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Welfare State, The 1945 Constitution, and Industrial Relations

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Abstract. Welfare state is the goal of KSBSI since its declaration on 25th April 1992. Unions which are members of the ITUC (International Trade Union Confederation) as the basic Social Democracy, their goal must either be welfare state or KSBSI. In other occasion, when Soekarno spoke before court in 1937, he stated that the goal of the proclamation the independence of Indonesia was to build a welfare state. In addition, when the founding fathers declared the 1945 Constitution, they placed welfare state as a state goal for the interest of the peoples. Without the implementation of a welfare state, the welfare of the peoples will never be realized.

Keywords: Welfare state, Industrial Relation

INTRODUCTION

In the last few years, discourses on welfare state surfaced, and is considered as the best, state-involved answer in improving the welfare of the citizens (Darmawan 2006). Most major states set welfare state as the end-goal of their respective countries. Agreed or not, the founding fathers of our nation aimed for a formation of a welfare state by means of the 1945 Constitution (Darmawan 2006). Such goal can be seen in the fourth paragraph in the 1945 Constitution’s preamble, which reads: “Pursuant to which, in order to form a Government of the State of Indonesia that shall protect the whole people of Indonesia and the entire homeland of Indonesia, and in order to advance general prosperity, to develop the nation’s intellectual life, and to contribute to the implementation of a world order based on freedom, lasting peace and social justice...”

It is clear that the goal of Indonesia is to achieve public welfare, which is the most distinctive trait of a welfare state. Fundamentally, the 1945 Constitution guarantees public welfare of the citizen, as an extension of their constitutional rights. This guaranty is stated explicitly in the Constitution, among which are: First, Article 27 section (2) of the 1945 Constitution states that “Each citizen shall be entitled to an occupation and an existence proper for a human being.” Rights on occupation and proper livelihood are one of the basic rights of a person, for without any occupation, a person would not have proper livelihood, and without equal opportunity, a person would not be able to compete for an occupation. However, a person’s opportunity is usually limited by his economic abilities. On those bases, a mechanism with which a person competing for employment opportunities, regardless of equal or near equal circumstances, in order to improve his livelihood must be arranged.

Second, Article 28H1 section (1) of the 1945 Constitution states that “Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care.” Third, Article 28E section (1) and (2) of the 1945 Constitution states that “each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave,” as well as “the right to be free in his convictions, to assert his thoughts and tenets, in accordance with his conscience.”

Fourth, Article 29 section (2) of the 1945 Constitution states that “the State guarantees each and every citizen the freedom of religion and of worship in accordance with his religion and belief.” Embracing and practicing religious beliefs are the very basic rights of a person. The State must guarantee that each and every person practices his religious belief freely, and religious facilities and infrastructure should be made available, adequate and freely accessible for each and every person.

Fifth, Article 31 section (1) and (2) of the 1945 Constitution states that each citizen has the right to education, and each citizen is obliged to take part in primary education, which is government-sponsored. Education for all must be provided for if the objective of a welfare state is to be achieved. Through education, quality human resources will be created, and with such resources, the state will achieve its public welfare targets. As such, the state is obliged and responsible for education, both in terms of funding and services as well as facilities which support it. The 1945 Constitution, as the foundation of Indonesia, requires the government to devise and run a national education system in order to educate the nation and allocate at least 20% of the State Budget for education. This proves that the government of the Republic of Indonesia has the responsibility and desire to devise Indonesia as a...
Article 34 section (1), (2), and (3) of the 1945 Constitution states that the state is responsible for improving material and spiritual conditions of the people, especially the poor and abandoned children, and a social security system for everybody in accordance with their needs as human beings, as well as providing proper education and public service facilities. Article 34 of the Constitution brings forth a new light in protecting the rights of the poor people, especially the poor and abandoned children. Poverty is a long-lived issue everywhere in the world. Poverty rates indicate the prosperity of a state. According to the concept of welfare state, a state will not be considered a welfare state unless there are citizens living under the poverty line. Should there are government intervention and support, the poverty will be reduced or eliminated in addition. Then, with the synchronous industrial relations, investments increase, strengthening the economy and labour unions and wellbeing of labour.

RESULTS AND DISCUSSION

Welfare state is a system which balances out discrepancies caused by dominance of neoliberalism and at the same time a win-win solution for everyone within the framework of the state. The principle of justice applied is that individuals should be provided with the minimum needs, the private sector, and the market are free to expand as long as the state is certain that minimum welfare of the public is reached. Synchronous industrial relations supporting the welfare state are also devised, in addition. Thus, with the synchronous industrial relations, investments increase, strengthening the economy and labour unions and wellbeing of labour.

The welfare of the people (Darmawan 2006). In theory, the state (government) is responsible in ensuring the welfare of its citizens. The state is proactive in fulfilling the economic, social, and cultural rights of its citizens. Should the state fulfill the welfare of its citizens, the state is considered as a welfare state. Institutional Welfare States include Denmark, Finland, Norway, Sweden, and the Netherlands. Their system is based on social democratic welfare (Esping-Andersen 1999).

Welfare state is the goal of the Proclamation of the Republic of Indonesia, as viewed in the Preamble of the 1945 Constitution (provisions and body). There are five principles on which citizen welfare is based: democracy, rule of law, protection of human rights, social justice, and non-discrimination.

Democracy means that every decision involving the livelihood of both the public and the state must include involvement of the public. Rule of law means the upholding of the law, in that the presence of just positive laws and law enforcement. Protection of human rights means that there are guarantees on the rights and an accountable democratic system. Social justice means fair and even distribution of wealth to the people. Non-discrimination means equality for all in every circumstance, especially before the law and in public services. Such welfare state is what labour union and social-democracy movements around the world strive to achieve (Pakpahan 2001).

There are nine basic programmes which materialize the welfare of the public. The programmes are logical, rational, and measurable, as described below. Note that points 8 and 9 are collective needs after the 1980s. First, a compulsory education system. Education is an absolute requisite which must be provided by the state in order to fulfill the welfare of the citizens. Without proper education, a state is not considered as a welfare state (Bruce Keith 1996). The state puts in action a Compulsory Education System. Under the system, children are state-sponsoled to study up to the upper secondary or until 18 years old. This, in turn, requires Indonesians to go beyond upper secondary education. In order for the system and the quality of education be well, education must be made a priority program and teaching is considered as a respectable profession and have the highest salary. The Constitution, however, only requires lower secondary education.

Second, unemployment insurance. The paramount objective of any state is to provide employment for its citizens, and, by extension of employment, wellbeing. Should the government is unable to provide new employment opportunities, the state, as a consequence, guarantees the livelihood of the unemployed by means of benefits. Certainly, such benefits require phases. The first phase is social security for laid-off workers. Subsequent phases are insurances for persons unemployed entirely due to lack of employment opportunities. Should the welfare state is implemented, the focus of the government is to create new fields of employment, since unemployment insurance would drain state funds. By proxy, the govern-
ment will be cautious in passing policies which affects employment or the employment market.

The United States has ideally implemented Unemployment Insurance. The policy is based on the Social Security Act of 1935. The Act became the basis of the fulfillment of the economic rights of the public. Regulations made in the Social Security Act of 1935 states explicitly that the state must make certain the wellbeing of the citizenry, especially the unemployed (economics.about.com, 2010). The Social Security Act of 1935, signed into law by Franklin D. Roosevelt on 14th August 1935, asserts several insurance schemes made available for the United States citizens. Social insurances in the Act mentioned several points in its provision (Eduard A. Lopes 1987), which are: requires every federal state to adopt unemployment insurance regulations; its implementation is preceded by estate tax; 80% of the funding is sourced from the federal government; and regulations on unemployment insurance in the Social Security Act of 1935 can be found in Title IX Social Security Act, which provided detailed descriptions on the amount of funds allocated.

Third, pension funds. Among the biggest risks faced by labour throughout the globe is their inability to work due to old age, otherwise known as retirement. The state, as such, must devise a form of old-age insurance benefit for such labour. Historically, in the United States, retirement insurance benefits are funded through a system of taxation as regulated in the federal tax code (Shuey 2004). After the Second World War, changes in the federal tax code resulted in the development of retirement insurance benefits provided by employers. Employers collect pension funds by setting aside some of their employee's pay and deposited the cuts in a retirement saving account. The collected fund were not treated as income and was therefore not subject to income tax (Goodfellow and Schienber 1993). Such treatment caused changes in the federal tax code to interest employers to offer benefits, such as pension instead of raises. In addition, changes in the federal tax code encourage employers to offer their employees retirement opportunities by offering tax incentives in order to evade taxation.

Fourth, health insurance. The state provides health insurance for its citizens. Thus, those who suffer from illness have access to healthcare. Citizens who suffer from illness and require hospitalizations or treatments could be immediately taken care of. The health insurance funds are applicable for workers, farmers, fishermen, and contract labour. The state is required to be proactive in overseeing health insurance funds for its citizens, one of which way is to allocate appropriate funds in accordance with the state expenses.

Referring back to the United States, the health costs allocated by the superpower country is 16% of the state's gross domestic product, and the health expense per capita is twice of that in other major industrial countries, such as Japan and several European countries (OECD 2008). Nonetheless, treatment and health insurance figures are becoming unrealistic. Furthermore, 45.7 million Americans do not have health insurance (DeNavas-Walt et al. 2008). The costs threaten the ability of the state to shell out for new treatment and technology, which is usually expensive, and pay for other unexpected expenses. The obligation prevents the federal government from achieving universal life insurance or other national objectives beyond the health care system while still keeping fiscals in check (Orszag and Ellis 2007a, 2007b).

Fifth, cheap housing. Houses are one of the main needs of a person or a family. The state must devise a system so that every family owns an inexpensive house with more or less three bedrooms. On the other hand, progressive tax is applied for estates and ownership of more than one house.

Sixth, nourishment of abandoned and disabled children. The state has to protect impoverished persons, abandoned children, and people with physical disability, which inhibit them from working normally. To undertake the obligation, the government must devise a system of education whose goals are empowering abandoned, poor, and disabled children. The system, in the long-term, is directed to free the children of dependencies and train them to be independent and productive workers. Under the program, Indonesia will be free of panhandlers.

Seventh, freedom of religion, faith, and conviction. Freedom of religion, faith, and conviction are the basic rights of every person. Since those are basic rights, the state must guarantee the freedom of religion, practice of religious beliefs, establishment of places of worship, and protection of the freedom of faith, as well as practicing such faiths. The state guarantees the freedom of faith, protecting the freedom and the expression of the faiths.

Eighth, fair and healthy competition. The state guarantees the presence of fair and healthy competition, especially for farmers. Farmers selling their products must have a floor price guaranteed by the state. The same applies to small fishermen who are selling their catch.

Ninth, the environment. The state must devise organized and planned conservation programmes as humans are part of a healthy environment. In achieving such goals, the state balances general interests and business interests. In other words, the state guarantees business interests and conservation of the environment at the same time.

The main target communities of a welfare state are workers, farmers, fishermen, and small/traditional business owners. The community plays the role of both subject (agent) and object (target). In order to create welfare state for labour, a National Bipartite Conference was held in March 2000, resulting in an agreement to arrange a democratic, harmonious, dynamic, just and prosperous industrial relations system based on the Japanese industrial relations system to advance businesses and business owners, prosper the life of labour and strengthen the national economy.

The Japanese industrial relations system is taken as a reference due to the rapid growth of the Japanese econo-
parties meet, the ILO, the WTO, the IMF, and the WB. Labour may form company labour unions (CLU) if there is at least ten members. Three merged CLUs are eligible to be a member of MLB. A combination of at least 1/3 of the MLBs in a province is eligible to be a member of PLB, and a combination of 1/3 of the PLBs is eligible to be a member of NLB. The number of delegates of every labour union is regulated proportionally; 5) part of taxes imposed on labour are given to labour unions in order to strengthen unions and educate/train labour; and 6) labour unions shall make offices available at its respective company, if possible.

Freedom of association is the main reason why labour unions took the initiative to form the ILO (International Labour Organization). Of the seven fundamental conventions of the ILO, there are two conventions which regulate freedom of union, which are No. 87 and 98 (Thc Corc Conventions of the ILO 1999). In addition, it is the main reason why the world criticized the Soeharto-era's rule. During the reformation era, then-President B.J. Habibie issued the Presidential Decree No. 83 of 1998 which ratified the ILO Convention No. 87 on freedom of association and protection of the rights to associate.

Second, worker dismissal issues. This topic is important since worry-free working conditions for labour are absolute. In order to create worry-free conditions, the following regulations need to be implemented: 1) worker dismissal is not permissible, except for crime committed by the labour or bankruptcy of the company. There are two types of criminal charges: criminal acts and sentenced to criminal sentences and workplace crime, i.e. disturbing workplace, production, or absence. Labour whose employment is terminated by crimes may not receive any compensation, benefits, or pension. On the other hand, labour whose employment is terminated due to bankruptcy of the company may receive unemployment insurance from Worker Social Security and lifetime pension benefits; 2) labour who are subject to permanent jobs may not apply to be contract or outsourced workers. By law, a labour is considered permanent should he has finished his trial placement period; and, 3) company labour unions must take part in a worker dismissal process due to criminal acts or bankruptcy.

Third, wage issues. Wages are the main reason of forming industrial relations, and, as such, it is important for the following regulations to be implemented: 1) wages are discussed by sector and bipartitely on a national level, and the minimum amount for each sector is assigned; 2) proper living is the bases of wage fixation. The wage should enable the worker to properly support himself and his family. Considered proper means nutritious sustenance, ownership of a house, tuition to at least high school, old-age insurance and annual vacations; 3) the amount of wages realized is discussed bipartitely on a company level with previous wages as reference. The real financial ability of the company and livelihood as considered proper is taken into account. Thus, the company's

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1 The term “Labour Union” is used instead of “Trade Union”, the meaning of which, however, is similar.
financial condition must be made transparent to the labour union. 4) By law, 20% of net profits must be given to the workforce as a bonus. To achieve the goal, a representative of the labour must be present in the Board of Directors and Commissioners, in addition to planning company production processes and accounting financial conditions. The point being is to enhance the senses of responsibility and belonging in each worker. This system will in turn form hardworking and productive cultures.

Fourth, Contractual Bargaining Agreement (CBA). The function of CBA is to form harmonious, dynamic, democratic, just, and prosperous industrial relations. In order to meet the ends, the following regulations are needed: 1) the CBA regulates working terms, worker dismissal, wages, holidays, working hours, and promotion; 2) the CBA is signed by a representative of the labour union present at the company. Should there be only one labour union, that union shall be the representative. Should there be more than one union, the representatives are assigned proportionately, e.g. 10-100 members equals three representatives; 100-500 members equals 7 representatives; more than 5000 members equals 9 representatives. To achieve that end, a tripartite verification is needed (Office of Labour Services, the management, and labour unions); 3) the CBA is drafted every two years based on talks between the parties. The CBA is signed by representatives of the labour and the management; and, 4) should there be differences within the labour representatives, votes shall be taken to address the differences.

Fifth, education, training, and wages. Wages are graded based on position of the labour; the same applies for raises based on regular and performance increases. For that end, the following regulations need to be implemented: 1) companies have to devise a wage grading system based on qualifications, experiences, position, and creativity; and, 2) education and training are aimed to increase productivity. Labour unions and the management have to determine the type of education and training provided in accordance with current needs.

Sixth, on Labour Social Security (Jamsosbud) replacing Worker Social Security (Jamsostek). Labour Social Security (Jamsosbud) is a lifetime welfare insurance for labourers regulated as follows: 1) Jamsosbud is organized by the Statutory Association operating as a non-profit trusteeship council, and mutually managed by the government, APINDO, and labour unions. The body is directed by the President and managed by the Minister of Labour; 2) the objective of the body is for the welfare of labour. Any activity and management of Jamsosbud funds is aimed for the wellbeing of labour; 3) the programmes are: lifetime pension after 60 years of age, health insurance, and unemployment insurance at 75% of the previous wages of last employment; 4) funds are collected from wages and profits of labour and company, respectively (for example, 13% of the funds are sourced from the company, or 1:2 ratio), and contribution from the state is sourced from the State Budget. Should the employer have more than ten employees; the employer must register his employees as participants of Jamsosbud. Employers who failed to do so shall be prosecuted.

Seventh, labour trials. The Labour Trials Act should be renamed as Industrial Relations Feud Settlement Act. Should there be disputes, despite the enforcement of the above regulation; labour trials held should be quickly settled, fair, and free of cost. The regulations of the proposal are as follows: 1) Labour issues/industrial relations are settled based on a quick, fair, and free-of-cost trial; 2) the series of trials shall be no longer than 120 days since charges are pressed in the Office of Labour Services and any subsequent courts (Industrial Relations Court, Supreme Court Appeal, and Supreme Court Decision); 3) ad hoc judges from labour unions and APINDO shall be present in the every court. While facing charges at the Industrial Relations Court, the labour chooses his judges from a list made available to him; available ad hoc judges are listed in an on-duty list; 4) the judges shall protect the interests of the labour, whereas the third judge, elected from the local District Court, shall head the board of judges; and, 5) labour unions and company associations has the right to represent its members in labour trials.

Between 2000 and 2004, various Acts on industrial relations issues, such as the Labour union Act, were passed as Law No. 21 of 2000 on Labour unions by the House of Representative. Acts on wages, worker dismissal, CBA and education, as well as training and wages were passed as one law, which is Law No. 13 of 2003, and the Labour Trials Act was passed as Law No. 2 of 2004 on Industrial Relations Feud. On the other hand, the Jamsosbud Act, provisional to Law No. 2 of 1992 on Worker Social Security is yet to be passed. Instead, Law No. 40 of 2004 on National Social Security System was passed.

Historically and politically, Law No. 21 of 2000 on Labour Unions/Employee Associations contains significant differences between labour union and employee association, especially in the use of the words “labour” and “employee.” As agreed by the founding fathers, the 1945 Constitution uses the word “labour.” However, Soeharto’s presidency (Soeharto is an anti-communist) dropped the word “labour” since it meant reviving communist ideologies. In other words, “labour” has communist connotations whereas “employee” has New Order connotations. After the Act was floored, it was settled to use both “labour union” and “employee association” (Law No. 21 of 2000).

With the passing of the Law on Labour Unions/Employee Association, a new era was reached for those who are within the industrial relations system. There are principal differences on formation of labour unions before and after the law was passed, which are: 1) labour unions can be easily formed. With only ten members, a labour union may be formed. Currently, there are more than 100 labour unions listed in the Department of Labour; and, 2) National, Provincial, and Municipal Labour Boards
are abolished, resulting in absence of institutions which moderate inter-labour feuds. The fact is this: labour unions are fragmented and labour is still far from the state of wellbeing.

Labour movements in the United States may be taken as a prime example of labour unions. Currently the U.S. has one strong labour union: the AFL-CIO (American Federation of Labour, Confederation Industries Organized), home to 13.5 million members contributing 1% of their monthly pay to the union. Through the AFL-CIO, the U.S. has successfully built a strong tripartite structure. The strength owed itself to the role of priests and churches. Thomas R. Donahue, Secretary/Treasurer of AFL-CIO (Higgins and Bole 1993) wrote that “since the values of the church and labour unions have a common philosophic base, both institutions define themselves through their commitment to the dignity of individual, and each has a solid translation of social action that ensure the recognition of that dignity.” The comment is an excerpt is his preface of a book honouring the churches in the U.S. played in building strong labour unions in the 1960s.

In respect to the above, Jose Ricardo Barbosa Gonçalves states “that a serious challenge for labour union is the capital moving. Global Unions have been mobilizing against the business model of the private equity funds that not only to the sustainability of productive capital and employment in domestic markets but also in the stability of the financial system” (Gonçalves 2011). This is the statement by Gonçalves, it is suggested that strong labour unions, and without a welfare state, good governance, and healthy industrial relations, it will have difficulties in achieving the welfare of workers.

In 1960, according to the passing of Law No. 21 of 2000, the Indonesian House of Representatives floor other Acts with collective dismissal, wages, CBA, and education/training. The fact of which were compiled into an Employment Act. When the Act was announced, labour unions opposed it and despite such opposition; the Act was signed into Law No. 13 of 2003 on Employment.

In changing its name, the Indonesian House of Representatives also included additional articles which are strongly opposed by labour unions and APINDO. In the articles, opposed by labour unions as it will make wages of labour more difficult and weaken labour unions. Outsourcing is an instrument the company has requested labour from another company. The latter pays the wages of the labour to the former enjoys profits from 500 uninsured labourers outsourced labourers reluctant to join contract labour. Contract labour causes labour weak and unprotected. Every contract labour can be contract terminated at any time and contract labour is also reluctant to join labour unions. Essentially, contract labour is not entitled to any permanent posts. In reality, many of them work in permanent posts and no intervening actions are taken.

Third, company rules. By law, if there is a labour union in a company, the management must discuss CBA terms with representatives of the union. Nonetheless, company rules may be made despite the presence of a labour union, according to Law No. 13 of 2003.

Lastly, on worker dismissal. Law No. 13 of 2003 allowed any worker dismissal to be carried out with ease while at the same time is not favoured by labour unions. As long as there are worker dismissals, it would be near impossible to build healthy industrial relations, of which, according to the law are democratic, dynamic, harmonious, fair, and prosperous.

Labour unions reject the four articles above; APINDO rejects the notion of severance pay. Due to conflicting interests, the Act took some time to draft. Eventually, the Indonesian House of Representatives passed it and was signed into law by the then-President Megawati. After the signing, labour union leaders state that neoliberalism has taken over Indonesia.

The enactment of Law No. 13 of 2003 on Employment urged the declaration of the Partai Buruh (Labour Party). Upon the declaration of Partai Buruh, it based its struggle on the essence of the seven drafts of Industrial Relations Act. However, Partai Buruh didn’t win any seats in the 2004 and 2009 general elections. Thus, welfare state and the Japanese industrial relations system would not be realized, and the lives of labour would still be in hardships. The Reform era does not improve the lives of labour.

On the international level, labour unions and bipartite and tripartite spirits are strong, and CBA on every level is devised. The ILO holds conferences every year to evaluate the conditions of labour. The discussion mainly revolves around the issues stated above. The following are sample reports compiled by the ILO which may be a point of consideration on labour and industrial relations issues: 1) the German model inspires the Japanese government, employers, and labour unions to launch a similar approach in 1970 (German-model trial) by forming the Industry and Labour Round Table. The Round Table takes national leaders, business owners and labour unions, experts, and government officials in an informal discussion on topical socio-economic issues. The monthly meetings is one of the main instruments in stabilizing industrial relations in Japan (ILO 1995); 2) employers and labour unions, along with individual companies or other interest groups, must be involved in abolishing child labour. Coherent and effective policies as well as plans can be developed and implemented within a tripartite structure and agreed based on constructive social dialogues on a national and international scale (ILO 2002); 3) Reports and ratifications of ILO conventions, for example, Indonesia is a member of the ILO since 1950 and has ratified and enacted 14 conventions: No. 19 equality of treatment; No.
27 marking of weight; No. 29 Forced Labour; No. 45 Underground work for women; No. 69 Certification of Ships Cooks Convention; No. 87 Freedom of Association; No. 98 Right to organize and Collective bargaining; No. 100 Equal Remuneration; No. 105 Abolition of Forced Labour; No. 106 Weekly Rest; No. 111 Anti Discrimination; and 120 Hygiene. Of the conventions, convention number 97 on freedom of association and number 98 on right to organize and collective bargaining require a much more serious attention (ILO 2000); and, 4) the government, employers, and labour unions discuss application of conventions and recommendations jointly on every labour and industrial relations issues. This is due to the fact many of the conventions need to be consulted with employers and labour unions, or their cooperation in various actions (Labour Conventions, 2000).

CONCLUSION

Without the implementation of a welfare state, labour (and farmers and fishermen) would never enjoy a prosperous life. Even if Indonesia is independent and Papua is still part of Indonesia in the years to come, the people of Papua will still be poor and uneducated if Indonesia does not implement a welfare state. Not only hard life of the people, but social injustice will also be present and threaten political and national stability.

In addition, industrial relations in Indonesia will still be as regulated by Law No. 13 of 2003; labour in Indonesia will never enjoy a prosperous life, and industrial relations will never be fully harmonious. In line with the statement, Michael Schneider in his book A Brief History of the German labour union states that “we will understand that the role of labour unions were very significant and important to build labour or people welfare. That for much of its course German social history would have been bumpier without the labour unions” (Michael Schneider, 1991). Therefore, after seven years of the enactment of the Law No. 13 of 2003, it is now time for labour unions to approach political parties so that the ideas are considered by factions seated in the Indonesian House of Representatives.

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