

ILR **New Conversations Project**



SUSTAINABLE LABOR PRACTICES IN GLOBAL SUPPLY CHAINS

Social Dialogue in the 21st Century

Mapping Social Dialogue in Apparel: **Indonesia**

January 2021

INDRASARI TJANDRANINGSIH



**Cornell University School of Industrial and
Labor Relations & The Strategic Partnership for
Garment Supply Chain Transformation**

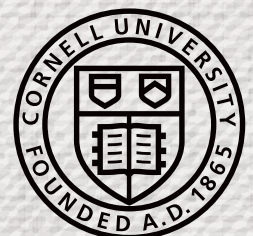
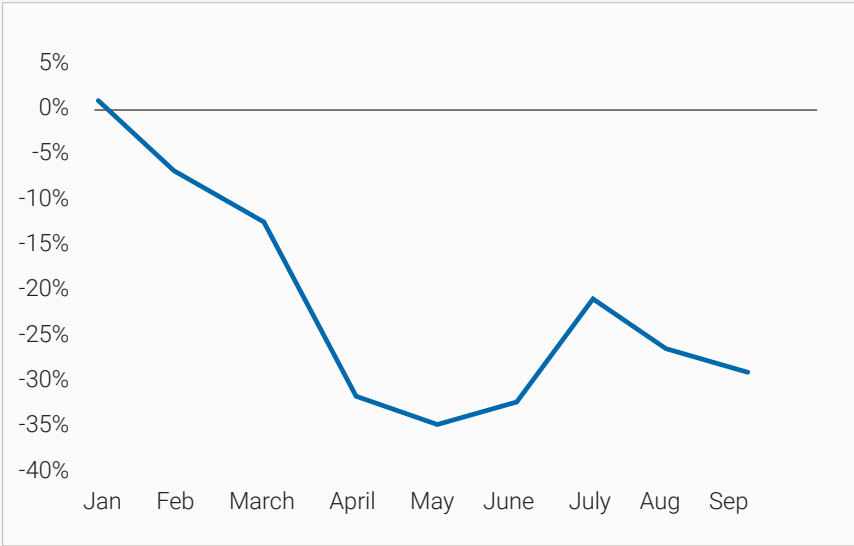


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Indonesia COVID-19 Garment Industry Impacts

<p>State of COVID-19¹</p>	<p>As of February 1, 2021,</p> <ul style="list-style-type: none"> • Confirmed COVID-19 cases: 1,078,314 • COVID-19 deaths: 29,998 • Case-Fatality: 2.8% • Deaths/100K Pop: 11.21 																				
<p>Year on year US & EU imports from Indonesia 2020 vs 2019 show an overall 19% decrease from January to September with imports falling 36% in May, rebounding to a 14% decline in July, and then falling again by 28% in September.</p>	 <table border="1"> <caption>Year on year US & EU imports from Indonesia 2020 vs 2019</caption> <thead> <tr> <th>Month</th> <th>Change (%)</th> </tr> </thead> <tbody> <tr> <td>Jan</td> <td>0%</td> </tr> <tr> <td>Feb</td> <td>-7%</td> </tr> <tr> <td>March</td> <td>-13%</td> </tr> <tr> <td>April</td> <td>-32%</td> </tr> <tr> <td>May</td> <td>-35%</td> </tr> <tr> <td>June</td> <td>-33%</td> </tr> <tr> <td>July</td> <td>-21%</td> </tr> <tr> <td>Aug</td> <td>-26%</td> </tr> <tr> <td>Sep</td> <td>-28%</td> </tr> </tbody> </table>	Month	Change (%)	Jan	0%	Feb	-7%	March	-13%	April	-32%	May	-35%	June	-33%	July	-21%	Aug	-26%	Sep	-28%
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<p>Length of apparel industry lockdown</p>	<p>No official lockdown; national social distancing mandated followed by provincial actions.</p>																				
<p>Job losses or workforce capacity reduction percentage</p>	<p>Ministry of Industry reported that by July 2020, approximately 800,000 apparel and footwear workers had been laid off (ILO 2020).</p>																				
<p>Government support specific to apparel industry</p>	<p>No support specific to the garment industry. Kartu Pra Kerja program (pre-employment card) supposed to provide IDR 3.5 million (USD 228) per worker for a four month period as an unemployment subsidy. The government also allocated IDR 37.7 trillion (USD 2.7 billion) for a wage subsidy program. Under this program, workers receiving less than IDR 5 million per month (USD 356) and are registered in Indonesia's social security program would receive a stimulus payment of IDR 600,000 (USD 43) per month for four months starting in August 2020 (Better Work, 2020b)</p>																				
<p>Characterization of social dialogue activities</p>	<p>Government took unilateral action in passing an Omnibus Job Creation Bill without trade union involvement. Unions were also not involved in the formulation of government circulars in response to the pandemic. Ceremonial dialogue with broad commitments of support and collaboration between trade unions and employer associations took place.</p>																				

1. Data from the Johns Hopkins University Coronavirus Resource Center <https://coronavirus.jhu.edu/data/mortality>

2. Imports refer to imports of products with HS commodity codes 61, 62, 63, and 64. Data from UN Comtrade.

1.0 Introduction

The apparel and footwear industry¹ plays a critical role in Indonesia's economy. It is among the country's top export industries accounting for approximately 6.9 percent of total exports in 2019 (Workman, 2021). Furthermore, the industry is a major employer, accounting for approximately 24.8 percent of jobs in Indonesia's manufacturing sector in 2019 (ILOSTAT).

The apparel industry has met with a number of labor challenges including violations of workers' rights of freedom of association and collective bargaining, unpaid wages, high labor turnover, and poor working conditions. There have been a number of initiatives by local NGOs, international organizations, and trade unions to address these issues including the Freedom of Association Protocol (FOA Protocol) and Multi-Company Collective Bargaining Agreements (MCCBAs).

This study examines these efforts as a part of *Social Dialogue in the 21st Century*, a collaborative project of Cornell University's New Conversations Project and the Strategic Partnership for Supply Chain Transformation (Fair Wear Foundation, CNV Internationaal, and Mondiaal FNV with support from the Dutch Ministry of Foreign Affairs) on the future of social dialogue in global supply chains, focusing specifically on apparel and footwear. The study will examine the capacity, strengths, weaknesses, and interactions of trade unions, employer associations, government institutions, civil society organizations, international organizations, and multi-stakeholder initiatives. Furthermore, the report will examine current case studies of social dialogue. The report also analyzes the impacts of the COVID-19 pandemic on the apparel and footwear industries in Indonesia and its social dialogue institutions. The research is based on desk review of previous studies and reports on labor relations in Indonesia as well as interviews with key stakeholders.

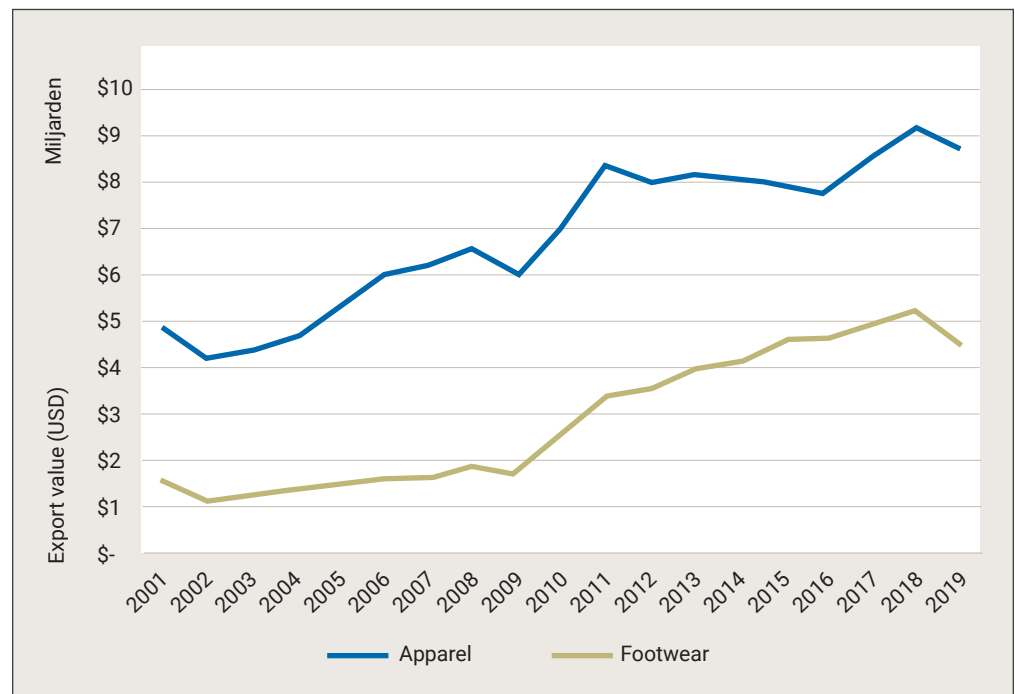
The report is structured as follows: after the introduction, section 2 provides a general context of the garment industry including an examination of Indonesia's main export markets and its apparel and footwear trade over time. Section 3 examines the industrial relations framework in Indonesia covering its history, legal framework, dialogue mechanisms, and relevant government policies. Section 4 maps the key stakeholders in industrial relations. Section 5 examines social dialogue mechanisms and specific initiatives. Finally, section 6 examines the COVID-19 pandemic's impact on the apparel and footwear industry, how stakeholders responded to the crisis, and how social dialogue mechanisms were (or were not) used in response. The report then ends with concluding remarks.

1. Use of "apparel" industry in this report captures both apparel and footwear sectors.

2.0 Indonesia's Garment Sector at a Glance

Indonesia's export-oriented garment and footwear industry is largely concentrated in Java, specifically in Central and Western Java. In 2019, the apparel industry employed approximately 3.73 million people (Enderwati, 2020) of whom approximately 80 per cent are women. Garment workers in West Java in general are migrants from Central Java and several provinces such as Lampung, South and West Sumatra. Conversely, garment workers in Central Java are largely local residents.

Figure 1: Indonesia Apparel and Footwear exports to the world 2001-2019.



Source: UN ITC HS Codes 61, 62, & 64

In 2019, Indonesia exported approximately USD 4.4 billion in footwear and USD 8.6 billion in apparel to the world. Indonesian apparel and footwear exports have grown steadily since 2001 although in 2019 (before the COVID-19 pandemic), exports had fallen slightly from 2018 figures based on International Trade Center data.

Since 2013, garment factories in West Java and Banten have been moving out to regions with lower minimum wages (SPN News, 2018a). The center of the apparel industry which was initially located in Tangerang, Banten and Bogor, Bekasi in West Java has since moved to Kendal, Jepara, Boyolali, Brebes in Central Java. In 2019, the

provincial minimum wage in Central Java was IDR 1,605,396 per month (USD 114) while in West Java it was IDR 1,668,372 (USD 119). Table 1 shows the significant difference in minimum wages among regions. Besides moving out to regions in Central Java, some garments factories in West Java moved to lower wage regions in other parts of the same region as minimum wages vary within regions (for example from Bekasi to Subang).

Table 1: Minimum wages across different regions in Indonesia

WEST JAVA & BANTEN	MONTHLY MINIMUM WAGE (IDR)	US\$	CENTRAL JAVA	MONTHLY MINIMUM WAGE (IDR)	US\$
Karawang	4,234,010	302	Kendal	2,084,393	149
Bekasi	4,146,126	296	Jepara	1,879,031	134
Tangerang	3,841,368	274	Boyolali	1,790,000	128
Bogor	3,763,405	268	Tegal	1,747,000	126
Subang	2,732,899	195	Pemalang	1,718,000	125
Cianjur	2,336,004	167	Sragen	1,673,500	120
Sukabumi	2,331,725	167	Brebes	1,665,850	119
Majalengka	1,791,693	128	Rembang	1,660,000	

Source: West Java, Banten and Central Java governors' decree on 2019 Minimum wage

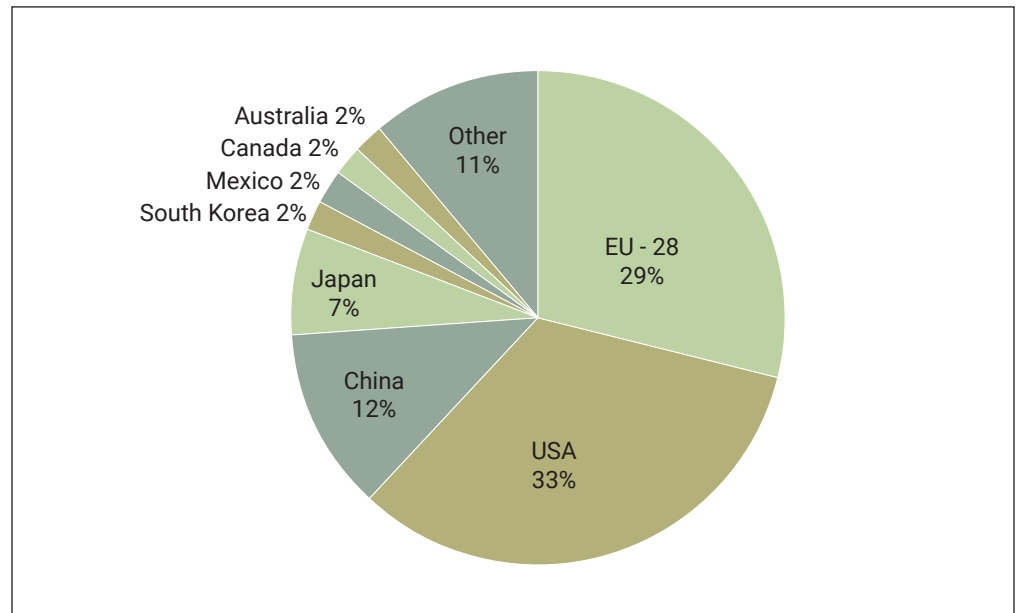
The apparel and footwear industry produces for American and European consumers in its largest traditional markets. Some of the largest domestic and foreign-capital factories – largely from South Korea, Taiwan and China – employ tens of thousands of workers in a factory compound. Some of the largest garment factories employ 80,000 workers in Serang, Banten, or 40,000 workers in Sumedang, West Java and in Solo, Central Java.

The garments produced range from daily wear for children and adults, school uniforms, sports apparel including Olympic team uniforms, and military uniforms for European countries and NATO. The majority of garment factories in Indonesia have no direct access to end-markets, do not have their own brands and are very dependent on foreign buyers, especially from the US and European countries. Most major brands source from Indonesia including H&M, Disney, Gap, Uniqlo, Columbia, Adidas, and Nike.

In terms of trade, Indonesia's largest export markets for footwear are the United States, EU, and China. In 2019, the United States made up 33 percent of Indonesia's footwear exports while the EU made up 29 percent and China 12 percent. For apparel

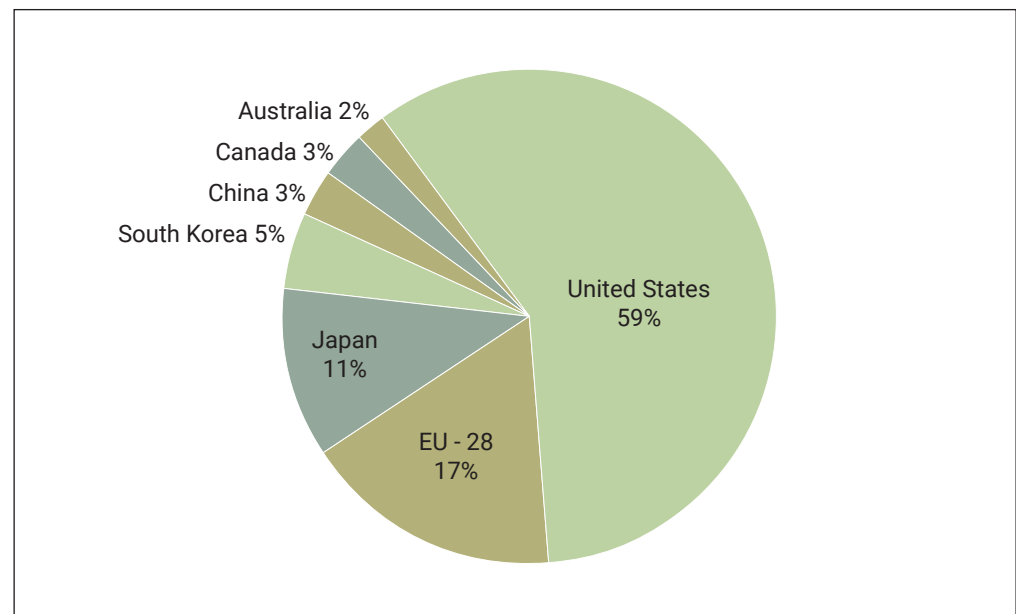
production, the US is likewise Indonesia's largest export market, followed by the EU and Japan. In 2019, the US made up 59 percent of Indonesia's apparel exports, the EU, 17 percent, and Japan, 11 percent.

Figure 2 Indonesia Footwear Export Markets (2019)



Source: UN Comtrade HS Code 64

Figure 3 Indonesia Apparel Export Markets (2019)



Source: UN Comtrade HS Codes 61, 62

3.0 Industrial Relations in Indonesia

Democratization and decentralization policies after the end of Suharto's authoritarian rule in 1998 have greatly influenced the dynamics of Indonesian industrial relations. Broadly speaking, these policies have resulted in a high degree of provincial authority regarding labor regulations and wages as well as a multiplicity of trade unions.

During the early 2000s, Indonesia began a national policy of decentralization. This process involved moving minimum wage negotiations from the national government to the provincial level, where tripartite wage councils set minimum wages annually (Caraway & Ford, 2017). Additionally, responsibility over occupational safety and inspections was delegated to local governments (ILO, 2011). Provincial and district governments have had limited institutional capacity to enforce labor regulations and conduct labor inspections. The most recent data from 2016 indicate that there were 1,923 labor inspectors in Indonesia corresponding to an inspector-to-company ratio of 1:11,228 (ILO, 2017). Furthermore, many local labor authorities lack proper training as positions are assigned by rotation rather than expertise. Despite gaps in enforcement and capacity associated with decentralization, labor scholars note that the localization of industrialization increased opportunities for trade unionists to engage in local politics and exercise their rights as citizens (Caraway & Ford, 2014).

In addition to decentralization, democratization policies opened opportunities for freedom of association and unionization. From 2000 to 2004, the Law on Trade Unions, Law on Manpower, and Law on Industrial Disputes Settlement were implemented. The Law on Trade Unions allowed for independent trade union organizing and led to a significant increase in union registrations at the national level (Ford & Gillan, 2017). By 2006, there were 87 trade union federations registered nationally and more than 11,000 enterprise level unions at the local level (Palmer, 2009). This significant increase in the number of trade unions has profoundly impacted the realization of freedom of association in Indonesia but has also brought on challenges for unions. Union multiplicity has at times resulted in competition, conflict, and fragmentation among rival unions. These divisions have made it difficult to organize a strong, unified union movement at the national level (Palmer, 2009).

3.1 Legal Framework Overview

A period of significant labor law reform also followed the end of Suharto's rule in 1998. The initial phase in the early 2000s produced the *Law on Trade Unions*, *Law on Manpower*, and *Law on Industrial Disputes Settlement*. Also in the early 2000s, Indonesia ratified all eight of the ILO's fundamental conventions.

The 2000 *Law on Trade Unions* allowed for the legalization of independent trade unions. Previously, under Suharto's rule, unionization was limited to a state-affiliated trade union, the *Serikat Pekerja Seluruh Indonesia* (SPSI). This law set out unions' responsibilities including for the collection of members' dues and representation of workers in collective bargaining. Employers are similarly required to recognize unions and not to interfere with their functioning, nor to form any labor organizations under their own control (i.e. 'yellow' unions). The law also includes provisions allowing for the dissolution of unions if a union is determined by a court to have violated the Indonesian constitution or national ideology of *Pancasila* (believe in one God, justice, unity, democracy, and social justice). The ILO has expressed concern about this provision as dissolution of a union could be disproportionate to the seriousness of the violation (US DOS, 2019).

The 2003 *Law on Manpower* defines regulations regarding matters of employment, working hours, contracts, payment of wages, prohibitions on child labor and discrimination among others. The Law mandates the formation of Bipartite Cooperation Committees (LKSB in Indonesian) in every enterprise employing 50 or more workers. These bipartite forums are designed "for communication, consultation and deliberation on labor issues at an enterprise" (Indonesia Gazette, 2003). The committee must have at least six members composed of equal worker and employer representatives; worker representatives are to be democratically elected (Better Work, 2012). Furthermore, the Law provides for the creation of tripartite forums at the national and provincial/district levels through the National Tripartite Cooperation Institute and the Provincial, District/ City Tripartite Cooperation Institutes.

The 2004 *Law on Industrial Disputes Settlement* established procedures on the settlement of industrial relations disputes through bipartite cooperation and dispute resolution channels (mediation and conciliation) as well as through the Industrial Relations Court. Under this system, all disputes should be first referred to the Bipartite Cooperation Institute, by which it is envisaged that worker representatives and employers will try to negotiate a resolution to the dispute. If this is unsuccessful, the dispute proceeds to mediation or conciliation. Unsuccessful mediation or conciliation is referred to the Industrial Relations Court (ILO, 2004).

2015 Minimum Wage Reforms

In 2015, the new administration of President Joko Widodo instituted reforms to the minimum wage provisions in the Manpower Act. These reforms sought to 'depoliticize' the minimum wage setting by tying minimum wage setting at the provincial level to percentage increases in the national consumer price index (CPI) rather than the less structured tripartite negotiations of wage councils under the Manpower Act (van Klaveren, 2020). Minimum wage setting at the provincial level had been the focus point of strikes and demonstrations. An ILO evaluation and studies by Hamilton-Hart and Schulze (2016) and Allen and Kyloh (2016) found that this new system had the consequence of widening income gaps among different provinces (van Klaveren, 2020).

Trade unions opposed this new system and highlighted the lack of trade union participation in the drafting process. In developing the new mechanisms, the Widodo administration formed a technical team of senior officials from various ministries and government agencies. None of the experts had strong links to the union movement. Rather, APINDO, the main employers' association, played a significant role in the team's discussions. The unions asserted that they were not invited to any consultations. They jointly submitted a proposal in writing that advised to maintain the current system. Nonetheless, the government and APINDO officials drafted the new system with automatic annual adjustment as its core. Finally, on October 23, 2015, Government Regulation No. 78 of 2015 on Wages was enacted (van Klaveren, 2020).

2020 Omnibus Law Reforms

In November 2020, the re-elected Joko Widodo (Jokowi) administration made major changes to the 2003 Manpower Law (ML) in the form of an Omnibus Law on Job Creation (JCL). The JCL amends 83 laws, with the stated goal of attracting new foreign investment and fostering job creation in Indonesia. Chapter IV of the Omnibus Law covers employment matters.

Among the many changes made, the law removes restrictions on outsourcing under the 2003 Manpower Law and allows for the use of fixed-term contracts (FTC) for "a timeframe that is not unduly long" rather than the prior 3 year restriction (ABNR Law, 2020). Further, the law extends maximum overtime hours to four hours a day and 18 hours a week (previously 3 per day and 14 per week under the ML) (Kadir et al., 2020). The JCL also reduces the number of weekly rest days – now workers receive a minimum 1-day's rest per 6-day workweek (7 hours per day); previously workers were entitled 2 days for a 5-day week (8 hours per day).

Table 2: Omnibus Law on Job Creation Reforms		
Provisions	2003 Manpower Law	2020 Omnibus Law
Contract Labor/ Fixed-Term Employment	FTCs used in very limited circumstances – work that is temporary with a maximum of 3 years. May not be used if work constitutes a permanent part of operations.	Retains similar provisions to ML but abolishes maximum period of 3 years permitted by ML. Exact types and duration of work pending issuing regulations.
Working Hours/ Overtime	Maximum 3 hours per day and 14 hours per week.	Maximum 4 hours per day and 18 hours per week.
Workweek	1 day's rest for 6-day workweek at 7 hours per day. 2 days' rest for 5-day workweek at 8 hours per day.	Minimum 1 day's rest per 6-day working week
Minimum wage setting	Varies by geographical location; determined at provincial, county or municipal level.	MWs set a provincial level by the governor. Rates determined by economic and labor-market conditions and include economic-growth and inflation data. Repeals temporary exemptions from minimum wage – although implementing regulations may permit this.
Termination of Employment	Termination strongly discouraged. Employer must apply to the Industrial Relations Court for ruling approving termination. IRC approval not needed for certain violations but 3 consecutive written warnings needed.	Bipartite negotiations and then mediation if employee does not accept termination. Additional permitted grounds for termination (business efficiencies because of losses, company restructuring). Further grounds pending implementing regulations.
Source: ABNR Law, 2020; Kadir et al., 2020		

The JCL changes the minimum wage setting mechanisms. Minimum wages are set by the provincial governor and determined by economic and labor-market conditions, including economic growth and inflation data (ABNR Law, 2020). Furthermore, the law allows for more permitted grounds for termination. These include the need for business efficiencies as a result of losses or company restructuring. However, it is import-

ant to note that many of these reform provisions – particularly regarding termination, fixed-term contracts, and minimum wages – are still awaiting further details provided in forthcoming Government implementing regulations (ABNR Law, 2020).

These reforms were met with significant resistance by trade unions who expressed that they were not party to negotiations or the drafting of the Omnibus bill. Other labor rights and government transparency groups such as the Indonesian Legal Aid Foundation point out that there was little public consultation in drafting the bill (HRW, 2020). As a result, there were massive protests prior with media reporting approximately one million people joining the walkouts (Sijabat & Paddock, 2020). Union leaders from KSPI and KSBSI as well as several other labor and civil society groups filed a judicial review to the Constitutional Court seeking to block the law's implementation. Legal experts note however that such an outcome is highly unlikely given how much political capital President Widodo has spent on the project (Mulyanto, 2020)

3.2 Unions, Freedom of Association, and Collective Bargaining

Legal Provisions

Indonesia has ratified the two core ILO conventions on freedom of association and collective bargaining (Conventions 87 and 98) and the 2000 Law on Trade Unions provided the foundational provisions for the development of trade unions in Indonesia. The Law establishes the right for workers to form unions as well as provisions for union organizing: a union must have at least 10 members, there can be multiple unions in a factory, and unions must give notice of their establishment to the local government manpower agency (Better Work, 2012). Furthermore, the Law allows unions to form and join federations; a federation is composed of at least five unions. Federations may join confederations which is composed of at least three federations (Better Work, 2012). The Trade Union Law further includes the right for unions to be free from interference and for equal treatment of all unions at an enterprise.

The 2003 Manpower Act sets forth provisions on collective bargaining. The Act allows for one or more registered trade unions to engage in collective bargaining at an enterprise although only one collective bargaining agreement is allowed and applies to all workers in said enterprise (Article 117). In order to begin negotiations, a union must secure representation of 50 percent or more of workers in a company (Article 119) – in cases with more than one union, the unions may form a coalition representing more than 50 percent of workers or form a “negotiator team” with members proportional to the number of workers each union represents (Article 120). Collective bargaining agreements are valid for a maximum of two years but may be extended for a third year if agreed upon by the parties (Fair Wear, 2018).

Moreover, the 2003 Manpower Act sets forth workers' right to strike. However, the strike must be staged "legally, orderly and peacefully as a result of failed negotiation." Legal strike provisions require two written notifications within a 14-day period by unions to employers and a declaration in meeting minutes of a deadlock in negotiations. Employers are not allowed to terminate workers, decline to renew workers' contracts, or reduce benefits in retaliation to a strike (Better Work, 2012). Presidential and ministerial decrees have enabled companies to request assistance from government officials to suppress strikes that threaten to disrupt "national vital objects." Union leaders state that the government has increasingly referenced "national vital objects" as justification in the use of police to restrict strikes (US DOS, 2019).

Freedom of association and collective bargaining in practice

Despite the legal protections for union organizing and bargaining, workers in Indonesia continue to face problems relating to the implementation, violation, and enforcement of their rights to freedom of association and collective bargaining. Indonesia received a score of 5 in the 2020 ITUC Global Rights Index for having "no guarantee of rights" since workers are "exposed to autocratic regimes and unfair labor practices" (ITUC, 2020). Key obstacles include the increasing flexibilization of labor, employer reluctance to engage in bargaining, anti-union animus by government actors, and limited scope of collective bargaining.

While the Manpower Act sets forth restrictions on the use of fixed-term contracts – specifically that workers in core business positions may not be on temporary contracts – trade unions report widespread illegal recruitment of temporary and outsourced workers for core positions. This "flexibilization" of labor has resulted in a reduction in the number of permanent workers and an uptick in the number of temporary workers. Official data on the number of temporary workers in the garment industry is not available however union leaders estimate that approximately 60 percent of workers are on short-term contracts (Fair Wear, 2018). This dynamic has had negative impacts for trade unions, as contract workers are reluctant to join unions out of fear having their work contracts terminated (author interviews).

In addition to the illegal use of contract labor, union leaders and labor rights advocate report that employers engage in practices that undermine freedom of association. Common practices include anti-union intimidation through termination or transfer of union leaders. Some companies even sue union leaders for financial losses connected with strikes. Additionally, employers form "yellow" unions (management controlled) to undermine legitimate unions (US DOS, 2019). Some union leaders do note that the signing of the Freedom of Association Protocol² (FOA Protocol) has helped reduce employer resistance to unions – particularly in tier one factories supplying for global brands (Fair Wear, 2018).

2. A more detailed analysis of the FOA Protocol is in section 5.1

Moreover, even in factories where unions are present, labor leaders note that employers exhibit reluctance in negotiating with unions. Unions note that employers often delay the negotiation of CBAs with few legal repercussions (US DOS, 2019). In factories with multiple unions, employers play off against one another resulting in the fragmentation of a united negotiating party (Fair Wear, 2018). Where trade unions are successful in negotiating an agreement, oftentimes agreements fail to provide benefits greater than what is in the law. Even worse, there are cases where unions agree to provisions that are **less** than what is legally mandated. In their most recently available 2018 report, Better Work Indonesia found collective bargaining violations in 23 percent of member factories. The most common noncompliance items were: work agreements that violate CBAs, company regulations, or labor laws (21 percent); the presence of collective bargaining agreements with provisions less favorable than the law (16 percent); and lack of information-sharing with workers regarding the contents of CBAs (12 percent) (Better Work, 2018).

Since 2014, trade union representatives and worker rights observers have noted a turnaround in the Indonesian government's protection of the right to freedom of association and collective bargaining, particularly with the Joko Widodo administration. In 2016, worker members of the ILO Conference Committee on the Application of Standards detailed examples of police beatings, use of paramilitary organizations to break up labor demonstrations, banning of demonstrations by local authorities in several regions, and misuses of the Penal Code. The committee members further note the arrest and detention of trade unionists as well as the adoption of the 2013 Law on Mass Organizations – a law that trade union leaders fear could be used in restricting freedom of association (Fair Wear, 2018).

3.3 Tripartite and Bipartite Cooperation Committee – A Space for Social Dialogue?

As described in section 3.1, the 2003 Manpower Act includes provisions mandating the formation of tripartite cooperation committees at various levels and bipartite cooperation committees at the enterprise level.

Tripartite Forums

Several tripartite forums exist at the national and provincial levels. At the national level, the National Tripartite Body, National Wage Council, and National Occupational Safety and Health Council serve to advise the Ministry of Manpower on matters of labor, minimum wages, and OSH. At the regional level, there are a variety of tripartite bodies – there is no uniform structure of tripartite dialogue across provinces (Labor Institute Indonesia, 2016).

Worker rights advocates generally view tripartite institutions as ineffective given how several labor policies were issued without the involvement or consultation of labor actors through these institutions. The latest example is the issuance of 2015 Minimum Wages reforms that did not involve the national tripartite committee. The regulation reduced role of unions in negotiating minimum wage fixing. Unions had generally been quite active in the setting regional minimum wages and were able to secure gains through local political mobilization before these reforms (Caraway et al., 2019). There remain some strong trade union influence at the local level in specific regions such as in Bekasi and Pasuruan. However, the garment sector is not dominant in these regions.

Enterprise-level Bipartite Dialogue

According to the Manpower Act, enterprises with more than 50 workers must have a Bipartite Cooperation Committees as a forum for communication and consultation on labor issues. Non-compliance with this provision is widespread. Better Work Indonesia found that 45 percent of member factories did not have a functioning bipartite committee (LKSB in Indonesian). Furthermore, BWI found that many factories with LKSBs did not follow the Manpower Act's regulations properly. For example, many factories had an imbalance in committee membership with over-representation of management due to worker turnover. Additionally, in factories with multiple unions, oftentimes not all unions were represented in the LKSB. Lastly, many factories had management pick LKSB worker representatives rather than having worker-led elections (Better Work, 2018). Trade Union representatives also note cases where employers have argued against unionization citing the presence of an LKSB as sufficient (Fair Wear, 2018).

It is important to note that the Industrial Disputes Settlement Law identifies LKSBs are the first body responsible for resolving worker disputes. The lack of functioning LKSBs has rendered legal dispute resolution provisions ineffective. Better Work Indonesia found that 31 percent of member factories did not have disciplinary measure that complied with legal requirements. Rather than using dialogue through these bipartite committees, in factories where there are unions, union leaders have reached out to international NGOs or brand representatives directly to address grievances (Bartley & Egels-Zandén, 2016).

3.4 Dispute Resolution Mechanisms

As described in section 3.1, the Law on Industrial Disputes Settlement prescribes a process for dispute resolution beginning with bipartite cooperation committees, moving through alternative dispute resolution, and if necessary, culminating in the Industrial Relations Court. Workers and trade unions have generally avoided the court system given the length, expense, and difficulty of litigation as well as the perception that the judicial system is biased towards employers (Fair Wear, 2018). In fact, some employers use this to their advantage as a way of "waiting out" disputes. Even if work-

ers do go through the entire litigation process and receive a favorable judgment, there is no guarantee that that judgment will be enforced. The Solidarity Center in Indonesia notes that ministerial judgements, industrial court rulings, and even Supreme Court rulings on disputes and duties to bargain are often not enforced (author interviews). The annual assessment of labor rights practices by the U.S. Government in 2019 included this assessment of labor law enforcement and dispute resolution:

The government did not always effectively enforce provisions of the law protecting freedom of association or preventing antiunion discrimination. Anti-union discrimination cases moved excessively slowly through the court system. Bribery and judicial corruption in workers' disputes continued, and unions claimed that courts rarely decided cases in the workers' favor, even in cases in which the Ministry of Manpower recommended in favor of the workers. While dismissed workers sometimes received severance pay or other compensation, they were rarely reinstated. Authorities used some legal provisions to prosecute trade unionists for striking, such as the crime of "instigating a punishable act" or committing "unpleasant acts," which criminalized a broad range of conduct (US DOS, 2019).

Given this, unions and workers have resorted to ad hoc engagements with brands and multi-stakeholder initiatives in addressing disputes (author interview; see Bartley & Egels-Zandén, 2016).

3.5 Government Policies Impacting Industrial Relations

Broadly speaking, the Joko Widodo administration has sought to boost economic growth through pro-investment policies (Hayden, 2016). Many trade union leaders and labor advocates view some of these policies as detrimental to worker welfare, particularly the 2015 minimum wage reforms and 2020 omnibus job creation law described in section 3.1. In addition to these, specific policies related to minimum wages and factory closures have had acute impacts on workers and trade unions.

Minimum wage exemptions

Government regulations allow companies that are unable to pay minimum wages to be able to postpone paying minimum wages. The Company is required to submit a written request to the provincial government and show a written agreement between employers and workers. This postponement is only allowed for 3 to 6 months (Wage-Indicator, n.d.). Trade unions report however that oftentimes these exemptions last much longer than what is legally prescribed and that companies face no repercussions for doing so.

Furthermore, provincial governments have issued special wage policies allowing particular industries to offer wages less than the minimum wage. In 2017, the West Java Provincial Government issued a decree providing "labor-intensive" sector wag-

es specific to the garment sector below the minimum wage in four regions: Bekasi, Depok, Bogor, and Purwakarta (KPOne, 2017). These wages were approximately 10 to 15 percent lower than the general minimum wages.

In 2019, the West Java governor again issued a decree for a special minimum wage allowing 33 garments companies in Bogor to pay wages lower than the Bogor minimum wage (Warta Ekonomi, 2019). The Governor justified this decree by stating that it would prevent factory closures, mass layoffs, and factory relocation. However, although eight unions rejected this decree, thousands of workers employed in these 33 factories expressed support for the measure. These workers stated that they had received guarantees that they would be able to keep their jobs as many had been fearful that their company would relocate, as many garment factories have been relocating from West Java to Central and East Java where wage rates are lower (Jakarta Post, 2018). Trade union leaders note that many of the workers who agreed with the special minimum wage were not union members. In one factory for example, out of 6,000 workers, only 10 percent were union members and these members had been against the lower minimum wage (Lentera Jabar, 2019). Interestingly, Garteks and eight other trade unions won a lawsuit in the Supreme Court seeking to enjoin this regulation. However, as of the time of writing, this regulation has not been revoked.

APINDO, whose members consist of garment factory owners, has actively voiced support over these special minimum wage provisions. Industry representatives argue that high wages in Indonesia pose a barrier to the country's competitiveness with other countries such as Vietnam, Thailand, Bangladesh and Myanmar. Given this, APINDO has been active in proposing policy initiatives to reduce the rates of minimum wage increase, especially for labor-intensive sectors (See van Klaveren, 2020).

Factory Closures and Impunity

Unannounced factory closures add to the vulnerable working conditions and fractured industrial relations of the Indonesian garment industry. There are many reports of factories that close down – either because of financial difficulties or plans to move to lower-minimum wage regions – without fulfilling the obligation to pay severance to thousands of workers who have been laid off. In 2015, two major suppliers for Uniqlo and S.Oliver shut down overnight without paying legally required severance payments (CCC, 2019). Additionally, PT Dada in Purwakarta, West Java closed abruptly in 2018 as well as PT Hansae in Jakarta in 2019 (buruh.co, 2019; RMOLjabar, 2019). Workers have relied on international organizations, such as the Solidarity Center, to engage with brands on an ad hoc basis to resolve disputes, particularly regarding factory closures. Oftentimes, seeking remedies in the court system is lengthy and judgments may not be enforced.

4.0 Stakeholder Mapping and Analysis

4.1 Trade Unions

Overview

According to the Ministry of Manpower, in 2019 there were 137 federations and 15 confederations in Indonesia with a total membership of approximately 3 million (2,985,834 people). According to the Indonesian Central Bureau of Statistics, in 2018 union density in the manufacturing sector was 12.7 percent, a decrease from 13.9 percent in 2017 (BPS, 2019). No official data on trade union density specific to the garment industry is available. However, international labor observers note that the garment sector is well represented in the trade union movement. It is estimated that there are 500,000 organized garment workers. *Serikat Pekerja Nasional* (SPN) – a trade union representing many garment sector workers – reported 294,000 members in September 2018. Garteks reported a total membership of 66,616, although the majority of these workers are in sectors other than textiles, garments and footwear (Fair Wear, 2018).

The largest confederation is the Confederation of All-Indonesian Workers Unions or *Konfederasi Serikat Pekerja Seluruh Indonesia* (KSPSI). It is the legacy union of the former state-backed union during the Suharto era. . It does not maintain and international affiliations nor receives international donor funding (Fair Wear, 2018). In fact, many workers generally view KSPSI affiliated unions as ‘yellow’ unions although labor rights observers debate as to whether KSPSI “may be transformed into a genuinely democratic and independent trade union as a new generation of workers and union leaders come to the fore” (Hauf, 2017). The Confederation of Indonesia Prosperity Trade Union or *Konfederasi Serikat Buruh Sejahtera Indonesia* (KSBSI) was established during the late Suharto years as an independent union. KSBSI is an affiliate of the ITUC (ITUC, 2019). KSBSI’s affiliate union Garteks, is significant in the garment industry and is an affiliate of IndustriALL (IndustriALL, 2020a). The Indonesian Trade Union Confederation or *Konfederasi Serikat Pekerja Indonesia* (KSPI) was formed by reformists in the KSPSI (the Suharto union) and was the first independent national federation formed during the Suharto dictatorship. Its affiliate National Trade Union or *Serikat Pekerja Nasional* (SPN) is a significant trade union in the garment industry (Fair Wear, 2018). KSBSI, KSPI and their affiliates are the most active in collaborating with international programs such as the FOA Protocol, Fair Wear Foundation, and Better Work Indonesia. Smaller and newly emergent independent union confederations include the Federation of Independent Labor Unions (GSBI), *Federasi Serikat Buruh Persatuan Indonesia* (FSBPI) and Congress of Indonesian Labor Unions’ Alliance (KASBI). Labor observers view these unions as more militant, progressive, and vocal – at times distrusting of international initiatives (Hauf, 2017).

In November 2020, seven garment unions convened as the Alliance of Garment and Textile Workers or *Aliansi Pekerja Buruh Garmen dan Tekstil (APBGATI)*. Participating unions include: Garteks-KSBSI and SBSI 92 (affiliates of KSBSI), SPN KSPI and KSPN (a faction of SPN), the garment faction of KSPSI, the garment faction of SPSI, and the Serikat Buruh Muslimin Indonesia (SARBUMUSI) (KSBSI, 2020). This alliance serves as a forum for education and advocacy with the goal of improving the quality of social dialogue to address labor issues in the garment industry. At the moment, APBGATI is in the process of settling organizational matters: the alliance's statutes, its leaders, executive board, as well as developing partnerships with government agencies and employers' associations (author interviews). Trade union representatives expressed optimism that the establishment of APBGATI would increase trade union solidarity and strength in addressing labor issues in the garment sector (KSBSI, 2020). According to trade union leaders, the unions in APBGATI represent approximately 90 percent of organized garment worker currently.

Challenges faced by Unions

Trade unions in the Indonesian garment industry face many challenges. *Employer union busting remains widespread*. The 2019 U.S. Department of State Human Rights Report in Indonesia found that:

Antiunion intimidation most often took the form of termination, transfer, or unjustified criminal charges. Companies often sued union leaders for losses suffered in strikes. Unions also alleged that employers commonly reassigned labor leaders deemed to be problematic. Labor activists claimed that companies orchestrated the formation of multiple unions, including "yellow" (employer-controlled) unions, to weaken legitimate unions. Some employers threatened employees who contacted union organizers (US DOS, 2019).

Besides external challenges such as employer and government interference, trade unions face many internal challenges. *Competition among trade unions* has led to fragmentation and animosity between some trade unions. Trade union leaders interviewed for this report acknowledge that their members easily shift membership to other organization when they think that the organization is not doing enough to fight for their industrial conflict (author interviews). Competition between unions is not the only source of fragmentation among unions. Within trade unions, trade union leaders who lose elections or have disagreements with other trade union officials have created fragmentation inside unions (author interview with trade union leaders). Furthermore, a reliance on international donor funding has resulted in some trade unions using 'dues free membership' as a means to attract membership as well as adopting more 'project oriented' strategies like NGOs instead of organizing campaigns (author interviews).

In addition to these challenges, the limited capacity of trade unions in the garment industry is partially the result of *low awareness and knowledge on employment laws and unionism among the workers*. Furthermore, the habit of social dialogue has not yet

been built although recent developments related to multi-company collective bargaining and forums convening trade unions such as the West Java Social Dialogue Forum (both discussed in section 5.1) are increasing this knowledge and providing dialogue experiences. Trainings and forums however have largely focused on union leadership and labor observers note that transmission of this information from union leadership to the rank-and-file has been limited (author interviews).

4.2 Employers' Associations

The *Asosiasi Pengusaha Indonesia (APINDO)*, or the Indonesian Employers Association, is the main employer representative body at the national level in Indonesia. The organization seeks to foster a “good business climate in order to realize national development significantly.” The organization represents employers in various national tripartite bodies (APINDO, 2021). The organization also provides ad hoc judges representing employers in the Industrial Relations Courts (Fair Wear, 2018). Overall, APINDO is politically connected and powerful. APINDO was a major proponent of the recent Omnibus Job Creation bill reforming labor law and has advocated against increasing minimum wages during the pandemic (VOI, 2020a, 2020b). Furthermore, APINDO leaders have close relationships with senior government officials. The former APINDO Chairman, Sofjan Wanandi received the Bintang Mahaputera Nararya, one of the country's highest honors, from President Joko Widodo (Jakarta Post, 2019).

The *Asosiasi Pertekstilan Indonesia (API)*, or Indonesian Textile Association, represents employers in the textile and garment industry. API largely deals with government policy on textile and apparel trade-related issues. Similar to API, the *Asosiasi Persepatuan Indonesia (APRISINDO)*, or Indonesian Footwear Association, advocates for policies beneficial to the footwear manufacturing sector. Together, API and APRISINDO have engaged in limited negotiations with trade unions; most recently signing a joint commitment on promoting safety and health during the COVID-19 pandemic (IndustriALL, 2020b).

The **Korean Garment Manufacturers Association in Indonesia (KOGA)** is a country-based association of South Korean-owned garment manufacturers. KOGA is not a member of APINDO or API although it occasionally meets with these organizations to discuss labor issues. Indonesian industrial relations stakeholders and observers note that KOGA is rather insular, operating on its own rather than working with APINDO or API (Lee, n.d.). KOGA has exerted significant influence at the local level. It advocated for special minimum wages in Bekasi, Purwakarta, Depok, and Bogor described in section 3.5 (Mahardika, 2018).

Korean garments factories have gained notoriety among unions for their treatment of workers. Three large garments factories in Purwakarta and Bekasi irresponsibly closed the factories and left workers with nothing. According to SPN national leader the Bekasi closure has forced Korean president to intervene (SPN News, 2018b). The

Korean president ordered to investigate the case and demand the owner to settle workers' rights (Korea Times, 2019).

Interestingly some KOGA members participate in Better Work Indonesia and KOGA is involved in CNV Internationaal's MC-CBA project.

4.3 Civil Society Organizations

Not many labor NGOs are active in Indonesia. In Java, there are a few CSOs focused on education and research. These include *Lembaga Informasi Perburuhan Sedane (LIPS)* which provides education for trade unions and document labor and workers voices. Likewise, *Lembaga Bantuan Hukum Jakarta (LBH Jakarta)* provides education for independent local unions. The *Center for Social Analysis (AKATIGA)* conducts labor research to support advocacy on labor issues. *Trade Union Rights Center (TURC)* actively carries out labor and trade union empowerment projects in collaboration with several international unions and international agencies. There are also CSOs focused on specific labor issues: *Lion* focuses on OSH issues while *Yasanti* in Yogyakarta focuses on empowering women workers. Outside of Java, *Organisasi Penguatan dan Pengembangan Usaha-Usaha Kerakyatan (OPPUK)* in North Sumatra provides education for trade unions as well as legal assistance in resolving labor dispute cases.

Broadly speaking, labor CSOs are not directly involved in social dialogue initiatives with workers but provide assistance to unions. Assistance through education, training, and information-sharing on social, political, and economic issues are helpful to unions in their bargaining and negotiations with employers and government actors. Many Labor NGOs also receive support from the same international organizations that support trade unions. For example, Mondiaal FNV supports TURC and FES has retained AKATIGA for research on living wages and outsourced workers.

4.4 Government Institutions

The **Ministry of Manpower** is the government body responsible for drafting labor laws and regulations and ensuring their enforcement. Within the Ministry are Directorates for Wages, Industrial Relations, and Directorates for Guidance and Oversight of Manpower and Occupational Safety and Health.

It is important to note the decentralized system of governance in Indonesia. While the national ministry is responsible for drafting national level laws, provincial governments still maintain a significant amount of power in determining provincial minimum wage rates and labor provisions. The minimum wage exemption policies described in section 3.5 are emblematic of this. The 2019 U.S. Department of State report on labor rights in Indonesia described the capacity constraints of Indonesia's local government bodies as follows:

Local officials from the Ministry of Manpower are responsible for enforcing regulations on minimum wage and hours of work as well as health and safety standards. Penalties for violations include criminal sanctions, fines, and imprisonment (for violation of minimum wage law), which were generally sufficient to deter violations. Government enforcement remained inadequate, particularly at smaller companies, and supervision of labor standards continued to be weak. Provincial and local-level officials often did not have the technical expertise needed to enforce labor law effectively. The number of inspectors was inadequate to enforce compliance in a country of 250 million inhabitants, although the government substantially increased its labor inspectorate funding to IDR 143 billion (\$10.2 million) with specific funds for enforcing child labor regulations. The ILO noted that low compensation for inspectors was a barrier to the creation of a professional inspectorate.



5.0 Social dialogue

As described above, there are several provisions in the Manpower Act for tripartite and bipartite dialogue at all levels. However, social dialogue has yet to be a habitual practice in the Indonesian garment industry. This is largely due to a lack of trust among social partners, limited capacity of trade unions, lack of political will by employers and national and local government actors, and weak institutional support mechanisms such as dispute resolution and labor law enforcement bodies. In addition to these obstacles, some stakeholders have a corrupted definition and understanding of social dialogue. The Indonesian Minister of Manpower Hanif Dhakiri interpreted the social dialogue as follows:

“... he often held informal meetings between the government, trade union leaders, and business associations in his official home. ‘Differences of opinion may and are reasonable, but that does not mean that they cannot sit together.’ ‘In the meeting we can laugh together, even play music together. This is the importance of social dialogue” (nuonline, 2019).

Here we see how some actors view social dialogue as an ad hoc and informal exercise, more reminiscent of a social ‘conversation’ than a method of workplace democracy. Part of this comes from a very liberal interpretation of the ILO’s rather broad definition of social dialogue as including “all types of negotiation.”

Other Indonesian labor leaders note that some employers view social dialogue very narrowly. A labor activist shared an experience with an employer believing that merely setting up a bipartite committee constituted social dialogue despite the fact that negotiations or dialogue never took place outside of CBA renewal every two years (Rokhani 2018).

Political will of worker representatives is certainly not lacking as Indonesian trade union leaders are eager for opportunities to engage in social dialogue. An interviewed Garteks leader considered social dialogue effective in gaining union recognition. According to the trade union leader, social dialogue between the union and international brands due to initiatives like the FOA Protocol and Corporate Social Responsibility programs have allowed Garteks to gain recognition in some newly opened factories in Central Java (author interviews).

There are a number of trainings on social dialogue provided by international projects and by the labor ministry. However, trade union representatives note that many of the government-led trainings are largely concerned with technical issues on procedures for conducting dialogue sessions, reiterating the rights and obligations of workers and

employers as stated in relevant legislation, rather than on actual negotiation strategies. Labor rights activists also note that the objective of the labor ministry's trainings on industrial relations focus more on reaching quantitative targets for CBAs rather than improving the quality of CBAs (author interviews).

5.1 Key Social Dialogue Initiatives

Several initiatives for social dialogue have been implemented in the Indonesian garment industry. Initiatives related to protecting workers' rights to freedom of association and facilitating collective bargaining include the Freedom of Association Protocol and CNV Internationaal's Multi-Company Collective Bargaining project. In addition, Better Work Indonesia has strove to improve dialogue at the enterprise level.

Freedom of Association Protocol

The Freedom of Association Protocol (FOA Protocol) is a multi-party agreement created by an alliance of five Indonesian trade unions, four major footwear suppliers, and six global apparel brands including Nike, Adidas, Puma, and New Balance (Connor et al., 2016; Tjandra & Tambunan, 2019). The FOA Protocol was the result of the Play Fair Alliance's³ long running campaign targeting apparel production for the 2008 Beijing Olympics. Play Fair called on brands to demonstrate progress on wages and working conditions. As a result of this campaign, brands and Play Fair chose Indonesia as a pilot for national-level dialogue and negotiations began in 2009 (Connor et al., 2016).

After two years of negotiation, a protocol on Freedom of Association was signed in June 2011. Labor rights organizations such as the CCC note that without the leverage of global brands – Nike and Adidas in particular – it would have been very unlikely that Indonesian manufacturers would have entered negotiations with Indonesian trade unions. Additionally Oxfam Indonesia played a key role in the agreement as a facilitator among parties and providing limited funding for meeting costs. The agreement sets forth workers' rights of freedom of association, regulating union access to facilities, protection of union members from intimidation, and the right to display the union's flag among other protections (Connor et al., 2016). The agreement is limited to workers at all tier one factories of the signatory brands – tier two suppliers are merely "encouraged" to implement the Protocol. At the time of signing, the CCC acknowledged that the Protocol was an important first step in improving the situation for the hundreds of thousands of sportswear workers facing low wages and poor conditions but the real test, however, would be in its implementation (CCC, 2011).

A 2016 evaluation of the FOA protocol found that it had a positive effect in creating lines of communication between unions and brands, enhancing the ability of some unions to organize and recruit members, and helping unions resist employer efforts

3. An alliance of labor unions and NGOs including IndustriALL, Maquila Solidarity Network, and the Clean Clothes Campaign.

to gain minimum wage exemptions from the government (Connor et al., 2016). The same evaluation, however, also found that the protocol largely facilitated informal conflict resolution through ad hoc communication with brands instead of the negotiated grievance redressal system, as implementation of formal workplace committees were slow or nonexistent. Furthermore, the protocol is limited in scope in that it only covers first tier suppliers. Trade union representatives also expressed frustration over the unwillingness of global brands to negotiate separate protocols on job security and living wages.

An NGO observer in the FOA Protocol remarked the National Committee – the group tasked with monitoring implementation of the Protocol and addressing disputes – has had a drop in meetings in 2019 due to opinion from brands and trade unions that the other party was less committed to the schedule or decisions that have been agreed upon together.

There have also been several “offshoot” projects associated with the FOA Protocol which have created overlapping and at times conflicting priorities for unions and brands, in some instances increasing fragmentation among parties. Mondiaal FNV and CNV Internationaal have supported the Decent Work Working Group (DWWG) – a group consisting of the protocol unions – as a way of expanding the FOA protocol network and conducting further research on living wages and contractual workers in Indonesia. Meanwhile, the Belgium Trade Union for Workers in Eight Different Industrial Sectors (BBTK) have provided funding to three of the FOA protocol union signatories to draft protocols on living wages and jobs security. Additionally, brands such as Pentland have cancelled involvement in a future living wage protocol citing its involvement with IndustriALL’s ACT project (Tjandra & Tambunan, 2019). These overlapping initiatives have led to uneasiness among unions as some receive funding as part of their participation in an initiative while others do not. Furthermore, overlapping projects have brands and suppliers shifting their priorities, at times undermining the future protocols on living wages and job security which trade unions are seeking.

Overall, the FOA Protocol is in the midst of an existential crisis. The national committee is not functioning given communication difficulties between trade unions and brands, trade unions are involved in overlapping and at times competition projects, brands likewise have conflicting priorities given their participation in other projects, and the lack of a central facilitating organization has allowed these tensions to fester. Trade union representatives do credit the FOA Protocol for connecting them with brand representatives. In fact, these connections have resulted in union leaders using ad hoc communication with global brands to address FOA issues with some success. The survival of the agreement however, largely depends on the political will of brands and suppliers to agree to protocols on issues such as contract labor and decent wages which are the key priorities of trade unions.

Multi-Company Collective Bargaining Agreements⁴

In August 2017, the first multi-company collective bargaining agreement (MCCBA) in Indonesia was signed in Subang. The agreement involved ten garment factories, six trade unions, and covers approximately 17,000 workers (CNV, 2017). This agreement came out of the long standing partnership of Garteks KSBSI with CNV Internationaal. The agreement included provisions for pregnant workers and longer maternity leave (Fair Wear, 2018) although some labor activists note that many of the provisions do not go above the law (author interviews).

The MCCBA project was born out of the West Java Social Dialogue Forum (WJSDF). The WJSDF was formed in 2013 and is tripartite; it includes trade union representatives from Garteks KSBSI, employer representatives from APINDO West Java, and the West Java Department of Manpower and Transmigration. The WJSDF proposed pursuing an MCCBA in 2014. From then, parties came to a joint agreement to follow the process of establishing an MCCBA. Trainings on social dialogue were provided by CNV Internationaal (WJSDF, n.d.). The parties then began negotiations with factory owners, all of whom were KOGA members. The negotiations ran into difficulty as the KOGA representatives halted negotiations because of a member's reportedly having a bad experience before with KSBSI. However, an evaluation of the MCCBA process noted that "it is likely that the tripartite nature of the delegation, clearly stating that the MCCBA was backed also by government and the business association contributed to the successful signing of the Subang agreement" (SP, 2020). KOGA's reluctance was swayed by seeing the support of APINDO and the local government.

Overall, trade union representatives involved in the MCCBA project note that the core of the project was creating trust among tripartite partners, particularly through the trainings and discussions in the WJSDF. Additionally, a trade union leader in Subang notes that the project has helped introduce workers to CBAs generally, as previously there had only been one CBA among the 700 factories in the region. Employers note how the agreement has helped standardize wage and working conditions among participating factories and has prevented factories from hijacking workers from other factories.

Since the signing of the agreement in 2017, KSBSI and Garteks have followed up with trainings and awareness raising events. Trainings have included factory managers, government officials, and employer associations. The WJSDF has also led an experience sharing workshop in December 2019 where worker representatives from eight signatory companies identified areas of improvement and participated in discussions (SP, 2020). The WJSDF has built on their experience in Subang through implementing another MCCBA in Cianjur covering five garment companies and one union (SP, 2020)

4. Based on interviews with union leaders in Bandung and Subang and with a CNV consultant

Better Work Indonesia

Better Work Indonesia (BWI) was created in 2011 as a partnership between the International Labor Organization (ILO) and the International Finance Corporation (IFC). This program involves workers, employers and the government to improve working conditions and improve the competitiveness of the garment industry. With its head office in Jakarta, BWI provides services to factories in the apparel and footwear sector based in five provinces (Banten, Jakarta, West Java, Central Java, Yogyakarta). These services include assessments (audits), consultations with management and workers, and training. As of January 2021, BWI has 216 member factories covering approximately 385,580 workers (Better Work, 2021).

In its member factories, BWI has sought to implement bipartite cooperation committees (LKSBs) as spaces for dialogue. Along with the Ministry of Manpower, BWI has trained factories on creating and maintain functional LKSBs. These trainings seek to help factories understand the laws and processes associated with LKSBs. Despite these trainings and socialization efforts, BWI's 2018 annual report found that 45 percent of factories were noncompliant in that they did not have a functioning bipartite committee (Better Work, 2018). Some labor rights advocates attribute the limited impact of BWI, particularly regarding freedom of association and social dialogue, to its lack of leverage over garment factories. Unlike in Cambodia where all exporting garment factories are required to participate in Better Factories Cambodia, no such requirement exists in Indonesia resulting in the program capturing a smaller share of the industry (author interview). In turn, without the link between compliance and export permits, factories have less incentive to comply.

Despite BWI's limited impact in establishing enterprise-level dialogue in its member factories, labor scholars have found that BWI's role in legitimizing and enforcing labor laws have successfully reinforced state regulation under certain conditions. A 2016 study by Amengual and Chirot found that BWI reinforced state institutions in cases where union mobilization pressured local government officials to create constraints on employer behavior, particularly related to minimum wage setting (Amengual & Chirot, 2016). This indicates a complex interplay between transnational regulations, local laws, and local stakeholders affecting labor rights governance in Indonesia.

6.0 Social Dialogue during the COVID-19 Pandemic

6.1 COVID-19 Impacts on the Indonesian Garment Industry

The COVID-19 pandemic led to a massive drop in global apparel demand in March and April 2020. In April 2020, US apparel retail sales dropped 88 percent compared to 2019 and major brands cancelled and postponed payments for their orders. Labor scholars and workers' rights advocates estimate that global brands reneged on approximately USD 40 billion in orders (Anner & Nova, 2020). The Indonesian Textile Association (API) revealed that in March and April 2020, 80 percent of textile and apparel factories temporarily halted operations. In May 2020, Indonesia's textile and apparel exports dropped 52 percent compared to 2019 (Pane & Pasaribu, 2020).

The crisis has created a difficult situation for all stakeholders but particularly for garment workers. In May 2020, the Deputy Chairman of the Indonesian Chamber of Commerce and Industry, Shinta W. Kamdani reported that 2.1 million workers in the textile and apparel industry were laid off (Kencana, 2020). Factories took measures to reduce labor costs including delaying wage payments, reducing wages, eliminating benefits and bonuses, and reducing social security benefits. The Clean Clothes Campaign estimates that for the months March to May 2020, garment workers in Indonesia lost out on approximately USD 405 million in wages due to factory closures and furloughs (CCC, 2020).

It is important to note that Indonesia never instituted formal lockdowns but instead implemented large-scale social distancing measures (known in Indonesian as PSBB). In addition to the drop in demand described above, these restrictions meant that many factories had to close as workers remained at home. These restrictions were eased in June 2020 (Better Work, 2020b). Although production has increased since the initial months of the pandemic, as of October 2020 many workers remain furloughed; among Better Work factories, 17,600 workers in 28 factories remain furloughed (Better Work, 2020b).

6.2 Government Responses and Social Protection

In response to the COVID-19 pandemic, the Indonesian Government issued several official circulars seeking to control the impact of the pandemic on businesses as well as provide protections to workers.

In April 2020, the government issued Circular Letter No. M/3/HK.04/III/2020 regarding Worker Protection and Business Continuity in the context of Prevention and Overcom-

ing COVID-19. This circular instructs businesses to engage in dialogue with workers to negotiate agreements on reduced wages during the pandemic (Better Work, 2020a). Despite these provisions for dialogue, labor rights observers note that the majority of factories proceeded to unilaterally furlough or terminate workers and reduce wages without dialogue with workers (CCC, 2020). In October 2020, the Ministry of Manpower issued a circular instructing regional administrations to maintain the 2020 provincial minimum wage and not increase minimum wages in 2021 (Rahman, 2020). Trade unions reacted in protest accusing the government of siding with businesses over workers (Ghaliya, 2020).

To help workers affected by COVID-19, the government introduced the *Kartu Pra Kerja* program (pre-employment card). The program is supposed to provide IDR 3.5 million (USD 228) per worker for a four-month period as an unemployment subsidy. Labor observers note however that “the pre-employment card scheme has been marred by inefficiency and corruption. As a result, by June 2020, although 434,000 people had already completed the training, only 361,000 had received IDR 600,000 (USD 39.16) each, or just 7 percent of the median minimum wage of a garment worker, up to that time” (CCC, 2020).

In addition, the government allocated IDR 37.7 trillion (USD 2.7 billion) for a wage subsidy program. Under this program, workers receiving less than IDR 5 million per month (USD 356) and are registered in Indonesia’s social security program would receive a stimulus payment of IDR 600,000 (USD 43) per month for four months starting in August 2020 (Better Work, 2020b). This subsidy makes up around 14 percent of Jakarta’s monthly minimum wage (IDR 4.2 million) which labor rights advocates view as insufficient to cover worker’s daily needs. Detailed data on how many garments workers received government social protection is not yet available.

6.3 Social Dialogue

The COVID-19 pandemic has brought about a decline for worker’s rights and weakened trade unions’ bargaining position. Unions were not involved in the formulation of government circulars for which employers’ associations had lobbied heavily. The circular letters show the domination of the employers’ associations and the government towards unions. Although the government stated that the implementation of the two circular letters must be carried out based on a bipartite agreement, in reality little dialogue has taken place.

At the factory level, there was generally no dialogue between management and unions on measures taken to respond to the crisis. Managers took unilateral action without consulting trade unions or workers. Representatives of API and the West Java associations stated that the management did not negotiate the policies taken, but only conveyed them to trade unions or workers’ representatives (author interviews). In this case, there was no dialogue but unilateral announcements. These unilateral management policies elicited different responses from trade unions some immediately

accepted it, some negotiated wage cuts, some refused and brought the disputes to the Manpower office or the labor court.

Unions that sought remediation from local government officials were quickly rebuffed. In Tangerang, for example, when labor unions reported companies that had not paid workers' wages since April 2020 Manpower officials responded negatively. They said that there was no need to make reports of violations of labor rights during the crisis because the reports from the previous year on the violation of workers' rights had not yet been processed (author interview).

Representatives from the Fair Wear Foundation revealed that in the limited instances where social dialogue did take place at the factory level, the quality of the dialogue was not good. This was largely because of the lack of openness and transparency from management, particularly in regards to order reductions and the factory's financial condition. This limited access to data significantly undercut unions' capacity to engage in dialogue with management in response to the pandemic.⁵ Additionally, in several companies in Subang, West Java, changes in wage policy were formally agreed upon by trade unions indicating favorable dialogue. However, in Tangerang, trade union representatives shared how a factory employed a bureaucratic tactic to narrow the scope of dialogue: the company notified the local manpower office of the wage reduction before submitting the change to the trade union so that once the union received notice, the union is not in a position to negotiate because the notification to the government is considered by the management as a legal decision (author interview).

The pandemic crisis has shown an increasingly unequal position of trade unions in comparison to employers and the government. Garment employers have a strong lobby against the government to influence garment industry policies, especially regarding employment. With the support of the Korean Garment Association (KOGA) and the Indonesian Employers' Association (APINDO), they have a strong bargaining position. Due to their shared interests, namely being able to survive and reduce losses, they have increased demands to the government to issue policies to protect them. The most egregious example of this was the passage of the Omnibus Job Creation law described in section 3.1. Trade unions staged nationwide protests opposing the law which they assert was passed without their consultation (Jakarta Post, 2020).

In August 2020, ILO Indonesia and Better Work facilitated the signing of a joint commitment to mitigate the economic and employment impact of COVID-19 (ILO, 2020). The commitment was signed by Indonesian employers' associations (APINDO, API and APRISINDO) and trade unions related to export-oriented garment and footwear industries (SPSI, SPSI ATUC, Garteks). "The commitment adopts a collaborative approach to protect safety and health, business sustainability and welfare of workers in the export-oriented garment/footwear sectors in Indonesia" (ILO, 2020). Labor rights advocates have characterized this joint commitment as largely ceremonial and a generic statement of cooperation. There is no clear road map on how to implement the commitments and there is no indication so far on whether the commitment has brought about actual health and welfare projections for workers (author interviews).

5. Zoom discussion with Fair Wear country and project managers

Labor rights advocates note that, in general, companies' crisis response were largely the same whether or not there were trade unions present. Companies sought to reduce labor costs through layoffs, wage reductions, reduced bonuses, eliminating overtime pay, and reducing social security contributions. The difference in unionized versus non-union factories lies in the execution of these measures. In companies where there was no union the measures can be implemented immediately while in companies with unions – depending on the union's bargaining position – employers must go through a process of communication and sometimes negotiation. However, as stated above, the negotiation process does not take long because for the union the situation is almost merely to take it or leave it.

6.3 Health and Safety

Factories have generally undertaken health and safety protocols such as providing hand sanitizer or facemasks, measuring body temperature, and instituting policies for physical distancing. Some companies implement physical distancing within the factory by having distance markers between workers in the production lines. However, worker representatives note that the effectiveness of physical distancing only applies within the factory but is ineffective during lunch break and when working hours are over. Many companies do not have a special dining room such that during lunch breaks workers crowd around food vendors with no social distancing.

The Government issued operational and mobility permits (IOMKI) to factories allowing them to operate during COVID-19 restrictions, provided they establish strict health protocols in their facilities. Factories are required to provide weekly reports of their operations however, only 51 percent of permit holders have complied with these requirements (Parama, 2020). A representative from the Ministry of Industry notes that: "despite rigorous enforcement of health protocols and monitoring by both manufacturers and the government, preventing an outbreak in factories had proven to be challenging as employees could catch the virus outside industrial zones" (ibid). Better Work Indonesia has provided guidance for factories on COVID-19 best practices and held virtual industry seminars disseminating this information for its factory members. However, given how factory visits are suspended, its implementation is yet to be verified (Better Work, 2020b). In addition to the health and safety concerns, the pandemic has increased other concerns, particularly for women workers. The impact of the pandemic which causes school children to learn online is very inconvenient for garment workers who are mostly women. Workers who are laid-off or furloughed or who have fewer shifts can indeed supervise their children studying, but those who have to keep working have to leave their children studying online alone or leave them with neighbors. Online schools also cause workers to buy cellphones and internet quotas as learning facilities while they have income shortage.

7.0 Conclusion

Social dialogue in the Indonesian apparel and footwear sector has largely been weak. Obstacles to impactful social dialogue include a lack of trust among and within stakeholder groups, weak unions and limited collective bargaining, management commandism, a history of government intervention in, and control of, industrial relations. While garment sector unions have large membership in comparison with other sectors, they have had limited involvement in industrial and employment policy formulation at the national level.

Internationally supported campaigns and projects have resulted in landmark agreements such as the Freedom of Association Protocol (FOA Protocol) and Multi-Company Collective Bargaining Agreements (MC-CBAs). However, since its inception in 2011, the FOA Protocol has experienced difficulties in its implementation and administration, casting doubt on its sustainability. Furthermore, the impact of MC-CBAs has been the subject of debate among labor activists and local unions. While proponents argue that the project has increased trade unions' and employers' understanding of social dialogue and began the process of establishing the habitual practice of social dialogue, critics argue that the agreements provide little benefits to workers.

The COVID-19 pandemic placed added strain on Indonesia's industrial relations system. Rather than spurring social dialogue, workers and unions were largely shut out of national policy formulation. In fact, the pandemic served as an impetus for the government, with support of employers' associations, to advance legislation relaxing worker protections in the landmark Omnibus Job Creation Bill. The landscape for social dialogue has become bleaker with the COVID-19 pandemic and its devastating effects. Furthermore, the diminishing political will among government actors to protect worker rights poses a very difficult obstacle for trade unions and the practice of social dialogue moving forward.

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