

QUO VADIS: LEGAL CERTAINTY OF INFORMAL WORKER THROUGH MANPOWER ACT

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Abstract

Issue related to legal protection policies for informal sector workers in Indonesia still leaves a lot of debate among our society. The basis of this employment is in Law Number 13 of 2003 concerning Manpower which is further perfected and becomes a new hope for workers in Indonesia, this hope is stated in Law Number 11 of 2020 concerning Job Creation. However, the regulation needs to comprehensively regulate the existence of informal sector workers in Indonesia. Informal workers received no guarantees or protection; many had sum-proportional wages, were found to be physically ophysically abused, and had low welfare. This study aims to analyze legal protections for informal sector workers in Indonesia. This research is normative legal research that uses a legal and conceptual approach. The data used is secondary data consisting of primary, secondary, and tertiary legal materials. Data collection techniques in this study were carried out with a review literature study and then analyzed with a qualitative descriptive method. This study's results show that a legal vacuum (rechtsvacuum) regulates the existence of informal sector workers in Indonesia. It is inherent that informal sector workers receive more attention from the government as they are the largest group of workers in Indonesia. If analyzed with 'triadism law' theory, the current legal regulations in Indonesia are considered not to have fulfilled the elements of the purpose of law itself. Therefore, with that in mind to ensure the rights of informal sector workers, it is necessary to have clear rules and guarantee workers' rights including health insurance guarantees, legal umbrellas, environmental empowerment, welfare, and social protection.

Keywords: *Informal Workers; Protection; Employment; Job Creation Act.*

INTRODUCTION

According to Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a state of law. The implementation of a good and proper condition of the law is used to regulate all matters within the country that cannot be separated from its citizens. (Aswandi & Roisah, 2019s).

Pursuant to the rules of the law, every Indonesian citizen must be guarded and protected by their constitutional rights in order to gain legal protection and a reasonable level of living. This legal safeguard also applies to employment

concerns, particularly for workers in the informal sector.

Recently, the applicable regulations related to employment are subject to Law Number 13 of 2003 on Manpower, and further regulated through Law Number 11 of 2020 on Job Creation, which provides new hope for workers in Indonesia

Employment is one of the sectors that has a significant impact on the economy, law, and society. Employment encompasses all matters related to workers before, during, and after their employment period (Syahrial, 2020). So,

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the presence of this Manpower Act should be able to cover the necessities that employees desire. Meanwhile, the employment requirements in Article 1 paragraph (1) UUCK underline that this UUCK exists to provide convenience, protection, and empowerment to both employers and employees.

Nevertheless, the current Manpower Act and Job Creation Act only provide legal certainty for formal sector workers. On the other hand, the existence of informal sector workers is still considered shadow workers, where these workers are deemed not deserving of economic, social, and health guarantees, especially since informal sector workers are not guaranteed by existing laws (Sofiani, 2017). Examined from a historical perspective, both formal and informal workers have been regulated before in Law Number 25 of 1997 on Manpower. Specifically, this law defines informal sector workers as workers who work in informal sector employment and receive wages and/or rewards (JDIH BPK RI, 1997).

Currently, the informal sector is being exploited as an alternative and is the only sector in which many people are interested (Rusydi et al., 2018). The existence of informal sector workers in Indonesia, based on the annual report by Statistics Indonesia (BPS) in 2021, is estimated to be around 77.9 million people. This number has increased by 0.3% from the previous year, which amounted to 77.68 million people (Bayu, 2021). This indicates that informal sector workers are highly sought after by the public in seeking a livelihood and improving their family's economy, and also that informal sector workers are one

of the contributors to the economy in Indonesia (Noeraini, 2015).

However, the fact is that informal sector workers are often associated with the less privileged members of society, those with low levels of education, and other limitations (Nariswari, 2020). Moreover, BPS records that the average monthly net income of informal sector workers based on their highest education level, from never having attended school to not completing elementary school, is Rp 1,091,308.00 (BPS, 2021).

In addition, there are other problems related to the issue of inequality among informal sector workers, especially compared to formal sector workers. This inequality occurs due to two main reasons, external and internal factors. External factors include wage disparities between informal and formal sector workers and discrimination by informal institutions, such as arbitrary termination of employment, which often happens to pregnant women, married women, and workers deemed unproductive. Another difference is the disparity in benefits given at the beginning of employment versus when workers are no longer considered productive (Kurniasari, 2021). Another issue is the bureaucratic system, as well as the environment of the informal economic actors themselves. Furthermore, the internal factor is due to the unequal level of productivity caused by the imbalance in access to capital, credit, employment resources, technology, and information processing (Hapsari, 2015).

The existence of informal sector workers in Indonesia should receive more attention from the Indonesian government, as mandated by the constitution in Article 28D paragraph (1)

which relates to equal treatment under the law, protection, and welfare, as well as Article 27 paragraph (2) which stipulates "Every citizen has the right to work and to a decent standard of living for human dignity" (Darmayanti, 2018; MKRI, 1945). However, looking at the current condition of informal sector workers, both the Manpower Act and the Job Creation Act have not comprehensively regulated the rights and guarantees that informal sector workers should receive.

Therefore, this research aims to provide certainty or guarantee of rights for informal sector workers in the form of health insurance, legal protection, environmental empowerment, welfare, and social protection. It is expected that this research will have a significant impact on the enforcement of law and protection for informal sector workers in Indonesia.

RESEARCH METHOD

The research method used is normative with a legal and conceptual approach. In addition, the data used in this study includes secondary data consisting of primary legal materials obtained from several regulations such as the 1945 Constitution, Law Number 25 of 1997 on Manpower, Law Number 13 of 2003 on Manpower, and Law Number 11 of 2020 on Job Creation. Meanwhile, secondary legal materials come from books, journal articles, and other relevant legal documents to support this research. Then, data collection techniques were carried out through a literature review. Furthermore, the data analysis used in this study is qualitative and presented descriptively.

RESULT AND DISCUSSION

Short Discussion on Indonesian Informal Workers

Historically, Ghana's informal sector expanded dramatically in the 1970s. As a result, several hypotheses concerning the formation of the informal sector have evolved, including the labor supply method, the neo-Marxist approach, the underground approach, and the neo-liberal approach (Pitoyo, 2007).

The excess of labor supply approach suggests that there are many job opportunities that require certain skills, but not all workers can meet those requirements. Therefore, according to this theory, many workers seek alternative options or start their own businesses. Compare to the neo-Marxist approach argues that the emergence of the informal sector is due to the capitalist system, characterized by capital-intensive and blind distribution of production results, which creates two opposing camps: the core and the periphery of the economy. Furthermore, the underground approach theory suggests that international industrial competition has resulted in many small industries competing with each other. As a result, these small industries are forced to engage in informal activities to survive and support large industries in the global economic competition. Finally, the neo-liberal approach suggests that the informal sector emerged due to the many bureaucratic and administrative requirements that must be met to become part of the formal sector. Many medium and small production units cannot meet these requirements and therefore operate outside the existing regulations (Berger & Buvinić, 1989).

On one hand, employment development in Indonesia cannot be separated from the informal sector. Which, historically Indonesia was in the underground approach phase. This is because the development of the informal sector occurred during the economic crisis that peaked in 1998. In that year, Indonesia's economy was in a very bad and uncontrollable condition, as evidenced by inflation approaching 88% with an average value of rupiah to dollar reaching Rp. 10,000.00. The situation worsened with a negative economic growth rate of almost 15%. Consequently, many formal workers were laid off and decided to switch professions to agricultural work in rural areas, while others worked in the service sector. However, the current situation has reversed, and the presence of informal sector workers can support the process of economic development. Thus, the informal sector is seen as an alternative sector to solve the debate on employment.

On the other hand, the informal sector in Indonesian employment faces a complex, controversial, and ongoing discussion. For example, determining the definition of informal sector workers is not found in the Manpower Act or Job Creation Act. In Article 1 paragraph (3) of Law Number 13 of 2013, only legal certainty for formal workers is provided. The article states that workers/laborers are any person who works for wages or other forms of compensation (Undang - Undang RI Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003).

If we look back at the previous applicable law, namely Law Number 25 of 1997 on Manpower, it contains provisions and regulations for the

informal sector, informal businesses, and informal employment relationships. This Law explains that informal sector workers are those who work in informal sector employment relationships by receiving wages and/or rewards as stated in Article 1 paragraph (32). Previously, in Article 1 paragraph (31), it was explained that informal businesses are activities carried out by individuals or families, or several people who work together for economic activities based on trust and agreement, and are not legal entities. This law also regulates informal employment relationships as stated in Article 1 paragraph (33), "This relationship exists between employment with individuals or several people who work together for economic activities based on trust and agreement, and receive wages and/or rewards or profit-sharing" (Sofiani, 2017).

Referring to the aforementioned articles, informal sector workers are those who work in the informal economic sector or workers who perform work outside of employment relationships (TK-LKH), as well as those who engage in economic activities without the assistance of others. Workers who perform work outside of employment relationships (TK-LKH) are referred to as Non-Wage Receivers (BPU) according to Social Security Administrative Body (BPJS) (Heniyatun et al., 2018).

According to the definition provided by the BPS, informal sector workers are those whose primary employment status includes self-employed, assisted by non-permanent workers, assisted by permanent workers, employees/workers, freelance workers in agriculture, freelance workers in non-agriculture, and family workers/unpaid workers (BPS, 2022). The

International Labour Organization (ILO) defines informal sector workers as those who work as self-employed or as workers who assist their family (Sari, 2016). ILO tends to use the term "informal economy," which is a hybrid category that focuses on business and employment status, as well as small and micro enterprises that lack regulation and are unregistered. This also includes formal sector jobs that exist outside formal regulatory areas. The Ministry of Manpower and Transmigration provides a definition of the informal sector as a commercial and non-commercial business or economic activity that is unregistered and lacks a formal organizational structure. In general, the informal sector is characterized by family ownership, small-scale operations, labor intensity, the use of adapted technology, and dependence on local resources. Those who work as self-employed or assist family members are part of the informal sector according to ILO's definition (Nazara, 2010).

While, according to the International Conference of Labour Statisticians (ICLS) 17th session held in Geneva on November 24 to December 3, 2003, workers in the informal sector are considered to have jobs if their employment relationships are not subject to labor laws, if they are not subject to income tax, and if they have minimal social protection or specific rights to job security (such as prior notice of termination, payment systems without detailed notes, or the absence of leave, sick leave entitlements, etc.) (BPS, 2014; ILO, 2003).

In the absence of a clear definition of informal sector workers in current legislation, the Government of Gorontalo Regency in Indonesia, through Regional

Regulation Number 2 of 2021 on Social Security Programs for Formal, Informal, and Construction Service Sector Workers, provides a definition of informal sector workers. According to this regulation, informal sector workers are individuals or self-employed persons who are not legal entities and work based on agreement. The scope of informal sector workers in this regulation includes farmers, fishermen, laborers, livestock breeders, miners, motorcycle taxi drivers, horse carriage drivers, carpenters, stonemasons, coconut tree climbers, drivers, domestic workers, street vendors, disaster volunteers, and other informal sector workers according to the provisions (JDIH BPK RI, 2021). The informal sector is a field that should receive more attention from the government. This sector arises due to poverty, lack of employment, and even a lack of education.

The Importance of Informal Sector Workers in the Indonesian Economy

The informal sector has become an integral part of the economy that cannot be ignored or neglected any longer, although it still remains a flexible and open buffer zone (Hapsari, 2015). The OECD Development Centre Studies titled "Tackling Vulnerability in the Informal Economy" explains that as the level of informality in households increases, it is often accompanied by higher poverty rates and lower incomes (OECD & ILO, 2019). Furthermore, Chen et al., (2002) stated that the informal sector in the economy, in particular, has a special contribution to poverty. The average income of informal sector workers is low, and this data identifies that formal

workers are much better off than informal sector workers.

The increasing number of informal sector workers in Indonesia has a negative and relatively insignificant impact on the country's economic growth. If the number of workers in the informal sector continues to increase, it will lead to a decline in Indonesia's economic growth, according to research conducted by Zaky Bachtiar A., (2019) found that the regression coefficient for the informal sector labor variable is -0.001236. Thus, an increase in the number of informal sector workers would result in a decrease in the economy by -0.001236 percent.

Workers in the informal sector in Indonesia are also highly disadvantaged and often neglect proper posture analysis methods, despite the fact that repetitive processes and manual material handling are the main problems in industries that result in musculoskeletal disorders (MSDs) due to poor posture and repetitive

processes (Tiogana & Hartono, 2020). According to data from the National Health Interview Study (NHIS) in 2008, MSDs are the cause of 50% of work-related illnesses that affect the hands, wrists, upper arms, forearms, elbows, and shoulders. Furthermore, the World Health Organization (WHO) reported in 2013 that musculoskeletal complaints are the second most common work-related illness after respiratory diseases. The Bureau of Labor Statistics (BLS) in 2013 reported that MSDs accounted for 33% of all work-related illnesses and accidents (Aqilla et al., 2022).

The lack of understanding among informal sector workers is a contributing factor to the high prevalence of MSDs in Indonesia. This is particularly concerning given the large number of informal sector workers in the country. According to data from BPS in 2019, the informal sector has many workers and remains a popular employment option.

Table 1. Number and Percentage of Population Aged 15 and Above who Work by Formal/Informal

Formal/Informal Labor Force	[SAKERNAS] Number and Percentage of Population Aged 15 Years and Over Who Worked by Formal/Informal (Persons)		
	Total		
	2017	2018	2019
Formal	36456.00	38922.00	31437.00
Formal Percentage (%)	55.77	55.05	44.73
Informal	28915.00	31778.00	38845.00
Informal Percentage (%)	44.23	44.95	55.27
Total	65371.00	70700.00	70282.00

Table 1 above shows a significant increase in the number of informal sector workers from year to year. In 2017 and 2018, the number of informal sector workers was still below that of the formal sector, at 44.2% and 44.9%, respectively.

However, in 2019, the number of informal sector workers reached 55.2%, an increase of about 10% from the previous two years. Looking at the current situation, the number of informal sector workers is likely to continue increasing.

As a result, informal sector employment opportunities will also increase, as can be seen in Table 2.

Table 2. Proportion of Informal Employment by Province 2019-2021

Island	Proportion of Informal Employment by Province		
	2019	2020	2021
Jawa	48,99	54,46	53,35
Kalimantan	51,28	55,54	54,65
Sulawesi	61,91	65,23	64,88
Maluku	61,84	66,35	63,99
Bali	49,46	56,69	57,10
Nusa Tenggara	71,64	74,79	74,93
Papua	65,77	68,95	69,20
Indonesia	55,88	60,47	59,45

Next, looking at the data from BPS regarding the informal sector workers in the (Micro, Small, and Medium Enterprise) MSME sector, it has a lot of

interest. In the BPS report of 2021, Table 3 shows an increase in MSME credit, despite a slight decline in 2020.

Table 3. Position of Micro, Small, and Medium Enterprise (MSME) Loans in Commercial Banks (in Billion Rupiah)

MSMEs	Position of Micro, Small, and Medium Enterprise (MSME) Loans in Commercial Banks (in Billion Rupiah)		
	2019	2020	2021
Business Field	1107240	1088333	1220459
Business Scale	1107240	1088333	1221015
Micro	283518	247142	389871
Small	343245	352923	459541
Medium	480477	488268	371603

Based on the data above, it is clear that the informal sector workers have a significant contribution to the Indonesian economy, although it may not be optimal at the national level. The high number of informal sector workers should be a concern for the government, and they should provide a clear definition of informal sector workers to ensure their legal rights and welfare are protected. The

government should also provide guarantees and protections for informal sector workers to improve their well-being.

The Importance of Designing a Law Model for Informal Workers

Wahyu Susilo, the Executive Director of Migrant Care, believes that there is a legal vacuum regarding the informal

sector, both in terms of workers, businesses, and relationships within the informal sector. There are no clear regulations governing this informal sector, and therefore, this legal vacuum should be ended (Agnes Theodora Wolkh Wagunu, 2022).

In Indonesia, there are only two laws that regulate employment, namely the Manpower Act and the Job Creation Act, and these regulations are considered insufficient in protecting workers in Indonesia. Therefore, the state should provide guarantees of regulations and welfare for its citizens, and the state must provide good law for all society. With these goals, the purpose of the law will be fulfilled, as seen in the Triadisim Law Theory proposed by Gustav Radbruch, where the law must contain three main elements, namely justice (*Gerechtigkeit*), utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*) (Muslih, 2013).

Justice (see from philosophical aspect) means not taking sides from any perspective, treating fairly, not burdening one side, and providing equal treatment based on the rights and obligations that both formal and informal sector workers have (Santoso, 2021). Justice is also in line with the conventional (classical) school of thought, which is reflected in the ethical theory supported by Francois Geny, which states that law aims to realize or achieve justice for society. Therefore, the current employment laws in Indonesia does not regulate justice or equal rights for workers, whether they are informal or formal. The current regulations only focus on protecting formal sector workers, and the welfare provided here includes social security

guarantees as stipulated in Article 99 of the Manpower Act.

Furthermore, if we look at the aspect of the usefulness of the Manpower Act, it has provided benefits to formal sector workers, but not to informal sector workers in Indonesia. In line with the theory of usefulness by Gustav Radbruch, the law should be beneficial for society, without distinguishing who will benefit from it, and it should provide the greatest possible benefits to society. This is also supported by the utility theory endorsed by Curson, which places law in direct relation to the realities of society based on its needs and developments. Additionally, Roscoe Pound emphasized that law is a tool for engineering society or as a tool for social change, which according to him, law can change society for the better (Atmaja & Churairo, 2021). The Indonesian government should provide social security guarantees for informal sector workers as well, as these workers will always exist and play a vital role in society, but there has been a lack of concern from the government in this regard.

Finally, if we look at the Manpower Act, it does not provide clear legal certainty for informal sector workers in Indonesia. The law only regulates workers in a general sense, which if interpreted broadly, would include informal sector workers. However, in its implementation, many informal sector workers do not have social security, because employers interpret the Manpower Act loosely. From the perspective of legal certainty theory or Van Kan's normative dogmatic theory, the law should aim to safeguard all the interests of society to prevent disruptions

and ensure legal certainty (Sarwohadi, 2012).

The social protection that should be provided for informal sector workers includes health insurance, legal protection, environmental empowerment, welfare, and social protection. If we look at it, the legal protection for informal sector workers should be included in the legal framework in Indonesia. At least, we should bring back and improve the things in Law Number 25 of 1997 (Zaky Bachtiar A., 2019).

Furthermore, informal sector workers should receive economic security because according to Article 27 paragraph (2) of the 1945 Constitution, everyone is entitled to a decent job and livelihood. For example, there should be economic protection, in which informal sector workers have sufficient income, including when they are unable to work against their will (Sinaga & Zaluchu, 2017). If we look back at the state's functions in the economic field, according to W. Friedman, the state will act as a provider for the welfare of the community, then it will act as a regulator, next the state will act as an entrepreneur or run certain sectors such as State-Owned Enterprises (SOEs), and finally the state will act as an umpire which is intended to establish standards based on justice in the economic sector including state-owned corporations (Adillah & Anik, 2015). Furthermore, many economic experts state that the government has set a wage limit for workers according to their respective regions, but this has resulted in many victims of economic structure and social exclusion among informal sector workers. In reality, there are sanctions for employers under Article 90 paragraph (1)

of the Manpower Act and also under Law Number 11 of 2020 Article 81 paragraph (25). However, this only applies to employers defined in the law as individuals, partnerships, or legal entities. Thus, there are no sanctions yet for actors in the informal sector.

Finally, but not least importantly, there must be social protection for workers, in this case, in the form of occupational health insurance and the freedom to associate, and the protection of the right to organize. Technical protection must also be such as security and safety measures (Cendekia, 2019). Furthermore, this social protection guarantee is based on Article 28H paragraph (3) and Article 34 paragraph (2) of the 1945 Constitution, which states that everyone has the right to social protection and the state must develop a social protection system and empower the weak and less fortunate communities (Salim et al., 2020). Furthermore, in addition to the constitutional mandate, social protection is also regulated in the Law on Health, which stipulates that every individual has the right to access health resources and receive services in accordance with applicable principles, such as safety, quality, and affordability (Sudrajat et al., 2020).

Therefore, the importance of protection for informal sector workers in the form of various guarantees provided by the state cannot be overstated. Thus, it is the responsibility of the state to ensure legal certainty for these workers by issuing, adding, or revising existing laws or employment regulations.

CONCLUSION

Based on the analysis and discussion above, it can be concluded that workers in

the informal sector are those whose work does not involve contractual or formal employment relationships. Workers in the informal sector are not defined in any law, but they can be interpreted as workers in accordance with Article 1 paragraph (3) of the Manpower Act. Workers in the informal sector are the largest contributors to employment in Indonesia and are increasing every year. However, the increase in the number of informal sector workers is accompanied by obstacles, challenges, and risks that they will face in the future.

Therefore, it is essential for the government to provide protection in the form of guarantees in accordance with the constitutional mandate. However, in reality, this development is not accompanied by government attention. Although workers' rights have been guaranteed in various laws and regulations, such as the Manpower Act and the Job Creation Act, this has not been realized for informal sector workers. Therefore, there is a need to improve the existing legal framework and facilitate all forms of protection for workers, both formal and informal, in Indonesia.

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