

Legal Implications for Home-Based Workers Following the Judicial Review Decision of the Constitutional Court of the Republic of Indonesia

Nova Septiani Tomayahu [□]

Faculty of Sharia, IAIN Sultan Amai Gorontalo, Gorontalo, Indonesia,

novatomayahu@iaingorontalo.ac.id,

ORCID iD: <https://orcid.org/0009-0005-9314-404X>

Dedi Sumanto

Faculty of Sharia, IAIN Sultan Amai Gorontalo, Gorontalo, Indonesia,

dedisumanto@iaingorontalo.ac.id,

ORCID iD: <https://orcid.org/0000-0001-8465-3735>

✉ Corresponding email: novatomayahu@iaingorontalo.ac.id

Abstract

This study aims to analyze the laws and regulations governing informal workers, especially home-based workers in Indonesia by examining decision No. 75/PUU-XX/2022 concerning the application for review of Law No. 13 of 2013 regarding Manpower against the 1954 Constitution in the Constitutional Court of the Republic of Indonesia.

Understanding the legal status of informal workers in Indonesia is crucial. This research employed a normative legal method using statutory and analytical approaches. Data was collected using the document study method on secondary data, which was then analyzed qualitatively. Based on the research results, it was found that home-based workers are included in the informal sector, but Manpower Law has not yet accommodated them. This is because Indonesian law does not recognize home-based workers in the Job Creation Law or the Manpower Law, as it has not adopted international instruments on home-based workers. However, home-based workers still receive work agreements based on Article 1320 and Article 1338 of the Civil Code and protection in several laws and regulations. According to the Court, the government must specifically regulate home-based workers to accommodate every type of work in Indonesia.

Keywords

Home-based workers, Judicial Review, Legal Implication

I. Introduction

The 1945 Constitution is the primary source of all legal sources in the Indonesian legal system. Therefore, all laws and regulations produced by the legislature and the President, as well as other state institutions with the authority to create laws and regulations, must not conflict materially or formally with the 1945 Constitution. In addition, the validity of a regulation must fulfill philosophical, juridical, and sociological elements. Therefore, if the enactment of a legislative product is considered and suspected to cause harm to citizens, the state provides an alternative to conduct a judicial review of the regulation.

The state institution in Indonesia entrusted by the 1945 Constitution to conduct judicial reviews is the Constitutional Court of the Republic of Indonesia (MKRI). Article 24C paragraph (1) of the 1945 Constitution states that "The Constitutional Court has the authority to adjudicate at the first and final levels, with decisions that are final, to review laws against the Constitution, to decide disputes over the authority of state institutions whose authority is granted by the Constitution, to decide the dissolution of political parties, and to decide disputes regarding the results of general elections." Additionally, Article 29 paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority states that one of the Constitutional Court's constitutional authorities is to adjudicate at the first and final levels, with decisions that are final, to review laws against the 1945 Constitution.

In 2022, a request for judicial review of regulations was submitted by home-based workers, registered under case number 75/PUU-XX-202¹. In this petition, the petitioners argued for the

¹ MKRI, H. (2022b). *Hubungan kerja pekerja rumahan dan pekerja umum seharusnya sama*. MKRI. Diakses dari laman

review of Article 1 point 15 and Article 50 of Law Number 13 of 2003 concerning Manpower (Manpower Law). The petitioners, numbering five individuals, work by receiving jobs, orders, and wages from intermediaries (individuals).

Every Indonesian citizen is guaranteed the constitutional right to obtain employment. Securing employment is a fundamental right of citizens as stipulated in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This constitutional provision is then elaborated in more specific regulations, namely through the enactment of Law Number 13 of 2003 concerning Manpower (Manpower Law), which was subsequently amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Job Creation Law). The Manpower and Job Creation Law provides further regulations regarding citizens' right to obtain employment. However, these regulations do not guarantee legal protection for all types of work, as they explicitly provide protection only to workers within the formal sector. In contrast, workers in the informal sector have not yet received the same protections as formal sector workers. This issue is significant given that workers in Indonesia are predominantly informal workers.

There are informal workers who possess characteristics different from those of typical informal workers. Pragmatically, this type of work falls into the category of formal employment, but in reality, there are several differences in the working conditions. The type of work in question is home-based work. The term "home-based work" refers to tasks performed by individuals known as home-based workers. This work is carried out within their own homes or at another location of their choice, outside the employer's

<https://www.mkri.id/index.php?page=web.Berita&id=18607&menu=2>. [Diakses pada 8 Juli 2023].

premises, to earn wages by producing goods, products, or services as specified by the employer². Workers who take their work home and are paid based on their work targets are known as operating under the Putting Out System³⁴.

The practice of home-based work has become increasingly prevalent with the growth of industrialization. The petitioners in the Constitutional Court decision are home-based workers who fall under the Putting Out System (POS) category. On average, the petitioners have worked as home-based workers for more than 10 years. According to the petitioners, there has been legal uncertainty and discrimination against them based on the provisions being challenged in the judicial review. Before the petition for judicial review was submitted, the petitioners had an audience with the Ministry of Manpower in 2017 to inquire about the legal protection status of home-based workers as employees and their employment relationship status under the Manpower Law⁵.

² Solechan, S. (2018). Perlindungan Homeworker yang Berkerja Secara Putting Out System. *Administrative Law and Governance Journal*, 1(4), 386–390.

³ Solechan Solechan, “Perlindungan Homeworker Yang Berkerja Secara Putting out System,” *Administrative Law and Governance Journal* 1, no. 4 (November 30, 2018): 386–90, <https://doi.org/10.14710/alj.v1i4.386-390>; Tri Rahayu Utami, Naila Amrina, and Maimunah Maimunah, “Perlindungan Hukum Bagi Pekerja Rumahan Yang Bekerja Secara PPutting Out System Melalui Optimalisasi Peran Badan Ssaha Milik Desa,” *Administrative Law and Governance Journal* 2, no. 2 (June 6, 2019): 365–79, <https://doi.org/10.14710/alj.v2i2.365-379>.

⁴ Utami, T. R., Amrina, N., & Maimunah, M. (2019). Perlindungan hukum bagi pekerja rumahan yang bekerja secara pPutting Out System melalui optimalisasi peran badan ssaha milik desa. *Administrative Law and Governance Journal*, 2(2), 365–379.

⁵ Saputra, A. (2022). *Gugat ke MK, pekerja rumahan minta diakui uu ketenagakerjaan*. DetikNew. Diakses dari laman

However, the Ministry of Manpower responded by stating that, first, the term "home-based worker" is not recognized in the Manpower Law, and second, while home-based workers can be categorized as workers, they are considered to be outside of a formal employment relationship.

In such a situation, the petitioners hope for the state's presence to provide discretion as a foundational basis. The state's presence can manifest through the implementation of social justice for all citizens to obtain a decent living and social security⁶⁷. The state's role in creating protection for its citizens is realized through the intentional creation of laws (by design), as one of the state's functions as a power organization is to make legislation⁸⁹. The

<https://news.detik.com/berita/d-6213589/gugat-ke-mk-pekerja-rumahan-minta-diakui-uu-ketenagakerjaan>. [Diakses pada 19 Juli 2023].

- ⁶ Bernadus Wibowo Suliantoro and Caritas Woro Murdiati Runggangini, "Konsep Keadilan Sosial Dalam Kebhinekaan Menurut Pemikiran Karen J. Warren," *Jurnal Respons Universitas Katholik Atma Jaya* 23, no. 01 (2018): 39–58, <https://doi.org/10.22146/bpsi.7399>.
- ⁷ Suliantoro, B. W., & Runggangini, C. W. M. (2018). Konsep keadilan sosial dalam kebhinekaan menurut pemikiran Karen J. Warren. *Jurnal Respons Universitas Katholik Atma Jaya*, 23(01), 39–58.
- ⁸ Ahmad Fadlil Sumadi, "Hukum Dan Keadilan Sosial Dalam Perspektif Hukum Ketatanegaraan," *Jurnal Konstitusi* 12, no. 4 (2016): 849, <https://doi.org/10.31078/jk1249>.
- ⁹ Sumadi, A. F. (2016). Hukum dan keadilan sosial dalam perspektif hukum ketatanegaraan. *Jurnal Konstitusi*, 12(4), 849.

governmental authority that functions in forming legislation is the House of Representatives¹⁰¹¹.

Based on the background description, the author formulates the problem as follows: what are the legal implications for home-based workers following the judicial review decision issued by the Constitutional Court of the Republic of Indonesia? Research on informal workers has been conducted previously, but this study describes the challenges faced by informal workers during the COVID-19 pandemic in early 2020, which caused their income to drop to 80%, while their livelihood depended on this work¹². This study aims to examine the legal protection received by workers in the informal sector, specifically home-based workers, following the judicial review decision by the Constitutional Court of the Republic of Indonesia.

II. Method

The author employed normative legal research methods. Normative research involved examining library materials (secondary data). This descriptive research aims to comprehensively

¹⁰ Ahmad Yani, "Sistem Pemerintahan Indonesia: Pendekatan Teori Dan Praktek Konstitusi Undang-Undang Dasar 1945," *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2018): 119, <https://doi.org/10.30641/kebijakan.2018.v12.119-135>.

¹¹ Yani, A. (2018). Sistem pemerintahan Indonesia: Pendekatan teori dan praktek konstitusi undang-undang dasar 1945. *Jurnal Ilmiah Kebijakan Hukum*, 12(2), 119.

¹² Octavia, J. (2020). *Building back better: COVID-19 and informal workers in Indonesia*. LSE. Diakses pada laman. <https://blogs.lse.ac.uk/seac/2020/12/15/building-back-better-covid-19-and-informal-workers-in-indonesia/>. [Diakses pada 27 Mei 2023].

describe the existing legal conditions governing home-based workers in Indonesia. The author also examined the juridical phenomena arising from the arguments of the research subjects and objects based on the legal phenomenon of home-based workers in Indonesian society¹³. The approach used involved legislative and analytical approaches. The author reviewed various laws and regulations related to informal workers and policies issued by the government, with a specific focus on the Constitutional Court's decision regarding home-based workers in Indonesia. Furthermore, the authors employed an analytical approach to primary legal materials, secondary legal materials, and non-legal materials. The authors collected these materials through searches conducted in libraries and on the internet.

III. Result & Discussion

A. Indonesian Informal Workers

Formal workers have standard employment relationships with clear, stable contracts, career advancement opportunities, work at a specific workplace, and are assigned tasks according to their personal skills¹⁴. In contrast, informal workers have non-standard employment relationships, lack job security, and are susceptible to rapid hire-and-fire cycles, placing them in vulnerable conditions¹⁵. This vulnerability informal workers face is due to

¹³ Abdulkadir Muhammad. (2004). *Hukum dan penelitian hukum*. Bandung: Citra Aditya Bakti. hlm. 64.

¹⁴ Hermanto, M., & Purwaningsih, S. B. (2021). Critical Review on New Indonesia Law on Labour Rights. *Indonesian Journal of Law and Economics Review*. <https://doi.org/10.21070/ijler.v13i0.740>

¹⁵ BPS. (2020). *Proporsi Lapangan Kerja Informal*. Badan Pusat Statistik. Daikes pada laman.

their non-standard relationships, commonly called precarious workers.

Informal or precarious workers in Indonesia can be determined using four dimensions established by Ernest Cano¹⁶:

- a. Lack of job continuity;
- b. Inadequate wages;
- c. Deterioration of worker-employer relationships and worker vulnerability;
- d. Weakening of social protection for workers.

Given these four dimensions, the vulnerability experienced by precarious workers leads to uncertainty and poverty, indicating that the state should provide protection and fulfillment of their right to work^{17,18}. However, in reality, this is far from being achieved. Although the Job Creation Law has been enacted, it still

[https://www.bps.go.id/indikator/indikator/view_data/0000/data/1166/sdgs_8/1#:~:text=Pekerja informal adalah penduduk yang, dan pekerja keluarga%2ftak dibayar. \[Diakses pada 25 Juni 2023\].](https://www.bps.go.id/indikator/indikator/view_data/0000/data/1166/sdgs_8/1#:~:text=Pekerja%20informal%20adalah%20penduduk%20yang%20dan%20pekerja%20keluarga%20ftak%20dibayar.)

¹⁶ Ikmal, N. M., & Noor, M. (2022). Kebijakan pemerintah Indonesia dalam penanganan Covid-19. *Jurnal Litbang Provinsi Jawa Tengah*, 19(2), 155–167.

¹⁷ Tim Serikat Pengajar HAM, *Membangun Kembali Dengan Lebih Baik: Kajian Pemenuhan Hak Atas Pekerjaan Bagi Kelompok Marginal Di Indonesia* (Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia (Komnas HAM RI), 2023), <https://www.komnasham.go.id/index.php/publikasi/2023/05/05/158/membangun-kembali-dengan-lebih-baik.html>.

¹⁸ Tim Serikat Pengajar HAM. (2023). *Membangun Kembali dengan Lebih Baik: Kajian Pemenuhan Hak atas Pekerjaan Bagi Kelompok Marginal Di Indonesia*. Komisi Nasional Hak Asasi Manusia Republik Indonesia (Komnas HAM RI). <https://www.komnasham.go.id/index.php/publikasi/2023/05/05/158/membangun-kembali-dengan-lebih-baik.html>. P.20.

fails to accommodate the interests of informal workers. Despite the employment cluster in the Job Creation Law, which amends the Labor Law Number 13 of 2003, it changes at least nine provisions of the Labor Law¹⁹. Yet, none of these amendments include protection for informal workers. Ideally, the Job Creation Law should serve as an improvement over the previous Labor Law, particularly in aspects related to a decent livelihood, such as recognizing the existence of workers by regulating their employment relationships to provide protection, social security, and workplace safety.

According to the International Labour Organization (ILO), demographic changes, labor market policies, macroeconomic fluctuations, and technological developments have led to the increasing prevalence of non-standard forms of employment over the past few decades. This trend is also evident in Indonesia. Non-standard forms of employment dominate the informal labor sector, but it cannot be said that all informal workers fall into the category of non-standard employment²⁰.

There are various types of informal workers in Indonesia who use non-standard forms of employment, including street vendors, transportation drivers, online motorcycle taxi drivers, barbershop workers, massage therapists, construction workers, street hawkers, and street performers²¹. However, the study by the National

¹⁹ Ady Thea DA. (2021). *Ada 9 Perubahan UU Ketenagakerjaan Lewat UU Cipta Kerja*. Hukum Online. Diakses pada laman <https://www.hukumonline.com/berita/a/ada-9-perubahan-uu-ketenagakerjaan-lewat-uu-cipta-kerja-lt6095378ff0690/>. [Diakses pada 27 Juni 2023].

²⁰ Ibid.

²¹ Agung Prasetya. (2020). Pengalaman pekerja informal di tengah pandemi Covid-19 di kota Bandung. *Komunikasi, Masyarakat Dan Keamanan*, 2.

Commission on Human Rights (Komnas HAM) focuses on three vulnerable types of informal work that meet the four dimensions of precarious workers: online motorcycle taxi drivers, home-based workers, and freelance workers in the creative industry²². The significance of these three types of employment in Indonesia is based on their substantial numbers, yet they lack adequate protection. However, the author will only discuss informal workers in the category of home-based workers following the issuance of the judicial review decision by the Constitutional Court.

B. Legal Protection for Home-Based Workers in Indonesia

The enactment of the Job Creation Law represents a new breakthrough in Indonesia's legislative framework, introducing the Omnibus law model. Its existence is based on structural reform goals and accelerating economic transformation. The urgent need for job opportunities, facilitating access for the public to start new

<https://ejurnal.ubharajaya.ac.id/index.php/KOMASKAM/article/view/300>.

²² HAM, K. (2021). Kertas kebijakan tinjauan undang-undang nomor 11 tahun 2020 tentang cipta kerja dan peraturan pelaksanaannya pada klaster ketenagakerjaan terhadap hak atas pekerjaan dan penghidupan yang layak bagi pekerja prakeriat. *Komnas HAM*. Diakses pada laman <https://www.komnasham.go.id/index.php/publikasi/2022/02/03/141/kertas-kebijakan-tinjauan-atas-undang-undang-nomor-11-tahun-2020-tentang-cipta-kerja-dan-peraturan-pelaksanaannya-pada-klaster-ketenagakerjaan-terhadap-hak-atas-pekerjaan-dan-penghidupan-yang->. [Diakses pada 26 Juni 2023].

businesses, and efforts to prevent and eradicate corruption are the objectives behind the creation of the employment cluster of the Job Creation Law. Meanwhile, upon examining the Job Creation Law's considerations, efforts are to fulfill the right to employment and a decent livelihood. It is the government's responsibility to focus on regulating and synchronizing with emerging issues and trends to achieve the fulfillment of the right to employment and a decent livelihood²³.

Indonesia has implemented flexibility in employment relationships, allowing for flexibility in employment agreements between companies and workers. Even during the COVID-19 pandemic, this work system became one of the policies issued by the government, namely the work-from-home (WFH) system. The legitimacy of policies protecting the safety and health of workers is found in Article 89 paragraph (1) letter a of the Manpower Law²⁴. Technical regulations for WFH for workers were initially based on the Circular of the Jakarta Provincial Manpower, Transmigration, and Energy Agency Number 14/SE/2020 regarding Recommendations for Working from Home, while WFH for Civil Servants was formulated in the Circular of the Minister of State Apparatus Empowerment and Bureaucratic Reform Number 19 of 2020 regarding the Adjustment of the Civil Servant Work System in Efforts to Prevent COVID-19 in Government Agencies²⁵.

²³ Ibid.

²⁴ Bernadeth Aurelia Oktavira, *Ketentuan Pelaksanaan Work From Home di Tengah Wabah COVID-19*, <https://www.hukumonline.com/klinik/a/ketentuan-pelaksanaan-iwork-from-home-i-di-tengah-wabah-covid-19-lt5e7326fd25227>, Diakses tanggal 19 Januari 2024.

²⁵ Rudi Hartono, N., & Suci Ramadhani, A. (2020). *Tinjauan Yuridis Kebijakan Work From Home Berdasarkan Undang-Undang*

However, the flexibility of work referred to in this paper pertains to home workers who basically do not have basic employment agreements (non-standard). The purpose of introducing flexible working arrangements is to address unemployment issues. However, in practice, this phenomenon faces various obstacles for certain types of jobs, such as minimum wage problems, income uncertainty and job security, low bargaining power of workers, and vulnerability of unskilled workers, which are based on the weak government supervision system. This trend results in vulnerability, categorizing these workers as part of the precariat, whose numbers are increasingly significant. Precariat workers generally work full-time but do not receive workers' rights. Additionally, they do not receive social security or the right to unionize.

Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every citizen has the right to work and a decent livelihood for humanity," therefore the state needs to make various efforts or actions to fulfill the rights of citizens to obtain decent work and livelihoods. The fulfillment of these rights is not only done in peaceful conditions but also during disasters. However, the protected employment relationships in the Omnibus Law on Job Creation remain narrow. Because some types of workers are not included in the employment framework regulated by the Omnibus Law on Job Creation, even in its implementing regulations. Most of the provisions regulated in the Omnibus Law on Job Creation only protect the rights of formal sector workers, so when the country experiences disasters such as the COVID-19 pandemic, which requires citizens to stay at home by changing the work concept to work from home, such a work concept is only effective for those who have standard employment relationships with the government or companies. Thus, those

workers can remain calm at home because even though they are not as active as usual at the workplace before the pandemic, it does not diminish their rights. This is different for workers in the informal sector, especially those in the group of home workers.

Home-based work or, according to international labor organizations, referred to as homeworking, means work performed by an individual, who is referred to as a homemaker, which involves²⁶:

- (i) at their home or at another location of their choice, other than the employer's workplace;
- (ii) to earn wages;
- (iii) producing a product or service as determined by the employer, regardless of who provides the equipment, materials, or other inputs.

The Labor Law does not specifically differentiate between formal and informal workers. However, the law definitively regulates what is meant by labor. Article 1 number 2 states, "Labor is any person capable of performing work to produce goods and/or services, either for their own needs or for society." Furthermore, individuals who are already working are referred to as workers/laborers, regulated in Article 1 number 3, which states, "Workers/laborers are any person who works for wages or other forms of compensation." Based on the definitions in Article 1, numbers 2 and 3, it can be interpreted that anyone who performs work producing goods or services for wages for their own needs is included as a subjects regulated by this law. However, this contrasts when compared to Chapter VI on labor placement, specifically in

²⁶ ILO. (1996). *Rekomendasi kerja rumahan, 1996 (No. 184)*. Diakses pada laman https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/legaldocument/wcms_220986.pdf. [Diakses pada 27 Juni 2023].

Article 31, which explains that "Every worker has the same rights and opportunities to choose, obtain, or change jobs and to earn a decent income domestically or abroad." The aspect to be highlighted in this provision is the part that states "to earn a decent income." These rights may not be experienced by all workers, especially those classified as home-based workers or, more specifically, those classified as precarious workers.

Home-based work can be divided into two main types: workers who work for companies/employers and workers who work independently and market their own products²⁷. Its forms can be divided into two basic categories: traditional and modern. Traditional homework involves manual labor and guidance activities, typically requiring low skill levels and wages based on physical output. Meanwhile, modern home-based work involves information and professional activities with incentives, requiring high skill levels²⁸.

Based on their form, home-based workers are spread across various fields such as fashion, crafts, and services. Factually, the products of home-based workers include socks and baby gloves seamstresses, makers of ready-to-eat food packaging, makers of jewelry (necklaces, bracelets, and rings) typical of a region, and so forth²⁹. Generally, those who take on this work are predominantly

²⁷ Utami, T. R., Amrina, N., & Maimunah, M. (2019). Perlindungan hukum bagi pekerja rumahan yang bekerja secara Putting Out System melalui optimalisasi peran badan usaha milik desa. *Administrative Law and Governance Journal*, 2(2), 365–379.

²⁸ Gajimu.com. (2023). *Seputar kerja rumahan di Indonesia*. Gajimu.Com. Diakses pada laman <https://gajimu.com/tips-karir/Tentang-wanita/Pekerja-Rumahan>. [Diakses pada 26 Juni 2023].

²⁹ Column, S. (2019). *Mengenal siapa mereka pekerja rumahan*. Communication.Binus.Ac.Id. Diakses pada laman

women, as they usually have a low educational background, and other contributing factors include poverty. This makes it difficult for them to access formal sector jobs, which typically require a minimum high school diploma or equivalent.

Initially, home-based work was done to earn extra income, but gradually, for some people, it became their main source of income. Home-based workers are paid based on the unit of their work output, not based on the intensity or duration of their work. Regarding homeworkers, there has been a request for legal testing of the regulations against Law No. 13 of 2003 concerning Manpower to the Constitutional Court of the Republic of Indonesia, with registration of Case Application No. 75/PUU-XX/2022. The material content requested for testing is stipulated in Article 1 number 15 and Article 50 of Law No. 13 of 2003 concerning Manpower³⁰. Based on this case, the wages obtained by each petitioner can be found, which will be detailed in the table below.

<https://communication.binus.ac.id/2019/01/03/mengenal-siapa-mereka-pekerja-rumahan/>. [Diakses pada 5 Juli 2023].

³⁰ MKRI, H. (2022b). *Hubungan kerja pekerja rumahan dan pekerja umum seharusnya sama*. MKRI. Diakses pada laman <https://www.mkri.id/index.php?page=web.Berita&id=18607&menu=2>. [Diakses pada tanggal 10 Juli 2023].

Table 1: Data on Home-Based Workers, Work Form, Employers, and Wages³¹

No	Petitioner	Petitioner Domicile	Workplace	Home-Based Work Form and Employer	Wage
1.	Petitioner I	North Jakarta, DKI Jakarta Province	Home	Sewing socks and baby mittens. Materials and sewing patterns provided by the intermediary.	IDR 60.000/week
2.	Petitioner II	North Jakarta, DKI Jakarta Province		Making packaging (paper) for ready-to-eat fried chicken. Materials and work equipment provided by the intermediary.	IDR 50.000/week
3.	Petitioner III	North Jakarta, DKI Jakarta Province		Processing the lamination process of footwear products. Materials provided by the intermediary	IDR 400.000/week
4.	Petitioner IV and Petitioner V	Cirebon, West Java		Working on rattan furniture products such as chairs and tables, as well as rattan weaving for home decorations. Rattan materials provided by intermediary.	IDR 300.000/week

Based on the table above, it is known that petitioner I, II, and III are domiciled in North Jakarta, DKI Jakarta Province. If assessed according to the criteria for a decent living, the government has established the Provincial Minimum Wage (UMP) applicable in all

³¹ Dikelola dari Register Permohonan Perkara Nomor 75/PUU-XX/2022).

districts or cities within a province. The minimum wage is the minimum standard used by employers or industrial actors to provide wages to workers. UMP is determined by the governor's decision, while adjustments to UMP are made by the Provincial Wage Council, which is then recommended to the governor through the Provincial Manpower Office for approval. Therefore, each region has different UMPs. In 2022, the UMP for DKI Jakarta Province was IDR 4,641,854.00 per month, and the UMP for West Java Province was IDR 1,841,487.00³². The income received by petitioner I per week is IDR 60,000.00. If multiplied by four weeks, the cumulative income obtained from home-based work in one month is approximately IDR 240,000.00. If petitioner II earns IDR 50,000.00 per week, if multiplied by 4 weeks, the average income is IDR 200,000.00. For petitioner III, who earns IDR 400,000.00 per week, the cumulative income for one month is IDR 1,600,000.00. Therefore, when compared to the UMP of DKI Jakarta, the comparison is still far apart. Meanwhile, petitioners IV and V are both domiciled in Cirebon Regency, West Java Province, where 2022 the UMP was set at IDR 1,841,487.00. Both petitioners are paid IDR 300,000.00 per week, and if totaled, the income they receive from home-based work is IDR 1,200,000.00. Similar to petitioners I, II, and III, the income of petitioners IV and V also has not reached the UMP in their area.

However, in this case, the Provincial Minimum Wage (UMP) cannot be used as a benchmark for wage payment for home workers because, in fact, to date, the Indonesian government has not ratified

³² Aida, N. R. (2022). *Daftar lengkap UMP 34 Provinsi di Indonesia tahun 2022*. Kompas.Com. Diakses pada laman <https://www.kompas.com/tren/read/2022/05/18/190000365/daftar-lengkap-ump-34-provinsi-di-indonesia-tahun-2022?page=all>. [Diakses pada tanggal 8 Juli 2023].

the instrument to protect home workers, namely the ILO Convention of 1996 on Home-Based Work. Therefore, the employment relationship between the five petitioners, who are home workers, and their employers is not the employment relationship referred to in Article 1 Number 15 of the Labor Law because the employers are merely intermediaries, not employers. The petitioners only represent a small portion of Indonesia's various forms of home workers. Their work involves activities to produce a product and/or service to meet their livelihood needs, even though the work arises only through verbal or non-standard agreements. This implies that despite their significant time investment, there is no legal basis for them to demand wage adequacy, let alone to be adjusted to the UMP in their area. However, home-based workers are entitled to and deserve equal recognition and status before the law to receive benefits equivalent to formal workers. Moreover, home-based workers are exposed to the risk of workplace accidents, so they also require social security, such as protection for occupational safety.

Social security protection for informal workers is administered by the National Social Security Agency for Employment (BPJS Ketenagakerjaan) through a social insurance system implemented via the National Social Security program based on Law No. 40 of 2004 and Law No. 24 of 2011. However, this only applies to informal workers outside formal employment relationships³³. Meanwhile, for home workers who work under the Putting Out System, as done by the petitioners, it is not fully

³³ I Gusti Ngurah Brama Abimayu Rahmanda Putra and I Ketut Westra, "Jaminan Sosial Bagi Pekeja Di Sektor Informal Sebagai Wujud Pelaksanaan Sila Kelima UUD NRI 1945," *Kertha Desa* 9 (2021): 91–101, <https://ojs.unud.ac.id/index.php/kerthadesa/article/view/83349>. Diakses tanggal 21 Oktober 2023.

regulated by labor laws³⁴. The state is responsible for implementing Article 9 of the International Covenant on Economic, Social, and Cultural Rights, as ratified by Law No. 11 of 2005, to recognize everyone's right to social security, including social insurance³⁵. According to this convention, social security becomes the right of every individual without discrimination based on the type of employment, whether formal or informal (such as home-based workers).

Home-based workers included within the informal worker sector are a traditional scheme passed down through generations. Home-based workers are often referred to as subcontracted workers. However, the subcontracting referred to here generally involves a verbal contract agreement between the employer and the worker (home-based worker). Based on a copy of the Constitutional Court of the Republic of Indonesia Decision Number 75/PUU-XX/2022, in the section describing the types of work carried out by the Petitioners, it is explained that both Petitioner I to Petitioner V obtained work and work orders verbally from an individual acting as an intermediary to produce a specific product with materials and equipment provided by the

³⁴ Utami, T. R., Amrina, N., & Maimunah, M. (2019). Perlindungan hukum bagi pekerja rumahan yang bekerja secara Putting Out System melalui optimalisasi peran badan usaha milik desa. *Administrative Law and Governance Journal*, 2(2), 365–379.

³⁵ HAM, K. (2021). Kertas kebijakan tinjauan undang-undang nomor 11 tahun 2020 tentang cipta kerja dan peraturan pelaksanaannya pada klaster ketenagakerjaan terhadap hak atas pekerjaan dan penghidupan yang layak bagi pekerja prakeriat. *Komnas HAM*. <https://www.komnasham.go.id/index.php/publikasi/2022/02/03/141/kertas-kebijakan-tinjauan-atas-undang-undang-nomor-11-tahun-2020-tentang-cipta-kerja-dan-peraturan-pelaksanaannya-pada-klaster-ketenagakerjaan-terhadap-hak-atas-pekerjaan-dan-penghidupan-yang->

intermediary, but the home workers perform the work in their own homes³⁶.

C. Legal Review of the Constitutional Court Decision

In accordance with the petition submitted by the petitioners in Constitutional Court Decision Number 75/PUU-XX/2022, the petitioners are Indonesian citizens (WNI) who have constitutional rights to recognition, equality before the law, freedom from discriminatory treatment on any basis, as well as fair and decent treatment as workers in employment relationships. The employment relationship held between the petitioners as home workers and their employers is based on an employment agreement that includes elements of wages, orders, and work as stipulated in the Labor Law.

According to the Court, the petitioners, who are home-based workers, regarding the legal status of the petitioners based on Article 51 paragraph (1) of the Constitutional Court Law, which states that those who can submit a request for the examination of a law against the 1945 Constitution are those who believe that their constitutional rights and/or authority granted by the 1945 Constitution are violated by the enactment of a law, namely:

- a. individual Indonesian citizens (including groups of people with the same interests);

³⁶ MKRI. (2022a). *Putusan Nomor 75/PUU-XX/2022*. MKRI. Diakses pada https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8846_1675153517.pdf. [Diakses pada 10 Juli 2023].

- b. indigenous legal communities as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia regulated by law;
- c. public or private legal entities;
- d. state institutions.

Therefore, in examining the law against the 1945 Constitution, the petitioners must first explain their status as petitioners in accordance with Article 51 paragraph (1) of the Constitutional Court Law and whether there is any loss of rights and/or constitutional authority granted by the 1945 Constitution caused by the enactment of the law being petitioned for examination. Thus, the judge opines that there is apparent causality between the petitioners' presumption of constitutional rights loss and the enactment of the legal norms being petitioned for examination. Therefore, regardless of whether the petitioners' arguments regarding the constitutionality of the law being petitioned for examination are proven, according to the Court, the petitioners have the legal standing to act as petitioners in the petition.

The main request from the petitioners, based on Article 1 number 15 and Article 50 of the Labor Law, will be examined by the judge, which then narrows down to two issues: the petitioners claim that there has been legal overlap or ambiguity resulting in legal uncertainty and that these provisions have led to discrimination, thereby failing to guarantee protection for the rights of home-based workers.

According to the Supreme Court's consideration regarding the petitioner who desires an employment agreement between the employer and home-based worker, such an agreement is not prohibited as long as both parties mutually agree to bind themselves within the contract based on the principles of freedom of contract

as stipulated in Articles 1320 and 1338 of the Civil Code (principle of *pacta sunt servanda*). However, the petitioner's request should not necessitate altering the normative construction of Articles 1 and 50 of the Manpower Act. Granting this request could exacerbate the imbalance between the demand for jobs and the availability of labor, as the current labor supply does not match the available job opportunities. Furthermore, if the term "employer" were to be interpreted as the petitioner suggests, equating it with the term "job provider" would harm workers/laborers, particularly those who have already entered into employment agreements with employers and are engaged in an employment relationship. Article 50 of the Manpower Act states, "An employment relationship arises due to an employment agreement between an employer and a worker/laborer." Therefore, a job provider who offers work to home-based workers is not necessarily an employer who owns a company. Moreover, the Court found no formal evidence proving that the petitioners had entered into an employment agreement with the workers who have been providing work. Article 51, paragraph (1) of the Manpower Act states, "Employment agreements are made in writing or verbally," and Article 52 outlines the basis of employment agreements: mutual consent of both parties, the ability or capacity to perform legal acts, the existence of an agreed-upon job, and the job not contravening public order, morality, or prevailing laws and regulations. Nevertheless, the Court holds that petitioners should have the same rights as workers/laborers employed by an employer who owns a company. Special conditions or provisions in employment agreements are intended to provide protection and legal certainty for workers/laborers. More specific regulations are required to protect home-based workers receiving work from a job provider who is not necessarily an employer, but where an employer is certainly a job provider with an employment relationship with workers/laborers.

Regarding the petitioners' (home-based workers) statement that the definition of employment relationship in Article 1, number 15, and Article 50 of Law No. 13 of 2003 (Labor Law) has caused legal discrimination and inequality for workers not employed by entrepreneurs, as the relationship is considered not to meet the criteria of an employment relationship, resulting in the loss of basic rights and the right to a decent livelihood, the Constitutional Court judges opined that this statement is not valid. Home-based workers, such as the petitioners, have characteristics distinct from workers/laborers employed by companies. These differences are evident in the workplace, working hours, to whom they report, wages, and work facilities. Therefore, treating different situations differently does not constitute discrimination, as discrimination involves treating identical situations differently. Consequently, Article 1, number 15, and Article 50 of Law No. 13 of 2003 do not entail discriminatory treatment, as the limitations stipulated in these articles apply to all workers/laborers under the Labor Law.

The Court's opinion regarding the absence of discrimination is based on several considerations:

- a. According to the objectives of Law No. 13 of 2003, which include providing equal opportunities and treatment to workers/laborers in terms of obtaining employment, welfare, and a decent livelihood, this must be implemented without distinguishing gender, ethnicity, race, religion, and political affiliation, and adjusted to the interests and capabilities of the workers/laborers. This includes equal treatment for persons with disabilities by assigning employers the responsibility to grant rights and obligations to workers/laborers without differentiating based on gender, ethnicity, race, religion, skin color, or political affiliation.
- b. Protection of the workforce is intended to guarantee the basic rights of workers/laborers and ensure equal opportunities

and treatment without discrimination on any grounds to achieve the welfare of workers/laborers and their families while still considering the progress and development of the business sector.

- c. Based on Chapter III of Law No. 13 of 2003 concerning equal opportunities and treatment, Article 5 states that "Every worker has the same opportunity without discrimination to obtain employment," and Article 6 states that "Every worker/laborer is entitled to equal treatment without discrimination from the employer."

Regarding the petitioners' claim that Article 1, number 15, and Article 50 of Law No. 13 of 2003 have resulted in the loss of basic worker rights for those employed by entities other than entrepreneurs, as well as the loss of the right to a decent livelihood because their legal relationship does not meet the criteria of an employment relationship, the Court considered that existing legislation had provided protection to home workers. This includes Law No. 40 of 2004 on the National Social Security System, Government Regulation No. 31 of 2006 on the National Work Training System, Government Regulation No. 101 of 2012 on Health Insurance Contribution Assistance Recipients as amended by Government Regulation No. 76 of 2015, Government Regulation No. 33 of 2013 on the Expansion of Employment Opportunities, Government Regulation No. 44 of 2015 on the Implementation of Work Accident and Death Insurance Programs, and Government Regulation No. 25 of 2020 on the Implementation of Public Housing Savings.

However, the Court opined that home workers should be a priority for the government, specifically the ministry responsible for labor affairs, to promptly formulate special or more specific regulations for home workers. This would ensure that the rights of home workers are clearly regulated. Such regulations could be

enacted through the regulatory authority of the minister in charge of labor affairs or through local regulations, ensuring that the rights of home workers are adequately protected and their welfare is maintained according to the conditions of each region.

Based on all the above considerations, the Petitioners' claim that Article 1, number 15, and Article 50 of Law No. 13/2003 have caused legal ambiguity, resulting in a lack of recognition, assurance, protection, and legal certainty, and have led to unfair treatment for workers not employed by entrepreneurs because they are considered to be outside of an employment relationship, thereby conflicting with Article 28D, paragraphs (1) and (2) of the 1945 Constitution, is not substantiated. Therefore, the claim is legally unfounded.

However, the employment relationship between the Petitioners as home workers and the employers does not fall within the definition provided in Article 1, number 15 of the Labor Law, which definitively states that "An employment relationship is a relationship between an employer and a worker/laborer with an employer or a hiring party, which includes the terms of employment, rights, and obligations of the parties." In reality, the employer who gives work orders to home workers is seen not as an entrepreneur but as an intermediary (individual) who also receives orders or cooperates to carry out or distribute the work from the main employer. Thus, the legal relationship that the Petitioners have with their employers is not recognized as work within the scope of an employment relationship, often referred to as work outside the employment relationship.

Additionally, the provision reinforcing the basis of the employment relationship is Article 50 of the Labor Law, which states that "An employment relationship is established by a work agreement between the employer and the worker/laborer."

Therefore, although the Petitioners can be categorized as workers, they are not considered as having an employment relationship in practice. This results in legal disparity and discrimination between the Petitioners and other workers employed by employers. Recognition and protection are crucial for every home worker because they also contribute to the country's economic growth. Based on the assessment of facts and law outlined, the Court concluded that it has the authority to adjudicate the Petitioners' (home workers') application, the Petitioners have legal standing to file the application with the Constitutional Court, and regarding the substance of the application, the Petitioners' claims are deemed legally unsubstantiated. Consequently, in its decision, the Court declared, "The Petitioners' application is entirely rejected."

IV. Conclusion

Based on the aforementioned discussion, it can be concluded that there are two employment sectors: formal and informal. Home workers are classified within the informal employment sector. The current legislation, namely the Job Creation and Labor Law, has not yet provided legal protection for the home worker sector. This protection refers to employment relationships that impact fair wages and social security protection. This issue has been brought before the Constitutional Court and has been adjudicated. The Court opined in its ruling that the petition based on Article 1, number 15, and Article 50 of the Labor Law, seeking recognition of the existence of home workers by acknowledging the employment relationship between home workers and employers, was rejected. However, the Court recommended that the government, specifically the Ministry of Manpower, which has the authority to handle labor issues, should promptly create regulations

specifically addressing the informal sector, particularly home workers. Additionally, the Court stated that legal protection for home workers in establishing employment agreements with employers can be based on Articles 1320 and 1338 of the Civil Code. Furthermore, the Court noted that home workers already receive legal protection under social security through various existing regulations, including Law No. 40 of 2004 on the National Social Security System, Government Regulation No. 31 of 2006 on the National Work Training System, Government Regulation No. 101 of 2012 on Health Insurance Contribution Assistance Recipients as amended by Government Regulation No. 76 of 2015, Government Regulation No. 33 of 2013 on the Expansion of Employment Opportunities, Government Regulation No. 44 of 2015 on the Implementation of Work Accident and Death Insurance Programs, and Government Regulation No. 25 of 2020 on the Implementation of Public Housing Savings.

V. References

- Ady Thea DA. (2021). *Ada 9 Perubahan UU Ketenagakerjaan Lewat UU Cipta Kerja*. Hukum Online. <https://www.hukumonline.com/berita/a/ada-9-perubahan-uu-ketenagakerjaan-lewat-uu-cipta-kerja-lt6095378ff0690/>
- Agung Prasetya. (2020). Pengalaman pekerja informal di tengah pandemi Covid-19 di kota Bandung. *Komunikasi, Masyarakat Dan Keamanan*, 2. <https://ejurnal.ubharajaya.ac.id/index.php/KOMASKAM/article/view/300>
- Aida, N. R. (2022). *Daftar lengkap UMP 34 Provinsi di Indonesia tahun 2022*. Kompas.Com. <https://www.kompas.com/tren/read/2022/05/18/190000365/daftar-lengkap-ump-34-provinsi-di-indonesia-tahun-2022?page=all>
- BPS. (2020). *Proporsi Lapangan Kerja Informal*. Badan Pusat Statistik. https://www.bps.go.id/indikator/indikator/view_data/0000/data/1166/sdgs_8/1#:~:text=Pekerja informal adalah penduduk yang,dan pekerja keluarga%2Ftak dibayar.
- Column, S. (2019). *Mengenal siapa mereka pekerja rumahan*. Communication.Binus.Ac.Id. <https://communication.binus.ac.id/2019/01/03/mengenal-siapa-mereka-pekerja-rumahan/>
- Gajimu.com. (2023). *Seputar kerja rumahan di Indonesia*. Gajimu.Com. <https://gajimu.com/tips-karir/Tentang-wanita/Pekerja-Rumahan>
- HAM, K. (2021). Kertas kebijakan tinjauan undang-undang nomor 11 tahun 2020 tentang cipta kerja dan peraturan pelaksanaannya pada klaster ketenagakerjaan terhadap hak atas pekerjaan dan penghidupan yang layak bagi pekerja prakeriat. *Komnas HAM*. <https://www.komnasham.go.id/index.php/publikasi/2022/02/03>

/141/kertas-kebijakan-tinjauan-atas-undang-undang-nomor-11-tahun-2020-tentang-cipta-kerja-dan-peraturan-pelaksanaannya-pada-klaster-ketenagakerjaan-terhadap-hak-atas-pekerjaan-dan-penghidupan-yang-

- Ikmal, N. M., & Noor, M. (2022). Kebijakan pemerintah Indonesia dalam penanganan Covid-19. *Jurnal Litbang Provinsi Jawa Tengah*, 19(2), 155–167. <https://doi.org/10.36762/jurnaljateng.v19i2.910>
- ILO. *Non-Standard Forms of Employment around the World: Understanding Challenges, Shaping Prospects*. First Publ. Geneva: International Labour Office, 2016. <https://www.ilo.org/global/topics/non-standard-employment/lang--en/index.htm>.
- Putra, I Gusti Ngurah Brama Abimayu Rahmanda, and I Ketut Westra. “Jaminan Sosial Bagi Pekeja Di Sektor Informal Sebagai Wujud Pelaksanaan Sila Kelima UUD NRI 1945.” *Kertha Desa* 9 (2021): 91–101. <https://ojs.unud.ac.id/index.php/kerthadesa/article/view/83349>.
- Solechan, Solechan. “Perlindungan Homeworkeer Yang Berkerja Secara Putting out System.” *Administrative Law and Governance Journal* 1, no. 4 (November 30, 2018): 386–90. <https://doi.org/10.14710/alj.v1i4.386-390>.
- Suliantoro, Bernadus Wibowo, and Caritas Woro Murdiati Runggangdini. “Konsep Keadilan Sosial Dalam Kebhinekaan Menurut Pemikiran Karen J. Warren.” *Jurnal Respons Universitas Katholik Atma Jaya* 23, no. 01 (2018): 39–58. <https://doi.org/10.22146/bpsi.7399>.
- Sumadi, Ahmad Fadlil. “Hukum Dan Keadilan Sosial Dalam Perspektif Hukum Ketatanegaraan.” *Jurnal Konstitusi* 12, no. 4 (2016): 849. <https://doi.org/10.31078/jk1249>.
- Tim Serikat Pengajar HAM. *Membangun Kembali Dengan Lebih Baik: Kajian Pemenuhan Hak Atas Pekerjaan Bagi Kelompok Marginal*

Di Indonesia. Jakarta: Komisi Nasional Hak Asasi Manusia Republik Indonesia (Komnas HAM RI), 2023. <https://www.komnasham.go.id/index.php/publikasi/2023/05/05/158/membangun-kembali-dengan-lebih-baik.html>.

Utami, Tri Rahayu, Naila Amrina, and Maimunah Maimunah. "Perlindungan Hukum Bagi Pekerja Rumahan Yang Bekerja Secara PPutting Out System Melalui Optimalisasi Peran Badan Ssaha Milik Desa." *Administrative Law and Governance Journal* 2, no. 2 (June 6, 2019): 365–79. <https://doi.org/10.14710/alj.v2i2.365-379>.

Yani, Ahmad. "Sistem Pemerintahan Indonesia: Pendekatan Teori Dan Praktek Konstitusi Undang-Undang Dasar 1945." *Jurnal Ilmiah Kebijakan Hukum* 12, no. 2 (2018): 119. <https://doi.org/10.30641/kebijakan.2018.v12.119-135>.

Acknowledgment

None

Funding Information

None

Conflicting Interest Statement

There is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.