

## Human Rights Application in Labor Relations That Reflects Legality And Justice

By:

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**ABSTRACT:-** Indonesia must achieve human rights in labor relations. However, the reality is still very tough due to various field conditions and an increase in the number of demands for workers' rights to employers and the government. The initial goal of this research is to examine how human rights are applied in labor relations. Second, to examine Labor Relations in light of the legal certainty and justice principles. The research approach used in this work is doctrinal research or legislative research. This research is done by using the method of statute approach, conceptual approach, case approach. According to the study's findings, the application of human rights in labor relations has yet to be fully implemented. Second, although numerous rules have been published by the government, including harmonizing laws and regulations with the birth of the job creation law, Labor Relations in line with the principles of legal certainty and justice have yet to be realized.

**Keywords:** Application, Labour Relation, Human Rights, Legal Certainty, Justice

### I. INTRODUCTION

Fundamentally, in labor relations, human rights should be granted to all workers without distinction between those with permanent job ties and those with flexible or irregular employment arrangements since human rights are fundamental rights bestowed upon humanity as a gift from God. Furthermore, human rights are universal rights because all humans have them.

In general, the protection of human rights against workers is the fulfillment of basic rights inherent and protected by the Constitution as stipulated in Article 27, paragraph (2) of the Constitution of the Republic of Indonesia year 1945, which reads, "Every citizen has the right to work and decent living for humanity." Furthermore, Article 28 letter I, paragraph (2) states that everyone has the right to be free from discrimination on any basis and protected from discrimination. Then, in Article 28 letter I, paragraph (4) and paragraph (5) of the Constitution<sup>45</sup>, the consequences of the amendment indicated that the state, particularly the government, is responsible for the preservation, promotion, enforcement, and fulfillment of Human Rights (HAM). Next is the provision of Article 33 paragraph (1), which indicates that the economy compiled as a cooperative effort on kinship". Every citizen's human rights are safeguarded and protected under the provisions of the Constitution. Furthermore, in the legislation itself, the protection of human rights for labour is Law Number 13 of 2003 concerning Labor and Labor Implementing Regulations. The government is currently working to defend human rights in labor relations by passing the job creation bill, often known as the omnibus law.

In present times, particularly in the sphere of Economics and increasingly advanced technology. Combined with the covid 19 outbreak that has rocked the world, it has had a very significant impact, notably on Labor Relations, because many businesses are enduring economic hardship due to the covid 19 outbreak. Many businesses seek to improve efficiency and effectiveness by lowering the number of available labor resources. Compromise steps adopted by a corporation to safeguard workers' human rights include a system of employment contracts or outsourcing. The contract system (outsourcing), according to Barzah Latupono,<sup>1</sup> is defined as the transfer or delegation of some business processes to a service provider agency, where the service provider agency performs administrative, and management processes based on definitions and criteria agreed

<sup>1</sup>Barzah Latupono, 2011, Perlindungan Hukum Dan Hak Asasi Manusia Terhadap Pekerja Kontrak (Outsourcing) di Kota Ambon. Jurnal Sasi Volume 17 Number 3 Month of July-September. P. 60

upon by the parties. The contract system (outsourcing) is defined in Law 13 of 2003 as the chartering of jobs and labor service providers.<sup>2</sup>

Every worker/laborer has been guaranteed human rights under the provisions outlined in the 1945 Constitution and labor legislation and job creation that are legally formal. Based on the data, it is clear that many things are being violated or not going as planned in the workplace. Furthermore, legal certainty and justice have yet to work as planned in labor relations.

With this current condition, we want to express through this article that overall the regulation that ensures human rights in labor relations are controlled in such a way. This study will address the application of human rights in labor relations and the legal certainty and fairness principle in labor relations.

### **A. Research Questions**

Based on the description of the above background, then formulated the following problems:

- 1) How are human rights implemented in labor relations?
- 2) How is the employment relationship in accordance with the principles of legal certainty and Justice?

## **II. RESEARCH METHOD**

The research used in this study is doctrinal research, which is research on legislation and literature related to the material discussed by providing a systematic explanation of legal norms into a certain category and analyzing the relationship of legal norms. Explaining difficult areas and is expected to predict the development of these norms.

The approach was taken by using the method is as follows:<sup>3</sup>

- a) *Statute approach*, it is an approach that is carried out by examining all related laws and regulations and other regulations related to the legal issues being addressed..
- b) *Conceptual approach*, it is an approach that is carried by studying the views and doctrines in the field of law.
- c) *Case approach*, it is an approach carried the formulation of problems through existing cases in the world of work related to the topic discussed.

The sources of legal materials used consist of primary legal materials, secondary legal materials and tertiary legal materials. While the analysis used in this study is descriptive techniques and comparative techniques.

## **III. DISCUSSION**

### **1. Application of Human Rights in Labour Relations**

Indeed, various laws and regulations govern human rights, including workers' rights in labor relations. Different regulations precisely govern and preserve human rights, including employees' rights in labor relations. The protection of human rights as the primary component of the rule of law is a description of the Constitution, which states that the state is founded on law rather than authority.

Labor rights imply that it encompasses all human rights, which are inherent in the workers themselves, and non-human rights, which are regulated through laws and regulations. Labor' rights, according to Ida Hanifah, can only be properly realized if it is considered that laborers as rights holders can enjoy their rights without any hurdles or interference from any party and can be prosecuted through legal procedures.<sup>4</sup>

Workers/laborers are protected under the 1945 Constitution, which is evident in the fourth paragraph of the Constitution's preamble, as well as Article 27 paragraph (2), Article 28 d paragraph (1), and Paragraph (2). Laborers can be protected by giving direction, recompense, or improving acknowledgment of human rights and physical and socioeconomic protection through appropriate norms.

Based on this, the government is responsible for providing protection, welfare, and justice to all Indonesians, as stated in the fourth paragraph of the preamble of the Constitution. Furthermore, as stated in Article 3 of the 1945 Constitution, Indonesia is a state of law, and all efforts undertaken by the state to provide legal protection to the people of Indonesia must be based on law.<sup>5</sup>

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<sup>2</sup>This provision is regulated in Article 64 of Law Number 13 of 2003 concerning employment Jo Law Number 11 of 2020 concerning job creation.

<sup>3</sup>Pieter Mahmud Marzuki, 2006, *Penelitian Hukum*. Kencana Prenada Media Group. Jakarta. P. 93-95.

<sup>4</sup>Ida Hanifah, 2020, *Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum*. Jurnal Legislasi Indonesia. Volume 17 Number 1 Juni. P. 197.

<sup>5</sup>Darwati dan Aziz Budiarto, 2017, *Analisa Hukum Perjanjian Kerja Waktu Tertentu Berdasarkan*

Human rights, according to the provisions of Article 1 paragraph (1) of Law No. 39 of 1999 on Human Rights, are a set of rights inherent in the nature of human existence as a creature of God Almighty, and are a gift that must be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity. Then there's Article 38 of Human Rights Law Number 39 of 1999, which states:

- (1) Every citizen, in accordance with talent, aptitude, ability, has the right to decent work;
- (2) Every person has the right to freely choose the occupation he likes and is also entitled to fair conditions of employment;
- (3) Every person, both men and women who perform the same, comparable, equal and similar work, shall be entitled to the same wages and terms of the employment agreement;
- (4) Every person, whether male or female, in performing work commensurate with his human dignity shall be entitled to fair wages in accordance with his achievements and may ensure the continuity of his family life.

Similarly, in essence, Labor Law No. 13 of 2003 has governed the protection of workers' rights, including the following:

- a) The right to a decent wage.
- b) The right to protection .
- c) The right to layoffs.
- d) The right to strike on.

Furthermore, in Law Number 11 of 2020 concerning job creation, the rights of workers and companies in labor relations are more firmly regulated, which are listed in Article 81 paragraph (25) of the job creation law amending the provisions of Article 88A paragraph (1) reads that the right of workers/workers to wages arises when there is an employment relationship between workers/workers and employers and ends when the employment relationship is terminated. The provisions of Article 88A paragraph (4), which states that "wage arrangements stipulated by agreement between employers and workers/laborers or trade unions/trade unions must not be lower than the wage provisions stipulated in laws and regulations," are amended by Article 81 paragraph (25) of the job creation law.

Indeed, when carefully monitored, the job creation law is rapidly eroding workers' rights previously regulated by labor law. This may be observed in the repeal of the requirements of Article 91 of the labor code, which eliminates the obligation of businesses to pay workers wages in accordance with the minimum wage that has been established.

History records that one of the reasons for the birth of Law No. 13 of 2003 is that some of the legislation in force at the time, including some that are colonial products, put workers at a disadvantage in the service of employment and industrial relations system that highlights differences in position and interests so that it is no longer considered following the law.<sup>6</sup>

Legal protection is defined as the use of legal methods or protection supplied by law, demonstrated against specific interests, namely by converting the interests to be protected into legal rights.

The goal of labor law is to establish or implement social justice in the realm of labor and to safeguard employees from employers' unrestricted power, such as by developing or creating regulations that require businesses not to act arbitrarily against workers as weak parties. While the role of labor law is to equalize the socioeconomic justice of labor and the direction that must be taken in regulating the economic needs of workers in accordance with the ideals and aspirations of the Indonesian nation, with mutual cooperation as a characteristic of the nation's personality and the main element of Pancasila.

According to Imam Soepomo, the provision of worker protection includes five areas of labor law, namely: First, the field of recruitment/placement of Labor, second, the field of Labor Relations, third, the field of Occupational Health, job security, fifth, the field of social security workers.<sup>7</sup>

Actually, the objective of legal protection for labor is to give protection from employer arbitrariness and to establish a pleasant atmosphere in the workplace that can be implemented in accordance with existing industrial relations norms. The government is obligated to protect the weak, in this case the Labor itself.

According to Imam Soepomo, there are 3 types of labor protection, including:<sup>8</sup>

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Undang – Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan (studi kasus putusan PHI No.46/PHI.G/2013/PN.JKT.PST). Lex Publica, Volume IV, Number 3 1, November. Hlm. 692

<sup>6</sup>Compare with articles from Niru Anita Sinaga and Tiberius Zaluchu, 2017, *Perlindungan Hukum Hak-Hak Pekerja Dalam Hubungan Ketenagakerjaan Di Indonesia*. Jurnal Teknologi Industri. Universitas Suryadarma Volume 06. P. 57

<sup>7</sup>Asri Wijayanti2009, *Hukum Ketenagakerjaan PascaReformasi*, Jakarta: Sinar Grafika. hal. 11.

<sup>8</sup>Abdullah Sulaiman dan Andi Wali, 2019, *Hukum Ketenagakerjaan/Perburuhan*, Jakarta: Yayasan Pendidikan dan Pengembangan Sumber Daya Manusia, hal. 90-91

1) Economic protection, namely protection related to efforts to provide sufficient income to meet daily needs for himself (labor) and his family, including if he is no longer able to work due to something beyond his will. Social protection, namely protection so that workers can carry out community activities. The purpose of this protection is to enable him to develop life as a human being in general and as a member of society and family in particular.

2) Technical protection, namely protection to protect workers from the danger of accidents caused by work tools or materials used by the company.

Meanwhile, according to Abdullah Sulaiman and Andi Wali, there are 5 types or forms of labor protection, namely:<sup>9</sup>

a) Economic protection, namely as protection for working conditions or labor conditions stipulated in regulations regarding employment relations or work agreements.

b) Occupational safety protection, namely providing protection to workers so that they are safe from hazards that can be caused by work tools or materials being worked on.

c) Occupational health protection. This protection exists because industrial and non-industrial technology workers sometimes experience arbitrary and inhumane treatment by their employers.

d) Protection of employment relations, namely protection of work carried out by workers for employers in employment relations by receiving wages.

e) Protection of legal certainty, namely in the form of legal protection stipulated in statutory regulations. It contains orders and prohibitions, as well as sanctions for violations in a coercive nature, as harshly as possible, and as strictly as possible.

In this context, Faiq Tobroni claimed significant disparities in the organization of workers' rights in the Labor and Job Creation laws. In terms of preserving employees' rights, the Manpower Law outperforms the Job Creation Law (although not ideal). Outsourcing, work agreements for a certain period, compensation, severance pay, and termination of employment all show a reduction in the quality of preserving workers' rights (PHK). The idea of expanding human rights should be incompatible with a reduction in the quality of protection. According to this principle, the State should increase the quality of human rights protection provided to its citizens as the holder of human rights obligations.<sup>10</sup>

The Universal Declaration of Human Rights specifies this. Furthermore, the declaration states that human rights are inherent to all human beings from birth and that the government's first responsibility is to protect these rights. Human rights are based on the basic principle that all people have essential human dignity, regardless of gender, race, skin color, language, national origin, age, class, religion, or political beliefs, and that every human has the right to enjoy his rights.

Article 28D paragraph (2) of the Republic of Indonesia's 1945 Constitution declares firmly that everyone has the right to work and get fair and proper compensation and treatment in a work relationship. Then, in Article 28I paragraph (2), it is reiterated that everyone has the right to be free from discrimination on any basis and to be protected against such discrimination.

Furthermore, Article 28I paragraphs (4) and (5) of the 1945 Constitution of the Amendment stated that the State, particularly the Government, is responsible for the preservation, promotion, enforcement, and realization of Human Rights (HAM). Defending and protecting human rights in line with the principles of a democratic rule of law, human rights implementation is guaranteed, controlled, and outlined in statutory regulations under Human Rights Law Number 39 of 1999.

According to this, every worker/laborer has been legally and formally granted protection for his/her dignity as a whole human being. The fact that there is a kind of protection that is highly regulated in these rules and regulations needs to be consistently implemented, as many violations continue to occur. Various issues have developed, including the denial of constitutional orders in work relations and numerous cases of human rights breaches in employment relations.

Alternative methods that can be used to prevent and prosecute human rights violators related to work relations practices include the following: First, properly utilizing the Inherent Supervision system in the labor sector. Second, strengthen the state's protection completely with ultra-strict legal products for the protection of human rights in employment relations through the regulation of terms and conditions of work, following the mandate and orders of the 1945 Constitution, which emphasizes that the state protects all Indonesians. Finally, worker protection is designed to provide basic worker rights and equal opportunity and treatment without discrimination of any type to realize the welfare of workers and their families while taking into account advances in the financial world and the interests of employers.

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<sup>9</sup> ibid

<sup>10</sup> Faiq Tobroni, 2021, *Norma Pemajuan HAM dan Degradasi Perlindungan Hak Pekerja dalam Undang-Undang Cipta Kerja*. Jurnal Al Ahkam. Volume 17 Number 1 June. P. 8

## **2. Employment Relations In Accordance With The Principles Of Legal Certainty And Fairness..**

According to Article 27, paragraph (2) of the 1945 Constitution, workforce development strives to offer employment for each workforce so that people can acquire a job and a good living for humanity, a feature of a populist economic system.

According to the constitution, the government has established a program for the protection and development of labor institutions, one of which is to improve the development of requirements and enforcement of labor regulations, including job guarantees for workers in employment relations following legal certainty and justice.

According to Indonesian law, particularly the constitution, the 1945 Constitution is the highest law and serves as the foundation and reference for labor protection legislation below it. The employment problem is a highly complex national problem exacerbated by the deterioration of economic conditions. This predicament has resulted in an increasing number of people being laid off due to the Co-19 accident.

Labor relations in people's lives have been embodied in laws to ensure the formation of legal certainty. However, it turns out that despite being embodied in laws, many people do not comply with their execution. Gustav Radbruch reinforced this by stating that the aspect of certainty demonstrates the promise that the law (which comprises justice and norms that promote virtue) genuinely acts as a rule that must be obeyed.

The preceding statement by Gustav Radbruch is based on his belief that legal clarity is certainty about the law itself. Legal certainty results from the rule of law, or more precisely, of legislation. When there is law, there is a certainty. As a result, Theo Huijbers claimed that for the sake of order/order in a country, the element of legal certainty must be maintained, and thus positive legislation that governs human interests in society must always be observed, even if positive law is unfair or does not fulfill legal aims.<sup>11</sup>

According to Jan M. Otto, real legal certainty must have a higher judicial character. As a result, he defined legal certainty as a possibility that, in particular circumstances, necessitates the following: First, the availability of clear or clear, consistent, and accessible legal rules issued by state power; Second, that the authorities (government) apply these legal rules consistently and also submit and obey them; Third, that the majority of citizens in principle agree with the contents and thus adjust their behavior to those rules; Fourth, that independent and impartial judges (judiciary) apply these legal rules consistently when resolving legal disputes; and Fifth, that court decisions are concretely implemented.<sup>12</sup>

The five elements listed above suggest that legal certainty may be obtained if the substance of the law conforms to the demands of the community. Thus, the rule of law that can create legal certainty is a law that is born from and reflects society's culture, fulfilling a feeling of justice while also being beneficial.

This type of legal certainty is called real legal certainty. Legal certainty necessitates cooperation between the state and the public in orienting and comprehending the legal system.

Legal certainty is visible in connection to the community when the community generally complies with or implements the rule of law; on the other hand, if the law is not complied with, it can be stated that the law has not yet ensured the creation of legal certainty. There are numerous reasons why people do not comply with or do not comply with the law (in the sense of law), the most important of which is that the law is perceived to be contradictory to the fabric of values and legal awareness that evolves and develops in people's lives.<sup>13</sup> Legal certainty can be interpreted as follows: First, there is legal clarity itself. Second, there are no doubts or multiple interpretations of the legislation. Third, the law neither causes nor results in inconsistencies. Fourth, the law can be put into effect.

Legal certainty necessitates efforts by authorized and authoritative parties to regulate law in legislation so that these rules have a juridical character that can provide certainty that the law works as a rule that must be respected.

Legal certainty is inextricably linked to the citizen-state relationship. Legal certainty is frequently related to consistently applying the law in a social process to achieve a standard of behavior. Community life can be conducted orderly, peaceful, and equitable.

People are anxious because they do not know what to do without legal certainty. When the law is too severe in terms of legal certainty, the effect is that the law becomes stiff and can produce a sense of injustice; even when the law is strictly enforced: the law is harsh, but it is what it says (*lex dura, sed tamen scripta*).

The achievement of legal certainty is dependent on at least three (three) things: first, the ever-increasing need for law must be addressed. Second, human and societal legal awareness is rising daily,

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<sup>11</sup>Theo Huijbers, 1982, *Filsafat Hukum Dalam Lintasan Sejarah*, Cetakan Kelima Belas, Kanisius Yogyakarta. P. 165

<sup>12</sup>Jan Michiel Otto, 2003, *Kepastian Hukum Di Negara Berkembang, terjemahan Tristam Moeliono*. Komisi Hukum Nasional. Jakarta. P. 5

<sup>13</sup>Idah Hanifah, 2020. Opcit.

necessitating a proper legal response. Third, attaining legal certainty also depends on law enforcement aspects, which can be shorter than possible.

Thus, legal certainty in human rights connections in employment relationships is the application of labor law in line with what it states so that society may trust that labor law is followed. The essence of labor law certainty is that the law is followed and put into action.

Furthermore, justice can be viewed as a value that creates an ideal relationship between one human being and another as a member of society by giving that human being what he is entitled to based on his achievements and enforcing obligations based on law and morals.

According to Rawls, justice is understood through societal rights and obligations. The core subject of justice is the underlying structure of society, or how social institutions distribute fundamental rights and duties and regulate the distribution of benefits and social cooperation. Justice in social programs is primarily determined by applying fundamental rights and obligations to economic opportunities and social situations in various areas of society.<sup>14</sup>

Rawls' perspective of the theory and notion of justice can be summarized as follows: First, justice is the primary virtue. Second, the state plays an important role in administering justice, and in doing so, state or government officials must have high moral standards. Third, state or government administrators must not only be able to draft appropriate rules and regulations, but they must also have the bravery and capacity to implement such laws and regulations. Fourth, in order to achieve justice, every citizen must follow all of the regulations that have been established. Fifth, justice seeks to realize human satisfaction on an individual and collective level.<sup>15</sup>

Rawls' viewpoint demonstrates that justice must be fulfilled in society without sacrificing the interests of others. Thus, one of the most crucial things to realize is justice.

In order to sustain justice, many norms of the balance must be realized in practice. The balancing standard is represented by prioritizing ideals derived from a balance of living values and upheld in society. The embodiment of societal ideals colors the concept and model of law enforcement. Some experts feel that justice is a great and universal value that must be attained for a country's welfare. Justice is the most important need for achieving success.

According to Emmy Latifah, justice includes universal moral qualities fundamental to human rights and needs worldwide. These moral norms of justice are the ideals of every nation in which numerous groups have interests. In this example, *justice* is an agreement reached by many components of society seeking a just and successful state life.<sup>16</sup>

Justice in the workplace is needed so that there is no discrimination among fellow workers. Fairness in the workplace includes equal pay distribution, absence of gender discrimination, access to capacity building training facilities and equal treatment. This is created where there is or manifests fair conditions. Fair conditions in the work environment are conditions where laborers get equal opportunities and treatment in carrying out their work.<sup>17</sup>

In fact, in the concept of the state it is found that the welfare of the state includes the meaning of social justice which is the basis for the legitimacy of the existence of the state. Ideally the state can only justify its existence because of its function to ensure the welfare of society. The dream of building a just and prosperous society has become a mission scare for the Indonesian nation.

Strictly in the Preamble to the 1945 Constitution of the Republic of Indonesia, it mandates this, namely by realizing social justice for all Indonesian people. The value of social justice in formulating various laws and regulations and employment policies, especially the protection of human rights for workers, is a separate value in creating complete social justice. The value of justice contained in various regulations creates a sense of togetherness that can be accepted by all parties, including both workers and employers.

In the end it can be said that labor law has the nature of protecting and creating a sense of security, peace and prosperity by realizing social justice for all people. The momentum for the birth of the work copyright law should have been a turning point in renewing labor relations, however, it is very unfortunate that the work copyright law which has become the hope has been in vain because in terms of substance it is considered by the Constitutional Court to be still unconstitutional and not in accordance with the process of forming regulations legislation. The hope for the future is that with the postponement of the enactment of the work copyright law,

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<sup>14</sup>John Rawls, 2006, *A Teory Of Justice*, Harvard University Press Cambridge, Massachusetts. Translated by, U. Fauzan dan H. Prasetyo, *Teori Keadilan*, Pustaka Pelajar. Yogyakarta. P. 12

<sup>15</sup>ibid

<sup>16</sup>Emmy Latifah 2015, *Eksistensi Prinsip-Prinsip Keadilan Dalam Sistem Hukum Perdagangan Internasional*, n *Jurnal Ilmu Hukum*, Universitas Padjadara Volume 2 Number 1. P. 65.

<sup>17</sup>Article 5 and Article 6 Law No. 13 of 2003 concerning labor, the government guarantees workers to receive equal rights and treatment without any form of discrimination.

until the government improves the substance, including the regulation of work relations in accordance with the principles of human rights and the value of legal certainty and justice, it is something that society is waiting for, including the parties involved in work relations. Ideally, the principles of human rights in employment relations are maintained properly and without forgetting the value of legal certainty and the value of justice itself.

#### IV. PENUTUP

##### 1. Conclusion

Based on the discussion above, it can be concluded in this paper as follows:

- 1) Whereas the application of human rights in employment relations so far has not been properly implemented. This is due to the fact that there are still many workers' rights that have not received proper guarantees from both the employers themselves and the government, which carries out the oversight function in labor relations.
- 2) Whereas labor relations that are in accordance with the principles of legal certainty and justice have apparently not been realized, even though various regulations have been issued by the government including harmonizing laws and regulations with the birth of the work copyright law. The Constitutional Court considers the work copyright law to be still unconstitutional and in its formation it is not in accordance with the mechanism for forming statutory regulations.

##### 2. Recommendation

Based on the conclusions above, there are several things that can be recommended or become suggestions in this paper, namely as follows:

- 1) The government as soon as possible makes improvements to the substance of the work copyright law and in its formation follows the mechanism for the process of forming statutory regulations.
- 2) Harmonization of laws and regulations through the work copyright law, which regulates various changes to labor laws, must be followed up by legislators/legislative parties by supporting the government to make changes according to the orders of the Constitutional Court.
- 3) The principle of human rights in employment relations is mandatory in the regulation of labor laws, therefore several things that are still demands related to the human rights of workers must be considered by employers or companies.
- 4) The community must be involved in monitoring labor relations together with the government through the relevant ministries.
- 5) Workers and employers or companies must mutually respect the values of legal certainty and the value of justice in employment relations.

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