A Viewpoint to Research Labour Laws in South East and East Asian Countries

KAGAWA Kozo*

Chapter 1 Introduction

This article aims to clear my viewpoint to research labour laws in South East and East Asian countries.(1) In these areas there are various conditions in the field of political, economic and social sphere. But this article will investigate Asian labour laws from both the political and economic perspective because Asian labour laws have had strong connections with political and economic situations. Namely, it will be researched how labour law system has been formed from the perspective of political and economic factors in Asian these countries.

South East Asian counties mean ASEAN countries and East Asian countries are China, South Korea and Japan in this article. There are two kinds of countries: capitalistic country and socialistic country. But socialistic countries have changed their targets into socialistic market economies after socialism economies have been collapsed in 1980s. So we can compare with two kinds of countries on the same perspective. Therefore we can cover China, South Korea, the Philippines, Vietnam, Thailand, Singapore, and Indonesia in this article.

Chapter 2 Framework of viewpoint(2)

Economic and political situation is a key point to investigate Asian labour laws because Asian labour laws have been influenced by economic and political circumstances. Asian labour laws have been changed under the strong connection with economic and political powers. Therefore we want to research this theme from both economic and political factor. Namely, as economic factor, we shall consider whether Asian countries have adopted controlled (planned) economies or market economies. And it shall be considered whether Asian countries have been controlled by authoritarian powers or democratized powers as political factor. We

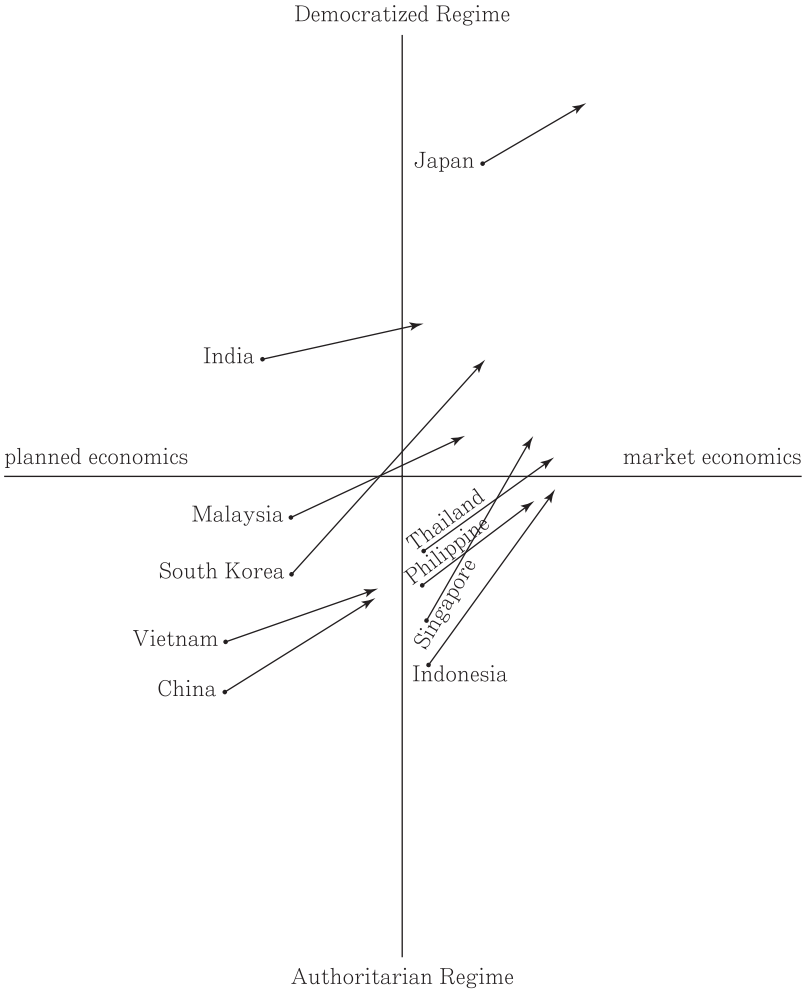
*Professor, Graduate School of International Cooperation Studies, Kobe University.

can describe the graph under vertical shaft of political factor and horizontal shaft of economic factor (Graph 1). So we can locate the situation of background of Asian labour laws in 4 types of the graph. And we can imagine the changing direction of Asian labour laws in the future.

(a) Economic factor

Next we will explain my hypothesis for framework of research. After getting independence after the Second World War, Asian capitalistic countries tried to develop nations by industrialization policy strongly leaded by administrative

Graph 1. Imaginative Graph on Economic and Political Situation



authorities. At that time Asian countries were agrarian ones where mono-cultural system had been compelled by suzerain states. But mono-cultural system could not sustain Asian developing countries. The profits under mono-cultural system were unstable because the amount of productions depended upon climate conditions and selling prices were decided under world market. So they have adopted economic development policy to achieve industrialization mainly targeting manufacturing sector. Manufacturing sector was expected to gain more profits steadily than agricultural sector.

At first these countries adopted policies of import substituting industrialization in 1960s. But this policy failed to enlarge national wealth because they suffered from the scarcity of foreign exchange to import materials and technologies from developed countries. From 1970s, export-oriented industrialization policy has been introduced in Asian developing countries except Indonesia which had domestic market. For this new policy, foreign direct investment was a key point to achieve successful industrialization because Asian developing countries have had little capital and technology.

To attain industrialization policy smoothly, the economic policy has been planned by administrative authorities. The Constitution has provisions that the nation should lead the economies, for example, in Indonesia, Thailand, the Philippines and South Korea.

The typical example was long-term economic policy. Indonesia made five-year economic plan since 1969. Malaysia had the economic plan since 1956 and the second Malaysian plan since 1971 and presently has "Vision 2020" plan to reach to developed countries. In Thailand the economic plan has been begun from 1961, 1957 in the Philippines, and 1962 in South Korea.

Under the industrialization policy, new labour laws were made in order to promote productivity leading to economic development. In general labour laws have two big functions. One is to cooperate with the employers to promote productivity and another is to confront with the employer to negotiate how to divide the profits of the company. The former is cooperative sphere and the latter is conflicting sphere. At the first stage of industrialization, cooperative sphere was emphasized to attain the economic growth. On the other hand, right to

strike was regulated strictly because strikes should damage productivity and strike strategy has a possibility to change political ruling powers and make political and social instability. Therefore labour laws are used to cooperate with the companies to promote productivity and to prohibit or limit labour unions to obstruct economic growth through strikes or work stoppages.

In socialistic countries like China and Vietnam, planned economies policy has been adopted to maintain the nations. Of course the Communist Party has had controlled strongly the planned economies together with the administrative authorities. Under the planned economies, the government has assigned electric power, materials and manpower resources to manufacturing units. This is very strong control to the management of the units. And workers could get stable status at the unit. So they have had tendency not to work hard because they would not lose stable status though they would not work hard. As a result, socialistic countries cannot maintain high productivity. To recover the economies, they have changed policy to market economies. In the field of labour laws, labour contract system is introduced with definite period. There is a possibility to dismiss workers when they would work at less than minimum required level. In China right to strike have been prohibited, but in Vietnam it has been recognized on the restricted conditions under the Labour Code in 1994. But in fact, it is so difficult to do strikes in Vietnam. So all the strikes are illegal wild-cat strikes in Vietnam. Work stoppages shall also be prohibited or limited in socialistic market economies.

In this way economic factors influence the content of labour laws whose detailed shall be described at Chapter 3.

(b) Political factor

To introduce foreign direct investment, political and social stability should be established in Asian developing countries. Foreign companies would not come to unstable countries because the fate of the companies could not be foreseen. But it was so difficult to establish the stable countries in Asian developing countries. This stable situation could be organized intentionally by political and administrative powers which was named as authoritarian system or development

dictatorship. Especially opposing political groups were suppressed by development dictatorship. In capitalistic countries communist party had been oppressed after independence in 1950s and 1960s in Indonesia, Thailand, Malaysia and Singapore. Freedom of association and expression has been strictly controlled to keep ruling powers by National Security Act or Public Order Act. But in the Philippines communist party is now very active in cooperation with Muslim group.

But recently democratization is being requested in Asian countries which have fairly achieved economic growth. There can be found three kinds of powers to demand democratization in the political field.

One is the middle classes graduated from colleges and universities who have been formed as certain pressure groups to promote democratization after Asian miracle of economies has been gained. Members of middle class want to substantially express their opinions in the political field like the Parliament and local government. This movement sometimes involves poor working groups whose activities are inclined to be strong and violent. But there is a possibility that members of middle class will take conservative attitude to keep authoritarian dictatorship because they can be promoted to middle class under authoritarian system. So members of middle class will not protest authoritarian dictatorship together with poor peoples in the lower class. Though members of middle class have both sides, this can be named as democratization from the lower side.

Another can be listed as democratization from the upper side. In Asian capitalistic countries we can find the movement to democratization from the upper side. Guided Democracy advocated by Mr. Sukaruno, Pancasila Democracy initiated by Mr. Suharuto, Half Democracy by Mr. Chachai, and Thai-style Democracy by Mr. Sarit is a good example. These aimed to sustain authoritarian dictatorship even in the process of democratization on the belief that Asian democracy based on collective group is so different from European democracy based on individuals. The same movement can be seen in the socialistic countries because development dictatorship can be found in China and Vietnam ruled by communist party. In Vietnam only communist party is recognized to engage in political activities. Other political parties cannot be allowed to be organized in Vietnam. But from 1998 independent members from communist party is allowed

to stand as candidates for national parliament election under the decision of Fatherland Fronts. In fact, very few candidates are elected as members of parliament. This shows that communist party cannot ignore the request for democratization. So democratization has been in progress step by step by communist party in Vietnam.

The third movement can be named as democratization from the outer (international) side. The process of democratization has been requested by developed countries in order to compete developing countries in economic powers. Developed countries has begun to feel a threat from developing countries in international competition. Especially USA requests developing countries to attain democratization including human rights and fair labour standards. The problem of social clauses in international trade is a typical one between developed and developing countries.(3) And also Global Compact initiated by United Nations Secretary-General Kofi Annan aims to advance corporate citizenship to resolve the problem of globalization. The Global Compact has ten principles in the fields of human rights, labour standards, the environment and anti-corruption.(4) The labour standards are influenced by ILO Declaration of Fundamental Principles and Rights at Work in 1998 concluded in order to resolve the problem on social clauses. The Global Compact has no legal effect, and relies on public accountability. And international NGO and international labour unions have initiated to make international labour standards effective through Corporate Code of Conduct.(5) This soft way to promote corporate citizenship is expected to lead democratization at the level of establishments from the international outer side.

As the above-mentioned, Asian developing countries are requested to achieve democratization from the lower, upper and outer (international) side, whether they are capitalistic or socialistic countries. Next we must consider how this movement has given effects on labour laws.

Chapter 3 The relationship between labour laws and political and economic contexts

In this chapter this article investigates the relationship between labour laws and political and economic factors. Characteristic systems are selected to discuss

this problem among labour laws.

(a) Registration system of labour union

Many Asian developing countries have introduced compulsory registration system of labour unions: for example, Trade Unions Act 1959 in Malaysia, Trade Unions Act in Singapore, Book V of the Labour Code 1974 in the Philippines and Labour Relations Act 1975 in Thailand.

Historically registration system of labour union has not been a tactics to control labour union. The first case on registration system had been adopted in the Trade Unions Act 1871 of England. This registration was not compelled to labour unions. If registered, a labour union could get protection of union property. This system had been reflective of voluntarism in industrial relations in England. This system was introduced to Indian Trade Unions Act 1926 during colonial time. In India, registered labour union could get legal entity and immunity from criminal and civil liability. So the sphere of legal protection became wider in India than in England. But registration system has continued to be voluntary till now in India.

Next this registration system was imported into Ceylon (at present, Sri Lanka) in 1935. In Ceylon compulsory registration system was introduced by Dr. Sydney Webb, then Secretary of State for both Dominion Affairs and the Colonies.

Dispatch from Sydney Webb had a big influence to introduce compulsory registration of labour union. "I regard the formation of such associations in the Colonial dependencies as a natural and legitimate consequence of social and industrial progress, but I recognize that there is a danger that, without sympathetic supervision and guidance, organizations of labourers without experience of combination for any social or economic progress may fall under the domination of disaffected persons, by whom their activities may be diverted to improper and mischievous ends. I accordingly feel that it is the duty of Colonial Governments to take such steps as may be positive to smooth the passage of such organizations, as they emerge, into constitution on the lines of Section 2 and 3 of the Trade Unions Act 1871 should be enacted in all dependencies, where it dose not already exit, declaring that trade unions are not criminal, or unlawful for civil

purposes and also providing for compulsory registration of trade unions."[6]

Dr. Sydney Webb suggested to introduce compulsory registration system to promote unionization under sympathetic supervision and guidance. But in fact this system was used to control labour unions opposing colonial government in Ceylon. This oppressive character of registration was introduce to Malaysia Trade Unions Ordinance in 1940 which was succeeded to Trade Unions Act in 1959.

In Malaysia the Trade Unions Act requires the registration of every trade union within one month of its establishment. If application for registration is rejected or if the registration of a trade union is withdrawn or cancelled, the trade union shall be deemed to be an unlawful association and shall cease to enjoy any rights, immunities or privileges of a registered union. Director General for Trade Unions may reject the application by a labour union if he is of the opinion that the labour union is likely to be used for unlawful purposes. He has discretionary power to judge whether the activities of labour union are lawful or not. This power is used to control labour unions opposing ruling powers.

In Indonesia regulation on union registration in 1987 imposed prerequisites on labour unions in order to get recognition from the Ministry of Manpower. A labour union should be dissolved if the Government judges it is acting against Pancasila.[7] But registration system was abolished by Law No.21 of 2000 regarding Trade Union under the influence of democratization movement and ratification of ILO Convention No.87 and 98.[8] In this new Act of 2000 trade union or federation of trade unions shall give a written notification to the local government agency responsible for manpower. The government agency is obliged to keep a record of and issue a record number to the trade union or federation of trade unions within 22 days since the date it received the union notification. The trade union or federation of trade unions which has a record number has the right to negotiate a collective labour agreement and represent workers in dispute settlement and in manpower institutions. In this Act there is provision on notification of trade union in stead of registration system. But notification of trade union shall be compulsory and the government agency has a jurisdiction to judge whether the requirements have been fulfilled to keep a record of and issue a record number to the trade union or federation of trade unions. For example, the

Constitution must include the ideological basis of the State, basic principles and objectives that must not be stood in opposition to the Pancasila and the 1945 Constitution. In case a labour union has not fulfilled the requirements, the government agency may postpone the putting of it into the official records and the issuance of the number of proof. Discretionary power may be given to the government agency whether a labour union will be officially recorded or not. Although we shall investigate how the notification system is applied, it is fairly thought that the notification system is very similar to the registration system of trade unions.

In South Korea any person who intends to establish a labour union must submit a report including the name of the union, the address of the principal union office, the number of members, the names of the officers and their addresses and the name of any industrial federation under the Trade Unions Act 1963 as amended in 2001. Korean authorities adopt this system which allows a trade union to function as an officially authorized union after it certifies in writing that the report has been made appropriately. This system has a similar role of the compulsory registration of labour union.

As the above-mentioned, unregistered trade union shall be treated as illegal one and has no right to carry out collective bargaining under the compulsory registration system. The concerned authority (for example, the Registrar) has wide discretionary competence under this system. Namely, the authority may refuse to register a labour union if he or she judges that it does not satisfy the conditions for registration. This implies that freedom of association depends upon the decision of the concerned authority. So there is a high possibility to control labour unions. Because a labour union is often treated as an barrier to promote productivity and economic development. And also a labour union is looked as the political opposition to the ruling groups supporting authoritarian dictatorship. So in Asian developing countries the ruling groups have a policy to control a labour union to maintain social and political stability. Registration system of labour union has been used for that purpose.

There are some ways for development dictatorship to control labour unions through compulsory registration system. For example, there are some countries

where no labour union shall be registered at duty-free or export processing industrial sites which wants to invite foreign direct investment. This strategy has been used to introduce foreign direct investment because it can easily manage the companies without labour unions. As another example, only one labour union can be registered. Namely another labour union shall be refused to be registered in one unit (industry or establishment) if one labour union has already been registered. Through this scheme, development dictatorship can recognize one kind of labour union endorsed by ruling political groups or specified persons. This system is used to exclude labour unions opposing ruling political groups or specified persons. Sometimes one company-dominated labour union, even if it is organized on paper, can be registered before free democratic labour union will be organized. The latter labour union can not be registered till the registration of company union would be cancelled. Or the latter union shall seize power into the company-dominated union if it wants to be active legally. This problem could be seen in South Korea.

It is evident that these ways shall violate freedom of association granted to workers. Therefore in the recent process of democratization we can see the changing situation to admit multiple registered labour unions. We have good examples in Indonesia and South Korea. This example will bring about reconsideration of compulsory system of labour union in order to respect the freedom of association.

In China and Vietnam there is no registration system of labour union. But it is more strictly controlled than the registration system in Asian capitalistic developing countries. In both countries, labour union has two functions: protecting working conditions for workers and supporting communist party as quasi-administration body. So there is only one labour union recognized by communist party and government. At national level All China Federation of Trade Unions (ACFTU) is recognized in China and Vietnamese Confederation of Labour (VCL) in Vietnam. In Vietnam VCL is an important organization belonging to the Fatherlands Front whose activities are supporting communist party of Vietnam. Primary labour union based on the enterprise shall belong to ACFTU in China and VCL in Vietnam. So the character of labour union is so different from one

in Asian capitalistic countries. Therefore registration system is not necessary to control labour union activities in both countries.

(b) Legal system of collective agreement

Only registered labour union can be a party of collective bargaining and agreement in Malaysia, Singapore, and the Philippines. In Malaysia and Singapore union recognition shall be obtained from employer or an administrative authority to be a party of collective bargaining. In the Philippines registered labour union designated or elected by the majority of the employees in an appropriate bargaining unit shall be a party of collective bargaining. In Thailand unique system is adopted that a group of employees can be a party of collective bargaining besides registered labour union under the Labour Relations Act because labour unions are very weak and few in number. In Indonesia a labour union which has a record number has the right to negotiate a collective labour agreement with the employer. A record number is granted by the local government agency after the written notification submitted from the labour union. This system is similar to one of South Korea.

In Asian developing countries the procedure of collective bargaining is provided in details under the Act and is directly linked to labour disputes settlement procedure. For example, in Malaysia, one party may propose in writing to commence collective bargaining. The other party must, within 14 days of the receipt of the proposal, reply in writing to one party notifying either acceptance or refusal. If accepted by other party, collective bargaining shall be begun within 30 days of the receipt of acceptance. If refused by the other party, one party may notify in writing the Director General for Industrial Relations. He may take steps as may be necessary to persuade the other party to commence collective bargaining. When there is again refusal by the other party, a trade dispute shall be deemed to exit upon the matters set out in the proposal. Then the trade dispute may be referred to fact-finding by Committee of Investigation or Board of Inquiry appointed by the Minister of Human Resources, or conciliation procedure by the Department of Industrial Relations, or arbitration procedure by the Industrial Labour under the Industrial Relations Act 1967.[9] The issues which are

not resolved under collective bargaining may be referred to the labour disputes settlement machinery for conciliation and arbitration.

There are mainly four types of legal treatment on collective agreement.[10] The first comes from England where the collective agreement is a gentleman's one without legal effect. If it will not be kept, one party can resort to strikes to compel the other party to observe the provision of the collective agreement. One party cannot sue to Court for relief. The second type is German doctrine which gives special contractual effect to the collective agreement. This type is introduced to South Korea, Thailand and Indonesia including Japan. The third type comes from Australia developing compulsory arbitration system. So this third type can be named as Oceania type which can be found in India, Sri Lanka, Malaysia and Singapore. In these countries, the collective agreement shall be registered at the competent authority. For example, in Malaysia the Registrar of the Industrial Court can bring the collective agreement before the Court for its cognizance or approval. The Court has a direction to approve or refuse to approve the collective agreement. The registered and approved collective agreement shall be deemed as an award under the compulsory arbitration system. If a party violates the award, the competent authority makes order to comply with the term of the award or collective agreement or to cease from doing any act in contravention of any term of the award or collective agreement. If one party does not obey the order, he or she shall be guilty of criminal penalty. The third type shows high degree of intervention by administrative authority which can control the content of the collective agreement to adjust economic conditions.

In China and Vietnam registration of collective agreement is necessary to give legal effect. The collective agreement shall be invalid when the agreement has not been registered at the competent authority. When one party deems that the other does not fully carry out or violates the collective agreement, it is entitled to demand that the other party correctly execute the agreement. The both parties must discuss a solution. If they cannot negotiate for resolution, each party is entitled to demand to resolve labour disputes. In this system violations of the collective agreement shall be settled under the process of labour disputes settlement. This is the fourth type of collective agreement.

In Asia the second, third, fourth type has been adopted to give legal effect to the collective agreement. The collective agreement has a function to establish standards for working conditions and to rules between labour union and employer for a prescribed period of time. For that period the standards and rules give peaceful conditions between union members, labour union and employer. Therefore legal effects of collective agreement has a role to resolve labour disputes peacefully. Then this is indirectly useful to aim economic growth.

(c) Regulation of strike and labour disputes settlement

In Asian developing countries strike strategy is deemed as disturbance to economic development and sometimes to the public order. So it becomes a problem how to limit strike actions.

There are many kinds of means to limit strike actions. One is the procedure to start strikes. Before a strike is undertaken, a labour union must comply with the strike procedure, for example, strike ballot and strike notice to the administrative authority. Sudden strikes or unofficial strikes shall be stopped to avoid slowing down productivity. The authority can check the situation and has the power to stop the strike action under a certain ground.

Next is the prohibition of strike actions. For example, strikes are prohibited in the industries vital to national interests, defense industry, and essential services. The sphere of prohibition, in general, is very wide in Asian developing countries.

Next no workmen can resort to strike actions once the labour dispute has been referred to the settlement procedure, especially arbitration procedure. In Asian countries strikes can be resorted to only after the parties concerned have failed to resolve the industrial disputes through collective bargaining and dispute resolution procedure (fact-findings, conciliation and arbitration).

Voluntarism based on collective bargaining has not been fostered in Asian developing countries. Rather tripartism leaded by the government has prevailed in Asian developing countries. Cooperative industrial relations have been emphasized by the government. It can be seen in Code of Conduct to Promote Thai Industrial Relations in 1976 and 1981, Code of Conduct for Cooperative Industrial

Relations 1975 in Malaysia, Declaration of Industrial Relations Policy 1981 in the Philippines, Guideline of Pancasil Industrial Relations 1985 in Indonesia and Labour Management Council Act 1987 in South Korea. These have a purpose to promote productivity through consensus through joint consultation. This consensus style is traditionally peculiar in Asian developing countries to resolve disputes and discord. This consensus way is important to resolve labour disputes in stead of strike actions in Asian developing countries.

In China the right to strike is not guaranteed under the Constitution and labour acts. It is thought that there is no need of strike actions in socialistic countries because they would protect workers' rights. But there are so many strikes in China. In Vietnam the right to strike is permitted under so limited conditions. The right to strike is provided in the Labour Code of Vietnam under the guidance of ILO. There are more than 1000 strikes after the Labour Code was enforced. All the strikes are illegal because the procedure is not kept by workers participating in the strikes. Strikes are deemed as disturbance to economic development in China and Vietnam like in Asian capitalistic countries. So to prevent strike actions, labour disputes settlement procedure is provided in details to resolve individual and collective labour disputes. China and Vietnam has a very similar machinery to settle labour disputes: consultation, mediation, arbitration and peoples court.

As above-mentioned, strikes and labour disputes settlement is regulated to promote productivity leading to economic development in both capitalistic and socialistic countries of Asia.

It is very interesting to research the problem on wages during strike period. Under the doctrine of labour contract, workers are not entitled for wages during the strike period under the principle of "no work, no pay". But we can find some cases where wages are paid totally or partially even during the strike period in Asian countries. In India wages are paid when the strike is found to be justified and legal under the case law doctrine made by the Supreme Court of India. In Indonesia and Vietnam wages during the strike period are regulated under the Ordinance or the Act. In Vietnam the workers shall be paid full wages for the days of going on strike when the strike is official and the employer makes the

mistakes. And when the strike is unofficial, the court shall deicide on the payment of wages under the Ordinance on the Procedure of Settling Disputes on Labour in 1996. In South Korea wages were paid to the striking workers as the conditions to resolve labour disputes. But now no work no pay principle has been established in South Korea under the Amendment of Trade Unions and Labour Relations Adjustment Act in 1997. In Japan, some money were paid to help striking workers to maintain their living as the condition to resolve labour disputes just after the Second World War when Japan was a poor country. This money had the same function with the payment of wages during the strike period.

The workers have so small savings that they cannot maintain their livings during the strike period. Therefore the payment of wages during the strike period is allowed totally or partially from the viewpoint of social justice. Only when the strike would be legal or justified, wages are requested to be paid to the striking workers. This doctrine come from consideration to poor living conditions of workers, but is not suited to market mechanism. This shows that social justice has a role to save workers in the process of economic development. Will this doctrine disappear when economic development has been achieved?

(d) Working conditions

Working conditions are protected by various kinds of Acts and Ordinances to provide minimum labour standards: For example, Employment Act 1955 in Malaysia and Singapore, Labour Standards Act in South Korea, Labour Code 1974 in the Philippines, Labour Protection Act 1988 in Thailand, Labour Law 2003 in Indonesia. In China there is Labour Law of the People's Republic of China in 1994 as a fundamental labour regulatory Act. In Vietnam Labour Code was made in 1994 as a comprehensive labour act.

The content of these provisions has been gradually amended to higher working conditions. This has a possibility to be defeated in international competition in developing countries. Low labour costs is a weapon to invite foreign direct investments and to win economically in international competitiveness in the world. How have employers and governments coped with this problem in Asian

developing countries?

One method is to limit the application of protective labour acts. For example, they apply only to the limited proportion of the workforce working in the formal sectors. As a result workers engaged in informal sectors cannot enjoy protective working conditions. Furthermore, they apply to the establishments employing more than the certain number of workers. For example, the Employment Act in Malaysia applies to those who earn less than RM 1500 per a month or who are engaged in manual work.

The second method is to prohibit to level up working conditions provided under the labour acts. For example, in Malaysia collective agreement cannot involve more advantageous working conditions than those in the Employment Act at pioneer industries or industries decided by the order made by the Minister of Manpower. So the working conditions under the Employment Act are, in fact, situated as the maximum working conditions at pioneer industries. This shall give favourable treatment to pioneer industries because they would contribute very much to economic development.

The third method is to prohibit to organize labour unions in duty-free zones or special industrial zones inviting foreign direct investments. Labour unions have a role to get better working conditions than the labour regulatory Acts. So this way is used not to upraise working conditions in order to maintain low costs strategy.

The fourth method is to violate the provisions to protect working conditions. Namely enforcement of minimum labour standards law cannot be kept in Asian developing countries. Law and practice gaps can often be seen in the field of labour laws. For example, minimum wages are decided based on cost of livings in the region, the needs of employers and etc. Any employer violating minimum wages shall be subject to penalty of imprisonment or fines. But the level of compliance is very low except large or foreign companies. So minimum wages are substantially treated as average or maximum wages in Asian developing countries.

The employer could be escaped from punishment through paying some money to labour inspectors. Corruption of labour inspectors is the fifth method to keep

low labour costs. Although labour inspection system has been established, labour inspectors do not fairly display their powers to check the employers. The shortage of labour inspectors can be found owing to budget problem. And there are many cases of corruption on the side of labour inspectors because of their low salaries. Therefore enforcement of prosecution does not have much effect to follow labour laws including minimum wages. Namely rule of law principle has been so often neglected in the field of individual labour laws. But this neglect shall help Asian developing countries to promote economic development at the sacrifice of workers.

Chapter 4 Conclusion

There can be found authoritarian dictatorship in Asian developing countries whether they are capitalistic or socialistic countries. In the field of collective labour laws the government has intervened to control industrial relations in order to make cooperative industrial relations and also to lead to achieve economic development policy. For this purpose tripartism has been prevailed more than collective bargaining between both parties. But in the field of individual labour laws the government has not functioned to control industrial establishments to observe the minimum labour standards. But this has brought an opportunity to industrial establishments to enjoy low labour costs policy for attaining economic development.

But recently democratization under the market economies has been requested on several reasons. In the process of democratization we can find new amendment on the regulation on trade unions, strikes and labour disputes settlement. The contents are different in each country because there has been various kinds of changes in labour problems and industrial relations.

In Asian developing countries, collective labour laws are comparatively kept better than individual labour laws. Collective labour laws are used to protect authoritarian dictatorship. And individual labour laws are deemed to be disturbance against economic development although international labour standards are requested to be kept in Asian developing countries by ILO and developed countries under the economic globalization. International pressure will be stronger to

observe the provisions of labour laws, especially core labour standards in Asian developing countries. It shall be interesting to investigate how Asian developing countries will respond to the pressure in the future. In the international level the pressure is now arranged through Global Compact and ILO Declaration on Fundamental Principles and Rights in 1998 and voluntary code of conduct initiated by international labour unions and NGOs.

Notes

(1) This original paper was submitted to Launch Labour Law Project Fukuoka Seminar, 13-14 February 2006 held in Fukuoka, Kyushu, Japan.
(2) Outline of viewpoint was mentioned at the meeting at Japan Labour Law Association. Kozo Kagawa, "A Viewpoint to Study Labour Laws in Asian Countries" (in Japanese), *Journal of Labour Law,* May 1998, No.91
(3) Kozo Kagawa, "Legal Cultural Research on Social Clause in South and South-East Asian Countries", International Sociological Association ed., *The Proceedings of 1995 Annual Meeting Research Committee on Sociology of Law,* Tokyo, Section Meeting 4.
(4) http://www.unglobalcompact.org/1,000
(5) For example, Social Accountability International promotes SA8000 including child labour, forced labour, health and safety, freedom of association and right to collective bargaining discrimination, disciplinary practices, working hours, remuneration and management system. Global Sullivan Principle has been initiated by The International Foundation for Education and Self-Help from 2001. As international labour unions, IMF made Model Code of Conduct to enable workers to enjoy a higher standard of living and great affluence in their lives regardless of their nationality or region to which they belong. Under this Model of Code of Conduct, IMF-JC made special model applied to Japanese companies. Kozo Kagawa, "Code of Conduct Regarding Labour and Employment", *Social Sciences* (Doshisha University), no, 70, 2003, International Confederation Free Trade Unions ed., *A Trade Union Guide to Globalization,* ICFTU, 2002
(6) Kozo Kagawa, *Malaysian Industrial Relations Law* (in Japanese), Shinzansha, 1995, pp.31-2.
(7) Marvin J. Levine, *Worker Rights and Labour Standards in Asia's Four New Tigers — A Comparative Perspective,* Plenum Press, 1997, p.190.
(8) Ministry of Manpower and Transmigration ed., *Labour Regulations,* ILO, 2005
(9) Dunston Ayadurai, *Industrial Relations in Malaysia, Law and Practices,* Butterworths Asia, Malaysia, 1992, pp.89-93
(10) Kozo Kagawa, "Collective Bargaining and Determination of Working Conditions in Japan: From the Viewpoint of Comparative Study Among Asian Countries", JIL ed., *Industrial Relations and Labour Law in Changing Asian Economies, -1996 Asian Regional Conference on Industrial Relations,* JIL, Tokyo, 1996

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