

## The Legal Protection of Homeworkers in The Perspective of Labor Copyright Law & Its Implementing Regulations

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**Abstract.** Law No. 6 of 2023 was recently enacted in the hope of creating wider employment opportunities amidst intense global competition and the demands of economic globalization. The law regulates various aspects that aim to facilitate job creation through ease, protection, and empowerment for cooperatives and micro, small, and medium enterprises. In addition, the law also focuses on improving the investment ecosystem and accelerating the implementation of national strategic projects, and aims to improve the protection and welfare of home-based workers. For this reason, despite all the pros and cons of the issuance of Law No. 6 of 2023 and its implementing regulations, it is recommended that the Government issue a regulation that specifically provides legal protection to homeworkers. The formulation and implementation of such a regulation should include the introduction and understanding of homeworkers as formal workers as well as informal workers; the policy direction of empowering homeworkers; the expansion of social protection for homeworkers; the development of homeworking and homeworkers as potential actors of micro and small businesses; and promoting the importance of gender equality and non-discrimination in the industrial relations between homeworkers and the parties. This research uses a normative juridical analysis approach. The results of this study found that in this context, the introduction, protection and empowerment of homeworkers and the development of homeworking can be one of the job creation strategies based on the real potential of the community economy that has been growing for a long time along with the development of an increasingly educated, advanced and innovative society.

**Keywords:** Creation; Empowerment; Homeworkers; Job; Protection.

### 1. INTRODUCTION

Humans are economic creatures who live from the fulfillment of economic needs, so naturally the fulfillment of economic needs becomes one of the problems of human life. After humans grow up or have met certain requirements to work or have a productive business, then inevitably they are faced with employment issues, and they should understand the rules of labor law.<sup>1</sup>

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<sup>1</sup> Simamora, Y. A., Yuliani, D., & Wardhani, D. T. (2019). Hardiness perempuan rawan sosial ekonomi dalam pemenuhan kebutuhan ekonomi di Kelurahan Sukapura Kecamatan Kiaracondong Kota Bandung. *Jurnal Ilmiah Perlindungan Dan Pemberdayaan Sosial*, 1(2).

In this dimension of work issues, every worker is normatively bound by certain rights and obligations. How the rights of every worker as a citizen are stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Every citizen has the right to a job and a livelihood that is worthy of humanity." This means that getting a job is a right for every citizen who has met certain requirements, and this right is clearly accompanied by certain obligations. For example, having the competence to carry out his work productively and responsibly, and with his competence he is not only entitled to be rewarded with a certain value, and he also receives legal protection in accordance with his position and work. For this reason, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Every person has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." Paragraph (2) states that "Every person shall have the right to work and to receive fair and equitable remuneration and treatment in employment."

Based on existing regulations, it becomes very clear that every individual in the scope of work has the right to obtain fair recognition, guarantees, protection and legal certainty. In addition, everyone also has the right to equal treatment before the law. Based on these rules, everyone has the right to work, receive fair compensation, and get proper treatment in all forms of labor relations with anyone, in any situation, and anywhere.<sup>2</sup> This means that the provisions of the labor constitution stipulated in the constitution apply to all employment relationships, among whoever the work applies to, in terms of any work, and wherever the work is carried out. The provisions of this arrangement are the basis and constitutional reference for the preparation of labor laws.

The provisions of the labor constitution implemented in Law No. 13/2003 on Manpower are based on deep considerations to support inclusive and sustainable national development. First, the Constitution stipulates that national development must be implemented to develop the Indonesian people as a whole and the Indonesian society as a whole, with the aim of creating a prosperous, just, and materially and spiritually prosperous society, in accordance with the values of Pancasila and the 1945 Constitution. Second, within the framework of national development, manpower is recognized as having a very important role and position, both as an actor and as a target of such development. Third, the important role of labor development is to improve the quality and level of labor participation in the development process. It also aims to provide better protection to workers and their families, in line with respect for human dignity. Second, protection for labor is directed at ensuring that all workers or laborers have basic rights, equal opportunities, and are treated without discrimination. The aim is to create welfare for workers and their families, while taking into account the development and progress in the business world.<sup>3</sup>

The formulation of Article 1 of Law No. 13 of 2003 provides definitions related to several important terminologies in employment in Indonesia. First, "The term 'employment' covers all matters relating to labor from before they work, during the

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<sup>2</sup> Yunus, N. R. (2017). Hak Untuk Mendapatkan Pengakuan, Jaminan, Perlindungan, dan Kepastian Hukum Dalam Ranah Hak Asasi Manusia. *ADALAH*, 1(11).

<sup>3</sup> Iswahyudi, B., Effendi, D., Imawijaya, R. A. P., & Puspitasari, D. (2020). Kepastian Hukum Bagi Tenaga Kerja atas Penangguhan Upah dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan. *El-Qist: Journal of Islamic Economics and Business (JIEB)*, 10(2), 192–204.

working period, until after the working period ends. Second, 'labor' is a term used to describe everyone who has the ability to do work in order to produce goods and/or services, both to meet personal needs and social interests. Third, the term 'worker' or 'laborer' refers to an individual who performs work by receiving a salary or other type of compensation. Fourth, 'employer' includes individuals, employers, legal entities, or other entities that employ workers in exchange for wages." Fifth, "employers" can be individuals, partnerships, or legal entities that run their own companies, including those in Indonesia representing foreign companies. Finally, "company" is defined as a business incorporated or not, including private or state-owned, as well as other social enterprises that employ workers and provide remuneration.<sup>4</sup>

Based on the prevailing labor regulations, the term labor or worker/labor refers to an individual who is capable of carrying out work to produce goods and/or services, which aims to fulfill personal needs or public interests. Also included in this category are those who work for a salary or other form of compensation in return for services rendered. The ability in question is that the laborer and or worker has the competence to carry out his work productively and responsibly, and with his competence he is not only entitled to be rewarded with a certain value, and he also gets legal protection in accordance with his position and work.<sup>5</sup>

Hans Kelsen's ideas about law and the state are very important to be used as a reference in protecting workers' rights, considering that human rights are also closely related to workers. Lilik Mulyadi emphasizes that the obligation of the government or state organs to be responsible is evidence of the legal protection provided by the state through its apparatus to its citizens or people. Legal protection also applies to workers who are bound by a work agreement. This is based on Article 2 of Law No. 39/1999 on Human Rights which states that "The State of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are inherently inherent in and inseparable from humans, which must be protected, respected, and upheld for the sake of improving human dignity, welfare, happiness, and intelligence and justice".

The formulation of Article 38 of Law No. 39/1999 on Human Rights affirms the fundamental rights of workers in obtaining employment and fair treatment in the workplace. The first paragraph of this article guarantees that every citizen, based on his or her talents and abilities, has the right to obtain decent work. The second paragraph reinforces the individual's freedom to choose a job according to his or her preferences and to demand fair terms of employment. Furthermore, the third paragraph states that everyone, regardless of gender, has the right to equal pay and working conditions when performing the same or similar work. Finally, the fourth paragraph underlines that everyone is entitled to a fair and decent wage that can support a decent living for himself and his family, in accordance with work performance and human dignity.<sup>6</sup>

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<sup>4</sup> Djayadi, H. (2021). Sistem Ketenagakerjaan Dalam Konstelasi Hukum Positif Dan Hukum Islam Di Indonesia. *INOVATIF: Jurnal Penelitian Pendidikan, Agama, dan Kebudayaan*, 7(2), 220–230.

<sup>5</sup> Lasmaya, S. M. (2016). Pengaruh sistem informasi SDM, kompetensi dan disiplin kerja terhadap kinerja karyawan. *Jurnal Ekonomi, Bisnis & Entrepreneurship*, 10(1), 25–43.

<sup>6</sup> Suntoro, A., & Komnas, H. (2021). Implementasi Pencapaian Secara Progresif dalam Omnibus Law Cipta Kerja. *Jurnal Ham*, 12(1), 1–18.

From the provision stating that "Workers/laborers are everyone who works by receiving wages or other forms of compensation", normatively this provision applies to all designations of "workers/laborers", including the designation of "Home Workers". In view of this, the interesting questions to be answered are whether there is a special legal regulation governing home-based work; and what will be the fate of home-based workers after the Job Creation Law is revised and declared effective? In order to provide answers to such questions, it is deemed necessary to conduct a normative study and a sociological study of the phenomenon of home-based workers, which in fact has been developing for a long time in various work and business environments carried out by families, community groups or certain companies.

## 2. RESEARCH METHODS

According to Peter Mahmud Marzuki's view, legal research is a discovery process that includes legal rules, legal principles, and doctrines that exist in the field of law. This process is carried out to provide answers to legal problems that are being faced, in line with the prescriptive nature of legal science.<sup>7</sup> Normative legal research can be interpreted as a process of searching for legal rules, legal principles, and legal doctrines that aim to provide answers to existing legal problems. Through this research, it is hoped that new arguments, theories, or concepts can be produced that are useful for handling and solving these legal problems.<sup>8</sup> The results obtained from this research are considered to have value because they have succeeded in contributing new thoughts in the field of law. This research uses a normative juridical analysis approach. Through the normative juridical analysis approach, the meaning and intent of various legal rules and provisions relating to the legal protection of homeworkers in the implementation of industrial relations will be examined and discussed, both from existing laws and regulations, as well as from laws and regulations after the enactment of the Law on Job Creation, by discussing the results of the ILO-MAMPU Project.

## 3. RESULTS AND DISCUSSION

### 3.1. Actual Conditions and Challenges of Homeworkers in Indonesia

The existence of homeworkers is not something new. In India, around 88.2% of workers from the total labor force are informally employed. Coupled with the Covid-19 pandemic, most of those working in the informal sector have become homeworkers.<sup>9</sup> In Paul Adams' opinion, there are various forms of home-based work, such as Mexican families producing socks and engineers working on their own schedules in Silicon Valley.<sup>10</sup>

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<sup>7</sup> Mahmud Marzuki, P. (2005). *Penelitian hukum*. Jakarta: Kencana Prenada Media, 55.

<sup>8</sup> Diantha, I. M. P., & Sh, M. (2016). *Metodologi penelitian hukum normatif dalam justifikasi teori hukum*. Prenada Media.

<sup>9</sup> Mezzadri, A. (2021). A value theory of inclusion: Informal labour, the homeworker, and the social reproduction of value. *Antipode*, 53(4), 1186–1205.

<sup>10</sup> Adams, P. (1999). Bringing globalization home: A homeworker in the information age. *Urban Geography*, 20(4), 356–376.

ILO Convention No. 177 defines "home work" through three main aspects: first, the work is performed in the worker's own home or other location of his/her choice, not in a workplace provided by the employer; second, the work is performed for remuneration; third, the work is aimed at producing products or services according to the employer's specifications, regardless of who provides the equipment or materials used. On the other hand, domestic work, although also performed at home, does not fall under this definition because it does not aim to produce a product or service, and is generally performed in the home of the employer, not meeting all the criteria of homework according to this definition. Domestic work usually includes tasks such as washing, sweeping, and cooking, all of which take care of the daily needs of the household. Homeworkers are part of the putting out system in production. Often, homeworkers are used as an alternative by businesses to reduce production costs.<sup>11</sup>

In her research on homeworkers in Indonesia, Emma Ellen and her colleagues made several important findings. First, they found that homeworkers tend to bear occupational risks independently. They bear the costs of raw materials, equipment, utilities and transportation. The products they produce are generally sold directly to customers in local markets, and sometimes even to international markets. While they do not employ others, many are assisted by unpaid family members. Secondly, they found that homeworkers are often involved in sub-contracting agreements where they interact with employers, both individuals and companies, and these interactions often involve middlemen. These homeworkers usually receive raw materials from employers and are paid per unit of finished product, but do not sell their own final products. Even so, they still bear significant production costs including workplace, equipment, supplies, utilities, and transportation. This research confirms that homeworkers are not the same as domestic workers who perform domestic tasks, and they are also different from home-based workers who work independently.

Home-based work has long existed and is often identified in Indonesia as "sub-contracted labor". Typically, it is family-run, with the role often passed down through generations, involving grandmothers, mothers and daughters. Despite being a part of everyday life for many years, the existence of homeworkers is often overlooked and poorly understood. There have been some initiatives to study and improve their conditions, through research and advocacy by homeworker groups that have received support from international organizations and civil society institutions. However, homeworking is rarely the focus of attention for policymakers, employers, trade unions or the wider public, with homeworkers often not recorded in official statistics or recognized in labour laws. Information on their working conditions is still very limited. Moreover, there is no consensus or clear understanding of the status of homeworkers, who are often confused with self-employed workers, domestic workers, or simply considered as someone who does activities on the side.

The ILO-MAMPU project took the initiative to deepen the understanding of issues related to homeworking in order to improve the planning and development of policies and programs in Indonesia. With this objective in mind, the project prioritized raising awareness about homeworking and expanding the availability of data on homeworkers. Close collaboration with Indonesia's Central Bureau of Statistics was also an important

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<sup>11</sup> Agusmidah, A. (2018). Hak Ekonomi Perempuan: Pekerja Rumahan dalam Jangkauan Undang-Undang Ketenagakerjaan. *Talenta Conference Series: Local Wisdom, Social, and Arts (LWSA)*, 1(1), 001–007.

part of the project, particularly in an effort to include additional questions in the routine labor force survey questionnaire that would help identify home-based workers. The project focuses on mapping the conditions of homeworkers in several regions in Indonesia, including North Sumatra, West Java, Central Java, Yogyakarta, East Java and Banten. The aim is to collect data on the working situation of homeworkers, which can later be used as a reference by various related parties such as policy makers, employers, trade unions, Civil Society Organizations (CSOs), and homeworkers' organizations. This information is expected to assist in efforts to improve the quality of life and working conditions of homeworkers in Indonesia. The research involved interviews with 3,010 female homeworkers spread across 297 villages in the six provinces, using a stratified random sampling method. The research reveals that homeworkers in Indonesia exhibit some common traits similar to global homeworkers. These workers are spread across industries and sectors, working from home or from a friend's place of residence. They generally have lower levels of education compared to the general population, have a narrow view of gender equality, and more than 80 percent of the women interviewed were married with husbands who were either self-employed or had short-term jobs in low- or no-skilled sectors. The study found that women with disabilities in Indonesia, with the exception of Yogyakarta - where only 1% of the sample was interviewed - are generally engaged in home-based work. Their involvement in this work is usually initiated through social networks such as friends and neighbors. This home-based work is their main source of income, with an average duration of five years. About half of the respondents expressed a desire to set up their own business if the opportunity arose. Meanwhile, another 20% prefer to be full-time housewives, and only a small number choose to work in the formal sector or continue their education.

Almost all women work without a written contract, but 47 percent have verbal agreements. Nonetheless, the work they do is in accordance with the orders and specifications provided by the employer or intermediary. While some receive instruction through on-the-job training, formal training is rarely provided to these women workers.

Most women homeworkers receive raw materials for their work, but rarely are they provided with equipment by their employers or brokering agents, leaving them to cover their own production costs. Almost 60% of them have little information about the companies or sources that order their production. About 18% of these workers produce goods for international markets. They are paid based on production quantities, with rates set by the employer and usually with no room for negotiation. Despite working long hours-more than 30% of these women workers work more than 48 hours per week-they earn only slightly above the poverty line and well below the average wage. The majority of them receive payment when the products are delivered, but payment is often delayed.

The advantages of home-based work include the opportunity to earn income while taking care of other economic activities or childcare. However, challenges include low income and instability in the number of work orders. Some workers also feel that limited space at home is a constraint as it must be adapted for work activities. Although many homeworkers claim to have good health conditions, there are still complaints about health problems such as fever, cough, and occasional headaches. Furthermore, they often continue to work even when in poor health or even when injured. Most homeworkers do not benefit from government social assistance and

insurance programs. They are often not integrated into labor rights groups and are more likely to belong to traditional religious groups, which generally do not provide a platform to discuss work issues. Typically, homeworkers do not negotiate with employers due to fears of losing their jobs.

This research reveals the condition of homeworkers who need serious attention regarding improving their quality of life. These homeworkers not only serve as economic support for their families but also as the backbone of their families' survival. The importance of their role must be recognized so that they can gain better access to legal and social protection and achieve decent work standards. Therefore, a strong commitment from various parties, including policymakers, employers, trade unions, and organizations that represent homeworkers and support them, is needed to ensure that the rights of homeworkers are recognized and protected.

Some key recommendations to improve working conditions for homeworkers in Indonesia include collecting comprehensive data on homeworkers to understand their needs and challenges more deeply. It is also important to officially recognize homeworkers as workers so that they receive the same rights and protections as other workers. To address the decent work deficit, empowering homeworkers through better education and resources is an important step. The expansion of social protection and promotion of responsible practices in the supply chain will help ensure that homeworkers are valued and treated fairly. Finally, the promotion of gender equality and non-discrimination is essential to create a conducive and fair work environment for all workers, both women and men, to access decent and quality work.

### **3.2. Challenges in Implementing the Labor Law as a Legal Foundation in Practice**

In the perspective of workers' constitutional rights, the existence of homeworkers normatively clearly receives legal protection. This is clearly covered in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Every citizen has the right to a job and a livelihood worthy of humanity." This means that getting a job is a right for every citizen who has met certain requirements, and this right is clearly accompanied by certain obligations. For example, having the competence to carry out his work productively and responsibly, and with his competence he is not only entitled to be rewarded with a certain value, and he also receives legal protection in accordance with his position and work. For this reason, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Every person has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." Paragraph (2) states that "Every person has the right to work and to receive fair and appropriate remuneration and treatment in employment." These are constitutional guarantees given by the state to every worker, including homeworkers. Measures that need to be taken therefore include recognizing homeworkers as legitimate workers, giving them the power to overcome disadvantages in securing decent work, expanding social protection coverage, encouraging responsible practices in supply chains, and supporting gender equality and anti-discrimination. These measures are essential to establishing an environment conducive for all, both women and men, to gain access to decent work. This is part of the effort to provide legal protection for homeworkers.

Homeworkers make a significant economic contribution in almost every country. This is especially true if the homemaker is a woman. Women become the majority gender of homeworkers because of the flexibility of working time that can be adjusted to household duties. Triana Sofiani argues that the contribution of women who are homeworkers is much higher than men who work in the same sector. The System of National Accounts shows that in almost every country, the economic contribution made by women is equal to or even higher than that of men.<sup>12</sup>

It can be concluded that legal protection should be available for homeworkers through the Employment Law and the Job Creation Law. The rights of homeworkers should be guaranteed by the existing provisions in these laws. However, one of the main challenges in the effective implementation of the Labor Law for homeworkers is the issue of supervision by the government. Without comprehensive data on the number of homeworkers at the national level, it becomes very difficult to monitor their working conditions individually in each home. In addition, the shortage of supervisors in the Manpower Office at both the district/city and provincial levels makes this oversight even more difficult. There are several proposals that have been put forward to increase the number of supervisory personnel by the government.<sup>13</sup> Even so, it seems that the number of government inspectors is not enough to supervise all homeworkers in Indonesia. Therefore, there needs to be a special study in the labor department to design an effective supervision strategy.

Satjipto Rahardjo defines legal protection as an effort to protect human rights that are harmed by others, providing guarantees to the community to enjoy the rights granted by law. Meanwhile, Phillipus M. Hadjon views legal protection for the people as government action carried out preventively and repressively. Preventive protection aims to prevent disputes by encouraging the government to be careful in making discretion-based decisions.<sup>14</sup> Repressive protection is focused on dispute resolution, including handling in judicial institutions (Maria, 2010). The pursuit of legal protection aims to create order and regularity, prioritizing basic legal values such as legal certainty, legal utility, and legal justice. Although these basic values are often contradictory in practice, it is important to strive to achieve them simultaneously.

The main function of law is to protect people from various dangers and actions that can harm and torment their lives, whether committed by other individuals, community groups, or by the authorities. In addition, the law also aims to provide justice and be a tool in achieving welfare for all people. The protection, justice, and welfare provided by the law are addressed to all legal subjects, including their rights and obligations, and this applies to women as well (2011). Legal protection for homeworkers is one form of protection guaranteed by the state for workers. This protection must be understood through the general understanding of workers and through existing worker protection

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<sup>12</sup> Sofiani, T. (2010). Eksistensi perempuan pekerja rumahan dalam konstelasi relasi gender. *MUWAZAH: Jurnal Kajian Gender*, 2(1).

<sup>13</sup> ADY. (2013, agustus). Pengawas Ketenagakerjaan di Jakarta Akan Ditambah Tiap tahun ditargetkan menambah 30 petugas pengawas ketenagakerjaan baru. *Hukum Online*. <https://www.hukumonline.com/berita/a/pengawas-ketenagakerjaan-di-jakarta-akan-ditambah-1t5218cee924273?page=2>

<sup>14</sup> Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia: Sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara*. Bina Ilmu.



policies. According to Imam Soepomo, a legal expert, legal protection in labor law covers five main areas, namely: (1) Labor placement, (2) Labor relations, (3) Occupational health, (4) Occupational security, and (5) Social security for workers. Asri Wijayanti elaborates on Imam Soepomo's view of legal protection for workers which covers five main aspects of labor law. First, there is the field of labor placement, where legal protection is provided before the worker begins the employment relationship, often known as the pre-placement phase. Secondly, in the field of labor relations, workers need protection from the start of the employment relationship, which begins with a work agreement, both for certain period of work and for permanent workers. Thirdly, in the field of occupational health, workers are guaranteed health during their working relationship, and a safe working environment is ensured for the long term. Fourth, in the field of work safety, workers are given protection for the work tools used so that they are safe at work, both for short and long periods. Fifth, in relation to labor social security, Law No. 3 of 1992 on Labor Social Security guarantees the social aspects of workers.

Indiarso and MJ Saptanno state that legal protection for workers or laborers includes protection from the law against the actions of employers before, during, and after the employment period. The purpose of this legal protection is to ensure that the rights of workers or laborers are not trampled by employers, especially because in work relations, the position of workers or laborers tends to be weaker, both economically and socially. This condition makes workers or laborers often experience violations of their rights. Abdul Khakim argues that the purpose of labor protection is to ensure the creation of harmonious working relationships without pressure from the more powerful party to the weaker party. Therefore, employers must comply with and implement labor protection provisions in accordance with applicable regulations and legislation.

Soepomo outlines worker protection into three main categories. First, Economic Protection, which emphasizes on providing adequate income to workers, including in situations where they are unable to work for reasons beyond their control. Second, Social Protection, which includes health insurance for workers as well as freedom of association and the right to organize, taking care of the social aspects of the work environment. Third, Technical Protection, which focuses on the security and safety of workers while performing their duties, ensuring that working conditions do not jeopardize their health or safety.<sup>15</sup>

The legal provisions that regulate the three types of protection also explain the objects protected by the law. According to Winahyu, legal protection can generally be divided into two types, namely passive legal protection and active legal protection. Passive legal protection is a series of actions from outside parties (not laborers or workers) that provide recognition and guarantees through regulations and policies that support the rights of women workers.<sup>16</sup> Active legal protection for women workers includes actions they take in order to fulfill their rights. This protection is divided into two types. The first is active-preventive legal protection, which covers the rights that women workers have to respond to rules or policies from the government or employers that could potentially harm them. The second is active-repressive legal protection, which

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<sup>15</sup> soepomo, I., helena poerwanto, & suliati rachmat. (1990). *Pengantar hukum perburuhan*. unmediated.

<sup>16</sup> Erwiningsih, W. (1995). Masalah-masalah Tenaga Kerja di Sektor Informal Dan Perlindungan Hukumnya. *Jurnal Hukum*, 1(3).

consists of claims filed by women workers against the government or employers if policies that have been implemented prove detrimental to their rights.<sup>17</sup>

Active-preventive legal protection and active-repressive legal protection for women workers are very important, especially for home-based women workers who traditionally work on cultural products such as batik, wigs, shoes, culinary and local wisdom products. In addition, with the rapid, globalized and highly functional development of information technology for entrepreneurs, now, amidst the uncertainty of the end of the Covid-19 pandemic, many home-based business groups (Business At Home-BAH) involving a number of home-based workers are growing. Home-based work in Indonesia is a long-standing phenomenon, often identified as sub-contracting. These activities are generally run by families, with the dominant role held by women involving multiple generations, from grandmothers, mothers, to daughters. This tradition has been going on for generations, but still lacks adequate recognition and understanding. While these homeworkers have become part of the economic and social fabric, they remain less visible and are often not valued as much as they should be.

Lilik Mulyadi emphasized that the obligation of accountability carried out by the government or state organs is a manifestation of the legal protection provided by the state through its state apparatus to its citizens or people. This legal protection specifically also applies to workers who are bound by employment agreements. This view is based on Article 2 of Law No. 39 of 1999 concerning Human Rights which regulates this matter: "The State of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are inherently inherent in and inseparable from human beings, which must be protected, respected, and upheld for the sake of improving human dignity, welfare, happiness, and intelligence and justice." In relation to workers' human rights, Article 38 of Law No. 39/1999 states: (1) Every citizen, in accordance with his talents, skills and abilities, has the right to decent work. (2) Every person shall freely choose the occupation he or she prefers and shall be entitled to fair conditions of employment. (3) Every person, whether male or female, who performs the same, comparable, equal or similar work, shall be entitled to the same wages and terms of employment. (4) Every person, whether male or female, engaged in work commensurate with his or her human dignity is entitled to a fair wage commensurate with his or her achievements and capable of ensuring the continuity of his or her family life. Therefore, recognizing homeworkers as workers; empowering homeworkers to address decent work deficits; extending social protection to homeworkers; promoting responsible practices in supply chains; and promoting gender equality and non-discrimination among the general public and key stakeholders to create an enabling environment for both women and men to access decent work, are a series of measures for the legal protection of homeworkers. Departing from the constitutional rights of homeworkers, the human rights of homeworkers, and the concept of worker protection described, the main question before and after the Job Creation Law was revised and enacted was how to fulfill the constitutional rights and human rights of homeworkers? One concept of the answer to such a question is included in the considerations behind the issuance of Law No. 11 of 2020 which has been revoked by Law No. 6 of 2023 on Job Creation.

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<sup>17</sup> Rosifany, O. (2020). Perlindungan Hukum Terhadap Pekerja Perempuan Menurut Ketentuan Undang-Undang Ketenagakerjaan. *LEGALITAS: Jurnal Ilmiah Ilmu Hukum*, 4(2), 36–53.

The Job Creation Law containing 15 Chapters and 186 Articles has been issued based on several key considerations. First, in order to achieve fair and prosperous national development goals in accordance with Pancasila and the 1945 Constitution, the Indonesian government recognizes the need for concrete efforts to guarantee the right of every citizen to obtain employment and a decent life. Second, job creation is expected to be an effective solution in absorbing a large number of workers, which is important in the face of increasingly fierce global competition. Third, there is a need to adjust regulations that support the ease, protection, and empowerment of MSMEs, as well as to improve the investment climate and accelerate the realization of national strategic projects. Fourth, current regulations in various sectors are considered inadequate to meet the needs of accelerating job creation, so a revision of the law is needed. Fifth, the revision aims to integrate and synchronize various regulations in one comprehensive law that is able to effectively address these issues.

Such considerations are preceded by the view that the State needs to make various efforts to fulfill citizens' rights to work and a decent livelihood for humanity through job creation. With the issuance of Law No. 6 of 2023, it is expected that the law will be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and the demands of economic globalization. To support such job creation, it is necessary to adjust various aspects of regulation relating to the ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises, the improvement of the investment ecosystem, and the acceleration of national strategic projects, including increasing the protection and welfare of homeworkers. In this context, the introduction, protection and empowerment of homeworkers and the development of homework can be one of the job creation strategies based on the real potential of the community economy that has been growing for a long time along with social changes and the development of an increasingly educated, advanced and innovative society.

On the other hand, to support such work creation, it is necessary to adjust various aspects of regulation related to the convenience, protection, and empowerment of cooperatives and micro, small, and medium enterprises, so there is an alternative that can be taken, namely categorizing homeworkers as part of Micro, Small, and Medium Enterprises (MSMEs), so that their wage provisions can be subject to Government Regulation Number 36 of 2021 concerning Wages. The lack of legal certainty for homeworkers so far, which has been discussed previously, can provide another protection space for homeworkers. In this alternative, the liability of homeworkers is limited to business owners or directly to their superiors.

The formulation of Article 36 paragraph (2) of Government Regulation No. 36 of 2021 stipulates that the determination of wages for workers or laborers in micro and small enterprises must be made through an agreement between the employer and the workers or laborers concerned. This provision ensures that the agreed wage value must meet two important criteria: first, the wage must be at least 50% of the average public consumption at the provincial level; second, the agreed wage must also be at least 25% above the prevailing poverty line at the provincial level. These two conditions are designed to ensure that workers in micro and small enterprises receive an adequate income relative to local economic standards. Furthermore, despite the existing wage arrangements, and despite all the pros and cons of the issuance of Law No. 11/2020 specifically regulating the labor sector, it is recommended that the

Government issue a legal regulation that specifically provides legal protection to homeworkers. The formulation and implementation of the rule of law in question should include the introduction and understanding of homeworkers as formal workers as well as informal workers; policy directions for empowering homeworkers; expansion of social protection for homeworkers; introduction and understanding of homeworking; and promoting the importance of gender equality and non-discrimination in establishing industrial relations between homeworkers and the parties.

#### 4. CONCLUSION

With the enactment of Law No. 6 of 2023 and its implementing regulations, it is expected that wider employment opportunities will be created amidst increasingly fierce competition and the demands of economic globalization. This law facilitates adjustments in various aspects of regulation to support the ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises. In addition, the law also aims to improve the investment ecosystem and accelerate the implementation of national strategic projects, which will not only create more jobs but also improve protection and welfare for home-based workers. For this reason, despite all the pros and cons of the issuance of the Law on Job Creation, it is recommended that the Government issue a legal regulation that specifically provides legal protection to homeworkers. The formulation and implementation of the law should include the introduction and understanding of homeworkers as formal workers as well as informal workers; the policy direction of empowering homeworkers; the expansion of social protection for homeworkers; the development of homework and homeworkers as potential actors of micro and small businesses; and promoting the importance of gender equality and non-discrimination in establishing industrial relations between homeworkers and the parties. In this context, the recognition, protection and empowerment of homeworkers and the development of homework can be one of the job creation strategies based on the real potential of the community economy that has been growing for a long time along with the development of an increasingly educated, advanced and innovative society.

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