

Paradigmatic Approach of the Formulation of Social Protection for Homeworkers within the Perspective of Progressive Law

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Abstract

The system wherein work is conducted outside the company's work system (putting-out system) and industrial sub-contracting system have become a trend nowadays, and have even become a very promising option in the free trade era. Home-based work is a symptom of self-exploitation in which there is a mobilization of labor force with low or no wages, and in which family members or children are exploited as work force with very low wages. Homeworkers are marginal workers neglected by the system of employment rules and absent from the target of existing social protection programs. This situation is regarded as an anomaly that produces a state of crisis in Indonesian employment laws. The legal-positivistic paradigm of employment laws is unable to adjust the needs of the homeworker communities, so a new paradigm needs to be proposed in order to view the realm of law differently, namely through the paradigm of progressive law. Intrinsically, the paradigm of progressive law emphasizes the servitude of law in the society and is oriented to law's value of justice that is more substantial than procedural, namely a law that could improve the welfare of the people.

Keywords: Homeworkers, Progressive Law Paradigm, Social Protection

I. INTRODUCTION

a. Background of Study

According to the regulatory framework of the National Medium Term Development Plan 2015-2019, development in employment sector is included in the fields of human resources development and poverty alleviation. The employment regulatory framework is aimed to a comprehensive system of social security which incorporates health care, employment security, and other policies related with social assistance programs for the poor and the deprived that are synergized with empowerment programs for near-poor workers. Implementations of conducive employment policies will correlate with investment climate and business tranquility, while a fair and definite legal basis will certainly provide strength and support in implementing labor market policies.

In accordance with the direction of National Medium Term Development Plan 2015-2019 in the field of employment, a synergy between regulations and policies should be realized in order to create a national regulatory system which is both simple and orderly to support the development of the comparative advantages of an economy based on available human resources, quality human resources, as well as the capability in mastering adequate knowledge and technology (Regulation of the Ministry of Employment and Transmigration No. 14 of 2015 on the Strategic Planning of the Ministry of Employment and Transmigration 2015-2019).

The rise of informal sector workers in Indonesia happens at the same time as the increase in the flexibility of labor market and the age-population boom in early 21st century which resulted in higher level of unemployment and lessening employment opportunities in the formal sector. The effects of the increase in the number of informal workers is a parallel process to the increase in home-based work practices due to the pressures of globalization on companies to gain cheaper, more flexible and more productive ways (*Kompas*, 2016, p. 12). Based on Central Statistics Agency's report in February 2016 (CSA, East Java province, p. 4), those aged 15 and up in East Java were recorded to reach 30.02 million people. The labor force (aged 15-64 years) in East Java reached 20.50 million of the working population that reached 19.65 million. Part-time workers and underemployed workers amounted to 6.28 million, while full unemployment reached 4.31 percent. Those who worked in the formal sector amounted to 7.23 million or 36.95 percent, while those in the informal sector amounted to 12.39 million or 63.03 percent. Those who worked in the informal sector were categorized in four divisions, namely: (1) those that were self-employed, amounted to 2.91 million; (2) those that worked with temporary workers, amounted to 3.85 million; (3) free workers, amounted to 2.72 million; and (4) family workers/unpaid workers, amounted to 2.91 million. According to the deputy secretary general of MWPRI (from now MWPRI), the categories of free workers and family workers/unpaid workers are dominated by homeworkers.

The increases in labor market flexibility, production process externalities and high level of unemployment trigger increases in informal employments and home-based work practices. Increases in informal employments and the growing number of women working in paid-work sector combines employment and family responsibilities. One of the rising reasons states that because women have less access to formal jobs compared to men they more often take informal jobs. The majority of home-based working women work without sufficient income and they lack access to more decent jobs so they lack the capability to achieve the minimum standard of

decent living for themselves and their families.

Putting-out system and industrial sub-contracting system has become a trend nowadays and even has become a very promising option for industries. Diverting these work systems is not merely an element of 'convenience' provided by companies for those who desire paid jobs, but more than that, the practices of these systems result in marginalization and extraordinary exploitation carried out by companies against their workers. Those practices are symptoms of self-exploitation through the mobilization of labor with low wages or no wages at all, exploitation of family members, child workers or with extremely low wages (Workshop draft of the Policy of Homeworkers' Protection, MWPRI and the Ministry of Empowerment of Women and Protection of Children, Bogor, October 18-19, 2010).

Due to the hidden nature and lack of public recognition of home-based works, unlike workers of other employment relations this kind of workers has no access to normative labor rights. Homeworkers are marginal workers that are neglected and missing from the target of existing social protection programs. This situation was viewed by Satjipto Rahardjo as an anomaly that gave birth to crisis. The legal-positivistic paradigm of labor law is not able to adapt to the society's legal needs, so new paradigms are needed in order to view the realm of law differently, namely via the paradigm of progressive law. In essence, progressive law paradigm emphasizes more the servitude of law in public life which is oriented to the value of legal justice that is more substantial in nature than procedural, namely a law that is able to improve the welfare of the society (Kusuma, 2009, p. 64).

Based on temporary observations, the focus of current social protection programs is still directed to two major groups of the society, namely workers in the formal sector that have a relatively good income and absolute poor people whose criteria are uniformly and nationally applied. People that work in informal sector or are outside employment relationships and whose income is just above the poverty line are still untouched by social security programs. In such vulnerable situations for the marginalized populace, also called the vulnerable population, they face a crucial situation that has the great potential to cause them to fall in the poor category which includes a great number of people. The concept of social protection requires that its implementation be a sustainable system that protects all citizens through a set of public instruments against the possibilities of socio-economic risks.

The development of social security system and programs in Indonesia was initiated in the reformation era following the amendment of 1945 Constitution and the issuance of Law No. 40 of 2004 on National Social Security, called to be a masterpiece produced by policies on social developments in the history of Indonesian government. The system of social protection and security was publicly applied for the first time as an alternative solution to the problems of poverty and social inequality resulting from the financial crisis that hit Indonesia in 1997.

To date, the attempts to resolve the issues of poverty and social inequality remain the priority in the development program of national social welfare. Nevertheless, the approach used in the treatment is still ad-hoc in nature, unintegrated and unsustainable; meaning that the problem of poverty is handled partially, with limited schemes and geographical ranges. Such approach model is deemed to never be incomplete in eradicating poverty, since its strategies are not geared to eliminate poverty thoroughly but to create programs directed to the poor themselves.

The root problem of poverty should be seen from the perspective of substance, in which it is a structural product of a related system which includes the following elements: first, an economic system that stresses the levels of national income growth and distribution; second, an education program that is related to human resources empowerment and development; and third, the implementation of social security through a plan of social assistance and social insurance (http://www.policy.hu/suharto/modul_a/makindo_09.htm). Current security social program for workers in Indonesia in fact only affects workers in formal sector, while informal workers – whose number is greater – have not acquired sufficient social security services.

b. Problem Formulation

1. What is the formulation of social protection for homeworkers group when legal-formalistic labor laws are unable to achieve protection of homeworkers' normative rights?
2. What is the model for the empowerment of the organizational network of vulnerable workers "women homeworkers" based on the progressive law approach to gain access to a scheme of social protection?

c. Research Objectives

This research tried to describe advocacy activities that are related to homeworkers' working conditions that are undesirable and prone to exploitation, making the focus of this study aimed to the role of MWPRI as the catalyst in the reinforcement of the organization of vulnerable workers "women homeworkers" in gaining access to social safety net programs and other social assistances. Aside from that, this reasearch aimed to formulate the concept of law as a means of social engineering, based on a legal-positivistic perspective or a progressive law paradigm approach with sociological perspective, in relation to public participation in enhancing the workings of law in society. The current study is associated with the formulation of a model that can counter the lack of effective positive regulation instruments that resulted in the inability to effect changes in the society as desired,

therefore the approach of sociological aspects may be an option in choosing the parameters of the effectiveness of social security program regulatory system in changing the working conditions of homeworkers to be more acceptable.

Furthermore, this research provides an understanding the participatory role of the society in order to help improving the workings of law, in this case the civil society networking community MWPRI who has actively advocated policies that are committed to improving the welfare of women homeworkers. Given that on this period (2015-2016) they are able to run the programs due to supportive cooperation with the Institute of International Donor Cowater Inc. – Australia, the results achieved might be more realistic..

d. Literature Review

The Concept and Implementation of Social Protection

The concept of social protection as practiced in many countries is part of social policies related to the government's strategies and efforts in improving the welfare of its citizens. Limitations on social protection are still not in uniformity because its formulation is always influenced by social, economic and political conditions in a nation.

In its discussion report, *Deutsche Stiftung für Internationale Entwicklung* (DSE) used the limitations on social protection as issued by the UN in "United Nations General Assembly on Social Protection", i.e. as a set of policies and government and private programs created in order to deal with a variety of incidences which might lead to the loss or substantial reduction of the income/salary received, to provide assistance to families (and children), and to provide healthcare and housing services (Yohandawati et al., 2003, p. 3). The Central Statistics Agency, based on a report on the results of a focus group discussion (2004, p. 17), formulated the limitations on social protection system as a sustainable system that provided protection to all citizens, through a set of public instruments, from social and economic problems that resulted in the unfulfillment of the citizens' basic needs, whether caused by the cessation, decrease or insufficiency of income, by illness, pregnancy, accident, disability, old age, death, natural disaster, or social unrest. ILO (2002, p. 3) in "Social Security and Coverage for All" explained that social protection was a broad concept as well as reflect the economic and social changes at the international level.

The concept included social security and private schemes. In detail it was explained that social protection system could be divided into three layers: the first layer was a social safety net that was fully funded by the government; the second layer was a social insurance scheme that was funded by the contributions made by employers and employees; and the third layer was a supplementary provision that was fully managed by private institutions. Furthermore, based on studies by several experts, it was explained that social protection was any good initiative made by the government, the private sector or the society, which aimed to provide transfer of income or consumption to the poor, to protect vulnerable groups from livelihood risks, and to improve social status and rights of marginalized groups (Suharto, 2006, p. 7).

According to Barrientos and Shepherd, social protection was traditionally known as a concept that was broader than social security, broader than social insurance, and broader than social safety net. In addition, Conway and de Haan et al suggested that social protection was a set of public efforts undertaken in dealing with and overcoming helplessness, risks and poverty that have exceeded the set limits (in Yohandarwati et al., 2003, pp. 2-3).

Social protection as a vehicle in the attainment of social justice is an important element in the strategy of public policies in alleviating poverty and the multidimensional afflictions of the disadvantaged and powerless. As a public policy, social protection is a type of social policy which leads to various forms of service, provisions or programs that the government has developed to protect its citizens, particularly the vulnerable groups, from various economic, social, and political risks, as well as other disasters. Formal social protection system according to Kertonegoro in Shihab (2012, p. 178) can be grouped in several forms, namely: (i) social assistance; (ii) provident fund; (iii) social insurance; (iv) employer's liability. Informal system may take the form of conventional institutions as local wisdom, such as community gathering, mutual work, helping each other, community concord, or some other community-based social safety net schemes.

The forms of social protection program implementation

The implementations of social protection are a universal mechanism in the maintenance and improvement of the welfare of a nation's citizens. Even though there are similarities in the basic principles of social protection program implementations among nations all over the world, commonly based on the mechanisms of social assistance and insurance, in reality there are broad variations. The variety of social protection programs, levels of benefit or defined contributions are somewhat influenced by the local population's culture and socio-economic conditions. Such variations are inseparable from the development history of a social protection system within the changes of political system and policy forms of a government.

Such forms of social protection include: social security, public health insurance, social protection for the vulnerable, and protection guarantee against social-economic risks. With regard to its implementation in the forms of programs and their funding, social protection covers several aspects: formal social security system and

temporary support system.

The creation of a formal social security system is supported by legislations and its main characteristics are: (1) compulsory participation for every citizen or resident; (2) the security is designed to fulfill an individual's fundamental physical needs that are not natural disasters; (3) the source of the funding comes from the society; and (4) non-profit management. As for temporary support system, it is an *ad hoc* action or movement aimed to alleviate the society's or the community's vulnerability in fulfilling temporary fundamental needs. Such vulnerability is the result of previously unpredictable incidental events, for instance natural disasters, economic or political crises, famine, or other temporary incidents. Resources of temporary support funds are included in the social risk that is entirely the responsibility of the government, but this does not rule out the possibility of getting the funds from non-governmental sources or even from overseas.

The concept of social security

Etymologically, the term 'security' from 'social security' is derived from the Latin word *securus*, in which 'se' means liberation and 'curus' means uneasiness. Whereas the term 'social' means a community or a group of people living who live together (*socius*). Thus the literal meaning of the term 'social security' is a society that lives free from troubles, in the sense that their social life scale has been fulfilled in accordance with the minimum standard of decent living.

The juridical basis for social security which is in contact with public policies within the context of public administration is pointed out in Article 22 of the Declaration of Human Rights of 1948, in which it is stated that everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. In the statement it is emphasized that any citizen is not only entitled to social security but also economic rights, which include decent jobs and adequate wages. In accordance with the concept by ILO (1998) it is stated that social security is a protection financed by the society itself, through a set of public policies, to anticipate socio-economic risks which will likely result in the loss of the whole or part of public income, due to the incidences of occupational accident, illness, childbirth, termination of employment, old age, and premature death.

Constitutionally, the organization of social security in Indonesia is guided by Article 28H section 33 of the 1945 Constitution: "Everyone is entitled to social security which allows his full development as a dignified human being"; and Article 34 section 2 of the 1945 Constitution: "The State shall develop a social security system for all citizens and empower the weak and the underprivileged in accordance with human dignity." In addition, Article 3 of Law No. 3 of 1992 on Employment Social Security states that social security is a protection for workers in the form of pecuniary compensation as a partial replacement of lost or reduced income, and a service on account of events or circumstances experienced by workers in the forms of occupational accident, illness, pregnancy, old age, and death. In the broader scope of Article 1 of Law No. 40 of 2004 on National Social Security System, it is stated that social security is a form of protection to ensure that all citizens are able to meet the needs of a decent living.

The main principle underlying the need for the administration of social security to all citizens includes two essential expediencies for coexistence, namely: first, social security is positioned as a social tool that is capable of providing protection from diverse socio-economic risks that might befall the society; second, social security system is economically and socially safe for both the providers and the recipients of their service. Social security is not a futile public expenditure, but rather a form of social investment which is profitable in long term and supported by two major pillars which explain how the mechanisms of social security work, i.e. redistribution of income and social solidarity. Such social investment can be described as a circulation of money that circulates among members or participants of social security, resulting in a mechanism of mutual protection among them that in turn creates a construct or a pool of social fund that next is managed to contribute to sustainable maintenance and improvement of the society's quality of life.

Redistribution of income in question can be illustrated as a transfer of funds from the rich to the poor, or as a manifestation of the support provided by the strong economic community to the weak economic community via, among others, tax system. As for the pillar of social solidarity it is essentially a joint movement in the form of mutually beneficial support or *gotong-royong*, which can be articulated as a consensus against various risks and a responsibility against the uncertainties of life which might be detrimental to the future (Suharto, p. 4, <http://www.policy.hu/suharto/modul>).

Administration of social security is guided by the concept and can be provided through a system of social insurance financed by insurance premiums as well as social assistance whose funds are derived from tax revenue. Social insurance is determined based on technical actuarial (insurance expertise) estimates and provision of insurance benefit is determined by the amount of the premium. The operation of social insurance in principle is in the hand of the (central) government together with other public institutions and the nature of participation in the social insurance is compulsory. Whereas social assistance is not determined based on the

terms of premium payment, but rather the provision of social assistance is based on the allocation of funds collected from tax revenue. Central and local governments channel social funds or services to the society as a consequence of the constitutional obligation to meet the fundamental rights of the citizens.

With regard to the preparation of the design of social security and the determination of the type of the system, whether it would be in the form of social insurance or in the form of social assistance, evidently depend on the purpose and content of the system, as well as the environment and the historical elements of the concerned state government. In general, reflecting on the experiences of diverse nations in the world with regard to medical security and retirement security and pension, the type chosen is social insurance. Public support system is a typical instance of social assistance, which is in the form of allowances for underprivileged families and protection from other social risks.

Social Security for Informal Workers within the Employment Relations of Sub-Contract System

There have been many empirical studies on the importance of informal sector as the alternative source of employment opportunities, and a maxim has been widely known on how the informal sector serves as a last resort. That is, it is the last expectation or option for the poor and the unemployed to earn a living, although in reality the income or the wages received are often insufficient to sustain decent living standard (Akatiga, 2003, p. 3).

The category of informal workers in the employment relations of informal economy is generally unorganized and unprotected by a legal framework or a network of labor regulation system. Among the many informal sectors there is also an agreement-based-employment relation that gives birth to the relation between workers and employers and that is based on the sub-contract production pattern.

According to Central Statistics Agency (BPS, 2015), the number of Indonesia's employed population was 128.2 million, divided into 47.5 million (40.19%) in the formal sector and 70.7 million (59.81%) in the informal sector. It is estimated that half of the number of informal workers are homeworkers of the putting-out system model or of an employment relation of sub-contract production pattern. The practices of informal employment relation with such sub-contract production pattern often apply standard wage rates that are far below the Regional Minimum Wage, as well as lacking safety measures and social security.

Doing a job outside the company's work system (putting-out system) means that most of the production processes that are previously carried out in the company or industry are transferred to the workers' homes. This transfer of production system is not only an element of 'convenience' that the company grants to anyone who desires an employment opportunity, but more that that the system is in practice capable of causing marginalization and extraordinary exploitations, committed by the company against workers who are mostly women. The symptoms of self-exploitation include mobilization of unpaid workers, exploitation of family members, child labor, or cheap labor (workshop draft on the Policy of Homeworkers Protection by MWPRI and the Ministry of Women Empowerment and Child Protection Indonesia, Bogor, October 18-19, 2010).

In connection with variations in the forms of home-based jobs which are commonly carried out by women, one possible construction is the system of commercial sub-contract labor, also called the putting-out system because the production process takes place outside the company's principal work system. Moreover, the construction of industrial sub-contract labor indicates a direct involvement of the sub-contractors in the production process. Principality is not always assigned to large companies; in reality, there are also micro businesses and informal small businesses that sub-contracted jobs to homeworkers based on the relations of kinship, camaraderie or adjacency.

The quality of jobs and the work conditions of the homeworkers tend to be worse than the work conditions of formal workers who work at the company's workplace. This is due to the employers' lack of understanding of their legal and socio-economic responsibilities to informal workers. On the other hand, homeworkers generally do not have sufficient expertise and skills due to low education and experience levels, so they often do not feel they have sufficiently strong bargaining power and give up easily whenever the condition is rough.

The lack of understanding is, among other things, caused by the ambiguous definition of homeworkers as informal workers that has been made the juridical basis. For instance, in the provision of the Regulation of the Ministry of Employment and Transmigration PER-24/MEN/VI/2008 on the Guidelines for the Implementation of Labor Social Security Program for Laborers that Perform Work outside Employment Relations, in its Introduction it is stated that workers that perform work outside employment relations are everyone who is self-employed or does business within the informal economy. This definition gives the impression that home-based workers in putting-out system or industrial sub-contract system are qualified as workers outside employment relations so they all have to endure workplace risks by themselves. In fact, the meaning of employment relations according to Article 1 point 15 in connection with Article 51 section 1 of Law No. 13 of 2003 is work relationships between employers and workers which take place due to an employment agreement, either directly or through sub-contract, either in words or in writing.

Legal Orientation as a Means of Social Change

Law as a means of social engineering is the conscious use of law to achieve an orderly state in the society as aspired, or to perform the desired changes. That legal view with sociological perspective was proposed by, among others, Roscoe Pound through his thesis on law as a means of social change and which should be future-oriented. Law ultimately must play an active role in effecting a reformation of the society, so the function of law is not merely to create an order but also to encourage changes within the society (Kusuma, 2009, p.103).

The types of modern law as expounded by David M. Trubek (1972, pp. 4-10) constitute a particular social process that arises from the dynamics of life in general, with the following characteristics:

- a. It is a regulatory system;
- b. It is a form of deliberate human action;
- c. It is a part of but at the same time also independent of the state.

With regard to the characteristic in point (b), modern law is in fact instrumental in nature, therefore it contains a pretension that social life could be shaped by a particular volition. If the elite holders of power come from the class of reformers, they will bring changes through legislations and will try to make them happen in reality.

Thus legal regulations allow planned and calculated reforms to achieve certain goals. Then again, the implementation of law cannot be entirely detached from public participation. According to Satjipto Rahardjo (2010, p. 206), the society in fact did not provide any evidence that support absolute capabilities of law. He suggested that in daily life law has more of the plus-minus quality. That is, the law's regulations are actually just the beginning of the process or just an ideal or an expectation (aspirational). Thus, after regulations have been laid out there are still necessary actions to ensure that what the law desires could be realized. In a sociological discourse based on reality in the society, the law or the state does not have a monopoly. The society or a particular community could create their own norms, either to fill a legal vacuum or not.

Turns out all legal issues cannot be entirely left to formal law. The public also needs to participate in filling and enhancing law which in reality has the plus-minus trait. Formal rules and institutions still require additional public support to create order. Moreover, the public are also capable to spontaneously organize their powers to maintain order.

2. RESEARCH METHOD

The current research is a legal one aimed to finding solutions to the issues of law occurring in the society. The results to be achieved are to provide a prescription of what should be (Mahmud, 2007, p. 9), and the study is based on empirical evidence followed by an evaluative review on the interrelations between norms and facts (Bruggink, J. J. H., 1996, p. 168). The focus of this research is oriented to changes, that is, this research is the type that is based on deductive and inductive logics which reconstructs the legal system of employment, intensively evaluates compliances with provisions in force, and recommends changes in regulations or policies which in substance are needed today.

The theme of the research raises the issue of the marginality and vulnerability of homeworkers, previously explored in the fundamental scheme research in 2008. It is concluded (Imron A., 2008) that job opportunities for the putting-out system home-working which is mostly filled by women are invisible to the public eye and unrecognized as real work, so the workers' normative rights in the category of decent job are neglected. Through the extension of the juridical-sociological study in the National Strategy scheme research, funding year 2015, the important role of MWPRI is revealed; they conduct advocacy activities to reduce the marginality of women homeworkers. Via an approach that is related to the function of (written) law as a means of social engineering, it is found that in practice it is not enough to rely on existing formal legal institutions – the role and intervention of the public in conducting the functions of law are very important.

The development of the capacity of homeworkers which were initiated by establishment of an organization, socialization of the issues of homeworkers within the framework of advocacy program, and economic empowerment of homeworkers through the creation of social business centers to break the production chain, in connection with the development of the catalyst role of MWPRI, have at least opened the eyes of the public and raised the awareness of policy makers on the facts of the social vulnerability of women homeworkers. MWPRI, together with several of its field facilitators who have prepared the study cases for this report, has sufficiently showed that mutual organizing to fight for normative rights and representation in a tripartite forum should be prioritized for the welfare of the workers and their families.

3. RESULTS AND DISCUSSION

a. Opportunities for Homeworkers in Social Protection Program Scheme

The development of the field of social policy through social security programs has been realized in the form of regulations in Indonesia now. The membership is mandatory and public, as well as based on the methods of social security and social assistance. As stated in Article 1 Law No. 40 of 2004, social security is one of the

forms of protection to ensure that all citizens are able to meet the needs of a decent living. Furthermore, the normative basis for the participation of the poor and the vulnerable is formulated in Article 13 Law No. 24 of 2011 which stated the obligation of the government to register the participation of the poor and the underprivileged, together with their family members, to the Social Security Administrator Body (obligation-based) as the beneficiaries of a donation assistance which is equivalent to the fulfillment of premium payment in the social insurance system.

The legislation mandate addressed to the government to build and improve the level of public welfare is very clear, but in reality, especially in the last decade, the government's commitment to the improvement of public welfare and health may be said to be small. This issue was revealed at "One Decade National Conference of Initiatives Society" forum, October 7-8, 2014, in Jakarta. The conclusion section of the forum's treatise stated, among others, that programs relating to welfare and health, such as the creation of productive jobs for the poor, welfare improvement for laborers, productivity improvement programs for farmers, healthcare financing for the society, and social protection programs, turned out to be the last target of the development agenda.

The condition that describes income inequality and low living standards of the marginalized groups is demonstrated by the working conditions and socio-economic vulnerability of women homeworkers in East Java today. The results of the 2014-2015 survey on 49 women homeworkers organizations in 9 districts/cities in East Java facilitated by MWPRI – ILO/MAMPU stated that from as many as 1.128 vulnerable workers documented as members in the interviewed women homeworkers organizations, not a single one was registered as participants in Social Security Administrator's labor security program and only roughly 20% was registered as beneficiaries to donation assistance in social security health program (as a continuation of the Community Health Insurance Program).

The facts that the vulnerable women homeworkers have yet to be assisted by the service facilities of social security programs and have not optimally received their normative rights are in general due to the inherent factors in their identity as homeworkers, as well as external factors such as public policies that yet to side with homeworkers.

Internal factors inherent in the character of homeworkers include lack of expertise and sufficient skills. Low education and skills cause them to be grouped as residual workers that have little or no opportunity to be accommodated in the formal sector. They are regarded as invisible, solitary, unorganized and some other predicates of negative connotation. The external factors come from government policies that include discriminatory practices between the protection of formal workers' rights and that of informal workers' rights, since an imprecise definition of a policy would result in the homeworkers' rights be disregarded and their access to public privileges and services be denied.

External factors related to the approach used in the participatory system of Social Security Administrator is demand-based or based on the desire to participate in the national social security system scheme. This is actually quite alarming because in practice the administration of services might not be so different from what have been happening to this day. There is a possibility of very minimal government services due to the belief that it is the public that needs the service instead of the belief that it is the government's task and obligation to appreciate and respect the citizens' rights, as well as to serve and meet the demands for social security schemes.

The phenomenon that reflects the decline of the homeworkers' working conditions and socio-economic vulnerability is an anomaly from the perspective of modern theory of law. The normative basis that guarantees the fulfillment of basic labor rights, either formal or informal, is already laid out in Law No. 13 of 2003 and in its implementation regulations, and the right to social security health services and labor social security, as well as their administration agencies, are also laid out in Law No. 40 of 2004 and Law No. 24 of 2011 and in their implementation regulations. But the lawmakers' expectation to create changes that consequently will produce decent jobs that in turn will affect a better livelihood for homeworkers is still far from being realized.

This fact indicates an irrelevance with social-perspective law concept in modern law, that law as a means of social engineering can be used as a means to make the desired changes. But in the context of empowering vulnerable women homeworkers, the produced law or norms of law along with their institutions – the legal formalistic – are not capable to solve social problems optimally and completely by their own power. This situation was perceived by Satjipto Rahardjo as an anomaly which in turn created a crisis. The paradigm of a legal positivistic labor law is not capable to adapt to the society's legal needs, thus necessitating a new paradigm to view the world of law differently, namely through the paradigm of progressive law. In essence, progressive law paradigm puts more emphasis on the servitude of law in public life and is oriented to the values of justice in law which is more substantial than procedural (Kusuma, 2006, p. 61).

In keeping with the results of progressive law study by Satjipto Rahardjo (2010, p. 205), law or rules have merely the plus-minus quality in real life. That is, the process that has to be undertaken is longer than what is written in black and white. Turned out the achievement of the desire to improve the working conditions and decent labor living for women homeworkers could not be left to formal law and its institutions. The public also

needs to help in fulfilling and enhancing law within the context of empowering women homeworkers; in particular, the catalyst role of MWPRI is very important in gaining access to the realm of public service.

The progress of the catalyst role of MWPRI achieved in the period of 2014-2015, facilitated by the ILO Project – MAMPU AusAID, include the mapping, data collection, and organizing of homeworkers in 49 home-based women workers organizations in 9 districts/cities in East Java. In accordance with the action plans of June 2016 to June 2018, half of the activities will refer to the patterns and strategies prepared by MWPRI in assuming their catalyst role in the empowerment and development of women homeworkers' organizational network in Indonesia.

As follow-up of the catalyst role, a cooperation contract has been made between MWPRI and MAMPU AusAID Program for 2015-2018 periods. MWPRI, together with the field facilitator network in seven cities/districts in East Java, has implemented the appropriate activities with the action plan in the form of data collection and the mapping of homeworkers, advocacy on the policies on the normative labor rights for homeworkers, and the inclusion of vulnerable homeworkers as beneficiaries of social assistance from the local work units in the local governments.

b. Advocacy Framework for Homeworkers in Reaching the Scheme of Social Protection Program

Home-based work is not a new practice in the broader society and homeworkers are often referred to as sub-contract workers because of an intermediary role called *makhun*. Home-based work is a production of goods or a provision of services for entrepreneurs or contractors based on a particular agreement, in which the work is undertaken at places chosen by the workers themselves, often the workers' own homes. The increasing use of home-based work by entrepreneurs is triggered by, among others, the global market pressures for cheaper, more flexible and more productive ways for employers to conduct business.

In present century there is a rising global trend of the increase of informal jobs and the growing number of female workforce in paid jobs. Homeworkers become a significant proportion of informal workers in the fields of manufacturing, agriculture, trade and services, the majority or almost all of it are women. They are independent homeworkers, or sub-contracts, generally are less educated workers who spend their time in paid jobs while at the same time carrying out their domestic responsibilities, and they usually live and work below decent work standards.

Home-based work that often involves women has yet to receive serious attention by the government and various other circles, which can be seen from the implications of the lack of a clear and definite policy in either national or local regulations directed to the protection and empowerment of homeworkers. Although Law No, 13 of 2003 on Labor applies to homeworkers, home-based work is well known as an area that is difficult to control and to monitor, and on which it is difficult to enforce the labor rights, making it extremely vulnerable to exploitation practices. This group of women homeworkers, based on the observations made by some researchers, experiences substandard working conditions that leads to modern slavery practices.

The formulation of the results of the national consolidation through Focus Group Discussion on May 18 and 19, 2016, at Oria Hotel, Jakarta, attended by the research team and several partners of MAMPU Program (BITRA, YASANTI, MWPRI, and TURC), as well as representatives of the Women Homeworkers Network from Yogyakarta, East Java, Banten, Central Java and Sumatra, mapped the general condition of homeworkers in Indonesia as follows:

Description of the Social Conditions and Legal Standing of Homeworkers in Indonesia:

1. Social Conditions of Home-based Workers:
 - a. Poor working conditions
Homeworkers work at the lowest rung of the supply chain, poor economic conditions.
 - b. The involvement of unpaid workers
Family members are not infrequently included in the completion of the work. Parents, husbands, and even children are made to help the working family members in their work.
 - c. Invisibility
The government has yet to enter the homeworkers' data in the category of workers because there is no official data from Central Statistics Agency and the workers themselves have not realized their status as workers – they regard their work as part-time jobs, additional jobs, or side jobs.
2. Legal Standing of Homeworkers
 - a. Uncertain employment status
Home-based workers undertake jobs based on verbal agreements or those which are not contained in a written contract.
 - b. Low wages
Home-based workers are not paid based on working time but based on the amount of goods produced, such as per kernel, per dozen, per score, and so on.
 - c. Bearing the costs of production
In addition to low wages, homeworkers usually also bear the production costs.

d. Weak bargaining position

Low educational background, poor economic life and no organizational network leave the homeworkers with very few job options.

e. No occupational safety and health security

Working at home where the workplace is joined with family spaces creates unhealthy housing conditions. Houses also serve as warehouses and small factories, in which there are no supervision and assurances of occupational safety and health.

Through the focus group discussion forum held for three days in Jakarta, the National Consolidation of Women Homeworkers activities by partners of MAMPU program concludes:

1. Home-based work that mainly involves women has yet to receive serious attention from the government and various other circles, which can be seen from the implications of the absence of a clear and definite policy in either national or local regulations that is aimed at the protection and empowerment of homeworkers.
2. Law No. 13 of 2003 on Labor only implicitly alludes to homeworkers, but home-based work in the informal sector is unreachable by the legislation. Home-based work is known as an area that is difficult to control and to monitor, and on which it is difficult to enforce the labor rights, making it vulnerable to exploitation practices, and whose working conditions are below the standards of decent work and lead to modern slavery practices.
3. The conditions of homeworkers, whose number is estimated at close to half of the number of informal workers, are far from the standard minimum wage and lack health protection, occupational safety, employment security, as well as social security. Allegedly homeworkers are part of Indonesian citizens who are still struggling with poverty, as a result of the structured impoverishment process produced within the country's social, political, economical, and legal conditions.
4. The trend of the increasing employment of homeworkers by entrepreneurs is marked by the phenomenon of global pressure for ways that are cheaper, more flexible and productive in doing their businesses. The presence of the government in such circumstances is required to conduct service functions, monitoring or crackdown on violations of labor law. The government as mentor, supervisor and law enforcer should implement regulations wisely in view of the position of both entrepreneurs and workers as the state's potential assets as well as development subjects that are equal before the law.

In line with the catalyst role of MWPRI in improving the social welfare of women homeworkers, their work program has been concentrated on a legal-positivistic approach, in particular leaning on a means of employment law derived from Law No. 13 of 2003. This approach of legal-positivistic paradigm in fact has not shown any results, because formal law does not monopolize being the guarantor of legal order in the society. Studies on progressive law which prioritize reasonableness will, according to its nature, always deconstruct conventional logic of law. Deconstruction of the logic of labor law in question is undertaken through expanding the horizons of law by orienting to social expediency considerations, i.e. the approach of the concept of integrated social protection programs which is in line with one of the priorities of the third phase National Medium Term Development Plan 2015-2019, that is, the eradication of poverty.

Poverty eradication is a national strategic issue, thus the orientation of advocacy programs which is aimed at improving the welfare and empowerment of women homeworkers will be more relevant if elaborated through the schemes of social protection programs. Civil society institutions, in this case MWPRI, deem it necessary to achieve such purpose through cooperation with local governments.

Table 1
 Advocacy Practices Reflected in Cooperation of Poverty Eradication Program between Local Governments and MWPRI

No	Local Government as Partners	Legal Basis of Cooperation	Initiation of Cooperation Activities	Concrete Results of Cooperation	Performance Results of MWPRI Field Facilitators
1	The government of Probolinggo District	<ul style="list-style-type: none"> - Memorandum of understanding - Working meeting for the harmonization of perceptions, November 3, 2015 	<ul style="list-style-type: none"> - Stakeholder Workshop - Audience with the local work units 	<ul style="list-style-type: none"> - Data collection on low income populace - Registration of low income populace trade unions - Healthcare facilities support 	<ul style="list-style-type: none"> - Formation of 12 low income populace groups of 237 members in 6 districts and 11 villages
2	The government of Malang City	<ul style="list-style-type: none"> - Working meeting for the harmonization of perceptions, March 18, 2016 	<ul style="list-style-type: none"> - Preparation of cooperation plan 	<ul style="list-style-type: none"> - Provision of facilities for the formation of low income populace organizations 	<ul style="list-style-type: none"> - Formation of 5 low income populace groups of 88 members in 3 districts and 9 villages
3	The government of Jember District	<ul style="list-style-type: none"> - Working meeting for the harmonization of perceptions, May 23, 2016 	<ul style="list-style-type: none"> - Preparation of the form of cooperation 	<ul style="list-style-type: none"> - Provision of facilities for the formation of low income populace organizations 	<ul style="list-style-type: none"> - Formation of 9 low income populace groups of 179 members in 4 districts and 8 villages/families
4	The government of Mojokerto City	<ul style="list-style-type: none"> - Assessment of cooperation 	<ul style="list-style-type: none"> - The planning of cooperation preparation 	<ul style="list-style-type: none"> - Provision of facilities for the formation of low income populace organizations 	<ul style="list-style-type: none"> - Formation of 10 low income populace groups of 123 members in 2 districts and 5 villages/families
5	The government of Mojokerto District	<ul style="list-style-type: none"> - Assessment of cooperation 	<ul style="list-style-type: none"> - The planning of cooperation preparation 	<ul style="list-style-type: none"> - Provision of facilities for the formation of low income populace organizations 	<ul style="list-style-type: none"> - Formation of 10 low income populace groups of 139 members in 2 districts and 2 villages/families
6	The government of Surabaya City	<ul style="list-style-type: none"> - Assessment of cooperation 	<ul style="list-style-type: none"> - The planning of cooperation preparation 	<ul style="list-style-type: none"> - Provision of facilities for the formation of low income populace organizations 	<ul style="list-style-type: none"> - Formation of 2 low income populace groups of 137 members in 2 districts and 2 villages/families
7	The government of Malang District	<ul style="list-style-type: none"> - Assessment of cooperation 	<ul style="list-style-type: none"> - The planning of cooperation preparation 	<ul style="list-style-type: none"> - Provision of facilities for the formation of low income populace organizations 	<ul style="list-style-type: none"> - Formation of 5 low income populace groups of 126 members in 3 districts and 5 villages/families

In line with the pattern of thinking on how we should deal with the impasse in conditioning home-based works into decent works based on the formal logic of Labor Law, the insufficient formal law approach can be improved with an approach that is based on a progressive law perspective. Karl Ranner, as the important figure behind Satjipto Rahardjo's thoughts about progressive law (Rahardjo, 2010, p. 68), stated that law did not proceed and develop by logic alone but also by the element of social expediency considerations (reasonableness).

Progressive law perspective, according to Satjipto Rahardjo (2009, p. 2), suggests that carrying out law should not merely according to letter but according to the spirit and the very meaning of legislations or law. This is the most important trait of progressive law in the face of a certain reality in which labor legislations as the formal reference that is supposed to protect homeworkers' rights is proven to be incapable to reach its substantial interest. Therefore, the obstacles arising in the midst of the workings of a legalistic law can be lessened if we are willing to open up the horizons of law so as to accommodate the dynamics of the society.

Further, Satjipto Rahardjo (2009, p. 2) affirmed that the test of success for a legal product is if it is able

to prove that its orientation is directed to the protection of human interests, or is more oriented to the substance and not the form. Enforcement of progressive law is not merely by intellectual intelligence but also by spiritual intelligence. In other words, law enforcement carried out with determination, empathy, dedication, commitment to the sufferings of the people, and with the courage to find different ways from the usual.

It is such law enforcement that should be applied to the marginalized homeworkers when labor laws are unable to guarantee their rights in the fulfillment of the employers' normative obligation; to ensure that their human dignity be secured and protected, they are directed to the framework of social assistance policy as part of the government's poverty eradication program.

4. CONCLUSION

1. An effect of free trade nowadays can be seen when a system wherein work is conducted outside the company's work system (putting-out system) and a system of industrial sub-contract have become a trend, and even have become a very promising option in the industry. Diversion of such work systems is not merely an element of 'convenience' provided by the company to those who desire paid jobs, but more than that these systems in practice cause marginalization and extraordinary exploitations done by companies against their workers. Those work practices are symptoms of self-exploitation through the mobilization of labor with low or no wages, with exploiting family members, child labor or with very low wages.
2. As informal jobs and the number of female workforce in paid jobs increase, homeworkers have become a significant proportion of informal workers in manufacturing, agriculture, trade and services. The majority of or almost all homeworkers are women. They are independent homeworkers or sub-contracts, generally less educated, spending time in both paid work and domestic affairs, and generally live and work below the decent work standards.
3. Although Law No. 13 of 2003 on Labor applies to homeworkers, home-based work is known as an area that is difficult to control and monitor, and on which the labor laws are difficult to enforce, making it vulnerable to exploitation practices. The women homeworkers, based on observations in 7 cities/districts in East Java experienced working conditions that are below the standards of decent work and hint on being practices of modern slavery. With regard to the catalyst role of Partners of Women Homeworkers Indonesia (MWPRI) in the attempts of improving the social welfare of women homeworkers, the working program has been concentrated on a legal-positivistic approach, specifically leaning on labor regulations derived from Law No. 13 of 2003. In addition, the strategies of program development are aimed at the availability of local government service packages which have the duty and obligation to appreciate and respect the rights of the citizens, as well as to serve and meet the vulnerable women homeworkers' needs for social security schemes.
4. The use of a legal-formalistic paradigm approach in realizing decent working conditions and jobs for homeworkers have yet to show results. This is the evidence that formal law does not monopolize the position as the guarantor of legal order in the society. The study on progressive law that prioritizes reasonableness naturally constantly deconstructs from conventional logic of law. Deconstruction from the logic of labor law in question is through expanding the horizons of law that orients to the considerations of social expediency, i.e. an approach of integrated social protection programs which are in line with the priorities of the third phase National Medium Term Development Plan 2015-2019, i.e. the eradication of poverty.

REFERENCES

- Akatiga (2003), *Employer-Employee Relationship in the Informal Sector: Implications on Labor Social Security and Its Organization*, Social Analysts Study Center Akatiga, Bandung.
- Badan Pusat Statistik (2010). *Sistem Perlindungan Sosial bagi Penduduk Rentan*, BPS, Jakarta
- BPS Provinsi Jawa Timur, *Berita Resmi Statistik*, No. 33/05/35/Th. XIV, May 4, 2016.
- Bruggink, J.J. H. (1996), *Refleksi tentang Hukum*, alih bahasa: Arief Sidharta, PT. Aditya Bakti, Bandung.
- International Labor Organization (2002), *Social Security and Coverage for All*, ILO.
- International Labor Organization (2015), *Hubungan Kerja dan Kondisi Kerja di Sebuah Rantai Pasokan Rotan IKEA*, ILO-MAMMPU-Kementerian PPN/Bappenas, Jakarta.
- Imron, A. 2008, *Perlindungan Sosial Kelompok Wanita Pekerja Rumahan dalam Hubungan Kerja Sektor Informal*, Fundamental Research Report, 2008. Malang.
- Kusuma, M. 2009, *Menyelami Semangat Hukum Progresif (Terapi Paradigmatik Bagi Lemahnya Penegakan Hukum di Indonesia)*, Antonylib, Yogyakarta.
- Rahardjo, S. 2010, *Penegakan Hukum Progresif*, Penerbit Buku Kompas, Jakarta.
- Shihab, A. (2012), *Hadirnya Negara Di Tengah Rakyatnya Pasca Lahirnya UU No. 24 Th. 2011 tentang Badan Pelaksana Jaminan Sosial*, Jurnal Legislasi Vol. 9 No. 12. 2012.
- Silaban, R, *Negosiasi Rantai Pemasok Global*, Kompas, Education and Culture column, Monday, June 20, 2016.

- Suharto, E. (2006), *Kebijakan Perlindungan Sosial Bagi Kelompok Rentan dan Kurang Beruntung*, Seminar paper, Social Department of RI, Jakarta.
- Yohandarwati, et al, (2003), *Desain Sistem Perlindungan Sosial Terpadu*, Directorate of Population and Social Welfare and Empowerment of Women, Bappenas, Jakarta.
- MWPRI-Kementerian PP dan PA RI. (2010), Workshop draft of the Policy of Homeworkers' Protection, October 18-19, 2010, Bogor.
- Pemenakertrans No. PER-24/MEN/VI/2008 on Guidelines on the Implementation of Labor Social Security Program for Workers Outside of Employment Relations.
- Permenakertrans No. 14, 2015 on the Strategic Plans of the Ministry of Employment and Transmigration, 2015-2019.