

# Indonesia

## Informal Women Workers: The Case Of Indonesia

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### 1. Contemporary Snapshot

#### Description of Indonesian Informal Economy

The most complete picture on the informal employee situation is portrayed in a survey conducted by BPSN or *Badan Pusat Statistik Nasional* (Central Bureau of Statistics). Based on BPSN data of 2006, the Indonesian population stood at 224 million, comprising of 106.28 million in the productive workforce (95.18 million are employed and the remaining 11.1 million are unemployed). Around 60.77 million work as labourers, which mean that around 63.85% of the workforce works in informal economic enterprises.(See Table 1)

**Table 1. Formal and Informal Workers**

Year	Number of Formal Workers	Number of Informal Workers	Productive Workforce
2004	34.5 million	59.2 million	93.7 million
2005	34.5 million	60.6 million	94.9 million
2006	34.4 million	60.7 million	95.1 million

Source: BPSN, 2006

The above data reflects that the number of people working in the informal economy is increasing yearly. In contrast, the formal economy is in a downturn so that it can be said that job creation in the formal economy is unable to absorb the growth in the labour market. The informal economy is more likely to operate in enterprises that do not rely on advanced educational backgrounds and require no special skills. As reflected in Sakernas (National Labour Force Survey) data of 2006, 46% of the workforce which was engaged in informal activities were elementary school graduates, followed by employees who had not graduated from elementary school.

**Table 2: Number of Workers in Informal Activity Based on Educational Achievement in 2006**

Educational Background	Total (millions)	Percentage
Elementary School (not finished)	14.337	23.66
Elementary School (graduated)	28.026	46.12
Lower Secondary School	12.031	19.80
Upper Secondary School	5.939	9.78
Diploma/Academy	0.166	0.27
University	0.23	0.37
Total	60.769	100

Source: BPSN, 2006 (February)

The statistical figures above do not reflect whether the informal workers referred to are mainly comprised of workers outside the agriculture sector. However, given the workforce structure based on the sector (see Table 3) we might find that most of the workforce is employed in informal economy of trade.

**Table 3. Informal Workforce Distribution Based on Sector**

No.	Sector	Number of Workforce (millions)
1.	Agriculture	39.22
2.	Processing Industry	2.84
3.	Service provider	10.09
4.	Consultancy	1.93
5.	Others	6.68

Source: BPSN, 2006

In addition to informal economic activities related to the agriculture sector and economic patterns based on culture and local tradition, recently there has been a rapidly developing informal economy that is linked to the modern economy. Although the word informal might indicate small-scale business, the economic contribution of these informal activities is significant. In 2004, the Central Bureau of Statistics estimated the number of Business Entities categorized as non-legal entities (*Usaha Mikro, Kecil dan Menengah* or Small, Micro and Medium Enterprises) at 17 million business units, employing a total of 30 million informally, with total production valued at IDR 537 billion.<sup>1</sup>

### The Process of Informalization

One area of interest related to the informal economy is the informalization of working relations that were previously formal. This informalization relates to economic development in developed countries such as the US and Europe which has promoted new work divisions under production which has become global. The production system, by developing supply-chains, no

longer focuses on centralized production activities but spreads production to a number of regions or countries based on comparative competency. Hence, economic units become more flexible to deal with competition. Meanwhile, production parts are outsourced to the third parties. Such transfer of production is often carried out by a number of illegal business units employing, for instance, immigrant workers; this type of production unit is what is known as a sweatshop. This phenomenon explains the employment informalization process. In this context, usually workers do not receive protection of employment status or health care. The New World (i.e. developed world)'s work practices have had an impact on Indonesia. Beginning in 1970s, a number of factories were established in different industrial estates, prepared by the government to attract foreign direct investment. The investors, mostly foreigners, tried to win bids offered by major European and American companies such as Adidas, Nike, and Reebok by taking advantage of the comparative advantage of low-cost manpower in Indonesia. Some argued that those companies shifted their operations due to strict provisions in the constitution and regulations of both Europe and the US.<sup>2</sup>

To top it off, the world's worsening economic situation that caused poverty in developed countries in the late 1990s compelled the global community to become more selective in exercising their spending power, and focus more on economizing rather than buying luxury items. The Wal-Mart retail business which has been rebuked for its anti-union policy was able to expand significantly because the consumers in the country of origin no longer care about anti-sweatshop campaigns.<sup>3</sup>

In those days, factories employed workers in a manner that frequently contravened laws and regulations. This included employment of young children, or discrimination against female workers, e.g. by giving less compensation compared to their male counterparts. Only after international human rights and local labour organizations focused on this issue did these factories improve themselves and reduced illegal practices. However, the companies also transformed their production units into smaller units often undertaken by smaller home industries. The workers of such industries usually work based on contract and receive remuneration based on the size of the order they complete.

### **Problems and Issues of Informal Workers: Focus on Women**

In Indonesia, the informal workers are located in both in the urban and rural areas. By and large, the work is recognized from its ease of entry, lack of any formal procedure whatsoever, operation on a very small scale, maybe done on own account or with the help of others sometime without pay, use of locally based resources, where the technology required is simple and easy to adapt to, and no education required for the job, which more than often not was creatively thought of by the workers themselves. For example these are street traders, laundry service, food producers, handicraft makers, pedicab drivers, only to mention several, as the activities, indeed, cover various products of goods and services.

Characteristically the problems and issues faced by these informal workers are:

1. Poverty  
Most of the informal workers are living in poverty. The majority of them are women, who, due to poverty, always apply survival strategies in their daily life to secure their living.
2. Lack of capital  
They have only a low level of capital. In most cases their working motivation are only as

simple as having enough income earning to meet the daily food consumption, with no intention to pile wealth.

3. Limited skills
4. Limited access to regular markets and technology.
5. Poor working conditions  
Lack of capital and small income, they work in indecent places.
6. Low and unstable income
7. Invisibility  
Unlike those in the formal employment, the informal workers do not appear in statistics, are unregistered as working enterprises, or are wage workers employed by a middle-person.
8. Unprotected workers  
Since Indonesia's independence in 1945, for around six decades labour regulations have not yet been designed for them. It is not surprising therefore, that the informal workers have become workers with neither protection nor any form of standard social security.
9. No labour union  
Working in solitude, such as working in isolation within their own home with no common establishment, organizing in a labour union is almost impossible. This leads to the fact that almost all of the informal workers are unorganized workers. Consequently, they have no representation capacity.
10. Long working hours  
The women might work for long working hours, particularly when the informal work is intermingled with domestic chores under women's responsibility. Other common reason is related to the workers capital availability. As capital is limited, they rely on their labour to earn. Moreover, as earnings are low, they are willing to spend hours to work to earn enough for living.

The evidence is enough to conclude that being an informal worker is an unfortunate thing. Despite their plights, because they do not work within enterprises that adhere to legal and regulatory frameworks, it is a logical consequence that they have little or no legal and social protection. This is still true despite the latest development, the passing of the latest labour law, namely Law No. 13/2003 about manpower, in which all wage labourers are supposed to be covered, while the own account workers shall be covered by social security for all policy areas in accordance with Law No. 40/2004, as described in the next section.

### **Informal Women Workers**

Very much related to the gender role of women, the majority of Indonesian women work in the informal economy. Largely, there are two categories of informal women workers: own account workers, and wage workers.

#### **a. Own Account Women Workers**

In this category the following type of workers are included:

1. Heads of family business
2. Self-employed
3. Unpaid family workers
4. Street vendors

Relatively speaking, self-employed women conduct regular work; they have daily orders, and can decide on their own compensation and work standards, working hours and rest periods, holidays and leaves. They get paid upon selling their products, following the entire production process, and bear all of the risks. Sometimes these are not all applied, and what happens then is more complicated. An example is the case of palm-sugar production by the own account women workers in Lumajang, East Java.<sup>4</sup> (Wijaya, 2008). These workers are necessarily women because the production process involved boiling and simmering the palm nectar to be molded later; any production activities related to cooking is women's work.

Three parties are involved. *First*, are the sugar wholesale traders, who grant loans to the self-employed women according to their demand of money and their ability to return the loan, collect palm sugar from the workers at the price set by this wholesalers (usually lower than the market price), and sell it to the buyers. Though they claimed that there is no interest for the loans, they gain huge profits from loaning as they collect palm sugar from the workers at a much lower price than they sell to the market. *Second*, are palm tree owners who rent palm trees to the palm sugar workers. *Third*, are the self-employed women workers who work to earn a living and to repay debts. The workers do not have adequate capital to start their own business. They have very low credit ratings, making it impossible to obtain loans from banks. They also prefer borrowing money which is 'interest-free', not understanding the high implicit interest rate in such borrowing. As they cannot save enough capital to set up their own business, they have no choice but to continue borrowing from the same person to get enough capital for production and sustenance. The working conditions are poor. The family workers, often unpaid, usually have to climb up palm trees without safety devices, and the workplace for boiling nectar and moulding the palm sugar has poor ventilation and poor lighting. Risks for the women such as falling from the palm trees or third degree burns from splashing boiling nectar are common, yet the women lack health insurance against such risks.

## b. The Wage Workers

Various wage workers are included in this category. They maybe classified as follows:

1. Employees of informal enterprises
2. Casual workers without a fixed employer
3. Home-workers (industrial outworkers, or workers in the putting-out system, the system of producing for external companies)
4. Domestic workers
5. Temporary or part-time workers
6. Unregistered workers
7. Undeclared workers

Lacking statistical figures, it is believed that home-based workers are the majority of women informal workers in Indonesia. Like elsewhere in the rest of the world, this is related to the gender roles of women as the home-maker, which necessitate that women work in their own home even though it is an economic activities to earn income. Other reasons are that because it is flexible work, they can do income-earning activities without neglecting their roles as mother and wife in the home as necessary. The women home-based workers alternately do domestic chores and work for income-earning activities. They work by orders to perform special tasks and get paid by piece or by volume. It has been observed that in most cases the domestic role is prioritized over the putting-out system work, resulting in a double burden to the women workers, lack of rest and working overtime to meet the deadline.

Not only is the work flexible, while recruitment is simple—through word of mouth only—home-based work is less tense than working in a factory since the work is unsupervised. Nevertheless, quality control is carried out by the employers (or immediate employers/the middle person), and the risk of below-standard production must be borne by the workers in the form of deducted payment in the case of products beyond repair, or by undoing and redoing the rejected product, which usually takes longer time than initially. The employer–employee relationship is loose, without any standard practice of that officially recognized by the Department of Labour and Transmigration. This predicament leaves the home-based workers, like other informal workers in the rest of the world, without any access to social protection.

Home workers show specific characteristics remarkably different from workers in a manufacturing establishment which belongs to the factory owner. In Indonesia, there are three types of home-based workers:

1. Home workers in the putting-out system (POS) who work in their home. This work is obtained from the employers or, in most cases, immediate employers or intermediaries who give them orders and raw materials; thus the workers do not have any rights to the type of products and they do not have rights to market the product;
2. Home workers who act as middle persons, employ other home workers and employ themselves in similar type of work, and
3. Home workers who are self-employed and work independently in producing goods according to their own designs, having full rights to their production and marketing their products themselves.

An example of typical home-based work in Indonesia is shoe production in Asrikaton Village, Malang Regency, East Java 1 (Students for Equality and Equity Project of Hong Kong University, 2007, unpublished report). Sanny shoe factory, which receives orders from overseas (Malaysia, Germany, Singapore and Hong Kong) and domestic buyers, allocates part of the production process to the factory, and outsources the rest to home-based workers through ‘middlemen’ or intermediaries, as factory partners. The shoe factory is a transnational company, with investors from Germany, Malaysia and Indonesia. The factory claims that all of the production processes are finished within the factory, and that it outsources some of its production process to partner factories only when the factory lacks the capacity to meet the demand. This claim, however, is contradicted by what the intermediaries and the women home workers have said, i.e. that the factory conceals the fact that they employ home workers. The intermediaries in most cases are long-term employees. For example, the head of the Assembly Department has not only the responsibility to train the assemblers in the factory and supervise the production process in his department, but since eight years ago when economic crises hit the Indonesian economy at its worst and a large number of workers were retrenched, he has been assigned the additional role of finding women home workers to assemble shoes when the factory has difficulty fulfilling orders in time. He profits from the difference between the piece rate he receives from the factory and that offered to the home workers. He also checks the quality of the finished products and returns those which are sub-standard, but he neither trains these workers nor supervises the production process. The home workers receive orders for sewing shoes from the intermediaries. Sewing is perceived as women’s job, and only women are perceived capable to do so, regardless of the fact that it is, indeed, tough work. Therefore only women are recruited as the home workers, receive orders from the intermediaries, and are paid based on a piece rate ranging from IDR (Indonesia rupiah) 1,900 to IDR 2,500 (equivalent to US\$2.1 – US\$ 2.6) according to the complexity of different models. On average each workers can finish 10 – 12 pairs a day. This is similar to the capacity of their counterparts working in the factory. But their working hours fluctuate a lot due to the irregularity of the orders, and their income, too, fluctuates accordingly. Furthermore they

do not receive benefits. These women workers are the ex-workers of the shoe factory laid off years ago and have been working as home-based workers ever since, receiving raw materials in the form of shoe parts, including shoe-soles, needles, and thread. Yet no occupational safety measures are practiced from the order provider against punctured fingers, wound and cuts, shoulder aches and sore eyes.

All three types of home-based workers have the following characteristics in common (typical of informal workers, as previously mentioned): 1) long working hours, 2) low returns, below the regional minimum wage, 3) work often involving family labourers, 4) no social security, 5) no occupational health and safety devices, 6) no written contract, and 7) use of their home as their base of production. Neither return nor compensation is paid to the POS workers for their contribution on fixed cost (e.g. room, premises), variable costs (e.g. electricity, oil, paints, water, petrol) and equipment (such as cooking utensils, knife, scissors, molds, etc.) and machineries (e.g. sewing machines). The POS system involves their production in mass production, unlike the self-employed women, where the production process moves from one home-based worker to another before the final product is fully shaped.

There are additional similarities between home workers in the POS and home workers who are middle persons at the same time. Their work is irregular, orders are from one to seven days, and wages are paid through piece rate decided upon by the immediate employer or intermediary, and upon delivery of products which are considered satisfactory by the latter. Despite long working hours, they have no overtime payment. Their contributions to the production process which consist of not only labour, but other input factors mentioned above are only compensated for (if at all) by the flat all-inclusive piece-rated return. Workers lack any bargaining power to overcome this problem. There are no provisions regarding length of working hours, overtime bonus, weekly rest period, maternity leave, menstruation leave, or annual leave. More often than not at the time of economic crises, or simply during market failure of their product (e.g. time of Gulf War, rejection of garment products from entry to Germany and the USA, during financial crises in the second half of the 1990s) it is the home workers who suffered losses. They bear the brunt of these market changes because they do not get paid if products remain unsold.

### **State of the Labour Movement with Particular Attention to Women**

The experience of self-employed workers—namely of street traders, home-workers in the putting-out system, overseas contract workers as domestic helpers, forester community, farmers and fishers—in workers organizing and advocating for social protection are different from one another, because each group has unique characteristics.

Home-workers are the only self-employed workers that are officially organized under proper registration following Law no. 22/2001 on workers' organization, although it should follow a bottoms-up approach from the bottom level of the Technical Labour Agency at the municipality level and reGENCY (an intermediate administrative unit) level, to provincial level, before going to the national level. At present, the level of organization is primitive. East Java is the only Province out of 33 provinces in Indonesia in which the Association of Women Home workers (Himpunan Wanita Pekerja Rumahan Indonesia) is officially registered as a labour union (in the reGENCY of Malang, municipality of Blitar, reGENCY of Mojokerto and the reGENCY of Situbondo. These are only four out of 38 Municipalities reGENCIES in East Java Province. The workers should be empowered before capable of registering themselves, due to their unique characteristic wage workers. They should know by heart the aims of organization such as:

- collective bargaining capacity

- collective advocacy
- recognition as workers
- obtaining rights as workers including social security rights
- alliance-building for strengthening workers' capacity

Standing before the officials of the local labour technical agencies is a tough challenge for the home workers, who may regard themselves as being just housewives.

- As for the other type of informal workers, the organization, if any, may not be officially registered while their aim for organizing focuses on productivity only. It is different from one organization to another. With the self-employed street trader in Jember, East Java, for example, the goal set is provision of local regulations for street traders which protect them and offer them job security and freedom from exploitation. On the other hand, the fisherfolk, forestry community and the farmers organization aim at: a model of protection, social empowerment, and protection of natural resources.

The only informal workers who are insured with the state worker insurance company Asuransi Jasindo Consortium are the overseas contract workers—basically, those who go abroad to work as domestic helpers. However, regardless of their full payment of the insurance premium, they remain unprotected at the receiving countries; they became undocumented workers precisely because their documents get confiscated by the labour agencies. At all stages, whether during pre-departure, at the work place or even on the way to return back home, claiming insurance for a work-related accident is almost impossible.

For workers who have not got any experience in organizing themselves, organizing is often perceived as a waste of time, particularly for those for whom, very much due to low income and poverty, time is a factor sorely needed for survival. Organizing this unorganized sector requires a process and facilitation. The role of NGOs in capacity-building and organizing is crucial, while character-building ought to be undertaken too. It can be as simple as it looks such as in the case of street traders, yet it can be as complicated as overseas domestic helpers at their workplace which involve various components and many players. The unique characteristics of each must be taken into account in the effort to organize an informal workers' union. Protection against risks may be an effective entry point for informal workers' movement.

Specific segments of informal work have specific type of risks related to occupational health at the workplace, variously ranging from physical ills (e.g. respiratory problems, eyesight problems, stomach disorders, muscle tension, skin diseases, cuts and wounds, over-fatigue), to emotional tension, to economic risks. Sometimes sexual violence is suffered by the women informal workers, as experienced by women workers in the tobacco drying area in East Java. Even death occurs among informal women workers, both among those who work as domestic workers abroad as well as those who work in-country such as street traders. Among the fisherfolk, the informal workers face uncertainty about their future when they get old and they are too weak to work, no longer capable of selling their labour with frail aging bodies. 'Pension' is not in their vocabulary.

In the recent laws of social security for all, those above-mentioned risks may be covered by health insurance, social security insurance, and a pension scheme for the old age. All these depend, however, on the capacity to pay premium, which is a question mark for the low-earning informal workers.

Another problem is related to the type of the insurance scheme availability. During the 2nd Informal Sector Workers Conference in 2005, it was revealed that there are other types of risk which is usually uncovered by any insurance scheme, such as:

- a. Economic related risks for the women home-workers in the putting-out system such as unpaid wages and lack of benefits and holiday
- b. Death, capital loss, overfishing, instability of fish prices, seasonality and uncertainty of catch and competition with the capital intensive modern fishing companies risks for the fisherfolk
- c. Risks of total capital loss, and uncertainty of workplace availability for the street vendors
- d. Risk of death, loss of land, loss of product and income loss, risks of instability for the farmers
- e. For overseas migrants workers and domestic workers: risks of unpaid wages, deportation, loss of jobs as formal workers, confiscation of documents (e.g. passport, working permit, ID card and/or working contract), transformation from legal to illegal status, confiscation of money and personal belongings, treatment as modern form of slaves, sexual and physical abuse, and death.

All those risks are good entry points to initiate informal workers' movement and struggle to obtain social protection, or, social security, wherever applicable as their rights of workers. This has been applied to home workers in Indonesia, as part of the home workers movement in Southeast Asia. Since it is only at the initial stage, we need to wait to observe its progress and success.

### **Indonesian Labour Law: Does It Apply To Informal Workers?**

For a long time the Indonesian labour law has not included any clear concept between the formal workers and that of the informal one. The former is well-regulated, while the latter is neglected. Policies related to the protection of informal workers have been absent, even though the 1945 Basic Constitution, Chapter 28 reads that:

*'Every citizen has the rights to obtain social security that make it possible for a person to develop properly as a respectable human being.'*

while Chapter 24, Article 2 states that:

*'The state shall develop a social security system for all of the citizens and empower the poor segment of the society in accordance with proper degree of humanity.'*

This is a logical consequence of the fact that informal sectors are invisible. Their numbers are not covered by statistics or by any labour union – let alone organization, and representation. For more than 15 years, official efforts to protect home-based workers have been conducted in Indonesia to analyze the existing labour laws, since home workers are invisible as workers under the law even though they actually have working relations with their employers and receive pay in return. Those workers should therefore be recognized by law and obtain their rights as workers.

This Country has not ratified the 1996 ILO Convention on Home Workers. This Convention defines a home worker as someone who works for remuneration in his or her home or in other premises of his or her own choice, other than the workplace of the employer, resulting in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other input used. Are home workers protected under the Indonesian Labour Law No. 13/2003? The following section explores this issue by describing the characteristics of home workers in Indonesia, analyzing their predicament under the current labour law, and making certain conclusions at the end.

When Labour Law No. 13/2003 was passed, a new hope began to take form for the formal workers. By the definition of workers in this law, all wage workers should be covered by this law. This leads to the implication that the wage workers in the informal economy are also protected. The main problem is that terminology of informal workers is not mentioned explicitly in this Labour Law. Research into this law has indicated that they are not protected by written working contracts due to a lack of formal and direct 'working relations' with the employer (Wijaya & Sembodo, 2005).

However, to the informal workers the law is not readily implementable for various reasons. For example in the case of home-based workers. Essentially, these segments of informal workers may be classified into the following categories (as described earlier in the chapter):

Home-workers in the putting-out system

Sub-contractor who are sub-contracting the job order to the other home-workers

Self-employed workers

### **Does Law No. 13/2003 Protect Workers in Informal Employment?**

#### *The case of home-based wage workers*

Working relations between home-based workers and their immediate employers has specific features distinct from employer-employee relations in the industrial sector or formally registered companies. They have the following characteristics:

1. The working contract between the employee (i.e. home workers) and their immediate employer is only a verbal agreement. This verbal agreement covers an extremely short time only (one day to one week), yet because there is a constant repetition of the job, the work goes on continuously. The job contract components include, for example:
  - a. a job order
  - b. a wage/salary upon completion of work performed
  - c. workers working for 'employers' within a subordinate relationship
2. The employers do not supervise home workers who are employed. Yet quality control is imposed upon the submitted product based on their standards of the expected results.
3. The home workers do not have any bargaining power to mutually determine the terms of a contract with the immediate employer. It is the same when they work as intermediaries between end workers and employers.

These characteristics cannot easily be fitted into the new Indonesian labour law. The main question is whether their current patterns of working relations are covered by existing law, thereby ensuring that their rights to be protected as workers are met, or whether such patterns fall outside the existing labour law.

### **Working Relations**

In the case of the putting-out system, for example, although home-workers are not explicitly mentioned in the latest Indonesian labour law, the definition of workers alone implies that this law covers those workers. Consequently they must have the right to obtain social protection.

In this law (Law No. 13/2003), it appears from a glance that home workers are covered by it. Chapter 3, Article 3 reads: '*A worker or a labourer is a person who works and receives a wage or a return in other forms.*' Chapter 1, Article 4 also provides that '*A work provider is an individual or entrepreneur, corporate body or other type of institution that employs a worker and pays by wage or other form of return.*' These definitions are consistent with the home workers' intention to work for pay.

According to the definition of what an entrepreneur is and what an enterprise is, found in Chapter 1, Number 5, and Chapter 6, Number 6 of Law No. 13/2003, not only the employers, but also the middle persons or subcontractors employing women home workers, should be covered—whether registered or non-registered, as long as they employ other people in the production process.

It implies that entrepreneurs/employers who employ home workers are included in the above-mentioned definition, because it applies to both types of employers. The problem is that entrepreneurs are usually not transparent about the fact that they employ home workers. Entrepreneurs can hide their status as employers since the production process is not done in the factory establishment, but in the houses of home workers.

### ***The Work Contract***

In the meantime, the work contract supposedly is covered by the law which states: '*A working contract is an agreement between the workers/labourer with the employer or work provider that covers work conditions, rights and responsibilities of all parties.*' (Chapter 1, No. 14 of Law No. 13/2003). This definition is broader than the coverage of labour laws in the past. In particular, it explicitly states that a working contract is not only applied to labourers/workers with employer, but also to the middle person. The main difference between the two lies in enterprise ownership. Entrepreneurs may own the enterprises, while the work providers are not necessarily enterprise owners.

Unfortunately, it seems this chapter is nullified by the law which reads: '*A working relation is relation between entrepreneurs and the workers/labourers, based on working contract that spells out items of work, age and order.*' (Chapter 1, No. 15, Law 13/2003)

Legal experts such as Soepomo (1985) and Djumaldji (2002) however believe that a working agreement exists when a worker/labourer has agreed to work for employers who provide jobs and pay upon job performance. It is not necessary for there to be a written contract since Chapter 51, Article 1, of Law 13/2003 reads: '*A work agreement may be a written agreement or a verbal agreement.*'

Thus the elements of work agreements are: 1) job implementation, meaning that the worker agrees to perform a designated job, and 2) a subordinate relationship, meaning that workers work under the leadership or instruction of others.

### ***Repeated Nature of Work Confirms Work Relations***

Another feature that characterizes home-based work relations is that the work is very much short-term, and replicable continuously. Particular reference to this is in chapter 1601 c, Article 2 KUHP (Book of Rule of Civil Law a) which states: '*When a work-contract-agreement is followed with other agreement in which there is a time gap in between, or if during the time of drafting the work contract agreement both parties clearly meant to materialize further a number of agreements, such*

*that all work contract agreements together are considered as one work agreement....this agreement is considered to remain intact as a work contract agreement.'*

It is clear that such relation may be categorized as work relation, because it involves a leadership element or authority for employers to instruct workers such as home workers.

On the other hand, the self-employed workers, as own-account workers, are not covered since no working relations involved.

### **The Issues of Wage Payment and Social Security**

Law No. 13/2003 mentions the following definition of wage or pay. *'A wage is the worker's/labourer's rights in the form of return from employers or work provider to the workers/labourers which is determined and paid according to a work agreement, joint agreement, or rules of laws, including bonus for workers/labourers and their families upon a job and/or tendered service.'* This definition identifies the work provider as the party who is capable of paying the workers/labourers, thereby implying inclusion of the case of home workers. The ones who are actually the workers/labourers in the putting-out system (POS) are covered and should be protected under Indonesian labour laws.

In addition, as a result of advocacy by Homenet Indonesia and other groups, the Ministry of Manpower covered home-based workers by issuing the following regulation on piece rate: *'For the labourers on the contract system of piece-rated payment, for over and above a month, the minimum monthly wage should be equivalent to the minimum wage rate at the said company'* (Minister of Labour Regulation No. Per. 01/MEN/1999) Chapter 15, Article 1.

Although the term 'home workers' is not specifically mentioned, this article means a lot to them. Consequently, other rights as workers should be applied to the home labourers including social security. This has been seriously undertaken with the promulgation of implementing regulation No. Kep. 150/Men/1999, a Decision Letter of the Manpower Minister regarding operation of the social security programme for daily paid workers, contract labourers and fixed time agreements.

Homenet Indonesia will work based on these rules, as these are not nullified by Workers Law No. 13/2003. As for the self-employed workers, they are supposed to be covered by social security using Law 3/1992, regarding workers' social security, wherein Chapter 3, Article 2 says: *'Every worker has the right to obtain worker social rights.'* The mechanism for implementation is organized by and under the responsibility of PT Jamsostek (Worker's Social Security Company).

As a conclusion, although technically, home workers are not specifically mentioned by the labour laws, Homenet Indonesia claims that these laws can be interpreted to cover the workers or labourers in the putting-out system. However, a lot still has to be done in order to make social protection in general, and social security in particular, a reality for the home workers.

Important also is the question of: 'Who is the employer?' because in most cases, the employers are invisible to the home workers and can easily deny any responsibility to their employment.

In 2008, nearly five years since Labour Law No. 13/2003 was promulgated, nothing has happened that positively changed home workers' access to social security. It is important to note

that since the law did not explicitly state the definition of home workers, the general perception among government officials and the entrepreneurs remains that they yet uncovered by the law, and thus, are not eligible to obtain social protection benefits. Up to the present time, despite the widespread popularity of informal work, informal workers are not officially recognized. At the empirical level, for instance, both the employers and the officials of the Department of Employment and Transmigration have not had any knowledge of the home workers' issues. This indicates therefore, that to make the law work for the workers in their obtaining protection, awareness-raising should be carried out to all parties, i.e. not solely to the home-workers, but also to the officials of the Department of Labour and Transmigration and the employers.

### Social Security to Cover Informal Workers

After a long period of advocacy, Law No. 40/2004, otherwise known as '*Sistem Jaminan Sosial Nasional*' (National Social Security System, hereafter NSSS) has finally been promulgated. Through this Law, the government shall cover the social security of all Indonesian citizens. Previously social security had been available only for workers in the formal economy. Optimism is high with the promulgation of NSSS that all workers in the informal economy, own account workers in particular, will be covered and protected.

To the surprise of many, *Law No. 40 /2004 regarding NSSS seems to respect the informal workers' right to decent living*. Chapter 1 defines Social Security as: '*... one form of social protection to secure that all of the people obtain a decent level of the basic needs of life*'. From what has been almost a standard norm to provide informal workers only a minimum level of basic needs, it has been raised to a more truly decent one. Meanwhile, the words 'all people' implies embracing those in the informal employment including own account workers and home workers too, validating the latter's inclusion as recipients under the law. The standard of a social security system as it applies to Indonesia is further stated in Chapter 3: '*National Social Security System aimed at full provision of decent basic needs of living to its members and/or their family members*'. By Law, the NSSS will extend minimum protection using the criteria of decent basic living ('*Kehidupan Hidup Layak*'). Essential needs, or decent basic needs or living, is defined as meeting minimum basic needs in order to have a decent life—this ultimately is the realization of social welfare to all Indonesian people.

The NSSS explicitly states that five security programmes shall be extended to all Indonesian people:

- a. Health security
  - b. Occupational accident security
  - c. Old age security
  - d. Pension security
  - e. Death security
- The home-based workers, particularly the self-employed women, are therefore not excluded from availing of the said privileges provided by law.
  - Chapter 14 states that the government is committed to the poorest and most financially incapable persons, who as recipients of the government-supported welfare plan must be registered with the Social Security Implementing Board. Under the said scheme, a home worker may participate as a self-employed worker by paying the nominal rate determined by the government, or may join the system through a neighborhood group. Home workers in the putting-out system may avail of the scheme through joint payment, with those receiving

low wages being encouraged to participate in the insurance programme. They should be given access to claim their rights to social security and that of their families.

- Social security under this law is obtained depending on the capacity of a person to pay: she or he may choose to avail of all the privileges offered or may choose just one or two of the following—health, workplace accident, pension, old-age security, and death.
- In view of the above, the Board of Social Security was legally established, with four agencies to undertake the task of implementation and facilitation of social security extension to workers: Workers Social Security Company (PT Jamsostek), Government – Civil Servant Insurance and Saving Fund Company (PT Dana Tabungan dan Asuransi Pegawai Negeri, or TASPEN), Social Insurance of the Army of the Republic of Indonesia Company (PT Asabri), and Indonesian Health Insurance Company (PT ASKES).

Similarly, a lot still has to be done as the law is not readily implementable as the bureaucracy requires directives or other implementing instructions. In the meantime the Government has taken ILO's recommendations as follows:

- a. organizing the workers by type of employment
- b. training the workers on workers' rights and responsibilities
- c. assisting informal employment workers to become formal ones

Viewing the law positively, it is worth noting that:

- 1) The government has been aware that the informal employment workers should not be discriminated against by formal workers. A step-by-step approach ought to be undertaken hand in hand with non-government organizations. The latter, considered to be more advanced in experience, should offer their inputs to the government.
- 2) Every person may become a NSSS member by paying the premium.
- 3) The government is willing to work collaboratively with NGOs and other forms of community organizations particularly with respect to the availability of data on workers in informal employment that may realistically be used for NSSS purposes across government departments (such as the Department of Labour and Transmigration, Department of Fishery and Oceanography, Department of Health, Department of Women Empowerment, etc.)
- 4) The government should play a role in the supervision of NSSS implementation particularly with respect to employers who break this law.
- 5) Socialization of NSSS is needed for the society in general, and the workers in the informal economy in particular.

Effort toward official recognition of home workers remains to be pursued. It is recommended that:

- a. An official written statement be given, that the home workers be included in the definition of workers by Indonesian labour laws
- b. The home based workers be organized to conduct a formal registration of an informal workers' union within the Department of Labour and Transmigration
- c. Enable informal workers' associations, through advocacy, to be eligible for membership in the Labour Conflict Solution Board at the provincial/district Wage Boards. This should lead the associations to pursuing a real function and existence.
- d. Enact or implement local regulation that clearly states rules between the employer and the employee leading to a written working contract that includes at least the basic rights and responsibilities of the two parties.

- e. Advocacy and struggle for the realization of workers' social protection, particularly their participation in the workers' social security company, PT Jamsostek, equally for informal workers as for those who work in the formal employment.

Law No. 40/2004 remains inadequate in the sense that are many more risks beyond the coverage of the five social security programmes it mentions. This implies that other type of social security programme that meet the need of the informal employment workers should be developed.

Other challenges also remain, in order for the law to become implementable for informal workers in all sectors concerned, particularly women:

- To date, there are still some 21 compulsory implementing regulations under this law that must be passed. Otherwise its full implementation will prove futile.
- Additionally, Chapter 52 on Transitional Directives states that all regulatory directives of the Social Security Implementing Board should be adjusted within five years' time. Therefore, there is a need for concerted effort and relentless pursuance of public policy advocacy to push the Government to pass all of the implementing regulations. This is to ensure that within five years social security will be accessed by informal workers including the home-based workers, and the rest of Indonesian citizens. Moreover, learning from the past experience of futility and disappointment, there is a real need to keep track of how the good intention of the law is carried out, through advocacy, monitoring and consultation. This includes the government's use of its financial capacity, because of its position and power to either deny or provide provision of full insurance packages.
- The apparent absence of enforcement power in the law may turn the National Social Security System inutile or inefficient. For example, there is no sanction for uncooperative employers who disagree to make contributory payments for workers' insurance, nor obligation for those in power to dutifully obey and fulfill their responsibility under the law.
- Finally, the organizing efforts among informal sector and home-based workers must be pursued at all levels. In the meantime, for the own account workers, the advocacy should be directed at the drafting and pushing the directives of a social security programme for workers outside the working relations designated in Law No. 3/1992, Chapter 4, Article 2. To fill the gap, indigenous social protection schemes should be promoted.

### **Tripartite Meeting to Improve Protection for Informal Workers**

In addition to the responses to the laws of 2003 and 2004 by workers and NGOs already mentioned, another response was to call for a public discussion through a conference to allow a democratic process involving the 'tripartite' structure of the government officials, the SPSI (Konfederasi Serikat Pekerja Selerut Indonesia, the state-backed All Indonesian Workers Union), and APINDO (Asosiasi Pengusaha Indonesia, the Indonesian Business Association), in addition to the NGO network and the workers in the various sectors.

Following the first meeting of its kind solely dedicated to workers in the informal sector in 2002, as preparation of the first ILO International Conference employment in Geneva, in 2005 the second National Conference on Informal Workers was organized in Jakarta. The aims of this conference were:

- to discuss and shares the result of the law studies, both that of Law no 13/2003 and Law no. 40/2004.

- to discuss whether ratification of the ILO convention no.177/1996 is still relevant
- to discuss the follow up with respect to the plight of workers in the informal employment

The government's officials from related departments, SPSI (the state-backed labour union) and APINDO (the employers' association) were invited. Interestingly, the appropriateness for the informal wage workers and the own account workers of the Social Security under Law 40/2004 was questioned by those parties. In the meantime, the grassroots and the NGOs, after critically examining the type of risks faced by the workers, found that there is a need for adequate measures of social security. Many expressed that formal systems in the above-mentioned laws were still far from appropriate as far as the type of risks and problems are concerned.

As a result, it has been agreed that the workers in the informal employment should organized themselves as a workers' union to obtain their rights. An All-Indonesian Informal Workers Association has been suggested to be established among the grassroots of the informal workers in which its members shall be composed of groups of informal workers. For example classified as informal wage workers home-based workers, organized within HWPRI (Himpunan Wanita Pekerja Rumahan Indonesia – The Indonesian Association of Women Home Workers), and SBMI (Serikat Buruh Migran Indonesia – The Indonesian Union of Migrant Workers) for the cause of migrant workers, while the own account workers expected to be established are the Fisherfolk Union, Farmers Union and Union of Traditional Traders.

A quick survey to selected informal workers was undertaken to find out whether the labour law was known to them. It was very interesting to find out that they did not yet know that the Labour Law had been passed. Similarly, upon a quick polling of the local governments, a year after the promulgation of the law, most of them were still at the state of awaiting the implementation instruction from the national level government.

The strategies for the wage workers in the informal employment that have been agreed among the organized informal workers were as follows:

- to form a solid group
- to register the workers group as a labour union
- to submit the file of labour conflict cases to the Labour Agency Technical Department and Court where relevant
- to be listed as members of the Labour Conflict Solution Board at the provincial/district Wage Boards
- to demand a registration as the beneficiaries of the labour social security

In parallel, advocacy work must be done to the governments officials at all levels managing the social security systems. NGOs and activists' participation to facilitate the response to work is important.

### **Health Insurance for the Poor**

Consistent with the definition of informal workers as those with no formal working relations, or who are self-employed, the workers shoulder all of the risks themselves, to obtain security against accidents at work, old age and health care, for which the worker must pay on their own. To obtain these benefits, using the minimum regional wage 2006 standard in East Java for example, to cover the entire family of four, the monthly premium is nearly 10% of the monthly

wage. This is considered relatively high. For the poorer informal workers in East Java whose total monthly earning is around one half of the minimum regional wage, the premium is found to be unaffordably expensive. As though a blessing from God, however, a sudden policy of health care for 50 million of the poor was announced.

Thus, the opportunity for the informal workers believed to be covered by Law No. 40/2004 regarding National Social Security System for all became available through the Health Insurance for the Poor scheme. Solely limited to health care, in 2005, Kepmenkes (Decision of the State Minister of Health) No. 56/2005 was passed as an implementation directive of Health Care Security Programme for the poor.

In the following year, this directive was revised with the passing of Kepmenkes No. 332/2006 regarding Guidelines for implementing Health Care Security Programme for the poor. Namely, under the programme Health Insurance for the Poor (Asuransi Kesehatan Untuk Masyarakat Miskin - Askeskin) as many as 60 million poor people are covered. This is a 20 per cent higher number of poor members of society than targeted under the previous directive (Kepmenkes No. 56/2005), but the mechanism and rules is tighter than before.

Within two years of the passing of the Askeskin programme, the following empirical evidence of on the ground has been observed:

- Below-standard medical service for the poor
- Programme information is almost non-existent; it is very difficult to access information on access to Askeskin
- The procedure is bureaucratically long, full of red tape and confusingly complicated
- Illegal requests of payment from the personnel of the health provider

For poor informal workers, it is certainly a promising health care programme worth the struggle. However, NGOs' support to advocate and improve this programme is still greatly needed, directed both at the health providers and the informal workers.

### **State of the Labour Movement: Union Organizing and Organizing of Women**

The fact that the informal workers mostly work in isolation yet also spread widely all over the archipelago makes organizing at the national scale difficult. At present the Indonesian union of workers are those organized under SPSI (mentioned above), for the labourers in formal employment. This union has not been recognized yet by the ITUC (International Trade Union Confederation) as a member. For about a decade, including around eight years facilitated by the ILO-DANIDA project (for the home-based workers including self-employed women workers), efforts to organize informal workers as a segment of SPSI has not yet been successful.

Only after the fall of Suharto's regime did new alternative workers' unions sprout in this country. In the spirit of democracy and freedom of expression, following the transformation era in 1998, the labour movement tried through various actions on the ground to fight for their rights as workers such as: minimum regional wage adaptation issues, discrimination of labour including gender issues, retrenchments without proper payment, to mention several. Demonstration and strikes have become a way of life of workers. They not only showed their feelings and stated their demands to the employers about normative rights, but also to the executives, e.g. to the labour technical agencies at the local as well as national level. When the issue was about law, for example during the drafting process of Law 13/2003, they marched to the People's Representative

Assembly structures. Yet their spirit has not yet reached the informal workers. Rallies and strikes are not part of their activities. Campaign among their peers for extension of membership alone up to the present time has not been a movement. Empowerment and awareness-raising is required to make organizing as a labour union get on the move.

It seems that workers in the informal employment still have a long way to go, since without suitable implementing regulations the law is futile. Meanwhile, by 2006, a bright hope has come for own account workers further to the above-mentioned laws in 2003 and 2004, with the passing of Permenakertrans no. 24/2006 (Regulation of the State Minister of Labour and Transmigration no. 24/2006) which seems to be an exceptional government programme to access the social protection programme. This regulation deals with guidelines for implementing the labour social security for workers employed outside the standard working relations. This is perceived, at the same time, as an implementing regulation of Law no. 3/1992 regarding social protection for workers, which states the social protection for workers outside working relationship shall be regulated further. Yet, problems remain. It is not always easy to persuade information workers to agree to join the social security scheme offered. Those who understand and have perceived themselves as workers, do want to be classified as workers instead of the poor.

A new initiative is being applied to fisherfolk who consist of both own account and wage workers, to learn the need to organize as well as to get the protection of the social security board based on their own experience of the risks they have suffered from, including death toll, shipwreck on the stormy seas, and the lack of catches that directly affect their income and wellbeing. Considering Indonesia is an archipelagic country, the fishing community is large and widely spread all over the country. Organizing them is challenging. The type of insurance scheme offered within the social security programme has also not yet covered any total loss of ship and death at workplace on the sea.

Registration of the informal workers group to the Technical Department at the national level has not possible yet, as registration in the local Technical Agency of Labour almost absent. Registration is a must if the group of home workers would like to be recognized by the government. It seems that among various segment of workers in the informal employment, only several home-based workers in East Java have been registered (Malang Regency, Blitar, Mojokerto and Situbondo—four regencies out of 38 regencies/municipalities of East Java Province). An initiative to register has been in place from the early 1990s facilitated by YPP (Yayasan Pengembangan Pedesaan – The Rural Development Foundation), by organizing the unorganized informal workers, started from a group of home workers.

Officially registration has been possible only in this millenium, based on Law No. 21/2002. In 2005, Homenet Indonesia facilitated the establishment of a women home workers grassroots organization of women mentioned earlier - namely Himpunan Wanita Pekerja Rumahan Indonesia. That organization is supposed to be a branch of SPEKINDO (Serikat Pekerja Ekonomi Informal – The Indonesian Informal Economy Workers Union). The other type of informal workers (farmers, fisherfolk, informal workers in The trading sector, and domestic workers) are not yet easily organized nationally. The ission to struggle toward realization of workers rights including social security is not yet in the agenda of any existing national organization of informal workers. This is true for example, in the case of farmers. So far they are under the organization of Agriculture Technical Department. Usually they are organized by group of farmers, in which their vision, mission, and activities focus on productivity and income. This is also the case of farmers organization facilitated by NGOs. Another type of national farmers' organization exists under

the wings of political parties, to ensure constituencies' commitment to place their voting during general election.

For the women farmers, instead of workers' rights and social protection, the organizing agenda is related to the government development programme strongly related to current gender ideology. Struggles should start with gender awareness-raising not only to the women farmers alone, but also the families, the related technical departments and the concerned NGOs partners. It is certainly challenging since it is work against the mainstream, against culture and against patriarchal ideology that currently remains strong within Indonesian society.

## ENDNOTES

1. Central Bureau of Statistics (2006) '*Beberapa Indikator Penting Sosial-Ekonomi Indonesia*', Directorate of Statistical Dissemination, Jakarta, July, p. 16.
2. Suziani, J. (1999) *Kasus Nike di Indonesia, Menempok Kondisi Kerja Buruh Perusahaan Sepatu Olahraga*, Yakoma-PGI, Jakarta, p. 20.
3. Wal-Mart is a major retailer company that expands at the highest speed in the world. In 1998 its sales hit \$100 million, and in 2004 it grew almost three times as much, i.e. \$276 million. Wal-Mart is also one of the private company that has the largest employees. In 2004 it employed 1.5 million people at 3,361 outlets in the US, 1,363 retail shops, and 1,672 Super Centers. Behind these achievements, Wal-Mart has destroyed employment opportunity and economy in US because most of its items are manufactured abroad. See: Quinn. B. (2005) *How Wal Mart is Destroying America (and the World). And What You Can Do About It*, California, United States: Ten Speed Press.
4. Wijaya, Hesti R. (2008). 'Sektor Informal - Katup Pengaman dan Sang Penyelamat yang Terabaikan'. *Jurnal Perburuhan* No. 8, p. 24 - 29.

