The implementation of labor strike rights: Between freedom and order in Indonesia

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ABSTRACT

This research aims to investigate and know about the implementation of labor strike rights, between freedom and order in Indonesia. The methodology of this research is normative legal research using a qualitative descriptive approach, and data collection techniques using library research techniques. The results of the study indicate that a labor strike occurs when unjust labor practices occur in which workers/employers hold their jobs to protest against employers who are considered to have violated the applicable labor laws. Workers who strike because of unfair labor practices cannot be legally dismissed or replaced permanently and this is guaranteed by law in Indonesia. However, some efforts are needed to navigate the potential for a labor strike that can be carried out by improving the quality of work life in the company. Through the implementation of the quality of work life, it is hoped that workers will feel involved in the workplace. If there is a problem at work, the workers/workers want to be heard by the company's leadership, and they want to know that there is a fair settlement process as regulated by the prevailing regulations and laws so that this is the best solution to prevent and deal with labors to strike rights.

INTRODUCTION

At this time, labor strikes in various countries including Indonesia have become very important. This is because the quality of work is a major problem in Indonesia, and compliance with existing labor regulations is very low (The Asian Development Bank, 2022). By labor law, the right to strike is guaranteed in the Indonesian labor law. Whereas economically, a labor strike will have an impact on the loss of production and customers is usually the first result of the indirect strike costs that occur later can be just as serious (Israelstam, 2017). According to Israelstam (2017), once the strike is over, even if the business has not been closed by the entrepreneur then the feelings of hostility resulting from the strike can seriously damage the team work, productivity and profitability of the company.

Along with the dynamics of the Indonesian economy in facing the industrial revolution 4.0 where the Indonesian economy did not escape the flow of the globalization era which was triggered by the wave of the industrial revolution 4.0 and after the outbreak of Covid-19. The industrial revolution 4.0 can be interpreted as a rapid change in the economy and production in the form of increasing efficiency which causes its impact on various fields of life (Ellitian, 2020), including the labor and employment sector (Tri & Nhe, 2021). The labor and employment sector is greatly affected due to the industrial revolution 4.0, causing very tight competition in the business world which is marked by the growing development of creativity and innovation (Sugiarto, 2018).

On the other hand, the industrial revolution 4.0 has disrupted various aspects of global life, including competition in the economic field (Sugiarto, 2018) thereby increasing connectivity, the loss of boundaries between humans and regions (Ilyas et.al., 2020). In this context, the problem of human labor threatened by technological achievements is the increasing exposure of workers to the risks of automation and digitalization in the form of the possibility of widening income inequality and social inequality, and digitalization of...
the replacement of human factors by machines and robots which tend to lead to creative disasters (Zervoudi, 2019). Then, during the COVID-19 outbreak related to the safety of workers in the workplace, both physically and psychologically also became a central issue for companies (Falco et al., 2021).

Therefore, the tough challenge facing the business world in the 4.0 industrial revolution in Indonesia at this time is the efforts that organizations (companies) must make to achieve their goals through their resources as production factors. Factors of production are inputs used to produce goods or services to generate income which consists of land, labor, capital, and entrepreneurship (Hicks, 2020). In this context, labor as labor is one of the factors of production (Papava, 2017), and on the other hand the latent benefits associated with work are important for psychological well-being (Fowler et al., 2009).

Workers in industrial relations often cause problems. One of the problems of workers/workers in industrial relations is related to work strikes or labor strikes so that they require more serious handling (Ayub et al., 2021). According to Thompson & Borglum (1973), and Nicholson & Kelly (1980) in Fowler et al. (2009) state that a labor strike occurs when hostility increases between management and workers so that workers collectively agree to stop working to get concessions from the employer. According to FindLaw's (2017) that the factors that trigger the emergence of work strikes carried out by workers and trade unions are caused by:

i. Economic complaints or disagreements, including about wages, hours worked, rest periods, salary increases, promotions, medical benefits, and retirement benefits.
ii. Unsafe working conditions or unfair labor practices in violation of the country’s labor laws.

In general, labor strikes occur after contract negotiations fail, and the majority of workers in the bargaining unit have voted to strike, and strikes are an activity that is guaranteed and protected by labor laws in many countries (FindLaw’s, 2017), and labor law is no exception. Indonesia under certain conditions and at different levels. This aims to provide legal protection for every Indonesian citizen in carrying out work, whether working in the government, as well as in the private sector (Hamid, 2021). Furthermore, Lim (2019) stated that the right to strike is very important in defending and winning rights.

Based on various previous descriptions, this article examines in more depth and comprehensively the labor strike between freedom and order as regulated and guaranteed in Indonesian labor law. This research is significant because the issue of a labor strike is a strategic issue in order to maintain economic stability and security, especially the development of the Indonesian business world in the midst of the wave of the industrial revolution 4.0, and the Covid-19 outbreak which currently tends to slope in Indonesia, various countries in the world due to the relatively disciplined application of health protocols and the implementation of a fairly intense vaccination program.

The research methodology used in this research is normative legal research, starting from das solen or law in books to das sein or law in actions (Barus, 2013) where the right to strike is based on the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan or UUJK No. 13/2003). In this study, a qualitative descriptive approach was used with an emphasis on the use of scientific logic (Bachtar, 2018), and analyzed in detail (Creswell, 2007) so that these new ideas become the findings of this study.

While the data collection technique uses library research techniques in the form of notes, books, newspapers, magazines, transcripts, and others that come from secondary data sources from published sources (Kabir, 2018).

Furthermore, this article is entitled: "The Implementation of the labor strike rights, between freedom and order in Indonesia", and the formulation of the research problem is as follows:

I. What is meant by the implementation of the labor strike rights, between freedom and order in Indonesia?
II. How is the implementation of the labor strike rights, between freedom and order in Indonesia?

Thus, this article in order discusses the juridical review, the labor strike rights, the implementation of the labor strike rights, between freedom and order in Indonesia, and this article ends with a conclusion, which can be described as in Figure 1 below as follows:
Juridical Review

In Indonesian labor law, it is the right of labors/workers to strike in the context of industrial relations. Industrial relations are working relations between employers and workers which contain the rights and obligations of both parties, including safety, security, and work benefits for workers/workers where this is very necessary to ensure legal freedom and job satisfaction of workers (Hamid, 2021). In relation to the definition of a labor strike, Article 1 number 23 of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan or UUK No. 13/2003) stipulates that a strike is an action by workers that is planned and carried out jointly and/or by a union. workers to stop or slow down work.

Indonesia’s labor law is regulated by UUK No.13/2003, as amended by Law Number 11 of 2020 concerning Job Creation (Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja or UUCK No.11/2020). In the context of this change, the government has issued a government regulation to implement both UUK No.13/2003 and UUCK No.11/2020 through Government Regulation Number 35/2021 (Peraturan Pemerintah Nomor 35 Tahun 2021 or PP No.35/2021) concerning Fixed Time Work Contracts, Outsourcing, Time Work and Rest, as well as Termination of Employment; and Government Regulation no. 36 of 2021 (Peraturan Pemerintah No. 36 Tahun 2021 or PP No. 36/2021) regarding Salaries. Then, the other two main laws are: Law No. 2 of 2004 (Undang-Undang Nomor 2 Tahun 2000 atau Serikat Pekerja or UU No.2/2004) concerning Settlement of Industrial Relations Disputes; and Law No. 21 of 2000 on Trade Unions. (Undang-Undang Nomor 21 Tahun 2000 tentang Serikat Pekerja atau UU No.21/2000).

In addition to the various laws and government regulations mentioned above, employers and workers are also subject to company regulations (or work regulations) or collective labor agreements (PKB), if applicable, as well as strict provisions of work agreements between employers and workers. In the case of a labor strike, which Article 137 of the UUK No.13/2003 stipulates regarding this matter, a strike is a basic right of workers and trade unions are carried out legally, orderly and peacefully as a result of the failure of negotiations?

In the labor law in Indonesia, the meaning of “orderly and peaceful” in carrying out a labor strike is that its implementation does not interfere with security and public order, and/or threatens the safety of life and property belonging to the company or entrepreneur or other people or belonging to the community (Explanation). Article 137 UUK No.13/2003. Meanwhile, what is meant by negotiation in UUK No.13/2003 is the failure to reach an agreement on the settlement of industrial relations disputes which can be caused because the entrepreneur does not want to negotiate or the negotiations are deadlocked (Explanation of Article 137 UUK No.13/2003).

Labors Strike Rights

One form of the state's role in the relationship between workers and employers is to give workers the right to strike (Elang, 2017). The labor strike has been recognized as a worker's human right based on the ILO Convention No. 87 of 1948 and the ILO's Convention No. 98 of 1949, the state has an interest in regulating and limiting strikes. A strike is defined by Law Number 13 of 2003 concerning Manpower (UUK No. 13/2003) in Article (1) paragraph 23 as an action by workers/laborers that is jointly planned and or by a labor union to stop or slow down work.

Strikes are a way to balance power between employers and workers, socio-economic conditions that affect this relationship may have to be considered when determining the rules regarding strikes (Waas, 2012). According to Article 137 of the UUK No. 13/2003, a strike is a result of the failure of negotiations between employers and workers. In addition to still getting a salary, a labor strike is also guaranteed by Article 144 of the UUK No. 13/2003, that companies may not replace striking workers with other workers outside the company, and may not impose sanctions or retaliation in any form.
Strikes are not only a means to demand and achieve adequate provisions on basic freedoms, but are also an intrinsic and self-determined expression of freedom and human rights (Lim, 2019). Functionally, strikes give workers/labor bargaining power to encourage fair and meaningful negotiations, offsetting the inequalities inherent in bargaining power in employer-employee relationships (Lim, 2019).

According to Englert (2022), there are 3 (three) types of legal strikes according to Section 7 of the National Labor Relations Act (NLRA) that can be implemented by workers and trade unions/labor, namely:

i. Economic strikes, in which employees seek to pressure employers to admit their demands for improvements to wages, benefits or work arrangements.

ii. Strikes on unfair labor practices, as a protest against employers engaging in unfair labor practices.

iii. Sympathy strike, which occurs when an employee chooses not to cross the main picket line out of sympathy for the main strike employee.

In carrying out a legitimate strike, what must be considered is that the provisions of collective bargaining agreements between employers and trade unions can limit or prohibit the rights of trade unions to engage in economic strikes (Englert, 2022). Meanwhile, strikes with unfair labor practices can be interpreted as a labor negotiation tool to improve the quality of working life in the work environment. In this context, the quality of working life is very important for workers because it is related to fair and adequate compensation, safe working conditions and a healthy environment, competency development, and leadership (Ruhana et.al, 2019).

According to experts in Leitão et al. (2019) that the quality of work life can be interpreted as follows:

i. Satisfaction and fulfillment of the physical conditions considered basic to ensure functionality, health and safety in the workplace.

ii. The socio-emotional and psychological needs of employees, which require the application of more behavioral lenses, to uncover the components that can most influence job satisfaction and motivation, but also productivity.

Based on the previous descriptions, efforts are needed to navigate the potential for a labor strike by improving the quality of working life in the company. Through this, workers/workers feel involved in the workplace. If there is a problem at work, the workers/workers want to be heard by the company leadership. Then, the workers/workers want to know that there is a process carried out by the company leadership to solve problems in the workplace in a fair and transparent manner as regulated by regulations and applicable laws. Therefore, efforts to improve the quality of working life in the company are expected to be the best solution to prevent and deal with labor strikes.

Thus, the Indonesian government is expected to be able to provide guidance to elements and activities related to manpower, particularly the implementation of the right to strike workers. The implementation of the right to strike workers is a strategic issue and is very important to be anticipated and managed appropriately in order to maintain ideological, political, economic, social, legal and other stability. In this case, the government can do this by involving and involving employers' organizations, trade unions Labor unions, and related professional organizations in an integrated, coordinated, and active role in mediating negotiations related to labor strikes.

**Implementation of the Labors Strike Rights: Between Freedom and Order**

Lim (2019) states that the implementation of a strike is a collection of classical values in the context of liberal democracy, especially the values of dignity, freedom, and autonomy in the form of acts of collective disobedience, freedom of speech, association, and assembly. In this case, a strike or strike can be interpreted as a worker's right due to the failure of negotiations in the settlement of disputes in industrial relations. A labor strike can be carried out by complying with the provisions of the applicable laws and regulations. In other words, the implementation of a strike should not be carried out arbitrarily.

Therefore, the implementation of a strike must be in accordance with the rules of the legal corridor applicable in Indonesia. In this case, strengthening alliances between workers, communities, academics, and other democratic forces is very important to encourage the implementation of strikes in the democratic space in order to build a more just society. On the other hand, strikes are carried out to build strength, and to ensure that all workers in Indonesia can exercise their fundamental right, the right to strike.

Furthermore, various rules governing the implementation of strikes based on labor laws in Indonesia are as described in table 1 below as follows:
Table 1: Rules for Implementing the Labors Strike Rights in Indonesia

<table>
<thead>
<tr>
<th>No</th>
<th>Labor Law</th>
<th>Description of the Rules for the Implementation of the Labors Strike Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Article 138 paragraph (1) UUK No.13/2003</td>
<td>Workers and/or trade unions who intend to invite other workers to strike, at the time the strike takes place are carried out without violating the law</td>
</tr>
<tr>
<td>2</td>
<td>Article 138 paragraph (2) UUK No.13/2003</td>
<td>Upon an invitation to strike, the person concerned may choose to participate or reject the invitation to strike.</td>
</tr>
<tr>
<td>3</td>
<td>Article 140 paragraph (1) UUK No.13/2003</td>
<td>A maximum of 7 working days before the strike is carried out, workers and trade unions are obliged to notify the employer and the local manpower office in writing.</td>
</tr>
<tr>
<td>4</td>
<td>Article 140 paragraph (2) UUK No.13/2003</td>
<td>The notification shall at least contain: the time (day, date, and hour) of the start and end of the strike; the place of strike; the reasons and reasons why a strike must be carried out; and the signatures of the chairman and secretary and/or the respective chairman and secretary of the trade union as the person in charge of the strike.</td>
</tr>
<tr>
<td>5</td>
<td>Article 140 paragraph (3) UUK No.13/2003</td>
<td>In the event that a strike will be carried out by a worker who is not a member of a trade union, the notification is signed by the worker's representative who is appointed as the coordinator and/or person in charge of the strike.</td>
</tr>
<tr>
<td>6</td>
<td>Article 140 paragraph (4) UUK No.13/2003 and its explanation UUK No.13/2003</td>
<td>If the strike is carried out without written notification as regulated above, in order to save the means of production and company assets, the entrepreneur can take temporary measures by: prohibiting striking workers from being at the location of the production process activities; or if deemed necessary, prohibit striking workers from being in the company's premises, where the strike place is a place that does not prevent other workers from working.</td>
</tr>
<tr>
<td>7</td>
<td>Article 141 paragraph (1) UUK No.13/2003</td>
<td>After receiving the notification, the company or the manpower office must provide a receipt for the written notification of the proposed strike.</td>
</tr>
<tr>
<td>8</td>
<td>Article 142 paragraph (1) UUK No.13/2003</td>
<td>A strike that does not meet the above provisions is an invalid strike.</td>
</tr>
<tr>
<td>9</td>
<td>Article 143 paragraph (1) UUK No.13/2003</td>
<td>No one can prevent a legal, orderly and peaceful strike.</td>
</tr>
<tr>
<td>10</td>
<td>Elucidation of Article 143 paragraph (1) UUK No.13/2003</td>
<td>What is meant by obstruction is among others by: imposing punishment; intimidating in any form; or make harmful mutations.</td>
</tr>
<tr>
<td>11</td>
<td>Article 143 paragraph (2) UUK No.13/2003</td>
<td>If a strike is carried out in a lawful, orderly and peaceful manner, then anyone is prohibited from arresting and/or detaining workers and workers union officials who are on strike.</td>
</tr>
<tr>
<td>12</td>
<td>Article 185 paragraph (1) jo. Article 143 UUK No.13/2003</td>
<td>Parties who hinder a legal, orderly and peaceful strike may be subject to sanctions in the form of imprisonment for a minimum of 1 year and a maximum of 4 years and/or a minimum fine of Rp. 100 million and a maximum of IDR. 400 million.</td>
</tr>
<tr>
<td>13</td>
<td>Article 144 UUK No.13/2003</td>
<td>In addition, it should be noted that workers who strike according to the law, employers are prohibited from: replacing striking workers with other workers from outside the company; or give sanctions or countermeasures in any form to workers and trade union officials during and after a strike.</td>
</tr>
<tr>
<td>14</td>
<td>Article 145 UUK No.13/2003</td>
<td>Workers who strike legally in carrying out demands for normative rights that are really violated by employers, workers are entitled to wages.</td>
</tr>
<tr>
<td>15</td>
<td>Elucidation of Article 145 of UUK No.13/2003</td>
<td>What is meant by &quot;really violating normative rights&quot; is that the entrepreneur is clearly not willing to fulfill his obligations as referred to and/or stipulated in the work agreement, company regulations (Peraturan Perusahaan or PP), collective labor agreement (Perjanjian Kerja Bersama or PKB), or statutory regulations. employment invitation, even though it has been stipulated and ordered by the official in charge of manpower affairs.</td>
</tr>
<tr>
<td>16</td>
<td>Article 1 number 2 of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes (Law No. 2/2004)</td>
<td>Disputes over rights, namely disputes arising from non-fulfillment of rights, due to differences in the implementation or interpretation of the provisions of laws and regulations, work agreements, PP, or PKB.</td>
</tr>
<tr>
<td>17</td>
<td>Article 3 jo. Article 5 Decree of the Minister of Manpower and Transmigration Number KEP-232/MEN/2003 of 2003 concerning the Legal Consequences of an Unlawful Strike. (Keputusan Menteri Tenaga Kerja dan Transmigrasi Nomor KEP-232/MEN/2003 Tentang Akibat Hakam Mogok Kerja yang Tidak Sah or Kepmenakertrans 232/2003)</td>
<td>A strike is invalid if it is carried out: not as a result of failed negotiations; without notification to the employer and the manpower office; with less than 7 days' notice before the strike; the content of the notification is not in accordance with the provisions of Article 140 paragraph (2) letters a, b, c, and d of UUK No.13/2003; and/or strike at companies that serve the public interest and/or companies whose types of activities endanger the safety of human life, which are carried out by workers who are on duty. In contrast to a strike that is legal, orderly and peaceful, the consequences of a strike that is illegal, disorderly and not peaceful include: The company can take temporary action by prohibiting strikes at the location of the production process activity or even at the company location if deemed necessary, in order to save production equipment and company assets if the strike is carried out without or less than 7 days prior written notice; The security apparatus may arrest and/or detain workers and trade union officials, by using the legal theory of reverse interpretation (a contrario) of Article 143 paragraph (2) of the Manpower Law; and Employers have the right to replace striking workers with other workers from outside the...</td>
</tr>
</tbody>
</table>
A labor strike is guaranteed in the labor law in Indonesia. However, all parties with an interest in the issue of labor strikes can be wiser in managing the issue of strikes by workers/workers which can have an impact on the problem of violent strikes and which tend to be devastating to the economy, causing injury to community members and workers who do not strike, and the possibility that employers will lay off workers if their business does not make a profit as a result of the strike. Therefore, the government, employers, workers/labor unions, academics and all other interested parties are expected to be able to manage the issue of labor strikes by: (1) Overcoming the issue of the worker-management & government gap - This can be done through process management better business and organizational structures that can help to remove these barriers; (2) Improve the quality of work life in the work environment - In this kind of work environment, employees take the initiative to excel in order to create a sense of personal achievement because the worker really wants to be respected for their contributions. they provide for the overall success of the company; (3). Provide needed information - Workers see their employers provide valid and transparent information and there is a fair resolution process when a reason for termination of employment (PHK).

Thus, labor strikes in Indonesia are carried out by workers who join trade unions/workers which are a legal right to protect the basic values of freedom of expression. In this case, workers and trade unions/workers can strike either in a form of an economic strike or a strike due to unfair labor practices. Therefore, the implementation of a labor strike in Indonesia must be carried out in the context of a legal, orderly and peaceful legal corridor as regulated by the labor law in Indonesia, Article 185 paragraph 1 jo. Article 143 UUCK No.13/2003.

**Conclusion**

A labor strike is guaranteed in the labor law in Indonesia. However, all parties with an interest in the issue of labor strikes can be wiser in managing the issue of strikes by workers/workers which can have an impact on the problem of violent strikes and which tend to be devastating to the economy, causing injury to community members and workers who do not strike, and the possibility that employers will lay off workers if their business does not make a profit as a result of the strike. Therefore, the government, employers, workers/labor unions, academics and all other interested parties are expected to be able to manage the issue of labor strikes by: (1) Overcoming the issue of the worker-management & government gap - This can be done through process management better business and organizational structures that can help to remove these barriers; (2) Improve the quality of work life in the work environment - In this kind of work environment, employees take the initiative to excel in order to create a sense of personal achievement because the worker really want to be respected for their contributions, they provide for the overall success of the company; (3). Provide needed information - Workers see their employers provide valid and transparent information and there is a fair resolution process when a labor dispute arises in the company. Company leaders are able to provide workers/union with complete information as they need so that this can keep staff safe and valued.

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Undang-Undang Nomor 2 Tahun 2004 tentang Penyelesaian Perselisihan Hubungan Industrial

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