

Indonesia country study 2021



**FAIR
WEAR**

INDONESIA FAIR WEAR COUNTRY STUDY 2021

Nabiyla Risfa Izzati

Labour Law Lecturer, Faculty of Law Universitas Gadjah Mada

PhD Candidate, Queen Mary University of London

Table of Contents

Introduction	4
1. How to read this country study	9
2. General country information	10
2.1. Economic indicators	11
2.2. Social, political & governance indicators	12
2.3. Income and poverty	14
2.4. General human rights situation	14
3. Stakeholders	16
4. Garment Industry	24
5. Industrial relations	29
6. Implementation of the FWF Code of Labour Practices	37
6.1. Employment is freely chosen	37
6.2. There is No Discrimination in Employment	38
6.3 No Exploitation of Child Labour	40
6.4. Freedom of Association and the Right to Collective Bargaining	42
6.5 Payment of a living wage	45
6.6. No excessive working hours	51
6.7. Safe and healthy working conditions	53
6.8. Legally binding employment relationship	56
7. Risk Analysis	60
8. Recommendations	67
Source Used in this Country Study	70

INTRODUCTION

The textile and garment industry are among Indonesia's oldest sectors and has historically played a vital role in the economy.¹ However, since the country's transition away from import substitution towards export promotion, the industry has grown rapidly and become one of the largest globally,² employing over 4.3 million people and generating \$13 billion in exports annually.³

While less critical to Indonesia's economy than it has been in the past, the garment and textile industries remain a strategically important sector in the Indonesian economy. This sector also still played its roles as a large employer of women, with recent reports showing women making up more than 80% of the workforce in the garment industry.

As a labour-intensive sector, labour laws and policies are crucial issues in this sector. Recently, Indonesia has just undergone one of the most significant changes in its labour law, enacting Law Number 11 of 2020 on Job Creation. The law amended 77 current regulations, one of which is Law Number 13 of 2003 on Manpower. This law is one of the government's efforts to create and expand employment opportunities to improve the national economy.

Interestingly, the Job Creation Law has not been received favourably by the workers and trade unions in Indonesia. From the bill's inception in April 2020 until the law passed in October 2020, the Job Creation Law has met with several protests and criticism, including from the trade unions, workers, students, and many civil society organisations. The reason is that Job Creation Law has introduced a range of changes to Law Number 13 of 2003 on Manpower regarding the regulation of fixed-term contracts and outsourcing, wage determination, dismissals, severance pay, leave, working time, and use of foreign workers. Some of these changes are deregulating the current labour law and thus feared by most workers and unions.

Moreover, the COVID-19 pandemic has also shaken the Indonesian labour condition in general and the garment and textile sector specifically. Due to the pandemic, Indonesia's unemployment rate has surged to its highest level since 2011. Recent Statistics Indonesia (BPS) data indicates 139,81 million people in the labour force, with 131,03 million people working and 6,88 million (6.49%) unemployed.⁴ The data also shows that some 29,12 million people, or 14,2 per cent of the Indonesian workforce, have been affected by the pandemic, with shorter work hours, furlough, layoffs, and no longer being considered part of the workforce. The pandemic also triggered a rise in informal workers and a fall in the number of formal workers.⁵ Now, most Indonesians are working in the informal sector, with the number soaring as high as 59,62 per cent (78,14 million people), compared to the formal sector, which employs around 40,38 per cent of the labour force (52,92 million people).⁶

1 Hal Hill. 1992. *Indonesia's Textile and Garment Industries: Development in an Asian Perspective*. Institute of Southeast Asian.

2 Better Work. 2019. *An Impact Evaluation of Better Work from a Gender Perspective*. <https://betterwork.org/wp-content/uploads/2020/01/Discussion-Paper-30.pdf>

3 Ayman Falak Medina. 2020. *Indonesia's Textile and Garment Industry: Opportunities for Foreign Investors*. ASEAN Briefing. <https://www.aseanbriefing.com/news/indonesias-textile-garment-industry-opportunities-foreign-investors/>

4 Statistic Indonesia, 2021, "Berita Resmi Statistik: Keadaan Ketenagakerjaan Indonesia Februari 2021", No.37/05/Th. XXIV, 05 Mei 2021

5 Pitoyo, Agus Joko, Bagas Aditya, and Ikhwan Amri. 2020. "The Impacts of COVID-19 Pandemic to Informal Economic Sector in Indonesia: Theoretical and Empirical Comparison." *E3S Web of Conferences* 200 (October). <https://doi.org/10.1051/e3sconf/202020003014>.

6 Statistic Indonesia, 2021, "Berita Resmi Statistik: Keadaan Ketenagakerjaan Indonesia Februari 2021", No.37/05/Th. XXIV, 05 Mei 2021

The Indonesian Textile Association reports that 2.1 million workers in the garment and footwear sectors have lost their jobs due to the COVID-19 pandemic.⁷ It is estimated that 70% of garment factories in the country will be forced to permanently close as cash-flow difficulties arise due to the crisis.⁸ According to a survey conducted by Decent Work Check, only 25% of garment factories report paying total wages to their workers dismissed or sent home during the pandemic.⁹ Clean Clothes Campaign estimates that in March, April and May 2020, garment workers in Indonesia lost a total of approximately 40% of their average wages, equivalent to US\$406 million.¹⁰

While the pandemic is causing a slowdown in all parts of the world, its impacts on exporters of textiles and textile products are hitting developing countries hard.¹¹ COVID-19 crisis led global trade in garments to sharply decline in the first half of 2020. For example, in May 2020, Indonesia's textile and textile product exports dropped by 52% compared to the same month in 2019.¹² This continues a worsening trend since March and April 2020 – when exports declined by 14.6% and 38.9%, respectively, compared to the previous year.

Several reasons above are why it is now crucial for Fair Wear to update its Country Study in Indonesia. Fair Wear will continue to provide updated information on Indonesia at www.fairwear.org and will update this country study periodically in the future.

7 ILO. 2020. COVID-19 and the textiles, clothing, leather and footwear industries. ILO Sectoral Brief.

8 Brigitte Dekker. 2020. The impact of COVID-19 measures CRU Policy Brief on Indonesian value chains. CRU Policy Brief. Netherland Institute of International Relations.

9 Business & Human Right Research Center. 2020. Impacts of COVID-19 on Indonesia's garment sector. <https://www.business-humanrights.org/en/from-us/covid-19-action-tracker/indonesia/>

10 Clean Clothes Campaign. 2021. UN(DER) PAID IN THE PANDEMIC An estimate of what the garment industry owes its workers. <https://cleanclothes.org/file-repository/underpaid-in-the-pandemic.pdf/view>

11 Deasy Pane and Donny Pasaribu. 2020. Indonesia's garment industry in crisis. East Asia Forum. <https://www.eastasiaforum.org/2020/08/10/indonesias-garment-industry-in-crisis/>

12 ITC. 2021. Trademap. Trade Statistics for International Business Development. <https://www.trademap.org/Index.aspx>

FAIR WEAR IN INDONESIA

Fair Wear has been active in Indonesia since 2016, with 12 Fair Wear member brands sourcing from 30 factories. Fair Wear engaged directly with factories and member brands across the country with an active Workplace Education Programme, audit, training and complaint handling.

One key element of the work in Indonesia is the Gender Network Platform, an initiative launched in 2017. This platform brings together trade unions, international organisations, ministries and the country's National Women Rights Commission to work on gender issues. Its first goals are to push the government to pass a bill against sexual violence (RUU TPKS) and ratify the International Labour Organization's Violence and Harassment in the World of Work convention—two essential steps that will put pressure on business to improve working conditions. The network also conduct knowledge sharing session on gender and other labour rights topics.

The Indonesia Freedom of Association Protocol (FoA Protocol) is another unique initiative that supports Fair Wear member brands and factories in Indonesia. The protocol is a ground-breaking agreement that has created a new way for clothing brands, factories and trade unions to come together to improve working conditions and factory operations, reduce conflict and strengthen workers' rights. The Protocol represents an important example of what the future of responsible supply chains might look like.

The Protocol has four main pillars:

- ▶ Participating factories create an environment for trade unions to operate and organize, agreeing not to discriminate against or dismiss workers for union-related activities;
- ▶ Brands promote the initiative to their suppliers and agree to support ongoing social dialogue between workers and management;
- ▶ The more open environment for trade unions, and the support of brands should help lead to the negotiation of collective bargaining agreements between unions and factories;
- ▶ Dispute committees are created at the factory and national level, designed to resolve disputes between trade unions and management in a structured and fair way.

Some notable development of FOA in the recent years are resumed below:

Members of the FOA protocol national committee before 2017 consisted of brands (Adidas, Nike, New Balance, Puma, Pentland, and Asics), labor unions (Garteks, SPN, GSBI, KASBI, and TSK-SPSI Reformasi), and Observers (Oxfam). In 2017, Fair Wear Foundation invited three Fair Wear Foundation member brands: Suit Supply, Kjus, and Haglofs to sign the FOA protocol.

Since 2018, Fair Wear Foundation took the initiative to hold formal and informal meetings for the FOA Protocol national committee, with issues related to social dialogue, the development of FOA protocols, and discussions related to on-going cases. Clean Cloth Campaign (CCC) also added as an observer in the national committee of the FOA Protocol in 2018.

In 2019, the development of the FOA Protocol agenda was a core discussion in consultation meetings with INGO, CNV, FNV, and global labor unions. It is agreed that agenda for wages and decent working conditions should be the priority agenda for FOA Protocol. Meanwhile, there were concern on the side of the labor unions related to overlapping programs or activities to oversee the FOA Protocol, so it was agreed that the Decent Work Working Group (DWWG) program initiated by CNV and FNV was suspended while waiting for the union's agreement on programs related to support for the FOA Protocol. OXFAM also changed the role as an observer in the FOA Protocol. Overall, strengthening the implementation of the FOA Protocol in factories is a challenge for trade unions, and trade unions realize that to create an effective complaint system and case resolution in the FOA protocol, every company that has formed a trade union/labor union must form a factory-level committee.

In 2020, the COVID-19 pandemic hit hard for garment factories, brands, and garment workers. There are practically no activities or meetings regarding the FOA protocol either offline or online. Although, Fair Wear regularly contacts FOA committee members asking for news, opinions, and suggestions on the desire to bring back the FOA protocol meeting during the pandemic. In the same year, the government issued a job creation law or omnibus law with minimal consultation and involvement of unions and civil society in it, resulting in massive resistance and demonstrations by trade unions and NGOs. Fair Wear has tried to provide discussion spaces for NGOs and trade unions to deliver a discourse against the government on this matter. With various extreme events that occurred in 2020, the attention of trade unions and brands was diverted from the issue of freedom of association.

It wasn't until early 2021 that the Fair Wear Foundation managed to gather all members and observers to re-open communication that had been cut off. The heated issue raised in the meetings is regarding dismissal of workers, but it is requested that the cases resolved in stages as regulated in the SOP: starting from the FOA committee at the factory level, then if the case is not resolved it is brought to the regional level and if the case has not been resolved then it is only brought to the national level committee for discussion. Meanwhile, the trade unions have finished finalizing the draft wage protocol and contract protocol. The first meeting to get input from all stakeholders has been carried out, draft revisions and regular meetings will be held with all stakeholders.

Beside FOA Protocol, during 2016-2020, Fair Wear Indonesia lead a program called The Strategic Partnership for Supply Chain Transformation (Strategic Partnership). In collaboration with Dutch trade unions Mondiaal FNV and CNV Internationaal and the Dutch Ministry of Foreign Affairs, Strategic Partnership is an innovative programme to improve corporate and government policies regarding human rights compliance in apparel supply chains. Combining the expertise of trade unions, NGOs, and progressive brands and factories, the partnership aims to demonstrate how movement towards living wages, gender equality, and constructive labour relations and social dialogue is possible. During 2020 Covid-19 pandemic, in the framework on the partnership, Fair Wear supported brands and factory-level trade unions through exchanging information from a supplier survey, a worker survey, and by interviewing trade unions in Fair Wear supported the Ministry of Manpower to collect the data of affected workers. Based on the data, the Ministry distribute EUR 250,000 to 2000 garment workers and homeworkers through a program called Tenaga Kerja Mandiri (TKM).

Continuing this program, in 2021 Fair Wear launched a new program called STITCH (Sustainable Textile Initiative: Together for Change) that will run through 2021-2025. STITCH is led by Fair Wear and will work with unions and labour rights organizations on collective bargaining to influence higher wages and workplaces free from harassment.

Since 2022, Fair Wear phase out the traditional membership services (audits, WEP and complaint handling support in Indonesia. As brands have few other sources to turn to, Fair Wear is continuing their role in providing brands important information on risks and issues in the Indonesian garment industry. As part of STITCH, Fair Wear will continue to have a local presence in Indonesia. Together with CNV Internationaal under STITCH partnership, Fair Wear will focus on influencing the government to adopt a law to protect women against violence, combat the shrinking civil space for trade unions and provide support to engage in meaningful social dialogue on wages, job security, and lobby for the incorporation of human rights due diligence and decent work clauses in the Free Trade Agreement between the EU and Indonesia (IEU-CEPA).

1. HOW TO READ THIS COUNTRY STUDY

This country study should provide a clear and concise picture of the industry, labour law, labour conditions and industrial relations within the textile/garment industry. The study is prepared through gathering information about national laws and local stakeholders' views on labour issues in the garment industry in Indonesia.

- › **Chapter 2, General country information**, provides general country information describes the economic, social, political, and governance situation, and the general human rights situation, using international indicators and comparing the country to other garment-producing countries.
- › **Chapter 3: Stakeholders** lists the main stakeholders that impact labour conditions in the garment/textile industry or play an active role in monitoring the situation for workers in the industry. This chapter serves as a reference point for stakeholders and brands that want to engage with or consult a local stakeholder to find further information or help concerning their activities in Indonesia.
- › **Chapter 4: Garment industry** presents an overview of the situation for the garment industry in Indonesia, including main areas of production, products, and prospects.
- › **Chapter 5: Industrial relations** describes the trade union situation in general and specifically for the garment industry. This chapter provides essential information for understanding how well challenges regarding working conditions are handled through social dialogue.
- › **Chapter 6: Implementation of the Fair Wear Code of Labour Practices** provides an assessment of the implementation of every standard included in the Fair Wear Code of Labour Practices based on national laws and regulations and different stakeholders' views on implementation. It also references official statistics on compliance where available.

This country study examines the situation in Indonesia, using statistics and data available to 2020 and stakeholders' opinions. Where relevant, current information from 2021 has been included. Considering that this study was written during the COVID-19 outbreak, the impact on the industry and the country has been considered whenever relevant. Fair Wear will continue to provide updated information at <https://www.fairwear.org/> and will update this country study periodically in the future.

2. GENERAL COUNTRY INFORMATION

With a landmass of 1.9 million km² and a population of 272 million, Indonesia is the largest country in Southeast Asia. Even more, today, Indonesia is the world's fourth most populous nation, the world's 10th largest economy in terms of purchasing power parity, and a member of the G-20.¹³

Indonesia's 2020 GDP is around 1.058 USD billion, with the manufacturing sector generating 20.61% of the GDP.¹⁴ The textile and garment sector accounts for 11% of manufacturing exports, 5% of total exports and employs some 4.3 million people.¹⁵ In addition, the garment and textile industry continued to become an essential source of formal employment for Indonesian women, with the female labour force participation rate in the garment sector accounting at 82% in 2017.¹⁶

Due to the COVID-19 pandemic, the textile and garment sector was severely impacted. This is because the demand for textiles and garments fell sharply for exports and domestically (as demand from shopping malls declined with social distancing requirements).¹⁷ As a result, textile and textile product exports reduced by 52% in 2020 (compared to 2019 figures), and domestic retail sales of clothing declined by 74%.¹⁸ However, the online sales in the domestic market and the increased demand for personal protective equipment (PPE) provided some continuing need.¹⁹

The Indonesian Chamber of Commerce (KADIN) highlighted that some 2.1 million textile and garment sector workers were unemployed because of the pandemic in July 2020.²⁰ Furthermore, as the Indonesian sector is highly dependent on imported raw materials (such as US cotton), the continuing supply disruptions caused by fluctuating global demand and requirements for social distancing in production facilities make the sector and its workers highly vulnerable.²¹

The pandemic also required the government to impose several restrictions, including lockdown and closures of textile and garment factories (although the sector is defined as "essential"). This means that the factories must operate with some restrictions in line with health protocols, including only allowing 50% of production workers and 10% of administrative workers into facilities at any one time.²²

13 World Bank. 2021. Overview Indonesia. <https://www.worldbank.org/en/country/indonesia/overview#1>

14 Tabel Dinamis, ("Proporsi Nilai Tambah Sektor Industri Manufaktur Terhadap PDB", "Proportion of Added Value of Manufacture Sector To GDP") <https://www.bps.go.id/site/resultTab>

15 Deasy Pane and Donny Pasaribu. 2020. Indonesia's garment industry in crisis. East Asia Forum. <https://www.eastasiaforum.org/2020/08/10/indonesias-garment-industry-in-crisis/>

16 Evans. 2017. Patriarchal Unions = Weaker Unions? Industrial Relations in the Asian Garment Industry. Working Paper. University of Cambridge.

17 ILO. 2021. Opportunities for a Just Transition to environmental sustainability and COVID-19 recovery in the textile and garment sector in Asia. https://www.ilo.org/asia/events/WCMS_822273/lang-en/index.htm

18 Deasy Pane and Donny Pasaribu. 2020. Indonesia's garment industry in crisis. East Asia Forum. <https://www.eastasiaforum.org/2020/08/10/indonesias-garment-industry-in-crisis/>

19 Meylinah. 2020. COVID-19 Sows Uncertainty for Textile Industry. USDA Voluntary Report. https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=COVID-19%20Sows%20Uncertainty%20for%20Textile%20Industry_Jakarta_Indonesia_10-13-2020

20 Ibid.

21 ILO. 2021. Opportunities for a Just Transition to environmental sustainability and COVID-19 recovery in the textile and garment sector in Asia. https://www.ilo.org/asia/events/WCMS_822273/lang-en/index.htm

22 ILO and Cornell University. 2020. The supply chain ripple effect: How COVID-19 is affecting garment workers and factories in Asia and the Pacific. https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/briefingnote/wcms_758626.pdf

From the factory's perspective, another issues that they are facing during COVID-19 is the lack of government's assistance in relation with production cost, which are mounted during the pandemic. For example, companies still must pay their electricity bill in full during the restriction period. Therefore, Asosiasi Pertekstilan Indonesia (API) and Pelaku Industri Tekstil dan Produk Tekstil (TPT) asked the government to facilitate the postponement of electricity payments during the pandemic.

ECONOMIC INDICATORS

Indonesia has made remarkable development strides in the 21st century, including sustained economic growth and significant poverty reduction.²³ However, Indonesia's progress is at risk of reversal because of the impacts of the COVID-19 pandemic on lives and livelihood. In 2020, Indonesia's GDP fell 2.1, but while large, this downturn was smaller than other countries in the Asia-Pacific region.²⁴ By 2021, the GDP is projected to rebound by 3.7% and 5.2% in 2022, assuming Indonesia does not experience a new severe COVID-19 wave. Indonesia's 2020 GDP itself is around 1.058 USD billion.²⁵

After a historically wide budget deficit of 6.2% of GDP in 2020 due to pandemics, the government plans to modestly narrow the deficit in 2021 and 2022. In 2023, the government plans a sharper fiscal consolidation as it reinstates its Constitutional budget deficit ceiling of 3% of GDP, which implies the primary budget will be near balance.²⁶

When it comes to Human Development Index (HDI), a summary measure for assessing long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living, Indonesia's HDI value for 2019 is 0.718— which put the country in the high human development category—positioning it at 107 out of 189 countries and territories.²⁷

However, it is essential to remember that levels of human development vary significantly across the archipelago, with many of the poorest Indonesians having little access to education or healthcare. There is also a great deal of inequality in the major cities, where most wealthy Indonesians live. Garment and textile workers have a more reliable income than many of the country's urban poor. Still, their wages are barely enough to provide a very basic living for their families.

23 ADB. 2021. Asian Development Bank Member Fact Sheet, September 2021, <https://www.adb.org/sites/default/files/publication/27769/ino-2020.pdf>

24 IMF. 2021. IMF Country Focus, Indonesia Has an Opportunity to Boost Growth. <https://www.imf.org/en/News/Articles/2021/03/03/na030321-indonesia-has-an-opportunity-to-boost-growth>

25 World Bank. 2021. Indonesia Economic Prospect, December 2021. <https://openknowledge.worldbank.org/bitstream/handle/10986/36732/166956.pdf>

26 OECD. 2021. OECD Economic Outlook, VOLUME 2021 ISSUE 2. https://www.oecd-ilibrary.org/economics/oecd-economic-outlook/volume-2021/issue-2_66c5ac2c-en

27 UNDP. 2020. Human Development Report 2020, Indonesia. <http://hdr.undp.org/sites/default/files/Country-Profiles/IDN.pdf>

SOCIAL, POLITICAL, AND GOVERNANCE INDICATORS

One prerequisite for sustainable and good working conditions is stable and favourable social and political environments. As a large, complex democracy that emerged out of 30 years of authoritarian rule in 1998, Indonesia has made impressive democratic gains and established significant pluralism in politics and the media.²⁸ Indonesia has also been undergoing multiple peaceful transfers of power between parties since 1998. However, the country struggles with systemic corruption, discrimination and violence against minority groups, and the politicised use of defamation and blasphemy laws.

According to Democracy Index ranked by The Economist Intelligence Unit, Indonesia is ranked 64th among 167 countries. This number is significantly better than Bangladesh (ranked 76th) and Vietnam (ranked 137th), two other critical Asian garment-producing countries. One of the concerning issues in Indonesian governance indicators is their corruption index. According to Corruption Perceptions Index 2020 by Transparency International, Indonesia is ranked 102 among 180 countries. Though it is certainly not an excellent rank, this number still slightly better than Vietnam (ranked 104) and Bangladesh (ranked 146).

However, based on CIVICUS Monitor, a global research tool to tracks changes civil society freedom across the world, Indonesia current rating is obstructed.²⁹ Meaning that civil space in Indonesia is viewed to be heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights.³⁰

Gender equality also remains a concerning issue in Indonesia. In the *Gender, Equality, and Governance Index 2020*, an index that analyses gender discrimination using five critical pillars (governance, education, work, entrepreneurship, and violence), Indonesia is ranked 101 among 158 countries. This falls behind Vietnam (ranked 63rd) but is higher than Bangladesh (128th). This number is mirrored with the Gender Inequality Index by UNDP. In 2019, Indonesia was ranked 121 among 189 countries, while Vietnam was ranked 65th, and Bangladesh was ranked 133. The Gender Inequality Index (GII) score indicates that gender-based discrimination occurs at home, community, and in the workplace. While middle-class women are relatively sheltered from the worst forms of gender-based discrimination, working-class women have little respite from the economic practices and social norms favouring men over women.

Comparable to the global condition, Indonesian women earn 23% less than men. Although more women workers have a college or university degree than male workers, higher education has not narrowed the gender pay gap.³¹ However, in the textile, garment and footwear industries, the gender pay gap is not as significant as in other industries, with women earning slightly higher than men in the same job.³²

Gender-based violence also continues to be a problem in Indonesia. A Nationwide survey done in 2016, commissioned by Indonesia's Women's Empowerment and Child Protection Ministry with assistance from

28 Freedom House. 2021. Freedom in the World – Indonesia Country Report. <https://freedomhouse.org/country/indonesia>

29 CIVICUS. 2022. Indonesia Live Rating. <https://monitor.civicus.org/country/indonesia/>

30 CIVICUS. 2022. Civicus Monitor: How it Works. <https://monitor.civicus.org/Ratings/>

31 ILO and UN Women Indonesia. 2020. Infographic: Gender Pay Gap in Indonesia. <https://asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAsia/Docs/Misc/2020/09/id-Gender-Pay-Gap-Statistic-in-Indonesia-September-2020.pdf>

32 Phu Huynh. 2016. Assessing the gender pay gap in Asia's garment sector. ILO Asia-Pacific Working Paper Series. ILO. https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/publication/wcms_466268.pdf

the UN, found that one in three Indonesian women have experienced physical and or sexual violence in their lifetime.³³ Following the other countries in Southeast Indonesia, Indonesia issued the Sexual Harassment Crime Law (UU TPKS) in April 2022. The law has been advocated by CSO for more than 8 years.

According to the ILO Better Work survey of garment factories covered by the programme, around four out of every five workers stated that sexual harassment or sexual touching was a concern in their workplace.³⁴ The report also indicates that the sexual harassment concern reported per factory in Indonesia is significantly higher than other Better Works country programmes. In a way, this suggests that workers in Indonesian factories are likely more willing to voice their concerns through surveys. Moreover, workers' responses suggest they are comfortable doing something about their concerns, such as seeking help from their trade union representative or their Human Resources department. Taking such actions indicates that workers are becoming more aware of their rights and are increasingly confident about seeking help to address the issue."³⁵

Moreover, one of the most critical changes in governance in the post-Suharto period for manufacturing workers was the introduction of decentralisation in the early 2000s. As part of this process, many of the functions of government – including industrial relations – were developed to the local level. This increased opportunities for trade unionists to engage in the political process, which helped them achieve better wage outcomes and provided them with vital education regarding their rights as citizens.³⁶

But 2020 has recorded one of the biggest failures of the labour movement in Indonesia, namely the passing of Law Number 11 of 2020 on Job Creation. The law amended 77 regulations, one of which is Law Number 13 of 2003 on Manpower. Despite fierce opposition by most trade unions and workers, the bill was passed in November 2020. Many workers feel that this law and its implemented regulations will weaken the labour rights of Indonesian workers. This will be elaborated further in the Industrial Relations section of this report.

In the International Trade Union Confederation (ITUC) Global Rights Index 2021, Indonesia is awarded Rating 5, meaning that the organization view there is no guarantee of rights. On the other way, ITUC view that while the legislation in Indonesia may spell out certain rights for the workers, they have effectively no access to these rights and are therefore exposed to unfair labour practices. ITUC 2021 index also mention about the passing of Job Creation Law, calling the law repressive, since it introduced sweeping changes to workers' entitlements and environmental regulation.³⁷

In terms of social security, the social security coverage of Indonesian workers remains relatively limited. BPJS Ketenagakerjaan only covers about 22 per cent of Indonesian labour force as of 2018.³⁸ It must be noted

33 UNDP. 2017. Ending violence against women today.

<http://www.id.undp.org/content/indonesia/en/home/presscenter/articles/2017/12/08/ending-violence-against-women-today.html>

34 Better Work. 2019. Sexual Harassment at Work: Insights from the Global Garment Industry. Better Work Thematic Brief. ILO.

https://www.ilo.org/wcmsp5/groups/public/--ed_dialogue/--sector/documents/publication/wcms_732095.pdf

35 Ibid.

36 Caraway, T. & M. Ford, 2014. Labour and Politics under Oligarchy. In Michele Ford and Thomas Pepinsky (eds.), Beyond Oligarchy: Wealth, Power, and Contemporary Indonesian Politics, (pp. 139-155). Ithaca, New York: Cornell Southeast Asia Program (SEAP).

37 ITUC. 2021. ITUC Global Rights Index. https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN-final.pdf

38 ILO. 2021. Actuarial Analysis of a Proposed Unemployment Insurance Scheme in Indonesia.

https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--ilo-jakarta/documents/publication/wcms_806432.pdf

that the majority of coverage also remain partial, with coverage for full benefit (Jaminan Kematian, Kaminan Kecelakaan Kerja, Jaminan Hari Tua, and Jaminan Pension) only enjoyed by around 11.8 million workers.³⁹

INCOME AND POVERTY

The proportion of people living under the poverty line in Indonesia has decreased substantially since the mid-1990s. Yet while Indonesia's poverty levels continue to fall, inequality remains high. Indonesia's official statistics reported a poverty rate of 10.1 per cent in March 2021, remaining elevated relative to the record low level of 9.4 per cent in September 2019, before the COVID-19 pandemic.⁴⁰ The poverty line in Indonesia is defined by Indonesia's national statistics office (Badan Pusat Statistik, BPS) as the amount of money required to obtain 2,100 calories per day, along with a small amount for other basic non-food items.

On the other hand, the Gini index stood at 38.4 in March 2021, slightly higher than in March 2020, when estimated at 38.1.⁴¹ It must be noted that COVID-19 increased inequality both in urban and rural areas. This suggests that a prolonged pandemic may threaten progress in reducing inequality in the long term.

BPS reports show that the unemployment rate remained elevated at 6.3 per cent in February 2021, higher by 1.3% compared to the year before. Not all workers have returned to work, and some continue to earn less than before.⁴² While World Bank survey showed that 10 per cent of primary breadwinners were not working in March 2021, whilst 43 per cent of those working were still earning less than before the pandemic.

Despite the surge of unemployment in 2020 caused by pandemic, BPS recorded that the number of unemployed in Indonesia as of August 2021 was 9.1 million people, a decrease of 670 thousand compared to August 2020. This is in line with the decline in the national open unemployment rate from 7.07% in August 2020 to 6.49% in August 2021.⁴³

THE GENERAL HUMAN RIGHTS SITUATION

Although Indonesia has a relatively robust democracy, several human rights issues still need to be addressed. In October 2019, Indonesia won a seat on the United Nations Human Rights Council for the 2020-2022 term. But Amnesty International noted that during the COVID-19 pandemic, Indonesia failed to place the protection of human rights at the centre of its prevention, preparedness, containment and health care policies and activities.⁴⁴

39 BPJS Ketenagakerjaa. 2018. Annuual Report 2018.

40 BPS. 2021. Laporan Bulanan Data Sosial Ekonomi Maret 2021.
<https://www.bps.go.id/publication/2021/03/25/51fee0e21cac0e2f777c3893/laporan-bulanan-data-sosial-ekonomi-maret-2021.html>

41 World Bank. 2021. Poverty and Equity Brief Indonesia, October 2021.
https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2021/Global_POVEQ_IDN.pdf

42 BPS. 2021. Keadaan Angkatan Kerja di Indonesia Februari 2021.
<https://www.bps.go.id/publication/2021/06/08/b547a5642aeb04d071cb83d4/keadaan-angkatan-kerja-di-indonesia-februari-2021.html>

43 BPS. 2021. Laporan Bulanan Data Sosial Ekonomi Agustus 2021.
<https://www.bps.go.id/publication/2021/08/26/5bf6571402c29021b5db7ea1/laporan-bulanan-data-sosial-ekonomi-agustus-2021.html>

44 Amnesty International. 2020. Indonesia 2020.
<https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/indonesia/report-indonesia/>

In terms of labour rights, Indonesia is a signatory to CEDAW and all eight of the ILO's core conventions. However, it struggles with the broader decent work agenda because of high unemployment and informal employment levels, but due to the government's failure to enforce legislative provisions even in the formal sector workplaces. One of the reasons for this is the limited number of labour inspectors in Indonesia. In 2020, the number of labour inspectors throughout the nation will be 1.686. In comparison, the number of companies based on Wajib Lapor Ketenagakerjaan Perusahaan (WLKP) has reached 343.000 companies, with a total workforce of 9.5 million people.⁴⁵

It is also noted that the pandemic negatively impacted workers' rights. This is shown in the increasing number of undue employment terminations, threats of wage cuts and holiday allowance cuts by employers in sectors badly affected by the pandemic, and problematic physical distancing and work-from-home policies.⁴⁶

Even though the Indonesian legal framework and the enforcement of legislative provisions are not yet in line with the UN Guiding Principles on Business and Human Rights, the government is taking steps to increase Indonesia's compliance with the UN Guiding Principles on Business and Human Rights. In 2014 the government appointed the National Commission on Human Rights (Komnas HAM) and the Institute for Policy Research and Advocacy (ELSAM) to begin producing a National Action Plan on Business and Human Rights. As of November 2021, a process for developing a National Strategy on Business and Human Rights is underway, and a draft was published in November 2020.⁴⁷

45 Tempo.co. March 2021. "Menaker: Pelanggaran Norma Ketenagakerjaan Terus Turun", <https://nasional.tempo.co/read/1445927/menaker-pelanggaran-norma-ketenagakerjaan-terus-turun#:~:text=Hingga%20triwulan%20IV%20tahun%202020,seluruh%20Indonesia%20sebanyak%201.686%20orang>

46 Amnesty International. 2020. Indonesia 2020. <https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/indonesia/report-indonesia/>

47 UNDP Indonesia. 2020. "Draft National Strategy on Business and Human Rights aims to integrate human rights and business in Indonesia". <https://www.id.undp.org/content/indonesia/en/home/presscenter/pressreleases/2020/Draft-National-Strategy.html>

3. STAKEHOLDERS

This section briefly presents several stakeholders active in Indonesia's garment/textile industry. The focus is on stakeholders who are actively part of forming the labour conditions or monitoring the situation for workers in the industry.

GOVERNMENTAL INSTITUTIONS

The Ministry of National Development Planning (Bappenas)

Bappenas is responsible for formulating and establishing planning, budgeting, regulatory and institutional policies about national development and controlling the implementation of those programs. Bappenas includes The Sustainable Development Goals (SDGs) when developing policies. Its structure consists of a directorate for the economy responsible for trade and industry.

<https://www.bappenas.go.id/>

The National Commission for Eradication of Violence against Women (Komnas Perempuan)

The National Commission for Eradication of Violence against Women (Komnas Perempuan) is an independent state body for the enforcement of women's rights in Indonesia. Komnas Perempuan was established through Presidential Decree No. 181 of 1998, which was then reinforced by the Presidential Regulation No. 65 of 2005 in response to the demands of civil society to the government. These demands called for the state to take responsibility for cases of sexual violence against women.

<https://www.komnasperempuan.go.id/>

Ministry of Manpower

The Ministry of Manpower is responsible for improving human resources, drafting laws, strengthening its institutions and procedures and ensuring that relevant laws are followed, including through inspections.

Relevant directorates within the ministry include the Directorate for Wages, the Directorate for Industrial Relations and the Directorate for Work Norms for Women and Children.

The Directorate for Wages oversees wage policy, including the mechanism for setting minimum wages, which has dramatically affected unions' capacity to advocate for worker-friendly policy at the local level.

The Directorate for Industrial Relations oversees Indonesia's bipartite and tripartite committees and processes and enforces labour law provisions.

The Directorate for Guidance and Oversight of Manpower and Occupational Safety and Health is tasked with formulating policy on labour inspection social security for workers and enforcing the law in these fields.

The Directorate for Work Norms for Women and Children is tasked with increasing awareness of the need for gender equality in the workplace and identifying instances in which workplace.

<https://kemnaker.go.id/>

The Ministry for Women's Empowerment and the Protection of the Children

The Ministry for Women's Empowerment and the Protection of Children has three priority areas: violence against women and children, human trafficking and economic disadvantage. The latter focuses heavily on women entrepreneurs rather than women in waged work. There is, however, a sub-directorate dealing with women's rights at work under the Deputy Secretary for Protection of Women's Rights.

<https://www.kemenpppa.go.id/>

EMPLOYERS' ORGANISATIONS

Employers are expected to engage with worker representatives or unions in negotiations and collective bargaining. They do so through APINDO and API.

Asosiasi Pengusaha Indonesia, APINDO (Indonesian Employers Association)

APINDO is the main body representing employers in the wage councils and other tripartite committees. It joins unions and government in tripartite structures at the local and national levels, including local and regional wage councils and policy advisory bodies. It also provides ad hoc judges representing employers in Indonesia's industrial relations courts, alongside career judges and judges representing the unions.

<http://apindo.or.id/id>

Asosiasi Pertekstilan Indonesia, API (Indonesian Textile Association)

The Indonesian Textile Association is an industry association representing producers of textiles and textile products. Besides producing the most up-to-date and detailed data sources on these industries available, it is tasked with negotiating with unions on matters to do specifically with the textile and garment industries.

<https://www.linkedin.com/company/asosiasi-pertekstilan-indonesia/about/>

The Korean Garment Manufacturers Association in Indonesia (Koga)

Koga is a country-based association of garment manufacturers, which has significantly influenced policy at the local level. It is also involved in CNV's Multi-Company CBA initiative.

<http://www.koga.co.id>

TRADE UNIONS

The basic building block of Indonesia's trade union movement is enterprise-based unions. Five or more enterprise unions can form a federation, and at least three alliances are needed to create a confederation, which usually exists to represent workers at the national level. In 2018 there were 14 confederations and 120 federations. Two of the three major confederations are affiliated with the International Trade Union Confederation. In addition, most Global Union Federation (GUF) affiliates are members of these confederations. Among these are Serikat Pekerja Nasional (SPN) and Garteks, two of the major unions in the garment sector, which fall under the jurisdiction of IndustriALL, the GUF that represents manufacturing.

In industrial terms, Indonesia's trade union confederations are relatively weak, with much of the power at the national level residing in the KSPI-affiliated federations and some of the federations associated with KSPSI. Union activity is concentrated in Indonesia's vital industrial centres in Greater Jakarta, Greater Surabaya, Greater Medan and Batam, with a significant presence in smaller manufacturing hubs in West, Central and East Java.

Table 1. Indonesian Affiliates of the Global Union Federation

Global Union Federations (GUF)	Affiliates
BWI	Serikat Pekerja Perikanan dan Perhutanan Indonesia (SP Kahutindo) Building and Public Works Workers' Union (BPWWU) Federasi Konstruksi Umum dan Informal (FKUI) - SBSI Federasi Serikat Buruh Hutan, Kayu dan Pertanian (FSB HUKATAN) - SBSI
EI	Federasi Serikat Pendidikan, Pelatihan dan Pegawai Republik Indonesia (FESDIKARI SBSI) Persatuan Guru Republik Indonesia (PGRI)
IFJ	Aliansi Jurnalis Independen (AJI)
IndustriALL	Serikat Buruh Kimia dan Kesehatan (KIKES) - KSBSI Chemical, Energy and Mine Workers Union (CEMWU) - SPSI Garteks SBSI Federasi Serikat Pekerja Kimia, Energi, Pertambangan, Minyak Gas Bumi dan Umum (FSP KEP) Federasi Serikat Pekerja Industri Semen Indonesia (F SP ISI) Federasi Serikat Pekerja Pulp dan Kertas Indonesia (FSP2KI) Federasi Serikat Buruh Logam, Metal dan Elektronik (LOMENIK- SBSI) Federasi Pertambangan dan Energi (FPE - SBSI) Serikat Pekerja Metal Indonesia (FSPMI) Serikat Pekerja Nasional (SPN) Federasi Serikat Pekerja Farmasi dan Kesehatan (FARKES) - SPSI
ITF	Garuda Indonesia Flight Attendant Association Indonesia Railway Workers Union/Serikat Pekerja Kereta Api Kesatuan Pelaut Indonesia (KPI) Sekar Sejahtera (SS-ACS airline catering) Serikat Karyawan PT Garuda Indonesia Tbk (Sekarga) Serikat Pekerja Terminal Petikemas Koja Trade Union of Jakarta International Container Terminal
IUF	Federasi Serikat Pekerja Mandiri (FSPM) National Federation of Food and Beverage Workers (FSBMM) Serikat Pekerja Mandiri Arnott's Indonesia (SPMAI) Serikat Pekerja P.T. Sarihusada Generasi Mahardika (PERKASA)
PSI	Persatuan Pegawai PT Indonesia Power Tingkat Pusat (PPIP) Pharmaceutical and Health Workers Union (PHWU) Serikat Pekerja Perusahaan Daerah Air Minum Jakarta (SP PDAM Jkt) Serikat Pekerja Perjuangan PT PLN PERSERO (SPP PLN) Serikat Pekerja BPJS Ketenagakerjaan (SP BPJS TK) Serikat Pekerja PT (PERSERO) Angkasa Pura I (SP AP1) Serikat Pekerja PT. PJB (SP PJB)
UNI	Asosiasi Serikat Pekerja Indonesia (ASPEK-ID) Telekom Indonesia Union (Sekar Telkom-ID)

Konfederasi Serikat Pekerja Seluruh Indonesia (Confederation of All-Indonesian Workers Unions)

The Confederation of All-Indonesian Workers Unions is the legacy union of the Suharto period. There are currently two splinters of the organisation, one headed by Yorrys Raweyai and the other by Andi Gani. Each claims the affiliation of the Federation of Textile, Garment and Footwear Unions (Federasi Tekstil, Sandang, Sepatu, FSP TSK-KSPSI), one of the largest unions in the sector. However, KSPSI is not affiliated with the ITUC, nor is it affiliated with the GUFs, and it receives no international funding support.

<http://kspsi.com/> (Yorrys Raweyai)

<http://dpp-kspsi.blogspot.co.id/> (Andi Gani)

Konfederasi Serikat Pekerja Indonesia (Indonesian Trade Union Confederation)

The Indonesian Trade Union Confederation KSPI was established by reformists within the Suharto-era union, with the support of the international labour movement. Its affiliates include the National Workers Union (Serikat Pekerja Nasional, SPN), which focuses predominantly on textiles, garments and footwear. KSPI is affiliated with the International Trade Union Confederation (ITUC), and some of its federations have benefited from international assistance directly from Solidarity Support Organisations and through the Global Union Federations. In addition, SPN has received significant funding over time from IndustriALL and its predecessor, the ITGWLF, and bilateral SSOs.

<http://www.kspi.or.id/>

<http://spn.or.id/>

Konfederasi Serikat Buruh Seluruh Indonesia (Confederation of Indonesian Prosperous Labour Unions)

KSBSI grew out of the Suharto period's largest and most established alternative union and is supported by unions in Belgium and the Netherlands. Formerly affiliated with the World Confederation of Labour (WCL), it has been a member of the ITUC since WCL amalgamated the International Confederation of Free Trade Unions (ICFTU). KSBSI's garment, textile and footwear union is known as Garteks. In recent years, Garteks has received direct support from CNV Internationaal, targeted at increasing its reach and effectiveness.

<http://www.ksbsi.org/>

<http://www.ksbsi.org/index.php/page/link/116/116>

Aliansi Pekerja/Buruh Garmen Alas Kaki dan Tekstil Indonesia (APBGATI)

APBGATI is an alliance of workers/labor unions working in the garment, footwear and textile industry sectors. APBGATI was formed in 2019, aiming as a forum to increase capacity, advocacy and quality of social dialogue between trade unions, employers and the government. APBGATI also focuses on garment sectoral issues such as low wages, factory relocation, social security and shorter work contracts.

The focus of APBGATI's work related to cross-cutting issues is the elimination of violence and sexual harassment in the garment sector. APBGATI members consist of TSK KSPSI, TSK SPSI, FSB GARTEKS-KSBSI, KSPN, SARBUMUSI, SBSI-92 and FSPBI. APBGATI represents 800,000 garment workers throughout Indonesia, of which more than 50% are women.

<https://apbgati-spsb.org/>

LABOUR NGOS

Several local NGOs have a long history of involvement in the garment industry in Indonesia. These include Akatiga, LBH Jakarta, Sedane and TURC. International NGOs include Oxfam, which until recently was the major player in relation to the garment industry, and the Clean Clothes Campaign (CCC), which has recently appointed an Indonesian representative.

Akatiga

Akatiga is a research NGO established in 1991, which initially specialised in industrial labour, small business and land issues. It undertakes fieldwork-based research projects, maintains a research library, publishes a semi-academic journal, and participates in national-level advocacy campaigns. Akatiga has been an important player in labour research.

<http://www.akatiga.org/>

Asia Floor Wage Alliance

The Asia Floor Wage Alliance is a global coalition of NGOs and trade unions advocating for a standard wage, calculated on Purchasing Power Parity, to be applied across Asia. Activities in Indonesia include the convening of a People's Tribunal in June 2014, the recommendations of which included that government that it addresses its failure to monitor and address violations of the labour law; those brands ensure transparency around their auditing practices; that unions should coordinate their efforts to improve conditions in the garment industry; and that NGOs work together to maximise the effectiveness and transparency of auditing and monitoring activities. In more recent times, AFWA has engaged with international discussions of gender-based violence, arguing that low levels of payment for women constitute a form of gender-based violence.

<http://asia.floorwage.org/>

Gajimu.com

Gajimu.com is the Indonesian branch of the WageIndicator Foundation. It has a website that includes information on wages, questions on other work-related topics and career tips. It also includes a special section for garment workers. Gajimu.com also have a survey that garment workers could fill in, as well as information about a small number of garment factories (including what unions are present and how well the factory complies with a range of labour-related conditions).

<https://gajimu.com/>

Lembaga Bantuan Hukum Jakarta (Jakarta Legal Aid Institute)

LBH Jakarta, established in 1969, was one of several of a network of legal aid institutes to take a proactive role on industrial labour in the late new order. Although it is less influential than it was in previous decades, it has continued to engage in this area of 'structural legal aid', including through its reports on labour rights abuses and its involvement in initiatives such as the FoA protocol.

<http://en.bantuanhukum.or.id/>

Lembaga Informasi Perburuhan Sedane (Sedane Labour Information Centre)

LIPS was established in 1992 as a labour-focused research and policy NGO by Fauzi Abdullah, formerly of LBH Jakarta. After the fall of Suharto, it began publishing a quarterly update on labour issues and an Indonesian-language labour journal, as well as conducting research for foreign NGOs. While continuing its research work and clipping service, LIPS activists are currently heavily involved in training activities for local trade unions.

<https://sedanelips.wordpress.com/>

Trade Union Rights Centre (TURC)

TURC was established in 2003 by activists from LBH Jakarta. TURC conducts research and provides legal and trade union training for members of various trade unions. TURC is arguably the most prominent labour NGO in contemporary Indonesia. It has received financial support from the Confederation of German Trade Unions (Deutsche Gewerkschaftsbund, DGB) and other international trade union donors, including Mondiaal FNV.

<http://turc.or.id>

Worker Rights Consortium (WRC)

The Worker Rights Consortium (WRC) is an independent labor rights monitoring organization. WRC conducts independent, worker-centered investigations; issues public reports on factories producing for major brands; and aids workers at these factories in their efforts to end violations and defend their workplace rights. The WRC has investigators in twelve countries, one of which is Indonesia.

<https://www.workersrights.org/>

Solidarity Center

Solidarity Center is US-based international worker rights organization partnering with workers and unions to support their struggle for respect, fair wages, better workplaces and a voice in the global economy. In Indonesia, Solidarity Center focused on the issue on gender-based violence at work.

<https://www.solidaritycenter.org/>

GENDER FOCUS/WOMEN GROUPS

Gender Network Platform

The Gender Network Platform (GNP) is a multi-stakeholder network that works in the garment sector, and focuses on the issue of Gender-Based Violence (KBG) in the garment sector. The GNP carries out research and capacity-building; promotes gender-based violence-free zones; supports the incorporation of gender-based violence prevention in collective bargaining agreements and develops guidelines for employers.

GNP was formed after the Gender Forum event in Vietnam, 2017. The GNP engaged more than 20 organizations/institutions consist of trade unions who are working in garment sector (Garteks, SPN, TSK SPSI, Sarbumusi, FBLP); NGOs (Asia Floor Wage Alliance, TURC, Wage Indicator, Solidarity Center, Perempuan Mahardhika); ILO Better Work; women journalists; government (Ministry of Manpower, Ministry of Women Empowerment and Child Protection, National Commission on Violence against Women); Business association (Apindo and API); as well as factories/suppliers.

GNP has been advocating for the Draft Law on the Crime of Sexual Violence (previously named the Bill on the Elimination of Sexual Violence) since 2018. The activities carried out by the GNP include: holding limited discussions and public discussions and capacity building through training and comparative studies to India. India has its own Act on the Prevention, Prohibition and Remediation of Sexual Harassment of Women in the Workplace.

Perempuan Mahardhika

Perempuan Mahardhika is a national, multi-sectoral mass organisation for women that has a commitment to the liberation of women, which focuses on research, campaigning and capacity building with a focus on gender-based violence. It works closely with FBLP on initiatives related to the working conditions of women and has conducted research on sexual harassment and maternity-related rights for women workers in the industrial zone of Cakung, as well as worked with a variety of unions to increase their ability to handle cases of gender-based violence.

<https://perempuanmahardhika.wordpress.com/>

Yayasan Annisa Swasti, Yasanti

Established in 1982, Yasanti began working with rural women in 'traditional' development activities. While continuing to support informal workers, it shifted its focus to female industrial workers from the late 1980s. It currently has a focus on women porters, and women home workers and women working in more formal sector industrial workplaces.

<http://www.yasanti.or.id/index.php>

PRIVATE SECTOR INITIATIVES

FOA Protocol

The Freedom of Association Protocol, signed in June 2011, promotes the rights of women and men producing for global brands in Indonesia to join unions and bargain collectively for better working conditions making a change. Signatories to the protocol include Adidas, Nike, Puma, Pentland, New Balance and Asics, as well as Fair Wear members, Suit Supply, Kjus and Haglofs. The Protocol is supported at a global level by Play Fair, a global network of NGOs and trade unions that campaigns for workers' rights in factories that produce sportswear.

ILO Better Work Indonesia

ILO Better Work Indonesia is part of a global collaborative initiative involving the International Labour Organization and the International Finance Corporation. Beginning in 2011, the five-year program aims to include compliance with labour standards and promote competitiveness in the Indonesian garment industry through the provision of market incentives. Its main services to its corporate members are assessments, advisory services and training.

<http://betterwork.org/indonesia/>

Global Framework Agreements

Global Framework Agreements (GFAs) are agreements signed by a multinational corporation and one or more Global Union Federations that aim to protect the rights and interests of workers employed in all parts of that corporation. IndustriALL, the Global Union Federation that has responsibility for the garment industry, has signed GFAs with Inditex and H&M, both of which have operations in Indonesia.

<http://www.industrialunion.org/>

4. THE GARMENT INDUSTRY

The textile and garment industry are among Indonesia's oldest sectors and has historically played a key role in the economy from colonial times to the Suharto regime (Hill, 1992; Thee, 2009). Since the country's transition away from import substitution towards export promotion, the sector has grown rapidly.⁴⁸ While less important to Indonesia's economy than it has been in the past, the garment and textile industries remain a strategically important sector in the Indonesian economy. Manufacturing is estimated to have contributed approximately 20.61% of the GDP in 2020.⁴⁹ The textile and garment sector specifically accounts for 11% of manufacturing exports 5% of total exports and employs around 4.3 million people.⁵⁰

ORGANISATION OF THE GARMENT INDUSTRY

Indonesia's garment and textile industries played a vital part in Indonesia's entry into export-oriented manufacturing from the 1980s. These industries have been significant ever since, making a larger contribution to the Indonesian economy than in the case in the Philippines and Thailand, though considerably less than those in Vietnam and Cambodia.⁵¹

Until recently, the Indonesian economy has been highly dependent on garment exports. In 2019, the sector contributed 11% to total manufacturing exports and 5% of total exports. It is also employing roughly 4.3 million people, with the female labour force participation rate in the garment sector accounting at 82%.⁵² This means that the share of garment and textile industry sector jobs is 3.6% in total employment and 5.8% in female employment.

Foreign investment has been a primary driver of garment manufacturing in Indonesia. Better Work Report in 2019 shows that the main investment source is currently from South Korea.⁵³

48 Better Works, An Impact Evaluation of Better Work from a Gender Perspective

49 BPS Report

50 ILO, Moving the Needle Gender equality and decent work in Asia's garment sector

51 ILO/ADB. 2014. ASEAN Community 2015: Managing Integration for Better Jobs and Shared Prosperity. Bangkok: ILO and ADB, p.33.

52 Evans. 2017. Patriarchal Unions = Weaker Unions? Industrial Relations in the Asian Garment Industry. Working Paper. University of Cambridge.

53 Better Works, 2019, Better Work Vietnam: Garment Industry 10th Annual Compliance Synthesis Report. ILO and IFC.

Table 2. Garment Industry in Indonesia snapshot

Indicators	Figure
Number of workers	4.3 million
The proportion of women workers	82%
Share of jobs in total employment	3.6%
Share of jobs in female employment	5.8%
Share of total exports	5%
Share of manufacturing exports	11%
Main investment source	Republic of Korea

Based on the Making Indonesia 4.0 roadmap, the garment and textile industry is one of the five manufacturing sectors that are prioritized in its development. In 2019, The Ministry of Industry said that the garment and textile sector showed a brilliant performance by recording the growth of 15.35%. This achievement shows developments that continue to improve amid pressure from global economic conditions.⁵⁴

But the impact of the COVID-19 crisis led global trade in garments to sharply decline in the first half of 2020. The pandemic is causing a slowdown in all parts of the world, but its impacts on exporters of textiles and textile products are hitting developing countries hard.⁵⁵ In May 2020, Indonesia's textile and textile product exports dropped by 52% compared to the same month in 2019.⁵⁶ This continues a worsening trend since March and April 2020 – when exports declined by 14.6 and 38.9 per cent respectively compared to the previous year. The largest export drop of 51% is to the US market, the destination of 60 per cent of Indonesian garments.⁵⁷

MAIN EXPORT FROM GARMENT INDUSTRY

In 2019, the largest export value of the garment and textile industry from Indonesia was to the United States, which amounted to approximately 4.8 billion USD.⁵⁸ The number is dropped in 2020 due to the COVID-19 pandemic, with some stated drop of 51% to the US market⁵⁹, and show that the number still amounted to approximately 3.6 billion USD.⁶⁰

54 Kontan.co.id. February 2020. "Sektor TPT masih tumbuh 15%, ekspor tekstil turun 2,87% tahun lalu".

<https://industri.kontan.co.id/news/sektor-tpt-masih-tumbuh-15-ekspor-tekstil-mencapai-us-129-miliar-tahun-lalu>

55 Deasy Pane and Donny Pasaribu. 2020. Indonesia's garment industry in crisis. East Asia Forum.

<https://www.eastasiaforum.org/2020/08/10/indonesias-garment-industry-in-crisis/>

56 ITC. 2021. Trademap. Trade Statistics for International Business Development. <https://www.trademap.org/Index.aspx>

57 Deasy Pane and Donny Pasaribu. 2020. Indonesia's garment industry in crisis. East Asia Forum.

<https://www.eastasiaforum.org/2020/08/10/indonesias-garment-industry-in-crisis/>

58 World Integrated Trade Solution. 2019.

https://wits.worldbank.org/CountryProfile/en/Country/IDN/Year/2019/TradeFlow/Export/Partner/all/Product/50-63_TextCloth

59 <https://www.eastasiaforum.org/2020/08/10/indonesias-garment-industry-in-crisis/>

60 Statista. 2020. <https://www.statista.com/statistics/1143341/indonesia-wearing-apparel-export-value-by-destination/>

The second biggest destination of exports from the garment sector in Indonesia is Japan, with total exports of 1.3 billion USD in 2019⁶¹ and dropping to 732 million USD in 2020.⁶² While the third biggest destination of garment export in 2019 in China with the total number of 770 million USD⁶³, the third place was changed to Germany in 2020 with the total exports of 379.3 USD, since export in China dropped to only 192 million USD in 2020.⁶⁴ The top five major destinations of garment export from Indonesia can be seen in Table 3.

Table 3. Top Five Destination of Garment Export, 2019-2020.

Year	Country	Value Export (USD Million)
2019	United States	4.643
	Japan	1.341
	China	770
	South Korea	612
	Germany	523
2020	United States	3.624
	Japan	732
	Germany	379
	South Korea	332
	Australia	199

When it comes to the product, the garment export itself is very diverse from women’s and girl’s apparel, men’s and boy apparel, to underwear, hosiery and clothing accessories.

MAIN AREAS FOR GARMENT PRODUCTION

According to Statistic Indonesia, there were as many as 2,389 large and medium enterprises involved in the garment sector in 2019 and 583,565 small and micro enterprises in 2015.⁶⁵ Although statistics are not readily available on the proportion of these involved in export production, it can be expected that a significant proportion of large and medium enterprises are in some way involved in international supply chains. The vast majority of textile and garment factories are located on the island of Java. The garment industry is particularly concentrated in West Java, Central Java, East Java, and Banten. Together, these regions accounted for more than 85% of all garment, textile and footwear employment in 2016.⁶⁶

61 World Integrated Trade Solution. 2019.

https://wits.worldbank.org/CountryProfile/en/Country/IDN/Year/2019/TradeFlow/Export/Partner/all/Product/50-63_TextCloth

62 Statista. 2020. <https://www.statista.com/statistics/1143341/indonesia-wearing-apparel-export-value-by-destination/>

63 World Integrated Trade Solution. 2019.

https://wits.worldbank.org/CountryProfile/en/Country/IDN/Year/2019/TradeFlow/Export/Partner/all/Product/50-63_TextCloth

64 Statista. 2020. <https://www.statista.com/statistics/1143341/indonesia-wearing-apparel-export-value-by-destination/>

65 BPS. Table dinamis. 2019 and 2011. <https://www.bps.go.id/subject/9/industri-besar-dan-sedang.html#subjekViewTab5>

66 Horne, R., & M. C. de Andrade, 2017. Gambaran beragam untuk sector garmen Indonesia. Bangkok: ILO.

https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--ilo-jakarta/documents/publication/wcms_625194.pdf

The garment, textile and footwear industry are a major employer in Indonesia, accounting for around 26.6% of all employment in manufacturing.⁶⁷ This sector employs roughly 4.3 million people, making the garment and textile industry shares 3.6% of jobs in total employment. According to Statistic Indonesia data in 2018, the number of workforces employed by the large and medium factories in the garment and textile industries is around 629.298 people, meaning that most of the workforce is employed by the small and micro-enterprises

SOCIAL COMPOSITION OF THE GARMENT WORKFORCE

The female workforce in Indonesia is almost concentrated in trade and hospitality services as well as community, social and personal services. However, the female labour participation rate in the garment sector accounts for 82%⁶⁸; this makes the garment sectors contribute 5.8% of female employment in Indonesia.⁶⁹

In Indonesia, the process of workforce feminization took place in the 1970s and 1980s, during the emergence of large-scale factory-based export production.⁷⁰ Various studies have identified links between increased productivity and greater gender diversity in the workplace. A study conducted by the ILO in 2020, for example, showed that 77% of surveyed enterprises in Indonesia agreed that gender diversity helped enhance their business outcomes.⁷¹

Traditionally, many workers in the garment industry are internal migrants (many of them young and female).⁷² Nowadays, while internal migrants continue to comprise a significant percentage of the industry in some locations, many have since settled long-term, if not permanently, in the industrial regions in which they work.⁷³

Persistent violations that prevail in the Indonesian garment industry are in the areas of contracts, wages, overtime and health and safety. In its 2020 annual compliance report, ILO Better Works reports that 48% of their assessed factories did not comply with limits on the use of work agreements for a specific period. 50% of the workplace were also non-compliant with legal requirements for compensations, contract, OSH, and/or working time to non-production employed workers.⁷⁴ There is also a problem with overtime because excessive overtime happens regularly, especially during peak season. On the other hand, the Better Work report suggests that 24% of employers do not pay correctly for all overtime worked on a regular working day. The final important feature of the industry is the use of short-term contracts and outsourced workers on

67 Ibid.

68 Better Work. 2019. An Impact Evaluation of Better Work from a Gender Perspective. <https://betterwork.org/wp-content/uploads/2020/01/Discussion-Paper-30.pdf>

69 Phu Huynh. 2016. Assessing the gender pay gap in Asia's garment sector. ILO Asia-Pacific Working Paper Series. ILO. https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/documents/publication/wcms_466268.pdf

70 Better Work. 2019. An Impact Evaluation of Better Work from a Gender Perspective. <https://betterwork.org/wp-content/uploads/2020/01/Discussion-Paper-30.pdf>

71 ILO, 2020. Safe and Healthy Working Environments Free from Violence and Harassment. ILO. https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--safework/documents/publication/wcms_751832.pdf

72 Pangestu, M. and Hendytio, M. 1999. Survey Responses from Women Workers in Indonesia's Textile, Garment and Footwear Industries. World Bank Policy Research Working Paper No.1755. Washington: World Bank.

73 ILO and IFC, 2012. Indonesia Baseline Report: Worker Perspectives from the Factory and Beyond. Geneva: ILO.

74 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia. <https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

mainstream production lines. This practice has been the focus of considerable controversy in Indonesia for some years. According to the ADB, job tenure in Indonesia tends to be the shortest in the retail and trade sector, followed by the finance and manufacturing sectors.⁷⁵ Job insecurity also tends to be gendered. In the garment, textile and footwear industry, casualization was higher among female employees (8.1 %) compared to male employees (3.5 %) in 2016.⁷⁶

75 Allen, E. 2016. Analysis on trends and challenges in the Indonesian labor market. Manila: ADB.

76 Horne, R., & M. C. de Andrade, 2017. Gambaran beragam untuk sector garmen Indonesia. Bangkok: ILO.

5. INDUSTRIAL RELATIONS

As mentioned previously, the most recent and biggest development in Indonesian law was the enactment of Law Number 11 of 2020 on Job Creation. The law was enacted on 5 October 2020, amending 77 existing regulations across a wide range of sectors and industries, including the laws on energy and mining, plantations, telecommunications, healthcare, tourism, land and buildings and employment. The spirit of this amendment is to enhance the investment climate and the Ease of Doing Business in Indonesia. The central government is required to issue 49 implementing regulations from the Job Creation Law, and by February 2021, it has enacted 45 Government Regulations and 4 Presidential Regulations.

The elucidation part of Job Creation Law mentions its intention is to be a positive stimulus for the improvement and growth of the national economy that provides more jobs for the people and ultimately improves public welfare.⁷⁷ But, the law itself has not been received favourably by the workers and trade unions in Indonesia.⁷⁸ Despite the broad range of this law, the labour chapter became one the most talked-about parts and was widely criticized by trade unions, workers, and civil society in general.

Job Creation Law introduced a range of changes to Law Number 13 of 2003 on Manpower. Some of the notable changes are related to the regulation of fixed-term contracts and outsourcing, wage determination, dismissals, severance pay, leave, working time, and the use of foreign workers. The majority of these changes reduce existing workers protections from the previous law, such as the erasure of 2 years limitation of a fixed-term contract, the removal of provisions that limit the type of work that can be outsourced, and the longer possibility of overtime work.

Despite the fierce rejections from trade unions and workers, the government follow through with the law. In February 2021, 4 Government Regulations served as implementing regulations from the labour section in the Job Creation Law has also been enacted, namely: Government Regulation No. 34 of 2021 on Use of Foreign Workers; Government Regulation No. 35 of 2021 on Employment Contracts for Fixed Period, Transfer, Working Time, Working Relationship and Rest Time, and Termination of Employment; Government Regulation No. 36 of 2021 on Wages; and Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program.

Since the law was enacted, several trade unions in Indonesia has filed judicial review regarding the Job Creation Law to the Constitutional Court. Confederation of Indonesian Trade Unions (KSPI) and the Confederation of All Indonesian Trade Unions (KSPSI), for example, has filed a lawsuit in November 2020, stating that the law stripped many of the worker's rights, including minimum wages and severance payments.⁷⁹ The Confederation of All Indonesian Workers Union (KSBI) also submitted a plea to the Constitutional Court in

77 See: Elucidation of Law Number 11 of 2020 on Job Creation.

78 See: "Indonesian Union Reject Omnibus Bill", January 30, 2020,

<http://www.industrialunion.org/indonesia-industrial-affiliates-reject-omnibus-bill>.

"Labour Union Plans More Protest Against Omnibus Law to Prepare Legal Challenge, Jakarta Post, October 24, 2020,

<https://www.thejakartapost.com/news/2020/10/24/labor-union-plans-more-protests-against-omnibus-law-to-prepare-legal-challenge.html>;

"Labor Unions Plan Nationwide Strike Rejecting Omnibus Draft Bill", Tempo.co, September 28, 2020,

<https://en.tempo.co/read/1390878/labor-unions-plan-nationwide-strike-rejecting-omnibus-draft-bill>.

79 Detik.com. November 2, 2020. "KSPI-KSPSI Antarkan Surat Buruh Menggugat Omnibus Law ke MK".

<https://news.detik.com/berita/d-5237913/kspi-kspisi-antarkan-surat-buruh-menggugat-omnibus-law-ke-mk>;

Sindo News. April 21, 2021. "KSPI Demo Minta MK Batalkan UU Cipta Kerja".

<https://nasional.sindonews.com/read/394534/12/kspi-demo-minta-mk-batalkan-uu-cipta-kerja-1618211068>.

April 2021, arguing that the formation of Job Creation Law did not involve labour union and thus did not fulfil the principle of forming good legislation.⁸⁰

On 25 November 2021, the Constitutional Court decided that Law No. 11 of 2020 on Job Creation is conditionally in-constitutional due to the process of its creation being contrary to the principles of good legislation. However, this unconstitutional status is temporary. This status is subject to the condition that the Government must remedy the procedural flaws within two years. If this is done, the law will be constitutional.

In practice, the government keep reassuring that Law No. 11 of 2020 will continue to be in force as well as its implementing regulations since the Constitutional Court did not revoke this Law.⁸¹ But this decision creates potential uncertainties because it opens up the possibility that the substance of the Omnibus Law will be changed during this process, and the Court has also ordered the Government to stop making strategic decisions, which may deter it from implementing key measures mandated by this Law.⁸²

Besides the changes in the Manpower Law, Job Creation Law also contains provisions which changes other laws related with labour, such as: Law Number 24 of 2011 on the Social Security Agency, and Law Number 18 of 2017 on Protection of Indonesian Migrant Workers. The changes in Law Number 24 of 2011 on the Social Security Agency is one of the good development under Job Creation Law since it introduces unemployment insurance as the new type of social security program. Prior to the enactment of the Job Creation Law, Indonesia does not have an unemployment insurance scheme. Therefore, the only effort to protect the laid-off workers is through a severance pay system.

Under the unemployment insurance program, workers who experience termination of the employment relationship are entitled to obtain unemployment insurance. The implementation regulation for this program is Government Regulation Number 37 of 2021 on The Organization of The Unemployment Insurance Program. The unemployment insurance program will be organized by the social security agency for the manpower (BPJS Ketenagakerjaan) and the central government. The goal of the program is to maintain a decent living when workers lose their job.⁸³ The premium for unemployment insurance shall be paid by the Central Government⁸⁴, and the benefit of unemployment insurance will be in the form of cash, access to job information, and work training.⁸⁵ However, not all workers will be eligible for the program. The requirements and eligibility of the program is explained in the Box 1 below.

80 CNN Indonesia. November 6, 2020. "KSBSI Resmi Daftarkan Gugatan Uji Materi UU Cipta Kerja ke MK", <https://www.cnnindonesia.com/nasional/20201106201841-20-566969/ksbsi-resmi-daftarkan-gugatan-uji-materi-uu-cipta-kerja-ke-mk>; Detik.com. November 9, 2020. "Penggugat UU Cipta Kerja ke MK Bertambah, Kini Giliran KSBSI". <https://news.detik.com/berita/d-5247370/penggugat-uu-cipta-kerja-ke-mk-bertambah-kini-giliran-ksbsi>.

81 Fair Wear. Focus Group Discussion, December 2021/

82 HHP. 2020. Indonesia: What to expect after constitutional court decision on the Omnibus Law. https://insightplus.bakermckenzie.com/bm/antitrust-competition_1/indonesia-what-to-expect-after-constitutional-court-decision-on-the-omnibus-law#:~:text=On%2025%20November%202021%20the,procedural%20flaws%20within%20two%20years.

83 Article 46B, Law Number 11 of 2021 on Job Creation

84 Article 46C, Law Number 11 of 2021 on Job Creation

85 Article 46D, Law Number 11 of 2021 on Job Creation

Box 1. Requirements and Eligibility of Unemployment Insurance Program/Jaminan Kehilangan Pekerjaan (JKP)⁸⁶

In order to be deemed eligible for membership of the JKP program, workers must meet the following requirements:

1. Must be Indonesian citizens;
2. Must be below the age of 54 at the time of registration;
3. Must have a working relationship with the relevant employers; and
4. Must be registered as members of the following other social security programs:
 - a) For workers employed by large- and medium-scale enterprises: i) The National Health Security (Jaminan Kesehatan Nasional/JKN) program; ii) The Work Accident Insurance (Jaminan Kecelakaan Kerja - "JKK") program; iii) The Old-Age Benefit (Jaminan Hari Tua/JHT) program; iv) The Pension Insurance (Jaminan Pensiun/JP) program; and v) The Life Insurance (Jaminan Kematian - "JKM") program; or
 - b) For workers who are employed by small- and micro-scale enterprises: all of the above-listed programs, with the exception of the program outlined in point (iv) above.

JKP benefits can be enjoyed by workers (as JKP program members) whose employment relationships are terminated, provided that said terminations are not made for any of the following reasons: 1) Worker resignations; 2) Permanent disability; 3) Retirement; or 4) Death.

All employers (with the exception of micro-scale employers) should note that any failure to register their workers under the JKP program will result in their having to provide the following benefits to workers if they are terminated: 1) Cash payments, in accordance with the provisions elaborated upon in the above table; and 2) Work training.

Employers will also be required to provide cash payments to terminated workers if they fail to pay the relevant JKK and JKK program premiums for a period of more than three consecutive months and if terminations occur during such a period. Employers may then request that the BPJS Ketenagakerjaan reimburse said payments once the employers in question have settled the relevant payable premiums and fines. Said requests must be filed within three months of employers completing any cash benefit payments to the terminated workers in question.

86 Summarize from Government Regulation Number 37 of 2021. See also: Hukum Online, 2021, Regulatory Framework for the Unemployment Insurance Program Issued, <https://pro.hukumonline.com/a/lt6040928a9efce/regulatory-framework-for-the-unemployment-insurance-program-issued>

During the COVID-19 pandemic, the Indonesian government had issued several policies in relation to employment, among others: (1) Government Regulation in Lieu of Law (*Perppu*) Number 1 of 2020; (2) Minister of Manpower Circular Letter No. M/3/HK.04/III/2020; (3) Minister of Manpower Circular Letter No. M/6/HL.00.01/V/2020; (4) Minister of Health Decree No. HK.01.07/MENKES/328/2020; (5) Ministry of Manpower Circular Letter No. M/8/HK.04/V/2020; and (6) Ministry of Manpower Regulation Number 14 of 2020. Most of these policies are in line with ILO's four-pillar policy framework for responding to the COVID-19 pandemic, which consists of (1) stimulating the economy and employment; (2) supporting enterprises, jobs, and incomes; (3) protecting workers in the workplace; and (4) relying on social dialogue for a solution.

However, there is also some controversial policy, such as Minister of Manpower Regulation No. 2 of 2021 on the Implementation of Remuneration in Certain Labor-Intensive Industries During the Corona Virus Disease 2019 (COVID-19) Pandemic. This regulation permits companies within certain labour-intensive industries (one of which is the textile and garment industry) affected by the COVID-19 pandemic to agree with the workers to adjust the amount of the wages paid to workers along with its payment procedures. To this end, a company must enter into an agreement with the workers.

As a result, the regulation emphasizes the ability of a company to agree with its employees to reduce the wages for a certain period of time (until December 31, 2021). This is highly criticized by trade unions and workers since it is open the possibility of the company to reduce the wages even below the minimum wages and thus hurt the workers' rights.

In terms of compliance with international labour standards, Indonesia has ratified all the core ILO conventions but continues to struggle to comply with international standards regarding freedom of association and the right to collective bargaining. In addition, it also continues to struggle with the more general implementation of the framework of its industrial relations in a fair and effective way. On the ITUC Global Rights Index 2021, Indonesia was awarded a rating of five because it provides 'no guarantee of rights', which means that 'while the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices.'⁸⁷

ORGANISATION OF EMPLOYERS IN THE GARMENT SECTOR

In addition to APINDO (*Asosiasi Pengusaha Indonesia/The Indonesian Employers Association*), employers in the textile, garment and footwear sector are represented by API (*Asosiasi Pertekstilan Indonesia/The Indonesian Textile Association*) as the industry-level employer association. API was established in the 1960s as part of a country-wide attempt to form industry-level employers' associations, several of which pertained to the garment, textile and footwear sectors. It was consolidated in its current form in 1974 in the early years of the Suharto era and had branches throughout Java and also in some locations in Bali, West Nusa Tenggara and Sumatra.

87 ITUC. 2021. ITUC Global Rights Index. https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN-final.pdf

ORGANISATION OF TRADE UNIONS IN THE GARMENT SECTOR

The garment sector is relatively well-represented in the trade union movement. The sector was organised early with support from international allies and has remained a keystone in the Indonesian labour movement, even though its unions lack the strength and influence of their counterparts in the metals and chemicals sectors.

In general, the union density in Indonesia is considerably low. There is no recent data on this, but in 2017, it is stated that the trade union density stands at 6% of formal workers.⁸⁸ Ministry of Manpower stated that in 2017 there were an overall 7,000 trade unions and 2.7 million members. At the same time, the amount of formal workers in 2017 itself stands at 52 million workers.⁸⁹

The mass layoff caused by COVID-19 is suspected of causing the number of trade union members to continue to decrease. Serikat Pekerja Nasional (SPN), for example, stated that there is at least a 50,000 decrease in their membership due to the COVID-19 layoff.⁹⁰ This is, of course, leads to a reduction in the union power as well. This issue is exacerbated by the fragmentation in the trade unions, an issue that continues as a problem in Indonesia.⁹¹

Besides, the trade union in Indonesia are highly concentrated in terms of their geographic location. With the exception of sectors like mining and forestry, they are concentrated in a small number of industrial centres around the country, the most significant of which are located near the capital, Jakarta, around the East Javanese city of Surabaya, and in the industrial cities of Medan and Batam on the island of Sumatra. Union membership density is also concentrated in the manufacturing, education and public administration sectors.⁹²

COLLECTIVE BARGAINING AGREEMENT COVERAGE IN THE COUNTRY

There has been a significant increase in the number of registered collective labour agreements in Indonesia compared to the previous year. In 2019, the Minister of Manpower stated that there are 14,423 companies in Indonesia that have a collective labour agreement. This is not a majority (the Indonesian Employer Association said that only 30% of companies have Collective Labour Agreement),⁹³ but it is growing from the number in 2009 and 2017. The low number of collective labour agreements is correlated with the low union density since only companies that have registered trade unions can make collective labour agreements.

In manufacturing, collective bargaining agreements are generally found in large and medium enterprises, and within this category predominantly in firms that are integrated into high-profile global supply chains. Where they exist, many collective bargaining agreements continue to be of poor quality. In many cases, they have simply restated conditions provided for in the national regulatory framework.

88 ITUC. 2017. Indonesia – A Trade Union Focus on The SDG. https://www.ituc-csi.org/IMG/pdf/hlpf2017-countryprofile-indonesia_en.pdf

89 CNN Indonesia. 2018. “Menaker: Jumlah Serikat Pekerja Menurun Signifikan”, <https://www.cnnindonesia.com/nasional/20180328143824-20-286542/menaker-jumlah-serikat-pekerja-menurun-signifikan>

90 Interview with TURC.

91 Max Lane. 2019. An Introduction to the Politics of the Indonesian Union Movement. Singapore: ISEAS Publishing/

92 Allen, E., & R. Kylloh. 2016. Labour reforms in Indonesia: An agenda for more significant equity and efficiency. https://www.ictu.ie/download/pdf/labour_reforms_in_indonesia_an_agenda_for_greater_equity_and_efficiency_november2016.pdf

93 Bisnis.com. 2019. Baru 30% Perusahaan di Indonesia yang Punya Perjanjian Kerja Bersama, <https://ekonomi.bisnis.com/read/20190205/12/885647/ketenagakerjaan-baru-30-perusahaan-di-indonesia-yang-punya-perjanjian-kerja-bersama>

COLLECTIVE BARGAINING AGREEMENT COVERAGE IN THE GARMENT INDUSTRY

There are no reliable official statistics available on collective bargaining agreement coverage in the garment industry; however, it can be assumed to be low given the predominance of small and medium enterprises. Data provided by key unions in the garment and textile industry suggests that this is the case even in unionised factories.⁹⁴

As mentioned previously, only when there is a registered trade union within the company, the company may be able to have a collective labour agreement. But the negotiation of collective labour agreements is complicated by the existence of multiple unions in some workplaces, which makes it difficult for any single union to meet the criteria to represent workers in collective bargaining. There are also significant numbers of employers that remain reluctant to enter into a collective labour agreement, relying solely on the company regulations, which are unilaterally determined by management.

Other issues in relation to this are the implementations of the collective labour agreement. The 2020 ILO Better Work Indonesia annual report found that 18% of factories in its program were non-compliant with collective bargaining. Even more, there is even an issue of collective labour agreement with provisions less favourable to workers than the national law.⁹⁵

As an effort to tackle this issue, there is an initiative of a multi-company collective bargaining agreement (MCCBA). CNV Internationaal led this initiative, working with Indonesian trade union partners Garteks and KSBSI.⁹⁶ The aim of the MCCBAs is to target production sites within a defined geographical area, is to establish a levelled playing field based on the respect of core labour rights and where independent unions operate freely. Currently, there are three established MCCBAs in the garment sector, namely Subang, Skoci, and Cianjur.⁹⁷ A major focus of the agreement is to ensure compliance with existing Indonesian legislation on labour conditions.

Another effort has also been made by the global union, industrial, with its global framework agreements. Global Framework Agreements (GFAs), also sometimes referred to as International Framework Agreements (IFAs), are negotiated between multinational corporations and global unions. They generally affirm core labour standards on freedom of association and collective bargaining, and some also secure better working conditions, wages and safety standards. Even though the effectiveness of the agreements varies, GFA can be an instrumental tool to resolve conflicts and strengthen workers' voices.⁹⁸

From the employer side, APINDO stated that they have a regular agenda of social dialogue training and assistance in the making of collective bargaining agreements. Recently in 2021, APINDO conducted training in collaboration with KSBSI in the garment and textile companies in Yogyakarta dan Central Java.⁹⁹

94 Interview with GARTEKS.

95 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia.

<https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

96 CNV Internationaal. 2017. First Multi-Company Collective Bargaining Agreement for Indonesian Textile Sector.

<https://www.cnvinternationaal.nl/en/our-work/news/2017/august/first-multi-company-collective-bargaining-agreement-for-indonesian-textile-sector>

97 Scanteam Analyst and Advisers. 2020. End Term Evaluation of Strategic Partnership for Garment Supply Chain Transformation (2016-2020).

98 IndustriALL. 2020. Using global framework agreements to organize.

<https://www.industriall-union.org/using-global-framework-agreements-to-organize>

99 Interview with APINDO.

LOCAL GRIEVANCE MECHANISM FOR WORKERS

There are no changes in the grievance mechanism for workers under Job Creation Law. As previously regulated in the Law Number 13 of 2003 on Manpower and Law Number 2 of 2004 on Industrial Relations Disputes Settlement, the local grievance mechanism in Indonesia focuses on bipartite negotiations at the firm level, supported by higher-level processes including arbitration or conciliation, including formal mediation. Unions and employers can ultimately recourse to an industrial relations court presided over by a magistrate and two ad hoc judges, one nominated by employers and the other nominated by unions. Parties to the dispute may access the industrial court 30 days after other processes have failed. If either party is dissatisfied with the court's ruling, appeals against rights and termination disputes can be brought before the Supreme Court.

Workers and trade unions often do not use the court system. Reasons nominated for avoiding the courts included the lengthiness, expense and complexity of the process, as well the distance between the workplace and the court, and a sense that judgments tended to favour employers. Holding out for an industrial court settlement thus offers employers a very viable strategy of containment in their negotiations with union officials, who are only too aware of the obstacles imposed by a court case.¹⁰⁰

Correspondingly, workers sometimes used alternative dispute resolution to resolve their issue. For example, when garment workers feel that their rights are being violated, or when others see this happen; workers, trade unions, and others can file a complaint through Fair Wear. In the economic zone of Cakung, the trade union FBLP and Perempuan Mahardika set up a complaints office for harassment and gender-based violence complaints. As factories are moving from Cakung to Central Java, the organisations are setting up a similar complaint system in Central Java.

The transition from Law Number 13 of 2003 towards Law Number 11 of 2020 has the potential to cause an increasing number of industrial relation disputes.¹⁰¹ This is due to the knowledge gap regarding the implementation of the Job Creation Law, especially after Constitutional Court decided that Law No. 11 of 2020 on Job Creation is conditionally in-constitutional.

STATE ROLE IN INDUSTRIAL RELATIONS

The state's role in the industrial relations in Indonesia is divided between the Ministry of Manpower, which has the responsibility to develop legal and policy framework at the national level, and the local manpower offices, which have responsibility for on-the-ground engagement with companies and unions on the matters of industrial relations in their area. If the company and workers fail to resolve the issue in a bipartite manner, the matters can be resolved through mediation within the local manpower office. If the matters still cannot be resolved through these processes, then they can be taken to the industrial relations court.

One important authority of the local manpower office is doing labour inspection through their labour inspector. Labour inspection is a public function of labour administration that ensures the application of labour legislation in the workplace. In the world of work, labour inspection is the most important instrument

100 Solidarity Center, 2010. Core Labor Rights in Indonesia 2010: A Survey of Violations in the Formal Sector. Jakarta: Solidarity Center.

101 Bisnis.com, 2020, "Gugatan PHI Diproyeksi Meningkat, Pemulihan Pasar Kerja Perlu Transisi ", <https://ekonomi.bisnis.com/read/20201213/12/1330254/gugatan-phi-diproyeksi-meningkat-pemulihan-pasar-kerja-perlu-transisi>

of state presence and intervention to design, stimulate, and contribute to the development of a culture of prevention covering all aspects potentially under its purview: industrial relations, wag, general conditions of work, occupational safety and health, and issues related to employment and social security.¹⁰²

However, in practice, the enforcement of labour inspection in Indonesia is lacking due to the limitation of labour inspectors and inadequate sanctions. In 2020, the number of labour inspectors throughout the nation will be only 1.686. In contrast, the number of companies based on *Wajib Laport Ketenagakerjaan Perusahaan (WLKP)* has reached 343.000 companies, with a total workforce of 9.5 million people.¹⁰³

In response to the shortage of labour inspectors, there is an initiative called “Labour Norms Expert/Cadre (KNK).” KNK is a personnel/member of staff within a factory who is trained about labour norms to assist employers in conducting factory self-assessment as an effort to control employment risks and to improve the factory’s labour law compliance. The KNK was established through the Manpower Ministerial Decree No. 257/2014, which regulates that it is mandatory for each factory with more than 100 workers to have KNK. A lot of garments industries are participating in the KNK program.¹⁰⁴

THE MECHANISM FOR SOCIAL DIALOGUE (NATIONAL/SECTORAL)

Indonesia has a series of social dialogue that is provided by the law and has not been changed by Job Creation Law, such as: a) bipartite cooperation forum, that refer to a communication and consultation forum on matters pertaining to industrial relations in an enterprise whose members consist of entrepreneurs and trade/ labour unions that have been registered at a government agency responsible for manpower affairs or workers/ labourers’ representatives; and b) tripartite cooperation institute, that refers to communication, consultation and deliberation forum on manpower issues (problems) whose members consist of representatives from entrepreneurs’ organizations, workers/ labourers’ organizations and the government.

In recent years there has been increasing emphasis on plant-level bipartite consultative committees tasked with improving communication between workers and management. There are also tripartite consultative committees at the local, provincial and national levels, which are tasked with sharing information, engaging in dialogue and reaching joint decisions pertaining to industrial relations as well as broader socio-economic issues. Some of these committees are sector-specific.

Due to the erasure of sectoral minimum wage in the Job Creation Law, many are worried it will also weaken the sectoral social dialogue. The shortcomings of government-mandated bipartite and tripartite structures have prompted the establishment of a range of private regulatory initiatives, including ILO Better Work Indonesia, the Freedom of Association Protocol, and the Asia Floor Wage, all of which seek to leverage international brands’ concerns about the reputational risk to improve conditions in Indonesia’s garment factories.

102 ILO. 2017. Factsheet on Labour Inspection in Indonesia.

https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--ilo-jakarta/documents/publication/wcms_549704.pdf

103 Tempo.co. March 2021. “Menaker: Pelanggaran Norma Ketenagakerjaan Terus Turun”,

<https://nasional.tempo.co/read/1445927/menaker-pelanggaran-norma-ketenagakerjaan-terus-turun#:~:text=Hingga%20triwulan%20IV%20tahun%202020,seluruh%20Indonesia%20sebanyak%201.686%20orang>

104 ILO. 2017. Factsheet on Labour Inspection in Indonesia.

https://www.ilo.org/wcmsp5/groups/public/--asia/--ro-bangkok/--ilo-jakarta/documents/publication/wcms_549704.pdf

6. IMPLEMENTATION OF THE FAIR WEAR CODE OF LABOUR PRACTICES

In this chapter, the implementation of every part of the Fair Wear Code of Labour Practices is examined by looking at official statistics on compliance (where available), laws and regulations, as well as different stakeholders' opinions and analyses on implementation. Each section starts with quoting the Fair Wear Code of Labour Practices. Text in italics is quoted from relevant laws.

6.1. EMPLOYMENT IS FREELY CHOSEN

“There shall be no use of forced, including bonded or prison, labour”.
(ILO Conventions 29 and 105)



Indonesia has signed both of the relevant ILO Conventions regarding forced labour. There are also no major deficits in the regulation of forced labour. However, as is the case with all other aspects of labour law, the inspection regime only applies to formal sector workplaces, and even there it, is seriously inadequate.

Official statistics on compliance

There are no government statistics available on compliance with this standard. However, Better Work Indonesia's 2020 annual report found no instance of non-compliance regarding forced labour within the factories they assessed.¹⁰⁵

Laws and regulations

Indonesia has ratified both ILO Convention Number 29 on Forced Labour and ILO Convention Number 105 on the Abolition of Forced Labour. In general, Law Number 13 of 2003 of Manpower jo. Law Number 11 of 2020 on Job Creation and its implementing regulations has also been accommodated the aspect of non-forced labour within its provisions. For example, Article 31 of the law states that any manpower should have equal rights and opportunities to choose a job, get a job, or move to another job and earn a decent income irrespective of whether they are employed at home or abroad. The provisions in Law Number 13 of 2003 on Manpower regarding 30 days' notice prior to workers resigning (unless they are bound by ikatan dinas, or a contract to work for the enterprise for a certain period of time in return for the training provided to them) is also still applicable under its amendment in the Job Creation Law.

105 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia.

<https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

Stakeholders' opinion and analysis on implementation

The stakeholders agree that forced labour is not an identifiable problem in the formal sector and thus the garment industry. However, the trade unionist stated that there is always a possibility of this issue outside the main factory, as in for work being outsourced towards the third party or a home-worker.

The trade union also mention excessive working hours, which might not be entirely up to the workers. It must be noted that according to the ILO, the imposition of overtime only constitutes forced labour if it exceeds the limits permitted by national legislation or collective bargaining. However, it does note that workers may be vulnerable to undue pressure in cases where a decision not to comply could result in a failure to earn the minimum wage or maintain their jobs.

Workers complaints to fair wear, related to 'employment is freely chosen'

Fair Wear received no complaints related to this labour standard in the last three years.

6.2. THERE IS NO DISCRIMINATION IN EMPLOYMENT

“In recruitment, wage policy, admittance to training programs, employee promotion policy, policies of employment termination, retirement, and any other aspect of the employment relationship shall be based on the principle of equal opportunities, regardless of race, colour, sex, religion, political affiliation, union membership, nationality, social origin, deficiencies, or handicaps”. (ILO Conventions 100 and 111)



Indonesia has signed both ILO Conventions No. 100 on Equal Remuneration and ILO Convention No. 111 on Discrimination in Employment and Occupation. The consideration of Law Number 13 of 2003 on Manpower stated that protections of workers is the protection of workers is intended to safeguard the fundamental rights of workers and to secure the implementation of equal opportunity and equal treatment without discrimination on whatever basis. Therefore, discrimination in employment on the basis of race, colour, sex, religion, political affiliation, union membership, nationality, social origin, deficiencies or handicaps is illegal.

Gender discrimination is not widely reported in terms of recruitment to the garment factories; however, many occupations are defined along gender lines. In addition, the absence of a supportive workplace culture has a measurable effect on women's decisions about whether to engage in paid work when their children are young since Indonesia has poor availability of childcare facilities.¹⁰⁶

Indonesia also has affirmative action towards people with disability, requiring the company to hire one person with disabilities for every 100 workers, the employment rate of people with disabilities remains very low.

¹⁰⁶ See M. Ford, and Nurchayati. In press. Indonesia: Middle-Class Complicity and State Failure to Provide Care. In Baird, M. Ford, M. and Hill, E. (eds). Women, Work and Care in the Asia-Pacific. Abingdon and New York: Routledge.

Official statistics on compliance

There is no official government statistic available on compliance with this standard. According to international standards, Indonesia's Gender Development Index (GDI) in 2019 is 0.940, slightly higher than its 2015's GDI.¹⁰⁷ On the contrary, the Indonesian Gender Pay Gap Index is declining in 2021, scored 0.6888, reducing 0.013 points from the previous year index, making Indonesia in the rank of 101 from 156 countries.¹⁰⁸

Laws and regulations

Law Number 13 of 2003 in Manpower stated in its consideration that protections of workers are the protection of workers is intended to safeguard the fundamental rights of workers and to secure the implementation of equal opportunity and equal treatment without discrimination on whatever basis. Article 5 of the Law assure that any manpower shall have the same opportunity to get a job without discrimination, and Article 6 states that every worker has the right to receive equal treatment without discrimination from their employer. Furthermore, Article 32 regarding job placement mention that job placement shall be carried out based on transparency, free, objectivity, fairness and equal opportunity without discrimination.

In terms of protection towards female workers, Article 81 of the Law assured that female employees are entitled to 3 months paid maternity leave, divided into 1.5 months before giving birth and 1.5 months after. Women are also eligible for leave on the first and second day of their period in accordance with Article 82, even though the implementation varied. It is also illegal to female fire workers on the grounds of pregnancy, birth, miscarriage, or breastfeeding. Women must also be provided with facilities and time to breastfeed if needed during work time under the law. In addition, Ministerial Decision No.224/2003 includes provisions for well-lit separate bathroom facilities for men and women.

Law Number 8 of 2016 on Person with Disabilities require companies to employ people with disability in order to push inclusion towards them—the Law requires the company to hire one person with disabilities for every 100 workers. However, the Better Work annual compliance report on 2020 mentions that the highest non-compliance rate is in this area since only 28% of Better Work-registered factories complied with this policy in 2019.¹⁰⁹

Furthermore, Law Number 13 of 2003 also required employers to provide adequate opportunity and space for employees to carry out their religious duties. Employers are also not allowed to dismiss an employee for carrying out their religious duty.

Stakeholders' opinion and analysis on implementation

In Indonesia, the issue of discrimination in employment is usually referred to as gender discrimination. When the stakeholders are asked further about another type of discrimination, most of them are unlikely able to identify other identity-based forms of discrimination in employment.

107 UNDP. 2020. Human Development Report 2020: Indonesia. <http://hdr.undp.org/sites/default/files/Country-Profiles/IDN.pdf>

108 World Economic Forum. 2021. Global Gender Gap Report 2021. https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

109 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia. <https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

Most stakeholders believe that discrimination (especially based on gender) is not a pressing issue in the garment industry nowadays, even though it used to be an issue years earlier. According to stakeholders, women are not overtly discriminated against in promotions procedures, though observational data suggests that they are under-represented in supervisory positions.¹¹⁰

The trade unions stakeholder assume that the decreasing discrimination issue is in line with the better representations of the union in the factory. GARTEKS, for example, have several gender equality programs within garment company. They are pushing the gender issue to be included in the collective bargaining agreement. However, other stakeholders notice that women's issues are seldom at the top of the trade union agenda, due to the under-representation of women within trade union itself.

One pressing issue on the discrimination is the ongoing problem related to trade union activities. Trade union stakeholders mention that there are plenty of discriminations against trade union officials, where the managements make it more difficult for them to move up the career ladder.

Another greater concern regarding discrimination is the failure of companies to meet their obligations regarding women's reproductive health and childrearing. Stakeholders reported that few workplaces meet the requirements needed to provide adequate facilities for lactating women or onsite childcare. Stakeholders report that female workers continue to have difficulty accessing their menstruation and maternity leave. Though clearly forbidden by the law, in some cases, it is reportedly common for pregnant women to be sacked.¹¹¹

Workers complaints to fair wear, related to 'there is no discrimination in employment'

From 2018-2021, Fair Wear has received 5 complaints related with discrimination. One of the complaints is because the working contract was terminated due to maternity sickness and consequent absence from work, while other is discrimination related with trade union activities, as has been mentioned above.

6.3. NO EXPLOITATION OF CHILD LABOUR

“There shall be no use of child labour. The age for admission to employment shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years.” (ILO Convention 138)

“There shall be no forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour. [...] Children [under the age of 18] shall not perform work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals”. (ILO Convention 182)



110 Fair Wear. 2019. Indonesia Country Study 2018. <https://api.fairwear.org/wp-content/uploads/2019/12/2019-Indonesia-Country-Study-pdf>

111 Fair Wear. 2019. Indonesia Country Study 2018. <https://api.fairwear.org/wp-content/uploads/2019/12/2019-Indonesia-Country-Study-pdf>

Indonesia has signed ILO Conventions 138 and 182, and under Indonesian law, children are permitted to work for a maximum of three hours per day under conditions that do not interfere with their schooling or their physical, mental or moral development. Child labour is not common in Indonesia's formal sector, though children may be employed in the home industry. However, it must be noted that, as in other areas, Indonesia has little capacity to monitor adherence to these requirements.

Official statistics on compliance

There is no official government statistic available on compliance with this standard. A Better Work compliance report in 2020 stated that they found no evidence of child labourers in the company that they assess. However, they also mention that in some factories, there was a lack of non-functioning age verification systems.¹¹²

Laws and regulations

Law No.13/2003 forbids the employment of children except in very particular circumstances. The circumstances are applicable for children between the age of 13 and 15 that may undertake light work as long as it does not interfere with their physical, mental or social health. In such cases, the employer must have written permission from a parent or guardian and a work contract between the employer and the parent or guardian, and work may last for a maximum of three hours of daytime at a time that does not interfere with the child's schooling. If work takes place in a workplace that employs adults, a separate workspace must be provided. A formal work contract is not required if the child is employed in a family business. Children aged over 14 may also undertake work experience in order to develop a talent or hobby.

Stakeholders' opinion and analysis on implementation

Interview with stakeholders confirms that child labour is not a concern in the garment factories. However, they acknowledge the possibility that children may be working in the home industries due to lack of oversight. Another issue is that there are a possibility of workers and/or agencies falsifying document in order for them to seek employment even before they turn 18 years old. This can be a problem because some factories have lack and/or non-functioning age verification systems, as previously mentioned in the Better Work report.

Workers complaints to fair wear, related to 'no exploitation of child labour'

Fair Wear received no complaints related to this labour standard in the last three years.

112 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia.

<https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

6.4. FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING

“The right of all workers to form and join trade unions and bargain collectively shall be recognised.” (ILO Conventions 87 and 98) “Workers’ representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to carry out their representation functions”. (ILO Convention 135 and Recommendation 143)



Indonesia has made significant advances on freedom of association since the 1998 fall of the New Order regime through the enactment of Law Number 21 of 2000 concerning the Trade Union. Indonesia also has ratified ILO Convention Number 87 on Freedom of Association and Protection of the Right to Organise and ILO Convention Number 98 on Right to Organise and Collective Bargaining, though it has yet to sign Convention Number 135 on Workers’ Representative.

Indonesian labour law actually provides some of the strongest guarantees for collective labour rights.¹¹³ At the same time, trade unionists continue to be confronted by numerous difficulties in trying to exercise their rights, many of which stem from the systemic failure of state institutions to uphold the law. This is exacerbated by the trade union density, which remains very low.

With the current Job Creation Law regime, workers need to be aware that trade unions and collective bargaining have become more important than ever. This is because, after Job Creation Law, there will be much important labour relation matters that need to be agreed on through the individual work agreements, company regulations, and collective work agreement. Among these documents, the one that most likely protects the workers’ interest is the collective work agreement. Unfortunately, physical restrictions as a result of the COVID-19 pandemic makes it even harder to conduct an effective social dialogue.

Official statistics on compliance

There are no official statistics regarding compliance on freedom of association and the right to collective bargaining. In 2021, OECD issued a document showing the main indicators and characteristics of collective bargaining in Indonesia for 2019 or the latest year available. It shows that the trade union density is 7% (based on data in 2012), while the percentage of employees with the right of bargain is 10% (based on 2008 data). OECD report also noted that there is no data at all on the employer organisation density.¹¹⁴

Laws and regulations

The main regulation concerning trade unions in Indonesia is Law Number 21 of 2000 on Trade Union. Based on the law, as few as ten workers can form a union, and multiple unions are permitted to operate in a single workplace. The law also allows for multiple union federations and confederations and permits enter-

¹¹³ World Bank. 2019. Doing Business in 2019, Creating Jobs, IBRD/the World Bank, Washington.

¹¹⁴ OECD and AIAS. 2021. Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts, OECD Publishing, Paris, <https://www.oecd.org/employment/collective-bargaining-database-Indonesia.pdf>

prise-level unions to affiliate with any union federation or confederation at the regional or national level, marking a radical departure from the single-union model that had characterised the New Order. The trade union law also forbids anti-union activities such as intimidation, campaigning against the formation of a union, termination or temporary suspension of employment, demotion or transfer and withholding or reducing payment. The administrative requirements for trade unions are outlined in Ministerial Decision No.187/2004 on Trade Union Dues and Membership.

The right to engage in collective bargaining is also guaranteed under Law No.13/2003. If there is only one labour union in a factory, this union has the right to represent workers in negotiating the collective bargaining agreement, provided that more than 50% of the workforces are union members. If less than 50% of workers are union members, a vote is held to determine whether the union can represent the workers in collective bargaining. The vote is organized by a committee comprised of union officials and representatives of non-unionized workers and is witnessed by a government official responsible for manpower affairs and the employer.

In factories with multiple unions, the way to do collective bargaining in Law. Number 13 of 2003 is changed with Constitutional Court Decision No.115/PUU-VII/2009 in 2010. The decision stated that a maximum of three unions or a group of unions, each representing at least 10% of all workers in the enterprise, can form the negotiating team with members determined in proportion to the number of members in each union.

There can only be one Collective Bargaining Agreement (CBA) in an enterprise, and it applies to all workers. A CBA should only include terms that are at least as favourable to workers as the terms and conditions required by national law. If a CBA contains provisions that run counter to national law, those provisions are considered null and void, and national requirements apply. A CBA is valid for two years, but this can be extended for up to one additional year based on a written agreement between the employer and the unions. CBA negotiations may be started as early as three months prior to the expiration of an existing agreement. If the negotiations fail to result in an agreement, the existing CBA remains valid for a maximum of one additional year. The implementing regulations to refer for this process is Minister of Manpower Regulation Number 28 of 2014 regarding Procedure for Making and Approval of Company Regulations and the Making and Registration of Collective Bargaining Agreement.

While the right to strike is guaranteed under Law Number 13 of 2003 on Manpower, in general, seven days notice must be provided, mentioning the intention and reason to strike. Under Ministerial Decision No.232/2003 on the Results of Illegal Strikes, strikes are only permitted after the failure of negotiations, which is defined as the failure of the employer to respond to two written notifications from the union over a period of 14 days. Strikes that do not meet these requirements are treated as a failure to attend work. Workers may be prevented from striking in the vicinity of the company if this requirement is not followed. This regulation is problematic, as employers were usually reluctant to acknowledge that there was a failure of negotiation, resulting in strikes that were considered illegal. Besides, Ministerial Decision No. 620/2012 on National Vital Objects in Industry restricts the capacity of workers to strike within industrial parks that have been classified as National Vital Objects, which severely limits the potential impact of strikes.

Stakeholders' opinion and analysis on implementation

Stakeholders mention that it is less common now for employers to prevent workers from establishing a union, especially in tier-one garment factories, as well as multi-national companies that have relationships

with international brands. However, the trade union stakeholders reported that in comparison with the shoe industry, the freedom of association and collective bargaining in the garment industry remain weaker. The stakeholder assumes that one of the reasons for this is because of seasonal export contracts, which are common in the garment industry. Due to the seasonal export contract, many garment companies prefer to employ workers on a contract basis continuously, a practice that is actually prohibited under Indonesian labour law. The fear of violating the law caused companies to see trade unions as a threat instead of a partner in the industry.

Based on the trade union stakeholder, when textile and garment employers became aware of workers attempting to form a trade union, the union leaders were immediately demoted and refused approval for their overtime. It is not easy to overcome anti-union discrimination as authorities are slow in taking action against employers violating labour laws.

An even more common issue is the reluctance of management to negotiate with unions where they exist. Stakeholders also acknowledged, however, that in some cases, many workers, including union members, may not see the need to engage in collective bargaining. Another barrier to effective negotiation is multiple trade unionism, even where all of the unions are bona fide, as management can play unions off against one another. There were also reports of cases where employers had interfered with unions' right to strike.

The pandemic also has dire consequences towards freedom of association and collective bargaining. First, the trade union stakeholders reported the decreasing number of members due to layoffs throughout the pandemic. GARTEKS, for example, reported that there is a reduction of at least 20.000 people in their organisation. Second, there are companies that postpone the collective bargaining schedule, as well as refuse dialogue with workers due to pandemics. The trade union mention that they generally prioritize the face-to-face meeting while doing a social dialogue because it is more effective, but there are restrictions from the companies to do that on the grounds of the COVID-19 safety issue. The difficulty to hold social dialogue during a pandemic is also justified by the employee and government stakeholders.

In a way, the lack of social dialogue held during the pandemic is also affecting the socialization of the labour law changes due to the enactment of the Job Creation Law. As mentioned previously, the Job Creation Law consists of long and complicated new rules, which further regulated in several implementing regulations. The unique model of "omnibus law", which is adopted in the Job Creation Law is a new model which is not yet familiar for many Indonesian. Therefore, there are still plenty of questions and debates remains about the content of the Job Creation Law. The lack of socialization of the law then leads to a much different understanding of the provisions, especially from the different perspectives of workers and companies, and in the long run, may cause industrial relations disputes.

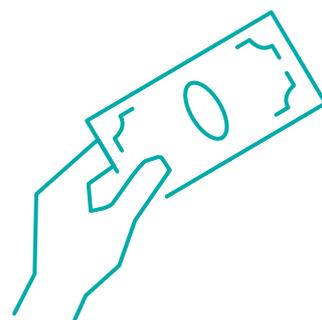
Aside from Job Creation Law, the Indonesian government also issued numerous policies to mitigate the employment crisis caused by the COVID-19 pandemic. Interestingly, most of these policies are using individual agreement instead of collective agreement to agree on matters related to changes in working conditions/ rights due to the COVID-19 pandemic, such as shown in Circular Letter No. M/6/HI.00.01/V/2020 regarding the Religious Day Allowance and Regulation of the Minister of Manpower Number 2 of 2021 concerning the Implementation of Wages in Certain Labour-Intensive Industries during the COVID-19 Pandemic.

Workers complaints to fair wear, related to 'freedom of association and the right to collective bargaining'

During 2018-2021, Fair Wear received five complaints regarding freedom of association and the rights to collective bargaining. Some of the cases involved the dismissal of trade unionist, while other case is concerning the company refusal of the establishment of trade union in the company. Fair Wear is actively working to remediate the situation.

6.5. PAYMENT OF A LIVING WAGE

“Wages and benefits paid for a standard working week shall meet at least legal or industry minimum standards and always be sufficient to meet basic needs of workers and their families and to provide some discretionary income” (ILO Conventions 26 and 131, the Universal Declaration of Human Rights, art 23(3) and art 25(1))”.



“Deductions from wages for disciplinary measures shall not be permitted nor shall any deductions from wages not provided for by national law be permitted. Deductions shall never constitute an amount that will lead the employee to receive less than the minimum wage. Employees shall be adequately and clearly informed about the specifications of their wages including wage rates and pay period”.

The minimum wage setting in Indonesia has undergone substantial political and regulatory changes in the past decades. Authority for minimum wage setting was devolved from the central government to the provincial-level governors in the year 2000, and from 2004 tripartite wage councils were formed as advisory bodies to the governors.¹¹⁵ Until late 2015, minimum wages were determined through an annual process led by local tripartite wage boards, which estimated the income needed for workers to achieve a ‘minimum decent standard of living for a particular province or district. Their recommendations were put first to the mayor or local district head and then signed off on by the governor. In some areas, provincial minimum wages were set instead of district wages. In a context where enterprise-based collective bargaining is weak, these negotiations around the minimum wage were very important industrially.¹¹⁶ They also created significant political space for unions at the local level.

However, in 2015, Government Regulation No. 78/2015 on Wage (GR 78/2015) effectively decentralized wage setting by mandating the calculating wage formula, which is a calculation for minimum wages as being the

¹¹⁵ Petra Mahy, 2021. Indonesia’s Omnibus Law on Job Creation: Reducing labour Protection in a Time of Covid-19, Working Paper No. 23, Labour, Equality and Human Rights (LEAH) Research Group, Monash University.

¹¹⁶ ILO. 2015. Labour and Social Trends in Indonesia 2014–2015: Strengthening Competitiveness and Productivity through Decent Work. Jakarta: ILO.

current year's minimum wage plus national inflation and GDP growth.¹¹⁷ More than 35,000 workers demonstrated in Jakarta on 30 October 2015 to protest the regulation. Under pressure from labour, governors in some provinces initially set wages higher than the formulated amount allowed. The Ministry of Manpower reported that in setting the minimum wages for 2016, 17 provinces did not conform to the new wage regulations. In October 2017, ahead of the 2018 minimum wage setting, the Minister of Manpower ensured greater compliance by issuing a circular reminding governor of their obligation to set the minimum wages based on the 2015 government regulation.¹¹⁸

Recently, the enactment of the Job Creation Law also changed several important articles regarding wages from Law Number 13 of 2003. Many of these changes are basically upgrading the provisions on GR 78/2015 to the status of Law. One of the key changes on minimum wages that caused concern is the abolition of Article 89 of Manpower Law which states that “the establishment of minimum wages shall be directed towards meeting the need for decent living (kebutuhan hidup layak/KHL)”.¹¹⁹ Instead, there is a new Article 88D which stipulates that: (1) the minimum wage shall be calculated by using the minimum wage formula. (2) the minimum wage calculation formula shall contain economic growth or inflation variables. In other words, the decent living criteria has been removed in the Job Creation Law.

The formula for calculating the Minimum Wage has also changed in line with the issuance of Government Regulation (GR) Number 36 of 2021 concerning Wages which is a derivative rule of Law Number 11 of 2020 on Job Creation. In Government Regulation No. 36/2021 on Wages, the Minimum determination Wage is based on economy and employment conditions by taking into account upper and lower limits of the minimum wage.

Given that $UM(t)$ is the current minimum wage and $UM(t+1)$ is the calculation of minimum wage for next year, the formula is as follows:

$$\text{Upper Limit } UM(t) = \frac{\text{Average consumption per capita}_{(t)} \times \text{Average number of member in households}_{(t)}}{\text{Average number of member in households who are working}_{(t)}}$$

$$\text{Lower Limit } UM(t) = \text{Upper Limit } UM(t) \times 50\%$$

$$UM(t+1) = \left\{ \text{Max}(\text{Growth}_{(t)}, \text{Inflation}_{(t)}) \times \left[\frac{\text{Upper Limit}_{(t)} - UM(t)}{\text{Upper Limit}_{(t)} - \text{Lower Limit}_{(t)}} \right] \times UM(t) \right\}$$

The economic growth and inflation above refer to the rate at provincial level.

2022 minimum wage is the first minimum wage calculated with this formula. The formula determined a minimum wage increase of 1.09% for 2022, an increase that is being heavily contested by the labour movement since it is significantly lower than the average increase from previous years.

117 See: Government Regulation No. 78/2015 on Wages, Article 44.

118 Fair Wear. 2019. Indonesia Country Study 2018. <https://api.fairwear.org/wp-content/uploads/2019/12/2019-Indonesia-Country-Study-.pdf>

119 According to Minister of Manpower Regulation Number 21/2016 on Decent Living Needs, KHL referred as the standard requirement for a single worker to be able to live decently in 1 month.

Table 4: 2022 provincial minimum wages for 5 provinces that produce garment and textile¹²⁰

No.	Province	Minimum Wages
1	DKI Jakarta	IDR 4.453.936,536
2	West Java	IDR 1.841.487,31
3	Central Java	IDR 1.812.936,23
4	Yogyakarta	IDR 1.840.915,53
5	Banten	IDR 2.501.203,11

Table 5: Legal minimum wages in the top 10 garment producing regions in 2022

No.	Garment Producing Regions	Minimum Wages
1	Kota Tangerang	IDR 4.285.798,90
2	Kabupaten Tangerang	IDR 4.230.792,65
3	Kabupaten Semarang	IDR 2.311.254,15
4	Bantul	IDR 1.916.848,00
5	Karawang	IDR 4.798.312,00
6	Cimahi	IDR 3.272.668,50
7	Kabupaten Bandung	IDR 3.241.929,67
8	Sidoarjo	IDR 4.368.581,85
9	Kabupaten Bogor	IDR 4.217.206,00
10	Kabupaten Serang	IDR 4.251.180,86

Another substantial change regarding wages in the Job Creation Law is the exemption towards small and micro enterprises from the requirement to pay minimum wages. Instead, the wage in small and micro-businesses shall be stipulated based on an agreement between business and workers at the company by referring to a certain amount of percentage of average public consumption based on data that are sourced from an agency in charge of the statistic sector. The reason given for this change is to take account of the financial capacity of micro and small enterprises, but it became a further barrier for many workers that work in micro and small enterprises to get decent wages.

120 Better Work Indonesia. 2022. Summary Minimum Wages 2022.

<https://betterwork.org/wp-content/uploads/2021/12/BWI-min-wages-2022-web-1.pdf>

Official statistics on compliance

There is no official statistic regarding the compliance of minimum wage in Indonesia. According to law, compliance with the statutory minimum wages is ensured by the labour inspectorate. In the case of violation on the part of the employer, a worker may file a complaint with the labour inspectorate. The Manpower Act on article 185 provides for criminal sanctions as follows: whosoever violates the provisions of law regarding payment of minimum wage is liable to a punishment of imprisonment ranging from one to four years and a fine of a minimum of IDR 100,000,000 (one hundred million rupiah) and a maximum of IDR 400,000,000 (four hundred million rupiahs).

Though garment company mostly located in a province with among lowest minimum wage in Indonesia, the ILO report in 2016 estimated around 39.1% of employees in the Indonesian garment sector earns less than the minimum wage.¹²¹ But the same report also suggests that around 50% of workers in garment sectors are paid more than 120 % of the minimum wage.

Laws and regulations

As mentioned above, the wages regulation in Indonesia recently underwent a significant change due to the enactment of Law Number 11 of 2020 on Job Creation and Government Regulation Number 36 of 2021 on Wages. Previously, the regulation on wages mainly came from Government Regulation No. 78/2015 on Wages.

Under the Job Creation Law, many of the changes in the articles regarding wage is basically upgrading the provisions on GR 78/2015 to the status of Law. One of the key changes on minimum wages that caused concern is the abolition of Article 89 of Manpower Law which states that “the establishment of minimum wages shall be directed towards meeting the need for decent living (kebutuhan hidup layak/KHL)”.¹²² Instead, there is a new Article 88D which stipulates that: (1) the minimum wage shall be calculated by using the minimum wage formula. (2) the minimum wage calculation formula shall contain economic growth or inflation variables. In other words, the decent living criteria has been removed in the Job Creation Law. However, it must be noted that Job Creation Law still contain Article 88 (1) which ensures that any workers are entitled to a decent living standard.

Secondly, Article 88C of Job Creation Law stated that Governors must stipulate the provincial minimum wage and may stipulate the minimum wage at regency/city-level with certain conditions. This means that under Job Creation Law only provide the obligation to set minimum wages at the provincial level, while minimum wages at the district/city level is only optional. This is different from the previous regulation under Manpower Law, which regulated that the district level minimum wages are mandatory. The change draws criticism from workers and labour academics because the previous system is considered successful.¹²³ Moreover, provincial minimum wage may not be representative of decent living standards at the district/city level due to the high disparities in socio-economic conditions between districts/cities in the same province.

121 Cowgill, M., & Huynh, P. 2016. Weak minimum wage compliance in Asia's garment industry. Bangkok: ILO.

122 According to Minister of Manpower Regulation Number 21/2016 on Decent Living Needs, KHL referred as the standard requirement for a single worker to be able to live decently in 1 month.

123 Sigit Riyanto, et.all.. 2020. “Kertas Kebijakan: Catatan Kritis Terhadap UU Nomor 11 Tahun 2020 tentang Cipta Kerja”. Faculty of Law Universitas Gadjah Mada.

The Job Creation law also removed the sectoral minimum wage that previously existed in the Manpower Law. Previously, the sectoral minimum wage was required to be set higher than the provincial and district minimum wage under the previous regulation, and although relatively rare, sectoral wages had been successfully negotiated in some provinces and industries.¹²⁴

Furthermore, Article 88C (1) Job Creation Law extends to the Governor the possibility of setting district/city minimum wage solely based on economic or employment conditions -exclusively- which only partially consider the elements of Convention 131 and Recommendation 135. The Article still overlooks the needs of workers, the cost of living, the relationship with other wages and living standards of other social groups, as well the benefits of social protection. Paragraph 4 of the Article includes inflation as an alternative added to economic growth. There is no mention in the Job Creation Law of the concept of the needs of workers and the families or living standards, which had been included in the past legislation and is leaves a substantive void in such an important law.

Article 88D Job Creation Law stated that the minimum wage should be calculated by using a minimum wage calculation formula. The formula is not specifically stated in the Job Creation Law, but later regulated in the Government Regulation No. 36/2021 on Wages. The regulation stated that the determination of minimum wage should be based on economic and employment conditions by taking into account upper and lower limits of the minimum wage, with the formula previously mentioned above.

Moreover, Article 88B Job Creation Law stated that wage should be determined based on unit of time and/or output. GR 36/2021 then regulate that wages based on the unit of time shall be determined with the basis of hourly, daily, or monthly.¹²⁵ Article 17 GR 36/2021 regulating the calculation of daily wage is monthly wage divided by 25 (for a company with 6 days a week working system), or monthly wage divided by 21 (for company with 5 days a week working system).

124 There are several districts (usually in the industrialization areas) which successfully have sectoral minimum wage over the years. For example: Bekasi District: <https://spsibekasi.org/spsibekasi/wp-content/uploads/2021/02/SK-UMSK-KAB-BEKASI-2020.pdf>
Karawang District: https://www.apindokarawang.org/uploads/210217KEPGUB_811_TTG_UPAH_MINIMUM_SEKTORAL_KABUPATEN_KARAWANG_TAHUN_2020.pdf. Bappeda West Jawa. 2019. "West Java Governor Sets UMSK for Four Regencies/Cities" <http://bappeda.jabarprov.go.id/gubernur-jabar-tetapkan-umsk-empat-kabupatenkota/>

125 Article 15, Government Regulation Number 36 of 2021 on Wages. It must be noted that the hourly wages may only be allocated for Workers/Laborers who work part-time.

Table 6: Important changes regarding wages in the Job Creation Law

Issue	Manpower Law Law 13/2003	Job Creation Law Law 11/2021
Decent living criteria	Minimum wages are calculated to meet the need for a decent living.	Decent living criteria are removed. The minimum wage shall be calculated by using the minimum wage formula, which contains economic growth or inflation variables.
Provincial and District level minimum wages	Both provincial and district level minimum wages are mandatory.	Provincial minimum wages remain mandatory, but the district level minimum wages became optional.
Sectoral minimum wages	Possible to be agreed on the certain sector.	Sectoral minimum wages is no longer exist.
Hourly wages	Not mentioned.	Job Creation Law is not mentioning this as well. But it is regulated in GR 36/2021, even though restricted only for part-time workers.
Daily wages	Not mentioned	Not mentioned in the Job Creation Law. But regulated in GR 36/2021.

During the COVID-19 pandemic, the Indonesian government also enacted some regulations which are correlated with wage adjustment due to pandemic, such as the Ministry of Manpower issued Circular Letter No. M/6/HI.00.01/V/2020 regarding the Religious Day Allowance (Tunjangan Hari Raya/THR) in 2020 for Companies during COVID-19 and Regulation of the Minister of Manpower Number 2 of 2021 concerning the Implementation of Wages in Certain Labour-Intensive Industries during COVID-19 Pandemic. Both regulations caused plenty of protest from workers because it became a legal basis for employers to deduct wages during the pandemic.

Stakeholders' opinion and analysis on implementation

Payment of living wage is an issue most highlighted by all the stakeholders. The trade union stakeholders worried that the new regulations on wages would make it more difficult for workers in the garment industry to earn a decent income. This is because, in practice, a lot of workers are still getting paid minimum wages after years of working, even though the regulation clearly stated that minimum wage should only be paid for workers in their first year.

The main reason for this is the lack of enforcement of regulations, making the minimum wage function more as a normative goal rather than a real safety net. Although concrete data is not possible to obtain, it is an open secret that many employers in the garment sector do not pay the minimum wage. According to trade union stakeholders, most large garment producers generally comply with the minimum wages, but many medium enterprises and small enterprises do not.

While the trade union stakeholders point out that many employers do not comply with the wage's regulations, not just about minimum wages but also the part on the responsibility for companies to make wage

structure and scale, the employer's stakeholders mention that, in fact, it is the governor that in some places do not comply with the regulations. According to APINDO, in determining the 2022' minimum wage, there is at least three regional head that does not comply with GR 36/2021, one of which is DKI Jakarta.

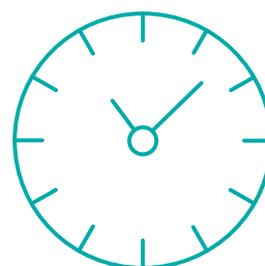
In December 2021, Anies Baswedan, DKI Jakarta's governor, raised the Jakarta provincial minimum wage for 2022 by IDR 22.556,- or a 5.1% increase from the previous year. This number was revised from previously set in November 2021, when the increase was supposedly only IDR 37.749 or 0.85% increase from the previous year. The 0.85% increase was in accordance with GR 36/2021 calculation formula but prompted a strong protest from the workers. Anies Baswedan later issued letter No. 533/-085.15 on Suggestion for the Review of Provincial Minimum Wage Determination Formula for 2022, which was addressed to the Ministry of Manpower. The decision to increase the provincial minimum wage by 5.1% was based on studies conducted by Bank Indonesia, which projected that the growth rate of the Indonesian economy would be between 4.7% and 5.5% next year, with inflation remaining under control at 3%. This revision then prompted rejections from the side of employers, who challenged the decision to the state administrative court, deemed the DKI Jakarta's governor to have violated GR 36/2021.

Workers complaints to fair wear, related to 'payment of a living wage'

Fair Wear received four complaints during 2018-2021 regarding this labour standard, three of which are companies' inability to pay severance payment in the case of layoff. This problem is a recurrent pattern in many companies even prior to COVID-19 pandemic, but it got worse during the pandemic. While one of the case regarding living wage in 2018 mentioned that the factory does not pay the required legal minimum wage, but it has been resolved.

6.6. NO EXCESSIVE WORKING HOURS

"Hours of work shall comply with applicable laws and industry standards. In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every seven-day period. Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate". (ILO Convention 1)



Indonesia is a signatory to ILO Convention No.1, and normal hours of work are formally capped at 40 hours per week over five or six days. However, excessive overtime is a serious problem in Indonesia's labour-intensive industries, including the garment industry. Where it is properly recompensated, workers are often happy to take on extra work to supplement their wages, even when that overtime is excessive. There are many reports, however, of instances in which workers are required to take on overtime without being paid.

Official statistics on compliance

There is no official statistic on compliance of working hours in Indonesia. In 2016, an ILO factsheet states that the average working hours in the textile, garment and footwear industry in Indonesia were around 43 hours per week. Better Work annual report in 2020 stated that overtime hours remain a widespread problem across the industry, with two-thirds of factories not respecting the limits. The problem lies not only with production planning and productivity but also with factors beyond factories' direct control, such as buyers' sourcing practices across the supply chain and other demand issues.¹²⁶ It also reported that the non-compliance of overtime hours in the factories that they assess is 72%, with 24% of employers also do not pay correctly for the overtime hours.

Laws and regulations

Law No.13/2003 limits working hours to 40 hours per week over five or six days unless stipulated under a sector-specific regulation. Workers must agree to reasonable requests to do overtime, which is subject to legal limits. The legal limit previously regulated under Law No. 13/2003 was 3 hours per day or 14 hours per week. This limit is changed in the Job Creation Law, which makes the current legal limit for overtime is 4 hours per day and 18 hours per week. According to the Government's Discussion Paper, this change to overtime was 'needed to fulfil the needs of the business world in increasing production and accommodating dynamic work relations patterns'.¹²⁷ While there is an increase in the overtime hours, the approval of the employees for any overtime is still required under the Job Creation Law.

Law No.13/2003 also imposes specific conditions on women's hours of work. Women under the age of 18 may not work between 11 pm and 7 am. The same condition is imposed for pregnant women who have received advice from a doctor that it would not be advisable for them to work at night. Employers are also required to provide transport to and from the workplace for women who finish work between 11 pm and 5 am.

Stakeholders' opinion and analysis on implementation

Excessive overtime is a well-recognised feature in Indonesia's garment industry. From the perspective of employers, overtime is an unavoidable response to the rhythms of an industry driven by seasonality, unpredictable orders and expectations of a fast turnaround. While from the workers perspective, they embrace over time due to low wages, since getting overtime also means getting an additional income.

However, the trade union stakeholders reported that the overtime sometimes is not preceded by surat perintah lembur (letter ordering over time) from the management, which caused workers not to get appropriate overtime wages. As noted in the previous Fair Wear report, a target-driven system means that workers are often forced to undertake unpaid overtime facilitated through the practice of scoring, where if a line does not reach its target, workers are required to continue working without being paid.

126 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia.

<https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

127 Government of Indonesia, 'Naskah Akademis Undang-Undang Cipta Kerja' [Academic Discussion Paper for the Law on Job Creation, p. 1212

There is also case where the timesheet is not being put by workers, but instead by the management, and in correspondence causing some working hours to be not calculated. Another issue that raised during the pandemic is that workers sometimes work in the night shift (for example, workers started working at 10pm-6am), but is considered working in the normal hours.

Worker complaints to fair wear, related to 'no excessive working hours'

Fair Wear received no complaints related to this labour standard in the last three years.

6.7. SAFE AND HEALTHY WORKING CONDITIONS

“A safe and hygienic working environment shall be provided, and best occupational health and safety practice shall be promoted, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Appropriate attention shall be paid to occupational hazards specific to this branch of the industry and assure that a safe and hygienic work environment is provided for. Effective regulations shall be implemented to prevent accidents and minimize health risks as much as possible (following ILO Convention 155...) Physical abuse, threats of physical abuse, unusual punishments or discipline, sexual and other harassment, and intimidation by the employer are strictly prohibited.”



COVID-19 pandemic is a wake-up call on the importance of safe and healthy working conditions in the garment industry. Previously, occupational health and safety are known as major problems in the Indonesian garment industry, where employers and employees alike are most commonly not attentive with regard to work-related hazards. But since the pandemic, there has been an improvement in several areas, even though it still varies within factories.

Official statistics on compliance

There is no official statistic on compliance for occupational safety and health in Indonesia. The Better Work report in 2020 highlighted that 87% of the factory that they assess have an effective OSH committee, 98% of factories conduct periodic emergency drills, and 95% of factories provide training to workers who handle chemical and hazardous substances.¹²⁸ Though it must be noted that the assessment was conducted prior to the COVID-19 pandemic, meaning that plenty of things might have been changed.

128 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia. <https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

Laws and regulations

Law No.1/1970 on Work Safety remains the primary regulatory instrument specific to the topic of occupational safety and health in Indonesia, supplemented by Law No.23/1992 on Health, which requires that companies must not endanger a worker's health. Law No.13/2003 on Manpower also states that the occupational health and safety needs of every worker must be guaranteed by the employer and that occupational health and safety must be integrated within the management systems of companies.

Detailed requirements are to be regulated through ministerial decisions and other instruments; however, the most up to date information available suggests that none have been issued on the topic since the time the law was passed. Most of the regulations on matters such as machine safety, material safety, chemical safety and so on date back to the Suharto period and regulation passed from 1999-2002, including:

- › Ministerial Regulation No.3/1999 on Occupational Health and Safety for the Transport of People and Goods
- › Ministerial Decision No.51/1999 on Physical Factors in the Workplace
- › Ministerial Decision No.186/1999 on Fires in the Workplace
- › Ministerial Decision No.197/1999 on Handling Dangerous Chemicals
- › Ministerial Decision No.75/2002 on the Implementation of International Standards on Electrical Installations in Workplaces

With regard to the protection of workers' rights in the case of sickness or injury, Law No.13/2003 states that a worker may not be fired for being ill as long as the illness does not exceed 12 months. This includes workers who have developed a permanent disability or chronic illness as a result of a work-related incident. During that time, workers must be paid 100 % of wages for the first four months, then 75 % for the second four months, 50 % for the third four months and 25 % for the remaining time until the employer ceases the employment relationship.

During the COVID-19 pandemic, the Indonesian government issued some regulations and recommendations regarding the prevention of COVID-19 transmission at work. One of the most important regulations regarding health protocol in the workplace comes from the Ministry of Health, which issued Minister of Health Decree No. HK.01.07/MENKES/328/2020 dated May 20, 2020, regarding Guidance for the Mitigation and Control of Coronavirus Disease (COVID-19) in Office and Industrial Workplace Settings in an Effort to Support Business Continuation during a Pandemic. The decree contained protocols for the management of workplaces to mitigate the transmission of COVID-19 and protect workers as much as possible, as well as protocols for workers themselves in the face of changes brought about by the pandemic.

The Ministry of Manpower also issued guidance on worker protection and business sustenance through the Minister of Manpower Circular Letter No. M/3/HK.04/III/2020 concerning Worker Protection and Business Sustenance in the Context of Preventing and Control of COVID-19, dated 17 March 2020. One of the main ideas of the circular is to: make efforts to prevent the spread and handling of COVID-19 related cases at work.

Based on the Decree and Circular, in order to minimize transmission at work, companies are recommended to 1) conduct health examinations of workers and provide Occupational Health Services in the workplace; 2) encourage senior management of the company to immediately establish a preparedness plan in dealing with COVID-19 pandemic to minimize the risk to workers and its business continuity; 3) guide workers to take prevention measures for COVID-19 virus spread in the workplace, and 4) coordinate with relevant parties to prevent the spread of COVID-19 virus in the workplace.

Stakeholders' opinion and analysis on implementation

Stakeholders acknowledge that occupational health and safety remains a serious challenge for the Indonesian garment industry, especially in the non-top tier factory. However, they also acknowledge that the OSH in the company is getting better compared to the time before the pandemic. Some examples: there are factories that previously do not have a medical clinic in the workplace and now have.

The companies also join hand in hand with the trade unions to successfully conduct vaccination to the workers. Many factories, in collaboration with the government, are opening vaccination centres that can be easily accessed by workers. Both employer and trade union stakeholders also claimed that the vaccination rates among workers in the garment industries are high.

Though other stakeholder also noted that the part that got better during pandemic is only the 'health' part of OSH, because pandemic has made the company aware about the importance of having better health policy inside the factory. However, the safety part does not improve much, and some safety factor even declining as caused by the pandemic. For example, there are a lot of companies that cannot held the routine fire-drill in the workplace during the pandemic.

According to Better Work Indonesia, their member factories have generally matured on the implementation of the OSH management system and the establishment of P2K3, consisting of representatives of the management and workers. As a result, these efforts have helped put public health measures in place. Nevertheless, the COVID-19 outbreak has required greater efforts given the nature of the viral transmission that can occur through air, droplets as well as in contact with contaminated surfaces. Among the prevention efforts are mandatory mask-wearing and social distancing; the latter can be a challenge in garment factories due to their labour-intensive nature and the layout of sewing machines that are commonly placed near each other.¹²⁹

Worker complaints to fair wear, related to 'safe and healthy working conditions'

Fair Wear received four complaints regarding safe and healthy working conditions during 2018-2021. In one case, not all workers were provided with social security, but this case is reportedly resolved. There are also case of harassment and physical abuse, which also reportedly resolved and closed.

129 ILO. Protecting Garment Sector Workers: Occupational Safety and Health and Income Support in response to the COVID-19 Pandemic, https://www.ilo.org/jakarta/whatwedo/projects/WCMS_766702/lang-en/index.htm

6.8. LEGALLY-BINDING EMPLOYMENT RELATIONSHIP



“Working relationships shall be legally binding, and all obligations to employees under labour or social security laws and regulations shall be respected”.

In the garment industry, the practice of non-legally-binding employment relationships is reportedly not common, especially in tier-one suppliers to international brands due to a higher level of supervision and standard. However, the practice might be entrenched in the lower tiers of international supply chains as well as in many producers for the local market.

The issue of the employment relationship in the industry is more on the status of the employment relationship itself. Indonesian labour law itself draws a clear distinction between workers under permanent work agreement (Perjanjian Kerja Waktu Tidak Tertentu/PKWTT) and workers under a temporary employment agreement (Perjanjian Kerja Waktu Tertentu/PKWT). Workers under both of these types of agreements gain similar rights under Indonesian labour law, but the difference is related to the security of employment terms and dismissal payment. Workers under permanent work agreements have rights to severance and reward-for-service payments¹³⁰, while workers under temporary employment agreements do not get any of this if the contract ends its term.

Recently, the changes in Job Creation Law erased the two years' time limit of the temporary employment agreement, but Government Regulation 35 of 2021 clarified that the current maximum period for a temporary employment agreement is 5 years. The changes bring fierce critics from the workers' side since it opens the wider possibility for the employer to use a temporary employment agreement, something that is clearly not beneficial for workers.

There is also an issue with the use of outsourcing, i.e. use of subcontracted labour supplied by a third party agency. Since the enactment of Manpower Law in 2003, outsourcing has been permitted under Indonesian labour law, but only to carry out 'non-core' activities in the company. But now, the Job Creation Law removed articles in the previous Manpower Law that provides restrictions on the types of work that can be done through an outsourcing system.

Official statistics on compliance

There are no official statistics available on compliance with legally-binding employment relationships or other forms related to the contract. However, Better Work annual report shows that the highest non-compliance in the contracts and HR cluster was found for contracting procedures.¹³¹ It is mentioned in the report that the implementation of non-permanent contracts in the garment industry is still marred by non-compliance, as 48% of factories assessed by Better Work did not comply with limits on the use of temporary employment agreements. This includes issues such as factories ignoring limitations under national law on the number of times they are allowed to extend or renew contracts.

¹³⁰ Reward for service payment (Indonesia: “Uang Penghargaan Masa Kerja” is a service fee which is intended as an employer's award to workers related to the length of employment period.

¹³¹ Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia. <https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

Laws and regulations

Law Number 13 of 2003 on Manpower in Article 51 specify that work agreements can be made either orally or in writing. Though Article 63 later mentioned that if a work agreement for an unspecified time is made orally, the entrepreneur is under an obligation to issue a letter of appointment for the relevant worker.

Indonesian labour law draws a distinction between workers under a permanent work agreement (PKWTT) and workers under a temporary employment agreement (PKWT). According to Manpower Law as well as Job Creation Law, temporary employment agreements can only be used for certain types of work, which, because of the type and nature of the job, will finish in a specified time. The types of work that fall under this category are slightly changed in the Job Creation Law, namely: a) work that will be completed at once or its nature is temporary; b) work that its completion is estimated not in a long time; c) seasonal work; or d) work that is related to a new product, a new activity or an additional product that is still in the experimental stage or try out phase; or e) work that its types and nature or its activities are not fixed.¹³²

Previously, Article 59 (4) of Manpower Law stipulated that the maximum period of duration PKWT is two years, followed by a one-year extension or 2-year renewal.¹³³ Under Job Creation Law, this provision is removed, which means that in the Job Creation Law, there are no more terms on the maximum period of PKWT, along with the restriction on renewal.

After many critics addressed the issue, the government then regulated further the maximum period of PKWT under Government Regulation Number 35 of 2021 on Temporary Employment Agreement, Outsourcing, Working Hours, and Breaks and Termination of Employment Relationship (hereafter referred to as GR 35/2021).

Article 4 of GR 35/2021 stated that PKWT should be based on: a) period of time; or b) completion of a certain work. Then, Article 8 GR 35/2021 regulate that PKWT based on the period of time can be drawn for a maximum of five years. This clarifies the non-existing time limitation under Job Creation Law, even though this restriction does not apply for PKWT that is based on the completion of a certain work (Article 9 GR 35/2021). The problem is, due to the absence of definition and clarification of what job can be constituted under “completion of a certain work”, this leave room for legal uncertainty. GR 35/2021 is also silent on the issue of renewal of PKWT, meaning that PKWT can be made in a short period of time and then continue to be renewed until the maximum period of 5 years.

Article 10 GR 35/2021 also regulate one more types of PKWT which are the Daily Employment Agreement. A daily employment agreement is a type of PKWT for certain works whose time and volume of the work, as well as payment of workers wages, are based on attendance. Article 10 also stated that a daily employment agreement should be carried out on the condition that workers work less than 21 days in one month.

Previously, a daily employment agreement is regulated in the Decision of the Minister of Manpower and Transmigration No. KEP.100/MEN/VI/2004 on the implementation of a specific time working agreement. But, under this previous regulation, a daily employment agreement was excluded from the maximum period of PKWT. Therefore, it was possible for employers to hire workers under a daily employment agreement for a very long period of time.

¹³² Article 59 (1) of Job Creation Law, amended Article 59 (1) of Manpower Law.

¹³³ Article 59 (4) Manpower Law.

In the GR 35/2021, the provision which stated that the daily employment agreement was excluded from the maximum period of PKWT is erased, which means that the daily employment agreement can be hired for a maximum 5 years period, just like any other PKWT workers. GR 35/2021 also clearly stated that enterprises that employ workers under this scheme must draw daily employment agreements in writing with the workers. It also requires companies to fulfil the rights of workers, including the right to the social security program.

One of the good changes on PKWT under the Job Creation Law is about compensation for workers under the temporary employment agreement. Article 61A of Job Creation Law stated that “in the event that a temporary employment agreement is terminated, a business must provide compensation to workers/labourers.” The compensation is given in accordance with the workers’ term of office at the relevant company. Previously in the Manpower Law, compensation for contract workers is not provided.

Article 15 of GR 35/2021, if the PKWT is extended, the Compensation shall be provided at the completion of the period of PKWT before the extension, and toward the extended PKWT period, the next compensation shall be provided after the extension of PKWT period expires or is completed. The amount of compensation for PKWT workers who work for 12 months continuously shall be provided in the amount of 1 monthly wage. This compensation is a bit similar to the severance pay given to the permanent workers in the event of termination of employment. But, the amount of compensation for workers at micro-scale businesses and small-scale businesses¹³⁴ is excluded from this calculation and shall be provided based upon an agreement between entrepreneurs and workers.

While the issue of outsourcing in Job Creation Law is that the law is now silent on the types of work that may be outsourced to an outsourcing company, job Job Creation Law revoke Article 65 of Manpower Law, which consequently allows companies to freely subcontract any work to any third party based on commercial terms agreed by the parties.

A good change regarding outsourcing provision in the Job Creation Law is that it clarifies that the outsourcing company (and not the engaging company) is responsible and liable for the employment of the outsourced employees. Article 66 of Job Creation Law also assured that in the event that outsourcing companies employ workers/labourers based on a temporary employment agreement, the employment agreement shall require a transfer of protection of workers’/laborers’ rights if there is a change of the outsourcing company and insofar that the work object still exists. This gives more legal certainty towards the workers under outsourcing relationship, even though some trade unions are sceptical on how it works out in reality, due to the lack of government supervision on its enforcement.¹³⁵

134 Based on Law Number 20 of 2008, micro-scale business is enterprises which have maximum net assets of IDR 50 million, not including the land and buildings used by the business; or enterprises which have maximum annual revenues of IDR 300 million. While small-scale business is enterprises which have net assets of more than IDR 50 million but less than IDR 500 million, not including the land and buildings used by the business; or enterprises which have annual revenues of more than IDR 300 million but less than IDR 2.5 billion.

135 There is no specific legal oversight for outsourcing company regulated under Job Creation law, so it will be under the supervision of labour inspection just like a standard employment relationship. But due to the limited number of labor inspector, the implementation of the outsourcing system is often leave unsupervised, and many legal violation that go unpunished.

Stakeholders' opinion and analysis on implementation

Stakeholders acknowledge that issue regarding the status of employment relationships is still a pertaining problem in the garment industry, particularly after the issuance of the Job Creation Law in 2020. Many garment workers are employed on a much more precarious basis. The exact numbers are unknown, in part because not all companies meet their reporting requirements and in part because of a failure on the part of the government to systematically collect data related to employment practices.

According to the Better Work report, Indonesia's Manpower Act is designed to encourage employers to use temporary contracts only when necessary and to provide permanent employment gradually. However, in several instances, this has led to compliance and industrial relations issues. Some examples include employers refusing to extend temporary contracts for female workers during pregnancy and the failure to provide entitlements and paid leave to them.¹³⁶

Trade union stakeholders pointed out that the legal limit of temporary workers and outsource workers is widely exceeded in practice. They even gave an example of one factory claiming that all of the workers are in the temporary employment contract. This practice is feared to worsen after the enactment of the Job Creation Law since the law gives more lenience towards this practice.

Employers acknowledge the widespread use of contract workers. According to industry sources, contract employment and outsourcing are necessary both as a consequence of the nature of the industry, since the labour demands are corresponding with the flow of orders, and because of the high costs of compliance associated with permanent employment

Unions involved in the FOA Protocol initiative have been pushing for a second protocol on security of employment to address concerns, including the impact of short-term contract work on workers not only in terms of their ability to support themselves and their families but also their ability to access their labour rights in the workplace. They are also rightly concerned that short-term employment undermines the strength of trade unions in a context where contract workers are reluctant to become union members. But while they have been pursuing this agenda for some years now, they have had little success in convincing the suppliers and brands involved to move ahead.

Workers complaints to fair wear, related to 'legally-binding employment relationship'

Fair Wear received four complaints regarding this labour standard during 2018-2021. Most of the cases is related with workers who are employed through non-permanent contract, even though they have been working for a long time. The issue is usually corresponded with the unlawful lay-off that will later experience by the workers.

136 Better Work. 2020. Annual Report: Creating an Impact on Every Level. Better Work Indonesia.

<https://betterwork.org/portfolio/better-work-indonesia-annual-report-2020-an-industry-and-compliance-review/>

7. RISK ANALYSIS

Presented in this chapter are the most common risks and violations of the labour rights in garment factories in Indonesia, through the lenses of the Fair Wear Code of Labour Practices. The risk and violation addressed in this section are a non-exhaustive list of examples but are considered as most relevant high-level risk.

Employment is freely chosen

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Risk: over time (OT) which might not be entirely up to the workers.	Factory with high pressure on order sometimes asking workers to do overtime without the workers consent. If workers are asked to stay longer after the working hours during the working week, workers seldom use their right to refuse the management's decision. This is because the workers are also in the need to work overtime because that is the only way to get decent earning.	High	Frequent

There is no discrimination in employment

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Risk: discrimination due to trade union activities	There are plenty of cases of discrimination against trade union officials in the companies, where the management make it more difficult for trade union leader to move up the career ladder. In some case, there is even a possibility of dismissal due to the workers' activity in the trade union.	Very High	Frequent
Risk: discrimination related with women's reproductive health and childrearing	Very few workplaces in Indonesia are meeting the requirements needed to provide adequate facilities for lactating women or onsite childcare. Moreover, the issue about female workers having difficulty to access their menstruation and maternity leave continue to be a pressing issue.	High	Frequent
Violation: dismissal of workers who are pregnant or on maternity leave or forces them to resign.	Dismissal of workers who are pregnant or on maternity leave is clearly forbidden under Indonesian labour law. However, it is reportedly common for pregnant women to be sacked from the factory, especially when their employment contract is non-permanent (PKWT) so the company can just decide not to prolong their contract.	Very High	Frequent

No exploitation of child labour

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Risk: lack and/or non functioning age verification system in the factory.	While child labour is not a concern in the garment factories in Indonesia, there is a possibility of workers and/or agencies falsifying document in order for them to seek employment even before they turn 18 years old. This can be a problem because some factories have lack and/or non-functioning age verification systems, therefore, opening a possibility of unwanted child labour in the factory.	Medium	Sometimes

Freedom of association and the right to collective bargaining

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Violation: Management punishes, threatens, intimidates, harasses, terminates, or does not renew workers' contracts due to their union membership or activities.	<p>While reportedly less common in the recent times, the cases of terminations of employment contracts, bullying and other violations of workers' rights towards workers who are members of trade union and especially the trade unions' official are still happening. This is experienced more frequently in the non-tier-one garment factories.</p> <p>In some case, when management became aware of workers attempting to form a trade union, the union leaders were immediately demoted and refused approval for their overtime.</p>	Very High	Sometimes
Risk: The factory does not have a Collective Bargaining Agreement (CBA)	<p>Indonesia still has a low number of Collective Bargaining Agreement (CBA), even in the garment sectors which arguably a bit more unionizes compare to the other sectors. Therefore, the number of garment factories that have Collective Bargaining Agreement is still very limited.</p> <p>The 2020 ILO Better Work Indonesia annual report found that 18% of factories in its program were non-compliant with collective bargaining. Even more, there is even an issue of collective labour agreement with provisions less favourable to workers than the national law.</p>	High	Frequent
Risk: The lack of social dialogue	<p>One of the common issues in the factory is the reluctance of management to negotiate with unions. This is exacerbated with the fact that many workers, including union members, may not see the need to engage in collective bargaining and social dialogue.</p> <p>The pandemic also has dire consequences towards social dialogue, because it is used as an excuse from the management not to conduct a face-to-face meeting.</p>	High	Frequent

Risk: There is no appropriate training for worker representatives	Many workers' representatives are not familiarised with their role and have a lack of time available to commit to their in-factory role. Workers are not empowered to look for additional training to improve their skills on social dialogue. There is also lack of incentives for factory managers to provide training to workers' representatives.	High	Frequent
---	---	------	----------

Payment of a living wage

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Risk: changes in wages regulation may cause legal uncertainty	<p>The wages regulation in Indonesia recently underwent a significant change due to the enactment of Law Number 11 of 2020 on Job Creation and Government Regulation Number 36 of 2021 on Wages. The regulations caused massive protest from the workers side, because the formula to count minimum wages has been changed, and the new formula will make the minimum wage increase insignificant.</p> <p>An example of complication caused by this new regulation can be seen in December 2021, Anies Baswedan, DKI Jakarta's governor, raised the Jakarta provincial minimum wage for 2022 by IDR 22,556,- or a 5.1% increase from the previous year. This number was revised from previously set in November 2021, when the increase was supposedly only IDR 37,749 or 0.85% increase from the previous year. The 0.85% increase was in accordance with GR 36/2021 calculation formula but prompted a strong protest from the workers. Anies Baswedan later issued letter No. 533/-085.15 on Suggestion for the Review of Provincial Minimum Wage Determination Formula for 2022, which was addressed to the Ministry of Manpower, prompted rejections from the side of employers, who challenged the decision to the state administrative court, deemed the DKI Jakarta's governor to have violated GR 36/2021.</p>	Very High	Frequent
Risk: legal minimum wage is not sufficient to ensure decent living wage	Worker and trade unions are concerned that the change of formulation of minimum wage under GR 36/2021 will make the legal minimum wage not representative with the decent living wage. This is because the formulation relied heavily with the economic condition (which is currently not great due to pandemic), instead of actually looking at the decent living criteria in each region.	Very High	Frequent

Risk: reduction of wage due to COVID-19 pandemic	During the COVID-19 pandemic, the Indonesian government enacted some regulations which are correlated with wage adjustment due to pandemic, such as the Ministry of Manpower issued Circular Letter No. M/6/HL.00.01/V/2020 regarding the Religious Day Allowance (Tunjangan Hari Raya/THR) in 2020 for Companies during COVID-19 and Regulation of the Minister of Manpower Number 2 of 2021 concerning the Implementation of Wages in Certain Labour-Intensive Industries during COVID-19 Pandemic. Both regulations caused plenty of protest from workers because it became a legal basis for employers to deduct wages during the pandemic.	Very High	Frequent
Violation: employers paid below legal minimum wage.	it is an open secret that many employers in the garment sector do not pay the minimum wage. According to trade union stakeholders, most large garment producers generally comply with the minimum wages, but many medium enterprises and small enterprises do not. One of the main reason for this issue is the lack of oversight from government.	Very High	Frequent
Violation: workers getting paid minimum wages even after years of working.	In practice, a lot of workers are still getting paid minimum wages after years of working, even though the regulation clearly stated that minimum wage should only be paid for workers in their first year. This shows that employers do not comply with the wage's regulations, not just about minimum wages but also the part on the responsibility for companies to make wage structure and scale.	Very High	Frequent

No excessive working hours

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Violation: overtime not being paid correctly in accordance with regulation	The overtime sometimes is not preceded by surat perintah lembur (letter ordering over time) from the management, which caused workers not to get appropriate overtime wages.	Very High	Sometimes
Violation: unpaid overtime when the target is not reach.	Many factories are using target-driven system, meaning that workers are often forced to undertake unpaid overtime facilitated through the practice of scoring, where if a line does not reach its target, workers are required to continue working without being paid.	Very High	Frequent
Risk: night shift are calculated as a normal shift.	During the pandemic, a lot of workers have to take a night shift due to the restriction of the number of people allowed in the factory, but the shift are considered as in normal shift.	High	Sometimes
Violation: timesheet are being put in the machine by management, not by workers	There is case where the timesheet for overtime is not being put by workers, but instead by the management, and in correspondence causing some working hours to be not calculated fairly,	High	Sometimes

Safe and healthy working conditions

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
Risk: Policies and procedures for OSH not communicated with the workers.	Some factories are only putting up signs about OSH in the workplace as it is mandatory by law, but not actually communicating with the workers. As a result, a lot of workers does not have a clear understanding about the OSH policies in their workplace.	Very High	Frequent
Risk: Health and safety training for workers is not provided, or inadequate	Trade unions has highlighted that the workers are poorly trained on how to deal with health and safety risks in the workplace. In addition, although many workers have been trained to recognise potential hazards and problems in factories as a legal requirement, worker awareness is often low, and risks are not taken seriously, especially when they are running fast with the target.	High	Frequent
Risk: routine safety drill cannot be conducted during pandemic.	Due to many restrictions during the pandemic, some company cannot hold a routine safety check and training, such as, safety fire-drill.	High	Sometimes
Risk: high number of sexual harassments in the workplace.	Most workers stated that sexual harassment or sexual touching was a concern in their workplace. There is also a high number or sexual harassment concern reported in the factory.	Very High	Frequent
Violence: physical abuse from supervisor or higher management	Fair Wear received numbers of complaints related with harassment and physical abuse from supervisor or higher management in the factory.	Very High	Sometimes
Risk: transmission of COVID-19 in the workplace	COVID-19 outbreak has required company to do more in relation with OSH given the nature of the viral transmission that can occur through air, droplets as well as in contact with contaminated surfaces. Among the prevention efforts are mandatory mask-wearing and social distancing, but not all factories have the same standard on it, especially about the social distancing rules due to their labour-intensive nature and the layout of sewing machines that are commonly placed near each other.	Very High	Frequent

Legally-binding employment relationship

Most common country risks and violation	Examples (Description)	Potential impact	Likelihood
<p>Risk: the increasing number of contract workers due to the new Job Creation Law and GR 35/2021</p>	<p>Previously, Article 59 (4) of Manpower Law stipulated that the maximum period of duration temporary employment agreement (PKWT) is two years, followed by a one-year extension or 2-year renewal. Under Job Creation Law, this provision is removed, which means that in the Job Creation Law, there are no more terms on the maximum period of PKWT, along with the restriction on renewal.</p> <p>But the government then regulate the maximum period of PKWT in the GR 35/2021. Article 8 GR 35/2021 regulate that PKWT based on the period of time can be drawn for a maximum of five years. This clarifies the non-existing time limitation under Job Creation Law, even though this restriction does not apply for PKWT that is based on the completion of a certain work (Article 9 GR 35/2021).</p> <p>In general, this changes of rules made the rules about PKWT more lenience than before, and most likely will make the number of contract workers increasing.</p>	<p>High</p>	<p>Frequent</p>
<p>Risk: unpaid compensation for contract workers in relation with new provision in Job Creation Law and GR 35/2021</p>	<p>In continuation with the changes brought by Job Creation Law, Article 61A of the law stated that “in the event that a temporary employment agreement is terminated, a business must provide compensation to workers/labourers.” The compensation is given in accordance with the workers’ term of office at the relevant company. Previously in the Manpower Law, compensation for contract workers is not provided.</p> <p>Furthermore, the compensation is regulated in GR 35/2021. Article 15 of GR 35/2021 stated that if the PKWT is extended, the Compensation shall be provided at the completion of the period of PKWT before the extension, and toward the extended PKWT period, the next compensation shall be provided after the extension of PKWT period expires or is completed. The amount of compensation for PKWT workers who work for 12 months continuously shall be provided in the amount of 1 monthly wage. This compensation is a bit similar to the severance pay given to the permanent workers in the event of termination of employment.</p> <p>The compensations for PKWT workers draws criticism from both sides, with employer argue that the new regulations will became new burden for them; while the workers side fear that the rules will be hard to enforce due to the lack of compliance from the company.</p>	<p>Very High</p>	<p>Frequent</p>

<p>Violation: workers are consistently employed on temporary contract</p>	<p>Employers acknowledge the widespread use of contract and outsource workers as a consequences nature of the industry. However, trade unions stated that the legal limit of temporary workers and outsource workers is widely exceeded in practice. The union gave an example of one factory claiming that all of the workers are in the temporary employment contract.</p>	<p>High</p>	<p>Frequent</p>
<p>Risk: Employer refuse to extend temporary contracts for female workers during pregnancy</p>	<p>Indonesia's Manpower Act is designed to encourage employers to use temporary contracts only when necessary and to provide permanent employment gradually. However, in several instances, this has led to compliance and industrial relations issues. Some examples include employers refusing to extend temporary contracts for female workers during pregnancy and the failure to provide entitlements and paid leave to them.</p>	<p>Medium</p>	<p>Sometimes</p>

8. RECOMMENDATIONS

Considering the current development of Indonesian Labour Law due to the new enactment of Job Creation Law and its implementing regulations, as well as COVID-19 pandemic which have devastating effect towards garment industry, and the changes of Fair Wear Indonesia starting in 2022, there are some recommendations that needs to be highlighted:

A. On Job Creation Law:

1. Stakeholders needs to be more aware on the current development of Indonesian labour law, especially related with the Law Number 11 of 2020 on Job Creation and its implementing regulations. There is a huge possibility that the laws will be changing again in the near future as the Constitutional Court has decided that the law is conditionally unconstitutional.
2. Stakeholders also need to be aware on the potential risks due to regulatory changes. For example, there will be high chances of dispute in relations as many workers has been opposed with the new laws, and a lot of companies also not yet clear on the changes that has been brought in the new regulations.

B. On COVID-19 Pandemic:

1. The impact of COVID-19 pandemic has magnified existing inequalities, systemic vulnerabilities, and challenges in global garment supply chains. Despite these challenging circumstances, garment brands and retailers should continue to uphold principles of responsible business conduct. This includes understanding how their decisions during the crisis will impact workers in their supply chain and doing everything they can to mitigate negative impacts.
2. Fair Wear call upon the members and all garment brands and retailers to implement the following key responsible practices¹³⁷ during the crisis and initial recovery phase:
 - a. Responsible sourcing decisions
 - Maintain frequent and transparent dialogue with all supply chain partners on sourcing decisions and look for collaborative solutions. No unilateral decisions should be taken.
 - We expect retailers and brands to honour their obligations and pay in full for orders completed or in progress.
 - If orders cannot be completed, we expect retailers and brands to prioritize covering labour costs, as well as materials or other costs that have already been incurred.
 - We expect companies to work hard to minimise the ongoing impact upon workers who will already be facing difficult circumstances.
 - Collaborate with suppliers on orders for upcoming months to identify alternatives to cancelling orders and treat order cancellations as a last resort.

137 See more on: Fair Wear. 2020. <https://www.fairwear.org/covid-19-dossier/responsible-purchasing-practices/>

- Anticipate changes or delays in production and be flexible about delivery dates, payment terms, and financial liability.
- Do not terminate the business relationship with your supplier without first having discussed scenarios and solutions with your supplier. If exit is unavoidable ensure that workers are protected and paid.
- Work closely with suppliers including raw material suppliers to collaboratively plan and secure capacity needed and provide updated forecasts.

b. Safeguarding factory working conditions

- Listen to the voices of workers through their trade unions, social dialogue mechanisms or elected worker representatives.
- Make sure safety measures to contain the risk of infection are implemented at the work floor. Workers should be informed about their rights and provided correct information on preventive safety measures.
- Factories should have a mechanism in place to address questions from workers and involve them in decision making. Workers must have access to a trade union or other worker representation to collectively respond to measures or to raise issues. Workers should have access to a channel to support remedy of problems related to their rights. Grievance channels should be accessible to workers even if factories have closed, or the workers have been retrenched.
- Workers should have access to safe transportation to the factory.

C. On the continuation of Fair Wear in Indonesia:

As Fair Wear has phase out the traditional memberships' services (audits, WEP and complaints handling support) in Indonesia per 31 December 2021, there will be some changes on how Fair Wear will continue in Indonesia:

- 1.** Fair Wear will continue doing the work in relation with human rights due diligence in Indonesia's garment sector through reports and occasional updates that can be checked in the Fair Wear Website.
- 2.** Fair Wear will no longer be doing audit and WEP-training sessions in Indonesia, but Fair Wear will provide a list of our former auditors and trainers. Brands are at liberty to use our audit and training methodology as they are freely available, and these efforts will be taken into consideration in the Brand Performance Check. With the risk-based approach, these audits will qualify as adequate information for risk assessment and prioritization. The trainings can serve as part of risk mitigation, remediation, or improvement programs.
- 3.** Workers, Trade Unions, and other stakeholders continue to be able to use complaint mechanism in Fair Wear' website, and it will be followed up by the Country Manager who will log the complaint in Fair Force. Fair Wear will inform the respective brand and will ask them to take the necessary step. Brand is now responsible for the follow up as well as the investigation and evaluation of the complaints. Though, Fair Wear can still advise on parties that can help in investigation and can support remediating the complaint.

4. Fair Wear will also continue to do the advocating work in relation with garment industry in Indonesia, focusing on influencing the government to adopt law to protect women against violence, combat the shrinking civil space for trade unions and provide support to engage in meaningful social dialogue on wages, job security, and lobby for the incorporation of human rights due diligence and decent work clauses in the Free Trade Agreement between the EU and Indonesia.

SOURCE USED IN THIS COUNTRY STUDY

The information in the report has been gathered by Nabiyla Risfa Izzati, a labour law lecturer in the Faculty of Law, Universitas Gadjah Mada and PhD Candidate in Queen Mary University of London. The study is prepared through gathering information about national laws and local stakeholders' views on labour issues in the garment industry in Indonesia and using the prior data from previous Fair Wear Country Study that are still relevant. In addition to this, information has been collated from internationally recognized sources on the country's economic, social, political, and human rights situation.

The following stakeholders representing public authorities, employers, trade unions and NGOs were consulted in writing this country study:

I. GOVERNMENT/PUBLIC AUTHORITIES

II. EMPLOYERS

Association of Indonesian Employers (APINDO)

The main body represents employers in the wage councils and other tripartite committees pertaining to industrial relations.

No people : 2
Tel : +62 21 83780824
E-mail : sekretariat@apindo.or.id
Website : <http://apindo.or.id/id>

III. TRADE UNIONS

Centre for Indonesian Labour Struggle (GSBI)

Small national federation with a strong footprint in textile, garment, textile and footwear industries.

No people : 1
Tel : +62 21 4223824
Email : gsbi_pusat@yahoo.com
Website : <http://www.infogsbi.org/>

GARTEKS

KSBSI's affiliate for the textile, garment and footwear industries.

No people : 1
Tel : +62 21 85903319
Email : aryjokosulistyo@gmail.com
Website : <http://www.ksbsi.org/index.php/page/link/116/116>

IV. LABOUR RELATED NGOS

Trade Union Rights Centre (TURC)

Labour NGO with a long history of engagement with trade unions.

No people : 3
Tel : +62 21 5744655
Email : andriko.otang@gmail.com
Website : <http://turc.or.id>

Yayasan Sosial Dialog (The Social Dialog Foundation)

Established in 2018 as a follow-up to the collaboration between the West Java Social Dialogue Forum & CNV International in the Social Dialogue & Multi-Company Collective Labor Agreement project in West Java.

No people : 1
Tel. : -
Email : info@yayasandialogsosial.com
Website : <https://yayasandialogsosial.com/>

V. INTERNATIONAL STAKEHOLDERS

CNV Internationaal

NGO that works on social dialogue, on the employability of young people and labour rights in international production chains, and is active in the palm oil, sugar, mining, textiles and metal industries.

No people : 1
Tel. : -
Email : sammy.gultom75@gmail.com
Website : <https://www.cnvinternationaal.nl/en>

ILO Better Work Indonesia

ILO program involving government, international brands, and textile and garment unions.

No people : 2
Tel : +62 21 391 3112
Email : indonesia@betterwork.org
Website : <http://betterwork.org/indonesia/>

Copyright © 2022 Fair Wear Foundation

This report is published with financial support
from the Dutch Ministry of Foreign Affairs.



Government of the Netherlands



www.fairwear.org