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The Value of Justice in Legal Norm of Strike

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Abstract: *This study aims to reveal how work strikes and the value of justice in work strike norms, especially Article 137 of the Employment Law: Article 140 and Article 141 of the Employment Law as well as Article 186 of the Employment Law, by referring to John Rawls' concept and theory of justice. The problem of this research is whether justice is reflected in the meta norm of work strikes as stipulated in the Employment Law. The research method used in this study is the normative legal research method. In this kind of legal research method, the data used in it are primary legal materials, secondary legal materials, and tertiary legal materials. A strike is a manifestation of the freedom and right to participate of workers as rational and free moral persons in decision-making relating to the welfare of workers while protecting the socio-economic interests of workers/laborers. A strike is a manifestation of the right to disobey as a political right of every citizen which is carried out in direct relation to the demand to overhaul or reject unjust laws.*
Key Word*: Employment law, Justice, Strike*

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I. Introduction

Article 27 paragraph (2) of the 1945 Constitution reads: "Every citizen has the right to a job and a livelihood that is worthy of humanity." As a result, the State is responsible for providing public welfare and ensuring social justice and welfare for every worker/laborer to improve their quality of life through work.

The basic policy of the formation of Law Number 13 of 2013 on Employment, hereinafter referred to as the Employment Law, is essential to bridge the inequality of position between workers and laborers and the inequality of bargaining position of workers against employers as well as to protect workers/laborers who are socio-economically weaker than employers, especially from the arbitrariness of employers that can occur in employment relationships (Hikmahanto Juwana, 2005), and realizing social justice. This is in line with the thoughts of Goffrey Key and James Mott as follows: " The main object of labor law has always been and I venture to say will always be, to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship... It is an attempt to infuse law into a relation of command and subordination" (Goffrey Key and James Mott,2003).

One of the primary legal objectives according to Theo Huijbes is to realize justice in living together (Theo Huijbers, 1982). For this reason, the basic legal policy leads to a certain goal and not just a decision to do something (M. Solly Lubis, 1989). Substantially, the existence of the Employment Law is multi-dimensional, because its substance not only covers political, social, and economic aspects but is very relevant to human rights (Bahder Johan Nasution, 2004), especially demands improvement of workers' fundamental rights, so it is not surprising that the government's political and economic interests are very evident in the formation of labor law. The indication is that the establishment of the Labour Law is inseparable from the influence of globalization characterized by a free market (Adam Smith, 1973): the pursuit of profit/individual interests, individual competition, and those who excel will emerge as winners (Jhonny Ibrahim, 2009).

Although the free market can accommodate production factors quite efficiently, the market mechanism without government intervention has negative effects that will directly lead to destruction and poverty (Gunnar Myrdal). The free market system that is characterized by laissez-faire laissez passer creates inequality in income and consumer levels and socially has the consequence that society will be structured in rich and poor classes. The free market is certain to harm the poor, especially workers in the absence of government intervention (Sadono Sukirno, 1994). These impacts are as follows (i) labor wages will be increasingly suppressed because companies must reduce costs to a minimum, and workers/laborers are increasingly squeezed (ii) the decline of the rural economy because it is unable to compete with international agricultural products, (iii) increased urban expansion to cities, (iv) increased informal sector that is not protected by employment laws and regulations: and:

(V) the environment will be more threatened because trade increases demand which will increase the exploitation of natural resources (Arimbi HP dan Agusmidah, 2011).

Referring to the above labor conditions and problems, a law is needed as a form of government intervention in the economic field, especially employment, to protect social interests. Government intervention aims to (i) ensure that equal rights for each individual are maintained and avoid oppression, (ii) keep the economy growing and experiencing regular and stable development, (iii) supervise the activities of companies, especially large companies that can influence the market, so as not to carry out harmful monopolistic practices, (iv) provide common goods, namely, goods such as roads, police, and soldiers, whose use is carried out collectively and the community to increase social welfare: supervise so that the externalities of economic activities that harm the community are avoided or reduced in extent (Sadono Sukirno, 1994).

Thus, the State must act as a wise and neutral regulator in the formation of fair labor legislation and regulations as stated by Naoyoki Sukamoto: labor law will most probably become the major tool to implement the government's Labor policies." (Nayoki Sukamoto, 1999). This is important to do because the dominance of the government's role is so strong in the formation of employment legislation that it can facilitate the different interests of workers/laborers and employers so that the general assumption that labor law is a political tool of the government to legitimize government actions to limit the freedom of workers/laborers and prioritize the interests of employers can be eliminated.

The fundamental reason for the establishment of a fair employment law is that with justice, balance, comparability, and harmony between personal interests and common interests including the interests of the state and there is a guarantee of stability and tranquility in human life. A fair Employment Law, can lay down the principles of justice to resolve conflicts between different interests but also become a judge who is not neutral, and always sides with truth and justice. If necessary, the law must dare to make choices and take sides, namely siding with workers/laborers who do not get justice and are marginalized.

Justice can only be achieved if, first, social institutions are built fairly and can be perpetuated to maximize benefits and usefulness to as many people as possible. Second, there is a balance in the distribution of social burdens and benefits such as employment, wealth, food and shelter, and human rights. The reality is that the structure of society (social institutions, political economy, and law) is not healthy and is not systematic, even though the basic structure of social functions to distribute social burdens and benefits (income, wealth, food, protection, power, rights to freedom and welfare). Therefore, reorganization (call for redress) needs to be carried out through social institutions and institutions to change this initial position for further prospects.

This happens because from the perspective of the politics of employment law, the model of employment law in Indonesia, which Tamara Lothion calls a corporatist model, namely employment relations is determined by legislation in the form of regulations (Agusmidah, 2011). Consequently, the government's intervention is so strong, and there is a tendency for laws to be produced as a means of government repression to limit the space for workers/laborers and to favor investors. This legal model places the *Harmonie* Model as the main consideration where (i) the government limits freedom with repressive regulations so that the parties do not have freedom, the (ii) consensus is required by prohibiting conflict (strikes), (iii) dispute resolution must use peaceful means and prohibit the use of forced methods (strikes or lockouts) (Aloysius Uwiyono, 2008).

Consequently, employment law has not reflected the value of justice for workers/laborers because substantially the formulation of legal norms and their implementation have repressive and partial nuances. This is in line with Aloysius Uwiyono's opinion that various developments in the era of globalization have placed labor law at a crossroads (Aloysius Uwiyono, 2003). Employment law in Indonesia has not been able to become an accommodating law, among other things that Law Number 13 of 2003 substantially continues to generate controversy between employers and workers/laborers, especially the issue of strikes, specific time work agreements, outsourcing systems, and unilateral termination of employment, and restrictions on the right to unionize workers (union busting), and industrial relations disputes. The problem is the inequality of (economic) accessibility, - strategic - resources between workers and employers. This inequality of accessibility means that workers/laborers continue to be used as objects of exploitation for the benefit of employers to increase employers' profits without even touching the fundamental issue of workers' welfare. Workers/laborers feel that they are only a minor part of the mechanism of the production system, which can be easily replaced at any time if they are considered no longer productive.

This is worsened by the limited space for workers/laborers and the widespread domination of employers and government control. The widespread practice of control is based on the assumption that the state is the sole institution that has the authority to regulate and control the people. In such a situation, workers/laborers are in a weaker bargaining position, and even tend to be weakened or degraded. The weak involvement of workers in decision-making and the strong control of the government can be found in the regulation on strikes for workers/laborers as follows:

a. Article 137 of the Employment Law states that strikes are only carried out in an orderly and peaceful manner as a result of the failure of negotiations.

b. Article 140 of the Employment Law states that (1) at least within 7 (seven) working days before a strike is conducted, workers/laborers or trade unions/labor unions are required to notify in a writing the employer and the agency responsible for the local manpower sector. The notification shall at least contain the time of commencement and termination of the strike, the location of the strike, the reasons and causes of the strike, and the signatures of the chairman and secretary and/or the respective chairman and secretary of the trade union/labor union as the person in charge of the strike. (3) If the strike is carried out by workers/laborers who are not members of a trade union/labor union, the notification as referred to in paragraph (2) shall be signed by a representative of the workers/laborers as the coordinator and/or person in charge of the strike. (4) If a strike is not carried out as referred to in paragraph (1), then to save the means of production and company assets, the employer may take temporary measures by (1) prohibiting striking workers/laborers from being at the location of production process activities: or (ii) if deemed necessary prohibiting striking workers/laborers from being at the company premises.
c. Article 141 of the Employment Law states that (1) Government agencies and companies that receive strike notification letters as referred to in Article 140 must return the notification letters. (2) Before and during a strike, the agency responsible for labor is required to resolve the problem that caused the strike by bringing together and negotiating with the disputing parties. (3) If the negotiations as referred to in paragraph (2) result in an agreement, a collective agreement must be signed by the parties and an employee of the agency responsible for labor, the employer, and the agency responsible for labor as a sanction. (4) If the negotiations as referred to in paragraph (2) do not result in an agreement, the official of the agency responsible for labor shall immediately deliver the problem causing the strike to the authorized industrial relation dispute settlement institution. (5) If the negotiations do not result in an agreement as referred to in paragraph (4), then based on negotiations between the employer and the trade union/labor union or the person in charge of the strike, the strike may be continued or stopped temporarily or stopped entirely.
d. Article 186 of the Employment Law states that criminal sanctions are imposed on workers/laborers who violate the provisions of Article 138 paragraph (1) with a maximum penalty of 4 (four) years imprisonment and/or a fine of Rp.400,000,000.

The main objective of employment law is the implementation of social justice. To achieve a just law as the ideal of law, a just law is not enough with the existence of a normative rule but the regulations made must be under the principles of justice (gerechts rechi/just), which is enshrined to maximize the benefits and usefulness to as many people as possible. This paper examines work strikes and the value of justice in work strike norms, especially Article 137 of the Employment Law: Article 140 and Article 141 of the Employment Law as well as Article 186 of the Employment Law, by referring to John Rawls' concept and theory of justice. The problem of this research is whether justice is reflected in the meta norm of work strikes as stipulated in the Employment Law.

II. Material And Methods

The research method used in this research is the normative legal research method. In this kind of legal research method, the data used in it are primary legal materials, secondary legal materials, and tertiary legal materials. The data relating to the research problem is gathered through library research and is analyzed descriptively and qualitatively. This research uses a statutory approach and a conceptual approach (Susanti & Efendi 2014).

III. Result and Discussion

The Nature of Justice Theory as Fairness According to John Rawls

John Rawls constructed his theory of justice based on an aphorism of ethical theories that developed in the Anglo-American world around the early 1950s. According to Wollf, the two most influential ethical theories at the time were utilitarianism and intuitionism. According to Rawls, these two theories failed to properly conceive justice (Wollf, RP, 1977). From the failure of these theories, he felt challenged to build an idea of justice that can uphold social justice and at the same time can be held accountable objectively and scientifically.

Utilitarianism theory teaches that the rightness or wrongness of a rule or human action depends on the direct consequences of the rule or action. According to him, morally, the goodness and badness of human actions depend on the goodness and badness consequences of these actions for humans. So if the consequences are good, then a rule or human action will automatically be good. With this principle, Rawls argues that utilitarianism fails to ensure the realization of social justice because it prioritizes the principle of utility over the principle of rights.

The principle of the greatest happiness of the greatest number is a major failure of John Stuart Mill to protect individual rights and thus opens up opportunities for slavery, servitude, and oppression (Yoseph Ruang 2004). The theory of intuitionism is not free from criticism from Rawls because it does not give adequate place to the principle of rationality. In the decision-making process, intuitionism relies more on human intuition, hence this theory is inadequate as a basis for decision-making, especially when there is a conflict between moral norms.

According to Rawls, value prioritization will become a problem that is difficult to solve if everyone tends to use intuition rather than reason (ratio) in the consideration process. Thus, according to Ata Ujan, moral considerations, and decisions will become subjective or lose their objectivity (Ata Ujan, 2011). In the context of freedom, it is worth remembering that by ignoring ratios, intuitionism also fails to see humans as free persons, because freedom fundamentally finds its basis in human rationality.

Rawls based his theory on the principle that humans are rational, free, and equal moral persons. Through A Theory of Justice Rawls wants to uphold human nature as a moral person who is rational, free, and equal, and has rights. Utilitarianism only places humans as a means to maximize satisfaction or socio-economic benefits. In addition, by criticizing intuitionctually wants to affirm rationality as a specific nature that determines human identity as a human being, because this element of rationality is very important in formulating a theory of justice that is acceptable and can be held accountable together. For Rawls, a theory of justice should be based on a moral person who is rational, free, and equal. According to Rawls, the moral person is fundamentally characterized by two moral capabilities, namely: "first, the ability to form and strive for the realization of a concept of the good that is expressed rationally in life plans and second, the ability to understand and act on the principle of justice at least at a minimum level." (John Rawls, 1971). According to Ata Ujan, in another of his works, Rawls also briefly mentions these two moral abilities, namely: the ability to have a sense of justice, and a sense of good. The existence of moral abilities possessed by each person strengthens the position of each individual as a rational, free, and equal moral person. These two moral abilities are not only considered as a motivation for human behavior but should also be considered as values in themselves that should be pursued and realized" (Ata Ujan 2011).

Justice as fairness emphasizes the importance of a fair procedure to ensure that decisions are fair to all parties. To facilitate decisions that can ensure a fair distribution of rights and obligations, it is important for all parties involved in the process of choosing the first principles of justice to be in an initial condition that he calls "the original position". The original position is a hypothetical initial condition in which people are in a state of ignorance about their place in society, their natural abilities, their desires, and the situation surrounding their society.

According to Rawls, all rational people, in this hypothetical situation, would agree to abide by the following two principles of justice:

> "First, everyone has an equal right to the widest possible range of basic freedoms to the extent that they do not prejudice the similar freedoms of others. Second, social and economic inequalities should be organized in such a way that they can be expected to benefit everyone and that positions and offices are open to everyone (John Rawls, 1971). These two principles of justice are not intended to address a criterion for the direct distribution of benefits but they are designed as principles that establish the basic rights and duties that govern the distribution of social and economic benefits from the activities of the basic structures of society (ST. M. Scanlon, 1974).

In the context of the relationship between the two principles of justice, Rawls emphasizes the order of the two that must be arranged in what he calls a serial order or Jexical order. This means that the first principle has priority over the second. This means that the starting point of basic freedom cannot be replaced by the goal of socio-economic gain (John Rawls, 1971). The first principle demands freedom as a value that occupies a higher position than socio-economic gains or interests. Thus restrictions on rights and freedoms are only permissible to the extent that they are intended to protect and secure the exercise of freedom itself even through institutional regulation. The second principle of justice demands that inequalities in the attainment of social and economic values are permissible if they leave room for others to benefit in the same way. Therefore, inequality in the attainment of social and economic values should not necessarily be interpreted as injustice, which is the essence of the second principle of justice.

Analysis: the value of justice in labor strike norms

In analyzing the issue of the value of justice in the Strike norm, the basic concept of John Rawls' theory of justice is used, especially the implications of the theory of justice as fairness in the political field. Although Rawls' theory of justice is from a political perspective, his basic ideas about the constitution and democracy also have implications for the law that are still relevant to current conditions.

Implications of Rawls' Theory of Justice in the field of strikes.

There are several implications of John Rawls' theory of justice in politics: first, the right to equal political participation. Second, the right of citizens to disobey (Ata Udjan, 2001).

Right to Political Participation

In essence, the democratic system rejects any form of external intervention that restricts the individual's right to freedom to determine their life path. One of the individual rights is the right to political self-determination, which is realized through the opening of maximum opportunities for the political participation of all citizens. The right to political participation is intended to provide great opportunities for all citizens to be actively involved in the decision-making process. A constitutional democratic system is characterized by two things, namely, in addition to a representative body that functions to make rules and social policies, which is elected through fair elections and is accountable to its voters, as well as a strong guarantee of protection of the fundamental freedoms of every moral person. Rawls emphasizes the importance of seeing people according to their talents and willingness to fairly use the political opportunities and access available to all members of society.

From the perspective of the principle of differentiation, injustice in political freedom is acceptable because of objective differences among citizens as a given fact. More relevant is that all people who are equally qualified in terms of skills and willingness to make an effort have equal opportunities to participate in and influence political policies. The exercise of the right to equal participation needs to be governed by a fair constitution that cannot jeopardize the system of freedom entirely. A constitution, which is formed by an open and impartial majority, can serve as an effective tool to regulate the political rights of citizens. It is therefore incumbent on every rational citizen to find a fair constitutional procedure that allows for the exercise of political freedom without jeopardizing freedom as a system. The effectiveness and rationality of a constitution entirely depend on the procedures that have given birth to the constitution. A constitution that is established and supported by the majority will be considered fair if the majority that established it moves within the guidelines of the applicable law. The constitution as a barometer of political freedom is Rawls' basic stance that does not simply entrust the protection of everyone's political freedom solely to the sense of justice that is naturally possessed by each individual as a moral person.

In the context of employment, workers have the right to freedom to determine welfare as the purpose of life through work. Workers, as rational moral persons, are free to determine ways to improve their quality of life to achieve welfare. To achieve welfare, workers have the same right to participate in the process of formulating laws and policies that concern fundamental issues of welfare because the principle of the democratic system rejects any intervention that reduces individual rights to freedom to determine their path in life. As rational, free, and equal moral persons, workers/laborers have the fundamental ability to form and seek the realization of a better life which is expressed through a plan to achieve welfare through work. Secondly, workers/laborers can understand and act freely to materialize their life plans by doing work to achieve a decent life as a goal.

Therefore, in a constitutional democratic system, the basic freedom of every worker/laborer such as a strike as the right to participate in the decision-making process concerning fundamental welfare issues receives strong protection. ILO Conventions No. 87 and No. 98 on the Fundamental Rights of Workers concerning the Human Right to Freedom of Association and Organization and Collective Bargaining affirm that "the right to strike is an integral part of the right to organizational activity protected by ILO Conventions. The right to strike is an essential right of workers/laborers and their organizations in fighting for and protecting the economic and social interests of workers/laborers". If basic freedoms are constitutionally protected, then the existence of a strike is a social phenomenon that must be given a proportional place and become legitimate and acceptable. Strikes in the context of justice as fairness should act as a dynamic social element in advancing and supporting the achievement of the political ideal, namely, the bonum commune. The existence of workers in a democratic industrial relations environment becomes legitimate and relevant if the strike is carried out in the context of a struggle based on the creation of the welfare of all people (workers).

Worker participation in the perspective of the principle of different, objective differences between workers and employers can be accepted because of objective differences as a given fact. What is more relevant is that these objective differences do not prevent workers from influencing every policy that concerns their interests, namely the right to welfare and justice. In this sense, inequality of opportunity in participation due to differences in ability and position does not mean injustice. With a superior position in the quality of abilities, employers are expected in due course to improve or open up better life prospects for those who are less or not superior. In a review of the Employment Law and its implementing regulations, there is not a single article that regulates fair legal procedures that open up opportunities for the free participation of workers in the process of formulating industrial relations norms as a form of preventive legal protection for workers. In the context of preventive legal protection, the right of workers to be heard has not yet received a reasonable place (Philipus Mandiri Hadjon, 2007). The principle of equal rights to freedom demands that freedom is a value that occupies a

higher position than profit or socio-economic interests. The right to worker participation in the process of formulating industrial relations norms does not have a proportionate place. Thus, the restriction of workers' participation in the struggle for public welfare through strikes is a restriction of the right to freedom which is contrary to the "principle of greatest aguel liberty".

Second Implication: Citizen's Right to Disobey

In a democratic country, disobedience to the state is seen as a right of every citizen. The questions are, (i) What kind of disobedience is considered under the position of a citizen? (ii) In what situations is disobedience justified? To answer these fundamental questions, it is necessary to look at the definition or notion of non-compliance that John Rawls initiated. Citizen disobedience is "a public act, non-violent, contrary to the law because it is usually carried out with the aim to a change in law or government policy (John Rawls, 1971). According to this definition, non-compliance can only be referred to as non-compliance related to one's position as a citizen if: first, it is a political action. The basis of political action is the two principles of justice and fairness. Therefore, the right of citizens to disobey should only be exercised in cases directly related to demands to overhaul or reject unjust laws that are not following the fairness of every citizen. Second, non-compliance is also a public act. This means that the exercise of the right to disobey must be directed towards principles relating to the public interest or public policy. This aspect of publicity is a measure that can ensure that the act of non-compliance can take place fairly. Third, that in practice, non-compliance does not justify violence as a consequence of the requirement that non-compliance must be public. Violence, according to Rawls, is contrary to justice itself. The absence of a place for violence and injustice in the realization of the right to disobedience is also because the right is based on justice-intended laws and not on persons. The right to disobey must be subject to the corridors of the applicable law. In other words, non-compliance as a reaction to the applicable law should not reduce one's obedience to the law. A law that allows violence as a way to uphold justice is essentially killing itself. Therefore, such a law must be removed in a just manner as well.

Concerning the question "under what circumstances is non-compliance justified", Rawls argues that, in general, the right of citizens to non-compliance is justified when there is a serious threat to two principles of justice: the principle of equal freedom and the principle of fair equality of opportunity (John Rawls, 1971). The most important condition for giving place to the right of citizens to disobey is when there is a clear violation of the principle of equal freedom. Every citizen has the right to disobey state institutions such as social and economic institutions that threaten the same fundamental freedoms for all citizens. Concerning the second principle of justice, every social group should be allowed to disobey as a political right. The basic principle is that every citizen is equal and therefore everyone is entitled to equal treatment and equal rights including disobey. The exercise of the citizen's right to disobey is primarily intended as a critique of the majority's sense of justice. The exercise of the citizen's right to disobey is necessary as a means of criticizing unjust institutions (John Rawls, 1971).

In the context of employment, a strike is a manifestation of workers' disobedience to unfair labor laws and policies, government favoritism, and unfair social institutions. Disobedience to the law is justified if there is a serious threat to the two principles of justice, namely the principle of equal freedom and the principle of fair equality of available opportunities. The disobedience of workers/laborers by going on strike aims to affirm the recognition of the right of every worker/laborer to participate in shaping and determining labor policies that can guarantee workers obtain welfare as the right to a decent life. The right of workers/laborers to disobey is a demand from the principle of justice itself. Therefore, limiting the use of the right to strike is contrary to the demands of the principle of justice, namely the "principle of greatest aguel liberty".

Value of Justice in Work Strike Norms

According to Rawls, the fundamental problem of justice is the unhealthy and unsystematic basic structure of society that hinders the distribution of social burdens and benefits, thus preventing the achievement of social justice (Dominikus Rato, 2011). Because the structure of society fundamentally affects the prospects of individual life, the basic structure of society functions to distribute social burdens and benefits, which include wealth, work, clothing, food, protection, and the right to freedom. In the context of employment, the Law on Strikes does not fulfill the principles of justice but instead limits the rights and freedoms of workers, thus preventing workers from obtaining justice and welfare. This is clear in the strike norms in Article 137, Article 138, Article 140, Article 141, and Article 186 paragraph (1) of the Employment Law.

The Restriction of Strikes Grouds

ILO Conventions No.87 and No.98 on the Fundamental Rights of Workers Relating to the Right to Freedom of Association ratified by Indonesia affirm that: "the right to strike is an integral part of the right to organize protected by ILO conventions". The right to strike is an essential right for workers and their organizations in fighting for and protecting the interests of workers' social and economic interests to improve

decent working conditions and collective demands in an employment relationship. Consequently, the convention is an inseparable part of the right to organize for workers and government intervention that prevents administratively or bureaucratically preventing workers/laborers from enjoying the right to strike is prohibited in principle.

Article 137 of the Employment Law limits the scope of a strike only in the event of a failure in negotiations. The limitation of the reasons for strikes, substantially contradicts International Labor Standards ILO Conventions No.87 and No.98. In addition to limiting the freedom of workers/laborers and/or trade unions to exercise the right to strike as part of the fundamental rights of workers/laborers and trade unions to freedom of association and organization, it is also a form of control over the function of trade unions/laborers as legal institutions for workers/laborers to fight for their welfare.

Procedure for exercising the right to strike

The effectiveness and rationality of a legal instrument on the right to strike all depend on the procedure that has established the rule. The relevant juridical questions are: Is the principle of a fair procedure regulated in the norm of the implementation of labor strikes?

The provisions of Article 140 require workers/laborers or trade unions/labor unions to notify in writing the employer and the agency which is responsible in the field of employment no later than 7 (seven) days before conducting a strike by stipulating the time of the strike, the location of the strike and the reasons for the strike: this indicates: first, it is contrary to International Labor Standards as stipulated in ILO Conventions No. 87 and No.98 ratified by Indonesia, that "the right to strike is an integral part of the right to organize workers/laborers protected by the ILO": The right to strike is an essential right for workers/laborers and their organizations in fighting for and protecting the economic and social interests of workers: "Second, it reflects repressive state intervention, administrative and lengthy procedures that do not allow workers to exercise the right to strike. Third, it does not reflect the realization of the principle of "fair legal procedures". A fair procedure is the existence of a balance of rights and obligations between workers and employers stipulated in the legal norms of strikes, and the favoritism of the rules for employers through the power of the authorities to prohibit striking workers/laborers at the location of production process activities or on the company premises. Article 141 shows that there is no certainty for workers to get their rights as soon as possible from the state and employers. The right of workers to be heard as a form of legal protection for workers/laborers has not yet received a proper place. This unfair procedure prevents workers/laborers from exercising their right to strike.

The Sanction Against the Strikers

Article 186 of the Manpower Law stipulates the sanction of "a maximum of 4 (four) years imprisonment and/or a fine of Rp. 400,000,000 for workers/laborers and/or trade unions/labor unions who violate the provisions of Article 138 paragraph (1). From a normative perspective, sanctions are based on violations of norms of prohibitions, orders, and obligations. The regulation on criminal sanctions stipulated in Article 186 of the Labor Law is not based on violations of the norms of orders, prohibitions, and obligations, but is based on workers who invite other workers to strike at work as stipulated in Article 138 of the Employment Law which is not a prohibited norm. Article 186 of the Employment Law is very harsh against the workers, insubstantial, and is an attempt to deter workers from conducting strikes. More substantially, criminal sanctions, for instance, should be imposed on workers who commit acts of violence during a strike.

IV. Conclusion

A strike is a manifestation of the freedom and right to participate of workers as rational and free moral persons in decision-making relating to the welfare of workers while protecting the socio-economic interests of workers/laborers. A strike is a manifestation of the right to disobey as a political right of every citizen which is carried out in direct relation to the demand to overhaul or reject unjust laws. Law No. 13/2003 and the Implementing Regulations relating to work strikes do not reflect the values and principles of justice. On the contrary, they limit the rights and freedoms of workers/laborers, which is contrary to the principle of: "principle of greatest aguel liberty".

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