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Implementation of Reversion of Burden of Proof in the Case of Labor

Fauzan
Lecturer at the Faculty of Law, Universitas Pembangunan Panca Budi, Medan, Indonesia
e-mail**:** fauzanfariz@yahoo.com

Ahmad Fauzi
Lecturer at the Faculty of Law, Universitas Sultan Ageng Tirtayasa, Serang, Indonesia
e-mail: papawzi.abi@gmail.com

Agus Ngadino
Lecturer at the Faculty of Law, Universitas Sriwijaya, Palembang, Indonesia
e-mail: agus.ngadino@yahoo.co.id

Abstract. The problem of employee position that weaker than their employer in the employment relationship. If there any dispute based on Law Number 2 of 2004 prevailing civil law proceeding and in the application of the burden of proof based on Article 163 HIR (Herzien Indonesisch Reglement)/283 RBg (Rechtsreglement Buitengewesten)/1865 BW (burgerlijk wetboek voor Indonesie) that the litigant should hold the burden of proof, while to protect the employee, the international labor standard ILO (International Labour Organization) approved the application of reversal burden of proof especially about employment dismissal, discrimination, and freedom of union. The research utilized the descriptive approach of normative juridical supported by the interview of some judges in the industrial relation court environment and was supported by case studies as supporting data, and afterwords the collected data was analyzed in the qualitative method. This research also implements the approach of legal comparation conducted to obtain the implementation of reversal burden of proof in some different country courts. The research concludes that the international labor standard ILO (International Labour Organization) can be implemented in Indonesian industrial relation court to legally protect the employee from illegitimate employment dismissal, discrimination, and labor union busting carried over by the employer. Some of the verdicts from industrial relation courts have implemented the reversal burden of proof. The best point of this research is the invention of the reversal burden of proof model for discrimination cases and union-busting undertaken by employers secretly.

Keywords. Implementation, Reversion, Burden of Proof, Labor Case.

1. Introduction

In the implementation of national development, the workforce has a very urgent role and position both as actors and as development goals (Wijayanti, 2018). This is in line with the

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objectives and substance of National development is carried out in the framework of the development of the whole Indonesian people and the development of the Indonesian society as a whole to create a society that is prosperous, just, opulent, equitable, both materially and spiritually based on Pancasila and the Constitution of the Republic of Indonesia 1945. In this regard, a form of legal protection regulation for workers is needed, which aims to guarantee the fundamental rights of workers and ensure equal opportunity and treatment without discrimination to realize the welfare of workers and their families while still paying attention to the progress of the business world.

Efforts to protect workers are carried out when the workforce is carrying out their work and when there are disputes between workers and employers. The increase in human activities in line with the current acceleration of globalization has resulted in frequent conflicts of interest between persons and between groups that cause disputes. These disputes also often occur between workers and employers, which in Law Number 13 of 2003 concerning Manpower (after this referred to as the Manpower Law) are referred to as Industrial Relations Disputes (PHI). Industrial relation is a system of relations formed between actors in producing goods and/or services consisting of elements from entrepreneurs, workers/laborers, and the government based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. The causes of industrial relations disputes can come from both employers and workers. From the entrepreneur's side, the cause of the dispute is paying less attention to the workforce's interests and demands, taking action against workers who make demands, obstructing or refusing the worker from carrying out the work (Wijayanti, 2018). The cause of disputes on the part of the workforce is that the employer has not fulfilled his demands, either individually or collectively, to slow down or stop work due to the dispute (Wijayanti, 2018).

Legal protection for workers in industrial relations is very urgent and must be protected by employers and the government to create a proportional position (Zulkarnaen & Utami, 2016). Soepomo stated that juridically, the relationship between workers and employers in implementing this working relationship has an equal position to carry out freely (Soepomo, 1985). From this opinion, it can be seen that the status of workers and employers is juridically the same, but sociologically it is very difficult to find common ground in society (Asyhadie & Kusuma, 2019). This unequal position of workers and employers often creates conflicts. According to their considerations, employers provide good and acceptable regulations to workers (Asyhadie & Kusuma, 2019). But the workers sometimes have different views from the employers, so as a result, it will create disputes (Asyhadie & Kusuma, 2019).

In the industrialization era, the problems of PHI are increasing and complex, so that fair, precise, fast, and cheap PHI institutions and procedures are needed. There is currently "Law Number 2 of 2004 concerning the Settlement of Industrial Relations Disputes" (after this referred to as the PPHI Law), which is expected to resolve disputes between workers and employers as well as possible. Settlement of industrial relations is classified into two primary forms: non-litigation and litigation (Udiana, 2015).

In the current era of labor law, one of the main problems is not yet adopting the concept of applying a reverse burden of proof in labor legislation. This is a form of a legal loophole in the field of labor law because if you look at other areas of law where the relationship between the parties has equality with the relationship between employers and workers has adopted the concept of the burden of proof reversed, for example, consumer protection law, environmental law, and corporate law.

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The absence of reversing the burden of proof in the labor law becomes a dilemma aspect in its application. This will lead to legal conflicts in unfair legal practices for the parties involved in it. Seeing the reality of unbalanced legal practices in labor law, Indonesia, which is entering the stage of a welfare state, needs a powerful intention towards government intervention by forming laws that function to protect the weak (Horwitz, 1977). As a response to this, the state began to pay attention to the interests related to the law of limited liability companies, consumers, small businesses, and the environment (Samsul, 2004), also adopted in the field of criminal law, namely in the corruption law.

This can be seen in consumer protection law, environmental law, and company law which have adopted a reversal of the burden of proof.

1. Articles 19, 22, 23, and 28 of Law Number 8 of 1999 concerning Consumer Protection, formulating the responsibility of producers adhering to the principle of presumption of guilt (Samsul, 2004).
2. Article 88 Law Number 32 of 2009 concerning Protection and Management of the Environment, formulating the application of a more advanced reverse burden of proof system, namely by strictly adhering to the principle of absolute responsibility (strict liability) in full (Agustina, 2003).
3. Articles 97, 104, 114, and Article 115 of Law Number 40 of 2007 concerning Limited Liability Companies also regulate claims against members of the board of directors and board of commissioners because their mistakes caused losses to the company. In the formulation of these articles, the board of directors' responsibilities and the board of commissioners are still formulated with the principle of presumption of liability. This principle is a modification of the principle of liability based on fault (Samsul, 2004).

In connection with the principle of the burden of proof in reverse, it is not adopted in the legislation of labor law in Indonesia, even though if you look at international legal principles in the field of labor law related to the International Labor Organization (ILO), the principles of international labor standards have been issued. ILO Labor Standards (ILS ILO) in the form of Conventions or recommendations that regulate relating to the application of the burden of proof reversed in certain cases, as follows:

1. The reverse evidence in the Case of Termination of Employment, ILO Convention 158, concerning Termination of Employment is regulated in Article 9: 2
2. Regarding cases of freedom of association in relation to ILO Convention No. 87 and No. 98 have been issued ILO Recommendation Number 143 of 1971 concerning Childbirth in Article 6 paragraph (2) letter e and the General Survey of the ILO Committee of Experts in paragraphs 217 and 218.
3. Equality in employment and occupation in relation to ILO Convention Number 111 by the ILO a General Research on Equality in Employment and Occupation was conducted.

The development of the reverse burden of proof at the regional level has been included in the Evidence Act 1997 and the Employment Act 2009 in Singapore. In the 1997 Evidence Act, the reverse proof is based on Part III, while the Employment Act 2009 also states reverse evidence in disputes between workers with the employer as stated in Part XVI. 131 of these provisions.

2. Methodology

The approach method in this research is juridical empirical to find out how the relationship between law and society and the factors influencing the implementation of law in

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society, as primary data. The second data is obtained indirectly through library research. This research specification describes an analysis to explain the applicable law related to the concept of law and positive law about the main research problem. Based on primary and secondary data, identification, classification, and validation, qualitative data analysis was carried out, and the results were displayed in the research report.

3. Result and Discussion

3.1. Principles of Reversion of Burden of Proof in International Labor Standards

As stated earlier that International Labor Standards include Conventions, Recommendations, Declarations, Resolutions, and Codes of Ethics. Meanwhile, other instruments issued by the Committee of Experts and the Committee on Freedom of Association include, among others, the General Survey and Special Survey, which are not formally included as an instrument in the International Labor Standards. Still, these instruments are essential because they serve as an explanation and interpretation of provisions in the instruments of International Labor Standards. International Labor Organization (ILO) has compiled International Labor Standards in examining labor cases in the framework of protection at work. Issues explicitly relate to international labor standards in terms of termination of employment, protection of workers' representatives, and protection of childbirth. These three issues of discrimination often arise (ILO, without years).

This protection is to overcome the fact that the applicable procedural law often gets a significant obstacle in resolving discrimination cases. This is true when discrimination occurs in its most subtle form (ILO, without years). To overcome this difficulty, applying a reverse burden of proof will be more effective if the worker is discriminated against to assert his / her rights. Suppose workers can provide preliminary evidence (prima facie) of discriminatory treatment. In that case, the burden of proof must be transferred or borne by the employer, which will show that differences in treatment are based on objective considerations and are not related to discriminatory treatment.

For the first time, ILO introduced it in the form of a Recommendation, namely ILO Recommendation Number 143 of 1971 concerning Worker Representatives. In ensuring effective protection of workers' representatives from termination of employment and other discriminatory actions, the burden of proof rests on the employer. This provision is expressly regulated in Article 6 paragraph (2) letter e ILO Recommendation Number 143 of 1971, which reads as follows:

Suggest that measures seeking to ensure the effective protection of worker's representatives may include provisions against employers, in cases where dismissal is accused of discrimination or unfavorable changes in employment conditions of workers' representatives, the burden of proof of such acts is justified.

In the General Survey of the Committee of Experts on the Application of Convention Number 158 and Recommendations on Termination of Employment in 1995 in report II section 4B point 42 (ILO, without years), have reported that concerning anti-union discrimination, regulations in some countries have strengthened protections for workers by requiring the employer to prove that the anti-trade union action was based on reasons other than trade union activities, some texts establish a presumption that is favorable to the workers.

The next step of International Labor Organization (ILO) in 1982 has formulated the importance of proof reversed in cases of termination of employment, which is regulated in ILO Convention Number 158 of 1982 concerning Termination of Employment (not yet ratified by Indonesia), states that race, color, sex, marital status, family responsibilities, pregnancy,

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religion, political opinion, national origin or social origin cannot be the reasons valid for termination of employment. This confirms the appropriate principle that workers should not burden themselves to prove that termination of employment is not justified (ILO, without years). The formulation in this Convention is contained in Article 9 paragraph (2) of ILO Convention Number 158 of 1982, which reads as follows:

For the worker concerned not to bear the burden on his own to prove that the termination of employment in question is unjustifiable, the methods of an application referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

a) The burden of proving there are valid reasons for termination of employment as defined in Article 4 of this Convention shall be left to the employer.

b) The bodies referred to in Article 8 of this Convention shall be empowered to conclude the reasons for termination of employment by taking into account the evidence provided to the parties concerned and under the procedures in national law and practice.

The formulation in Article 9 of the Convention is a compromise of the wishes of the member countries of the Convention, namely:

(1) Countries that want the burden of proof rests on employers.

(2) Countries are wishing that the burden of proof was not carried out alone but by both parties (ILO, without years).

In connection with the reverse evidence related to discrimination cases, Special Survey of ILO Committee of Experts on the Application of ILO Convention Number 111 of 1958 concerning Equality in Employment and Occupation and the General Survey of the Committee of Experts on the Application of ILO Convention Number 87 and ILO Convention Number 98 concerning Freedom of Association and Collective Bargaining. The Special Survey Committee of Experts has issued a statement in Paragraph 230 which principally states that if the plaintiff provides primary evidence of the alleged discrimination, the burden of proof shifts to the employer. Paragraph 230 is quoted as follows: The main task of quasi-judicial bodies is to accept and resolve cases of discrimination by giving final and binding decisions to the parties, generally relating to individuals but sometimes with a number of people. The burden of proof can be a significant barrier to achieving fair results in suspected discrimination cases, either directly or indirectly. For example, in cases of discrimination at the recruitment or promotion stage, the plaintiff applied for a vacant position and was then rejected, resulting in allegations of discrimination. Usually, information about the criteria for selection and the qualifications and ratings of various candidates for positions opened rests with the employer. This is usually true in indirect discrimination, where the essential criteria for selection have existed for many years. In many countries, the burden of proof is on the plaintiff. The employer is not obliged to provide evidence to show that there is no discrimination against the refusal. The employer can win the case simply by saying there is no discrimination and by disputing the reasons provided by the plaintiff. The Committee notes that once a plaintiff provides primary evidence of suspected discrimination in some countries, the burden of proof shifts to the employer.

General Survey of ILO Committee of Experts on the Application of ILO Convention Number 87 and ILO Convention Number 98 concerning Freedom of Association, reports that the provisions regarding cases of protection against freedom of association can be found in Paragraph 217 of the General Survey on the Application of Freedom of Association and the Right to Organize Convention Number 87 of 1948 and the Right to Organize and Bargain Together Convention Number 98 of 1948 which is the implementation of the provisions of Articles 19, 22 and 35 of the ILO Constitution (ILO, 1994), affirm that in terms of proof of

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freedom of association including those that result in termination of employment, it is applied in Paragraphs 217, 218 and 219 as follows:

Evidence

217. One of the main difficulties results from placing on workers the burden of proving that the act in question occurred as a result of anti-union discrimination, which may constitute an insurmountable obstacle to compensation for the prejudice suffered. Legislation in several countries has therefore strengthened the protection of workers by placing on the employer the onus of proving that the act of alleged anti-union discrimination was connected with questions other than trade union matters, and some texts expressly establish a presumption in the worker's favor. Since it may often be difficult, if not impossible, for a worker to prove that has been the victim of an act of anti.

218. union discrimination, legislation or practice should provide ways to remedy these difficulties, for instance by using the methods mentioned above.

219. The Committee draws attention to the relevance of certain provisions of other ILO instruments. Thus, Article 9 (2) of the Termination of Employment Convention, 1982 (No. 158), provides as follows: "In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities: (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer; ... ". Paragrafs (a) and (b) of Article 5 of the Convention provide further that union membership or participation in union activities, including acting as union representative, do not constitute valid reasons for termination. Moreover, Paragraf 6 (2) (e) of the Workers' Representatives Recommendation, 1971 (No.143), provides that "provision for laying upon the employer, in the case of any alleged discriminatory dismissal or unfavourable change in the conditions of employment of a workers' representative, the burden of proving that such action was justified."

Furthermore, to ensure the implementation of ILO Convention Number 158 and Recommendation Number 166 concerning Termination of Employment, ILO Committee of Experts in the 1994 Survey on the application of Convention 158 and Recommendation Number 166 has reported that in cases of termination of employment, the application of the general rules of contract law, where the burden of proof rests on the plaintiff, is practically impossible for the worker concerned to demonstrate that the termination of employment is unjustifiable. in particular because the employer has evidence of the reasons for termination of employment (ILO, without year).

Then the General Survey of the Committee of Experts on the Application of Convention Number 158 and Recommendation Number 166 of 1982 concerning Termination of Employment in Report III (Section 4B) of session 82 of 1995 have issued important matters regarding the burden of proof contained in Paragraphs 196 to Paragraph 217 which principally recommend use in handling labor disputes. One of the paragraphs can be cited as follows:

Paragraph 203

Therefore, the Convention distinguishes itself from the concept of traditional contract law, where the burden of proof is placed on the plaintiffs. This is based in particular on the tradition of common law countries where the employer is obliged to provide evidence of the reasons for termination of employment without notification for serious offenses and to concepts that exist in other countries in civil proceedings where judges decide based on evidence. which

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is submitted to him, particularly evidence submitted by the parties concerned, who therefore participate in seeking the truth, often with apparent powers to carry out investigations. This is also related to the principle whereby in labor disputes legal provisions must be interpreted favorably for workers.

Finally, to ensure that ILO member states prevent all acts of anti-labor union discrimination, the ILO's Committee on Freedom of Association has asked ILO member countries to create a national procedural procedure that must be fast, impartial and established procedural procedures that are not difficult for workers. The 2005 report of the Committee on Freedom of Association is contained in Paragraphs 817 and Paragraph 819 (ILO, 2006).

Paragraph 817

The government is responsible for preventing all acts of anti-trade union / labor discrimination. The government must ensure that complaints of anti-trade union discrimination are reviewed within the framework of national procedural procedures that should be prompt, impartial, and considered be such by the parties concerned.

Paragraph 819

Oftentimes, it is difficult, if not impossible, for workers/laborers to provide evidence of an act of anti-union discrimination against which they have been victims. This shows the importance of Article 3 of Convention No. 98, which provides that appropriate instruments for national conditions be established, whenever necessary, to ensure respect for the right to organize.

The proven international labor standards formulated by the ILO were in 2000, namely the issuance of the ILO Convention Number 183 of 2000 concerning the Revision of the Convention on Maternity Protection (Childbirth) in 1952, one of the considerations issued by this Convention is to consider the conditions of women workers and the need to protect pregnancy which is the responsibility of the government and society.

One form of protection is job protection and non-discrimination against the termination of employment against women during pregnancy and leave. The proof of termination of employment of women who are pregnant and on leave is with the employer. Formulation of Article 8 of the ILO Convention Number 183 of 2000 reads as follows:

a) Employers are deemed to have violated the Prevailing Laws if they terminate the employment relationship of a female worker who is pregnant and leaves as stipulated in Article 4 or 5, or for a certain period after returning to work, which will be determined by the Prevailing Laws or national regulations, except by for reasons unrelated to pregnancy or the birth of the child and its consequences or the care of the child. The employer must prove pregnancy or childbirth and its consequences or care for the child.

b) Female workers are guaranteed the right to return to their original position or an equal position with the same wages during the maternity leave period.

In connection with Article 8 of the ILO Convention 183 of 2000, the ILO Committee of Experts on the application of Convention 158 and Recommendation 166 has reported that in several countries, including Argentina, that women workers who are dismissed from their jobs for reasons of pregnancy or marriage, the burden of proof the employment relationship not for reasons of pregnancy and marriage rests with the entrepreneur (ILO, without year).

Based on all of what has been described above, it can be found that the principles of proof that have been contained in the ILO regulations are:

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(1) ILO Recommendation Number 143 of 1971 concerning Worker Representatives.
(2) ILO Convention Number 158 of 1982 concerning layoffs.
(3) ILO Convention Number 183 of 2000 concerning Maternity Protection.
(4) General / Special Surveys Regarding the Application of Convention 158, Convention 111, and Convention 87 & Convention 98. All International Labor Standards (Conventions and Recommendations) and the General / Special Surveys of the Committee of Experts and the Committee on Freedom of Association above apply reverse evidence regarding discrimination to protect workers because it is naturally difficult for workers to prove it.

3.2. Application of International Labor Standards in Indonesian Labor Courts

First, the reasons for protecting workers as stated in ILO provisions and national legislation, if a labor dispute occurs, it isn't very easy to get protection when using conventional evidence-based on article 163 HIR (Herzien Indonesisch Reglement) / 283 RBg (Rechtsreglement). Buitengewesten) / 1865 BW (burgerlijk wetboek voor Indonesie) because workers are in a position that is unable to prove. On the other hand, as discussed earlier that Indonesia's civil procedural law has not regulated the burden of proof reversed in labor cases. Also, the ILO convention on reverse proof has not been ratified by Indonesia, so that it becomes a separate legal problem to apply it. The only thing that might apply it is based on the principle of appropriateness, but it also has its legal problems because it still depends on the subjectivity of the judge. The power of protection cannot be maximized if reverse evidence is not applied, as happened in Argentina. The difficulty of proof is the biggest obstacle to obtaining effective protection against discriminatory acts in court decisions in Argentina. At the court of the first instance, workers are defeated because the court uses a conventional system of proof so that workers cannot prove that the worker was terminated due to discrimination by the employer, however the Argentine Court of Appeal, Fifth Chamber, in the case between Parra Vera Maxim vs. San Timoteo Sacons Number 144/05 to 68536 Year 2006 won workers by declaring the termination of employment illegal and rehiring workers to their original positions. The appellate court has used reverse evidence by considering that when a worker considers himself a victim of discrimination, to fulfill the requirements for the protection of his basic rights, and difficulties with the initial facts, there must be a transfer of the traditional rules which can provide reasonable evidence that the employer's actions violate his basic rights. In other words, prima facie evidence aims to bring out the hidden reasons for the company's actions (ILO, 2011).

Second, the reason is that in some countries, it is one of the sources of international law as a source for establishing the rule of law. For judges, the decisions of courts of other countries, especially regarding the application, are crucial. Through comparative interpretations can compare the decisions of domestic labor courts with those of courts of other countries. By comparing it, we want to find clarity about the meaning of a provision of the Prevailing Law. This method of interpretation is used by judges when facing cases that use a positive legal basis that arises from international treaties. This is important because, with uniform implementation, objective legal unity is realized or a general rule of law for several countries. In comparative interpretation, the interpretation of the regulation is justified by finding common ground on solutions found in various countries. Especially for laws that are reciprocal of international treaties. Outside international law, the use of this method is limited (Mertokusumo, 2007).

The court decisions of several countries that have applied a reverse burden of proof in labor cases are, as follows:

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a) National Court of Appeal Decision, Fifth Chamber, Argentina Number 144/05 s.d 68536 dated 14 June 2006, in Parra Vera Maxima Vs. San Timoteo SA Conc.

b) Judgment of the High Court of Labor, Sub-part 1 specialist on individual disputes within Sao Paulo Transporte S.A. Vs. Gilmar Ramos Da Silva, March 5, 2003.

c) The decision of the Spanish Constitutional Court, Second Chamber, 23 November 1981, Case Number 38/1981.

d) Court Decisions Not Using International Labor Standards, United States Supreme Court Judgment in the case between McDonnell Douglas Corp vs. Green, 411 US 792 of 1973.

The Prevailing Laws in Indonesia do not regulate themselves the burden of proof in settlement of labor cases in court unless they only concern seafarers' work accidents and work accidents. At the same time, outside of this, it refers to the Civil Procedure Law, namely the provisions in Article 163 HIR / 283 RBg/1865 BW.

The absence of stipulation of the provisions of the Legislation in its application does not mean that judges in the closed continental legal system find a fair burden of proof and protect workers as the weak party. According to Sudikno and Pitlo, quoting Knottenbelt's opinion in the continental legal system, including Indonesia, recognizes heteronomous legal findings as long as the law binds the judge. Still, this legal discovery has strong autonomous elements because the judge must explain or complete the law in his view. Departing from this view, judges at the Industrial Relations Court in Indonesia are required to make legal findings regarding the burden of proof in labor cases based on the matters discussed above. First, the relationship between employers and workers is that workers are in a weak position in front of the employer, and the employer orders workers. In such a position, the evidence does not always exist with workers. Second, the ILO labor standards and other ILO Instruments have dealt with reverse evidence. Third, industrial relations courts in Indonesia and other countries have made several decisions applying reverse evidence. Fourth, there has been jurisprudence in civil procedural law regarding the application of the burden of proof based on merit, namely who makes it possible to prove it is he who is given the burden to prove.

Even though according to Sudikno Mertokusumo, the primary source of legal discovery is legislation, then customary law, jurisprudence, international treaties, then doctrines. The sources of law are understood hierarchically in the source of law, and there are levels. Therefore if there is a conflict between two sources of law, the highest source of law will override the lower source of law.

Sudikno's opinion in judicial practice is not absolute that if there is a conflict between the law and the jurisprudence that the law wins, in certain cases casuistically in the conflict of legal values between the law and jurisprudence, then the chosen and won jurisprudence, the mechanism to be adopted by judges won jurisprudence against statutory provisions based on several approaches, namely:

1. Based on the reasons of "appropriateness" and "public interest", the judge must examine and analyze carefully, that the legal values contained in jurisprudence have a higher degree of appropriateness and can protect the public interest more than the law, in this case the judge must be able to perform "comparative analysis" to examine the value of appropriateness and fairness of Jurisprudence compared to what is formulated in the Law. To carry out a precise comparative analysis, anticipation and insight into professionalism are needed. Without this capital, it would be very difficult for a judge to get rid of an article in the Law.

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2. The judge conducts "contra legem" which means the judge decides to override the Prevailing Laws because the laws and regulations if applied, will cause injustice and lead to unprotected public order. For example, the Supreme Court Number 275K / Pid / 1983 contra legem the provisions of Article 244 of the Criminal Procedure Code, which states that an acquittal cannot be made for appeal and cassation. In the decision of the Supreme Court, overriding the provisions of Article 244 of the Criminal Procedure Code by allowing the Public Prosecutor to file an appeal with the consideration that legal remedies that close the door of legal remedies against an acquittal are considered to be contrary to the protection of public order, for the verdicts that carried out this contra legem in judicial practice has been follow by judges and judges do not use the provisions of Article 244 of the Criminal Procedure Code.

3. The judge flexes the provisions of the law by softening the provisions of the Law from imperative to facultative, for example the provisions of Article 19 of Government Regulation Number 10 of 1961 affirms that any transfer of land rights must be carried out before the Land Deed Making Official, the provisions of Article 19 of this Government Regulation are softened by the Jurisprudence of the Supreme Court Number 130 K / SIP / 1974 dated 7 August 1975 and Number 272 K / SIP / 1974 which contains legal principles that in accordance with the provisions of Article 5 of the Basic Agrarian Law still recognizes the position of customary law as the basis for land law in Indonesia, therefore the sale and purchase of land is legal and perfect and binding if it is carried out in contante handling based on the existence of The agreement on price and the object of sale and purchase is an administrative act only, because the emphasis of the matters regulated in it is the statutory rule for land registration, therefore, the legal rule regarding buying and selling is not Government Regulation No. 10 of 1961, but based on customary law.

As discussed earlier, in applying the burden of civil proof, jurisprudence has emerged that the burden of proof is based on merit, namely, who is more capable or most likely to prove that he is burdened. Based on this jurisprudence in labor cases, in addition to appropriateness, it is measured based on who is most capable or most likely to prove that fairness is also based on universal values that exist in the ILO international labor standards and other ILO instruments. Appropriateness is based on protecting workers as parties who weak.

The end of this research has found a new concept, namely:

1. The idea of the burden of proof in labor law by transforming the concept of evidence-based on propriety in civil procedural law based on the discussion of ILO international labor standards and other ILO instruments. Decisions of industrial relations courts as well as decisions of other countries in essence, both in the ILS and labor court decisions, the reasons for applying the reverse burden of proof are because workers have limited access to evidence so that to protect workers, the burden of proof is applied inversely so that the concept of proof is found propriety protection. Appropriateness concerns the evidence that is absolutely in the hands of the entrepreneur. The employer is most likely to prove it so that it is under the theory of evidence-based on fit, and then the entrepreneur is given the burden of proof. Evidence that is absolutely in the hands of the entrepreneur is related to the evidence according to the Prevailing Laws and based on the entrepreneur's habits who are obliged to keep it. Protected, regarding the existence of guaranteed protection for workers for the actions of employers regarding termination of employment, discrimination, anti-freedom of association, and childbirth, to ensure protection against these matters, if the worker can prove preliminary evidence (prima facie) of a violation these things, then the burden of proof shifts to the employer to prove that the employer's actions against workers are not related to these things.

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2. Found the concept of a pattern of order and allocation of evidence in disguised discrimination and anti-unionism. This concept is essential because, as discussed in advance both in the ILS ILO and other ILO Instruments, the decisions of the Argentinean, Brazilian and Spanish labor courts as well as the decision of the Supreme Court of the Republic of Indonesia Number 208 / Pdt.Sus-PHI / 2013 is not yet in a clear sequence and allocation of evidence. The pattern of ordering and allocation of evidence in disguised discrimination cases is found in the decision of the United States Supreme Court Number 411 U.S. 792 of 1973 in Mc Donnel Douglas Vs. Green, which in essence, judges in examining and adjudicating cases of hidden employment discrimination must follow:

a) The Plaintiff (Employee) must first prove that there is preliminary evidence (prima facie) of sufficient discrimination to support the claim by showing that the plaintiff is a minority group, the Plaintiff fulfills the conditions determined by the defendant, the Defendant refuses the Plaintiff's employment, and the Defendant continues to look for other potential workers with qualifications with the Plaintiff;

b) Defendants must prove the reasons for non-discrimination in their decision. If Defendant can prove, then the Plaintiff's claim that the Defendant committed discrimination has not been proven.

c) The plaintiff must then provide evidence in the form of facts to show a discriminatory conclusion. Plaintiffs may do so that Defendant's explanation is insufficient and is only a pretext for discrimination, or otherwise prove that the defendant's actions are used as one of discrimination prohibited by law.

This pattern of order and allocation of evidence can also be applied in disguised anti-union cases because the two types of cases have the same character. In general, employers rarely commit acts of direct discrimination and anti-unionism. The concept of the order and allocation pattern of evidence is essential because it will provide legal certainty for the parties when workers argue that employers have discriminated against and are anti-union in disguise. In addition, it will also protect workers against acts of discrimination and anti-union in disguise because if the proof is under the civil procedural law, the worker is in a weak position in gaining access to evidence, he will find it difficult to prove it.

4. Conclusion

International Labor Standards include Conventions, recommendations, Declarations, resolutions, Codes of Ethics. While other instruments are issued by the Committee of Experts and the Committee on Freedom of Association, general and special surveys do not formally include instruments in the International Labor Standards. Still, they are even so crucial as they serve as explanations and interpretations of provisions in the International Standard instruments Labor. To protect the workplace, the ILO has compiled International Labor Standards to examine labor cases. Issues that are explicitly related to international labor standards in the case of termination of employment, protection of workers, and protection of labor. Such protection is in the recommendation, ILO recommendation 143 1971 concerning Workers' Representation, General Committee of Experts on the Application of the Convention Number 158, and recommendations on work termination in 1995 in the report Article II Article 4b 42, ILO Convention Number 158 1982 and in making a special survey of the ILO Committee of Experts on Applications of Work at the ILO 111 on equality and the General Experts survey Convention Number 78 at the loco convention. 98 on freedom of association and collective offerings and ILO Convention 183 of 2000, ILO Committee of Experts on the application of Convention 158 and recommendation 166.

The rationale is substantially in the essence of the International Labor Standards and the ILO instruments that contain the principle of general law that workers should be provided with protection in the settlement of Industrial Relations disputes in applications from the reverse burden of evidence. According to article 38, paragraph (1) of the Charter of the International Court of Justice, the principles of general law are legal principles recognized by civilized countries (legal principles recognized by civilization).

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