

**DO WOMAN WORKERS IN INDONESIA  
GET THEIR RIGHTS?  
AN ANALYSIS OF LAW NO. 13/2003 FROM GENDER PERSPECTIVE**



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**Abstrak:** Wanita paling tidak memiliki dua peran dalam keluarga; sebagai ibu/istri dan sebagai pengatur hubungan dengan masyarakat. Banyak diantara para perempuan mempunyai tiga fungsi dengan menambahkan dua fungsi tersebut dengan satu fungsi yang lain yaitu sebagai pekerja, dalam rangka menopang perekonomian keluarga atau untuk alasan yang lain misalnya emansipasi wanita dalam dunia kerja. Di Indonesia, telah banyak perempuan yang bekerja di hampir semua sector kehidupan, mulai dari manager atau menduduki posisi penting dalam perusahaan sampai bekerja dalam sector "berat" seperti sopir bis atau truk. Hak-hak para pekerja termasuk pekerja wanita sesungguhnya telah diatur dalam UU No. 13/2003. Namun, apakah pekerja perempuan telah mendapatkan hak-hak mereka melalui UU ini? Dengan melakukan analisis dari perspektif gender, peneliti menemukan bahwa secara umum UU No. 13/2003 telah menjamin kesempatan yang sama antara pekerja perempuan dan laki-laki dalam mendapatkan upah dan libur khususnya cuti kerja yang berkaitan dengan fungsi reproductive wanita. Akan tetapi UU No.13/2003 tidak secara eksplisit menyebutkan bahwa ada persamaan kesempatan antara pekerja wanita dan laki-laki dalam mendapatkan promosi jabatan. Promosi jabatan merupakan tahap yang penting bagi pekerja untuk menduduki posisi penting dalam perusahaan. Jika pekerja perempuan tidak mendapatkan hak yang sama dalam mendapatkan promosi jabatan, mereka akan tetap berada dalam jabatan atau posisi kerja tingkat bawah dengan gaji atau upah yang relative kecil seperti yang terjadi di banyak perusahaan di Indonesia. Hanya sedikit dari pekerja perempuan yang mampu menduduki top level management dalam perusahaan atau tempat kerja. Lebih lanjut, UU No 13/2003 lebih mencerminkan pengaturan pekerjaan di sector perkotaan yang terkonsentrasi pada industry. Kebijakan ini tidak menyinggung regulasi terhadap pekerjaan di sector pertanian di pedesaan yang notabene mendominasi jenis pekerjaan di Indonesia. UU No.13/2003 juga tidak mengatur tentang hak dan kewajiban para pekerja rumah tangga yang banyak dijalani oleh para wanita Indonesia.

**Kata kunci:** buruh, perempuan, laki-laki, hak dan kewajiban

## **INTRODUCTION**

Industry developments and labour markets in Indonesia collapsed due to severe financial crisis at the end of 1990s. Many industries were closed down that resulted in

huge number of unemployment. Workers who were lucky enough by remaining in their jobs, however, also suffered from this economic crisis. When prices of all goods doubled without achieving increased wages, they cannot meet their needs, even basic goods. This condition was not merely caused by the economic condition at that time but also by the existed labour policy that did not provide proper wages, worker relations and job security. In this condition women function to support household income by participating in the employments. Hence economic crisis at the end of 1990s has boosted the involvement of females in labour market.

Democratic transition in Indonesia, furthermore, has brought several policy changes including in the labour market. The government has endorsed a new policy on labour in 2003, Law No. 13/2003, to provide better condition for workers and industrial development. Although the previous policies adopted women rights in workplaces, Law No. 13/2003 is claimed by its policy makers in bringing better working condition for female workers by adopting gender neutral and gender aware principles.

This paper aims to analyse Law No. 13/2003 regarding its principles to promote equality between male and female workers. In the first part I discuss the theoretical perspectives that underlie Law No. 13/2003. The second section is an analysis of the assumptions about women, men and gender that enter in this policy while the third part discusses the consequences that may arise from these assumptions for practical outcomes. In the fourth part, I try to assess the sensitivity of Law No. 13/2003 to the recent context of Indonesia. Lastly, I will analyse the strengths and weaknesses of this policy from the gender perspective. In the conclusion section I conclude that Law 13/2003 basically has provided principles to promote practical gender need. However, meeting strategic gender needs is also crucial to empower women. Therefore I recommend that the policy should be amended to endorse the achievement of strategic gender need by adopting equal rights for training and job promotion and parental leaves.

## **THEORETICAL PERSPECTIVE**

The equal rights between male and female workers in Law No. 13/2003 shows the adoption of liberal feminist theory. The liberal feminists argue that men and women have the same moral and intellectual core (Donovan, 2001). The aim of liberal feminist theory is equality between men and women. This purpose is based on assumption that men and women have the same capabilities and capacities. Liberal feminism also highlights that sexism means that women are denied opportunities to fulfil the capacities and capabilities. Women subordination then is against human rights and should be abandoned. Labour market is viewed as a means of achieving gender equality.

In Law 13/2003 liberal feminism principles can be seen from its sections that regulate female workers in achieving the equal rights with their male counterparts such as rights of leaves and holidays, taking care family and relatives, payment and weekly hour work. These equal rights are stated in chapter X on Security, Remuneration and Welfare.

Nevertheless, not all of the content of Law 13/2003 represents the spirit of liberalism particularly the enlightenment of liberal feminism. Donovan (2001, p. 8) says that the enlightenment of liberal feminism shared the following tenets:

1. A faith in rationality
2. A belief that women's and men's souls and rational abilities are the same
3. A belief in education as the most effective ways to effect social change and transform society
4. A view of women and men who has the private sphere as an individual
5. A demanding of political rights

This labour policy does not provide explicit statements for women and men workers to get the same opportunity in developing their career in work places. It seems that in regulating chances to get promotion, Law No. 13 adopt gender blinds in which there is no specific mention for men and women to get the equal rights in some issues such as job promotion. Therefore, some parts of this policy do not maintain the principle of liberal feminism to achieve equal society by giving equality opportunity for men and women.

Another theory that explains women's involvement into economic development including working activities is Women into Development (WID) theory. This theory is popularized by Ester Boserup (1970) by arguing that the main characteristic of economic development is the progress toward an increasingly intricate pattern of labour specialisation. Associated with this idea, many women move "village to town" which bring a fundamental change in the domestic activities of women.

However, the participation of women in the work places does not benefit women since in many cases they are marginalized. Moreover, Boserup argues that with the onset of development men begin to benefit significantly over women because they become specialised producers. Men also have more access to education, training, knowledge and equipment that makes their work more efficient and productive. On the other hand, women are restricted to the traditional sector and are denied access to these assets. As a result, women remain in the lower level of job management with lower wages while men can obtain high position of management level and higher salary.

WID is basically built from the modernization and liberal feminism theory. WID's goal is to achieve more efficient and effective development that includes women (Kabeer, 1994). Women then need to be involved in the employment to increase women's productivity and income on one hand and to increase women's ability to look after the households on the others. Modernization assumes that women are also important players in the economic development process. They do not merely have role in the private sector as wives and mothers, but women can also have productive roles. By doing so, women can support their family economically and socially. Thus, women may have three roles: reproductive, productive and social management roles. The reproductive roles refer to the roles of women in taking care their families including having babies and feeding them. The productive roles mean that women can function in the economic development that is beneficial for them and their families regarding their incomes. Finally, community management roles imply that women are the key actors to maintain society relationships. Therefore, they have duties to involve in community activities that is very important in the traditional societies as in Indonesia.

In terms of liberal feminism, WID views women have the same opportunity with men to engage in the labour market. The aim of women's participation in the work

place is to integrate them in the development process. The strategies then focus on women's projects, on women's components of projects, and on integrated projects. Another approach to support women in the development is by increasing women's productivity and income. However, WID still emphasizes the reproductive roles of women. In doing so, WID wants to increase women's ability to look after their households. Therefore, it seems that WID tries to encourage women to active out of the private sphere on one hand, but also strengthens their roles in the families.

By promoting women's roles in the economic development without leaving their important functions in the households and community managements, WID is criticized as providing more burdens to women. Also, WID does not challenge the existing social structures that place female inferior to their male counterparts. WID highlights the reproductive and productive roles of women that in reality provide more and more burdens to them. Women have to maintain their function to take care and support their families socially and economically. This idea would be successful in the developed countries but in the third world countries where patriarchal system exists, it may put women in the darkness. Women in the patriarchal society are viewed as the second earner of money on one hand but they have more responsibilities to look after their household economically on the others. Then, in many cases of distributing government assistances in Indonesia such as rice for poor households and *zakat*, women involve more than men.

Law No. 13/2003 adopts WID principles with regard to increase women productivity by promoting productive and reproductive roles. In doing so, Law No. 13/2003 is endorsing women's productive roles by providing the equal basic rights, such as wages and holiday schemes, as mention in chapter X. Additionally the policy obligates employers to provide transportation for women who work from 23.00 to 05.00 to protect them in doing their jobs. As cited in article 76, the company also has responsibility to give healthy food and security for female workers who work at 23.00 - 07.00. The above regulations mean that the employer should provide safe and healthy conditions for women who physically are unique and many of them are not strong as men.

Moreover, this labour policy provides special treatments for female employees regarding their reproductive roles, particularly in section 81, 82 and 83. Reproductive role refers to the roles of women in relation to delivering babies and child rearing (Moser, 1993). In section 81, women can absent from works due to menstruation illness, particularly in the first and second day. This regulation is important for female labours and employers since menstruation time is often painful for some women that can disturb their work effectiveness. Section 82 regulates maternity leave for female workers that can be granted for 3 months (1,5 months before giving birth and 1,5 months after delivering birth). It also ensures work leaves for 1,5 months for those who experience miscarriages. Finally in section 83, Law No. 13/2003 guarantees the provision of breastfeeding time during working. These policies are important to establish happy family and healthy babies on one hand and to achieve efficient and effective work on the others.

The provision of special rights for women represents the principle of gender aware policies. Gender aware policies identify the importance of women in development as well as men. Moreover, women usually have different needs, interest and priorities that may conflict with men's (March and Smyth, 1999). Law 13/2003 acknowledges the different needs and interests of female workers particularly when they suffer from menstruation illness and miscarriages and have to deliver and feed their babies. These

women's condition may need special treatments that male workers do not get. Further, in the law clarification it is mentioned that the employers should provide safe and comfortable places for women in giving breastfeed to their babies. This regulation is crucial since women in Indonesia often find difficulties to breastfeed their babies in the public places comfortably. Without established special places for mothers to giving breastfeed, the woman workers tend to leave their babies at homes which mean the babies do not get the best feed from their mother since the babies do not consume breastfeed properly.

However, Law no 13/2003 does not explicitly obligate the employers to establish child care services in the work places. This obligation I think is also vital to support the productive and reproductive roles of women. Female workers would be more productive and also can maintain their reproductive functions. Hence this labour policy recognizes that women are active participant in the development process, who through both their productive and reproductive roles provide a critical contribution to economic growth.

As a representation of WID approach, this policy however does not confront existing social structures that subordinate women. Some sections of this regulation show gender neutral policies. Gender neutral acknowledges gender differences but work within existing division of resources and responsibilities (March and Smyth, 1999, p. 21). This type of policy does not deal with sex-based discrimination and inequality. Gender neutral policies are shown in section 5 and 6, Part V on Training and Part VI on Job Promotion. Section 5 and 6 state that every worker has the same opportunity to get jobs and to be treated without discrimination. In part VI, particularly article 32, the policy also states the avoiding of discrimination in placing workers. Nevertheless, there is no clarification what is categorized as discrimination. Part V on training is an important element to determine the opportunity for workers to increase their education and skills. In Indonesia, male workers often get more opportunities to obtain trainings than their female counterparts. As a result, female workers remain in the low level of management in formal and informal sectors due to lack of education although the number of female participation in the employment has increased significantly. Therefore the explicit mention of women or female workers in the policy document, particularly in this part, is essential to ensure equal opportunity in advancing their education and skills.

#### **ASSUMPTIONS BEHIND THE POLICY**

In the workplace women are assumed as secondary earners of household income. Their productive role is usually concentrated more in the informal sectors and unpaid works, domestic jobs, rather than in formal and paid works. Even, economic and social conditions may force them to hold both paid and unpaid jobs that often provide double burdens for them. Moreover, women in many developing countries have to play productive role to earn income, reproductive roles as mother and wife and community management role. As a result, women have to allocate increasing amount of time to stretch their limited resources due to their triple roles (Moser, 1993). Those who participate in the productive roles particularly in the formal employments, however, often achieve lower wages and hold lower level position of management than male employees.

For women, the labour policy is intended to increase their welfare by providing specific women needs and interests in order to support their productive and reproductive roles. The adoption of gender-aware policies in Law 13/2003 such as age limitation and specific protection for women of working at the night, menstruation leaves,

maternity leaves and breastfeed time, show the means of maintaining productive and reproductive roles. In turn, it also aims to increase equality between men and women to finance household. However, the specific protections for women, such as healthy food and transportation provisions during night works, without treating men with the same provisions seem to tighten the patriarchal system. In the patriarchal system, women are seen as subordination of men since women are considered weak and need more protections. Hence the policy should also provide the same services for men in terms of healthy food and transportation provisions to avoid gender bias.

Law No. 13/2003 assumes men as the main breadwinner of the family. The main role as the head of household is to earn more incomes rather than responsible for domestic jobs. The policy then seems to provide higher opportunity for men to obtain better welfare condition than women. It is represented in chapter V on Training and chapter VI on Job Promotion that do not explicitly mention women and men equal opportunity rights. In section 11, it is stated that every worker has right to obtain and improve their competence based on their talent, interests and capability through training while section 32 mentions that job promotion is based on free, fair, objective and equal principle without discrimination. In these sections, there is no clarification whether male and female will experience equal treat. It may then give more benefit for men to obtain greater opportunity since there is no clear identification of discrimination meaning.

This labour policy, furthermore, has emerged during the recovery time of economic recession when women's participation in the labour market has increased significantly. The policy aims to regulate this improvement of female participation in the employments. During the recession there was a demand of cheap workers while many male were retrenched. Female workers were recruited as cheap workers and male substitution. In regulating women as substitute men, the policy attempts to give equal opportunity in their fundamental rights. In practices, many women particularly less educated workers were recruited in massive manufacturing industries that offered low wages (Manning, 2003).

Moreover, by omitting women in the training and workplace promotion sections, this labour policy still inscribes a bearer of gender. Elson (1999, p. 611) states that "bearer of gender" means that institutions in a sense put social stereotypes which associate masculinity having authority over others in the labour market. This labour rule highlights social stereotypes about what is "men's" work and what is "men's work" that often exist whatever individual does not aware.

### **Consequences of policy's assumptions**

Since Law 13/2003 implicitly carves "bearers of gender", the significant impact of its implementation is gender subordination in workplaces. The employers may prioritize the opportunity for men employees to take trainings and other activities to increase education and skills. Consequently, male workers would relatively occupy strategic and high level management position than their female counterparts due to higher education and skills. If so, in terms of wage payment men workers may achieve higher wages while female workers will remain in the lower level of employments with lower wages.

Other possible effects of this labour policy depend on the employers' willingness to scrutinize it. First, 'good' employers may put the policy in practice by giving equal rights for man and woman employees. They will also provide menstruation leaves, maternity leaves, breastfeeding time and other special treatments for their female work-

ers. Moreover, they may provide the equal opportunity for all workers regardless their gender to get trainings and better positions by examining their performances. This means that the employers will look into workers' achievements based on the same criteria of good performance between men and women in deciding who will get job promotions and education trainings, although the policy does not explicitly mention equality in these matters.

Second, the company may recruit more male workers than female ones due to profit maximization. By employing male employees, the employers do not need to allocate more budgets to manage female workers' leaves, menstruation and maternity. The company may not need to build a special place for women to breastfeed their babies. This parenting duty is viewed as liabilities for employers (Elson, 1999, p. 612). The representation of women in the employment is not assumed to give benefits or assets for employers in order to select the best workers the companies look for. Conversely, the companies believe that they will get more benefits by employing male workers because they do not pay attention to conform the reproductive roles of women.

Third, the companies may choose to replace human workers by using more machines in their industries. The companies may assume that employing human workers will need more budgets to fulfil employees' rights as human. Moreover, by using machinery the industries will benefit in the long run investments and increase their total factor productivity. At last, the companies will not get difficulties to solve workers' demand to increase wages and to provide labour right protections.

In spite of the above negative effects, Law No. 13/2003 may positively increase equality between men and women employees. In comparison to the old policies, this policy contents have provided more opportunity for women to involve in labour market and to get better rights as female workers. Many companies that employ women workers tend to obey the rules of labour policies currently. As a consequence, there is more female participation in labour market while reducing male-female payment differentials, job segregation by sectors and occupation and on contracts and conditions of work. Many women involve in 'male works' such as bus or 'big' vehicle drivers; engineering and mechanical maintenances; manufactures industries and other building projects.

Increase equality in the workplaces including increased wages and management position, however, does not guarantee to empowering women in the family. Earning more money for women may not automatically increase their control over resources in the households (Elson, 1999, p. 614). Often their wages are given to another family member, such as husbands, because in the household women are still placed as male subordinate. For migrant workers for example, many rural-poor women are working in urban areas as Jakarta as domestic workers or workers in manufacturing industries. Every month they send their wages back to their homes enjoyed by family members. Additionally, many women may face problems of 'losing' their husbands due to live separately. Since women do not have bargaining power in the decision making, husbands often marry or enjoy their wives' earning with other women. These phenomena are often experienced by female migrant workers in many regions of Indonesia such as Gunungkidul (Yogyakarta), East Java, West Java and Lombok. Furthermore, increase participation of women in productive roles does not automatically increase male participation of caring family. Consequently, women have double and even triple burdens regarding their triple roles. The unpaid jobs in the households have resulted longer hour of work for female employees.

**Law 13/2003 and the current context of Indonesia**

Recently the number of female participation in the labour market significantly increases. "At prime age (between 25-49) about two- third of all women are involved in the labour force, compared with only 35-45% two decades ago and around 45-50% in 1990" (Manning, 2003). Their participation was considered high in the international standard. The increased women participation can be caused by two reasons. First, in the early 1990s Indonesia experienced economic boom by increasing roles of labour intensified industries for export commodities. Second, during and after economic crisis women participations in paid works are needed to overcome the effect of falling household income.

However, females tend to occupy low productivity and low wages employments. Both men and women workers are concentrated in all jobs in rural areas (over 80%) particularly on family farms. Female employees involve in retail trade (30%) and manufacturing industries (15 %) that offer low wages while their male counterparts occupy 16 % and 12 % respectively (Manning, 2003). In the urban areas, many females engage in domestic works that are vulnerable to exploitation physically and mentally.

Regarding the educational background, the increase of female participation in the workplaces occurs among less educated workers. At the same time, the number of educated women has also contributed to the rise of their involvement in the labour market. Recently, the educational background of labour force increase significantly particularly in junior and senior high schools (Manning, 2003). This condition can support the improvement of working productivity. It also enlarges the opportunity for females to be absorbed in the gainful employments and formal sectors.

The emergence of Law No. 13/2003 is aimed to regulate labour market and in particular to promote equality for male-female workers. Basically, the policy has represented the sensibility of current condition in Indonesia by providing special treatments for woman workers due to their increased participation in the employments. The law has ensured the provision of some women rights in order to conform their productive and reproductive roles in the paid works such as maximum working hour, minimum wages, menstruation and maternity leaves.

The policy, nevertheless, does not cover the regulation for women who work as domestic workers. This type of occupation is categorized paid works and occupied by large number of women. The Amnesty International (2007) claims that there are about 2.6 millions of domestic workers who are mostly women and young girls (12 and 13 years old). They have to do domestic jobs such as cooking, washing, cleaning the house, looking after children, and shopping household necessities every day. In addition, many female domestic workers suffer from long hour works, approximately 70 hours per week and even more, and physical and mental domestic violation. Section 77 of Law No. 13/2003 mentions that the maximum weekly work is 40 hours but this rule is only suitable for formal employments. Furthermore, domestic workers often achieve wages under minimum standard in Indonesia. Their payments are usually based on spoken agreements that do not have law power. They also do not have freedom to take holidays and even to get bonus such as overtime payment. Therefore, the labour law should also regulate this occupation in order to provide equal protection for workers.

Regarding the status of women workers, Law No.13/2003 does not explicitly mention the equal opportunity to achieve trainings and job promotion. Since there is in-



crease of female involvement in the labour market that is vital to support household income, section 5, 6, 11 and 32 should enter 'women' in their sentence structures. This is to ensure that the employers will give equal treats for all workers. Lastly, the policy does not cover the rural jobs that are dominant in Indonesian labour market recently. It seems that the law is merely suitable for urban and formal jobs. Since most male-female workers are concentrated in rural areas and informal works, the policy should also regulate these occupation types in order to achieve better development.

### Strengths and Weaknesses

Law 13/2003 presents several strengths with regards to gender perspective. First of all, the policy provides protections by covering basic worker rights such as hours per week, wages, rest periods, holiday and leave plans without differing gender. By providing sort of fundamental rights, the policy has promoted achieving practical gender need. Moser (1993b) suggests that practical gender need is often focused on inadequacies in living condition. The increase participation of women into employment is mainly caused by the family condition that needs more incomes instead of husbands' earning. Hence equal protection between male and female workers is essential to support women's productive roles.

**Second**, this labour law is categorized as gender aware policy by granting menstruation leaves, maternity leaves and breastfeeding time for female employees. These reproductive roles are also considered to succeed women involvement into development. Third, the law presents punishment procedures and administrative sanctions in part XVI that is essential to regulate penalties for employers that break the law. In turn, this regulation is vital to guarantee that the employers will provide equal protection rights for all their employees, male and female, able and disable workers.

**Nevertheless**, this labour policy is not free from limitations. First, this law does not specifically mention further elaboration to give precise protection for female workers. Unlike maternity and other sick leaves, Law 13/2003 does not mention the payment for menstruation leaves but gives the opportunity for employers to formulate their regulations on it. Under that section, there should be explicit clarification that female workers still get their full payment during their menstruation leave. Additionally, if there is no explicit regulation the companies may tend to break the law by rejecting menstruation leave and do not pay the employees who take menstruation leaves.

**Second**, Law No. 13/2003 is too 'business' and 'formal' oriented policy. If so, the policy cannot cover informal jobs occupied by many women, such as domestic workers. This job puts female workers in vulnerable condition of exploitation with the lowest wages. The exploitation of domestic workers emerges on the longest hour of work per week (approximately 70 hour or more) and physical and mentally violations from their employers. Many domestic workers often get this violence because they cannot do jobs as employers' want.

**Third**, while providing fundamental rights to obtain practical gender need, this policy tend to avoid means to achieve strategic gender need. Strategic gender need refers to the need related to gender division of labour, power and control (Moser, 1993b). The neglecting of strategic gender need implicitly appears in training and job promotion sections. Training and job promotion are important elements to increase women's bargaining power since they may increase education and level of position in workplaces. If women have higher education and position, it may lead to achieving gender equality.

Fourth, the policy is urban bias. Law 13/2003 is less relevant to regulate rural works occupied by most of labour force in Indonesia. Most Indonesian workers are concentrated in rural areas and agriculture occupations while the policy tends to rule urban works such as manufacturing industries. Hence the policy may not appropriate to solve labour market problems in Indonesia.

## CONCLUSION

Law 13/2003 is important to encourage women into development by providing fundamental labour rights. These rights are needed to support female's productive and reproductive roles to obtain practical gender need. However, meeting practical gender need does not mean empowering women, since it still embodies women's subordination. Promoting strategic gender need by providing equal opportunity to get training and job promotion is also necessary. Therefore, to improve this policy, the decision makers need to explicitly mention women in the policy document particularly in training and job promotion sections. Moreover, the policy should also consider other vital employment—domestic works and rural jobs—to be more responsive to the current context of Indonesia. These particular employments are occupied by most women and men. Additionally, the policy can also be intended to increase men roles in the private sphere by endorsing parental leaves. Of course, this last effort requires many resources from the employers and state. I believe, however, Indonesia can promote this parental leave policy in the future.

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