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Inconsistencies in the Reality of Employment Law in Indonesia in International Legal Conventions

Sukhebi Mofea[1]

Abstract

The problem in this article is that there are inconsistencies and gaps between national and international labor regulations, many provisions in national labor laws are not in accordance with international standards that have been ratified by Indonesia, such as provisions regarding minimum wages, severance pay, outsourcing and protection for migrant workers. This type of research is qualitative research using normative legal research methods which use data collection techniques using literature study. The purpose of this research is to discuss and examine inconsistencies or conflicts between labor laws that occur in Indonesia and international legal convention regulations that regulate labor law. The results of the research and discussion are that regulations regarding freedom of association for workers in Indonesia began with the ratification of ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 Concerning the Implementation of the Principles of the Right to Organize and Collective Bargaining.

Keywords: *Employment Law, Labor, International labor regulations.*

Introduction

Basically, employment issues are a social, political and economic agenda that is quite crucial in modern countries, because employment issues are actually not only the relationship between workers and entrepreneurs, but more broadly also include issues of the economic system of a country and at the same time the economic system his politics. Therefore, the economy and politics of a country will greatly determine the style and color of the employment system it implements (Jalil, 2008).

M.G. Levenbach said that labor law is the law that regulates the pattern of employment relations, and workers are under the control of the leadership and depend on their livelihood from this work. Molenaar also said that employment law is a legal component that specifically regulates the relationship between entrepreneurs as employers and workers (Manulang S. H., 2001). Then Husni stated that Employment Law is all legal regulations relating to labor both before employment, during or in the employment relationship, and after the employment relationship (Husni, 2010).

Otto Kahn Freund is of the opinion that the emergence of labor law is due to the unequal bargaining position that exists in the employment relationship (between workers and employers). For this reason it can also be seen that the main aim of labor law is to be able to eliminate the inequality between the two that arises in the relationship work (Agusmidah, 2011). Labor law not only regulates the relationship between workers/laborers and employers in the implementation of employment relations but also includes someone who will seek work through the correct process or related implementing institutions, as well as regarding workers who are retired or have finished working (Soedarjadi, 2008).

Employment law is one of the positive laws in Indonesia, which originates from international law (Treaty). Treaty is an international agreement. Treaties are divided into two types, namely Law Making Treaties and Treaty Contracts. The Law-Making Treaty is an international agreement that is universal in nature, so that all countries as part of the world community inevitably have to become parties or heed it, unless the international agreement regulates reservations. Meanwhile, a Treaty Contract is an international agreement which can be bilateral (carried out by two countries) or multilateral (carried out by several countries), so that the agreement is only binding on countries that are parties to the agreement. And international legal provisions relating to employment law or labor law are included in the Law Making Treaty, which was published by the World Labor Body called ILO (International Labor Organization) in the form of a convention (ILO Convention) (Dalimunthe & Fajri, 2023).

[1] Syekh Yusuf Islamic University, Tangerang, Banten. Email: mofea@unis.ac.id.

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Employment law is based on national and international legal sources. National legal sources are divided into two categories; first, state law which includes the constitution, statutory regulations and government policies; and secondly professional agreements such as collective work agreements, customs and company regulations. The source of international law comes from international agreements and treaties, especially international labor organization (ILO) conventions (Dedessus-le-Moustier, 2014).

There is previous research that resembles the research discussion in the current article. Previous research regarding international conventions protecting the rights of migrant workers was carried out by Achmad Zulfikar in 2017. In this research, he discussed the harmonization of international conventions protecting the rights of migrant workers with Law no. 39 of 2004 was carried out through a transformation process which refers to the position of international conventions in Indonesian national law and the substance of the international convention for the protection of migrant workers' rights was adopted through two processes, namely the political process through the discussion of the Bill on Amendments to Law No. 39 of 2004 in the DPR RI and the involvement of civil society organizations and the legal process with reference to Law no. 6 of 2012 in the Draft Law on Amendments to Law no. 39 of 2004 version of May 2016 and identified 7 findings comparing the Amendment Bill and the Law ratifying the convention (Zulfikar, 2017; Mazhar, 2023; Merik & Slate, 2023).

The difference between the current research article and previous research articles is that the current article discusses inconsistencies and discrepancies between national and international employment regulations. There are many provisions in national labor law that are not in accordance with international standards that have been ratified by Indonesia, including examples of several regulations that are not in accordance with international labor law conventions. Meanwhile, previous research only discussed the harmonization of international conventions for the protection of migrant workers' rights with Law no. 39 of 2004.

The problem in this article is one of the problematic aspects of labor law in Indonesia is the inconsistency and discrepancy between national and international labor regulations. Many provisions in national labor laws do not comply with international standards that have been ratified by Indonesia. Such as provisions regarding minimum wages, severance pay, outsourcing and protection of migrant workers. In addition, there are many provisions in national labor laws that conflict or overlap, such as provisions regarding work agreements, working hours and leave. This creates confusion and legal uncertainty for workers and employers, and makes it difficult to enforce labor law in Indonesia. From a human rights aspect, one of the labor problems in Indonesia is the widespread violation of workers' rights, both by employers, the government and society. Many workers do not receive fair and decent treatment in employment relationships, such as discrimination, harassment, exploitation or slavery. Many workers also do not have adequate access to education, health, housing and justice. There are also many workers who do not receive effective protection from the state, such as migrant workers, domestic workers, informal workers and child workers.

Based on the background explained above, this article discusses labor law in Indonesia, international labor law, Indonesian labor law in international legal conventions, and inconsistencies in Indonesian labor law in international legal conventions. Apart from that, this article aims to discuss and examine the inconsistency or conflict between labor law that occurs in Indonesia and the regulations of international legal conventions that regulate labor law.

Research Methods

The research in this article uses normative legal research methods, namely legal research carried out by examining library materials or secondary data (Barus, 2013). This research uses the technique of collecting legal materials by means of library research. The data analysis technique in this research uses qualitative descriptive data analysis techniques and interpretation according to the explanation of the law. The source of legal material in this research is Primary Legal Material: Legal principles and rules. The embodiment of legal principles and rules can be in the form of: Basic Regulations, Constitutional Conventions, Legislation, Unwritten Law, and Court Decisions. Secondary Legal Materials Legal Publications, and the Internet.

Results and Discussion

Employment Law in Indonesia

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One of the legal aspects related to regulating the rights and obligations of every citizen is the aspect of employment law. Zulkarnain Ibrahim emphasized that the regulation of labor law aspects in Indonesia has been implemented through informal customary labor law norms, namely through an agreement between the employer and recipient (Ibrahim, 2019). The Indonesian government is responsible for implementing state policy in the field of making labor laws with a pattern of balancing the interests of the parties in labor relations in accordance with current developments, which clearly will not be separated from change and growth which, if not responsive, repressive and preventive, is continuously paid attention to, will result in a life full of chaos, which practically contradicts the ideal of law as an order of life (Iftitah, 2018).

The legal position of employment is related to aspects of civil law, aspects of state administrative law, and aspects of criminal law. This really depends on the field involved in it. Example: If it is related to a work agreement including rights and obligations that have been mutually agreed upon and only involves the parties, then this concerns aspects of civil law. Apart from that, if it is related to licensing in the field of employment, determining minimum wages, ratifying company regulations, registering collective work agreements, registering workers/labor unions, and so on, then this concerns aspects of state administration law; and If it is related to violations of the Employment Law, then this concerns aspects of criminal law (Harahap, 2020).

Operational employment law according to Oesman as quoted from Abdul Khakim, systematically and grouping laws and regulations into three groups, namely those that regulate the period before employment, the period during employment, and the period after employment (Khakim, 2014). In labor law, there is a Pancakrida of Labor Law which is a struggle that must be achieved, namely: Freeing Indonesian people from slavery, serfdom; Freeing Indonesian people from corvee or forced labor; Freeing Indonesian laborers or workers from penal sanctions; Freeing Indonesian laborers or workers from the fear of losing their jobs; and Providing a balanced position between laborers or workers (Bambang, 2013).

In Indonesia, the field of Manpower applies various laws and regulations starting from the 1945 Constitution down to the lowest regulations as implementing regulations. This provision is of course inseparable from the philosophy contained in the Preamble to the 1945 Constitution which emphasizes that one of the national goals is to provide protection to every Indonesian citizen and to advance the welfare of the Indonesian people (Anwar, 2021). Based on Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it states that "Every citizen has the right to work and a living that is worthy of humanity" (Wijayanti, 2009). This is reaffirmed in the 1945 Constitution of the Republic of Indonesia (the result of the second amendment) Chapter XA concerning Human Rights (Article 38 A-28J). Article 28 D mandates that "everyone has the right to work and receive fair and appropriate compensation and treatment in employment relationships". Furthermore, Article 28 I paragraph 4 emphasizes that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. Previously, the government had stipulated paragraph 38, paragraph 2, which stated that "every person has the right to freely choose the job he likes and also has the right to fair employment conditions." Meanwhile, article 71 regulates the government's responsibility to respect, protect and promote human rights both as regulated in law and international law (Lawendatu, 2021).

Labor regulations are regulated in labor law. Initially, employment law was better known as labor law, using diction that was considered less positive in Indonesian grammatical nomenclature. After the independence of the Republic of Indonesia, employment was regulated in the provisions of Law no. 14 of 1969 concerning the Basics of Labor Provisions. Then further in 1997 concerning Employment through Law no. 25 but the birth of Law no. 25 of 1997 thus reaped many public protests. This is because it is linked to the existence of a social security tower which was built due to alleged costs of collusion with the social security mechanism. Finally, the existence of Law no. 25 of 1997 revised by Law no. 13 of 2003 concerning Employment (Djayadi, 2021).

Protection of workers is intended to guarantee workers' basic rights and guarantee equality and treatment without discrimination on any basis to realize the welfare of workers and their families while still paying attention to developments in the business world and the interests of employers. Legislation related to protection for workers Law Number 13 of 2003 concerning Employment and Implementing Regulations of legislation in the field of Employment (Budiono, 2011).

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The issuance of Law Number 13 of 2003 concerning Employment is a response to the government's political will in the field of employment law which has the noble aim of legal protection for workers in terms of: empowering and utilizing workers optimally and humanely, realizing equal employment opportunities and providing labor work that is in line with national and regional development needs, provides protection to workers in realizing prosperity, and improves the welfare of workers and their families (Charda, 2015).

The regulations contained in Law Number 13 of 2003 concerning employment explain that what is meant by labor is every person who is capable of carrying out work to produce goods and/or services either to meet their own needs or those of the community. Realizing the importance of workers for companies, government and society, it is necessary to think about how workers can maintain their safety and minimize all risks that arise in carrying out their work (Sulaiman, 2013). The definition of labor in Law Number 13 of 2003 concerning Manpower has perfected the definition of labor in Law Number 14 of 1969 concerning Basic Employment Provisions (Manulang S. H., 2001).

In Indonesia, there are various regulations and rules related to workers' welfare, including the 1945 Constitution of the Republic of Indonesia: Regulating the basic rights of workers, such as the right to a decent life, the right to work and earn a decent income, as well as the right to obtain protection at work, Law Number 13 of 2003 concerning Employment: This is the main law that regulates employment in Indonesia, including workers' rights and obligations, wages, working hours, occupational safety and health, as well as settlements labor disputes, Government Regulation Number 78 of 2015 concerning Wages: Regulates the determination of provincial minimum wages, district/city minimum wages, and sectoral minimum wages, Minister of Manpower Regulation Number 18 of 2019 concerning Labor Inspection Norms: Regulates labor inspection norms which aim to ensuring employers' compliance with labor norms (Arifudin, Angel, Rahmawati, Markus, & Azra, 2024).

The Employment Law (UU No. 13/2003) is the second of three labor laws planned in the Labor Law Reform Program in 1998. This Employment Law discusses employment, namely entrepreneurs and employers' associations, workers and trade unions, government officials, professional organizations, lawyers and legal consultants, the educational world of non-governmental organizations (NGOs) and society in general. Law Number 13 of 2003 concerning Employment (UUK) is basically a refinement of Law Number 25 of 1997, although it was originally prepared as the Employment Development and Supervision Bill (RUUPPK). Most of the UUK material is taken from Law no. 25/ 1997. Starting from the initial preparation stage for drafting the Draft, up to discussions in the DPR, all relevant elements have been involved, namely representatives of employers and employers' associations, representatives of workers and trade unions, Government institutions and related Non-Governmental Organizations (NGOs) (Ardianto & Farisi, 2021).

Apart from that, there are also other laws and regulations related to employment, such as Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, Government Regulation Number 35 of 2021 concerning PKWT, Outsourcing, Working Time and Rest Time and Layoffs, Government Regulations Number 36 of 2021 concerning Wages, and Government Regulation Number 37 of 2021 Implementing the Job Loss Guarantee Program. However, significant changes occurred with the enactment of the Job Creation Law (Omnibus Law) in 2020. This caused mixed reactions in society, with some supporting and some worrying about the possibility of taking away workers' rights. (Sinambela, et al., 2023).

Although the source of employment law in Indonesia is legal provisions spread across various laws and regulations, Law Number 13 of 2003 concerning Employment is the main regulation which contains comprehensive and comprehensive regulations in the field of employment. Regulations in the employment sector are made to achieve peace and fulfill the three conditions, namely philosophically it can create justice, sociologically it is useful, and juridically it can create certainty (Prasetyo, 2014).

International Level Employment Law

The international organization that is competent in labor matters is the International Labor Organization (ILO), this organization is the only UN "tripartite" body that invites representatives of governments, employers and workers to jointly formulate policies and programs. The ILO is the global body responsible for setting and monitoring international labor standards. In collaboration with its 181 member countries, the ILO seeks to ensure that these labor standards are respected both in principle and in practice. Based on

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the concept of classification of international organizations, the ILO is included in the OI category with Universal Membership with a Special Mandate. From this categorization it can be seen that the ILO is an OI with more than one or two countries as members who have the same vision and focus on their duties, namely to handle problems surrounding labor and world trade unions (Hanny, 2017).

The International Labor Organization (ILO) has an important role in regulating and supervising labor matters, where the ILO handles all problems that arise regarding labor. The ILO is an organization under the guidance of the United Nations (United Nations) and the ILO is a forum for the government and its social partners. The ILO was founded in 1919 with 187 member countries, of which the ILO has produced 190 Conventions, 8 ILO Basic Conventions (Core Conventions) and 206 ILO recommendations. Indonesia is one of the members who joined in 1950 with 20 conventions that have been ratified. And the ILO has had offices in Jakarta and Timor Leste since 1970. The establishment of the ILO organization has the aim of increasing peace for the entire nation by promoting social justice, which includes justice, human rights and social aspects (Hartana & Rohmadani, 2022).

Institutionally, according to Jasmien Van Daele, the ILO is an international organization that has the authority to regulate and establish international standards regarding the principles of freedom of association and the right to organize workers/laborers in the form of conventions, recommendations (and/or resolutions). The ILO is a forum that combines interests' government, the interests of workers/laborers, and the interests of employers. Based on the context of "intergovernmental organization", worker/labor and entrepreneur representatives are qualified as non-government representatives. In general, there are three authorities attached to the ILO, namely normative authority, supervisory authority and sanctions authority. Based on normative authority, the ILO makes norms such as legal provisions and the right to participate in making international agreements with other subjects of international law in accordance with Article 6 of the Vienna Convention. The authority to carry out supervision is carried out to monitor member countries that do not carry out their obligations that have been agreed in Conventions, Recommendations and/or Resolutions (Setiawan, Perdana, Apriani, Pusriansyah, & Santoso, 2022)

The international labor rights agenda broadened dramatically at the end of World War I with the creation of the International Labour Organization. The ILO was established in 1919 as an offshoot of the League of Nations and originally had 44 member countries from Europe, Asia, Africa and Latin America. Initially, discussions in the ILO focused on the eradication of slavery and all forms of forced labor. However, a broader labor rights agenda also included the rights to freedom of association and collective bargaining, nondiscrimination in employment, and the elimination of child labor. As part of building an international consensus on labor standards, the ILO promulgates certain "Conventions" and "Recommendations" that member nations may choose to ratify. The early Conventions adopted between 1919 and 1939 included a long list of labor market practices targeted for international standards. For example, Convention 1 establishes the 8-hour day/48-hour workweek, and Convention 5 establishes a minimum work age of 14 years (although children working with family members are excluded). Additional Conventions and Recommendations pertained to wages, occupational health and safety, retirement compensation, severance pay, survivor's benefits and other topics (Brown, 2001).

The primary goal of the ILO is to promote opportunities for women and men advanced to obtain decent and productive work with fair wages, social protection and social dialogue, and rights at work and the integration of the gender dimension. The purpose is not only to create jobs but to create quality jobs, the amount of work cannot be separated from the quality. ILO Conventions provide that any person has the right to social security, the right to rest, the right to security in the event of unemployment, sickness, disability. These objectives are inseparable, interrelated and mutually reinforcing them. They also define how the ILO can promote the primary objective of decent work (Larion, 2013).

The primary objective of action in the ILO is the creation of the International Labor Standards in the form of Resolutions and Recommendations. Resolutions are international treaties and instruments, which generate legally binding responsibilities on the nations that ratify those nations. Recommendations are non-binding but better set out guidelines orienting countrywide policies, procedure and help in developing actions. Labor Law controls matter, such as, remuneration, labor employment, and conditions of employment, trade unions, industrial and labor management relations. They also include social legislations regulating such characteristics as reimbursement for accident triggered to a worker at work place, maternity

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benefits fixation of minimum wages, and distribution of the company's profit of the organization's workers, etc. Most of these acts regulate rights and the responsibilities of employee (Singh & Singh, 2014).

The International Labor Organization (ILO) approved Convention 189, a treaty-like document that extends labor protections around wages, hours, and overall working conditions to domestic workers', following o ratification by nation states (Boris & Fish, 2014). To protect labor rights, international institutional mechanisms are important. ILO is accountable for drawing up and supervision global labor ethics. So, ILO can play a vital role by assigning different tasks to pertinent stakeholder organizations, and to follow monitoring progress (Syed, Bhattacharjee, & Khan, 2021)

The ILO creates two types of international labour instruments: conventions and recommendations. Whereas conventions can be legally binding through ratification, recommendations cannot be ratified and are often technical in nature. The international labour conventions are adopted by the International Labour Conference (ILC), which is a tripartite body consisting of governments, businesses and workers. The Governing Body (GB) is also a tripartite body that sets up the agenda of the ILC, including items related to international labour conventions. The International Labour Office (the Office) serves as the permanent secretariat of the ILO and is constituted by nearly 3000 officials from over 150 countries. The Office's main task, broadly speaking, is to assist the GB and the ILC. However, it enjoys considerable authority. For example, most conventions are initiated by the Office (Koliev, 2022).

Freedom of association and assembly is contained in the ILO convention on freedom of association and protection of the right to organize 1948 (No. 87) which has been ratified and stated in Presidential Decree No. 83 of 1998, and the ILO Convention on the right to organize and bargain collectively 1949 (No. 98) have been ratified in Law no. 18 of 1956. Convention no. 87 is intended in its entirety to protect freedom of association against possible government interference. Convention No. 98 is aimed at encouraging the full development of voluntary collective bargaining mechanisms (Handayani, 2016).

Indonesian Labor Law in International Law Conventions

The existence of international law today cannot be denied. International law not only regulates relations between nations but has developed so that state subjects are not only limited to countries but individual companies have also been recognized as part of the subjects of international law. This is as stated by Mochtar Kusumaatmadja that international law is the totality of legal rules and principles that regulate relations or issues that cross national borders, international relations that are not civil in nature. The nature of international law is coordinative, not subordinate, as is the case in national law. Therefore, international relations are based on equality of position between members of the community of nations. Thus, there is no position that is higher than another. The highest position is in the international community itself (Kusumaatmadja & Agoes, 2015).

In the field of employment, Indonesia has never before bound itself to a treaty except to bind itself to provisions which are the result of the International Labor Organization (ILO) Convention. These ILO provisions are not automatically binding because they must be ratified first. In 1956, the Indonesian government ratified ILO Convention No. 98/1949 (ILO Convention on the Right to Organize and Bargain Collectively). The implication was that in the 1960s, the number of trade union memberships mushroomed and was almost uncountable (Afrita, 2015).

Regulations regarding freedom of association for workers in Indonesia originate from the ratification of ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organize and Collective Bargaining. These provisions are further regulated in Law Number 13 of 2003 concerning Employment and Law Number 21 of 2000 concerning Trade Unions. This can be seen from the consideration of the formation of a law which refers to Law Number 18 of 1956 concerning Approval of the International Labor Organization Convention Number 98 concerning the Applicability of the Basics of the Right to Organize and to Bargain Collectively (Nurjanah & Kusniati, 2017).

ILO Convention No. 87 and ILO Convention No. 98 universally provide basic principles for workers to exercise their right of association through guarantees of freedom of association without any differences, freedom of association without prior permission, freedom of choice, freedom of organizations to function:

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guaranteeing the framework of activities, administration , activities and programs, the right to organize, collective bargaining and agreements, civil rights and liberties of trade unions (Wijayanti, 2012).

Table 1. Ratification of ILO conventions by the Indonesian government (Heryandi, 2016).

Convention Number	About	Ratification
105	Abolition of Forced Labor	UU No. 19 Tahun 1999
138	Minimum Age to be Allowed to Work	UU No. 20 Tahun 1999
111	Discrimination in Employment and Occupation	UU No. 21 Tahun 1999
87	Freedom of Association and Protection of the Right to Negotiate	Keppres No. 83 Tahun 1998
98	The Right to Negotiate and to Bargain Collectively	UU No. 18 Tahun 1956
100	Equal Wages for Male and Female Workers for Work of Equal Value	UU No. 80 Tahun 1957
106	Weekly Rest in Commerce and Offices	UU No. 3 Tahun 1961
120	Hygiene in Business and Offices	UU No. 3 Tahun 1969
144	Tripartite Consultation	Keppres No. 26 Tahun 1990
19	Equal Treatment for National and Foreign Workers in Terms of Work Accident Benefits	Stb. 1929 No. 52
27	Giving Weight Marks to Large Goods Transported by Ship	Stb. 1933 No. 60
29	Forced or Compulsory Labor	Stb. 1933 No. 61
45	Women's Work in All Kinds of Mines Under Ground	Stb. 1937 No. 219

There are several provisions that regulate protection for female workers in accordance with the ILO Convention, this can be seen in the table below as follows: (Banjarani & Andreas, 2019):

Table 2. Fulfillment of women's labor rights in Indonesian law based on the ILO convention.

No	Aspects in ILO Conventions	Implementation in Law in Indonesia
	Equal pay ILO Equal Remuneration Convention, 1951 (No.100)	Basically, equality of workers' wages is protected in the 1945 Constitution, namely in Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states, Every person has the right to work and receive fair and decent compensation and treatment in employment relationships. In addition, ILO Convention no. 100 concerning Equal Wages has also been ratified by Indonesia with Law no. 80 of 1957. Other laws in Indonesia that regulate equality are contained in Article 88 paragraphs (1) and (2) of Employment Law no. 13 of 2003. Then it is also contained in Article 11 of Law No. 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women. There are regulations regarding sanctions for employers who carry out wage discrimination, which are contained in Article 31 PP No. 8 of 1981.
	Discrimination in employment and occupation, ILO Discrimination (Employment and Occupation) Convention, 1958 (No.111)	Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women/ CEDAW by Indonesia through Law No. 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women. Then Indonesia also ratified ILO Convention no. 111 concerning Anti-Discrimination in Positions and Employment which was ratified in Law no. 21 of 1999. Apart from that, it is also regulated in Article 5 and Article 6 of Republic of Indonesia Law no. 13 of 2003 which regulates that every worker has the same opportunity without discrimination to obtain work. Meanwhile, Article 6 states that every worker has the right to receive equal treatment without discrimination from employers.
	Pregnancy protection ILO Maternity Protection Convention, 2000 (No.183)	In terms of pregnancy protection, Indonesia has not ratified the ILO Convention on Pregnancy Protection, 2000. However, Labor Law no. 13 of 2003 regulates women's reproductive protection. especially in Articles 81 to Article 83.
	Workers with family responsibilities ILO Convention on Workers with Family	In terms of workers with family responsibilities, Indonesia has not ratified the ILO Convention on Workers with Family Responsibilities, 1981. However, several articles in Employment Law no. 13 of 2003 regulates welfare

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	Responsibilities, 1981 (No.156)	guarantees for every worker and their family. These regulations are contained in Article 99, Article 100 and Article 157.

The International Labor Organization (ILO) has established a system of international standards to guarantee equal employment opportunities for men and women. Several ILO conventions specifically address issues faced by female workers, including equal pay, maternity protection, and work with family responsibilities. The CEDAW Convention affirms women's right to fair treatment and non-discrimination in the workplace. Despite efforts to protect women's rights, a culture of patriarchy and inequality remains a challenge in Indonesian society (Susanti, Suhaimi, Zulkifli, Hayati, & Rahman, 2023).

In the ILO (International Labor Organization) convention, discrimination related to gender in employment is prohibited. This is further emphasized in law number 13 of 2003 articles 82 and 84 (Sondakh, 2018). Article 82 of Law Number 13 of 2003 states that female workers/laborers have the right to rest for 1.5 (one and a half) months before giving birth and 1.5 (one and a half) months after giving birth according to the obstetrician or midwife's calculations. (2) Female workers/laborers who experience a miscarriage are entitled to rest for 1.5 (one and a half) months or in accordance with a certificate from an obstetrician or midwife. Meanwhile, Article 84 of Law Number 13 of 2003 states that every worker/laborer who uses the right to rest time as intended in Article 79 paragraph (2) letters b, c and d, Article 80 and Article 82 is entitled to receive full wages.

Article 10 ILO Convention No. 183 of 2000 regulates in more detail that female workers who breastfeed have the right to one or more breaks between work or reduced working hours each day to breastfeed their babies or express breast milk. According to WHO recommendations, the breastfeeding period is at least 2 years. In addition, women giving birth are prohibited from being laid off in the Minister of Manpower Regulation No. Ministerial Decree 03/Men/1989 regulates the prohibition of layoffs for female workers as a form of protection for female workers in accordance with their nature, honor and dignity and is a logical consequence of the ratification of ILO convention no. 100 and Number 111 concerning discrimination (Flambonita, 2017).

Since January 2003, the International Labor Organization (ILO) convention no. 169 concerning customary law communities has been ratified by 17 countries. As a follow-up to the ILO convention, the government of the Republic of Indonesia promulgated Law of the Republic of Indonesia no. 33 of 1999 concerning Foreign Relations and Republic of Indonesia Law no. 24 of 2000 concerning international agreements. These two legal instruments provide a strong legal basis for the implementation of foreign relations, the implementation of foreign policy and the making of international agreements (Sengkanda, Paseki, & Tooy, 2024).

In particular and specifically, human rights protection for the rights of indigenous peoples themselves regarding the protection of rights to their land and homelands is guaranteed in a general provision formulated by the United Nations, namely in document No. E/C.4/2009/97. Meanwhile, more detailed and specific substance related to the protection of land rights and homelands of indigenous peoples themselves is contained in the ILO (Convention concerning indigenous and tribal peoples in independent countries) No. 169 dated 27 June 1989 but unfortunately this ILO convention which contains basic provisions for the protection of land rights and homelands of indigenous peoples has not been ratified at all by the Indonesian people so it is not surprising that in reality indigenous peoples, especially in Indonesia itself, tend to experience discrimination (Saputra, 2019).

The Indonesian government has adopted and ratified a number of international legal instruments regarding the criminal act of trafficking in persons in Indonesia such as ILO Convention Number: 182, Convention on the Rights of the Child and Optional Protocol of CRC on Saving of Children, Child Prostitution and Child Pornography and Convention on the Elimination of All Forms of Discrimination Against Women. Even at a normative level, it is stated that the Indonesian Government has demonstrated its commitment to implementing the 2000 Palermo Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Conventions Against Transnational Organized Crime), namely by issuing the Law-Law Number 35 of 2014 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence and following Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (Syahbana & Ramlan, 2019).

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In general, the definition of the crime of human trafficking is mostly taken from the 2000 UN protocol to prevent, suppress and punish perpetrators of human trafficking, especially women and children (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children), and in December 2000 Indonesia ratified the protocol (Miko, 2001).

Based on the General Explanation of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, it can be concluded that the Law on the Eradication of the Crime of Trafficking in Persons complies with the provisions of the United Nations Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000; The substance of Law no. 21 of 2007 is not the same as the UN Protocol, however its substance refers to this Protocol. Another fact that shows that Law no. 21 of 2007 refers to the 2000 UN Protocol, we can read Article 1 in accordance with UN Protocol article 3 letter a. Likewise, Article 1 point 5 determines "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." Meanwhile, UN Protocol article 3 letter d determines that "Child" shall mean any person under eighteen years of age (Tahar, 2017).

The protection of migrant workers is also regulated in ILO provisions, as the same standard for countries to have protection rules for migrant workers in their national laws, especially for Indonesia as an ILO member country. ILO conventions are binding on member countries; therefore member countries must be able to implement them. This obligation begins in the Declaration of Fundamental Rights and Principles at Work which was adopted in ILO Convention No. 86 in June 1998. The legal umbrella, both national and international, available to Indonesian migrant workers is a form of existing legal protection (Anggriani, 2017).

Indonesia, which is a member of the ILO, has ratified the convention regarding migrant workers through Law Number 6 of 2012 concerning Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Law Number 6 of 2012). This ratification is based on Indonesia being one of the largest sending countries for migrant workers in the world but in terms of protection and security it is still relatively low (Djazuli, 2021).

In connection with the protection of Indonesian citizens who work abroad, Indonesia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, where in this convention there is protection for 64 types of rights that must be fulfilled by the State for Indonesian migrant workers. This ratification is a form of the government's seriousness in efforts to protect the rights of Indonesian workers abroad as these rights have also been accommodated in the 1945 Constitution of the Republic of Indonesia. This ratification was ratified through Law number 39 of 2017, which is a policy instrument in protecting workers migrant work which is an effort towards prosperity for those who work abroad (Shaleh & Nasution, 2020).

International law has also accommodated legal instruments whose existence is contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which was issued by the UN General Assembly Resolution no. 45/158 dated 18 December 1990. This convention regulates that migrant workers and their families have human rights in the form of: 1) the right to basic freedom; 2) equality before the law; 3) the right to privacy; 4) equality as citizens; 5) freedom of assembly/association; and 6) the right to obtain information (Adharinalti, 2012)

Inconsistencies in Indonesian Labor Laws in International Legal Conventions

Inconsistency of a regulation or law, namely in one statutory regulation there are many articles or arrangements that are inconsistent with the provisions in derivative statutory regulations or statutory regulations that are still related to the statutory regulation in question (Amin & Achmad, 2020). The labor law problems that have been present have mostly been in the realm of government at the regional level, and this cannot be separated from the inconsistency and disharmony of labor regulations between the central government and regional governments. Disharmony in employment policies will certainly have an impact on the issue of protecting the rights of workers, especially those in areas far from the reach of central government supervision (Phahlevy, Multazam, & Mediawati, 2015).

Reports received from member countries will be reviewed by a special team at the ILO if follow-up is required and technical assistance for resolution will be discussed at the workers' meeting, especially at the

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Application Standards Committee/Expert Committee on Application (Note: Governing Body every 3 times a year at the ILO Head Office Geneva) after which the special team provides comments if the implementation of the Convention is not in accordance or if there are national laws that conflict with the ILO Convention. The ILO will provide comments and recommendations to the government to adapt its national regulations to international provisions (Khairunnisa, Pramono, & Sonhaji, 2016).

Law no. 13 of 2003 contains fundamental principles and rights in the workplace in accordance with the ILO Basic Convention, namely: the principle of freedom of association and protection of the right to collective bargaining, the principle of eliminating all forms of forced or compulsory labor, the principle of eliminating all forms of labor discrimination, and the principle of prohibiting the employment of child labor. However, there are still several provisions that conflict with the ILO Basic Convention, namely reducing workers' rights relating to collective work agreement arrangements, the right to strike and outsourcing of work (Japian, Karisoh, & Karamoy, 2021).

In Indonesia there are no laws and regulations that specifically regulate personal relationships or communication issues between employees, the absence of legal protection that regulates employee interpersonal behavior means that bullying behavior still occurs in the workplace, especially in developing countries such as Indonesia. This is reinforced by Emperor & Seventy (2015) who explain that the lack of specific protection for employees regarding verbal harassment and bullying behavior in the workplace still often occurs in developing countries (Merdiana & Gumelar, 2021).

Judging from labor law, the connection with a human rights perspective is the continuity of interests, especially the interests of workers and the interests of employers in market economic mechanisms. One of the conflicts regarding the labor law is that it conflicts with the ILO convention concerning workers' fundamental rights relating to human rights as well as freedom of association and organization and to carry out collective bargaining as contained in ILO conventions No. 87 and 98 (Syukrati, 2016).

In the regulations for determining minimum wages, there are inconsistencies between one rule and another. As stated in Article 88 paragraph (1) of Law Number 13 of 2003), where wages are defined as "the rights of workers/laborers received and expressed in the form of money as compensation from entrepreneurs or employers to workers/laborers which are determined and paid according to an agreement work, agreements or Legislative Regulations including allowances for workers/laborers and their families for work and/or services that have been or will be performed." This provision is not explained further in the implementing regulations, where it turns out that the amount of the minimum wage used depends on decent living needs (KHL). KHL is the standard for the needs of a single worker/laborer to be able to live a decent life physically for 1 (one) need. Meanwhile, referring to international regulations, this results in a violation of the legal theory regarding living wages, Paragraph (3) of ILO Convention Number 131 which states that: (Choirotunnisa, 2023)

> "Elements that must be considered in determining minimum wage levels include: (a) the needs of workers and their families, taking into account domestic wage levels, costs of living, social security guarantees, and family living standards of other social groups; (b) economic factors, including economic development, level of productivity and level of quality of workers." (ILO C131 (3)).

With the enactment of Law Number 32 of 2004 concerning Regional Government, the distribution of labor inspection responsibilities in relation to regional government is no longer uniform. The central government's power is to determine the system and supervise employee supervision. The authority delegated to the province is the responsibility for implementing labor inspection. Meanwhile, districts or cities have absolutely no authority in terms of labor inspection. The Regional Government Law is not intended to specifically regulate labor inspection. Likewise with laws and regulations regarding employment. Labor law regulates many aspects of employment, but does not have specific regulations regarding labor inspection. In contrast to these two laws, Law Number 21 of 2003 was specifically created to implement the International Labor Organization (ILO) Labor Inspection Convention. This law is specifically and entirely devoted to labor inspection issues. Based on information, of the three laws, the specific law is Law Number 21 of 2003. Therefore, this law must be implemented. Therefore, Labor Inspection should be considered a government-related field and should be completely under the Central Government, in accordance with international labor standards (Singadimedja, 2017).

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Establishment of PP No. 78 of 2005 does not involve the Tripartite so it is contrary to ILO Convention no. 144 of 1976 and the provisions of Law Number 11 of 2012. The formation of legal norms in labor legislation should take into account ILO Convention Number 144 of 1976 concerning Tripartite Consultation to Improve the Implementation of International Labor Standards which has been ratified by Presidential Decree Number 26 of 1990 dated 18 June 1990. However, on the other hand, in general the Indonesian government has concluded that there are many benefits to ratifying the ILO Convention. Ratifying an ILO convention must maximally protect Indonesia's interests and be a joint reflection of the Indonesian government and people. Thus, the government should pay attention to ILO Convention no. 144 which has also been ratified by Presidential Decree Number 26 of 1990, as well as provisions for the Formation of Good Laws as regulated by Article 5 of Law No. 11 of 2012. If we look at the workers' union's protest that they did not involve the Tripartite in the formation of Government Regulation Number 78 of 2015, this means that the formation of this regulation overrode the "principle of openness", as regulated by Law Number 11 of 2012 (Rahman, 2021).

An example of a case of employment regulations in Indonesia that is contrary to the ILO convention is the requirement for an attractive appearance in job vacancy information as a form of discrimination in the world of work which focuses on the issue of equal rights in getting a job with the result that the qualification for an attractive appearance shackles the rights of prospective workers by because there are no specific boundaries regarding what is meant by "looking attractive". This is not in accordance with Article 15 paragraph (3) of the Minister of Manpower Regulation Number 39 of 2016 because there are no points that regulate the appearance of prospective workers and is contrary to Human Rights and ILO Convention Number 111, where these qualifications are included in discriminatory acts to the workforce (Rizqiyah, 2023).

Apart from the case examples above, another case of regulations that conflict with ILO conventions is the CJ Feed case. The case of the rejection of a pre-trial lawsuit by CJ Feed Jombang workers (a group from Samsung) on September 19 2013 in Pre-trial petition case No. 19/Paper/2013/PN.Sby regarding the Order to Stop the Investigation No. S.Tap/36/V/2013/Ditreskrimsus and the Order to Stop the Investigation No. SPPP/36/V/2013/Ditreskrimsus is an implementation of the judge's lack of understanding of the public nature of labor law. The judge only paid attention to the formal truth regarding the minimum number to form a labor union which is 10 people (Article 5 paragraph (2) Law 21/2000). The judge did not pay attention at all to Presidential Decree No. 83/1998 which substantially contained the ratification of ILO Convention No. 87 which should have a higher position than Law 21/2000, which prohibits a State from making registration a legally valid requirement for a labor union (Wijayanti, 2013).

Conclusion

Regulations regarding freedom of association for workers in Indonesia originate from the ratification of ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize and ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organize and Collective Bargaining. These provisions are further regulated in Law Number 13 of 2003 concerning Employment and Law Number 21 of 2000 concerning Trade Unions. This can be seen from the consideration of the formation of a law which refers to Law Number 18 of 1956 concerning Approval of the International Labor Organization Convention Number 98 concerning the Applicability of the Basics of the Right to Organize and to Bargain Collectively.

Inconsistency of a regulation or law, namely in one statutory regulation there are many articles or arrangements that are inconsistent with the provisions in derivative statutory regulations or statutory regulations that are still related to the statutory regulation in question. An example of a case of employment regulations in Indonesia that is contrary to the ILO convention is the requirement for an attractive appearance in job vacancy information as a form of discrimination in the world of work which focuses on the issue of equal rights in getting a job with the result that the qualification for an attractive appearance shackles the rights of prospective workers by because there are no specific boundaries regarding what is meant by "looking attractive". This is not in accordance with Article 15 paragraph (3) of the Minister of Manpower Regulation Number 39 of 2016 because there are no points that regulate the appearance of prospective workers and is contrary to Human Rights and ILO Convention Number 111, where these qualifications are included in discriminatory acts to the workforce.

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