



Analysis of Indonesia's Compliance with International Norms of Occupational Safety and Health in the Textile and Garment Industry

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Abstract

The economic globalization that continues to develop worldwide has not only impacted the economic growth, but it has also affected the basic rights of workers. The report of Better Work Indonesia shows that Indonesia still has not fully complied with international norms regarding occupational safety and health, especially in the textile and garment industry. This paper explores on why Indonesia has violated international norms despite having ratified numerous ILO conventions regarding occupational safety and health using theory of reputation from Guzman.

Keywords: Better Work Indonesia, International Norms, Occupational Safety and Health, Textile and Garment Industry, Theory of Reputation.

Introduction

The issue of basic labor rights is a problem that is often raised in the debate regarding globalization. Globalization is a multidimensional process of intensifying relations between countries in the world. At first, the economic dimension dominated the debate about globalization, but then the social dimension of globalization continued to receive more attention (Bielenstein, 2002). The involvement of national and private parties' economic relations in the global economic system continues to show an increasing trend. This phenomenon of economic globalization results in market liberalization which is aimed at continuously increasing mutual economic cooperation (Nayyar, 1999).

Economic globalization is not only limited to aspects of market liberalization. The interaction between liberalization and market protectionism results in national policies which are not only influenced by increasing economic competition, but also by binding overall decisions made within the framework of international organizations outside the context of country. The national legal system is thus confronted with legal norms that arise outside the national context (Zuern, 2000).

The International Labor Organization (ILO) is an organization that aims to protect the rights of workers throughout the world and seeks to overcome labor law injustices (Sengenberger, 2013). The ILO is a special body of the United Nations (UN) which has various programs and instruments that are recognized almost all over the world. The ILO sets labor standards through conventions and recommendations and has a tripartite government structure that represents the government, employers and workers (International Labor Organization, 2017c). The ILO has two legal instruments, namely recommendation and convention. The recommendation aims to provide guidance to member countries, while the ILO convention has the status of a treaty which in principle binds member countries who voluntarily ratify a certain treaty (International Labor Organization, 2017b). In 1998 ILO member countries, workers and employers' representatives declared eight fundamental principles and rights at work that had been ratified by the majority of the member countries. The contents of the core conventions that have been declared are as follows: Elimination of forced labor; Freedom of association and protection of the right to organize; Rights to organize and bargain collectively; Equal pay for male and female workers; Elimination of all forms of forced labor; Discrimination in employment and occupation; Minimum age to be allowed to work; Immediate prohibition and action of eliminating the worst forms of child labor (International Labor Organization, 2002). Despite the important role played by the ILO in labor and social policy levels, the low level of convention implementation continues to be criticized to this day (Jakovleski, Jerbi&Biersteker, 2019). The ILO seeks to reinforce the compliance of conventions that have been ratified by member states through technical cooperation and also implements various programs to help workers find a decent work. One example of the manifestation of the said program is Better Work Indonesia (BWI) program. BWI is a partnership between the ILO and the International Financial Corporation (IFC). The program aims to improve compliance with international labor standards and promote competitiveness in global supply chains in the textile and garment industry. BWI focuses on sustainable solutions through strengthening cooperation between companies, workers, governments and international buyers and distributors (International Labor Organization, 2018b). BWI conducts company assessments to monitor compliance with international labor standards and national labor laws. The assessment was compiled into an annual report that began in 2012 to highlight findings of non-compliance. The findings are then reported to help the factories identify areas that need to be improved. The collection and reporting of these data will help factories demonstrate their commitment to improving labor standards.

BWI divides its reporting into eight clusters of labor standards based on the setting of the 1998 ILO convention and the standards established by Indonesian labor law (International Labor Organization, 2012).

The factory-level assessment carried out by BWI is based on an overall criteria assessment of more than 280 questions covering labor standards divided into compliance clusters. Information is collected through various sources and techniques such as document review, direct observation, interviews with managers, workers and union representatives. Therefore the annual appraisal report is only based on what was observed, investigated and analyzed during the performance appraisal period and the review of related documents collected during the appraisal. Each factory is given seven days before BWI formalizes the report to provide input that might have an impact on the final report (International Labor Organization, 2012).

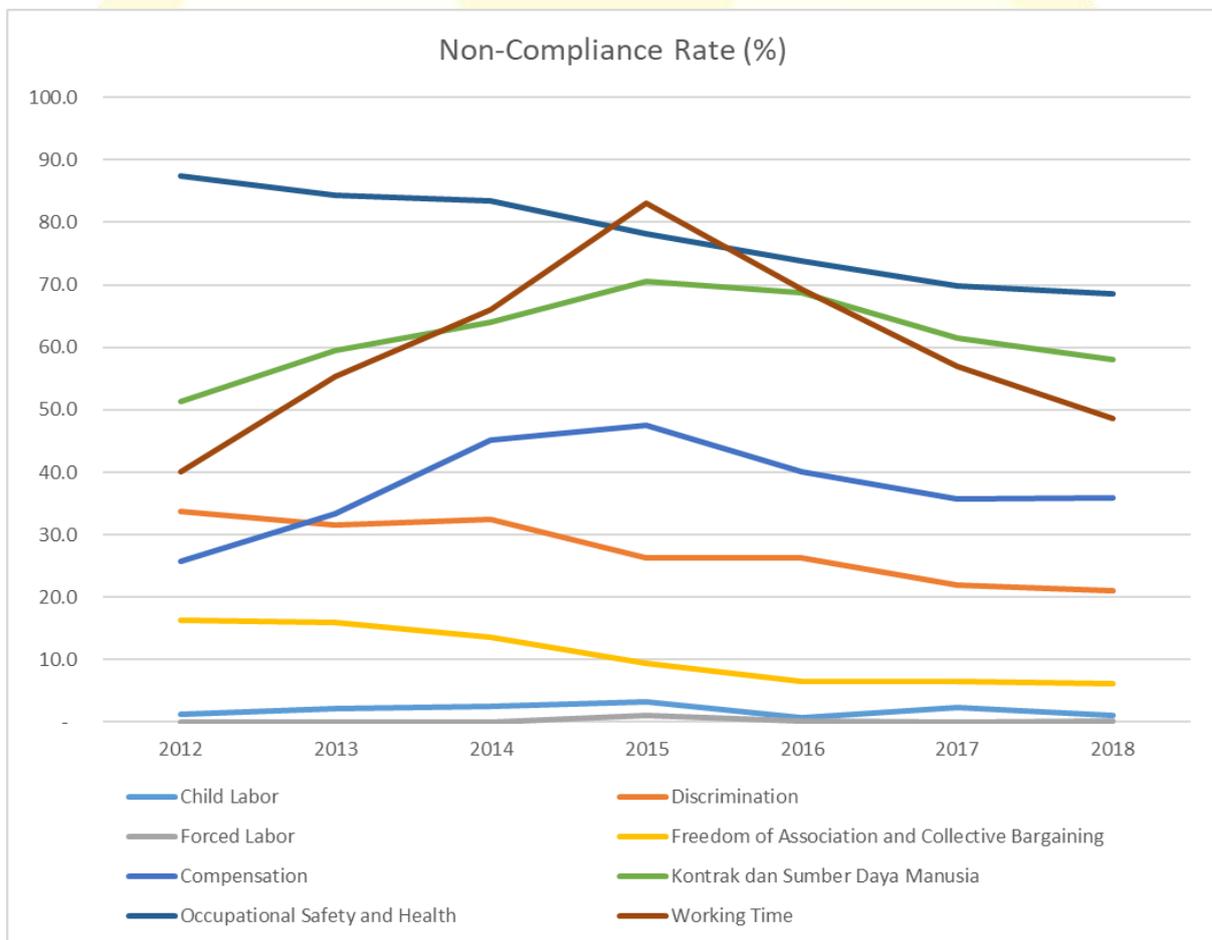


Figure 1: Non-Compliance Findings in the Better Work Indonesia Program (International Labor Organization, 2012-2018).

This section contains compilation of non-compliance with issues in the textile and garment industry from 2012 to 2018. This compilation serves as a benchmark to show the

level of non-compliance with the studied issues. The following is the summary of each compliance cluster.

- **Child Labor:** in this cluster no evidence was found of child labor under 15 years in factories studied by BWI. An example of non-compliance in this cluster is the discovery of workers under the age of 18 working with sewing machines that are considered dangerous according to the Indonesian law.
- **Discrimination:** the main source of non-compliance in this cluster comes from the inability of factories to meet national requirements regarding the employment of workers with disabilities.
- **Forced Labor:** in this cluster no significant violations were committed by the factories. The performance of this cluster is the best when compared to other clusters.
- **Freedom of Association and Collective Bargaining:** data shows that sometimes violations still occur that mainly relate to intervention and discrimination against workers.
- **Compensation:** the level of non-compliance in the compensation cluster is mainly concentrated on overtime pay issues. This problem is caused by misclassification of workers who do not get wages on national holidays and working day arrangements that do not consider national holidays.
- **Contracts and Human Resources:** the main issue of this cluster is mainly regarding the employment contracts. The factories do not specify the main terms and conditions of employment in the work agreement such as work time, wages or payment methods.
- **Occupational Safety and Health:** this cluster is the largest of BWI's assessments coverage and is divided into eight sub-clusters. Many of the violations found by the factories studied were related to government regulations regarding occupational safety and health.
- **Working Time:** non-compliance in this cluster is mainly concentrated regarding overtime issues. Excessive work time is an enduring problem for this industry and is difficult to change in the near future. Working time cluster is the second worst violation in the last 6 years.

From the presented data and brief description of each cluster, it can be found that the occupational safety and health cluster is relatively the cluster that has the highest non-compliance level. Although it continues to show an increasing trend every year, non-compliance in this cluster is almost always in the top position compared to other clusters(except in 2015).Five non-compliances with chemical safety, emergency preparedness, health services & first aid, occupational safety and health management systems as well as worker protection never reached a percentage lower than 80% in seven years. There are often violations such as chemicals that are not stored properly, the absence of a fire detection system, the absence of trained first aid workers and the absence of government permits for building safety.

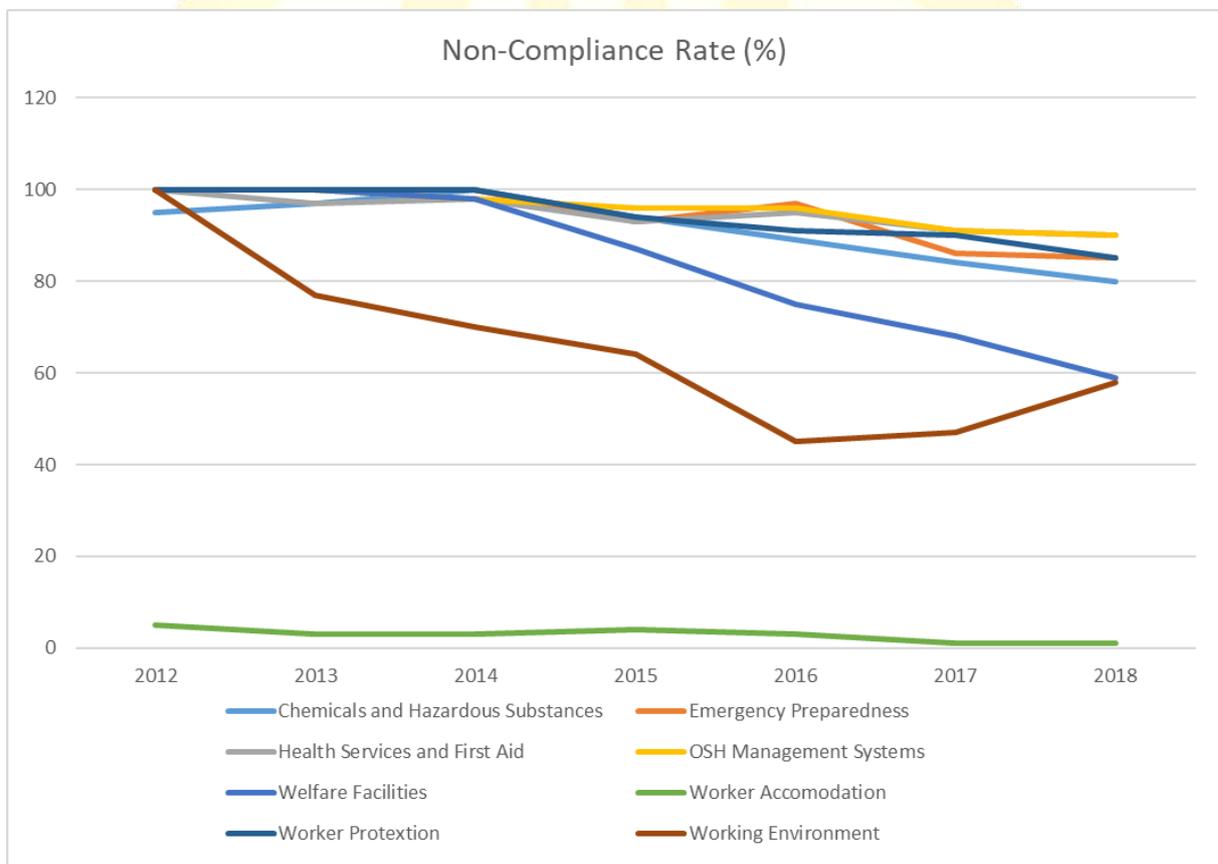


Figure 2: Non-Compliance Findings in Occupational Safety and Health Cluster (International Labor Organization, 2012-2018).

From the background described above, this paper aims to analyze and discuss Indonesia's compliance with occupational safety and health standards set out by the ILO, particularly in the textile and garment industries. Therefore the main question of this paper is: Why does Indonesia still violate ILO norms regarding occupational safety and health in the textile and garment industry?

Literature Review and Theoretical Framework

The origin of academic debate about the relevance of international law and explanations of state compliance has existed since the 1940s. During the cold war era, the theory of obedience was marked by debates between realist political academics who were skeptical of the influence of international law on the state and academics such as McDougal who then encouraged the relevance of international law (Raustiala & Slaughter, 2002).

Since the 1990s the science of international relations and international law began to interact intensively and more academics from the two disciplines collaborated with each other (Koh, 1997). This collaboration then produced a variety of new theories aimed at explaining state behavior towards norms in international relations. One theory that emerged was the theory of legitimacy by Franck (1990). Franck believes that countries adhere to international norms if they are considered to have a high level of legitimacy. The state determines the level of legitimacy of the norm by considering four characteristics, namely determination, symbolic validation, coherence and compliance. Another theory that emerged was from Koh (1997) regarding the theory of transnational legal processes. Koh aims to explain the country's compliance with international norms motivated by the fact that these norms have been internalized into the country's domestic legal system and therefore have become part of the value of state norms. Transnational legal processes that lead to the incorporation of norms are normative, dynamic and constitutive. Repetition of this compliance process will have an impact on the emergence of regular behavior patterns and ultimately will shape national identity.

Ramdan (2012) argues that the conditions of occupational safety and health (especially in the informal sector) in Indonesia is still concerning and need to be addressed through cross-program, cross-sector and cross-agency collaboration. The company through its CSR program, is a strategic partner of the government to improve the safety and health conditions. Companies can choose the method or program choice in planning, implementing and evaluating CSR programs according to the characteristics of the company's employees and the local community.

This study uses the reputation theory from Guzman (2002) as the main theoretical framework. In his article "A Compliance-Based Theory of International Law", Guzman developed the theory of compliance with the international law. Guzman assumes that states are rational actors, who pursue their national interests. A country's decision to comply with a certain international law can be influenced by two main considerations, namely with the

possibility of direct sanctions or with reputation damage that may arise due to violations of international law.

In the first part of his article, Guzman designs a case scenario where the state must decide whether they will comply with international law. In the neorealist view of international relations, international law in this case scenario is irrelevant. But in the second part, Guzman analyzes several case scenarios in which international law can influence state behavior. Although in his article Guzman uses the example of the relationship in a bilateral context, his main statement that “a state has a rational calculation that considers possible sanctions and the reputational consequences of its behavior“ can be applied into a multilateral context.

Research Method

This paper uses literature analysis as the main data source. Various secondary literatures that are relevant from various disciplines such as economics, sociology and anthropology are used to strengthen the analysis. This paper will also use various ILO and BWI publications that can be obtained either via the internet or by directly visiting ILO representations in Jakarta. These publications are report on labor standards compliance in the factories visited by BWI. This paper also uses various articles published by national and international media on various topics related to the research discussions.

Result and Discussion

Guzman's theory assumes that a country carries out a risk analysis between costs and benefits and on this basis will decide what steps they will take to fulfill international legal obligations. Departing from this theory, it can be underlined that Indonesia considers the costs incurred for non-compliance with occupational safety and health standards are still less than complying with occupational safety and health standards which can cost more. This is certainly alarming and might pose social turmoil and workers who are increasingly left frustrated with the situation. However, these workers do not have high bargaining power because of the possibility of losing their jobs which can have a negative impact on workers and their families.

On the other hand, the benefits of non-compliance are largely financial. Success in the textile and garment industry has had a significant impact on the progress of the Indonesian economy. With a large number of workers who are willing to work with relatively low wages, Indonesia is able to attract a variety of foreign companies with relatively low production costs.



Figure 3: Most Dynamic Export Processing Zones in the Asian Region (Asia Briefing, 2014).

Indonesia also owns several EPZ (Export Process Zones) which offer further facilities for foreign investors. In this EPZ, imports of tax-free raw materials and export goods are not taxed (Sivananthiran, n.d.). If production costs in Indonesia rise, it will have an impact on the departure of foreign investors to other countries, which of course can present a threat to the Indonesian economy. In this case, cost and benefit risk analysis of non-compliance with occupational safety and health standards can explain Indonesia's low compliance status.

The case of Indonesia's non-compliance with occupational safety and health standards in the textile and garment industry illustrates that although it is a very important topic, international norms still face difficulties regarding countries' behavior towards these. To improve compliance with ILO norms, it is important to conduct further and elaborate research on the motives behind countries' behavior.

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