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KEMNAKER

▶ **Labour Inspection
Guide in Preventing and
Handling Discrimination,
Harassment, and Sexual
Violence in the Workplace**



- ▶ **Labour Inspection Guide in Preventing and Handling Discrimination, Harassment, and Sexual Violence in the Workplace**

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▶ Foreword

Ministry of Manpower

First and foremost, all praises are due to Allah SWT for we shall be grateful for completing the Labour Inspection Guide in Preventing and Handling Discrimination, Harassment, and Sexual Violence in the Workplace.

A workplace culture founded on mutual respect among individuals is essential for the realization of decent work. The acknowledgment of equal opportunity principles for both men and women, ensuring the right to live without fear of violence and harassment, is enshrined in the 1945 Constitution, Article 28I, paragraph (2), which asserts that “Every person is entitled to be free from discriminative treatment on whatsoever basis and is entitled to acquire protection against such discriminative treatment.”

However, obstacles persist in the access to rights for workers, particularly women workers. Given the inherent nature of their roles, women workers require special protection, closely tied to their reproductive function. In addition to grappling with gender gaps, women workers face a heightened susceptibility to workplace violence and harassment. This phenomenon is increasingly prevalent across various sectors, notably in health, services, transportation, education, garments, domestic work, night shifts, and remote employment settings.

To address these challenges, a steadfast commitment is required from the government, business entities, and workers, including employers’ and workers’ organizations, to ensure the protection of women workers. In line with this commitment, the Ministry of Manpower issued Circular Letter No. 03/MEN/IV/2011 in 2011, providing guidelines for the prevention of sexual harassment in the workplace. This Circular Letter was further reinforced by the issuance of Minister of Manpower Decree No. 88 of 2023, which focuses on the prevention and handling of sexual violence in the workplace. In response to the Minister of Manpower’s Decree, a comprehensive guide entitled **Labour Inspection Guide in Preventing and Handling Discrimination, Harassment and Sexual Violence in the Workplace** was developed. This guide is designed to provide labour inspectors with directions in ensuring non-gender-biased labour inspection. Its purpose is to support the labour inspection function in preventing and addressing discrimination and sexual violence in the workplace, while also fostering gender equality and cultivating a workplace characterized by respect (Respectful Workplace Policy).

On this occasion, I extend my appreciation and gratitude to all stakeholders, with special acknowledgment to labour inspectors and the Jakarta ILO office, for their collaborative efforts in formulating this guideline. I hope that this guide serves as the foundational framework for the execution of labour inspection processes that are devoid of discrimination and sexual violence.

Dr. Haiyani Rumondang, M.A

Director General for Labour Inspection and Occupational Safety and Health (OSH)

▶ Foreword

International Labour Organization

Labour inspection has always held a vital position in workplaces, ensuring a fair, safe, and healthy environment for workers.

This Guide, developed jointly by the ILO through the Improving Workers Rights in Rural Sectors project and Ministry of Manpower, with reference to national regulations and ILO conventions, paves the path towards an all-inclusive and respectful workplace. It will help in sharpening workplace policies to promote gender equality. This Guide encapsulates the essence of promoting gender equality within the realms of labour inspection.

This Guide will provide guiding information to labour inspectors on how to distinguish and address gender roles, indications of discrimination, sexual harassment, and relations that can significantly affect the work environment.

The ILO Conventions serve as a robust backbone for this Guide, as it advocates for promoting gender equality in workplaces. Its conventions, such as the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family Responsibilities Convention (No. 156), and Maternity Protection Convention (No. 183), and Violence and Harassment Convention (No. 190) prioritizes equal rights for workers, irrespective of their gender.

This Guide will also support the labour inspectors in providing advice to the company in developing a gender equality action plan to create a respectful workplace. It reviews practices from a gender perspective, ensuring there are no loopholes that can be exploited or contribute to discrimination, and directs attention to details that may be often disregarded, such as menstrual leave rights, maternity rights, wage inequality, or sexual harassment. The book also acknowledges that the issues faced by men and women in the workplace can be starkly different, and a “one size fits all” approach would be insufficient. Hence, labour inspectors could even be more sensitive, observant, and above all, fair while handling cases.

We hope that this Guide could be beneficial both for improving capacity of the labour inspection and compliance at the workplace to mainstream gender in the world of work.

Michiko Miyamoto

Country Director of ILO Indonesia and Timor-Leste

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Introduction

The National Action Plan of Human Rights (*Rencana Aksi Nasional Hak Asasi Manusia* [RAN-HAM]) of 2021-2025, which is specified in the Presidential Regulation Number 53 of 2021, has stated that empowering women is a pivotal objective aimed at fostering the principles of respect, protection, fulfilment, enforcement, and promotion of human rights. One of the enduring challenges faced by women in the modern era is the prevalence of workplace discrimination. Consequently, a strategic approach to safeguarding and upholding women's rights in line with the National Action Plan on Human Rights (RAN-HAM) involves the establishment of a work environment that promotes mutual respect, devoid of discrimination, exclusion, limitations, harassment, bullying, and various other forms of violence.

Achieving a secure, comfortable, and harmonious work climate can be accomplished through the implementation of respectful workplace policies. **Respectful Workplace Policy** in the Indonesian language can be defined as the policy to foster respectful behaviour in the workplace (*kebijakan berperilaku saling menghargai di tempat kerja*). One of the fundamental principles of respectful workplace policy applied in a company is to uphold gender equality at the workplace, given that gender equality is a fundamental human right.

Gender equality for both men and women in the workplace is a core value acknowledged and promoted by the international community. From a business standpoint, gender equality not only aligns with global consensus as a driver of a 'smart economy,' but it is also deemed essential for sustainable development, poverty alleviation, and the improvement of living standards for all individuals, irrespective of gender.

Through a resolution established in 2009, ILO has recognized gender equality as the fundamental aspect of decent work.¹ Over the past few decades, significant strides have been taken to promote gender equality in the global workforce. Many nations have developed national policies, legislative frameworks, and enhanced law enforcement measures to promote gender equity. Moreover, there has been a growing awareness of workers' rights to equal opportunities and fair treatment. In numerous countries, labour administration and labour inspection systems have strengthened their capacity to oversee and ensure the enforcement of laws and regulations related to gender equality.

Indonesia has made considerable progress in promoting and protecting women's rights. Gender mainstreaming is mandated through the Presidential Instruction on Gender Mainstreaming (Inpres No. 9/2000), which requires all government agencies at national and local levels to mainstream gender into planning, implementation, monitoring, and evaluation of all policies and programs. According to the Instruction, ministries and agencies at national and local levels are to address gender inequality and eliminate gender-based discrimination.² As part of these efforts, in 2005 the Ministry of Manpower and Transmigration (MOMT) developed a "Guide on Equal Employment Opportunity in Indonesia", focusing on eliminating sex discrimination from the workplace. In 2011, MOMT issued a "Guide on Sexual Harassment in the Workplace" and in early 2014 the Ministry issued "Gender-Neutral Pay Equity: A Step-by-Step Guide" for employers in Indonesia. Additionally, Indonesia has ratified the international conventions that emphasize gender equality, passed national legislation protecting women's rights, increased levels of women's education, and promoted higher numbers of women participating in the formal workforce.

Despite these efforts, however, challenges remain. Women in Indonesia continue to have lower participation and higher unemployment rates than men. They receive lower wages, have limited access to resources, face discrimination in hiring and promotion practices, and are often subjected to sexual harassment in the workplace. Both horizontal and vertical segregation persists in Indonesia's labour market. In the formal economy, women are over-represented in low-paying jobs and under-represented in executive, management, and technical positions. In the informal economy women make up most of Indonesia's self-employed, unpaid family workers and migrant workers, leaving them susceptible to personal and financial insecurity, trafficking, and other human rights violations. Tackling these problems requires paying more attention to equal employment opportunities and addressing the causes of labour market segmentation that result in gender pay gaps and limited career advancement opportunities for women.³

1 ILO: Gender equality as the heart of decent work, International Labour Conference, Session-98 (Geneva, 2009).

2 World Bank; Republic of Indonesia, Ministry of National Planning and Ministry of Women's Empowerment: Policy brief 1 on gender equality - Indonesia (No. 75844), p. 5 (Jakarta, 2011).

3 World Bank; Government of the Republic of Indonesia, Ministry of National Planning and Ministry of Women's Empowerment: Policy brief 4 on gender equality - Indonesia (No. 73032), p. 1 (Jakarta, 2011)

Labour inspectors can play a crucial role in addressing the challenges faced by women workers in workplaces. In broad terms, labour inspectors are responsible for conducting labour inspections. More specifically, labour inspection can be defined as the activities to monitor and enforce the laws concerning manpower-related affairs. This inspection takes various forms, including first, regular, periodic, follow-up, and specialized inspections conducted at companies or workplaces. Additionally, it encompasses development, training, and counselling activities aimed at educating workers and employers about labour laws and regulations.

Many labour laws and regulations in Indonesia have mandated that companies must ensure workplace equality, unequivocally requiring anti-discrimination measures and the rigorous protection of women workers. This underscores the pivotal role of labour inspectors in guaranteeing the safeguarding of women workers' rights, ensuring they are free from discrimination, violence, and harassment in the workplace.

However, gender-based discriminatory practices in the workplace are often subtle and challenging to detect. Hence, labour inspectors must enhance their gender sensitivity and familiarize themselves with the prevailing discriminatory behaviours in work environments. The aspiration is for labour inspectors to conduct inspections that are inclusive and responsive to the unique needs and realities of both women and men in the workplace.

For this reason, promoting gender sensitivity in labour inspections becomes paramount. **Gender-sensitive labour inspections** can be defined as **labour inspections conducted with a keen consideration of and attention to gender-related factors that impact conditions within the employment relationship.**

▶ Objectives and Outline of the Guidebook

This book serves as a comprehensive guide to enhance and fortify the capacity of labour inspectors in conducting gender-sensitive labour inspections, particularly, in handling discrimination, harassment, and sexual violence-related issues in the workplace. This book is intended to serve as a guideline for labour inspectors in identifying and addressing issues related to discrimination, harassment, and sexual violence in the workplace, emphasizing the adoption of a more gender-sensitive perspective. This objective aligns with the implementation of the respectful workplace policy and is consistent with one of the key targets outlined in RAN-HAM, which involves reinforcing the gender sensitivity of law enforcement instrumentalities.

Within these pages, labour inspectors will find invaluable insights on identifying gender disparities and discrimination within the workplace, as well as promoting best labour practices and advancing gender equality. The contents of this

Guide also serve as a valuable tool for raising awareness, facilitating training, and advocating for fundamental concepts related to workplace discrimination, equal opportunities, and equitable treatment in employment and career progression.

Furthermore, this Guide includes a checklist and questionnaire forms designed to assist labour inspectors in effectively identifying instances of gender discrimination within work settings.

This Guide consists of the following sections:

Chapter 1. **Gender Equality in the Workplace and the Roles of Labour Inspectors**

This section introduces the international law standards, laws applicable in Indonesia, and the roles of labour inspectors in promoting gender equality in the workplace.

Chapter 2. **Gender, Equality, and the Concept of Non-Discrimination in the Workplace**

This section discusses the equality principle in the workplace and the concept of non-discrimination and gender stereotypes, while also elucidating the procedures for identifying both direct and indirect forms of discrimination.

4 See Appendix 1: The Presidential Regulation of the Republic of Indonesia Number 53 of 2021 concerning the National Action Plan of Human Rights 2021-2025.

Chapter 3. **Sexual Violence in the Workplace**

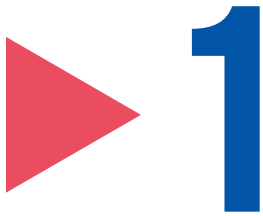
This section has a special focus on the discussion of sexual violence in the workplace. This issue is specifically due to its strong correlation with workplace discrimination, and its prominent international and national visibility. The chapter is supplemented with prevention and response strategies that can be promoted by labour inspectors.

Chapter 4. **Preventing and Handling of Discrimination at All Stages of Employment**

This section addresses contemporary issues concerning gender discrimination in the workplace. It offers guidance to labour inspectors on recognizing instances of gender discrimination at different phases of the employment cycle. Some of the key topics covered in this chapter encompass discrimination during recruitment and placement, equitable compensation, working hours, and the safeguarding of workers who perform precarious forms of work.

Chapter 5. **Identifying Workplace Discrimination through the Assessment of Compliance with the National Legislation and Good Practices of Gender Equity**

This section provides a checklist and questionnaires that labour inspectors can utilize to pinpoint instances of gender discrimination within the workplace. It also provides guidance on the development of a gender equality action plan that labour inspectors can advocate for among both workers and employers.



Gender equality in the workplace and the roles of labour inspectors

Equality in the workplace signifies fair opportunity, commensurate remuneration, and unbiased treatment to foster parity within the labour market. This entails that all workers should possess the right to cultivate their talents and partake in developmental advantages on an equitable basis, free from the constraints imposed by stereotypes and prejudice.

Discrimination in the workplace encompasses ‘any differentiation, exclusion, or favouritism founded on criteria such as race, colour, gender, religion, political beliefs, national origin, or social background, which results in the negation or deterioration of equitable access to opportunities or impartial treatment in the context of employment.’⁵

One of the primary responsibilities of labour inspectors is to safeguard equality and foster non-discriminatory treatment of workers/labourers in the workplace. Labour inspectors shall refer to the international and national legal frameworks as the basis to enforce and promote equality at the workplace, while concurrently promoting greater female participation in the labour market.

▶ 1. International laws to promote gender equality in the workplace

The international labour laws provide the minimum benchmark to guide the national law and practice. These laws/standards generally take the form of conventions and recommendations.

- ▶ **ILO Conventions** establish legally binding obligations upon international law’s ratification by member States of the International Labour Organization (ILO). These conventions set forth the minimal standards that nations should adhere to upon their ratification. Furthermore, even conventions not formally ratified can exert influence on the development of national laws and policies.
- ▶ **ILO Recommendations** offer authoritative guidance similar to conventions, yet they are not subject to ratification. Typically, they encompass guidelines aimed at establishing higher standards aligned with the associated convention.

5 ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Article 1.

Two main international labour standards that promote gender equality in the workplace are the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100), and Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

- ▶ **Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100)**, adopted by the International Labour Conference in 1951, promotes equal pay for work of equal value between men and women. It was the first international labour instrument adopted to ensure that the work done by women and men is valued fairly and to eliminate pay discrimination on the ground of sex.
- ▶ **The Discrimination (Employment and Occupation) Convention (No. 111)**, adopted by the International Labour Conference in 1958, sets comprehensive standards to promote equal opportunity and treatment in the world of work.

The aim of Convention No. 111 is to safeguard individuals against discrimination in the realm of employment and occupation, founded on factors such as race, colour, sex, religion, political beliefs, nationality⁶ or social origin.⁷ Sex and gender discrimination encompass differential treatment based on the biological characteristics and functions that differentiate between men and women, as well as distinctions arising from gender or societal disparities between the sexes. These disparities are culturally acquired, evolve over time, and vary both within and among nations.

The Convention safeguards not only individuals currently employed or actively engaged in employment but also those in the process of job preparation, job-seeking, or facing the risk of job loss. Its applicability extends across all sectors of economic activity, encompassing all professions and occupations within both the public and private spheres, including the informal economy. Moreover, the Convention extends its protection beyond wage employees to encompass self-employed individuals and entrepreneurs.

The principles of equality, as articulated in Conventions No. 100 and 111, are encompassed within the framework of the ILO Declaration on Fundamental Principles and Rights at Work (1998). These two conventions constitute integral components of the eight ILO Fundamental Conventions. These core conventions encompass freedom of association and the effective recognition of the right to collective bargaining (Conventions No. 87 and No. 98); the eradication of all forms of forced or compulsory labour (Conventions No. 29 and No. 105); the complete elimination of child labour (Conventions No. 182 and No. 138); the eradication of discrimination concerning employment and occupation (Convention No. 111); and the promotion of equal remuneration for work of equal value (Convention No. 100). Indonesia has ratified all eight of these fundamental international labour standards, thereby establishing a legal obligation to uphold their principles and standards, progressively incorporating them into national legislation.

Conventions No. 100 and 111 are also incorporated within the foundational principles of the UN Global Compact, which was inaugurated in 2000 as a strategic policy initiative aimed at businesses dedicated to harmonizing their activities with ten universally endorsed principles encompassing human rights, labour, environmental responsibility, and anti-corruption measures.⁸

Several additional international labour conventions hold relevance in advancing gender equality in the workplace. These include:

- ▶ **Maternity Protection Convention, 2000 (No. 183)**: Establishes standards for maternity leave, benefits, and safeguards against pregnancy-based discrimination.
- ▶ **Workers with Family Responsibilities Convention, 1981 (No. 156)**: Advocates for the equitable sharing of family responsibilities, along with the effective promotion of equal opportunities and treatment among male and female workers, as well as between those with and without such responsibilities. This convention calls for measures that enable the reconciliation of work for both men and women, enabling them to share family responsibilities more effectively.

6 ILO: As stated in the Equality and non-discrimination in East and Southeast Asia – Guideline, p.30 (Bangkok, 2011), discrimination in employment and occupation predicated upon ethnic or national origin encompasses differentiation rooted in an individual's foreign lineage, birthplace, or ancestral heritage. This category of ethnic and national origin also encompasses minority ethnicities or linguistic groups, as well as immigrant communities. An illustrative example of this form of discrimination is the differentiation made between local-born citizens and those with foreign birthplaces or ancestral ties..

7 Discrimination and the absence of equal opportunities stemming from one's social background pertain to situations wherein an individual's affiliation with a particular social class, socio-occupational category, or caste dictates their employment prospects. This occurs when they are either denied access to certain positions or activities or are exclusively considered for specific roles. Household registration may also play a role if it confers privileges. In certain countries, individuals from specific geographic regions or socially disadvantaged segments of the population, irrespective of their individual capabilities, encounter barriers to recruitment. This exclusion is distinct from that faced by individuals from ethnic minority backgrounds. Reference: International Labour Organization (ILO), 'Giving Globalization a Human Face- General Survey,' CEACR Report (Geneva, 2012).

8 UN Global Compact Office: Corporate sustainability in the world economy: United Nations global compact (New York, 2014).

- ▶ **Home Work Convention, 1996 (No. 177):** Encourages parity in treatment between homeworkers and conventional wage earners.
- ▶ **Convention concerning Decent Work for Domestic Workers, 2011 (No. 189):** Promotes equitable terms of employment and the provision of decent working conditions for domestic workers.
- ▶ **Convention concerning the Elimination of Violence and Harassment in the World of Work, 2019 (No. 190):** Recognizes the right of everyone to a world of work free from violence, including gender-based violence and harassment.

Although Indonesia has not ratified ILO Conventions 183, 156, 177, 189, and 190, their comprehensive content remains a valuable resource that can be utilized by the government and other organizations to promote and uphold gender equality in the workplace.

Nevertheless, on September 13, 1984, Indonesia ratified the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**. This convention represents an international human rights treaty that actively promotes the advancement of women in various facets of life, including the workplace. The CEDAW Committee's General Recommendations, in particular, address matters of equality and non-discrimination within employment, offering guidance on issues such as "equal remuneration for work of equal value" (General Recommendation No. 13), "uncompensated female labour in both rural and urban family enterprises" (General Recommendation No. 16), and 'female migrant workers' (General Recommendation No. 26).

▶ 2. The national legislation on gender equality in the workplace

In addition to international standards, national legislation serves as the primary mechanism for promoting gender equality within the workplace. The 1945 Indonesian Constitution unequivocally prohibits discrimination and upholds equal treatment before the law. Article 28I of the Constitution asserts that "every individual possesses the right to be free from discriminatory treatment based on any grounds whatsoever and is entitled to protection against such discriminatory treatment." Pertaining specifically to employment, Article 28D asserts that "every individual has the right to work and to receive equitable and just compensation and treatment in employment." Furthermore, **Law Number 39 of 1999 on Human Rights**, in Article 1(3), defines discrimination as "any form of restriction, degradation, or exclusion, whether direct or indirect, based on distinctions related to... sex."⁹

Indonesia has enacted several national legislations that prohibit discrimination based on sex and promote equal opportunities for both men and women. Notably, **Law Number 13 of 2003 concerning Manpower** establishes various standards to address non-discrimination and gender equality in employment, as well as provisions for maternity protection. Article 5 of this law emphasizes that all workers have equal opportunities and must be free from discrimination in acquiring a job. The explanatory notes accompanying Article 5 of Law Number 13 concerning Manpower emphasize that every individual has an equal right and opportunity to decent work commensurate with their skills and competencies, without facing discrimination based on sex, ethnicity, race, colour, religion, or political orientation. Furthermore, this article stipulates equal treatment for individuals with disabilities. Additionally, Article 6 stipulates that every employee or worker is entitled to equal treatment and may not be subjected to discrimination by their employers. The legal explanation accompanying this provision states that employers must confer the rights and obligations upon their employees or workers, regardless of their sex, ethnicity, race, religion, colour, or political orientation.

Article 32 requires that job placement be based on fairness and equal opportunity without discrimination; Article 153 prohibits job termination based on sex, pregnancy, or marital status; and Articles 82 and 83 allow for maternity leave and opportunities for breastfeeding at work.

Some provisions in the Manpower law also restrict women from working unless certain conditions are met. For example, Article 76 Paragraph (1) prohibits women who are less than 18 years of age from working between 11 p.m. and 7 a.m.

⁹ Law Number 39 of 1999 concerning Human Rights also prohibits discrimination on the grounds of religion, ethnicity, race, group, societal status, economic status, language, and political preferences.

Article 76 Paragraph (3), also stipulates that employers who engage female workers or labourers for shifts between 11 p.m. and 7 a.m. are required to: a) Supply nutritious food and beverages; and b) Ensure decency, morality, and safety in the workplace. Article 76, paragraph (4), also mandates that employers provide transportation to and from work for female workers or labourers working between 11 p.m. and 5 a.m.

These provisions are specifically mandated in the Decree of the Minister of Manpower and Transmigration No. KEP.224/MEN/2003, concerning the Responsibilities of Employers Engaging Female Workers/Labourers for Shifts between 11 p.m. and 7 a.m. This decree includes detailed stipulations regarding the duties of employers when deploying female workers during night time shifts, as outlined in Article 6:

“Employers must ensure the safety and well-being of their female workers/labourers working the night shift by:

- a. Providing security officers in the workplace;
- b. Offering appropriate restroom facilities with adequate lighting, which must be separate from male restrooms and female restrooms.”

In recent times, significant alterations to labour laws have taken place as a result of the enactment of Law No. 6 of 2023 concerning the Enactment of Government Regulation in lieu of the Law No. 2 of 2022 concerning Job Creation into Law (also referred to as the “Omnibus Law”). This law incorporates amendments to various provisions within multiple existing laws. These include Law No. 13 of 2003 on Manpower, Law No. 40 of 2004 on the National Social Security System, Law No. 24 of 2011 on the Social Security Provider Agency (BPJS), and Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers. While Law No. 6/2003 introduces substantial changes to Indonesia’s labour regulations, encompassing aspects such as employment termination, severance pay, outsourcing mechanisms, and minimum wage provisions, it is noteworthy that it does not modify the sections related to discrimination or the protection of women workers, as mentioned earlier.

Another relevant provision in the context of promoting gender equality in the workplace is Law Number 12 of 2022 concerning the Criminal Acts of Sexual Violence (*Tindak Pidana Kekerasan Seksual* [UUTPKS]). This law governs the prohibition of various forms of sexual violence that may occur in the world of work. Article 2 of the UUTPKS emphasizes that the regulation of Criminal Acts of Sexual Violence is grounded in the following principles: a) respect for human value and dignity; b) non-discrimination; c) the best interests of the victim; d) justice; e) expediency; and f) legal certainty.

The enactment of this law is anticipated to reduce unfair working conditions, particularly those resulting from incidents of sexual violence or harassment against women in the workplace. Detailed guidance on the implementation of UUTPKS for the prevention and case management of sexual violence in the workplace will be provided in Chapter 3, which focuses on this issue.

▶ 3. The roles of labour inspectors in promoting gender equality

While good laws and regulations are essential, they alone are insufficient to achieve gender equality in the workplace. What is equally crucial is the responsive, gender-sensitive, and effective enforcement of these legal provisions. This is where labour inspectors play a pivotal role.

In accordance with Article 3.1 of **the ILO Convention on Labour Inspection in Industry and Trade, 1947 (No.81)**, ratified by Indonesia in 2003 through the enactment of Law No. 21 of 2003, the functions of labour inspectors are as follows:

- a. ensure the enforcement of laws regarding working conditions, labour protection, and regulations concerning working hours, wages, safety, health, welfare, child and youth labour, and other related matters.
- b. provide employers and workers/labourers with technical guidance on the most effective methods for complying with the national legislation.
- c. report any irregularities or abuses not explicitly covered by the national legislation or regulations to the government.

Thus, labour inspection plays a vital role in enforcing and providing technical advice on implementing equality provisions in labour legislation, and bringing to light discriminatory workplace practices that are not yet addressed under the law.

Convention No. 81 also discusses the importance of having both male and female labour inspectors. Article 8 requires that both men and women are considered for appointments to inspection staff. These “equal eligibility” requirements have been interpreted to include “steps to encourage the recruitment, training and promotion of women inspectors” and “greater gender awareness” in the inspection system more generally.

In addition, the ILO instruments include the possibility to assign specific functions to women inspectors. The Toolkit for labour inspectors (produced by ILO-Budapest in 2006) suggests, for example, that labour inspectorates assign “*women inspectors, suitably trained, to deal with special issues of women workers*” in labour inspections. This can include: the appointment of female labour inspectors in sectors and occupations dominated by women, such as the textile and garment industry, domestic service, and home work; and the involvement of both male and female inspectors in dealing with workplace problems such as sexual harassment also needs to be taken into account.

The Indonesian labour inspection system should ensure that all labour inspectors are able to apply gender sensitivity in identifying discrimination in the workplace, responding to discrimination and sexual violence-related reports, and promoting gender equality at the workplace.

The pivotal roles of labour inspectors are as follows:

a. Enforcing the labour law

Labour inspectors are charged with monitoring compliance with anti-discrimination provisions in the labour laws. Labour inspectors have the power to inspect workplaces and to obtain and examine information that may reveal instances of discrimination. Where inspections are carried out following reports from an individual or groups, labour inspectors can bring cases before the courts or intervene in court proceedings instituted by another party. The possibility of facing legal action or penalties serves as an effective incentive for employers to avoid and prevent discrimination in their companies.

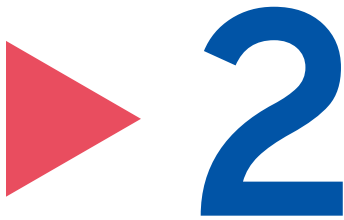
b. Providing technical information and advice

Providing technical information and advice during inspection visits, or responding to written or verbal requests, is the first step in enforcing the law and is an effective way to promote compliance with anti-discrimination and gender equality provisions in the Labour Law. In order to strengthen legal protection against discrimination, inspectors should conduct training and capacity-building initiatives with employers or business owners, workers, and their respective organizations, and with the trade unions. Also, as concepts related to discrimination often are not well understood among the general public, employers and workers, information and advice can be shared through awareness-raising campaigns, sensitization and educational initiatives such as short films, and posters.

c. Contributing to the improvement of labour law

Labour inspectors have special authority to access workplaces; thus, they can identify labour related problems that call for solutions for improving protection at work. For this reason, should inspectors identify any issue not explicitly addressed by the applicable law, they are required to report it to the central inspection authority under the Ministry of Manpower of the Republic of Indonesia and provide recommendations for enhancing the existing legislation.

Labour Inspection Convention No. 81, ratified by Indonesia in 2003, asserts that as part of the monitoring function “The labour inspection system shall bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions” (Article 3, paragraph 1(c)). Labour inspectors should therefore play a key role in the process of drafting new labour legislation to ensure that it is both achievable and enforceable.



Gender, equality and discrimination

ILO Constitution asserts that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”¹⁰ Equal opportunities for all to participate in the labour market are often hindered by the biased perspective prevalent in society. This perspective is the result of stereotyping based on factors, such as gender, race, religion, or other differences, leading to various forms of discrimination.

Discrimination constitutes a violation of the fundamental rights of individuals seeking a decent livelihood. Consequently, effective measures to prevent discrimination must be implemented. Despite the existence of numerous policies related to labour and employment that regulate and ensure non-discriminatory treatment and gender equality in Indonesian work settings, there is still a need for increased awareness and dissemination of principles related to gender equality and non-discrimination among and by labour inspectors.

▶ 1. Gender and sex

One fundamental aspect to address when discussing gender equality is the definition of gender itself. Gender is often mistakenly equated with “sex”. However, it’s essential to recognize that gender and sex are distinct concepts with different meanings.

- ▶ “Sex” refers to biological characteristics that make a person either female or male.
- ▶ “Gender” refers to the socially constructed roles, attributes, and conduct that each society considers appropriate for men and women.

Gender roles are not something that we are born with, they are something we learn. Societies’ ideas about what it means to be female, or male are often the cause of gender bias and unequal treatment.¹¹ Many cultures have gender-biased expectations and traditions. For example, in Indonesia, like in many other societies, women and girls take care of their families, which is seen as their traditional duty. However, this role is not pre-determined by nature. In other words, boys and men can also be caretakers of families and children, while girls and women may embrace “masculine” roles and professions, such as a driver or police officer.

Different gender-related expectations become problematic if there is a tendency to rigidly associate girls/women and boys/men with specific activities and situations.¹² This can result in women having less access to power and lower status

10 ILO: Declaration of Philadelphia, General Conference, Session 26, Philadelphia, 1944

11 ILO: Gender mainstreaming strategies in decent work promotion: Programming tools - GEMS Toolkit, p. 9 (Bangkok, 2010).

12 UNESCO: Teacher training modules to address gender issues and promote gender equality (Ha Noi, 2011).

than men. Such misconception in Indonesia has led to occupational segregation where women are under-represented in higher-paying jobs and senior management positions.¹³

► 2. Gender equality and gender mainstreaming

Equality in the workplace is a core value and fundamental principle that promotes equitable treatment for all workers based on the work they perform. This principle offers equal opportunities to each worker, enabling them to reach their full potential in their personal lives and careers.

Gender equality refers to the equal rights, opportunities, and treatment enjoyed by individuals of all ages, regardless of their gender, race, color, national or social origin, or health condition, across all aspects of life and work. It signifies that every person is free to develop their personal abilities and make choices without being constrained by stereotypes and biases regarding gender roles and the characteristics associated with men and women.

The concept of **gender equality** recognizes that men and women are not identical and that certain biological or physical differences, such as women's reproductive functions, may necessitate distinct treatment in specific circumstances. However, an individual's rights, responsibilities, social status, and access to resources and employment should not be contingent upon their gender at birth.

Both women and men should have the freedom to cultivate their personal abilities and enjoy equal opportunities for success in their careers, free from limitations imposed by stereotypes and biases related to gender roles. Promoting gender equality can benefit both women and men and requires their combined efforts.

Discrimination against women has deep-seated societal roots. To eradicate it, it is crucial that gender equality and non-discrimination are integrated or "mainstreamed" across a whole range of national policies and programs.

Gender mainstreaming requires assessing the implications for women and men of any planned action, including legislation, policies, or programs, in any area and at all levels. It is a strategy for making the concerns and experiences of women, as well as men, an integral part of the design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and social spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of gender mainstreaming is gender equality.¹⁴

As mentioned earlier, gender mainstreaming in Indonesia is mandated by the Presidential Instruction on Gender Mainstreaming (Inpres No. 9/2000), which requires all government agencies at the national and local levels to integrate gender considerations into the planning, implementation, monitoring, and evaluation of policies and programs. According to this Instruction, ministries and agencies at both the national and local levels are responsible for addressing gender inequality and eliminating gender-based discrimination.¹⁵ Enhancing the skills and knowledge of labour inspectors in the realm of gender equality within the workplace is a vital component of gender mainstreaming in labour inspections. This endeavour aims to improve their performance and strengthen compliance with labour laws.

To attain genuine gender equality in the workplace, it is imperative for inspectors to identify gender inequality constraints and take measures that facilitate women's full participation in the workforce. Enforcing the principle of **equality before the law** is a crucial initial step in this endeavour. Labour inspectors are in a strategic position to promote and to advocate for existing equality and non-discrimination provisions in labour law and in the national legislation that protects women from discrimination.

However, it is important to recognize that while legal equality is necessary, it is not always sufficient to achieve the expected outcome. Therefore, supervision and/or inspection to ensure equal and non-discriminatory practices in the workplace are crucial. These endeavours should also be carried out based on the principles of **substantive equality** or **meaningful equality**. Special measures are often required to ensure that both sexes can have equal opportunities at the beginning of their career and throughout their tenure. This approach acknowledges that achieving equal distribution of benefits requires addressing the unequal workload, asset distribution, and power dynamics between men and women stemming from gender roles and discriminatory stereotypes.

13 ILO: "Individual observation concerning Equal Remuneration Convention, 1951 (No. 100) with respect to Indonesia," in Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, 2012).

14 United Nations Economic and Social Council (ECOSOC): Agreed conclusions E/1997/L.30, p.2; See also Equality at work: The continuing challenge, Report of the ILO Director General, Report I(B), International Labour Conference, 100th Session (Geneva, 2011).

15 World Bank, Government of the Republic of Indonesia, Ministry of National Planning and Ministry of Women's Empowerment: Policy brief 10n gender equality - Indonesia (No. 75844), p. 5 (Jakarta, 2011).

▶ 3. Forms of discrimination

Discrimination is a deliberate attitude of distinction or exclusion against groups based on specific interests or characteristics. Discriminatory treatment may occur in any place, including workplaces. However, it often takes on a more systematic, pervasive, and long-lasting form. This form of discrimination, often termed '**structural discrimination**' or '**systemic/institutional discrimination**,' is deeply ingrained in numerous cultures, policies, and workplaces. It is firmly rooted in societal norms, organizational frameworks, and legal systems that perpetuate discriminatory practices and results. Examples of structural discrimination encompass the gender wage gap and employers' preferences for hiring men over women of reproductive age due to concerns about potential pregnancy-related productivity issues.

There are several ways in which discrimination manifests itself in the workplace, i.e., **Discrimination in the Law (*De Jure*)** is a form of discrimination that is evident in laws, regulations, and rules. Example: regulations that establish a lower retirement age for women compared to men or lower pay scales for women.

Discrimination in Practice (*De Facto*) is discriminatory practices observed in real-life situations. Example: the persistent gender pay gap, where companies pay men more than women for similar roles upon hiring; or companies that consistently prioritize hiring men over better-qualified women in the recruitment process.

Direct discrimination, occurs when unequal treatment between men and women directly results from laws, rules, or practices that explicitly differentiate between them. Example: Job announcements specifying that only men or only women will be considered for a position.

Indirect discrimination occurs when rules and practices may appear neutral but, in practice, result in disadvantages primarily affecting individuals of a particular sex, race, colour, or other characteristics that are not supposed to be the basis for discrimination. For example: a job announcement that requires the applicant to postpone pregnancy for two years after accepting the position. This requirement places women workers at a disadvantage.

The following examples show direct and indirect discrimination in the workplace:¹⁶

Examples of direct and indirect discriminations

- Companies with distinct pay scale structures for men and women. This implies that employees in these companies encounter *direct* sex discrimination.
- An employer of cleaning workers who assigns different job titles and pays a higher wage to "field technicians" (all of whom are men) compared to "cleaning staffs" (all of whom are women), despite the work being very similar and their output having the same value. This practice indicates an *indirect* sex discrimination.
- Bank loan conditions that mandate applicants to be members of the dominant religion to qualify for a loan constitute a form of *direct* discrimination.
- Banking practices that provide information on accessing credit exclusively in the majority language, knowing that most ethnic minority individuals cannot read that language, may amount to *indirect* discrimination.
- Job advertisements that explicitly state that individuals with disabilities or health conditions need not apply are engaging in *direct* discrimination.
- Job advertisements that stipulate an irrelevant height requirement, which women or individuals using wheelchairs cannot meet, can constitute *indirect* discrimination if the height requirement is unrelated to the essential job requirements.
- The exclusion of domestic workers, workers in agriculture, part-timer and seasonal workers from social protection measures may result in *indirect* discrimination against various groups. Low-income women, workers belonging to ethnic minorities, migrants and elderly workers are disproportionately represented in these types of work and therefore suffer the most from this type of exclusion.

16 ILO: *Equality and non-discrimination at work in East and South-East Asia – Guide*, p.18 (Bangkok, 2011).

Many individuals become subject to discrimination based on more than one ground. Sex-based discrimination frequently interacts with other forms of discrimination or inequality based on race, national extraction, social origin, religion, age, migrant status, disability or health condition, or political opinion. Persons who experience **discrimination on multiple grounds** often find themselves in a vicious spiral of cumulative disadvantage in the workplace.

The capacity to recognize both direct and indirect discrimination is crucial for labour inspectors. This is because achieving workplace equality is contingent on addressing and eliminating discriminatory practices within the workplace.¹⁷

► 4. What does NOT constitute prohibited “discrimination”

Not all measures that have an effect on a certain group are discriminatory in and of themselves. Such measures are permitted if they are necessary and proportionate to achieve a “legitimate objective”.¹⁸ For example, employers must always be able to recruit individuals who meet the **“inherent requirements”** of the specific job in question. Inherent requirements, also known as genuine occupational requirements, are the necessary, objective, and proportionate qualifications that a job applicant or worker must possess to effectively perform the essential functions, duties, and responsibilities of a particular job. For instance, the height requirement in flight attendant recruitment, given that body height may affect their performance particularly when they are organizing passengers’ luggage in the compartment.

To be deemed acceptable, requirements that give preference to or exclude individuals based on personal characteristics must meet specific criteria: they should be objective and justifiable, inherent to or necessary for the job, and not disproportionately restrictive or exclusive for the role. If job requirements fail to meet these standards, they often lead to indirect discrimination. A case-by-case assessment is essential to determine whether a particular personal characteristic constitutes a genuine occupational requirement for a specific job or not.

Additionally, **protective measures** and **affirmative action** are not considered discriminatory as long as evidence supports the need for such measures, and they are strategically designed to address inequality and discrimination.

Protective measures are important for ensuring substantive equality in labour market practices. For example, measures to protect workers with disabilities are critical to their ability to participate fully in the labour force. For women, the most important protective measure is protecting their reproductive health which includes the provision of menstrual leaves, pre-partum and post-partum leave, the opportunity to conveniently nurse their child, and parental leave due to miscarriage or stillbirth.

In order to address structural discrimination and achieve gender justice, it is sometimes necessary to take affirmative action measures to correct environments that discriminate against women.



¹⁷ ILO: “Giving globalization a human face – General survey” in Report of the CEACR (Geneva, 2012); ILO: *Time for equality at work (Geneva, 2003)*; ILO: *Equality at work: The continuing challenge (Geneva, 2011)*.

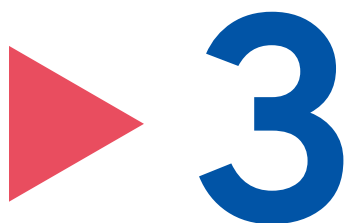
¹⁸ ILO: *Equality and non-discrimination at work in East and South-East Asia – Guide, pp.53-8 (Bangkok, 2011)*.

The ILO Convention on Discrimination (Employment and Occupation) No. 111 refers to such conditions as “special measures of assistance,” while the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) refers to it as “temporary special measures.”

Empirical and reliable evidence to determine the extent and nature of the problem is critical to the success of any affirmative action measure. Additionally, affirmative action programs should have specific objectives concerning the group covered by the program; specific measures to redress the causes of the discrimination identified; a timetable to attain the objectives and apply the measures; and a mechanism to monitor progress, assess difficulties, and make adjustments. It is also important to ensure that special measures do not reinforce gender stereotypes and that they are discontinued once the objectives of equal opportunity and treatment have been achieved.

Moreover, it is not discriminatory to assist a particular person or group with reasonable accommodation through adjustments or modifications at work, as long as it does not impose a disproportionate or undue burden on the employer. For instance, adjusting the layout and spatial design at the workplace to accommodate workers with disabilities in order to facilitate their work.

Additionally, Article 4 of ILO Convention No. 111 stipulates that any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.



Sexual violence in the workplace

Sexual violence in the workplace is a critical issue that demands the utmost attention. It constitutes a type of workplace discrimination that is absolutely intolerable, given its potential to adversely affect health, safety, security, and overall comfort in the workplace. Therefore, it is imperative for the government, employers, and workers/labourers to demonstrate a strong commitment to collaboratively combat and prevent sexual violence in the workplace, considering its direct correlation with the fundamental human rights and dignity of all workers.

The ILO report on Eliminating Violence and Harassment in the World of Work states that violence and harassment “impact workplace relations, employee engagement, health, productivity, the quality of public and private services, and the reputation of enterprises.” Furthermore, it also impacts “labour market participation, particularly by potentially hindering women from entering male-dominated sectors and occupations, as well as their ability to sustain their presence in the workforce.”¹⁹

In Indonesia, the Online Information System for the Protection of Women and Children (SIMFONI PPA), managed by the Ministry of Women’s Empowerment and Child Protection, indicates a rise in cases of sexual violence during the period 2020-2023. Sexual violence within the workplace is reflected in relatively substantial data, particularly in workplaces with a substantial female workforce.²⁰ For instance, in the garment industry, which predominantly employs women under the age of 30, data published by Better Work in 2019 revealed that 84.3% of female workers in the Indonesian garment industry expressed concerns about sexual harassment in their workplaces.²¹ The Cross-Factory Labour Federation has also observed that sexual harassment is prevalent in garment factories, where 99% of the workforce comprises women. Furthermore, a study conducted by Perempuan Mahardika indicates that female workers in garment factories not only contend with the risk of sexual violence but also encounter challenges regarding the fulfilment of their maternity rights in the workplace, along with vulnerability to domestic violence at home.²²

Another recent study, published by the Never Okay Project in 2020, documented 117 cases of sexual violence and harassment across various employment sectors from 2018 to 2020.²³ These sectors encompassed: 1) government, 2) tourism and hospitality, 3) education and research, 4) micro, small, and medium enterprises (MSMEs), 5) banking and finance, 6) manufacturing, 7) health, 8) arts and sports, 9) media and creative industries, and 7 other sectors. This underscores the widespread and cross-sectoral nature of workplace violence and harassment in Indonesia.

In 2022, *Never Okay Project*, in collaboration with ILO, conducted a survey on workplace violence and harassment. The findings revealed that out of 1,773 workers who became the respondents of this study, 852 (70.93%) of them reported experiencing some form of workplace violence and harassment.²⁴ Psychological violence and harassment emerged as the most commonly reported forms, followed by instances of sexual violence and harassment.

19 ILO: Report V (1) Ending Violence and Harassment Against Women and Men in The World of Work, (Jenewa: 2017).

20 APINDO: Preventing and Responding to Sexual Harassment in the Workplace: A Guide for Employers, (Jakarta, 2012)

21 BetterWork: Sexual harassment in the workplace: Insights from the global garment industry 2019, <https://betterwork.org/portfolio/sexual-harassment-at-work-insights-from-the-global-garment-industry/>, (Jakarta, 2019)

22 Perempuan Mahardika: Sexual Harassment and Maternal Rights Neglect among Garment Workers: A Study of Gender-Based Violence at KBN Cakung, (Jakarta, 2017).

23 Never Okay Project: Data Report on Sexual Violence and Harassment in the World of Work 2018-2020, <https://neverokayproject.org/pusat-data/riset/laporan-data-kekerasan-dan-pelecehan-seksual-di-dunia-kerja-tahun-2018-2020-2/>, (Jakarta: 2020).

24 Never Okay Project: Violence and Harassment in the Indonesian Workplace Survey Report 2022, <https://neverokayproject.org/pusat-data/riset/semua-bisa-kena-laporan-hasil-survei-kekerasan-dan-pelecehan-di-dunia-kerja-indonesia-2022/>

Numerous studies on workplace sexual violence emphasized that this issue is a structural issue. Even during the COVID-19 pandemic, when many companies have adopted remote work arrangements (work from home), the risk of sexual violence remains substantial. This is because these remote workers lack the protection of workplace safety measures, such as an anti-sexual harassment policy.²⁵ Instances of sexual harassment during remote work frequently manifest online through various digital platforms, as digital technology has become an essential means of work communication. With the surge in digital activities, incidents of online sexual harassment have also seen a rise.²⁶

Victims of sexual violence in the workplace often endure psychological repercussions, including feelings of shame, shock, self-blame, anger, frustration, depression, and isolation. These conditions undoubtedly impact performance and hinder the development of conducive working relationships. Therefore, it is crucial for all stakeholders, including labour inspectors, to play a role in preventing and addressing sexual violence in support of the victims.

► 1. Definition of Sexual Violence in the Workplace

In an Academic Paper on the Law for the Eradication of Sexual Violence, *Komnas Perempuan* defines **sexual violence** as any action that degrades, insults, attacks, or otherwise violates a person's body in connection with sexual desire, sexual attraction, and/or reproductive functions. Such conducts are typically carried out by force, against the victim's will, or in a manner that deprives the victim of the ability to provide consent freely. These conducts are often influenced by unequal power dynamics, gender relations, and other factors, resulting in or potentially resulting in physical, psychological, sexual, economic, social, cultural, and/or political suffering or losses.²⁷

Meanwhile, **sexual harassment** is defined as any sexual act involving physical or non-physical contact with the target's sexual organs or pertaining to their sexuality. This encompasses actions such as whistling, flirting, making sexual remarks, displaying pornographic material or expressing sexual desires, as well as poking or touching specific body parts. Additionally, it includes any gestures or signals of a sexual nature that can lead to discomfort, offense, humiliation, or potential health and safety concerns. Based on this comprehensive definition, sexual harassment can be categorized as a form of sexual violence.

In 2019, ILO introduced the **ILO Convention on Violence and Harassment, 2019 (No. 190)**, marking the world's first legal instrument addressing issues of violence and harassment within the workplace. The Convention defines **violence and harassment** as a wide spectrum of unacceptable behaviours and practices, including threats, whether they occur as isolated incidents or repeatedly. These behaviours and practices are characterized by their potential to cause physical, psychological, sexual, or economic harm. This definition also encompasses gender-based violence and harassment.

This concept of violence and harassment is intentionally comprehensive, combining "violence and harassment" as interconnected notions. The definition explicitly acknowledges that gender-based violence and harassment can stem from acts of violence and harassment. Article 2(b) of C190 provides its definition of gender-based violence and harassment

25 Never Okay Project and SAFEnet: Survey Report on Sexual Harassment in the World of Work During WFH, 2020, <https://neverokayproject.org/pusat-data/riset/wfh-rentan-pelecehan-seksual-perusahaan-didesak-buat-protokol-anti-pelecehan-seksual/>, (Jakarta: 2021).

26 Online Discussion, Sexual Violence in the workplace, Discussion series on the Elimination of Sexual Violence Bill, Law Gender and Society, July 31st 2021, available in <https://www.youtube.com/watch?v=68dfhRGdtic>.

27 Komnas Perempuan (National Commission on Violence Against Women): Academic Paper of Draft Law on the Elimination of Sexual Violence, 2017, <https://www.dpr.go.id/dokakd/dokumen/RJ1-20170307-091105-5895.pdf>

as follows: “...violence and harassment directed against individuals based on their sex or gender, or disproportionately affecting individuals of a specific sex or gender, which includes instances of sexual harassment.”

Furthermore, the convention also defines the world of work in a broad scope, which includes:

- a. workplaces, encompassing both public and private spaces where employees carry out their duties;
- b. locations where workers receive payment, take breaks, have meals, or utilize sanitation, washing, and changing facilities;
- c. during work-related travel, trips, training sessions, events, or social activities;
- d. via work-related communications, including those facilitated by information and communication technology;
- e. within accommodations provided by the employer; and
- f. while commuting to and from the workplace.

The definition of workplace violence and harassment as outlined in this convention can serve as a reference point in the effort to combat and eliminate incidents of sexual violence in the workplace.

► 2. Legal Provisions on Sexual Violence in the Workplace

The current Labour Law in Indonesia lacks specific provisions addressing workplace violence and harassment. Nonetheless, Article 86, paragraph (1) of Law No. 13 of 2003 concerning manpower ensures that workers and labourers are entitled to protection in terms of occupational safety and health, moral standards, decency, and treatment in line with human dignity and religious values.

In 2011, the Ministry of Manpower and Transmigration issued Circular Letter No. SE.03/MEN/IV/2011, concerning the Guidelines for the Prevention of Sexual Harassment in the Workplace. This circular letter is intended to offer guidance and serve as a reference for employers, workers, and other relevant organizations within the realm of employment in their efforts to prevent and address sexual harassment in work environments.

The circular defines sexual harassment as:

“...any unwelcome sexual advances, requests for sexual favours, verbal or physical conduct, or gestures of a sexual nature. It also includes any other conduct of a sexual nature that causes a person to feel offended, humiliated, or intimidated, provided that such a reaction is deemed reasonable given the circumstances, and such behaviour interferes with one’s ability to work, is made a condition of employment, or creates an intimidating, hostile, or abusive work environment.”

The circular also states that both workers and employers are responsible for proactively preventing sexual harassment in the workplace. It is obligatory for both parties to institute an internal mechanism at the company or organizational level to prevent and address incidents of sexual harassment in the workplace.

However, the primary issue with this circular is its non-binding nature. The circular explicitly states: “These guidelines are not legally binding but serve as a foundation to promote non-discrimination in the workplace and prevent sexual harassment.”

In the realm of criminal law, Indonesia has already enacted Law Number 12 of 2022 on the Crime of Sexual Violence (UUTPKS), which comprehensively addresses the prohibition of all forms of sexual violence as a relevant crime that may take place in work settings. According to Article 4, paragraph (1) of UUTPKS, the Crime of Sexual Violence encompasses:

- a. Non-physical sexual harassment.
- b. Physical sexual harassment.
- c. Coercion of contraception.
- d. Forced sterilization.
- e. Forced marriage.

- f. Sexual torture.
- g. Sexual exploitation.
- h. Sexual slavery.
- i. Electronic-based sexual violence.

In addition, Article 4, paragraph (2), states that Criminal Acts of Sexual Violence also encompass:

- a. Rape.
- b. Obscene acts.
- c. Copulation with a child, obscene acts against a child, and/or sexual exploitation of a child.
- d. Acts that violate morality against the victim's will.
- e. Child pornography or explicit pornography containing violence and sexual exploitation.
- f. Forced prostitution.
- g. Criminal acts involving human trafficking intended for sexual exploitation.
- h. Sexual violence within the confines of a household.
- i. Money laundering crimes where the original criminal offense is sexual violence crime.
- j. Other criminal offenses explicitly defined as criminal offenses of sexual violence in accordance with the provisions of laws and regulations.

If an act of violence and harassment occurs in the workplace and falls under the category of actions covered by the Crime of Sexual Violence Law, the resolution mechanism may involve the criminal process, guided by the provisions outlined in Law Number 12 of 2022 concerning Crimes of Sexual Violence.

In 2023, the Ministry of Manpower issued the **Ministerial Decree Number 88 of 2023 (Kepmenaker 88/2023) concerning Guidelines for the Prevention and Handling of Sexual Violence in the Workplace**. This decree is closely aligned with Law No. 12 of 2022, which addresses Criminal Acts of Sexual Violence. Minister of Manpower Decree No. 88 of 2023 aims to provide technical guidance for the effective implementation of measures to prevent and address sexual violence in the workplace, fostering harmonious and productive industrial relationships. This directive primarily targets employers, workers/labourers, labour unions, and other relevant stakeholders in the workplace, as well as governmental ministries and agencies responsible for labour affairs at the provincial, regency, or city levels.

► 3. Identifying Sexual Violence in the Workplace

Minister of Manpower Decree No. 88 of 2023 concerning 'Guidelines for Preventing and Responding to Sexual Violence in the Workplace,' defines **sexual violence** as *any act that degrades, insults, harasses, or physically assaults an individual's body or reproductive functions. These acts stem from power imbalances and gender disparities, leading to psychological and/or physical suffering, including disruptions to an individual's reproductive health and their ability to work safely and optimally.*

On the other hand, **sexual harassment**, a subset of sexual violence, is defined as *any unwelcome sexual act, request for sexual acts, verbal or physical actions or gestures of a sexual nature, or any other behaviour with a sexual connotation. Such conduct can make an individual feel offended, humiliated, or intimidated, thereby disrupting their working conditions and environment.*

Moreover, the **workplace** is broadly defined as *any enclosed or open space or area, whether mobile or immobile, in which workers carry out their duties or frequently access in the course of business operations. This definition encompasses areas presenting potential hazards, comprising all spaces, fields, yards, and their immediate vicinity, connected to or integral to the workplace.*

Minister of Manpower Decree No. 88 of 2023 also clarifies that the scope of sexual violence is extensive. It encompasses incidents occurring within the workplace or those connected to it, such as in worker/labour's vehicles or other related settings.

The concept of **power relations** is a crucial element in the definition of sexual violence in the workplace. This is because power dynamics play a significant role in the occurrence of such incidents in a professional environment. The complex and layered power dynamics inherent in the workplace heighten the vulnerability to violence and harassment. For instance, although the perpetrators of violence and harassment can be anyone, more acts of violence and harassment are committed by superiors to subordinates (power relations of position and title); or by men to women (gender power relations).

It is crucial for Labour Inspectors to effectively discern between what constitutes sexual violence and harassment and what does not. Such behaviour is characterized by **being unwelcome and unwanted**. In simpler terms, conduct falls within the realm of violence and harassment if the victim perceives it as offensive, humiliating, and unacceptable.²⁸

Unwanted conduct refers to actions that the worker has not requested and deems unwelcome or disrespectful. Whether behaviour is considered unwanted is evaluated from the perspective of the person who feels sexually harassed. In this context, what matters most is how the act is perceived and experienced by the recipient, rather than the intention behind it. In other words, the perpetrator's intent is not the primary consideration; it is the recipient's perception that determines whether the act is deemed acceptable or not.

Unwanted conduct can be characterized by:

- ▶ The victim explicitly expressed that the treatment is unwelcome.
- ▶ The victim experienced feelings of humiliation, offense, and/or intimidation due to the actions of the perpetrator.
- ▶ The perpetrator was aware that their actions would likely result in others feeling offended, humiliated, and/or intimidated.

Even if a worker consents to sexual activity, it can still be considered an act of violence and harassment if the victim feels pressured to consent, especially in situations marked by unequal power dynamics between the two parties.

Sexual violence and harassment can manifest in two distinct forms: "*quid pro quo*" and a hostile work environment.

- ▶ "**Quid pro quo**," or "something for something" refers to a situation in which an employer, manager, supervisor, or another employee engages in or attempts to influence the employment process or working conditions in exchange for sexual favours.
- ▶ "**Hostile work environment**" encompasses behaviours that create a workplace environment that intimidates, antagonizes, or humiliates the victim.

Minister of Manpower Decree No. 88 of 2023, outlining the Guidelines for Preventing and Responding to Sexual Violence in the Workplace, categorizes types of sexual violence based on the provisions in Law No. 12 of 2022 (UU TPKS). It specifies nine forms of sexual violence, including:

- a. Non-physical sexual harassment.
- b. Physical sexual harassment.
- c. Coercion of contraception.
- d. Forced sterilization.
- e. Forced marriage.
- f. Sexual torture.
- g. Sexual exploitation.
- h. Sexual slavery.
- i. Electronic-based sexual violence.

Among the nine forms of sexual violence mentioned above, the most prevalent in the workplace is:

- a. **Non-physical sexual harassment**, which involves non-physical sexual actions targeting an individual's body, sexual desires, and/or reproductive organs with the intention of undermining a person's dignity based on their sexuality and/or morality. This includes:

²⁸ UN Women and ILO: *Guidelines for Addressing Violence and Harassment in the World of Work for Companies and Workers*, p. 15 (Jakarta: 2022).

- 1) **verbal or oral harassment**, including sexually suggestive comments, offensive jokes, or derogatory remarks about an individual’s private life, body, or appearance;

Example: A supervisor remarks, “Wow, getting even curvier now, huh!” to his fellow worker who has recently returned from maternity leave.

- 2) **gesture or visual harassment**, including body language and gestures that convey a sexual nature, such as repetitive glaring, leering, whistling, finger gestures, lip licking, as well as lustful glances or stares.

Example: A co-worker makes a hand gesture mimicking the act of grabbing his female co-worker’s breast, directed at another co-worker.

- 3) **psychological or emotional abuse**, including repeated and unwelcome solicitation and seduction, unexpected date invitations, as well as insults or slurs.

Example: A developed romantic feelings for B and decided to ask B to go on a date after work. However, B declined the invitation as she is not interested in pursuing a romantic relationship with a co-worker. Despite facing rejection, A never gave up and continued asking B every day to go on a date, feeling determined to win her over.

- b. **Physical sexual harassment**, involves physical sexual acts targeting an individual’s body, sexual desires, and/or reproductive organs with the intent to demean someone’s dignity based on his/her sexuality. This includes actions such as kissing, patting, pinching, and engaging in inappropriate physical contact.

Example: A co-worker who deliberately invades personal space while speaking, causing discomfort among other co-workers.

- c. **Electronic-based sexual violence**, committed by perpetrators without the rights of:

1. Recording and/or capturing sexually charged images or screenshots without the consent of the person being recorded or photographed;
2. Transmitting sexually charged electronic information and/or documents to a recipient without their consent, with the intention of arousing sexual desires; and/or
3. Engaging in electronic stalking and tracking of a person who becomes the subject of electronic information or documents for sexual purposes.

Some examples of actions that can be categorized as workplace sexual violence include:

Physical	Verbal	Non-Verbal	Online
<ul style="list-style-type: none"> • Inappropriate and unnecessary physical contact; • Seduction; • Kissing; • Attempts to bring the bodies closer. 	<ul style="list-style-type: none"> • Phrases that refer to sexuality or attack sexuality; • Personal questions related to physical appearance, gender identity, or sexual orientation; • Requests, directions, or invitations for sexual activity. 	<ul style="list-style-type: none"> • Intense and/or lustful staring; • Displaying sensual photos, videos, or images; • Offensive body language; • Offering gifts with sexual connotations. 	<ul style="list-style-type: none"> • Sending sexualized texts, information, photos, symbols, emojis, images, videos, or sexually suggestive solicitations; • Bullying: electronically spreading true or false personal information, including through social media.

Sexual violence probably originated from various sources, including supervisors, teachers, co-workers, clients, vendors, or contractors. Workplace sexual violence is not limited to traditional office spaces, factories, or farms; it can occur in any location where employment-related activities take place. This includes work-related social events, conferences, training sessions, official business trips, business lunches and dinners, promotional campaigns organized for clients or partners, as well as telephone conversations and electronic communications.²⁹

Even though sexual violence and harassment can affect individuals of any gender; however, statistics show that a majority of victims are women, particularly those who are young, widowed, disabled, or from ethnic minorities. Women in low-wage, low-status positions with non-permanent contracts are particularly vulnerable. They often hesitate to report or ask for help and support due to concerns about jeopardizing their employment.

► 4. The Role of Labour Inspectors in Preventing Sexual Violence in the Workplace

According to the Minister of Manpower Decree No. 88 of 2023, which outlines the Guidelines for preventing and addressing sexual violence in the workplace, the key stakeholders responsible for preventing such incidents include employers, workers/labourers, trade unions/labour unions, other relevant parties within the workplace, the company's Task Force for Preventing and Addressing Sexual Violence in the workplace, as well as the relevant ministry and governmental agencies responsible for labour affairs at the district/city/ province level

In essence, labour inspectors are vital stakeholders in the endeavor to prevent sexual violence in the workplace. Some of the actions that labour inspectors can take include:

a. Conducting Awareness Programs on Sexual Violence in the Workplace

Providing education on sexual violence to all relevant parties is a crucial step in the efforts to prevent and address sexual violence, particularly in the workplace.

Profound comprehension of sexual violence serves as a crucial compass, enabling individuals to steer clear of potential instances of sexual violence in the workplace. Therefore, labour inspectors can facilitate awareness programs on workplace sexual violence for employers, workers, and relevant stakeholders. These programs aim to cultivate awareness and concern regarding workplace violence and harassment, as well as to outline preventive measures.

b. Encouraging employers to create a company policy on sexual violence

Sexual violence is a criminal offense subject to legal sanctions in accordance with the applicable law. It is also a form of violation of the company's norms, which may result in actions ranging from a warning letter to employment termination. Consequently, employers are obligated to establish comprehensive and transparent company policies for preventing and addressing sexual violence in the workplace, which can be detailed in employment contracts, company regulations, or collective labour agreements.

As a baseline safeguard, these workplace policies may refer to the Circular Letter of the Minister of Manpower and Transmigration No. SE 03/MEN/IV/2011, which provides guidelines for preventing sexual harassment in the workplace. They should contain:³⁰

- 1) A declaration of *zero tolerance* for violence and harassment.
- 2) A program for preventing workplace violence and harassment;
- 3) Clearly defined roles and responsibilities for both workers and employers;
- 4) The protection of workers' rights in relation to violence and harassment;
- 5) Procedures for lodging complaints or reporting incidents, along with mechanisms for addressing them;

29 Government of Indonesia - Ministry of Manpower and Transmigration (MoMT) and ILO: *Guidelines on Sexual Harassment Prevention in the Workplace*, p.7 (Jakarta, 2011).

30 UN Women and ILO: *A Guide to Addressing Violence and Harassment in Workplace for Employers and Workers*, p. 47 (Jakarta: 2022).

- 6) A commitment to addressing and acting upon both internal and external communications related to incidents of violence and harassment;
- 7) Protective measures for complainants, victims, witnesses, and whistle-blowers;
- 8) The prosecution of perpetrators;
- 9) Support and assistance for victims in their recovery process.

c. Promoting effective dissemination of company policies regarding sexual violence

The key to preventing sexual harassment is to ensure that all levels of management, employees, and individuals interacting with the workplace are informed about the workplace violence and harassment policy. These stakeholders must also be aware that there is zero tolerance for such behaviors. In this regard, Labour Inspectors can urge employers to take the following actions:

1. Officially launching the policy and reminding employers to provide regular updates during management and staff meetings;
2. Distributing copies of the policy to all workers in a language they can understand or with diagrams and pictures for those who may be illiterate. Additionally, ensure that the policy is introduced to all levels of management and new employees during orientation;
3. Requesting all levels of management and workers, including contractors and outsourced workers, to sign a copy of the policy as an acknowledgment that they have read and understood it;
4. Displaying the policy on the workplace notice board.

► 4. The role of labour inspectors in handling cases of sexual violence in the workplace

In accordance with Ministerial Decree No. 88 of 2023, which outlines guidelines for preventing and addressing sexual violence in the workplace, complaints regarding cases of sexual violence in the workplace can be reported to:

- a. The Task Force established within the company;
- b. The relevant government agency responsible for labour-related affairs at the district/city/ province level; and/or
- c. The ministry responsible for labour-related affairs at the governmental level.

Complaints submitted to the local Manpower Office, or the Ministry of Manpower are processed in accordance with their respective authorities and addressed by:

- a. The department responsible for industrial relations or labour inspection at the government agency overseeing manpower-related affairs in the district/city/province; and/or
- b. The department responsible for industrial relations or labour inspection at the ministry overseeing manpower-related affairs.

In essence, Labour Inspectors have an obligation to address complaints of workplace sexual violence submitted to either the local manpower office or the Ministry of Manpower. Addressing complaints of sexual violence in the workplace should be approached with utmost seriousness, ensuring that each complaint is promptly and impartially addressed. However, it's important to acknowledge that the authority of labour inspectors in addressing cases of sexual violence remains circumscribed by their primary duties and functions.

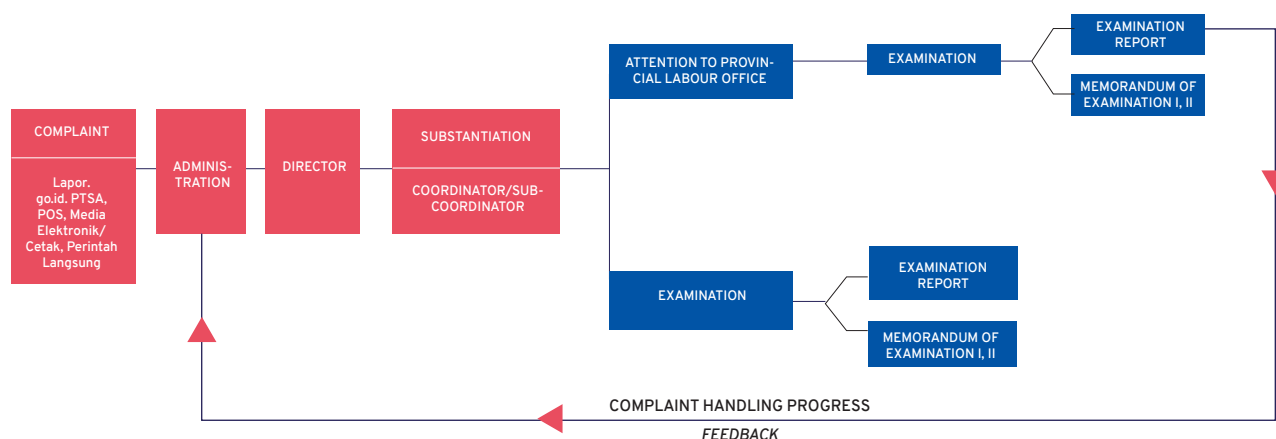
Addressing sexual violence in the workplace by labour inspectors can be accomplished with the following procedure:

- a. The party responsible for addressing the complaint collects information, including but not limited to requests for information related to workplace sexual violence complaints, adhering to the presumption of innocence principle. This may involve reviewing surveillance camera (CCTV) footage and consulting other information sources;

- b. Requests for information, as mentioned in point a, may be directed to the victim and/or complainant, the accused party, and other relevant parties;
- c. The findings from the information collection are documented in writing by the party handling the complaint;
- d. Based on the information collected, the party addressing the complaint may give their consideration to:
 - 1) Victims, to report acts of sexual violence in the workplace to the police; and/or
 - 2) The company, to impose sanctions on the accused party in accordance with the terms outlined in the employment contract, company regulations, or collective labour agreement.

The diagram below shows the procedure for addressing complaints related to the protection of women’s work norms, which can be applied in addressing cases of sexual violence in the workplace received by labour inspectors:

COMPLAINT PROCESS’ FLOW RELATING TO THE PROTECTION OF WOMEN’S LABOR NORMS



Description:

1. If an alleged violation is identified in the Inspection Report (LHP), the Labour Inspector is obligated to create a Memorandum of Inspection.
2. Memorandum of Inspection I must be prepared no later than 3 (three) days after the completion of the inspection.
3. The implementation period for Memorandum of Inspection I is limited to a maximum of 30 (thirty) days from the date of its receipt.
4. If the Memorandum of Inspection I is not implemented within the specified period, the Labour Inspector shall issue the Memorandum of Inspection II, within a period of (fourteen) days from the date of receipt of the Memorandum of Inspection II.

Labour inspectors **can collaborate** with other related government agencies to address workplace violence and harassment cases. They can also offer support to victims as part of their core responsibilities. Additionally, the agency or ministry overseeing labour-related affairs can provide both victims and the accused parties with a safeguarding measure in the form of grievance redress services in cases involving violations of labour norms or industrial relations disputes stemming from incidents of sexual violence in the workplace.

The principles to be applied in the investigation of workplace sexual violence cases encompass:

a. Taking the victim-centred perspective

Addressing cases of sexual violence must always prioritize the perspective of the victim. This entails conducting efforts that align with the victim’s needs, obtaining the victim’s consent at each stage, ensuring protection and empowerment, and maintaining strict confidentiality regarding the victim’s identity and safety. Empowerment, in this context, refers to strengthening the victim’s awareness of the risks associated with each stage of the process, allowing them to assess these risks independently. Empowerment enables victims to make informed decisions regarding all critical aspects of case resolution and to embark on a path toward a better life. In other words, the principle of addressing sexual violence from the victim’s perspective entails that the victim determines the course of action they wish to pursue once they are informed about the available treatment stages, the associated risks, and efforts to mitigate those risks.

b. Gender equity and equality

The investigation of alleged cases of sexual violence must adhere to principles of equity and perspective of gender equality. This is accomplished through empathic and sensitive handling mechanisms that address the possibility of unequal power relations and/or unequal gender relations in sexual violence reports. A gender justice perspective is essential to help those involved in the investigation understand that sexual violence often occurs due to society construction of gender, which render certain groups, particularly women and children, more vulnerable than others.

c. Prudence

The precautionary principle in the process of handling cases of sexual violence is very essential. This principle is manifested through:

- 1) Receiving reports of sexual violence while safeguarding the confidentiality of the parties directly involved in the report;
- 2) Prioritizing data security and the safety of victims, witnesses, reporters, and complainants throughout the process of addressing sexual violence cases;
- 3) Providing victims and witnesses with information about their rights, reporting mechanisms, potential risks they may encounter, and strategies to mitigate those risks;
- 4) Conducting a comprehensive examination of the data or information provided by the complainant, survivor, witness, the accused party, and other relevant parties;
- 5) Providing information about the applicable laws and regulations concerning sexual violence cases in the workplace to all relevant parties;
- 6) Facilitating victims' access to grievance redressal and protection services, provided by entities, such as the Ministry of Women's Empowerment and Child Protection or the National Commission on Violence Against Women;
- 7) Guiding victims to report the case to the police if it constitutes a criminal offense.

d. The principle of impartiality

The principle of impartiality entails equitable treatment. An impartial process for addressing alleged cases of sexual violence is one that operates without external pressures, remains unbiased except in pursuit of the truth, and maintains a balanced approach in evaluating the facts and information acquired throughout the investigation.

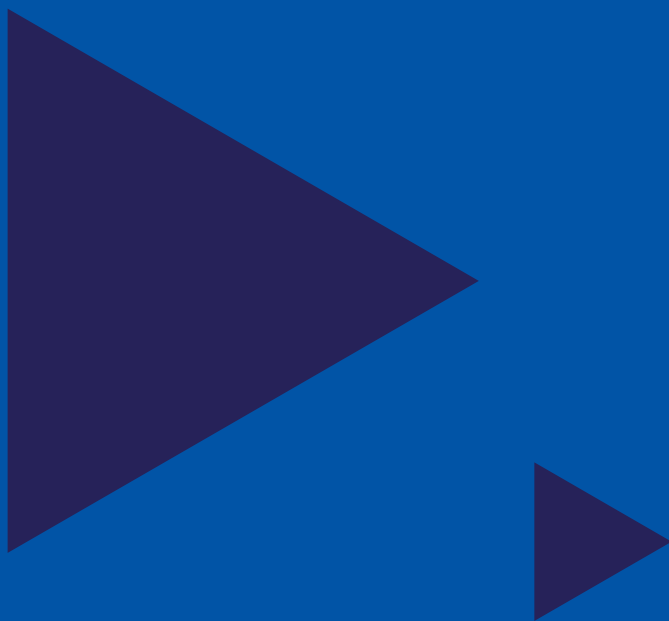
f. The fulfilment of normative labour rights



When labour inspectors handle cases of sexual violence, they must also take into account the fulfilment of normative labour rights, both for the perpetrator and, most importantly, for the victim. Some recommendations that labour inspectors can offer to companies include:

- 1) Restoring sick leave or annual leave that was utilized during the process of addressing sexual violence;
- 2) Considering the provision of additional sick leave when the victim requires counselling due to trauma;
- 3) Removing any negative assessments from the company's personnel records resulting from incidents of sexual violence;
- 4) Reinstating the victim if they were unjustly terminated;
- 5) Reviewing employment-related practices and decisions that may harm the victim or complainant to ensure they are not retaliatory in nature; and/or
- 6) Offering support to victims, including covering medical expenses.

Addressing complaints of sexual violence in the workplace is a challenging endeavour. Victims often experience embarrassment, while companies may strive to protect their reputations. Additionally, power dynamics within the workplace can complicate investigations. Therefore, it is imperative to establish clear strategies and guidelines for handling incidents of violence and harassment in the workplace.

To effectively address complaints, designated labour inspectors, regardless of gender, should undergo training and receive suitable resource support to fulfil this responsibility. If workplace sexual violence is substantiated, the labour inspector may issue a Memorandum of Inspection to the company to enforce sanctions on the accused party in accordance with the terms outlined in the employment contract, company regulations, or collective labour agreement.





Preventing and handling of discrimination at all stages of employment cycle

Various forms of discrimination are substantially likely to take place at any stage of employment cycle. For instance, during the recruitment and placement phase, both direct and indirect discrimination are frequently observed. The consequences of such gender-based discriminatory practices have far-reaching implications, including the labour market segregation, which persists to this day. Concurrently, the instances most frequently observed concerning workplace discrimination and gender equality within the employment relationship encompass a spectrum of issues including wage equality, maternity protection, working hours, night shifts, leave entitlements, family responsibilities, and occupational safety and health.

This chapter addresses various issues pertaining to discrimination experienced by workers or potential workers. Furthermore, it delves into measures that labour inspectors can undertake to prevent and address these concerns.

▶ 1. Recruitment and job placement

Recruitment refers to the engagement of a person by or on behalf of an employer or making a commitment to a person to provide him or her with employment. This includes any related arrangements such as seeking and selecting an employee (e.g. job advertisements, job interviews, and entrance exams or tests).

Placement refers to any operations for the purpose of ensuring or facilitating the employment of persons in accordance with their competencies. Such services are commonly offered by both public and private employment agencies.

Women are among the most affected by discriminatory recruitment and placement policies, and thus, women can find it very difficult to obtain decent work. In Indonesia, there is evidence of discrimination against women during the recruitment and hiring processes, often linked to their potential responsibilities related to childbearing and childcare. For instance, according to a study conducted in formal, unionized enterprises, 18 percent of workplaces took into account the applicant's marital status during the recruitment process.³¹

Additionally, traditional ideas about what kind of work is suitable for women and men, and prevailing prejudices regarding women's abilities mean that women and men tend to be recruited and hired into jobs that reflect traditionally "female" and "male" roles. Women's jobs are largely found in the care economy and are concentrated in the five "C" occupations:

31 ILO: Labour and social trends in Indonesia – 2011, p. 46 (Jakarta, 2012).

caring, cashiering, catering, cleaning, and clerical, all of which are at the lower levels of the job hierarchy with respect to pay, status, working conditions, and job security. Many of these positions also involve work on short-term contracts, as well as part-time, non-permanent, and atypical work.

a. International and national law standards on recruitment and placement

Law of the Republic of Indonesia No. 13 of 2003 concerning Manpower, Article 5 states: “Any manpower shall have the same opportunity to get a job without discrimination.” Elucidation of Article 5 states “Every person who is available for a job shall have the same right and opportunity to find a decent job without being discriminated against on grounds of sex.”³²

It is noteworthy that the elucidation of this discrimination-related provision is actually not fully aligned with the definition of discrimination in ILO Convention No. 111 on discrimination in employment and occupation, which expressly prohibits discrimination on the basis of sex, race, color, religious creed, origin, national origin, political opinion, and other nationally determined grounds.

The ILO’s 1996 General Survey on the implementation of ILO Convention No. 111 (Employment and Occupation) observed that ‘in the case of men and women, distinctions based on gender may be necessary for specific roles, such as those in the performing arts or those perceived as involving particular physical intimacy. Such distinctions should be established on an objective basis, taking into account individual capabilities. However, the ongoing exclusion of women from certain authoritative positions purely on the grounds of their gender and the presence of negative prejudices is a practice that should be eliminated through methods appropriate to national conditions and practices, as per the 1958 instruments.’³³

b. The roles of labour inspectors

Labour inspectors play the role of eliminating gender-based discriminatory practices in recruitment and placement by taking the following measures:

- ▶ **Enforce the law.** Ensure compliance with labour laws by using inspections reactively to deal with complaints and incidents of discrimination in recruitment and placement, and proactively to identify areas of non-compliance and advise on corrective action before complaints are made.
- ▶ **Identify instances of discriminatory practices in the recruitment process:** Job advertisements should not indicate a preference for applicants of a particular sex unless the preference is clearly justified as job-related and necessary. Furthermore, job advertisements that incorporate language featuring gender-specific nouns and adjectives, discouraging individuals of the opposite sex from participating in the selection process, are deemed discriminatory.
- ▶ **Review selection criteria for advertised positions.** Criteria should be objective and relevant to the inherent requirements of the job and consistently applied to all applicants irrespective of their group or sex. Also, within male-dominated sectors, inspectors should analyse whether the training requirements sought for recruitment are indirectly discriminating against women without any job-related reason.
- ▶ **Review recruitment channels.** Recruitment should be undertaken from a wide variety of sources that have adequate representation of both men and women.
- ▶ **Review the systems used by the company to collect and obtain information from job seekers.** Job application forms, job offers, interviews and examinations should be job-related and free from gender or ethnic bias. For example, employers should avoid asking female job seekers about their family obligations or their marital or family status.
- ▶ **Collect information from workers through interviews or questionnaires to find out if there are any indications of discriminatory practice concerning a company’s recruitment and employment relations.** The results of surveys conducted on male and female workers who have recently joined the company will clearly illustrate whether and to what extent gender biases have impacted the recruitment processes and resulted in unequal outcomes for the discriminated individuals.

32 Government of the Republic of Indonesia – State Secretary: Elucidation of Law No. 13 of 2003 on Manpower.

33 ILO: *General survey on equality in employment and occupation, para. 118 (Geneva, 1996).*

- ▶ **Closely monitor job intermediaries such as employment agencies and job placement firms.** Inspectors must encourage employment agencies and subcontractors (outsourcing) to implement the above principles. For example, employment services agencies should not screen or follow discriminatory instructions from organizations or companies using their placement services, and employers have a responsibility to ensure that such agencies do not engage in discriminatory employment practices.³⁴

▶ 2. Labour market segregation

Labour market segregation refers to a situation where men are channelled into particular types of jobs and women are channelled into other jobs – often with less pay and job security. This is due in part to persistent gender-role stereotyping, which causes employers to resist accepting women in certain positions and men in others and makes employers reluctant to promote women to management posts. Gender-based stereotyping also is often the reason that men are not allowed to work shorter days or take parental leave, and why much of the work in female-dominated occupations is undervalued. This situation has led to unequal world of work and interferes with an efficiently functioning labour market.

a. Gender segregation in Indonesian labour force

It is conventional to distinguish sex-based vertical job segregation, in which men are concentrated in the higher-status and better-paid positions, from horizontal job segregation, where the different sexes work in different types of occupations and jobs. Both types of job segregation are usually based on gender stereotyping and assumptions about women's and men's capabilities rather than on facts.

In Indonesia, both vertical and horizontal segregation are major factors contributing to women's confinement in low-quality jobs and disadvantaged position in employment. Indonesian women are overrepresented in part-time and non-permanent employment, where they earn much lower wages than full-time and permanent workers, who are predominately men.³⁵ Labour Force Survey (SAKERNAS) conducted by the Central Bureau of Statistics of the Republic of Indonesia in 2019-2021 has resulted in findings that show:

- ▶ Indonesian women are 15-24 percent more likely to be working informally than men.
- ▶ Indonesian women are much less likely than men to be employers/business owners.
- ▶ Women are significantly overrepresented in the category of unpaid family workers in comparison to men.

Challenging stereotypical ideas about the physical abilities of male and female workers

Promotion of gender equality at work requires that women and men shall have equal access to training and employment of their own choice, on the basis of individual suitability for such training or employment. Traditional ideas about the suitability of certain jobs for women and men should not interfere with the choice made by an individual. The suitability for specific jobs should be assessed with reference to the individual characteristics of the person and the inherent requirements of the job in question.

Scientific research on lifting capacity and other physical abilities of women and men workers shows that no assumptions on these abilities can reasonably be made on the basis of a person's sex. For example, studies done in the US and Europe based on anthropometric data of white Anglo-Saxon workers show that the capacity range for female and male worker groups was very similar. Also, other gender-oriented research on health aspects has demonstrated that differences among working populations are mainly based on individual human variability rather than on biological differences between the sexes.

Source: V. Forastieri: *Information note on women workers and gender issues on occupational safety and health* (Geneva, ILO, 2000).

³⁴ ILO: *Equality and non-discrimination at work in East and South-East Asia – Guide*, pp.47-8 (Bangkok, 2011).

³⁵ Manpower Data Center and Information Technology: *Employment in Data*, 5th edition, 2022 (Jakarta, 2022).

Although the gender pay gap in Indonesia has narrowed in the past decade, it still persists partly because of gender segregation in the labour force. It is estimated that a woman with exactly the same education and experience as a man will earn, on average, about 23 percent lower than what a man earns.³⁶ To help address the problem of sex-based discrimination in the labour market, in 2005, the Ministry of Manpower and Transmigration (MoMT) issued Guideline on Equal Employment Opportunity in Indonesia.³⁷ This Guideline is meant to assist both employers and workers in responding effectively to discriminatory practices in Indonesia. Workplaces are considered a good starting point to address discrimination on the grounds of sex.

In 2022, representatives from the Indonesian government, workers, and employers within the labour sector convened once more at the Tripartite Guidance Workshop on Equal Employment Opportunity (EEO) and Safe Workplaces. The purpose was to collectively revise the EEO Guidelines to align them more closely with the latest developments in the world of work. Some of the vital issues to be incorporated into the updated EEO Guidelines include the adoption of ILO Convention No. 190 on Violence and Harassment at Work and the impact of the COVID-19 pandemic on workers.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has called upon Indonesia to address the problem of gender segregation by taking measures to improve the access of women to a wider range of job opportunities at all levels, including sectors in which they are currently absent or underrepresented.³⁸ The UN Committee on the Elimination of Discrimination of All Forms of Discrimination against Women (CEDAW) has also reminded Indonesia about the importance of addressing gender stereotypes that contribute to inequalities in employment and occupation. The Committee has urged the government to expedite efforts to ensure women's access to employment in a wider range of occupations and industries.³⁹

b. The roles of labour inspectors

Labour inspectors should make every effort to detect, within a specific company, any discriminatory practices that serve to limit women from pursuing productive employment opportunities, and perpetuate the segregation of a particular sex or group. For example, if during an inspection there is an indication that gender discrimination is a problem, inspectors should collect sex-disaggregated information related to (i) occupation (participation rate, occupied population, persons employed part-time or under "atypical" contracts) and (ii) salary (average annual earnings, gross monthly salary, and gross wage per hour). Once collected, this data can be used to conduct an "enterprise gender audit" to assess the labour situation of a company from a gender perspective.

The labour inspectorate should also:

- Encourage managers to utilize the full potential of their workforce by **identifying skill shortages** within the company. Ensure that both men and women are offered equal training and job opportunities to enhance their skill sets.
- Persuade employers to promote gender diversity by **encouraging women and men to enter fields of work traditionally dominated by the opposite sex**. Ensure they are not subjected to hostile work environments when they take up these positions. However, for this strategy to succeed, it is essential to address the undervaluation of jobs traditionally held by women (e.g. caring works) since adequate pay is crucial to attract men to these roles.
- **Organize training programs** specifically designed to raise awareness of segregation among employers. Ensure that the management is capable of identifying and opposing biases in job evaluation procedures, pay systems, and other organizational practices related to selection, recruitment, promotion, and job assignments that contribute to segregation.
- Recommend that the company with a trade union or another workers' representative organization engage in **annual collective bargaining specific to occupational equality** at the company level.
- Promote and support **motivational events** and **educational campaigns** aimed at challenging stereotypes that contribute to a gender-segregated workforce. These initiatives should seek to broaden the perspectives, skills, and choices of both men and women in the company.

36 UN Women: Gender Pay Gaps in Indonesia (Jakarta, 2020).

37 Ministry of Manpower and Transmigration: *Equal Employment Opportunity (EEO) in Indonesia*, (Jakarta, 2005).

38 ILO: "Direct request concerning Discrimination (Occupation and Employment) Convention, 1958 (No. 111) with respect to Indonesia, in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2011).

39 CEDAW: *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Indonesia* (Geneva, 2007).

▶ 3. Wages and benefits (pay equity)

a. Gender-based pay gap

In Indonesia, economic inequalities faced by the majority of women continue to constrain their ability to participate as equals in the economy. Estimates suggest that Indonesia loses about US\$2.4 billion a year due to inequalities in labour market participation between men and women.⁴⁰ Closing the gender wage gap is not just a human rights issue, it is also a human resource and economic development issue. This gender pay gap has many causes, including workplace discrimination. Meanwhile, raising the salaries of undervalued female workers can boost morale and productivity within the company, decrease employee turnover, and draw in high-quality candidates — all of which will ultimately benefit the company's financial performance.

b. International and national law standards on pay equity

Closing the gender wage gap requires ensuring equal remuneration between men and women for work of equal value – otherwise referred to as “equal pay” or “pay equity.” This concept was established in the **ILO Equal Remuneration Convention, 1951 (No. 100). Article 1 of Convention No. 100** states:

- a) the term “remuneration” includes the ordinary, basic, or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.
- b) the term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

In Indonesia, according to Article 2, paragraph (2) of the **Government Regulation No. 36 of 2021 concerning Remuneration** stipulates that: “Every worker/labourer is entitled to equal treatment in the implementation of the wage system without discrimination.” Furthermore, Article 2, paragraph (3) asserts that “Every worker/labourer has the right to receive equal pay for work of equal value.”

However, there are two primary obstacles preventing Indonesian women from receiving equal remuneration as men. Firstly, despite the law prohibiting discrimination in remuneration based on sex, employers often restrict benefits (e.g. family allowance) to the ‘head of household,’ a designation defined by marriage law as the male or husband. **The Marriage Law No. 1 of 1974** considers men to be the head of the household and assigns women the responsibility for maintaining the home and taking care of the children.⁴¹ In addition to promoting stereotypes that women are fit for particular jobs and men for others, this law is often referred to when women are denied family allowances and other work-related benefits that employers reserve for the ‘head of household’.⁴²

During an observation carried out in 2011, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) raised these concerns and urged Indonesia to implement necessary measures to prevent direct and indirect discrimination in relation to family allowance and other job-related allowances for women.⁴³ Furthermore, it is also stated that in order to comply with Convention No. 100 the term ‘remuneration’ should be defined with rigour and should include not only the ordinary, basic or minimum wage or salary but also any additional emoluments whatsoever payable directly or indirectly whether in cash or kind, by the employer to the worker and arising out of the worker's employment.”⁴⁴

In the latest provision of Government Regulation Number 36 of 2021, wages are now defined as follows: “Wages is the right of Workers/Labourers to receive compensation from the employer in a monetary form in accordance with the provisions specified in a work agreement, contract, or applicable laws and regulations. This includes benefits for workers/labourers and their families for work and/or services that have been or will be performed.”

The second obstacle to achieving true pay equity is that “equal pay for work of equal value” is often misconstrued as implying that individuals performing the same or similar jobs should receive identical wages. However, attaining

40 ILO: *Equality and non-discrimination at work in East and South-East Asia – Guide*, p.20 (Bangkok, 2011) citing Indonesian Government, *BPS: Labour force survey* (Jakarta, 2010).

41 Marriage Law No. 1, Article 31(3) (1974)

42 Government of the Republic of Indonesia: Combined 4th and 5th reports to the Committee on Elimination of All Forms of Discrimination against Women, paras. 106 and 161 (Jakarta, 2005).

43 ILO: “Individual Observation on Equal Remuneration Convention, 1951 (No. 100) - Indonesia,” as cited from the Report of Committee of Experts on the Application of Conventions and Recommendations (Geneva, 2011).

44 ILO: “Individual observation concerning Equal Remuneration Convention, 1951 (No. 100) with respect to Indonesia,” in Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, 2011).

genuine pay equity demands more. ‘Equal pay for work of equal value’ necessitates that individuals engaged in roles that require **substantially similar skills, effort, and responsibilities** should be compensated equally. In essence, pay for a specific job should be determined by the intrinsic characteristics of that job, including:

- ▶ Skills and qualifications gained through education, training, and work experience.
- ▶ Duties and responsibilities in terms of using technology and dealing with people and financial resources.
- ▶ Physical, mental, and psychosocial effort required.
- ▶ Working conditions (physical, psychological, and social).⁴⁵

This approach can help to address the undervaluing of the jobs undertaken primarily by women (because women are often disproportionately represented in positions that are typically considered ‘less prestigious’) by comparing those jobs in terms of their actual requirements with the jobs undertaken mainly by men.

Another wage-related issue arises from the prevalence of informal sector employment, where many workers’ wages are not determined by minimum wage provisions but rather follow a supply-based wage mechanism. Given that women are often overrepresented in the informal sector, this factor contributes significantly to the persistent wage gap.

CEDAW Committee has urged the Government of Indonesia to take concrete measures aimed at ensuring equal remuneration, allowances, and social services for women, both for similar job roles and works equal value. Concrete actions should also be taken to impose sanction on instances of discrimination against women within the realms of public and private sectors.⁴⁶

To adhere to the aforementioned guidelines, the elucidation of Government Regulation No. 36 of 2021 concerning Wages, as outlined in Article 2, paragraph (3), further clarifies that “work of equal value” refers to work of equivalent significance, assessed based on factors such as competence, work-related risks, and responsibilities within a single company. Additionally, the Ministry of Manpower has issued ‘Guidelines for the Promotion of Gender-Neutral Wage in the Workplace’⁴⁷ as a proactive measure to encourage wage parity in professional settings. While these guidelines lack the legal enforceability of legislation, they represent a positive stride by the Indonesian government toward the full implementation of ILO Convention No. 100.

Another significant aspect to consider concerning wages is that numerous companies still impose wage deductions on workers who take family leave. Given that women tend to take family leave more frequently than man, such as to care for ill children, this practice can lead to reduced income for female workers.

C. The roles of labour inspectors

In the realm of wages, there are various empirical issues closely linked to wage equality that labour inspectors must take into account. Labour inspectors can take the following actions to promote pay equity in workplaces:

- ▶ Identifying workplace policies on pay equity

Inspectors can assess whether companies have established policies or regulations that guarantee equal remuneration for work of equal value, along with equal promotion opportunities for both male and female employees.

- ▶ Assessing benefits provided by companies

Labour inspectors should assess whether women and men have an equal access to benefits provided by the companies, such as: access to housing, transport and family allowances, social security and other benefits provided in connection with employment. If health benefits are provided, they should be available to all workers, even those in non-permanent positions (most of whom are women).

Additionally, labour inspectors can support pay equity by evaluating employers’ benefits packages to determine whether they have a discriminatory impact on women. While it is legitimate to pay higher wages and better benefits to those in higher-level management positions as compensation for their higher level of responsibility,

45 ILO: *Equality and non-discrimination at work in East and South-East Asia - Guide*, p. 50 (Bangkok, 2011) citing Government of Indonesia, BPS: *Labour force survey* (Jakarta, 2010).

46 CEDAW: *Concluding remarks of the Committee on the Elimination of Discrimination against Women: Indonesia*. Para.35 (Geneva, 2007).

47 Government of Indonesia - Ministry of Manpower and Transmigration (MoMT), *Gender-Neutral Pay Equity: A Step-by-Step Guide for employers in Indonesia*, (Jakarta, 2014).

these types of remuneration practices may lead to discriminatory outcomes for women. When assessing whether a case involves sex discrimination, it is necessary to determine whether a large majority of the higher-level managers are men and the lower-level managers and employees are women. If so, this may point to indirect discrimination against women.

► Assessing bonus and allowance systems

Since bonus systems generally concentrate on full-time employment, women are often at a disadvantage, as they are more likely to work part-time. Employers should consider concentrating on basic pay increases, which may be of greater benefit to women. Alternatively, bonus systems may be enlarged to include all workers regardless of status (including non-permanent workers) or extended to include grades of jobs that have not traditionally attracted bonus payments. It is important to ensure that bonuses are paid without discrimination, either direct or indirect.

► Assessing pension schemes

Pension benefits are typically determined by factors such as length of employment and previous salary levels. Given that a significant portion of women occupy lower-paying positions, their pension entitlements tend to be lower than those of men. Additionally, more women than men may have intermittent work histories or extended leave periods to fulfil family responsibilities. Some women rejoin the workforce later in life after raising children, while many opt for part-time employment, potentially resulting in fewer pension benefits or exclusion from company pension schemes. This situation necessitates attention, as individuals with disrupted career paths or delayed entry into the workforce may find themselves with inadequate pension funds for their retirement.

► Promoting the use of job evaluations⁴⁸

Convention No. 100 calls for carrying out objective job appraisals on the basis of the work to be performed and free from gender bias.⁴⁹ Thus, labour inspectors should encourage employers to conduct job evaluations in order to detect and address any gender bias in wages and benefits within the company. Such evaluations should aim to establish the relative value of jobs that differ in content, by breaking jobs down into components or “factors” and assigning points to them. Such factors generally will include skills/qualifications, responsibility, effort and working conditions. Two jobs that are found to have the same value are entitled to equal remuneration. Job evaluation is concerned with the *intrinsic component* of the job and not with the personal characteristics or the performance of the persons doing the job.⁵⁰

► 4. Maternity leaves and protection during pregnancy and post-natal period

The safeguarding of maternity leave rights and the protection of pregnant and breastfeeding workers represent crucial conditions for eradicating workplace discrimination. In Indonesia, numerous and diverse issues are associated with the implementation of maternity leave and the protection of pregnant workers. During the recruitment process, for instance, there have been instances where women of reproductive age were denied employment opportunities or required to commit to not marrying or becoming pregnant within a specified timeframe, under the threat of immediate dismissal in case of a ‘breach’.

Once in an employment relationship, it is not uncommon for women to face dismissal due to pregnancy or marriage, or to harbour concerns about taking maternity leave for fear of job loss, even though they are entitled to this benefit. Additionally, many women workers do not receive paid maternity leave, and accessing maternity leave rights can be challenging for contract workers, outsourced workers, and those in the informal sector. In the meantime, ensuring the

48 ILO-UN Global Compact: *Equal pay for work of equal value: How do we get there?* (Geneva, 2011).

49 ILO: *Equality and non-discrimination at work in East and South-East Asia - Guide*, p. 20 (Bangkok, 2011) citing the Government of Indonesia, BPS: Labour force survey (Jakarta, 2010).

50 For further information on the procedure of job evaluation, please see: *Promoting Equity: Gender Neutral Job Evaluation for Equal Pay: A Step-by-step Guide* (Geneva, 2008).

continuous employment and income security of women during and after pregnancy is paramount to guaranteeing their access to equal opportunities and equitable treatment in the workplace.

a, Legal provisions on maternity leave and protection during pregnancy and breastfeeding period

Indonesia has enacted several laws aimed at safeguarding the rights of female workers during pregnancy and the postnatal period, preventing discrimination, and facilitating access to necessary support, particularly during the initial months after childbirth.

Law No. 13 of 2003 on Manpower in conjunction with Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law, Article 82 asserts that:

- 1) Female workers/labourers are entitled to 1.5 (one and a half) months of rest both before and after childbirth, as determined by a certified obstetrician or midwife.
- 2) Female workers/labourers who experience a miscarriage during pregnancy shall be entitled to 1.5 (one and a half) months of rest or as indicated by a certified obstetrician or midwife.

As maternity leave and leave due to miscarriage are considered part of the mandatory rest rights provided by the company, the company is required to continue paying the wages of workers during both 1.5-month maternity leave periods before childbirth and 1.5-month maternity leave periods after childbirth. Wages must also be paid to workers during 1.5-month leave periods due to miscarriage.

Furthermore, Article 83 of Law 13/2003 stipulates that “Entrepreneurs are under an obligation to provide proper opportunities to female workers/ labourers whose babies still need breastfeeding to breast-feed their babies if that must be performed during working hours.” This provision is reinforced by Article 128 of Law No. 39/2009 on Health (Health Law), which establishes the responsibility of families, government, local authorities, and communities, including employers, to support and promote exclusive breastfeeding for mothers. Article 200 of the Health Law also prohibits any person or entity, including companies, from intentionally obstructing exclusive breastfeeding programs, with penalties including imprisonment and fines. Additionally, Government Regulation 33/2012 on Exclusive Breastfeeding mandates that employers provide working mothers with the opportunity to breastfeed their babies exclusively or express breast milk during working hours in their workplace. Employers must also provide appropriate facilities to breastfeed and express breast milk, taking into account the female workers’ condition.

In connection with the aforementioned rights, Article 153 of Law 13 of 2003, in conjunction with Law 6/2003 on the Prohibition of Termination of Employment (*Pemutusan Hubungan Kerja* [PHK]), explicitly states that one of the prohibited grounds for terminating employment is pregnancy, childbirth, miscarriage, or breastfeeding (as per Article 153, letter (e)).

Furthermore, Article 100 of Law 13/2003 requires employers to provide welfare facilities in the workplace. According to the elucidation of Article 100, paragraph (1), these welfare facilities encompass lactation rooms and day-care centres.

On an international standard level, **the ILO Maternity Protection Convention, 2000 (No. 183)**, sets forth a minimum maternity leave of 14 weeks and recommends extending it to at least 18 weeks to ensure adequate rest and recovery for mothers. The convention also emphasizes that maternity leave benefits (paid maternity leave) should be sufficient to ensure the health and well-being of both mothers and children, allowing them to avoid poverty and hardship. The Convention specifies that the benefit in cash should be at least two-thirds of the woman’s previous income and recommends increasing it to 100 percent wherever possible.

ILO Maternity Protection Convention, 2000 (No. 183)

- Applies to all employed women, including those in precarious forms of employment, such as informal employees, casual, seasonal, workers with fixed-term contract and outsourced workers, domestic workers, and homeworkers.
- Provides for 14 weeks of paid maternity leave, including a compulsory six-week leave following childbirth.
- Women on maternity leave are entitled to a cash benefit ensuring their well-being and that of their child (no less than two-thirds of their previous earnings or a comparable amount), allowing them to maintain proper health and a suitable standard of living.
- Prohibits employers from terminating a woman’s employment during pregnancy, maternity leave, or upon her return to work, except for reasons unrelated to pregnancy, childbirth, or nursing. The

burden of proof rests with the employer. Women returning from maternity leave have the right to return to their previous position or an equivalent position with the same pay rate.

- Requires ratifying states to ensure pregnant women and breastfeeding mothers are not obliged to perform work harmful to their health or that of their child, and provides protection against pregnancy and maternity discrimination.
- Grants women the right to one or more daily breaks with pay, or a daily reduction in working hours to breastfeed their child.
- Provides for medical benefits, including prenatal, childbirth, and postnatal care, as well as necessary hospitalization care.
- Ensures that women who do not meet eligibility conditions for maternity cash benefits are entitled to receive adequate support from social assistance funds.

It is noteworthy that Indonesia has not yet ratified **ILO's Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** that prohibits direct and indirect discrimination on the ground of sex. Even though this convention does not explicitly prohibit discrimination related to maternity, it can be argued that direct discrimination due to maternity is equivalent to indirect discrimination on the grounds of sex, particularly considering that only women can experience pregnancy.⁵¹ Indonesia has not yet ratified Convention No. 183. However, it has ratified ILO Convention No. 111 on Discrimination in Employment and Occupation, which prohibits both direct and indirect discrimination on the grounds of sex. While this Convention does not explicitly address discrimination based on maternity, it is important to note that, given that only female workers are affected, direct discrimination on the grounds of maternity can be considered a form of indirect discrimination on the grounds of sex.⁵² Indonesia has also ratified the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**. Article 11.2 of CEDAW requires countries to prohibit discrimination in the workplace on the basis of marriage, pregnancy, and maternity, to introduce paid maternity leave without loss of benefits or career opportunities, and to encourage the provision of supporting social services to allow parents to combine family obligations with work responsibilities.

b. Implementation Challenges

Research conducted jointly by the ILO and the Demographic Institute of the University of Indonesia in three major cities revealed a disparity between maternity leave provisions and their actual implementation. The findings elucidate that merely 62.6% of the workforce had the opportunity to exercise maternity leave entitlements, with a mere 44.1% of respondents receiving full remuneration during the period of maternity leave.

Social dialogues held with workers and trade unions further highlighted the challenge faced by medium and micro/small enterprises in providing maternity leave and full salary payments. Additionally, a significant issue arises from the fact that maternity leave provisions outlined in the Labour Law are legally binding only for formal sector workers. This exclusion means that informal workers are unable to access maternity leave with full pay.

Ensuring the protection of pregnant and breastfeeding women in the workplace continues to encounter several challenges. For instance, not all companies have established adequate lactation room facilities, and even when they do, these facilities often fall short of meeting the necessary standards.

There are also instances where pregnant women are employed during night shifts, a situation that has been linked to a higher incidence of miscarriages.⁵³ These practices often remain unnoticed, partly due to the unavailability of complaint mechanisms for female employees to file incidents related to violence and discrimination within some companies.⁵⁴

51 Diahadi Setyonaluri, et. al., 2023, Maternity leave in metropolitan Indonesia: Evidence on duration, benefit, and job protection, International Labour Organization, hlm. 19.

52 ILO: *Equality and non-discrimination at work in East and South-East Asia - Guide*, p. 33 (Bangkok, 2011) noting that the jurisprudence of the European Court of Justice recognizes any pejorative treatment related to maternity and breastfeeding as direct discrimination against women, given that only women can become pregnant.

53 Suara.com, "Exploitation of Pregnant Workers: Ice Cream Factory Workers at Aice Go on Strike," February 27, 2020, <https://www.suara.com/news/2020/02/27/135532/buruh-hamil-dieksplotasi-pekerja-pabrik-es-krim-aice-mogok-kerja>, accessed on April 8, 2023.

64 Presentation of the Directorate of Labour Relations and Wages, Ministry of Manpower of the Republic of Indonesia in the Social Dialogue organized by ILO, March 1st, 2023.

In labour regulations, there is no specific provision that outright prohibits the employment of pregnant female workers at night, unless such work poses a risk to their safety and health or that of their pregnancy. Therefore, it is crucial for labour inspectors to assess whether the tasks performed by pregnant female workers pose any such risks. Labour inspectors can request companies to conduct regular health assessments for pregnant workers to ensure that their work does not jeopardize their well-being or that of their unborn children.

b. The Roles of Labour Inspectors

Labour Inspectors are tasked with the responsibility of enforcing the applicable laws and policies pertaining to maternity leave and the protection of expectant and nursing mothers. Labour inspectors can also investigate company practices to ensure that pregnant women and those who have recently given birth are protected. This includes ensuring they are not exposed to health and safety hazards, receive full pay during maternity leaves, have the opportunity to take breastfeeding breaks, when necessary, are safeguarded from discrimination and dismissal, and are guaranteed the right to return to work after their maternity leaves.

Labour inspectors can also encourage the adoption of best practices by companies, surpassing the mere normative requirements mandated by laws and regulations. These practices not only benefit workers but also contribute to the overall success of businesses. When employees feel valued and supported, they are more likely to demonstrate commitment, diligence, and a strong work ethic to perform better in their work.

A number of good practices that should be promoted by Labour Inspectors are as follows:

▶ Fully paid maternity leave

Ensure that women have adequate maternity leave after giving birth to let the body recover, to adapt to the changes resulting from childbirth and to give the required care for their children. Labour inspectors can also showcase the positive implications obtained by Employers that allow their workers to take maternity rests with full pay.

▶ Miscarriage Leave

Although miscarriage leaves are regulated in the Labour Law, many companies have not implemented them, often due to the perception that miscarriage is not as significant an event as childbirth. However, it is important to note that the ILO recommends the availability and accessibility of miscarriage breaks for women workers, including cases of stillbirth. This recommendation takes into account the emotional stress experienced by women and their families during such difficult circumstances.

▶ Child Adoption

Another good practice that labour inspectors should encourage is providing leave equivalent to the duration of maternity leave (1.5 months) to parents who adopt a child or children. This leave allows for essential bonding time between the adopted child and their parent(s) to establish a strong family foundation. It's worth noting that the current labour laws do not explicitly outline these rights for adoption leave.

▶ The Rights of Expectant and Breastfeeding Mothers

Pregnant women and nursing mothers should be permitted to avoid heavy physical work which may endanger the pregnancy, and to choose alternative positions such as being able to sit comfortably rather than standing all day or alternate between sitting and standing. Working with toxic materials and chemicals can be harmful and may damage the health of an unborn child. Lifting heavy weights and working with vibrating machines should also be avoided.

The right to continue breastfeeding upon return to work and access to appropriate and hygienic facilities for nursing are also important for the health of the mother and her child. Nursing breaks should be sufficiently frequent and long enough and should be treated as paid working time. The provision of childcare facilities or a room for breastfeeding on or near the workplace reduces the time needed for nursing breaks.

▶ Job Security

Inspectors must ensure that workers are protected against discipline or dismissal for reasons related to maternity or family responsibilities. Several crucial points to consider regarding job security in relation to maternal or family responsibilities include:

- No victimization or loss of job due to pregnancy.

- The right to return to the same or a similar job after maternity leave (including parental leave or other extended leave).
- No interruption in seniority during or after leave.
- Reassignment to non-hazardous tasks. Special protection should be afforded to pregnant women employed on short-duration fixed-term contracts, with the understanding that non-renewal of contracts for continuous employment should be treated as dismissal and, therefore, prohibited.
- Prohibition of pregnancy testing for recruitment or while on the job.

► Paternity Leave

Labour Inspectors can initiate promotions and dialogue with companies to emphasize the significance of fathers' parental responsibilities and the pressing need for comprehensive paternity leave policies within organizations. Paternity leave, provided without subtracting from annual leave entitlements, plays a crucial role in allowing new fathers to bond with their children, provide support to their spouses, and strike a healthier balance between work and family obligations.

It's important to note that, in Indonesia, paternity leave is not explicitly regulated. However, there are regulations specifying that a worker whose spouse gives birth is entitled to a maximum of 2 (two) days of paid leave.

► 5. Working hours and night work

a. Working hours

Enabling increased labour force participation of women contributes to an increased prosperity and productivity. However, because of women's traditional role as caretakers for the family they often choose or have to take **part-time** positions. Part-time workers may be at a disadvantage in comparison with colleagues who do equivalent full-time work due to:

- Lower hourly rates of pay.
- Impact on pension and other benefit schemes.
- Ineligibility for various forms of leave.
- Limited training and promotion possibilities.
- The perception that a part-time worker is a less committed worker.⁵⁵

Thus, efforts must be made to increase opportunities for quality part-time work and flexible work arrangements in which employees receive the same hourly pay and benefits, and have the same conditions as full-time employees, including a weekly rest.

Additionally, for those in full-time and part-time jobs, it is important to ensure that basic hours do not encroach into unpaid overtime at the request of the employer. The internationally recognized practice is to regulate "normal hours of work" by determining daily and weekly limits on hours worked, beyond which overtime limits apply. Generally, normal working hours for workers range between 8 – 9 hours a day and 40 – 45 hours a week. Overtime may be permitted but should be limited, e.g., to 12 hours a day (including overtime) and 15 hours of overtime a week.

Having access to **paid overtime** is important for women and men who want to work extra hours to boost their income. However, working excessive overtime can be detrimental and should be discouraged. The data from the Central Bureau for Statistics (*Badan Pusan Statistik [BPS]*) for 2021 shows that 21.29% of women workers work more than 48 hours per week.⁵⁶ Gender equality principles dictate that both women and men should have access to overtime and be paid for it but to limit excessive overtime requirements.

It is crucial to ensure that women have the option to work at night if they choose to do so. Presently, Indonesian law offers special protections for women working at night to protect them from excessively strenuous working conditions (please refer to the discussion below regarding Article 76 of the Labour Law). However, this well-intentioned regulation

⁵⁵ ILO: *Curriculum for labour inspectors - Labour inspection and gender equality, Module 13, p. 45* (Geneva, Turin, 2012).

⁵⁶ BPS: *Labour Force Data for 2021*, (Jakarta: 2021).

may inadvertently limit women's access to diverse employment opportunities. Since companies are required to provide specialized services to women but not men, many employers might be less inclined to hire women for night shifts due to associated costs. Conversely, while compensation for night work is often higher than daytime wages, women might miss out on opportunities to increase their earnings.

b. Legal provisions on hours of work and rest

Law No. 13 of 2003 on Manpower in conjunction with Law No. 6 of 2023 on Stipulation of Government Regulation in lieu of the Law No. 2 of 2022 on Job Creation into Law has stated some provisions concerning hours of work in the following articles:

- Article 77 Paragraph (2) states that working hours shall cover:
 - a. 7 (seven) hours a day and 40 (forty) hours a week for 6 (six) workdays in a week; or
 - b. 8 (eight) hours a day, 40 (forty) hours a week for 5 (five) workdays in a week.
- Article 78 Paragraph (1) states that employers who require their workers/labourers to work longer than the working hours determined under paragraph (2) of Article 77 must meet the following requirements:
 - a. Approval of the relevant worker/labourer; and
 - b. Maximum overtime work of 4 (four) hours in a day and 18 (eighteen) hours in a week.
 - c. Employers who require their workers/labourers to work overtime are under an obligation to pay overtime pay.
- Article 79 Paragraph (1) requires Employers to allow their workers to take a rest and leave.
- Article 79 Paragraph (2) states that the period of rest as mentioned in Paragraph (1) shall include the period of rest between working hours at least half an hour after working for 4 (four) hours consecutively and this period of rest shall not be inclusive of working hours, and the weekly period of rest is 1 (one) day after 6 (six) workdays in a week.

Several consensuses have been established at the international level as references to address working hours and night shifts. Article 4 of the **ILO Part-Time Work Convention, 1994 (No. 175)** states that measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers. These equal protection measures are to address discrimination in employment and occupation.

Additionally, Article 5 also states that "...part-time workers do not, solely because they work part-time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method." **ILO Part-Time Recommendation, 1994 (No. 182)** further elaborated that if the employer requires their worker to work more than the agreed working hours, as far as possible, changes in the agreed work schedule and work beyond scheduled hours should be subject to restrictions and prior notice and the system of compensation for work beyond the agreed work schedule should be subject to negotiations.⁵⁷

ILO Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), which was ratified by Indonesia in 1972, stipulates in Article 6 that all persons to whom this Convention applies shall, except as otherwise provided by the following articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days. Furthermore, the weekly rest period shall, wherever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the country or district, and the traditions and customs of religious minorities shall, as far as possible, be respected.

ILO Night Work Convention, 1990 (No. 171), and **Recommendation No. 178** state that all workers who perform a substantial number of hours of night work, irrespective of their sex, shall be safeguarded with special measures, which include: (a) health protection (first aid facility, health assessment); (b) maternity protection; (c) social services; (d) opportunity to attain career progression; and additional compensation (working hours, salary, and other benefit with equal value). The term *night work* means all work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m. This Convention applies to all employed persons except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation who typically work during night times.⁵⁸

⁵⁷ ILO: *Equality and non-discrimination at work in East and South-East Asia – Exercise and tool book for trainers*, p. 113 (Bangkok, 2011).

⁵⁸ ILO: *The ABC women workers' rights and gender equality*, 2nd ed., p.137-8 (Geneva, 2007).

Indonesia has not ratified the Part-Time Work Convention or the Night Work Convention. Nonetheless, labour inspectors can use these conventions as a guide to promote good practices among employers.

The applicable laws in Indonesia provide special protection for women workers, as already mandated in **Article 76 of Law No.13 of 2003 on Manpower**:

- 1) It is prohibited to employ female workers/labourers aged less than 18 years of age between 11 p.m. and 7 a.m.
- 2) Employers are prohibited from employing pregnant female workers/labourers who, according to a doctor's certificate, are at risk of damaging their health or harming their own safety and the safety of the babies that are in their wombs if they work between 11 p.m. and 7 a.m.
- 3) Employers who employ women workers at night (11 pm to 7 am) are required to provide their female employees with nutritious food, and drinks and to maintain 'decency, morality and security' in the workplace during these late hours.
- 4) Employers are under an obligation to provide return/roundtrip transport for female workers/labourers who work between 11 p.m. and 5 a.m.

There is international consensus about the need to provide women with maternity protection to achieve genuine equality and enable women to fulfil their maternal role without being marginalized in the labour market. However, in a number of countries protective measures for women go beyond maternity protection and may lead to discrimination in employment. For example, the above requirement in Indonesian law to provide female employees working at night with food, drinks, and transportation, may make hiring women to work at night more expensive for employers and thus may limit women's opportunities to engage in night work.

Hence, it might be essential to assess and explore alternative protection measures that are applicable to both male and female workers. These measures could include ensuring access to adequate transportation and security facilities, as well as providing comprehensive social security, including health and employment insurance. Addressing these matters is vital to ensuring that women have equal access to such employment opportunities as men.⁵⁹

C. The Roles of Labour Inspectors

Labour inspectors have various responsibilities to ensure that the implementation of hours of work and night work remains free from discriminatory practices. Some aspects that can be assessed include:

► **Ensuring part-time workers are not treated as second-class workers.**

Part-time employees have a right to equal remuneration for work of equal value just like full-time employees and should receive the same benefits and conditions as full-time employees, including overtime compensation for work beyond the agreed work schedule. Additionally, benefits such as medical care and access to welfare facilities, are not appropriate for pro-rating.⁶⁰ Transport benefits and some other cash benefits are also unsuitable for systematic pro-rating and are more appropriately awarded to all workers on a needs basis. Ensuring that part-time workers have rights regarding redundancy is also important. If part-timers are automatically chosen before full-timers for redundancy, women are likely to be disproportionately disadvantaged. This constitutes indirect discrimination and should be avoided. Part-time workers should also have access to redundancy pay.⁶¹

► **Analyse whether payment schemes compensating part-time workers less than full-time workers result from indirect sex discrimination.**

According to BPS data for 2021, the percentage of female workers employed on a part-time basis still exceeds that of male workers.⁶² Labour inspectors should conduct an analysis of the gender distribution within the full-time and part-time worker groups within a company. If it is discovered that the majority of full-time workers are male while part-time workers are predominantly female, and if part-time workers receive fewer benefits than their full-time counterparts, it may be inferred that a case of indirect sex-based discrimination exists.

► Calculate the hours of work for both men and women working overtime to detect disparity and possible gender discrimination.

59 ILO: "Putting a Human Face on Globalization – General Survey," CEACR Report (Geneva, 2012).

60 Pro-rating refers to reducing the amount of payment to reflect actual days or hours worked. All workers should receive health care benefits and access to welfare regardless of their part-time or full-time status.

61 ILO: *Curriculum for labour inspectors - Labour inspection and gender equality, Module 13, p. 46* (Geneva, Turin, 2012).

62 BPS: *Labour Force Data for 2021*, (Jakarta: 2021).

Inspectors should ensure that both men and women have access to any available overtime. In addition, basic hours should not extend into unpaid overtime at the request of the employer.

- ▶ **Encourage employers to provide appropriate protection to *all* employees engaged in night work, and not just women.**

Within the international community, there has been a shift from the original concept of protecting women against excessively arduous working conditions, including in night work, towards an understanding that protection appropriate to the nature of the work should in principle be granted to all workers irrespective of their sex.

Except for the measures to provide maternity protection, other specialized protective measures for women often do not align with the goals of promoting equal opportunities, equal remuneration, and equal treatment for men and women. In some cases, these measures may inadvertently exacerbate discrimination.

▶ 6. Family leave and responsibilities

To advance gender equality, it is imperative to guarantee that all workers, irrespective of their sex, can pursue their careers without discrimination stemming from family responsibilities. Many women, as well as some men in the workforce, shoulder primary caregiving duties within their families. These individuals effectively manage two roles – one at home and one at work. Hence, it is vital to advocate for workplace policies that shield such workers from discrimination due to these dual commitments. Furthermore, employers have a vested interest in cultivating a workplace environment conducive to achieving work-life balance. This can be facilitated by offering more flexible work schedules or even the option to work from home when necessary.

There are several good practices related to leave policies that can be promoted to foster gender equality in the workplace. These include:

- Paternity leave

Paternity leave is an important component of ensuring gender equality in the workplace. Allowing fathers to take the special leave allowed by law after the birth of a child acknowledges the importance of the father's parental responsibilities and provides new fathers with the opportunity to nurture their infants. Paternity leave provisions are becoming more common and reflect evolving views of fatherhood. These shifts in relationships and perceptions of parenting roles can bring about more gender-balanced approaches to caregiving and unpaid work.

- Sick and annual leave

Many women with precarious contracts (i.e., temporary, part-time, piece-rate workers) are not entitled to any leave and therefore work throughout the year without any regular leave. These workers should have at least the same pro-rata entitlement to leave as their full-time colleagues. Additionally, taking leave must not entail any reduction in job security for any worker.

- Paid educational and training leave

Women, including those working part-time, should have access to the same training opportunities as men. Training should be used as a means to redress existing biases in employment hierarchies.

a. Legal Provisions on family leave and responsibility

Article 93 (4) of Law No. 13 of 2003 on Manpower requires employers to grant paid leave for two days to the workers if the worker/labourer's wife gives birth. Additional paid leaves for two days shall also be granted if the worker marries their child, or if the worker's child is circumcised, or baptized, or if the worker's spouse, parent, parent-in-law, child, son-in-law, or daughter-in-law dies. One day of paid leave shall be granted if any member(s) of the worker's household dies.

Law No. 13 of 2003 on Manpower stipulates **annual Leave and paid day-off** as specified in the following articles:

- Employers are under an obligation to allow their workers/labourers to take annual leave which covers a minimum period of 12 (twelve) workdays after the worker/labourer works for 12 (twelve) months consecutively; A long period of rest of no less than 2 (two) months, which shall be awarded in the seventh and eighth year of work each for a period of 1 (one) month to workers/labourers who have been working for 6 (six) years consecutively at the same enterprise on the condition that the said workers/labourers will no longer be entitled to their annual period of rest in 2 (two) current years. This provision shall henceforth be applicable every 6 (six) years of work (Article 79).
- Workers/labourers are not obliged to work on formal public holidays. Employers may require their workers/labourers to work during formal public holidays if the types and nature of their jobs must be conducted continuously or under other circumstances based on the agreement between the worker/labourer and the employer. Employers who require their workers/labourers to work on formal public holidays are under an obligation to pay overtime pay (Article 85).

Law No. 13 of 2003 on Manpower provides stipulations on **menstrual leave** in the following Articles:

- Female workers/labourers who feel pain during their menstruation period and notify the entrepreneur about this are not obliged to come to work on the first and second day of menstruation (Article 81, Paragraph [1])
- Employers shall be obliged to pay the female workers/labourers' wages if the female workers/labourers are ill on the first and second day of their menstrual period so that they cannot perform their work (Article 93, Paragraph [2]).
- The implementation of menstrual leave shall be regulated in work agreements, company regulations, or collective labour agreements (Article 81, Paragraph [2]; Article 93 (Paragraph [5]).

The **ILO Convention on Workers with Family Responsibilities, 1981 (No. 156)** requires countries to “make it an aim of national policy to enable all persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and to the extent possible, without conflict between their employment and their family responsibility.” The Convention emphasizes the need to create equality of opportunity and treatment between men and women workers with family responsibilities, and also between workers with and without family responsibilities. Convention No. 156 defines “family” as dependent children and other members of the immediate family who need the workers' care or support. Articles 1 and 2 of the Convention offer support to workers where such responsibilities restrict their possibilities of preparing for, entering, participating in, or advancing an economic activity.

While **Indonesia has not ratified Convention No. 156**, inspectors can use its provisions as a guide when raising awareness with employers about the importance of adequate policies related to leave and family responsibility in combating gender discrimination.

b. The roles of labour inspectors

Labour inspectors should take the needs of workers with family responsibilities into account when examining workplaces and discuss with employers the importance of policies that provide adequate leave and some flexibility in working conditions. In particular, inspectors should promote the following good practices:

- **Ensure all workers are entitled to leave when dependent members of the immediate family fall ill** and need a worker's care or support or in case of the death of an immediate family member.
- Advocate for the progressive reduction of hours of work and **capping obligatory and excessive overtime**.
- **Promote family-friendly flexible work arrangements** that allow women and men to better balance their duties at home and at work. For example, core working hours of six hours per day could be arranged with flexible working hours on either side, as long as a certain number of hours are worked per week. In other cases, there could be an averaging of annual hours. Whenever flexible working time hours are introduced to improve productivity, care should be taken to ensure that these do not have a disproportionately negative effect on women.
- Ensure that all terms and conditions of employment for **part-time workers, workers on temporary contracts, and home workers**, including social security, leave, and time off on public holidays (or compensation) are equivalent to those of full-time and permanent workers.
- Ensure that taking leave does not disadvantage workers' access to employment, pay, or career advancement. As take-up rates of leave provisions tend to be higher for women than men,⁶³ leave provisions may be perceived as increasing the costs of women's labour, and this may be used to justify offering lower wages in industries where

63 ILO: *The ABC of women workers' rights and gender equality, 2nd edition, p. 111* (Geneva, 2007).

women predominate. Inspectors should be sensitive to this possibility and ensure that indirect discrimination against women does not occur as a result of the use of leave entitlements.

- **To promote the significance of paternity leave and foster its utilization within companies already equipped with policies.** Not all fathers take advantage of paternity leave, even when paid, out of fear that they will be seen as less committed to their work. Prevailing stereotypes of masculinity may clash with caretaking roles and influence their decisions as well.⁶⁴ The labour inspectorate, trade unions, and employers should work together to change such attitudes through campaigns and other initiatives that encourage fathers to make use of their leave upon the birth of a child.

▶ 7. Occupational safety and health

It is important to ensure that the specific characteristics of women are taken into account when promoting safe and healthy working conditions. Men and women are physically different and there are often significant differences in the jobs they do, their working conditions and how they are treated by society. This situation has also given some implications to the context of occupational safety and health. For example, while traditionally male-dominated workplaces, such as those with heavy machines, and in construction and mining, are usually covered by occupational safety and health (OSH) laws, female-dominated sectors such as domestic work, home-based and subcontracted work, and agriculture are often not covered.

ILO Convention on Occupational Safety and Health, 1981 (No. 155) applies to all economic sectors and to all workers in these economic sectors. However, labour inspectors must recognize that a “one size fits all” approach to OSH may not always be appropriate. Thus, they should ensure that gender differences are taken into account when conducting hazard identifications and risk evaluations, and when developing or suggesting preventative measures. OSH policies and programs as well as OSH systems including data collection and analyses, reporting mechanisms, and compensation arrangements for workplace accidents and injuries should also consider the gender aspects of the ILO Convention on the Promotional Framework for Occupational Safety and Health, 2006 (No. 187).

An important occupational health and safety (OSH) issue to consider pertains to the representation of women in the Occupational Safety and Health Advisory Committee (*Panitia Pembina Keselamatan dan Kesehatan Kerja* [P2K3]). While there is no legal mandate requiring women’s representation in P2K3, the absence of women can lead to a lack of attention to gender-specific OSH concerns within the company.

Another issue related to OSH and workplace equality concerns health insurance and employment insurance. Data from the National Social Security Agency for Health (BPJS Kesehatan) reveals that many female workers are not registered as BPJS members by their employers. This is often justified because their husbands, who also work, are registered with BPJS, and the female workers are automatically included as family members under their husbands’ BPJS accounts. However, this practice cannot be justified, as the law mandates that all workers, regardless of gender or marital status, should be registered as participants in BPJS *Kesehatan* and BPJS *Ketenagakerjaan* (BPJS for Employment) by their employing companies.

Labour inspectors can play a role in promoting gender-sensitive OSH policies and initiatives in the workplace by encouraging employers and workers to involve women in OSH activities, including participation in the preparation, implementation, and monitoring of OSH management systems and participation in the Occupational Safety and Health Advisory Committee (P2K3).

⁶⁴ ILO: *Protect the future: Maternity, paternity and work*, p. 5 (Geneva, n.d).

► 8. Protection of groups performing precarious work

Employment in the informal sector and irregular work arrangements such as part-time or temporary types of work, home-based work, or contractors, go hand in hand with low job security.

The fact that women are concentrated in these jobs means that they are disproportionately affected. Those involved in this type of work are generally poorly organized and represented, or not at all. They are regularly subjected to discrimination and abuse; required to work in physical, geographical, social, or cultural isolation, and easily fall victim to exploitation.⁶⁵ Meanwhile, these groups of workers are, like other workers, entitled to the respect for, and protection of their human and workers' rights.

Workers involved in precarious forms of employment belong to diverse categories and are engaged in various economic activities. These groups encompass:

► Fixed-term, casual, contractor, and seasonal workers

The commonality among workers in this category is their lack of access to permanent employment status. This is particularly pronounced following the implementation of the Job Creation Law, which permits the extended use of the fixed-term employment contract (*Perjanjian Kerja Waktu Tertentu [PKWT]*) for individuals without permanent status. Consequently, many contract workers find themselves in a quasi-permanent employment situation, yet they do not receive bonuses, leave entitlements, benefits, or wage hikes. Despite working for the same company for many years, numerous employees remain on non-permanent status.

► Homeworkers

Many women in Indonesia are engaged as homeworkers. They may work for an employer or an intermediary, or they may produce goods that they sell through an agent. Surveys and focus group discussions in East Java and North Sumatera have indicated that women comprise the majority of homeworkers (approximately 87%). Homeworkers are typically engaged through informal arrangements and are particularly vulnerable to high levels of exploitation.⁶⁶

Home work is not recognized or explicitly defined by national laws or regulations as a specific category of work in Indonesia. On the other hand, the definition of homeworkers however embraces the three common elements of an employment relationship under Indonesian labour law – defined work, remuneration and a degree of subordination.⁶⁷ Thus, in the absence of explicit legislation governing home work, there is also a significant challenge in promoting and safeguarding the homeworkers' rights as they are largely isolated and working in privacy of their homes.

Like other outsourced and contract workers, homeworkers also face significant barriers to joining workers' organizations due the precariousness of their employment contracts. Because most home work is characterized by unpredictable employment (as orders for work fluctuate according to employer demands), very low wages, long hours of work, arbitrary withholding of pay and dismissals, and serious occupational health and safety hazards, the labour inspectorate should continue to explore ways to better promote and protect the rights of homeworkers.

► Domestic Workers

Globally, there are 61 million domestic workers and more than four out of every five of these are women (83 percent). Even though domestic workers make up a significant portion of the labour force, they are regularly denied the most basic human rights, including protection under labour laws. In the Asia Pacific region:

- Only 3 percent of domestic workers are covered to the same extent as other workers by general labour laws, and 61 percent are excluded from **all** labour legislation.
- 97 percent have no right to even one day off of work per week.

65 ILO: *Curriculum for labour inspectors - labour inspection and gender equality module*, p. 55-6 (Geneva, 2012).

66 ILO: Baseline data on homeworkers from East Java (Jakarta, Project Empowering Indonesian Women for Poverty Reduction (MAMPU), (unpublished). Sumatera.

67 Law No. 13 of 2023 on Manpower, Article 1 (15).

- 99 percent have no limit to weekly hours worked.
- 88 percent are excluded from minimum wage coverage.

Incidents of violence against domestic workers remain prevalent. Demographically, domestic workers usually have little education and come from poor families in rural villages. Their work is often invisible, carried out in private homes for the benefit of private citizens who generally do not regard themselves as employers, even though they are. Sex discrimination plays an important role in the exploitation and abuse suffered by many female domestic workers, who are expected to be available any time and to work long hours, as 'part of the family' for little pay. Moreover, traditional attitudes and prejudices about women as subordinates also contribute to widespread practices of coercion and violence against domestic workers.

► **Child labour**

Child labour violates fundamental human rights and hinders children's development. Working children often do not go to school, which limits their prospects for upward social mobility and contributes to generational poverty, which eventually leads to slow economic growth and social development.

Studies have shown that eliminating child labour in transition and developing economies could generate economic benefits nearly seven times greater than the costs, mostly associated with an investment in better schooling and social services.⁶⁸ While child labour affects both boys and girls, it has a significant impact on girls as it reinforces gender discrimination, resulting in a denial of education and other opportunities. Additionally, many girls are likely not accounted for in statistics on child labour because their work often takes place behind closed doors and thus is invisible.

► **Forced labour and human trafficking**

Forced labour takes different forms, including debt bondage, trafficking and other forms of modern slavery. Women workers are particularly vulnerable to forced labour and trafficking, especially in economic sectors such as textiles and garments, domestic work, sex work and work in the entertainment industry.

a. Legal provisions on precarious forms of work

The Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182) are two fundamental conventions that have been ratified by Indonesia. These conventions urge immediate action against the worst forms of child labour, such as the use of any girl or boy under the age of 18 in forced or compulsory labour, including armed conflict; prostitution; the production of pornography, or for pornographic performances; production and trafficking of drugs and work that is likely to harm the health, safety or morals of children.

The Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105) are also two fundamental conventions ratified by Indonesia, aimed at suppressing all forms of forced labour, including human trafficking and slavery. Forced labour is defined as: "All work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

The ILO Home Work Convention, 1996, (No. 177), recognizes that homeworkers are in a marginalized position, and in need of special legal protection. It must be borne in mind that while there are many categories of "homeworkers," a common feature is their lack of employment-based benefits and social protection. The Convention defines a homemaker as: "*a person who carries out work in his or her home or in other premises of his or her choice, other than the workplace of the employer; for remuneration which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used.*" (Article 1).

The Convention requires equality in the treatment of homeworkers, stating that they shall be treated no less favourably than other categories of workers with respect to:

- Freedom of association and collective bargaining.
- Protection against discrimination.
- Occupational health and safety.
- Minimum wages and remuneration.
- Social security protection.

⁶⁸ ILO: *International labour standards on child labour* (Geneva, 2014), citing ILO: *Investing in every child – An economic study of the costs and benefits of eliminating child labour*, pp. 4-5 (Geneva, IPEC, 2004).

- Access to training.
- Minimum age.
- Maternity protection.

Indonesia has not yet ratified the ILO Home Work Convention. However, it can be used as a guide to develop best practices and ensure gender equality for those working in this sector.

The ILO Domestic Workers Convention, 2011 (No. 189) provided the first international standards on domestic workers, and **the Domestic Workers Recommendation, 2011 (R. 201)** gives guidance for national laws and practices. Substantive provisions of the Convention and Recommendation include:

- Rights to freedom of association and non-discrimination, abolition of forced labour and child labour.
- Protection against abuse, harassment, and violence.
- Fair terms of employment and decent working and living conditions.
- Information on terms and conditions, and written contracts.
- Fair working hours and remuneration.
- Social protection.
- Review and supervision of employment agencies.
- Compliance and enforcement.

The Indonesian Parliament is presently in the process of drafting a bill, known as the Domestic Workers Protection Bill (*Rancangan Undang-Undang Perlindungan Pekerja Rumah Tangga [RUU PPRT]*), with the objective of safeguarding domestic workers. This initiative represents the initial stride toward establishing comprehensive legal and social protection for this demographic. The enactment of this anticipated bill is expected in the near future.

b, Roles of Labour Inspectors


Ensuring the protection of workers engaged in precarious forms of employment presents a considerable challenge for labour inspectors. The limited number of inspectors, the elusive nature of many disadvantaged worker groups, and legal constraints that primarily confine inspectors to formal-sector and wage-based employment further complicate their tasks. Moreover, the absence of sex-disaggregated data and insufficient awareness of gender-related issues within the labour force pose obstacles to identifying and addressing the unique conditions and needs of women within these groups.

However, there are steps inspectors can take to better protect all workers in these precarious jobs:⁶⁹

- Enforce the existing laws concerning **outsourcing**, for instance, by ensuring all outsourced workers are granted their normative rights by the service-provider companies.
- If discrimination is suspected in a workplace, conduct an **enterprise gender audit with a specific focus on disadvantaged groups of workers**, in particular child workers, homeworkers, domestic workers, rural workers, and victims of forced labour and human trafficking.
- Improve methods for detecting irregular employment relationships and abuses among casual, temporary, and seasonal task workers, and **advocate for more permanent and less precarious labour contracts**.
- **Pay particular attention to identifying girls and young women engaged in work**.
- Ensure the presence of female labour inspectors during workplace inspections, especially in establishments with a predominantly female workforce. Female inspectors should be specifically designated to address claims made by female workers, particularly those related to **sexual harassment or workplace violence**.

⁶⁹ ILO: Curriculum for labour inspectors – Labour inspection and gender equality, Module 13, p. 57-58 (Geneva, Turin).





5

Identifying discrimination in the workplace by assessing compliance with national legislations and the good practices of gender equity

Labour inspectors play a crucial strategic role in promoting compliance with labour laws and fostering good practices that contribute to achieving decent work for all. In this endeavour, it is of paramount importance to prioritize addressing gender discrimination as a key issue. This can be accomplished through a combination of advisory and monitoring measures aimed at enhancing awareness and adherence to gender equality laws and regulations, as well as referencing relevant international provisions.

The enforcement of gender-equitable practices within the workplace is not limited to prioritizing the interests of women workers alone. It also seeks to achieve the following objectives:

- Protecting all workers and their families.
- Protecting the employers who invest in promoting decent work from unfair competition by non-compliant counterparts.
- Creating sustainable growth opportunities for the economy and society
- Ensuring that all workers receive a fair share of the output they contribute to producing.

To assess a company's compliance with laws prohibiting sex discrimination, labour inspectors may conduct an **Enterprise Audit focusing on the issues related to Discrimination, and Sexual Harassment and Violence in the Workplace**. The assessment form assists inspectors in gathering and analysing information, which can be utilized for the following purposes: (a) identifying instances of gender and sex-based discrimination. (b) introducing necessary measures to eliminate discrimination and promote gender equality. (c) establishing a baseline for monitoring and evaluating progress in eliminating discrimination. (d) documenting exemplary practices that contribute to achieving gender equality. (e) obtaining deeper insights into the needs of women in the workplace.

The Enterprise Audit Focusing on Issues Related to Discrimination, Sexual Harassment and Violence in the Workplace should be carried out through a comprehensive examination by labour inspectors. This involves collecting both quantitative and qualitative data through document reviews, interviews, or focus group discussions (FGDs) with all stakeholders, including management, direct supervisors, workers, and trade union representatives. To maximize

effectiveness, these activities should encompass a thorough examination of all aspects of the employment relationship, including:

- Maternity breaks, miscarriage and paternity leaves
- Workplace violence and harassment
- Equal remuneration
- Recruitment and job placement
- Types of contracts (including fixed-term contracts, home works, etc.)
- Promotion and training
- Organization of working time (including working hours, part-time and full-time arrangements, etc.)
- Reconciliation of work, personal, and family life
- Occupational safety and health
- Guaranteed tenure and contract termination
- Industrial relations

In order to conduct an effective enterprise gender audit, inspectors must have access to information and data about the company. Employers should therefore be encouraged to keep good records including sex-disaggregated data regarding recruitment, salaries, promotions, training, etc. This will provide inspectors with the information necessary to determine whether certain workplace policies or measures have a disparate impact on women.

The Enterprise Audit Focusing on Issues Related to Discrimination, Sexual Harassment and Violence in the Workplace can take different forms, and the labour inspectorate is encouraged to experiment in order to determine what format works best. One way of conducting this audit is for labour inspectors to use a checklist and/or questionnaire for interviewing managers and workers and observing workplace practices; inspiring discussion and answering questions about discrimination; and helping track progress on equality promotion in the workplace. Below is a checklist and a more in-depth questionnaire that can be used together or separately as part of an enterprise gender audit.

The labour inspection checklist for identifying sex discrimination in the workplace (“Checklist”) is designed to touch briefly on important issues related to gender equality and help inspectors identify areas of concern within the enterprise in a relatively short period of time. Once an area of concern is identified, inspectors can then use the relevant parts of the more in-depth “Labour Inspection Questionnaire on sex discrimination and equality” (“Questionnaire”) to delve more deeply into the problem and make suggestions for improvement. The questions in both the Checklist and Questionnaire are designed to apply to all types of workers.

