

# CHAPTER I

## INTRODUCTION

### 1.1 Background of the Study

Since its independence in 1945, Indonesia has declared itself a country of law, thereby holding the rule of law as its foundation.<sup>1</sup> These foundational values are expressed and codified within the 1945 Constitution of the Republic of Indonesia [**“1945 Constitution”**] which, since its establishment, thereby binds Indonesia as a whole to pursue the protection of human rights, through its legislation and judicial administration. Accordingly, several of the fundamental human rights codified under the constitution is the right to work, to receive fair wage and fair treatment in employment. As Article 28D paragraph 2 mandates: *“Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.”*

Based on the aforementioned obligation, the Indonesian government enacted legislation in order to pursue the fulfilment of every Indonesian citizen’s right to fair wage and fair treatment as employees, namely Law Number 13 of 2003 on Labor [**“Law 13/2003”**]. This law is then challenged when faced with completely new circumstances, such as the

---

<sup>1</sup> Brian Z. Tamanaha, *On the Rule of Law – History, Politics, Theory* (Cambridge University Press, 2004), pp. 1-6.

COVID-19 Pandemic, which challenges the integrity of the institutions in place which protects the basic rights of employees in Indonesia.

Beyond the narrow scope of the Indonesian legal system, most countries and jurisdictions recognize the entitlement of every human being to their basic human rights, including the right to work, receive fair remuneration, social security and adequate standards of living, which gives rise to the active and passive obligations of states to enact policies, practices or regulations to ensure that business practices do not harm the realization of these rights.

Notwithstanding this, the arguably most vulnerable communities, particularly in the context of economic crises due to global health emergencies, are persons with disabilities, homeless people, migrants, prisoners, and refugees, and generally all those communities that are equally struggling to keep themselves afloat above the poverty line. Failing to pay attention to the needs and concerns faced by these groups may unintentionally expose them to higher risks of infection.

One of its most prominent effects of the COVID-19 pandemic is the halting of most business activity, in almost every country, in an attempt to keep the spread of the virus to a minimum while the pandemic shows little signs of abating. While countries like New Zealand have showcased remarkable achievements in handling the outbreak within their own territory, and have returned to operating normally with many added

precautions to prevent a second outbreak,<sup>2</sup> other countries, including Indonesia,<sup>3</sup> have been lagging behind in effectively containing the viral outbreak within its own territory. Regardless, most countries begin to assess how to 'return to business as usual'. In fact, leaders of nations such as the United States,<sup>4</sup> Brazil,<sup>5</sup> and Sweden<sup>6</sup> have expressed their agenda to rush their return to the way things were before the pandemic, despite objections from national and international health experts and advisors.

However, what these countries' leaders fail to realize is that resuming 'business as usual' could very well become detrimental to the protection of public health and social wellbeing. This model of prioritizing the continuation of business activity is based upon the notion of 'shareholder primacy', which purports the idea that businesses solely exist, both in a legal and social sense, to financially benefit its shareholders. Those who cite this notion often refers to the 1919 Michigan Supreme Court decision in the case of *Ford v. Dodge Motor Company*, in which the

---

<sup>2</sup> Michael Baker, Nick Wilson, *New Zealand hits zero active coronavirus cases. Here are 5 measures to keep it that way* (The Conversation, 8 June 2020) available at: <https://theconversation.com/new-zealand-hits-zero-active-coronavirus-cases-here-are-5-measures-to-keep-it-that-way-139862>

<sup>3</sup> Fitria Chusna Farisa, *UPDATE 4 Oktober: Bertambah 3.992, Kasus COVID-19 di Indonesia Jadi 303.498* (KOMPAS, 4 October 2020) available at: <https://nasional.kompas.com/read/2020/10/04/15274751/update-4-oktober-bertambah-3992-kasus-covid-19-di-indonesia-jadi-303498>

<sup>4</sup> David Smith, *Trump seeks to reopen 'large sections' of US by Easter, clashing with experts* (The Guardian, 25 March 2020) available at: <https://www.theguardian.com/us-news/2020/mar/24/trump-coronavirus-us-easter-new-york-fauci-birx>

<sup>5</sup> Tom Phillips, *Bolsonaro says he 'wouldn't feel anything' if infected with Covid-19 and attacks state lockdowns* (The Guardian, 25 March 2020) available at: <https://www.theguardian.com/world/2020/mar/25/bolsonaro-brazil-wouldnt-feel-anything-covid-19-attack-state-lockdowns>

court, when faced with the issue of the shareholder's right to receive dividends versus the company's strategy of building better, cheaper cars to pay better wages, ruled that the shareholder's right should be prioritized, even going so far as to make the remark:

*“There should be no confusion .... A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of the directors is to be exercised in the choice of means to attain that end, and does not extend to ... other purpose.”*<sup>7</sup>

This showcases the ideology upon which businesses are more willing to operate for financial gain than prevent or mitigate harm caused to basic human rights – that all decisions made in relation to businesses should be with the purpose of maximizing a company's values for its shareholders.<sup>8</sup>

Furthermore, the rule or notion of shareholder primacy, particularly in the United States, has for a long time lead to the culture in which businesses limits costs in any way they can, leading to their hostility against unions,<sup>9</sup> minimum wage,<sup>10</sup> and other institutions or policies that

---

<sup>6</sup> Richard Milne, *Sweden bucks global trend with experimental virus strategy* (Financial Times, 25 March, 2020) available at: <https://www.ft.com/content/31de03b8-6dbc-11ea-89df-41bea055720b>

<sup>7</sup> *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919), ¶684.

<sup>8</sup> N. Craig Smith, David Rönnegard, *Shareholder Primacy, Corporate Social Responsibility, and the Role of Business Schools*, *Journal of Business Ethics* volume 134 (2016), pp.463–478.

<sup>9</sup> Morgan Gstalter, *Ocasio-Cortez knocks Barstool Sports founder over threat to fire unionizing workers* (The Hill, 14 August 2019) available at: <https://thehill.com/homenews/house/457390-ocasio-cortez-knocks-barstool-sports-founders-threat-to-fire-unionizing>

<sup>10</sup> Marc Rod, *Business groups slam House for passing \$15 minimum wage bill* (CNBC, 18 July 2019) available at: <https://www.cnn.com/2019/07/18/business-groups-slam-house-for-passing-15-minimum-wage-bill.html>

seek to protect the rights of employees and people impacted by the businesses' choices. When the world looks to businesses in the United States as an example for what constitutes the 'ideal' business practices, this serves as a gigantic obstacle in addressing human rights protection in business practices practically anywhere in the world.

The widening of the rift known as economic inequality is especially a threat to the protection of human rights during the COVID-19 crisis. Historically, public health emergencies (e.g. Ebola, the H1N1 Virus, etc.) have largely affected certain socio-economic groups and communities more than others, and the COVID-19 pandemic is no exception.<sup>11</sup> What States fail to realize in their COVID-19 response is that vulnerability of individuals to COVID-19 highly depends on their financial stability (or lack thereof), their living arrangements, and lack of safeguards or institutions to mitigate the risk of infection to these individuals.

The effects of COVID-19 is particularly devastating in developing countries such as Indonesia, where the effects of economic inequality are felt more prominently. Those who live below or barely above the poverty line struggle to gain income, even more so due to the mass terminations and reduction of wages from the lack of business activity. Many remote rural locations remain out of reach from the appropriate healthcare

---

<sup>11</sup> CDC, *Reducing Stigma* (accessed October 2020) available at: [https://www.cdc.gov/coronavirus/2019-ncov/daily-lifecoping/reducingstigma.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fsymptomstesting%2Freducing-stigma.html](https://www.cdc.gov/coronavirus/2019-ncov/daily-lifecoping/reducingstigma.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fsymptomstesting%2Freducing-stigma.html)

facilities to handle an outbreak, and in certain areas, the available health infrastructure such as hospitals only have enough resources to provide care for COVID-19 positive cases, disregarding most other equally pressing illnesses.<sup>12</sup>

Particularly on the topic of Indonesia's COVID-19 response, we can see the prioritizing of the survival of business activity in the recently established National Economic Recovery Program or the *Program Pemulihan Ekonomi Nasional* (PPEN), which aimed to increase the fiscal deficit and subsidize small to medium-sized enterprises who were collapsing due to the lockdown procedures.<sup>13</sup> The many regulations that the government has enacted thus far have been largely focused on supporting the survivability of businesses, but little to no regulations so far in regard to the provision of effective remedies for those who have been laid off from work since the beginning of the pandemic – despite unemployment rates continuing to rise.<sup>14</sup>

At the beginning of the COVID-19 pandemic, Indonesia was included in the many stated that have had a delayed response to the

---

<sup>12</sup> Christophe Bahuét, *Economic and Human Development Inequalities Widen During -COVID-19 Pandemic* (UNDP Indonesia, 28 May, 2020) available at: <https://www.id.undp.org/content/indonesia/en/home/presscenter/articles/2020/Economic-and-Human-Development.html#:~:text=In%20Indonesia%20the%20pandemic%20is,since%20the%201998%20economic%20crisis.&text=Indonesia's%20HDI%20would%20have%20already,continuing%20to%20drive%20up%20inequalities>.

<sup>13</sup> Lidya Julita S, *Sri Mulyani, Defisit Dramatis APBN & Beban 10 Tahun ke Depan*, CNBC Indonesia (18 June 2020), available at: <https://www.cnbcindonesia.com/news/20200618184443-4-166405/sri-mulyani-defisit-dramatis-apbn-beban-10-tahun-ke-depan>. Accessed 1 Aug. 2020.

pandemic, with national politicians denying the existence or reporting of any cases within the country until early March 2020.<sup>15</sup> Ever since the first cases were acknowledged on 2 March 2020, the total number of cases have been increasing, and there's reason to suspect that infection and death rates are abundant beyond the official statistics, given limited testing capability.<sup>16</sup> Indonesia currently has the second-highest number of COVID-19 deaths in Asia after China, a large portion of which were medical professionals. The capital city Jakarta has since been the epicenter of the outbreak, but there have been cases recorded in all 34 provinces. President Joko Widodo has opposed to a full national lockdown, only imposing restrictions on 21 April 2020 for the annual movement of individuals (mudik) related to Ramadan and also the Idul Fitri (Eid al-Fitr) holidays.

Indonesia encompasses a decentralized system of government; provincial and regional governments have specific powers (and responsibilities) to deliver local health care programs and enforce of nationally-determined labor rights. usually prior to specific orders from the national government, several lower-level (local, or regional) governments declared localized COVID-19 emergencies, imposed social distancing

---

<sup>14</sup> *COVID-19 developments in Indonesia* (EKONID, 2 October 2020) available at: <https://indonesien.ahk.de/en/infocenter/news/news-details/covid-19-developments-in-indonesia>

<sup>15</sup> Tim Lindsey, Tim Mann, 'Indonesia was in Denial Over Coronavirus. Now it May be Facing a Looming Disaster' (The Conversation, 9 April 2020)

<sup>16</sup> Tom Allard, *et al.*, 'Jump in Jakarta Funerals raises Fears of Unreported Coronavirus Deaths' (Reuters, 4 April 2020)

measures, including but not limited to, restricting access to villages and neighborhoods. The national government has since been attempting to reclaim control over Indonesia's overall pandemic response. This being said, these regulatory measures by the national and regional governments have mostly been executive, in lieu of legislative. The response of society to this decision-making has been tough to gauge. whereas activist NGOs have actually been providing crucial commentary and lobbying,<sup>17</sup> there is reduced capability for the democratic population to assemble and protest in public areas, not to mention the government's active curbing of online protests. Society and communities, however, have been actively organising assistance and social distancing programs for the poor at ground-level, among other activities. On 31 March 2020, the national government declared a public health emergency and passed a regulation permitting individual regional governments to implement 'Large-Scale Social Restrictions' (Pembatasan Sosial Berskala Besar).<sup>18</sup> The Capital City region of Jakarta was first to implement this on a local level, with a provincial regulation issued on 9 April 2020 formalizing these restrictions.<sup>19</sup>

---

<sup>17</sup> 'Desak Pemerintah Lindungi Hak Pekerja Saat Wabah Covid-19!' (*Amnesty International Indonesia*, 2020)

<sup>18</sup> Government Regulation no. 21/2020 on Large-Scale Social Restrictions in Relation to Handling the Corona Virus Disease 2019 (COVID-19).

<sup>19</sup> Governor of Jakarta Regulation no. 33/2020 on the Implementation of Large-Scale Social Restrictions in Handling the Corona Virus Disease 2019 (COVID-19) in the Special Capital Region of Jakarta.

These restrictions required all workplaces to be temporarily closed, except for government bodies and certain firms in essential services sectors, including health, food, energy, finance, communications, logistics, construction and public utilities. Restaurants were restricted to takeaway only, and app-based motorbike transport is restricted to merchandise delivery only. This is in addition to earlier recommendation to public service and office employees to work from home where possible. The government of Jakarta was additionally authorised to supply help to vulnerable groups and incentives to businesses suffering from the rules. Different regions outside the capital have since been steadily implementing 'Large-Scale Social Restrictions'.

On 13 April 2020, the President declared an emergency state of national disaster and required provincial and regional governments to follow suit in their response to COVID-19. The social restrictions and associated economic downswing are having huge negative effects on employees in both formal and informal sectors of the economy, with official estimates showing some four million workers affected through dismissals, being sent home, halting of business activity in some informal businesses, and returning of foreign migrant workers.<sup>20</sup> The government has additionally expected that millions more may lose their livelihoods.<sup>21</sup>

---

<sup>20</sup> 'Dampak Covid-19, Menaker: Lebih dari 2 Juta Pekerja di-PHK dan Dirumahkan' (Kompas, 23 April 2020)

<sup>21</sup> Emma Connors and Natalia Santi, 'Fears of Social Unrest as Indonesia Enters Dangerous Phase' (*Financial Review*, 20 April 2020)

Formally, there are numerous protections that cover the majority of workers under Indonesian labour law, including protections that are notably relevant to the pandemic situation. However, surveys show that because of weak enforcement, only an estimated 30% of Indonesian workers are fully covered or protected by labour law in practice.<sup>22</sup> Given the economic downturn, it is quite possible that the COVID-19 situation is worsening compliance with workers' rights.

In the United Nations Guiding Principles on Business and Human Rights, states have the obligation to ensure that business practices, products, operations and policies do not negatively impact human rights.<sup>23</sup> The scope of this 'negative impact' is wider than mere direct causation but includes indirect causation as well – this is what obliges businesses to assess their actions and mitigate any possible harm that it might cause to the human rights of those affected by their choices.

States therefore have the responsibility to enact and implement laws that encourage the protection and promotion of human rights. Therefore, this paper will discuss in length on whether Indonesia's labor laws and COVID-19 response programs provides adequate protection for the human rights of employees during the COVID-19 pandemic, and whether the enforcement of that law is effective to protect the most vulnerable layers of

---

<sup>22</sup> Asian Development Bank and BPS-Statistics Indonesia, *The Informal Sector and Informal Employment in Indonesia* (2011).

<sup>23</sup> OHCHR, *Guiding Principles on Business and Human Rights* (Geneva, 2011) available at: [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

society – due to economic inequality – during the crisis caused by COVID-19.

## **1.2 Formulation of Issues**

1. Does Indonesia's employment law and COVID-19 safety-net programs ensure human rights protection for employees during the COVID-19 crisis?
2. Is the implementation of the law and programs effective in protecting the human rights of employees during the COVID-19 crisis?

## **1.3 Purpose of this Study**

The purposes of this study are as follows:

1. To analyze whether Indonesian employment law and COVID-19 safety-net programs ensure human rights protection for employees during the COVID-19 crisis.
2. To analyze whether the implementation of the law and programs effective in protecting the human rights of employees during the crisis.

## **1.4 Benefits of this study**

This study can provide contributes to the general society's awareness of the human rights afforded to employees during economic crises resulting from the COVID-19 pandemic and any possibly future global emergencies that might have similar impact. Further, it may help inform

the decision-making of the government and legislature in implementing corresponding policies, to highlight the need for these policies to properly balance between the protection of human rights of vulnerable individuals in the working population while protecting business continuity.

## **1.5 Research framework**

Chapter I will be the introductory chapter of this thesis, which will contain the background of this research, the formulation of issues that this study will explore, the purposes and benefits of this study, as well as the systematic framework of the entire thesis.

Chapter II will discuss the important concepts on international human rights law, the relationship between human rights law and business law, Indonesian business law, economic inequality, and the relationship between international human rights law and Indonesian business law.

Chapter III will then discuss the research methodology utilized for this research, and will elaborate on the nature of this research as a legal research, what the nature of the data used is, the sources of the data – mostly legal sources, methods of data gathering, as well as approaches to review and analyze the data.

Chapter IV will then discuss the answer to the issues presented in the Formulation of Issues.

Finally, Chapter V will contain the conclusion and recommendations.