



TRAINING MANUAL

FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND THE ROLE OF POLICE IN INDUSTRIAL DISPUTES

TRAINING MANUAL

**FUNDAMENTAL PRINCIPLES
AND RIGHTS AT WORK
AND THE ROLE OF POLICE IN
INDUSTRIAL DISPUTES**

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FOREWORD by the Chief of the Indonesian National Police

FOREWORD by the ILO

New labour laws in Indonesia (Law No. 21/2000 on Trade Unions, Law No. 13/2003 on Manpower, and Law No. 2/2004 on Industrial Dispute Settlement) have created a new framework for the functioning of harmonious and productive industrial relations.

In line with its mandate to serve, protect and defend the community, the Indonesian National Police (Polri) has an important role in this new environment, especially in relation to industrial dispute situations.

A significant development in this regard has been the development by Polri of *Guidelines on the Conduct of Indonesian National Police in Handling Law and Order in Industrial Disputes*. These guidelines were adopted to establish and maintain proper conduct of police personnel in maintaining public security and order, and enforcing the law in industrial disputes situations in the field. A training programme on the role of police in industrial disputes according to relevant international and national standards is needed to enhance the capacity of Polri in that regard.

This Police Training Manual has been developed to be used as a tool for that purpose. Development of the Manual has involved consultations between Polri and representatives of workers, employers and the Ministry of Manpower and Transmigration, through a number of consultation workshops; it has also involved inputs from the University of Indonesia and the ILO.

The International Labour Organization is grateful to have the opportunity to work with the Indonesian National Police in developing this Training Manual, which reflects the strong commitment of the Indonesian Police in contributing to the realization of harmonious and productive industrial relations in Indonesia and ensuring an appropriate role for the police in maintaining law and order.

Jakarta, September 2005
Alan Boulton,
Director, ILO Jakarta Office

PREFACE

The Indonesian National Police (INP) has a significant role in creating harmonious and productive industrial relations—one of the most important factors for Indonesia’s economic recovery and development. Under the program of labour reform that began in 1998, the Government of Indonesia has ratified the eight Fundamental ILO Conventions and issued three laws that form the basis for the establishment of a new system of industrial relations that respects and upholds the principles of freedom of association and the right to organize as well as other fundamental rights of workers and employers at work.

Throughout this process of change, it is not uncommon for conflicts of interest to arise between workers and employers, some of which ultimately end up in disputes. Disputes that cannot be solved through the available settlement mechanisms often force workers and employers to strike, demonstrate or impose company lockouts. Such actions are not only a potential threat to security and order, but can also open the door to violations of the law.

As part of their duty to protect and serve the people, the police are obliged to safeguard security and order, as well as uphold the law during strikes, demonstrations or lockouts, and in industrial relations disputes in general. In carrying out this task, the police must apply the following principles:

1. Resist becoming involved in negotiations or arbitration to settle industrial relations disputes.
2. Resist taking sides with one or other of the parties involved in the dispute.
3. Focus on upholding the law and safeguarding public safety and order.

These principles are meant to ensure that any disputes that occur can be settled through the procedures stipulated in the law, and to avoid any breach of peace or disruption of industrial productivity.

This Manual has been compiled to assist the INP to increase the capacity of their personnel to understand and deal with the law and

order aspects of industrial relations disputes, both in accordance with ILO standards and the relevant national legislation.

The Manual is designed to be used for at least three types of training: training of trainers, awareness-raising, and seminars or briefings, any of which can be delivered by police trainers or educators or by senior police officers from District to Headquarters level.

ILO/US Declaration Project
on Training for the Police

Jakarta, September 2005
Christianus H. Panjaitan
National Project Coordinator

PART I
How to Use the Manual

Part I
How to Use
the Manual



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STRUCTURE OF THE MANUAL

This Manual consists of three parts: (I) How to Use the Manual; (II) Opening the Training, Introducing the Participants, and Establishing the Objectives and Ground Rules for Training; and (III) Training Modules. There are seven Modules:

- **Module 1: Preparing and Implementing Training**

This Module discusses the theories and techniques that trainers can use to prepare and implement training programs on the fundamental principles and rights at work and the role of the Indonesian National Police in handling industrial disputes. This module can be used in training programs for police trainers.

- **Module 2: Indonesia and the ILO in the Global Community**

This Module contains a discussion of Indonesia's position, role, and interaction with the ILO as a member of the international community. The mandate, organizational structure and working mechanisms of the ILO are also explained to provide an overview of the ILO as one of the specialized agencies of the United Nations (UN).

- **Module 3: Human Rights and Fundamental Principles and Rights at Work**

In this Module, the provisions in ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 on the Right to Collective Bargaining are discussed in detail to explain the main principles that act on the implementation of the right to freedom of association and collective bargaining. Principles concerning the implementation of the right to strike and company lockouts are also explained here.

- **Module 4: Principles of the Freedom of Association and Collective Bargaining**

In this Module, the provisions in ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 on the Right to Collective Bargaining are discussed in detail to explain the main principles that act on the implementation of the right to freedom of association and collective

bargaining. Principles concerning the implementation of the right to strike and company lockouts are also explained here.

- **Module 5: Industrial Relations in Indonesia**

This Module explains the fundamental national and legal background that shapes the system and regulates the implementation of industrial relations in Indonesia.

- **Module 6: The Prevention and Settlement of Industrial Relations Disputes**

The procedures and mechanisms for the prevention and settlement of industrial relations disputes are explained in this Module. The discussion is based on the prevailing national legislation, namely Law No. 22 Year 1957 on the Settlement of Labour Disputes and Law No. 12 Year 1964 on the Termination of Employment in Private Companies, as well as Law No. 2 Year 2004 on the Settlement of Industrial Relations Disputes which is scheduled to come into effect at the beginning of 2006.

- **Module 7: The Role of the Police in Industrial Disputes**

The discussion in this Module covers the international and national principles and legal basis for the role of the National Police in industrial disputes as well as the implementation of the police's duty to safeguard security and public order and uphold the law in such situations.

STRUCTURE OF THE MODULES

Each Module in this Manual consists of several sections to assist trainers in planning and implementing training sessions.

- Contents
- General and Specific Objectives
- Suggested Training Strategy
- Training Content
- Training Materials
 - Presentation Materials
 - Case Studies
 - Games/Simulations
 - Quizzes
- References

SUGGESTIONS FOR TRAINING PROGRAMS

What follows are suggested programs for the three types of training referred to above.

1. **Training for National Police Trainers on the Fundamental Principles and Rights at Work and the Role of the Police in Industrial Relations Disputes.** A 7-day training program is suggested.

Target Group:

Prospective trainers, trainers or educators from the INP, at both central and regional levels, as well as at police education and training institutions.

Training Objectives:

After this training, the participants will be able to prepare and implement training on Fundamental Principles and Rights at Work as well as on the Role of the Police in Industrial Relations Disputes.

Suggested Program:

The program proposed below makes use of several training methods that involve activities both in and outside the classroom, including experiential learning. Some of the suggested out-of-class activities demand good physical and psychological health on the part of the participants.

PROGRAM OF ACTIVITIES

Day D-1

17:00	Opening
18:00	Socializing and Dinner
19:30	Introductions; Establishment of Training Objectives and Ground Rules
21:30	Finish

Day 1

05:30	Sports/exercise
06:00	Rest and Breakfast
08:00	Pre-training Quiz
08:20	Simulation: Exploration and Discovery (outside class, including 30-minute round-up)
10:00	Lecture I: Indonesia and the ILO in the Global Community
12:00	Lunch break
13:30	Simulation: Awareness Raising (outside class, including 60-minute round-up)
16:00	Tea break
16:30	Case Studies: Lecture I
18:00	Finish

Day 2

05:30	Sports/exercise
06:00	Rest and Breakfast
08:00	Refresher Quiz: Indonesia and the ILO in the Global Community
08:30	Lecture II: Human Rights and Fundamental Principles and Rights at Work
10:30	Coffee break
11:00	Simulation: Simultaneous simulation (outside class, including 60-minute round-up)
15:30	Lecture II (continued)
17:30	Rest and Dinner
19:30	Case Studies: Lecture II
21:30	Finish

Day 3

05:30	Sports/exercise
06:00	Rest and Breakfast
08:00	Refresher Quiz: Fundamental Principles and Rights at Work

08:30	Lecture III: Freedom of Association and Collective Bargaining
10:30	Coffee break
11:00	Case Studies: Lecture III
13:00	Lunch break
14:30	Simulation: A new union (outside class, including 60-minute round-up)
17:30	Simulation: Solo night

Day 4

06:00	Sharing: Solo night
07:00	Rest and Breakfast
08:30	Refresher Quiz: Freedom of Association and Collective Bargaining
09:00	Lecture IV: Industrial Relations in Indonesia
10:30	Coffee break
11:00	Lecture V: Prevention and Settlement of Industrial Relations Disputes
13:00	Lunch break
14:00	Simulation: Canoe Simulation (outside class, including 60-minute round-up)
17:30	Rest and Dinner
19:30	Case Studies: Lectures IV and V
21:30	Finish

Day 5

05:30	Sports/exercise
06:00	Rest and Breakfast
07:30	Refresher Quiz: Lectures IV and V
08:00	Lecture VI: The Role of the Indonesian National Police in Industrial Relations Disputes
10:00	Coffee break
10:30	Case Studies: Lecture VI
11:30	Lunch break
13:30	Case Studies: (continued)
14:30	Tea break
15:00	Simulation: The Indonesian National Police in the International Community (including 60-minute round-up)
17:30	Rest and Dinner
19:30	Lecture VII: Preparing and Implementing Training
21:00	Finish

Hari 6

05:30	Simulation: Running Challenge (outside class; including 20-minute round-up)
06:30	Rest and Breakfast
08:00	Refresher Quiz: The Role of the Indonesian National Police in Industrial Relations Disputes
08:30	Lecture VII: (continued)
10:00	Group Work: Preparing a Training Program
12:00	Lunch break
13:30	Group Work: Presentation of Training Programs
14:30	Tea break
15:00	Individual Work: Preparing Presentation Materials
17:30	Rest and Dinner
19:30	Individual Work: Presentation of Presentation Materials
21:00	Finish

Day D+1

06:30	Breakfast
07:30	Final Round-up and Evaluation of Training
09:00	Closing and Presentation of Certificates
10:00	Participants leave the training venue

2. Awareness-Raising Training on Fundamental Principles and Rights at Work and the Role of the Police in Industrial Relations Disputes. A 3-day program is suggested.

Target Group:

INP personnel who have decision-making authority with regard to the handling of various industrial relations dispute situations in the field. Chiefs of units, functional units or divisional chiefs at District and Subdistrict Police levels are the target groups for this training.

Training Objectives:

After the training the participants will have an understanding of the international and national principles and legal basis for the implementation of the fundamental rights of workers and employers at work, as well as the role and duties of the INP in industrial relations disputes. Based on this understanding, the participants will be expected to carry out these duties effectively and in accordance with the principles and provisions concerned.

Suggested Program:

PROGRAM OF ACTIVITIES

Day D -1: Participants Arrive

16:00 Participants arrive at the training venue, receive an information sheet and fill in their participant biodata form.

Day 1: Fundamental Principles and Rights at Work

08:00 Introduction and Establishment of Training Ground Rules

08:30 Opening

09:00 Pre-training Quiz

09:20 Introduction of Participants and Trainers

09:50 Gathering Participants' Expectations

10:30 Coffee break

10:45 Presentation and Discussion about the ILO

12:00 Lunch

13:00 Presentation and Discussion on the Fundamental Principles and Rights at Work (including Principles of the Exercising of the Right to Strike and Company Lockouts)

14 :30 Group work (Case studies on the key points of the relevant principles):

- Group 1: Freedom of Association and Collective Bargaining
- Group 2: Forced Labour
- Group 3: Child Labour
- Group 4: Discrimination in the Workplace

15 :30 Tea break

16 :00 Presentation and discussion of the results of group work

17 :30 Finish

Day 2 : Application of the Principles of Freedom of Association and Collective Bargaining

08:30 Refresher quiz (Quiz 1)

08:45 Games

09:30 Presentation on the Industrial Relations System in Indonesia, based on:

- Law No.21/2000 on Labour Unions
- Law No.13/2003 on Labour
- Law No. 2/2004 on the Settlement of Industrial Relations Disputes

10:30	Coffee break
10:45	Presentation and discussion on the national application of the principles of freedom of association and collective bargaining (including the implementation of the right to strike and company lockouts)
12:00	Lunch
13:00	Group work (Case studies on the exercising of the principles of freedom of association and collective bargaining): <ul style="list-style-type: none"> - Group 1: Violations of freedom of association principles - Group 2: Violations of collective bargaining principles - Group 3: Employees' right to strike and company lockouts - Group 4: Industrial disputes resolution system
14:00	Presentation and discussion of group work
15 :30	Tea break
16 :00	Simulation: Indonesia in the international community (including a 30-minute round-up)
17:30	Finish

Day 3: The Role of the Police in Industrial Disputes

08:30	Refresher quiz (Quiz 2)
08:45	Presentation on the role of the police in industrial disputes
09:45	Discussion on the role of the police in industrial disputes (including sharing experiences in handling industrial disputes, which may cover difficult experiences, actions taken and unanswered questions).
10:45	Coffee break
11:00	Group work (case studies on the role of the police in industrial relations disputes): <ul style="list-style-type: none"> - Group 1: Police intervention in industrial relations disputes - Group 2: Use of force by the police in strikes - Group 3: Arrest and detention of striking workers - Group 4: Involvement of intelligence and criminal investigation in dispute situations
12:00	Lunch
13:00	Presentation and discussion of the results of group work
14:30	Refresher quiz (Quiz 3)

14:45	Games
15:30	Tea break
16:00	Final round-up and evaluation of training (filling in the evaluation form.)
16:30	Presentation of the results of the pre-training quiz and refresher quizzes.
16:45	Closing
17:30	Finish

Day D+1 : Participants Depart

10:00	Participants leave the training venue
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3. Seminar on Fundamental Principles and Rights at Work and the Role of the Police in Industrial Relations Disputes

Target Group:

Senior police officers from Headquarters to District level who have policy-making and decision-making authority. The target group for this training can include the Chief of the INP, the Vice Chief and Deputy Chiefs of Police, Regional Police Chiefs and Directors at regional level, and District Police Chiefs. This activity can be completed in 2–3 hours.

Training Objectives:

After this seminar, participants will understand the international and national principles and legal basis for the implementation of the fundamental rights of workers and employers at work. They will also understand the role of the INP in industrial relations disputes. Participants will be expected to use this understanding as input in the decision-making process.

Suggested Training Program:

PROGRAM OF ACTIVITIES

08:30	Opening
09:00	Presentation on Fundamental Principles and Rights at Work and the Role of the Police in Industrial Disputes.
10:00	Question-and-answer session
11:45	Closing
12:00	Lunch

CONCLUSION

This Manual was compiled as a guide for National Police trainers or personnel who will be giving various forms of training on fundamental principles and rights at work, and the role of the police in industrial disputes. The contents of this Manual can be modified or updated as necessary to achieve the training objectives and to suit the prevailing conditions and facilities available.

PART II

Opening of Training, Introducing the Participants, Establishing Training Objectives and Ground Rules

Part II
OPENING OF
TRAINING,
INTRODUCING THE
PARTICIPANTS,
ESTABLISHING
TRAINING
OBJECTIVES AND
GROUND RULES

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OBJECTIVES

General

Through these sessions, participants will get to know each other and reach a consensus with the trainers on the objectives and ground rules of the training, thus establishing a conducive learning environment.

Specific

Participants will:

- Get to know each other and the trainers;
- Express their hopes and expectations for this training;
- Reach a consensus with the trainers on the objectives and ground rules for the training.

SUGGESTED TRAINING STRATEGIES

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Formal opening of the training		Welcome	30 mins
2.	Introduction and establishment of training ground rules	Lecture and general discussion	Flip Chart	30 mins
3.	Pre-Training Quiz	Quiz	Pre-training quiz	30 mins
4.	Introduction of participants and trainers	Game	"Name Ball"	30 mins
5.	Sharing participants' hopes & expectations	Game	Flip chart & paper & cut into fruit shapes	40 mins

TRAINING MATERIALS

1. Sample Questions for Pre-Training Quiz

PRE-TRAINING QUIZ

INSTRUCTIONS:

Give your answers on the Answer Sheet provided.
Please don't write on this Question Sheet.
Good Luck!

- 1) The police can be a "social partner" for the ILO in the handling of labour disputes except in cases where:
 - a. There is a disturbance of public order;
 - b. There is a threat to other people's safety;
 - c. There are violations of labour laws;
 - d. Criminal offences are committed.

- 2) In the case of an industrial relations dispute that is followed by a legal workers' strike, the police role is to:
 - a. Keep order in the strike;
 - b. Act as a mediator;
 - c. a and b;
 - d. Neither a nor b.

- 3) According to Law No. 9 Year 1998, to stage a demonstration, you need:
 - a. Permission from the police;
 - b. To give written notice to the police;
 - c. To give verbal notice to the police;
 - d. No permission from or notice to anyone.

- 4) The interdependency between nations means that national governments must base all national policy on:
 - a. Diplomacy;
 - b. The international political configuration;

- c. Active, free politics;
 - d. Global policy.
- 5) The police are a “social partner” for the ILO in which of these contexts:
- a. Government;
 - b. Labour;
 - c. Employers;
 - d. Independent.
- 6) Differences of opinion about the interpretation or implementation of legislative provisions, work contracts, company regulations or collective labour agreements, are:
- a. Employment disputes;
 - b. Disputes;
 - c. Rights disputes;
 - d. Individual disputes.
- 7) All the items below are international principles related to the use of force, except:
- a. Force is used only if it is really necessary;
 - b. Force is used only to uphold the law;
 - c. There are no reasons or exceptions to justify the use of force;
 - d. The use of force must always be proportional to the legal objectives.
- 8) Workers’ representatives have the right to effective protection of their functions and activities as:
- a. Members or leaders of workers’ organizations;
 - b. Workers in general;
 - c. Members of workers’ organizations;
 - d. Citizens in general.
- 9) By ratifying an international Convention, a country must do all of the following, except:
- a. Apply it in national law;
 - b. Use it for political purposes;
 - c. Implement it in practice;
 - d. Submit reports in accordance with the provisions of the Convention concerned.
- 10) All the items below inspired the birth of the ILO except:
- a. The poor welfare of workers;
 - b. The lack of health insurance for workers;
 - c. The exploitation of workers;
 - d. Restricted employment opportunities.

- 11) Workers strikes can be any of the following, except:
- Work stoppages;
 - Sit-in at the company;
 - Slow-down of the production process;
 - Company lockout.
- 12) The parties in bipartite cooperation institutions are:
- Workers/labour unions and employers;
 - Workers and social partners;
 - Employers and social partners;
 - Government and employers-workers.
- 13) The key objective of collective bargaining is:
- To create stable working conditions;
 - To produce collective work agreements;
 - To harmonize industrial relations;
 - To prevent industrial relations disputes.
- 14) The ILO Declaration on Fundamental Principles and Rights at Work was adopted in:
- 1996
 - 1997
 - 1998
 - 1999
- 15) The fundamental principles and rights stipulated in the ILO Declaration are set forth in:
- 9 Fundamental ILO Conventions
 - 8 Fundamental ILO Conventions
 - 7 Fundamental ILO Conventions
 - 6 Fundamental ILO Conventions
- 16) In line with the fundamental principles contained in the ILO Declaration on Fundamental Principles and Rights at Work, workers and employers have the right, without exception, to form and become members of workers' organizations or employers' associations:
- Voluntarily;
 - Freely, with certain exceptions in line with ILO recommendations;
 - Restricted by the national laws of the member state concerned;
 - Compulsorily.
- 17) Along with the elimination of forced and compulsory labour, the following rights are also all principles of the ILO Declaration, except:
- The elimination of discrimination in the workplace;
 - The elimination of all forms of violence in the workplace;

- c. The abolition of child labour;
- d. Freedom of association and collective bargaining.

18) Labour inspectors have the authority to monitor companies in relation to which of these problems:

- a. Implementation of legislation;
- b. Police going into a company;
- c. Workers' street demonstrations;
- d. Conflicts of interest.

19) According to Law No. 13 Year 2003, the authority to investigate criminal actions in the context of labour rests with:

- a. Indonesian National Police officers only;
- b. Labour Inspectors only;
- c. Indonesian National Police officers and Labour Inspectors;
- d. Neither Indonesian National Police officers nor Labour Inspectors.

20) ILO Convention no. 87 concerns:

- a. The right to organize and collective bargaining;
- b. The elimination of forced and compulsory labour;
- c. Discrimination in respect of employment and occupation;
- d. Freedom of association and protection of the right to organize.

2. How to Play "Name Ball"

This game is intended to help the participants and trainers get to know one another, and to foster a sense of solidarity as participants together, irrespective of rank or position.

The activity is divided into two parts:

1. General introductions, and
2. Group introductions.

1. General Introductions.

This can be done in or outside the classroom. All the participants and trainers stand and form a large circle. One of the trainers starts off the introductions by saying his or her name and a certain phrase while giving the ball to the person to his or her right. This carries on until the ball gets back to the trainer.

Example::

Person 1, holding the ball, says: "I'm (says name), here you are, (name of the person to his/her right)," and gives them the ball.

Person 2 takes the ball from Person 1, saying: "Thank you (name of Person 1), I'm (own name), here you are (name of the person to his/her right)," and hands them the ball. This procedure is repeated until the ball has been passed round to everyone in the circle.

2. Group introductions.

This can be done in or outside the classroom. The participants are divided into several groups, each with no more than 14 people. Each group, facilitated by a trainer, stands and forms a circle. There are two activities: formal introductions and informal introductions.

In the formal introductions, the participants use their full names. The procedure is the same as for the general introductions. If the participants already know the names of the people beside them, the trainer can change the rules by asking the participants not to throw the ball to the two people standing immediately to their right or the two standing immediately to their left.

Before the informal introductions start, the trainer stops the ball and asks each participant to say the name of their favourite or least favourite animal. Each participant must choose a different animal. The trainer then asks the participants to change their family name or last name to that of their chosen animal. The game can be played using the same procedure as for the formal introductions.

After the game the trainer explains the objective of the game, and asks each group to decide on a name and a slogan or motto for their group.

3. How to Play "Hope Tree"

In this game, the participants are divided into several groups, each with no more than 14 people and each facilitated by a trainer. This activity can be done in or outside the classroom as long as the participants have somewhere to write properly.

Each participant is asked to express what they hope to gain from this training. They do this by writing on one side of a piece of paper cut into the shape of a fruit, provided by the trainer. When everyone has finished writing, the participants are asked one by one to read out their hope and stick the "hope fruit" on a flip chart on which there is a drawing of a tree.

At the end of the training, each participant is asked to "pick" his or her hope and tell the other participants whether the hope has been realized or not, explaining their reasons and what they plan to do next.

PART III
Training Modules

Part III
TRAINING
MODULES

MODULE 1
PREPARING AND
IMPLEMENTING
TRAINING



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OBJECTIVES

General

After studying this module, the participants will understand the theory and techniques of preparing and implementing effective training.

Specific

The participants will:

- Understand the fundamental theory of preparing and implementing training programs;
- Understand the techniques of preparing a training program, covering identifying needs, setting targets and planning; and
- Understand the techniques of delivering training materials.

SUGGESTED TRAINING STRATEGY

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Presentation on the general and specific objectives of Module 1	Lecture	Flip Chart	10 mins
2.	Presentation on “Preparing Training”: <ul style="list-style-type: none"> - Training Functions - Factors in the Learning Process - Identifying Needs - Identifying the Target Group - Setting Targets and Determining Objectives - Selecting the Materials - Selecting Methods - Arranging the Framework and Schedule 	Interactive Lecture	Presentation/Transparancies on “Preparing Training”	90 mins
3.	Group Work: Preparing a Training Program	Group Work	Group work guidelines; Transparancies or Computer	90 mins
4.	Presentation of the Results of Group Work	Interactive Lecture	Presentation/Transparancies for each Group	60 mins (total)
5.	Round-up	General Discussion		10 mins

REPARING AND IMPLEMENTING TRAINING

INTRODUCTION

Why Do Training?

Human resources are improved, developed and shaped through a combination of guidance, education and training. All three are closely related, although training essentially comprises the elements of guidance and education. Training is a management function that should be carried out continuously in the context of human resource development within an organisation.

A growing and developing organisation has usually already designed a program of activities to achieve the organisation's objectives. The growth of the organisation is synchronized with human resource development by filling the gaps in knowledge, skills and attitudes in order to meet the needs of the organisation. This is training.

Training Function

Training has educational, administrative and personal functions. The educational function is directed towards improving professional, personal and social skills, as well as instilling dedication and loyalty to the organisation. The administrative function is aimed at fulfilling the administrative requirements of all personnel, for example promotion, career development, gaining credit points and so on. The personal function, meanwhile, places more emphasis on personal development that will enable participants to deal with any difficulties and problems they are confronted with in carrying out their tasks. These three functions are all closely related: all workers need to have professional capability, to fulfil administrative requirements and to have a well-rounded personality.

The Learning Process

The key objectives of adult learning are not only to get certain knowledge and skills, but also to promote changes in attitude that lead to behaviour change.

Learning is an active process on the part of the person studying. The trainer's role is to provide input in such a way that the student's learning process is effective. A person is said to be learning if he or she can "change his/her behaviour permanently as a result of repeated reinforcement." (J.P. de Cecco).

There are several types of learning processes to be aware of:

- Association: connecting a situation with a certain occurrence;
- Conditioning: giving a stimulus repeatedly to produce an intended spontaneous reaction;
- Instrumental: a conditioning process that is assisted by certain apparatus or methods such as games and simulations; and
- Perception: knowing, differentiating and seeing the relationship between stimuli on the basis of individual understanding.

The learning curve shows the improvement in a person's knowledge and understanding during the learning process. This curve usually shows an increase of knowledge in line with the training period up to a certain point, after which the curve levels off, indicating that there is no further increase in knowledge even though the training period continues.

This is the plateauing that is frequently seen on learning curves. It can happen when a certain stage in the learning process has been completed, and learning needs to be stepped up to the next stage. If the learning process is continued at a higher level or new knowledge is provided, a new curve will form, similar to the previous one, until a new plateau is reached. Thus the entire curve will appear as a series of steps.

Internal Factors in the Learning Process

Learning Needs and Motivation

Every action a person takes is essentially aimed at fulfilling a need. Likewise, in the learning process, an individual will want to learn if he or she feels there is a need to learn. This need will arise if, with their current level of knowledge, skills and attitude, the person cannot achieve the results he or she expects. But in order to be effective, the need must arise out of self-awareness.

Aside from needs, the motivation to learn is also influenced by the study method, which may or may not be satisfying. Satisfaction can be achieved if the learning process is designed in such a way that the participant feels that he or she:

1. is satisfied with the result achieved.
2. is satisfied with the recognition of the result.
3. has responsibility.
4. achieves progress.
5. develops.

Association in learning is usually established if the person concerned has a need and motivation. Besides accelerating the learning process, motivation will also increase the range of behaviour.

Learning Capacity

In the learning process, people vary in their ability to understand, master and apply what has been learned in real situations. This ability is mostly determined by a person's education, experience, and social and cultural environment, as well as their age.

External Factors in the Learning Process

The Trainer

The trainer's input, pattern of teaching and delivery techniques are all influential factors in the learning process.

Environment

Conditions in the training environment that also influence the learning process include the condition of the venue, the relationship between the participants and the conditions applied during the learning process.

DESIGNING TRAINING

The process of devising and implementing a training program is basically a cycle that starts from the identification of a certain target group need, which forms the basis for determining the training target or targets. The desired targets and objectives are the key factors to take into consideration when designing an effective training program. Evaluation is done to establish how effective the training has been. Further, the results of the evaluation represent a source of information that can be used to identify needs for subsequent training.

Identifying Training Needs

Training Needs

Training will only be successful if the process meets the training need properly. Essentially, this need is the gap between current knowledge, skills or attitudes and a specified standard.

Training needs can be classified as follows:

1. To meet the demands of one's current position

This need can usually be identified when an employee's achievements do not match the job performance standards. This problem cannot always be solved by training, however.

2. To meet the demands of another position

This need arises when someone is about to occupy a new position that is different from their current position.

3. To meet the demands of change

Changes, whether internal (changes in the system, vision or mission of the organisation, or in the organisational structure) or external (changes in technology, the community or the environment) frequently call for additional new knowledge.

Identification

Research on the need for training is the collection and analysis of the symptoms and information that can help to identify deficiencies in the knowledge, skills or attitude to work of the person who occupies, or who will occupy, a certain position in an organisation. This research can be conducted through some of the procedures below.

1. Analysis of Job Description and Resumé

Compare the job description with the employee's or prospective employee's knowledge and skills as specified in their resumé.

2. Analysis of Performance Appraisals

Analyze some below-standard performances and determine whether the weakness was caused by a lack of knowledge and skills. If so, the next step is to determine exactly what knowledge and skills are lacking.

3. Analysis of Employee's Records

An employee's records contain data on their educational background, the results of the recruitment or selection procedure, any training that they have had, promotions, demotions, transfers, periodic performance appraisal and so on. These records can be used to identify any deficiencies that could be improved through training as well as potential that can be developed.

4. Analysis of Reports from the Organisation/Other Units

A study of reports from the organisation or other units about complaints from the public or employees, attendance records, occupational accidents, violations by the employee/member, damage to equipment and so on can be also used to identify any deficiencies that could be remedied by training.

5. Problem Analysis

In general, the problems encountered by the organisation or unit can be divided into two basic types, namely systemic problems and human problems. Human problems often have implications for training.

6. Organisational Long-Term Plans

The long-term planning of the organisation, like it or not, has to involve human resources. If significant changes are anticipated

during the planning process, the potential for knowledge and skills gaps can be detected early on. Moreover, the targets and design of the program can be formulated.

Sources of Information

Records, reports and plans that have been properly organized will make it easier to identify training needs. However, a lot of the information needed to analyse training needs is unwritten. This kind of information should be drawn from:

1. Field observation.
2. Requests for training from the managerial level.
3. Direct interviews with:
 - training target groups;
 - superiors; or
 - subordinates.
4. Group discussion.
5. Questionnaires.
6. Written tests.

In fact, research on training needs frequently relies on such sources because of a lack of written records and reports.

Identifying the Training Target Group

After establishing the need for the training, the next step is to identify the most appropriate target group for training. Some of the factors that need to be known when identifying the target group are:

- Position.
- Rank.
- Work experience.
- Educational background.
- Experience in the field of the proposed training.
- Age composition.
- Gender composition.

It should be kept in mind that different target groups may very likely need different forms of training even on the same field or subject. For example, the training on controlling demonstrations provided for officers will be different to the training for the lower ranks. The training for officers will place more emphasis on understanding the concepts, theories and principles as well as regulations that can help them to make the right decisions in the field. For the lower ranks, meanwhile, the training will focus more on organizing the positions of the units deployed at the demonstration site, as well as the use of crowd control apparatus—although the key principles of their roles and duties in dealing with demonstrations will also be taught.

Setting the Training Objectives

Every directed activity must have an objective, namely the desired result of carrying out the activities concerned. Likewise with training programs; the intended result must be formulated clearly so that the preparation and implementation stages can be directed towards achieving the specified objective.

Clearly formulated training objectives are an important reference when selecting the training materials to be given, the methods to be used and the trainers and facilities needed to achieve the objectives. On the other hand, objectives that are unspecific or too general will not only make it difficult to prepare and implement the training, but will also have an adverse impact on the fulfilment of the training objectives.

Benefits of Training Objectives

Clearly formulated training objectives have the following benefits:

1. Guarantee consistency in the design of a training program— materials, methods, delivery, facilities and so on.
2. Facilitate communication between the training program designer and the section or individuals needing the training.
3. Provide clarification for the participants of what needs to be done in order to achieve the training objectives.
4. Facilitate the evaluation and assessment of participants' progress during the training.
5. Facilitate the appraisal or evaluation of the results of the training.
6. Reduce the possibility of conflict between the organizer and the person requesting the training concerning the effectiveness of the training provided.

Training Objectives

All training is basically conducted to produce a change in the behaviour of the participant. The change may be in the form of increased knowledge or skills, or a change in attitude. Training objectives can therefore be categorized into the following behaviour types:

- A. **Psychomotoric:** This refers to control of the muscles in order to perform certain actions. Psychomotoric training objectives are aimed at ensuring that the participant develops specific physical skills.
- B. **Affective:** Affective objectives are intended to instill certain feelings, values or attitudes in the participant.
- C. **Cognitive:** This covers intellectual processes such as remembering, understanding and analysis. This type of objective is aimed at developing knowledge and intellectual skills.

Generally speaking, training objectives cover some aspects of all three of the categories above. For example, to achieve a certain psychomotoric level, it is also necessary to study matters that are covered

in the affective and cognitive categories. Similarly, even if the main focus is on cognitive aspects, psychomotoric and affective learning will also play a role.

Types of Training Objectives

1. Level-Based

- a. **The primary objective** is the core or the main unit of the training program. The primary objective is crucial because it provides the meaning, clarity and unity for all the activities during the training.
- b. **The secondary objectives** are the core of each learning unit in a training program. The secondary objectives provide a further translation of and are an integral part of the primary objective.

2. Content-Based

- a. Instructor Activity-Centred Objectives describe what the instructor will do during the training. For example: demonstrate how to deal with a protest or demonstration.
- b. Subject Matter-Centred Objectives describe the materials that will be given during the training. For example: training materials on the procedures for dealing with a demonstration.
- c. Participant Activity-Centred Objectives describe what the participants will do during the training. For example: an activity on dealing with a demonstration.
- d. Participant Performance-Centred Objectives describe what the participants will know, be able to do or what attitude they will have following the training. For example: after the training, the participants will be able to deal with a demonstration.

Effective Training Objectives

“Training is given so that, following the training, the participant will be able to do something, reach a certain level of knowledge or have a certain attitude”.

Based on these parameters, effective training objectives must be focused on the results that the participant is to achieve after undergoing the training. The criteria for meeting training objectives cover the following:

1. What the participant should be able to achieve after undergoing the training.
2. The conditions under which the participant will be able to achieve the objectives properly.
3. The standards or criteria that indicate good or acceptable results.

For example:

What	- The participant can control a workers' demonstration.
Conditions	- Within and outside company premises.
Standard	- Staying out of any negotiations to settle the dispute; no conflict breaking out between the participant and the demonstrators.

Objectives like this describe the intended behavioural change. The participant must be able to achieve a certain behavioural level before being declared as having successfully completed the training.

Trainee performance-centred objectives are very important because they are the best tools for making an objective assessment of the training program.

Selecting the Training Materials

Once the needs, objectives and the target participants are known, the next step is to select the training materials. Selecting the training materials must take into account the time and resources available, the methods and the media that can and will be used to deliver the materials effectively, and the stages in the learning process—generally consisting of the orientation stage, discussion of subject matter, application, confirmation and consolidation.

The subject matter or content of the training can be packaged in many different types of training materials, such as presentations, handbooks, reference materials, and other appropriate resources.

Selecting the Training Methods

These days, training usually makes use of a variety of methods. Each method has certain typical characteristics that limit its effectiveness for achieving different training objectives. Therefore, we should choose one method or combine a number of methods in order to achieve the training objective. Here are some of the training methods that can be used:

1. Lecture
2. Discussion (plenary, group or panel discussion)
3. Case Study
4. Role Play
5. Simulation
6. Demonstration
7. Practice
8. In-Tray
9. Collaborative Learning
10. Experiential Learning.

Since training is a system, the selection of the method should take into account the training variables and factors that influence the learning process, namely:

1. Trainer/Instructor

The trainer's knowledge, experience and ability are all factors that determine whether the method is applied successfully. For example, experience of dealing with various kinds of human problems, knowledge of individual behaviour and the ability to react fast in a discussion will all assist the trainer to use role play effectively. As another example, effective lecturing calls for strong oral communication skills.

2. Participants and Environment

The following must also be considered when choosing the training methods:

- The level of intelligence and educational background of the participants.
- The age and practical experience of the participants.
- The social and cultural environment.

Senior participants with a lot of experience will be easier to deal with if they are given the opportunity to have discussions, solve cases or do simulations/games. These methods usually help them to realize the limits of their knowledge and skills.

For participants who are more junior or have a lower level of education, simple and practical materials are recommended. Demonstrations or practical instruction may be more appropriate here. Methods that demand active participation, for example discussions, will run into difficulties if they are used with people who are not used to voicing their opinions.

3. Training Objectives

Training objectives that are designed to increase skills need more practice/application than training designed to increase knowledge. For the latter, lectures accompanied by some demonstration are usually sufficient to deliver knowledge at a certain level. If the training objective is to improve the participants' capacity to analyze and solve problems, it is better to use cases. Another possibility is to use a combination of methods because there is a limit to the degree to which any method can add knowledge or skills.

4. Field of Training

Different fields have their own characteristics. For example, technical fields such as intelligence and investigation need a lot of demonstration and practice besides lectures on the basic concepts. On the other hand, for non-technical fields such as personal development, lectures, discussion and case studies can be used. In fact, these three methods can generally be used in all fields.

5. Time, Facilities and Cost

The decision on which training methods to use is ultimately bound by the constraints of time, facilities and cost. In the case of time, for example, the time available for training will determine the type of method used. The longer the training period, the more opportunities there will be for the trainer to use participatory methods.

The same goes for the time of day when training takes place: there are certain times (for example in the morning), when using methods that actively involve the participants will be more effective.

The room size, availability of supporting equipment and so on must also be known in advance as certain methods require more complex equipment. The choice of training method must therefore be adjusted to such limitations.

All of this will, in turn, be related to the budget.

6. Motivation

People are generally keen to learn a lot if they are highly motivated. Therefore, in choosing the training method, we must also take into account whether the method will be capable of stimulating and fostering the motivation to learn.

7. Active Involvement

Usually, the more involved a person is in the learning process, the stronger their motivation to learn. Someone who is actively involved in an activity will remember more about it and be better able to apply it later. The method used should thus be able to encourage people to get actively involved in the training.

8. Individual Approach

Another thing to take into consideration is that everyone has their own learning capacity and procedures. As a result, the materials and methods used must give opportunities for each individual to think, practice and apply their knowledge.

9. Systematic Approach

Some training/teaching materials need systematic application to make them easier to understand. This applies particularly to materials that are broad-ranging and complex. Not all training methods provide a systematic framework to facilitate learning (case studies, for example).

10. Feedback

People are more motivated to learn if they get constructive feedback on their learning performance, whether on the concepts or their practical application. In addition, trainers also need input concerning the results of the training. This is easier to get through some methods (for example, exercises) than others (such as discussions).

11. Transfer

Generally, the easier it is for someone to transfer whatever they have learned to real situations, the easier it will be for him or her to learn. Teaching methods such as lectures or discussion pay relatively little attention to transfer. On the other hand, simulations and practicals are good in this respect, and as a result are frequently considered as the most effective methods.

The following table gives some of the considerations that must be taken into account when selecting a training method:

METHOD	CAN BE USED	IMPORTANT MATTERS
<p>1. Lecture</p> <p>Subject matter is delivered orally by one person without the involvement of anyone else</p>	<ul style="list-style-type: none"> - If there are a lot of participants, a lot material to be delivered and the time is limited. - To give concept/ theory before the participants practice or try out a skill. - To give knowledge at a certain level. 	<ul style="list-style-type: none"> - Because the participants are not so involved, they may get bored. - The lecture may be meaningless if from start to finish the content is not fully understood or assimilated. - The instructor should give relevant examples and provide opportunities for the participants to ask about anything they do not understand.
<p>2. Discussion</p> <p>A free exchange of ideas, experiences, knowledge and opinions concerning a certain subject between participants and trainer.</p>	<ul style="list-style-type: none"> - To enrich ideas or insights. - To benefit from the experience and knowledge of several people. - (for the instructor) to get feedback on how the participants apply their knowledge. - If there are not too many participants. 	<ul style="list-style-type: none"> - Discussions can be undirected/ stray off the subject. - Allows for the possibility of debate between the participants or with the trainer. - There may be some participants who are too passive or too dominant. - The trainer must be able to act as a mediator, be capable of directing the discussion and encouraging participation.
<p>3. Case Study</p> <p>The participants analyse the information provided</p>	<ul style="list-style-type: none"> - To practice problem/situation analysis skills. 	<ul style="list-style-type: none"> - Participants sometimes cannot see the relationship between

METHOD	CAN BE USED	IMPORTANT MATTERS
<p>to determine the cause of a certain problem and/ or to make a decision on the problem.</p> <p>Can be conducted individually or in groups.</p>	<ul style="list-style-type: none"> - To apply the knowledge gained in a situation that resembles reality. 	<p>the different pieces of information.</p> <ul style="list-style-type: none"> - The instructor should give clear instructions about the analysis framework.
<p>4. Role Play</p> <p>The participants play roles in a certain situation.</p>	<ul style="list-style-type: none"> - To give an illustration of human behaviour. - To practice skills related to human behaviour. 	<ul style="list-style-type: none"> - Participants may be shy or embarrassed. - Participants do not take it seriously. - Participants should play roles that are different from their day-to-day roles.
<p>5. Simulation Game</p> <p>Participants carry out a simulation, usually in groups.</p>	<ul style="list-style-type: none"> - To demonstrate or describe a concept indirectly. 	<ul style="list-style-type: none"> - Participants do not take it seriously. - The game must be relevant to the situation under discussion. - Better if it precedes the concept. - Reviewing and analyzing plays an important role in relating the game to the concept being taught.
<p>6. Demonstration</p> <p>The trainer demonstrates the procedure for using a piece of equipment or completing a task. The trainer's demonstration is usually followed by the participants practicing.</p>	<ul style="list-style-type: none"> - If the participants find it difficult to understand a theory or concept without observing it directly. - If the participants need to be able to use equipment or perform a certain task correctly. 	<ul style="list-style-type: none"> - The instructor should give an explanation and repeat the demonstration as many times as necessary until the participants understand it properly.
<p>7. Practice</p> <p>Participants practice using equipment or performing a certain task as demonstrated by the</p>	<ul style="list-style-type: none"> - To practice or check knowledge that has already been given. - To practice a skill. 	<ul style="list-style-type: none"> - Participants may become frustrated if it is too difficult. - The training must be realistic and the results should be

METHOD	CAN BE USED	IMPORTANT MATTERS
<p>trainer. Can be done individually or in groups.</p>		<p>achievable by all participants.</p> <ul style="list-style-type: none"> - The trainer must give appropriate instructions and guidance. - The facilities needed must be available.
<p>8. In-Tray</p> <p>Participants are given a number of files, papers and letters similar to what they would find in their work.</p> <p>Based on this information, the participants are asked to make a number of decisions.</p>	<ul style="list-style-type: none"> - For participants who usually do or will be doing desk-based jobs. 	<ul style="list-style-type: none"> - The material given must be realistic.
<p>9. Collaborative Learning</p> <p>A group learning methodology where each member contributes information, experience, ideas, attitudes, opinions, capacity and skills to enhance the understanding of the whole group.</p>	<ul style="list-style-type: none"> - In situations that call for an agreement or solution of the problem through an exchange of opinions within the group. 	<ul style="list-style-type: none"> - Participants perform the group task but without contributing in a collaborative process. - Participants are reluctant to contribute or share their knowledge. - Certain participants control the process of task completion to the extent that other group members cannot make an optimal contribution. - Participants tend to avoid the task and make only minimal effort to complete it.
<p>10. Learning By Doing</p> <p>A group learning method where each member gets the opportunity to experience something as a result of a stimulus-response relationship,</p>	<ul style="list-style-type: none"> - With relatively complex issues that call for commitment, creativity and innovation, and clear planning and decision making. 	<ul style="list-style-type: none"> - Participants are in a situation where there are risks and the unexpected can happen. - Participants are not interested in outdoor activities. - Participants have low physical stamina.

METHOD	CAN BE USED	IMPORTANT MATTERS
<p>which is presented through a simulation of an event, and they have to take action in outdoor facilities or in combination with learning in the classroom.</p>		

Designing the Training Framework and Activity Schedule

The next stage in preparing the training is to make a training framework which stipulates the objectives and the materials that will be provided to meet the training needs of the target group. This training framework is then arranged into an activity schedule.

The training framework can be arranged by referring to the sequence of learning processes that can be used to put together a training program, module or session in the program. The stages in the learning process are:

1. Orientation

At the orientation stage, a general explanation is given about the aims and objectives of the training or the session, the material that will be discussed as well as the activities that will be done in order to raise interest and prepare the participants for learning, and at the same time to build a conducive atmosphere for learning.

2. Discussion of Materials

The learning matter, such as concepts, theories, methods and other knowledge, is delivered at this stage. In order to actively involve the participants at this stage, the trainer should prepare examples or questions that match the participants' day-to-day experiences.

3. Application

The application stage is the first stage of consolidation. At this stage, the participants are encouraged to apply the knowledge they have gained to consolidate their understanding of the subject matter. Methods that can be used include exercises, case studies, role play or simulation. The method must be chosen carefully if it is to be effective.

4. Confirmation

At this stage, the participants are tested on their ability based on the specified training objective indicators. The aim of this test is to establish how far the participants are able to apply what has been learned without any assistance or guidance from the trainer. Methods include giving quizzes or asking questions.

5. Consolidation

This is the conclusion and rounding up of the training, module or session that has just taken place. In the implementation of a module or training session, this stage is also used to link the module or session just completed with the next one.

The training schedule usually consists of several sessions that involve presentation, discussion, games/simulations and rest breaks. An effective training schedule needs:

- A logical framework so that one session flows seamlessly into another;
- An appropriate sequence for the learning process so that the participants can follow it effectively; and
- A high level of integration so that each session or activity supports the others in achieving the training objective.

When arranging the activity schedule it is important to take the following into account:

- Allow sufficient time at the beginning of the training to create a conducive learning environment for the participants;
- Do not allocate too much time for the presentation. Give sufficient time for the participants to ask questions, share information, discuss or express their opinions;
- Allow sufficient time to summarize what has been learned in each session;
- Allow sufficient time for participants to rest and perform religious obligations such as praying;
- Alternate presentation activities with group discussions or games; and
- Don't schedule key sessions which need the participants' full attention and concentration during "sluggish" times, such as one hour before or after lunch.

Preparing the Training Sessions

A training program usually consists of several sessions involving one or more activities; for example, presentation, question and answer, group discussion or games and simulation.

Each session must be prepared carefully and have:

- An objective, namely the knowledge or information that will be conveyed to the participants;
- An aim, that is, what the participants will achieve (for example, the participants will know the four ILO fundamental principles and rights at work);
- Material, namely the information that is to be delivered;
- Structure, consisting of the introduction, content and closure, taking into account the sequence of the learning process;

- Time allocation;
- Methods, taking into account the aims of the session, the number of participants and the time available; and
- Training media, namely audio and visual media such as transparencies, PowerPoint presentations, white board, flip chart, short films or video as well as equipment for games that can be used to enhance the use of the auditory and visual senses as well as to improve the participants' attention and concentration.

IMPLEMENTING TRAINING

In this part we will discuss the trainer's role and how he or she can carry out the task of delivering the subject matter effectively, whether by presentation, leading a discussion or giving directions before and after a game or simulation, in order to achieve the stipulated aims and objectives of the training. Matters relating to the preparation and administrative and logistical aspects of training implementation will not be discussed here.

During training, the trainer acts as a facilitator who creates a conducive atmosphere so that the learning process can proceed effectively and the participants can achieve the training objectives. The trainer's role starts at the preparation stage of the training program.

To perform this role effectively at the implementation stage, a trainer must have:

- Good technical mastery of the subject matter;
- Interpersonal skills; and
- Cooperative skills.

To be able to give training on fundamental principles and rights at work as well as on the role of the police in industrial relations disputes, a trainer of course must know about:

- The role of national police in industrial relations disputes in general in the context of Indonesia as a member of the international community;
- The mandate, structure and working mechanisms of the International Labour Organisation (ILO);
- Human rights principles as the basis of the fundamental principles and rights at work;
- ILO conventions that govern the fundamental rights and principles at work;
- ILO principles and other international principles concerning the right to strike and company lockouts;
- National laws and provisions governing employment and industrial relations, including strikes, demonstrations and company lockouts;

- ILO and other international principles on the implementation of the role and tasks of the police in dealing with strikes, demonstrations and company lockouts; and
- National legislation specifying the functions and tasks of the national police.

There are ten skills that are categorized as key skills in interpersonal relationships. Of these, communication skills, listening skills and giving feedback are considered the most important (Robbins, 1989).

For communication to be effective, whatever it is that needs to be expressed has to be planned and structured before it is said, and in addition, there are certain techniques that should be used to reduce the possibility of communication failure.

In making a presentation, for example, try to:

- Speak carefully and clearly to all participants;
- Speak loud enough so that the participants who are furthest away can hear clearly;
- Speak at a speed that can be followed by all participants; ask the participants if you are speaking too fast or too slow;
- Vary your intonation. Don't speak in a monotone;
- Avoid using technical terms, unless you are really sure the participants understand them;
- Avoid doing things that can be distracting, like saying "eh" or "mmm" or drumming your fingers or your pen;
- Make eye contact with the participants. Don't look at the screen, white board or flip chart all the time while you are speaking;
- Pay attention to your body language and facial expressions so as not to distract from the communication; and
- Dress appropriately.

The skill of listening effectively to others is frequently overlooked. In fact we often confuse hearing with listening. When someone hears, they are only picking up the sounds or noises that pass into the ear. When someone listens, on the other hand, they are actively making an effort to capture and understand the meaning of the sounds or noises they hear.

Effective listening is hearing actively to understand information from the perspective and feelings of the speaker, whereas passive hearing is when someone is like a piece of equipment that merely records the information heard.

Active and effective listening requires skills that need to be learned and practiced. There are four important conditions in active listening, namely: (i) intensity, (ii) empathy, (iii) acceptance and (iv) willingness to

take responsibility for the completeness of the message (Rogers & Farson, 1976 in Robbins, 1989).

There are 14 active listening techniques that the trainer can use to improve effective listening skills:

1. Motivate yourself to listen actively;
2. Make eye contact to focus attention on, respect and encourage the speaker;
3. Show interest by listening to the content of what is being said;
4. Avoid shifting your attention as it will upset the speaker and you may miss the important part of the information being expressed;
5. Empathize and try to understand what the speaker is seeing and feeling by placing yourself in his or her position so that you pick up the needs and intentions of the speaker;
6. Take in everything the speaker says. An active listener regards feelings and emotions as factual content; likewise for nonverbal signs, voice and gestures;
7. Ask questions. An effective listener asks question to clarify, check understanding and assure the speaker that he or she is listening to the information the speaker is giving;
8. Make a summary of the topic in your own words to check both what you have heard and the accuracy of the meaning;
9. Don't interrupt. Let the speaker express all his or her thoughts before giving a response, and don't make guesses while the speaker's thinking process is in progress;
10. Integrate what the speaker has said by taking time to both to better understand the speaker's ideas and to arrange the information given to get the full picture.
11. Don't talk too much, as if you want to charge a "price" for your listening. People cannot talk and listen at the same time;
12. Confront any biases you have about the issues being discussed to avoid unnecessary barriers and discomfort;
13. Make a smooth transfer between the role of listener and speaker. Generally, in a work situation, this kind of transfer of intention and role happens frequently. Do it by focusing on what the speaker has said and practice not thinking about what you want to say when you have the opportunity;
14. Behave appropriately. Don't try to be the most enthusiastic listener in the world (by over-using eye contact, facial expressions, questioning or showing interest, for example), because you may lose credibility in the eyes of the speaker. Use your own style, naturally and appropriately.

As mentioned earlier, people will be more highly motivated to learn if they get feedback on their learning performance, not only on their understanding of the concepts but also on how they apply them in

practice. The trainer also needs input on the results of the training he or she has delivered.

Feedback, whether requested by or given to the participants, is a useful means of unifying perceptions and avoiding misinterpretation and assumptions in communication. A number of matters should be taken into consideration when giving and requesting feedback:

- Start with the positive things.
- Feedback should be specific, descriptive, tentative and informative.
- Feedback should be given in the form of recommendations and alternatives.

In training, trainer and participants must work together to achieve their joint objectives. The success of the training program therefore also depends on the participants' attitude towards the training activities.

Participants are expected to;

- Be able to accept the learning situation.
- Be able to accept the group.
- Keep an open mind.
- Want to learn from the trainer and the other participants.
- Be objective.
- Maintain a positive attitude.
- Be mentally prepared.
- Want to cooperate.
- Be able to maintain concentration.

In this case, the trainer must be able to work with the participants in order to maintain a conducive learning atmosphere. The following are some techniques that can be used to deal with various character types:

1. **Quarrelsome.** This type of participant stays quiet and does not attempt to enter into the group, but likes to answer questions with questions. Make sure that this person does not give too much of a contribution.
2. **Positive-cooperative.** Try to ensure that this type of participant is involved in the group because he or she is a very useful source.
3. **Know-all.** Try to ensure the group completes the theory.
4. **Talks too much.** Try to make tactical interruptions or let others give comments. If necessary limit his/her contribution.
5. **Shy.** Give special but discreet attention, ask questions that the participant can definitely answer to build his/her self-confidence, and respond positively to the participant's contributions.
6. **Rejecter.** Give instructions that are related to his/her knowledge and skills and try to use his/her contributions.
7. **Inattentive.** Ask which materials he/she finds interesting and what examples would be relevant, then use those examples.
8. **Intellectual.** Don't let yourself be criticized; rather, respond

tactically using the “yes, but” approach.

9. **Persistent questioner.** Turn his or her questions over to the group.

A good way to involve a participant is by asking a question. The question may motivate the participant to think and to give a response. Questions to participants can serve the following functions:

- Determine the participant’s level of knowledge/understanding.
- Open a discussion.
- Develop a discussion.
- Stimulate thinking.
- Set limits for a discussion.
- Change the discussion.
- Formulate a conclusion.
- Get attention.
- Activate the participant.

At each stage of the learning process certain questions are needed. The question may be general/put to the group, or to an individual. An effective question has the following characteristics:

- Can be answered.
- Simple.
- To the point.
- Relates to the subject matter.
- Clear.
- Brief.
- Has a clear and positive aim.

When asking questions:

- Avoid closed questions.
- Avoid leading questions.
- Frame the question as a positive sentence.
- Prepare the question before asking it.

EVALUATING TRAINING

Evaluation is a natural and necessary part of training because we expect training to deliver real results. Nevertheless, it should be realized that real results in the field represent the interaction of various factors, not just impact of the training. Therefore we need to be really clear about what we want to evaluate. The aims of a training evaluation are:

1. To determine the extent to which the training program objective is achieved.
2. To provide the information needed to improve subsequent programs and to eliminate ineffective elements.

Evaluation can be used more effectively if we evaluate:

1. How the training was implemented (reaction);
2. The results of the participants' learning (learning);
3. The change in behaviour produced by the training (behaviour); and
4. The real results of the training in the field (results).

Evaluating the Reaction

The object of this type of evaluation is the participant's response to the way the training was organized. The evaluation focuses on the participant's feelings or opinions, but not on how much has been learned. This type of evaluation can be done by asking the participants to fill in a questionnaire. The following should be taken into account:

- Determine what you want to find out;
- Devise questions that can provide the answer to what you want to know;
- Design the questionnaire in such a way that the responses are easy to process;
- The questionnaire should be anonymous so that the participants can give their honest opinions;
- The questionnaire should allow sufficient space to write down additional opinions;
- For various reasons, questionnaires on participants' reactions are often not filled in completely honestly. Therefore, an additional assessment/appraisal form can be made which is completed by the trainer's coordinator;
- With both forms completed, the evaluation of the program implementation of the training should be more objective.

Evaluating Learning

This type of evaluation aims to find out the extent to which the participant knows or has understood/mastered the principles, facts or techniques that were taught, but not how they apply them in their daily work.

The principles of evaluating learning results are as follows:

1. The participant's learning must be measured quantitatively as far as possible.
2. You should be able to distinguish between the pre- and post-training results (assessments are made before and after training).
3. Evaluation/assessment is based on the training objective.
4. If possible, use a "control group" (which does not take part in the training) as a comparison.
5. Try to make a statistical analysis of the results.

Learning can be evaluated through:

- A. Participants' Work in the Training Room

For skills training, learning can be assessed through the classwork. The progress/results of skills training can usually be observed directly during the training activity.

B. Written Tests

Written tests are generally given to measure the extent to which the participant has understood a certain concept, theory or principle. In psychomotor skills training, a written test can only give an indication of the participant's understanding of the concept/theory/basic principle, and not their mastery of the skill itself. On the other hand, for training aimed at increasing thinking or analytical capacity, a written test is the only way to evaluate learning.

Evaluating Behaviour

This type of evaluation relates to the application of what has been learned back in the participant's daily activities. Such evaluation is needed because people frequently master the knowledge or understand the principles but don't apply them.

Admittedly, behaviour evaluation is not easy because behaviour change can occur as a result of various influences, not just from the participant's additional knowledge or skills.

Behaviour change can take place if the participant:

1. Knows his or her weaknesses;
2. Wants to improve;
3. Works in an environment that enables improvement;
4. Gets assistance from skilled, enthusiastic people; and
5. Has the opportunity to try out new ideas.

The principles of evaluating behaviour are as follows:

1. Work is assessed before and after the training.
2. The assessment can be made by one or more of the following:
 - participant;
 - participant's line manager/superior;
 - participant's subordinate;
 - someone who is familiar with the participant's work.
3. Statistical analysis can be used; also the relationship between the change that has occurred and the training given.
4. The assessment should be made at least three months after the training so that the participant has the opportunity to apply what has been learned.
5. A "control group" (which does not take part in the training) can be used as a comparison.

Evaluating Results

This type of evaluation measures the impact of the training program.

This can be observed from the changes in attitude and actions in the field several years after the training.

Evaluating results is difficult because many factors external to the training influence the emergence of the desired effects. The major difficulty is determining the extent to which the training has contributed to the solution of the problem. Despite these difficulties, results do need to be evaluated.

The evaluation is conducted by making a comparison between the conditions that prompted the training and the conditions after the training, for example:

1. Police officers' understanding in the field of their role in industrial relations disputes;
2. The number of incidents between the police and workers who are striking or demonstrating;
3. The number of industrial dispute cases where the police are involved in negotiating a settlement; and
4. The number of strikes and demonstrations that are successfully handled by the police without the use of force.

TEN GUIDELINES FOR LEARNING

Below are some guidelines for learning that can be used by the trainer as a reference when preparing and implementing training:

1. **A Person's Capacity to Determine What He/She Can Learn and at What Speed**

Based on this principle, an advisor must know the student. A highly intelligent person can grasp complex theories relatively quickly compared to someone who is not so intelligent.

2. **The Presentation Sequence Determines Learning Effectiveness**

The material given at the beginning and end is usually remembered better than the material provided in the middle of a presentation. Therefore, if there are two important things to be conveyed, one should be presented at the beginning and the other at the end.

3. **Show that making Mistakes can Actually Increase Learning Effectiveness**

A demonstration can be made more effective not only by showing "what to do", but also by showing "what not to do". It can, therefore, be very useful to demonstrate the wrong procedure and the consequences of the error, before showing the correct procedure.

4. **The Forgetting Process Tends to Follow Rapidly After the Learning Process**

Subject matter should therefore be continuously recycled. Usually, to combat rapid forgetting, repetition should be more intensive in the first week.

5. **In the Remembering Process, Repeating Identical Material is as Effective as Repeating the Same Material With Some Variations**

To help participants remember what has been taught, the instructor can choose to use either identical or slightly different materials.

6. **Knowing the Results of Learning can Increase Learning Effectiveness**

Learners often don't know how their learning is progressing. If the instructor can let them know about their progress, they can learn faster.

7. **The Learning Process will be more Effective through Active Practice rather than Passive Acceptance**

A presentation that leads to active audience participation will be more memorable. "Active" here means using all the senses optimally, and in particular organizing the thought processes.

8. **Subject matter is more easily Learned if it is not Contrary to past Experience**

Based on this assumption, training processes that refer to the participants' previous experience will enhance the learning process.

9. **Mere Repetition does not Always Accelerate the Learning Process**

There are two important things here, namely unity and satisfaction.

Unity means that there must be a logical and orderly relationship between all the related elements that are being learned.

Satisfaction must be real—it can even be a symbolic reward—to distinguish it from any undesirable consequences that may arise through the learning process.

10. **Learning Something new can Disrupt the Process of Memorizing something that came before**

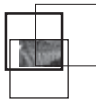
Participants frequently have difficulties if they are asked to change the way they usually work. A participant who studies French in the morning and then continues with Italian in the afternoon will retain less of the French than if he or she had just studied French and then had a break.

PRESENTATION 1.1: PREPARING TRAINING



TRAINING FUNCTIONS

- Educational
- Administrative
- Personal



LEARNING PROCESS FACTORS

- Learning Process
- Internal Factors
 - Needs and Motivation for Learning
 - Learning Capacity
- External Factors
 - Trainer
 - Training Environment



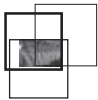
IDENTIFYING TRAINING NEEDS

- Training Needs
 - To meet the demands of the current position
 - To meet the demands of another position
 - To meet the demands of change



IDENTIFYING TRAINING NEEDS

- Means of Identification
 - Analysis of Job Description and Resume
 - Analysis of Performance Appraisals
 - Analysis of Employee's Records
 - Analysis of Reports from the Organization
 - Analysis of Problems
 - Organizational Long-term Plans
- Sources of Information



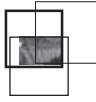
IDENTIFYING THE "TARGET GROUP"

- Issues to Consider:
 - Position
 - Rank
 - Work Experience
 - Educational Background
 - Experience in the field of the proposed training
 - Age composition
 - Gender composition



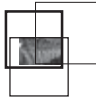
SETTING THE TRAINING OBJECTIVES

- Training Objectives
 - To increase knowledge
 - To increase skills
 - To change behavior/attitudes
- Training Objective Categories:
 - Psychomotoric ➤ physical skills
 - Affective ➤ attitude change
 - Cognitive ➤ intellectual skills



SETTING THE TRAINING OBJECTIVES

- Benefits of Training Objectives
 - Guarantee consistency in program design
 - Facilitate communication between training program designer and prospective training participants
 - Clarify what participants need to do
 - Facilitate evaluation of participants' progress
 - Facilitate evaluation of the training as a whole
 - Reduce the possibility of conflict between the organizer and the training beneficiaries regarding the effectiveness of the training



SETTING THE TRAINING OBJECTIVES

- Types of Training Objectives
 - Primary Objective
 - Secondary Objective
 - Instructor Activity-Centred
 - Subject Matter-Centred
 - Participant Activity-Centred
 - Participant Performance-Centred



SETTING THE TRAINING OBJECTIVES

- Effective Objectives
 - Determine what is to be achieved
 - Explain the conditions for achieving the objectives
 - Set the standards for the intended achievement



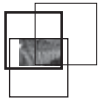
SELECTING TRAINING MATERIALS

- Things to consider:
 - Time and Resources
 - Methods and Media that can be used
 - Stages in the learning process



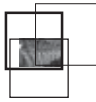
SELECTING THE TRAINING METHODS

- Training Methods
 - Lecture
 - Discussion (plenary, groups, panel)
 - Case studies
 - Role play
 - Simulation
 - Modelling/Demonstration
 - Practice/Exercises
 - In-tray
 - Collaborative Learning
 - Learning by doing



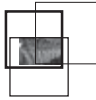
SELECTING THE TRAINING METHODS

- What to take into account:
 - Trainer
 - Participants and Environment
 - Training Objectives
 - Field of Training
 - Time, Facilities and Cost
 - Motivation
 - Active Involvement
 - Individual Approach
 - Systematic Approach
 - Feedback
 - Transfer



ARRANGING THE TRAINING FRAMEWORK AND SCHEDULE

- An effective training framework needs:
 - A logical framework
 - An appropriate sequence for the learning process
 - A high level of integration



ARRANGING THE TRAINING FRAMEWORK AND SCHEDULE

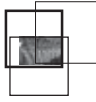
- What to consider when arranging the training schedule:
 - Allow enough time to create a conducive learning environment
 - Keep presentation time short
 - Allow enough time to summarize each session
 - Allow enough time for rest and prayer
 - Alternate presentation and discussion
 - Don't schedule key sessions during "sluggish" times



PREPARING THE TRAINING SESSIONS

- Each session must have:
 - Objective
 - Aim
 - Materials
 - Structure
 - Method
 - Time allocation

PRESENTATION 1.2: IMPLEMENTING TRAINING



TRAINER and PARTICIPANTS

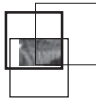
- The trainer acts as a Facilitator to help participants achieve their objectives
- The trainer must have:
 - Mastery of the subject matter
 - Interpersonal skills
 - Cooperative skills



TRAINER and PARTICIPANTS

- Participants also determine whether the training objectives are achieved successfully
- Participants are expected to:
 - Keep an open mind
 - Be positive, objective and cooperative
 - Maintain concentration

“The Trainer and the Participants have to work together to achieve the Training Objectives”



MAKING A PRESENTATION

- Prepare what to say
- Speak carefully and clearly
- Make eye-contact with all participants
- Speak loud enough so that the participants furthest away can hear clearly
- Pay attention to how fast you are speaking; make sure all the participants can follow you
- As far as possible, avoid using technical terms
- Pay attention to your body language and facial expressions
- Dress appropriately



EFFECTIVE LISTENING

- Hearing vs. Listening
- Hearing:
Picking up sounds/noise through the ears naturally (passive)
- Listening:
Picking up and understanding the meaning of the sounds/
noise heard (active)
- Effective listening:
Picking up and understanding the information from the
speaker's perspective



FEEDBACK

- Benefits:
 - Unifies the perceptions of all participants and the trainer
 - Reduces the possibility of misinterpretation
 - Avoids assumptions
- What to consider when giving and requesting feedback:
 - Start with positive things
 - Be specific, descriptive, and informative
 - Give feedback in the form of recommendations and alternatives



ASKING QUESTIONS

- Functions of Questions:
 - To stimulate participants to think and respond actively
 - To open, expand or narrow the discussion
 - To formulate conclusions
 - To get attention



ASKING QUESTIONS

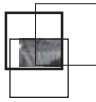
- Effective questions are:
 - Simple
 - To the point
 - Related to the subject matter
 - Intended positively
 - Answerable



ASKING QUESTIONS

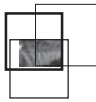
- What to consider:
 - Avoid closed questions
 - Avoid leading questions
 - Frame the question in a positive sentence
 - Prepare the question before asking

PRESENTATION 1.3: EVALUATING TRAINING



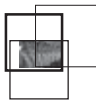
TRAINING EVALUATION OBJECTIVE

- To measure the achievement of training objectives
- To get input on how to increase the effectiveness of subsequent training



EFFECTIVE EVALUATION

- Covers:
 - Evaluation of reaction
 - Evaluation of learning
 - Evaluation of behaviour
 - Evaluation of results



EVALUATING THE REACTION

- To assess the participants' reaction to the way the training was organized
- Done by asking the participants to fill in a questionnaire



EVALUATING LEARNING

- To measure the extent to which the participants know, have understood or mastered the principles, facts or techniques taught
- The assessment is quantitative
- The assessment is made before and after training
- Can be done through written tests (for concepts) or practices (for skills)



EVALUATING BEHAVIOUR

- To measure the extent to which the knowledge and/or skills taught are applied in participants' daily lives, resulting in behaviour change.
- Can be affected by factors external to the training
- The assessment is made before and after training (at least 3 months after training)
- The assessment can be made by the participant (self-assessment), his/her line manager or subordinate, or by someone who is familiar with his/her work.



EVALUATING RESULTS

- To measure whether the training has changed attitudes, practices and actions in the field
- Many external factors outside training are influential
- Should be done at least 2-3 years after training
- The assessment is made by comparing conditions before and after training

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PART III
Training Modules

Part III
**TRAINING
MODULES**

MODULE 2
INDONESIA AND THE
INTERNATIONAL LABOUR
ORGANIZATION (ILO) IN
THE GLOBAL COMMUNITY

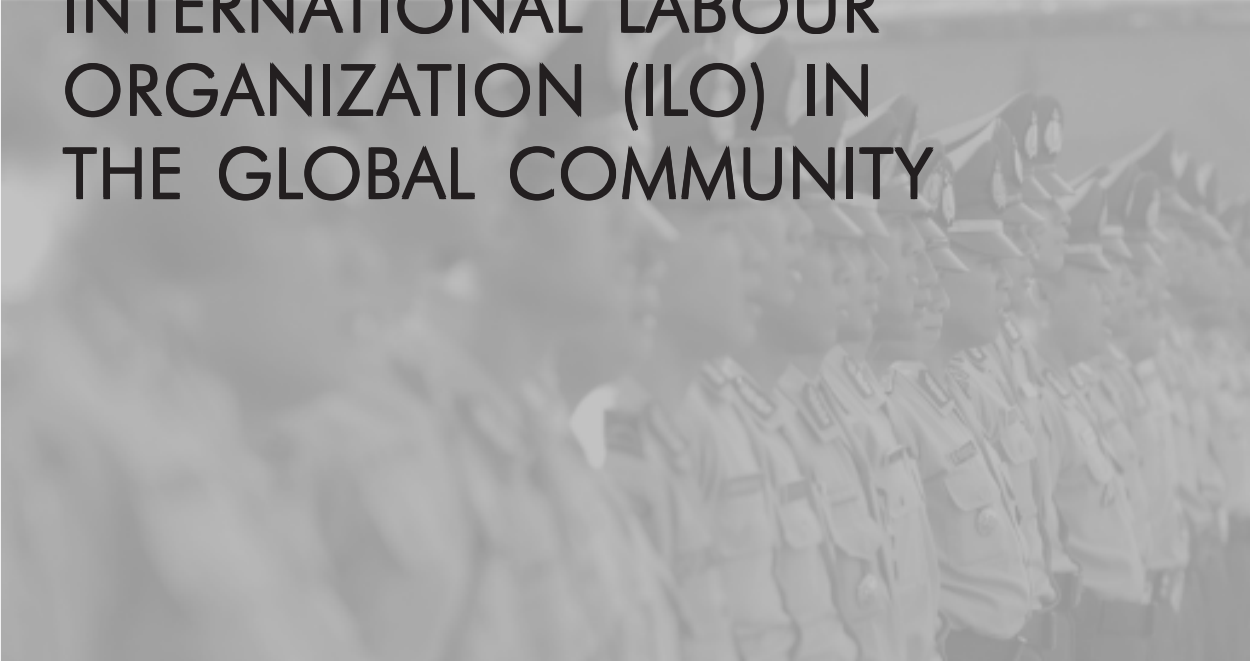


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OBJECTIVES

General:

After studying this module, the participants will understand Indonesia's position and participation in, as well as its interaction with, the International Labour Organization (ILO) as a member of the international community.

Specific:

The participants will:

- Understand the importance of Indonesia's participation in the international community;
- Know and understand the position of the ILO as part of the international community, its relationship with Indonesia as well as the principles and characteristics of the ILO as an international institution under the auspices of the United Nations;
- Identify the fundamental principles of the ILO's function and how they are implemented; and
- Understand the role of social partners in supporting the ILO's activities.

SUGGESTED TRAINING STRATEGY

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Presentation on the general and specific objectives of Module 2	Lecture	Flip Chart	5 mins
2.	Presentation: "Indonesia and the ILO in the Global Community"	Lecture	Presentation/ transparencies on Indonesia and the ILO in the global community	40 mins
3.	Question and answer on the presentation	General discussion	Presentation materials & Flip Chart	60 mins
4.	Conclusion	Lecture		10 mins

BACKGROUND

Globalization has ushered in many changes to the life of the international community. Technology development has eliminated inter-state territorial borders. Further, global market growth has increased the interdependency among the members of the international community. This greater interdependency between states in economic (trade, investment, and finance), social and political terms has driven a shift in the pattern of relationships in the development of national and global policy in all these fields.

Unilateral action can no longer be relied upon to fulfil national needs. Governments can no longer achieve all their critical policy targets by acting independently. Dealing with economic disparity, environmental damage, human rights violations, international crime and the narcotics trade, for example, calls for a joint effort by all countries through the development, implementation and monitoring of international regulations and standards in the fields of economic, security, political and social affairs. Violations of international standards by a country, whether individual or institutional, will ultimately impact negatively on the country itself.

Since the proclamation of Indonesia's independence, the 1945 Constitution, as set forth in the Preamble, has emphasized the importance of international relationships in the organisation of the nation and the state. The Law of the Republic of Indonesia Number 37 Year 1999 regarding International Relations sets out the fundamental thinking that forms the basis of the Indonesia's foreign political relations: "In pursuing international relations and the implementation of foreign policy, Indonesia is bound by international law and norms, which constitute the basis for the interaction and relations between states."

Active participation in international organisations is one of the options available to national governments as they endeavour to meet the demands of national and international interests. Besides providing a forum through which to obtain information for domestic policy

development, they can also be a means of determining a global policy direction that serves the political, social and economic interests of the country concerned.

Indonesia, Labour Issues and the ILO

In the field of labour and manpower, the ILO is an important partner for Indonesia. On 12 June 1950, Indonesia became the seventy-fourth member of the ILO. Up until the end of July 2004, Indonesia had ratified 17 ILO Conventions including the eight fundamental ILO Conventions as set forth in the ILO Declaration on Fundamental Principles and Rights at Work adopted by all ILO member countries in 1998. By ratifying Convention No. 182 on 28 March 2000, Indonesia also became the first country in Asia to ratify all eight fundamental Conventions of the ILO.

Table I. Fundamental ILO Conventions Ratified by Indonesia

No.	Title	Ratification Date
87	Convention on Freedom of Association and Protection of the Right to Organize, 1948.	09-06-1998
98	Convention on the Right to Organize and Collective Bargaining, 1949	15-07-1957
29	Convention on Forced Labour, 1930	12-06-1950
105	Convention on the Abolition of Forced Labour, 1957	07-06-1999
138	Convention on Minimum Age, 1973	07-06-1999
182	Convention on the Worst Forms of Child Labour, 1999	28-03-2000
111	Convention on Discrimination (Employment and Occupation), 1958	07-06-1999
100	Convention on Equal Remuneration, 1951	11-08-1958

Table II. Other ILO Conventions Ratified by Indonesia

No.	Title	Ratification Date
19	Convention on Equality of Treatment (Accident Compensation), 1925	12-06-1950
27	Convention on the Making of Weight (Packages Transported by Vessels), 1929	12-06-1950
45	Convention on Underground Work (Women), 1935	12-06-1950
69	Convention on the Certification of Ship's Cooks, 1946	30-03-1992
81	Convention on Labour Inspection, 1947	29-01-2004
88	Convention on Employment Services, 1948	08-08-2002

I 06	Convention on Weekly Rest (Commerce and Offices), 1957	23-08-1972
I 20	Convention on Hygiene (Commerce and Offices), 1964	13-06-1969
I 44	Convention on Tripartite Consultation (International Labour Standards), 1976	17-10-1990

The economic crisis that hit several countries in Asia in 1997 highlighted the interdependency of states mentioned earlier. The crisis, which began in mid-1997 in Thailand, spread rapidly all around Asia, taking in China, South Korea, Hongkong, Malaysia, the Philippines and Indonesia. The crisis caused major upheaval, not only economic, but social and political too.

In Indonesia, the crisis led to the collapse of the economy as well as ongoing social unrest that culminated in the fall of President Soeharto in May 1998. This was driven by the reform movement, which demanded an end to corruption, collusion and nepotism, commitment to democratization and respect for human rights. Alongside the reform movement there was renewed interest in building cooperation with international bodies like the United Nations.

In the field of labour, the Indonesian government announced a program of reform of the Labour Law, which included the ratification of the fundamental ILO Conventions and the drafting of three new labour laws through a lengthy tripartite consultation process. These were Law Number 21/2000 on Labour Unions, Law Number 13/2003 on Labour and Law Number 2/2004 on the Settlement of Industrial Relations Disputes. In line with these developments, the collaboration between the Indonesian government and the ILO has also intensified in the form of various technical cooperations in the field of industrial relations.

The three new laws now form the basis for a new system of industrial relations that provides freedom to workers and employers to establish or join labour or employers' organisations, protects the right to exercise fundamental rights at work and encourages cooperation between all players in industrial relations. The new laws also represent the application of the provisions in the fundamental ILO Conventions.

THE INTERNATIONAL LABOUR ORGANIZATION (ILO)

The ILO In Brief

The ILO came into being at the end of the first World War when the ILO constitution was adopted by the Peace Conference in Versailles in April 1919. Referring to the articles in that Constitution, there were three key motivations for the establishment of the ILO.

The first was humanitarian. The ILO was established in an attempt to improve the welfare of workers, who at that time were exploited with no consideration for their health, their family lives or their advancement. This perspective is expressly stated in the Preamble of the Constitution, which declares: *"...where which the existing work conditions involve injustice, hardship and privation to large numbers of people."* The principal changes sought by the ILO included limiting working hours to eight hours a day, reducing unemployment, providing guarantees for welfare, protecting women's reproductive rights and guaranteeing protection at work for women and young people.

The second motivation was political. The injustices suffered by workers, increasing as a result of industrialization, were giving rise to unrest that could eventually threaten world peace, as noted in the Preamble of the Constitution: *"unrest so great that the peace and harmony of the world are imperilled."* Therefore, social justice, particularly for workers, was the principal condition for world peace.

The third motivation was economic. It was well recognized that the demand for workers' welfare would be unattractive to employers because it would increase production costs and make them less competitive. Improving workers' welfare called for commitment on the part of all countries. As noted in the Preamble of the Constitution, the reluctance of one country would be an obstacle in the way of all other nations that wanted to improve working conditions in their own countries.

The Philadelphia Declaration of 1944, which was annexed to the ILO Constitution, sets forth the four fundamental principles on which the ILO rests:

- Workers are not a commodity;
- Freedom of association and expression are essential to sustainable progress;

- Poverty in one place is a threat to prosperity everywhere; and
- Every human being, irrespective of race, belief or gender, is entitled to pursue material well-being and spiritual development in conditions that respect freedom, values and dignity, with economic security and equal opportunities.

The essence of the ILO's purpose is expressed in the fundamental rights that must be applied at work. This declaration forms the basis for the ILO's actions on labour relations and economic and social development. It also inspired the later establishment of the United Nations.

Field	Strategic Objective
Standards and fundamental principles and rights at work	To promote and realize standards, and fundamental principles and rights at work.
Employment opportunities	To create greater opportunities for men and women to secure decent employment and remuneration.
Social security	To enhance the coverage and effectiveness of social protection for all.
Social dialogue	To strengthen tripartite consultation and social dialogue.

The Mandate and Means of Action of the ILO

Since its establishment, the principal mandate of the ILO has been to support the creation of social justice and better working conditions and welfare all over the world to ensure the realization of lasting, universal peace. In general, the mandate is exercised through protecting the fundamental rights of workers, creating a just society and avoiding all forms of negative international competition. Specifically, the mandate is implemented by stipulating strategies and agendas relevant to the needs and conditions of each era.

In 21st century, the ILO's agenda and strategy for realizing social justice is based on the "Decent Work" approach. The Director General of the ILO, Juan Somavia, confirms that this approach creates the opportunity for men and women to get decent and productive work in free, fair, safe and civilized conditions.

The steps taken by the ILO to achieve its four strategic objectives are as follows:

- Stipulating international labour standards¹ in the form of conventions or recommendations, supported by a unique monitoring system that guides and assists national governments in following up these policies with a range of real actions;
- A broad international technical cooperation program designed and carried out on the basis of active partnerships with social partners as a means of assisting member countries to ensure that policies are effective; and
- Training, education, research and publication of activities to support the efforts above.

Thus it is clear that the ILO is principally an organization that provides technical assistance, rather than a donor organization.

Main Bodies of the ILO

The ILO has a unique organisational structure, unlike that of any other international organisation under the United Nations. Although it is an international organisation, all decisions are made jointly by representatives of the three tripartite elements: workers, employers and government.² This tripartite structure can be found in almost all bodies or units of the ILO, including the three main bodies.

Exceptions can be found in specific bodies such as the Committee of Experts on the Application of Conventions and Recommendations, which comprises experts with undisputed competence and integrity in their fields; the Joint Maritime Commission, which has a bipartite structure and whose membership comprises employers and workers in the shipping and maritime sectors; and the Joint Committee on Public Services, which is a bipartite body consisting of representatives of member country governments and public service companies.

The ILO also has a special training body, the International Training Centre, which is located in Turin, Italy. The centre not only designs and implements training programs but also conducts research on labour and employment issues.

The organisational structure of the ILO comprises three main bodies:

1. International Labour Conference

The international labour conference is the highest decision-making body of the ILO. It has a tripartite structure and three main functions: (i) to draft international labour standards in the form of conventions and recommendations, (ii) to serve as a forum for discussing various global labour and social issues, which is competent to issue resolutions that will form the guidelines for

1 International labour standards stipulate the minimum standards on various issues in the world of work that must be implemented by all member countries.

2 This can be seen from the management composition of each institution within the ILO. Refer to site: <http://www.un.org/ILO>

overcoming such problems, and (iii) to draw up the biennial program and budget of the ILO.

2. Governing Body

This body has 56 members consisting of 28 member country representatives, 14 workers' representatives and 14 employers' representatives. Their main task is to establish the ILO's policies and priorities for implementation as a whole. In other words, the governing body determines and guides the concrete activities of the ILO.

3. International Labour Office

This is the ILO Secretariat, which carries out concrete programs at the central, regional, sub-regional and national levels in member countries. The head office in Geneva has the task of managing the administrative and secretarial aspects of the work for the Governing Body and the International Labour Conference, as well as providing technical and administrative support for offices at the regional level. The regional, sub-regional and national offices design and carry out technical assistance programs for the member countries.

The ILO office in Jakarta, for example, carries out technical cooperation programs with the government and other social partners, such as labour unions and employers' associations. The ILO also works with non-governmental organisations that are involved in labour issues. On the implementation side, the ILO Jakarta office gets technical support from the sub-regional office in Manila and administrative support from the regional office for the Asia Pacific region in Bangkok.

ILO Supervisory Mechanisms

To ensure that member countries implement international labour standards such as conventions and recommendations, the ILO has a unique supervisory system that makes use of a number of experts. Governments play a significant role in the supervision process by reporting the implementation of international labour standards in their countries. However, unions and employers' organisations can also give input.

1. Regular Supervision

This is carried out through reports submitted by the member countries to the ILO which are then checked by the experts. According to the provisions of the ILO Constitution, two types of report are required:

- Reports on ratified Conventions

This procedure is based on the provisions of Article 22 of the ILO Constitution, which require member countries to submit annual reports to the ILO on efforts made to implement the provisions of

the ILO Conventions that have been ratified by the country concerned. The report should also cover results achieved and any constraints encountered.

Member country governments must consult labour unions and employers' organisations on the preparation of the report, in line with the provisions of Article 5 paragraph (1)(d) of Convention No. 144 and paragraph 5(e) of Recommendation No. 152. According to the provisions of Article 23(2) of the ILO Constitution, member countries are obliged to send copies of the report to any labour unions and employers' organisations in their countries. Labour unions and employers' organisations are entitled to comment on the report, and these comments are then included as an annex.

The report, complete with comments, is then analyzed by the Committee of Experts on the Application of Conventions and Recommendations, which has 20 expert members who work independently and are drawn from various fields of social and economic expertise. The results are reported to the Governing Body for publication and submission to the government of the member country concerned as well as to the unions and employers' organisations in that country.

The Expert Committee's report is subsequently submitted to the International Labour Conference to be discussed in tripartite in the Conference Committee on the Application of Standards. The results are then forwarded to the International Labour Conference.

- Report on Conventions or Recommendations that have not been Ratified

According to the provisions of Article 19 of the ILO Constitution, the Governing Body of the ILO can request that a member country submit a report on problems in relation to certain conventions even though the country concerned has not ratified them. It can do the same with regard to the position of member countries vis-à-vis certain recommendations. These reports are analyzed by the Committee of Experts on the Application of Conventions and Recommendations, and the results are published in the form of a General Review.³

2. Special Supervision

In all, there are three procedures for the special supervision of how the ILO Conventions and Recommendations are implemented. Two of these are based on the ILO Constitution—namely, Representation and Complaints. On the basis of the 1950 agreement between the ILO and United Nations Economic and Social Council/ECOSOC,

³ International Labour Standards: A Trade Union Training Guide, ILO/ITC, Turin, 1998. Page 397.

meanwhile, a third special procedure was established to deal with violations of the principles of freedom of association.

- **Representations Procedure**

The provisions of Article 24 of the ILO Constitution allow labour unions and national and international employers' organisations to submit "representations", through the ILO office, to the Governing Body concerning a member country that has allegedly failed to implement the provisions of a convention ratified by that country. If the representation is deemed to have fulfilled certain requirements, the Governing Body will conduct an inspection and at the same time issue a recommendation and request a response from the country concerned. If there is no response within a certain period or if the response is deemed unsatisfactory, the Governing Body can publish the representation.

- **Procedure for the Submission of Complaints**

According to Article 26 of the ILO Constitution, a member country can lodge a complaint against another member country or its delegation at the International Labour Convention for failing to implement the provisions of a convention ratified by both countries. If the complaint is accepted, the Governing Body will follow up by conducting an investigation and giving a recommendation.

- **Special Supervisory Mechanism for Freedom of Association**

Through this procedure, governments, labour unions and employers' organisations can lodge complaints against other ILO member countries concerning violations of the principle of freedom of association. This procedure can be used whether or not the member country has ratified the convention concerned. This is allowed because freedom of association is a fundamental principle that must be upheld by all member countries.

Two special bodies have been established to follow up such complaints, namely the Commission on Freedom of Association and the Fact-finding and Conciliation Commission on Freedom of Association.

The Commission for Freedom of Association has nine members representing the three tripartite elements, who are charged with investigating complaints. The Fact-finding and Conciliation Commission on Freedom of Association, meanwhile, comprises highly qualified and independent individuals who are appointed by the Governing Body. This commission has the task of investigating violations and finding joint solutions with the government of the country concerned.

For gross and urgent violations of the right to associate freely, the Director General of the ILO, with the approval of the Commission for Freedom of Association, can request the government concerned to permit its representative to carry out a direct contact mission and field investigation. This direct contact mission makes a report that is used as input by the Commission for Freedom of Association in formulating its decision and recommendations.

The Tripartite Constituents and ILO Social Partners

Broadly speaking, the ILO's principal partners are governments, employers and workers. The term "social partner" formally refers to employers' organisations and labour unions, or the "social partners" in the economy. Their "voice" is equivalent to that of the member country governments in shaping the ILO's policy and programs.⁴ In this case, the ILO's social partners can be broadly classified into two groups. The first is the labour unions and employers' organisations that have consultative status in the main bodies of the ILO, such as the International Labour Conference and the Governing Body. The second group consists of labour unions and employers' organisations or other institutions that are closely involved with the implementation of ILO programs or have specific competencies in dealing with labour and employment problems.

The ILO's Social Partners in Indonesia

The ILO's social partners in Indonesia are the labour unions and the employers' association. Both play an important role in the implementation of the ILO's mandate described earlier in this module. In stipulating international labour standards, for example, workers' and employers' representatives, together with the government, share information and discuss their respective situations, views and interests as well as their programs. This discussion can, in turn, lead to the stipulation of new international labour standards that accommodate the needs of all parties and can be applied in Indonesia.

In the implementation of these standards, the labour unions and the Indonesian Employers' Association (APINDO) give input to the government through the reports required by the relevant conventions. Both unions and APINDO jointly take part in the shaping of national legislation that meets international standards, as well as in developing the technical assistance programs Indonesia needs. In principle, the ILO's activities must take the interests of its social partners into account, and at the same time respect their roles and responsibilities. Conversely, the partners can also be expected to play an active role in these activities.

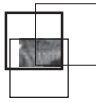
4 ILO Information Leaflet, Page 4. www.ilo.org/public/english/bureau/inf/download/leaflet2001.pdf

The Police as a Partner of the ILO

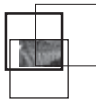
Industrial disputes are an unavoidable fact of life in the process of economic and industrial development. Article 1 of Law No. 2/2004 on the Settlement of Industrial Relations Disputes states that an industrial dispute is a difference of opinion that causes conflict between employers or a group of employers and workers or labour unions as a result of differences over rights, interests, termination of employment or a dispute between the labour unions within a company.

As stipulated in Law No. 2/2002 on the National Police of the Republic of Indonesia, the police are basically responsible for maintaining security and order, enforcing the law and protecting and serving the community. As a result, dealing with the law and order aspects of an industrial relations dispute falls within the scope of their duties. Thus the police can be said to be a partner of the ILO—even though formally they are represented by the department responsible for labour affairs. The role of the police in dealing with the law and order aspects of industrial relations disputes will be discussed in more detail in Module 7.

PRESENTATION 2: INDONESIA AND THE INTERNATIONAL LABOUR ORGANIZATION (ILO) IN THE GLOBAL COMMUNITY



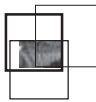
**INDONESIA AND THE INTERNATIONAL
LABOUR ORGANIZATION (ILO) IN THE
"GLOBAL COMMUNITY"**



GLOBALIZATION

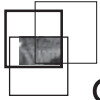
Globalization has:

- Changed the concept of global relations
- Increased interdependency between nations and states
- Encouraged the establishment of legally binding international standards in various fields
- Encouraged an increase in cooperation with international agencies



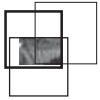
INTERNATIONAL COOPERATION

- Opens up opportunities for a nation to advance
- Is the optimal application of globalization
- Means active participation in international organizations



GLOBALIZATION, INDONESIA and the ILO

- The Asian monetary crisis in 1997 led to economic, social and political change in Indonesia
- Increasing demands for reform in various fields, including labour ? reform of the labour law and ratification of the ILO fundamental conventions
- Increased cooperation between Indonesia and international agencies, including the ILO



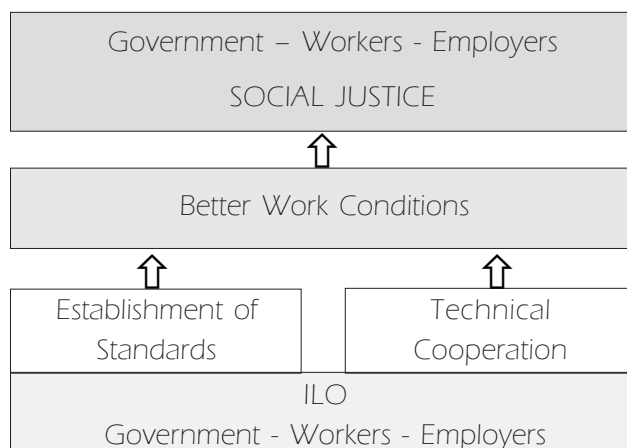
ILO (International Labor Organization)

- The UN agency that deals with labour issues
- Founded in 1919
- Seeks to promote social justice
- Currently has 176 member countries

“Universal and lasting peace can be established only if it is based upon social justice” (Preamble to the ILO Constitution)



ILO FRAMEWORK

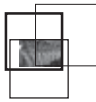




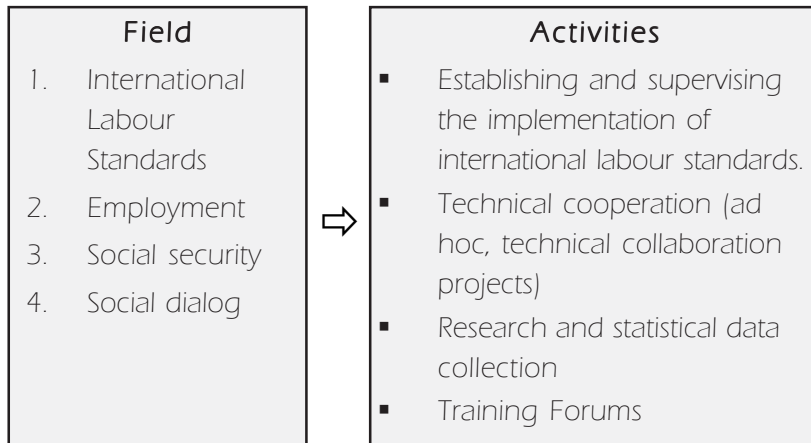
The ILO's Agenda in the 21st Century: "Decent Work"

"To promote opportunities for men and women to obtain decent and productive work, in conditions of freedom, equity, security and human dignity"

- Juan SOMAVIA, Director General of ILO



ILO Operations and Activities

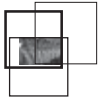
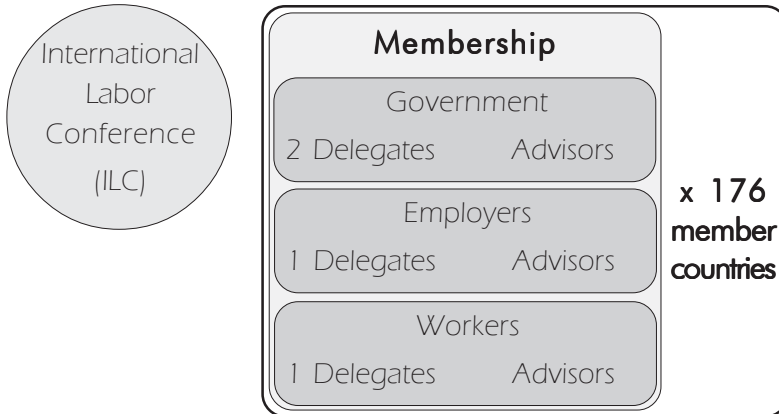


Structure of the ILO

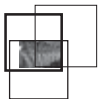
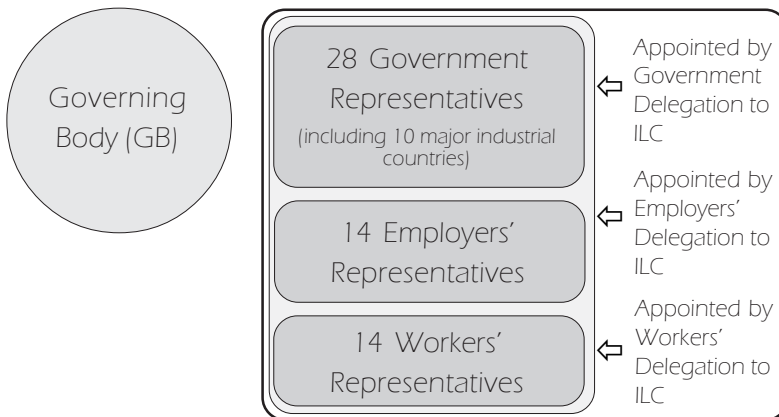




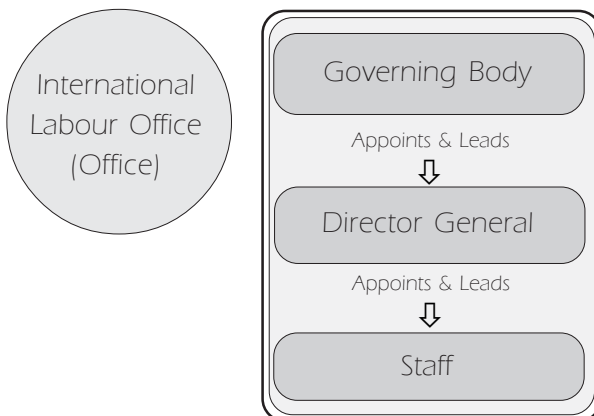
Membership of ILO Agencies: "International Labor Conference"

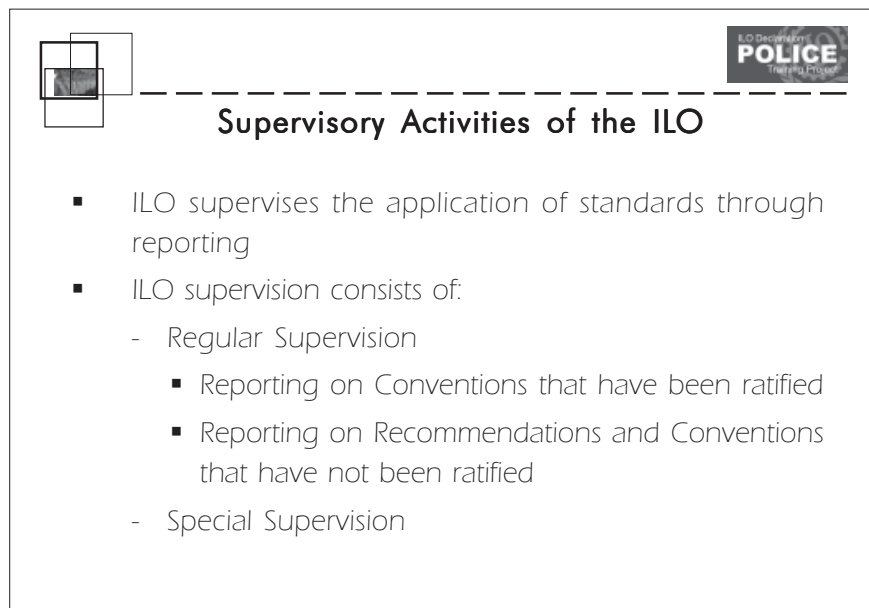
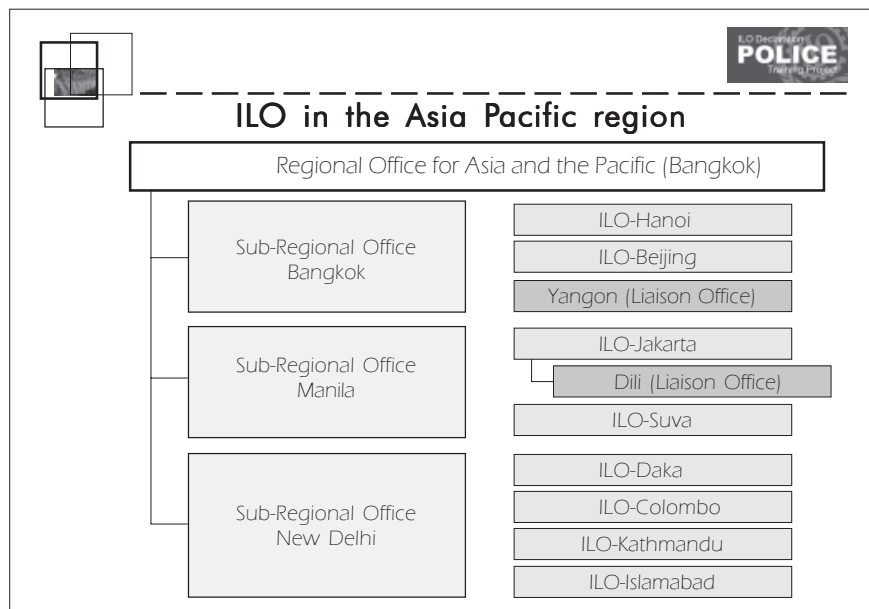
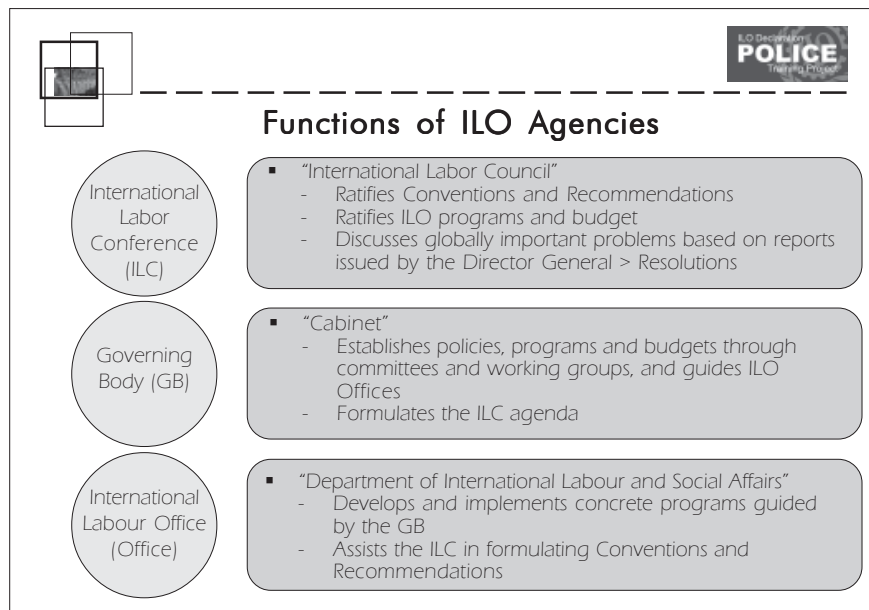


Membership of ILO Agencies: "Governing Body"



Membership of ILO Agencies: "International Labour Office"







Regular Supervision

- Reporting on Conventions that have been ratified (ILO Constitution Article 22)
- Reporting on Recommendations and Conventions that have not been ratified (Article 19)
- Submission of reports
- Two main ILO bodies are involved:
 - Committee of Experts on the Application of Conventions and Recommendations
 - Standards Committee of the International Labour Conference

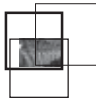


Report on a Ratified Convention



Report on a Recommendation or Convention that is not Ratified

- Constitutional obligation to report “legislation and implementation” regarding conventions that have not been ratified, including any constraints on their ratification (Article 19)
- Annually, on different instruments as ruled by the Governing Body
- Reports are checked by the Committee of Experts, which submits “General Surveys” to the Conference Committee



Special Supervision

- “Representations” by employers’ and workers’ organizations (Article 24)
- “Complaints” by Member Countries or Conference Delegations (Article 26)
- Complaints about violations of the principle of freedom of association
 - Commission on Freedom of Association of the Governing Body
 - Irrespective of whether the country concerned is bound by the Convention on Freedom of Association

REFERENCES

1. International Labour Standards: A Trade Union Training Guide, ILO/ITC, Turin, 1998.
2. www.un.org/ILO
3. ILO Information Leaflet, www.ilo.org

PART III
Training Modules

Part III
TRAINING
MODULES

MODULE 3
HUMAN RIGHTS
AND FUNDAMENTAL
PRINCIPLES AND RIGHTS
AT WORK

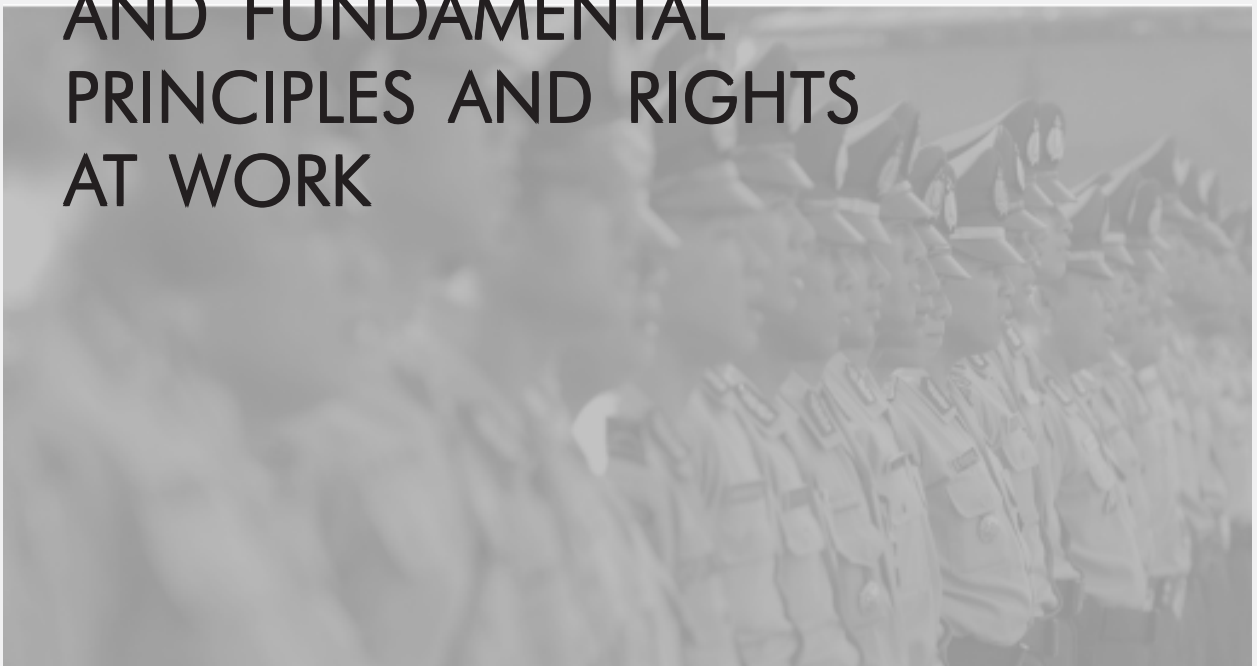


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OBJECTIVES

General:

After studying this module, the participants will know the background to the stipulation of the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, and understand the basic provisions of each of the fundamental ILO Conventions.

Specific:

The participants will:

- Know and understand the Fundamental Principles and Rights at Work;
- Know and understand the basic provisions of each of the fundamental ILO Conventions; and
- Know how these fundamental principles and rights are applied in ILO member countries.

SUGGESTED TRAINING STRATEGIES

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Presentation of general and specific objectives	Lecturer	Flip Chart	5 mins
2.	Presentation: "Human Rights and Fundamental Principles and Rights at Work"	Lecturer	Presentation 3.1	30 mins
3.	Question & answer on the subject presented	General discussion	Presentation 3.1 and Flip Chart	20 mins
4.	Presentation: "ILO Conventions 29 and 105	Lecturer	Presentation 3.2 and 3.3	40 mins
5.	Question & answer on the subject presented	General discussion	Presentation 3.2, 3.3. and Flip Chart	20 mins
6.	Presentation: "ILO Conventions 100 and 101	Lecturer 3.5	Presentation 3.4	30 mins
7.	Question & answer on the subject presented	General discussion	Presentation 3.4, 3.5. and Flip Chart	30 mins
8.	Presentation: "ILO Conventions 138 and 182	Lecturer	Presentation 3.6 3.7	30 mins
9.	Question & answer on the subject presented	General discussion	Presentation 3.6, 3.7. and Flip Chart	30 mins
10.	Case Study on Fundamental Principles and Rights at Work	Group Work	Flip Chart & Transparencies	60 mins
11.	Paparan Hasil Kerja Kelompok	Lecturer and General discussion	Flip Chart & Transparencies	60 mins
12.	Round-up	Lecturer		10 mins

BACKGROUND

Human Rights are the rights that are naturally inherent in the essence and existence of human beings. Human rights essentially touch on all aspects of human life.

Indonesia, as part of the global community, is, as explained in the previous module, obliged to respect the human rights specified in UN Universal Declaration of Human Rights and many other international human rights instruments. Even though it continues to face many social, political and economic problems, Indonesia has to prioritize this issue. While these grave problems remain unsettled, social justice for all will never be achieved.

According to the 1945 Constitution, Indonesia is a state based on law (*Rechtsstaat*) rather than on power (*Machtsstaat*). This means that the actions of the state (including here the government and other state institutions) must be based on and accountable by law. As a state of law (*Rechtsstaat*), Indonesia is obliged to guarantee and protect human rights on the basis of just legal provisions with an emphasis on: (i) the acknowledgment and protection of human rights; (ii) free and impartial courts; and (iii) the rule of law.

According to the provisions in Articles 8, 71 and 72 of Law No. 39 Year 1999 on Human Rights, the responsibility and the duty to protect, promote and uphold human rights lies largely with the government, including the executive, judicative and legislative institutions. Nevertheless, without well-established cooperation with all constituents of the community, the protection of human rights cannot be fully realized. This is because the freedoms and rights of one individual are essentially limited by freedoms and rights of other individuals; therefore, each individual has an obligation and a responsibility to respect the human rights of everyone else.

FUNDAMENTAL PRINCIPLES OF HUMAN RIGHTS

The concept of human rights is based on the equality and dignity of human beings, and on humanitarian values that are universally applicable. All of these rights essentially contain the principles of equity and prohibition of discrimination based on ethnicity, colour, language, religion, sex, nationality, political opinion, origin, ownership, birth and so on. These principles are backed up by independence and freedom of choice. As such, human rights cover all the fundamental rights of human life and include various aspects of physical security, freedom and self-actualization.

Historically, human rights can be divided into three types:¹

- 1. Rights to civil and political protection, namely:**
 - a. A human being's right to life, integrity, liberty and security, including freedom from torture and other cruel, inhumane or degrading treatment or punishment;
 - b. Rights in a court of justice;
 - c. The right to privacy;
 - d. Freedom of religion and belief, freedom of opinion and of expression, and freedom of movement;
 - e. The right to peaceful assembly and association;
 - f. The right to political participation;
 - g. Equality before the law; and
 - h. Effective protection from discrimination of any form whatsoever.

- 2. Rights to social, cultural and economic protection, namely:**
 - a. The right to work and the right to favourable work conditions;
 - b. The right to form labour unions;
 - c. The right to social security and an adequate standard of living, including adequate food, clothing and shelter;
 - d. The right to health;
 - e. The right to education; and
 - f. The right to participate in cultural life.

¹ Muladi, "Tanggapan Pendidikan Tinggi dalam Bidang Hukum Menghadapi Era Pasar Bebas: Bidang Hak Asasi Manusia." (The Response of Higher Education in the Field of Law to the Free Market Era: Human Rights). Paper presented in the Forum Komunikasi Bidang Hukum organized by the Director General of Higher Education, Bandungan, Semarang, 18-21 November 1996.

3. **Rights to development, including the right to participate in, contribute to and enjoy the results of development, and the right to self-determination.**

These three types of Human Rights are formulated in the principal human rights instruments such as the *Universal Declaration of Human Rights* (1948), *International Covenant on Civil and Political Rights* (1948), *International Covenant on Economic, Social and Cultural Rights* (1966), as well as a series of other instruments developed to meet the needs of the international community. The National Action Plan on Human Rights (RANHAM) 2004-2009 accomodates the second ratification of the main covenant in its work program.

In relation to the labour and employment sector, the rights that relate to workers clearly include not only economic, social and cultural rights, but also civil and political rights. The right to employment and all its attributes will not be fulfilled effectively if the person concerned does not receive equal treatment before the law, or if he or she is deprived of access to the public services provided by the state. This suggests that labour problems are not merely national issues; they are global.

ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

On 18 June 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. The Declaration is a universal commitment that seeks to ensure balance between economic growth and public welfare within a country and between countries in the globalization era. It sets out a social foundation that must be respected by all countries, regardless of their level of socio-economic growth.

The instrument combines the four fundamental principles and rights at work that are contained in the eight ILO Conventions known as the Fundamental ILO Conventions. The Declaration establishes the principles and rights that must be respected, disseminated and implemented by all ILO member countries. This obligation is a condition of membership and as such these fundamental conventions must be ratified and implemented by all member countries.

Through the Declaration, the ILO affirms its full commitment to assist its members to meet their obligations in the form of annual reports, global reports and technical assistance. The following is an explanation of the four fundamental principles and rights at work, and the relevant fundamental conventions.

Freedom of Association and the Right to Collective Bargaining²

Freedom of Association guarantees the right of all workers and employers to establish or join a labour union or employers' association of their own choosing. Workers and employers have the right to protect and fulfil their needs and interests at work through dialogue in free collective bargaining.

These principles are regulated in ILO Convention No. 87 Year 1948 on Freedom of Association and Protection of the Right to Organize

2 These principles are also set forth in several international human rights instruments and national legislation, such as: Article 20 Paragraph (1) of the Universal Declaration of Human Rights; Article 21 of the Covenant on Civil and Political Rights; Article 8 of the Covenant on Economic, Social and Cultural Rights; Article 28, 28E Paragraph (3) and 28D of the 4th Amendment to the 1945 Constitution; and Articles 24 and 34 of Law No. 39/1999 on Human Rights; Articles 2, 3, 6, 7, 13 Paragraph (3), and Article 18 Paragraph (1) of Law No. 9/1998 on Expressing Opinions in Public.

and ILO Convention No. 98 Year 1949 on the Right to Organize and Collective Bargaining.

ILO Convention No. 87 protects the rights of all workers and employers, without exception, to form or join a labour union or employers' association of their own free choice. Workers and employers are entitled to protection and to the fulfilment of their needs and interests at work through dialogue in free collective bargaining.

These principles are regulated in ILO Convention No. 87 (1948) on Freedom of Association and the Protection of the Right to Organize, and ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining.

ILO Convention No. 87 protects the right of all workers and employers, without exception, to form or become members of a union or employers' association of their choice without prior authorisation or permission. The Convention also protects the rights of workers and employers to draft and implement the constitutions/rules of association (AD/ART) and work programs of their organisation. Two other fundamental rights specified in this convention are the right to protection against the suspension or dissolution of the organisation, and the right to establish or join a federation or confederation and to affiliate with international organisations.

ILO Convention No. 98 protects workers against anti-union actions, such as discrimination on the basis of being a union member or steward. This convention also stipulates that unions and employers' associations should be free from intervention by other parties, as well as to be able to promote collective bargaining and make it more effective in order to establish working terms and conditions through voluntary negotiation based on good faith.

These principles of freedom of association and collective bargaining have been applied through the new three Indonesian laws on labour, namely: Law No. 21/2000 on Labour Unions; Law No. 13/ 2003 on Labour; and Law No. 2/2004 on the Settlement of Industrial Relations Disputes.

The Elimination of All Forms of Forced and Compulsory Labour³

This principle protects all individuals against forced or compulsory labour. It is based on the premise that no-one can be forced to work against their will or under threat of punishment. It also requires abolition of all forms of forced and compulsory labour. The two fundamental ILO

3 These principles on forced labour are also specified in: Article 4 of the Universal Declaration of Human Rights; Articles 7 and 8 Paragraph (20) and Article 12 of the Covenant on Civil and Political Rights; Articles 28B Paragraph (2), 28D Paragraph (2) and 28I Paragraph (4), and Article 30 Paragraph (4) of the Fourth Amendment of the 1945 Constitution (UUD 1945); Articles 3, 4, 9, 20, 27, 30, 33 and 38 Paragraph (2) of Law No. 39/1999 on Human Rights; and Articles 297, 324, 328, 333, 335 Paragraph (1) of KUHP.

Conventions governing this principle are Convention No. 29 (1930) on Forced or Compulsory Labour and Convention No. 105 (1957) on the Abolition of Forced Labour.

Convention No. 29 requires ILO member states to make concerted efforts to abolish all forms of forced or compulsory labour as soon as possible. Forced or compulsory labour is any work or service that is exacted from any person or imposed as a form of punishment and carried out by that person against his or her will. Forced labour is considered a criminal offence and offenders must be punished.

Examples of forced labour are, among others, slavery and debt bondage. Exemptions are made for compulsory military service based on Law, work that is performed as a form of community service (such as compulsory civic work for university graduates), work carried out as a result of a court ruling under the direct supervision of a government official, work exacted during emergencies (war, natural disasters, fire or floods), or work in the context of communal cooperation (working together to clean the village or safeguard the neighbourhood).

ILO member states that ratify the Convention No. 105 are obliged to take effective action to secure the full and immediate eradication of forced labour of any kind. This includes any form of forced labour used as a means or instrument of coercion or punishment against people on the basis of their political views or ideology, to mobilize workers for the purpose of economic development, to discipline workers, to punish someone for participating in a strike or as a means of imposing discrimination of any sort.

Effective Abolition of Child Labour⁴

This principle stipulates that every child must have the opportunity, physically, mentally and morally, to develop his or her potential and talent before entering the world of employment at the prescribed minimum age for admission to employment. Governments are also asked to progressively raise the minimum working age. Ideally, a child should be able to enjoy his or her childhood—a time that should be occupied not by work, but by education and self-development. The abolition of the worst forms of child labour is a key priority.

The two fundamental ILO Conventions that reflect these principles are Convention No. 138 (1973) on the Minimum Age for Admission to Employment and Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

4 These principles can also be found in Articles 4, 24, 25 and 27 of the Universal Declaration of Human Rights; Articles 7 and 8 of the Covenant on Civil and Political Rights; Articles 10 Paragraph (3) and Article 15 Paragraph (1) of the Covenant on Economic, Social and Cultural Rights; Articles 11 Paragraphs (1), 14, 31, 32 and 36 of the Convention on the Rights of the Child; Article 28B Paragraph (2), Article 28 D Paragraph (2), Article 28 I Paragraph (4), and Article 30 Paragraph (4) of the 4th Amendment of the 1945 Constitution; Articles 3, 52, 61, 64 and 65 of Law No. 39/1999 on Human Rights; and regulated also in Articles 11, 13 and 59 of Law No. 23/2002 on Child Protection; further formulated in Articles 297, 301 and 330 Paragraph (1) of the Criminal Code.

Convention No. 138 requires the member countries that ratify it to implement national policies designed ensure the effective eradication of the practice of employing children. This Convention also asks the governments of these states to progressively raise the minimum age at which a child can legally work for the sake of his or her physical and mental development.

Convention No. 182 requires the member countries that ratify it to take effective and immediate action to prohibit and eliminate the worst forms of child labour, including:

- All forms of slavery and similar practices, such as the sale and trafficking of children, debt bondage, slavery, forced/compulsory labour (including for the purposes of armed conflict);
- The exploitation, procurement or offering of children for prostitution or for the production of pornography and or pornographic performances;
- The exploitation, procurement or offering of children for the production and trafficking of illicit drugs as defined in the relevant international treaties; and
- Any work that by its nature, use of equipment or materials or by the circumstances in which it is carried out, endangers the physical, moral or intellectual health and safety of the child.

Elimination of Discrimination in the Workplace⁵

This principle governs the granting of equal opportunities and treatment to all workers in all aspects of employment or occupation in the workplace. These aspects range from training, recruitment, promotion and remuneration to working conditions. All workers must receive equal opportunities and treatment regardless of their sex, religion, ethnicity, colour, political beliefs, nationality or social status.

The fundamental ILO Conventions that cover this principle are Convention No. 100 (1951) on Equal Remuneration for Men and Women Workers for Work of Equal Value and Convention No. 111 (1958) on Discrimination in respect of Employment and Occupation.

Convention No. 100 is aimed at ensuring equal pay and social security for men and women workers for work of equal value. It covers

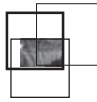
⁵ These principles are also found in Articles 2 and 23 of the Universal Declaration of Human Rights; Articles 2 and 3 of the Covenant on Civil and Political Rights; Articles 3, 6 and 7 of the Covenant on Economic, Social and Cultural Rights; Articles 1, 11 and 16 of the Convention on Elimination of All Forms of Discrimination Against Women, which has been ratified by Law No. 7/1984; Articles 5, 28B Paragraph (2), 28D Paragraph (2) and (3), 28 H Paragraph (2), 28 I Paragraph (2) and (4), Article 30 Paragraph (4) and Article 49 of the 4th Amendment to the 1945 Constitution; Articles 5, 6, 22, 23, 31, 38 Paragraph (3), Articles 45, 49 Paragraph (1) and (2) of Law No. 39/1999 on Human Rights; Articles 6, 13 and 14 of Law No. 4/1997 on Disabled Persons, and Articles 7 Paragraph (1) and 17 of Law No. 43/1999 on Fundamentals of Employment. Law No. 13/2003 on Employment also applies these principles, as seen in Articles 3, 5, 6, 11, 18, 52, 67, 80, 81, 83, 86, 88, 99, 104, 111, 153 Paragraph (1) sections c, g, and i.

the basic wage, minimum or ordinary wage, and all benefits or bonuses in cash or in kind, that are paid directly or indirectly by the employer as compensation for the work or services performed by the worker. The value of work is determined objectively by involving representatives of the three tripartite constituents. This principle can be exercised through the establishment and implementation of laws, legislation, cooperation agreements or a combination of the above.

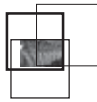
Convention No. 111 is intended to ensure equal opportunities and treatment for all citizens with respect to securing employment and reaching a position without discrimination on the basis of ethnicity, colour, nationality, sex, religion or political views. This Convention calls for the regulation of such matters through national legislation and for the revocation of discriminatory laws.

The explanation above shows that, essentially, all the rights specified in the 1998 ILO Declaration are formulated in national legislation and in various international human rights instruments. Therefore, it can be concluded that the four fundamental principles and rights are inalienable human rights for every person at work, and that they must be respected, protected and developed in order to create a conducive working environment.

PRESENTATION 3.1: HUMAN RIGHTS AND FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

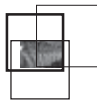


HUMAN RIGHTS AND "FUNDAMENTAL PRINCIPLES AND RIGHTS "AT WORK



HUMAN RIGHTS

- The rights that are naturally inherent in human beings
- Fundamental Principles:
 - Equality and dignity of human beings
 - Humanitarian values
 - Rights and liberty
- Main Types of Human Rights:
 - Civil and political rights
 - Economic, social and cultural rights
 - The right to personal development and self-determination



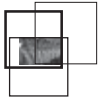
FUNDAMENTAL PRINCIPLES AND RIGHTS "AT WORK (FPRW)

- Fundamental principles and rights for workers and employers
- Prerequisite: to create decent work for all
- Main components:
 - Key principles and rights that are needed to promote and safeguard decent work for all
 - ♦ Freedom of association and the right to bargain collectively



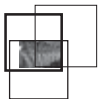
FPRW (cont'd)

- ♦ Freedom from discrimination and the right to equal opportunities
- Key principles needed to eradicate all forms of work that is not decent
 - ♦ Prohibition on forced labour and the obligation to abolish it
 - ♦ Prohibition on the worst forms of child labour and the obligation to abolish it



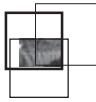
FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (FPRW) and HUMAN RIGHTS

- FPRW confers respect and protection for the fundamental rights of workers and employers at work:
 - Civil and political rights
 - Economic, social and cultural rights
 - The right to personal development
 - The right to equality and dignity



FPRW in Human Rights Instruments: UNIVERSAL DECLARATION OF HUMAN RIGHTS

- Freedom of association and collective bargaining: Article 20 (freedom to gather and associate peacefully), Article 23 (4) (the right to form and join a labour union to protect one's interests);
- Equality and non-discrimination: Preamble, Article 1, 2, Article 7, and Article 23 (2) (the right of all individuals, without exception, to receive equal remuneration for the same work);

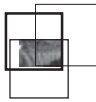


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FPRW in Human Rights Instruments: ...

- Forced labour and the worst forms of child labour: Article 4 (prohibition on slavery and trafficking of any form; prohibition on inhumane and degrading treatment); Article 23 (1) (the right to freedom of employment and to fair and favourable working conditions); Article 26 (all individuals have the right to education and free basic education, which must be compulsory).



FPRW in Human Rights Instruments: INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

- Freedom of association and collective bargaining: Article 22 (1), (2) and (3);
- Equality and non-discrimination: Preamble, Article 2, 3, and 26;
- Forced labour and the worst forms of child labour: Article 8 (prohibition on slavery and trafficking in any form; prohibition on the confinement of others in slavery; prohibition on forced and compulsory labour)



DECLARATION OF FPRW: AN INSTRUMENT OF UNIVERSAL ILO PRINCIPLES AND RIGHTS

- Background:
Social Justice? Efforts to balance economic growth and social development between countries and within a country
- Declaration is validated (June 1998) as a political commitment of all ILO member countries to promote, respect and realize the fundamental principles and rights:



cont'd



Declaration of FPRW: ...

- Freedom of association and the right to collective bargaining
- Elimination of forced labour
- Elimination of discrimination in employment and occupation
- Elimination of child labour

which are set forth in the fundamental conventions of the ILO

- by being an ILO member country, all these principles and rights must be promoted, respected and realized.



cont'd



Declaration of FPRW: ...

Measures to promote and realize FPRW:

- Annual reports
 - On ILO member countries' efforts to promote and realize the four fundamental principles and rights and the constraints they face
 - Prepared by the ILO office based on information from member countries that have not ratified.



cont'd



Declaration of FPRW: ...

- Global reports
 - On the status of one of the four fundamental principles and rights in all ILO member countries
 - Prepared by the Director General of the ILO
- Technical cooperation projects
 - The realization of the ILO's commitment to mobilize internal resources and external assistance to help member countries achieve the objectives of the FPRW Declaration



Fundamental Conventions: Defining the Content of the Fundamental Principles and Rights at Work

Fundamental Conventions:

“Conventions that contain the fundamental principles and rights at work. All member countries shall ratify these conventions.”

- Freedom of Association and the Right to Collective Bargaining (C.87 and C.98)
- Abolition of Forced Labour (C. 29 and C.105)



cont'd



Fundamental Conventions: ...

- Elimination of Discrimination in Employment and Occupation (C.100 and C.111)
- Elimination of Child Labour (C.138 and C.182)



C87: FREEDOM OF ASSOCIATION AND THE PROTECTION OF THE RIGHT TO ORGANIZE, 1948

- Summary: Protection of freedom from potential restrictions or violations by the State
- Four main principles:
 - Right of all workers and employers to join or form an organization
 - Right of the organization to determine its internal affairs



cont'd



C87: FREEDOM OF ASSOCIATION

- Right to protect the organization from suspension or dissolution
- Right to establish and join federations and confederations, and the right to affiliate with international organizations
- This Convention applies to civil servants engaged in the administration of the State



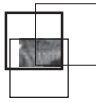
C98: Right to Organise and Collective Bargaining, 1949

- Summary: An instrument that focuses on workers' and employers' rights
- Three main principles:
 - Protection for workers against anti-union discrimination
 - Protection of workers' and employers' organizations against intervention by one or the other
 - Promotion of collective bargaining
- This Convention does not apply to civil servants engaged in the administration of the State.



C29: Forced Labour, 1930

- Summary: Stipulates the definitions of and exceptions to forced labour, and that forced labour must be subject to commensurate sanctions
- Definitions:
 - All work or services exacted from any person as a consequence of punishment AND not executed of the person's own free volition

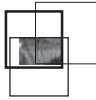


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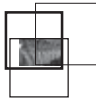
C29: Forced Labour, 1930

- Exceptions:
 - Military service, ordinary civil obligations arising from an indictment, emergency situations, simple public services
- Forced labour is a criminal offence and those who commit such offences shall be subject to strict and commensurate punishment



C105: Elimination of Forced Labour, 1957

- Summary: Stipulates certain circumstances where forced labour cannot be imposed:
 - As an instrument of political coercion or education, or
 - As a punishment for holding or expressing political views;
 - As a method of mobilizing and exploiting workers for the purposes of economic development;
 - As a means of disciplining workers;



cont'd



C105: Elimination of Forced Labour, 1957

- As a punishment for taking part in a strike;
- As a means of discriminating on racial, social, nationality or religious grounds.



C100: Equal Remuneration, 1951

- Summary: Stipulates the provision of equal remuneration for men and women for work of equal value
- Does not define what is meant by “equal value”: each country, with the approval of workers’ and employers’ organizations, determines or promotes the determination of objective methods to evaluate work, through an analysis of the work or by other procedures.



C111: Discrimination (Employment and Occupation), 1958

- Summary: Requires legal and policy measures to eliminate discrimination
- Stipulates national policies to eliminate discrimination in terms of access to work, training and working conditions, and promotes equal opportunities and treatment. Revokes discriminative legislation.



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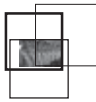
C111: Discrimination ...

- Discrimination is “every difference, exception or selection based on racial, colour, sex, religion, political views, nationality or social origins (or other grounds stipulated by the state concerned) that leads to the reduction or loss of equal opportunities and treatment in employment or occupation.”



C138: Minimum Age, 1973

- Summary: Requires the determination of effective policies to abolish child labour and principles for the stipulation of the minimum age
- Member countries have to issue national policies to eliminate child labour and raise the minimum age for work



cont'd



C138: Minimum Age, 1973

- Principles:
 - The minimum age must not be lower than age at which compulsory basic education is completed.
 - Under no circumstances shall it be lower than 15 years (where educational facilities and economic conditions are insufficiently developed, the minimum age may be 14)
 - Dangerous work > 18 years (or 16 where educational facilities and economic conditions are insufficiently developed)
 - Light work > from 13 or 12 years (where educational facilities and economic conditions are insufficiently developed) to 15.



C182: Worst Forms of Child Labour

- Summary: Requires immediate and effective measures to prohibit and eliminate the worst forms of child labour
- Requires “immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labour”
 - All forms of slavery or similar practices, such as child trafficking, debt bondage, and forced or compulsory labour;
 - Forced or compulsory employment of children in armed conflict



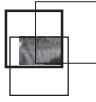
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C182: Worst Forms of Child Labour

- Exploitation of children for prostitution and pornographic products or performances;
- Exploiting or procuring children for illegal activities, especially the production and sale of illicit drugs; and
- Work that endangers health, safety and morality of children.

PRESENTATION 3.2: ILO CONVENTIONS 29 AND 105

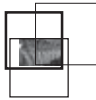


**FREEDOM FROM FORCED LABOR
C. 29 AND C. 105**



FORCED LABOR CONVENTION, 1930 (NO. 29)

- RATIFIED BY: 163 OF 177 MEMBER COUNTRIES
- RATIFIED IN INDONESIA ON 12 JUNE 1950



FORCED LABOR

“ANY DIFFICULT WORK OR SERVICE EXACTED FROM ANYONE UNDER THREAT OF PUNISHMENT AND FOR WHICH THE PERSON CONCERNED HAS NOT OFFERED HIM OR HERSELF WILLINGLY”

Commensurate Punishment Law Enforcement



EXEMPTIONS (1)

- Compulsory Military Service for Specific Military Work
- Cannot be Applied to Volunteer or Career Military Personnel
- The Work must be of a Purely Military Nature, not for Development Purposes



EXEMPTIONS (2)

Normal Civic Obligations

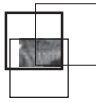
Example: Jury Duty



EXEMPTIONS (3)

All work exacted as a Consequence of a Court Conviction

- Under the Supervision and Control of a Public Authority
- Person is not hired or placed under a Private Company



EXEMPTIONS (4)

EMERGENCY SITUATIONS

Any circumstance that endangers the existence or well-being of all or part of the population

Example: *fire, flood, earthquake, accute epidemic disease, invasion by animal, insect or vegetable pests*



EXEMPTIONS (5)

PUBLIC SERVICE

- In the direct interest of the community by members of the community
 - Members of the community have been informed about the work to be done

Example: *irrigation for the community, road maintenance for the community, construction of small building (school) for the community*



CONVENTION ON THE ABOLITION OF FORCED LABOR, 1957 (NO. 105)

- RATIFIED BY: 161 OF 177 MEMBER COUNTRIES
- RATIFIED BY INDONESIA ON 7 JULY 1999



OBJECTIVE (1)

FORCED LABOR FOR POLITICAL PURPOSES

- As a means of political coercion or education or as a punishment for holding or expressing political views or ideology opposed to the existing political, social or economic system
- Interacts with rights such as freedom of expression and right to assembly



OBJECTIVE (1)

- Does not protect political violence or terrorism
- Does not apply to restrictions on the right to freedom of expression that are essential to maintaining the democratic values of the community, such as slander, racial hatred, public protests



(cont'd)

OBJECTIVE (2)

As a means of mobilizing and using labour for the purposes of Economic Development

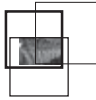
- Figures are significant
- Frequently stipulated as a fixed period of civic service for the community based on age and education (Myanmar)



OBJECTIVE (3)

As a means of labour discipline

- To ensure action is carried out (physical restrictions in a vessel)
- Penalties for disciplinary violations (key services)



OBJECTIVE (4)

As a punishment for involvement in a strike

- Illegal strikes (key services, conciliation period)

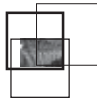


OBJECTIVE (5)

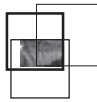
As a means of racial, social, national or religious discrimination

- Rarely happens, there are no new cases of this

PRESENTATION 3.3: ILO CONVENTIONS 100 AND 111

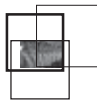


FREEDOM FROM DISCRIMINATION C. 100 AND C. 111



CONVENTION ON DISCRIMINATION (EMPLOYMENT AND OCCUPATION), 1958 (NO. 111)

- Ratified by: 160 of 177 Member Countries
- Ratified by Indonesia on 7 July 1999





DISCRIMINATION

- Any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, nation or social origin, which impairs or nullifies equality of opportunity or treatment in employment or occupation
- Any other such distinction that has the same effect, as determined after consultation with the tripartite constituents (e.g. age)



COVER

- Includes freelance workers
- Includes non-citizens (among themselves)
- Does not include discrimination between citizens and non-citizens





IMPACT

NULLIFICATION OR REDUCTION OF EQUAL OPPORTUNITIES AND TREATMENT

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graph TD; A[NULLIFICATION OR REDUCTION OF EQUAL OPPORTUNITIES AND TREATMENT] --> B[DIRECT DISCRIMINATION]; A --> C[INDIRECT DISCRIMINATION];
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DIRECT DISCRIMINATION

INDIRECT DISCRIMINATION



INDIRECT DISCRIMINATION

- Distinctions made on one criteria, which in practice can affect many people, although it not related to the nature or requirements of the work

For example, *physical distinctions such as height which mean that only a certain sex is eligible*



EMPLOYMENT AND OCCUPATION

- Access to employment
- Access to vocational and in-house training
- Promotion based on experience
- Guaranteed term of employment
- Working conditions
- Including equal remuneration for work of equal value



EXEMPTIONS (1)

- Distinctions made on the basis of the nature and requirements of the work
- Objective distinctions made on the basis of the fundamental demands of the work

Example: Political views for certain senior administrative positions, religious views for priests, sex for considerations of authenticity, beauty or tradition in artistic performance



EXEMPTIONS (2)

- Individuals who are formally suspected of being involved with or active in activities detrimental to national security
- Provided that they have the right of appeal in a higher court
- Membership of any group whose teachings are aimed at achieving peaceful change is not sufficient grounds for exemption



EXEMPTIONS (3)

- Specific measures for protection are specified in other ilo instruments, such as protection for pregnant women from night work
- Positive action to restore the balance



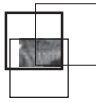
POSITIVE ACTION

- Temporary specific steps to eliminate the direct and indirect impact of previous discrimination in order to create real equal opportunities



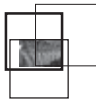
CONVENTION ON EQUAL REMUNERATION FOR MEN AND WOMEN WORKERS FOR WORK OF EQUAL VALUE, 1951 (NO. 100)

- Ratified by 161 of 177 Member Countries
- Ratified by Indonesia on 11 August 1958



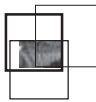
SCOPE

- Applies to all workers
- No exemption based on economic activity or sector



REMUNERATION

- Includes the minimum, basic wage or ordinary wage
- Additional emoluments in any form (bonus, allowance)
- Paid directly or indirectly
- Paid in cash or in kind
- Arising out of the work performed by the worker



EQUAL REMUNERATION

Refers to the rate of remuneration established without discrimination based on sex

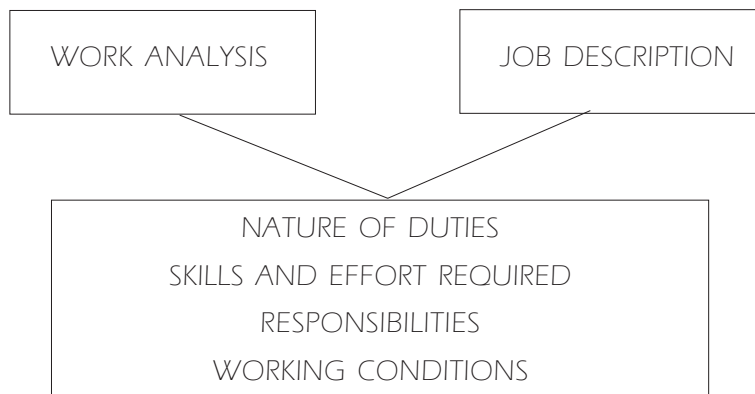


OBJECTIVE APPRAISAL (1)

- Formal procedure to establish the remuneration based on an analysis of the work
- Instruments legally recognized or established for the purpose of determining remuneration
- Collective agreement



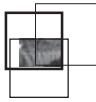
OBJECTIVE APPRAISAL (1)



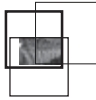
EXEMPTION

Differential rates of remuneration between workers due to differences in the work to be performed, based on an objective valuation, without regard to sex

PRESENTATION 3.4: ILO CONVENTIONS 138 AND 182



ELIMINATION OF CHILD LABOR C. 138 AND C. 182



CONVENTION ON MINIMUM AGE, 1973 (NO. 138)

- Ratified by 138 Member Countries
- Ratified by Indonesia on 7 July 1999



OBJECTIVE

To have national policies designed to guarantee the elimination of child labor effectively and to progressively raise the minimum age for admission to employment to a level consistent with their full physical and mental development as young people



SCOPE

- Irrespective of whether it is formal or informal
- Exemptions for certain sectors (minimum list)
- General exemptions:
 - Work done at school/training institutions for vocational, technical or general education purposes
 - For specific purposes such as artistic performances (individual licence)



MINIMUM AGE (GENERAL)

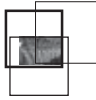
- Not less than the age of completion of compulsory education, and in any case not less than 15 years
- A minimum age of 14 can be specified if economic conditions and educational facilities in the country concerned are insufficiently developed



MINIMUM AGE (LIGHT WORK)

- Light work is allowed for children aged 13 to 15 (or 12 to 14)
- Not harmful to the child's health and development
- Does not disrupt the child's education

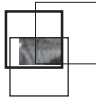
Example: as a courier, newspaper delivery person; depends on the situation



MINIMUM AGE (Hazardous Work)

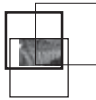
- 18 years for work which, due to its nature or the environment in which the work is performed endangers the health, safety or morals of young people
- 16 years of age with specific conditions

Example: working with hazardous substances or processes, underground work



CONVENTION ON THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR, 1999 (no. 182)

- Ratified by 150 Countries
- Ratified by Indonesia on 28 March 2000



OBJECTIVE

To encourage countries to take immediate and effective action to guarantee the prohibition and elimination of the worst forms of child labour



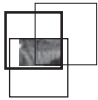
SCOPE

- All people under 18 years of age
 - complements C. 138 as a lex specialis instrument



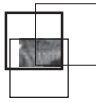
WORST FORMS OF CHILD LABOUR

- All forms of slavery or similar practices (child trafficking, debt bondage, forced recruitment for armed conflict)
- Exploiting, procuring or offering children for prostitution, for the production of pornography, or for pornographic performances



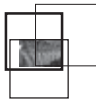
WORST FORMS OF CHILD LABOUR

- Exploiting, procuring or offering children for illicit activities, in particular for the production and trafficking of drugs
- Work which, by its nature or the circumstances in which it is performed, may endanger the health, safety or morals of children



HAZARDOUS WORK (R. 190)

- Exposes children to physical, psychological or sexual abuse
- Work underground, under water, at dangerous heights or in confined spaces
- Work with dangerous machinery, equipment and tools, or handling or transporting heavy loads.



HAZARDOUS WORK (R. 190)

- Work in an unhealthy environment (hazardous substances, processes, temperatures, noise levels or vibrations)
- Work under difficult conditions (long working hours, night shifts)



ACTION

- Programs of action
- Penalties or other sanctions
- Rehabilitation programs
- Access to free education
- Target: children at risk
(girls, child domestic workers)

CASE STUDY MATERIALS

Sample Questions and Tasks:

Questions:

1. In this case, is there violation of the fundamental principles and rights at work?
 - a. If not, give your arguments.
 - b. If yes, give your arguments and specify which principles and rights are violated by referring to the articles of the relevant ILO Convention.
2. In the event of a violation of the principles and rights at work:
 - a. What ILO supervisory procedures can be used by the tripartite constituents (government, workers/unions, and employers/employers' associations) in the settlement of the case?
 - b. What can the ILO do in this case?

Tasks:

1. In your group, decide who will be:
 - a. the discussion leader;
 - b. the note taker; and
 - c. the presenter.
2. Make a summary of the case your group is working on.
3. Write down your group's answers and arguments on the transparencies provided.

Sample Cases

Case 1: Retirement Age of Airline Employees

The provisions of a Collective Labour Agreement (CLA) between a national airline and its employees specify that the retirement age for female cabin crew is 46, whereas for men it is 56. Further, the CLA also provides that the retirement age limit for women pilots is 50, whereas for male pilots it is 60.

This prompted 10 female cabin crew members of the airline to fight for their rights by establishing a Female Cabin Crew Association. They are demanding that the national airline put an end to this kind of practice.

Case 2: Labour Union at PT ATF

The efforts of workers at PT ATF to establish a labour union seemed to be successful when they were eventually able to hold a general meeting to declare the establishment of the organisation and elect their chairman in a field on the outskirts of the town, close to the rented house of one of the workers. They did this because none of company's facilities could be used for such a purpose.

"We have pioneered establishment of a workers' union in this company for 6 years, but we always failed. At that time, the Company felt that unions had communist connotations," said the Secretary of the ATF Labour Union. "However, we never gave up; we met at one boarding house or another, and then established ATF Employees Association," he continued.

That meeting in the open field—which went from morning to evening—was attended by at least 400 ATF workers out of a total of 600, and successfully elected a General Chairperson of the ATF Labour Union. "Since then, the company has intimidated and threatened to dismiss the stewards of our organisation. Our General Chairperson was not allowed to speak to other workers. Every morning and evening he was called by the management and questioned," explained one of union stewards.

Subsequently, the Company formed a rival workers' union; however, after six months, the company-established organisation, called the "ATF Committee", was dissolved in accordance with the demands of workers who belonged to the ATF Labour Union. After a long struggle by members of the ATF Labour Union involving protests and strikes, the company finally accepted the existence of the ATF Labour Union, and it was even provided with office facilities, complete with a computer.

Case 3: Garment Workers

A number of child workers were allegedly imprisoned by a couple who owned a company.

These children worked 12 hours a day (from 07.00 to 19.00). They were promised a wage that was far lower than the minimum wage in the city where the company was located. However, after working for between two to six months, the employer had not paid their wages and forbade them to leave the company premises. The case was successfully uncovered by the Intelligence Unit of the local police. The husband and wife are now in custody.

This case first came to light as a result of a report by one of the workers, DH (15 years old), who managed to escape from where he was being held by the garment employer and reported to the police.

Another worker, AI (11 years old), was initially offered a job by a fellow villager. The offer was accepted by both AI's parents, who were unemployed. She was then taken to the suspect's house and put to work in their home industry. "They promised that the job would not be hard. But, in reality, we had to work all day and were not allowed to go outside the house," recalled the oldest of two siblings, who only graduated from elementary school.

A similar story was told by MT (14). According to this child, who worked for just two months, the employer did provide food and shelter, but it was far from adequate. "There were six people to one room. The girls and boys were separated. We slept on boards covered with a mat, and used rolled-up plastic bags for a pillow," said MT, who claimed not to have received any wages.

MT went on to relate that the workers had to wake up at 05.00 each morning to help with the housework before going to work making embroidered fabric. In the morning, before work, they were given a breakfast of boiled noodles. For lunch and dinner, they got salted fish and spinach or beans.

After working hours they were not allowed to go outside the house. "They deliberately padlocked the doors of the two-storey house", said NN (15) who also worked there. Moreover, the workers were not allowed to go back to their home villages before working there for a year.

Case 4: Karaoke Waitress

On 3 June 2004, a woman named TS (18 years old) was offered a job by PW as a café waitress on a tourist island. On 7 June, after staying for three days in PW's house, TS, together with another woman, went with PW to the place where they would be working.

They were placed in a Karaoke bar in the southern part of the small island. After staying there overnight, TS and her friend were told by an employee that they had both been sold for 200 dollars and that was now the debt they would have to pay off to the Karaoke bar. They were both contracted for five months.

TS was shocked. She and the other girl, who was about the same age, were put to work as sex workers in the Karaoke bar. TS tried to run away with one of her friends, but they were apprehended by Karaoke bar's security staff. They were both confined in a small room without a light and were not given any food for a whole day.

After working for six weeks and serving at least 13 men, TS discovered that she had been infected with a sexually transmitted disease. She was given 150 dollars by the Karaoke management to

seek medical assistance from a designated doctor. This money was also deemed as a further debt to the Karaoke bar.

On 31 July 2004, a social worker with an NGO on the island managed to rescue TS and settled the case out of court by signing a statement that contained the following:

1. The Karaoke Bar Management voluntarily and sincerely releases the victim from her work and surrenders the victim to the NGO.
2. The Management will not demand repayment of the victim's expenses or any of the victim's "debts" amounting to 350 dollars.

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2. Universal Declaration of Human Rights
3. International Covenant on Civil and Political Rights
4. International Covenant on Economic, Cultural and Social Rights
5. ILO Convention No. 87 (1948) on Freedom of Association and the Protection of the Right to Organize
6. ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining
7. ILO Convention No. 29 (1930) on Forced and Compulsory Labour
8. ILO Convention No. 105 (1957) on the Abolition of Forced Labour
9. ILO Convention No. 138 (1973) on Minimum Age for Admission to Employment
10. ILO Convention No. 182 (1999) on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
11. ILO Convention No. 100 (1951) on Equal Remuneration for Men and Women Workers for Work of Equal Value
12. ILO Convention No. 111 (1958) on Discrimination in respect of Employment and Occupation

PART III
Training Modules

Part III
**TRAINING
MODULES**

MODUL 4
**PRINCIPLES OF FREEDOM
OF ASSOCIATION AND
COLLECTIVE BARGAINING**

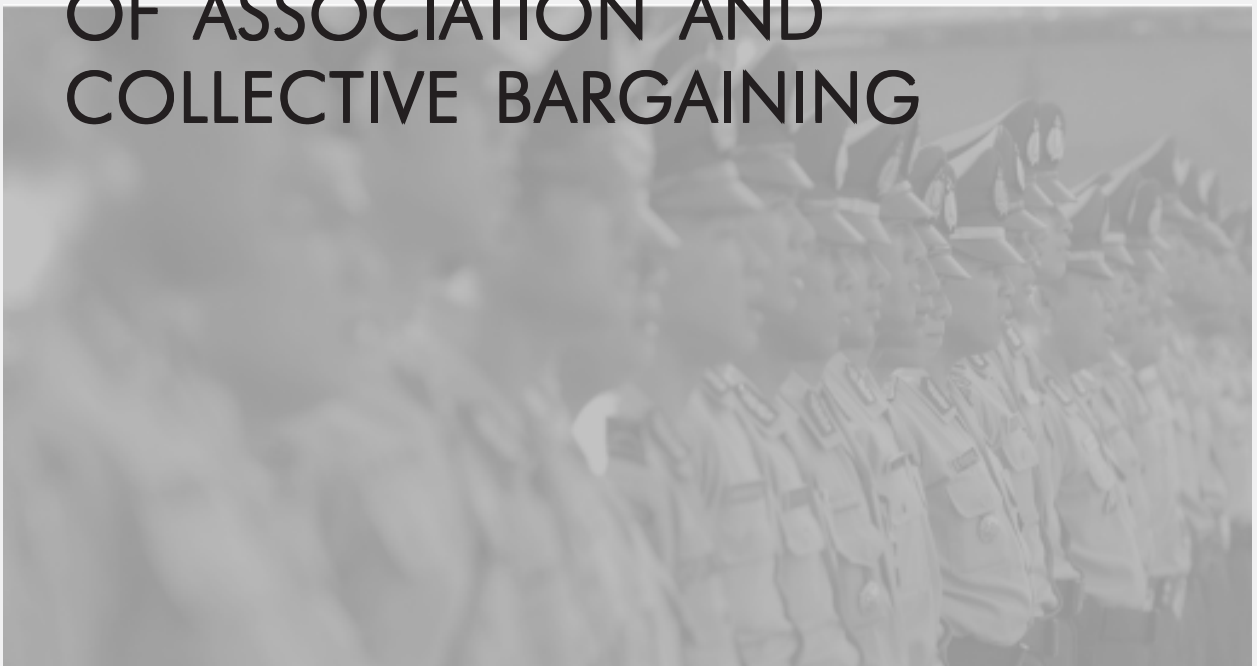


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OBJECTIVES

General

After studying this module, the participants will understand the main principles of the ILO Convention on Freedom of Association and the Right to Collective Bargaining, including the principles concerning the right to strike and company lockout.

Specific

The participants will:

- Know and understand the main principles of freedom of association and the right to collective bargaining for employees and employers;
- Know and understand the basis for the implementation of strikes and lockouts;
- Know and understand the basis for the implementation of collective bargaining;
- Understand the bipartite cooperation institution as an internal mechanism for employees and employers; and
- Understand the role of the police in the exercise of these rights.

SUGGESTED TRAINING STRATEGY

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Presentation of general and special objectives	Lecture	Flip Chart	5 mins
2.	Presentation: "Freedom of Association and Collective Bargaining"	Lecture	Presentation 4.1	60 mins
3.	Case Study on Freedom of Association and Collective Bargaining	Group Work	Flip Chart and Transparencies	50 mins
4.	Paparan hasil kerja kelompok	Lecture and general discussion	Group Presentations	60 mins
5.	Round-up	Lecture		10 mins

FREEDOM OF ASSOCIATION

Freedom of association guarantees the rights of workers and employers to assemble, and to establish and run their organisations as a locus for cooperation and negotiation. The principle of freedom of association has been established as a fundamental principle and is specified in three key ILO documents, namely: the Preamble to the ILO Constitution (1919), the 1944 Philadelphia Declaration and the ILO Declaration on Fundamental Principles and Rights at Work (1998).

As of January 2004, 142 ILO member countries had ratified ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organise.² This means that 80% of all 177 ILO member countries have ratified this Convention, affirming the acknowledgment of this principle as a universal principle.

Fundamental Principles

The fundamental principles of freedom of association include:

Freedom of Association and Civil Liberties

The relationship between the rights of workers and employers to associate and civil liberties has been recognized since the ratification of the Philadelphia Declaration in 1944. In principle, freedom of association for workers and employers will only be effectively achieved if the civil and political freedoms as specified in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other international instruments is genuinely acknowledged and protected.³

The right to freedom of association does not stand alone. The International Labour Conference of 1970 expressly stated that the fundamental freedoms that are crucial for realization of freedom of

“The fundamental principle concerning freedom of association and the right to collective bargaining is a reflection of human dignity.”

(Juan Somavia, Director General ILO, 2004)¹

1 Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Organising for Social Justice, ILO Geneva, 2004, para. 2, p. 1.

2 Ibid, p. 22.

3 Freedom of Association, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth (revised) Edition, ILO Geneva, 1996, para. 33, p. 13.

association are:

1. The right to liberty and security of person, and freedom from arbitrary arrest and detention;
2. Freedom of expression and opinion, particularly the freedom to hold opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers;
3. Freedom to assemble;
4. The right to be adjudged fairly by an independent and impartial tribunal; and
5. The right to protection of the property of a labour union.⁴

The Right and Freedom of Workers and Employers, Without Distinction, to Establish or Join a Labour Union or Employers' Organisation of their Own Choosing, Without Previous Authorisation

Workers and employers are entitled to establish and join the labour union or employers' association of their choice voluntarily, regardless of race, nationality, sex, colour, age, social status or political opinions. According to the provisions in Article 9 of Convention No. 87, exceptions can be made in the case of the armed forces, police and senior civil servants.

This means that member countries, through their national laws, can determine whether these rights will be extended to members of the armed forces and the police. Senior civil servants here are the public officials who have the managerial responsibility and authority to make decisions on behalf of the state.⁵

Article 2 of Convention No. 87 guarantees the right of workers and employers to establish or join an organisation without prior authorisation from the government. In this case, it is left to the discretion of each government to issue provisions on formalities and provisions that guarantee the implementation of the functions of such organisations, provided that they do not impede the exercise of the freedom to associate.

Provisions on the obligation to submit the constitution or articles of association, registration or listing of a union or employers' association, for example, do not violate the principle of freedom of association provided that such matters are not a pre-requisite for the establishment or operation of the organisation and do not give rise to a discretionary power for the government to reject the establishment of the organisation concerned. To provide protection against this kind of administrative policy, the existing national provisions must give workers and employers the opportunity to file legal claim with an independent and impartial body.⁶

4 Freedom of Association and Collective Bargaining, International Labour Conference 81st Session, 1994, ILO, Geneva, 1994, para. 25, p. 14.

5 Ibid, Para. 57, p. 28.

6 Ibid, Para. 68-78, p. 34-37.

Inherent in the right of workers and employers to establish or join a union or employers' association of their own choosing is the freedom to determine the structure and composition of the organisation, to establish one or more organisations in the company, occupation or branch of activity, to establish a federation or confederation, and to affiliate with international organisations.

For that purpose, national regulations must guarantee the pluralism of unions and employers' organisations, and ensure that the organisations concerned are free to unite at their own discretion. Governments can stipulate a minimum number of members for the establishment of a union or employers' organisation. Setting the minimum too high, however, may be deemed a violation of the provisions of Article 2, ILO Convention No. 87.⁷

The Right of the Organisation to Function Freely

So that they can function properly, unions and employers' organisations are entitled to: (i) draw up their constitutions and rules of association; (ii) elect stewards or representatives according to their own provisions and procedures; and (iii) organise the administration, programmes and activities of their organisation without intervention from the government. All these rights are affirmed in Article 3 of ILO Convention No. 87.

Nevertheless, the Convention also affirms that, in exercising the rights above, unions and employers' organisations must be subject to the prevailing law of the land. This is specified in Article 8, which states that national law must not be developed or implemented so as to impair the principle of freedom of association as specified in Convention No. 87.

The Suspension and Dissolution of the Organisation

A union or employers' organisation can only be suspended or dissolved voluntarily by the organisation's stewards pursuant either to the provisions on the minimum number of members of the organisation—as reasonably determined by the law of the land⁸—or to a court ruling. The suspension or dissolution of a union or employers' organisation by the government constitutes a major violation of the principle of freedom of association.

If an organisation is dissolved, any remaining assets must be used in a manner consistent with the original purpose for which they were bought. In this case, the assets can be distributed among the former

7 Ibid, para. 79-83, p. 38-39.

8 Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth (revised) edition, ILO Geneva, 1996, para 660, p.135.

members or to other organisations that are pursuing the same objectives as the dissolved organisation.⁹

The Role of the Police

From the description above, we can conclude that unions and employers' associations must be free from interference by other parties in the following matters: (i) the exercise of the right to freedom of association; (ii) the process of establishing and affiliating the organisation; (iii) membership; (iv) the organisation and implementation of their programmes; and (v) administration. This includes freedom from intervention by the police, unless the exercise of these rights threatens or adversely affects public safety and order. Until this happens, the police cannot, under any circumstances, interfere with the exercise of the right to freedom of association.

⁹ Freedom of Association and Collective Bargaining, International Labour Conference 81st Session, 1994, ILO, Geneva, 1994, Para 188, p. 82.

COLLECTIVE BARGAINING

ILO Convention No. 98 (1949) on the Right to Organise and Collective Bargaining essentially provides workers and unions the right to receive protection against acts of anti-union discrimination and acts of interference. This Convention also protects workers' and employers' right to engage in voluntary collective bargaining with a view to determining their terms and conditions of employment by means of collective agreements.

Collective bargaining is an activity or process that is aimed at producing a Collective Agreement.¹⁰ As specified in Article 2 of ILO Convention No. 154, 1981 on Collective Bargaining, the definition of collective bargaining is: "All negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for (a) determining working conditions and terms of employment, (b) regulating relations between employers and workers,¹¹ and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations."

10 Paragraph 2 of ILO Recommendation No. 91 1951, on Collective Agreements, defines a Collective Agreement as follows: "All agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of workers duly elected and authorised by them in accordance with national laws and regulations, on the other."

Compare this with the definition of consultation, which is broader in scope, and covers the following:

1. The collective interests of workers and employers;
2. A joint investigation aimed at resolving the problems in accordance with the collective agreement; and
3. The possibility for a public authority to receive opinions, advice and assistance from worker's and employers' organisations, in respect of establishing and enforcing statutory regulations related to their interests, for example the establishment of national agencies, or the planning and execution of economic and social development.

11 "Relations between employers and workers" is broadly interpreted to include matters that concern working conditions. The ILO advisory board, on the other hand, allows for the exclusion of matters that can only be decided by the employer— as part of the company management—such as job assignments and promotion. In addition, the inclusion of certain clauses that relate to public order, such as discriminatory clauses, clauses on guarantees for certain workers' organisations, and other clauses that are contradictory to the minimum protection standards in the law, is prohibited.

The parties to collective bargaining are employers or employers' associations and organisations or representatives of the workers, including union federations and confederations. Worker's representatives can only bargain collectively in the absence of a union. The independence of workers' organisations is reaffirmed. As such, the drafting of the constitution or rules of association and other internal regulations and the organisation of their activities must be free from various forms of interference on the part of the employer, other workers' organisations or the government.

In general, the outcome of the collective bargaining—the collective agreement—is binding upon all the signatory parties. The terms and conditions of employment and relations created between the two parties are generally much more favourable than those stipulated by national law. Even in the event of a lockout, the obligations set forth in the collective agreement must still be fulfilled.

Fundamental Principles

Some of the fundamental principles of the right to organise and bargain collectively are:

Protection Against Anti-Union Discrimination

Workers need to enjoy adequate protection against discriminatory anti-union acts, given that this is a key aspect of the right to organise. Such protection must be given to workers throughout the period of employment, from the time of recruitment until the relationship is terminated. According to this principle, a worker may not be admitted to employment, dismissed or otherwise penalised by reason of: (i) the condition of membership or resignation from certain workers' organisations and (ii) participation in union activities outside working hours or, with the consent of the employer, within working hours.¹²

Workers' and employers' organisations also need adequate protection against interference by each other or by each other's agents or members in their establishment, functioning or administration.¹³ Interference here means all acts that are designed, directly or indirectly, to dominate the process of establishment or the activities of a workers' organisation. Material or other support that is aimed at controlling a union is also deemed to be interference.¹⁴

Free and Voluntary Bargaining

To be effective, collective bargaining must be entered into voluntarily by the parties concerned. Because this voluntary nature is a key aspect of exercising the right to organise, governments must take

¹² Article 1, Paragraph 2, ILO Convention No. 98 (1949).

¹³ Article 2, Paragraph 1, ILO Convention No. 98 (1949).

¹⁴ Article 2, Paragraph 2, ILO Convention No. 98 (1949).

measures to avoid interfering. If a government forces collective bargaining on a certain organisation, the fundamental nature of collective bargaining is automatically compromised. Governments must not impose penalties to ensure that negotiations take place.

Generally speaking, then, the imposition of compulsory arbitration contradicts the principle of voluntary collective bargaining. Nevertheless, it can be imposed in circumstances that involve: (i) employees of agencies that provide essential public services¹⁵; (ii) senior civil servants who are responsible for the administration of the state; (iii) a “deadlock” in bargaining that supposedly cannot be solved without the government’s initiative; and (iv) in an acute national crisis.¹⁶

The Most Representative Organisation

In principle, the workers’ organisation that best represents the workers of a company in collective bargaining is the union with largest number of members.¹⁷ This principle is applicable to collective bargaining at industrial, regional and national levels.

The employer’s acknowledgment of the most representative union in the company forms the basis for the collective bargaining procedure. To prevent abuse or partiality, decisions must be made based on objective criteria that have been prescribed and agreed upon. The government, in this case, is entitled to conduct objective verification on the claim of a union to be the most representative organisation if such claim is allegedly incorrect.

In the absence of a union that represents a majority of the workers in a bargaining unit (company, industry and so on), or the workers have no union, negotiations can still be conducted by the workers’ representatives, elected legally according to national law. In Indonesia, according to provision in Law No. 13/2003 on Labour, the membership of a union that represents workers in collective bargaining must comprise more than 50% of all the workers in the company in question. If that figure cannot be reached, the union can nevertheless engage in collective bargaining provided that it has the support of more than 50% of the workforce, obtained through a vote. If the required number of votes is still not reached, voting can be repeated after six months.¹⁸

15 In the strict sense of the term, essential public services are any services which, if their provision is obstructed, could jeopardize the lives, health and safety of part or all of a population.

16 Fundamental Rights at Work and International Labour Standards, ILO Geneva, 2003, p. 29-30.

17 When a certain union has been elected by a majority vote, based on the exclusivity doctrine, that union becomes the sole bargaining agent that will defend the interests of the workers. This means that no other union or individual workers have the right to conduct other negotiations with the employer. The power of exclusivity gives the union the right to pursue the interests of the workers both wholly and individually. See Wayne N. Outten et al., *The Rights of Employers and Union Members* (US: Southern Illinois University Press, 1994), p. 379.

18 Law No. 13/2003 on Employment, Article 119, paragraphs (2) and (3).

The Protection of Certain Rights of Minority Workers' Unions

Although the “most representative organisation” system is applied in collective bargaining, the rights and interests of members of minority unions must not be disregarded, nor must their functions be impeded.¹⁹ Minority unions are at least entitled to lodge complaints or grievances on behalf of their members and to represent their members in individual cases. Before collective bargaining takes place, the majority union is urged to consult with minority workers' unions to ensure that their interests are accommodated in the bargaining.

Bargaining in Good Faith

This means that, in the bargaining process, both employers and unions equally make every effort to reach an agreement through constructive and honest bargaining by avoiding any unnecessary postponement of the negotiations. This kind of bargaining can build confidence and create harmonious and productive relations between the two parties.

The Role of the Police

By definition, collective bargaining is an activity or process with the purpose of reaching a collective agreement. A collective agreement is an agreement entered into by a union or workers' representatives and an employer or employers' association. It can be concluded, therefore, that the police cannot interfere in any way with the exercise of the right to bargain collectively. The police are called upon to play a role only in the event of negative consequences that occur as a result of the failure of collective bargaining, which pose a genuine threat to public order and security.

19. Another doctrine exists, namely the obligation to be a fair-minded representative, where a certain union holding the exclusive right to bargain must exercise such right fairly, as a proxy. Principles such as loyalty, honesty and good faith need to be taken into consideration. The bargaining agent should be able to exercise the right subject to the discretionary authority of the national regulations or any existing internal agreements, on behalf of and for the benefit of “all” workers (including individual workers who are not members of the union concerned or are members of another union in the company—if any) without discrimination of any kind, fairly, impartially and in good faith. *Ibid*, p. 400.

THE RIGHT TO STRIKE AND LOCKOUT

The right to strike has never been specifically regulated in international legal instruments such as the ILO conventions and recommendations. Nevertheless, there are a number of ILO conventions, recommendations and resolutions that incidentally specify and recognize the existence and the exercise of the right to strike in member countries. Convention No. 105 (1957) on the Abolition of Forced Employment prohibits any forced or compulsory labour as a means of punishing workers for participating in a strike action. ILO Recommendation No. 92 (1951) on Voluntary Conciliation and Arbitration states that none of the provisions may be interpreted as limiting the right to strike in any way. The Resolution on the Elimination of Anti-Union Laws in ILO Member Countries that was adopted in 1957 contains recommendations on the enforcement of laws that guarantee the effective and unlimited exercise of union rights, including the right to strike. Further, the 1970 Resolution concerning the Rights of Unions and their Relationship with Civil Liberties recommends that government bodies fully and universally recognize the rights of unions in the broadest sense, particularly concerning the right to strike.²⁰

Further, ILO Convention No. 87 stipulates the “right” of unions and employers’ associations to formulate programmes and organise their administration and activities,²¹ for the purpose of defending and furthering their interests²² (strikes and lockouts are included in these activities).

The Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations state that the right to strike is a fundamental right of workers and their organisations provided that such right is exercised peacefully to promote and defend their economic and social interests.²³ Both committees have also specified the limits on the definition and implementation of this right.

20 See Bernard Gernigon et al., ILO Principles Concerning the Right to Strike (International Labor Office, Indonesia, 2000), p. 7-8.

21 Article 3, Convention No. 87 Year 1948.

22 Article 10, Convention No. 87 Year 1948.

23 See Freedom of Association, op. cit., Para 473-475, p. 101.

While various constitutions and international instruments acknowledge the existence of the right to strike, the right or freedom to lockout has not been as widely discussed or recognized.²⁴ Nevertheless, in Article 146 of Law No. 13/2003 on Labour, lockout is recognized as the fundamental right of the employer to prevent workers, in part or in their entirety, from doing their work as a result of a breakdown in negotiations.

Employers may impose a lockout provided that it is done in accordance with the provisions of the prevailing laws, and not in retaliation for the normative demands of the workers or the union. Exceptions apply to companies that render essential services.

The Right to Strike

Definition

A strike, as defined by the ILO Committee of Experts, is:

“any work stoppage, however brief and limited, can be considered as a strike. Other actions to stop the work, such as downing tools, sit-down strikes, go-slow strikes and so on are categorized as strikes only if such actions are conducted peacefully.”

In Indonesia, according to the provisions in Article 137 of Law No. 13/2003, the right to strike is recognized as a fundamental right of workers and unions if the strike is conducted in a lawful, orderly and peaceful manner. Other provisions in this Law will be discussed further in Module 6 of this Training Manual.

Basic Principles

Through their resolutions and recommendations, the Committee on Freedom of Association and the Committee of Experts have stipulated some basic principles of the right to strike²⁵, namely:

- The right to strike is one of the fundamental means and rights available to workers and their organisations, federations or confederations to defend and further their economic and social interests legally and peacefully.
- The right to strike must be exercised as a last resort; after all other efforts to resolve a dispute have failed to yield a desirable agreement.
- All workers in the public and private sectors are entitled to strike, with the exception of members of the armed forces, the police and senior civil servants who administer the state, and workers

24 Why COSATU Opposes a Lock-out Provision in the Bill of Rights. www.cosatu.org.za, www.iss.co.za. And the results of an interview with Shingo Miyake, Legal Officer on International Labor Standards-ILO Subregional Office for South-East Asia and the Pacific and Temesgen Samuel.

25 The ILO Principles Concerning the Right to Strike, Bernard Gernigon et. al., ILO Geneva, 2000, p. 55-56.

employed in companies that render services the interruption of which could jeopardize the life, health, or safety of all or part of the community, or in situations of acute national crisis. Providers of essential services include hospitals, electricity companies, potable water companies, telephone companies, and air traffic control facilities.²⁶

- Provisions that stipulate the conditions for a strike can be made provided that they do not make it difficult or impossible to hold a strike. Such conditions can include prior notice of strike action, the obligation to engage in conciliation or voluntary arbitration, and the approval of a quorum of union members.
- Hiring other workers to replace the striking workers is a serious violation of the right to strike, unless it is done in a company that provides essential services or in a situation of acute national crisis.
- Legal provisions regarding wage deductions based on the number of strike days are not deemed to be in violation of the principles of the right to strike.
- The responsibility for determining the illegality of a strike lies not with the government, but with an independent body that is trusted by all the disputing parties.
- Strikes that are purely political in nature and strike action that has been decided systematically far in advance of the bargaining process do not fall within the scope of strikes that are protected by the principle of freedom of association.
- The protection conferred by the principle of freedom of association does not cover any abuse of the right to strike, such as strikes that fail to comply with the reasonable requirements prescribed by the law, or that are accompanied by criminal acts.
- The right to strike shall not be limited to industrial disputes that can be settled through collective agreements. Unions may use them to express their dissatisfaction with broader economic and social problems that affect the interests of their members.
- The legal exercise of the right to strike shall not result in any detrimental acts against the workers who organise or participate in the strike. Any sanctions imposed in relation to the abuse of the right to strike as referred to above must be consistent with the extent of the violation or fault.
- The involvement of the police in a strike does not violate the principle of freedom of association provided that it is limited to safeguarding public order and safety and does not restrict the exercise of the legal the right to strike. However, the involvement of the police to disband a strike that poses no real threat to public safety and order is a violation of the union's rights.

26 Freedom of Association, op. cit., Para. 544, p. 112.

Types of Strike

Strikes can be grouped into three categories based on the demands they put forward, namely: strikes for economic or social objectives, political strikes and sympathy strikes.²⁷ The first type of strike is aimed at settling an industrial dispute that concerns the work and has a direct impact on the interests of the striking workers. Political strikes can directly or indirectly affect the working conditions and welfare of the striking workers, while sympathy strikes are generally related to union rights issues.

Economic-Social Strikes

In many cases, unions hold strikes to fulfil workers' demands regarding occupational matters, such as an improvement in working conditions and/or welfare at work. However, the reality is that the resolution of many industrial disputes at work demands an adjustment of the government's economic and social policies. Therefore, the Committee on Freedom of Association states that the exercise of a union's right to strike shall not be limited to industrial disputes that can be settled through collective agreements.

Political Strikes

Apart from strikes aimed at influencing the government's political and judicial policies, strikes held for economic-social objectives, where the settlement calls for an amendment of economic and social policies that may directly affect the workers or the employer, are also categorized as political strikes provided that they are conducted through an orderly protest. In general, the decision to hold a political strike is made far in advance of the bargaining. In addition, political strikes usually have a wider geographical scope than economic-social strikes, and are even frequently conducted on a national scale.

Strikes in this category are not directly related to the interests of the workers, in terms of wage increases and other improvements in employment conditions.²⁸ According to Convention No. 87, strikes of this kind do not fall within the scope of the principle of freedom of association.

Sympathy strikes

In order to determine whether a strike action can be categorized as a sympathy strike, it should be considered whether the workers are striking in support of another strike action and whether the action is related to employment, unionism or other economic-social objectives that do not have a direct and immediate impact on the striking workers. The Committee of Experts has stipulated a basic principle that workers

27 Freedom of Association, *op. cit.*, Para 479-483, P. 102.

28 See Jeremy Brecher, *Strike* (Cambridge: South End Press, 1997), p. 285.

are entitled to hold a solidarity strike provided that the strike they are supporting is itself legitimate.²⁹

Prerequisites

In relation to the laying down of conditions that have to be met before a strike can be categorized as “legitimate”, the Committee on Freedom of Association has stipulated that the national requirements (related to the exercise of this right) must be reasonable and not impose substantial limitations on this fundamental right. The Committee has stipulated the following prerequisites:

- The obligation to give prior notice of the strike;
- The obligation to pursue other alternatives as prior steps in the sequence of dispute settlement, for example the use of voluntary mediation, conciliation and arbitration mechanisms;
- The obligation to meet a certain quorum or secure the approval of a majority on the matter in question;
- The obligation to make the decision to strike through a secret ballot;
- The taking of action to satisfy safety requirements and prevent accidents;
- The determination of minimum service under certain circumstances; and
- The guarantee of freedom to work for non-striking workers.

The Committee on Freedom of Association has also stipulated that the authority to determine whether or not a strike is “illegal” should be assigned to an independent body whose members are trusted by the parties involved, rather than to the government.

The Role of the Police

The Committee on Freedom of Association states that as long as workers and their organisations conduct the strike in a lawful and peaceful manner, the police cannot intervene, unless there is a serious and substantial threat to public safety and order or a violation of the law.

29 Freedom of Association, op. cit., Para. 486, p. 103.

LOCKOUT

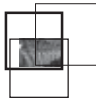
Definition

Lockout is defined as “an action by an employer to prevent workers, in part or in their entirety, from doing their work.”

Matters to take into account include the following:

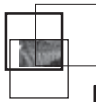
- Lockouts may not be imposed as a retaliatory action in response to the normative demands (demands for the worker’s rights that have legal grounds) put forward by the workers;
- There are certain prerequisites and exceptions for exercising such rights, the regulation of which depends on the national legal apparatus of each ILO member country; and
- Lockouts generally occur as a result of a breakdown in bipartite negotiations between the workers and the employer.

PRESENTATION 4.1: FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING



THE IMPORTANCE OF THE FREEDOM OF ASSOCIATION PRINCIPLE

- ILO Constitution (1919)
Preamble ...an improvement of (workers' and employers') conditions is urgently required by...recognition of the principle of freedom of association
- Philadelphia Declaration (1944)
The Conference reaffirms...that...freedom of association...(is)...essential to sustained progress
- Also recognized as a right that must be protected by the State in:
 - Universal Declaration of Human Rights (1948)
 - International Covenant on Civil and Political Rights (1966)
 - International Covenant on Economic, Social, and Cultural Rights (1966)



INTERNATIONAL LABOUR STANDARDS ON FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

- ILO Convention No. 87 on Freedom of Association and the Right to Organise (1948)
 - Protection of workers' and employers' freedom to associate
- ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949)
 - Protection for workers against anti-union discrimination
 - Independence of workers' and employers' organisations from each other
 - Promotion of collective bargaining



ILO CONVENTION NO. 87: FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANISE, 1948

- Four fundamental principles of the Convention:
 - Right of all workers and employers to set up and join organisations of their choosing
 - Right of organisations to decide on their internal affairs
 - Right to protect organisations from suspension or dissolution
 - Right to establish and join federations and confederations, and right to affiliate with international organisations
- This Convention also applies to civil servants engaged in the administration of the State.



CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN ORGANISATIONS

- “Workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own preference without previous authorisation.”

- Article 2



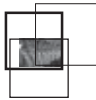
CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN ORGANISATIONS

- Without distinction whatsoever
 - This right applies equally to all workers and employers.
 - Civil servants should enjoy the right to organise as well.
 - Exceptions are made for the armed forces and the police. However, those who are placed within these categories must be strictly defined in national law.



CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN ORGANISATIONS

- Subject only to the rules of the association concerned
 - It is the organisations themselves that determine which categories of workers or employers they want to organise.



CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN ORGANISATIONS

- Of their own choosing
 - Any legal provision that limits freedom in choosing an organisation would be contrary to the Convention.
 - Any legal measures aimed at creating a trade union monopoly are also contrary to the Convention.



CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN ORGANISATIONS

- Without previous authorization
 - Rules or regulations for the registration of organisations must not function as authorisation needed before creating or joining organisations.



CONVENTION NO. 87: THE RIGHT TO DETERMINE THEIR INTERNAL AFFAIRS

- “Workers’ and employer’s organisations have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and formulate their programmes (without interference from other parties including the government)”
 - Article 3



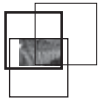
CONVENTION NO. 87: THE RIGHT TO DETERMINE THEIR INTERNAL AFFAIRS

- The right of organisations to draw up their constitutions and rules
 - Legislation serves only to determine the basic rules in order to protect individual members.



CONVENTION NO. 87: THE RIGHT TO DETERMINE THEIR INTERNAL AFFAIRS

- The right to elect their representatives in full freedom
 - Legislation that stipulates detailed and/or discriminatory conditions is contrary to the Convention.
 - Strict monitoring by the government of the election process in an organisation is also contrary to the Convention.



CONVENTION NO. 87: THE RIGHT TO DETERMINE THEIR INTERNAL AFFAIRS

- Administration
 - Financial autonomy of the organisation.
 - Government officials are not allowed to enter the office or investigate the organisation's correspondence and communication without a Warrant from an authorized officer of the court.



CONVENTION NO. 87: THE RIGHT TO DETERMINE THEIR INTERNAL AFFAIRS

- Activities and programmes
 - Workers' and employers' organisations can be involved in any legal activity, including expressing their political opinions.
 - The obligation to comply with the prevailing national law is stated in Article 8 of this Convention.
 - The right to strike is one of direct implications of workers' right to organise.



CONVENTION NO. 87: THE RIGHT TO PROTECT THE ORGANISATION AGAINST SUSPENSION OR DISSOLUTION

- "Workers' and employers' organisations cannot be dissolved or suspended by administrative authority."
 - Article 4



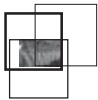
CONVENTION NO. 87: THE RIGHT TO PROTECT THE ORGANISATION AGAINST SUSPENSION OR DISSOLUTION

- Dissolution or suspension a form of interference and the most extreme violation of the freedom to associate
- Dissolution based on legislative efforts or provisions is also contrary to the Convention.



CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN FEDERATIONS AND CONFEDERATIONS, AND THE RIGHT TO AFFILIATE WITH INTERNATIONAL ORGANISATIONS

- “Workers’ and employers’ organisations have the right to establish or join federations and confederations and similar organisations, and every federation or confederation has the right to affiliate with international workers’ and employers’ organisations.”
- Article 5



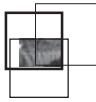
CONVENTION NO. 87: THE RIGHT TO ESTABLISH AND JOIN FEDERATIONS AND CONFEDERATIONS, AND THE RIGHT TO AFFILIATE WITH INTERNATIONAL ORGANISATIONS

- Article 5: An extension of workers’ and employers’ right to organise.
- Article 6 states that all provisions in Articles 2, 3 and 4 apply to federations and confederations.
- The right to affiliate with international organisations covers the right to receive assistance, including financial assistance, from such organisations.



ILO CONVENTION NO. 98: THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING, 1949

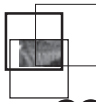
- Three fundamental principles of the Convention:
 - Protection for workers against anti-union discrimination
 - Protection for workers’ and employers’ organisations against interference by each other
 - The promotion of collective bargaining
- This convention does not apply to civil servants who are involved in the administration of the State.



CONVENTION NO. 98: PROTECTION AGAINST ANTI-UNION DISCRIMINATION

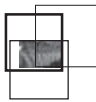
- “Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.”

- Article 1



CONVENTION NO. 98: PROTECTION AGAINST ANTI-UNION DISCRIMINATION

- Discriminative acts are prohibited during: employment, termination, transfer, denial of training or promotion/upgrading, demotion, disciplinary action, etc.
- This protection must cover the period of acceptance of employment as well as the implementation and completion of the work.
- Particularly important for union representatives and management/officials.



CONVENTION NO. 98: PROTECTION FOR WORKERS’ AND EMPLOYER’S ORGANISATIONS AGAINST INTERFERENCE BY EACH OTHER

- “Workers’ and employers’ organisations shall enjoy adequate protection against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.”

- Article 2



CONVENTION NO. 98: PROTECTION FOR WORKERS' AND EMPLOYER'S ORGANISATIONS AGAINST INTERFERENCE BY EACH OTHER

- Actions prohibited under the Convention
 - Promoting the establishment of workers' organisations under the domination of employers.
 - Providing financial support so that the union can be controlled by the employer.



CONVENTION NO. 98: THE PROMOTION OF COLLECTIVE BARGAINING

- "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."
 - Article 4



CONVENTION NO. 98: THE PROMOTION OF COLLECTIVE BARGAINING

- The right to bargain freely and on the basis of equality between workers and employer is essential for freedom of association.
- Examples of practices that are contrary to the Convention:
 - Restrictions on the scope of negotiable issues
 - System of official approval to validate or cancel an agreement
 - Compulsory arbitration

CASE STUDY MATERIALS

Sample Questions and Tasks:

Questions:

1. In this case, is there a violation of the provisions in the ILO Conventions on Freedom of Association and Collective Bargaining?
 - a. If not, explain your arguments.
 - b. If yes, explain your arguments and specify which provisions are violated by referring to the relevant articles of the ILO Convention in question.
2. What should be done by all the parties involved in this case to resolve the problem?

Tasks:

1. In your group, decide who will be:
 - a. the discussion leader;
 - b. the note taker; and
 - c. the presenter.
2. Make a summary of the case your group is working on.
3. Write your group's answers and arguments on the transparencies provided.

Sample Case

Case 1:

Two months ago, PT. ATM forced an election to determine which union was eligible to represent the workers in negotiating a collective agreement. This was because there were four unions in the company, two of them with an equal number of members; thus none of the unions had a majority. After counting the ballots cast, the "Perdamaian" Union emerged with 35% of the votes, while the results for the other unions were as follows: "Buruh Selalu", 20%; "Perjuangan", 25%; "Maju Terus", 20%. Based on this result, the "Perdamaian" union was appointed as the workers' representative in the negotiation of the collective

agreement. About a week after the election, the employer received a letter signed by 51% of the entire workforce, stating that they did not want “Perdamaian” to represent the workers in the bargaining. On these grounds, the employer refused to negotiate with “Perdamaian” because it could no longer be considered as the most representative union in the collective bargaining.

Case 2:

SP PT. CPT has been negotiating for one-and-a-half years with the employer to renew the collective agreement. However, their efforts have come to nothing because the employer consistently rejects them. The employer allegedly always tries to delay, justifying this by citing the economic condition of the company and the fact that it has not recovered from the economic and monetary crisis. However, the employer is not prepared to show any evidence in support of this, even though the workers have asked to see it. Eventually, the PT. CPT Union openly declared to the employer that, as a show of moral support to their representatives at the negotiating table, they would coordinate a mass demonstration in the front yard of the company, which coincidentally fronts on to a major thoroughfare, bringing large banners and placards. The employer was concerned that the content of the banners and placards would smear the company’s reputation and declared that the union was in violation of the principle of bargaining in good faith because it had threatened and put pressure on the employer.

Case 3:

Some 250 workers at a muffler factory, PT. SMJ, held a strike in the front of factory, demanding an increase in their pay to 60 dollars a month, in line with the Standard Minimum Wage in the region where the company operates. At the time the workers there were being paid only 50 dollars per month. In addition to the pay increase, the workers—who are mostly women—also requested the freedom to form a union. Up until then, the company had, for no clear reason, prohibited its employees from establishing a union. At the same time the workers who were employed for piece work or as day labourers demanded that their status be changed to that of contracted or permanent employees because they were being paid only 41 dollars a month.

Case 4:

About 3,000 workers from various divisions of a plantation company, PT PNP, are holding a strike in front of the office of the company’s Board of Directors in protest against the management. As a result of the strike, which has gone on for more than a week, the largest plantation company in this developing country is practically paralysed.

The striking employees constructed a stage in the yard in front of the Board of Directors’ office. From first thing in the morning, they take

turns to give speeches and read out their demands. A truckload of armed police officers from the local precinct stands guard in front of the Board of Directors' office.

The strike was triggered by employees' dissatisfaction with a number of management policies that are allegedly unfair. Among the perceived unfair treatment is the non-implementation of the provincial minimum wage, and the lack of transparency in the allocation of official vehicles to certain employees.

This dissatisfaction has so far not been conveyed to the company management. Even by the eighth day of their action, there has still been no meeting between the employees and the management. The management only wants to negotiate with the BUD Union. However, the employees have always viewed BUD as being on the side of the company.

According to PT PNP's Head of Public Relations, the management considers many of the workers' demands irrational. For example, it would be impossible for the company to meet the demand for the payment of a bonus that amounted to eight times the salary. Moreover, he went on, the allegation of poor performance on the part of the management is not true, considering the company's profit in the last year increased by 100 percent over the previous year, and the company would soon receive a certificate declaring it the "healthiest company".

PT. PNP is one of largest plantation companies in Indonesia. This state-owned company has plantation area of 150,000 hectares and more than 4,000 workers. The main product of the company, which last year earned gross profits of 180 billion rupiah, is oil palm.

This strike is clearly detrimental to the state, because company is losing 2.4 billion rupiah daily as a result of the strike, continued the Public Relations director.

He explained that the Board of Directors wants to negotiate only with BUD because this is the majority union that is recognized by the company. "We were supposed to meet with the workers last week, but they cancelled it unilaterally for no clear reason," he said.

Given the protracted strike situation, the Public Relations director continued, the company would soon take firm action by closing the access road to the PT. PNP offices. "Because this is a state-owned facility and to prevent any undesirable consequences, we will seek police assistance to block the access road," he asserted.

Meanwhile, the workers vow to continue their action until the company meets their demands. Some of them are staying in a command post they have set up in the company offices to prepare for the coming action.

Specific questions for Case 4:

1. According to the prevailing statutory regulations, is the planned lockout by the company legal?
2. What can be done by the related parties, including the Manpower Office and the national police, to prevent the company from going ahead with the lockout?

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PART III
Training Modules

Part III
TRAINING
MODULES

MODUL 5
INDUSTRIAL RELATIONS
IN INDONESIA



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OBJECTIVES

General

After studying this module, the participants will know and understand the background and legal basis that shapes and regulates the industrial relations system in Indonesia.

Specific

The participants will:

- Know and understand the background to Labour Law reform in Indonesia;
- Know the labour legislation that shapes the industrial relations system in Indonesia; and
- Know and understand the components of the industrial relations system as well as their functions and roles.

SUGGESTED TRAINING STRATEGY

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Presentation of general and specific objectives	Lecturer	Flip Chart	5 mins
2.	Presentation: "Industrial Relations in Indonesia"	Lecturer	Presentation 5.1	30 mins
3.	Question and answer on the subject matter presented	General Discussion	Presentation 5.1 and Flip Chart	45 mins
4.	Round-up	Lecturer		10 mins

LABOUR LAW IN INDONESIA

The case above is just one example of how workers in Indonesia are becoming increasingly aware of their rights. Nevertheless, to secure those rights, they often have to deal with a lot of unpleasantness. Adequate protection must, therefore, be provided, not only to the workers, but also to the employers through national law and the enforcement thereof in the field.

The development of Indonesian Labour Law began in the Dutch colonial era and is still continuing today in the labour law reform that began in 1998. In addition, as explained in previous modules, one of the consequences of globalization is that it demands that national governments apply international principles in their national decision-making and legislative processes. As a member of the ILO, Indonesia enjoys the benefits of membership as it attempts to bring its employment legislation in line with international principles. By ratifying the international labour standards specified in the ILO conventions and recommendations, Indonesia is entitled to technical assistance from the ILO on the implementation of said conventions or recommendations through its national laws and regulations.

Labour Law Before Reform

The Labour Law provisions set forth in the Civil Code and other legislation, many of which had been in place ever since the time of the Dutch East Indies, underwent several amendments over the course of time. Various new rules were stipulated to replace the old colonial-era provisions.

Law No. 14/1969 on the Basic Labour Provisions came into force in 1969. Other legislation on labour and employment introduced in the pre-reform period includes Law No. 12/1948 on Employment, which was declared effective by Law No. 1/1951; Law No. 23/1948 on Labour Inspection, declared effective by Law No. 3/1951; Law No. 21/1954 on Labour Agreements; Law No. 22/1957 on the Settlement of Labour Disputes; Law No. 8/1961 on Compulsory Labour for Graduates; Law No. 12/1964 on the Termination of Employment in Private Companies; Law No. 1/1970 on Work Safety; and Law No. 3/1992 on Social Insurance for Workers.

A group of 49 workers at PT Laris Maju Terus proposed to the management of the company that they establish a trade union. The management requested that a proposal be made in writing, complete with the names of the workers who would become members and officials, the purpose and objectives of establishing a union, the activities that would be carried out and how it would be funded. The workers objected, worried that if they did as the company requested, the people listed as officials would be fired.

Law No. 25/1997 on Employment was enacted in an attempt to summarize all the provisions distributed across various pieces of legislation. However, intense debate over the law delayed its implementation and it was subsequently amended, as set forth in Law No. 28/2000 on Stipulation of Government Regulation in Lieu of Law No. 3/2000 on the Amendment of Law No. 11/1998 on the Amendment of the Effective Date of Law No. 25/1997 on Employment. This Law, was, in turn, superseded by the enactment of Law No. 13/2003.¹

Labour Law, Post-Reform

Demands for reform in 1998 have made an impact on labour law. Calls for greater respect for and protection of human rights have driven the process of national law reform, including Labour Law. Regional autonomy, too, has influenced the way the provisions of employment legislation are implemented in each region.

Now districts have the authority to regulate employment conditions in accordance with local needs. This is seen principally in the setting of the local minimum wage, the emphasis on certain types of employment in the region, labour market services, inspection and the settlement of industrial relations disputes.

The Indonesian Government's programme of Labour Law reform has so far produced three new laws: Law No. 21/2000 on Trade Unions, Law No. 13/2003 on Manpower and Law No. 2/2004 on the Settlement of Industrial Relations Disputes. Indonesia has also ratified a number of ILO Conventions, and in year 2000 Indonesia became the first Asian country to ratify all eight fundamental ILO conventions.

¹ Article 192 of Law No. 13/2003 on Employment, State Gazette of the Republic of Indonesia 2003 No. 39, Supplement to the State Gazette No. 4279.

INDONESIA'S INDUSTRIAL RELATIONS SYSTEM: NOW AND IN THE FUTURE

Industrial Relations

Industrial relations are based on a system that is shaped by the laws and other subordinate provisions. These provisions regulate industrial relations actors and instruments from national to company level.

Industrial Relations Actors

The actors directly or indirectly involved in industrial relations are workers, trade unions, employers, employers' associations and the government.

Workers

Article 1 of the Manpower Act states that a "worker is any person who works for a wage or other form of remuneration." In industrial relations, workers are the employers' partners in the process of producing goods and services in a company, in order to ensure the company's continued operation as well as to improve the welfare of both workers and employers.

Trade Unions²

As an organization formed of, by and for workers, whether inside or outside a company, a labour or trade union is established to further, defend and protect the rights and interests of workers. This includes improving the welfare of workers and their families. Such organizations are free, open, independent, democratic and accountable.

A trade union can be established at the level of the company, business sector, occupation or otherwise, as decided by the workers. An individual worker can only belong to one union at a time. Workers are entitled to establish a trade union if they can form an association of at least 10 workers.

² Law No. 21/2000 on Labour Unions. State Gazette of the Republic of Indonesia of 2000 No. 131, Supplement to the State Gazette of the Republic of Indonesia No. 3889.

The minimum membership requirement for a trade union is as follows:

Workers	➤ trade union	➤ union	federation	➤ confederation
10 people		5 unions		3 federation

Admission to membership in a trade union, federation or confederation must not discriminate on grounds of political opinion, religion, nationality or gender.

The internal affairs of the organization are provided for in the trade union's constitution or articles of association. These must include the trade union's name and symbol or logo, the foundation of Indonesia, the objectives and principles of the organization, the date of establishment, domicile, membership and officials, sources of funding and financial accountability, and provisions concerning the amendment of the constitution and articles of association.

Notice must be given in writing of the establishment of a trade union, federation or confederation to the government institution responsible—the Manpower Office at regional level or Ministry of Manpower and Transmigration at the central level. Attached to the notice must be a list of the founding members, the constitution or articles of association, structure of the union and the names of the officials. This is then registered and the union, federation or confederation of the trade union receives a registration number.

Employers

An employer is an individual, association or legal entity that operates a company owned by the employer or by others, which is domiciled in Indonesia or is in Indonesia as the representative of a company domiciled outside Indonesia.⁴

In industrial relations, the employer plays the crucial role of organizing the company's activities, including the workers' performance of their work. However, the business will not run smoothly without the workers' support. Employers must, therefore, regard workers as partners in production.

Employers' Associations

Employers are entitled to establish and join employers' associations.⁵ In this respect, employers' associations are organizations founded of, by and for employers that are authorized to represent employers' interests in employment and industrial relations.

³ Law No. 21/2000, Article 11.

⁴ Law No. 2/2004, Article 1, para. 6.

⁵ The provisions on employers' organizations are regulated in accordance with the prevailing legislation (Article 105 Paragraph (2) of Law No. 13/2003)

As employers' representatives, the role of an employers' association is to further and defend the interests of the employers through its involvement in industrial relations institutions such as tripartite cooperation, from the district level to the national, regional, and even international levels.

The employers' organization that has such authority in Indonesia is the Employers' Association of Indonesia (APINDO). Decision of Executive Council of the Indonesian Chamber of Commerce (KADIN) Number Skep/019/DP/III/2004, dated March 5, 2004 confirms APINDO as KADIN's representative in the Industrial Relations Institution for the period 2004-2006.

The Government

In the evolution of labour relations in Indonesia, what was originally a civil relationship has now come to involve the government. In 1975, the concept of labour relations based on Pancasila was introduced. At that time, however, it had not been formalised in any legislation. It was only in Law No. 13/2003 on Manpower that the role of the government was finally reaffirmed, as stated in Article 102 Paragraph (1), which refers to the government's functions in industrial relations:

- Setting policy;
- Providing services;
- Inspection/supervision;
- Taking action against violations of the labour legislation.

INDUSTRIAL RELATIONS INSTRUMENTS

Contracts of Employment

A contract of employment is an agreement between a worker and an employer containing the terms and conditions of employment, and the rights and obligations of both parties.⁶ The terms and conditions of employment include remuneration and welfare insurance for workers during the period of employment. This is closely connected to workers' protection in the narrow sense of health at work—working hours, rest breaks and leave. In its broader sense, however, protection covers all forms of protection for workers, including special protection for people with disabilities, children and women, which is generally not specified in the contract.

A contract of employment is established on the basis of:⁷

- The agreement of both parties.
- The capacity or expertise involved.
- The availability of the promised work.

⁶ Law No. 13/2003, Articles 50 and 54.

⁷ Law No. 13/2003, Article 52.

- The promised work does not conflict with public order, morals or legislation.

This makes a contract of employment different from a contract agreement or an outsourcing agreement. In contract work, it is the specified outcome of the work that is stipulated in the agreement. In an outsourcing agreement, specific expertise is required to perform the work in question.

If a certain activity requires additional work, the Labour Law provides for the opportunity to delegate the work to other parties through contracting agreements or outsourcing. Outsourcing is usually used when certain work needs to be performed at a specific time.⁸

A contract of employment can be entered into for a fixed or unlimited period, taking into account the specified terms and conditions. The stipulation of the term or period of the employment contract is related to the procedures for and consequences of termination. Basically, employers and workers try to avoid termination. When it does happen, however, both parties must negotiate the matter.

An employer can only dismiss a worker following a decision from the industrial relations dispute settlement body. Pending such decision, the employer is entitled to suspend the worker but must continue to pay the worker during the waiting period.

The Manpower Act places a number of restrictions on dismissal. These relate to the ill health or pregnancy of the worker, the existence of a blood relationship between workers, discrimination, and trade union membership. The law also provides for termination procedures and the consequences thereof. Dismissed workers are entitled to obtain severance pay and/or payment for recognition of their term of employment and compensation for their rights. These entitlements should be consistent with their term of employment and the cause of dismissal.⁹

Company Regulation

The provisions in Articles 108–115 of Law No. 13/2003 on Manpower govern matters related to company regulations, which can be summarized as follows:

- In the absence of a collective labour agreement, employers retaining at least 10 workers are obliged to establish a company regulation. This is made in writing by employer, taking into account the suggestions and considerations of the workers' representatives in the company in question.
- The company regulation sets forth the terms and conditions of employment and the company's code of conduct, including the rights and obligations of both employer and workers. It has an effective period of no more than two years.

⁸ Law No. 13/2003, Articles 64-66.

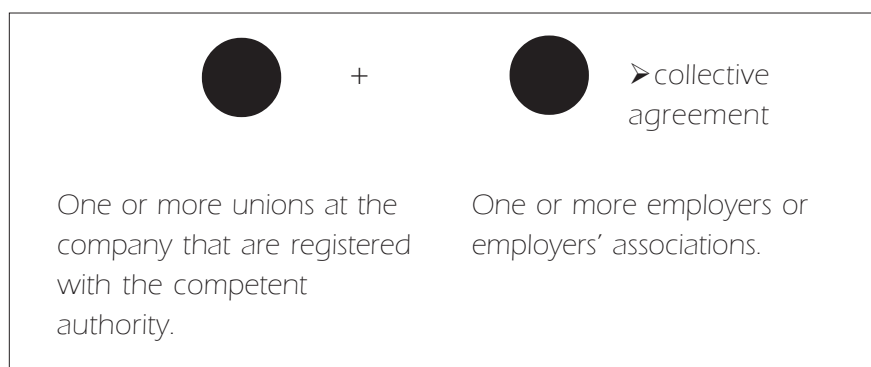
⁹ Article 156 of Law No. 13 of 2003

- To put the company regulation into effect, it must be legalised by the minister or competent authority within 30 days of receipt of the text of the policy (insofar as it conforms with the prevailing provisions).
- Once that period has lapsed, the company regulation is deemed applicable at the company concerned.

Article 188 of Law No. 13/2003 also stipulates that any violations of the obligations specified in the company regulation can be subject to a criminal penalty of between Rp. 5,000,000 (five million rupiah) and Rp. 50,000,000 (fifty million rupiah).

Collective Labour Agreements

A collective labour agreement is an agreement made in writing as the outcome of a negotiation between a trade union and an employer. The parties to the agreement are:



In one company there can only be one collective labour agreement, which sets forth the terms and conditions of employment, and the rights and obligations of both parties.¹⁰ The collective labour agreement applies to all workers in the company for a period of two years, and may be extended for another year.¹¹

If there is only one trade union in a company, this union can represent the workers there if its membership includes more than 50% of the company's entire workforce. If it does not reach that figure, the union must be able to demonstrate that it has the support of more than 50% of all the workers in the company. This is done through a vote. If the vote does not demonstrate clear support, negotiations are postponed for six months before the same procedure is followed again.¹²

If there is more than one trade union in a company, the one entitled to represent the workers is the union whose members make up more than 50% of the company's total workforce. If none of the unions have sufficient members to meet this figure, they may make a

¹⁰ Law No. 13/2003, Article 118.

¹¹ Ibid., Article 123.

¹² Ibid., Article 120, paragraph (1).

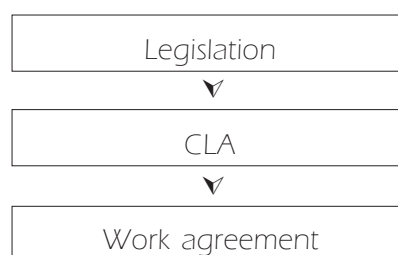
coalition or form a negotiating team whose membership is in proportion to the membership of each union. Trade union membership is indicated by a membership card. The election of the workers' representative is witnessed by the government.¹³

The collective labour agreement contains:

- The rights and obligations of the employer;
- The rights and obligations of the trade union and the workers;
- The period and effective date of the collective labour agreement; and
- The signatures of the parties to the collective labour agreement.

Any collective labour agreement that is not contrary to the legislation is binding upon all parties in the company. This means that employer, trade union and workers are obliged to implement and abide by the provisions in the collective labour agreement. Each contract in the company must be consistent with the prevailing collective labour agreement. If there are any inconsistencies, the overriding agreement is the collective labour agreement. Similarly, for any matters not provided for in the contract of employment, the prevailing provisions are those in the collective labour agreement.

If the union is dissolved or there is a change of ownership of the company, the collective labour agreement remains in effect until it expires. In the case of a merger of companies where each company has its own collective labour agreement, the overriding one will be the one that is most favourable to the workers. If there is only one collective labour agreement in a merger, this agreement remains in effect until its expiration date. The collective labour agreement is effective as of the date it is signed, and is then registered with the competent government authority for such matters.



Labour Legislation

The government's role in labour affairs includes stipulating labour policies by drafting legislation and guaranteeing the implementation of the legislative provisions through tripartite consultation with employers' organization and trade unions. Once they have been ratified, the provisions of the ILO conventions can be included in the national legislation.

¹³ Ibid., paragraph (2) and (3).

Bipartite Cooperation Institution

This is an institution at the company level that comprises the employer and the registered trade union or workers' representatives, and has a term of operation of two years. The employer to worker ratio is 1:1; the total number of members depends on the needs but there must be at least six people and no more than 20.¹⁴ This institution is the communication and consulting forum for matters related to industrial relations in a company.

According to the provisions of Article 106 of Law No.13/2003 on Manpower, all companies that employ 50 or more workers must establish a bipartite institution. The manpower minister or other competent authority can impose administrative sanctions on companies that neglect this obligation. These sanctions may be in the form of:¹⁵

- Warning;
- Written Notice;
- Restriction of business;
- Suspension of business;
- Cancellation of approval;
- Cancellation of registration;
- Stoppage of all or part of the production equipment;
- Revocation of licence.

Tripartite Cooperation Institutions

Members of this institution are drawn from employers' organizations, trade unions and the government. This institution serves to provide input, suggestions and opinions to the government and related parties on policy making and labour issues such as the minimum wage, occupational safety and health and so on. These institutions exist at national, provincial and district level.

Labour Dispute Settlement Committee

According to Law No. 22/1957 on the Settlement of Industrial Relations Disputes and No. 12/1964 on the Termination of Employment in Private Companies, the task of settling industrial relations disputes falls to the National and Regional Labour Dispute Settlement Committees. The Ministry of Manpower and Transmigration's Industrial Relations Dispute Settlement Institutions at central and district levels also play a role in this process.

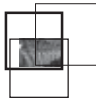
By the time Law No. 2/2004 comes into effect to replace these two Laws, it is expected that the institutions for mediation, conciliation and arbitration, along with the industrial relations court, will be working well enough to ensure that industrial relations disputes are resolved

14 Decree of the Minister of Manpower and Transmigration No. Kep.255/Men/2003 on Procedures for Establishment and Composition of Membership of the Bipartite Cooperation Forum.

15 Article 190, Law No. 13/2003.

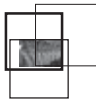
quickly and relatively easily. The settlement of industrial relations disputes, and their prevention, will be discussed further in the next module.

PRESENTATION 5.1: INDUSTRIAL RELATIONS IN INDONESIA



INDUSTRIAL RELATIONS

- Relations between employers, workers and government who are involved directly or indirectly in the production process and/or services, from company level to national level
- Works within a system of industrial relations which is established on the basis of national laws and regulations



INDUSTRIAL RELATIONS ACTORS

- Definition: Parties who are involved directly or indirectly in the implementation of industrial relations.
- Include:
 - Workers
 - Labour/Trade Unions
 - Employers
 - Employers' Organisations (APINDO)
 - Government (Ministry of Manpower and Regional Manpower Offices)



INDUSTRIAL RELATIONS ACTORS: WORKERS

- Anyone who works for a wage or other remuneration
- Partner of the employer in the production process



INDUSTRIAL RELATIONS ACTORS: TRADE UNIONS

- Organisations formed of, by and for workers
- Play a role in furthering and defending workers' interests and improving the welfare of workers and their families
- From company level to international level
- Provide input for the government on:
 - Formulating national law
 - Ratifying international labour standards
 - Formulating technical assistance programmes with international agencies



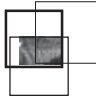
INDUSTRIAL RELATIONS ACTORS: TRADE UNIONS

- The Establishment of Unions, Federations and Confederations (Law No. 13/2003):
 - 10 Workers > 1 Unions
 - 5 Unions > 1 Federation
 - 3 Federations > 1 Confederation



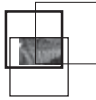
INDUSTRIAL RELATIONS ACTORS: EMPLOYERS

- An individual, organisation or legal entity
- Operates a company
- Company is self-owned or owned by others
- Domiciled in Indonesia or overseas
- Workers' partner in the production process



INDUSTRIAL RELATIONS ACTORS: EMPLOYERS' ORGANISATIONS

- Established of, by and for employers
- Represent the interests of employers on labour and industrial relations issues
- Provide input to government on:
 - Formulating national law
 - Ratifying international labour standards
 - Formulating technical cooperation programmes with international agencies
- The Employers' Association of Indonesia (APINDO), pursuant to Decree of the Indonesian Chamber of Trade (KADIN) No.Skep/019/DP/III/2004; 5 March 2004 (valid until 2006)



INDUSTRIAL RELATIONS ACTORS: GOVERNMENT

- Duties and Functions:
 - To serve the interests of employers, workers and the general public in the labour and industrial relations sector
 - To enact legislation in the labour and industrial relations sector
 - To supervise the implementation of such legislation
- Institution:
 - Ministry of Manpower and Transmigration (central government)
 - Regional Manpower Office (province and district level)



INDUSTRIAL RELATIONS INSTRUMENTS: CONTRACT OF EMPLOYMENT

- Agreement between worker and employer
- Contains terms and conditions of employment and the rights and responsibilities of all parties
- For a fixed or indefinite period



INDUSTRIAL RELATIONS INSTRUMENTS: CONTRACT OF EMPLOYMENT

- Basis:
 - Agreement of all parties
 - Capacity/expertise
 - Occupation
 - Does not conflict with:
 - + Public interest,
 - + Ethics and morality,
 - + Existing legislation



INDUSTRIAL RELATIONS INSTRUMENTS: COMPANY REGULATION

- Written agreement between workers and employer
- Contains terms and conditions of employment, company rules, and the rights and responsibilities of workers and employer



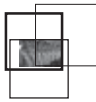
INDUSTRIAL RELATIONS INSTRUMENTS: COMPANY REGULATION

- Provisions:
 - Obligatory for companies employing 10 or more employees in the absence of a collective agreement
 - Must take into account the recommendations of the union or workers' representatives
 - Prepared by the company in writing
 - Valid for no more than 2 (two) years after being legalised by the competent authority
 - Must be updated upon expiry



INDUSTRIAL RELATIONS INSTRUMENTS: COLLECTIVE LABOUR AGREEMENT

- Written agreement between one or more unions and the employer in one company
- Contains terms & conditions of employment, as well as rights and responsibilities of employer, unions and workers



INDUSTRIAL RELATIONS INSTRUMENTS: COLLECTIVE LABOUR AGREEMENT

- Provisions:
 - One collective working agreement in one company
 - Valid for 2 (two) years after registration with competent authority; can be extended for a further 1 (one) year and then updated
 - Not contrary to existing legislation
 - Outcome of agreement of all parties through collective bargaining
 - If there is more than one union in the company, workers are represented by the majority union (membership > 50%)



INDUSTRIAL RELATIONS INSTRUMENTS: COLLECTIVE LABOUR AGREEMENT

- Provisions:

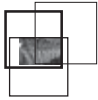
Workers are represented by:

 - Majority union (membership >50% of workforce)
 - Union supported by more than 50% of all workers
 - Coalition of several unions to reach membership requirement of > 50% of all workers
 - Membership of union negotiating team is in proportion to percentage of members of each union



INDUSTRIAL RELATIONS INSTRUMENTS: LAWS and LEGISLATIONS

- Regulates all issues related to labour and industrial relations
- Prepared by government through tripartite consultation with unions and employers' organizations
- Not contrary to ratified international labour standards



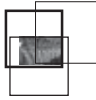
INDUSTRIAL RELATIONS INSTRUMENTS: BIPARTITE COOPERATION FORUM

- Industrial relations communication and consultation forum for workers and employers
- At company level
- Members are representatives of employers and unions/ workers' representatives; term of office = 2 years



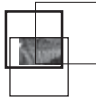
INDUSTRIAL RELATIONS INSTRUMENTS: BIPARTITE COOPERATION FORUM

- Provisions:
 - Obligatory in any company employing 50 or more workers
 - Ratio of workers' to employers' representatives is 1:1, total membership 6-20 people (Decree of Minister of Manpower and Transmigration No. Kep.255/Men/ 2003)
 - Companies violating these provisions can be subject to administrative sanctions (ranging from a warning to revocation of the company's business licence)



INDUSTRIAL RELATIONS INSTRUMENTS: TRIPARTITE COOPERATION FORUM

- Consultation forum for the three tripartite constituents (government, employers' organisations and unions)
- Assists government in formulating labour legislation and policy
- At national, provincial and district levels



INDUSTRIAL RELATIONS INSTRUMENTS: LABOUR DISPUTE SETTLEMENT COMMITTEE

- Regional Labour Dispute Settlement Committee and National Labour Dispute Settlement Committee
- Legal Basis:
 - Law No. 22/1957 on the Settlement of Labour Disputes, and
 - Law No. 12/1964 on the Termination of Employment in Private Companies
- Tripartite institution for resolving industrial relations disputes
- At provincial and national levels

REFERENCES

1. Law No. 21 Year 2000 on Trade Unions
2. Law No. 13 Year 2003 on Manpower
3. Decree of the Minister of Manpower and Transmigration No. Kep.255/Men/2003 on Procedures of Establishment and Membership Composition of Bipartite Cooperation Institution.

PART III
Training Modules

Part III
TRAINING
MODULES

MODUL 6
PREVENTING AND
SETTLING INDUSTRIAL
RELATIONS DISPUTES



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OBJECTIVES

General:

After studying this module, the participants will understand industrial relations disputes, and how they are prevented and settled.

Specific:

The participants will:

- Be able to identify industrial relations disputes that occur.
- Know the mechanisms for preventing and settling industrial relations disputes in Indonesia.

SUGGESTED TRAINING STRATEGY

No.	ACTIVITY	METHOD	MATERIALS	DURATION
1.	Presentation of general and special objectives	Lecture	Flip Chart	5 mins
2.	Presentation: "Preventing and Settling Industrial Relations Disputes"	Lecture	Presentation 6.1	45 mins
3.	Question and answer on the subject matter presented	General discussion	Presentation 6.1 & Flip Chart	50 mins
4.	Round-up	Lecture	10 mins	

BACKGROUND

Disputes occur when a difference of opinion over a certain matter arises between two or more parties. In the labour and employment sector, differences of opinion between workers and employers are known as industrial relations disputes. The sources of such disputes can be divided into disputes over rights or law, and over interest.

Disputes over rights or law occur as a result of differences in the interpretation or implementation of the matters regulated in legislation, contracts of employment, company policy or collective agreements. Disputes over interest, on the other hand, concern matters or demands that are not provided for in these instruments.

Law No. 22/1957 on the Settlement of Labour Disputes defines a labour dispute as “a disagreement between an employer or employers’ organisation and a labour union or union federation due to the absence of a common understanding of the employment relationship, the terms and conditions of the work and/or labour conditions.”¹

According to this Law, workers in industrial relations disputes are considered collectively, since the disputing party is the union. Disputes at the individual level are provided for in Law No. 12/1964 on the Termination of Employment in Private Companies. This kind of dispute generally arises over dismissal.

The above provisions, however, have been overhauled by Law No. 2/2004 on the Settlement of Industrial Relations Disputes. This Law states that industrial disputes can be settled on the basis of existing provisions without differentiating between the parties in dispute. The Law even provides for inter-union conflicts: with the freedom to establish unions specified in Law No. 21/2000, the two subsequent pieces of legislation, Law No. 13/2003 and Law No. 2/2004, anticipate the prospect of disputes between unions and regulate the process of resolving such disputes.

“... in the era of industrialization, the increasingly complex nature of industrial relations disputes calls for fast, appropriate, fair and low-cost institutions and mechanisms to settle them...”

(Preamble, Law on the Settlement of Industrial Relations Disputes)

1 Article 1 (1) sub c, Law No. 22/1957 on the Settlement of Labour Disputes

INDUSTRIAL RELATIONS DISPUTES

According to the Law on the Settlement of Industrial Relations Disputes, disputes may occur over rights, interests, termination and among unions.

Rights Disputes

Disputes over rights are regarded as differences of opinion due to differences in the interpretation or implementation of legislative provisions, contracts of employment, company policy or collective agreements. For example: a company prohibits a group of workers from forming any union in addition to the existing one. This would constitute a dispute over rights because the provisions concerning the establishment of unions are specified in the Law.

Interest Disputes

Conflicts of interest occur when there is a difference of opinion on the drafting or amendment of the terms and conditions of employment. In a conflict of interest, the matters in dispute are not provided for in the law, so the parties need to negotiate to reach an agreement, which will then be set forth in the collective agreement. For example: the provincial minimum wage in Jakarta in 2004 was Rp. 761,250 per month. The company set the minimum wage at Rp. 800,000 per month, but the workers demanded that this be increased to Rp. 1,000,000 per month. In this case, no law was violated. However, the workers' desire for a rise in the minimum wage led to a conflict of interest.

Termination Disputes

These occur when there is a difference of opinion over the termination of employment. In this kind of dispute, the conflict often concerns the consequences of termination. An employer who dismisses a worker is obliged to pay severance pay and/or a payment in recognition of the worker's period of employment and compensation

for his or her rights, the amount of which depends on the length of time worked. Disputes occur when the worker objects to the amount of severance pay determined by the employer; for example, the worker wants 10 times the amount stipulated in the provisions, while the employer is prepared to pay only twice the amount in the provisions.

Disputes Among Unions

This kind of dispute arises out of a difference of opinion concerning the membership and exercise of the rights and obligations of two or more unions in a company. A dispute may arise, for example, when each union wants to represent the workers' interests in bargaining with the employer on the drafting of the collective agreement, or wants to become a member of the Bipartite Cooperation Forum.

STRIKES AND LOCKOUTS

When negotiations to resolve a dispute do not yield the desired results, workers can go on strike, while employers can impose a lockout in a final attempt to resolve the issue. Strikes or lockouts represent the fight for the interests of the party concerned.

In Module 4 we discussed strikes and lockouts based on the international instruments that are applied in Indonesia. In this module, we will discuss Indonesia's national legislation on this matter and how it is implemented.

Strikes

Definition

Striking is basic right of workers that must be exercised in a legal, orderly and peaceful manner, by halting or slowing down work, as a collective action supported by a union. The right to strike is acknowledged in international instruments. In national law, it is regulated in Law No. 13/2003 and its implementing regulations.

To avoid any violation of the law, workers or unions must give written notice to the employer and the competent authorities at least seven days before going on strike. The notification must state, at least:

1. The time (day, date and hour) at which the strike will begin and end;
2. The place of the strike;
3. The reasons for and cause of the strike;
4. The signature of the chairperson and secretary and/or respective chairpersons and secretaries; and
5. The union responsible for the strike.

If there is no previous notification of the strike, the employer may, as a security option, take temporary action by prohibiting the striking workers from entering the workplace or company premises.

Types of Strike

Strikes can be classified into several types, based on the action taken or not taken by the workers:

- a. *Poster Strike*: posters are put up bearing the workers' demands; activities are not stopped;
- b. *Buzzing Strike*: workers make a noise with or hit objects to produce a noise; usually takes place for a brief period until the management invites them to state their demands;
- c. *Slow Down Strike*: work continues, but is intentionally slowed down;
- d. *Sit Down Strike*: workers do not work, just sit down;
- e. *Running Strike*: the strike action is only held at a specific work unit;
- f. *Bumper Strike*: strikes are held in different companies in turn;
- g. *Piston Strike*: the strike is held for a few hours;
- h. *Token Strike*: the strike is held for one day;
- i. *Unauthorized Strike*: the strike is held without the knowledge of the union;
- j. *Sympathy Strike*: the strike is held not to press demands but as a show of sympathy or solidarity;
- k. *Secondary Boycott*: a call not to buy the company's product; and
- l. *General Strike*: a strike that continues until the demands are met.

Restrictions²

Restrictions on the right to strike may be imposed on workers in companies or organisations that provide essential services and/or activities which, if halted or hampered, could put the health or lives of part of all of the population in jeopardy. Services or service providers of this type include hospitals, fire services, railway crossing guards, flood gate controllers, and air and sea traffic controllers.³

A strike that ignores the provisions concerning the notification of and restrictions on strikes referred to above can be categorized as an illegal strike.⁴ A worker taking part in an illegal strike can be classified as absent,⁵ and this can end up in a termination of employment since the worker is deemed to have resigned. An illegal strike held at an essential service institution that causes loss of life can be classified as a grave error.

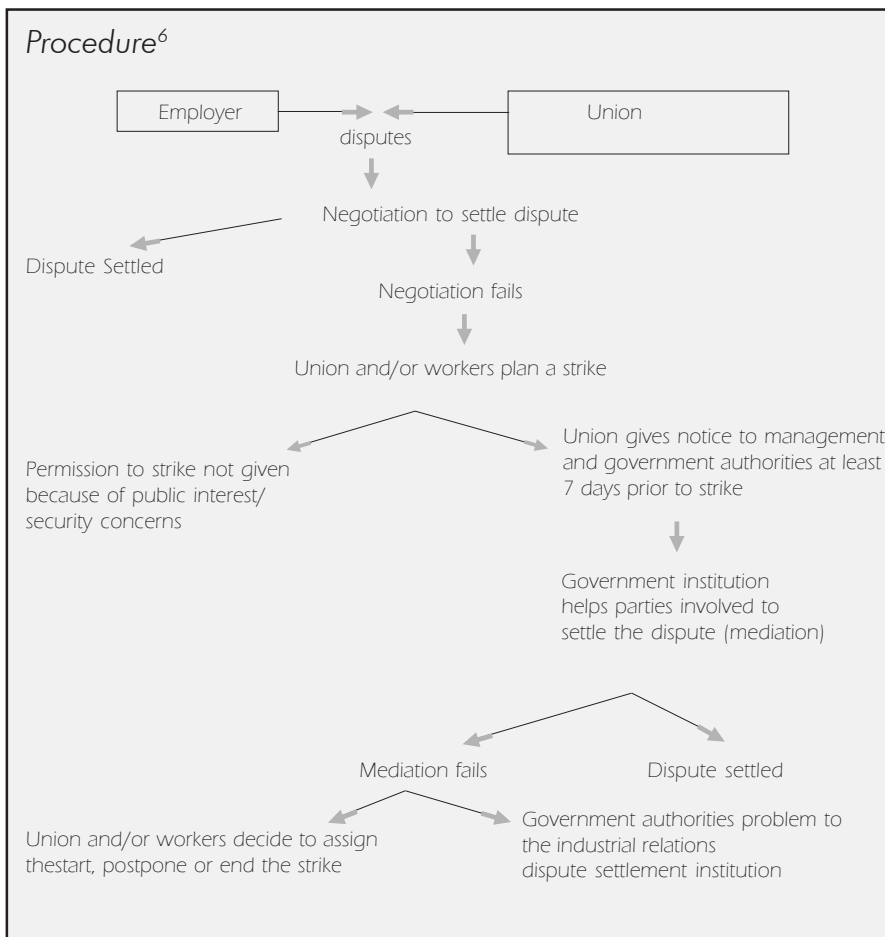
2 Article 9 of ILO Convention No. 87 states that restrictions on the extent of the guarantee provided by the Convention apply to the armed forces and police and are specified by the national legislation of each member country. Exceptions are also made in the case of senior state officials and employees that provide essential services. The Committee for Freedom of Association states that essential services include hospitals, electricity suppliers, potable water suppliers, telephone service suppliers, and air traffic control services. (See Freedom of Association, op. cit., Para. 536 and 544, pages 111-112).

3 Elucidation of Article 139 of Law No. 13/2003.

4 The authority to decide whether a strike is legal or not must be assigned to an independent body trusted by both parties in the dispute, and not to the government.

5 Decision of the Minister of Manpower and Transmigration No. KEP.232/Men/2003 on the Legal Consequences of Illegal Strikes

Procedure⁶



Strikes held in accordance with the provisions cannot be impeded and workers or union officials must not be arrested and/or detained. Employers are not allowed to replace the striking workers with other workers from outside the company or impose penalties or take any kind of retaliatory action.

Workers who go on strike legally to demand their normative rights (as stated in the legislation, contracts of employment, company policy or collective agreements) which have been infringed by the company will continue to be paid.

Lockouts⁷

A lockout is an action taken by an employer by way of preventing workers from doing their jobs, which is preceded by a notice to the workers and the competent authority. Such action is taken if the employer feels unable to continue negotiations with the workers. Lockouts must not be conducted in retaliation against strikes that are demanding normative rights.

Before imposing a lockout, the employer must give written notice

6 Suwanto, Indonesian Labour Law, Manual, ILO Jakarta: 2003, p. 33

7. This section refers to the provisions in Articles 146-149, Law No. 13/2003.

at least seven days in advance. The notification is submitted to the competent authority, the workers and the union. It must state, at a minimum, when (day, date and hour) the lockout will begin and why the action is being taken. Such notification is not required if the workers and the union violate either the procedures for a strike or any normative provisions.

As with strikes, this course of action is not available to companies that provide essential services such as hospitals, potable water suppliers, telecommunication control centres and power stations.

PREVENTING INDUSTRIAL RELATIONS DISPUTES

Grievance Handling Mechanisms

To avoid disputes that may end up in strikes or lockouts, it is better to consider the possibility that the workers have a real grievance over some source of dissatisfaction—the employment relationship, working conditions and so on. To do this, we must first understand what the grievance is.

The following steps can be taken to resolve the problem:⁸

1. Identify the problem—that is, understand the problem that gave rise to the grievance or complaint;
2. Analyze the problem;
3. Identify steps that can be taken to settle the problem; and
4. Determine the steps or alternatives that will be taken.

Preventing industrial relations disputes in this way very much depends on communication between the workers and the employer.

Bipartite Cooperation

The provisions of Article 106 of Law No. 13/2003 require any company employing 50 or more workers to establish a bipartite cooperation forum. This is the meeting point between the union representatives and the employer, through which the employer can convey information concerning the company, while the union representatives can give their own input. This is an important institution for establishing effective communication between both parties on a range of workplace issues, thus helping to avoid industrial relations disputes.

The cooperation between the actors in the production process can be categorized as a bipartite relationship if only two parties are involved—workers and employer. In general, workers are represented by workers' representatives or a union, while the employer is represented by management. In line with ILO's commitment to

8 "Training Materials on Improving Industrial Relations at the Company Level," ILO, Jakarta 2001

synchronizing economic development with social welfare, the “institutionalization” of bipartite cooperation is highly recommended as a means of creating harmonious and productive industrial relations from the company level right up to the national level,⁹ without prejudicing the role of the unions. In Indonesia this institution is known as the Bipartite Cooperation Forum. The equivalent institution in some other countries is Labour-Management Cooperation.

9 The international labour standards on which bipartite cooperation is based are:

1. ILO Convention No. 154 (1981) on Collective Bargaining.
2. ILO Recommendation No. 94 (1952) on Cooperation at the Level of Undertaking Recommendation.
3. ILO Recommendation No. 113 (1960) on Consultation (Industrial and National Levels) Recommendation.
4. ILO Recommendation No. 129 (1967) on Communications within the Undertaking Recommendation.
5. ILO Recommendation No. 130 (1967) on Examination of Grievances Recommendation.

LABOR-MANAGEMENT COOPERATION

Definition

The Labour-Management Cooperation institution is “a forum for cooperation, established voluntarily by workers and employers, whose members comprise workers’ representatives or unions and management, who function as a medium for consultation and social dialogue with the purpose of identifying and resolving problems of common interest.”¹⁰

Purpose

Labour-Management Cooperation or Bipartite Cooperation is established:

- As a means of finding a resolution to common problems;
- As a means of exchanging information, harmonising partner relationships, and boosting social dialogue between workers and employer; and
- To afford the relevant parties the opportunity to obtain common benefits.

Fundamental Principles

There are some fundamental principles that must be taken into account in the Labour-Management Cooperation forum:

- The forum or institution is established voluntarily and is not tied to specific laws;
- It is not established with the intention of diminishing or eliminating the role of the union; in fact workers must be represented in the forum;
- It is proactive in detecting and preventing problems or conflict;
- It is based on the principles of win-win solutions and joint settlement of problems;

¹⁰ “Common interest” covers the improvement of work quality and conditions, workers’ welfare, productivity and other issues that are not included as topics of discussion in collective bargaining. Manual, Bipartite Cooperation at Work 4 (International Labour Office, Jakarta, 2003).

- The periodic exchange of information concerning existing or potential issues can give rise to a mutual understanding that will make it easier to reach consensus and make the relationship more stable and productive;
- The agreements reached are not binding; and
- The implementation of the agreements is voluntary.

Mechanism

Efficient application of the Labour Management Cooperation concept calls for the formation of a Steering Committee, made up of workers and management. The membership ratio between the two parties need not be equal since all decisions will be reached by consensus. The committee also decides what type of problems can be proposed for discussion in the forum.

Eventually several teams, task forces or smaller working groups can be set up. These teams are responsible for dealing with various problems assigned by the Board of Directors. The teams also have to standardise the problem-solving approach and procedures, organise ongoing training in the company, and make reports and recommendations on problem solving. Team members should be rotated periodically to encourage the participation of all workers. After drafting a recommendation, the team automatically dissolves and merges with new members for new tasks.

TRIPARTITE COOPERATION INSTITUTION¹¹

The roles of the Tripartite Cooperation Institution include providing input, suggestions and opinions on labour issues to the government and other relevant parties related to the drafting of legislation or the settlement of labour problems, and at the same time, helping to prevent industrial relations disputes. The members are drawn from government, employers' organisations and unions, and the forums can be established at district, province and national level.

Labour Inspection

Labour inspectors monitor the enforcement of legislative provisions at central, provincial and district level. Inspectors also have special authority as civil investigators.

Law No. 23/1948 on Labour Inspection, as amended by Law No. 3/1951, states that the manpower minister (or the official assigned to exercise supervision) appoints officials who are entitled to enter company premises or employees' residences. If they encounter any difficulties in entering said premises, they can request police assistance.

The authority as a civil investigator (Article 182 of Law No 13/2003 on Employment) covers:

- Conducting inspections to verify reports and information on crimes related to labour;
- Making enquiries about individuals suspected of labour-related crimes;
- Requesting information and evidence from an individual or legal entity with regard to labour-related crimes;
- Inspecting or confiscating materials or evidence related to labour-related crimes;
- Examining correspondence and/or other documents concerning labour-related crimes;
- Seeking assistance from experts in the investigation of labour-related crimes; and

¹¹ Article 107, Law No. 13/2003.

- Halting an investigation if there is insufficient evidence of a labour-related crime.

Labour inspectors have such authority because Law No. 13/2003 on Labour and Law No. 2/2004 on the Settlement of Industrial Relations Disputes stipulate criminal provisions and administrative sanctions. These criminal provisions concern criminal actions in the labour sector, which may be either infringements or criminal offences. Sanctions may be in the form of imprisonment and/or fines, depending on the provisions that are infringed.

Effective labour inspection, together with the publication of annual reports containing the important information specified in Articles 19 and 20 of ILO Convention No. 81, 1947, can help the key players in industrial relations—workers, employers and state officials— to get an accurate picture of the existing situation, making it easier to anticipate or resolve problems. Employment issues are among the principal sources of industrial relations disputes.

SETTLING INDUSTRIAL RELATIONS DISPUTES

In any dispute, it is best if the difference of opinion can be settled through consultation and negotiation between the disputing parties to reach an agreement. However, such negotiations frequently fail to yield an agreement, and the presence of other parties may be needed to ensure that the negotiation proceeds smoothly.

Current Procedures

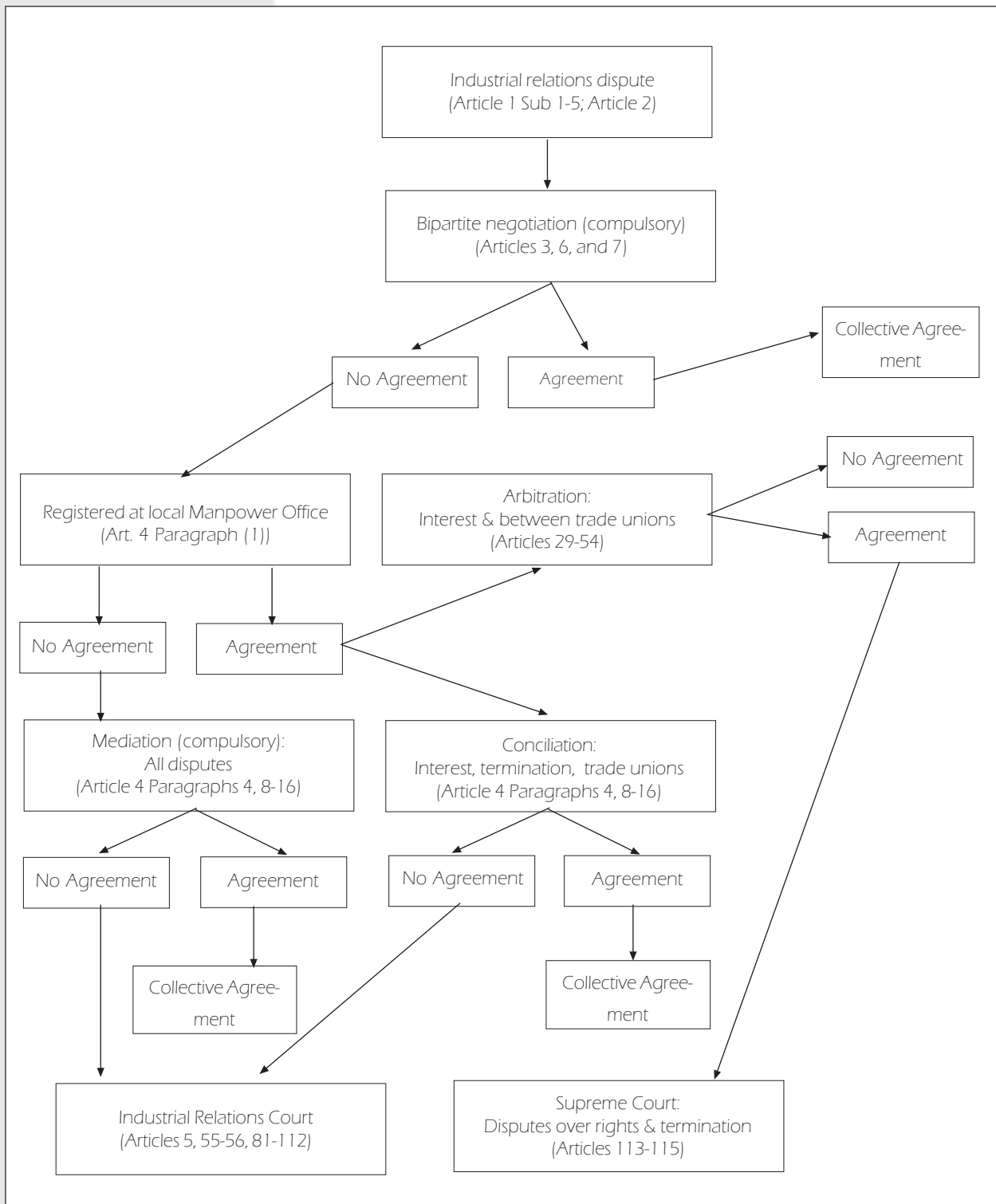
Before Law No. 2/2004 on the Settlement of Industrial Relations Disputes came into effect, Indonesia had no special courts to address industrial relations matters. Therefore, disputes over rights and law were settled through the general court system. According to Law No. 22/1957 on the Settlement of Labour Disputes, disputes can be resolved through the Labour Dispute Settlement Committee. This committee is not a special court, but a tripartite institution established by the government to settle industrial relations disputes and permit the employer to dismiss employees.

Under Law No. 22/1957 the dispute settlement stage is preceded by a bipartite negotiation. If this does not resolve the problem, the disputing parties can request the assistance of a mediator, or the matter can be referred to the Labour Dispute Settlement Committee at either national or regional level. If this, too, fails to yield an agreement, or the agreement is not executed, the parties can file the case with the local district court.

Planned Procedures

According to Law No. 2/2004 on the Settlement of Industrial Relations Disputes, which came into effect on 14 January 2005, industrial relations disputes can be settled through the Industrial Relations Court. This is a special court under the auspices of the district court that is authorized to investigate, hear and decide on industrial relations cases.

Dispute settlement according to the Law on the Settlement of Industrial Relations Disputes¹²



12 H.P. Rajagukguk, "Pelaksanaan UU Penyelesaian Perselisihan Hubungan Industrial (UU No. 2 tahun 2004) & Tantangan Bagi Pekerja/Pengusaha," (Implementation of the Law on the Settlement of Industrial Relations Disputes [Law No. 2 Year 2004]: Challenges for Workers/Employers) paper to the Panel Discussion on the same subject, held by CLGS-FHUI in Jakarta, 10 March 2004.

The provisions of the articles in Law No. 2/2004 specify five dispute settlement mechanisms: bipartite settlement, mediation, conciliation, arbitration and settlement through the industrial relations court.

Bipartite settlement. The disputing parties are obliged to settle the dispute. If an agreement is not reached within 30 days, the dispute is forwarded to the competent authority, which has to offer the disputing parties a settlement through conciliation or arbitration. If the parties do not make a choice, the dispute is assigned to one of the mediators available at the government agency concerned in each district.

In a dispute resolved through **mediation**, the mediator will investigate the case by calling any necessary witnesses. If an agreement is reached, it will be stated in the form of a collective agreement that is then registered with the local industrial relations court so that it can be enforced by the parties in question or with the court's assistance.

If an agreement is not reached at the mediation stage, the mediator will issue a written recommendation that is submitted to the disputing parties within 10 working days. Each party must then give a written response within 10 working days. If the recommendations are accepted, they will be stated in a collective agreement. A lack of response from either party is deemed as a rejection, and the settlement is referred to the industrial relations court.

Disputes that can be settled through **conciliation** are conflicts of interest, dismissal and disputes between unions in the same company. The disputing parties can appoint a conciliator who is qualified and is registered with the competent authority at district level. The conciliator must begin the proceedings within seven days of receipt of the case, starting by calling the witnesses. If an agreement is reached, it will be stated in a collective agreement, which is then registered with the industrial relations court to be executed by the parties in question, or with the assistance of the court.

If no agreement is reached, the conciliator will issue written recommendations within 10 working days, and the parties must respond within 10 working days of receipt. Failure to respond is deemed a rejection and the settlement efforts will be continued through the industrial relations court.

Arbitration can only be used to settle conflicts of interest and disputes between unions in the same company. The disputing parties can specify a qualified arbitrator, who is appointed by the minister of manpower on the basis of a written agreement in the arbitration agreement. Thereafter, the chosen arbitrator will conduct a closed investigation to maintain the confidentiality of each party. Investigation through arbitration begins with efforts to reconcile the disputing parties and forge an agreement. If this is successful, the agreement is stated in a conciliation deed which is then registered with the local industrial relations court.

If not, the arbitrator continues his or her investigation by giving related parties the opportunity to present a verbal or written clarification with any necessary evidence and witnesses. The arbitrator then makes an adjudication that is final and binding upon the disputing parties. This adjudication will be registered with the industrial relations court, and if necessary, it can be enforced through the court concerned.

Nevertheless, either party may petition the Supreme Court for an annulment of the arbitrator's adjudication within 30 days. This can be done if, after the adjudication has been made, any of the following occur:

- any correspondence presented in the investigation is discovered to have been falsified;
- a previously concealed document, which is a decisive factor in the case, comes to light;
- either party has committed fraud;
- the adjudication is beyond the scope of the arbitrator's authority; and
- the adjudication conflicts with the statutory legislation.

Within 30 days of receipt of the petition for annulment, the Supreme Court will award a decision on the annulment of all or part of the adjudication and determine the consequences. Any dispute that has been or is in the process of being settled through arbitration cannot be referred to the industrial relations court.

Every provincial capital has an **industrial relations court** under the auspices of the district court, whose jurisdiction covers the province or a district with a high concentration of industry. This court has the duty and authority to investigate and hand down decisions on:

1. Rights disputes at the first level.
2. Interest disputes at the first and final levels.
3. Employment termination disputes at the first level.
4. Disputes between unions in the same company at the first level.¹³

The judges in the industrial relations court comprise a district court judge, who is appointed and dismissed pursuant to a decree of the Chairman of the Supreme Court, together with *ad hoc* judges, who are appointed by presidential decree at the recommendation of the Chairman of the Supreme Court, based on the names approved by the manpower minister which, in turn, have been proposed by the union or employers' organisation.

An *ad-hoc* judge at the industrial relations court must not concurrently serve as a member of any higher state institution or as a regional/territorial leader, or chair any regional legislative institution, or

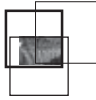
¹³ Law No. 2/2004 Article 56.

be a civil servant, member of the armed forces or the police, political party official, lawyer, mediator, conciliator, arbitrator or steward of a union or employers' organisation. Ad-hoc judges are dismissed at the recommendation of the Chairman of the Supreme Court.

The procedural law applicable in the industrial relations court is the civil procedural law that is applied in the general court system.¹⁴

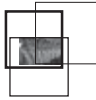
¹⁴ Ibid, Article 57.

PRESENTATION 6.1: PREVENTION AND SETTLEMENT OF INDUSTRIAL RELATIONS DISPUTES



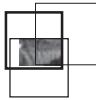
INDUSTRIAL "RELATIONS DISPUTES

- ♦ Law No.22/1957 on the Settlement of Labour Disputes:
 - Conflict between an employer or employers' association and a labour/trade union or federation of unions
 - Over employment relationship, terms & conditions of employment and/or working conditions
- ♦ Law No. 12/1964 on the Termination of Employment in Private Companies:
 - Labour conflicts over dismissal



INDUSTRIAL "RELATIONS DISPUTES

- ♦ Law No. 2/2004 on the Settlement of Industrial Relations Disputes:
 - Difference of opinion that causes conflict between an employer or employers' association and workers or a union
- ♦ Types of Industrial Relations Disputes:
 - Disputes over rights;
 - Disputes over interest;
 - Disputes over termination of employment;
 - Disputes between unions within one company.



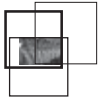
DISPUTE OVER RIGHTS

- ♦ A difference of opinion due to differences in the interpretation or implementation of legislative provisions, contracts of employment, company regulations or collective labour agreements



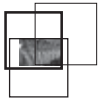
DISPUTE OVER INTEREST

- ♦ A difference of opinion on the drafting or amendment of the terms and conditions of employment stipulated in the employment contract, company regulation or collective labour agreement



DISPUTE OVER TERMINATION OF EMPLOYMENT

- ♦ A difference of opinion on the termination of employment by one of the parties



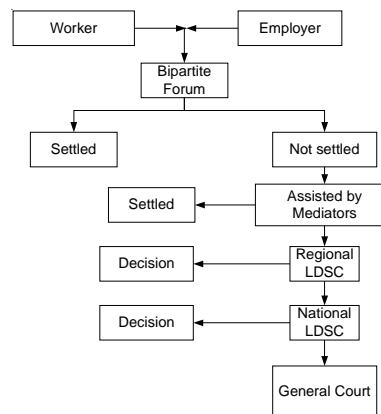
DISPUTE BETWEEN TRADE UNIONS IN ONE COMPANY

- ♦ difference of opinion on the membership, exercise of rights, and obligations of the union

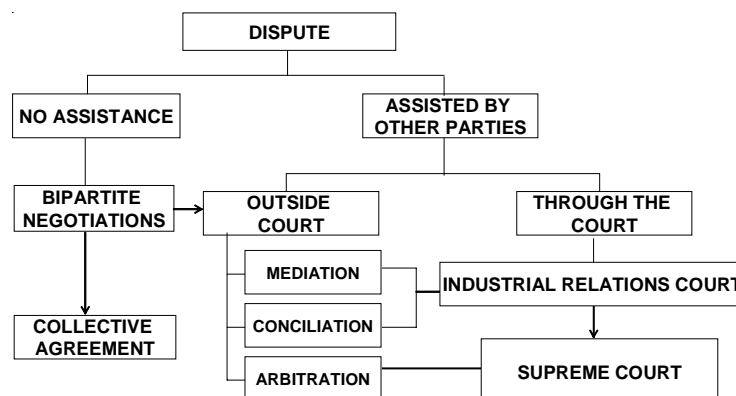
PREVENTING "INDUSTRIAL DISPUTES

- ♦ Contract of employment and collective agreement are formulated
- ♦ Bipartite Cooperation Forum or Labour-Management Cooperation is established
- ♦ Tripartite Cooperation Forum is established
- ♦ Manpower Office intensifies labour inspection
- ♦ Effective handling of grievances through:
 - Problem identification
 - Problem analysis
 - Identification and determination of settlement options

SETTLING INDUSTRIAL DISPUTES (Law No. 22/1957)



SETTLING INDUSTRIAL DISPUTES (Law No. 2/2004)





SETTLING INDUSTRIAL DISPUTES (Law No.2/2004)

- ♦ MEDIATION:
 - Settlement through consultation, mediated by one or more mediators
 - For all types of industrial disputes but only within a single company
 - Mediator:
 - + Competent officer of the Manpower Ministry or Office, appointed by Ministerial Decree
 - + Provide written recommendations on the settlement of the dispute



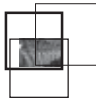
SETTLING INDUSTRIAL DISPUTES (Law No.2/2004)

- ♦ CONCILIATION:
 - Settlement through consultation, mediated by one or more conciliators
 - For all types of industrial disputes except rights disputes, within a single company
 - Conciliator:
 - + A person who is competent according to a Ministerial Decree
 - + Provides written recommendations on the settlement of the dispute



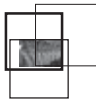
SETTLING INDUSTRIAL DISPUTES (Law No.2/2004)

- ♦ ARBITRATION:
 - Settlement by one or more industrial relations arbitrators based on the agreement of all parties
 - For interest disputes and disputes between trade unions within one company
 - Industrial relations arbitrator:
 - + A person who is competent according to a Ministerial Decree
 - + Hands down decisions that are binding on all parties and final



SETTLING INDUSTRIAL DISPUTES (Law No.2/2004)

- ◆ INDUSTRIAL RELATIONS COURT:
 - Special court under the auspices of the provincial court
 - Authorized to investigate, try and issue decisions regarding the settlement of industrial disputes
 - Judges committee consists of a career judge and ad-hoc judges whose appointment is based on recommendations from trade unions and employers' organization



SETTLING INDUSTRIAL DISPUTES

- ◆ STRIKES:
 - Stopping or slowing down the work
 - Final recourse for workers when all other efforts fail to settle the dispute
 - A fundamental right of workers, but it is not absolute (Strikes must be legal, orderly and peaceful, in compliance with existing legislation)
 - Exceptions:
 - + Armed forces and police, and essential service workers (obstruction or cessation of service can jeopardize the health or safety of part or all of the population)
 - + In a situation of acute national crisis (definite period)



SETTLING INDUSTRIAL DISPUTES

- ◆ OBJECTIVES OF STRIKE:
 - Socio-economic
 - Political
 - Solidarity



SETTLING INDUSTRIAL DISPUTES

- ◆ TYPES OF STRIKE:
 - *Poster Strike*: work is not stopped; posters are put up, stating demands;
 - *Buzzing Strike*: making a noise or hitting something to make a noise; usually for only a brief period until company invites them to convey their demands;
 - *Slow Down Strike*: workers still work, but at a deliberately slow pace;



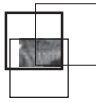
SETTLING INDUSTRIAL DISPUTES

- ◆ TYPES OF STRIKE:
 - *Sit Down Strike*: not working, just sitting;
 - *Running Strike*: strike action only in specific work units;
 - *Bumper Strike*: held in different companies in turn;
 - *Piston Strike*: takes only a few hours;
 - *Token Strike*: takes only one day;



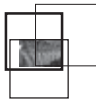
SETTLING INDUSTRIAL DISPUTES

- ◆ TYPES OF STRIKE:
 - *Unauthorized Strike*: held without the knowledge of the union;
 - *Solidarity/Sympathy Strike*: not based on demands; a show of sympathy only;
 - *Secondary Boycott*: a call not to purchase the company's products; and
 - *General Strike*: continues until the demands are met.



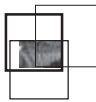
SETTLING INDUSTRIAL DISPUTES

- ◆ PROVISIONS ON STRIKES (Law No. 13/2003):
 - Notice in writing to the company and Manpower Ministry/Office, 7 days prior to strike
 - Must be legal, orderly and peaceful



SETTLING INDUSTRIAL DISPUTES

- ◆ PROVISIONS ON STRIKES (Law No. 13/2003):
Legal, orderly and peaceful strikes:
 - Cannot be impeded
 - For normative demands, workers are still entitled to receive wages
 - Striking workers cannot be arrested and/or detained, replaced by workers from outside the company, or penalised by the company



SETTLING INDUSTRIAL DISPUTES

- ◆ PROVISIONS ON STRIKES (Law No. 13/2003):
Illegal, disorderly or hostile strikes:
 - Employer may "lockout" the company for the strikers in the absence of advance notice
 - Striking workers may be assumed to have resigned and their employment contract can be subject to termination



SETTLING INDUSTRIAL DISPUTES

- ◆ LOCKOUTS:
 - Refusal to let some or all workers do their jobs
 - Initiated by the company
 - A fundamental right of employers, but it is not absolute (must be in compliance with prevailing law)
 - Exceptions for companies providing essential services



SETTLING INDUSTRIAL DISPUTES

- ◆ PROVISIONS ON LOCKOUTS (Law No. 13/2003):
 - Notice in writing to the workers or unions and Manpower Ministry/Office, 7 days prior to strike
 - Must be legal, orderly and peaceful

CASE STUDY MATERIALS

Sample Questions and Tasks

Questions:

1. In this case, are any of the provisions in the ILO Fundamental Conventions or the national legislation violated?
 - a. If not, explain your arguments.
 - b. If yes, explain your arguments and specify which provisions are violated by referring to the articles of the relevant ILO Convention or legislation.
2. What should all the parties in this case do in order to resolve the problem?

Task:

1. In your group, decide who will be:
 - a. the discussion leader;
 - b. the note taker; and
 - c. the presenter.
2. Make a summary of the case your group is working on.
3. Answer the questions above and the specific questions for each case.
4. Write your group's answers and arguments on the transparencies provided.

Sample Case

Case 1:

Responding to the workers' request to establish a trade union in their company, the management of PT. DX held a meeting in the company hall. In his speech, the management representative pointed out that the company had so far complied with all statutory employment regulations, and relations between the employees and the employer had so far been harmonious. The management representative went on to relate the experience of another textile company whose productivity decreased after the workers formed a union and frequently

went on strike. As a result, the company went out of business and the workers lost their livelihoods. The management representative of PT. DX said that the same thing could happen in their company if a union was established.

Specific questions:

1. Can the action of the PT. DX management representative be considered to be impeding the establishment of a labour/trade union?
2. What are tasks and functions of a union?

Case 2:

At least 100 workers of a beverage company who belonged to a trade union in the company went on strike following the dismissal of 11 of their colleagues. The workers said they would continue the 3-day-old strike until the company revoked the dismissal decision, which from their perspective had been taken unilaterally.

During the action, they held a sit-down and made speeches in the company yard. They also put up banners along the roadside. The messages on the banners called on the company to act more responsibly with regard to the workers. They made strong threats to the management, alleging it had gagged the workers' organisation, which had so far been quite vocal in demanding their rights.

Now, the company is not allowing the eleven union stewards to enter the company premises, saying they no longer have any right to be there.

Case 3:

ST is a domestic worker aged 15. Apart from still being very young, she worked long hours cooking, washing, cleaning the house and doing other household jobs. Her employers did not pay her wages and forced her to sleep on the floor and eat their leftovers. When one of her employers beat Silvia for rejecting his sexual advances, Silvia managed to escape and went back to her parents' house in the village with the help of her employer's neighbour.

Case 4:

About 1,000 workers of a textile company went on a general strike to demand that the company give them a Religious Holiday Allowance amounting to 150 percent of the district minimum wage they receive. They have been on strike for four days, during which they have been sitting down in the front of factory whilst waving protest posters.

The action was triggered by the company's announcement that this year the company would pay an allowance of only 100 percent, or

one times the monthly wage, given that the company was still in the midst of a crisis.

The workers did not accept this decision, even though the management said that it was reached on the basis of an agreement with union representatives during negotiations at the beginning of the year. The management's statement was refuted by the union chairman.

The grounds for the workers' demand that the company increase the allowance to 150% of the minimum wage were that in the previous year they had received 125% of the minimum wage, and this year the company had managed a 25% increase in production. They threatened to continue the strike if the company kept to its decision. For their part, the factory management vowed to implement the decision that had been agreed upon by both parties, because the union refused the offer to involve a mediator from the manpower office to assist with finding a settlement to the problem.

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PART III
Training Modules

bagian III
TRAINING
MODULES

MODUL 7
DEALING WITH LAW AND
ORDER IN INDUSTRIAL
RELATIONS DISPUTES



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OBJECTIVES

General:

After studying this module, the participants will understand appropriate ways for the police to deal with law and order aspects of industrial relations disputes.

Specific:

The participants will:

- Know and understand the role of the police in industrial relations disputes.
- Know and understand the provisions and procedures for police action as well as the use of force and firearms in accordance with international and national regulations.

SUGGESTED TRAINING STRATEGY

No.	ACTIVITIES	METHOD	MATERIAL	DURATION
1.	Presentation on general and specific objectives	Lecture	Flip chart	5 mins
2.	Presentation: "Law and Order in Industrial Relations Disputes"	Lecture	Presentation 7.1	45 mins
3.	Question and answer on the subject matter presented	General discussion	Presentation 7.1 and Flip Chart	50 mins
4.	Round-up	Lecture		10 mins

BACKGROUND

Confrontation between security officers and workers demonstrating to protest company policy is a common occurrence in many countries, including Indonesia. Events in many industrial relations disputes give the impression that the involvement of security officers only exacerbates the problem.

Industrial relations disputes frequently cause disturbances of security and order in the vicinity. Once the discussion turns to this issue, we must of course ask what, exactly, is the role of the police in this case.

Reform in the Indonesian National Police

Rapid societal development, in line with the growing spread of phenomena such as the supremacy of law, human rights protection, globalization, democratization, centralization, transparency and accountability, have given birth to a new paradigm in the way we look at the purpose, tasks, functions, authority and responsibilities of the Indonesian National Police. With the issuance of the second amendment of the 1945 Constitution, specifically Chapter XII (Article 30) on State Defence and Security, followed by the Decree of the People's Consultative Assembly (MPR) No. VI/MPR/2000 and No. VII/MPR/2000, the police were officially separated from the Indonesian Armed Forces.

The new, independent status of the police, whose tasks now include maintaining public order and safety, law enforcement as well as protecting and serving the public in the context of safeguarding domestic security,² led to demands for the police to be more capable, more professional and more oriented towards the communities they serve.

This is understandable, given the considerable influence of the Armed Forces on the role and operations of the police in the past. One example of the impact of military culture on the police was the

... A number of workers at a textile factory in China were taken to hospital and several others were arrested following a clash with police.

... When the police attempted to disperse the crowd and prevent more workers from joining the demonstration, confrontation became unavoidable.¹

1 Kompas: "Workers in China Clash with Police," Saturday, 14 February 2004.

2 Article 5 Paragraph (1) Law Number 2 Year 2002 on the Indonesian National Police, and Article 2 of the Decree of the President of the Republic of Indonesia Number 70 Year 2002 on the Organization and Operational Procedures of the Indonesian National Police.

militaristic attitude of police personnel in their dealings with the public.³ The hope is that the new paradigm, therefore, will lead to a change in the way the police deal with a public that needs their protection and service.

The burden of duties the police have to bear is indeed wide-ranging and heavy, particularly if we refer to Article 19 paragraph (1) of Law Number 2/2002, which states that in performing their tasks and exercising their authority, the police must always act on the basis of legal norms, observe religious, civil and moral norms, and respect human rights. In addition, the police must also prioritize preventive action (Article 19 paragraph (2) of Law No. 2 of 2002) through the development of preventive principles, and have a general obligation to maintain public order and safety.

A look at the job description and details of police authority shows that their social or community-oriented tasks (characterized by service and dedication) actually outnumber their juridical tasks in the field of law enforcement and criminal justice.⁴

3 Harkristuti Harkrisnowo, "A Paradigm Shift in the Police?" Paper given to a Seminar on Re-awakening the Integrity of Practitioners and Law Enforcers in Indonesia, organized by the Extension Study Association, University of Indonesia Faculty of Law, in Jakarta, 1 April 2000. Page 3.

4 Barda Nawai Arief, "The Juridical Task of the Indonesian National Police in Various Aspects of Law Enforcement" in Some Policy Aspects of Criminal Law Enforcement and Development, Bandung; PT Citra Aditya Bakti, 1998, Page 5.

THE KEY ROLE OF THE POLICE IN INDUSTRIAL RELATIONS DISPUTES

In principle, employment relations between employers and workers are a civil matter. Therefore, in a dispute, the settlement is left to the parties to the dispute. However, according to Law No. 13/2003, settlements for industrial relations disputes must be sought through bipartite consultation to reach an agreement. If no agreement can be reached, the procedures regulated in the law, such as mediation, conciliation, arbitration or the industrial relations court, come into play.

In an industrial relations dispute situation, the key role of the police, apart from law enforcement, is to keep order and safeguard the public. This is particularly important if negotiations between the workers and the employers break down, and the workers go on strike or the employers impose a lockout, creating the potential for disturbances of public order and security.

Strikes must be legal, conducted in an orderly and peaceful manner. In other words, they must be conducted in accordance with the provisions of the law. Thus a strike that is not legal, is held in a disorderly manner or gives rise to unrest constitutes a violation of the law. The same applies to lockouts. Even if the company belongs to the employer, the employer cannot close the company unilaterally or arbitrarily. Certain requirements must be met before a company can be closed. If these matters are not complied with, criminal sanctions will ensue.

According to the Regulation of the Chief of Indonesian National Police Number 1/III/2005 dated 24 March 2005 on the Guidelines on The Conduct of Indonesian National Police in Handling Law and Order in Industrial Disputes, some of the following are obligatory:⁵

1. Police units can be deployed in the vicinity of an industrial relations dispute, strike, demonstration or lockout.
2. The purpose of deploying a police unit is to provide protection and services for the maintenance of public order and safety, as well as to make it possible for the workers and the employer to exercise their right to strike, demonstrate or impose a lockout in a legal, orderly and peaceful manner.

5 Guidelines for Indonesian National Police Action on Law and Order Enforcement in Industrial Relations Disputes, Article 6, Letter a-d, pages 13-15.

3. Members of a police unit deployed in a certain area to deal with an industrial relations dispute must:
 - a. Always wear uniforms, badges and clear means of identification;
 - b. Act professionally and proportionally, obey all laws and legislation and respect human rights;
 - c. Not side with either of the parties to the dispute;
 - d. Uphold the principle that all parties are equal before the law;
 - e. Position the disputing parties not as opponents but as partners in seeking industrial goodwill and social justice;
 - f. Not get involved negotiating the settlement of any industrial relations dispute whatsoever.
4. In dealing with a strike, demonstration or lockout which does not lead to any disturbance of public order and safety, the police must be positioned at a radius of no less than 25 meters, or at least within sight of the strike or the demonstration.

Strike Action

Workers who go on strike legally and peacefully to claim their normative rights are entitled to continue to receive their wages. Moreover, a legal strike puts an obligation on the other parties (including the employer) not to take certain actions; any violation of this provision constitutes a criminal offence.

An atmosphere of unrest and disorder usually surrounds strikes that fail to comply with the legal procedures. In many instances, this is also characteristic of legal strikes if they are accompanied by demonstrations and sometimes even vandalism, threatening the safety of people and disturbing public order.

When there is a strike, and especially if it a mass action—even if it is held by the rules—the police, who have the task of keeping public order and safeguarding the public as well as providing protection, service and care for the community, play a crucial role. People participating in mass gatherings usually feel a heightened sense of solidarity and are easily provoked.

Therefore, it is the task of the police to ensure that the strike is orderly, so that negotiations to settle the dispute can proceed smoothly. While the workers and employers are negotiating, the police must remain neutral and not intervene in the bargaining process.

If a strike is legal and is accompanied by a demonstration, march, public rally and/or speeches,⁶ according to Law No. 9/1998 on the

⁶ Article 1 of Law No. 9/1998 gives a definition of the various means of expressing opinions publicly, as follows:

1. A demonstration is the activity by one or more people of expressing opinions orally, in writing and so on demonstratively in public (item 3);
2. A march is the activity of expressing opinions while moving in procession along a public road (item 4);
3. A rally is an open meeting held to express opinions on a certain theme (item 5);
4. A speech is the act of expressing an opinion, freely and openly in public under no particular theme (item 6).

Freedom to Express Opinions in Public (Article 10), notice of the planned action must be given to the local police in writing no later than 3x24 hours before the action is to take place. The police must also coordinate with the leader of the activity as well as the management of the agency or organization that will be the object of the action, and make security preparations for the location and the route.

The police are responsible for providing protection for those who are expressing their opinions in public, but at the same time they are also responsible for guaranteeing security and public order in line with the prevailing procedures (this is consistent with the principal tasks of the police as stated in Article 13 items a and c of Law No. 2/2002).

When opinions are expressed in public in a way that conflicts with the provisions of the law, the police, in their capacity as the agents responsible for public order and safety, can disperse the activity. In addition, if any of the participants do anything in violation of the law they may be subject to legal sanctions in accordance with the prevailing legislation. It is the police's responsibility to deal with the situation if any criminal laws are breached, in accordance with the principal task of the police as agents of law enforcement (Article 13 item b of Law No. 2/2002).

Criminal Acts in Industrial Relations Dispute Situations

If any excessive actions arise from the strike in the form of criminal actions such as vandalism, torture, hostage-taking, offensive acts or kidnapping, the police—as law enforcement agents—have the authority to take action, in accordance with the provisions of the prevailing laws, against the parties who are deemed responsible. As investigators, the police have the authority to use forcible means such as arrest, detention and seizure (Article 7 of the Code of Criminal Procedure).

According to Law No. 13/2003, there are a number of criminal offences that can occur during the course of an industrial relations dispute, as follows:

1. Violation of Article 143:

- (1) Impeding workers and unions in the exercise of their right to strike in a legal, orderly and peaceful manner.
- (2) Arresting and/or detaining workers and union officials who are holding a legal, orderly and peaceful strike in accordance with the prevailing legislation.

According to Article 185, these offences are crimes that are subject to criminal penalties in the form of imprisonment for at least 1 year up to a maximum of 4 years and/or a fine of at least Rp. 100,000,000 (one hundred million Rupiah) but not more than Rp. 400,000,000 (four hundred million Rupiah). The perpetrators

are those who prevent workers from exercising their right to go on strike in a legal, orderly and peaceful fashion. Thus the perpetrator could be the employer, or another party such as the company's security personnel or the police, any of whom may be subject to this provision.

Likewise for perpetrators of the action prohibited in paragraph (2)—that is, arrest and/or detention. Although by law the police are entitled to arrest and/or detain someone, they can only do so under the specific circumstances specified in the law. The police must therefore use this authority very carefully indeed.

2. Violation of Article 137 on strikes that must be legal, orderly and peaceful.

According to Article 186, this offence is a violation which carries a threat of imprisonment for a minimum of 1 month up to a maximum of 4 (four) years and/or a fine of not less than Rp. 10,000,000 (ten million Rupiah) and not more than Rp. 400,000,000 (four hundred million Rupiah).

3. Violation of Article 138 paragraph (1) on workers and/or unions intending to induce other workers to strike while the strike is taking place in accordance with the law.⁷

According to Article 186, this offence is a violation and is subject to criminal sanctions of a minimum jail term of 1 month up to a maximum of 4 years and/or a fine of between Rp. 10,000,000 (ten million Rupiah) and Rp. 400,000,000 (four hundred million Rupiah).

4. Violation of Article 144 prohibiting the employer from substituting the striking workers with other workers from outside the company; or imposing sanctions or any other form of retaliatory action on the workers and union officials during or after a legal strike.

According to Article 187, this is a violation and can be subject to criminal sanctions in the form of imprisonment of between 1 and 12 months and/or a fine of at least Rp. 10,000,000 (ten million Rupiah) but not more than Rp. 100,000,000 (one hundred million Rupiah).

5. Violation of Article 148 on the employer's obligation to notify, in writing, the workers and/or union as well as the responsible agency in the manpower sector, of a lockout at least 7 (seven) days before it is carried out.

According to Article 188, this criminal act is a violation subject to criminal sanctions in the form of fine of at least Rp. 5,000,000 (five million Rupiah) and not more than Rp. 50,000,000 (fifty million Rupiah).

⁷ It can be concluded from the provisions of Article 138 paragraph (1), when linked to paragraph (2), that inducing someone to strike while the strike is in progress is not a criminal act, provided that it is done in a way that does not violate the law. If a party is induced to strike by unlawful means, for example under threat or by force, it constitutes a criminal act and violates the provisions of Article 186.

For labour-related criminal offences that are committed during the course of an industrial relations dispute as mentioned above, the police, in their capacity as principal investigators (Article 6 paragraph (1) sub a, Code of Criminal Procedure), are entitled to conduct an investigation as confirmed in Article 182 paragraph (1) Law No. 13/2003. Further, the Labour Law states that, in addition to the police, labour inspectors are also given special authority as Civil Investigators under the coordination and supervision of the police.

We can conclude from the explanation above that in an industrial relations dispute, the police have the following roles:

1. To prevent unrest during a strike or lockout that is in compliance with the prevailing provisions. In situations like this, the police role is mostly one of maintaining safety and order.
2. To take action on labour-related criminal offences, namely by coordinating and supervising Civil Investigators.
3. To deal with other offences that arise as a negative consequence of a strike or demonstration (such as vandalism, torture, hostage-taking, kidnapping etc.) in their capacity as investigators.

POLICE ACTION

As agents of law enforcement, the police have the authority to take police action, which includes arrest, detention and seizure, for the purposes of investigating an offence. This is confirmed in Article 16 Law No. 2/2002. Police action essentially violates human rights if it is conducted without legal basis. Therefore, such action may only be taken by the competent agents and in compliance with the law; moreover, it must always be taken with due observance of the basic principles of human rights.

The international technical guidance and instruments which should be referred to in the implementation of police action includes the following:

1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).
3. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).
4. Basic Principles for the Treatment of Prisoners (1990).
5. Standard Minimum Rules for the Treatment of Prisoners (1957 and 1977).
6. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990).

In circumstances surrounding an industrial relations dispute, the police are required to take firm and measured action—which may include summons, arrest, searches, confiscation, investigation and detention consistent with the prevailing provisions and regulations—if there is a real threat to or disturbance of public order and safety, or if someone is suspected of having committed a general criminal offence during the dispute or while the strike, demonstration or lockout is in progress. The police action is taken to maintain security and order in the context of law enforcement as well as to protect human rights.⁸

⁸ Guidelines for Indonesian National Police Action on Law and Order Enforcement in Industrial Relations Disputes, Article 7 Page 16.

The convention against torture was ratified by Indonesia on 28 October 1928. All the technical guidelines above were drawn up through United Nations conferences and subsequently legalised through resolutions of the United Nations General Session or the Economic and Social Council (ECOSOC). The guidelines are not legally binding but are intended to provide guidance on various operational activities of the police and law enforcement units.

Arrest

Individual freedom is one of the most fundamental of all human rights, so its revocation can only be justified if it has a firm legal basis and is genuinely necessary. Article 9 of the Universal Declaration of Human Rights expressly states that no one can be arrested, detained or exiled arbitrarily. Arrests may only be made in accordance with legal procedure (Article 9 paragraph (1) of the International Covenant on Civil and Political Rights). Although in the 1945 Constitution, even in its fourth and latest amendment, there is no article that explicitly provides for this, it is clear from Law No. 39/1999 on Human Rights (Article 34) that in the case of arrest and detention, Indonesia adopts principles that are consistent with the international instruments.

The Code of Criminal Procedure, which also prioritizes protection of human rights, defines arrest as an investigative action in the form of a temporary restriction on the freedom of the suspect or the defendant if there is sufficient evidence for the purposes of the investigation or prosecution and/or trial (Article 1 item 20). The provisions governing the arrest and the procedure for the arrest are set forth in Articles 16 to 19 of the Code of Criminal Procedure. From these provisions it can be concluded that:

1. An arrest can be made for the purposes of an investigation or prosecution and/or trial;
2. An individual may only be arrested if he or she is strongly suspected of having committed a criminal offence (crime) on the basis of sufficient preliminary evidence. According to the 1st Joint Working Meeting of Mahkejapol (a forum comprising the Supreme Court, Ministry of Justice, Attorney General's Office and the Police) in 1982, "sufficient preliminary evidence" can constitute a report or complaint plus one of three things, namely (i) the minutes of the investigation of the witnesses/suspect/defendant, (ii) minutes of investigation at the crime site, and (iii) material evidence. A suspect cannot be arrested unless he or she has been legally served two consecutive summonses and failed to fulfil the summons without legitimate reason;
3. The party making the arrest is an officer of the Indonesian National Police;
4. The officer making the arrest must show a letter of assignment and the arrest warrant;

5. At the time of arrest, the suspect must be informed of the reason for the arrest, the crime he or she is suspected of and the place he or she will be questioned;
6. Arrest without an arrest warrant is only possible in cases where the suspect is caught in the act of committing the offence, with the provision that the suspect, together with any evidence, must be handed over immediately to the nearest investigator or assisting investigator;
7. The family of the person under arrest must be notified immediately of the arrest; and
8. The person arrested may only be held for a maximum of one day.

If the principles and provisions of the law concerning arrest are applied in an industrial relations dispute, then:

- For a labour-related criminal offence (pursuant to Law No. 13/2003), they can basically only be applied to a person suspected of violating Article 143, because this is a crime, whereas for the other offences—which are only violations—the suspect can only be arrested if he/she fails on two consecutive occasions to fulfil a summons with no legitimate reason.
- Workers who are expressing opinions in public, for example by holding a demonstration, cannot be arrested even if their demonstration does not comply with the procedures and provisions of the Law, unless, the way they express their opinion is an infringement of criminal law that constitutes a crime.
- Perpetrators who are caught in the act can be arrested without a warrant for the arrest.

Detention

A suspect under arrest may only be held for a relatively brief period. As a follow up, for the purposes of the investigation of the case, the suspect can be detained. Like arrest, detention is also an act of revoking an individual's freedom which is contrary to human rights; and in this case, for an even longer period than an arrest. Therefore, its use must be based on the law. Moreover, those whose freedom is revoked must be treated humanely and their human rights must be respected (Article 10 paragraph (1) ICCPR).

Unlike arrest, which is wholly the authority of the police, detention may also be used by a prosecutor or a judge in accordance with their authority to investigate a case. The duration of such detention, and any subsequent periods of detainment, are stipulated in the Code of Criminal Procedure.

When detaining a suspect, the authorised law enforcement agents must take into account several fundamental principles, as follows:

1. A suspect or a defendant may be detained if he or she is strongly suspected, based on sufficient evidence, of having committed a criminal act.

Since detention is an act of exemption, care needs to be taken when implementing it. Whether or not the suspect falls into the category of “strong suspicion” of having committed the criminal act must be based on sufficient evidence. Neither the Code of Criminal Procedure nor its implementing regulations provide clarification on this matter. However, seeing the considerable number of problems this was causing in the field, the 1st Joint Working Meeting of Mahkejapol in 1982 confirmed that “sufficient evidence” means a report or complaint plus two of the following: (i) minutes of investigation of the witness/suspect/defendant, (ii) minutes of investigation at the crime site, and (iii) material evidence.

2. A person can only be detained if the juridical condition and the condition of necessity have been met.

The juridical condition is that it is a criminal offence subject to a minimum of five years’ imprisonment or a specific criminal offence as referred to in the Code of Criminal Procedure, for example in Article 335 paragraph (1), Article 351 paragraph (1) and Article 353 paragraph (1). The condition of necessity is that there is concern that the suspect or defendant will abscond, destroy the evidence or re-offend.

This requirement is cumulative. This means that the person can only be detained if both conditions are met.

3. The detention is served by delivering a warrant for detention stating the identity of the suspect or defendant.
4. The detained suspect or defendant must be informed of the reason for his or her detention, the charge against him or her and the place of detention.
5. The family of the detained suspect or defendant must be notified of the detention.
6. The detained suspect or defendant is entitled to communicate with a legal counsel and a private doctor.
7. The detained suspect or defendant is entitled to petition the law enforcement agent, in accordance with the stage of the enquiry, for a postponement of detention, with or without a cash guarantee or personal guarantee. At the investigation stage, for example, the suspect or defendant is entitled to file the postponement request with the police in their capacity as investigator.
8. The suspect or defendant may only be detained for the period stipulated by the law. At the investigation stage, the police only have the right to detain suspect or defendant for 20 days at the most. If necessary for purposes of the investigation, the detention period may be extended by the public prosecutor for no more than 40 days. If the purposes of the investigation have been satisfied,

the suspect can be released before the expiration of the detention period. If the investigation has not been completed by the time the suspect has been held for 60 days, the investigator must, by law, release the suspect.

If we apply these general principles and provisions on detention in respect of a criminal offence that could occur during a labour dispute, we can see that:

1. For a labour-related criminal offence that is committed during an industrial relations dispute (violating Articles 137, 138 paragraph (1), 143, 144 and 148 of Law No. 13/2003), detention is not an option. This is because, apart from Article 143, the other articles are only violations. Even a suspect who violates Article 143 cannot be detained because the maximum penalty is only four years in jail.
2. Detention is an option if, during a legal strike or lockout, there is an expression of opinion in public which is followed by a violation of criminal law in the form of a crime, where the perpetrator fulfils the conditions for detention. If the basis for detention is a criminal offence that occurred as a consequence of an expression of opinion in public, that activity itself (the expression of opinion) is not the offence, even if it was not in compliance with the procedures or the requirements stipulated by law. This deserves attention because the penalty for such an act is only dispersal by the competent agents, not a criminal sanction.

Seizure

Besides the restriction and deprivation of a suspect's or defendant's liberty, the investigation of a case will sometimes also call for seizure. Seizure, according to Article 1 item 16 of the Code of Criminal Procedure, is a series of actions taken by the investigator to take over and/or to keep under his or her control goods or assets that may be movable or immovable, tangible or intangible, for the purposes of evidence in an investigation, prosecution or trial.

International human rights instruments, for example the Universal Declaration of Human Rights in Article 17 paragraph (1), assert that in principle, no one may have their property seized arbitrarily. The same provision can also be found in Indonesian law, in Article 28(h) paragraph (4) of the 1945 Constitution and Article 36 paragraph (2) of Law No. 39/1999. Therefore, seizure may only be conducted according to the law. The fundamental principles for seizure, according to prevailing procedural law—that is, the Code of Criminal Procedure—include the following:

1. Seizure may only be carried out by an investigator with a warrant from the chair of the local district court;

2. In very urgent circumstances, the investigator can seize movable goods without a warrant. In cases like this, the investigator must immediately report to the chair of the local district court for approval;
3. Only those objects that have been stipulated in the law can be seized, namely:
 - a. objects or receivables of the suspect or defendant, all or some of which are suspected of having been obtained by a criminal act or as a result of a criminal act;
 - b. objects that have been used directly in the committing or preparation of a criminal act;
 - c. objects that are used to impede a criminal investigation;
 - d. objects specially made or intended for committing a criminal act; and
 - e. other objects that have a direct relationship to the criminal act committed.
4. In a case where the suspect is caught committing a criminal offence, the investigator can seize the objects and equipment that have in fact or can reasonably be suspected of having been used to commit the offence, or other objects which may be used as material evidence. In addition, in such a case, the investigator also has the authority to seize packages, letters or objects intended for the suspect or originating from him or her, which have been shipped or sent through a courier service or shipping office, provided that a receipt is given to the suspect and/or an official at the shipping office or courier service in question.
5. The seized objects are kept at a warehouse for seized goods in as good a condition as possible and are the responsibility of the competent officer according to the stage of the investigation, and they must not be used by anyone whomsoever; and
6. If a decision has been handed down on the case, the seized object or objects can be returned to the person mentioned in the decision or removed by the state to be destroyed or used as evidence in another case.

The Use of Force and Firearms

A conflict between workers and employers that ends up in a strike or demonstration always has the potential to trigger violence. If something happens to disturb public order and safety as a consequence of an industrial relations dispute, the police have the authority to take certain actions in order to deal with the problem. This is in line with the principle tasks of the police to maintain security and order in the community, to enforce the law and to provide protection and service to the public.

It is not easy for the police to take action in handling a riot or mass unrest. Officers in the field must sometimes act firmly and forcefully

against the masses and this is often considered contrary to human rights.

In carrying out various law and order enforcement actions, the international instruments provides several principles which are suitable for use as guidelines by law enforcement agents to guarantee protection for human rights. Articles 2 and 8 of the Code of Conduct for Law Enforcement Officials (UN, 1979), for example, state that in carrying out their tasks, law enforcement agents must respect and obey the law, respect human dignity and protect human rights. Further, these guidelines require law enforcement officers to use force only if it absolutely necessary for the implementation of the task (Article 3).

With regard to the use of force and firearms—two measures that are considered highly dangerous if used—the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials describes clearly and in detail the basic principles of the use of these options. The basic principles, according to this international instrument, include the following:

- Non-violent means must be used first;
- Force should be used only if it is strictly necessary;
- Force should be used only for law enforcement objectives;
- There are no justifiable exceptions or reasons for using illegal force;
- The use of force must always be in proportion to the legal objective; and
- Damage and injury must be minimized.

While the basic principles for the use of firearms are as follows:

- Firearms must only be used in exceptional circumstances;
- Firearms must only be used in self-defence or the defence of others against the imminent threat of death or serious injury; or to prevent a serious crime involving grave threat to human life; or to arrest and prevent the escape of the person causing such threat and who is resisting efforts to contain the threat; and in all these cases firearms should only be used if less forceful means are inadequate; and
- The intentional lethal use of firearms can only be permitted if it is strictly unavoidable in order to protect human life.

Given that firearms can only be used in certain situations, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials also specifies the procedure for the use of firearms, as follows:

- The officer must identify him or herself as a police officer;
- The officer must give clear warning; and
- The officer must allow sufficient time for the warning to be obeyed, unless a delay will result in death or serious injury to the officer or to others, or if it is clearly not useful or not appropriate to delay in the situation in question.

In line with the international instruments referred to above, the Indonesian National Police have also issued their own guidelines for officers in the field who are dealing with demonstrations and riots. These are set forth in various instruments such as the Standard Operating Procedures (PROTAP) and a telegram from the Chief of the Indonesian National Police. The police are continuously updating and improving these guidelines in line with developments in the field.

In terms of substance, the principles in the Indonesian National Police guidelines on using force and firearms are consistent with the various international instruments, as we can see below.

The Telegram from the Chief of the INP No. Pol: STR/859/XII/2003 dated 12 December 2003 details the steps that must be taken by an officer in dealing with a demonstration:

1. The demonstration is dealt with by the Negotiating Team.
2. The demonstration is dealt with by the Rapid Response Unit, who wear regular uniforms with caps and shoulder belts, but do not use crowd control equipment or firearms.
3. If the demonstration becomes aggressive, it is dealt with by the Crowd Control Unit, who are equipped with crowd control equipment in the form of helmets, shields, "T" sticks, leg guards and right arm protectors.
4. If the crowd becomes aggressive and uses sharp weapons, the use of firearms with blank bullets fired upwards is justifiable as a form of "shock therapy" to disperse the crowd.
5. If the crowd becomes aggressive and starts to damage public facilities, shops, residences, government offices or police offices, or mass theft or looting breaks out, firearms with rubber bullets can be used to fire warning shots to disperse the crowd.
6. If rubber bullets are fired, they should be aimed below the waist and only at perpetrators who are considered a potential threat to the physical or psychological safety of the local residents or police or security officers, or who are deemed capable of causing damage or arson or even of starting a riot in the area concerned.
7. The use of firearms with live ammunition cannot be justified to deal with a mass demonstration. Live bullets may only be used to deal with certain groups who are known to use or are suspected of using firearms with live ammunition.

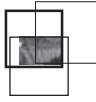
Concerning the use of firearms, the Standard Operating Procedures/01/V/2001 on the Use of Firearms expressly state that:

1. The use of firearms by an officer can only be justified in circumstances where he or she is forced to defend him or herself or to protect or save life from a threat or crime.
2. In principle, firearms are used to paralyse, rather than kill, the perpetrator, so that the threat to the life and safety of the officer and others can be averted and the perpetrator can be arrested.

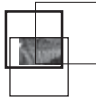
3. Shots should be aimed at non-vital body organs or parts.
4. Under conditions of rioting, unrest or mass movement, the priority targets are the leaders and provocateurs.
5. Firearms (with live ammunition) should not be immediately aimed at the perpetrator of the crime or violation; this should be preceded by three warning shots fired into the air using blanks, rubber bullets or live bullets.

The steps specified in the Police Chief's telegram as well as the Standard Operating Procedures demonstrate that force and firearms are used only as a last resort and as an extraordinary measure in dealing with demonstrations and unrest, and can only be used in certain circumstances.

PRESENTATION 7.1: LAW AND ORDER IN INDUSTRIAL RELATIONS DISPUTES



DEALING WITH LAW AND ORDER IN INDUSTRIAL RELATIONS DISPUTES: THE ROLE OF POLICE



INDONESIAN POLICE REFORM

- The Indonesian National Police is independent (separate from the Armed Forces) and no longer militaristic
- There is greater respect for human rights
- They are having to change their attitude in carrying out their duty to protect and serve the public



LABOUR REFORM

- Greater respect for the fundamental rights of workers and employers, including the right to associate and bargain collectively
- Ratification of fundamental ILO conventions
- Enactment of labour laws to shape the new industrial relations system, which places greater value on the fundamental rights of workers and employers



PROBLEMS

- Inadequate understanding of the respective rights and obligations of industrial relations actors
- Growing number of industrial relations disputes
- Industrial dispute settlement mechanisms still not effective
- Growing number of strikes and demonstrations by workers and lockouts by employers, which are a potential threat to public order and safety



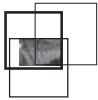
STRIKES & DEMONSTRATIONS

STRIKES

- Collective action by workers
- Planned
- Stops or slows down the work
- Written notice to the employer and local labour authorities
- Not less than 7 days in advance

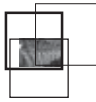
DEMONSTRATIONS

- Individual or group action
- To express opinions orally, in writing, etc.
- In public
- Written notice to the local police re. purpose & objective, location, route, person in charge, number of participants
- Not less than 3 x 24 hours in advance



KEY ROLES OF THE POLICE IN INDUSTRIAL RELATIONS DISPUTES

- Guardians of security and order during:
 - Strikes or lockouts;
 - Legal and illegal demonstrations
- Coordinators & supervisors of civil investigators in labour-related criminal cases, including illegal strikes and lockouts
- Investigators of other offences committed during strikes or lockouts



POLICE AS MEDIATOR IN INDUSTRIAL RELATIONS DISPUTES?

NO

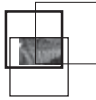


Law No. 2/2004 > **Mediator:**

An officer of a government agency with responsibility in the labour sector

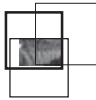
Fulfils requirements to be mediator > appointed by Minister
Duty is to mediate

Must issue written recommendations > disputing parties
To resolve > disputes over rights, interests, termination of employment & between unions within one company



DURING STRIKES AND LOCKOUTS (LEGAL OR ILLEGAL)

- Possible actions:
 - Demonstrations, Rallies, Public Meetings, Speeches
- According to Law No. 9/1998:
 - Written notice must be given to the local police, 3 x 24 hours in advance
 - Police are responsible for the safety and protection of the demonstrators
 - If the action is not in compliance with the provisions, it can be broken up



LAW NO. 9/1998

- Expressing opinions in public is in accordance with the law
- No one may obstruct the expression of opinion using violence or threats of violence
- Penalty is **one year in custody**



LABOUR-RELATED CRIMINAL OFFENCES:

1. Impeding a legal strike
2. Arresting and/or detaining workers on a legal strike
3. Illegal strike
4. Illegally inducing other workers to strike
5. Replacing workers who are holding a legal strike with workers from outside the company
6. Imposing sanctions or retaliatory actions on workers and unions during and after a legal strike
7. Not giving written notice of a lockout to the specified parties within the required period



THE POLICE AS THE LAW ENFORCEMENT AUTHORITY

- Using Forcible Means:
 - Detention, Seizure, Capture, etc.
- Use of Forcible Means:
 - Is a violation of human rights, if conducted without legal basis



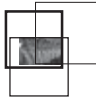
ARREST

- Must be based on sufficient preliminary evidence
- Officers must show letter of assignment and arrest warrant, unless arresting someone in the act
- Family of the suspect must be informed within 24 hours



DETENTION

- Must have sufficient evidence
- Must meet juridical requirements and condition of necessity
- Must have a warrant
- Suspect must be informed of reason for detention
- Family must be informed of detention
- Detained suspect has rights
- Suspect can be detained for specified period (20 days); can be extended by a further 40 days by Court
- Cannot be detained for labour-related violations (because they carry a maximum penalty of 5 years' imprisonment)



SEIZURE

- Must have a warrant from the local District Court, unless in emergency circumstances
- Objects that can be seized are specified by Law
- If suspect is caught in the act, objects used or suspected of being used to commit the offence can be seized
- Seized objects are kept in a warehouse and they are the responsibility of the officer in accordance with the level of the investigation. They must not be used by any person whomsoever



THE USE OF FORCE AND FIREARMS

- **Code of Conduct for Law Enforcement Officials:** Force should only be applied if **absolutely necessary** and only **to the extent necessary** for the execution of task



BASIC PRINCIPLES ON "THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

- Force is only used if absolutely necessary
- Force is only used for the purpose of law enforcement
- Firearms must only be used in exceptional situations
- Firearms must only be used in self-defence or to protect others against the imminent threat of death or serious injury
- Intentional lethal use of firearms is only permitted if strictly unavoidable in order to protect human life



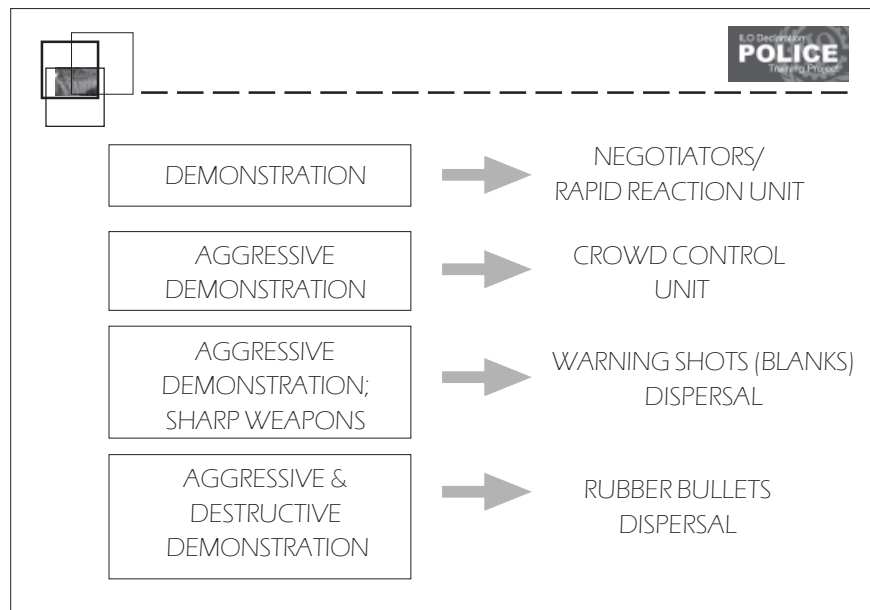
PROCEDURES FOR THE USE OF "FIREARMS

- Officer must identify him/herself as a police officer
- Officer must give a clear warning
- Officer must allow sufficient time for the warning to be heeded



TELEGRAM FROM CHIEF OF INP "NO. POL: STR/859/XII/2003 "DATED 12 DECEMBER 2003

- Demonstration is dealt with by Negotiating Team
- Demonstration is dealt with by Rapid Reaction Unit
- If it turns aggressive, dealt with by Crowd Control Unit
- If it turns aggressive and sharp weapons are used, police can use firearms with blanks (fired into the air) to break up the crowd
- If it turns aggressive and destructive, police can use firearms with rubber bullets (for warning shots) to break up the crowd
- Firearms with live bullets must not be used to deal with a mass demonstration



The diagram is contained within a rectangular frame. In the top right corner, there is a logo for 'I.O. Department POLICE Training Program'. In the top left corner, there is a small graphic of a camera or sensor. A horizontal dashed line runs across the top of the diagram. Below this line, the following text is centered:

SOPS/01/V/2001 REGARDING THE USE OF FIREARMS

- Only justifiable if forced to defend self/others.
- In principle, **only used to paralyze, not kill**
- Target must be **non-vital body organs/parts**
- Under riot conditions, priority targets are the leaders/ mobilisers of the riot
- Use of live ammunition must be preceded by warning shots using blanks, rubber bullets or live bullets fired into the air

CASE STUDY MATERIALS

Sample Questions and Tasks:

Question:

1. In this case, are any of the provisions of international conventions and national law violated?
 - a. If not, explain your arguments.
 - b. If yes, explain your arguments and specify which provisions are violated.
2. If there is a violation:
 - a. What legal and administrative procedures can be used to resolve the case?
 - b. What action can be taken by the police in this case?

Task:

1. In your group, decide who will be:
 - a. the leader;
 - b. the note-taker; and
 - c. the presenter.
2. Make the summary of the case analysis your group is working on.
3. Write your group's answers and arguments on the transparencies provided.

Sample Cases

Industrial Relations Dispute at PT. Barock

On 9 August 2004, hundreds of workers of PT. Barock demonstrated in front of the factory, which manufactures surgical gloves. Their action was coordinated by 10 workers led by MJ, who was also the Chairman of the Work Unit Board of the "White" Trade Union at the Company. The workers made speeches and shouted disparaging remarks about the management of PT. Barock. Among the approximately 200 workers there were several who were not PT. Barock employees, who were wearing "Red" Trade Union T-shirts and badges and were noisily urging the workers to unite with them against the employer, using offensive language.

The workers were taking this action to protest the company's decision to dismiss the coordinators of the demonstration. This decision was taken by the company on 9 July 2004, because the 10 people concerned had been unwilling to comply with the company's appeal to call a halt to acts of provocation and intimidation, which included a grave error according to the provisions of the Article 26 paragraph (10) letter O of the Company Policy. The workers also ignored the summons to return to work that was issued by the company on the same date. The company submitted an application for dismissal to the local Manpower Office on 16 July 2004.

According to the company, MJ and his members had gone on strike and spread misleading rumours, such as:

1. The company would change the status of all permanent employees to contract employees, so that they would no longer be entitled to the annual Religious Holiday Allowance, or severance pay and so on if they were dismissed.
2. The company would be conducting mass lay-offs in the near future.
3. The White union could no longer be expected to protect the workers' interests. The workers must therefore unite against the employer.

They spread these rumours by making contact with the workers both at the company and at their homes. As a result, the PT. Barock workers—who numbered about 1,500 in total—felt intimidated and they panicked, asking the company to verify the rumours.

The following day, on 10 August 2004, the workers again demonstrated in front of the factory. The demonstrators also set up tents and blockaded the factory access road, obstructing other workers coming to or leaving work, as well as forcing them to join the demonstration. Because their action was starting to become disorderly, that night the demonstrators were evicted by the local residents around the factory. On the same date, the company issued a further summons to return to work.

On 11 August, the workers demonstrated again. After making speeches in front of the factory, they continued their action at the Provincial Parliament, staying there for three days. On the second day of their action, the company was invited by Commission V of the Provincial Parliament to settle the dispute. However, the meeting, which was also attended by officials from the district-level Manpower Office and representatives of the workers, failed to yield an agreement between the disputing parties.

Since the Provincial Parliament was deemed incapable of assisting them to settle the problem, on 4 August the workers demonstrated again in front of the PT. Barock factory. This time they put up their tents and stayed overnight. The demonstrators were once again given help by people wearing clothing bearing the Red Union logo and colours.

Besides closing the factory gates, they also blocked off the back entrance to the factory so that workers and staff who wanted to come and go from work had to climb the factory's 3-meter high side fence.

Next, the protesters began throwing stones into the factory, "sweeping" around the factory and continuing to obstruct other workers who wanted to work while forcing them to join the protest. As a result, on 16 August, the company was forced to cease operations and close down the factory. The local residents chased away the protesters and, at the request of the Branch Executive Board of the White Union, the factory re-opened on 18 August 2004. On the same date, after being evicted from the factory, the protesters resumed their action in front of the Provincial Parliament building, staying the night there.

On the same date, the company applied to the district Manpower Office for permission to dismiss 830 of the demonstrating workers for failure to comply with any of the summons to return to work, which had been sent on 11, 13 and 14 August 2004.

To help find a resolution to the dispute, the Provincial Parliament established a joint team consisting of three Commissions, and held three meetings. The first meeting was held on 23 August at the Provincial Parliament and was attended by the provincial and district Manpower Offices, a representative of the Employers' Association, and the disputing parties. The meeting failed because the demonstrators took one of the company's representatives hostage for several hours.

Two days later, the Provincial Parliament again invited the parties to negotiate, but the company refused among concerns over security and their own safety. The following day, a meeting was held. This time it was at the factory, and was attended by the provincial and district Manpower Offices, and representatives of the Employers' Association, the Branch Executive Board of the White Union and the police, and the workers' legal counsel. However, this meeting too failed to settle dispute between the workers and the management of PT. Barock.

On 1 September 2004, at the initiative of the provincial and district Manpower Offices, a tripartite meeting was held at the Governor's Office. This meeting came up with the following recommendations:

1. An appeal is made to the workers to immediately call a halt to their demonstration and return to work pending the final settlement from the Ministry of Manpower and Transmigration, which is now in the process of handling this case.
2. If they insist on continuing to demonstrate, it should be done in an orderly and peaceful fashion.
3. This case will be settled in accordance with the prevailing provisions.

However, the next day the workers returned to demonstrate in front of the factory, continuing their action until 4 September when

the company was once again forced to close the factory because access was blocked by the demonstrators. This time, the demonstrators urged the workers to “fight to the death”, declaring that the Red Union would defend them.

Seeing this, some 500 factory workers who were against the protest action finally took action of their own by going to the local precinct police station to seek legal protection so that they could go back to work. Two days later, they paid a similar visit to Provincial Police Office.

On 7 September 2004, the provincial Deputy Chief of Police took the initiative of convening a meeting between the demonstrators, who were represented by their legal counsel, the workers who still wanted to work, and the company. Officials from the provincial Manpower Office, the precinct police and the Director of Intelligence for the provincial police force were also present at the Deputy Police Chief’s office. The Deputy Police Chief gives the following guidance:

1. The demonstrators are requested to stop their action now, in line with the recommendation of the district Manpower Office.
2. The demonstrators are requested not to impede other workers who want to work and not to close off the access to the factory so that the factory can resume operations.
3. The company is requested to collect data on which employees are demonstrating and which employees still want to work at the company.
4. The company and the demonstrators are requested not to impede either the demonstrators who want to go back to work or those who want to resign.

The meeting at the Deputy Police Chief’s office failed to resolve the problem: the next day, the demonstrators resumed their action and eventually had to be dispersed by the police. Several of the demonstrators were arrested and taken to the police station for resisting arrest. While they were breaking up the demonstration, the police found sharp weapons, Molotov cocktails and chilli juice.

Specific Questions:

1. Give your group’s analysis of the following:
 - ◆ Group 1: Police involvement in the process of negotiating a settlement for the dispute.
 - ◆ Group 2: The deployment of police units to deal with the demonstration.
 - ◆ Group 3: The arrest of workers who were on strike/demonstrating.
 - ◆ Group 4: The involvement of police intelligence and the criminal investigation department in an industrial dispute situation.

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