

Social Security Program in Social Engineering Frame to Alleviate the Poverty of Home-Based Women Workers

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ABSTRACT

Social security programs in present-time Indonesia in reality only affect workers of the formal sector, while workers of the informal sector—including home-based workers—whose number is larger do not receive adequate assistance. Home-based workers largely consist of women who work with standard wages which are far below the minimum wages, without occupational health and safety protection, and without social security for workers. This condition suggests that this group is still struggling with structural poverty due to the wrong policies made by state administrators. Theoretical study based on progressive law: in the sociological discourse based on the reality in the society, positivistic law or the state does not hold the monopoly. The society or particular communities may create their own norms, either to fill a legal vacuum or to reduce it. Factually, any legal issue cannot be left to formalistic law. The public also needs to fulfill and refine the law. This postulate is manifested in the lives of vulnerable home-based workers “the home-based women workers” in the instance of being neglected and do not receive social security program/normative rights. This fact proves that it is not enough to rely on formal-legal regulations to change the society. Furthermore, it would take a catalyst role for the Civil Society Institute Network (MWPRI) to strengthen the organization of “home-based women workers” in order to have a high bargaining power, to gain access to the public sphere in order to obtain the basic workers rights, including social security.

Key words : social security, law as a tool of social engineering, home-based women workers, public participation.

I. INTRODUCTION

A. Background of Study

Social security programs for the underprivileged and for vulnerable communities are still administered partially either because of legislations which were formed sectorally or because their socio-economic implementations have not been done in an integrated manner. In addition, the focus of social security program is still aimed at two large groups of the population, namely the population of workers in the formal sector who has a relatively good income, and the absolute underprivileged whose criteria is applied uniformly for the whole nation. The population that works in the informal sector or outside any employment relationship and has an income just above the poverty line, is still untouched by social security programs. In any emergency situation, the marginalized population, who is also called the vulnerable population, is faced with a crucial situation with a great potential to make them descend to the category of being poor, although this group comprises a greater number of people.

Based on data from the Central Statistics Agency (BPS), in 2013 the number of workforce in Indonesia was 149.8 million, while the number of informal workers (outside employment relationship) and the underemployed (working less than 35 hours per week) was 103.2 million, according to the records of Partner of Home-Based Women Workers (MWPRI) half of that number was home-based workers (www.tempo.co/read/news, downloaded February 5, 2014). While the results of the latest survey from the Ministry of Women Empowerment and Child Protection showed that 73% of home industry was conducted by women workers, in which 36% were Elementary School (SD) graduates and 8% was unschooled (www.portalhr.com, February 6, 2014). Home-based women workers work in a variety of occupations, some try to be independent, and some rely on order-givers or employers for their activities. Furthermore, some also work under putting-out system, which is the system wherein they bring the work from the companies or the employers/order to be worked on at home or other specified places.

This work practice of putting-out system which is largely performed by women is driven by socio-economic circumstances, among which are:

- a. The tendency of the industry to increase the use of labor under the model of putting-out system to save on production costs;
- b. The development of technology which allows a production process to be carried out separately without having to be conducted in a single place;
- c. Women/housewives having the motivation to aid their families' financial situation, while at the same time could still accomplish their home chores.

Based on an empirical study (MWPRI-ILO MAMPU, 2014-2015), half of the number of informal workers in East Java is home-based workers who work for their employers outside of companies' work system (putting-out

system) to obtain payment, either as sub-contract or labor contract/order. This home-based workers group which largely consists of women, work with standard wages far below the minimum wage provisions, without occupational health and safety and without labor social security. Given these circumstances, this group of home-based women workers is part of Indonesian citizens who are still struggling with structural poverty as a result of wrong policies by the state apparatus.

The development of social security systems and programs in the present reformation era is a major work which results from the policy of Indonesian government in the social development field. Social security system was generally applied for the first time as an alternative to overcome the problems of poverty and social inequality due to the financial crisis that occurred in Indonesia in 1997.

Constitutionally, the implementation of social security in Indonesia is based on the 1945 Constitution, Article 28 H, paragraph 3: "Every person is entitled to social security that allows their full development as a dignified human being"; Article 34, paragraph 2 of 1945 Constitution: "The State develops a social security system for all the people and empowers the powerless and underprivileged people in accordance with human dignity". Afterwards, it is followed by the publication of MPR Decree No. X/MPR/2001 on the Report on the Implementation of the MPR RI Decision by the State Supreme Agencies at the MPR RI Annual Session in 2001, which commissioned the President to form a national social security system in order to provide a more comprehensive and integrated social protection.

This policy in the form of a regulation as a follow-up of the constitutional mandate was issued as Act no. 40 of 2004 on National Social Security System and Law No. 11 of 2012 on Social Security Administering Body. Specifically, Article 1 of Law No. 40 of 2004, explicates that social security is one of the forms of protection to ensure that all people could meet the needs of a decent life. Furthermore, Article 3 of Law No. 3 of 1992 on Social Security states that social security is a protection for workers in the form of monetary compensation to substitute a portion of the lost or reduced income, and assistance in the events or circumstances in which workers experienced workplace accidents, illness, pregnancy, old age or death.

The government policy in issuing legal regulations is conducted with a specific purpose, which is a well-planned and well-measured reform to achieve certain social conditions. Based on that sociological perspective of law, as proposed by Roscoe Pound that law is the tool of social change, law must be future-oriented. Law should ultimately play an active role in creating an improvement in the society, so that the function of law is not only to create order but rather to encourage changes in the society (Kusuma, 2009: 103). That is, according to the literal meaning of social security itself the society should be free from economic hardships and poverty, in the sense that the scale of social life is fulfilled in accordance with the minimum standard of decent living.

A paradoxical phenomenon is faced by the vulnerable workers group of home-based women, in the era of post-enactment of national social security they are untouched by the policies and regulations, because based on research results (Ali Imron et al, 2015) their existence is sociologically and juridically weak, hidden and neglected. Given the alarming situation, a desire emerged from a civil society network institution called "Partners of Indonesia's Home-Based Women Workers" (MWPRI), which since its establishment has been determined to realize and implement a cooperative movement to improve employment opportunities and to gain access to social and legal protection for home-based workers (homenet.site40.net/index.php?option=com_content&task).

B. Problem Formulation

Based on the problem identification above, the problem can be formulated as follows:

1. What is the formulation of the concept of social security in the structure of Indonesia's legal system with regard to its function as a means of social engineering, as well as its implementation mechanism, for the group of home-based women workers against social risks, particularly to achieve the standard of decent living?
2. What is the model of social protection for home-based women workers with regard to the solitaire and invisible putting-out system, in connection with the catalyst role of MWPRI to strengthen the organization of home-based women workers to obtain sufficient bargaining power?

C. Purpose of Study

Social security is the commitment and social tool of the State in realizing social justice through the provision of income support and income redistribution. In practice in some developed and developing nations, social security is implemented in a standardized form and through mechanisms which are established via an integrated legislation system under a public legal authority and/or the ministry in charge of social affairs. Social security program in the context of national development is in essence a supporting element in maintaining economic stability. So this study's purpose is to formulate the concept of law as a means of social engineering, in

particular with regard to discretion and mechanisms of the implementation of social security programs aimed at informal workers groups that are vulnerable to social risks and whose economic decline would result in falling into poverty. Additionally, this study attempts to describe a model of social protection for the home-based women workers group, whose existence is neglected and is vulnerable to exploitation. The working conditions of home-based workers which are indecent and susceptible to exploitation make the study focus in this research be aimed at the ineffectiveness of the regulatory system, hence the appearance of the role of the civil society network institution MWPRI as the catalyst for the strengthening of the organization the vulnerable workers group of “home-based women workers” in order to be more empowered.

D. Literature Review

1. Social Security Was Born in the Frame of Public Policy

The views of neo-liberal theorists rooted in classical political works by Thomas Hobbes, John Locke and John Stuart Mill essentially championed that the important component of a society is the freedom of the individual. In the economic field, the 1776 monumental work of Adam Smith, *The Wealth of Nation*, viewed as a reference for neo-liberalists who put forward the principle of *laissez faire laissez passer*, published the idea of “the almost complete absence of the state’s intervention in the economy”. Broadly speaking, the proponents of neo-liberalism which developed in Europe believed that the State’s responsibilities did not include achieving social welfare. They were very confident that the superiority of natural mechanisms of the market would be capable to overcome poverty and social inequality (Nasution, 2004: 102).

According to Suharto (*op cit.*: 4-6), this excessive confidence of neo-liberalists was criticized by social democrats that stated that a capitalist economy with its free market system caused the economic depressions in the 1920s and early 1930s and as a result was considered a failure. Therefore, capitalism needs to be equipped with a welfare state system to make it look more humane. (The welfare state acts as the human face of capitalism.) The state has the role of providing social security, so that every person can access economic resources significantly and do not cause dependence.

To realize all these, the core key problem lies in government policies or the political will of the government to improve its administration function, in the context of ensuring the fulfillment the needs of a decent standard living for every citizen.

a. The concept of social security

The concept of social protection as practiced in many nations is part of a social policy related to the strategies and efforts of the government to improve the welfare of its citizens. The restrictions on social protection are still not diversified, since the formulation is always influenced by social, economic and political conditions of the state.

Deutsche Stiftung fur Internationale Entwicklung (DSE) in its discussion report used a restriction on social protection as reported by the UN in the “United Nation General Assembly on Social Protection”, namely as a collection of government and private agencies’ policies and programs which were created to deal with a variety of things, which cause substantial losses or reductions of income/salary received; providing assistance for families (and children) and providing health and housing services (Yohandawati et al., 2003: 3). The Central Statistics Agency (BPS), based on a report on the activities of focus group discussion (2004: 17), formulates a restriction on social protection system as a sustainable system that provides protection to all citizens through a set of public instruments, against social and economic difficulties which result in the citizens’ basic needs being unfulfilled, whether due to cessation, decline or insufficiency of income, due to illness, pregnancy, accident, disability, old age, death, natural disasters, or social unrest. ILO (2002: 3) in “Social Security and Coverage for All” explains that social protection is a broad concept as well as reflecting changes in the economy and the society at international level. This concept includes social security and private schemes. In detail it is stated that social protection systems can be divided into three layers: the first layer is a social safety network which is fully funded by the government; the second layer is a social insurance scheme which is funded by the contributions from work providers (employers) and workers; and the third layer is a supplementary provision which is fully managed by private agencies. Next, based on studies by several experts, it is explained that social protection is all good initiatives undertaken by the government, private sector, and the society which aim to provide transfer of income or consumption on the poor, to protect vulnerable groups against risks of livelihood, and to improve the status and social rights of marginalized groups in the society (Suharto, 2006: 7). According to Barrientos and Sheperd, social protection is traditionally known as the broader concept of social security, and is more comprehensive than social safety networking. Furthermore, Conway, de Haan et al, add that social protection is a collection of public efforts undertaken to face and overcome vulnerabilities, risks and poverty exceeding the limit (in Yohandarwati et al., 2003: 2-3).

Social protection as a vehicle for the attainment of social justice is an important element in the public policy strategy in overcoming poverty and the effort to reduce multidimensional affliction for the disadvantaged

and the powerless. As a public policy, social protection is a type of social policy which leads to a variety of assistance, provisions or programs developed by the government to protect its citizens, particularly the vulnerable groups that are powerless in the face of economic, social and political risks, and other disasters. Formal social protection systems, according to Kertonegoro in Shihab (2012: 178), can be grouped in several forms, namely: (i) social assistance; (ii) provident fund; (iii) social insurance; and (iv) employer's liability. As for informal systems, these may take the form of conventional institutions of local wisdom such as *arisan* (social gathering), *gotong royong* (mutual cooperation), mutual help, *rukun-kampung* (harmonious living), or some other society-based social safety networking schemes.

b. The Concept of Social Security

Etymologically, the term "social security" comes from the words "social" and "security"; the Latin "se-curus", "se" means liberation and "curus" means uneasiness. Whereas the word "social" means the people or a group of people who live together in a society. Therefore, the literal meaning of the term "social security" is a society that lives free from uneasiness, in the sense that the social life scale has been fulfilled in accordance with the minimum standard of decent living.

The juridical basis of social security which comes into contact with public policy in the context of state administration is mentioned in Article 22 of the Declaration of Human Rights in 1948, that each person as a member of the society is entitled to social security as well as entitled to the realization of economic and socio-cultural rights which are indispensable for the person's dignity and free development of their personality, through national efforts or international cooperation and in accordance with the resource settings of each nation. In this statement it is emphasized that citizens are not only entitled to social security but also to economic rights, which includes the attainment of decent jobs and adequate wages. In accordance with the concept of ILO (1998), it is stated that social security is a protection financed by the society itself through a series of public policies in anticipation of socio-economic risks which will likely cause the loss of the whole or the part of public income, due to job-related accidents, illness, childbirth, termination of labor relations, old age and premature death.

Constitutionally, the implementation of social security in Indonesia is guided by Article 38 H paragraph 3 of the 1945 Constitution: "Every person is entitled to social security which allows for their full development as a dignified human being"; and Article 34 paragraph 2 of the 1945 Constitution: "The state develops a social security system for all people and empowers the powerless and the disadvantaged in accordance with human dignity". Next, Article 3 of Law No. 3 of 1992 on Social Security states that social security is a protection for workers in the form of monetary compensation to substitute a portion of income which is lost or reduced, and assistance as a result of events or circumstances experienced by workers in the form of workplace accidents, illness, pregnancy, old age and death. In a broader scope, Article 1 of Law No. 40 of 2004 on SJSN formulates that social security is one of the forms of protection to ensure that the whole society could fulfill their needs for a decent living.

The main principle underlying the need for the implementation of social security to the citizens comprises two essential benefits for the common life which are: one, social security is positioned as a social tool which can protect from a variety of socio-economic risks that may befall the citizens; two, social security system is not detrimental economically and socially to both the executor and recipient of the service. Social security is not a vain public expenditure, but rather a form of social investment that is profitable in the long run and is supported by two main pillars that explain how the social security mechanism works, namely the redistribution of income and social solidarity. Social investment can be described as the presence of money circulation which circulates among members or participants of social security, resulting in a mutual protection mechanism among them which in turn creates a construction or a set of social funds, which is then moved to enable making contributions in maintaining and improving the citizens' quality of life in a sustainable way (Spicker, P. 1995: 58-60)

Redistribution of income is illustrated as the transfer of funds from a group of privileged people to the underprivileged, or a manifestation of the support of a strong economic community for the weak economic community, among others through the tax system. Whereas the social solidarity pillar is essentially a joint motion in the form of mutual support or mutual help, which can be articulated as a consensus of various risks and responsibilities against the uncertainties of life which are detrimental to the future (Suharto: 4, <http://www.policy.hu/suharto/modul>).

The implementation of social security is guided by the concept, may be provided through a social insurance system financed by insurance premiums or through social assistance whose funds are derived from tax revenues. Social insurance is determined based on the actuarial technical calculation (insurance expertise) and provision of insurance benefits is determined by the amount of the premium rate. The operation of insurance policy in principle is held by the central national government together with other public institutions, and the nature of membership of social insurance is compulsory. Whereas social assistance is not determined based on the premium payment terms, but the provision of social assistance is based on the allocation of funds collected

from tax revenues. Central and local governments channel funds or social services to the population, as a consequence of the constitutional obligation to meet the basic rights of the citizens.

With regard to the preparation of social security design and the determination of the type of the system, whether it be in the form of social insurance or social assistance, certainly depends on the purpose and content of such a system, as well as on the environmental and historical elements of the government of the concerned nation. Generally, reflecting on the experiences of various nations in the world, medical security and retirement and pension security are granted in the form of social insurance. Public assistance system is the typical example of social assistance, in the form of allowances for poor families and defense against other social risks.

2. Social Security of Informal Sector Workers in Sub-Contract Employment Relations System

There have been many empirical studies on the importance of informal sector as an alternative source of employment, and there is even a maxim that informal sector functions as the last resort. That is, it is the last hope or choice for poor people or the unemployed to earn income, although often in reality the income or wages received are not sufficient to sustain a decent standard of living (Akatiga, 2003: 2).

The category of informal workers in an employment relationship in the informal economy, generally they are not organized and are not protected by legal framework or the network of labor regulations system. Among the many informal sectors there is also a contractual employment relationship which births the relations between workers and employers, and their employment relationship is based on the model of sub-contract production.

The number of Indonesia's population that has working status, according to Central Statistics Agency (BPS, 2015), is 128.2 million people, divided into 47.5 million people (40.19%) working in the formal sector, and 70.7 million people (59.81%) working in the informal economy sector. It is estimated that half of the number of informal workers are home-based workers of the putting-out system or of the employment relationship with sub-contract production model. The practice of informal employment relationship with sub-contract model often applies standard wages that are far below the stipulated Regional Minimum Wages (UMR) as well as lacking the working safety and protection, and social security.

Running a job outside the company's working system (the putting-out system) means most of the production process which previously is done within the company or industry is transferred to the homes of the workers. This transfer of production system is not merely an element of 'convenience' given by the company to those who wish to get employment opportunities, but more than that this system in its practice results in extraordinary marginalization and exploitation by the company toward its workers, who were mainly women. This is a symptom of self-exploitation through the use of unpaid labor force, through the use of family members, child labor or very low wages (workshop draft of Home-Based Worker Protection Policy, MWPRI – the Ministry of Women Empowerment and Child Protection, Bogor, 18-19 October 2010).

Related to the variation of home-based jobs which are usually performed by women, this can be constructed as a system of commercial sub-contract, also called the putting-out system, since the production process occurs outside the company's principal work system. In addition, the construction of industrial sub-contract work is indicated through the direct involvement of the sub-contractors in the production process. The principal status is not always attributed to big companies, in fact there are also micro and small informal businesses that sub-contract work to groups of home-based workers based on kinship, acquaintanceship, or neighborhood.

The quality of work and working conditions of home-based workers tend to be worse than the working conditions and work of formal workers who work at company premises. This is caused by a lack of understanding on the side of the employers on their legal and socio-economic responsibilities toward informal workers. On the other hand, home-based workers generally do not have sufficient expertise and skills due to their low level of education and experiences.

This lack of understanding is partly due to the unclear definition of home-based workers as informal sector workers which is used as the juridical basis. For example, in the provision of the Ministry of Labor and Transmigration PER-24/MEN/VI/2008 on the Guidelines of the Implementation of Labor's Social Security Program for Labor Working outside Employment Relationship, in the Introductory Chapter it is explicated that those who work outside employment relationship are people who make efforts on their own or laborers who work outside employment relationship generally do business in the informal economy. This definition gives the impression that home-based workers characterized by putting-out system or those who work in industrial sub-contract system, are qualified as laborers who work outside the employment relationship so that they have to bear all work risks on their own. Whereas the intended employment relationship, according to Article 1, point 15 in conjunction with Article 51 paragraph 1 of Law No. 13 of 2003, is the employment relationship between employers and workers that occurs because of an agreement, whether made orally or in writing.

3. Law Orientation as a Means of Social Change

Law as a means of social engineering is the conscious utilization of law to achieve an order or a state of society as aspired, or to make the desired changes. This legal view with sociological perspective is spearheaded by, among others, Roscoe Pound with his thesis that law as a tool of social change should be oriented to the future. Law should ultimately play an active role to create a reform in the society, so that the function of law is not only to create order but rather to encourage changes in the society (Kusuma, 2009: 103).

The type of modern law as described by David M. Trubek (1972: 4-10) is a particular social process which arises from the dynamics of life in general, which generally shows the following characteristics:

- a. A system of rules;
- b. A form of human action which is carried out deliberately;
- c. A part of but also autonomous toward the state.

Regarding the characteristic in point (b), modern law is actually very instrumental in its nature and hence 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, then they will bring about changes through legislations and will try to make them happen in reality.

Thus it is possible with those legal regulations to make well-planned and well-measured reforms to achieve certain objectives. However, it should be noted that the implementation of law cannot be separated entirely from public participation. According to Satjipto Rahardjo (2010: 206), the reality of the society does not support the capability of an absolute law. He said that in daily reality, law is more of a plus-minus quality. That is, the rule of law is in fact the beginning of the process or is only aspirational. So after the law exists there is still a need to have actions so that what the law desires may come true. In a sociological discourse based on the reality of the society, law or the state does not hold the monopoly. The society or some particular communities may create their own norms, either to fill a legal vacuum or not.

It turns out that legal issues cannot be handed over to formal law. The public also needs to fulfill and refine law, which in actuality has the plus-minus quality. Rules and formal institutions still require additional public assistance to create order. Moreover, the society and the public are also capable to spontaneously organize their own power to maintain order.

II. METHOD OF STUDY

This study of law is a sociological juridical research, moving from case study to find concepts that are related to the process of coming to existence and the process of the workings of law in society. The analysis is focused on the catalyst role of the Civil Society Networking Institute "Partner of Indonesia's Home-Based Women Workers" (MWPRI) in promoting Indonesian groups of women workers to become decent laborers.

Related to the context of this study, which is the catalyst role of MWPRI in strengthening the organization of vulnerable workers group of home-based women, the approaches used (Marzuki, 2007: 93) are the conceptual approach and the case approach. Conceptual approach was used as an effort to build a concept as the stepping stone to comprehend the phenomena of law as a system of discipline. Whereas the case approach was focused on extracting information regarding the short-term and/or mid-term program activities which are currently implemented by MWPRI, both regular and temporary programs which are based on cooperation with other agencies.

Collection of secondary data was done through literature review or documentation study, by applying content analysis technique. The application of content analysis technique was intended to break down the legal literature materials from the primary source of legislation. The activity of obtaining secondary data sources in the form of non-legal literature materials, in the form of textbooks, journals of law and the internet, was placed as the primary data source in analyzing cases derived from the extraction and collection of qualitative data.

Processing and analysis of data in this study were conducted qualitatively. Presentation of research results (as the results of data processing) is fused with the analysis of data. This refers to the view of Soekanto (1986: 68-69) that in normative studies that examine secondary data, data presentation is conducted simultaneously with the analysis. That is, an integration of the collected data with the analysis associated with the studied cases to become a coherent whole and not merely a description.

III. RESULTS AND DISCUSSION

A. Formulation of the Concept of the Social Security for Home-Based Workers in Relation with Social Engineering toward a Decent Standard of Living

1. Socio-Economic Condition and the Juridical Position of Home-Based Women Workers

The increase of the quantity of informal economy workers in Indonesia is coincident with the increase of job market flexibility, followed by the results of age-population boom in early 21st century caused the high unemployment level and on the other hand is also due to the limited employment opportunities in the formal

sector. The effects of the swelling number of informal workers is a parallel process with the increase of home-based work practices due to pressures of globalization to companies to obtain means that are cheaper, more flexible and more productive.

Home-based workers are often indicated as laborers with low levels of education and skills. These groups of workers work from their personal space within their homes, and because of that are solitary in nature, have very low awareness and will to organize, and thus are vulnerable to labor exploitation. This condition is exacerbated by social facts of the lack of common understanding with regard to the meaning of home-based workers as ‘labor’ in an employment relationship within the framework of employment legal system in Indonesia.

This unfamiliarity with the legal status of as well as the rights of home-based workers, is prevalent among employers, sub-contractors and the government, because in fact there is no clear legal basis, coupled with a lack of attitude and clear signs from the Indonesian government to ratify the ILO Convention No. 177 on “Homeworks” of 1996. But the more fundamental thing is precisely that the home-based workers themselves are not aware that they are a class of labor that generally receives legal protection. Due to the grave condition that always accompanies them, the home-based workers group are very likely to suffer from the practice of labor exploitation.

Based on field observation, the group of home-based women workers that work for companies with sub-contract system (putting-out system) are faced with working conditions that are below the minimum standards, without health and work safety protection or social security. The socio-economic lives of home-based workers are generally still far from decent, as described in a survey at 9 (nine) Regencies/Cities in East Java (MWPRI Research Team, 2015), a large part of the socio-economic conditions of the families of home-based workers are still suffering from poverty or less decent living standards.

The quality of work and working conditions of home-based workers tends to be worse than the working conditions and work of formal workers who work at company premises. This is also caused by the lack of understanding on the side of employers on their legal and socio-economic responsibilities toward home-based workers. Then images are created among actors of home industry activities that home-based workers generally do not have sufficient education and skills due to low levels of education and experiences; they are merely a residual labor force that are not accepted in the formal sector.

This lack of understanding is partly due to the unclear definition of home-based workers as informal sector workers which is used as the juridical basis. For example, in the provisions of the Ministry of Labor and Transmigration PER-24/MEN/VI/2008 on the Guidelines of the Implementation of Workers’ Social Security Program for Workers that Work outside Employment Relationship, in the Introductory Chapter it is explicated that workers that work outside employment relationship are those who do business on their own or workers that work outside employment relationship generally do business in the informal sector. This definition gives the impression that home-based workers characterized with putting-out system as well as those who work in industrial sub-contract system, are qualified as workers who work outside employment relationship so that they have to bear all work risks. Whereas what is meant by employment relationship according to Article 1 point 15 in conjunction with Article 51 paragraph 1 of Law No. 13 of 2003 is the employment relationship between employers and workers which occur due to a work agreement, whether made orally or in writing.

The normative juridical aspect of home-based workers, they who work in the system of sub-contractual are workers who based on a work agreement—either written or unwritten—that gives rise to the rights and obligations of law of reciprocity between workers and employers. Although seen from the aspects of workplace and the work system are in the realm of informal economy, based on the employment agreement means there is a work binding or employment relationship. Thus, home-based workers who work in sub-contract system are included as workers who are entitled to the protection of normative labor rights according to the labor law in Indonesia. One of those normative rights is the right to obtain social security.

It is evident that the general lack of understanding about home-based workers including those with the characteristics of putting-out system, is related to the socio-economic conditions and the accompanying legal status, consequently the home-based workers group—the majority of which are women—is vulnerable to the excesses of labor usage which leads to acts of exploitation.

2. Formulation of Social Security for Vulnerable Workers Group “Home-Based Women Workers” in a Normative Juridical Study

The law provides protection for the basic rights of workers with certainty, with consequences for the employers or anyone with the title of work giver that violates the basic rights of workers, with mild sanctions up to levels of violations that can be classified as a crime.

Particularly for the normative rights of workers to social security, it is the object of State Constitution and the responsibility of all citizens and the government within the framework of Welfare State system.

According to the concept proposed by ILO (1998), social security is a protection financed by the society itself through a series of public policies to anticipate socio-economic risks which may cause the whole or a part of public income, as a result of job-related accidents, illness, termination of employment, old age, and premature death.

According to Article 1 Law No. 40 of 2004 on National Social Security System (SJSN), it is stated that social security is a form of protection to ensure that all citizens be capable to meet the needs of a decent living. Furthermore, it is explained that the National Social Security System is a governance of social security program by a number of social security administration agencies.

As a follow-up to the constitutional mandate, in November 2011 an act was passed: Law No. 24 of 2011 on the Social Security Agency (UUBPJS), which would realize a social security system for the Indonesian people and as a Public Legal Body whose accountability is directly to the President. The act ordered a transformation of four administration agencies, namely PT Askes (Ltd.) became BPJS of Health in January 2014; PT Jamsostek (Ltd.) became BPJS of Employment on July 1, 2014 and became effective since July 1, 2015; whereas for PT Asabri and PT Taspen would transform at the latest in 2029, based on government regulation.

The roles and functions of each BPJS are different in their duties and authorities. BPJS of Health has the duty of providing protection of or insurance of health; while BPJS of Employment is responsible to provide work accident insurance, pension insurance and retirement insurance. The general role of BPJS is to provide social security protection to their participants. Coverage of social security participant in BPJS includes every person who has paid their dues, including foreigners who have worked for more than six months in Indonesia. BPJS of Health implements a contribution assistance method whose allocation of funds comes from the government and from the State Budget, and is intended to aid the disadvantaged who have been registered as beneficiaries of the dues.

The task of BPJS is to register participants, collect contributions from them or from employers, receive contribution assistance from the government for BPJS of Health, manage the social security funds, manage participants' data, pay the benefits and/or provide services (Article 10 of UUBPJS). The authority of BPJS, among others, is to collect dues, put the investment of social security funds, monitor and check the compliance of participants, associate and/or terminate contracts with provider of services, impose administrative sanctions, and report participants' non-compliance to the authoritative body (Article 11 of UUBPJS).

Some of the obligations of BPJS include providing a single identity number, developing fund assets of social security, providing services and benefits, providing information on the rights and obligations of the participants, providing technical reserves, and submitting reports on the development of the program to the President periodically as well as submitting the copies to the National Social Security Council (Article 13 of UUBPJS).

It is the duty of the government to register a special BPJS participation for the poor and the disadvantaged, as well as their families, as beneficiaries of contribution aid (PBI). Beneficiaries of contribution aid are required to provide complete and correct data on themselves and their families to the government which in turn will be delivered to BPJS (Article 18 UUBPJS). Article 14 Law No. 40 of 2004 on SJSN determines that the government will progressively enroll beneficiaries of contribution aid as participants to BPJS. Then in Article 17 paragraph 4 it is stated that social security program for the poor and the disadvantaged is paid by the government. Paragraph 5 states that in the first phase, the dues of the disadvantaged paid by the government are limited to health insurance program. Article 7 of Government Decree No. 101, 2012, determines that the Ministry of Health should enroll the number of national PBI of social security which has been determined in the integrated data of each province, regency/city, by BPJS after the data has been verified and validated.

The integrated data on the beneficiaries of health contribution aid for the poor and the disadvantaged, for every six months in the current budget year is verified and validated. The results of the verification and validation of integrated data could be changed; therefore Article 12 of Government Decree No. 101 determines that citizens who are no longer poor and are already well off are required to become participants in the health insurance by paying dues. For workers that are classified as well off, work providers are required to register their participation and the payment of dues is derived from half of the income of the associated workers.

Work providers who do not register any participation of their workers and pay dues to BPJS are subjected to maximum 8 years of incarceration or fine of maximum one million rupiahs (Article 55 UUBPJS). In addition, administrative sanctions may be imposed as well by BPJS to employers who do not register themselves and their employees as participants in BPJS programs. Those administrative sanctions, according to Article 5 paragraph 2 of Government Decree No. 86, 2013, may take the forms of: written warning, fines and/or being denied certain public services. Administrative sanction in the form of being denied certain public services that is imposed on the employers includes: business-related licensing, licenses required in order to participate in project biddings, licenses required to hire foreign workers, licenses for companies that provide the services of workers/laborers, or building permits.

The procedure of registration as participants of BPJS of Employment, informal sector workers and the self-employed may form a body/organization consisting of minimum 10 people and register to BPJS of Employment with the following criteria:

- a. Representatives of the body register at the office of BPJS of Employment by filling out the registration form;
- b. Choose the type of security they want to participate in (they are not allowed to participate in the entire security) as well as the period of payment of dues (monthly or every three months);
- c. Pay the first contribution which can be done at an ATM or by cash deposit at Bank Mandiri, BNI, BRI, and Bukopin at maximum 30 working days from the time of registration;
- d. Completing the requirements: Business Permit from local RT/RW, a copy of each worker's ID and family card, and one colored photograph of each worker size 2x3.

The caretaker of the body/organization has the following duties: (a) gather outside-employment-relationship workers; (b) register participants to BPJS of Employment; (c) collect and deposit contributions to BPJS of Employment; (d) assisting in the distribution of BPJS membership cards to the participants; (e) take care of the rights of the participants to the security; (f) remind participants that are overdue in their dues and report this to BPJS. The types of the employment social security program, in accordance with Law No. 3, 1992, on Jamsostek, in conjunction with Permenakertrans No. PER-24/MEN/VI/2008, include: (a) work-related accident insurance (covering the costs of transporting the injured worker, replacing temporary costs during injury-related absence, costs of medical care, compensation for permanent total disability, death benefits, periodical compensation for death and permanent total disability, rehabilitation costs); (b) death benefits (covering death benefits, funeral expenses, periodical compensation); (c) retirement insurance (including the overall contributions the participants have paid together with the results of its investment); and (d) health care benefits (covering (i) first level outpatient including examination and treatment by general practitioners and dentists, (ii) advanced level outpatient in the form of examination and treatment by specialists, (iii) hospitalization, (iv) delivery assistance, (v) diagnostic support in the forms of prosthetic costs, or those and glasses, (vi) emergency treatment).

According to Article 6 paragraph 1 of the Presidential Decree No. 12, 2013, on Health Insurance, the participation in health insurance program is compulsory and involves the entire society. In accordance with Article 20 paragraph 1 of Presidential Decree No. 12, 2013, every participant is entitled to health insurance benefits which include personal health services, comprising the promotive, preventive, curative, and rehabilitative services, including drugs and consumables medical materials in compliance with the necessary medical needs. In Article 20 paragraph 2 it is determined that those health insurance benefits consist of medical and non-medical benefits; medical benefits whose services are not tied with the amount of the dues paid, while non-medical benefits include the benefits of accommodation and ambulance services.

The new atmosphere in the era after the enactment of this social security system exudes a new hope for workers groups that work in the informal sector in obtaining protection from social risks from the state. Organization problems occurring for the gathering bodies of participants whose statuses are that of sub-contractual informal laborers necessitate a pioneer so that the management of the members' needs may run effectively.

As described earlier, the data compiled by BPS at the end of 2013 shows that the number of informal workers (outside the employment relationship) and the underemployed (work less than 35 hours per week) is 103.2 million (68.89%), and according to the records of Partner of Home-Based Women Workers (MWPRI) half of the number are home-based workers. Surveys and Focus Group Discussions (FGD) held on the initiative of ILO/MAMPU Project in East Java and North Sumatra show that of the total number of home-based workers 87% are women. The results of the survey from the period of 2014-2015 on 49 organizations of home-based women workers in 9 regencies/cities in East Java which was facilitated by MWPRI state that from the 1.128 people registered as members of the organizations of home-based women workers, not one is participating in BPJS of Employment.

B. Model of Social Protection for Home-Based Women Workers Concerning the Catalyst Role of MWPRI in Strengthening the Organization of Home-Based Workers

Social protection as a vehicle for the attainment of social justice is an important element of public policy strategy in overcoming poverty and as an effort to alleviate the multidimensional affliction suffered by the disadvantaged and the powerless. As a public policy, social protection is a type of social policy that leads to various forms of service, provisions or programs developed by the government to protect its citizens, particularly the vulnerable who are powerless in the face of various economic, social and political risks, as well as other disasters. Formal systems of social protection, according to Kertonegoro in Shihab (2012: 178), can be classified into several forms: (i) social assistance; (ii) provident fund; (iii) social insurance; and (iv) employer's liability.

Informal systems may take the form of conventional institutions that are part of local wisdom, such as social gathering, mutual help, mutual support, harmony in the neighborhood, or some other society-based social protection networking schemes.

Constitutionally, the administration of social security in Indonesia is based on Article 28 H paragraph 3 of the 1945 Constitution: “Every person is entitled to social security which allows their full development as a dignified human being”, and Article 34 paragraph 2 of the 1945 Constitution: “The state develops a social security system for its entire people and empowers the weak and the disadvantaged in accordance with human dignity”. Then, Article 1 Law No. 40, 2004, on National Social Security System states that social security is one of the forms of protection to ensure that all citizens be able to meet the needs of a decent living. After the passing of Law No. 24, 2011, on the Social Security Agency, it is expected to realize a social security system for all Indonesian people, and as a Public Legal Body whose accountability is directly to the President.

The roles and functions of BPJS bear two different duties and authorities. BPJS of Health has the duty to provide health protection or insurance; whereas BPJS of Employment is responsible for insurances against work-related accidents, pension, death, and retirement. BPJS’s general role is to protect social security provided for its participants. Participants of social security within BPJS comprise every person who has paid their dues, including foreigners who have worked for more than 6 months in Indonesia. BPJS of Health applies a model of contribution assistance whose allocation of funds comes from the government and from the State Budget which is intended to aid disadvantaged people who have been listed as beneficiaries of contribution aid.

The duties of BPJS are to register participants, collect contributions from participants or work providers, receive contribution aid from the government for BPJS of Health, manage social security funds, manage participants’ data, pay the benefits and/or provide services (Article 10 UUBPJS). The authorities of BPJS, among others, are to collect dues, invest social security funds, to monitor and check the compliance of participants, associate and/or terminate contracts with service providers, impose administrative sanctions, and report participants’ non-compliance to the authorized institutions (Article 11 UUBPJS).

A number of BPJS’s obligations include providing a single identity number, developing social security fund assets, providing services and benefits, providing information on the rights and obligations of participants, providing technical reserves, and submitting reports on program development to the President periodically as well as submitting the copies to the National Social Security Council (Article 13 UUBPJS).

It is the duty of the government to register special participation in BPJS for the poor and the disadvantaged and their families, as beneficiaries of contribution aid. Beneficiaries of contribution aid are required to submit complete and correct information on themselves and their families to the government in order to be delivered to BPJS (Article 18 UUBPJS). Article 14 of Law No. 40, 2004, on SJSN determines that the government progressively registers beneficiaries of contribution aid as participants to BPJS. Furthermore, Article 17 paragraph 4 states that contribution for social security program for the poor and the disadvantaged is paid by the government. Paragraph 5 determines that in the first phase, contribution for the disadvantaged which is paid by the government is restricted to health insurance program. Article 7 of the Government Decree No. 101, 2012, on Beneficiaries of Contribution Aid (PBI) for Health Insurance, determines that the Ministry of Health registers the number of national PBI for health insurance which has been determined in the integrated data from each province and each regency/city which has been compiled by BPS, after the data has been verified and validated.

Based on a survey on 49 organizations of home-based women workers in 9 regencies/cities in East Java which has been organized by MWPRI during a period of 2014-2015, from 1.128 people registered as members of organizations of home-based women workers not one is a participant in BPJS of Employment. From that amount, only 547 people are registered as participants in BPJS of Health, whether as a beneficiary of contribution aid (PBI) or as an independent contribution payer participant.

The description of information revealed above is simultaneously a reflection of the ineffectiveness of law—in this case the law of Social Security for Workers—to provide security against work risks for home-based women workers. This fact proves the absence of access to employment social security, particularly for home-based informal workers who are socio-economically vulnerable. This closing of access to social security services for home-based women workers, as well as some internal reasons that cause them to be isolated and external reasons that cause them to be recognized by the government, is worsened by the lack of the ability of the home-based women workers to lobby, negotiate, and self-advocate to fight for their common interest. Due to this kind of situation, the catalyst role of the civil society networking institution MWPRI is needed to foster the strengthening of the organization of home-based women workers so that they will be able to have sufficient bargaining power in dealing with the issue of their normative rights as laborers.

Law as a tool of social engineering is the conscious utilization of law to achieve an order or an aspired-for situation in the society, or to create desired changes. In the context of the alleviation of vulnerable workers “home-based women workers”, law or the provisions made are not capable to finalize their designs accurately and completely by acting by themselves. In accordance with the results of the development of the study of

progressive law by Satjipto Rahardjo (2010: 205), law (regulations) has mere plus-minus quality in daily life. That is, the process to be undertaken is still a long way to go compared to the writing form. It turns that the achievement of the aspiration to build decent working condition and livelihood for home-based women workers cannot be left to formal law and its institutions. The public also needs to fulfill and refine the law; in the context of empowering home-based women workers, the role of catalysts such as MWPRI is very important to obtain access to the public sphere, for example by attempting to earn a place in the Tripartite Body.

The society and the public are also capable to organize their own power spontaneously to solve the problem of poverty, even though such capability has to be worked out together with other parties that share similar concern. It is empirically proven that formal institutions do not have the absolute capacity to finalize their own duties; to do their duties they always need the help, support and added power from the public. This is one of the weaknesses of the characteristics of modern law; ever since its inception 250 years ago, the state has always wanted to monopolize power, including the formation of law, the creation of the structure (agencies and institutions) and the process. Ever since that time, the autonomous power of the people has been drown out. But it never dies and is still working quietly or being latent (Satjipto Rahardjo, 2010: 209).

In the context of empowering vulnerable workers “home-based women workers”, the potency of the civil society networking institution MWPRI has been significantly demonstrated to mobilize diverse potentials to declare the strategic program of 2014-2015 including:

1. Organizing and strengthening home-based women workers through: mapping activities, formation of groups/associations, and the strengthening of organizational networks;
2. Advocacy for the protection of home-based workers: raising the issue of home-based workers at local and provincial levels by creating a dialogue space for the initiation of the formulation of policies/regulations for home-based workers;
3. Pilot initiative “Social Business Centre” for home-based women workers.

With regard to the maxim of law as a means of social change, in order to achieve the targets as desired the life of law cannot be monopolized by power, process and formal institutions, but by the rise of the autonomous power of the people to restore law as an institution with dignity which can lead the people to a more prosperous life. This is in line with the vision of progressive law which liberates, both in legal thinking and action, so that the law will be allowed to flow freely to finalize its duty to serve mankind and humanity (Satjipto Rahardjo, 2010: 69).

IV. CONCLUSION

1. Social security is the commitment and social tool for the State in realizing social justice through the provision of income aid and income redistribution. Moving on from the concept of law as a means of social engineering, the use of law is therefore expected to create and encourage changes in the society.
2. Social security is positioned as a social tool that is capable to protect against a variety of socio-economic risks that befall citizens, particularly the workforce. The social security program in Indonesia now only touches groups of workers in the formal sector, whereas workers in the informal sector—including home-based workers—whose number is far larger do not receive adequate social security services.
3. The quality of jobs and working conditions of home-based workers, the majority of which are women, tends to be worse than that of the working conditions and jobs of formal workers who work at company workplaces. This is caused by, among others, the lack of understanding on the side of the work providers of their legal and socio-economic responsibilities toward home-based workers. Meanwhile, there is an image existing among actors of home industry that home-based workers generally lack the sufficient expertise and skills, due to their low levels of education and experience. They are merely residual workforce from the jobs in the formal sector.
4. Home-based workers that mostly performed by women work with wages far below the minimum wage provisions, without protection of their safety and health at the workplace, and without social security. That condition reflects the condition of the society that is still struggling with structural poverty due to the wrong policies made by state administrators.
5. Generally, home-based women workers are unorganized and unprotected by legal framework or by the networking of employment regulations system. Based on a survey conducted on 49 organizations of home-based women workers in 9 regencies/cities in East Java which was organized by MWPRI in the period of 2014-2015, from the 1.128 people registered as members of the organizations of home-based women workers not one participates in BPJS of Employment. From that amount, around 547 people are registered as participants in BPJS of Health, whether as a beneficiary of contribution aid (PBI) or as an independent contribution payer participant.
6. Starting from the perspective of modern law which views law as a particular social process which emerges from the dynamics of law and therefore is very instrumental in its nature, there is a pretension that social life

can be shaped by a particular volition. In a sociological discourse which is based on the reality in the society, law or the state does not hold the monopoly. Based on the paradigm of progressive law, the society or a certain community is able to create its own norms, either to fill a legal vacuum or to complete it.

7. Turns out that all legal issues cannot be left to formal law. The public also needs to fulfill and refine law, which in actuality still has the plus-minus quality. Regulations and formal institutions still require additional help from the public to create order. Moreover, a community and a public are capable to spontaneously organize their own power to maintain harmony.
8. Related to the public role to reach vulnerable workers group “home-based women workers” in order for them to receive employment social security program, it is not sufficient to rely on formal regulations and their institutions. Seen here that the catalyst role of the civil society networking institution MWPRI to strengthen the organization of “home-based women workers” is very important, in order for the workers to obtain a strong bargaining power in accessing the public sphere, in this case to become part of the Tripartite Body, in order to achieve the normative rights of workers including social security.

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Curriculum Vitae

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