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Employer Anti-Unionism in Democratic Indonesia

Michele Ford

Introduction

In post-authoritarian Indonesia, the exclusionary corporatism of Suharto's New Order (1967-1998) has given way to a complex and ideologically diverse labour movement, free to engage in workplace organising and to attempt to exert influence on the national industrial relations landscape. This remarkable transformation was brought about by dramatic legislative shifts in the early post-Suharto period that heralded the arrival of far more inclusionary policies towards organised labour. Backed by the international labour movement and much optimism, dozens of union federations and several national centres emerged within a matter of years, all seeking to stake their claim on behalf of workers. Their capacity to do so was bolstered by dramatic changes to the industrial relations system, which shifted the emphasis from state-led tripartism to a combination of regional tripartite mechanisms and firm-level bipartism, in the process dramatically increasing the space available for collective bargaining, but also for legislative and public relations campaigns. Initially, employers were taken by surprise by the resurgence of organised labour in both the workplace and the policy arena. During the Suharto years, the developmentalist state had formed a strong alliance with capital in its efforts to achieve rapid economic growth, guaranteeing political and industrial stability in return for unquestioning loyalty and financial support. With those guarantees gone, the business community found itself in a new and very foreign terrain, a terrain in which they could no longer afford to simply ignore unions. Since then, however, employers have regained the upper hand both at the policy level and at the grassroots, not only in containing the unionisation of greenfield sites but also in eroding union density and undermining union effectiveness even in the most organised industrial sectors.

Based on data collected from interviews conducted at regular intervals between 1999 and 2012, union surveys and reports and secondary sources, this chapter explores the different kinds of anti-union strategies used by employers in the manufacturing sector in Tangerang, an industrial city just west of Jakarta, which is part of the Jabodetabek (Jakarta, Bogor, Depok, Tangerang, Bekasi) conurbation. It begins with an overview of Indonesia's post-authoritarian industrial relations system, and then turns its attention to different forms of employer anti-union behaviour in the post-Suharto period. The chapter argues that, in the absence of

adequate state inspection and prosecution regimes, employers have been able to use strategies of containment, overt union busting and workforce informalisation to limit the capacity of – and in some cases even destroy – independent unions. While they have not entirely stifled the union movement, together these strategies have severely hindered unions' capacity to effectively represent the interests of their members and of workers in general within Indonesia's industrial relations system.[1]

Emerging from authoritarian state corporatism

Suharto's New Order came to power in 1966-1967 after a period of great social turmoil, during which putative communists were killed in their hundreds of thousands, perhaps even millions (Cribb 1990, Kammen and McGregor 2012). As part of a number of sweeping political reforms in the early 1970s, the number of political parties was radically reduced, a 'floating mass' policy imposed, under which Indonesians were discouraged from political engagement and encouraged to devote their energies to national economic development, which it claimed to be based on the philosophy of Pancasila – the five principles of which, loosely translated, are belief in Almighty God, respect for humanity, Indonesian unity, democracy guided by the principle of deliberation to reach a consensus and the realisation of social justice.

A system of 'functional groups' was established in order to further the developmentalist interests of the state (Reeve 1985, Ford 2010). Labour and capital were not the only interest groups represented in the New Order's corporatist structures. However, industrial relations was a key focus of its corporatist strategy (Ford 1999). In 1973, the union movement was radically restructured, with a new single federation, the All-Indonesia Labour Federation (Federasi Buruh Seluruh Indonesia, FBSI), effectively replacing the centrist and conservative unions that had survived the anti-communist purges of 1965-1966 (Moertopo 1975, Sukarno 1979). In 1985, FBSI's 21 industry unions were replaced by nine divisions within the All-Indonesia Workers' Union (Serikat Pekerja Seluruh Indonesia, SPSI), forcing activists within FSBI to either leave the union movement or attempt to work within the new structure.[2] The New Order's explicit commitment to a single union ended in 1993 when SPSI was again restructured as a federation of industrial unions called the Federation of All-Indonesia Workers' Unions (Federasi Serikat Pekerja Seluruh Indonesia, FSPSI). A year later, Minister for Manpower Latief passed *Ministerial Regulation No.01/MEN/1994 on Trade Unions at the Company Level*, which allowed enterprise unions in workplaces where no SPSI unit existed. However, (F)SPSI remained the only union body permitted to participate in the tripartite committees and mechanisms that lay at the heart of the Pancasila industrial relations system, including the regional and national Disputes Resolution Committees, the National Tripartite Cooperative Committee and the National Wage Council.

Although both tripartism and bipartism were enshrined in the structures of New Order industrial relations, in practice the system revolved around its centralised, state-dominated tripartite mechanisms. Tripartism remains an important feature of post-Suharto industrial relations, but state recognition of multiple unions, those unions' expectations of workplace bargaining, and changes to the architecture of the industrial relations system have brought a

new prominence to bipartism. This dramatic shift was achieved through a law reform package, which built on the policy changes put in place by Suharto's immediate successor, B.J. Habibie, in 1998-1999 (Ford 2000).[3] This law reform package consisted of three separate but related laws: *Law No. 21/2000 on Trade Unions*; *Law No. 13/2003 on Manpower*; and *Law No. 2/2004 on Industrial Disputes Settlement*.

The Trade Union Law allowed as few as ten workers to form a union and permitted multiple unions in a single workplace, prompting a massive explosion in trade union numbers. By 2007, over 90 national-level unions had listed with the Department of Manpower, many of them associated with one of the three main national confederations. However, the last official union census of 2005 indicates that union density has remained low at approximately 11% in the formal sector, which only accounts for around 30% of employment in Indonesia. Data collected by the Ministry from the provincial and local level as of the September of that year suggest that the 64 national-level unions and trade union federations that meet the legal requirements for representation in industrial relations institutions had a combined membership of just 3.4 million (Departemen Tenaga Kerja dan Transmigrasi 2005). Based on these conservative figures – which undoubtedly understate the extent of union membership – at that time, only 3.6% of Indonesia's total employed workforce of 95 million was unionised. Most unionised workers continued to be found in blue-collar occupations in the private sector, reflecting the legacies of the Suharto era (Ford 2009). And although a number of small left-wing unions grew out of the alternative labour movement of the 1990s, the majority of the unions that emerged from the early 2000s subscribe to centrist notions of trade unionism premised on the advancement of workers' economic rights coupled with attempts to promote workers' political interests through sympathetic political parties (Ford 2010).

The law on industrial disputes resolution also brought far-reaching change to Indonesia's industrial relations system. Under the law, the central and regional disputes resolution committees were abolished and replaced with a renewed emphasis on bipartite negotiations at the firm level, supported by higher-level processes including arbitration or conciliation, formal mediation, and ultimately recourse to the newly convened industrial courts, which are presided over by a local magistrate and two *ad hoc* judges, one nominated by employers and the other nominated by unions. The shift away from centralised tripartism was further reinforced by *Law No. 22/1999 on Regional Autonomy*, which devolved determination of the minimum wage, and potentially a range of other industrial relations functions, to the local level. This shift refocused unions' efforts on the workplace and district levels, encouraging them to prioritise firm-level bargaining and local politics.

This fundamental restructuring of the industrial relations system – but especially the dramatic turn-around in government policy on independent trade unionism – caught employers by surprise. Under the New Order, employers, too, had been represented by a single peak body, the Indonesian Employers' Association (Asosiasi Pengusaha Indonesia, APINDO). APINDO was not as closely monitored or controlled as the state-sponsored union. However, it still acted as an instrument of the state rather than as an independent vehicle for the advancement of business interests (MacIntyre 1994).This largely symbolic role left APINDO ill-equipped to engage in direct negotiations with unions. But, having initially been caught on the back

foot, business leaders quickly regrouped, responding to the growth in unionism, unions' demands for a role in workplace negotiations and the decentring of government in industrial relations processes by restructuring APINDO and increasing their focus on firm-level industrial relations (Ford Interview with APINDO official, 2003). Employers' attempts to limit the power of unions since this time can be divided into three main categories. The first category, namely strategies of containment, includes firm-level strategies, public relations campaigns and legal actions that make it difficult for unions to operate effectively. The second category involves union-busting activities that are illegal but have proven difficult to prosecute. The third category, workforce informalisation, is a long-term profit-maximization strategy that – while not always explicitly targeted at unions – has had significant consequences for their capacity to organise.

Strategies of containment

Strategies of containment constitute employers' first line of attack when seeking to minimise the impact of workers' collective action. The first major firm-level strategy of containment since the fall of the New Order has involved the exploitation of provisions for multiple unionism under the trade union law. During the New Order, the right of workers to organise was recognised, but only though the state-sanctioned union, which operated in the private sector.[4] Although some forms of independent labour activism were tolerated, the state took a strong, punitive stance on activists' attempts to establish and register alternative unions, with the exception of the non-aligned enterprise unions permitted after issuance of *Ministerial Regulation No.01/MEN/1994 on Trade Unions at the Company Level*. With the support of labour NGOs or student activists, 'guerrilla' worker activists managed to gain control of some workplace units of the state union, using them as vehicles to negotiate with management for better working conditions.[5] However, the vast majority of the enterprise unions and workplace units within the state union were either controlled by or had a very cosy relationship with management and had little interest in promoting workers' rights or interests.

Since the fall of Suharto, unionists have had to face a very different challenge, namely that of having multiple unions in a single workplace. In some of these workplaces, management has continued to favour the workplace units of the direct successor to the Suharto-era union or set up 'yellow' enterprise unions in an attempt to silence genuine unionists (Ford Interviews 2008, 2010; Caraway and Ford Interviews 2012). Of the 658 unionised workplaces surveyed by JRI Research for the American Center for International Labor Solidarity (ACILS 2010:17)), some 16% had more than one union. In as many as 40% of these cases, one of the unions present had been set up by the employer in competition with one or more independent unions. Although some elements of the former official union have embraced the opportunities presented to them for reform, others have continued to trade on close relationships with management and local officials in order to cement their position in particular workplaces or districts. In some cases, officials from workplace units within the status-quo union have threatened or even physically attacked members of rival unions (Caraway 2008: 1386). In other workplaces, multiple unions are present as a consequence of splits caused by genuine differences within an existing union, leading to the formation of a rival union. In many of

these cases, genuine unions then struggle to co-exist, having become bogged down in inter-union conflict.

Inter-union conflict can take many forms. In the cases of the three Tangerang-based footwear manufacturers described by Rokhani (2006, 2008), conflict between rival unions had quite different impacts on their capacity to represent their workers. In the first, PT Adis Dimension Footwear, unions anticipated the possibility of conflict and developed strategies to manage it. In the second, PT Dong Joe Indonesia, conflict was driven by personal differences, which made it difficult to collaborate, even though officials from the two unions largely agreed on substantive issues. At the third, PT Panarub Industry, conflict emerged as a result of both personal clashes and differences over substantive issues, making collaboration impossible.

Although union relations with management were not the primary focus of Rokhani's study, the cases she deals with are instructive. In the case of PT Adis Dimension Footwear, management had sponsored the establishment of a workplace unit of the former state union in 1998 as a precautionary measure against the wave of industrial unrest that had struck Tangerang in the wake of the Asian financial crisis. In response to worker protests against the way in which members of the union executive had been selected, in the following year the executive was dissolved and open elections held. Despite the success of the democratic process, a second group of dissenting members chose to form an alternative enterprise-level union, which in 2005 accounted for 1,100 members of the company's 7,000-strong workforce, 5,600 of whom remained members of the SPSI workplace unit and a further 300 were un-unionised. Management deals with nominated bargaining partners representing both unions.

In the second case, a pre-existing workplace unit of SPSI went through two name changes as a result of splits at the national level, first in 1999, when the Textile, Clothing and Leather Workers Union (Serikat Pekerja Tekstil Sandang Kulit, SPTSK) was formed, and again in 2003, when it became a workplace unit of the National Workers Union (Serikat Pekerja Nasional, SPN). After the second change, a group of dissatisfied members decided to leave the union and re-establish an SPSI unit. Management opposed the formation of a second union, refusing to give it access to the check-off system before the break-away group forced a referendum on union membership in 2004, as a result of which SPSI emerged with 4,000 members. SPSI officials told Rokhani that management continued to favour SPN despite SPSI's majority status.

At PT Panarub Industry, as at PT Dong Joe Indonesia, a pre-existing SPSI unit had changed its name as a result of national shifts, first to SPTSK and later to SPN. In the process, a rival union emerged, which was affiliated with Perbupas, the footwear, clothing and textile union associated with a small, leftist national-level union federation called the Association of Independent Labour Unions (Gabungan Serikat Buruh Independen, GSBI). As of June 2005, of Panarub's total workforce of approximately 11,000, some 6,000 were members of SPN and a further 1,640 were members of Perbupas. Although the unions reached an inter-union agreement in 2002, that agreement has proven to be of little or no benefit. SPN officials continue to accuse Perbupas officials of running fear campaigns aimed at management

against it and Perbupas officials to accuse SPN officials of being too conciliatory. Meanwhile, management takes a harsh approach to both unions.

In all three workplaces, employers were able – and often pro-actively sought opportunities – to leverage inter-union competition to manipulate the outcomes of collective bargaining, or to avoid it altogether. In doing so, they called into play the second workplace strategy of note, namely employers' refusal to engage in meaningful negotiations. Multiple unions in a single workplace mitigates against effective collective bargaining because Indonesian labour law requires that a union represent a majority of unionised workers in a bargaining unit before it can bargain on workers' behalf. However, bargaining avoidance also occurs in single-union workplaces.[6] Of the workplaces in the ACILS survey, only 61% had a collective bargaining agreement in place, 42% of which simply replicated the provisions of national labour laws, provisions that a further 5% actually violated in some way. Where there is no collective bargaining agreement, companies are required to formulate company regulations, in consultation with unions, where they exist. The ACILS (2010:20-21) survey found that many employers have company regulations even where a collective bargaining agreement is in place.

A third strategy of containment within the workplace has been employers' refusal to implement a check-off system on unions' behalf, as was the case with the SPSI workplace unit at PT Dong Joe Indonesia. Under the New Order, the official union had guaranteed access to regular dues payments, which were deducted from workers' wages before disbursement. Dues constituted a small proportion of union resources, the bulk of which were provided through government patronage, but were nevertheless were important symbolically, as they underpinned claims about representativeness based on union density in unionised workplaces. Of the 658 workplaces surveyed for ACILS (2010:19-20), 71% had retained or gained access to a check-off system. Of the other 29%, half had requested that a check-off system be instituted, but their request had fallen on deaf ears. The power of the check-off system, which is no longer compulsory, has become increasingly evident in democratic Indonesia, where union membership is concentrated in the former state-sponsored unions and the unions that grew out of them, which are the most likely to deduct dues automatically from their members' salaries with the help of employers. As the case of PT Dong Joe Indonesia demonstrates, however, no single union has a monopoly on access to automatic dues collection. In that case, the fact that management refused to reinstate a check-off system for the SPSI workplace unit indicates that it was making a strategic assessment of the relative pliancy of the two unions present in their factory rather than simply favouring the former state-sanctioned union.

These workplace strategies of containment have been complemented by public relations and legal campaigns conducted at the regional and national levels. Employers, through APINDO, engaged in sustained and closely targeted public relations campaigns against unions and against pro-worker legislation.[7] Caraway (2004) and Ford (2004) describe the first large-scale public relations campaign of note in democratic Indonesia, which occurred during Abdurrahman Wahid's presidency (1999-2001) in response to a ministerial decree that gave resigning workers and workers dismissed for serious violations rights to compensation.

Having argued that Ministerial Decree No KEP-150/MEN/2000 on employment termination was politically motivated and provided too much protection for workers, especially with regard to severance pay – including allowances for seniority, and the provision of compensation to workers who had committed workplace misdemeanours – employers succeeded in pressuring the government to revise the controversial decision (SMERU 2002:17–21). These amendments resulted in violent protests in June 2001, and the government announced that it would revoke the amendments and re-enact the initial decision, an announcement that prompted a widespread outcry from domestic and foreign investors alike (Ford 2004).

Since that time, employers and their associations have regularly used the media to respond to minimum wage campaigns, industrial action, and unions' demands for further legislative reform. In addition to demanding that pro-worker regulations be rescinded, campaigns have focused upon the impact of industrial unrest on foreign and domestic investment. When large-scale sustained strikes hit the Shangri-La Hotel, Sony and Toyota Astra Motor between 1999 and 2001, for example, analysts were quick to condemn striking workers for destabilising the business climate (*Jakarta Post* 20 May 2000, 6 April 2001). When Sony eventually closed down its Bekasi plant in 2002, commentators again cited 'radical trade unions' and unfavourable labour law among the causes of the closure (*Jakarta Pos*t 29 November 2002). Similar reports appeared regularly over the next decade.

While APINDO led the campaign against union-friendly policies, foreign interests were also vocal about the impact of rising militancy. In 2002, the Malaysian government voiced concerns about growing militancy among Indonesia's unions, saying that 'investors would turn to other countries if they found that industrial relations in Indonesia were not attractive' (*Jakarta Post* 6 June 2002). In the same year, the Japan Bank for International Cooperation (JBIC) claimed that Japanese companies had begun to relocate from Indonesia in part because of 'increasing militancy and anti-foreign investment sentiment among trade unions' (*Jakarta Post* 26 March 2002), the Korean Chamber of Commerce warned that South Korean companies would pull out of Indonesia if labour problems were not addressed, citing 'unfavourable labour policy, wage increases, poor productivity and constant strikes' (*Jakarta Post* 24 August 2002), and the Taipei Economic and Trade Office in Jakarta claimed that Taiwanese investors were discouraged by labour conflict and unfavourable labour rulings in Indonesia (*Jakarta Post* 29 August 2002).

Media campaigns such as these have periodically re-emerged, as employers fight to maintain the ear of government and the broader public. Much of the focus of these campaigns has been business' on-going concerns over rising minimum wages. In 2001, for example, some members of APINDO threatened internal relocation to provinces with lower minimum wages when the minimum wage in Jakarta rose from Rp.350,000 to Rp.426,250 (US$31.53 to US$38.40) per month and the government announced plans for a further 38% increase in 2002 (*Jakarta Post* 24 November 2001, 28 November 2001). Annual minimum wage campaigns have remained an important public flashpoint in union-employer relations, as both sides seek to win the public relations battle during the period in which they are negotiated each year, as evidenced by the battles for public sympathy in Bekasi and Tangerang in 2011,

when workers succeeded in wringing out further concessions by blocking the toll roads to nearby Jakarta (Caraway and Ford Interviews 2012).

In a number of cases, APINDO has sought to supplement its media campaign by mounting legal challenges against a provincial wage decision, particularly in cases where governors have signed off on a higher level than that negotiated in the tripartite wage councils as a result of pressure from unions. These challenges to wage decisions constitute just one of a number of legal strategies used by employers to contain union influence. Under the Law on Industrial Disputes Settlement, employers and employees have the right to take a case to the industrial court if bipartite negotiations fail and they are unhappy with recommendations made during mediation by officials within the local manpower office. In practice, the financial and human resources costs to unions of mounting a case means that the workers may be greatly disadvantaged where cases are taken to court. Of the 35% of workplaces in the ACILS (2010:30-31) survey that had become involved in industrial disputes in the preceding two years, only one third opted to use the court system. Reasons nominated for avoiding the courts included the lengthiness, expense and complexity of the process, as well the distance between the workplace and the court, and a sense that judgments tended to favour employers. Holding out for an industrial court settlement thus offers employers a very viable strategy of containment in their negotiations with union officials, who are only too aware of the obstacles imposed by a court case.

Union busting

Strategies of containment like low-level resistance to collective bargaining are generally implemented in ways that are entirely legal, or that infringe the spirit, rather than the letter, of the law. By contrast, overt acts of union busting are unlawful but seldom pursued by police, manpower officials or the courts.

Although most employers are prepared to (at times reluctantly) recognise unions, failure to grant recognition to legitimate unions remains an effective union-busting strategy in Indonesia. GSBI data shows that for that one small trade federation alone there were 18 cases (including the Panarub case cited above) in which workers were sacked as a result of forming a workplace unit of one of the federation's associated unions between 1998 and 2003. In some of these cases, sackings were limited to union officials, while in others ordinary union members were also dismissed. Among the reasons most often given by employers in factories where GSBI union activists were sacked were inefficiency, indiscipline and disturbing harmonious work relationships (Yanti 2003).[8]

One well-documented case among these is that of PT Mulia Knitting, where a new union associated with GSBI tried to register in 2007. Within ten days of the presentation of registration documents to management, all founding members had been forced to resign or had been moved to PT Mulia Spindo Mills, a factory owned by the same group but located two hours from the location of the former. A number of members of the incoming executive were summarily dismissed, while others, having refused to resign from the union, were transferred to PT Mulia Knitting. Management subsequently declared that the transferred

workers had resigned when they did not turn up for work at PT Mulia Spindo Mills. Over the next few days, all workers listed as ordinary founding members of the union were given a choice between resigning and transferring – an option which, as in the other cases, amounted to dismissal because of the location of the alternative workplace offered. The only union members to avoid dismissal or transfer were the seven who resigned their union membership (WRC 2008).

It is important to note that the intimidation or sacking of activists is not limited to cases involving the formation of a new union, as was the case with PT Mulia Knitting. It is also a widespread technique for controlling the power and influence of established trade unions. As many as 32% of the 597 cases of workplace violations uncovered through focus group discussions with higher-level union officials conducted as part of the ACILS labour rights survey involved discriminatory acts against unionists (ACILS 2010:18). In 108 of these cases, activists had lost their jobs.[9] In many of these, and many other, cases, individual activists are picked off one by one, creating a climate of fear and trepidation among members and making it extremely difficult for the union to operate, to recruit members and, indeed, to retain existing ones. In some of the most dramatic cases, companies choose to close their doors, only to reopen shortly after in the same premises under a new name, forcing workers to reapply for their jobs and, in the process, reducing working conditions or eliminating 'trouble makers' (Ford 2009). Juliawan (2010) describes one such case, that of PT Sarasa Nugraha, an export-oriented garment manufacturer in Tangerang that filed for bankruptcy following a wage dispute, before reopening under the name of PT Panca Brothers Swakarsa. In its new form, the company re-employed fewer than half of its workers, some of them as trainees.

Alongside outright refusal to recognise a union and the termination of the employment of union activists, threats of physical harm are among the most extreme of a broader spectrum of overt acts of anti-unionism evident in contemporary Indonesia. Under the New Order, military officers were engaged by industrialists to contain worker unrest, and some military officers continued in the post-Suharto period to 'assist' companies in the management of industrial relations (Ford Interviews 2004). However, in many cases, the outsourcing of security functions was quickly reassigned to local *preman* (thugs or strong-men) (LIPS 1999, Ford 2000, Warouw 2006). In many cases, such as one recorded on 19 May 2012 at PT Intan Pertiwi Industri in Tangerang, *preman* have been engaged during industrial disputes to attack striking workers at their place of work – in this case, leading to the wounding of five workers, one of whom was hospitalised (KASBI 2012b).There have been myriad reports of cases in which *preman* have arrived at worker activists' homes to 'chat', and sometimes overtly threaten them or their families, if they did not desist in their 'disruptive' behaviour. In another case in 2012, this time in Central Java, a company union at PT SC Enterprises that (like the union at Intan Pertiwi) is associated with the leftist labour federation, KASBI, reported that dozens of *preman* employed to break a strike arrived at workers' homes, where they intimidated them into breaking the strike. One union official was threatened with a firearm and forced into a car (KASBI 2012a).

Pressure is also exerted in less overt ways through social networks in worker communities. Warouw (2006) describes two such cases in the industrial suburbs of Tangerang, where factories and worker housing sits cheek by jowl. As Warouw points out, most workers live in private, barrack-like accommodation blocks owned by relatively wealthy individuals within the local community, who are not only in possession of some kind of official or unofficial authority, but form pseudo-familial bonds with their tenants and with other workers living in their neighbourhoods. Local employers can exploit these relationships by calling on these figures to engage in informal forms of mediation. In one case described by Warouw, a community elder called Pak Mardi adopted an apparently neutral (if not pro-worker) position during a strike at a cardboard factory, acknowledging workers' right to strike but urging them not to become violent and warning them of the dangers of exerting too much pressure on their employer for fear the company might close its doors. Once an agreement was reached, Pak Mardi was greeted warmly by workers; however, he also received a token of gratitude (the equivalent of around a week's wage) from the employer for his 'assistance' in resolving the dispute.

Preman also use these kinds of unofficial networks of influence to influence workers' behaviour without necessarily always resorting to threats of violence. Warouw (2006) tells of a second case in the same suburb, in which local strong-man Jaro Sondi has long been retained on an unofficial security detail by the owners of a large local factory. Workers interviewed by Warouw were only too aware that a conflict with the factory would mean challenging Jaro Sondi. Counter-intuitively, however, their concern about doing so was born not of fear, but rather of their respect for his generosity, expressed in part through his support for the local mosque. Unlike Pak Mardi, Jaro Sondi did not receive cash from the company that retained him. However, his recycling business had flourished because he held an exclusive concession by local manufacturers to recycle their solid waste. In addition, the company had from time to time given him generous gifts, including paying for him and his wife to make the pilgrimage to Mecca, an act that reinforced his status among members of the local community, and, therefore, his capacity to influence their decisions in ways that benefited the company.

A final example of overt forms of anti-unionism is employers' exploitation of complex legal requirements around the right to strike. Workers are required to give seven days' notice after the breakdown of negotiations and before striking, where the breakdown of negotiations is defined as a written statement signed by the two parties to that effect or the employer's refusal to meet after two written requests over a period of 14 days. As the ACILS report noted (2010:23), employers can draw out the process by refusing to sign a written statement that negotiations have failed, thus forcing the union to wait for a period of some weeks before striking. Such situations put great pressure on unions internally by forcing them to contain their membership or to dissipate anger. Alternatively, they can engage in an illegal strike, which exposes the union to punitive legal sanctions that may ultimately threaten its very existence, and at the very least expose its members to police intimidation.

Outsourcing as union busting by stealth

In comparative terms, when measured against other countries in the region, the Indonesian labour market remains relatively inflexible not only at the level of its legal provisions but also in practice, particularly around costs associated with termination (Caraway 2010). Moreover, the 2003 *Manpower Law* limits the practice of outsourcing (along with the use of fixed-term contracts) to non-core activities, for example catering and packing. However, unionists claim that, in practice, companies have gone well beyond the provisions for outsourcing contained in the *Manpower Law*, instead imposing systematic change of status on large numbers of workers who continue to staff production lines (Ford and Tjandra Interviews 2007; see also Caraway 2009; Suryomenggolo 2008; Tjandra 2008; Tjandraningsih and Nugroho 2008).

These assertions are supported by studies such as one undertaken by Akatiga *et al.* (2006:127, 132), which documented the use of outsourced workers in core activities such as production. In a research project conducted in European-owned factories in Tangerang and Pasuruan in 2005-2006, the team found that five of the eight firms surveyed employed outsourced workers or workers with contracts lasting for periods of between four and six months in duration – some of whom worked on the production lines, which are clearly part of the firms' core business. In one of these firms, 896 workers were employed on short-term contracts and only 697 on a permanent basis. At another, which had 521 permanent workers, the number of outsourced workers fluctuated between 200 and 400. Similarly, of the firms surveyed for ACILS (2010:26), 69% employed contract workers and 43% used outsourcing companies. Contract workers comprised over 25% of the workforce in 40% of the companies using that mode of employment while outsourced workers comprised over 25% of the workforce in 30% of the companies that used outsourced labour. As many as 85% of companies using contract workers employed them for routine and on-going work; just under half of employers using outsourced labour deployed them in areas that respondents considered to be core work.

Although outsourcing and other forms of non-standard employment do not constitute a direct form of union busting, they, in fact, provide employers with an extremely effective means of dealing with troublesome unions. First and foremost, they allow employers to exploit unions' inability to unionise precarious workers. Most (and in many cases all) union members have permanent employment. The unions represented at the European-owned factories surveyed by Akatiga *et al.* (2006) consisted entirely of permanent workers, as did 70% of the workplace unions surveyed for ACILS (2010:26). In a context like Indonesia's, it is difficult to convince even permanent workers to join a union, in part reflecting the legacy of the New Order (see Ford 2009, 2010; Hadiz 1997; Kammen 1997). The challenge is, of course, much greater when it comes to contract and outsourced workers who, even if employed in the same workplace for decades on rolling contracts or placements, find themselves in a precarious position where any kind of public resistance represents a threat to their on-going employment. Second, at times, also, the decision to differentiate between permanent and impermanent workers constitutes a strategic choice on the part of a union. Hitching their wagons to the labour aristocracy, some unions have agreed to the expansion of outsourcing or contract positions in exchange for better conditions for their members (Tjandraningsih *et al.* 2008).[10]

Employers actively exploit these weaknesses of the labour movement, both by actively seeking to narrow the pool of workers from which unions can most easily recruit and by employing divide-and-rule tactics to exploit the divisions (increased by precarity) between different groups of workers. These tactics have serious implications for trade unions both in the workplace and outside it. At the enterprise level, union capacity to claim to serve as a channel or voice for workers' concerns in the workplace is limited in cases where a minority of workers are unionised, even if that minority constitutes a majority of permanent workers. Smaller membership numbers also reduce unions' capacity to fund their activities with dues. At the regional and national levels, seats on various tripartite bodies – including the wage councils where minimum and sectoral wages are determined subject to agreement from local and provincial authorities – are only available to unions that meet certain representative thresholds, namely having a presence at least 10 companies or 2,500 members at the district level, 30 companies or 5,000 members at the provincial level and 150 companies or 50,000 members at the national level (Juliawan 2010). In the case of Tangerang, the division between unions that are 'inside' and 'outside' these committees is so significant that it – rather than national affiliation, political leanings or other factors – defines the fault-lines between union alliances in the district (Caraway and Ford Interviews 2012). More generally, although unions' capacity to influence social policy also depends greatly on leadership, it is undermined when its membership declines, for the same reasons that limit a union's capacity to speak for workers in a single workplace.

Concluding remarks

There are few mechanisms to prevent even overt modes of anti-unionism in Indonesia. Although it is unlawful to interfere with freedom of association, to discriminate against unionists, to impede union activities or to use outsourced labour in core areas of a firm's business, the mechanisms through which anti-union acts can be challenged are deeply flawed. Although the 2000 *Law on Trade Unions* includes provisions for criminal penalties in anti-union cases, in order for a case to be brought forward, the police or local manpower officials must apply to the state prosecutor who may or may not go on to file charges in the criminal court – something that they have proven reluctant to do.[11] Furthermore, as ACILS (2010:8,31) has reported, although the 2003 *Manpower Law* prohibits excessive outsourcing, it contains no penalties, forcing unions to pursue cases in the industrial court where, as in other instances of anti-union activities, judges have been reluctant to take action or to ensure that their decisions are upheld. As a consequence, employers regularly ignore industrial court verdicts, forcing unions to seek an execution order from the national court, a long, expensive and uncertain process that greatly adds to the burden on unions.

Indeed, although several cases against anti-union behaviour have been brought to court, it was not until 2009 that a case resulted in a conviction (Tjandra 2010). The case, which was heard in the Pasuruan District in East Java, pertained to the unlawful dismissal in May 2008 of four officials from a plant-level union at PT King Jim Industries affiliated with the Federation of Indonesian Metalworkers Unions (Federasi Serikat Pekerja Metal, FSPMI), one of the largest and most respected unions in Indonesia, for activities that led to a strike. Although the plant-level union had been formally registered in the middle of that year and its

membership verified, management refused to negotiate with the union. Despite being instructed by the local Manpower Office to engage in collective bargaining, management refused to do so, prompting the union to register its intention to strike.

Management rejected a compromise offered by the Manpower Office and declared that workers participating in the strike would lose their annual bonuses and be barred from taking part in company-sponsored recreation activities. On 15 May 2008, the day after a one-hour strike was held, four union leaders received a letter stating that they were being dismissed for organising the strike. Tjandra (2010) reported that police were initially reluctant to take action on the basis of FSPMI reports but were forced to do so under pressure from an alliance of unions in East Java. Ultimately, the Bangil district court sentenced the general manager to jail for 18 months for violations of union rights under Articles 28 and 43 of the 2000 *Law on Trade Unions*, a decision upheld by the High Court in Surabaya, and ultimately by the Supreme Court.

Cases such as the PT King Jim Industries case demonstrate that there is capacity within the system to pursue the worst forms of anti-union behaviour. However, this example remains the exception not the rule. In the absence of an inspection regime capable of systematically identifying cases of anti-union behaviour and a prosecution regime that facilitates rather than obstructs enforcement of legal provisions against union busting, the right to freedom of association remains at best fragile. And in the absence of meaningful checks and balances on employer behaviour, employers will continue to use strategies of containment, overt union busting and union-busting by stealth designed to maximise their managerial discretion and minimise the challenge presented by organised labour.

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Notes

[1] The research on which this chapter is based was funded in part by an Australian Research Council Discovery Project entitled 'The Re-emergence of Political Labour in Indonesia' (DP120100654).

[2] For a discussion of Pancasila Industrial Relations, see Ford (1999). For an analysis of independent labour activism in this period, see Hadiz (1997) and Ford (2009).

[3] For a detailed discussion of the politics of the early stages of this reform, see Caraway (2004).

[4] Civil servants and teachers had separate professional associations, which were not integrated into industrial relations mechanisms.

[5] For a discussion of the role of NGOs in the alternative labour movement in the late 1980s and 1990s, see Ford (2009).

[6] Until recently, a union had to represent more than 50% of all workers in a firm to be able to engage in collective bargaining, a criterion that left many factories that were home to small but genuine unions without any chance of having a collective agreement.

[7] The description of these early campaigns presented here draws on Ford (2004).

[8] Anecdotal evidence collected in interviews conducted in 2007 and 2010 with other unions suggests both that this strategy is widely spread and that similar justifications – which are difficult to disprove – are given by employers when sacking union activists.

[9] In others, unionists' capacity to carry out their duties is hindered by employers' refusal to allow them to attend union training and other union-related events – a practice that is illegal. The ACILS (2010:19) survey found that most employers did not interfere with union leaders' attendance at meetings and training activities. However, anecdotal evidence suggests that it is more difficult for ordinary members, especially those employed on production lines (many of them women), to obtain leave for union activities (Ford 2008).

[10] At the national level, some federations and confederations have recognised this, including organising the unorganised and the combatting of outsourcing as one of their goals. At the time of writing, some unions had had some success within individual factories in terms of the latter, but the former remained decidedly aspirational.

[11] Under Articles 28 and 48, anti-union behaviours such as termination of employment, demotion, wage repression, intimidation and anti-union campaigns are subject to sanctions of one to five years imprisonment and/or a fine of Rp.100 million to Rp.500 million (US$10,000–$50,000) (Tjandra 2010).