

COURSE MATERIIL (BAHAN AJAR)



LABOUR LAW

Prepared by:
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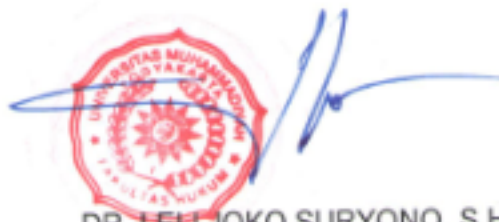
PROGRAM STUDI ILMU HUKUM
FAKULTAS HUKUM
UNIVERSITAS MUHAMMADIYAH YOGYAKARTA
2019

LEMBAR PENGESAHAN
BAHAN AJAR NON ISBN


1.	Judul	:	LABOUR LAW (HUKUM KETENAGAKERJAAN)
2.	Penyusun	:	NASRULLAH, S.H.,S.AG.,MCL.
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4.	Unit Kerja	:	PRODI ILMU HUKUM, FAKULTAS HUKUM UMY

Yogyakarta, 1 Februari 2019

Ketua Program Studi Ilmu Hukum



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CHAPTERS

LABOUR LAW

(2 CH)

Course Outline

Lecturer: Nasrullah, SH., S.Ag., MCL



DESCRIPTION

} Labor Law is a compulsory course which built on HK1461309 Public Law (Administrative Law Cluster). This course is designed to provide knowledge and everyday application of employment rulings and legislations with particular reference to Indonesia. It deals with employees and employers and the relationship between them (industrial relation). It covers things like industrial relations, work agreement, job placement, wages, job security, strikes, termination of employment, industrial relation disputes, and industrial relation disputes settlement.



Learning Objectives



} At the end of this course the student will be able to:

1. identify, describe and analyze Indonesian legal regime on labor/industrial relation laws which is mainly based on the 1945 Constitution and the Law No. 13 Year 2003 on Manpower Affairs;
2. demonstrate an understanding of the role of law in regulating industrial conflict, especially on the procedures of industrial disputes settlement which are mainly based on the Law No. 2 Year 2004 on Industrial Relations Dispute Settlement;
3. develop a spirit of fair dealing and justice through the study of real life cases and conflict areas which constitute labor law.



Course Materials



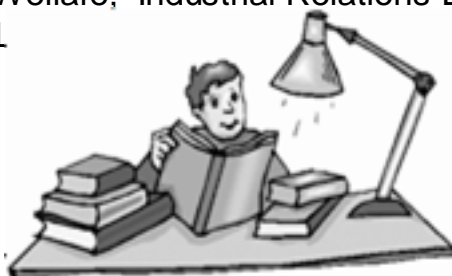
The course consists of the following units:

- } **Chapter 1: Introduction:** Definition of Labour Law; Position of Labour Law in the Indonesian Legal System; The History and Development of Labour Law in Indonesia; Principle, Goals, and Nature of Labour Law; Scope and Operational Arrangements of Labour Law (Week 1 & 2)
- } **Chapter II: The Industrial Relation:** The definition of industrial relation; The subject/parties of industrial relation; Normative basis of state/government intervention in labour relation; Trade/Labour Union; The bipartite and tripartite institutions; The Company Regulations; The Collective Labour Agreement. (Week 3 & 4)



} **Chapter III: Pre-Employment Legal Aspects:** Job Placement (Principles, Types and Its Legal Protection); Job vacancies report and employment at the company report; Job Training. (Week 5)

} **Chapter IV, During Employment Legal Aspects (Employment Relations):** Work Agreement, Protection (Disabled Person, Children, Women, Working Hours, Occupational Safety and Health); Wages; Welfare; Industrial Relations Disputes; Strike & L



} **Chapter V, Post Employment Legal Aspects:** Termination of Employment; The Rights of Laid-Off Workers; Social Security (Week 8 & 9)

} **Chapter VI, Industrial Relations Disputes Settlement:** Procedures of industrial disputes settlement; Settlement of Dispute Through the Industrial Relations Court. (Week 10 & 11)





} **Chapter VII:
International Regime
on Industrial
Relations (Week 12)**

} **Chapter VIII:
An Islamic
Perspective of
Industrial Relations
(Week 13 & 14)**



Some **Prescribed and
Recommended
Readings Materials**

} **Books:**

- } Sri Subiandini Gultom, SH., MH., 2008, *Aspek Hukum Hubungan Industrial*, Jakarta: Inti Prima.
- } Suw arto, 2003, *Hubungan Industrial dalam Praktek*, Jakarta: Asosiasi Hubungan Industrial Indonesia.
- } Dr.Lalu Husni, S.H., M.Hum, 2010, *Pengantar Hukum Ketenagakerjaan Indonesia*, edisi revisi, Jakarta: Rajaw ali Pers.
- } Abdul Khakim, S.H., M.Hum., 2009, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Bandung: PT. Citra Aditya Bakti.
- } Adrian Sutedi, S.H., M.H., 2009, *Hukum Perburuan*, Jakarta: Sinar Grafika



} Articles:

- } Syed, Jawad, 2008, "An Islamic Perspective of Industrial Relations: the Case of Pakistan" *Journal of Management, Spirituality and Religion*, 5(4): 417-440.
- } I. Nyoman Nurjaya, "Indonesian Labour Law and Reform".
- } Anis Hamim and Ruth Rosenberg, "Review of Indonesian Legislation" in *Trafficking of Women and Children in Indonesia*.
- } Pan Mohamad Faiz, "Protection for Child Labour in Indonesia Based on ILO Convention No. 182/1999", <http://faizlawjournal.blogspot.com/2006/12/child-labour-in-indonesia.html>

} Laws & Regulations:

- } Act No. 13 of 2003 concerning Manpower ("the 2003 Act")
- } Act No. 2 of 2004 concerning the Industrial Relations Dispute Settlement (the 2004 Act)
- } Law no. 1 Year 1970 on Occupational Safety
- } Law no. 3 Year 1992 concerning Employees' Social Security
- } Law no. 21 of 2000 on Trade Unions / Workers
- } Law no. 39 Year 2004 on Placement and Protection of Indonesian Workers Abroad
- } Government Regulation No. 76 of 1992 on Employer Pension Fund.

- } Government Regulation No. 8 / 1981 on the
Protection of Wāgēs
- } Decree of the Minister of Manpower and
Transmigration No.. Kep-224/Men/2003 about The
Liability of Employers who Employ Workers Female
between 23:00 o'clock sd 07:00
- } Decree of the Minister of Manpower and
Transmigration No.. Kep-231/Men/2003 Concerning
Suspension of the Implementation of Minimum Wage
- } Decree of the Minister of Manpower and
Transmigration No.. Kep-232/Men/2003 of Legal Due
Strike Invalid



- } Decree of the Minister of Manpower and Transmigration
No.. Kep-48/Men/2004 on Procedure Rule Making and
Ratification of the Company Regulation and the Making
and Registration of Collective Labor Agreement.
- } Decree of the Minister of Manpower and Transmigration
No.. Kep-67/Men/IV/2004 on the Implementation of
Employee Social Security Program for Foreign Workers.
- } Decree of the Minister of Manpower and Transmigration
No.. Kep-68/Men/IV/2004 on the Prevention and
Combating HIV / AIDS in the Workplace.
- } Decree of the Minister of Manpower and Transmigration
No.. Kep-100/Men/VI/2004 on the Implementation of
Certain Time Work Agreement.



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- } Decree of the Minister of Manpower and Transmigration No.. Kep-102/Men/VI/2004 on Working Time and Overtime Overtime Wages.
 - } Regulation of the Minister of Manpower No.. Per-01/Men/1999 on Minimum Wage, as has been enhanced with the Minister of Manpower and Transmigration No.. Kep-226/Men/2000 on the amendment of Article 1, Article 4, Section 8, Article 11, Article 20 and Article 21 of Regulation of the Minister of Manpower No. Per-01/Men/1999 on Minimum Wage.
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Methods Used

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- } presentation of a mandatory text in class
 - } Participations/discussions;
 - } assignments;
 - } Competence Based Exam: 1. written (2 times), 2. Oral/Individual Presentation (1 time)
 - } Students will also be expected to read the Indonesian Labour related Acts/Articles. Details will be given in class concerning which sections/ articles students should be reading. Analysis of the assigned material will take the form of classroom discussion in which everyone is expected to participate, supplemented by lecturing. Only by participation in class discussions combined with advanced preparation students can expect to obtain maximum benefits from the course.
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Assessment Components

Description	%	%
Competence Based Exam 1	30	70
Competence Based Exam II	35	
Competence Based Exam III (individual presentation)	35	
Assignment 1 (group/chapter writing)	50	30
Assignment II (group)	50	
		100



Competence Based Exam 3

1. Writing & presenting research paper on actual issues relating to the course. The maximum mark may be obtained from these tasks is 35 points.
2. The labour issue is found from clipping and as a result of analyzing 3 actual issues related to the topics of the course with the following conditions:



- a. The clippings must be taken from printing mass media published in the last 3 years.
- b. The clippings are to be taped on HVS paper of A4 size.
- c. Each of clipping must be commented in a separated HVS paper (may be handwritten or typed).
- d. The most interesting issues will be determined as a theme of final work (article).
- e. The Student shall finish and present his/her article 2 weeks prior to the end of semester.

Warning!

- } All assignments are to be handed in at the scheduled times. Delay in submission of assignments will be resulted in reduction of mark as much as 2 points for 1 day delay. Assignments more than five days late will not be accepted unless a prior arrangement has been made with the instructor.
- } Do not lend or copy assignments from other students. This is a form of cheating (plagiarism) which will result in a zero grade for both assignments.
- ~~} Do not take material off the internet without~~ including a full reference for each site used


To Contact Me

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Chapter 1




INTRODUCTION TO LABOUR LAW

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Terms




In labour law/employment law, there are some terms that are as diverse as:


- labor (*buruh*)
- worker (*pekerja*)
- employee (*karyawan*)
- officer (*pegawai*)
- manpower (*tenaga kerja*),
- employer (*pemberi kerja*),
and
- entrepreneur (*penusaha*)

- The term labourer has always been popular and is now often used as a term for the labour group fighting for their organization program.
- The term workers in practice often used to indicate the status of the working relationship as temporary workers, contract workers, daily workers, temporary workers, permanent workers, etc..
- The term employee or officer more often used for administrative data.




- Another opinion states **workers** since the first time is identical with rough jobs, low education and low income as well.
- In fact, there was laborer (*kuli*) term in the colonial era, foreman (mandor) or something alike, that put workers in a weak position under the entrepreneur.
- In fact, the existence of labour is very essential for the survival of the company. 4:1




Article 1 Act No.13 Year 2003 defines:

- **Manpower** as every individual or person who is able to work in order to produce goods and/ or services either to fulfill his or her own needs or to fulfill the needs of the society.
- **A worker/labourer** as any person who works and receives wages or other forms of remuneration.




- **An employer** as individual, entrepreneur, legal entities, or other entity that employ manpower by paying them wages or other forms of remuneration.
- **An entrepreneur** as:
 - a. An individual, a partnership or a legal entity that operates a self-owned enterprise;
 - b. An individual, a partnership or a legal entity that independently operates a non-self-owned enterprise;
 - c. An individual, a partnership or a



LABOUR LAW

Syahrani:
 "Labour law is the entire rules governing labour relations, namely the relationship between employees with employers, the relationship between employees and employers with government (ruler)."
 4:5

Definitions of Labour Law are vary depending on viewpoint of each lawyer.
For example:



- **Soepomo** in Manulang: "Labour Law is the set of rules, whether written or unwritten, regarding someone working for others with payment." 4:5
- **Utrecht:** "Labour law is the body of laws, which regulate the working relationship and the settlement of disputes between workers with employers." 1:5

- **Labour law** is the body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on, working people and their organizations.
(http://en.wikipedia.org/wiki/Labour_law)
- **Labour Law** is a body of law that applies to matters such as employment, wages, conditions of work, labour unions, and labour-management relations.
- Laws intended to protect workers, including children, from abusive employment practices

Elements of Labour Law



1. A series of rules written and unwritten form.
2. Regulate the working relationship with entrepreneurs.
3. The presence of people working at and below the others, with a wage as a reward.
4. Regulate the protection of workers, including sickness, menstruation, pregnancy, childbirth, the existence of workers' organizations, etc..

Principle/Statutory Basis of Indonesian Labour Law

- Art. 2 of Act. No. 13 Year 2003:
“Manpower development shall have the *Pancasila* and the 1945 Constitution as its statutory basis.”

Explanation:

The National Development shall be carried out in the framework of the whole, undivided development of Indonesian as a human being.

Therefore, manpower development shall be carried out with the aim to develop Indonesian and the Indonesian society as a whole into a prosperous, just, and well-off society in which material and

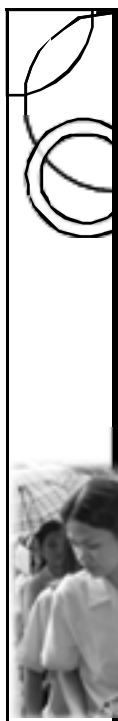


- Art. 3 of Act No. 13/2003:
“Manpower development shall be carried out based on the basic principle of integration through functional, cross-sector, central, and provincial/municipal coordination.”

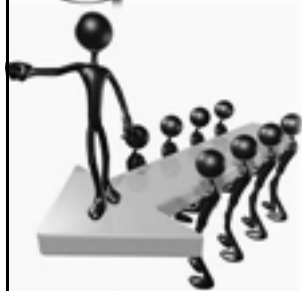
Explanation:

Manpower development has many dimensions and interconnectivity with many stakeholders such as the government, the entrepreneur and the worker/ labourer.

Therefore, manpower development shall be carried out in an integrated manner and in the form

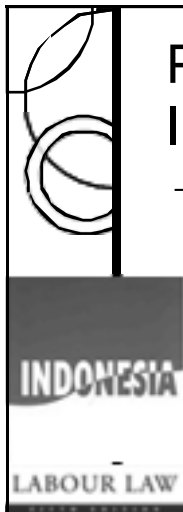


Goals of Indonesian Labour Law



- Art. 4 of Act 13/2003:
Manpower development aims at:
 - a. Empowering and making efficient use of manpower optimally and humanely;
 - b. Creating equal opportunity and providing manpower (supply of manpower) that suits the need of national and provincial/ municipal developments;
 - c. Providing protection to manpower for the realization of welfare; and
 - d. Improving the welfare of manpower and their family.

Position of Labour Law in the Indonesian Legal System




- Initially, working relationship between workers and entrepreneurs only related to private interests, which means related to aspects of civil law. However, when there is a difference of opinion/ disagreement or problem between them, government intervention is necessary, so that at this stage, labour law has been associated with public law, whether the relevant aspects of state administrative law and criminal law. (4:7)

Example:

- If related to the employment agreement includes the rights and obligations of a mutually agreed and only involve the parties è civil law.
- If associated with the permissions on the labor field, minimum wage, endorsement of company rules, registration of working agreement, registration of trade unions è administrative law.
- In relation to violations of the Labor Law è criminal law.

The 2 nature of provisions in Labour Law:

1. **Imperative** or *dwingenrecht* (force of law) which must be obeyed implicitly, must not be violated. Example:
 - a. In employing people who are available for a job, the employers as mentioned under subsection (1) are under an obligation to provide protection which shall include protection for their welfare, safety and health, both mental and physical. (Art. 35 (3) Act.13/2003)
 - b. Entrepreneurs are under an obligation to provide workers with adequate opportunity to perform their religious obligations. (Art. 80 Act. 13/2003)
 - c. Entrepreneurs are prohibited from paying wages lower than the minimum wages as mentioned under Article 89. (Art. 90 (1) Act. 13/2003)



2. **Facultative** or *regelendrecht/aanvullendrecht* (the law governing/complement), meaning that the law being left to one's option or choice; Example:

- Work agreements can be made either orally or in writing. (Art. 51 (1) Act. 13/2003).
- A work agreement for an unspecified time may require a probation period for no longer than 3 (three) months. (Art. 60 (1) Act. 13/2003).
- The parties or one of the parties may continue to file settlement of the dispute to the Industrial Relations Court in the local District Court. (Art. 14 (1) Act. 2 Year 2004)



Scope and Operational Arrangements of Labour Law

Systematic operational of employment law is divided into three groups, namely:

- pre-employment, including manpower planning, job vacancies, job placement, etc.
- During employment that is the substance of employment law, eg concerning work safety, social security, labour unions, wage protection, etc..
- Post-employment, including among others: the settlement of industrial

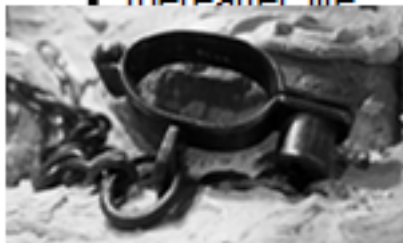


The History and Development of Labour Law in Indonesia



–The history of labor relations in Indonesia began with a very miserable period of slavery era, forced labor (*Rodi*) era, and *poenale sanctie* era.

Slavery is an event where the person doing the work of others (i.e. the slave) who has no rights whatsoever, even the right to life. For example the tragedy of Sumba in 1877, when 100 people were killed because of their monarch slave died, this was done on the basis of the belief that the slaves who were killed will be devoted to their master in thereafter life.



Netherlands Indies government began regulating the matter of slavery since 1817.

- **Rodi** is a forced labor done by the people for the benefit of the entrepreneur or other parties with no remuneration, conducted beyond the boundaries of humanity.

Rodi is used for all sorts of **purposes**, such as establishing harbors, factories, roads, etc..


Example: Hendrik Willem Daendels (1807-1811) was known for his forced work to make the road from Anyer to Panarukan/Banyuwangi.

Abolition of forced labor process took a long time, starting from February 1, 1938.




- **Poenale Sanctie** took place because of the Agrarische Wet policy in 1870 which resulted to availability of huge private estates.


To ensure these companies get the workers, then in the *Algemene Politie Strafreglement* (Stb.1872 No. 111) determined that workers who leaved or refused to do the work can be punished by a fine of between IDR 16 to IDR 25 or with forced labor for 7 to 12 days. The imposition of this penalty is called "**Poenale Sanctie**". (3:1-3)



There were several acts on manpower as colonial products:


- *Ordinance concerning the Mobilization of Indonesian People To Perform Work Outside of Indonesia (Staatsblad Year 1887 Number 8);*
- *Ordinance dated December 17, 1925, which is a regulation concerning the Imposition of Restriction on Child Labour and Night Work for Women (Staatsblad Year 1925 Number 647);*
- *Ordinance Year 1926, which is a regulation concerning Child and Youth Labour on Board of A Ship (Staatsblad*


- 
- *Ordinance dated May 4, 1936 concerning Ordinance To Regulate Activities To Recruit Candidates (Staatsblad Year 1936 Number 208);*
 - *Ordinance concerning the Repatriation of Labourers Who Come From or Are Mobilized From Outside of Indonesia (Staatsblad Year 1939 Number 545);*
 - *Ordinance Number 9 Year 1949 concerning Restriction of Child Labour (Staatsblad Year 1949 Number 8);*




After independence was recognized, a number of key pieces of legislation were enacted with regards to labor law, as detailed below:

Act No. 1 of 1951 *concerning the Declaration of the Enactment of Employment Act Year 1948 Number 12 From the Republic of Indonesia For All Indonesia (State Gazette Year 1951 Number 2).* - The first labor law enacted by the Government was Act No. 1 of 1951 concerning Employment which regulated working hours, annual leave, and long service leave, in addition to other inalienable obligatory rights, such as ministration and maternity leave. Child labor rights, and working environment conditions were included as well and expressed the dominant role of the Government in industrial relations, in order to control rights and obligations of stakeholders, namely, employer and workers.


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- **Act No. 2 of 1951** was the enactment concerning Employment Accidents. The Act obligated the employer to pay compensation to any worker who suffers a work-place accident irrespective of whether or not the accident is the fault of the employee his or herself. The employer is required to report such accidents to officials of the Department of Labor within 24 hours of the occurred accident. In case of failure to report workplace accidents, the employer could be liable to terms of imprisonment and/or fines.
 - **Act No.3 of 1951** on Labor Supervision defined the official authority mandated to Labor Inspectors to supervise the enforcement of labor law on the one hand, and to actively prevent potential breach of the provision of labor law and legislations on the other hand. In particular, it allowed Labor Inspectors to investigate punishable offenses and prosecute breaches of labor law and related regulations.


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- Act Number 21 Year 1954 concerning Labour Agreement Between Labour Union and Employer (State Gazette Year 1954 Number 69, Supplement to State Gazette Number 598a);
 - Act Number 3 Year 1958 concerning the Placement of Foreign Manpower (State Gazette Year 1958 Number 8);
 - Act Number 8 Year 1961 concerning Compulsory Work for University Graduates Holding Masters Degree (State Gazette Year 1961 Number 207, Supplement to State Gazette Number 2270);

- 
- Act Number 7 of the Year 1963 serving as the Presidential Resolution on Prevention of Strike and or Lockout at Vital Enterprises, Government Agencies In Charge of Public Service and Agencies (State Gazette Year 1963 Number 67);
 - Act Number 14 Year 1969 concerning Fundamental Provisions concerning Manpower (State Gazette Year 1969 Number 55, Supplement to State Gazette Number 2912);
 - Act Number 25 Year 1997 concerning Manpower (State Gazette of the Republic of Indonesia Year 1997 Number 73, Supplement to State Gazette of the Republic of Indonesia

- Act Number 11 Year 1998 concerning the Change in the Applicability of Act Number 25 Year 1997 concerning Manpower (State Gazette Year 1998 Number 184, Supplement to State Gazette Number 3791);
- Act Number 28 Year 2000 concerning the Establishment of Government Regulation in lieu of Law Number 3 Year 2000 concerning Changes to Act Number 11 Year 1998 concerning the Change in the Applicability of Act Number 25 Year 1997 concerning Manpower into Act (State Gazette Year 2000 Number 204, Supplement to State Gazette Number 4042).

√ The above-mentioned statutory legislations were considered necessary to be revoked and replaced by a new act since they were no longer relevant to the need and demand of manpower development because parts were colonial products and some were put workers in a less advantageous position especially when it comes to job placement service and industrial relations system that put too much emphasis on differences of positions and interests so that they are no longer suitable for today's needs as well as for future demands and hence, need to be abolished and/or revoked.

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- *The New Act (Act No. 13 of 2003 on Manpower Affairs) does not only abolish rules, regulations and provisions that are no longer suitable/ relevant in the manpower context of today but also accommodate very fundamental changes in all aspects of the life of Indonesian as a nation that started with the 1998 reformation era.*



On 14 January 2004 The House of Representatives of the Republic of Indonesia and the President of the Republic of Indonesia have stipulated the Act No. 2 of Year 2004 on Act Concerning Industrial Relations Disputes Settlement.

- Indonesia has also recently ratified several key ILO Conventions, making it the first Asian state to ratify all **seven fundamental Conventions**, including:
1. ILO Convention No. 87 on Freedom of Association and Protection of the Right to organize (ratified June 1998),
 2. No. 105 on Abolition of Forced Labor (May 1999) and
 3. No. 138 on Minimum Age (May 1999).
Convention No. 182 on Worst Forms of Child Labor ratified (November 2000).



GOOD LUCK!