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Disputing Labour Dispute Settlement: Indonesian Workers' Access to Justice

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Abstract

The article attempts to describe and analyse labour and union strategies to seek justice by using the weak yet available legal repertoir in the new democracy of Indonesia. Looking at an unprecedented case of an employer ending up in prison because he unlawfully dismissed trade union activists in East Java, the paper demonstrates how labour law enforcement remains nonetheless problematic. In this particular case labourers were able to develop an uncommon strategy for dealing with a common injustice they faced. Through a combination of legal knowledge and skills, with support of several groups and individuals who were sympathetic to their struggle, they were able to bring their grievances to a forum, which addressed them satisfactorily. However, they were unable to restore the justice seekers to their former position.

Keywords

Labour dispute settlement, access to justice, law enforcement, developing countries, Indonesia

1. Introduction

This article is about labour and union strategies to seek justice through law in Indonesia after the start of *Reformasi* (reform) in 1998, which marked the end of the authoritarian Soeharto regime and the beginning of democracy. It discusses a case that occurred in a Japanese company, PT King Jim Indonesia (KJI), located in Pasuruan district, East Java province. The General Manager of KJI was convicted for violating trade union rights under the Trade Union Act of 2000 and jailed for one and a half years because he unlawfully dismissed four trade union leaders of the Indonesian Metal Workers Federation (FSPMI). Despite many obstacles, the workers successfully used the available legal repertoire to bring their grievances to a forum and to obtain justice, at least from their own perspective. These workers in their own way have created opportunities for demanding more accessible and clear labour laws. Such a case is unprecedented since it is the first time an employer has actually been jailed under the Act, which also reflects the dynamics of the problematic labour law dispute settlement mechanism in the country.

The discussion is informed by the work of Felstiner et al. (1981) with the transformation perspective which sees disputes as social constructions. Drawing upon Karl Marx's famous quote on the relationship between men and history, Felstiner et al. write: 'people make their own law, but they do not make it just as they please.' (1981: 633). By this they insist upon the importance of looking at disputes as social processes, whereby individuals and disputants play important roles in their efforts to make their grievances heard and properly treated. They are the 'creators of opportunities' rather than merely 'records' or 'rates' of socially constructed law and legal activities. As they point out: 'Studying the emergence and transformation of disputes means studying a social process as it occurs. It means studying the conditions under which injuries are perceived or go unnoticed and how people respond to the experience of injustice and conflict.' (Felstiner et al., 1981: 632).

Such a theoretical position is particularly important from an access to justice perspective (see Bedner and Vel *in this volume*), since it helps focus on the people, notably the poor and disadvantaged – in this case industrial workers, and their ability to make their grievances heard. By this we are able to see how these workers developed their knowledge about their rights on the basis of their own experience, how they transformed their feelings of injustice into grievances and strategies, and what were the roles of the intermediaries involved. These processes are closely connected to the later choice of forums available (see the Rolax scheme Bedner and Vel *This Volume*). This constitutes an important step towards achieving justice.

As we shall see with the case study, the article concerns two types of injustices: violation of trade union rights, and unlawful dismissal of the workers and union leaders. The first relates to particular provisions under the Trade Union Act No. 21/2000 which gives legitimacy and protection to unions in Indonesia; and the latter relates to the labour dispute settlement mechanism under the Industrial Relations Dispute Settlement Act No. 2/2004 which establishes a new system for labour dispute settlement under the judiciary through the Industrial Relations Court, while maintaining government involvement through the branch of Manpower Offices at the district level. These two systems under the two laws are inter-related, yet they are also problematic and have resulted in growing criticisms from the workers and unions concerning their effectiveness in resolving problems.

2. The Historical Context

As I have discussed in more detail elsewhere (Tjandra, 2008), the economic history of post-independence Indonesia has been characterised by strong state intervention (see also Jilberto and Mommen, 1996; Siddique, 1989). In the early phase of the Republic, the Indonesian state was deeply involved in economic activities due to the absence of a significant domestic bourgeoisie capable of replacing the structures of the colonial Dutch economy or of guiding industrialisation after the taking-over from the Dutch in 1949 (Robison, 1986). The subsequent nationalisation of the former Dutch firms in 1957 and the rise of the authoritarian 'New Order' state in 1965 under President Soeharto further strengthened state domination of economic life. The result was corporatist industrial relations backed up by a strong state, which contained the workers within the economic development framework (Tjandra, 2002; Caraway, 2004; Ford, 1999; Fox, 1997).

It is important to note that the New Order state was established with the bloodbath of the Communist and the Left[1], and enabled the state planners to be insulated from the demands of organised labour when charting development strategies (Hadiz 1997)[2]. Under the New Order regime unions were systematically suppressed with no influence in the policy making processes for economic development (Hadiz, 1997, Deyo, 2006). Although Indonesian workers inherited a series of protective legislation enacted in the early years after independence in 1945, they were not implemented in practice, but simply sidelined by government decrees. The Collective Labour Agreement Act No. 21/1954, for example, respected multi-union existence and encouraged collective bargaining between unions and employers by guaranteeing the rights of unions to bargain collectively, but in practice such provisions were annulled by Minister of Manpower regulations that made it almost impossible to have unions outside the government sanctioned SPSI (All-Indonesia Workers Union) and imposed complicated requirements for unions before they could actually negotiate with the employers for collective agreements[3]. Relying on economic development and the military, Soeharto did not see any need to change the law where it could simply be ignored, while the unions had been tamed with the existence of SPSI as the only union allowed to operate.

The state's role changed dramatically after the Asian financial crisis hit Indonesia in 1997. The crisis fractured the foundations of the New Order state, and gave birth to *Reformasi*. Indonesian labour law was then transformed from a corporatist model, backed by a strong and powerful state, to one that is mainly based on market principles, even if the development of a market-based economy had already begun in the early 1980s (Feridhanusetyawan and Pangestu, 2003; Lee, 2003; Rosser 2002)[4]. Some examples of the changes were the intrusion of the flexible labour market concept into the law, which made it easier to hire and fire workers, and the decreasing role of government in handling disputes with the introduction of the Industrial Relations Court. Such changes, demanded by business and international financial institutions such as the International Monetary Fund and the World Bank, have arguably weakened the already weak unions' bargaining position (Tjandra, 2008, see also Tjandraningsih and Nugroho, 2008).

Although *Reformasi* has brought some improvements concerning the law regarding trade unions and workers' participation, the unions have generally been in a continuously weak position. The democratisation process came at the same time as the national economic crisis, thus there was not much to gain for the workers anyway. The combination of the destruction of organized labour during the New Order era and the inability of the unions to overcome the legacy of the systematic repression of Soeharto's rule ensured the continuing relative weakness of the trade union movement as a whole. In a situation like that, reforms facilitating freer union formation did not strengthen unions but increased union fragmentation instead. The initial labour law reforms following the neo-liberal economic reforms

have been a reflection of this condition, with insufficient consideration of the need to strengthen enforcement mechanisms which remained very vague.

Reformasi

Although the situation has improved compared to the three decades of union suppression under the New Order (Hadiz, 1997), stories abound concerning workers who formed unions only to be denied their rights to collective bargaining by the employer and to be confronted with intimidation of their members (Saptorini and Tjandra 2005, KSN 2009)[5]. Despite the enactment of the Trade Union Act No. 21/2000, whose provisions protect trade union officials from dismissal where it takes place as a result of the employers' anti-union conduct, this still happens with some frequency. The state's recognition of unions' existence is not necessarily followed by employers' acceptance of union involvement in dealing with day to day issues in the workplaces.

Since the reform and relaxation of union formation regulations in 1998, unions have grown in numbers from only one in early 1998 to around 100 national federations registered in late 2009, including four national confederations[6], and thousands of non-nationally registered plant level unions. Indonesia has also become the first country in Asia Pacific to ratify all core conventions of the International Labour Organization, including Conventions No. 87 and 98 on the rights to associate and collective bargaining. However, the level of unionization is relatively low with only 6-7 per cent union density in the formal sector, with numbers decreasing every year due to reasons such as the massive replacement of permanent workers, who were traditional members of the unions, by fixed-term contract or outsourcing workers[7]. Fragmentation among unions and lack of a strong central body also contribute to the unfavourable position of unions since it weakens their bargaining position with both the state and employers (Tjandra, 2007).

Nonetheless, on paper Indonesian trade unions have a basis to pursue their traditional objectives of improving the pay and conditions of workers. If before it was practically difficult to form independent unions, the Trade Union Act allows any group of ten workers to form a new trade union, and workers of one enterprise may associate with other workers in supporting industrial action. Five unions in five different workplaces might establish one federation, and three federations in three regions might become one confederation registered at the national level. Moreover, Articles 28 and 48 clearly prohibit anti-union behaviour, such as termination of employment, demotion, wage repression, intimidation and anti-union campaigns. The Act considers these conducts to be 'grave criminal offences', subject to sanctions of one to five years imprisonment and/or a fine of Rp 100 million to Rp 500 million (around US$ 10,000 to 50,000).

But these provisions are generally no more than paper tigers. Prior to the KJI case there had been several efforts to bring employers to court on the basis of existing labour law. Most related to violation of minimum wage regulations under Articles 90 and 185 of the Manpower Act, but they never resulted in a conviction[8]. As noted by a union leader in Pasuruan, 'Generally, we see that labour rights as written in the law have been violated without punishment. This is the first time we have been able to bring an employer close to justice, normally we are the ones that have been criminalized.' He referred to his own experience of facing criminal charges initiated by employers for 'defamation' (Article 310 and 311) and 'offensive treatment' (Article 335) of the Indonesian Penal Code, for his activities in defending his members (interview with Pujianto)[9]. Such a situation has resulted in widening distrust between workers and their employers, and a subsequent dysfunction of the industrial relations system, with little effort to improve it. This state of affairs constitutes the context of the case study which is discussed below.

3. Workers and Their Union: Between Rights and Grievances

The case study focuses on four union leaders who were dismissed in May 2008 for their activities as union officials following a strike they led in their factory. This one-hour strike was launched because of the management's lack of response to the submission by the union to establish a collective bargaining agreement, even though the union was already officially recognised by the Regional Manpower Agency (*Disnakertrans*, hereinafter the Agency) of Pasuruan District in July 2007, to become the FSPMI plant level union at KJI (KJI FSPMI), a national sectoral union federation whose members are mainly in the electronics and metal industries.

In November 2007, the KJI FSPMI union leaders submitted an application asking for collective bargaining with the employer. The main idea was to make a collective bargaining agreement (CBA) that would cover all workers, including contract and outsourcing workers, even if all union members held permanent contracts. In response, the company management facilitated the creation of a new company union, which did not belong to any federation. The management also sent a letter to the Agency asking for verification of the union's membership arguing that there were two unions in the company and it was unclear with whom they should negotiate. The Agency then verified the union membership in early January 2008, which showed that the KJI FSPMI union was supported by more than 50 per cent of all workers. This meant that it was entitled to collective bargaining. However, the management rejected the verification result and refused to sign the report by the Agency.

In January 2008 KJI FSPMI submitted a letter insisting on collective bargaining for the second time and officially informed the Agency about the company's continued refusal to start this process. In response, the Agency released an official statement in March 2008, stating that it was 'compulsory' for the KJI management to start the bargaining process. Yet, the company continued to refuse and on May 6, 2008, the union sent a 'warning letter' (*somasi*) that it planned to launch a strike on May 14, 2008 if the management persevered in its refusal to bargain with the union. A copy of the letter was sent to the Agency[10].

On the morning of May 13, 2008, three officials from the Agency came to the company and met with union representatives to discuss alternatives to a strike. The union agreed to cancel the strike if the company would give an exact date for a meeting, and asked for the Agency's assistance to organise such a meeting. However, the management said that they could not make any agreements since they wanted to first study the proposal. In the afternoon of the same day, the management released an announcement, that any worker joining the strike would lose his annual bonus and the opportunity to join in company recreation.

Despite these threats, the strike was staged on May 14, 2008. It took place for an hour between 7.30 to 8.30 AM, attended by 102 of the 164 registered union members. The union leaders thought that such a short strike would show some respect for the management's concerns, hoping that the management could thus be convinced that it would pay to co-operate with the union. However, on May 15, 2008 four union leaders were handed dismissal letters signed by Fathoni Prawata, the General Manager of KJI. These letters were handed separately to each of them in their homes, without giving them any opportunity to ask for reasons for the dismissal. The letters stated simply that they were dismissed because they had caused losses to the company by organising the strike. The four union leaders dismissed were Puguh Priyono (Chairperson), Abdullah Faqih (Vice Chairperson), Anam Supriyanto (Secretary) and Muhammad Didik (Vice Secretary III).

The next day the KJI management gathered all the workers and urged those who had joined the strike to produce 'written apologies' and statements that they had given up their membership of KJI FSPMI. If not, they would not be given their bonus and not be allowed to join the company picnic the following week. Feeling threatened and seeing no other option, many of the members withdrew their membership. From approximately 160 members, the membership plunged to less than ten – four of them being the already dismissed union leaders.

Box 1: Impact of the dismissal

'My wife collapsed when she heard for the first time about my having been sacked by the company, she was just coming to work from three months maternity leave,' said Abdullah Faqih whose wife was also a worker at KJI. 'After a while, I decided to move back to my parents in law's house,' he added. In Pasuruan it is common for a man after getting married to move to the house of the wife's parents, thus also taking on the responsibility for the welfare of his in laws. 'It's a disgrace for us [men] to stay at the house of your parents in law, without providing income for the family anymore.' Since the dismissal, all of the four workers had stopped receiving salaries from the company, which meant that they could not fulfill their obligation as 'head of the family'.

Muhammad Didik said the impact of the dismissal on him was considerable. 'The dismissal has destroyed me psychologically, as well as economically. I'm a married man, I have the responsibility for my wife and my daughter.' 'Fortunately, my wife's sister has got a small business at home, so I could help her work and earn some money. And I'm also doing small business near my parents' house.' Since the dismissal Didik was selling 'chicken noodle' in Malang, another city in East Java. 'But I still have faith, I believe all great people should face miseries before they get success.'

'We know the law, therefore, it is unfair that we, who have followed the provisions of the law, are dismissed like this,' said Puguh Priyono, expressing his feelings about the dismissal. 'The law guarantees our freedom of association; we are free to join a union. Those who violate the law are the ones that should be punished, not us,' he added. For Puguh their dismissal was in fact the company's strategy to ruin the union. As he pointed out, 'Our dismissal was clearly a direct attack on our union, not only on us.' 'That is why we agree to the suggestion to bring the case to the police instead of the Agency or Industrial Relations Court,' said Puguh again, 'We hope the case will teach the company a lesson, that they cannot deny our rights to associate'.

On May 17, 2008, the workers, with support of the FSPMI East Java branch, officially reported the case to the Pasuruan Police Resort, as a violation of Articles 43 and 28 of the Trade Union Act. In the beginning the police were hesitant to take the case saying that it should be the Agency's responsibility. But later, after learning that the Agency had withdrawn the case, the police agreed to take over the investigation. Meanwhile, to put more pressure on the case the unions, the FSPMI union, supported by other unions and workers' groups in East Java called ABM (Workers' Accused Alliance) of which FSPMI was also a member, organised a series of demonstrations in the following weeks in front of the Japanese consulate, the Regional Parliament and the Governor's offices in Surabaya. They also provided 'assistance' to the police who investigated the case by providing information about the relevant provisions under the law and other evidence and witnesses, and even contacted a university lecturer to become an expert witness[11].

The trial started at the Pasuruan District Court in Bangil on November 8, 2008, and was attended by around 400 workers, not only from KJI but also from other affiliates of the FSPMI in East Java. It

received high media coverage, which would continue during the entire procedure. The prosecutor demanded a sentence of two years, where five years is the maximum. After three months, on January 12, 2009, the Bangil District Court, Pasuruan, in its Decision No. 850/Pid.B/2008/Bgl sentenced the KJI General Manager to jail for one year and six months for violations of trade union rights under Articles 28 and 43 of the Trade Union Act. The decision was later upheld by the Surabaya High Court through Decision No. 54/Pid/2009/PT.SBY on February 23, 2009 and by the Supreme Court through Decision No. 1038 K/PIDSUS/2009 on June 5, 2009, which made it final.

4. Intermediaries

This case was the result of a combination of strategies involving several groups and individuals who were sympathetic to the workers' struggle. They were involved in developing the workers' knowledge and awareness of their problems, and helped transform them into grievances. They also contributed to the eventual success of bringing the KJI General Manager to court and then to jail. These included the FSPMI union to which the KJI union was affiliated and which provided legal assistance. The KASBI/ABM labour group played an important role in public campaigning, the experienced union leaders and activists supported the development of public campaigning strategies in dealing with the case. The university lecturers provided support by providing intellectual legal and political analysis to legitimate the case during the legal process.

The FSPMI union, in particular the East Java branch with Pujianto as the chairperson, played a key legal role. As a national federation, FSPMI (www.fspmi.org) shares a common story with the trade unions which have developed since *Reformasi*. It is affiliated to the Confederation of Indonesian Trade Unions (CITU) and to the International Metalworkers Federation (IMF). The IMF assisted the FSPMI's formation in 1999, not long after it expelled FSPMI's Soeharto-era predecessor and helped it develop as one of the few unions concerned primarily with developing effective workplace bargaining procedures. In 2009, it gained almost 100 thousand members, mainly from electronics sectors in Bekasi and Batam.

As such, it is quite an atypical union. FSPMI stands out because it is one of the few Indonesian union federations capable of systematic collection and processing of membership data. It quickly developed financial independence after it adopted a centralised membership dues structure. It collected Rp 2.5 billion membership dues in 2008, quite an achievement for a union in Indonesia, of which 60 percent goes to the local level and 40 percent to the national level. Its funds are redistributed while at the same time the central executive is empowered by such centralised dues system. This has allowed it to buy buildings in Jakarta and Batam and to fund regionally-based fulltime advocacy officers and other programs (Ford and Tjandra, 2007)[12]. The East Java branch of FSPMI was founded in 2006 at the initiative of Pujianto. He himself is a typical organic intellectual, whose first lessons were from his own case after his employer unfairly dismissed him. He developed his skills in advocacy through cases. With the financial support of the union and his members, he later studied law, graduated and joined the bar, then becoming a fulltime advocate for the union[13].

Another central organisation is the KASBI/ABM East Java chapter with its coordinator Jamaludin. ABM is an alliance of small, militant unions and labour activists; inspired by left wing thinking and a strong belief in mass action and mass organising. Its headquarters are in Jakarta, while East Java is the most developed provincial branch. KASBI is a registered national confederation, but it has fewer members than the other three mainstream confederations. Although there is no official link between

ABM and KASBI, many activists of KASBI are ABM members, and vice versa. It could be said that ABM is a sort of political wing of KASBI: while KASBI deals with labour relations issues, ABM deals with political activities such as mass action and public campaigns, with Jamaludin as the main engine of its highly publicised activities in East Java.

Jamaludin himself works as a cashier at a Kentucky Fried Chicken Restaurant outlet in Surabaya. On several important occasions he took strategic positions as spokes-person for workers alliances established as responses to actual issues. Most important was the controversial East Java regional minimum wage determination in 2006[14], which gave him a reputation as articulate resource person of any labour issues in East Java as well as well maintained access to journalists and the media. He pointed out that 'Media is an important part of our struggle', while showing the clippings of his interviews in East Java's media .[15] As noted by Abdullah Faqih, the FSPMI KJI vice chairperson, if it was not for Jamaludin they might not have had such a breakthrough. 'It was Jamaludin who continuously contacted media and updated information about the case each time there is a new development.'

Most of the union leaders involved in the case have somehow been involved with or have been in contact with the Legal Aid Institute (LBH) in Surabaya, an affiliate of the leading human rights NGO, the Indonesian Legal Aid Foundation (YLBHI)[16]. Many of them initially came to LBH for legal consultation on their own cases, or attended discussions on actual social issues organised by the organisation. This was where they first learned about the law and their rights. Even more important, LBH was a place where they learned to do public interest (labour) advocacy and the networks available for that purpose[17]. These networks include not only other NGOs, but also the media and state 'watchdog' institutions, such as the Judicial Commission, the National Human Rights Commission, the Corruption Eradication Commission, and later, the National Police Commission. The latter institution is particularly relevant for the case study because it provided a tool for the workers to monitor the activities of the police.

The workers also received support and sympathy from intellectuals at universities, particularly the State University of Airlangga in Surabaya, who were willing to give advice and act as expert witnesses for free[18]. The availability of some academic activists at the University was very helpful in this respect[19]. And again, Jamaludin played an important role in this matter, as he was the one who first contacted the university lecturers. Indeed, later on, his organisation managed to enlist several university lecturers as 'advisors' for his union through the union congress.

5. The Forums and Their Problems

Opting for an alternative route to address the dismissal, the KJI union leaders decided not to take the case to the Agency and the Industrial Relations Court. The dismissed union leaders with support of their union and others chose to report the case to the Police as a crime against trade union rights as guaranteed by the Trade Union Act No. 21/2000. Thus, they deliberately avoided the regular forums available for labour dispute settlement through the Agency and the Industrial Relations Court. In other words, instead of addressing the dismissal of the union leaders as merely dismissal cases in which the industrial dispute settlement mechanism would be used, they applied to it as a violation of trade union rights and thus involving criminal justice processes. This section analyses the problems of the industrial dispute institutions and processes, which arguably have led the KJI workers to shift their case to the criminal justice system.

5.1 The Regional Manpower Agency

At least two functions of the Agency at the provincial and district level are relevant to labour problems. One is to inspect the enforcement of labour law and other labour regulations by the companies in the region. The second is to mediate industrial disputes and provide 'suggestions' to the parties involved on how to resolve these disputes in a proper, lawful manner. In the first case, it is the labour inspectors that play their roles, and in the second case it is the mediators. In theory these two functions are interconnected, held by two different divisions under the supervision of the head of the Agency. In practice their relations are problematic due to reasons discussed later, and it has resulted in problematic enforcement and dispute settlement mechanisms that mainly disadvantage the workers.

It has been widely acknowledged, even by some government officials, that generally speaking the Agency has functioned poorly in Indonesia[20]. The situation has grown worse after many responsibilities on implementation and inspection as well as dispute settlement functions were devolved to the district level, while the law is still made by the national government and the parliament. My field research in Pasuruan and East Java confirms that the Agency has not been properly resourced, and therefore has generally failed in monitoring the implementation of national labour law in the regions (see also Tjandra and Hanggrahini, 2007). As I have argued elsewhere (Tjandra, 2009, also Ford and Tjandra, 2007), there are at least four reasons for this. The first concerns the budget for the Agency that is extremely small compared to other items in the regional budget. In the case of Surabaya, for example, the budget for the Agency is only one per cent of the budget for public gardens.
Second, it is political. In many cases political considerations of patronage determine the appointment of the head of the Agency, without taking into account that such a position requires technical knowledge to do the job properly. In Bekasi, for instance, about 30 km east of Jakarta, a former head of the Burial Office became the head of the Agency, or in Tulang Bawang, Lampung a former head of the Animal Husbandry Office. This adversely affects the performance of the office. Third, there is the problem of training for the officials concerned. The technical training that used to be provided by the central government has been drastically reduced as regional autonomy transferred this responsibility to the regions. Thus, it depends on the district government whether they are willing to spend on this, and usually they are not. And fourth, unclear career prospects for the officials affects their motivation. The regional focus also means that once Agency officials are appointed to a district, they have to remain there for the rest of their careers, with no chance for a promotion to other districts as before and to adapt to the 'local bosses'.

This situation has led to inadequate performance of the Agency. It is widely claimed by labour activists that there were no sanctions for companies failing to meet their legal obligations, and anti-union behaviour is widespread. The complaint processes take long and are costly, and their results are uncertain. All parties, workers, employers, including some Agency officials are in fact critical of this situation. In the KJI case, the distrust of the Agency was a reason for the union using a different approach to dealing with the dismissal of the union leaders.

5.2 The Industrial Relations Court

The establishment of the Industrial Relations Court marked a shift from 'compulsory' dispute settlement mechanism with government's involvement through the P4D/P4P[21] towards 'voluntary' mechanism with the Industrial Relations Court as the main institution[22]. The Labour Courts became

operative in April-May 2006, as 'special courts' dealing with labour issues under the umbrella of the District Court in the provincial capitals.[23] Unlike the P4D/P4P, which were informal and mediation oriented, the Industrial Relations Court generally follows the procedural law of civil litigation though with some exceptions. The Council of Judges consists of one career judge and two ad hoc judges nominated by trade unions and employers' association respectively. Special features are that no fees are charged for cases valued under Rp 150 million; that certain cases, such as interest disputes, cannot be appealed . Cases have to be settled within a maximum 50 days for the first instance session at the Industrial Relations Court and 30 days for the appeal process at the Supreme Court. While on paper both employer and workers are equally entitled to bring cases to the Industrial Relations Court, in practice workers have filed most cases by far[24].

There is currently growing scepticism about the Industrial Relations Court's performance. Pujianto, the chairperson of FSPMI East Java, for example, noted that despite the promise of the law, in practice the Industrial Relations Court is 'neither fast, nor precise, neither fair nor cheap'[25]. He referred to his own experience as labour advocate addressing the Industrial Relations Court: 'Because the Industrial Relations Court is only located in Surabaya, it costs a lot just to attend the trials, since many of the [union] members come from industrial cities outside Surabaya. […] not to mention the litigation procedures, which seem very difficult to most of my [union's] members to understand. […]Bringing cases to the Industrial Relations Court has consumed most of our energy, making us forget our main goal of organising members.' While confronted by the fact that it is actually workers that filed most of the cases to the Industrial Relations Court, Pujianto claimed that workers are 'forced' to do so, since they see no other way.

Jazuli of the FSPMI Pasuruan admits most Industrial Relations Court cases are brought by workers, and, indeed, workers have won many too[26], but since the employers consistently appealed to the Supreme Court, which suffers from a serious backlog of cases, the implementation of these judgments was postponed for several years. 'Even if we've got the decision, executing it in reality is another problem. If the employer does not want to comply voluntarily, it will cost a lot of money from the workers' side to follow the execution procedures at the Civil Court, which are far beyond our reach.'[27]

All of this has acted as a disincentive for workers to bring their cases to the Industrial Relations Court. It had been reported that the case load of the Industrial Relations Court has dropped considerably in the last few years. An ad hoc Judge at the Industrial Relations Court of Surabaya said, for example, that the number of cases dropped from 250 cases in 2007, to only 190 cases registered at the Surabaya court in November 2008. Similar trends are visible in other Industrial Relations Courts in Java; and even worse in the Industrial Relations Courts in Sumatera and Sulawesi, two main industrial islands outside Java[28].

6. Strategies in Dealing with the Forums

The problems with the labour law enforcement and dispute settlement mechanisms as explained above forced the workers to find other ways of dealing with the problems they face. The following discussion will focus on the strategies workers have developed in response. There are three steps in the strategies developed by workers and their union in relation to the case study: distinguishing labour 'disputes' from labour rights 'violation', the 'boycott of Industrial Relations Court', and criminal prosecution. The aim is to bring the violators to the criminal justice system, which is believed to be 'more effective' and 'more practical' than the regular dispute settlement mechanisms, .

6.1 'Dispute' vs 'violation'

'Fed up' with problems in the regular dispute settlement mechanisms, workers and unions in East Java have adopted alternative strategies, which they claim to be 'more effective' and 'more practical'. Using mass action as the main tool to enforce what they are supposed to enjoy based on the existing laws, they have tried to avoid mechanisms for 'dispute' (*perselisihan*) resolution and instead encouraged enforcement of the law by focusing on 'violation' (*pelanggaran*) cases. The main reason for such strategy is related to the actual enforcement problem. The workers believed that using 'violation' procedures as more certain rather than 'dispute' mechanisms, since there are stricter penal sanctions for violation, whereas dispute is seen as vague and preferred by employers and the Agency since it is more 'peaceful' and 'investor friendly'. Moreover, they argue, the dispute settlement process has become 'trading goods' for corruption by authorities involved during the long and uncertain process of dispute settlement.

According to the workers, the 'violation' strategy could use the already available 'dispute' forums such as bipartite negotiations followed by mediation at the Agency and court hearings at the Industrial Relations Court, but it has to be combined with mass action, pressures on related authorities (the Agency, *Bupati/Walikota*, Governor, local parliament, police) and campaigns in mass media. Such strategy is considered useful due to the problems with the 'court mafia' (*mafia peradilan*) within the corrupt judiciary. More public attention could limit such practices.

Since the Industrial Relations Court is relatively new and the system has not fully developed yet, the workers feel that many of the judges lack understanding, and thus sensitivity, on labour law issues (see also Tjandra, 2007). Although the workers agree that 'dispute' process might be to some extent beneficial since it had been made available by the law and particularly paid more attention to the mediation process, and 'win-win' instead of 'win-lose' solution as in the 'violation' process, they are skeptical about real implementation. They believe that a 'violation' strategy is not only beneficial as it provides a stricter enforcement mechanism, they believe that it is one way they could actually push reforms towards fairer dispute settlement mechanisms, revitalization of the labour law enforcement apparatus and assist in increasing workers' solidarity. An interesting example of the effect of a violation strategy is provided by the initiative of the East Java Governor, considered as 'best practice' by one former ILO Jakarta official.[29] The Governor issued a 'Circular Letter' concerning the enforcement of the labour laws and regulations outlined in Box 2.

Box 2: Inspecting the Inspectors

Partly inspired by the case and the Bangil District Court's decision, partly due to the potential for growing labour unrests in the region, there has been an interesting development in East Java, particularly in relation to the problem of labour law inspection and thus enforcement since the establishment of regional autonomy.

In anticipation of the series of worker demonstrations against the Governor which concerned the performance of the Agency inspectors in a number of local government areas within East Java, the Governor of East Java issued a 'Surat Edaran' or 'SE' ('Circular Letter') No. 560/6165/031/2009 of 25 May 2009, concerning the 'Enforcement of the Labour Laws and Regulations' which was directed at all *Bupati*/*Walikota* (District Heads) in East Java.

Basically, this SE requests the attention of the *Bupati/Walikota* to instruct the Agency to 'develop, inspect and take legal action against anyone who does not obey the existing law', relating to

such things as: ensuring payment of the minimum wage, pensions, the right to form unions, employment service providers, fixed term work contracts, training and apprenticeships and discrimination based on gender or disability.

What is interesting in this SE is the requirement of the Governor that the *Bupati* and *Walikota* must 'report the results of their implementation on the tenth day of each month from now on' to the Provincial Agency and the Provincial Tripartite Co-operation Institution.

Although SE is not a strong law since it is not part of the hierarchy of laws based on the People's Assembly Decision No. III/MPR/2000 and it does not contain any sanctions for heads of local government who refuse to implement it, this SE does provide a moral and social basis for the inspection of regional labour inspectors.

This initiative of the Governor of East Java is also in line with ILO Convention No. 81 (1947) on Labour Inspection in Industry and Commerce which was ratified by Indonesia in Act No. 21/2003 of 23 July 2003. This Convention clearly states that 'the inspection of labour must be under the supervision and control of the central government', and the Governor is indeed the extension of the arm of the centre which exists in the regions.

Despite opposition from the local business association for being 'too extreme' and resistance from a number of leaders in the local government Manpower Agency for being 'too brave', the Governor seems keen to persist with this effort. The final question which emerges is whether this law is better expressed in the form of a 'Surat Edaran' or indeed as a 'Peraturan Daerah' or Regional Regulation.

It is important to note that behind this initiative, Jamaludin, the KASBI/ABM East Java coordinator, played a very important role. As one member of the provincial Tripartite Cooperation Institution in East Java, he provided a lot of input during the drafting of the letter by the provincial Manpower Agency. In fact, most of the labour law enforcement issues in the circular letter were actually drafted by him, based on his knowledge and experience with actual cases faced by workers, in particular the KJI case. As noted by Jamaludin, 'This is obviously one of the good results of our hard work on the case.'

From the explanation above, we can see that the workers have shown great understanding of the law and ability to critically examine its strengths and weaknesses from their point of view. This would, as we discuss in the following sub-sections, help them find and use the forums available in order to raise their grievances.

6.2 The 'Boycott Industrial Relations Court' Strategy

The so-called 'boycott Industrial Relations Court' strategy, became a provocative action of avoiding the Court, in particular in rights violation cases. According to the workers the latter refer to cases where the law is not enforced against violators who ought to be punished. Although in theory a 'violation' (clear breach of the law) is different from 'dispute' (different interpretations of particular legal provisions), in practice they are often intermingled. Because of the lack of effective inspection by the Agency, many cases that should never have arisen are actually disputed at the Industrial Relations Court. In the present case, for instance, the KJI employer would rather have disputed the case at the Court as a 'dismissal dispute' of four workers rather than as a 'criminal offense' against union activists at the criminal court. According to the workers, the involvement of the Industrial Relations Court in rights violation cases distorts labour law enforcement and diverts the attention from the real issues at stake: the violators can thus safely hide behind the dispute process at the Court, while their crimes continue with impunity. To prevent this, the workers argue, they should focus, if necessary through

mass actions, on making the law enforcement institutions, such as the Agency and the police, actually enforce the law available.[30] Thus, they deliberately combined law and legal activities with political action.

These strategies targeting law enforcement institutions were supported by appeals to political authorities, such as the heads of the districts (the *Bupati* or *Walikota*) and the members of regional parliament (MPs). In many cases, MPs have served as 'mediators' between workers and employers. Several MPs have confirmed that the cause of this is the poor performance of the Agency, and that they simply exercise their 'monitoring' function over the executive. Police involvement was particularly notable when the workers informed them about their demonstration plan. [31] When submitting the notification, the workers explained their problems and asked the police to pressure the employers 'to solve the problem in good faith'. The police subsequently called the employers, informed them about the workers' plan, told them about the law and the legal basis of the case and asked them 'to follow the law as written'.

From the workers' perspective police involvement is particularly useful because they have more 'authority' in the eyes of employers than the Agency. According to the workers, the police are capable of pushing the employers to implement the law, because they may thus reduce the chance of mass demonstrations, which may threaten public order. If the police are reluctant to be involved or even suspected of being bribed by the employers, the National Police Commission can be called in to exercise pressure [32]. It is important to note that workers' visits to the Agency, *Bupatis*, regional parliaments, and the Police, are usually not a sign of trust in these organisations, but simply an attempt to resolve the case as quickly as possible.[33] This is why in their strategies they include media campaigns for public control and use mass actions in order for these authorities to become more responsive. Box 3 outlines the strategy developed by the workers in order to gain effective enforcement of labour law in the case study:

Box 3: The Strategy

1. Try to resolve the case through inspection mechanisms under the Agency:
   - all cases related to normative issues, meaning those which are clearly defined by law.
   - select ones that have criminal elements under the Act (particularly the Manpower Act No. 13/2003 and Industrial Dispute Settlement Act No. 2/2004).
2. Use bipartite negotiations with employers, use persuasive ways, initiate direct bargaining.
3. If this fails, initiate a mass action or strike, to improve your bargaining position.
4. Organise demonstrations and collective actions at the relevant sites to force the implementation e.g.:
   - at factories/companies;
   - at the Agency;
   - at employers' houses (in one case in Surabaya it is also the employer's lawyer's house, or even the employer's expert witness, who is a well-known lawyer in the region).
5. Use media campaigns/media advocacy to profile the issue and raise public attention.
6. Use the parliament for further pressure and public attention:
   - for case advocacy, ask MPs to get directly involved with the case, by inviting employers and unions/workers to mediation;
   - for controlling the Agency, ask MPs to exercise legislative functional power to control the

executive.
7. Advocate via the head of the region (*Bupati/Walikota*), to increase the pressure to take necessary steps to solve the problem legally and fairly.
8. Use the police as mediators as well as facilitators, by informing the police about a demonstration, as a requirement of 'permission' from police before mass action. The demand is that the police pressurizes the employers to 'to resolve the problem in good faith'.

The workers claimed that such strategies are 'more effective' and 'more practical', since they prevent the problems concerned from being distorted by the long and uncertain process of dispute resolutions under the Industrial Relations Court. But, they admitted, such strategies also have some disadvantages. A lot of money, time and energy is needed for mass mobilisation, and they often have to face 'preman' (thugs) and other illegal actions. Nevertheless, they think it is worth trying. If managed properly, the workers argue, these strategies might promote reform towards fairer dispute settlement, as well as revitalisation of the labour law enforcement apparatus, while it might also increase solidarity among workers (see also Box 2).

6.3 Criminal prosecution

The third step applied by the workers and their union also involved the police and was to, whenever possible, report incidents. Such a strategy is considered more effective than depending on labour inspections by the Agency. In the case at hand, such reporting was followed by a series of activities aimed at 'educating and influencing' the police, prosecutors and judges involved; combined with mass action to pressure demands, media campaigning to raise public awareness, and involving others sympathetic with their struggle, such as local MPs, academics from universities, etc.

These educating and influencing strategies were carried out through hearings and regular visits to the officials involved, often with dozens of workers together. As explained by Abdullah Faqih, the Vice Chairperson of KJI union, 'They were not demonstrations, just "hearings".'[34] The same strategy was used during the trial, with regular visits to the prosecutor's office and even the judges' homes. In the words of Anam Supriyanto, the union's secretary, their visits were 'to explain the case and provide as much information as they might need.' This included taking an academic from the University of Airlangga, Surabaya as expert witness to the Police.

When confronted by the 'Instruction of the Attorney General Office' hanging on the wall of the Pasuruan Prosecutions Office waiting room – whose first 'instruction' is that 'all Prosecutors are forbidden from meeting with guests related to cases he/she is working on'[35] – the workers argued that this was a kind of 'necessary wrong', due to the lack of knowledge of either the police or the prosecutor about the laws related to the case. Anam Supriyanto, the union's secretary, accepted the possibility that what they did actually violated the law, as he said, 'If it was a legal violation, I think it was. But since the understanding of the issue by the police as well as the prosecutor was limited, it was necessary for us to intervene. Moreover, it was the Public Prosecutor's wish as well.' Apparently, the workers felt that what they were doing was not entirely legal, but justified because it was the only way of obtaining a fair outcome.

Interestingly, Bambang Sunandar, the police officer who worked on the case, admitted that he felt the workers and the union were actually very helpful. He explained that his first response was to reject the case because he thought it was not really his office's function to check on labour law, wondering

'where the criminal elements of this case [are]'. Following the relentless efforts at explanation by the workers, he finally accepted the idea. 'They helped a lot,' he said, 'and they were like friends to me since we met almost every day.'

The workers and the union also employed additional strategies, such as providing books about the three Labour Acts to the police, prosecutors and judges involved. 'We highlighted the important articles related to the case, such as Article 28 of the Trade Union Act, so that they could understand what the case was all about.' This strategy was considered valuable, since 'they [the Judges, the Prosecutor and the Police officer] did not feel insulted,' said Pujianto, the man behind the strategy, claiming that he actually had bought 30 books, distributed to all the officials involved directly or indirectly in the case.

Additionally, all union leaders involved in the KJI case agreed that 'mass action' was their 'most effective advocacy strategy' to bring justice or 'something close to justice' to them and their co-workers. 'We believe, based on our observations through the trial process, that there was no way the General Manager could avoid the punishment,' said Anam Supriyanto, 'However, even a minute before the court decision was read, I was not sure whether we would get what we expected.'

'I only had partial confidence in the trial,' said Abdullah Faqih, 'it was due to "intervention" [from employers and regional government] that I was most afraid '. He referred to the previous PIER (Pasuruan Industrial Estate Rembang) management's lobby to the Bupati regarding the detention of the KJI General Manager.[36] 'I am happy that the Judge showed some willingness to learn about the case we brought to them and the laws that they are trained to understand,' said Faqih. 'Nonetheless, it is important that our case is publicized to raise public awareness about the issue; and one way to attract media attention is by mass action,' he explained. 'Media coverage is important to control the court,' added Anam, 'Companies that follow the law should not be afraid. A police officer on the street will not fine us if we do not break any traffic rules, right?'

7. Impact of the Decision and Its Dilemma

It has been almost a decade since the Trade Union Act No. 21 of 2000 was promulgated, yet, 'it is really a paper tiger' according to a union activist in Pasuruan. In reality discrimination against unionists, unfair dismissals for union supporters and other union-busting practices by employers have continued with impunity. As noted by Jazuli, the FSPMI Pasuruan regional coordinator, 'Justice seems far from workers' daily lives.' Thus, the court's decision to sentence a General Manager to one and a half years imprisonment for violating trade union rights under the Act was not only unprecedented, but for the workers involved, also signaled that justice might actually be realized. As Jazuli put it: 'Justice for workers does exist here, in our beloved country. It is not just a dream in the sky' (see also Jazuli and Pujianto, 2009).

Some good outcomes for workers have followed this decision. The four dismissed union leaders were invited by the President Director of PT King Jim Indonesia himself for a meeting. It was for the first time ever that a President Director, always a Japanese national, was willing to meet directly with union officials. According to Puguh Priyono, the chairperson of the KJI union, the decision was a moral boost for many of his members. Many who had quit the union under pressure from the management decided to rejoin it. 'I think my fellow workers started to understand that we have legal rights against any intimidation from the employer,' Puguh said, referring to the fact that the pressure only started to wane after the General Manager was detained by the Prosecutor. 'The decision confirmed that what we

fought for was correct and that the company's behaviour against the union was wrong,' he added. Moreover, this decision makes union development easier. According to Pujianto, the East Java FSPMI chairperson, many workers are now approaching him to join the FSPMI. 'They trust our commitment to defend our members,' he explained. 'Our number of members has doubled since. Before, it was really difficult to make employers understand why workers want to form a union, now we just show our registration letter to the Agency, together with clippings from newspapers about the General Manager being sentenced to jail for violating trade union rights. The company is likely to be more "friendly" to us then.'

When asked whether he thought it was worth losing his job to successfully put a General Manager in jail, Anam Supriyanto, the secretary of the KJI union, replied, 'Well, we may have lost our jobs, but we've got something that would never have come if we had not been fired, and that is knowledge'. 'We've got knowledge about how to tackle our own fear; fear of fighting for ourselves and for our fellow workers,' Puguh Priyono, the Chairperson, added. For these workers, the case is in fact their 'legal education'. As noted by Abdullah Faqih, the Vice Chairperson of the KJI union, 'Law is influence. He, who has more influence, can make laws that force others to do what he wants.' The case had in fact motivated him to continue studying law. As he pointed out, 'I want to go to college. I want to study law and practice it for the people. By being directly involved like this, I am deeply inspired. We cannot live without the law, we always live with rules, don't we?'

A rather different view came from Muhamad Didik, another dismissed union leader: 'Of course I'm happy with the decision and our sacrifice was worth it. But sooner or later we have to go back to work. The court decision did not say anything about that, so I understand that we have to struggle again . But for how long?' As mentioned earlier, after his dismissal Didik had moved to his hometown in Malang and left his family in Pasuruan, to work on a small business as chicken noodle vendor in front of his parents' house there.

Clearly, the 'boycott Industrial Relations Court' and 'criminal prosecution' strategies were workers' critical responses to the current problems of the current labour dispute settlement system, which for them is 'neither fast nor precise, neither fair nor cheap'. Moreover, it was a response to the absence of labour law enforcement in the regions since the implementation of regional autonomy policies. Such strategies, however, have created dilemmas. The four union leaders who had been unfairly dismissed still could not get their jobs back. The initial problem of collective bargaining rights has been left unresolved. Perhaps what they gained from the Criminal Court's decision was justice, but it was certainly incomplete. The Criminal Court cannot make any decisions regarding the workers' position or deal with labour relations issues such as collective bargaining. These issues are part of the jurisdiction of the Industrial Relations Court and the Agency. As we have learned from the case study, the workers and their union believed that it was actually the failure of these institutions in providing effective, fair and trustworthy mechanisms, that have made them decide not to bring their case to these common forums While, as explained by Pujianto, the workers could not bring the case simultaneously to the Industrial Relations Court since this could hinder the criminal process. The Court would focus mainly on the dismissal issue, whereas the case was actually about crime against union activists. 'If the police or the prosecutor knew that we also filed the case to the Industrial Relations Court, they would stop the investigation and prosecution, since they would think the workers had already accepted the dismissal and want to quit the criminal process.'[37]

To complicate matters, there is evidence that the decision might actually reinforce distrust between workers and employers. In a statement to the press as response to the Court's decision, the employers' association in PIER was reported as 'very concerned' that such a case happened in Pasuruan. As Abdul Muis, the PIER Manager, pointed out at a press conference: 'We're very sad, as to the swiftness of the legal process of the case. Such a problem should have been resolved through industrial relations law first [not criminal law].' (*Kompas*, 20 January 2009, *Duta Masyarakat*, 21 January 2009). He also complained about the 'weak law enforcement' in Pasuruan, and demanded that the government, the President in particular, to provide 'legal certainty' for doing business in Indonesia. He was also worried that the case would impact badly on the investment climate in the region.

In a press statement just after the decision was read by the Judges, while accepting the decision as a good sign for workers, Pujianto pointed out: 'We don't want the case to be a boomerang for workers. We, as workers' representatives, are quite happy with it, and we hope it will not happen again in the future, as there has been a lesson for the law violators.' This suggests that to him, the case was rather 'a lesson', in the hope that there would be no more repression of union activists. The wish was not to imprison the employer, but simply to encourage employers to have genuine respect for workers and their unions.

8. Conclusion

The problems in this case may be common, but the response is quite the opposite. We have seen how workers, despite adverse conditions, have been able to develop new strategies to address injustices. Through a combination of legal knowledge and skills[38], with support of several groups and individuals who were sympathetic to their struggle, they were able to translate the injustices they experienced into grievances. It led them to find the forums available, and use them accordingly. Starting from a 'common' problem of union activists being dismissed by the employer because of their union activities, these workers have successfully brought the company's General Manager to criminal prosecution and finally to prison for violation of the Trade Unions Act No. 21/2000.

Yet, it also brings dilemmas. The criminal justice system and the criminal court could not give solutions to the issues raised by dismissal of the four union leaders and the breach of collective bargaining rights of the union. Such solutions belong to the other system of labour dispute settlement with the Agency and the Industrial Relations Court as the main institutions responsible for dealing with the issues. Yet, they are considered to be highly problematic by the workers. Indeed, it is actually the failures of these two institutions that have led the workers to bring the case to the criminal processes. Moreover, such a decision may also enlarge the already large distrust between workers and employers.
Learning from Donald Black's three styles of social control, i.e., 'penal style', 'compensatory style', and 'conciliatory style' (Black 1976; see also Bedner and Vel, this volume), in the context of dispute between workers and their employers, some people may argue that the 'conciliatory style' perhaps offers a better solution than the 'penal style'. After the dispute, it is possible that the two parties may have to work together again, thus there should be some room for negotiation for mutual agreeable outcome for both. This requires some willingness of the two to take some of the blame, while trying to restore social harmony. As Black (1976) has explained, the role of the 'third party' is often important here to facilitate the parties to reach mutual agreement. Here we may refer to the institutions developed by the state through the so called 'labour dispute settlement mechanism'.

In Indonesia, as we have learned from the case study, such an ideal approach to labour dispute resolution may still take time to be achieved. The distrust between workers and their employers have poisoned the systems for long, with little effort at resolution. The decision to imprison an employer for his misconduct against union activists, however controversial it is, must be seen as merely a stepping-stone to 're-balance' the current 'disharmony' within the labour law enforcement in the country. This cannot be done through a single court decision; instead it should be taken up widely and systematically, involving all the stakeholders, including workers and their unions, employers and their organization, and the government.

In addition, the case represents the most advanced strategies used by workers to achieve justice, individually as well as collectively. Instead of getting trapped in the problematic systems of the Agency and the Industrial Relations Court, they are focusing their energy on building stronger bargaining positions through their collective powers, legal knowledge, and organic skills in lobbying and politics. By doing this they are able to choose and use the most appropriate though limited forums available in order to obtain as effective treatment of their grievances as possible. From an access to justice perspective, this in itself is already an important achievement.

For these workers justice seems to be more about struggle: Struggle to gain their own and their fellow workers' rights, which never come for free. Through strategies and the organisation of their collective powers, these workers have finally achieved 'justice', however 'incomplete'. Any law reforms that fail to recognise this may only lead to another form of 'incomplete justice'.

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[1] On 30 September 1965, some factions in the military were reported to have kidnapped and killed six leading Indonesian army generals accused of being involved in a conspiracy against President Soekarno. The Indonesian Communist Party (PKI) was also said to be behind these kidnappings. The military under the leadership of General Soeharto – a US-trained Chief Commander of the KOSTRAD (the Army Strategic Reserve Command), then took charge. In a few hours he assumed control of the army and crushed the 'coup' (Crouch, 1988; Anderson and McVey, 1971). He declared a state of emergency, banned the PKI and all its affiliates, including the SOBSI union, and all other leftist groups whether or not they were related to the PKI. Their leaders were killed or gaoled without trial. In the purges that followed, it was estimated that the number of people killed ranged from 100,000 to 1 million in only six months after 30 September 1965 (Cribb, 1990). General Soeharto then took full power on 11 March 1966, when Soekarno was forced to transfer the full presidential authority for the restoration of security and government control to Soeharto who then established the 'New Order' era.

[2] In a comparison between Latin American and East Asian countries, Deyo (1987) suggests that in Latin America states pursued import substitution industries that fostered broad populist coalition, including organised labour, because they confronted substantial labour movements that could not be easily repressed; whereas the East Asian 'developmental' states – Singapore, South Korea, and Taiwan – were insulated from the need to accommodate worker demands because organised labour was already effectively subordinated and repressed before these countries embarked on export-led development strategies based on low-wage manufactures. The latter was apparently also the case with Indonesia under the New Order (see also Beeson and Hadiz 1998).

[3] For example, workers might set up plant level unions in companies with more than 25 workers, only if no unions had been established, and as long as it was approved by more than 50% of the existing workers. Only one union was permitted in each company, and it excluded persons in management position. The corporate unions 'can establish cooperation with or be affiliated to the All-Indonesia Workers' Union' (SPSI), and that they were 'recommended to join the SPSI of relevant business sectors' within 12 months from their establishment.

[4] Three major labour laws were enacted during this time: the Trade Union Act No. 21/2000, the Manpower Act No. 13/2003, and the Industrial Relations Dispute Settlement Act No. 2/2004. They were formulated under the so-called 'labour law reform program' signed by President Habibie, Soeharto's successor, in August 1998, conducted under the auspices of the International Labour Organization with money from the US government through 'the ILO/USA Declaration Program'.

[5] KSN or the National Solidarity Committee (KSN) is a Jakarta-based alliance of tens of unions and labour NGOs and focuses on the advocacy of trade union rights.

[6] These are KSPI, KSBSI and KSPSI. The first two affiliated to the International Trade Union Confederation; whereas the latter is known as a New Order union which makes it difficult for it to join an international union confederation.

[7] This is the paradox: while the number of registered unions is increasing, the number of workers belonging to unions is decreasing. In May 2002, 45 national federations registered, with 8,281,941 members. In mid-2005, the Ministry of Manpower's verification result showed around 90 unions registered, with 3,338,597 members. See annual verification results by the Ministry of Manpower Office, Government of Indonesia.

[8] One union leader in East Java pointed to PT Kreasi Malatindo and PT Maltek cases, both in Mojokerto, East Java. The Manpower Act Article 90 states that 'Entrepreneurs are prohibited from paying wages lower than the minimum wages', which according to Article 185 is considered a 'felony' and subject to imprisonment for one to four years and/or a fine of Rp 100 millions to Rp 400 millions (US $ 10,000 to 40,000).

[9] Similar cases have been reported in many other places in Indonesia (see KSN, 2009).

[10] By doing this the union leaders showed that they were aware of the provisions on strike of the Manpower Act No. 13/2003. Article 137 rules that strike 'shall be staged legally, orderly and peacefully as a result of failed negotiation', whereby 'failed negotiation' means that 'no agreement to settle the industrial relations dispute is reached because the entrepreneur is not willing to negotiate or because the negotiation ends in deadlock'. Article 140, furthermore, rules that '[w]ithin a period of no less than 7 (seven) days prior to the actual realization of a strike, workers/labourers and trade/labour unions intending to stage a strike are under an obligation to give a written notification of the intention to the entrepreneur and the local government agency responsible for manpower affairs.'

[11] In the beginning, according to the workers and also admitted by the police officer handling the case, part of the police's hesitance was because they never had experience in such a case, thus 'assistance' from the union was beneficial in providing information concerning the particular provisions and evidence as well as witnesses available. As explained by the police, the involvement of expert witness from university was important since the case dealt with a 'special' crime under a 'special' law outside the general Penal Code.

[12] Pujianto and Jazuli, two FSPMI union main leaders in East Java who played a very important roles in the case, are FSPMI's full-time paid officers.

[13] He repeatedly mentioned that it was the members who collected money to pay for his bar exam. Once he noted, 'I have been "bought" by the workers. So, it is now my obligation to serve them in return.'

[14] For more discussion about the minimum wage advocacy since the regional autonomy policy particularly in Surabaya and East Java, see Tjandra et al. 2007.
[15] A journalist at *Kompas*, a leading national newspaper, in Surabaya branch and a producer at *Suara Surabaya* a leading news radio in East Java believe that Jamaludin is a valuable informant for any labour issues in East Java. Thanks to Jamaludin's influence, *Kompas* East Java pages often provides special coverage on the labour issues in East Java in their paper (see, e.g., *Kompas*, 30 April 2009, 4 November 2009)
[16] For a thorough analysis of the role of LBH in Indonesian society see Lev (1987), who argued that despite the low expectations at the time of its establishment in 1971, LBH 'has had remarkable political influence for so small an organization. It has proved more effective than any other public or private institution in calling attention to the decrepitude of the legal system, political injustice, and social and economic inequity.' (283).
[17] Despite its important role in the past in building legal awareness among workers, LBH Surabaya was said to have become a more 'bonsai-like' institution, growing but very slowly, with diminishing influence on the social movement in the region. Once a leader of the labour rights movement (with someone like Munir, the human rights champion who was later killed, as the Head of Labour Division there), LBH Surabaya hardly does any labour advocacy due to financial difficulties. Yet, it is still very important as the 'centre' of social movements. Many meetings of the workers' alliance were held at the LBH office, which was considered a 'neutral place' in gathering unions with differing perspectives (personal communication with Herlambang Perdana, June 2009).
[18] Hadi Shubhan, a lecturer in labour law at the Faculty of Law, University of Airlangga, is well-known among the workers. He has been expert witness in support of them in several cases, either at the Labour Court or confronting the police. His testimony during the King Jim trial proved to be influential in the final decision of the judges.
[19] Herlambang Perdana was one of them. Having been associated with LBH Surabaya for several years, he later became a lecturer at the Faculty of Law, University of Airlangga, in Surabaya. With several former LBH activists, together with Jamaludin, he developed an NGO called *Masyarakat Bantuan Hukum* (Legal Aid Society) with the idea of boosting the legal capabilities of marginalized groups such as workers and peasants in East Java. He also facilitated workers' access to other lecturers at the university.
[20] See for example statement of Muji Handaya, Director of Employment Norms Inspection, the Ministry of Manpower, in 'Seminar on Labour Inspection', organized by the FSPMI, Jakarta, July 13, 2009, see also the general proceedings of the seminar as prepared by FSPMI.
[21] Regional and national dispute settlement committee under the Ministry of Manpower, established in the late 1950s based on the Labour Dispute Settlement Act No. 22/1957. One of its main tasks was to authorize 'permission' for dismissal, without which the dismissal would be considered 'null and void'.
[22] 'Compulsory' mechanism refers to the obligation under the Labour Dispute Settlement Act that obliged any labour disputes to be brought by the parties involved to the P4D/P to resolve, whereas 'voluntary' means that the parties could choose whether or not to bring the case to the Industrial Relations Court or to resolve the dispute among themselves.
[23] Based on Article 1 of the Industrial Relations Dispute Settlement Act No. 2/2004, the court is authorised to examine, adjudicate, and decide on 'industrial relations disputes', i.e., 'a difference of opinion resulting in a dispute between employers or an association of employers with workers/labourers or trade unions due to a disagreement on rights, conflicting interests, a dispute over the termination of employment or a dispute among trade unions within one company.'
[24] Out of ten new cases brought to the Industrial Relations Court Jakarta in 2009 only one was filed by an employer (personal communication with ad hoc judge at the Industrial Relations Court Jakarta).
[25] He deliberately referred to the formulation in the Industrial Relations Dispute Settlement Act, which in its 'consideration' part stated that the law was aimed at developing a dispute settlement mechanism which is 'fast, precise, fair, and cheap'.
[26] This is partly due to the existence of ad hoc judges, particularly those from the trade unions, who show more sensitivity and often commitment in examining the cases brought to the Industrial Relations Court (see Tjandra 2008).
[27] In general to execute a court decision one needs assistance from the court executors, which required costs to do so. In Indonesia these costs consist of 'official costs' that regulated under the law, as well as 'unofficial costs' through tipping or even briberies in order to perform the execution. The Industrial Relations Dispute Settlement Act rules that cases with values below Rp 150 millions are free from charges, yet in practice there are other kinds of unofficial payments demanded of both workers and employers, such as 'typing fees', 'documentation fees', etc (see Tjandra, 2007).
[28] Indeed, some ad hoc Judges have raised their concerns with this development. They also criticise the systemic problems of their own institution in general, such as the long and inaccessible procedural law within the Industrial Relations Court, the problematic and costly execution of the Court decisions process, the difficult burden of proof, etc. (see Tjandra 2009).
[29] Personal communication with Carmelo Noriel (5 August 2009), who was the Program Director of the ILO/USA Declaration Program that facilitated the 'labour law reform program' in Indonesia.
[30] The issue of following 'the already existing law' seemed important for these workers. Despite their low expectation of the law, on occasion, they still found the law useful in order to make a case of their problems. Such statement seemed like

paradox, which might remind one to the situation in South Africa under the apartheid, whereby the law was both 'foe' and 'friend' for the oppressed: 'while the law generally served as an instrument of oppression, on occasion it might present a salvation for the oppressed.' (Abel, 1995).

[31] As ruled by the Freedom of Expression in Public Act No. 9/1998, see Article 10.

[32] The National Police Commission (www.kompolnas.go.id) is a special institution for monitoring police performance under the direct supervision of the Indonesian President. Its establishment is based on Indonesia's National Police Act No. 2/2002 and President's Decree No. 17/2005 on the National Police Commission. Due to the increasing number of such reports from workers, particularly from East Java, the Commission has appointed a commissioner to deal with such issues, whose task is basically to deal with workers' complaints concerning police performance and police institutions (interview with Novel Ali, Commissioner of the Police Commission).

[33] The workers mentioned that *Kabupaten* Sidoarjo, Head of Agency had a doctoral degree and taught industrial relations in several universities. They considered him 'more intellectual' and 'more sensitive to media.' As discussed further later, a media campaign was one of the strategies applied by workers to win their case.

[34] 'Hearing' meant that they, the workers, were 'invited' and 'welcomed' by the institution they targeted, while 'demonstration' was initiated by the workers and not welcomed by the target institution.

[35] This 'instruction' was formulated in year 2008 by the Deputy Attorney General on Special Crimes, Marwan Effendy, under the auspices of the Chief Attorney General, following the replacement of Kemas Yahya Harahap, ex-Deputy Attorney General on Special Crimes following a highly publicized bribery scandal (*Bisnis Indonesia*, 2 Februari 2008, *Tribun Indonesia*, 18 March 2008).

[36] One week before the Court reached the decision, the *Bupati* of Pasuruan gathered the officials involved in the KJI case reminding them to be more 'sensitive' to the situation in Pasuruan and the possibility of investors fleeing from Pasuruan as a consequence of the case. Later on, after the decision, four Japanese employers from PT Panasonic Lighting Indonesia, PT Yamaha Musical Product Indonesia, PT Central Motor Wheel Indonesia, and PT King Jim Indonesia, all located in PIER, sent a 'letter of appeal' to the President of Indonesia asking for 'protection' and 'legal certainty'. (*Kompas*, January 20, 2009; *Duta Masyarakat*, January 21, 2009).

[37] Later on the KJI management in fact brought the case to the Industrial Relations Court of Surabaya asking for dismissal approval from the court. Although the workers used the Bangil district court decision as evidence to support their argument that the dismissal was illegal, and that the court should reject the dismissal and reinstate the workers, the Court decided to accept the dismissal with compensation for the four union leaders since 'there is already "disharmony" in the relationship between the workers and the company' so that, the Industrial Relations Court argued, the work relations could not be continued anymore.

[38] The notion of 'legal capital' may be of the value here (see Bedner and Vel in this volume).