

The New Law on Trade Unions

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Foreword

The New Law on Trade Unions is meant to be a handy booklet for a better understanding and interpretation of the background and key provisions of Act No. 21 of 2000 which is one of three major legislation envisaged under the 1998 Labour Law Reform Program of Indonesia. It is the law now which opened the door to the establishment of three and independent trade unions in the country in the exercise of freedom of association as enshrined in ILO Convention No. 87.

Although many trade unions at various level including more than sixty national federations has now been established and registered under the Act, it is generally recognized, specially from the side of workers and trade unions, that the implementation of the Act is now without serious problems and obstacles. Many workers and trade unions still complain regularly of difficulties in forming and registering trade unions.

The Minister of Manpower and Transmigration Jacob Nuwa Wea, in an interview by Harvest International, emphasized the need for constant dialogue with trade unions so that they know their rights and responsibilities. He added that the openness of companies is also important. If the companies are open to the unions, there is likely to be less trouble. Businessmen must consider their workers as assets of the company. There is now the freedom to organize, and management cannot interfere with that, according to the Minister.

This new publication is part of the continuing efforts of the ILO/USA Declaration Project in Indonesia to assist the government, workers and employers, to understand and exercise their legal rights and obligations under all new legislation enacted in line with the fundamental principles and rights to freedom of association and collective bargaining.

This booklet is also intended to complement the “USER GUIDE on Act No. 21 of 2000” which was previously published by the project in collaboration with the Ministry of Manpower and Transmigration. It is intended primarily for the use of workers, trade unions, employers and government officials as well as the general public. We wish to express our appreciation to Dr. Payaman J. Simanjuntak, a labor expert and former senior official of DepnakerTrans, for preparing what we consider to be an excellent and useful booklet.

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Preface

This booklet is written in order to make it easy for readers, in particular union leaders and members, to understand the contents of Act No. 21 of the Year 2000 on Trade Union/ Labor Union, so that they can build workers' organizations, which, together with employers, should enable the enterprise to make progress and at the same time strive to improve the welfare of the worker and his/ her family.

Freedom of association is every worker's right. This right is guaranteed by Indonesia's Constitution and the 1945 Constitution. Indonesia also appreciates the international community's struggle for freedom of association and for this, Indonesia has ratified ILO Convention No. 87 of the year 1948 on Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 of the year 1949 on the Right to Organize and Collective Bargaining.

Act No. 21 of the year 2000 on Trade Union/ Labor Union is intended to regulate the implementation and protection of the right to organize in question, so that at the same time, secure, harmonious, dynamic, sustainable, well-balanced and justice-based industrial relations can be created.

Thus, this Act needs to be understood, not only by workers and trade unions, but also by employers and associations of employers, government officials, non-government organizations and the general public. This need is felt by the ILO, which, since the beginning, has been involved indirectly in the formulation and deliberation of this Act. That's why the ILO has requested the writer to write this booklet.

Hopefully this book is able to provide enlightenment and make it easy for readers to understand the objectives and contents of the Act on Trade Union/ Labor Union.

Jakarta, January 21, 2002

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Introduction

I. Background

Workers as citizens have equal status in law, right to get a job and earn a living that is proper, to express their opinions, to get together in one organization, and to establish and become member of a trade union.

The right to become member of a trade union is a worker's fundamental right that is guaranteed under Article 28 of the 1945 Constitution and, universally, in the Constitution and Conventions of the ILO. The objective of trade union is to fight for, protect, and defend the interests of, and to improve the welfare of, the worker and his or her family.

Workers are employers' very important partners in production process in order to improve the welfare of the worker and his or her family. Therefore, in exercising the right of freedom of association, trade unions are also obliged, together with employers and government officials, to create harmonious and dynamic industrial relations in order to promote the progress of and secure the survival of the enterprise, and also to secure the interests of the nation and State.

So far, trade unions' rights and obligations have not been regulated in legislation. Minister of Manpower's Regulation No. 3 of the year 1993 on trade union registration is deemed limiting freedom of association because the regulation stipulates that in order to be registered, a trade union must have regional union administrating chapters that represent it in no less than five provinces and have established enterprise union administering chapters in no less than 100 enterprises or have no less than 10,000 members all over Indonesia. Therefore, this Minister's Regulation has been annulled.

Trade union movement in Indonesia started in early 1905 during

the Dutch colonial times, which saw the establishment of unions such as The Postal Workers' Union (*Postbond*) in 1905 and The Sugar Workers' Union (*Suikerbond*) in 1906. This was then followed by the emergence of nationalist organizations striving for independence from the Dutch, such as The Netherlands East Indies Teachers' Union (1912), The Bumi Putera Pawn House Government Workers' Union (1914), and The Public Works Workers' Union (1917).

So, during the government of the Dutch colonialists, a number of trade unions were formed, which developed even further after Indonesia's independence on August 17, 1945. Until early 1973, Indonesia adopted a multi-union system, in which more than one union might be established within an enterprise.

Based on their experiences, union leaders concluded that the multi-union system rendered their union struggle and movement less effective. That's why on February 20, 1973, twenty-one union leaders reached an agreement to issue a Declaration for Uniting Laborers All Over Indonesia. The declaration contains statements, which, among others, say that:

- a. All the existing unions vowed to merge into one workers' organization, which were then called the Federation of All-Indonesia Laborers (FBSI);
- b. Trade union organizations were set up according to occupation or profession;
- c. Trade union movement and struggle must be free, that is, not bound or encumbered by a certain political force or a certain political party.

The Federation of All-Indonesia Laborers (FBSI) was then renamed The All-Indonesia Workers Union (SPSI), which later became The Federation of All-Indonesia Trade Unions (FSPSI) – the only workers' organization in Indonesia that was able to hold on for a relatively long period of time. Since early 1990s, there had been efforts to establish new trade unions outside of SPSI. In 1991 The Free Solidarity Labor Union (Serikat Buruh Merdeka Setia Kawan) was set up and in 1992 The All-Indonesia Labor Union was formed.

Pushed by political and government reforms in early 1998 and the ratification of ILO Convention No. 87 of the year 1948 on June 5, 1998, workers' organizations mushroomed. Early this year (2002), sixty federations of trade unions and more than 100 non-affiliated trade unions

were recorded. There is also a number of enterprises in which each has more than one trade union.

2 The Difference between Trade Union and Labor Union

In order to accommodate the aspiration of a number of workers organizations that prefers to call themselves labor unions, Act No. 21 of the year 2000 has to be named Trade/Labor Union Act (*Undang-Undang Serikat Pekerja/Serikat Buruh*).

Actually, the term “serikat pekerja” (trade unions) has a wider and more accurate and appropriate meaning than the term “serikat buruh” (labor unions). However, Act No. 21 is open to different ways of naming the union such as serikat pekerja (workers’ unions), serikat buruh (labor unions), kesatuan pekerja (unity of workers), kesatuan karyawan (unity of employees), kesatuan buruh (unity of laborers), persaudaraan pekerja (brotherhood of workers), persatuan karyawan (union of employees), asosiasi pekerja (association of workers), asosiasi karyawan (association of employees), ikatan karyawan (bond of employees), korps pegawai (corps of government officials), and so on.

Workers who are employed and work in enterprises are initially divided into two groups. The first group comprises operational workers, who sometimes are referred to as blue-collar workers [literal translation: workers who do rough job]. They normally work with machines so that their clothes get dirty easily. To prevent their clothes from getting dirty easily, the clothes are given blue color. That’s why they are called blue-collar workers. In the West [Western countries], they are also known as laborers and in Indonesia they are called buruh, which also means laborers.

The second group refers to workers who work [literal translation: carry out activities] in the office. They usually wear [formal white office shirt with] white collar. Because of the nature of their job, the white color that they wear does not get dirty easily. They are sometimes referred to as employees.

The more accurate and appropriate term to describe both groups is “workers.” This term includes white-collar as well as blue-collar workers who work in enterprises as well as those who work as self-employed workers and family workers. The word “workers” (pekerja) has a wider meaning than “laborers” (buruh). And the use of the word “workers” is more accurate and appropriate than “laborers.” By the same token, the

term “trade unions” has wider meaning and is more appropriate than the term “labor unions” because of the following reasons:

Firstly, the word “buruh” in Indonesian is often considered as the translation of the English word “labor”, and connotes workers who do rough job or workers who rely on their physical strengths rather than their intellectual expertise or capacities. As mentioned earlier, the word “laborer” in English is applied to workers who do rough job or blue-collar workers. By contrast, the word “workers” include everybody who works, irrespective of whether they are laborers or skilled workers, experts or white-collar workers or employees.

Teachers, doctors [physicians] and paramedics are not commonly referred to as laborers but they won't mind being referred to as workers. The same is also true for civil servants and those employed in state-owned enterprises. Thus, the use of the term “workers” include everybody who work, irrespective of whether they do rough job or whether they are skilled and expert workers, be they in the private sector or in the public sector or employed in state-owned enterprises.

Secondly, the term “laborers” and “labor unions” connotes workers who do rough job in the formal sector. It turns out that the historical development of labor unions, including that of advanced countries, hardly touch workers in the informal sector. The use of the terms “workers” and “trade unions” opens greater opportunities to invite workers in the informal sector to establish and become member of a trade union.

Thirdly, experiences in various countries show that members of labor unions are confined to workers who do rough job in the enterprise. They hardly include those employed in supervisory positions, lower management and middle management. The use of the term “trade unions” will open up greater opportunities to lure those employed in supervisory positions and leaders at all levels to become union members. They are basically receivers of wages or salaries. Not all of them represent employers or owners, and therefore they have the right to and deserve to become union members to fight for their interests.

Fourthly, all ILO Conventions and Recommendations use the terms “workers” and “workers’ organizations” or sometimes “trade unions” not “labor” or “labor organizations,” even though this organization is named International Labor Organization, whose correct Indonesian translation should be Organisasi Ketenagakerjaan Internasional.

Fifthly, the beginning of the history of labor struggle was indeed

[marked by] a clash of classes in which workers as a whole were mobilized to fight against capital owners or capitalists who were considered as exploiting workers in order to get as much profits as possible. In communist countries, labor unions demanded that capitalists be given no right to live, and that all capitals and assets must be owned by the State, which gave rise to state-ism that has failed to provide welfare to working communities.

Laborers and labor unions in liberal countries such as the United States, England, France and other European countries in the beginning held the view that capitalists basically tend to exploit laborers. Therefore, laborers must unite in a trade union to mobilize opposition against employers through various pressures and strikes. However, since the last tens of years, changes in their orientation and strategy have occurred, either because of the weakening of the role of trade union in advanced countries in general or because of the increasing effectiveness of tripartite forums at international and national levels.

Waves of strikes in advanced countries in 1970s have made them unable to compete against Japan. Employers in advanced countries incurred losses worth hundreds of millions man days because of strikes. Production was blocked and [prices became] expensive. Imports from Japan entered the markets of advanced countries. Labor market in advanced countries was bearish, and unemployment rose. Alarmed by this, employers and unions started to cooperate and activate dialogs and negotiations.

ILO has since its establishment emphasized the principles of partnership in a tripartite way. The principles have become more effective, in particular since the last 10 years. In this way, nowadays almost no countries apply the class struggle approach in the way they conduct their industrial relations.

Without intending to belittle workers' organizations that opt for names different than trade unions, this booklet consistently uses the terms "workers" and "trade unions."

3. Related Laws and Regulations

In Indonesia, there are several laws and regulations that are related to this Trade Union Act. [They are:]

- a. The 1945 Constitution, article 28, states that freedom of association and of getting together, of expressing one's thoughts orally

and in writing is determined by legislation.

- b. Act No. 21 of the year 1954 on Labor Agreements between Labor Unions and Employers.
- c. Act No. 18 of the year 1956 on the Ratification of ILO Convention No. 98 of the year 1949 on the Right to Organize and Collective Bargaining.
- d. Act No. 14 of the year 1969 on the Fundamental/Principal Regulations on Labor.
- e. Act No. 8 of the year 1985 on Community Organizations.
- f. Act No. 25 of the year 1997 on Labor (whose implementation has been postponed).
- g. Presidential Decision No. 83 of the year 1998 on the Ratification of ILO Convention N. 87 of the year 1948 on Freedom of Association and Protection of the Right to Organize.
- h. Act No. 39 of the year 1999 on Human Rights.

4. General Definition

- a. A worker is everybody who works for [literal translation: by receiving] wages or remuneration of other forms. In other words, workers in this case are those who are employed [literal translation: work in an employment relationship].
- b. An enterprise-bound trade union [literal translation: a trade union in an enterprise] is an organization formed by the workers of one enterprise or the workers of several enterprises. Basically, a trade union is established in one enterprise. However, trade unions can also be established in several enterprises that are connected with each other, for instance, in one enterprise and its subsidiaries.
- c. An enterprise-free trade union [literal translation: a trade union outside of an enterprise] is established by workers who work but not in an enterprise or who are not employed by an employer [literal translation: who do not have employment relationships with employers] such as the self-employed and workers in the informal sector.
- d. A federation of trade unions is a grouping of several trade unions.
- e. A confederation of trade unions is a grouping of several federa-

tions of trade unions.

- f. An enterprise is any form of business owned privately, by a sole proprietor, or a partnership or a legal body, or owned by the State, which employs workers by paying them wages or remunerations in other forms.
- g. An employer is an individual, a partnership or a legal body which runs or manages an enterprise that he or she or it owns or an enterprise that is owned by another person or another body.

Trade Union Principles, Characters and Objectives

1. Principles

Trade unions (including federations and confederations of trade unions) must accept The Pancasila [which literally means The Five Principles] as the [philosophical] basis of the State and The 1945 Constitution (as having been amended by the People's Consultative Assembly) as the constitution of The Unitary State of The Republic of Indonesia.

Trade unions must have principles that do not run against The Pancasila and The 1945 Constitution.

Are trade unions allowed to use one of Pancasila's Principles as the principle for their organizations? Yes, they are. For instance, a trade union may pick up nationalism or the union of [that which has been united as] Indonesia [Principle Number Three], democracy or deliberations aimed at reaching an agreement [Principle Number Four], or social justice [Principle Number Five] as a principle for its organization.

However, one needs to be extremely careful in using Principle Number One, Belief in God of Supreme Oneness. While religious morals, ethics and values can be accepted universally for all groups of workers, religious dogmas may limit the membership of a certain trade union only to certain groups of workers and thus rendering it inaccessible to other groups of workers.

2 Characters

Trade unions shall have the character of being free, open, independent, democratic and responsible.

Workers have right to establish a trade union or become member of a trade union. Thus, workers are free to choose to become member of

any trade union of their own choosing without being forced into accepting such membership and must not be prohibited by employers or other trade unions or other parties from exercising their right to organize.

Any trade union that operates in an enterprise must be open to the entire workforce in that enterprise without discriminating them on grounds of political orientation, religion, race, and sex. For instance, “Batak Christian Female Trade Union” is inconsistent with the open character of trade union because such union is closed or inaccessible to male workers and to female workers who are not Christians and not of Batak ethnicity. The same also applies to trade unions established by certain political parties, which basically limit their memberships despite their declaration that they are open to all workers.

Workers must be independent in establishing a trade union. This means that they must not let themselves be supported or controlled by another force, for instance, by a certain political party or by their employer. The same also holds true when trade unions exercise their activities. A trade union must be independent in carrying out its activities. It must not depend on the help or support of other parties. Nor shall it rely on the help or support of the employer. Otherwise it will end up finding itself having to obtain the employer’s agreement or permission for each move or activity it is going to take.

The formation of a trade union, the election of its officials, and the setting and implementation of its activities must be decided democratically by all its members or through a representation system.

In achieving its objectives and in carrying out its rights and responsibilities, a trade union is responsible not only to its members but also to the society and the State. This means that in achieving its objectives, a trade union must also take into account the interests of the general public and the interests of the State.

3. Objectives

The objectives of a trade union are to provide protection, to defend the rights and interests of its members, and to improve the welfare of its members and their families to a proper standard of living.

In order to achieve such objectives, a trade union shall carry out the following functions:

- a. It shall negotiate with the employer to formulate a collective work agreement;

- b. It shall resolve industrial disputes;
- c. It shall represent workers in cooperation institutions in the field of labor in accordance with their levels, for instance, in bipartite institutions at enterprise level, tripartite institutions at regional and central levels, and committees for the settlement of industrial relations disputes at regional and central levels;
- d. It shall, together with social partners, help create industrial relations that are harmonious, dynamic and based on justice;
- e. It shall accommodate, channel and fight for [the fulfillment of] the worker's aspirations and interests;
- f. It shall plan and be responsible for the implementation of strikes as the last resort to fight for the interests of the worker according to valid laws and regulations;
- g. It shall strive to get some shares in [the ownership of] the enterprise where its members work.

Trade Union Formation

1. On Forming a Trade Union

- a. Every worker has the right to form or establish a trade union.
- b. A trade union has the right to form or become member of a federation of trade unions.
- c. A federation of trade unions has the right to form or become member of a confederation of trade unions.
- d. The formation of a trade union (including the formation of a federation and confederation of trade unions) shall be based on the free will of the worker without any pressures or interferences by the employer, the government, political parties or whatever parties.

2 Requirements for Forming a Trade Union

- a. A trade union can be established in an enterprise by a minimum of 10 workers who work in the enterprise;
- b. A federation of trade unions can be established by a minimum of five trade unions;
- c. A confederation of trade unions can be established by a minimum of three federations of trade unions.
- d. Each trade union, federation of trade unions, and confederation of trade unions must have a constitution and bylaws.

3. Approaches to the Formation of a Trade Union

A trade union can be established according to the type of industry/

business sector, according to occupation/profession or expertise, or according to location.

a. Classification of trade unions by the type of industry/business sector

Industrial/business sector trade unions are trade unions that are formed according to the type of industry/business sector or sub-sector or groups of sub sectors of field of work, for instance:

- Agricultural and Plantation Workers' Unions
- Forestry Workers' Unions
- Energy and Mines Workers' Unions
- Metal, Electronic and Machine Workers' Unions
- Textile, Garment and Leather Workers' Unions
- Cigarette, Food and Beverage Workers' Unions
- Transport Workers' Unions
- Construction Workers' Unions
- Bank, Insurance and Financial Institution Workers' Unions
- Pharmaceutical and Health Industry Workers' Unions
- Etc.

Freedom of association makes it possible to form more than one trade union in one enterprise albeit by the same industry/business sector. For instance, within a certain bank such as BNI [Bank Nasional Indonesia or The National Bank of Indonesia], two trade unions for bank, insurance and financial institution workers can be formed. The first union may be a union of bank, insurance company and financial institution workers affiliated to SPSI [The All-Indonesia Trade Union] while the second may be another union of exactly the same kind but affiliated to SBSI [The Prosperous Indonesia Trade Union]. Similarly, a cigarette manufacturing company in East Java may have three cigarette, food and beverage workers' unions. The first may be affiliated to SARBUMUSI [The Indonesian Muslims' Labor Union], the second to SPSI-Reformasi [The All-Indonesia Trade Union of Reformation], and the third to another federation of unions.

b. Classification of trade unions by the type of occupation

Occupation-based trade unions are trade unions that are established according to the type of occupation or expertise or profession of their members. Occupation-based trade unions are for instance:

- Piping Technicians' Unions;
- Electrical Installation Workers' Unions;
- Physicians' Unions;
- Pharmacists' Unions;
- Nurses' Unions;
- Public Health Workers' Unions;
- Pilots' Unions;
- Machinists' Unions;
- Stewardesses' Unions;
- Etc.

Thus, within an enterprise, trade unions based on occupation or profession may be established, even though they are affiliated to the same federation. For instance, a trade union of physicians, a trade union of pharmacists, a trade union of nurses, and a trade union of public health workers may be established within the same hospital. Similarly, an air transport company [that operates commercial aircrafts] like Garuda Indonesia may have a trade union of pilots, a trade union of machinists, a trade union of stewards and stewardesses and other trade unions for other professions.

The shortcoming of occupation-based unions is that they are too complicated, in particular when it comes to negotiating collective work agreement. The presence of more than one occupation-based union within an enterprise means that more than one collective work agreement has to be made. Thus, the management of a hospital may have to conclude four separate and different collective work agreements, one for the hospital's physicians' union, one for the pharmacists' union, one for the nurses' union, and the other one for the public health workers' union. The management of an air transport company may also have to conclude more than just one collective work agreement each for its pilots, machinists, stewards and

stewardesses, and for its other workers in other professions.

Imagine what would happen if there are more than just one profession-based union in an enterprise and each profession-based union demands conditions that are better than the currently accepted conditions within the enterprise because they think their profession is more important than other professions and so they think they deserve to get more. For instance, the nurses' union in a hospital may threaten that without them, no health service can be performed at the hospital and nobody will take care of the hospital's patients. In the same fashion, the hospital's pharmacists' union may also blurt out that while doctors may continue to diagnose the patient's illness and prescribe medicines/drugs for the patient and nurses take care of the ill, no pharmacists of the hospital will prepare and distribute medicines unless their union's demand is fulfilled. By the same token, the machinists' union in an air transport company may be keen on proving that the aircraft will never take off if their demand is not granted. The stewards and stewardesses' union may also swear that although machinists have prepared the aircraft's engines for takeoff and pilots are ready to fly the plane, no steward nor stewardess will come into the aircraft to serve the passengers if their union's demand is not met.

In other words, the establishment of unions on the basis of the profession/occupation of their members tends to create tensions among the unions themselves. This problem will get more complicated if, within the same enterprise, workers of the same profession can establish several different unions, each of which affiliates to a different federation of their own choosing. Bearing in mind that today's employers are not familiar with a multi-union system like this, workers are recommended to prioritize the formation of union according to the type of business sector rather than to the type of occupation or profession.

c. Classification of trade unions by location

Trade unions can also be established on the basis of their location. There are two kinds of location-based unions.

The first kind is trade unions established by workers who are employed by different employers. For instance, in the Pulo Gadung

industrial zone in East Jakarta, there is a number of enterprises that manufacture different types of products such as metal products, electronic products, machines, medicines, shoes, textile products, etc. All the workers who work in the Pulo Gadung industrial zone may agree to establish a zone trade union called The Pulo Gadung Trade Union, which shall then be represented in each enterprise in the industrial zone by an enterprise-level union, which is named not according to the type of business or profession but according to the name of the enterprise where its members are. For instance, within the Pulo Gadung industrial zone, there may be enterprise-level unions with names such as The Pulo Gadung Union of Workers of Asahimas Co., The Pulo Gadung Union of Workers of Indofood Tbk., The Pulo Gadung Union of Workers of Multiplex Ltd., etc. Unions of this kind are usually independent. They are not affiliated to certain federations of unions. Each of these unions may negotiate its own collective work agreement separately with the management of the enterprise whose workers it represents.

The second kind refers to trade unions established by workers in an area/zone/location where they work independently as self-employed or have no employment relationship with any enterprise. The objective of establishing such unions has nothing to do with formulating a collective work agreement because there are no employers with whom they can negotiate collective work agreements. Such unions are established for the sake of obtaining support, protection and development assistance from the government and also for the sake of unity in formulating and implementing common working programs.

4. Hierarchical Structure of Trade Union Organization

The hierarchical structure of a trade union organization depends on the size of the area in which the organization covers, the number of enterprises that the organization covers and the number of members that the organization has. A trade union that has members in several provinces, a number of districts and thousands of enterprises may establish the hierarchy of its organization as follows:

- a. Start at enterprise level organizations. Such organizations may be called by many different names including enterprise-level

unions and shop floor-level unions, whose officials may be referred to as delegates, shop stewards, and union representatives. In Indonesian they may be referred to as pengurus unit kerja (or shop floor union officials whose abbreviation, PUK, is most commonly heard), ranting [which literally means ‘twigs,’ i.e., a subsection or smallest branch of a union organization], basis [which literally means a ‘base,’ i.e., the bottom part or smallest unit of a union organization] and other names.

- b. Now proceed to district/city level organizations. They are commonly referred to as district unions and city unions. District unions are administered by district union executive boards (or dewan pimpinan kabupaten in Indonesian), which may also be known as district union leadership boards or by any other names. City unions are administered by city union executive boards (dewan pimpinan kota), which may also be known as city union leadership boards or by any other names.
- c. Then go up to provincial level organizations. They are commonly named provincial unions and administered by provincial union executive/leadership boards (dewan pimpinan provinsi), which may also be called by any other names.
- d. And finally arrive at the national level organization. It is referred to as the national union or central union and its operation is governed by a national executive board or a national leadership board (dewan pimpinan pusat), which may also be called by any other names.

The establishment of federations of unions may take two forms of hierarchy:

- a. [The first is federations which are established with a hierarchy that] starts from district/city levels up to provincial and national levels or
- b. [The federation exists] only at national level.

5. Constitutions and Bylaws

Every trade union (including federations and confederations of unions) must have a constitution and a bylaw. A trade union that consists of enterprise unions, district/city unions, provincial unions and national union may have just one constitution and one bylaw that apply to them

all.

A federation of unions may also have only one constitution and one bylaw that apply to all the unions that belong to or are member of the federation, including those at provincial, district, city, and enterprise levels.

A union's constitution shall contain the union's principal/fundamental organizational regulations. A union's bylaw shall contain more detailed regulations. A union's constitution shall at least contain:

- a. The name and symbol of the union;
- b. The [philosophical] basis of the State, the principles and objectives of the union's organization;
- c. The union's domicile/seat;
- d. The union's membership and lineup of its officials;
- e. The union's financial sources and responsibilities;
- f. The form of the union's organization (for instance, according to business sector or the type of occupation or other criteria);
- g. The union's hierarchical organizational structure, and
- h. Regulations concerning amendments to the union's constitution and bylaw.

No trade union is allowed to use the name and symbol of another union that has been established/in existence before.

Membership

1. The Right To Become [and Not To Become] A Trade Union Member

Every worker basically has the right to establish and or become a member of a trade union of his or her own choosing, and the worker must not be barred from exercising such right by anybody, either by his or her employers or government officials or by other trade unions.

This shall also implies, however, that everybody [every worker] has the right to keep out of (or to avoid being involved in or associated with) any trade union and nobody must be forced by anybody to become a member of a trade union.

2 Trade Unions Must Be Open To All Workers

Trade unions must be open to all workers. Trade unions must accept all workers as their members without discriminating them on the basis of their political orientation, race and sex. As elaborated under Chapter II point 2, the formation of a trade union that is based on political orientation, religion, race, or sex is very much against the principle of “staying open” to all.

3. Avoiding Conflicts of Interests

In order to prevent a conflict of interests between the employer and the worker and among trade unions, workers who occupy certain positions – such as human resources managers, finance managers, or heads of autonomous divisions or units – must not be allowed to become union officials. This must be agreed upon and clearly stated in any Collective

Work Agreements.

4. No Worker Shall Have Membership in More Than One Union

No worker shall be allowed to have membership in more than one trade union. Similarly, no trade union shall be allowed to become a member in more than one federation of union. In the same fashion, a federation of union may become a member of one and only one confederation of union.

Every worker has the right to move or switch his or her membership from one trade union to another. In order to do so, the worker has to first resign his or her membership in the union to which he or she no longer wants to belong before he or she can become a member of another union that he or she intends to join.

5. Resigning One's Union Membership

A worker shall stop being a member of a certain union:

- a. By making a written statement that formally informs his or her decision to resign his or her membership in that union;
- b. If he or she is dismissed by the union's officials in accordance with the union's constitution and bylaw regulations.

A worker who has stopped being a member or an official of the union to which he used to belong shall continue to be held accountable for any unfulfilled obligations to the union that he or she may still have.

Notification and Recording

I. The Benefit of Notification and Recording

Notification and recording of trade unions are necessary in order to:

- a. Build an information center on trade union development that can at any times be used by [their] working partners in the society;
- b. Make available the addresses of all available unions so that they can be easily contacted by all related constituents of the society;
- c. Prove the existence of trade unions [legally in writing] for formal acceptance by employers when it comes to negotiating collective work agreements and for proportionally representing workers in labor institutions.

A trade union is part of the workforce of an enterprise. Federations of trade unions and confederation of trade unions are part of the society. So, it is quite natural that the society should be able to monitor trade union development through the trade union information center at all times.

In order to involve trade unions in various activities, the government as well as non-government organizations and various other constituents of the society need to have the clear addresses of all the existing trade unions.

The proof that a trade union has been recorded would avoid any hesitation [doubts and uncertainties] on the part of the employer in accepting the union when it comes to bipartite meetings and negotiating a collective work agreement. Moreover, such a proof would also be needed

by another union.

Therefore, any newly established trade union is obliged to give a written notification of its establishment to the local government agency responsible for labor/manpower affairs. The government must also be kept notified of any changes or amendments made to a trade union's constitution and or bylaw.

2 What To Notify?

Upon the recording of a trade union, the trade union in question is obliged to supply the following information:

- a. A list containing the names of the union's founding members;
- b. The union's constitution and bylaw;
- c. The lineup of the union's officials [the union's organizational structure] and their names.

3 Where to Get Recorded?

In respect of the autonomy extended by the central government for districts and cities, the recording of a trade union shall be made with the local labor/manpower service in the district or city where the union is established. Federations of trade unions, confederations of trade unions, provincial trade unions and national trade unions shall also be recorded with the labor/manpower services in the districts or cities where they are established.

4 Responsibilities of the Labor/Manpower Service

- a. A district/city manpower service is obliged to record [any trade unions established in the district or city of its jurisdiction] and issue them proofs that they have been recorded with the service within a period of no later than 21 workdays since the date on which the service receives notifications of their establishments.
- b. The manpower service must record the trade unions that have met the requirements for recording with the service in a union record book. The service must properly maintain the book and make the book available at any times for inspection by the public.

5. Responsibilities of Union Officials

In conjunction with such notifications and recordings, the officials of a trade union have the following responsibilities:

- a. They shall give a written notification of the establishment of their union to the local manpower service in the district or city where the union is established and enclose the letter of notification with [attachments consisting of] a list of the names of the union's founding members, the union's constitution and bylaw, and the lineup of the union's officials and their names.
- b. They shall complete [all the other] the information [that may be required] if the manpower service considers it necessary to issue [them] a proof of their having recorded their union with the service.
- c. They shall notify the manpower service of any changes or amendments made to the union's constitution and or bylaw within a period of no later than 30 days after the changes or amendments have been fixed.
- d. They shall give a written notification of the existence of their union and the proof that their union has been recorded with the manpower service to the management of the enterprise where they work or to their respective [managerial] working partners according to their levels/hierarchy.

Rights and Obligations

1. The Rights of a Trade Union

A trade union that has been issued a union record number as a proof of its having been recorded with the local manpower service is entitled to:

- a. Negotiate and make a collective work agreement with the employer;
- b. Represent workers in industrial dispute settlements;
- c. Represent workers in labor institutions such as bipartite institutions, tripartite institutions, committees for the settlement of industrial disputes, wage councils, safety and health committees/councils, etc;
- d. Establish an institution or carry out activities related to efforts to improve workers' welfare such as employee cooperatives or other welfare-improving undertakings;
- e. Carry out other manpower or employment-related activities that do not run against valid national statutory rules and regulations.

2 The Obligations of a Trade Union

Trade unions that have obtained official record numbers proving their recordings with the manpower service are under an obligation:

- a. To protect and defend their members in case their rights are violated;
- b. To look after the interests of their members;
- c. To strive to improve the welfare of their members and their fami-

lies;

- d. To account to their members for the activities that they have carried out on behalf of the union and prove that their activities are in line with what is stipulated under the union's constitution and bylaw.

3. Collective Work Agreement Negotiating Team

A collective work agreement that has been agreed upon between the management and the trade union in a given enterprise shall apply to all workers of groups of professions who work in the enterprise because there must be no discrimination in the enterprise. In other words, there should be only one collective work agreement. Therefore, it must be agreed upon by the majority of workers. For this, the negotiating team on the part of the worker that formulates the collective work agreement must represent the entire groups of workers who work in the enterprise regardless of whether they are members of the union or not.

If there is more than one trade union in the enterprise, there are several alternatives as to how the negotiating team should be structured or made up of. For instance, in an enterprise with 1,000 employees there are three trade unions that have obtained numbers proving their official recording with the manpower service. The three unions have 420, 200 and 200 members respectively, which implies that of 1,000 employees that the enterprise employs, 180 are not members of any union. If you take this as an example, then you might consider the following possible lineups of the negotiating team:

a. First alternative: involvement of all constituents

The worker's negotiating team shall consist of 10 people, which means that one person represents 100 workers. Of the 10 people, four shall represent the first trade union, two represent the second trade union and another two represent the third trade union. Workers who are not members of any union are requested to select two persons to represent them in the team.

b. Second alternative: coalition

If no agreement is made among the three trade unions, they may establish a coalition. For instance, the first union may establish a coali-

tion with one of the two other unions or ask a proxy from non-unionized workers.

If a union has members more than 50% of the workforce, the union may negotiate with the management with or without involving other unions and the collective work agreement resulted from the negotiation shall apply to all workers in the enterprise.

4. Determining Union Representatives

A proportional approach such as the first alternative mentioned above can be taken to determine union representation in various labor institutions. For instance, let's take the enterprise illustrated above as an example. The enterprise has a workforce of 1,000 people. There are three trade unions operating in the enterprise but not all the workers belong to the three. If five worker representatives are to be chosen to represent the entire workforce of the enterprise in a bipartite institution, how should their representation be determined?

Now let's consider the facts. There are five workers to choose among the enterprise's 1,000 employees to represent the entire workforce. This means one person represents 200 people. And there are three unions. So, the first union may appoint two representatives while the second union, the third union, and the remaining non-unionized workforce shall each select one representative to represent them.

Likewise, the number of union representatives in district, city, provincial, and national level labor/ manpower institutions shall be determined on a proportional basis by considering the number of members that the representing unions have, the number of enterprise unions that serve as their bases [constitute them], and the number of unions and officials that represent them at district, city, and provincial levels.

Protection of the Right to Organized

1. Blocking the Formation of a Trade Union is Prohibited

Everybody is prohibited from blocking workers from establishing or becoming members of a trade union, becoming union officials and or carrying out union activities.

Employers or other parties shall be considered to block workers from establishing or becoming members of a trade union, becoming union officials and or carrying out union activities if because of that the employers or other parties intend to:

- a. Terminate the employment of the workers in question, or to suspend them, to demote them, or to transfer them to another less desirable position or place;
- b. Stop paying or reducing their wages;
- c. Concoct various forms of intimidation against them, including intimidating them by the threat of losing their jobs;
- d. Launch anti-union campaigns.

Employers or other parties who have committed actions such as the ones described/mentioned above may be prosecuted and subjected to a criminal sanction of imprisonment for a minimum of one year and a maximum of five years and or a fine of a minimum of Rp100 million and a maximum of Rp500 million.

2 Opportunities and Facilities for Trade Unions

Through agreements between employers and trade union officials, employers must provide union officials and members with the following opportunities and facilities:

- a. An office room with office facilities according to propriety and the enterprise's condition;
- b. Opportunities to union officials and or members to carry out certain union activities during working/office hours either within or outside of the enterprise without losing their wages for the hours not worked for the enterprise;
- c. Opportunities to union officials and or members to carry out certain union activities without receiving wages.

Union Finances and Assets

1. Sources of Finances of a Trade Union

A trade union's finances come from:

- a. The contributions paid by its members, whose amount shall be determined in the union's constitution and bylaw;
- b. The results [the profits it earns as a result] of the union's legal business undertakings.
- c. Financial assistance from its members or from other parties that does not bind the union, including foreign financial assistance.

2 Foreign Aids

Foreign financial assistance that a trade union gets can only be used to improve the quality and welfare of its members. Any trade union that receives such overseas assistance is required to report it in writing to the government agency responsible for manpower/labor affairs or to the labor/manpower office.

3. Separation and Transfer of Assets

The finances and assets of a trade union must be recorded and managed separately from the personal finances and assets of its officials and members.

The transfer of finances and assets of a trade union to another party, including the one meant for investments and other legal business undertakings, can only be made in accordance with the union's constitution and bylaw.

4. Officials' Responsibilities

The officials of a trade union shall be held accountable for the use and management of the union's finances and assets. The officials are under an obligation to record the union's finances and assets in the union's books and report them to their members in accordance with the union's constitution and bylaw.

Dispute Settlement

Disputes among trade unions may happen if they have no mutual understanding or agreement on the issue of membership, on how they shall be represented in labor committees/institutions, or on their respective rights and obligations.

Disputes among unions shall be resolved by the disputing unions themselves through deliberations aimed at reaching a consensus. If the disputing parties cannot resolve the dispute in a bipartite way or through deliberations for consensus, they may settle their dispute according to what is prescribed under laws and regulations, that is, by referring their dispute to an arbiter or the court.

Dissolution

1. Reasons for dissolving a trade union

A trade union may dissolve itself or become dissolved if:

- a. It is so declared by its members in accordance with what is stipulated under its constitution and bylaw;
- b. The enterprise where its members work is closed or stops its operation for good and this results in the termination of all employments between the employer and all the workers of the enterprise;
- c. It is so declared by a court decision.

If the enterprise is closed for good, the dissolution of the trade union may be declared by the union's membership meeting or by the union's officials, according to the union's constitution and bylaw.

2. Dissolution of a trade union by a court decision

The court may dissolve a trade union if the trade union in question is sued by a local government agency and it turns out that:

- a. The trade union being sued has adopted principles that run against the principles of Pancasila and the 1945 Constitution;
- b. The trade union's officials and or members are proved guilty to have committed a crime, in the name of the union, against the security of the State and are therefore given a criminal punishment in the form of a jail sentence that has a permanent legal force for no less than five years.

3. Union officials' Responsibilities

After the dissolution of a trade union through the declaration of its members or officials or the court, the union's officials shall be held accountable for settling all their obligations to members as well as to other parties.

Union officials and or members who have been found guilty by a court decision and who cause the union to be dissolved shall not be allowed to establish another trade union and or become officials in another trade union for three years since the court decides to dissolve the union.

Inspection and Investigation

1. Inspection by Labor Inspectors

Inspection of the implementation of this Act shall be made by labor inspectors in accordance with valid laws and regulations.

2. Investigating Officers

In addition to [the authority to investigate that emanates from] the investigating officials of the Police of the State of the Republic of Indonesia, special authority to act as an investigator may also be awarded to certain civil servant officials in the field of labor to empower them to carry out criminal investigation.

Sactions

I. Sanctions against Trade Unions

Administrative sanction in the form of the revocation of union record numbers that prove the union's recording with the manpower service may be imposed on a trade union if the trade union has committed the following violations:

- a. The trade union is established with less than 10 workers;
- b. The trade union establishes a federation whose members number less than five unions;
- c. The union establishes a confederation with less than three federations of unions;
- d. The union does not report the changes/amendments to its constitution and or bylaw to the manpower service within 30 days after the changes/amendments have been made; or
- e. The union does not report to the manpower service the financial assistance that it receives from overseas trade unions and or does not use the assistance to improve the quality and welfare of its members.

Until it gets a new record number, a trade union that has got its record number revoked is no longer entitled to:

- a. negotiate and make a collective work agreement with the employer;
- b. represent workers in dispute settlements;
- c. represent workers in manpower/labor institutions;

2 Sanctions against Employers and Other parties

A criminal sanction in the form of jail sentence for a minimum of one year and a maximum of five years and or a fine of a minimum of Rp100 million and a maximum of Rp500 million shall be imposed on employers or other parties that have been found guilty of blocking workers from establishing or becoming members of a trade union by way of:

- a. terminating the workers' employment, suspending them, demoting them, or transferring them to a less desirable position/place;
- b. stopping paying their wages or reducing their wages;
- c. making various forms of intimidation; or
- d. launching an anti-union campaign.

Civil Servant

Civil servants have the right and freedom to organize. However, the implementation of their right and freedom to organize shall be regulated in a separate law.

As long as the separate law is not promulgated, civil servants may establish a trade union on the basis of Presidential Decision No. 83 of the Year 1998 on the Ratification of ILO Convention No. 57 of the year 1948 by referring to the principles of this Act.

Transitional Regulations and Closing Paragraphs

All trade unions that have been recorded (have been issued a union record number) before this Act comes into force must once again give a written notification/report [to the local manpower service in their respective areas] in order to get a new union record number according to the regulations of this Act within a period of no later than one year since the date on which this Act takes effect.

Any notification concerning the establishment of a trade union that has been made but is still being processed at the time this act takes effect must be [re-] processed in accordance with what is stipulated under this act.

This act started to come into force upon its enactment on August 4, 2001. Thus, since August 4, 2001, every trade union that has not been recorded according to what is stipulated under this act is assumed to have no union record number.

For the cognizance of the general public, this act has been placed on The State Gazette of The Republic of Indonesia Number 131 of the year 2000 and on The Supplement to The State Gazette of The Republic of Indonesia Number 3989.

Future Challenges

The soul of this Act is to avoid interference from the government, the employer and other parties in the exercise of workers' right and freedom to organize. The government's role must be limited to the minimal and confined to efforts to empower trade unions and facilitate their growth. Therefore, trade unions must play a more active role in resolving internal problems of their organizations as well as problems among trade unions and in building effective relations with employers.

By having greater freedom, workers and trade unions must be aware that they, too, have greater responsibilities not only towards their members but also towards the survival of the enterprises where they operate. In other words, the application of the right to organize and freedom of association must be balanced against responsibilities that are equal to such right and freedom.

I. Cooperation among trade unions

As can be read in the articles and their explanatory notes, this Act requires the Government to issue just one ministerial decision, that is, the one detailing the procedures for recording trade unions (Article 24). Thus, the role of the government is basically limited to union recording, issuance of union record numbers and maintenance of the union recording book.

Procedures for establishing trade unions, organizing them according to the type of business sector or profession, categorizing them according to their organizational hierarchy, forging cooperation among trade unions and procedures for dealing with other issues are all up to the trade union to determine by itself according to their own constitu-

tions and bylaws.

It will be far easier for all the social partners of the trade union, in particular the government and the employer, and even for the trade union itself, if all unions have the same pattern of organization.

Therefore, trade unions need to establish agreements. Firstly, they should agree on how their organization should be categorized or classified. Trade unions need to reach an agreement that their organizations should be established according to the type of business sector and sub-sector where they are in, not according to the type of occupation or profession of their members. As already explained under Chapter III, the formation of trade unions according to the type of profession contains a lot of shortcomings.

However, associations of professions remain necessary and should be established in order to improve the professionalism of their members in their respective field of expertise, not for industrial purpose or within the framework of industrial relations. Associations of professions may provide recommendations to the management but not through or in the form of negotiations in order to formulate a collective work agreement.

Secondly, trade unions need to agree on the number of business sectors and sub-sectors with the grouping of jobs and the provision of the same name.

Thirdly, trade unions need to agree on how a new trade union should be established in an enterprise, particularly if there is already one union or more operating in the enterprise.

Fourthly, trade unions need to agree on the criteria for measuring union strength. For instance, should the strength of a trade union be measured according to the number of members that it has, the number of enterprises where its members work, the number of [regional] branches it has, the number of its district/city/provincial organizations or, should there be other criteria? Moreover, it is also necessary to agree on the criteria for determining union representation in various labor institutions.

2 Freedom and Responsibility

Recent union developments have created an impression as if freedom of association were synonymous with absolute freedom to establish a trade union at will without a clear purpose and consideration. More and more new unions are established to swell the numbers and many

jump on the bandwagon without the support of adequate membership. As a result, the fruits of their labors are minimal to be enjoyed by their members.

Recent union struggles have also given an impression as if the presence of a trade union were identical with the presence of a barrage of irresponsible demands, demonstrations and strikes. Such [bad] impression will make it difficult for employers [to accept the presence of unions at their workplaces] and may make workers [particularly the uninitiated who are without knowledge of what a trade union is] feel reluctant to become union members.

The main function of a trade union is to look for the best interests of its members, the worker, through negotiations. Greater emphasis must be put on negotiation rather on strike. While striving for workers' interests, the officials of a trade union must make the union's members realize that they should do their jobs in a disciplined and responsible way and push them to do so.

A trade union has a role and responsibility to build secure and effective industrial relations in the enterprise where it operates and to secure the survival and success of the enterprise. Only by doing so would the trade union be able to realize its struggle to improve the welfare of the worker and his or her family.