

LIMITATIONS, HIDDEN EXCEPTIONS, AND RESPONSIBILITIES FOR BETTER WORKER PROTECTION

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Abstract

This paper will examine the characteristics of worker exploitation that lead to unfair/indecent working conditions, the imposition of sanctions on perpetrators of exploitation, exemptions from sanctions for specific sectors, and the forms of sanctions that can be imposed. The approach to sanctions should not only serve as a deterrent to violators but also ensure the protection of victims. This study will evaluate existing labor regulations and interpret them through a socio-economic analysis to identify their weaknesses and propose improvements, aiming to create more effective regulations for worker protection. Consequently, this research employs a socio-legal study approach. One of the key findings of this study is that imposing sanctions on exploitative employers alone is insufficient to protect workers. While such sanctions may deter violations, they do not necessarily enhance worker protection. Therefore, the enforcement of civil sanctions is also crucial to ensure that victims of exploitation receive compensation for the damages they have suffered.

Keywords: *exploitation; decent work; public interest*

Introduction

In the era of globalization, industrial development is increasingly broad and dynamic. Businesses exploit this to maximize profits with slick marketing strategies, while also minimizing production costs. To achieve this, businesses often neglect workers' rights and begin exploiting them. Labor exploitation remains a common issue, not only in Indonesia but also worldwide. Many forms of labor exploitation exist, including forced labor, child labor, unfair wages, excessive working hours, unsafe working conditions, lack of basic rights protection, workplace discrimination, and other business practices that violate sustainable development.¹ Labor exploitation has become commonplace and is often referred to as a form of modern slavery. Modern slavery is a situation where a person is exploited by another entity with power over them for personal gain.²

One example of exploitation is in the fisheries sector. The Benjina crew is one of many cases of labor exploitation that have occurred in Indonesia. The Associated Press (AP) news agency revealed the case on March 25, 2015. The report was the result of a year-long investigation that interviewed 80 people.³ The crew members said they were forced to drink dirty water and work 20-22 hours a day without a day off. Furthermore, they were not paid for their work pulling nets, and they were paid very little. The Indonesian crew members were subjected to ill-treatment by the ship's captain, including being kicked, whipped with stingray tails, or beaten if they complained or tried to rest. This resulted in many Indonesian crew members being maimed or dying on board. Each crew member typically receives US\$1,000 in wages, but afterward, they are forced to work without pay for months or years, or are not paid at all.⁴ Based on these facts, ABK Benjina can be said to be victims of slavery.⁵ Then specifically, ABK Benjina can

¹ I Gede Khrisna Marta, Human Trafficking, Sweatshops and Child Labor in Indonesia, 2016.

² International Labor Organization, What Is Forced Labor, Modern Slavery and Human Trafficking, <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>.

³ DAA Putri and TC Utomo, Cooperation between the International Organization for Migration (IOM) and the Indonesian Government in Addressing Human Trafficking and Slavery in Industry, Journal of International Relations, <https://ejournal3.undip.ac.id/index.php/jihi/article/download/22708/20769>.

⁴ Id.

⁵ Wanda Intantia Pravidiane, Aru Islands, and Pusaka Benjina, Legal Review of Indonesia's Authority in Applying Criminal Sanctions to PT. Pusaka Benjina Resources in the Practice of Criminal Acts of Slavery According to *Slavery Convention* Introduction Background Human Rights Is One of

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be said to be victims of modern slavery because of their conditions of exploitation due to the work they do.⁶ This modern slavery is perfectly suited to conditions where workers experience exploitation for the work they do. Another case of labor exploitation that came to light involved the shoe brand Nike in 2015. Nike initially decided to move its production to Indonesia because the country had less stringent work regulations and relatively lower wages. These advantages allowed Nike to implement physically and financially exploitative policies against its Indonesian employees.⁷ Nike uses physical exploitation by punishing workers who fail to meet production targets in a day by increasing the working day from 12 to 16 hours. This has a negative impact on the health of Indonesian employees working in Nike factories. Meanwhile, financial exploitation occurs when employees are paid wages that do not match the amount of time they spend working. Employees are typically paid around 1-2 USD per day. This case was resolved by Nike by negotiating and signing a collective agreement with the union and factory owners, paying a fair and decent wage to its workers, and forming a long-term commitment to the communities surrounding its factories in Indonesia.⁸

In addition to the Nike case, PT. Alpen Food Industry (PT. AFI), the producer of Aice ice cream, has demonstrated the practice of labor exploitation in Indonesia. PT. AFI reportedly ignored Occupational Health and Safety (K3) and forced its employees to work more than 12 hours a day without overtime compensation. Many workers reportedly worked in unsuitable conditions, such as rooms without adequate ventilation, resulting in exposure to chemicals such as ammonia. These conditions caused health problems for workers' skin, eyes, nose, throat, and lungs. Furthermore, PT. AFI allegedly deducted the salaries of employees who took leave.⁹ Furthermore, the employment contracts given to employees were deemed unfair because they included provisions stating that the employees themselves were responsible for covering their occupational health insurance. This was considered personal negligence on the part of the employees. PT. AFI exploited the workers' vulnerable position for the company's benefit, without regard for their welfare and basic rights. Inhumane working conditions, low wages, and the reduction of workers' rights indicate that the PT. AFI case demonstrates elements of exploitation that fall into the category of modern slavery. The company lowered production costs by using its power and control over its employees, ignoring the high work pressure and health risks.

The Benjina, Nike, and Aice cases are examples of uncovered acts of labor exploitation in Indonesia. However, these cases of labor exploitation are actually the tip of the iceberg in Indonesia, which still need to be monitored and addressed. The exposure and resolution of cases of labor exploitation that have occurred in Indonesia does not guarantee that workers will receive more attention in the future ('cover a hole, dig a new one'). This shows that existing laws to protect workers' rights are not enforced and have lost their validity, resulting in continued violations. Many cases of exploitation remain unrevealed or ineffectively addressed, leaving workers vulnerable to unfair treatment. Considering the cases above, it can be concluded that these acts constitute labor exploitation. However, in certain situations, the prohibition on exploitation can be exempted, and violators or perpetrators cannot be held accountable. One example is the Election Supervisory Agency (Bawaslu) workers who are required to work longer hours when election day arrives. Another example is medical and pharmaceutical workers who must work continuously with minimal rest time and no increase in wages during the COVID-19 pandemic some time ago. Acts of exploitation of workers in such circumstances also occur, but there are differences in treatment of the violators or perpetrators of such exploitation of workers.

the Instruments, 2015.

⁶ Arristo Herbawono, Human Rights in a Criminological Perspective: Labor Exploitation as a Form of Modern Slavery, *Journal Syntax Idea* 5 No. 12 (2023): 6, <https://jurnal.syntax-idea.co.id/index.php/syntax-idea/article/view/2631/1676>.

⁷ F.A. Tamami, Nike Sweatshop Analysis: Worker Exploitation by Nike Inc. in Indonesia Through the Eyes of Neomarxism, 2021, https://www.researchgate.net/profile/Farah-Tamami/publication/352799806_Analisis_Nike_Sweatshop_Eksplorasi_Buruh_oleh_Nike_Inc_di_Indonesia_dalam_Kacamata_Neomarxisme/links/60dc3116299bf1ea9ecf1571/Analisis-Nike-Sweatshop-Eksplorasi-Buruh-oleh-Nike-Inc-.

⁸ Reza Yusuf Ali Nugraha, Nike Inc.'s Exploitation of Workers in Indonesia. UMY Journal, 2018.

⁹ Felix Nathaniel, Work Exploitation at the Aice Ice Cream Factory, Sponsor of the 2018 Asian Games, Tirto.id, https://tirto.id/eksploitasi-working-at-aice-ice-cream-factory-sponsor-asian-games-2018-cA7h#google_vignette.

Thus, the general meaning of exploitation can be viewed differently. This perspective influences the treatment applied to violators or perpetrators. Therefore, in this opportunity, the author would like to analyze the following points as research questions:

1. What is meant by exploitation in the context of employment in Indonesia?
2. What are the things that can exempt the prohibition on exploitation and what are the limits of the exceptions to the prohibition on exploitation that can cause the violator/perpetrator to be freed from the obligation to be responsible?
3. What legal consequences can be imposed on perpetrators of worker exploitation?

The study of combating exploitation is a juridical study that cannot be limited to normative analysis. If we only assess labor exploitation from the perspective of the regulations that govern it, it will be very difficult for the author to define the balance between the "right to work" and the "right to decent working conditions." This writing requires an interdisciplinary perspective. An interdisciplinary approach utilizes two or more disciplines to analyze a particular social condition or problem. The goal of this approach is to reach a common conclusion derived from the analysis of these various disciplines.¹⁰ This paper will be a normative study by taking into account the socio-economic approach related to poverty and the need to fulfill the right to work of workers; as well as an anthropological approach related to the importance of paying attention to the Indonesian people's perceptions of decent working conditions, the lack of job opportunities that cause the weak competitiveness of Indonesian human resources in accessing decent working conditions, and the level of permissiveness of the Indonesian people (both from workers, employers and law enforcement) towards the lack of awareness to enforce decent working conditions. Therefore, this paper will apply the socio-legal study method. This method assumes that legal problems that exist in society do not have to be resolved by applying a legal science approach alone, but can also be analyzed using other social science approaches.¹¹ In this case, a socio-economic approach is used. From the results of the application of this socio-legal study method, it is hoped that conclusions can be drawn about what is actually meant by decent working conditions (without exploitation), what situations can exclude the obligation to fulfill these decent working conditions, and the legal consequences that must be imposed if there is a violation of these decent working conditions.

Discussion

The Right to Work and the Right to Decent Work are Linked to the Exploitation of Workers and Violations of the Right to Decent Work

Every Indonesian citizen has the right to decent work, as guaranteed in Article 27 paragraph 2 of the 1945 Constitution. Law Number 13 of 2003 concerning Manpower, as explained in Articles 5 and 6, ensures that everyone has equal employment opportunities and is not discriminated against. In addition, the government is responsible for providing adequate employment (Article 11) and protecting workers' rights regarding the type of work, working hours, wages, leave, and decent working conditions (Articles 69-102). Furthermore, Law Number 6 of 2023 updates this law by further regulating layoffs and PKWT, including Articles 77, 78, 151, and 185a. The right to work and obtain decent work is affirmed in various international declarations and conventions. The Universal Declaration of Human Rights (UDHR) states that everyone has the right to work, free choice of employment, just conditions of work, adequate remuneration, and protection against unemployment, as stipulated in Article 23 paragraphs 1-3. In addition, everyone has the right to rest and paid holidays (Article 24). The International Convention on Economic, Social and Cultural Rights (ICESCR) further strengthens these principles by emphasizing the obligation of states to ensure equal access to employment and to provide protection in the form of safe working conditions, fair wages, adequate rest periods, and equal opportunities for promotion (Articles 6-8). Existing normative provisions have not been fully utilized to protect workers. Exploitation includes the use or exploitation of people's labor for personal gain.¹² This is not just a simple violation of the law, but also a complex phenomenon involving various aspects of human life.¹³ In reality, exploitation occurs in various forms that deviate from regulations, such as using labor without adequate compensation, forcing workers to work in unsafe conditions, or denying other workers' rights. It is difficult to distinguish exploitation from breach of contract from this perspective. Therefore, distinguishing exploitation from

¹⁰ Sidharta, Philosophy of Legal Research, Digest Epistema 3 (2013): 3-7, <https://epistema.or.id/publikasi/publikasi-periodical/digest-epistema-vol-32013/>.

¹¹ Sulistyowati Irianto, Introducing Sociolegal Studies and Their Methodological Implications, Yayasan Obor Indonesia 2 (2009): 1-17, http://www.bphn.go.id/data/documents/materi_cle_8_yg_ke-2prof_dr_sulistyowati_irianto.pdf.

¹² Big Indonesian Dictionary, Exploitation, <https://kbbi.web.id/eksploitasi>.

¹³ An Nur Islamic University of Lampung, Exploitation: Definition, Types, Impacts, and Prevention, <https://an-nur.ac.id/blog/exploitation-understanding-types-impacts-and-prevention.html>.

breach of contract is crucial. When one party fails to fulfill its obligations agreed upon in an employment contract, it is called breach of contract. Conversely, more fundamental violations of universally recognized workers' rights, such as the right to safe working conditions and fair wages, are called exploitation. Exploitation is usually more systematic, involving an imbalance of power that allows the exploiter to continuously harm workers for personal gain. Beyond breaching the contract, exploitation violates broader moral and legal principles related to human dignity and well-being.

This exploitation is closely related to the right to work and the right to decent work. Decent work is work that is voluntarily chosen, provides sufficient income for a decent living, and ensures physical and psychological safety.¹⁴ To achieve decent work, three main conditions must be met: first, jobs must be available to all people of productive age without exception, including those with physical disabilities and without gender discrimination; second, all workers must be socially protected, including those working in the informal sector; and third, all workers must have the opportunity to express their aspirations through dignified dialogue. These principles are reinforced by the International Labor Organization (ILO), which establishes various indicators of decent work, such as government commitment to job creation, minimum wage laws, maximum working hours, protection against child labor and forced labor, equality of opportunity and treatment, and freedom of association. These indicators emphasize the importance of protecting and fulfilling workers' rights so they can work in decent and dignified conditions.¹⁵

Labor Openness in Indonesia: The Impact of Labor Market Conditions

The Indonesian labor market's labor absorption capacity and the quality of jobs available still face significant challenges. According to data from the Central Statistics Agency (BPS), the labor force reached 149.38 million in February 2024, with 142.2 million employed and 7.2 million unemployed.¹⁶ Although there are 133.82 million job opportunities available in 2022,¹⁷ the gap between the workforce and job opportunities remains significant. From an educational perspective, data shows that higher education does not always guarantee employment. Approximately 28.1 million people with high school, diploma, or university degrees remain unemployed.¹⁸ This gap reflects a serious challenge in workforce absorption. Even those with secondary education or above are already finding work very difficult, let alone those without a tertiary education (those with only elementary or junior high school education).

This situation creates social and economic pressures, intense competition, and limited decent employment opportunities, causing the workforce to become more permissive towards all types of work, even if it is unsuitable or even exploitative. Many workers are forced to accept any job, even one that does not meet decent work standards, in order to be absorbed into the labor market. Anthropologically, this phenomenon demonstrates how the need to survive forces individuals to lower the standards of work they deem acceptable, ultimately reinforcing the cycle of labor exploitation. In a socioeconomic context, this impact leads to a decline in the quality of life and well-being of workers, while simultaneously undermining efforts to improve working conditions in Indonesia. A labor market that cannot provide decent work for all levels of society, especially those with education, tends to create an unfair and detrimental work environment for workers. For example, Indonesian migrant workers working in the domestic sector in Malaysia often report facing exploitation, such as long working hours without adequate compensation and poor treatment. Many Indonesian domestic workers in Malaysia experience torture, detention, and non-payment of adequate compensation. This reflects how economic necessity forces individuals to take high risks in order to find work.¹⁹ Another example is the 60% of Indonesia's workforce in the informal sector, which often lacks legal and social protection. Workers in the informal sector, such as day laborers, street vendors, and farm laborers, often lack health insurance, decent wages, and safe working conditions. The ILO states that workers in the informal sector are highly vulnerable to labor rights violations.²⁰ The examples above demonstrate that labor market conditions in Indonesia not only present challenges for less-educated workers, but also for those with higher education. Exploitation, inadequate

¹⁴ National Workers Union, Decent Work, <https://spn.or.id/pekerjaan-layak-atau-decent-decent-work-guaranteed-physical-safety-and-security-and-psychological>.

work/#:~:text=Definition of

¹⁵ Id.

¹⁶ Central Statistics Agency, Number and Percentage of Working and Unemployed Population, 2024.

¹⁷ Ali Mahmudan, There Are 133.82 Million Job Opportunities in Indonesia in 2022, DataIndonesia.id, <https://dataindonesia.id/tenaga-kerja/detail/ada-13382-juta-kesepatan-kerja-di-indonesia-pada-2022>.

¹⁸ Central Bureau of Statistics, Open Unemployment According to Highest Education Completed, 2024, <https://www.bps.go.id/statistics-table/2/Njc0lzl=/open-unemployment-according-to-highest-education-finished--people-.html>.

¹⁹ Anwar Sitepu, Employers' Mistreatment of Indonesian Female Migrant Workers in Malaysia, *Journal of Research and Welfare Development* 12 No. 3 (2007): 57-69, <https://media.neliti.com/media/publications/52910-ID-employer-mistreatment-of-employees.pdf>.

²⁰ International Labor Organization, Insufficient Paid Work Affects Nearly Half a Billion People, New ILO Report Shows, "Employment and Social Outlook - Trends 2020, 2020, <https://www.ilo.org/safework/countries/africa/algeria/lang--en/index.htm>.

work, and a lack of legal protection worsen workers' quality of life and create a cycle of inequality in the labor market.

Exceptions to the Prohibition on Worker Exploitation: Legal Basis and Criteria

Given the current state of the labor market, exploitation violations are becoming increasingly difficult to avoid due to conflicting interests. Job scarcity, where the number of workers in Indonesia is not directly proportional to the number of available jobs, has the potential to lead to worker exploitation. This is because workers are more afraid of being replaced, especially in the current digital age where AI can replace humans.²¹ However, there are exceptions in certain situations, such as during the General Election (Pemilu) and the COVID-19 pandemic. To organize the election, a Voting Organizing Group (KPPS) will be formed by the Voting Committee (PPS).²² The PPS itself was formed by the General Elections Commission (KPU) to carry out voting at the sub-district or village level.²³ Elections, held simultaneously and nationwide, require significant time to compile the results. The polling station (KPPS), the officers responsible for processing the results, often work until late into the morning. In 2019, there were even 894 deaths.²⁴ KPPS members experienced various problems, such as unspecified working hours, short deadlines, heavy workloads, and inadequate wages. To date, there are no provisions that specifically regulate the rights of KPPS members. Law Number 7 of 2017 in conjunction with Law Number 7 of 2023 concerning the Stipulation of the General Election Regulation in Lieu of Law only applies the duties, authorities, and obligations of KPPS members and does not specify their rights at all.²⁵ Reflecting on the disaster that occurred during the 2019 Election, the General Elections Commission (KPU) is obligated to pay attention to and guarantee the rights of KPPS (polling station) members while working. Another example is the COVID-19 pandemic, which affected healthcare workers (Nakes) and medical personnel (Nadis). The overwhelming number of patients forced these workers to work with heavy workloads and extremely long working hours. This clearly violates the overtime provisions stipulated in Article 78 of the Job Creation Law.²⁶ Furthermore, the Occupational Health and Safety (K3) of healthcare workers must be guaranteed, as many healthcare workers have died due to exposure to high risks. These healthcare workers and health workers receive incentives and death benefits based on the Decree of the Minister of Health Number HK.01.07/MENKES/4239/2021. Ethically, although this exception is permitted by law, it raises questions regarding its compliance with human rights principles. These ethical considerations require that exceptions only be applied in truly urgent circumstances with maximum efforts to protect workers' rights and dignity. Considering all of this, it is important to reiterate that while there is room for exceptions, the fundamental principle prohibiting the exploitation of workers must remain upheld. Exceptions should only be used as a last resort in circumstances of absolute necessity, with strict oversight to ensure workers' rights are protected.

Legal Accountability for Worker Exploitation in Indonesia

Acts of worker exploitation still have their own consequences. The exceptions to exploitation can still be exploited by irresponsible parties to exploit workers arbitrarily, allowing exploitation to continue even when there are no urgent circumstances. Civil and criminal liability are important instruments in enforcing the law against violations of the prohibition on worker exploitation. In this regard, the author divides the situation into three situations:

²¹ Josie Cox, AI Development: Workers Fearing Displacement by Artificial Intelligence, 2023, <https://www.bbc.com/indonesia/articles/c51ley190njo>.

²² Ade Surya Wibawa: What Does KPPS Stand For? Bawaslu Explains in 2023 <https://ppid.bawaslu.go.id/info/kpps-abbreviation-of-what-is-this-explanation-of-bawaslu>.

²³ Id.

²⁴ Melinda Kusuma Ningrum, Ikhwan Reliubun, and Myesba Fatina Rachman, The Dark Story of the Death of 894 KPPS Officers in 2019 Election, What Problems Are They Experiencing Right Now?, 2024, <https://www.tempo.co/politik/kisah-kelam-the-death-of-894-KPPS-officers-in-the-2019-elections-what-problems-are-they-currently-experiencing-90429>.

²⁵ Law Number 7 of 2017, General Election, Articles 60-62.

²⁶ Law Number 13 of 2003 as amended by Law Number 6 of 2023, Determination Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation becomes Law, Article 78 paragraphs 1-3.

- (1) Employers who employ workers/laborers to work beyond the working hours as referred to in Article 77 paragraph (2) must fulfill the following requirements:
 - a. there is the consent of the Worker/Laborer concerned; and
 - b. Overtime work can only be done for a maximum of 4 (four) hours in 1 (one) day and 18 (eighteen) hours in 1 (one) week.
- (2) Employers who employ workers/laborers to work beyond the working hours as referred to in paragraph (1) are required to pay overtime wages.
- (3) The provisions regarding overtime work hours as referred to in paragraph (1) letter b do not apply to certain business sectors or jobs.
- (4) Further provisions regarding overtime working hours and overtime wages are regulated in Government Regulations.

1. If there is an employment agreement and it contains a clause containing exploitative elements

An employment agreement in this situation constitutes an unlawful employment agreement. This is because, according to Article 1320 of the Civil Code, an agreement is valid if it meets four requirements: there is a binding agreement between the parties; the parties are competent to make an agreement; there is a specific thing agreed upon; and there is a lawful cause. This also applies to employment agreements, so if there is an exploitative clause in the employment agreement, the employment agreement will violate the objective element, namely the absence of a lawful cause. Referring to Article 1337 of the Civil Code, it is stated that a cause is prohibited if it is prohibited by law, or if it is contrary to good morals or public order. Therefore, an employment agreement in this situation will be null and void, because the agreement does not fulfill the objective element of agreement validity, namely having an unlawful cause.

In a civil context, perpetrators of worker exploitation violations can be sued to provide compensation to the injured workers. This compensation can include compensation for material losses, such as lost wages or benefits that workers should have received, as well as immaterial losses, such as mental suffering due to inadequate working conditions. Given that the agreement does not meet the objective requirements of the agreement, perpetrators who employ workers in an exploitative manner can be held civilly liable for unlawful acts. This is in line with the provisions of Article 1365 of the Civil Code which states that every unlawful act that causes harm to another person requires the perpetrator to pay compensation. Perpetrators of unlawful acts under Article 1356 of the Civil Code can be held accountable if their actions fulfill the elements of an act, are unlawful, cause harm, and there is a causal relationship between the error and the harm.²⁷ The forms of compensation that can be requested are material compensation (for example, unpaid wages, medical expenses due to illness, etc.) and immaterial compensation (for example, losses due to trauma experienced by workers during exploitation). Article 1372 paragraph (2) of the Civil Code emphasizes that the judge is responsible for determining the severity of the error, the position of the parties, and the circumstances used to assess the amount and type of compensation due to unlawful acts.

2. If there is an employment agreement and there are no exploitative clauses

Not only liability based on unlawful acts can be applied, sometimes civil liability based on breach of contract can be carried out in cases of exploitation. It is possible that worker exploitation occurs under an agreement or contract. According to Article 1313 of the Civil Code, an agreement is an act in which one or more parties bind themselves to one or more other parties. Then, in Article 1234 of the Civil Code, an obligation is intended to provide something, to do something, or to not do something. According to Prof. R. Subekti, breach of contract can be a situation where the party with the obligation to perform the performance, does not do what was promised, does what was promised, does what was promised but late, or does something that according to the agreement is not allowed.²⁸ The perpetrator may be negligent in fulfilling his/her obligations, namely protecting workers' rights (even in circumstances where worker exploitation is excluded). It can be said that the perpetrator has been negligent and can be held civilly liable for breach of contract. Compensation in breach of contract does not include immaterial damages, because Article 1246 of the Civil Code only mentions the basis for compensation, namely related to costs, losses, and interest. This means that the amount of compensation to be awarded will be assessed based on the monetary compensation that must be provided.

3. If there is no work agreement

In the event that the parties do not have a clear employment agreement, it must be concluded that they are bound by an oral employment agreement. The form of an oral employment agreement is recognized in Article 51 paragraph (1) of the Manpower Law. It is emphasized that an employment agreement can be in oral and written form. However, an oral employment agreement can give rise to legal uncertainty, because it will be difficult for the parties to clearly understand the contents of their respective rights and obligations arising from the employment agreement. Therefore, the implementation of this employment agreement will depend heavily on employment regulations formulated in the form of mandatory rules. On the other hand, criminal liability is related to violations of public law and is regulated in the Manpower Law and other relevant regulations. Article 185 of Law Number 13 of 2003 concerning Manpower, as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, stipulates that any violation of the provisions of this law, including the prohibition on worker exploitation, may be subject to criminal sanctions. Criminal sanctions can include

²⁷ Kiki Nitalia, Mis-Selling in the Context of Banking Law (Review and Analysis of the Responsibility of the Perpetrators) Business).

Banking

²⁸ Ade Sanjaya, Understanding Default Performance Definition in Civil Law According to Experts and Its Types, 2017.

Refika Aditama,

imprisonment or fines, depending on the severity of the violation and its impact on workers. In addition, criminal liability can also include additional sanctions in the form of administrative sanctions, such as revocation of business permits or prohibitions on carrying out said activities. Both legal responsibilities have their own strengths and weaknesses. Criminal liability has a greater deterrent effect and sends a clear social message that exploitative practices of workers will not be tolerated.²⁹ However, the criminal law process is more time-consuming, complicated, and often focuses on punishing the perpetrator or correcting the perpetrator's mistakes, rather than rehabilitating the victim.³⁰ Meanwhile, civil liability provides direct restitution to victims so that victims can receive direct compensation in the form of compensation for the suffering and losses they have experienced.³¹ The process of civil liability is also more flexible so that it can be resolved through mediation or arbitration.³² However, civil liability does not provide a strong enough deterrent effect compared to criminal liability.³³ In employment law, civil liability cannot always be resolved through arbitration. For example, claims for compensation for termination of employment arising from termination disputes, according to Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes, cannot be resolved through arbitration.

It is important to emphasize that workers who are victims of exploitation should receive proper compensation in the form of material and immaterial compensation, not just punishment for the perpetrators of worker exploitation.³⁴ Legal liability, both criminal and civil, should be enforced in parallel. Rather than simply choosing one over the other to be applied to perpetrators of worker exploitation, they should be enforced simultaneously, while simultaneously protecting the rights of workers who are victims of exploitation.³⁵ By doing this, there will be impacts such as increased legal awareness of employers/employers to pay more attention to granting workers' rights to prevent exploitation of workers, while still maintaining the continuity of their business. In addition, with the implementation of legal compliance by employers, it can have an impact on workers such as increased legal certainty and protection for them. This will have an impact on worker loyalty, so that they provide the best performance and productivity for employers/employers. Of course, to achieve this, cooperation is needed between the parties, both workers and employers/employers, to be aware of each other's rights and obligations, and in good faith to strive and give the best to each other.

The Role of the State in Addressing Worker Exploitation

The state's role is crucial in addressing violations of the prohibition on worker exploitation. The state has a responsibility not only to establish regulations prohibiting exploitation but also to ensure their implementation through effective monitoring and law enforcement. This role is realized through mechanisms including labor inspection, enforcement of legal sanctions, and providing workers with access to justice. Labor inspection is carried out by government agencies such as the Department of Manpower, which is tasked with monitoring the implementation of labor regulations in the workplace. Through the labor inspectorate, the government can identify exploitative practices and take preventive action. Labor inspectors are authorized to conduct surprise inspections, inspect working conditions, and impose administrative sanctions on companies that violate labor regulations. One concrete example of the Indonesian government's efforts is the establishment of the Indonesian Migrant Worker Handling Task Force, commonly known as the Indonesian Migrant Worker Protection Agency (BP2MI). This task force aims to protect migrant workers from exploitation and rights violations.³⁶ The task force carries out various activities including:

1. Conducting outreach and education to prospective workers about their rights and the risks they may face;
2. Monitoring employment agencies to ensure they comply with applicable regulations; and
3. Provide channels for workers to report violations they experience.

While these measures demonstrate the government's commitment to protecting workers, their effectiveness

²⁹ Roy Sanjaya, Construction of the Theory of Deterrent Effect as a Parameter for Judges in Handing Down Criminal Verdicts, *Economic of Lawin the Indonesian Legal System*, 2022.

³⁰ Id.

³¹ Fajar Tri Yudha, Mechanism for Claims for Compensation and Restitution for Victims of Criminal Acts Committed by Corporation, Muhammadiyah University of North Sumatra, 2023.

³² Bernadetha Aurelia Oktavira, 3 Differences Between Mediation and Arbitration, Online Law, 2023, <https://www.hukumonline.com/klinik/a/3-perbedaan-mediasi-dan-arbitrase-1t5bc7526e7755c/>.

³³ Mutiara Seroja, Comparison of Civil Law with Criminal Law, University of Riau

³⁴ Fauzy Marasabessy, Restitution for Victims of Criminal Acts: A Proposal for a New Mechanism, *Journal of Law & Development* 45 No. 1 (2015): 53-75.

³⁵ Yos Pagawak, The Role of Victims in the Criminal Justice System in Indonesia, *Lex Privatum* 5, no. 10 (2017): 1, <https://ejournal.unsrat.ac.id/v2/index.php/lexprivatum/article/download/18746/18288>.

³⁶ Ombudsman of the Republic of Indonesia, Profile of Duties and Functions, Migrant Worker Protection Agency in Indonesia (BP2MI), 2021.

remains questionable. Some potential challenges include limited resources for comprehensive inspections, resulting in many violations going undetected; the continued lack of awareness among workers of their rights and thus reluctance to report violations (low legal awareness); and persistent reports of corruption among officials who are supposed to protect workers, which ultimately hinders effective law enforcement. In terms of law enforcement, the state must ensure that violations of the prohibition on worker exploitation do not go unpunished. A swift and fair legal process must be guaranteed for every case of exploitation discovered. The state also has a role in raising public awareness of the dangers and legal consequences of worker exploitation, as well as developing policies that support the prevention of exploitation in the workplace. Overall, the state, as a third party in the labor market, has a broad and profound responsibility to balance, prevent, address, and sanction any potential exploitation of workers due to their unequal position relative to the perpetrators of exploitation. This responsibility not only covers legal and supervisory aspects, but also includes educational efforts and worker empowerment through improving labor market mechanisms, inviting foreign investment, accommodating small businesses and through other practical means to create wider employment opportunities with a fair and decent working environment.

Closing

In an effort to address worker exploitation, the state's role has been realized through various oversight and protection mechanisms. These oversight and protection mechanisms are mandated by the Ministry of Manpower of the Republic of Indonesia (Kemnaker) at the national level and the Department of Manpower (Disnaker) at the regional level. However, regional governments also play a role in eradicating worker exploitation. This is because significant efforts and coordination between institutions are required to eradicate labor exploitation in Indonesia. Therefore, to create a decent work environment, a Task Force is needed in each region that specifically carries out preventive and repressive efforts against cases of labor exploitation. Article 58 of Law Number 21 of 2007 concerning the Crime of Human Trafficking states that regional governments are required to establish a Task Force to eradicate human trafficking. The formation of such a Task Force must also be applied to cases of labor exploitation, as a broader scope. For example, for migrant workers, particularly fishing vessel crews, the Indonesian Migrant Workers Protection Agency (BP2MI) has been established to oversee and protect Indonesian Migrant Workers (PMI). Furthermore, BP2MI also oversees labor placement companies acting as liaisons and/or employers. Given the primary duties and functions of BP2MI, which focus on protecting PMI, a similar institution is needed to address the exploitation of non-migrant workers. This institution can collaborate with law enforcement and stakeholders in every sector to conduct comprehensive oversight and protection. Not only through collaboration, but also through the role of regional governments in allocating state and regional budgets (APBN and APBD) to optimize the eradication of worker exploitation in each region. Given that labor exploitation is a deep-rooted problem in Indonesia, an institution is needed as a coordinating body focused on resolving this exploitation.

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