

# **THE IMPLEMENTATION OF SOCIAL JUSTICE IN THE INDUSTRIAL RELATION MODEL OF INDONESIA (A LAW PERSPECTIVE ANALYSIS BASED ON INDUSTRIAL RELATION REGULATIONS AND PRACTICE IN INDONESIA)**

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## **Abstract**

Industrial relation is one of important aspect in daily business practice, but sometimes it become the source of problem in business. The problem often be triggered by a gap between employer and employee interest. Employer business and profit oriented interest sometimes does not meet up with the employees paradigm that commonly work for their survival. The Industrial Relation practice in certain contry is always be related with the industrial relation model that internalised in manpower regulation of certain country. Today's there are two types of industrial relation model which commonly used, such as contractualist industrial relation model which relatively consists of individual value and corporatist industrial relation model which usually consist of collectivism value. Each industrial relation model is very dependent with the national public policy. This article will explain the industrial relation model which used and internalised in Indonesia based on the ideology and national identity of Indonesia esepcially social justice value. In regards to explain this article, secondary data such as regulation and theories regarding industrial relation and social justice value that become one of basic principle of Indonesia.

**Keywords: industrial relation, individualism, collectivism, government, social justice**

## **Abstrak**

*Hubungan Industrial adalah salah satu aspek penting dalam praktik bisnis sehari-hari, namun terkadang hal tersebut juga menjadi sumber permasalahan dalam bisnis. Permasalahan tersebut seringkali dipicu oleh kesenjangan antara kepentingan Pemberi Kerja dan Pekerja. Kepentingan Pemberi Kerja yang diutamakan untuk meraih keuntungan dalam bisnis terkadang tidak sesuai dengan sudut pandang Pekerja yang sebagian besar bertujuan untuk bertahan hidup. Praktik Hubungan Industrial di negara tertentu selalu berkaitan dengan model Hubungan Industrial yang terinternalisasi dalam regulasi mengenai ketenagakerjaan di suatu negara. Dewasa ini terdapat dua model Hubungan Industrial yang lazim digunakan yakni contractualist industrial relation model terdiri dari nilai individualism dan corporatist industrial relation model yang biasanya terdiri atas nilai kolektivisme. Masing-masing model tersebut sangat bergantung kepada kepentingan nasional dari suatu negara. Artikel ini menjelaskan model Hubungan Industrial yang digunakan dan terinternalisasi di Indonesia berdasarkan ideologi dan identitas nasional Indonesia khususnya nilai social justice. Data Sekunder seperti peraturan perundang-undangan dan teori-teori terkait Hubungan Industrial dan Social Justice akan digunakan untuk membahas persoalan yang terdapat dalam Artikel ini.*

**Kata Kunci: Hubungan Industrial, Pekerja, Pemberi Kerja, Pemerintah, Social Justice**

## A. Overview

The development in business field brings effect to the number of the needs of manpower. The increased number of manpower need is conservatively in line with the number of industrial sector even today that kind of assumption maybe is not relevant anymore with today's phenomenon. Beside the rapid development of industrial sector, the issues of manpower still become the most important thing to discuss. In the developing country the manpower issue often appear to surface and sometimes get special attention both from the internal and external party. We may say that government and people are part of internal party, and external party usually consist of institution or body that does not established by that country institution (such as International Labor Organization or abbreviated as "ILO"). The common manpower issues usually related with the disharmony between employer interest and employee interest. The gap between those interests caused by differences in interpretation regarding certain regulation which regulates rights and obligations for the parties. According to Indonesian Law No 13 Year 2003 Concerning Manpower (or abbreviated as "Manpower Law") the contractual relationship between employer and employee has to be mentioned clearly

as industrial relation.<sup>1</sup> All rights and obligations which attach to employer and employee shall be regulated under certain contract that consented by both employer and employee. According to Article 1 No 14 Manpower Law, employment contract is the agreement between employee and employer which consists of terms of employment, rights, and obligations of the parties.<sup>2</sup> This legal relationship between parties acknowledged as Industrial Relation. Theoretically Industrial Relation model in certain country is depended with the ideology of the country. Ideology of a country usually can be pictured by the regulation, especially the regulation related industrial relation.

According to Hamid Attamimi, Pancasila<sup>3</sup> is the *grundnorm* of Republic of Indonesia. *Grundnorm* is the fundamental norm or basic norm that become the highest source for all regulations in Indonesia. It is not possible if there is a regulation in Indonesia that does not follow and meet up the principle as stated in Pancasila. One of the regulation that follows those principles is Manpower

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<sup>1</sup> Indonesia, Law Concerning Manpower, *Law No 13 Year 2003*, NS No. 39 Year 2003, add NS no 4279, Art. 1

<sup>2</sup> *Ibid*, Article 1 No 14

<sup>3</sup> Pancasila is terminology to mention the fundamental principle of Indonesia that consists of five guiding principle for all Indonesian life such as believe in God, nationalism, humanity, democracy, and social justice.

Law. Manpower Law of Indonesia is the source of industrial relation model in Indonesia. According to Aloysius Uwiyono, there are two models of industrial relation, the first one is contractualist industrial relation model and corporatist industrial relation model.<sup>4</sup> Those two industrial relation models can be distinguished by the type of norms that compose the Manpower Law of certain country. The intervention of government in industrial relation is the simplest way to classify the industrial relation model in a country. It can be assumed that more intervention of government in industrial relation will bring the country to corporatist industrial relation model.<sup>5</sup> Theoretically the industrial relation model depends on the norm that composes the manpower law. In the manpower law at least there are autonomous norm and heteronomous norm. Autonomous norm is the type of norm that regulate the legal relation between the parties and heteronomous norm is the type of norm that regulates the legal relation between government and legal subject in a certain country (at this case employer and employee). As regulated in Article 2 Indonesian Manpower Law, the industrial relation shall be implemented based on

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<sup>4</sup> Aloysius Uwiyono, *Modul Perspektif Hubungan Industrial Menyongsong Visi Indonesia 2025*, (Jakarta; Universitas Indonesia, 2016), hlm. 7

<sup>5</sup> *Ibid*

Pancasila and The Constitution of Republic of Indonesia Year 1945 which means all of the aspect related manpower matter in Indonesia must be described the value and principle as stated in Pancasila or especially social justice principle.<sup>6</sup>

## **B. Industrial Relation based on Indonesian Law**

The legal certainty, especially regarding the manpower aspect in Indonesia can be seen from Manpower Law of Indonesia. Constitutionally, this regulation is the source for all manpower practice in Indonesia, including industrial relation. The Industrial Relation in Indonesia is implemented based on Manpower Law of Indonesia. Industrial Relation is the stakeholders relationship which related in good or services production process in a company<sup>7</sup>. Commonly, the stakeholders that related in a company consists of:<sup>8</sup>

- a. Employer or shareholders which daily represented by the management;
- b. Employee or labour and labour union;
- c. Supplier;
- d. User Company;
- e. People around the company; and
- f. Government.

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<sup>6</sup> *Op. Cit*, Art 2 Law Concerning Manpower

<sup>7</sup> Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan di Indonesia*, (Bandung: Citra Aditya, 2009), Page 43.

<sup>8</sup> *Ibid*

According to Article 1 No 16 Manpower Law of Indonesia,, industrial relation is defined as a system of relations that take shape among actors in the process of producing goods and/or services, which consist of employers, employees, and the government, which is based on the values of Pancasila and the Indonesian Constitution Year 1945.<sup>9</sup> The industrial relation itself can be considered based on employment relation. The Indonesian Manpower Law defines employment relation as a relationship between employer and employee based on employment contract, which deals with aspects relating to the job, the worker's wage, and orders and instructions.<sup>10</sup> From that regulation it can be seen that there are some elements in industrial relation, such as:

- a. Job;
- b. Worker's wage; and
- c. Order and instruction.

Job is a specific duty, role, or function<sup>11</sup> that has to be done by employee. Practically, the type of job in industrial relation practice in Indonesia, has been mentioned in Employment Contract. Worker's wage is the right of employee or worker that is received and expressed in the form of money as remuneration from

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<sup>9</sup> *Op. Cit*, Art 1 no 16 Law Concerning Manpower

<sup>10</sup> *Ibid*, Art 1 No 16.

<sup>11</sup> <https://www.merriamwebster.com/dictionary/job>, accessed on August 2018

the employer to employee, whose amount is determined and paid according to employment contract, a deal, or laws and regulations, including allowances for the employees and their family for a job and or service that has been performed or will be performed.<sup>12</sup> Worker's wage is very related with order and instruction aspect because to be determined as order or instruction in an industrial relation, that order has to be given and followed as the replacement service. Every order that given to the employee has to be stated before on employment contract as the consent of the parties. Parents's order to their children cannot be determined as industrial relation, because the order is not intended as a job and based on social norm that kind of order is the right of parents and the obligation of the children to do parent's order.

### **C. Contractualist Industrial Relation Model and Corporatist Industrial Relation Model**

According to *Rencana Pembangunan Jangka Panjang* ("Long Term Development Planning") Republic of Indonesia especially in sub section of district development, there is one important point that describes the direction which should be reached by Manpower

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<sup>12</sup> *Op. Cit*, Article 1 No 30 Law Concerning Manpower.

Law of Indonesia. The point is creating a conducive climate for investors including improvement of cooperation between countries through economic cooperation. From the investor perspective, there are some considered factors to invest their capital in certain country, such as minimum labour cost, near the raw material, new market, royalty from the transfer of technology, spare part sales, and other incentives.<sup>13</sup> Those factors are always in line and becoming the basis of investment climate in Indonesia and the most important motive for investors is to gain profit as much as they can. Before, invest their capital into certain place, the investors usually will take assessment period to make sure the certainty and profit that they may get in the future. The assesment is not only done by measure the business aspect, but also will considere based on the contry risk. According Panras Nagy, Country risk is the exposure to a loss in cross-border lending caused by events in a particular country which are, at least to some extent, under the control of the government but definitely not under the control of a private enterprise or individual.<sup>14</sup> On another hand, K

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<sup>13</sup> Erman Rajagukguk, *Modul Hukum Investasi dan Pembangunan*, (Jakarta; Universitas Indonesia, 2009), Page 55

<sup>14</sup> Panras Nagy, "Country Risk," *Journal of Banking and Finance*, (London: Euromoney Publications, 1985), page 195

Kosmidou mentioned, country risk may be prompted by a number of country specific factors or events such as political events, economic factors, and social factor.<sup>15</sup> As a Third World Country, Indonesia is still needs foreign capital, because of some reasons such as: the number of job opportunity, the development of import substitution industrial good for foreign exchange efficy, pushing the development of non oil and gas industries, the development of rural area, and transfer of technology.<sup>16</sup>

In line with the recent Long Term Development Planning of Indonesia and the needs of capital in Indonesia, the public policy regarding manpower matter is the element or factor that can assure legal certainty for the investor that plan to invest their capital in Indonesia. Basically, the investors will be brave to invest their capital in Indonesia if the government of Indonesia itself, able to assure the investors related the country risk. According to Jamaes Kallan, the most effective incentive to attract foreign investment activities is that government must be able to enforce the law and asure the security of the country. Globalisation plays the important role in every business practice in Indonesia. The globalisation

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<sup>15</sup> K. Kosmidou , *et.al*, *Country Risk Evaluation, Method and Application*, (USA: Springer, 2008), Page 7.

<sup>16</sup> Erman Rajagukguk, *Op. Cit*, hlm 60.

and the business practice cannot be separated as two different elements. That is why the globalisation is become the part of business practice itself. The globalisation pushes the government to use market center approach than The Centered Plan Economic.<sup>17</sup> Market center approach affects the role of government in practice is less than the role of labour union or employee. Almost all rights and obligations in an industrial relation may be consented by the employer and employee or labour union themselves. At this point, the globalisation brings Indonesia to use market center approach and relatively chooses the contractual industrial relation model.

According to Uwiyono, there are two types of industrial relation model which commonly implemented, they are contractualist industrial relation model and corporatist industrial relation model<sup>18</sup>. Contractualist industrial relation model is the industrial relation model which can be described by these four principle, first less of government intervention, second the freedom of union is highly supported, third the collective right to negotiate is absolute, and fourth the government is only act as referee (mediator)<sup>19</sup>. The less of government intervention can seen from the

clauses in the employment contract which consisted of rights and obligation of the party (employer and employee). The rights and obligations on the contract are depended on the parties will as regulated in Indonesian Manpower Law and The Indonesian Law of Contract. Article 50 Indonesian Manpower Law allows the parties to consent the right and obligation for an industrial relation based on a contract.<sup>20</sup> This regulation legally brings the party to follow the principle of Indonesian Law of Contract which is regulated under Indonesian Civil Code.<sup>21</sup> On another side, corporatist industrial relation model is the industrial relation model which relatively relies on the role of government as the regulator of industrial relation. As the opposite of contractualist industrial relation model, the corporatist industrial relation model commonly can be described by these four points such as the high number of government intervention, the limitation of the freedom of union and the right of collectively negotiation, and the government also plays the rule as the active actor.<sup>22</sup>

Those industrial relation models are consisted of two biggest norms which

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<sup>17</sup> Aloysius Uwiyono, *Op. Cit.*

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

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<sup>20</sup> *Op. Cit.*, Art 50 Law Concerning Manpower

<sup>21</sup> According to article 1320 Indonesian Civil Code, there are four conditions that make a contract legally bind. First is consent of the parties, second is *kecakapan*, third is related a thing, and fourth is lawful matter.

<sup>22</sup> Aloysius Uwiyono, *Op. Cit*

theoretically known in Manpower Law such as autonomous norm and heteronomous norm. Autonomous norm are legal provisions in manpower made by the parties involved in an industrial relation, the relation between the employer and the worker/laborer and the relation between the employer and the labor union<sup>23</sup>. Heteronomous norm is the Manpower clauses made by third party outside the parties that bound in an industrial relation<sup>24</sup>. The legal standing for heteronomous norm on Industrial Relation of Indonesia is Art 59 Paragraph (1) Manpower Law of Indonesia. It is regulated that the employment contract (autonomous norm) may be made by following the clauses such as 1) work to be performed and completed at one go or work which is temporary by nature; 2) work whose completion is estimated at a period of time which is not too long and no longer than three years; 3) seasonal work; and 4) work that is related to a new product, a new activity, or an additional product that is still in the experimental stage or try-out phase.<sup>25</sup> The autonomous norm is reflected on Art 50 Manpower Law of Indonesia which gives the authority to the employer and employee to

freely determine their right and obligation by themselves without breaking the terms and condition such as classified as heteronomous norm. The contractual relation between employer and employee, theoretically is a private relationship but that is not really private relationship because the parties are bonded by heteronomus norm.

As comparison, in practice Transnational Company that are offshoring production to Asian countries are entering national settings with little labour law enforcement. Since Transnational institution for worker's rights have not yet developed to balance the offshoring trend and the weak enforcement of Asian labour laws, the worker's right situation can be characterised as governance without government with Transnational Company, unions, NGO's governing industrial relations.<sup>26</sup> This statement is in line with the principle of contractualist industrial relation model which hands the industrial relation affair directly to the parties which are employee or union and employer. That kind of condition will affect the decreasing role of government in industrial relation and the increasing of the influence of

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<sup>23</sup> Aloysius Uwiyono, *et al.*, *The principles of labor Act*, Jakarta, Rajawali Pers, 2014), page. 7-8.

<sup>24</sup> *Ibid*

<sup>25</sup> *Op. Cit*, Article 59 paragraph (1) Law Concerning Manpower

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<sup>26</sup> Niklas Egels – Zanden, *Translating Competing Models of Industrial Relation Local Bargaining versus Global Rules in the Swedish Clean Clothes Campaign*, (Sweden: Center for Business in Society School of Business, Economics, and Law Goteborg University, 2016), page. 5

transnational cooperations in general. In this way, Transnational cooperation has gained and governments lost in strength in industrial relation.<sup>27</sup> A popular argument supporting this thesis is that the collectivist ideology of unions has become outdated as work has become individualised, roles and identities are being recast around individual service production, and shaped more by one's role as a consumer than a producer and this trend resulting from the increasingly transnational organisation of production is the decentralisation of industrial relation.<sup>28</sup> By this decentralisation of industrial relation it can be assumed that the principle in industrial relation model is contractualist industrial relation model. To face the gap between public sector and private sector role, there is a bargaining industrial relation model as known as Bargaining Model. The Bargaining Model is representative of the traditional national tripartite industrial relations system involving negotiations and collective bargaining between firms and unions with the state as a more or less passive actor in the background.<sup>29</sup>

#### D. Social Justice Principle

Pancasila is the fundamental principle of Indonesia and also the

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

ideology of Indonesian people. Regarding the theory of regulation as mentioned by Hans Kelsen, Pancasila is located on the top of Indonesian regulation hierarchy. According to Hamid Attamimi which used Kelsen Theory, Pancasila is can be treated as *grundnorm* or basic norm. *grundnorm* is a concept to denote the order or rule that forms an underlying basis for a legal system.<sup>30</sup> This Kelsen's theory is commonly known as The Pure Theory of Law. The Pure Theory describes the positive law as an objectively valid order and states that this interpretation is possible only under the condition that a basic norm is presupposed. The Pure Theory, thereby characterizes this interpretation as possible, not necessary, and presents the objective validity of positive law only as conditional namely conditioned by the presupposed basic norm.<sup>31</sup> The hierarchy in this theory is used to describe the legal positivism which start from basic norm where all other norms are related to each other by either being inferior norms, when the one is compared to the other, or superior norms.<sup>32</sup> Based on that theory, it can be defined that

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<http://manupatra.com/roundup/330/Articles/Article%201.pdf> accessed on August 2018

<sup>31</sup> Hans Kelsen, *Pure Theory of Law*, page 217-218,

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[https://en.m.wikipedia.org/wiki/Pure\\_Theory\\_of\\_Law](https://en.m.wikipedia.org/wiki/Pure_Theory_of_Law)



Pancasila is the highest source for the norm that regulated in Indonesia.

One of the substance that consisted in Pancasila which related with Manpower Law especially industrial relation model is Social Justice. Social justice is the 5th principle that written in Pancasila beside the religious, humanity, unity, and representative principles. In Bahasa Indonesia social justice is translated as “*keadilan sosial*”. To understand about the meaning of Social Justice, it can separated into two terminologies, social and justice or *keadilan* and *sosial* in Bahasa Indonesia. The meaning of *keadilan* is taken from arabic word “*adl*” which means giving the equal part. It is the same with the meaning of justice based on merriam webster dictionary which defined justice as the quality of being just, impartial, or fair and social means tending to form cooperative and interdependent relationships with others. From that definitions, social justice may interpreted as the fairness which implemented in an interdependent relationship on a society. (Find another meaning of social justice). Social Justice Principle, brings the society indirectly to be more collectivism value society than individualism society. Collectivism can be defined as a value which reflects an undistrubed peace situation in a society by fulfillment of individual interest which does not disturb other individual interest.

On another side, individualism means a value which reflects that each legal subject has their own interest which got or fullfilled from interaction with another. According to *Filsafat Antinomi Theory*, the harmonisation of those two values will produce a new value that is peace. Peace can be produced, if the collectivism and individualism values are harmonized each other. In politic sector, if individualism is preferred than collectivism, so the result will be tend to be capitalism value and on other side if collectivism is preffered than individualism will tend to result socialism value.<sup>33</sup> This harmonise situation between collectivism and individualism is the nearest description of what Social Justice Principle in Indonesia.<sup>34</sup>

According to Mohammad Hatta speech on July 13<sup>th</sup> 1945, there are some suggestions to assure Indonesia will able to keep the social justice for all Indonesian, such as firstly that Indonesian

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<sup>34</sup> According to Purnadi Purbacaraka and Soerjono Soekanto, the systematical of value will appear as certain set or couple which each set consists values that tension each other. The tension means a condition when a value presses another but both of them do not abolish each and other. The concrete example for this case is a set of value which consist of freedom value and discipline value. Both of this value can be said pressing each other because in a freedom condition there is also restrictions as the reflection of discipline value. This restriction is the manifestation that an individual cannot life freely without limit but outside the restriction, individual has also freedom, so the human life will no longer characterized as totally discipline.

lives by helping each other, secondly each citizen has the right to get the job and get the proper living, thirdly the national economic is arranged as collective business, fifthly land is owned by the people, sixthly the individual asset may not be the tools for oppressing other, and seventhly the poor is taken care by the government.<sup>35</sup> Those principle as mentioned by Mohammad Hatta, finally brought others founding father to consider about the idea of social justice deeper. The economic development that will be done by Indonesia will always consider the common needs so the public development which in line with the principle of social justice may be realized and implemented for the people of Indonesia. Social equality also act as the important aspect in social justice value. Through the social equality it is hoped that social welfare may be achieved on Indonesia.

#### **E. Social Justice Principle in Manpower Sector**

As the part of basic norm or fundamental norm in Indonesia, Social Justice has to be reflected in every Indonesian regulation, including the manpower sector regulation. The most general regulation for manpower sector is

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<sup>35</sup> Muhammad Hatta Speech July 13<sup>th</sup> 1945 as written in *Prisma Jurnal Pemikiran Sosial dan Ekonomi*.

Manpower Law of Indonesia and followed by technical regulations. The Manpower Law of Indonesia regulates the basic principles of industrial relation in Indonesia. The harmonisation of collectivism and individualism is can be seen in Manpower Law of Indonesia. Individualism value as part of autonomous norm is reflected by autonomous employment contract which may be made between the parties in an industrial relation. As mentioned before, the example of autonomous norm can be seen from Article 50 Manpower Law of Indonesia which allows the parties to consent the right and obligation for an industrial relation based on a contract.<sup>36</sup> A contract which defined by the regulation is employment contract. The Employment Contract in Indonesia may be made based on the basic principle of law of contract which regulated under 3rd Book of Indonesian Civil Code, especially Article 1320 Indonesian Civil Code. The freedom of contract which means allow the party to consent their own rights and obligations is the reflection of individualism principle inside Manpower Law of Indonesia. That kind of freedom is cannot be implemented as an unlimited freedom of contract. The employment contract in Indonesia has to follow the rules as regulated in other

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<sup>36</sup> *Op. Cit*, Art 50 Law Concerning Manpower.

technical regulation for Manpower matter such as The Minimum Wages Decree. The Employer and Employee are not allowed to consent regarding employee wage without considering that technical regulation. Every year, The Indonesian Government assigned the employee's minimum wages decree to adjust and assure the fulfillment of employee's needs. According to Art 1 No 1 The Ministry of Manpower and Transmigration of Republic of Indonesia Decree No.7 Year 2013 (The Minimum Wages Decree), minimum wages is the minimum monthly wage which consisted of basic wages including fixed allowances which assigned by governor to secure it.<sup>37</sup> This Minister of Manpower and Transmigration Decree is only giving the authority to the provincial government to determine the minimum wages. As the example, The Governor of Jakarta Municipal Province assigned The Governor Decree No 182 Year 2017 Concerning The DKI Jakarta Province Minimum Wages for 2018 ("Minimum Wages Decree of Jakarta"). Article 1 Minimum Wages Decree of Jakarta determines that the minimum wages for employee in Jakarta Province for 2018 is IDR.3,648,035.82 or around USD

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<sup>37</sup> DKI Jakarta Province, Governor Decree Concerning Minimum Wages, *Governor Decree No. 182 Year 2017*.

252.70.<sup>38</sup> It means that, on 2018 the employer is not allowed to pay the employee under that amount. This kind of regulation is the example of heteronomous norm which still actively prevailed in Indonesia. The parties are not be allowed to create an employment contract which determines the employee's wages under the amount regulated in Minimum Wages Decree of Jakarta. The freedom of contract principle is restricted with this kind of heteronomous norm and all of employment contract which does not follow the rule will be determined as null and void.

To assure the economic development through regular increase of employee's wages, every year the government determines the minimum wages regulation. The annual increasing of employee's wage is counted based on the calculation of the price of basic needs in Indonesia. As the example, the increasing of minimum wages for employee on DKI Jakarta Province is calculated based on 3.72% national inflation, 4.99% of economic development, and the increasing of minimum wages as determined by The Minister of Manpower is 8.71%.<sup>39</sup> Based on that calculation the minimum wages for employees in DKI Jakarta Province in 2018 is higher than the 2017 which

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<sup>38</sup> *Ibid.*

<sup>39</sup><https://finance.detik.com/berita-ekonomi-bisnis/d-3709931/ump-jakarta-tahun-depan-rp-36-juta-begini-hitungannya>

amount was IDR.3,355,750.00 or around USD 230.18.

The rule of government to assign the minimum wages at this case reflects the principle of heteronomous norm which symbolise the collectivism value in Indonesian Industrial Relation. This heteronomous norm is very useful to equalize the the Indonesian income and to realize the social welfare for Indonesian.<sup>40</sup> Social welfare can be manifested by the implementation of social justice principle as stated in Pancasila. There will be no social welfare if the social inequality still exist in a nation. The sociologist, Goran Therborn defined that social inequality is an inequality and unfair condition as the oposite of social equality.<sup>41</sup> According to him there are three dimation of social inequality related a human position as biologist creature, as individual, and social actor. The social inequality in biologist creature dimension is related with vital equality, in individual dimension is related with existential inequality, and in social actor dimension is related with resource inequality. The social justice principle especially as implemented in Indonesian

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<sup>40</sup> Realizing the social welfare is one of the the purpose of Republic of Indonesia as mentioned in the preamble of The Constitution of Republic of Indonesia.

<sup>41</sup> Airlangga Pribadi, "Masih Relevankah Memperjuangkan Cita-Cita Keadilan Sosial", *Prisma Jurnal Pemikiran Sosial Ekonomi*, (Jakarta: LP3ES, 2018), Page 89

manpower sector is also plays the role as institution to keep the nation against social inequality.

## **F. Conclusion**

As a country with Social Justice Principle, it is important for Indonesia to keep the spirit on the nation life, especially on the manpower sector. The manpower sector is one of the key factor of national economic development, because all of business field always be related with the manpower aspect including industrial relation matter. Industrial relation is The rights and obligations of employee and employer are very depends to the industrial relation model as mentioned before industrial relation is a system of relations that take shape among actors in the process of producing goods and/or services, which consist of employers, employees, and the government, which is based on the values of Pancasila and the Indonesian Constitution Year 1945.<sup>42</sup> If the industrial relation model is tend to be more contractual model, the employee and employer are more freely to determine their right and obligation. Beside that the government will only come as the silent party that does not have power to intervene the industrial relation. On another side, if the industrial relation is tend to be more

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<sup>42</sup> *Op. Cit*, Art 1 no 16 Law Concerning Manpower.

corporatist industrial relation model, the employee and employer in an industrial relation do not have the power to determine their right and obligation by themselves. The government as active actor is the party who has the legit power and authority to determine everything related industrial relation. Indonesia as social justice principle country, is still applying a system that use both of industrial relation model. The Employment Contract such as regulated under Art 59 Paragraph (1) Manpower Law is the contractual industrial relation stripe that showed by Indonesian Manpower system to follow with the development of business. Even though The Manpower Law of Indonesia has given the authority to the party to consent the right and obligation for industrial relation matter, the government of Indonesia still regulates the restriction, limitation, and other norms which strictly has to be followed by the business stakeholders especially the subject of industrial relation. The restriction and limitation that regulated by the government of Indonesia is related the clause that may to be made in employment contract such as the maximum period of contract, the type of job, and another terms and conditions. One of the easiest example that can be seen is the regulation related minimum wages of employees that annually published by the government to

keep the implementation of social justice and to avoid the social inequality in the society. On DKI Jakarta Province the minimum wages for employee in 2018 is IDR.3,648,035.82 or around USD 252.70 and calculated based on the basic needs of people on Jakarta. This kind of regulation (minimum wages regulation) is the example of government intervention in industrial relation sector. The government role is still very important in industrial relation. As we know that today globalization era brings the business actor to do the most efficient thing in their business and sometimes do not consider the right and obligation of the employee. At this kind of situation government has to appear to provide security and institution for the people and to create the social welfare for all, not only for certain group. The bargaining industrial relation model as offered by some theories is good to be considered. This bargaining industrial relation can be place as the win-win solution for between the capitalist business needs and the collectivist spirit. On this bargaining industrial relation model, the role of government must be provided strongly by without disturbing the private area between employer and employee as long as the right and obligation of the party do not break the norm and regulation such regulated before. The tripartite institution shall be activated anymore as a

mainstream institution to decide issues especially industrial relation issues between employer and employee.

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