

THE FUTURE STRUCTURE OF INDUSTRIAL RELATIONS IN INDONESIA

Some Issues and Challenges

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FOREWORD

The ILO Declaration on Fundamental Principles and Rights at Work is a solemn commitment by the ILO and its member states to respect, promote, and realize, the fundamental principles and rights set out in the eight core Conventions of the ILO. These rights include the freedom of association of employers and workers and their right to bargain collectively.

Indonesia has already ratified the eight core Conventions of the ILO and is committed to meeting these standards in its laws and practices. With this aim, it has embarked upon a labour law and policy reform program.

The **ILO/USA Project on Promoting and Realizing Freedom of Association and Collective Bargaining** specifically aims to:–

- Help Government, workers, and employers, to understand and exercise their new legal rights and obligations.
- Strengthen the ability of labor institutions and systems so they can fulfill their role in promoting sound and harmonious industrial relations.
- Encourage and strengthen dialogue and tripartism, particularly between Government, employers' organizations, and trade unions.

During the period of the project, a number of expert papers will be published. They will cover different aspects of labour law, industrial relations, and labour administration. It is hoped that these papers will be a useful resource and reference for all involved or interested in labour law and labour relations in Indonesia.

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INTRODUCTION

The purpose of this paper is to assist with the start-up activities for the ILO/USDOL Project by providing an up to date picture of the Indonesian industrial relations scene.

This paper, firstly describes the current state of industrial relations law in Indonesia and the background to this. Secondly, it examines the provisions of three new/proposed labour laws:-

- The Workers' Union/Labour Union Act (Act No. 21 of 2000)
- The Industrial Dispute Settlement Bill
- The Manpower Development and Protection Bill

In relation to each law or bill, this paper outlines how the ILO/USDOL Project might undertake activities and assist the process of planning, implementation, socialization, and monitoring.

CHAPTER ONE

INDUSTRIAL RELATIONS LAW IN INDONESIA

Background

Labour law in Indonesia has developed rapidly in recent years. A new law on Trade Unions (Act No. 21/2000) has been introduced. New laws on Manpower Development and Protection and on Industrial Dispute Settlement are currently being considered by Parliament.

The recent financial crisis has not only brought about political change in Indonesia but has led to calls, both from within Indonesia and outside, for economic and social reforms, including greater respect for human rights and labour rights. The new labour laws are a part of the response to the calls.

The task of labour law reform is a challenging one. The enormity and complexity of the reform exercise and the difficult environment in which it is being undertaken ensure this. Further, as recent history in Indonesia shows, labour reforms can attract much controversy.¹

In particular, there are special challenges in the labour law reform process in Indonesia because of the current state of the laws and institutions, and the fundamental and far-reaching nature of the reforms proposed. There is a need to consult widely about the reforms and to ensure that they have support from key groups in society.

¹ This may be illustrated by reference to the concerns surrounding the passage of the Manpower Act 1997 (Act No. 25/1997) and the deferral of the operation of that legislation. Reference might also be made to more recent disputes and protests relating to new laws on Termination of Employment (Minister of Manpower Decree No. Kep-150/Men/2000)

To date, the process has been undertaken in a period of political and economic uncertainty with, in some respects, a lack of clear leadership or direction from government. The passage of the proposed laws through Parliament has involved a process of comprehensive re-examination and some re-writing. Added to these difficulties, there is a range of issues arising from the devolution of powers and functions to provincial governments and districts² and, in particular, the implications of the changes for the administration of labour laws in the future.

It is a time of enormous change in Indonesia – political, economic and social. And the labour law reforms are a part of the changes being undertaken. The formulation and implementation of new laws was never going to be an easy task. However, the reforms are of fundamental importance to the economic and social development of Indonesia. Endeavours to assist with the reforms will have benefits for all Indonesians.

The Development of New Labour Laws

In Indonesia, labour laws have developed in an ad-hoc manner. The current legislative framework for industrial relations is found in a myriad of laws, regulations and decrees, some of which date back to 1948. They include the *Labour Act 1948*, the *Collective Agreements Act 1954* and the *Labour Disputes Act 1957* together with a multitude of Government Regulations and Ministerial Decrees. Just finding the applicable law on a subject can be a challenge in itself!

There has been, for some time, a recognition of the need to bring together the various strands of labour law in a consolidated form and to provide a modern set of labour laws for Indonesia. The *Manpower Act 1997* (Act No. 25/1997) was an attempt to enact a comprehensive statute. However, the way in which it was developed and its passage through the Parliament was secured has brought that legislation into disrepute.

² It remains to be seen whether this will be to the 370 regions devised by President Habibie or, perhaps more manageably, to the 29 provinces as might be favoured by President Megawati. It seems that decentralisation to the 370 regions will continue, but taxing and lending powers will be limited and policies co-ordinated through the 29 provinces.

The coming into operation of the *Manpower Act 1997* has been postponed twice now, with the most recent deferral being to 1 October 2002 (see Act No. 28 of 2000).

However the reform process has moved beyond the Manpower Act 1997. The end of the Soeharto/New Order regime, the persistent and widespread call for “*reformasi*”, conditions imposed by international financial institutions for their assistance during the financial crisis and the continuing pressure for progress with human and labour rights, have all contributed to this change. There is now a recognition and acceptance of the need for Indonesia to reform its outdated labour laws and to provide a modern and effective framework for industrial relations.

The first steps in the process of labour law reform were the ratification of several ILO Conventions, including the Freedom of Association Convention, which was ratified by Indonesia in June 1998. The need to revise existing laws in order to conform with the obligations under ratified Conventions, together with other pressures for new laws and the growing dissatisfaction with the *Manpower Act 1997*, all contributed towards an environment in which new laws needed to be developed. There is, perhaps, an even more fundamental reason for the need for new labour laws. This is simply that the *new economic, social and political environment in Indonesia requires a legal framework to be established for the conduct of industrial relations which is fair, effective and assists in the resolution of industrial conflict.*

During the Soeharto regime, there was strict control by government over industrial relations. This was part of the economic development agenda, which placed more emphasis on attracting foreign investment and the growth of new industries than on labour rights. The control included military intervention in labour disputes and limits on the right of workers to organise. The only union organisation allowed to function was the government-supported FSPSI.

Much has now changed. Since 1998, other workers’ organisations have been allowed to establish and operate and there are now (August 2001) some fifty-nine registered unions³ in Indonesia. The role of the

³ There are 2 confederations of unions and 59 federations of unions registered at national level. There are also 150 national unions which have been registered e.g. unions established in major enterprises such as banks. There are no accurate figures yet available as to the number of enterprise unions registered at the local level, although estimates suggest there may be some 11,000 registered unions at the plant level, based on previous compilations.

military and police in civil society has been redefined, with the result that they are now less willing to interfere in labour matters. The main mechanisms for dispute resolution under existing laws (e.g. the Committees for Dispute Resolution) simply do not work effectively in the new environment.⁴

Indonesia now faces the combination of increased union activity, the very real potential for industrial disputes and protest action to turn violent, and persistent concerns expressed by business about the level of industrial disputation and its impact on investment. This has brought home to many the pressing need for a more effective system to be put in place to deal with industrial relations issues and disputes. The new laws provide the legal framework for the new system.

In summary, the need for the new labour laws in Indonesia has arisen out of:-

- changed thinking about labour rights since the end of the Soeharto regime;
- the recognition of the right of workers to freedom of association and the development and operation of new unions;
- the activities of unions in representing workers who have been severely affected by the financial crisis, rising prices, and falling employment opportunities;
- the potential for industrial disputes and protest action to turn violent;
- concerns about the impact of industrial disputation on business and attracting foreign investment to Indonesia;
- the concerns about the intervention of the military or police in industrial disputes and the difficulty, in the Indonesian context, of drawing the line between non-interference with legitimate union activities and maintaining law and order;
- the ineffectiveness of existing dispute resolution mechanisms such as the Committees for the Resolution of Industrial Disputes.

⁴ E.g. the representation of workers on tripartite bodies, such as the Minimum Wage Committees and the Committees for Dispute Resolution, is still provided by FSPSI in most provinces.

Indonesia is entering a new era in industrial relations - and a new legal framework is required.

The framework for the new laws and the process to be followed in their development were set in 1998 – as was an ambitious timetable for the drafting of the laws and their enactment.

The framework was to include:–

- A new Act on Trade Unions to give effect to the *Freedom of Association Convention* and to replace the Government Regulation on Trade Unions made in 1998;
- A new Act on Labour Dispute Settlement to provide a more effective mechanism for the resolution of labour disputes;
- Revisions to other parts of the *Manpower Act 1997* prior to its commencement.

Subsequently it was decided that the Manpower Act 1997 would be replaced in its entirety - although different parts of that legislation have been incorporated into the new Acts or at least used as a basis for the development of the new provisions. The process followed by DEPNAKER for the development of the new laws included tripartite consultation and involvement together with liaison with other Ministries.⁵

The outcome of the process has been the submission to Parliament of three new laws:–

- The *Workers Union/Labour Union Act*, which was passed by Parliament (Act No. 21 of 2000) and is now in operation;
- The *Labour Dispute Settlement Bill*, which is presently before Parliament and which is expected to be enacted in the near future; and
- The *Manpower Development and Protection Bill*, which is also presently before Parliament.

A major challenge with the implementation of the new labour laws will lie in the field of **institution-building and development**. The

⁵ The process is described in more detail in “Demystifying The Core Conventions of the ILO Through Social Dialogue: The Indonesian Experience” International Labour Organization, Jakarta Office, October 1999, pp. 15-21.

new institutions include the representative organisations of workers and employers as well as the Industrial Tribunals, the conciliation service and the government agencies responsible for the registration and supervision of trade unions. In many respects the success of the new laws will be judged by reference to the quality and effectiveness of the institutions developed and the contribution they can make to economic and social progress in Indonesia.

One of the main contributions that the project can make will be in this field of institution building. It will involve assisting with the establishment of the new institutions and their effective operation. It will require a significant contribution to the training and development of the Judges and officials of the new institutions. A wider understanding of the role and operation of the new institutions and of the new rights and obligations under the labour laws will need to be promoted among workers, employers, and the community in general.

Work with the government will also be required. They will need assistance with proper planning for the establishment and operation of the new system and with the effective implementation of the new laws, including the commitment of adequate resources for the establishment and effective functioning of the system.

CHAPTER TWO

WORKERS' UNION/LABOUR UNION ACT

Explanation of the Act

The *Workers Union/Labour Union Act* (Act No. 21 of 2000) was passed by the Parliament in July 2000 and came into force on 4 August 2000. The Act gives effect to Indonesia's obligations following ratification of ILO Convention No. 87 on *Freedom of Association and the Protection of the Right to Organize*. It replaces various Government Regulations on the registration of workers' organizations.

The Act provides for:-

- workers to establish and to become members of unions;
- unions to function in order to protect, defend and improve the welfare of workers and their families; and
- protection of workers against acts of anti-union discrimination and interference.

Unions must be registered with the government agency responsible for manpower affairs. They must also meet certain basic requirements in regard to their constitution and rules, the rights and obligations of members and officials, financial administration, and the holding of property and dissolution.

The Act is divided into 15 Chapters:-

Chapter I provides for *General Definitions*. A workers' union or labour union is an organisation that is established by and for workers/labourers. The term "worker/labourer" is defined as any person who works for a wage or other form of remunerative exchange.

Chapter II deals with the *Statutory Basis, Characters and Objectives* of unions. Unions are required to accept, and their statutory basis must not run against, the state ideology of *Pancasila* and the 1945 Constitution (see Art. 2). Article 3 provides that unions, federations and confederations shall be “free, open, independent, democratic and responsible”. Their functions shall include the making of collective labour agreements, the settlement of industrial disputes, representing workers on councils and institutes dealing with labour issues and the defence of the rights and interests of their members (see Art. 4).

Chapter III deals with the *Formation of Unions*. The Act provides for three levels of union organisation: workers unions/labour unions; federations of unions; and confederations of unions. Workers have the right to form and become members of a workers union/labour union. Each union must have at least 10 workers as members (Art. 5).

Unions may form and be members of a *federation* of unions. A federation must be formed by at least 5 unions (Art. 6). Federations may form and be members of a *confederation* of unions. A confederation must be formed by at least 3 federations of unions (Art. 7).

The constitutions of unions, federations and confederations must deal with various matters, including name and symbol statutory basis and objectives, date of establishment, address, membership and administration, financial sources and accountability, and provisions for the amendment of the constitution (Art. 11). A union that is a member of a federation of unions may adopt the constitution of the federation and a federation may adopt the constitution of a confederation of unions to which it belongs (see Explanatory Notes to the Act).

Chapter IV deals with *Membership*. Membership of a union, federation or confederation shall be regulated by its constitution (Art. 13). However a union, federation, and confederation, must not limit membership or discriminate on the grounds of “political allegiance, religion, ethnicity or sex” (Art. 12).

A worker is not allowed to be a member of more than one union at an enterprise (Art. 14) and workers holding various management positions in an enterprise are not allowed to become union officials (Art. 15). A worker may resign his union membership in writing (Art. 17).

A union is only allowed to be a member of one federation of unions

and a federation can only be a member of one confederation (Art. 16).

Chapter V provides for *Notification and Recording*. Upon its establishment a union, federation or confederation must notify the local government agency responsible for manpower affairs.

The notification is to include a list of the names of its founding members and its officials and a copy of its constitution (Art. 18). The local government agency must keep a record of the union, federation or confederation which has fulfilled the necessary requirements. It must issue a record number to the union, federation, and confederation, within 21 working days of receipt of the notification (Art. 20(1)).

Where a union, federation, or confederation, does not fulfill the necessary requirements, the reasons for postponing the recording and issuance of a record number must be advised within 14 days of the receipt of the notification (Art. 20(2) and (3)).

The government agency must be advised of changes in the constitutions of unions, federations, and confederations, (Art. 21) and must ensure that the union record book is open to inspection and accessible to the general public (Art. 22).

Unions, federations, and confederations that have a record number are obliged to give written notification of their existence to relevant employers (Art. 23).

It is provided that further regulations concerning union record-keeping procedures may be stipulated by means of a Ministerial Decision (Art. 24). The Ministerial Decision concerning *Procedures for the Official Recording of Workers Unions/Labour Unions* (No. KEP.16/MEN/2001) provides procedures and forms to be used with respect to notifications to the government agency responsible for manpower affairs in the kabupaten/district where the union is domiciled and the recording and reporting functions of the local government agency.

This Ministerial Decision deals with the obligations on organizations to provide notification, upon:–

- the establishment of a union, federation, or confederation;
- any changes to the constitution/by-laws or in the domicile of an organization;
- the receipt of financial assistance from overseas sources; and
- the dissolution of an organization.

The Ministerial Decision also provides for the local government agency to report every three months to the Minister for Manpower and Transmigration on the recorded number of unions in the district, any changes in their domicile or constitution/by-laws, and on any notifications of foreign financial assistance or dissolution (see Art. 10 and Appendix XI of Kep.16/Men/2001).

Chapter V deals with the *Rights and Obligations of unions, federations and confederations*.

Such organizations with a record number have the right to negotiate collective labour agreements with management, to represent workers in industrial dispute settlements and in manpower councils and institutions, and generally to conduct such labour-related activities as are not contrary to national statutory rules and regulations (Art. 21).

They are obliged to protect members against violations of their rights, to improve the welfare of members and their families and to conduct their affairs in accordance with their constitutions (Art. 27). They may affiliate and/or cooperate with international trade unions and other international organizations, provided that such affiliation or cooperation does not run against national statutory rules and regulations (Art. 26).

Chapter VII⁶ deals with the Protection of the Right to Organize. Persons are prohibited from engaging in conduct which is directed towards preventing workers from forming a union, becoming or not becoming a union member or official, or carrying out or not carrying out union activities. The prohibited conduct includes dismissal, suspension or otherwise prejudicing a worker in his/her employment, withholding or reducing wages, intimidation, and campaigning against the establishment of a union (Art. 28).

Employers must allow union officials and members a period of time away from their main work duties to conduct union activities as provided under a collective labour agreement or as agreed between the parties (see Art. 29 and Explanatory Notes).

⁶ Note: there is no Chapter VI in the Act

Chapter VIII deals with *Finances and Assets*. The finances and assets of a union, federation or confederation must be dealt with in accordance with its constitution (Art. 33) and must be kept separate from the finances and assets of the officials and members (Art. 32). Union officials are accountable for the use and management of the finances and assets and are obliged to keep records and to present financial reports to the members (Art. 34).

Union officials must report any unconditional financial assistance from overseas sources to the government agency responsible for manpower affairs according to national statutory rules and regulations. Such assistance must be used to improve the welfare of union members (Art. 31).

Chapter IX deals with the *Settlement of Disputes between unions, federations and confederations*. The Act covers disputes concerning membership and the exercise of union rights and responsibilities (Arts. 1 and 35). It provides that such disputes are to be settled in accordance with national statutory rules and regulations (Art. 36).

Chapter X provides for the *Dissolution of unions, federations and confederations*. They may be dissolved by a decision of the members in accordance with the constitution; where the relevant enterprise in which members are employed is closed, the employment of the workers is terminated and the employer meets all obligations to those workers; or by a court decision (Art. 37).

The courts may dissolve a union, federation or confederation, where its statutory basis is contrary to the *Pancasila* and the 1945 Constitution or where its administrators and/or members have been convicted of certain crimes against State Security (see Explanatory Notes) and have been sentenced to 5 or more years imprisonment (Art. 38).

Chapter XI deals with *Inspection and Investigation*. This includes the role of government labour inspectors in conducting inspections (Art. 40) and the function of certain civil servants as investigators in relation to criminal matters (Art. 41).

Chapter XII provides for *Penalties* in relation to offences under the Act. The penalties include the revocation of the union record number where a union has failed to meet certain requirements, (such as the notification of changes to the union constitution or the reporting of interna-

tional financial assistance (Art. 42). It provides for fines and imprisonment for persons engaging in prohibited conduct under Article 28, namely interference with the right to organize (Art. 43).

Chapter XIII deals with *Miscellaneous Regulations*. In Article 44(1) it is provided that “*Civil servants have freedom of association and the right to organize.*” However the implementation of these rights is to be regulated by separate legislation.

Finally, **Chapter XIV** deals with various transitional arrangements and Chapter XV provides for the coming into force of the Act.

It should be noted that there are a range of matters which remain uncertain under the Act. Indeed, it has already been recognised that there are many “loop holes” in the legislation that present difficulties in regard to its implementation (e.g. there are issues regarding the respective responsibilities of central, provincial and local government agencies and how certain obligations under the Act are to be enforced). There have also been reports about discrepancies and inconsistencies in the registration process at different levels.

The legislation does not deal in any detail with a range of matters relating to union administration (e.g. the conduct of elections and the auditing of accounts) or with representational issues in collective bargaining negotiations (e.g. where there is more than one union registered at enterprise level). These matters will, no doubt, need further consideration in the implementation, monitoring and possible revision, of the legislation in future years.

Possible Project Assistance and Activities

There is limited scope for project activities specifically in relation to the *Workers Union/Labour Union Act*. The action needed in relation to the Act might be best pursued in conjunction with activities dealing with the package of labour law reforms.

Some of the major implications of the *Workers Union/Labour Union Act* are as follows:–

- **For national and provincial government agencies responsible for manpower affairs:** administration of the legislation

including – receipt of notifications about the establishment of unions, federations and confederations; ensuring legislative requirements are met; issuing of record numbers; and maintaining and updating records in relation to organizations.

- **For workers and unions:** understanding their rights and obligations under the Act with respect to – notification; the development of union constitutions and bylaws; proper financial administration and reporting; and the role of unions in representing members in agreement-making and industrial disputes.

- **For employers:** understanding their obligations not to interfere with the establishment or operation of unions or to act in a discriminatory way towards union members or officials; and dealing with new unions, federations and confederations on industrial matters and in negotiations.

To assist with the implementation of the laws and with the understanding of the rights and obligations thereunder, the following matters may be considered as **possible project activities**:-

1. Preparation of a *User Guide* to the Act. This will provide a summary of the main provisions of the Act. It may also provide information regarding:

- procedures and forms for notifications under the Act; and
- examples of union constitutions and bylaws.

2. Preparation of an *Information Kit* on the Act. This would include the User Guide together with other material (e.g. copy of Act and relevant Ministerial Regulations or Decisions; copy of relevant ILO Conventions; information regarding the establishment and operation of unions including examples of union constitutions and bylaws and advice regarding financial administration; and information regarding federations and confederations). The Information Kit would be of particular use to:-

- national and provincial government officials performing functions under the Act;
- workers seeking to establish unions; and
- unions, federations and confederations in meeting their obligations under the Act.

3 (a) Assistance to the Ministry of Manpower and Transmigration (MOMT) and to provincial government agencies in the establishment of procedures and practices for the performance of administrative functions under the Act. This could include: the preparation of an administrative manual;

- training of personnel; and
- advice regarding the establishment and maintenance of records at the provincial and national levels.

The undertaking of such activities by the MOMT would assist in ensuring consistent implementation of the Act throughout the provinces and districts.

3(b) Consideration may also be given by the MOMT to the establishment of an *Advisory Service* (hot line) to provide advice regarding matters arising under the Act to:—

- workers and unions;
- provincial government officials; and
- employers.

4. There are a range of possible activities to assist unions, federations and confederations, in relation to their rights and obligations under the Act. Some of these may be addressed under other projects (e.g. training in relation to the management and administration of unions). The provision of basic information and training about the Act would seem to be the most useful activity for this project at this stage.

5. Important provisions of the Act deal with the *protection of the right to organize* (Art. 28). These provisions may give rise to criminal prosecutions in the courts against employers and others (see Art. 43). Similar provisions in other countries have led to disputes and prosecutions where it is alleged that union officials or members have been dismissed or victimised in their employment, on account of union membership or involvement in union activities. There is potential for disputes and problems to arise in Indonesia in relation to such matters.

6. Consideration should be given to activities that will assist in the following:—

- making employers aware of their obligations under the Act;
- allowing government inspectors (Art. 40) to play a meaningful

role in preventing prohibited conduct, and resolving any disputes which arise; and

- ensuring the proper and impartial enforcement of the laws by the courts.

This might include preparation of material on the types of conduct prohibited and the examination of activities to discourage such conduct (e.g. *an education and awareness program*).

Assistance to the MOMT in relation to:–

- a. the publication of information/statistics regarding the unions, federations and confederations recorded under the Act;
- b. the monitoring of the operation of the Act; and
- c. the identification and rectification of any problems which arise in the implementation of the Act, especially at provincial level.

It might be appropriate for such matters to be considered by the *National Tripartite Forum*.

7. The project activities are to be conducted at the central level (Jakarta) and in selected provinces. Efforts should be made to ensure that the wider community is aware of the activities and, more importantly, is advised about the new legislation and the progress with the implementation of the right of freedom of association in Indonesia. To this end, *media statements and briefings* should be part of the planning for major activities and the release of publications.

Further, consideration may be given to ways of raising public awareness including the conduct of *Information Sessions or Briefings* on various aspects of the new laws (e.g. “current topics”). Although these would be targeted at industrial relations practitioners (employers, unions and workers, government officials, industrial advocates, etc.), the sessions might also be open to NGOs, academics and other interested persons.

CHAPTER THREE

BILL ON INDUSTRIAL DISPUTE SETTLEMENT

Explanation of the Act

The *Industrial Dispute Settlement Bill* is currently under consideration in the Parliament (August 2001). The analysis and explanation in this paper refers to the Bill finalised in August 2000 for submission to the Parliament.

The Bill is part of the package of labour law reforms in Indonesia. It seeks to provide a more effective regime for the settlement of industrial disputes than has applied under Act No. 22 of 1957 *on the Settlement of Labour Disputes*.

Under *Act No. 22 of 1957*, the following procedure for the settlement of labour disputes was provided:–

- disputing parties endeavour to negotiate a settlement;
- where no agreement can be reached, both parties may refer the dispute to an arbitrator or board of arbitrators;
- where a dispute is not so referred, one or both of the parties may advise a conciliator (an official of the MOMT);
- where the dispute cannot be settled by mediation, the conciliator shall refer it to the Regional Committee for the Settlement of Labour Disputes (P4D);
- the Regional Committee will endeavour to resolve the dispute by mediation and, if this fails, may decide either to issue a recommendation or a binding decision;
- a binding decision (award) of the Regional Committee may be

executed by a court where it is not honoured by the parties within 14 days, unless there is an appeal to the Central Committee for the Settlement of Labour Disputes (P4P); and

- decisions of the Central Committee are binding and executable within 14 days, unless the Minister for Manpower postpones or cancels a decision for reasons relating to the maintenance of public order or the protection of the interest of the State.

Disputes about termination of employment have been a significant part of the work of the Central and Regional Committee. Where there is no agreement between an employer and the workers' organisation or the worker concerned, the employer must, except in certain cases such as probationary or fixed term employment, request permission to terminate employment from a Regional Committee (in respect of individual dismissals) or the Central Committee (in respect of mass dismissals - i.e. the termination of the employment of 10 or more workers within a period of one month).

The industrial dispute settlement system in Indonesia has not worked well in recent years. There are a variety of reasons for this. They range from problems with the operation of the Committees to the fundamental changes that have occurred in Indonesian society and the economy. There have been problems with delays by the Committees in dealing with disputes and with government intervention in the dispute settlement process, through the exercise of the power of the Minister to postpone or cancel decisions of the Committees.

There have been problems with legal challenges, brought in the Administrative Court and higher courts, against decisions of the Committees. There are also issues concerning the composition of the Committees. In particular, the Committees are chaired by a representative of the MOMT, and all the workers' representatives on many Committees are still appointed from the FSPSI (and do not include representatives from newly established unions).

As Indonesia moves towards a more democratic society with less government, military, and police, intervention in industrial disputes, it is increasingly recognised that there is a need for a new system which has the confidence of the industrial parties and which provides for the fair and timely resolution of industrial disputes.. Furthermore, there may be questions as to the appropriateness, in a modern economy, of the previ-

ous level of government supervision of dismissals and the cumbersome procedures to be followed by employers in seeking permits from the Committees before dismissals may take place.

The new legislation seeks to provide a more effective system for the settlement of industrial disputes - one which provides for the settlement of disputes in “a simple, quick, fair and inexpensive way.” The new legislation will replace *Act No. 22 of 1957 and Act No. 12 of 1964 concerning Termination of Employment in Private Enterprises*.

The Bill covers a range of industrial disputes-including:-

- disputes about interests, e.g. the establishment of wages and conditions of employment;
- disputes about normative rights, e.g. the observance of work agreements, enterprise rules, and statutory provisions;
- disputes over termination of employment; and
- conflicts between unions in the same enterprise concerning the implementation of trade union rights and obligations.

The legislation covers disputes that occur in private enterprises, state-owned enterprises, and social undertakings.

The Bill provides for the following processes for the settlement of industrial disputes:-

Bipartite negotiations

- In the first instance, the resolution of disputes should be sought by the employers and workers concerned, together with their representative organizations (Art. 3).

- Records must be kept of the negotiations (Art. 7) and any agreement must be recorded in writing and signed by both sides (Art. 8(1)). The written agreement is legally binding on the parties (Art. 8(2)).

- Where a dispute over interests or termination of employment, or a dispute among trade unions in the same enterprise, is not resolved through bipartite negotiations, it shall be settled through mediation, industrial arbitration or industrial tribunals (Art. 5). Disputes over rights shall be dealt with by an Industrial Tribunal (Art. 4).

Mediation

- Both sides to a dispute may make an official request to a media-

tor to assist with the settlement of the dispute (Art. 9). The mediator is an official of the government agency responsible for manpower affairs who has been appointed by the Minister to perform mediation (Art. 1).

- The mediator must investigate the causes of the dispute and convene a mediation conference (Art. 10). If the mediation does not lead to a settlement, the mediator must issue a written recommendation to the parties (Art. 13). Where the recommendation is rejected by a party, the dispute shall be settled by an Industrial Tribunal (Art. 14).

- Time limits are provided in relation to the making and acceptance of recommendations (14 days - see Art. 13) and the completion of mediation (30 days - see Art. 15). Procedures for the appointment of mediators and for mediation are to be regulated by Ministerial Decision (Art. 16).

Industrial (Voluntary) Arbitration

- In the case of a dispute over interests or termination of employment, or a dispute among trade unions in the same enterprise, both parties may agree in writing to have the dispute settled by means of industrial arbitration (Art. 17)

- The parties must agree on the appointment of an industrial arbitrator, who must be registered with the government agency responsible for manpower affairs (see Arts. 18-20). Where the parties cannot agree on the appointment of an industrial arbitrator, one or both of them may request the industrial tribunal to appoint an arbitrator (Art. 21).

- The decision in the industrial arbitration is final and legally binding on the parties and may be enforced in the district courts (Art. 23). The decision may however be reviewed by the Supreme Court upon application by a party alleging that the decision is beyond power or is contrary to law, public order or morality or is not based on proper material (see Art. 25).

- Registration procedures and working procedures for industrial arbitrators are to be regulated by Ministerial Decision (Art. 27).

Industrial Tribunals

- ***Establishment and Composition:*** Industrial tribunals shall

be established at each district court in each provincial capital city and at the Supreme Court (Arts. 28 and 29).

- **Judges, Ad-hoc Judges, and Registrars:** The tribunals will be constituted by Judges, Ad-hoc Judges, Supreme Court Judges and Registrars (Art. 30). The Judges of an industrial tribunal at a district court shall be appointed by the Chief Justice of the Supreme Court (Arts. 31 and 32).

- The Ad-hoc Judges of an industrial tribunal shall be appointed by presidential decision based on the recommendation of the Chief Justice of the Supreme Court (Art. 33(1)). The recommendations are to be from names submitted by employers' and workers' organisations with the approval of the Minister (Art. 33(2)).

- The qualifications for appointment as an Ad-hoc Judge include at least 5 years' experience in industrial relations and a master's degree in law (Art. 34). Ad-hoc Judges are appointed for a five-year term and may be re-appointed for further terms (Art. 37). Provision is made for the dismissal or removal from office of Ad hoc Judges in certain circumstances (Arts. 36-39, 42).

- **Supervision:** The work of the Judges, Ad-hoc Judges, and Registrars of an industrial tribunal within a district court is to be supervised by the Chief Judge of the district court. However, this is not to affect the freedom and independence of the Judges and Ad-hoc Judges in examining and deciding disputes

- Similar provision is made for the supervision of the work of Supreme Court justices by the Chief Justice (see Art. 41). Procedures for the appointment and removal of Ad-hoc Judges are to be specified by Government Regulation (Art. 42) and the allowances and benefits provided to Ad-hoc Judges specified by Presidential Decision (Art. 43).

- **Sub-Registries:** A Sub-Registry will be established for each industrial tribunal with a district court. The Sub-Registry will be led by a Deputy Registrar, who shall be assisted by several Substitute Registrars (Art. 44).

The Sub-Registry will carry out administrative functions including record-keeping with respect to the disputes filed and the proceedings of an industrial tribunal court session (see generally Arts. 45-50). Initially, the Deputy Registrar and Substitute Registrars shall be civil servants

from the government agency responsible for overseeing manpower affairs (Arts. 47 and 51).

• **Dispute Settlement by Judges:** Industrial Tribunal Judges at the district court shall have jurisdiction to examine and determine:

- disputes over rights;
- disputes over interests;
- disputes over termination of employment; and
- disputes among trade unions in the same enterprise (Art. 53).

A “rights dispute” is defined in Article 1 as a dispute arising from the failure to fulfil rights in individual work agreements, enterprise rules and regulations, collective work agreements or statutory laws. The Judges have authority to examine and decide rights disputes “at the first and final levels” (Art. 53(a)).

An “interests dispute” arises out of disagreements concerning employment matters or changes to employment requirements stipulated in individual work agreements, enterprise rules and regulations, collective work agreements or statutory laws (see Art. 1 and Explanatory Notes).

A “dismissal dispute” arises from an disagreement concerning the termination of an employment relationship (Art. 1).

The Judges have authority to examine and decide disputes about interests or termination of employment “at the first level” (Art. 53(b) and (c)). Decisions on these disputes are subject to appeal to the Industrial Tribunal at the Supreme Court (Art. 71).

An “inter-trade union dispute” is a dispute among trade unions in the same enterprise concerning the implementation of trade union rights and obligations (Art. 1). Such disputes are dealt with by the Industrial Tribunal Judges, “at the first and final levels”, (Art. 53(d)) and the decision taken is final and permanent (Art. 70).

• **Procedure and Process:** The procedures and processes for dealing with industrial disputes are set out in the legislation. The Law of Civil Procedure is applicable to the Industrial Tribunal (Art. 54). Within 7 days of receiving a request for the settlement of an industrial dispute, the Chief Judge of the district court must establish a panel of Judges to examine and decide the dispute.

The panel is to be made up of one Judge as chair, and two Ad-hoc Judges as panel members (one whose appointment was recommended by workers' organizations and the other whose appointment was recommended by employers' organizations) (Art. 55). A date for hearing the dispute must be set within 7 days of the establishment of the panel, and the parties may be summoned to appear before the Tribunal (Art. 56).

The panel of Judges has power to summon witnesses or expert witnesses (Art. 57) and may compel persons to assist the panel in investigations aimed at facilitating the settlement of the dispute, including through the production of accounts and documents (Arts. 58 and 78). Provision is made for the adjournment and relisting of disputes, discontinuance of proceedings, and the conduct of proceedings (Arts. 60-62).

The panel of Judges must make a decision about the settlement of the dispute within 90 days of the first hearing (Art. 65). The decision must take into account "existing laws, agreements, conventions and justice" (Art. 63) and is to be read in an open court session and provided to the parties (Arts. 64, 66-69).

- **Appeals:** An appeal may be taken to the Supreme Court against a decision concerning an interests dispute or a dismissal dispute. The appeal must be lodged within 14 days of the reading or notification of the decision (Art. 71).

- **Appeals to the Supreme Court:** Appeals from the decisions of Industrial Tribunals are to be dealt with by Industrial Tribunal Supreme Court Justices (Art. 74). Where an appeal is taken, the settlement of the dispute must be completed by the Justices within 30 days of receipt of the appeal (Art. 76). Procedures for the lodgement of appeals and the settlement of disputes by Supreme Court Justices are to be in accordance with statutory rules and regulations (Art. 75).

- **Strikes and lockouts:** Special provision is made in the Bill for the termination of strikes and lockouts. Where a dispute is submitted to mediation, industrial arbitration or settlement, by an Industrial Tribunal, those responsible for the strike or lockout must put an end to it. The strike or lockout must cease from the time bipartite negotiations start or from the date on which it is agreed that the industrial dispute will be submitted to the mediator, the arbitrator or the industrial tribunal (Art. 77). It is a criminal offence not to comply with obligations to terminate

a strike or lockout (Art. 78).

- **Transitional Arrangements:** Transitional Arrangements under the Bill include that the Committees for the Settlement of Labour Disputes (P4P and P4D) are to continue to perform their duties and functions until the Industrial Tribunals are established. After establishment, the Industrial Tribunals are to deal with any disputes and appeals that have been referred to the Committees, but not settled by them (Art. 80).

- **Date of operation:** It is provided that the Act will come into effect two years after promulgation (Art. 82). This delay has been set to allow a preparatory period for the appointment of Judges and the preparation of structures and infrastructures for the operation of the industrial tribunals, including the construction of offices and meeting rooms (see Explanatory Notes).

Possible Project Assistance and Activities

The legislation will make fundamental changes in the industrial relations system in Indonesia and involve the establishment of new institutions for industrial dispute settlement.

The successful introduction and operation of the new system is important because it replaces arrangements that are no longer seen to be operating effectively, and which do not have the confidence of the industrial parties or the public.

The new system has been developed having regard to fundamental changes that have taken place in Indonesian society. These include, the commitment to international labour standards on freedom of association and collective bargaining, the establishment and functioning of new and rejuvenated unions, and the abandonment of policies of rigid government control over industrial relations and workers' activities, including through military and police intervention in industrial disputes.

It is inevitable in the new industrial environment that industrial disputes will occur. Indeed this is already evident and a significant cause of concern, especially where such disputes might lead to violence or the destruction of property. Further there are concerns that Indonesia's recovery from the financial crisis and its ability to attract foreign and do-

mestic investment may be put at risk by industrial disputation. It is essential that fair and effective machinery be put in place as soon as possible, to assist in the resolution of industrial disputes.

The new system is, in many respects, a significant departure from existing machinery with the Committees for Dispute Settlement. In particular, the new system gives a central role to the Judges of district courts and the Supreme Court, who are assigned within their courts to be involved in industrial dispute resolution. At the district court level, the Judges will sit together with Ad-hoc Judges appointed on the recommendations of employers and unions.

No doubt the involvement of the Judges is intended to provide a high standing for the Industrial Tribunals and to avoid the present problems caused by legal challenges being brought against decisions of the Committees. The involvement of the Judges might also assist to allay concerns about possible corruption within the system and will ensure that proceedings are conducted in a manner consistent with fairness in the judicial system.

However the success of the system will depend upon the extent to which it attains the confidence of the industrial parties and the public in general. This will only be achieved if the system is seen to operate in a fair, speedy and effective manner in resolving industrial disputes. Much will depend upon the Judges appointed to the Industrial Tribunals, the procedures and approach adopted in dealing with disputes and the extent to which the Industrial Tribunals are able to bring about acceptable and timely resolutions in industrial disputes.

There are many ways in which the project may contribute to the successful introduction of the new system. These may be listed under the following broad headings:-

- Process for the Selection and Appointment of Judges and Ad-hoc Judges;
- Process for the Selection and Appointment of mediators and arbitrators;
- Training for Judges, mediators and arbitrators;
- Training for government officials, employers and unions/workers in the operation of the system, including industrial advocacy;

- Assistance in regard to the administrative arrangements and operation of the Industrial Tribunals and the mediation service. This should include training for Registrars, the development of rules and procedures for the filing of disputes and notification of proceedings and decisions, the development of procedures for the conduct of proceedings, etc; and
- Preparation of materials about the new legislation and system, including guides to the use of the system (although these may need to await the making of relevant Regulations and a period of practical operation of the system).

Introducing a new system and institutions for dealing with industrial dispute resolution throughout the provinces of Indonesia, is an enormous exercise. Given this, at the initial stage, it is suggested that assistance be provided in the following *priority* areas. It is understood that there is a possibility that the date for the operation of the new arrangements might be brought forward due to concerns about the growing number of industrial disputes. If this occurs, there will be even greater urgency in the provision of assistance in these areas.

1. ***Strategic Planning for the New Institutions:*** Assistance to the MOMT and other relevant Ministries (e.g. Justice) on the range of issues to be addressed in the establishment of the new Industrial Tribunals and the appointment of suitable Judges to them.

It is particularly important that there be transparency in the appointment process and in the selection of Ad-hoc Judges, in order to ensure public confidence in the Tribunals. There may also be a role for project assistance in relation to the formulation of rules and procedures for the conduct of cases before the Tribunals.

2. ***Training of Mediators:*** This will build upon the experience and training given to government officials who have been appointed mediators.

3. ***Training of Industrial Tribunal Judges and Ad-hoc Judges.*** This will involve the development of a training package for Judges who may not have had previous experience in dealing with industrial disputes.

It is not clear from the legislation how the Industrial Tribunals are to deal with and determine industrial disputes (e.g. conciliation, arbitra-

tion, judicial rulings, or a combination of these approaches) and what procedures are to be followed. It will, therefore, be necessary for the training package to be developed in conjunction with the courts and policy-makers. This will involve the establishment of early contacts with the Supreme Court and district courts to discuss possible project assistance with training activities. The training will probably need to be undertaken at both central level and in a number of regional centres.

Consideration should be given to the development of a *University Diploma Course in Labour Law and Conciliation and Arbitration* specially designed for Judges of the new Industrial Tribunals (or those nominated or being considered for such appointment). The course might in time be open to conciliators and others such as industrial advocates. The diploma course would be provided through a major Indonesian university/universities, perhaps in association with an overseas university.

The course would be of short duration (e.g. 8 weeks) and would cover a range of topics such as labour law, international standards, labour economics, labour relations and human resource management and would include a significant practical training program on conciliation and arbitration in relation to industrial matters and disputes. The course would be the main vehicle through which training would be provided under the project to Industrial Tribunal Judges and Ad-hoc Judges.

It might be useful to examine the experience with the establishment of the Commission for Conciliation, Mediation and Arbitration in South Africa and the assistance provided by the ILO with this exercise. Further, it is possible that assistance might be provided by members of the Australian Industrial Relations Commission with the training of Judges of the Industrial Tribunals and mediators.

4. ***Preparation of Materials about the New System:*** The preparation of materials and a User Guide to the new system may be undertaken in conjunction with the MOMT. The materials and guide should be available to the industrial parties (employers and unions/workers and their representatives) and should include copies of relevant legislation together with any rules made by the Industrial Tribunals.

5. ***Information Sessions for Employers and Unions/Workers about the New System:*** These sessions will provide a briefing for government officials, employers and worker representatives about the

establishment and operation of the new system and the work of mediators, arbitrators and Industrial Tribunals. The sessions will need to be held in different regional centres and may be conducted in conjunction with the MOMT and the Industrial Tribunals. The sessions may be relatively short (e.g. one day) and may be followed by the conduct of more intensive courses for the users of the system and industrial advocates.

6. ***Advanced Training for Industrial Parties and Advocates:*** The Information Sessions will aim to provide an overview and general understanding of the operation of the new system and institutions. A more comprehensive training course may be developed for those from government, employers and unions involved in the operation of the system.

7. ***Encouragement of the Establishment of a Monitoring Committee:*** A monitoring or advisory committee, consisting of representatives of the government, employers and unions together with Industrial Tribunal Judges, might be established to assist with the introduction of the new system and to provide advice about issues arising in the operation of the new system. Part of this role might be performed by the National Tripartite Consultative Council. There might also be encouragement for Industrial Tribunals at district courts to establish consultative/advisory bodies that include representatives of the users of the system.

8. ***Public Awareness:*** The activities of the project should be widely publicised so as to increase public awareness about the new system and the steps taken in regard to the setting up of the system and the implementation of the Act. To ensure this, media releases and press briefings should be planned as part of all major activities and the publication of materials by the project.

9. ***Provinces:*** There is a need for special attention to be given to issues regarding the operation of the new system in the provinces, including the need for general consistency of approach and outcome at different levels of the system. This will involve programs of training being developed and provided for local government officials and for local representatives of employers and unions.

CHAPTER FOUR

MANPOWER DEVELOPMENT AND PROTECTION BILL

Explanation of the Act

The ***Manpower Development and Protection Bill*** is currently under consideration in the Parliament. The analysis and explanation in this paper refers to the Bill finalised in August 2000 for submission to Parliament.

The Bill deals with a range of employment and industrial relations matters and will replace the *Manpower Act 1997* (Act No. 25 of 1997). In particular, the Bill provides for protection of the basic rights of workers including protection in relation to wages, social security and occupational health and safety.

The wide scope of the coverage of the Bill may be illustrated by reference to some of the chapter headings:

- Chapter III Equal Opportunities
- Chapter IV Manpower Planning and Manpower Information
- Chapter V Job Training
- Chapter VI Job Placement
- Chapter VII Employment of Foreign Nationals
- Chapter VIII Employment Relations
- Chapter IX Protection, Payment of Wages and Welfare
- Chapter X Industrial Relations
- Chapter XI Termination of Employment

- Chapter XII Development of Manpower Activities
- Chapter XIII Control
- Chapter XIV Investigation
- Chapter XV Criminal Regulations and Administrative Sanctions

In Chapters III, VIII, IX, X and XI, the Bill covers matters which are included in the basic employment legislation or labour codes of many countries.

Chapter III deals with ***equality of opportunity*** and requires employers not to discriminate against persons in offering employment (Art. 5) or in their employment (Art. 6). The discrimination referred to includes discrimination on the grounds of sex, ethnic origin, race, religion or political affiliation and includes equal treatment to the disabled (see *Explanatory Notes on the Draft Bill*).

Chapter VIII deals with the ***employment relationship*** and provides for the making of work agreements between employers and individual workers (Arts. 63-76). The matters which must be included in a work agreement are specified and it is provided that the terms of the agreement dealing with wages and job requirements must not be contrary to the established rules and regulations of the enterprise, the collective work agreement and relevant legislation (Art. 67(2)).

Chapter IX deals with a variety of matters relating to ***wages and employment conditions***. Part One of this Chapter contains provisions relating to;—

- Child labour (see Arts. 78-84), including a prohibition on the employment of children under the age of 15 years (Art. 82);
- protections for disabled workers (Art. 77);
- restrictions on night work for female workers (Art. 85);
- working hours and overtime (Arts. 86-88), rest periods (Arts. 89 and 95), opportunity to pray (Art. 90), leave (Art. 91), and public holidays;
- protections for women workers (Arts. 92-95), including paid maternity leave (Arts. 93 and 95) and menstrual leave (Arts. 92 and 95);

- general protections regarding occupational safety and health (Arts. 97 and 98) and good treatment, namely, protection against sexual harassment or abuse, and treatment that shows respect for human dignity and religious values (Art. 97).

In relation to many of these matters (e.g. occupational safety and health, the provision of facilities within the workplace for breast-feeding, leave entitlements, working hours and child labour), the Bill provides for further and more specific regulation to be provided under Government Regulations or Ministerial Decree.

Part Two of Chapter IX contains provisions dealing with *wages*. Provision is made for the establishment of minimum wages at the provincial or district level based on the need-for-proper-living concept (*kebutuhan hidup layak*) (Arts. 99-100); for wages above the minimum wage to be negotiated between employers and workers (Arts. 101-103); for paid sick leave and other leave entitlements (Art. 104); for late payment of wages (Art. 105); and for the establishment of a National-level Wage System Council and regional councils in order to formulate wage policies (Art. 108). In regard to most of these matters, the Bill provides for further provisions to be made by Government Regulation.

Part Three of Chapter IX deals with *welfare* and refers to the social security system provided by legislation (Art. 109) and the making of Government Regulations in regard to the provision of welfare facilities by employers and the encouragement of the establishment of workers' co-operatives (Arts. 110 and 111).

Chapter X of the Bill deals with *Industrial Relations*. It refers to the role of government, workers, and employers, in the conduct of industrial relations (Art. 113) and repeats the basic rights of workers and employers to establish and become members of representative organisations (Arts 115-118).

Chapter X also provides for the establishment of *a bipartite co-operation forum* in each enterprise employing 50 or more workers as a "forum for communications, consultations and deliberation, aimed at solving manpower problems" (Art. 119). *A Tripartite Co-operation Institute* is also to be established to provide recommendations to the government and other parties involved in policy making and problem

solving concerning labour problems (Art. 120).

The Bill requires every enterprise to establish a set of **enterprise rules and regulations** which are made legal by the Minister or an appointed government official (Arts. 121, 125-128). The rules and regulations must be formulated in consultation with workers' representatives (Art. 123) and must specify various matters including:–

- the rights and obligations of the employer;
- the rights and obligations of the worker;
- work requirements and
- enterprise discipline and rules of conduct (see Art. 124).

The rules and regulations must not be contrary to legislation and will remain valid and effective for their period of duration unless a collective work agreement is negotiated (Art. 124).

Collective work agreements are dealt with in Articles 129-141. Such agreements may be made between registered trade unions and employers (Art. 129). There can only be one collective work agreement in each enterprise (Art. 130). If the collective agreement wins the support of more than half the workers in the enterprise, the agreement will apply to all workers in the enterprise. Otherwise, the agreement will only apply to the workers who approved it (Art. 131).

A collective work agreement may apply for up to two years and may be extended for no longer than one year by written agreement between the employer and trade union concerned (Art. 132). The agreement will take effect on the day it is signed unless otherwise provided in the agreement and must be registered at the government agency responsible for manpower affairs (Art. 140).

Collective agreements must be signed and must set out the rights and obligations of the employer, the union/s and the workers and the period of its operation (Art. 133(1)). The provisions of the agreement must not be contrary to legislation, in the sense that the provisions must not be below stipulations on similar matters in legislation (Art. 133(2) and (3) and *Explanatory Notes*). Further, individual work agreements or contracts of employment must not be contrary to what is stipulated in the collective work agreement (Art. 136).

The employer and the union/s must inform the workers about the contents of the collective work agreement (Art. 135(2)). The employer

and the union/s must implement the agreement (Art. 135(1)) and the employer must not replace the agreement with the enterprise's rules and regulations, as long as there is a union in the enterprise (Art. 138(1)). Even where the enterprise rules apply they must not be inferior to what is provided in the collective work agreement (Art. 138(2)).

Where there is a transfer of ownership of the enterprise (or a dissolution of a union), the collective work agreement will remain valid and effective until it expires (Art. 139(1)). In the case of a merger between enterprises, the collective agreement which gives the worker more advantages will apply to both enterprises (Art. 139(2) and (3)).

Rulings concerning the requirements for making, extending, varying and registering collective work agreements are to be dealt with by Ministerial Decree (Art. 141).

The Bill provides for the functions and obligations of the Government in regard to industrial relations. The Government must ensure the observance and enforcement of relevant legislation (Art. 143). The Explanatory Notes refer to the objectives of Indonesia Industrial Relations as follows:

- a. Create peace for the worker at the workplace and for the entrepreneur in undertaking his business; and
- b. Balance and harmonise the rights and obligations of both the worker and the entrepreneur;
- c. Protect the rights of both the worker and the entrepreneur;
- d. Push the development and growth of mental attitude that corresponds with the values of the Pancasila.”

The Government is also responsible for promoting an understanding of Indonesian Industrial Relations, in the community generally and, in particular, among the industrial parties (Arts. 154-159). This promotion shall be pursued in co-operation between the Government, unions and employers' organisations and other institutions (Art. 158).

Industrial Dispute Settlement is dealt with in Articles 144-153 of the Bill. These include provisions regarding **strikes and lockouts**.

Employers and workers/unions must attempt to resolve disputes by agreement. Where this cannot be achieved, the dispute may be resolved through conciliation, mediation, arbitration or through an industrial tribunal (Art. 144). The mechanisms for industrial dispute settlement are

to be provided under separate legislation (Art. 145).

Workers have the right to strike. Strikes must be “peaceful” and “orderly”, which means that they must not disrupt security and public order or threaten the life, safety or property of the employer/enterprise or members of the public (Art. 146(2) and Explanatory Notes). Employers are prohibited from replacing workers on strike (Art. 146(3)).

Strikes are prohibited in certain enterprises that serve the public interest, including those involved in telecommunications, electricity, gas and drinking water (Art. 147(1)). The right to strike is limited for workers providing various public services, including officers in charge of air traffic and sea traffic, firefighters, railway gatekeepers and medical staff in hospitals (Art. 147(2)). The enterprises and occupations where strikes are prohibited or limited, may be further specified by Government Regulation.

Workers or unions intending to stage a strike must give written notification to the employer and the local manpower agency (Art. 148). The notice must include the time and date of the strike and the reason for it. The notice must be given at least 7 days before the strike takes place (Art. 149).

Lockouts by employers have similar provisions. Lockouts are prohibited in certain industries. Enterprises that operate on behalf of the public interest in areas such as telecommunications, electricity, gas, drinking water and hospitals, are prohibited from closing their establishments either partially or wholly in order to resist demands by workers (Art. 151). Further, employers must give notification in respect of proposed lockouts. An employer intending to conduct a lockout must notify the workers/unions concerned and the local manpower agency at least 7 days before the lockout takes place (Arts. 152 and 153).

Chapter XI of the Bill deals with **Termination of Employment**. The Bill seeks to encourage efforts by employers, workers and unions, to avoid termination of employment and, where these are inevitable, to negotiate about them (Art. 160).

The employer is prohibited from dismissing a worker for reasons such as, absence due to illness, service to the State, religious observance, marriage or pregnancy, family relationships with other workers in the enterprise, membership of a union, or participation in union activities (Art. 161).

Where termination of employment takes place, the employer must provide severance pay or payment as a reward for service, and compensation pay, unless the worker has been dismissed during a period of probation, at the expiration of a contract of employment for a specified period of time, or upon reaching retirement age (Art. 162). Workers who resign their employment are entitled to severance pay if employed for a period of 3 years or more and to compensation pay (Art. 164). The amount of such payments shall be provided for by Government Regulation.

The employer may dismiss a worker for a range of offences (“major mistakes”) including theft, dishonesty, drug abuse, gambling at the workplace, immoral practices, violence or threats of violence against the employer or co-workers, destruction of the enterprise’s property, working in a careless or unsafe manner, and divulging confidential information or damaging the reputation of the enterprise. In these cases, the employer is not obliged to provide severance pay to the worker (Art. 165).

The employer may also dismiss a worker without providing severance pay in the case of abandonment of employment, although such a worker will be entitled to service pay and compensation pay (Art. 166). In particular, it is provided that compensation pay is payable to all dismissed workers “without considering the reasons of their dismissal” (Art. 167).

Severance pay, service pay and compensation pay are also payable in some cases where workers have resigned their employment. These include circumstances where resignation is the result of bad treatment by the employer, the failure to pay wages on time or to fulfil the obligations promised to the worker, and directions to perform unsafe or immoral work (Art. 168).

When Parliament considers the provisions of the Bill dealing with termination of employment outlined above, it will raise issues regarding the recent Minister of Minister of Manpower Decree on Termination of Employment (*Decree concerning the Settlement of Labour Dismissal and Stipulation of Severance Compensations in Companies* – No. Kep-150/Men/2000) and subsequent revisions to that decree (No. Kep-171/Men/2000 and No. Kep-77/Men/2001).

Possible Project Assistance and Activities

The project activities relating to the Manpower Development and Protection Bill should be implemented after the passage of the legislation through Parliament and when a date for its operation has been set.

The activities might be conducted as part of the general education and awareness program about the new labour laws and about the implications of the laws for employers and workers. Such a program would need to be developed with input from government, employers and unions, together with relevant NGOs, and might be co-ordinated and/or conducted with MOMT and provincial governments.

Possible activities fall into five broad categories:-

(i) Publications about the new legislation and the rights and obligations of employers and workers

The publications would include a *series of booklets/pamphlets* prepared by the project and/or by MOMT with project assistance on subjects including: Basic Rights and Obligations of Workers and Employers under the laws; Industrial Dispute Settlement; Strikes and Lockouts; Negotiating Collective Work Agreements; Equal Opportunity at Work; and Termination of Employment. The publications would aim to assist the promotion of good industrial relations in Indonesia by providing easy-to-understand explanations about the new laws for workers and employers, as well as for government officials and others.

Other publications, which might be considered by MOMT as providing assistance to employers and workers, include guidelines on the development and contents of enterprise rules and regulations and collective work agreements.

(ii) Technical assistance to MOMT with the preparation of regulations and decrees necessary to implement parts of the new laws and other measures to ensure the effective operation of the new laws at national and provincial level

This would include assistance in the *drafting and consultation* process in relation to the preparation of regulations and decrees on matters such as workers' entitlements (Chapter IX of the Bill), the requirements for making and registering collective work agreements (Art. 141) and entitlements to termination payments (Chapter XI of the Bill).

The assistance may also include a program to be conducted or co-ordinated by MOMT to inform provincial manpower officials about the new laws and the functions of local manpower agencies.

(iii) Awareness-raising activities to improve the understanding of workers and employers and the wider community about the new laws

These activities would include the conduct of *information sessions and seminars* about the new laws and their implications for employers and workers. An important part of the activities would be the preparation of *media releases*, with short articles or statements about the new laws suitable for publication in newspapers and magazines.

As a result of the general objectives of the project, emphasis might be placed on the “industrial relations” provisions of the Bill in some activities and training. However the awareness program should be developed with recognition of the importance of new provisions on *equality of opportunity and the new rights for women workers*. Activities to promote a wider understanding of these measures would be most worthwhile.

(iv) Training for government officials, employers, union leaders and others (e.g. arbitrators, conciliators, industrial tribunal Judges and industrial advocates) about the operation of the new laws

This would involve the conduct of *in-depth training courses* with detailed course materials focused on aspects of the new laws, e.g. industrial relations and the making of collective agreements; industrial conflict and dispute resolution mechanisms; and termination of employment issues.

(v) Assistance with monitoring the implementation of the new laws and the promotion of good industrial relations

This assistance might take a variety of forms. It would include continued encouragement of *tripartite-plus dialogue* regarding the labour reforms and the promotion of better industrial relations. This might be through the proposed Tripartite Co-operation Institute or other forums.

As the *Manpower Development and Protection Bill* is the final part of the labour law reforms, it might be timely for a critical assessment of the new laws to be made after the Bill has been in operation for one year. This would aim to bring together representatives of government, em-

ployers and workers, and concerned NGOs/academics. This forum could examine the progress made with implementing the new laws, the impact of the laws, and the problems experienced with their operation, and consider action which might need to be taken to ensure that the benefits of the new legislation are achieved.

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