Building Back Better

Research on the Right to Work for Marginalised Group in Indonesia Post Covid-19



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Publisher:

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Acknowledgment and Gratitude for the Support and Contributions to this Research:

Special thanks go to the team from SEPAHAM: Muktiono (Chair), Mirza Satria Buana (Course and Training Coordinator), E Joeni Arianto Kurniawan (Research and Advocacy Coordinator) and Inge Christanti (Director of SEPAHAM Press) who has written this research report.

Our gratitude goes to:

National Human Rights Commission of the Republic of Indonesia (NHRI)

Sandrayati Moniaga (Commissioner 2017-2022), Dr. Atnike Nova Sigiro, M. Sc (Head of NHRI), Anis Hidayah, S.H., M.H. (Coordinator of subcommission for Human Rights Promotion), Dr. Prabianto Mukti Wibowo, M.Sc. (Commissioner for Mediation), Saurlin P. Siagian, S. Sos., M.A. (Commissioner for Study and Research), Mimin Dwi Hartono (Head of Secretary of NHRI SDGs' Team), Rebeca Amelia Susanto (Secretary of NHRI SDGs' Team) and all team member of NHRI SDG's Team.

Danish Institute for Human Rights (DIHR):

Sofie Gry Fridal Hansen (Adviser in the Human Rights and Development Department).

List of Contents

Building Back Better: Research on the Right to Work for Marginalised Groups in Indonesia Post Covid-19 ii

List of Contents iv

Foreword vi

Building Back Better: Research on the Right to Work for Marginalised Groups in Indonesia Post Covid-19 1

Introduction 1

Objective, scope and data 3

Section 2: Overview of Human Rights Standards on the Right to Work and Decent Work and Links SDG Targets 5

The core obligations of the right to work 6

Progress on the right to work will lead to progress on SDGs 7

Section 3: Overview of Human Rights Issues Regarding Right to Work and Decent Work and specific vulnerable and marginalised groups of rights-holders in Indonesia 10

3.1 Key human rights issues on the right to work in Indonesia in general 10

Data from the international human rights mechanisms 10

Data from Komnas HAM 14

3.2 Key human rights issues for getting employment right for migrant workers 16

Data from the international human rights mechanisms on migrant workers 16

3.3 Key human rights issues for getting employment right for domestic workers 19

Data from the international human rights mechanisms on domestic workers 19

3.4 Key human rights issues for getting employment rights for precarious workers 21

Data from the international human rights mechanisms on precarious workers 21

Data from Komnas HAM on precarious workers 21

Section 4: Ways for getting employment right for marginalized groups in Indonesia and recommendations 23

4.1 Progress on the right to work for migrant workers and recommendations 23

4.2 Progress and Realization on the Rights of Domestic Workers and recommendations ... 25

4.3 Progress and Realization on the Rights of Precarious Workers and recommendations 29

Section 5: Conclusions and key recommendations 30

5.1 Conclusions 30

5.2 Key recommendations 30

Law and Policy 30

Reference 31

Foreword

The Covid-19 pandemic has deepened inequality in the labor market, especially for marginalized groups, such as women, migrant workers, farm laborers, and also for certain sectors such as small and medium enterprises, precariat workers, and others. Due to unequal access to decent work, these groups experience discrimination and access barriers to other rights such as social security, and the right to health. economic security, sick leave, health care, or assistance during times of social restrictions. This situation is exacerbated by new business models, such as the platform-based economy or "gig economy" whose employment relationships are not standardized, and tend to reduce benefits and protections for workers.[1]

To address rising poverty levels as a result of the pandemic, Komnas HAM proposes to the Government to promote sustainable recovery and build resilience to future crises guided by human rights standards and norms. Komnas HAM has put forward several important recommendations. First, reforming protection programs needs to be done immediately and comply with human rights norms. Second, the Government needs to establish a framework that is aligned with human rights principles and integrate it with the plans and programs of the Sustainable Development Goals (SDGs). In addition, Komnas HAM also proposes that the Government place the right to work and decent work at the heart of the recovery strategy and national development plan for SDG Goal 8.[2]

This study was prepared as a recommendation to the Government regarding the promotion, protection, and fulfillment of the right to work and decent work for marginalized

[1] https://www.humanrights.dk/tools/human-rights-guide-sustainable-recovery/sdg-8-sustainable-recovery

[2] *Preliminary Research The Role of the National Commission on Human Rights of the Republic of Indonesia related to the Impact of COVID-19 Pandemic on Human Rights and Sustainable Development Goals in Indone*sia (2020)

groups. The report begins with an outline of human rights standards on the right to work, and a brief analysis of key human rights issues related to the right to work and decent work in general, and migrant workers, domestic workers and precariat workers in Indonesia in particular.

The study provides several recommendations for the Government as part of the Government's follow-up to Indonesia's 4th cycle UPR and as part of a broader policy dialog for an integrated approach to human rights and SDGs. The data used in this report is mainly collected from information on the right to work and decent work contained in international human rights mechanisms, and reports or studies of Komnas HAM. Data from international human rights mechanisms consist of observations and recommendations from the UPR and examinations by the UN Human Rights Treaty Bodies. Meanwhile, data from Komnas HAM is taken from information available from the complaint system plus the results of analysis, observations, and recommendations contained in the publication of the results of the study or report of Komnas HAM.

Finally, Komnas HAM would like to thank all members of the writing team, Sepaham colleagues, and the Danish Institute for Human Rights (DIHR), for their cooperation in supporting Komnas HAM in its work on SDG and human rights issues.

Enjoy reading.

Jakarta, April 17th 2023

Dr. Atnike Nova Sigiro

Chairperson of Indonesia National
Commission on Human Rights (Komnas HAM)

Building Back Better: Research on the Right to Work for Marginalised Groups in Indonesia Post Covid-19

Introduction

The Covid-19 pandemic negatively affected the implementation of the right to work and decent work and related SDG targets in Indonesia. The pandemic has resulted in a global economic recession with historic levels of contraction of per capita income, unemployment, and deprivation. However, already before the Covid-19 pandemic Indonesia had received several observations and recommendation Komnas HAM and the international human rights mechanisms (UPR examinations, Treaty Bodies, and Special Mechanisms), asking the Government to improve the promotion, protection, and fulfillment of the right to work and decent work, especially for marginalized groups such as migrant workers, domestic workers, and precarious workers.

The jobs and livelihoods crisis from the Covid-19 pandemic further deepens inequalities in the labour market and disproportionately affects already marginalized groups without adequate social protections. Particularly affected are the small and medium-sized enterprises, farm workers, precarious workers in the "gig economy" or the informal sector, refugees, and migrant workers. Many of these also represent groups who face discrimination and who have no or limited access to social protection, economic security, sick leave, medical treatment, or to help to cope with the lockdown. New business models, such as the platform and gig economy with non-standard employment relationships, also tend to reduce benefits and protection for workers.[3]

Women are more likely than men to be in the most vulnerable segments of the

[3] SDGs 8 and Sustainable Development Goals, https://www.humanrights.dk/tools/human-rights-guide-sustainable-recovery/sdg-8-sustainable-recovery, accessed on 21 October 2022.

informal economy as domestic workers, home-based workers in the lower tiers of global supply chains, or as contributing family workers. As a result, they have few protections against dismissal, and little access to social protection including paid sick leave.Because of pre-existing gender-based inequalities, women will likely experience more difficulty finding new jobs or entrepreneurship opportunities for their economic recovery.[4]

As can be seen from the VNR (2021) on poverty level, the national poverty level decreased from 11.13% in 2015 to 9.22% in 2019 but then increased to 10.19% in 2020 due to the pandemic in the past year, setting back the poverty level to three years ago. Women, rural population, and the elderly are groups most affected, and poverty among children has increased from 11.76% in 2019 to 12.23% in 2020. Moreover, from 2015 to 2019, the Gini ratio has narrowed from 0.402 to 0.380, but due to the pandemic it has widened to 0.385 in 2020. In this regard, Indonesia has increased social protection expenditure rate from 12.3% in 2019 to 12.7% in 2020 in the national expenditure budget—the highest rate ever allocated to date.[5]

To counter the increasing poverty level, Komnas HAM proposes for the Government to promote sustainable recovery and building resilience towards future crises by being guided by human rights standards and norms when they to revise policies, plans and programmes for sustainable development.

According to Komnas HAM's (2020), there were two important recommendations. First, reform of the social protection program needs to be carried out immediately and comply with human rights norms. Second, the government needs to create framework that aligns with human rights principles and integrate them in the SDGs planning and

[4] https://www.humanrights.dk/tools/human-rights-guide-sustainable-recovery/sdg-8-sustainable-recovery.

[5] Indonesia's Voluntary Report: Review 2021, accessed from https://sdgs.bappenas.go.id/laporan-voluntary-national-review-vnr-indonesia-2021/, accessed on 20 October 2022.

programming. Moreover, Komnas HAM proposes to place the implementation of the right to work and decent work at the heart of the recovery strategies and national development planning for SDG 8. [6]

Key themes and human rights issues and specific vulnerable and marginalised groups of rights- holders are identified. They should be considered when the government revise policies, plans and programmes in relation to SDG 8 to tackle issues of discrimination, inequality and the 'leave no one behind' ambition of the Government. This approach could be part of placing the right to work and decent work at the heart of the recovery strategies and national development planning for SDG 8. In the report, Komnas HAM conclude to elevates the national findings to human rights and SDGs mechanism. Komnas HAM (2020) argues that the Government will promote sustainable recovery and building resilience towards future crises if they are guided by human rights standards and norms when they to revise policies, plans and programmes for sustainable development. This 'integrated approach' to sustainable development and human rights can be applied to all human rights and all SDGs. It should be seen as a general approach beyond SDG 8, and as an approach which can aid the Government's 'Decade of Action' on the SDGs and help identify and tackle issues of inequality and discrimination, and therefore be useful for the Government in living up to the 'leave no one behind' ambition of the Government and the 2030 Agenda.

Objective, scope and data

The objective of this report is to advise the Government on initiatives to improve the promotion, protection, and fulfilment of the right to work and decent work of migrant workers, domestic workers, and precarious workers. The report starts with an outline of the

[6] Preliminary Research, The Role of the National Commission on Human Rights of the Republic of Indonesia related to the Impact of COVID-19 Pandemic on Human Rights and Sustainable Development Goals in Indonesia (2020).

human rights standards on the right to work and an overview analysis of the key human rights issues in relation to the right to work and decent work in general, and specially for migrant workers, domestic workers, and precarious workers in Indonesia.

On this basis, the report develops recommendations for ways the Government can address these issues as part of the Government's follow-up to Indonesia 4th UPR in November 2022 and as part of broader policy dialogues for integrated approaches human rights and the SDGs and building resilience towards future crises.

The data used for the report is mainly based on collections of existing information related to right to work and decent work from international human rights mechanisms and reports or results of Komnas HAM studies. From the international human rights mechanisms, the data consists of observations and recommendations from UPR and Treaty Body examinations. The collection of existing data from Komnas HAM is focused information from the complaints system and existing analysis, observations and recommendations published in reports by Komnas HAM.

Section 2: Overview of Human Rights Standards on the Right to Work and Decent Work and Links SDG Targets

The right to work is recognized in several international and regional legal instruments. It is a fundamental human right, essential for realizing other human rights, and forms an inseparable and inherent part of human dignity.[7] The right to work also contributes to the survival of individuals and to that of their family, and, insofar as work is freely chosen or accepted, to their development and recognition within the community.[8] The International Covenant on Economic, Social and Cultural Rights (ICESCR) proclaims the right to work in a general sense in article 6 and explicitly develops the individual dimension of the right to work through the recognition in article 7 of the right of everyone to the enjoyment of just and favorable conditions of work, in particular safe working conditions. The collective dimension of the right to work is addressed in article 8 of ICESCR, which enunciates the right of all persons to form trade unions and join the trade union of their choice and the right of trade unions to function freely.[9]

The scope of this reports mainly focuses on human rights norms and standards on right to work and decent work as outlined in article 6 of ICESCR and General comment No. 18 on the right to work by the Committee on Economic, Social and Cultural Rights. Decent work is implied in article of 6 "*work as specified in article 6 of the Covenant must be decent work*".[10] However, ICESR article 7.b is also included.

ICESR article 6.1: "*The States Parties to the present Covenant recognize the right to*

[7] Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 1.

[8] *Ibid.*

[9] Committee on the Rights of Persons with Disabilities, general comment No. 8 (2022), para. 2.

[10] Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 7

work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

ICESR article 6.2: *"The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."*

ICESR article 7.b: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (b) Safe and healthy working conditions"

The core obligations of the right to work

General comment No. 18 describes three core obligations of a State Party in relation to the right to work:

(a) To ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity

(b) To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups

(c) To adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers' and workers' organizations. Such an employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed.[11]

Progress on the right to work will lead to progress on SDGs

As the previous global development framework, which is the Millennium Development Goals (MDGs), ended in 2015, all UN member states agreed to establish a new set of development goals in September 2015, namely Sustainable Development Goals (SDGs).

Under such a new global development framework, 17 goals have been set to be achieved in 2030 that mainly aimed to create peace and prosperity for people and the planet.[12] As such, and considering that we are now in the so-called "Decade of Action (2020-2030)", it is thus important and urgent to evaluate to what extent a country has made significant work to actualize those goals to be achieved in 2030 as targeted.[13] And in this brief report, the country that we are evaluating is Indonesia by focusing on goal number 8, namely Decent Work and Economic Growth.

Progress in Indonesia on the implementation the right to work will lead to progress in

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[11] Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005), para. 31

[12] The Human Rights Guide to the Sustainable Development Goals, https://sdg.humanrights.dk/, accessed on 3 November 2022.

[13] Shervin Ghorbani (without year), The History of Sustainable Development Goals, https://thesustainablemag.com/environment/the-history-of-sustainable-development-goals-sdgs/, accessed on 24 October 2022.

the implementation of at least 8 SDG targets. This can be illustrated by the Human Rights Guide to the SDGs[14], which links article 6.1 and article 6.2 of ICESR to 8 SDG targets, as illustrated by the table below shows the links between ICESR article 6.1 and article 6.2 and these SDG targets.

[14] The Human Rights Guide, supra note 11.

Table 1 Links between the right to work and SDG targets

ICESR articles			SDG targets linked to ICESR articles
6.1	6.2	7.b	
			SDG target 4.3 By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university.
			SDG target 4.4 By 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship.
			SDG target 8.4 Improve progressively, through 2030, global resource efficiency in consumption and production and endeavour to decouple economic growth from environmental degradation, in accordance with the 10-Year Framework of Programmes on Sustainable Consumption and Production, with developed countries taking the lead.
			SDG target 8.5 By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.
			SDG target 8.6 By 2020, substantially reduce the proportion of youth not in employment, education or training.
			SDG target 8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.
			SDG target 8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
			SDG target 8.b By 2020, develop and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization.
			SDG target 14.b Provide access for small-scale artisanal fishers to marine resources and markets.

Section 3: Overview of Human Rights Issues Regarding Right to Work and Decent Work and specific vulnerable and marginalised groups of rights-holders in Indonesia

The collection and review of existing data from Komnas HAM and international human rights mechanisms (UPR examinations, Treaty Bodies and Special Mechanisms) in relation to right to work and decent work reveals both general human rights issues and specific human rights issues for migrant workers, domestic workers, and precarious workers in Indonesia.

3.1 Key human rights issues on the right to work in Indonesia in general

Data from the international human rights mechanisms

By using the Human Rights Data Explorer[15], it is possible to collect and analysis observations and recommendations from the international human rights mechanisms for each SDG target.

As demonstrated in the table above, 9 SDG targets are linked to the right to work. Thus, the collection and analysis of the data, reports and recommendations from the international human rights mechanisms has focused on these 9 SDG targets and a review of the recommendations from the 4th UPR Cycle, which is not yet included in the Human Rights Data Explorer

Indonesia has received 151 recommendations and observations from international human rights mechanisms on in relation to the 9 SDG targets in focus.[16] The vast majority

[15] *Ibid.*

[16] *Ibid.*

of these were linked to SDG target 8.7 on end modern[17] slavery, trafficking and child labour and SDG target 8.8 on universal labour rights and safe working environments.

[17] *Ibid.*

Table: Number of recommendations and observations to Indonesia from international human rights mechanisms linked to relevant SDGs targets											
SDG and SDG targets	Total count of links	International human rights mechanisms									
		UPR Cycle 3	UPR Cycle 2	CESCR	CCPR	CEDAW	CRC	CMW	CAT	SP Food	SP Migrants
SDG target 4.3											
SDG target 4.4	70			8		15	4	39	4		
SDG target 8.4											
SDG target 8.5 Full employment and decent work with equal pay	19			4		11		3		1	
SDG target 8.6 Promote youth employment, education and training	1					1					
SDG target 8.7 End modern slavery, trafficking and child labour	71	12	10	5	3	14	6	10	7	2	2
SDG target 8.8	77	3	4	8		15	4	39	4	5	12
SDG target 8.b											
SDG target 14.b											
*Some Rec. And Obs. links to several SDG targets. Source: The SDG - Human Rights Data Explorer https://sdgdata.humanrights.dk/en											

Relating to the linkage between human rights and SDGs, this report found that the Law No. 11/2020 on Job Creation relates to Target 8.5 on full employment and decent work with equal pay. Based on CESCR**,** the Law raised about the adverse impact of the law on the rights of workers, *particularly* regarding termination of employment, application of the minimum wage and trade union activities, and on the environment (E/C.12/IDN/Q/2, para. 3.).[18]

On Target 8.6 regarding youth not in employment, education and training, this report finds an observation from CEDAW that expressed concern about the disparities in access to education, especially during the COVID-19 pandemic, for women and girls belonging to disadvantaged and marginalized groups (CEDAW/C/IDN/CO/8, para. 39 (b).). [19]

Regarding on Target 8.7 on end modern slavery, trafficking and child labour, the Committee on Migrant Workers expressed concern that Law No. 21/2007 on the crime of human trafficking due to (1) ineffectiveness of its implementation; (2) the national task force on trafficking in persons still did not cover many districts; (3) lack of effective measures to protect victims of trafficking and to provide them with effective remedies, including compensation and rehabilitation; (4) rates of prosecution for trafficking in persons had risen in recent times but they remained low and perpetrators were not adequately punished; (5) victims of trafficking were not adequately protected from being prosecuted, detained or punished for illegally entering or residing in Indonesia, or for the activities in which they were involved as a direct consequence of their situation as trafficked persons; and (6) trafficking-related corruption and complicity at all levels of government remained

[18] UN Compilation of Information UPR Indonesia, E/C.12/IDN/Q/2, para. 3 (2022).

[19] UN Compilation of Information UPR Indonesia, CEDAW/C/IDN/CO/8, para. 39 (b) (2022).

pervasive.[20]

Data from Komnas HAM

- Based on Komnas HAM's research (2020), there have been many violations on workers' rights which are in line with Target 8.8. There were complaints regarding insufficiency of a safe working environment for all workers, particularly for women migrant workers and workers in critical situations. The issues include: (1) unilateral layoffs or severance pay that is prejudicial to workers and (2) threat of being exposed to the virus (obligation to come to the office, no proper protocols at the office, etc.).
- Therefore, Komnas HAM RI (2020) recommended that the government guarantees and ensures that there are no unilateral layoffs of workers. It can be done by collecting data from business sectors that are vulnerable or affected by the COVID-19 and formulating mitigation steps in collaboration with related business associations. This is also in line with the Government of Indonesia Voluntary National Report/VNR (2021) that stated: "…amidst the Covid-19 pandemic, the number of affected vulnerable groups are widening."
- This report examines Komnas HAM's data complaint from 2019 – 2022 on violations of workers' rights, mostly committed by companies, with a total of 52 cases reported. Most of the complaints were related to the wage payment and unilateral layoffs.[21] Amid Covid-19 pandemic, there were 5.6 million people who were fired and being laid off.
- For the 4th UPR of Indonesia, Komnas HAM delivered an observation on the Law on

[20] UN Compilation of Information UPR Indonesia, CMW/C/IDN/CO/1 (2022).

[21] Preliminary Research Report, The Role of the National Commission on Human Rights of the Republic of Indonesia related to the Impact of COVID-19 Pandemic on Human Rights and Sustainable Development Goals in Indonesia (2020).

Job Creation has enacted without meaningful public participation even though it has the potential to violate human rights, especially to precarious workers.[22] Lastly, some of the benefits needed by vulnerable groups are not covered by the National Health Insurance (JKN) program.

In summary the key general human rights issues on the right to work in Indonesia documented and addressed by Komnas HAM and international human rights mechanisms are

a. Lack of accessible protection and fulfillment for the rights of migrant workers at all phases (pre-departure and placement processes) as an adaptive policy in crisis situation;

b. Minimum protection for the rights of domestic worker under current available laws and regulations, responsible institutions and government policies;

c. Absent of legal recognition and protection for precarious worker after the enactment of the Job Creation Act.

[22] Policy Paper on Law Number 11 of 2020 on Job Creation and Its Delegated Regulations on Rights to Decent Work for Precarious Workers (2021).

3.2 Key human rights issues for getting employment right for migrant workers

Data from the international human rights mechanisms on migrant workers

On target 8.8 regarding universal labour rights and safe working environments, the Committee on Migrant Workers expressed concern about the absence of comprehensive legislation on migration designed to protect the rights of all migrant workers, including those in an irregular situation.[23] The Committee expressed concern about complaints from poor and low-skilled migrant workers, particularly undocumented and migrant domestic workers, not being adequately addressed or such migrant workers being denied assistance.[24] It further expressed concern that recruitment agencies in Indonesia were given extensive powers in relation to the signing of contracts, pre-departure training, grievance handling, conciliation and repatriation, despite the fact that they were insufficiently monitored and regulated.[25]

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families that Indonesia should make declaration provided for in Articles 76 and 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As such, Indonesia should recognize the competence of the Committee to receive and consider communications from States parties and individuals concerning violations of rights established by the Convention (CMW/C/IDN/CO/1, para. 12.).

Data from Komnas HAM on migrant workers

For the 4th UPR of Indonesia, Komnas HAM delivered an observation that for migrant

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[23] *Ibid.*

[24] *Ibid.*

[25] *Ibid.*

workers most of the complaints pertain to non-payment of salaries, fraud in the recruitment process, and violence.

It is in line with the UPR recommendation of Komnas HAM which states that the government should actively coordinate and cooperate within international treaty bodies to guarantee the rights of migrant workers (UPR Recommendation: Par.38) Komnas HAM has provided complaint mechanism and conducted several researches on workers' rights. However, Komnas HAM realizes that there is still room for improvement, for example: the data presented are too general and limited. This limitation leads to a hurdle to analyse issues relating to specific marginalized groups, such as women and children. Komnas HAM acknowledges that it has not done any study specifically on migrant workers in Covid- 19's setting.

In 2020 Komnas HAM highlighted through Preliminary Research by Komnas HAM (2020) that there was stigmatization against migrant workers as "virus carriers." Another highlighted matter is that before the pandemic occurred, migrant workers received limited social protection upon arrival in their region of origin.[26] Despite the fact that there is a Ministry of Labour and the National Board for Protection of Indonesian Migrant Workers (BP2MI), Komnas HAM argues that the obligation of duty's bearer is to protect and fulfill the rights of migrant workers. One of the obligations is to provide and update data on migrant workers as the basis to identify patterns of inequality and discrimination.

In summary the key human rights issues on the right to work faced by migrant workers documented and addressed by Komnas HAM and international human rights mechanisms are:

a. Lack of sufficient training on workers' rights and controlling mechanisms in pre-

[26] *Ibid.*

recruitment phases could potentially lead to human trafficking and child labor.

b. Unreliable data as the basis to identify patterns of inequality, discrimination and insufficient legal protection to become basis and reference in identifying patterns of inequality and discrimination experienced by migrant workers. Thus, the available complaint data is not yet available adequate as a basis for formulating sustainable recovery policies and programs and building resilience to face future crises.

c. Ineffective and not optimal legal advocacy and monitoring mechanism for migrant workers due to minimal socialization in the pre-phase departures and weaknesses in aspects of enforcement and supervision.

Crucial issues related to migrant workers as mentioned before should be in line with the government's core obligation to rights to work as written in General Comment No 18. This general comment emphasizes three core obligations which are: workers' right to get access to work, especially for an individual and marginalized group; prevent discrimination and unequal services; and issue an arrangement in national strategy and plan of action in labour.[27] The previous explanation showed that many of the government's policies related to migrant workers have not yet fulfilled these core obligations.

[27] Committee on Economic, Social and Cultural Rights, General Comment No. 18 (2005), para. 31

3.3 Key human rights issues for getting employment right for domestic workers

Data from the international human rights mechanisms on domestic workers

The Committee on ESCR calls on the State party to accelerate the adoption of the Bill on the Protection of Domestic Workers and to ensure that it provides for: (a) the same working conditions as other workers covered by the 2003 Manpower Law as regards remuneration, protection against unfair dismissal, occupational health and safety, rest and leisure, limitation of working hours, and social security, among others; (b) additional protection in relation to conditions, such as residence with the employer, that render domestic workers vulnerable to forced labour, violence and sexual harassment; (c) effective mechanisms for reporting abuse and exploitation which take account of the difficulty for some domestic workers to access telecommunication means; and (d) an inspection mechanism for monitoring the conditions of work of domestic workers. The Committee raises concern about the continuing reports of exploitation and abuse of nationals of the State party employed as domestic workers abroad. The Committee also concerned at placement fees which are either disproportionally charged against the salary of domestic workers or, when paid by employers, have led to conditions akin to slavery for domestic workers (art. 7 ICESCR).

Data from Komnas HAM on domestic workers

For the 4th UPR of Indonesia, Komnas HAM delivered an observation that the Indonesian government is reluctant to ratify the International Labour Organization (ILO) Domestic Workers Convention (No. 189 of 2011), despite the government's claim to support it.

In summary the key human rights issues on the right to work faced by domestic

workers documented and addressed by Komnas HAM and international human rights mechanisms are:

a. Absent of legal advocacy due to exclusion of domestic workers from the State's legal definition on the Labor Law.

b. No political willingness from both the executive and the legislature to legalize the Bill on the protection of domestic workers and to ratify the ILO Convention No. 189/2011.

c. Ineffective legal advocacy and monitoring mechanism for domestic workers.

Earlier description showed that government could not yet fulfilled the core obligation as mentioned in General Comment No. 18. It can be seen from the lack of effort to fulfill rights of worker in accessing decent work and discrimination at workplace, especially for domestic workers who live with their employee. Not to mention equal and equity protection for domestic workers as other workers since they are treated as only a/an "helper" or "assistance" therefore this type of work cannot be categorized as legal worker based on regulation.

3.4 Key human rights issues for getting employment rights for precarious workers

Data from the international human rights mechanisms on precarious workers

Data which explicitly mentioned "precarious workers" are hard to find even in the International human rights mechanism. Most of discussing issues are about workers' conditions in general. The absence of this issue needs to be followed up through advocacy either in national or international contexts so precarious workers can be recognized as workers too.

Data from Komnas HAM on precarious workers

Komnas HAM's (2021) study on precarious workers related to the Job Creation Law simply categorizes precarious workers into three groups: online drivers, home workers, and creative industry workers. This categorization limits protection coverage that excludes other precarious workers such as sex workers, peasants, freelance gardeners, and other casual workers. Furthermore, this study claims that the Job Creation Law has created an unjust condition for precarious workers, thus it violates the workers' rights by omission. [28]

[28] Policy Paper, supra note 21, p. 24

In summary, the key human rights issues on the right to work faced by precarious workers documented and addressed by Komnas HAM and international human rights mechanisms are:

a. Exclusion of precarious workers from the State's legal definition of worker in every legislation and regulation on labor.
b. The government's omission or reluctance to actively protect precarious workers.
c. Absent of legal advocacy due to the exclusion of precarious workers as legal subjects.

For precarious workers, the government also has not fulfilled the core obligation of rights to work as other workers as mandated by General Comment No. 18. Government has not yet made any effort to give access to decent work for precarious workers although precarious workers are grown in number, especially in time of the pandemic.

Section 4: Ways for getting employment right for marginalized groups in Indonesia and recommendations

As the Government is in a process of formulating the plans for the follow-up to Indonesia's 4th UPR this section identifies ways for the Government to address the key human rights issues on the right to work for migrant workers, domestic workers, and precarious workers as part of the UPR follow-up process at national level. By deciding to address the key human rights issues in relation to the right to work and decent work in general, and specially for migrant workers, domestic workers, and precarious workers now through the UPR follow-up, the Government would at the same time support progress in the implementation of the SDG targets and be building resilience towards future crises at the same time.

4.1 Progress on the right to work for migrant workers and recommendations

This report has determined several issues on migrant workers, such as non-payment, fraud in recruitment processes (most of them are undocumented), violence (both physically and psychologically), and lack of health coverage insurance (JKN). These structural drawbacks lead to potential of human trafficking because there is no comprehensive legal protection.

This report acknowledges some efforts that the government has exercised including providing workers' data, availability of complaint mechanism, and the existence of formal-procedural legal protection. However, all of the efforts are limited and not fully accessible to migrant workers. The government also has banned several received countries, but recently the government has planned to open the moratorium. Unfortunately, the policy is not followed by significant changes on legal protection. Additionally, the government also

has ratified Convention on Migrant Worker Protection. Nevertheless, ratification is not a panacea, because ratification should be followed by delegative regulations that are politically dependent.

On the other side, the Republic of Indonesia has banned several received countries, such as Saudi Arabia, Oman, UAE, Qatar, and Bahrain until 2015. However, the government is set to start sending workers to the Middle East again as it considers lifting the ban. The government has been working on formalizing a plan that would see migrant workers, especially domestic workers, being allowed to work abroad again. The government has provided some legal advocacy to migrant workers, including through the Indonesian Embassies and the Ministry of Foreign Affairs. However, the advocacy is not adequately informed to prospective migrant workers from the pre-departure phase. Moreover, legal advocacy is often exercised when the cases already happen. In other words, there is no preventive measures and effective protection. This drawback can be reduced if the government takes into account the recommendation from the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families that Indonesia should make declaration provided for in Articles 76 and 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. As such, Indonesia should recognize the competence of the Committee to receive and consider communications from States parties and individuals concerning violations of rights established by the Convention (CMW/C/IDN/CO/1, para. 12.). It is in line with the UPR recommendation of Komnas HAM which states that the government should actively coordinate and cooperate within international treaty bodies to guarantee the rights of migrant workers (UPR Recommendation: Par.38).

4.2 Progress and Realization on the Rights of Domestic Workers and recommendations

Legally speaking, the right to work and decent work is stipulated by Indonesian laws, namely the Indonesian Constitution 1945 article 27 section (2) and article 28D section (2) as well as the Human Rights Law (Law No. 39/1999) in article 38. Furthermore, Indonesia has also ratified the International Convention on Economic, Social, and Cultural Rights which contains some stipulations regarding the right to work and decent work in its articles 6-8, which is ratified through Law No. 11/2005. And specific to labour matters, Indonesia has Labour Law (Law No. 13/2003) that is then partially revised by the so-called Job Creation Law (Law No. 11/2020). However, all those laws regulate rights to work and/or workers in general and do not address and/or stipulate domestic workers in any article that these laws have.

Nevertheless, since those laws explicitly stipulate rights to work and decent work for *all individuals*, such stipulations then should also include domestic workers.[29] As such, normatively, Indonesia should have further regulations and policies specifically concerning the rights of domestic workers.

At the national level, the regulation specifically concerning the rights of domestic workers at the level of legislation/act of parliament is also still non-existent. The primary existing regulation in Indonesia that specifically addresses domestic workers is only at the level of ministerial regulation, namely the Regulation of the Ministry of Labour No. 2/2015 (*Permenaker 2/2015*). However, such a ministerial regulation is far from adequate in

[29] For example, the Indonesian Constitution 1945 Article 27 section (2) stipulates: "*Every citizen* has the right to work and a decent living for humanity." Furthermore, Article 28D section (2) stipulates: "*Everyone* has the right to work and receive fair and proper remuneration and treatment in an employment relationship."

protecting the rights of domestic workers, especially in a mission to put their rights on par with the rights of the workers in general. For the obvious instances, this ministerial regulation has no specific stipulation concerning the allowed maximum working hours, including the resting times, and the minimum wage for domestic workers. Meanwhile, those are fundamental matters for workers.[30] Specific concerning the wage for domestic workers, the *Permenaker* 2/2015 simply stipulates that domestic workers have the right to be paid for their work based on the agreement with the employers.

Meanwhile, there is one policy being pushed by Indonesian parliamentary (DPR RI), which is the Bill of Law on the Protection of Domestic Workers (RUU PPRT). It has been under discussion for 18 years since 2004. The process of drafting, discussing, and the opportunity for this bill to be recognized as the law is important for seeing the state policy framework in protecting and fulfilling the rights of domestic workers.

The drafting of the Bill began in 2002 and was initiated by civil society groups. Subsequently, from 2004 to 2009, the first draft of the RUU PPRT entered into the National Legislation Program (*Prolegnas*) of the Indonesian Parliamentary (DPR RI), but it had not yet been ratified because there were still differences of opinion regarding the regulation. In the period from 2009 to 2014, the second draft of the RUU PPRT was included in the National Legislation Programs of the DPR RI in 2010, 2011, 2012, 2013, and 2014.

In 2010, the Working Committee (*Panitia Kerja* / Panja) was formed and conducted research in 10 cities. Furthermore, in 2011 and 2012, Panja conducted comparative studies

[30] Apart from its title, which is "the Regulation of the Ministry of Labour No. 2/2015 concerning the Protection for Domestic Workers", most of the stipulations of this ministerial regulation are only concerning private employment agencies. Yet, such a ministerial regulation neglects some of the most fundamental issues regarding the rights to work and decent work for domestic workers, namely the regulation concerning the minimum salary, maximum working hours, and resting time.

in South Africa and Argentina. In the next stage, a public test of the PPRT Bill was also carried out in Malang, Makassar, and Medan. The draft was then referred to as the PPRT Bill version of the Panja of Commission IX and was submitted to the legislative body (Badan Legislative/Baleg), but then there was no follow-up. In the period from 2014 to 2019, the draft of RUU PPRT was not included in the Annual Priority but was only on the waiting list status.

In the 2020 period, civil society groups met with members of Commission IX of DPR RI to convey their aspirations for the discussion of the PPRT Bill to be continued, but Commission IX refused to continue discussing the PPRT Bill because there were still different opinions regarding the provisions. In the end, the existing draft of the PPRT Bill was adjusted and approved by the Baleg Plenary Meeting on July 1, 2020, and has been approved by Baleg to be submitted to the DPR RI Plenary Meeting to be enacted as an initiative Bill. However, until now, there has been no follow-up on whether the PPRT Bill will be determined as an initiative Bill to be discussed and ratified.[31]

Such a dragging and stagnant process in the drafting and deliberation of the Bill can be seen as a manifestation of the different interests between employers and domestic workers themselves. The DPR RI and the Government tend to be not that serious in the process of making a comprehensive policy on the protection of the rights of domestic workers. That is because they still tend to position themselves as part of the employer.[32] Based on data from the ILO, the majority of employers are people with upper-middle-class

[31] Lita Anggraini (2022), "Urgensi perlindungan Pekerja Rumah Tangga"; Theresia Iswarini (2022), "Peran Komnas Perempuan dalam Perlindungan Pekerja Rumah Tangga"; Ninik Rahayu (2022), "Substansi dan Dinamika Penyusunan RUU PPRT," The papers are written in Indonesian and presented in the Focused Group Discussion on the Rights of Domestic Workers held by Komnas HAM RI on 18 April 2022.

[32] *Ibid.*

socio-economic status.[33] The practice of employing domestic workers informally has become a deeply rooted habit.

It obscures the importance of carrying out the state's responsibility to provide protection and fulfilment of the rights of domestic workers as part of workers/laborers in general. Some points of refusal that have been identified from the deliberation process of the PPRT Bill are the minimum wage based on the Provincial Minimum Wage (UMP), which is considered too high, the provisions regarding criminal penalties, and concerns about eliminating "family values" that have been going on so far.[34]

Regarding domestic workers, the problems start from recruitment phase. There are two models of recruitments: direct recruitment and through private agencies. For the direct recruitment, there is no controlling and monitoring mechanisms from the government, as a duty-bearer. Both models of recruitment are lacking of trainings, especially regarding workers' rights, social security, and legal procedures to exercise and defend their rights. Because of that insufficient legal awareness, when domestic workers encounter problems, they are not even aware of the state's remedy procedures.

Thus, there is no effective remedy. The government has efforts to protect the workers by enacting the Regulation of the Ministry of Labour No. 2/2015 (*Permenaker 2/2015*). Nevertheless, most of the provisions of this regulation has not explicitly covered workers' rights because it merely regulates private agency as a recruiter. The government

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[33] ILO (2018), "Toward a Better Estimation of Total Population of Domestic Workers in Indonesia", https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_628493.pdf , accessed on 18 July 2022

[34] Anggraini, Iswarini, and Rahayu, *supra* note 30.

used to have initiation to legislate the Bill of Protection for Domestic Worker (RUU PPRT). However, its progress is too political causing the prolong of its authorization. The delay of this legislation corresponds to the state's hesitation in ratifying ILO Convention No. 189.

4.3 Progress and Realization on the Rights of Precarious Workers and recommendations

Lastly, regarding precarious workers' rights, there is no legal protection whatsoever. On laws, there is no exact definition for precarious workers, let alone regulating their rights. Since the regulation of Labour Law and Job Creation Law covered workers in general term, precious workers should also be included. Thus, they are literally unregulated workers. As a result, there are not any government policies can be exercised. As such, Komnas HAM's study (2020) concluded that the government violated precarious workers' rights by omission.

The study by Komnas HAM on precarious workers indicated that the government knew the existence of "precarious workers". The government failed to recognize the rights of precarious workers by simply putting this type of worker similar to other workers that existed previously. Government should make new categorizations for precarious workers since this type of work has many differences in working hours, working conditions, workplace, and the nature of the relation between employee and employer.

Section 5: Conclusions and key recommendations

5.1 Conclusions

This report identifies some issues regarding vulnerable and marginalized workers, such as lack of social protection, wage payment, violence, inaccessibility of data, and ineffective complaint mechanisms. Those issues result from a structural problem: lack of legal protection and institutional effectiveness.

5.2 Key recommendations

Law and Policy

This report recommends a comprehensive reform of legal protection for vulnerable and marginalized workers. The recommendations are as follows:

1. The government should enact the Bill of Protection for Domestic Workers and ratification on ILO Convention No. 189 (2012) in order to provide maximum protection for the rights of the domestic worker;
2. The government should enact a provision that specifically regulates precarious workers to provide legal recognition and protection for precarious workers after the enactment of the Job Creation Act
3. Social protection should be accessible for all types of workers, especially workers such as migrant workers, domestic workers, and precarious workers which are considered in this report as the most vulnerable type of work and workplace. Social protection needed by these three types of work is paid leave, health, and pension insurance.
4. Take action on UPR recommendations by responding to all crucial comments given by the countries. The responses to the UPR recommendations would be accountable, especially to civil society organizations.

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Building Back Better

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Komisi Nasional Hak Asasi Manusia
Republik Indonesia

2023

