests such as their pride, independence, soul, property, rights and etc., from other things that may damage it so that the industrial peace can be created.

In order to prevent the company from establishing regulations that could be detrimental to the workers, then during the process of regulation-making, the management shall actively consult with the representatives of workers and trade union. For a company that has already a trade union, such consultation is not merely a negotiation. Instead, this consultation is utilized to improve the worker's understanding regarding the company's conditions in general and the working conditions in particular, after the management has finished making the company's drafts regulation, in depth-study to examine this draft needs to be done in advance by the government agencies that are in charge of employment before this draft regulation enacted. If the material contained in the new regulations is deemed adequate, then the regulations may be approved by the competent authority and then put into effect (Suwanto, 2003).

The company regulations should clearly and fairly set out the rights and obligations of both the workers or labourers and employers in which this matter has yet been set out under the laws and regulations of employment. The rights and obligations of workers or labourers and employers in general have been regulated in the legislation as *labour legislation* which must be

obeyed by all companies regardless of the size of the company. Whereas the things that have not been regulated in the labour legislation must be individually regulated by each company in a certain term of employment and set forth in the company regulations.

The objectives of company regulation are to act as a means of enhancing the peace of mind when one working and enhancing one's passion for work. This regulation also act as a means of increasing labour productivity, improving company profits, improving the welfare of workers and their families, and improving the worker's lives, improving the purchasing power and economic growth of the society. The company regulation should reflect a sense of justice and meet the expectation of all the parties involved in the industrial relations. The regulation-making process shall be responsive, participatory, and draw as much as possible participation of the interested parties (workers or labourers and employers). The material in this regulation shall contain aspirational materials, i.e., the material generally in accordance with the aspirations as well as the crystallization of the will of all parties in industrial relations.

Law on Collective labour Agreements

The term of labour Agreement used in Law No. 13 of 2003 is *Perjanjian Kerja Bersama* or known as Collective labour Agreement in English and is called as *Collective Arbeids Overremkomst* in Dutch. This agreement is known in the legal treasure of Indonesia under the provisions of the Civil Code (Husni, 2007). According to the Indonesian Civil Code, Article 1601, labour agreement is:

“A collective labour agreement shall be interpreted as a an arrangement, drawn up by one or more employers or one or more associations of employers which form legal entities, with one or more associations of labourers which form legal entities, concerning labour conditions, which must be taken into account at the time the labour agreements are concluded”.

According to Suwanto (2003), Collective labour Agreement is a result of a process in which the management and the element of associations of labourers strive to establish the employment conditions (term employment) which aim to prevent the occurrence of disputes or conflict, improve the sound relationship between workers and employers. In the negotiation process, both parties are free to formulate the agreement and understanding the other party in looking for a working conditions formula that will benefits both parties, in an attempt to increase mutual trust between the parties. A collective labour agreement is seen as a set of agreements made by people in an organized society or by parties in industrial relations (Marzuki, 2009).

Law on Industrial Relations Dispute Settlement Institutions

Each individual or person in a society has different interests from each other. At times, their interests-rights and obligation-may contradict each other, which will lead to a disputes (Sutantio and Oeripkartawinata, 2002). Similarly, in industrial relations the parties have the same goal i.e., realizing productivity of the company that correlates with the welfare of workers or labourer's and their families. However, each party in industrial relations basically has different interests and when their interests contradict each other; it may lead to the occurrence of industrial relations disputes.

Industrial Relations Disputes are disagreements that result in a conflict between employers or an associations of employers with workers or labourers or associations of labourers due to disputes over rights, interest, termination of employment and disputes among the trade unions within a company. Dispute over rights is:

"Dispute arising over the non-fulfilment of rights due to differences in the implementation or interpretation of the provisions of legislation, employment agreement, company regulation and collective labour agreements".

Dispute over interest, is:

"Dispute arising in the employment relationship due to the lack of conformity to the opinion concerning the making, and/or amendments to the terms of employment set in the employment agreement, or company regulations, or collective labour agreements".

Dispute over termination of employment is:

"Dispute arising from the non-conformity to the opinion concerning the unilateral termination of employment".

Dispute among the trade unions is a:

"Dispute between the one association of labourers with other association of labourers within a single company because of the lack of understanding regarding the membership, how to exercise the rights and obligations of the trade union".

CONCLUSION

The legal system and legislation in the means of industrial relations are not an objective, but are a reflection of the aspirations, rights, and interests of the parties or constitute a bridge that will bring all parties to the desired idea, namely the welfare of all parties in industrial relations. The legal system and legislation in the means of industrial relations are a tool in achieving the aims and objectives of industrial relations, namely creating the life relations of the parties can coexist peacefully, improve welfare, protect the interests of the parties in industrial relations such as honour, independence, soul, property, rights and others to the detriment of it, so as to create peace of work and business (industrial peace) motivate the performance of workers or labourers to be productive, innovative, creative, effective and efficient in an effort to achieve company productivity that correlates with the welfare of workers or labourer's, The legislation means industrial relations means: Trade Unions, Employer's Organizations, Bipartite Cooperation Institutions, Tripartite Cooperation Institutions, Company Regulations, Collective labour Agreements, Manpower Legislation Regulations, Relationship Dispute Settlement Institutions Industrial.

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