

## STATE RESPONSIBILITY IN LEGAL PROTECTION OF LABOR THROUGH CORPORATE APPROACH

**Ujang Charda**

ujangch@unsub.ac.id

Faculty of Law – Subang University

### ABSTRACT

The purpose of this research is to find out the basic concept of labor protection in the Indonesian legal state and to analyze the application of the legal protection model for workers through a corporatist approach. The research method used is analytical descriptive with a normative juridical approach through the library and field research stages with data collection techniques through literature study. Then the data were analyzed through qualitative normative methods without using numbers and mathematical formulas. Based on the results of the study, it is shown that the type of Indonesian labor law in legal protection of workers is a corporate model of labor law through legislation in the form of legislation as an instrument of government policy.

**Keywords: Legal Protection; State Responsibility; Labor**

### INTRODUCTION

Manpower development has many dimensions that are not only related to the interests of the workforce who will, are currently working, and after working period,<sup>1</sup> but how to ensure that all people get decent jobs and livelihoods for humanity without discrimination in the implementation of work relations.<sup>2</sup> The right to work and the rights to work are not only socio-economic rights, but are also fundamental human rights. This has implications for the state's responsibility to facilitate and protect its citizens so that they can earn income with a decent standard of living, so that they are able to meet their needs fairly on the basis of human dignity.<sup>3</sup> Therefore, in providing legal protection for workers, careful planning is needed to realize the state's responsibilities.<sup>4</sup>

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<sup>1</sup>Article 1 point 1 of Law Number 13 of 2003 concerning Manpower.

<sup>2</sup>See Article 27 paragraph (2), Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia which was adopted into Article 5 and Article 6 of Law Number 13 of 2003.

<sup>3</sup>Purnadi Purbacaraka and Soerjono Soekanto. *Regarding Legal Rules*. Bandung: Citra Aditya Bakti, 1993, p.5.

<sup>4</sup>Adrian Sutedi. *Labor Law*. Jakarta: Sinar Graphics, 2009, p. 1.

The welfare law state model formulated in the 1945 Constitution contains instructions to the state to organize social welfare with law as a means of achieving prosperity.<sup>5</sup>the general public as the supreme law (*solus publica supreme lex*)<sup>6</sup>which universally can touch happiness for humans to be sufficient for what they are for themselves (to be happy means to be sufficient for one's self).<sup>7</sup>In order to realize the goal of the welfare law state, there will be consequences related to the arrangement of various things for the sake of the creation of the common good. According to Thomas Aquinas, this arrangement is everyone's duty, but this task can turn into the responsibility of a group of people, namely the government.<sup>8</sup>Therefore, the state must be led by people who have concern for everyone<sup>9</sup>or in other words the government must prioritize the interests of all the people, so that the state participates actively in social relations.

For this reason, the state must be strengthened not weakened in the implementation of social welfare as mandated by the constitution by relying on the word "all nations" as the principle of the unity of the entire Indonesian nation, in addition to the word "protect" which implies the principle of protection (law) for all Indonesian people and all Indonesian bloodshed, without exception.<sup>10</sup>The legitimacy of implementing social welfare in Indonesia cannot be separated from the intervention of the state and the responsibility of the state in efforts to realize legal protection<sup>11</sup>against its citizens as a consequence of Indonesia's claim as a rule of law state.

In this period the state began to pay attention to labor protection in organizing the prosperity of its citizens for the benefit of all people and the state.<sup>12</sup>so that the functions of the state and government are wider,<sup>13</sup>in the political, economic, social and cultural

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<sup>5</sup>Padmo Wahjono. *Indonesia is a State Based on Law*. Jakarta: Ghalia Indonesia, 1986, p. 160.

<sup>6</sup>Ujang Charda S., "Higher Legal Education Produces Law Scholars Homo Juridicus and Homo Ethicus." *Journal of Legal Insights* XXIV. 1 (2011). pp. 75.

<sup>7</sup>Ibid.

<sup>8</sup>Thomas Aquinas. *André Ata Ujan. Philosophy of law*. Yogyakarta: Kanisius, 2009, p. 52-53.

<sup>9</sup>Ibid.

<sup>10</sup>Az. Nasution. *Consumer Protection Law (An Introduction)*. Jakarta: Diadit Media, 2002, p. 31.

<sup>11</sup>Arief Amarullah. *The Politics of Criminal Law in the Protection of Economic Crime Victims in the Banking Sector*. Malang: Banyumedia, 2007, p. 2.

<sup>12</sup>Ibid.

<sup>13</sup>Moh. Kusnardi and Bintan R. Saragih. *State Science*. Jakarta: Primary Media Style, 2005, p. 224-233.

fields.<sup>14</sup> This, of course, also widens the role of State Administrative Law to create a welfare state, so that it eventually becomes a social law state (social service state), because the state is burdened with public service duties.<sup>15</sup> State interference in the legal protection of workers as citizens for the right to work in a welfare law state, this is called the corporatist approach model, meaning that the state is destined to organize social welfare and at the same time position it as a regulator of policy direction in the national economy.

The corporatist type is constitutionally stated in Article 27 paragraph (2) of the 1945 Constitution, emphasized by Article 28A and Article 28D paragraph (2) of the 1945 Constitution which is a constitutional concept in the manpower development planning program on the recognition and protection of labor rights to work and a decent living. for humanity. This type of corporatism in the field of labor law is carried out through the practice of legislative policy in the form of the formation of statutory regulations as a government effort to foster national law.

In contrast to the contractualist type of labor law, employment relations are based more on the bargaining power of the workforce towards employers, the government is not an active party making labor regulations, but only acts to facilitate labor organization by guaranteeing the right to organize. This contractualist type is a capitalist concept that wants the state not to interfere too much in the issues of workers and employers, but to be left to the market mechanism with a flexible worker system.

In Indonesia, empirically the protection of the weak has been set forth in the 1945 Constitution in the form of social justice based on kinship. Furthermore, the state's attitude towards the relationship between workers/laborers and employers and the responsibilities that must be carried out can be observed from the attitudes of the founding fathers and mothers as reflected in the meeting of the Preparatory Committee for Indonesian Independence (PPKI) on 19 August 1945 where efforts were made to form a Ministry Welfare which oversees labor, care for the poor, orphans, and zakat fitrah. In the end, the Ministry was decided to be the Ministry of Social Affairs in charge

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<sup>14</sup>Abdul Mukthie Fadjar. Country of Law Type. Malang: Banyumedia, 2005, p. 28.

<sup>15</sup>Ni'matul Huda. State of Law, Democracy & Judicial Review. Yogyakarta: UII Press, p. 8.

of labor affairs, the poor which is now the Ministry of Social Affairs and the Ministry of Manpower.<sup>16</sup>

On the basis of previous research that differs from this research, that labor law is no longer private law but public law, because all matters relating to employment, the state has regulated it through statutory regulations and does not leave it to workers and employers on the basis of their agreement, this is what interpreted as a model of corporatist labor law. Therefore, the purpose of this study is to find out the basic concept of labor protection in the Indonesian legal state and to analyze the application of the legal protection model to workers through a corporatist approach..

## **RESEARCH METHODS**

The specification of this research is descriptive analytical research which is research to describe the flow of scientific communication and analyze existing problems which will be presented descriptively. This study uses a normative juridical approach,<sup>17</sup> namely by inventorying, studying and analyzing and understanding law as a set of rules or positive norms in the statutory system that regulates human life. The type of data used is secondary data, including library materials related to research, secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials.<sup>18</sup> Then data collection was carried out through literature study through a review of library materials related to the problems studied, then the data were analyzed normatively-qualitatively.<sup>19</sup>

## **RESULTS AND DISCUSSION**

### **A. The Basic Concept of Labor Protection in the Indonesian Law State.**

The existence of Indonesia's rule of law state has a historical meaning that is explicitly or implicitly normativized in Article 1 paragraph (3) of the 1945 Constitution as a Pancasila legal state, namely the concept of a rule of law state that must meet the criteria of a rule of law concept in general which is supported by 3 (three) pillars, such as the recognition and protection of human rights, an independent and impartial

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<sup>16</sup> Ujang Charda S. "Responsibility of the Indonesian State in the Legal Protection of Child Labor." *Journal of Legal Insights*, No. 1 (2014). pp. 5. DOI: <http://dx.doi.org/10.25072/jwy.v30i1.73>.

<sup>17</sup> Soerjono Soekanto. *Introduction to Legal Research*. Jakarta: UI, 1986, p. 9-10.

<sup>18</sup> *Ibid.*

<sup>19</sup> Ronny Hanitijo Soemitro. *Legal Research Methodology*. Jakarta: Ghalia Indonesia, 1985, p. 97.

judiciary, and the principle of legality in the formal and material sense colored by Indonesian aspirations, namely the 5 (five) fundamental values of Pancasila.<sup>20</sup> The 1945 Constitution requires that the Indonesian state is a constitutional state whose structure is imbued with and refers to the principle of legal certainty, the principle of legality, the principle of equality which implies the principle of democracy, and the principle of government (the bearer of public power) functions to serve the people, as well as the principle of independent judicial authority. It also includes the principle of impartial and objective justice.<sup>21</sup>

According to Rukmana Amanwinata, Indonesia is said to be a legal state which has independent characteristics and has characteristics that are different from other countries.<sup>22</sup> adhere to the philosophy of Pancasila.<sup>23</sup> Therefore, all government and people's activities in the life of the nation and state must comply with or not conflict with applicable law. Law is the main foundation in carrying out all activities in the life of the nation and state towards the ideals of an equitable and prosperous society.<sup>24</sup>

On the other hand, the formation of an ethically rational Indonesian state is an actualization of human nature which tends to want to live peacefully under state rule and certain laws rather than live freely but anarchically and full of threats. For this reason, the Indonesian state was formed to achieve common goals, as in the perspective of social contract theory, the state is a product of a social contract, a collective agreement to maintain and create mutual safety within the auspices of state power.<sup>25</sup>

Thus, Indonesia's claim to be a constitutional state when examined and traced from the substance of the Preamble as well as the articles of the 1945 Constitution, was created not only because of history and social contracts, but also on the basis of human function as the caliph of Allah SWT in this motherland who carries out His mandate to prosperity and welfare of its citizens as stated by the founding fathers who had made a

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<sup>20</sup>Ni'matul Huda. op. cit., p. 47.

<sup>21</sup>Ibid., p. 47-48.

<sup>22</sup>Wiratni Ahmadi. Legal Protection for Taxpayers in Tax Dispute Resolution. Bandung: Refika Aditama, 2006, p. 3.

<sup>23</sup>Ibid.

<sup>24</sup>Ibid.

<sup>25</sup>Ahmad Sukardja. Constitutional Law & State Administrative Law in the Perspective of Fiqh Siyasa. Jakarta: Sinar Graphic, 2012, p. vi.

solid foundation for building a welfare state, namely Soekarno and Hatta. It was Hatta who provided a form of democracy not only with the pattern of political democracy but also economic democracy as outlined in the 1945 Constitution.<sup>26</sup>

First, Soekarno called socio-democracy, a political democracy and economic democracy. Such a thing is not uncommon for democracy developed in the Western world and Europe which only has a political democracy pattern.<sup>27</sup>Second, Hatta gave the form of the Indonesian state as a "management state" which is based on mutual cooperation, joint efforts, with a family pattern which is nothing but a welfare state.<sup>28</sup>Moch's clarity of thought. This Hatta inspired the birth of Article 33 of the 1945 Constitution which constitutionally regulates the basis of the Indonesian state economy, the essence of which is an economy based on kinship and economic democracy which historically has been put forward by Moch. Hatta, who gave the concept of Article 33 of the 1945 Constitution with the term economic democracy by prioritizing people's prosperity and not the prosperity of individuals, so that the Indonesian economy is structured as a joint venture based on the principle of kinship.<sup>29</sup>

This regulation in the economic sector related to Article 33 of the 1945 Constitution, in the reform era occurred fundamentally with the emergence of 2 (two) views that were diametrically opposed, namely:

- a. Changes to the formulation of Article 33 are replaced with new ones

The first group rejects the "principle of kinship" which is deemed irrelevant to be replaced with another principle, for example "a fair market" or at least a social market system (social market economy).

- b. There are changes to preserve the main principle

The second group, which wants to preserve the formulation of Article 33, even though they agree to the addition of verses which are the development of new thoughts. Finally there was a change which resulted in the formulation of the title of Chapter XIV becoming "National Economy and Social Welfare" which before the change was titled

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<sup>26</sup>Sri Hastuti Puspitasari. Anthology of Legal Thought in Indonesia. Yogyakarta: FH-UJI, 2009,p. 319.

<sup>27</sup>Ibid., p. 319-320.

<sup>28</sup>Ibid.

<sup>29</sup>Ibid.

"Social Welfare" by adding Article 33 which was originally 3 paragraphs to 5 paragraphs.<sup>30</sup>

Here it is emphasized that the Indonesian state remains committed to the form of a Welfare State as evidenced by the amendment to Article 33 by adding 2 paragraphs. In addition to these 2 paragraphs, the welfare system, especially in the economic sector, accepts the positive side of the liberal and socialist system, but still rejects the view of market fundamentalism.<sup>31</sup> Furthermore, the notion of the Indonesian welfare state was emphasized in additional socio-economic articles, namely in Article 34 paragraph (2) and paragraph (3) of the 1945 Constitution. Meanwhile, Article 33 paragraph (3) of the 1945 Constitution is an affirmation of the welfare state by using the term which is used by Giddens as a "social investment state" (social investment state). The results of the amendment to Article 33 of the 1945 Constitution actually did not eliminate Moch's thoughts. Hatta and Soekarno, however, instead provided an expansion of thought towards global economic developments that demanded flexibility.<sup>32</sup>

In addition to Article 33 of the 1945 Constitution, Moch. Hatta also mentioned Article 27 paragraph (2) of the 1945 Constitution as a regulation for implementing the Indonesian economy, if Article 33 concerns the economic system, then Article 27 paragraph (2) of the 1945 Constitution regarding social rights of citizens, namely the right to work and a decent living for humanity .<sup>33</sup>Provisions that are still related to employment in the 1945 Constitution are Article 28D paragraph (2) and Article 28I paragraph (2). Article 27 paragraph (2) is a declaration, that to get a decent job and livelihood for humanity, while Article 28D paragraph (2) and Article 28I paragraph (2) of the 1945 Constitution is the right to work without discrimination is a human right of every person, so This article is appropriately categorized in the regulations governing human rights.

The concept of a rule of law adopted by Indonesia is more emphasized on aspects of the social security system as outlined in the form of legislation and social policies. It

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<sup>30</sup>*Ibid.*

<sup>31</sup>*Ibid.*

<sup>32</sup>*Ibid.*, p. 322.

<sup>33</sup>Sri Bintang Ultimate. *Main Thoughts on Economic Democracy and Development*. Jakarta: Sovereign People's Foundation, 1996, p. 1.

cannot be denied that the concept of a welfare state is not synonymous with social policy, but a state that is said to carry the concept of a welfare state will not be meaningful if there is no social security system in its legislation and social policies. Despite emphasizing the importance of the state's role in social services, the welfare state is essentially not state domination, but is a form of state democratic principles that are mandated to carry out their obligations to fulfill citizens' rights.<sup>34</sup> According to Darmawan Triwibowo, who quoted Esping-Andersen's opinion, put it as follows:

"The welfare state is not a concept with a standard approach, the welfare state is more often identified from the service policy attributes and social transfers provided by the state (cq government) to its citizens, such as education services, income transfers, poverty reduction, so that both (the welfare state and social policy) are often identified. This is not correct, because social policy has no implication relationship with the welfare state. Social policies can be implemented without the existence of a welfare state, but instead a welfare state always needs social policies to support its existence.<sup>35</sup>

This thought is a rejection of Adam Smith's theory of the parable of homo economicus which gave birth to a system of liberalism in the form of laissez faire, laissez aller, laissez passer.<sup>36</sup> what the thinkers of the founding fathers saw as inconsistent with the minds of the Indonesian people. Therefore, the concept of the Indonesian welfare state was described by Javanese poets as "a long hapunjung sand wukir loh jinawi country, gemah ripah kertoraharjo"<sup>37</sup> which implies, that a country's territory extends from the coast to the top of the mountain with fertile soil and cheap clothing and cheap food, a safe and peaceful condition with a harmonious atmosphere, and no crime, and the government always meets the needs of the people.<sup>38</sup>

Indonesia as a welfare law state has the authority to determine the direction of various fields of national life in its participation in determining the direction of policies in the fields of national life, especially in the economic field is to measure and direct economic activity so that it is in accordance with the principles of the nation's

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<sup>34</sup> Eddie Suharto. *Social Policy as Public Policy*. Bandung: Alfabeta, 2008, p. 58.

<sup>35</sup> Darmawan Triwibowo. *The Dream of the Welfare State*. Jakarta: Jakarta, 2006, p. 8.

<sup>36</sup> Sri Edi Swasono. *People's Sovereignty versus Market Sovereignty*. Yogyakarta: Pustep UGM, 2005, p. 7.

<sup>37</sup> Wirjono Prodjodikoro. *Principles of State and Political Science*. Bandung: Eresco, 1981, p. 14.

<sup>38</sup> Sri Hastuti Puspitasari (ed.). *op. cit.*, p. 320-321.



economy<sup>39</sup>as mandated in the 1945 Constitution. Thus, the welfare state is an ideal model of development focused on increasing welfare through the provision of important roles and responsibilities to the state in providing universal and comprehensive social services for its citizens, as stated by Spicker, that the welfare state "... stands for a developed ideal in which welfare is provided comprehensively by the state to the best possible standards".<sup>40</sup>

The welfare state refers to the responsive role and intervention of the government in managing and organizing the economy, so that it is able to carry out its responsibilities to ensure the availability of basic welfare services at a certain level for its citizens. This concept is seen as a form of state involvement in determining people's welfare through the implementation of social policies as the main foundation of the welfare state.<sup>41</sup>The development of thinking about the function of Indonesia's welfare state, especially the role of the state in realizing a welfare state, has abandoned the concept of a night guard state.<sup>42</sup>The form of state intervention in seeking the welfare of its people, among others, is by establishing basic norms for work relations issues that are categorized as public relations/events.

The basic norms provide the basis for the basic rules which constitute the order of a country in the form of a constitution or a written constitution, then these basic rules in turn form the basis of statutory law (*gesetzesrecht*) that apply in the country.<sup>43</sup>Therefore, the 1945 Constitution as a constitutional basis is the political direction of national labor law contained in the Fourth Paragraph of the Preamble of the 1945 Constitution, namely: "... protect the entire Indonesian people and all of Indonesia's bloodshed, promote public welfare ...." which correlates with Article 1 paragraph (3) of the 1945 Constitution, that: "The State of Indonesia is a state of law".

Article 1 paragraph (3) of the 1945 Constitution can be correlated with articles that regulate employment, such as Article 27 paragraph (2) which reads: "Every citizen has

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<sup>39</sup>Wiratni Ahmadi. *op. cit.*, p. 2.

<sup>40</sup>Spicker in Edi Suharto. *Social Policy.... op. cit.*, p. 57.

<sup>41</sup>*Ibid.*

<sup>42</sup>Agusmidah. *Indonesian Labor Law: Dynamics & Theory Study*. Bogor: Ghalia Indonesia, 2010, p. 9.

<sup>43</sup>Ni'matul Huda. *State of Law, Democracy & Judicial Review*. Yogyakarta: UII Press, 2005, p. 52.

the right to work and a decent living for humanity", Article 28D paragraph (2) reads: "Every person has the right to work and receive just and proper compensation and treatment in a work relationship." Then it is confirmed by Article 28I paragraph (2) of the 1945 Constitution which states, as follows:

"Everyone has the right to be free from discriminatory treatment on any basis and has the right to protection against discriminatory treatment."

According to Ismail Sunny, the provisions of Article 27 paragraph (2) of the 1945 Constitution above constitute a constitutional paper or a semantic constitutional by recognizing the right of its citizens to get a job,<sup>44</sup> then in fact Indonesia has determined and decided to eliminate unemployment, so that the country has the courage to include this article in its constitution.<sup>45</sup> Therefore, Article 27 paragraph (2) of the 1945 Constitution must be interpreted as follows:

"... that the government is obliged to eradicate unemployment and must make efforts so that every citizen can get a job with a decent living, not just as long as they work even with oppression or exploitation, but must be worthy of a living".<sup>46</sup>

Fundamentally, Indonesian labor law must not only be based on Article 27 paragraph (2), Article 28D paragraph (2), Article 28I paragraph (2) of the 1945 Constitution, but also be based on Article 33 paragraph (1) of the 1945 Constitution which regulates the basis of the economy the Indonesian state which historically has been put forward by Moch. Hatta who gave the conceptual article 33 with the term economic democracy by prioritizing people's prosperity and not the prosperity of individuals, so that the Indonesian economy is structured as a joint venture based on the principle of kinship.<sup>47</sup> In addition to Article 33 of the 1945 Constitution, Moch. Hatta also mentioned Article 27 paragraph (2) of the 1945 Constitution as a regulation for implementing the Indonesian economy, if Article 33 of the 1945 Constitution concerns the economic system, then Article 27 paragraph (2) of the 1945 Constitution regarding social rights of citizens, namely the right to work and a decent living for humanity.

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<sup>44</sup>Ishmael Sunny. Human rights. Jakarta: Yarsif Watampone, 2004, p. 8-9.

<sup>45</sup>Ibid.

<sup>46</sup>Wiyono, R. Outline of Discussion and Comments on the 1945 Constitution. Bandung: Alumni, 1976., p. 194-195.

<sup>47</sup>Muh. Hatta in Sri Bintang Pamungkas. loc. cit., p. 1.

The existence of Article 27 paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution, can be seen from 2 (two) views which can be briefly summarized as follows:

- a. Viewed from the point of view of workers
  - 1) Give citizens the right to get a job. The consequence of this right is the government's obligation to provide jobs to every citizen who needs them or to provide benefits (support) to the unemployed.
  - 2) Giving rights to every citizen to get a decent life for humanity. The consequence of this right is the government's obligation to provide a decent living for workers.
  - 3) Giving rights to workers so that their workers are given the same position and appreciation as capital and materials. Labor, capital and materials, the three important factors in production, are on the same level. The consequence of this right is the obligation of the government to provide and maintain the equal position of the three factors of production.
- b. Viewed from the government's point of view

This obligation imposed on the government obliges the government to intervene in employment matters. State regulations are no longer regulatory in nature or some call them arbitrary (regelend character), but coercive (dwingen).<sup>48</sup>

Article 27 paragraph (2) of the 1945 Constitution is a declaration to obtain a decent job and livelihood for humanity without discrimination and is part of everyone's human rights, so that this article can be categorized as a provision that regulates human rights. Meanwhile, Article 23 of the Universal Declaration of Human Rights, which is the Universal Charter, contains human rights, including the right to work. The right to work is included in the Universal Declaration of Human Rights, because it relates to human dignity as stated by Oemar Seno Adji as follows:

“... these rights need to be exercised to uphold human dignity. He must be given the right to work, free choice of work, favorable working conditions for work and protection against unemployment. Everyone has the right to a standard of living

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<sup>48</sup>Agusmidah. Dilemma.... op. cit., p. 209-210.

that is appropriate, adequate with health and welfare and family and security when he is sick, unemployed, old and so on.<sup>49</sup>

On this basis, the politics of Indonesia's national labor law in the protection of workers must be aimed at the happiness of Indonesian workers based on the Pancasila philosophy which is then embodied in a statute to serve as a legal basis for the implementation of this legal policy. Therefore, the consequences must be able to eliminate colonial thought patterns that place people as legal objects, so that they will not be repeated during this independence era.

In order to organize the politics of labor law, the government stipulates a number of manpower development policies in the protection of workers by preparing manpower planning through macro and micro planning.<sup>50</sup>In formulating policies, strategies, and implementing labor protection programs through labor laws, it is carried out on an ongoing basis, and the government must be guided by the manpower planning set by the government. The manpower planning approach can be carried out nationally, regionally and sectorally which is prepared on the basis of manpower information which includes among others: population and workforce, job opportunities, job training including job competence, labor productivity, industrial relations, working environment conditions, wages and labor welfare, and labor social security.<sup>51</sup>Every government policy in protecting workers must be seen in the context of improving the welfare of its citizens, even though this turns out to be not an easy task for any country, it is an obligation that must be realized in order to achieve state goals.<sup>52</sup>Therefore, the right to work (right to work) for every citizen is the responsibility of the government/state which must make every effort.

### **1. A Model of Legal Protection for Labor Through a Corporative Approach**

Basically, labor issues are a social, political, and economic agenda that are quite crucial in modern countries, because actual employment issues are not only the relationship between workers and employers, but more broadly also include issues of

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<sup>49</sup>Oemar Seno Adji in *Ibid.*, p. 211.

<sup>50</sup>Explanation of Article 7 paragraph (2) letter a of Law Number 13 of 2003 concerning Manpower.

<sup>51</sup>General Explanation of Law Number 13 of 2003 concerning Manpower.

<sup>52</sup>Revrisond Baswir and Eddie Sius Riyadi. *Development without feelings: evaluation of the fulfillment of economic, social and cultural rights*. Jakarta: Elsam, 2003, p. 24.

the economic system of a country and at the same time the social system. the politics. Therefore, the economy and politics of a country will greatly determine the style and color of the employment system it applies.<sup>53</sup>Indonesia as a rule of law means that all actions of the state/government are based on law, both in planning and directing national development programs. This is according to Philipus M. Hadjon, that government action as a central point can be linked to legal protection for the people which is divided into 2 (two) types of legal protection, namely preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, whereas repressive legal protection aims to resolve disputes<sup>54</sup>on the attitude of the government and citizens of other countries.

Furthermore, Tamara Lothion differentiates forms of legal protection, especially for workers in the field of employment law, of 2 (two) types, namely contractualist and corporatist. The corporatist type is the type that dominates regulations in the field of labor law,<sup>55</sup>because the model of labor relations that is to be developed is the harmony model, where the parties do not have freedom, but are controlled by the government through repressive legal provisions,<sup>56</sup>gave birth to a model of public employment law. This corporatist type has more nuances in the content of legal positivism which is formally conceptualized, that law is an order from a sovereign ruler (John Austin's version) or law is the will of the state (Hans Kelsen's version).<sup>57</sup>

Meanwhile, in the contractualist model of labor law, employment relations are based more on the bargaining position of workers against employers. The government is not an active party making regulations, but only acts to facilitate worker/labourer organizations by guaranteeing the right to organize, so this characteristic refers to the coalition model which is characterized by harmonious working relations and conflicting working relations which give birth to private labor law.

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<sup>53</sup>Abdul Jalil. *Labor Theology*. Yogyakarta: LKIS, 2008, p. v-vi.

<sup>54</sup> Philipus M. Hadjon. *Legal Protection for the People in Indonesia*. Surabaya: Science Development, 1987, p. 2.

<sup>55</sup>Tamara Lothion in Agusmidah, *Dilemmatics of Labor Law, Review of Legal Politics*. Medan+: PT. Softmedia, 2011., p. 9.

<sup>56</sup>*Ibid.*, p. 10.

<sup>57</sup>Otje Salman. *Legal Philosophy (Problem Development & Dynamics)*. Bandung: Refika Aditama, 2009, p. 12.

The type of labor law adopted by Indonesia, if related to Tamara Lothion's opinion, is more towards the corporatist type which is constitutionally stated in Article 27 of the 1945 Constitution. The provisions of Article 27 paragraph (2) above are emphasized by Article 28A and Article 28D paragraph (2) of the Constitution. 1945 which is a constitutional concept in the manpower development planning program on the recognition and protection of rights<sup>58</sup>labor for work<sup>59</sup>and a decent life for humanity.<sup>60</sup> The provisions of Article 27 paragraph (2), Article 28A, and Article 28D paragraph (2) of the 1945 Constitution above contain 3 (three) important and fundamental matters which constitute the three pillars of the right of every Indonesian citizen to work, namely the right to obtain a job, the right to to obtain a decent living, and the right to be treated humanely. If these three pillars of a person's rights are disrupted or disturbed by other parties, then state instruments must intervene, whether requested or not to protect and or prevent such disturbances from occurring, because the question of a decent life for humanity is a right of every citizen and the right of all citizens. people as a basic right for the people as a whole.<sup>61</sup>Therefore, a job does not only have economic value, but must also have high human worth.<sup>62</sup>

So far, labor issues have been largely determined by the world economic system, thus influencing the direction of labor law policies which gave birth to types of labor law, as stated by Tamara Lothion who distinguished the types of labor law into the contractualist and corporatist types. This type of corporatism in the field of labor law is carried out through the practice of legislative policy in the form of the formation of statutory regulations as a government effort to foster national law.<sup>63</sup>This is increasingly getting a justification basis, when connected with the legal system adopted by Indonesia

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<sup>58</sup>Sri Soemantri. Anthology of Constitutional Law. Bandung: Alumni, 1992, p. 49.

<sup>59</sup>Ujang Charda S., "Government Policy Reform Orientation in Employment Development in Indonesia." *Journal of Public Administration (JIA)* (2008), pp. 99.

<sup>60</sup>Darji Darmodihardjo, et al. *Santiaji Pancasila*. Surabaya: National Business, 1991, p. 39-40.

<sup>61</sup>Az. Nasution. *op. cit.*, p. 32.

<sup>62</sup>Article 23 of the Universal Declaration of Human Rights of 1948.

<sup>63</sup>Legal Protection for Child Labor from the Worst Forms of Labor Based on the Labor Law." *Syiar Hukum Journal* (2010), pp. 9.

since the beginning of independence based on the concordance principle (from Dutch law) which adheres to the Continental European legal system (Civil Law).<sup>64</sup>

The corporatist type is used, because the working relationship model to be developed is the harmony model, namely:

- a. The parties do not have freedom, but are controlled by the government through repressive legal provisions;
- b. Consensus (cooperation) is required by prohibiting conflict (strikes);
- c. Obligated to use peaceful settlements and prohibit the use of coercive means (strikes or out locks).<sup>65</sup>

Meanwhile, in the contractualist type of labor law, the employment relationship is based more on the bargaining power (bargaining position) of the workforce towards employers, the government is not an active party making labor regulations, but only acts to facilitate labor organization by guaranteeing the right to organize.<sup>66</sup> then this feature refers to the type of coalition that has the characteristics of a harmonious working relationship and a conflict working relationship.<sup>67</sup> This contractualist type is a capitalist concept that wants the state not to interfere too much in workers' and employers' issues, but to be left to the market mechanism with a flexible worker system, but returning to the objectives of labor law and the role of the government is still very much needed and eliminating state interference is not the right solution. -Absolutely right.<sup>68</sup> For this reason, between the role of the market and state interference as well as between economic development with a market and normative (constitutional) approach must complement each other, because carrying out economic development in a political vacuum is impossible, because:

- a. The role of the market is very important in order for companies to maximize profits and individuals and communities to maximize welfare, but the role of government is also important in correcting market failures.

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<sup>64</sup> Aloysius Uwiyono, et al. Melania Kiswandari . Jakarta: RajaGrafindo Persada RajaGrafindo Persada, 2014, p. 43.

<sup>65</sup> Agusmidah, *Dilemma... op. cit.*, p. 10.

<sup>66</sup> Ibid.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

- b. The role of the constitution and the rules of the game in making economic policies is very important to ensure good economic policies in order to improve people's welfare in the long term.
- c. Economic policies in pursuit of growth and distribution of results are closely related to ongoing political processes. Economic policy does not operate in a political vacuum, because in practice a normative or constitutional approach can provide clear direction for economic development by complementing each other.<sup>69</sup>

The state as a public legal entity, as a corporation must be able to position itself as a wise regulator through the establishment and implementation of labor law, because labor law will be the main vehicle for carrying out government policies in the field of manpower itself. Labor policy in Indonesia can be seen in the 1945 Constitution as the state constitution and also related laws and regulations. Therefore, the role of the state is very important in regulating the existence of labor law, this is because the parties involved in employment relations are generally in an unequal position.

O. Kahn Freund stated that the emergence of labor law was due to the unequal bargaining position contained in the employment relationship (between workers and employers). For this reason it can also be seen that the main purpose of labor law is to eliminate the imbalance in the relationship between the two that arises in work relations, even the principle of freedom of contract in work agreements is described by H. Sinzheimer as nothing more than a voluntary compliance with conditions that have been set unilaterally by employers.<sup>70</sup>

In line with this, according to G. Ripert the regulation of work issues in a separate social law (in this case labor law) is the result of social reality that in economic life there is a shift in the protection of interests in work contracts/agreements which constitute the public interest which can no longer be ignored on the basis of the principle of individual freedom and individual autonomy in entering into contracts/work agreements.<sup>71</sup> Ripert further stated that the power of labor politics was the main factor

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<sup>69</sup>Ibid., p. 11-12.

<sup>70</sup>O. Kahn Freund and H. Sinzheimer in Ibid., p. 13.

<sup>71</sup>Ibid.



that pushed labor law to become part of public law.<sup>72</sup>This shift in perception cannot be separated from the country's historical experience, as in France which has proven that the political movement of workers/laborers can lead to revolution, as well as in England in the mid-18th century there was an industrial revolution.<sup>73</sup>

Based on the description above, the type of Indonesian labor law in legal protection of workers is a corporatist type of labor law. In this type of corporatist law, protection for workers is regulated through legislation in the form of legislation as an instrument of government policy in an effort to foster national law in utilizing law as a means of manipulating society.<sup>74</sup>Legislation policy in the process of enforcing labor law begins with the process of determining/making labor law in advance by the legislature or it can also be referred to as the legislative/formulative policy stage.<sup>75</sup>Viewed from the entire labor law enforcement process, this legislative/formulative policy stage is the most strategic stage. Therefore, mistakes/weaknesses in legislative policies are strategic mistakes that can hinder law enforcement efforts at the next stage, namely the applicative/judicative policy stage and the execution/administrative policy stage.<sup>76</sup>If this happens, then legal reform, let alone the rule of law will only remain as a mere hope.<sup>77</sup>

## **B. A Model of Legal Protection for Labor Through a Corporative Approach**

Basically, labor issues are a social, political, and economic agenda that are quite crucial in modern countries, because actual employment issues are not only the relationship between workers and employers, but more broadly also include issues of the economic system of a country and at the same time the social system. the politics. Therefore, the economy and politics of a country will greatly determine the style and color of the employment system it applies.<sup>78</sup>Indonesia as a rule of law means that all

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<sup>72</sup>Ibid.

<sup>73</sup>Marshal Sinaga. *Labor Courts in Indonesia (Critical Legal Review of the PPHI Law)*. Yogyakarta: Cemerlang Nusa Celebration (SCN), 2006, p. 11.

<sup>74</sup>Soetandyo Wignjosoebroto. *From Colonial Law to National Law: Socio-political Dynamics in the Development of Law in Indonesia*. Jakarta: RajaGrafindo Persada, 1994, p. 231.

<sup>75</sup>Dwidja Priyatno. *Legislative Policy on the Corporate Criminal Liability System in Indonesia*. Bandung: Utomo, 2004, p. 8.

<sup>76</sup>Ibid.

<sup>77</sup>Ibid.

<sup>78</sup>Abdul Jalil. *Labor Theology*. Yogyakarta: LKIS, 2008, p. v-vi.

actions of the state/government are based on law, both in planning and directing national development programs. This is according to Philipus M. Hadjon, that government action as a central point can be linked to legal protection for the people which is divided into 2 (two) types of legal protection, namely preventive and repressive. Preventive legal protection aims to prevent disputes from occurring, whereas repressive legal protection aims to resolve disputes<sup>79</sup> on the attitude of the government and citizens of other countries.

Furthermore, Tamara Lothion differentiates forms of legal protection, especially for workers in the field of employment law, of 2 (two) types, namely contractualist and corporatist. The corporatist type is the type that dominates regulations in the field of labor law,<sup>80</sup> because the model of labor relations that is to be developed is the harmony model, where the parties do not have freedom, but are controlled by the government through repressive legal provisions,<sup>81</sup> gave birth to a model of public employment law. This corporatist type has more nuances in the content of legal positivism which is formally conceptualized, that law is an order from a sovereign ruler (John Austin's version) or law is the will of the state (Hans Kelsen's version).<sup>82</sup>

Meanwhile, in the contractualist model of labor law, employment relations are based more on the bargaining position of workers against employers. The government is not an active party making regulations, but only acts to facilitate worker/labourer organizations by guaranteeing the right to organize, so this characteristic refers to the coalition model which is characterized by harmonious working relations and conflicting working relations which give birth to private labor law.

The type of labor law adopted by Indonesia, if related to Tamara Lothion's opinion, is more towards the corporatist type which is constitutionally stated in Article 27 of the 1945 Constitution. The provisions of Article 27 paragraph (2) above are emphasized by Article 28A and Article 28D paragraph (2) of the Constitution. 1945

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<sup>79</sup> Philipus M. Hadjon. *Legal Protection for the People in Indonesia*. Surabaya: Science Development, 1987, p. 2.

<sup>80</sup> Tamara Lothion in Agusmidah, *Dilemmatics of Labor Law, Review of Legal Politics*. Medan: PT. Softmedia, 2011., p. 9.

<sup>81</sup> *Ibid.*, p. 10.

<sup>82</sup> Otje Salman. *Legal Philosophy (Problem Development & Dynamics)*. Bandung: Refika Aditama, 2009, p. 12.

which is a constitutional concept in the manpower development planning program on the recognition and protection of rights<sup>83</sup> labor for work<sup>84</sup> and a decent life for humanity.<sup>85</sup> The provisions of Article 27 paragraph (2), Article 28A, and Article 28D paragraph (2) of the 1945 Constitution above contain 3 (three) important and fundamental matters which constitute the three pillars of the right of every Indonesian citizen to work, namely the right to obtain a job, the right to to obtain a decent living, and the right to be treated humanely. If these three pillars of a person's rights are disrupted or disturbed by other parties, then state instruments must intervene, whether requested or not to protect and or prevent such disturbances from occurring, because the question of a decent life for humanity is a right of every citizen and the right of all citizens. people as a basic right for the people as a whole.<sup>86</sup>Therefore, a job does not only have economic value, but must also have high human worth.<sup>87</sup>

So far, labor issues have been largely determined by the world economic system, thus influencing the direction of labor law policies which gave birth to types of labor law, as stated by Tamara Lothion who distinguished the types of labor law into the contractualist and corporatist types. This type of corporatism in the field of labor law is carried out through the practice of legislative policy in the form of the formation of statutory regulations as a government effort to foster national law.<sup>88</sup>This is increasingly getting a justification basis, when connected with the legal system adopted by Indonesia since the beginning of independence based on the concordance principle (from Dutch law) which adheres to the Continental European legal system (Civil Law).<sup>89</sup>

The corporatist type is used, because the working relationship model to be developed is the harmony model, namely:

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<sup>83</sup>Sri Soemantri. Anthology of Constitutional Law. Bandung: Alumni, 1992, p. 49.

<sup>84</sup>Ujang Charda S., "Government Policy Reform Orientation in Employment Development in Indonesia." *Journal of Public Administration (JIA)* (2008), pp. 99.

<sup>85</sup>Darji Darmodihardjo, et al. *Santiaji Pancasila*. Surabaya: National Business, 1991, p. 39-40.

<sup>86</sup>Az. Nasution. *op. cit.*, p. 32.

<sup>87</sup>Article 23 of the Universal Declaration of Human Rights of 1948.

<sup>88</sup>Legal Protection for Child Labor from the Worst Forms of Labor Based on the Labor Law." *Syiar Hukum Journal* (2010), pp. 9.

<sup>89</sup>Aloysius Uwiyono, et al. *Melania Kiswandari* . Jakarta: RajaGrafindo Persada RajaGrafindo Persada, 2014, p. 43.

- d. The parties do not have freedom, but are controlled by the government through repressive legal provisions;
- e. Consensus (cooperation) is required by prohibiting conflict (strikes);
- f. Obligated to use peaceful settlements and prohibit the use of coercive means (strikes or out locks).<sup>90</sup>

Meanwhile, in the contractualist type of labor law, the employment relationship is based more on the bargaining power (bargaining position) of the workforce towards employers, the government is not an active party making labor regulations, but only acts to facilitate labor organization by guaranteeing the right to organize.<sup>91</sup> then this feature refers to the type of coalition that has the characteristics of a harmonious working relationship and a conflict working relationship.<sup>92</sup> This contractualist type is a capitalist concept that wants the state not to interfere too much in workers' and employers' issues, but to be left to the market mechanism with a flexible worker system, but returning to the objectives of labor law and the role of the government is still very much needed and eliminating state interference is not the right solution. -Absolutely right.<sup>93</sup> For this reason, between the role of the market and state interference as well as between economic development with a market and normative (constitutional) approach must complement each other, because carrying out economic development in a political vacuum is impossible, because:

- d. The role of the market is very important in order for companies to maximize profits and individuals and communities to maximize welfare, but the role of government is also important in correcting market failures.
- e. The role of the constitution and the rules of the game in making economic policies is very important to ensure good economic policies in order to improve people's welfare in the long term.
- f. Economic policies in pursuit of growth and distribution of results are closely related to ongoing political processes. Economic policy does not operate in

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<sup>90</sup> Agusmidah, *Dilemma... op. cit.*, p. 10.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

a political vacuum, because in practice a normative or constitutional approach can provide clear direction for economic development by complementing each other.<sup>94</sup>

The state as a public legal entity, as a corporation must be able to position itself as a wise regulator through the establishment and implementation of labor law, because labor law will be the main vehicle for carrying out government policies in the field of manpower itself. Labor policy in Indonesia can be seen in the 1945 Constitution as the state constitution and also related laws and regulations. Therefore, the role of the state is very important in regulating the existence of labor law, this is because the parties involved in employment relations are generally in an unequal position.

O. Kahn Freund stated that the emergence of labor law was due to the unequal bargaining position contained in the employment relationship (between workers and employers). For this reason it can also be seen that the main purpose of labor law is to eliminate the imbalance in the relationship between the two that arises in work relations, even the principle of freedom of contract in work agreements is described by H. Sinzheimer as nothing more than a voluntary compliance with conditions that have been set unilaterally by employers.<sup>95</sup>

In line with this, according to G. Ripert the regulation of work issues in a separate social law (in this case labor law) is the result of social reality that in economic life there is a shift in the protection of interests in work contracts/agreements which constitute the public interest which can no longer be ignored on the basis of the principle of individual freedom and individual autonomy in entering into contracts/work agreements.<sup>96</sup>Ripert further stated that the power of labor politics was the main factor that pushed labor law to become part of public law.<sup>97</sup>This shift in perception cannot be separated from the country's historical experience, as in France which has proven that the political movement of workers/laborers can lead to revolution, as well as in England in the mid-18th century there was an industrial revolution.<sup>98</sup>

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<sup>94</sup>Ibid., p. 11-12.

<sup>95</sup>O. Kahn Freund and H. Sinzheimer in Ibid., p. 13.

<sup>96</sup>Ibid.

<sup>97</sup>Ibid.

<sup>98</sup>Marshal Sinaga. Labor Courts in Indonesia (Critical Legal Review of the PPHI Law). Yogyakarta: Cemerlang Nusa Celebration (SCN), 2006, p. 11.

Based on the description above, the type of Indonesian labor law in legal protection of workers is a corporatist type of labor law. In this type of corporatist law, protection for workers is regulated through legislation in the form of legislation as an instrument of government policy in an effort to foster national law in utilizing law as a means of manipulating society.<sup>99</sup> Legislation policy in the process of enforcing labor law begins with the process of determining/making labor law in advance by the legislature or it can also be referred to as the legislative/formulative policy stage.<sup>100</sup> Viewed from the entire labor law enforcement process, this legislative/formulative policy stage is the most strategic stage. Therefore, mistakes/weaknesses in legislative policies are strategic mistakes that can hinder law enforcement efforts at the next stage, namely the applicative/judicative policy stage and the execution/administrative policy stage.<sup>101</sup> If this happens, then legal reform, let alone the rule of law will only remain as a mere hope.<sup>102</sup>

## **CLOSING**

State responsibility in the implementation of labor law is characterized by state interference in the legal protection of workers as citizens for the right to work in a welfare law state through a corporatist approach model, due to the weak position of workers in the implementation of employment relations. The type of Indonesian labor law in legal protection of workers is a corporate type of labor law through legislation in the form of laws and regulations as an instrument of government policy in an effort to foster national law in utilizing law as a means of engineering society which begins with the process of establishing/making labor law first by the legislature or it can also be referred to as the legislative/formulative policy stage as the most strategic stage, then the applicative/judicative policy stage and the administrative/executive policy stage.

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<sup>100</sup>Dwidja Priyatno. *Legislative Policy on the Corporate Criminal Liability System in Indonesia*. Bandung: Utomo, 2004, p. 8.

<sup>101</sup>Ibid.

<sup>102</sup>Ibid.

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