INTERNATIONAL JOURNAL OF LAW AND LEGAL ETHICS (IJLLE)
Volume 3, Issue 1, April 2022
ISSN 746-9719 (online)

THE ENFORCEMENT OF EQUAL EMPLOYMENT OPPORTUNITY: INDONESIAN AND TAIWANESE PERSPECTIVE

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ABSTRACT: Accommodating diversity and promoting equality in the workplace represents a substantial challenge both now and in the future. Two Asian countries: Indonesia and Taiwan have been restructuring the Equal Employment Opportunity (EEO) due to employment discrimination issues. The laws on the EEO can be found in both Indonesia and Taiwan. The right to equal employment opportunity is acknowledged. However, its enforcement remains a formidable challenge. The EEO enforcement is expected to eliminate discrimination and achieve equality at work, employees within the organization have the right to be treated justly in all matters of employment. In regards to the enforcement, Indonesia and Taiwan have their own EEO enforcement agencies. These agencies are crucial and are responsible in ensuring the EEO laws in the countries. These agencies, however, are not an independent state agency. By having normative legal research, the author analyzes the facts on the issue of discrimination in employment in Indonesia and Taiwan. Moreover, the study aims to describe how both Indonesia and Taiwan guarantee the EEO for their citizens. In addition, the study shows the works of those agencies and how they function in order to reduce employment discrimination rate in their respective countries.

Keywords: *Discrimination, Equal Employment Opportunity, Human Rights, Indonesia, Taiwan*

INTRODUCTION

Accommodating diversity and promoting equality in the workplace represents a substantial challenge both now and in the future.[1] The Minister of Finance of the Republic of Indonesia, Sri Mulyani stated, in a panel discussion on Empowering Women in the Workplace held by the International Monetary Fund (IMF) in Nusa Dua, Bali, on Tuesday, October 10th, 2018, that without the assistance of policies that can ease the burden on women, promoting gender equality in the workforce will be very difficult. The policy includes an

[1] Philip J. Connell, and Helen Russell, 2005, *Equality at Work? Workplace Equality Policies, Flexible Working Arrangements and the Quality of Work*, The Equality Authority, Ireland, p. 17.

institution to make its office environment friendly to women.[2] This sentence shows discrimination in employment in Indonesia is yet to end.

Meanwhile in Taiwan, the country has moved towards gender equality. On the basis of a strong legal framework and enhanced public education efforts, Wu Hsiu-chen, the Director General of the Department of Gender Equality of Taiwan, sees gender mainstreaming on the rise and cites the greater involvement of women in political and public decision-making. Additionally, equal access to education and employment opportunities is also paying dividends for women in Taiwan.[3] It is a great step forward that the country is trying to fight against the gender inequality in the workplace. However, even though some movements were made in Taiwan, it does not equate to the elimination of discrimination issues for the country. Indeed, Taiwan has experienced many discriminations in employment cases. The law for instance, requires 3% of the workforce in the public sector and 1% of the workforce in the private sector to be individuals with disabilities. According to Ministry of Labor of Taiwan, the unemployment rate of persons with disabilities was three times higher than that of individuals without disabilities.[4]

The two nations having good economic and trade relations yet falls short on the issues of employment, with several issues that must be addressed by both sides. One of the employment cases happened in early 2019 when the Indonesian government unilaterally suspended the scholarship program in Taiwan after reports emerged of forced labor practices experienced by Indonesian students.[5] "Indonesia will temporarily put a stop the recruitment

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[2] Fajar Sulaiman, 2019, "Minister of Finance Highlights Gender Equality Issues in the Workplace (Menkeu Soroti Isu Kesetaraan Gender di Tempat Kerja)", Warta Ekonomi Website, taken from https://www.wartaekonomi.co.id/read198477/menkeu-soroti-isu-kesetaraan-gender-di-tempat-kerja.html, accessed on May 21st, 2019.

[3] Taiwan News, 2019, "Taiwan Leads Way in Advancing Gender Equality in Asia", Taiwan News Website, taken from https://www.taiwannews.com.tw/en/news/3476339, accessed on May 22nd, 2019.

[4] American Institute in Taiwan, 2019, "2016 Human Rights Report (Taiwan Part)", American Institute in Taiwan Website, taken from https://www.ait.org.tw/2016-human-rights-report-taiwan-part-2/, accessed on October 23, 2019.

[5] The Jakarta Post, 2019, "Indonesia to Suspend Recruitment for Scholarship Program in Taiwan", The Jakarta Post Website, taken from https://www.thejakartapost.com/news/2019/01/03/indonesia-to-suspend-recruitment-for-scholarship-program-in-taiwan.html, accessed on December 14, 2019.

for the college internship scheme until an agreement on better governance is made," Ministry of Foreign Affairs of the Republic of Indonesia spokesman, Arrmanatha Nasir said.

The suspension was due to the allegations of forced labor against an estimated 300 Indonesian students. The news was revealed by a Taiwanese legislator, Ko Chih-en, to local media. He claimed that there were six universities in total found to send foreign students to work in factories.[6] Ko found the victims including the Indonesian students aged less than 20 years who were registered at Hsing Wu University in New Taipei City. These Indonesian students were only allowed to study for two days a week, while the remaining four days having to pack 30,000 contact lenses for 10 hours per day.[7] The actions violated Taiwan's labor law especially when the sum of working hours for foreign students shall not exceed 20 hours per week, except during summer and winter vacations.[8]

On top, the number of migrant workers in Taiwan reached 706,060 in April 2019. More than 271,000, or 38.4% of those, were from Indonesia. It was shocking when it was revealed that the Indonesian migrant workers were not working as they had previously expected, since out of 706,060 migrant workers, those reported as missing or working at jobs other than what they were legally contracted to do totaled 51,982, or 7.4%, National Immigration Agency data showed.[9] Reports of missing migrant workers have been increasing each year, creating public security concerns, the Control Yuan said in a report. Further, data also showed that the percentage of migrant workers

[6] *ibid.*
[7] MSN Indonesia, 2019, "Hundreds of Indonesian Students in Taiwan are Trapped in a Forced Labor Scheme (Ratusan Pelajar Indonesia di Taiwan Dijebak Dalam Skema Kerja Paksa)", MSN Indonesia Website, taken from https://www.msn.com/id-id/berita/dunia/ratusan-pelajar-indonesia-di-taiwan-dijebak-dalam-skema-kerja-paksa/ar-BBRKiGe, accessed on December 14, 2019.
[8] See Article 50, Employment Service Act 2018, Taiwan.
[9] Jason Pan, 2019, "Migrant Worker Numbers Exceed 706,000 in April", Taipei Times Website, taken from http://www.taipeitimes.com/News/taiwan/archives/2019/06/03/2003716245, accessed on December 13, 2019.

convicted of criminal activity has also risen, especially for assault, endangering public safety, narcotics activities, illegal logging and poaching.[10]

Hence, in order to curb the complexities of legal risks, the employment matters should be reduced by giving the correct information on job applications, treating the job applicants with equal opportunity, treating the workers with fair and proportionate tasks, and to enforce the EEO laws of the countries. Due to the close relationship Indonesia and Taiwan has built in conducting substantial business activities, including migrant employment, the countries should be familiar with the concept of equality in the workplace. Discrimination in employment is a crucial issue for countries that must be monitored and regulated in order to create an equal treatment and opportunity in a workplace. Equal Employment Opportunity (EEO) is more than the equality in terms of gender aspects. This EEO is a systematic, result-oriented set of actions that seek to identify and eliminate discriminatory barriers in the workplace so that equality of opportunity is provided.[11]

According to the International Labor Organization (ILO) Convention, the term discrimination includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.[12] Furthermore, ILO claims that people with disabilities are inherently equal human beings and thus entitled to equal treatment and equal opportunities, particularly with respect to employment.[13]

EEO is a Human Right that must be ensured. Human Rights protection is globally accepted as stated by the Universal Declaration of Human Rights (UDHR). Moreover, every Constitution of a country guarantees

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[10] *ibid.*
[11] UC Policy Library, 2018, *Equal Employment Opportunity (EEO) Policy*, UCPL-4-108, May 2018, University of Canterbury, New Zealand, p. 1.
[12] See Article 1 paragraph 1 (a), ILO Convention No. 111 on Discrimination in Respect of Employment and Occupation, 1958.
[13] ILO, 2011, *Achieving Equal Employment Opportunities for People with Disabilities through Legislation*, International Training Centre of the ILO, Italy, p. 32.

the protection of Human Rights for its citizens. In Indonesia, the EEO is regulated in some Articles from several Laws. Legally speaking, it is not only Indonesia, Taiwan also guarantees the full protection of equality in employment.

It is, therefore, clear that legislation regarding equal employment opportunities exists, but the question is whether it is regularly practiced in the everyday life. In other words: Assuming the law is effective, we expect to see it change and accelerate employment practices, given that employers wish to comply with the law to prevent sanctions, or are merely willing to adopt and apply newly enacted norms.[14] The regulation on EEO is a preventive attempt—to prevent inequality treatment in the workplace—for the citizens. If such attempt fails to do so, then the government must strengthen the law enforcements in the country.

Problems

How both Indonesia and Taiwan guarantee the EEO for their citizens?

Research Methods

To make this paper academically correct, the researcher will use normative legal research methods in structuring and researching the paper. Normative legal research method is a scientific research procedure aiming to find truth based on legal scientific logic in term of its normative.[15] Data analysis used is descriptive-qualitative method. It merely describes the phenomenon or situation under study and its characteristics.[16] It reports descriptively how the EEO enforcement in Indonesia and Taiwan is. Furthermore, the study shows what attempts both countries can do to deal with the EEO.

Discussion

1. The Laws on Equal Employment Opportunity

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[14] Aleksandra Stoilkovska, Jana Illieva, and Stefan Gjakovski, *op. cit*., p. 282.
[15] Hardijan Rusli, 2006, "Normative Legal Research Methods: How? (Metode Penelitian Hukum Normatif: Bagaimana?)", *Law Review*, Vol. 5 No. 3, March 2006, Fakultas Hukum Universitas Pelita Harapan, p. 40.
[16] Khushal Vibhute, and Filipos Aynalem, 2009, *Legal Research Methods Teaching Material*, Prepared under the Sponsorship of the Justice and Legal System Research Institute, p. 16.

After analyzing the issues of EEO in Indonesia and Taiwan, it is necessary to study and examine the rules and regulations regarding on EEO. Establishing regulations is a correct move to settle the employment inequality issues. Accordingly, these countries shall have a legal basis in the form of Constitution or law to guarantee the protection of equality in the workplace.

1.1. The Laws on EEO in Indonesia

Equality and non-discrimination in the workplace are two ways of stating the same things: Equality means no discrimination, and discrimination means losing or reducing equality. The right to equality is a fundamental Human Right, which are guaranteed in the 1945 Constitution of the Republic of Indonesia, Indonesian Manpower Act 2003, Persons with Disabilities Act 2016 of the Republic of Indonesia, as well as in international law instruments which have been ratified by Indonesia. The companies or corporations have responsibility to respect the principle of equality, both as an entrepreneur and as an economic agent.[17]

Corporations in Indonesia are expected to play a large role in Human Rights. However, this potential is lost because of the contribution of several factors such as weaknesses in international rules, bad policies and weak governance in the developing country, and corporate practices that prioritize short-term profits over long-term human development.[18]

1. 1945 Constitution of the Republic of Indonesia

Human Rights orders are constituted in Chapter XA of the 1945 Constitution. There are constitutionally several Articles

[17] ILO, 2013, *A Practical Guide for Employers to Promote Equality and Prevent Discrimination in the Workplace in Indonesia (Panduan Praktis bagi Pengusaha untuk Mempromosikan Kesetaraan dan mencegah Diskriminasi di Tempat Kerja di Indonesia)*, International Labour Organization, Jakarta, p. 3.

[18] Adzkar Ahsinin, *et. al.*, 2019, *Development of Business and Human Rights in Indonesia: Perception of State, Civil Society and Corporations (Perkembangan Bisnis dan HAM di Indonesia: Persepsi Negara, Masyarakat Sipil dan Korporasi)*, Lembaga Studi dan Advokasi Masyarakat, Jakarta, p. 2.

governing the Human Rights of the Indonesian citizens and these fundamentally relates to the protection of equality in employment.

Article 28D paragraph (2)[19]

"Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment."

The equal treatment for Indonesian people must exist in every aspect of activities. Therefore, it is unlawful to treat employees unfairly and unjustly. Indonesia guarantees the protection of right of employment since working is one of the fundamental rights that people have, no matter the gender or religion, and whether you are a person with disabilities or not. Moreover, receiving proper remuneration and fair treatment in employment should be applied well in the organization.

Additionally, several Articles on the 1945 Constitution concerning are among others: Article 28A, Article 28C paragraph (2), Article 28D paragraph (1) and (3), Article 28E paragraph (1), (2), and (3), Article 28H paragraph (2), as well as Article 28I paragraph (1), (2), and (4). These Articles stated crystal clearly that Indonesia protects the equality in any aspect, involving the employment. This is due to the fact that the state has responsibility to protect, advance, uphold, and fulfill the Human Rights of its citizen.

2. Manpower Act 2003 of the Republic of Indonesia (No. 13/2003)

The state guarantees that employees and the job applicants (or those who look for a job) have equal opportunity in applying the job vacancies. This is indeed a good aim of the manpower development in the country which everyone is judge equally before the law.

Article 4 letter (b)[20]

[19] See Article 28D paragraph (2), 1945 Constitution of the Republic of Indonesia.
[20] See Article 4 letter (b), Manpower Act 2003, Indonesia.

"Manpower development aims at:

Creating equal opportunity and providing manpower (supply of people available for a job) that suits the need of national and provincial/municipal developments."

Article 5[21]

"Every person available for a job shall have the same opportunity to get a job without discrimination."

Article 6[22]

"Every worker/laborer has the right to receive equal treatment without discrimination from their employer."

No discrimination shall occur to job applicants, because every Indonesian citizen is entitled to same opportunity in getting the job. Therefore, any kind of discrimination shall not exist in employment recruitment. The law further mentions that workers/employees (people who already get job and be employed) in the organization must be treated based on their competences and performances, and without receiving discrimination. Discrimination of any kind is absolutely prohibited.

3. Persons with Disabilities Act 2016 of the Republic of Indonesia (No. 8/2016)

The right to equally get the same portion in employment for those with disabilities is regulated under the Persons with Disabilities Act 2016. Chapter VII of the Law concerning the Right to Employment, Entrepreneurship, and Cooperative. This Chapter VII consists of only one Article, namely Article 11.

Article 11 letter (a), (b) and (c)[23]

"The right to employment, entrepreneurship, and cooperative for Persons with Disabilities include the followings:

[21] See Article 5, Manpower Act 2003, Indonesia.
[22] See Article 6, Manpower Act 2003, Indonesia.
[23] See Article 11 letter (a), (b), and (c), Persons with Disabilities Act 2016, Indonesia.

(a) to obtain employment from the Government, Local Governments, or private entities without discrimination;

(b) Equal remuneration with other workers who are not Persons with Disabilities for work of equal value and level of responsibility; and

(c) Reasonable accommodation in the workplace."

By having this Article, the organizations, whether government or private entities, must treat people with disabilities fairly and equally. In terms of performances and competences, people with disabilities must be treated the same way with non-disabilities. However, those with disabilities may face challenegs, this is therefore, as commanded by the law, the organizations need to provide them reasonable accommodation and proper facility in the workplace.

1.2. The Laws on EEO in Taiwan

Apart from Indonesia, Taiwan has legal bases on the EEO. These laws are vital to make the country orderly, especially with the inequality actions in employment. The country fundamentally guarantees the protection of Human Rights for all citizens. In terms of EEO, it is protected in the Constitution, Employment Service Act 2018, Gender Equality in Employment Act 2016, and People with Disabilities Rights Protection Act 2015.

1. Constitution of the Republic of China (Taiwan)

In Taiwan, rights and duties of the people are constituted in Chapter II of the Constitution. There are fundamentally several Articles in the Chapter protecting the rights of the citizens. Besides, another Chapter that guarantees the rights of EEO is Chapter XIII concerning the fundamental national policies.

Article 152[24]

"The State shall provide suitable opportunity for work to people who are able to work."

[24] See Article 152, Constitution of the Republic of China (Taiwan).

Everyone in the country who have the capacity to work is entitled to get a proper job regardless of the race, belief, place of residence, political view, gender, and disability. Providing a suitable employment opportunity constitutionally lies on a state. Thus, any violation against the right to employment opportunity must be proceeded decisively.

The Constitution of Taiwan guarantees the protection of equality. All citizen is constitutionally equal before the law. Accordingly, this equal treatment must be in all aspect of life, including in employment. Aside of Article 152 of the Constitution, other Articles that guarantee the Human Rights protections are Article Article 7, Article 10, Article 13, Article 14, Article 15, Article 153, and Article 156.

2. Employment Service Act 2018

As one of the legal bases for any matter related to employment, the Employment Service Act 2018 guarantees freedom to work and offers protections from inequality treatments which may occur in the workplace. There are vitally several Article mentioned about the EEO for the people in Taiwan. These Article are all included in Chapter I of the Law regarding the General Provisions.

Article 3[25]

"Every national is free to choose his/her occupation unless otherwise is prohibited or restricted by the law."

Article 4[26]

"Every national with working capability is equal in terms of the access to Employment Services."

Article 5 paragraph (1)[27]

"For the purpose of ensuring national's equal opportunity in employment, employer is prohibited from discriminating against

[25] See Article 3, Employment Service Act 2018, Taiwan.
[26] See Article 4, Employment Service Act 2018, Taiwan.
[27] See Article 5, Employment Service Act 2018, Taiwan.

any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, horoscope, blood type, or past membership in any labor union; matters stated clearly in other laws shall be followed in priority.

The Article above stated undoubtedly and clearly that no discrimination shall exist in employment, starting from the hiring process, job placement, even until after the applicant has worked in the respective organization or company. This prohibition to discrimination in employment is made for none other than to ensure equal opportunity in employment in the country.

3. Gender Equality in Employment Act 2016

In general, the protection of equal opportunity at work from any kind of discrimination is guaranteed in the Employment Service Act 2018. The gender segregation in the workplace, however, is further protected in the Gender Equality in Employment Act 2016.

Article 7[28]

"Employers shall not discriminate against applicants or employees because of their gender or sexual orientation in the course *of recruitment, screening test, hiring, placement, assignment, evaluation and promotion. However, if the nature of work only suitable to a specific gender, the above-mentioned restriction shall not apply."*

Job applicants and employees cannot be treated unfairly just because of their sexual orientation or gender. However, there is an exception to it if the nature of the job itself is only suitable to a specific gender. For example, male football team needs to hire a male football coach to train them. This job is naturally more suitable for a particular gender.

[28] See Article 7, Gender Equality in Employment Act 2016, Taiwan.

Since women may be in certain contexts as opposed to men (become pregnant, deliver baby, or engage in childcare activities), their rights in employment must be protected. Those special factors are not an excuse for work termination for women. In terms of retirement, discharge, severance, and termination, both men and women should have the same conditions and qualifications. Accordingly, gender is not an issue underlying whatsoever decision made by management.

4. People with Disabilities Rights Protection Act 2015

The legislative body of Taiwan, in recent decades, has passed several landmark laws aimed at promoting the rights of its citizens with disabilities. Disability policy makers were instrumental in helping to write and implement the 1991 Handicapped Welfare Act, the Physically and Mentally Disabled Citizens Protection Act of 1997, and the People with Disabilities Rights Protection Act of 2007 (the last Amendment was in 2015).[29] This law guarantees the protection of the rights in employment for those with disabilities. People with Disabilities Rights Protection Act 2015 is a major attempt for the country to eliminate barriers and limitations of people with disabilities at work.

Article 1[30]

"This Act aims to protect the legal rights and interests of people with disabilities, secure their equal opportunity to participate in social, political, economical, and cultural activities fairly, while contributing to their independence and development."

Article 1 states the purpose of the enactment of the Law. Working is one of the ways for the society to participate in national economic development. Healthy employment environmental tends to

[29] I-Chun Huang, and Roy K. Chen, *op.cit.*, p. 43.
[30] See Article 1, People with Disabilities Rights Protection Act 2015, Taiwan.

lead to better economic movement. The Article is great to exist as it tells us that we need to create a law aiming to protect the legal rights and interests of people with disabilities, and to secure their equal opportunity to participate in several engagements such as political, economic, social, and other activities.

2. The Enforcement Agencies of Equal Employment Opportunity

The regulations on EEO mean absolutely nothing and become only utopia if there is no implementation done by corporations or companies, as well as if there is the lack of law enforcement from the officials. This is therefore, both Indonesia and Taiwan have established and/or created EEO enforcement agencies. Indonesia has what so-called Labor Inspectors and Civil Servant Investigators. Meanwhile in Taiwan, the country has Employment Discrimination Review Committee, Committees on Gender Equality in Employment, and Labor Inspectors. These agencies shall all uphold the basic rights of employees/workers to be equally treated in the workplace.

2.1. Enforcement Agencies of EEO in Indonesia

In term of the enforcement of the manpower act in the country, the Labor Inspectors are the one in charge to ensure that the Act or provisions related to manpower are obeyed by employers, corporations, or other business entities. Article 176 of the Indonesian Manpower Act 2003 clearly stipulated that labor inspection shall be carried out by Labor Inspectors who have the competence and independency to guarantee the implementation of labor laws and regulations.[31] Furthermore, the Presidential Decree on Labor Inspection (No. 21/2010) stipulated that the labor inspection shall be carried out by the Labor Inspectors who has competency and independency.[32]

[31] See Article 176, Manpower Act 2003, Indonesia.
[32] See Article 14, Presidential Decree 2010 on Labor Inspection, Indonesia.

In work activities, labor inspection is the most important instrument to prevent matters that are undesirable in work. This includes all aspects that are potentially under its control, industrial relations, wages which are related to general working conditions, occupational safety and health, and issues related to employment and social security.[33] Due to its importance, Labor Inspection legally aims to ensure the implementation of labor norms in companies or workplaces.[34] Basically, based on Article 3 paragraph (2) of the Regulation of Minister of Manpower (No. 33/2016), labor inspection functions are as follows:[35]

a) guarantee labor law enforcement;
b) provide information and technical advice to employers and workers/laborers on matters that can guarantee the effectiveness of the implementation of labor laws; and
c) collect material information about work relations and employment conditions in the broadest sense as material for the drafting or improvement of labor laws and regulations.

Those functions will not make into effect if there is no cooperation from both government and companies. In relations to its functions, the Labor Inspectors has three major procedures in running their inspections. These procedures include:[36] a) planning; b) implementation; and c) reporting. In the process of implementation, Labor Inspectors might investigate whether injustice treatment and discrimination of any kind exist in the organization or not. Accordingly,

[33] Yenny Krisnny Tannasa, 2016, "The Role of Labor Inspectors in Handling Labor Problems According to Indonesian Manpower Act 2003 (Peranan Pegawai Pengawas Ketenagakerjaan Dalam Menangani Masalah Ketenagakerjaan Menurut Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan)", *Lex Administratum*, Vol. IV No. 1, January 2016, Sam Ratulangi University, North Sulawesi, p. 156.
[34] See Article 3 paragraph (1), Minister of Manpower Regulation 2016 on Procedures for Supervision of Manpower, Indonesia.
[35] See Article 3 paragraph (2), Minister of Manpower Regulation 2016 on Procedures for Supervision of Manpower, Indonesia.
[36] See Article 4, Minister of Manpower Regulation 2016 on Procedures for Supervision of Manpower, Indonesia.

the Labor Inspectors must follow the steps carefully so that it is expected to be no mistakes in making the reports.

The Indonesian Manpower Act 2003 further stated that essentially, besides of the police investigators, special authority to act as Civil Servant Investigators (Manpower Civil Servant Investigators) may also be given to Labor Inspectors in accordance with valid laws and regulations, in addition to the one assigned to the investigating officials of the Police of the State of the Republic of Indonesia. These Civil Servant Investigators will carry out the Labor Crime Investigation.[37]

Therefore, the discrimination of any kind that occurs in employment will absolutely be the concern of Labor Inspectors and state. Labor Inspectors, in carrying out their duties, are obliged to keep secret anything that according to their nature should be kept confidentially, and not to abuse their authority.[38] Overall, the legal basis of the existence of legal inspectors as well as Civil Servant Investigators is crystal clear. Both labor inspectors and Civil Servant Investigators, however, are only as civil servants and not an independent board of the state. Consequently, there are still outside interference that interferes with labor inspection. Moreover, these Civil Servant Investigators confuse the society in distinguishing their functions with police investigators. And there are absolutely overlapping tasks between these two investigators.

In addition, the Labor Inspectors in Indonesia in reality have not been able to work optimally, effectively and efficiently. This is because the number of labor inspectors is not comparable to the number of existing companies. Based on the Mandatory Labor Report Data from the Indonesian Ministry of Manpower, the current number of companies (June 2020) has reached 252,880 companies with a total workforce of

[37] See Article 47 paragraph (1) and (2), Minister of Manpower Regulation 2016 on Procedures for Supervision of Manpower, Indonesia.
[38] See Article 181, Manpower Act 2003, Indonesia.

13,138,048 people.[39] With the number of Labor Inspectors only around 1,574 people currently, they are only able to supervise 103,680 companies or 40.9% of the number of companies, said the Minister of Manpower, Ida Fauziyah, in a Webinar with the theme "Dynamics of Compliance with Employment Norms in the Post-COVID-19 New Normal Era" in Jakarta (15/6/2020).[40]

This statement is fundamentally stated based on the Indonesian Minister of Manpower Regulation 2016 on Procedures for Supervision of Manpower that was amended in 2020 as the Minister of Manpower Regulation 2020 on Amendment of Procedures for Supervision of Manpower. In that regulation, a Labor Inspector is obliged to inspect at least five companies every month or 60 companies in one whole year.[41] Minister of Manpower, Ida Fauziyah, further stated:[42]

"Innovation of inspection using information technology tools can be a solution to ease the work of more optimal supervision and facilitate public participation in monitoring work norms."

Minister of Manpower suggested to have the benefit of the emerge of technology to assist the government in monitoring the labor inspection. Furthermore, the public might have access to labor inspection as the technology facilitate people to access the information from the government. At the end, there would the transparency from the government related to their works in term of employment.

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[39] Indonesian Ministry of Manpower, 2020, "The Ministry of Manpower Asks Labor Inspectors to Ensure Workers are Safe during the COVID-19 Pandemic (Kemnaker Minta Pengawas Ketenagakerjaan Pastikan Pekerja Aman di masa Pandemi COVID-19)", Indonesian Ministry of Manpower Website, taken from https://www.kemnaker.go.id/news/detail/kemnaker-minta-pengawas-ketenagakerjaan-pastikan-pekerja-aman-di-masa-pandemi-covid-19, accessed on November 20, 2020.
[40] *ibid.*
[41] See Article 8, Minister of Manpower Regulation 2016 on Procedures for Supervision of Manpower, Indonesia.
[42] Ade Miranti Karunia, and Bambang P. Jatmiko, 2020, "Ministry of Manpower: Labor Inspectors are not Comparable to the Number of Companies Supervised (Menaker: Pengawas Ketenagakerjaan tak Sebanding Jumlah Perusahaan yang Diawasi)", Kompas News Website, taken from https://money.kompas.com/read/2020/06/15/210000226/menaker--pengawas-ketenagakerjaan-tak-sebanding-jumlah-perusahaan-yang-diawasi, accessed on November 20, 2020.

2.2. Enforcement Agencies of EEO in Taiwan

The laws on EEO are set clearly by the state. Now, regardless of the nature of the full-time or part-time jobs involved, all parties including government agencies, state-owned enterprises, and private companies must comply with those laws in hiring proses, job placement, and promotion. In addition, these regulations might apply not only to Taiwanese, but also foreigners who have obtained valid working permits from the state.[43] Essentially, there are at least 3 (three) main agencies responsible in ensuring the EEO in Taiwan. These authorized agencies are the Employment Discrimination Review Committee, the Committees on Gender Equality in Employment, and the Labor Inspectors.

1. Employment Discrimination Review Committee

The works of the Committee can actually be seen through the statistics about the complaints of discrimination. In 2012, based on the data from the Employment Discrimination Review Committees of several county and city, a total number of 125 complaints that were brought to the Committee were about gender, marital status, and also sexual orientation matters. It was basically around 47.9% of all complaints filed to the Committee. Nearly 84% of those complaints were submitted by women, higher than as compared to men did that was about 11.2%.[44]

The Committee have statutory foundation for its establishment. The Article 2 of the Enforcement Rules of Employment Service Law stipulated that the competent authorities of municipal city, and those of counties/cities may invite the relevant government agencies, the representatives of the labor organizations and those of the employer's organizations, and scholars and experts, to form the Employment Discrimination Review Committee in order

[43] Gender Equality Committee of the Executive Yuan, 2013, "Convention on the Elimination of All Forms of Discrimination against Women", Second National Report Republic of China, Convention-specific Document, December 2013, Taiwan, p. 5.
[44] Gender Equality Committee of the Executive Yuan, *op.cit.*, p. 6.

to investigate employment discrimination.[45] Basically, there are no clear functions attached to the Committee, Paragraph 4 to Article 6 of the Employment Service Act 2018 and Article 2 of its Enforcement Regulations, however, indirectly concerned with and implicitly mentioned the functions of the Committee. Accordingly, these bodies are authorized and responsible to "review and decide" any kind of discrimination complaints in employment.[46]

Since there are almost no guidelines to provide direction for these Committee to follow, both legislatively and administratively, they carry out their functions from very uncertain basis. For example, the state established Taipei Municipal City Commission on Employment Discrimination in 1995, but it initially had to spend time discussing functions of its own although at that time there were other commissions that had already established in seven cities and counties. Two months after the establishment, the Commission received its very first complaint about sexual harassment happened at work, and unfortunately to solve the issue, it had to start over as it had no precedent or previous examples to follow up on.[47]

A very long "trial and error" period of nearly four months later, after that finally the Commission decided that its functions were only to "review and decide" the complaint, and that the administrative matter and the trial would then be handled by the Ministry of Manpower.[48] This was continued by the Commission for nearly six years. During this time the Commission also passively received, reviewed, and decided certain cases of complaints related to employment. Following the management of commissions in

[45] See Article 2, Enforcement Rules of Employment Service Law 2018, Taiwan.
[46] Cing-Kae Chiao, 2019, "Employment Discrimination in Taiwan", Academia Sinica, The Japan Institute for Labour Policy and Training, taken from https://www.jil.go.jp/english/events/documents/clls08_chiao.pdf, downloaded on October 28, 2019, p. 152.
[47] *ibid.*
[48] Cing-Kae Chiao, *op.cit.*, p. 152.

Taipei City and Taipei County, then gradually the Commission carried out other additional functions. They eventually began publishing a series of programs related to education and training.[49]

2. Committees on Gender Equality in Employment

For the Committees on Gender Equality in Employment establishment, it has a solid legal basis. The Article 5 of the Act of Gender Equality in Employment stated about examining, consulting and promoting matters concerning gender equality in employment, the competent authorities at each government level (the Ministry of Labor at the central level, the municipal government at the municipal level, and the county (city) government at the county (city) level) shall set up committees on gender equality in employment.[50]

The functions of the Committee are essentially for the complaint and remedy. When, in cases, employees are suffered by the employment practices because of the existence of discrimination at work, the employers shall be liable for any damage arising from it.[51]

3. Labor Inspectors

Previously, we discussed the existence of Labor Inspectors in Indonesia. In Taiwan, the presence of Labor Inspectors is also guaranteed by the law. Thus, the country is supposedly familiar with the activity of labor inspection. Tthe Labor Standards Act that was amended currently in 2020 could be the legal foundation for the establishment of the Labor Inspectors. Moreover, it will guide us more in understanding how the Labor Inspectors in Taiwan work.

The labor inspection is required to enforce the Act, other labor statutes and administrative regulations. Accordingly, the Central Competent Authority shall either establish a labor inspection

[49] Cing-Kae Chiao, *op.cit.*, p. 152.
[50] See Article 5 paragraph (1), Gender Equality in Employment Act 2016, Taiwan.
[51] See Article 26, Gender Equality in Employment Act 2016, Taiwan.

agency or delegate this power to the competent authorities in the municipal cities. The local competent authority may also as necessary, dispatch staff members to conduct inspections.[52] The organizational structure of the labor inspection agency must be organized by the Central Competent Authority as the one responsible to arrange it.[53]

After going through the discussion on 3 (three) Agencies responsible in handling the EEO laws in Taiwan, we analyzed the idea on how it looks and works. Unfortunately, both Employment Discrimination Review Committee and Committees on Gender Equality in Employment are an *ad hoc* agency. Thus, the Employment Discrimination Review Committee, without the strong powers and functions of law enforcement, can only propose recommendations for adoption by the Ministry of Manpower, including: administrative fines for a recalcitrant employers depending on the harshness of the violation of law; no administrative fines imposed on the employer (especially those in the public sector) but reform and correction of his or her practices instead through some form of administrative guidance issued by the Ministry; and transfer the case to other resources or competent authorities for proper settlement.[54]

And so are the Committees on Gender Equality in Employment. Since it is only an *ad-hoc* or task-force type of committee, it essentially has no power and authority to enforce its own decisions independently. After the Committee of the Central Competent Authority has rendered its administrative decision based upon the findings of the Committee, and the employers, employees, or applicants are not satisfied with the decision, then the whole enforcement process enters into the procedures

[52] See Article 72 paragraph (1), Labor Standards Act 2020, Taiwan.
[53] See Article 72 paragraph (2), Labor Standards Act 2020, Taiwan.
[54] Cing-Kae Chiao, *op.cit.*, p. 154.

that is detailed by the Administrative Appeals Act and the Administrative Lawsuits Act.[55]

The existence of Labor Inspectors adds up a confusion. While there are competent authorities who can do the labor inspections, then it is not necessary to establish labor inspection agencies. Because latterly, there would be overlapping tasks among such government institutes. Furthermore, it will spend more the budget for establishing the labor inspection agencies. Overall, however, Taiwan is trying its best in eliminating discrimination in employment. This could be justified by seeing that Taiwan has more than one-complete-Agency responsible to ensure the enforcement of EEO laws in the country.

We have come to a conlcusion that actually the EEO enforcement agencies in Indonesia, Labor Inspectors and Civil Servant Investigators, both are only act as civil servants and not an independent commission of the state. Aside from that, as Indonesia has Police Investigators and Civil Servant Investigators, then this will make citizens difficult in distinguishing their functions. In addition, there are overlapping authorities between these two investigators. Not to mention that the Labor Inspectors in Indonesia in reality have not been able to work optimally, effectively and efficiently. This is because the total number of labor inspectors themselves is actually not comparable and proportionate to the total number of current companies. The same matter goes to EEO agencies in Taiwan, since they are only *ad hoc* commissions, which means they are not independent institutions. Consequently, their decisions might be interfered with by other parties, and might not determine decisions independently. Furthermore, the functions of such agencies are still unclear, making it hard to have strong powers.

By having those matters, should the country establish an independent state commission that is responsible in enforcing the EEO regulations? This question may arise as an independent state commission can determine

[55] Cing-Kae Chiao, *op.cit.*, p. 154.

decisions independently without any interference from outside so that the discrimination in employment can be truly eliminated. This independent state commission will also have clear functions and authorities attached. However, to establish such commission, both Indonesia and Taiwan need to consider on their budgets and human resources they will need. In addition, they shall think to create a new regulation as a legal foundation for the establishment of the commission.

Last, Indonesia needs to learn from the trajectories of Taiwan, especially to treat women in employment and other fields. This was due to the fact that Taiwan was ranked 8th by The World Bank regarding the "Women, Business and the Law 2020" index scores,[56] while Indonesia was placed at the 46th position.[57] Furthermore, Council on Foreign Relations (CFR) calculated a ranking of countries for the "Women's Workplace Inequality" back in 2018. On this Women's Workplace Inequality index, Taiwan was ranked 43rd leaving Indonesia in the 151st place.[58] That was a reality that highly concerned the Indonesian Administration. Coincidently, the former Presidents of both countries were elected for another one period to run their respective countries, then it is expected that they can lead the countries to be better equalities especially in employment matters and thus, the discrimination in employment might be eliminated seriously.

Conclusion

The regulation on EEO is surely a preventive attempt—to prevent inequality treatment or discrimination in the workplace—for the citizens. The form of discrimination in employment varies, including discrimination based on race, color, sex/gender, sexual orientation, religion, political view, national

[56] Women, Business and the Law by The World Bank takes as its starting point that the equal participation of women and men will give every economy a chance to achieve its potential. Equality of opportunity allows women to make the choices that are best for them, their families, and their communities. It is also associated with improved economic outcomes.
[57] The World Bank, 2020, "Women, Business and the Law 2020", International Bank for Reconstruction and Development, The World Bank, Washington DC., p. 7.
[58] The Council on Foreign Relations, 2020, "Top and Bottom Countries in Women's Workplace Equality", The Council on Foreign Relations Website, taken from https://www.cfr.org/legal-barriers/country-rankings/, accessed on December 18, 2020.

origin, as well as discrimination on the basis of disabilities. To eliminate discrimination of any kind at work, both Indonesia and Taiwan have promulgated regulations on EEO. These EEO regulations guarantee the protection of employment equality for their respective citizens.

When discussing the facts of the EEO, these two countries have been experiencing several issues related to discrimination in employment although the regulations on EEO have been set clearly by Indonesia and Taiwan. Indonesia guarantees the equality at work for the citizens in its 1945 Constitution and Manpower Act 2003. For those with disabilities, their rights in employment are set in Persons with Disabilities Act 2016.

The protection of EEO for the people of Taiwan is also guaranteed in the Constitution of the Republic of China (Taiwan). It is further guaranteed in Employment Service Act 2018, Gender Equality in Employment Act 2016, and People with Disabilities Rights Protection Act 2015. Taiwan is dedicated to combat discrimination in employment. It could be seen by the laws, rules, and regulations regarding the protection from discrimination at work that are constantly being updated and amended throughout the years to be in line with times. Indonesia, in order not to be outdated, needs to learn from Taiwan on the amendments of the law to suit the needs of the people.

On top, the existence of state agencies responsible for the enforcement of the EEO regulations is needed. These agencies shall uphold the basic rights of employees/workers to be equally treated in the workplace. On the other hand, they shall ensure that the employers will be just and fair to their employees/workers. When it comes to the state agencies in Indonesia, the country has Labor Inspectors and Civil Servant Investigators. Both act as civil servants and not an independent board of the state. Moreover, these Civil Servant Investigators, however, confuse the society in distinguishing their functions with police investigators. It has also been shown that the two investigators have overlapping tasks.

Moreover, the Labor Inspectors in Indonesia in reality have not been able to work optimally, effectively and efficiently. This is because the number

of labor inspectors is not comparable to the number of existing companies. Based on the Mandatory Labor Report Data from the Indonesian Ministry of Manpower, the current number of companies (June 2020) has reached 252,880 companies with a total workforce of 13,138,048 people. With the number of Labor Inspectors only around 1,574 people currently, they are only able to supervise 103,680 companies or 40.9% of the number of companies. Therefore, Indonesia is lacking the Labor Inspectors.

Meanwhile in Taiwan, the country has Employment Discrimination Review Committee, Committees on Gender Equality in Employment, and Labor Inspectors. However, both Employment Discrimination Review Committee and Committees on Gender Equality in Employment are an *ad hoc* agency, and the functions of the Committees are still unclear. Thus, the Employment Discrimination Review Committee, without the strong powers and functions of law enforcement, can only propose recommendations for adoption by the Ministry of Manpower.

Furthermore, the Committees on Gender Equality in Employment essentially has no power and authority to enforce its own decisions independently. This is due to the reason that when the employers, employees, or applicants are not satisfied with the decision, then they may file administrative complaints and proceed administrative lawsuits, and the whole enforcement process enters into the procedures that is detailed by the Administrative Appeals Act and the Administrative Lawsuits Act. The existence of Labor Inspectors adds up a confusion. While there are competent authorities who can conduct labor inspections, then it is not necessary to establish labor inspection agencies as it will create overlapping tasks among government institutes.

The question thus probes whether the country should establish an independent state commission that is responsible in enforcing the EEO regulations? This question may arise as an independent state commission can determine decisions independently without any interference from outside so that the discrimination in employment can be truly eliminated. This

independent state commission will also have clear functions and authorities attached. However, to establish such commission, both Indonesia and Taiwan need to consider the budget they will spend and human resources they will need. In addition, they shall think to create a new regulation as a legal foundation for the establishment of the commission.

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