LABOR STRIKES TO REJECT THE LAW

Abdul Rachmad Budiono
(Professor on Labor Law)
Faculty of Law Universitas Brawijaya
Email: rachmad.budiono@ub.ac.id

Abstract
According to Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39; Supplement to the State Gazette of the Republic of Indonesia Number 4279; hereinafter abbreviated as UK) a strike is a basic right of workers or labor unions. There are a number of conditions for a strike to qualify as a legal strike. One of these conditions is the "result of failed negotiations" between workers and employers. Based on this condition, it can be said that a strike can only be carried out by a person (worker) who is bound by a work agreement. A valid employment agreement issues a working relationship. Strikes against the law are always not strikes regulated within the UK.

Keywords: labor strike, conditions for labor strike.

A. BACKGROUND
In the title of this article, there is the word "law" without a specific identity, for example, Law Number 13 of 2003 concerning Manpower (State Gazette of the Republic of Indonesia of 2003 Number 39; Supplement to the State Gazette of the Republic of Indonesia Number 4279; hereinafter abbreviated as UK). This is intended to prevent the sensitivity of strikes to reject Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 245 Number 245; Supplement to State Gazette of the Republic of Indonesia Number 6573; hereinafter abbreviated as UUCK). The fact is since the UCK was ratified by the President of the Republic of Indonesia on 2 November 2020 there were a number of demonstrations against the UUCK by a number of elements of society, including workers or laborers. A number of trade unions have voiced the strike as a form of resistance to UUCK.

There are various reports circulating about the number of workers who are about to strike or have already been on strike. These vary in numbers, for example, 2 million workers, 5 million workers, and some even state that 11 million workers will go on strike or have already been on strike. In fact, there were a number of demonstrations against the UUCK, but it is difficult to determine how many of these demonstrations were workers. This article is not concerned with the number of workers who are on strike or who have already been on strike, but concerned about what the law says if workers strike against certain laws.

Although it may be debatable, in this paper the analysis begins with "a set of facts" or a number of facts, namely that there are striking workers who reject the law.

B. RESULT AND DISCUSSION
Aloysius Uwiyono, a professor of labor law at the Faculty of Law, University of Indonesia, said that there are two important objectives of a strike, namely (1) a strike for political purposes, and (2) a strike for the purpose of improving the fate of
workers. It is necessary to emphasize that Aloysius Uwiyono's proposition was presented when the UK was not yet published. Nevertheless, there is still something in common, namely that strikes can be linked to improving the fate of workers, including financial improvements.

Article 1 number 23 UK states, "A strike is a worker / laborer action that is planned and carried out jointly and / or by a trade / labor union to stop or slow down work". The important element in this article is "stopping work" or "slowing down work". Thus, a strike is not always a "non-working worker", but can also be a "worker working, but is slowed down". An example of the latter, for example, is that workers can usually paint 30 square meters of walls in one day, but because of the strike, workers only paint 10 square meters.

The first condition for a strike is "the result of failed negotiations". This is stated in article 137 UK, namely, "Work strikes as a basic right of workers / laborers and trade / labor unions are carried out legally, orderly and peacefully as a result of failed negotiations". Here is the illustration. Company A has 1000 workers. Some workers want wages to be increased by 20% starting from 2021. A number of negotiations between the company and workers or labor unions were held, but did not result in an agreement. After fulfilling a number of conditions, workers can go on strike to pressure employers to fulfill the workers' demands. UK and Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes (State Gazette of the Republic of Indonesia of 2004 Number 6; Supplement to the State Gazette of the Republic of Indonesia Number 4356; hereinafter abbreviated as UPPHI) requires that every party in industrial relations disputes, for example disputes over strikes, conduct negotiations. There are three possibilities for the necessity of these negotiations. First, employers and workers negotiate to produce agreements. Second, employers and workers negotiate without producing agreements. Third, employers and workers do not want to negotiate. The second and third possibilities are the concept of "failed negotiations".

One of the things that often creates problems is the concept of "failed negotiations". It is possible that the employer said there had been no "failed negotiations" yet, while workers said there had been "failed negotiations". In the end, according to employers, the strike was illegal, while workers said that the strike was legal. To overcome this, the Minister of Manpower and Transmigration Decree No. 232 / MEN / 2003 on the Legal Effects of an Illegal Work Strike (hereinafter referred to as Kepmenakertrans Number 232/2003) was issued. Article 4 Kepmenakertrans Number 232/2003 states, "The failure of negotiations as referred to in Article 3 letter a is the failure to reach an agreement to settle industrial relations disputes which can be caused by the employer not wanting to negotiate even though the trade / labor union or worker / laborer has requested in writing, to the entrepreneur 2 (two) times within the grace period of 14 (fourteen) working days or the negotiations which are carried out experience a dead end as stated by the parties in the minutes of negotiations ".

Based on article 4 of the Minister of Manpower and Transmigration Decree Number 232/2003, there are two forms of failed negotiations, namely (1) the employer does not want to negotiate even though the workers 'or workers' union has asked the employer in writing twice within a grace period of 14 working days, or (2) negotiations - The negotiations were carried out in a deadlock which was stated by the

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1 Aloysius Uwiyono, Right to Strike in Indonesia, Jakarta: Postgraduate Program at the Faculty of Law, University of Indonesia, 2001, pages 71 and 74.
parties in the minutes of negotiations. Problems often arise in the form of the failure of the second negotiation, namely about the concept of "negotiations which were carried out deadlocked as stated by the parties in the negotiation minutes". In other words, the parties agreed that the negotiations were deadlocked. What if the entrepreneur does not want to sign in the negotiation minutes stating that the negotiations are deadlocked? This question is logical, because if the employer signs it, it means that the employer supports that the strike is legal. If a strike is legal, there will be many legal consequences that are detrimental to employers. Thus it can be said that as long as the employer does not want to sign in the negotiation minutes stating that the negotiations are deadlocked, then the job match will always be invalid. Things like this are not constructive according to legal science. In practice, in the Industrial Relations Court trials, such matters are not solely dependent on the entrepreneur's signature or not in the negotiation minutes, but on the facts that are captured in the negotiation minutes. If it appears that there will be no agreement between the employer and the worker, then even though the employer does not want to sign in the minutes of negotiations, the judge can determine that there has been a "failed negotiation".

The second requirement for a strike is notification to employers and agencies responsible for manpower affairs at least 7 working days prior to the strike. In this notification there must be (1) the time (day, date and time) the strike starts and ends, (2) the place of the strike, (3) the reasons and reasons why you should go on a strike, (4) the signature of the union workers responsible for the strike.

How can a strike reject the law? In order not to misunderstand there is one assumption, namely that a strike is carried out by workers who are bound in an employment relationship. It has been discussed that one of the conditions for a strike is the failure of negotiations. What is meant by failed negotiations is the failure of negotiations between workers or trade unions and employers. Meanwhile, the law is not made by the entrepreneur. For example, workers negotiate with employers regarding the existence of certain laws. This negotiation is negotiation related to the plan to strike. The question is what are the workers or trade unions negotiating with the employers?

In addition, it is necessary to mention here Article 141 paragraph (1) to paragraph (5) UK. Paragraph (1), "Government agencies and companies receiving the notification letter as referred to in Article 140 are obliged to provide a receipt". Paragraph (2), "Before and during a strike, the government agency which is responsible for the manpower sector is obliged to resolve the problem that caused the strike by meeting and negotiating it with the parties in dispute". Paragraph (3), "In the event that the negotiations as referred to in paragraph (2) result in an agreement, a collective agreement must be signed by the parties and the employee responsible for the manpower sector as a witness". Paragraph (4), "In the event that the negotiations as referred to in paragraph (2) do not result in an agreement, the employees of the agency responsible for manpower affairs shall immediately submit the problem that caused the strike to the authorized industrial relations dispute settlement agency. Paragraph (5), "In the event that the negotiations do not result in the agreement as meant in paragraph (4), then on the basis of the negotiations between the entrepreneur and the workers / labor union or the person in charge of a strike, the strike can be continued or temporarily stopped or stopped altogether. " Based on a systematic interpretation it can be concluded that what is meant by "industrial relations dispute settlement institutions" are institutions regulated in UPPHI which are charged with the Industrial Relations Court.
Based on Article 141 UK, it is understood that before and during a strike there is always a strike. Revealed here "a set of facts". On November 2, 2020 the President of the Republic of Indonesia Ir. Joko Widodo endorsed the UCK. Before and after the UCK ratification, there were a number of demonstrations against UCK. In several places the demonstration was accompanied by vandalism by a number of people. There were a number of workers who participated in the demonstration, especially after the approval of the UCK on November 2, 2020. Among the people who demonstrated there were workers.

Workers participating in demonstrations are not prohibited. The right of everyone to express their opinion or ideas is guaranteed by the constitution. However, workers are people who are bound by a working relationship with the entrepreneur. The legal action that issues an employment relationship is a work agreement. As is common with reciprocal agreements, work agreements also issue rights and obligations for the parties making them. One of the obligations of workers is to do work. There are only a number of reasons workers may not do work, including (1) holidays, (2) leave, (3) sickness and a number of reasons permitted by the UK, for example fulfilling religious obligations, (4) legal strikes. Related to the theme of this paper is "legal strikes". At the beginning of this paper, it has been stated that one of the conditions for a strike is "the result of failed negotiations".

Negotiation here is negotiation between workers or trade unions and employers, regarding things that are requested by workers or trade unions. In other words, one of the conditions for a strike is that there is a working relationship between the striking worker and the entrepreneur. It is impossible for a strike to be legal if the things that the worker asks for are not within the authority of the employer. Anyone knows that making or not making laws is not within the authority of the entrepreneur. This is also known in British labor law. John Bowers and Simon Honeyball said, “the strikers do not want to give up their jobs; they simply want to be paid more for it or to secure other advantage in connection with it. The employer does not want to lose his labor force, he simply wants to resist the claim”.

Why are strikes regulated and limited by laws and regulations? Strikes are indeed one means of pressuring employers to be willing to fulfill workers' desires. Usually employers do not take risks if workers go on strike. Within the possible limits, especially those determined by economics and statutory regulations, the employer will fulfill the demands of the workers. Take the example of the desire of city bus cipers in the City of Wellington, capital of New Zealand, who plan to strike asking for an increase in wages of approximately 15% (occurred mid-2008). The plan to strike had been announced about three weeks in advance. A number of negotiations were held. Finally, the wages of city bus drivers are increased by about 12.5%. The problem is that not all strikes run orderly, safely and legally. Work strikes in Indonesia are sometimes disorderly, unsafe and illegal. Several things have caused such strikes.

C. CONCLUSION

The strike against the law is a concept unknown in the UK. According to the UK, a strike must be a worker in an employment relationship. In addition, it is impossible to fulfill the conditions: the result of failed negotiations, because the entrepreneur is not authorized to make or change laws.

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Assuming the striking worker is not bound by a labor relationship, there is no failed negotiation between the worker and the employer, the strike against the law is always not a strike regulated in the UK.

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