Issue 2: Leveraging regulations to support women in the private sector in Indonesia[1]

1- Introduction

The second publication of the Indonesia Gender Dashboard presents an overview of recent progress and identifies shortcomings within the country's legal framework surrounding women's participation in the private sector. The content is based on a review of Indonesian regulations and the latest Women, Business and the Law (2023) data and reports. The purpose of this publication is to stimulate a public-private dialogue and propose concrete actions to address the remaining gaps. To support these discussions, this issue provides examples of best practices from selected G-20 countries. The remainder of the note is organized as follows. First, it examines the specific legal constraints that women face in the Indonesian private sector, focusing on labor law, tax regulations, and asset ownership. Second, the note provides concrete recommendations stemming from inspiring examples that have been successful in selected G-20 countries. This issue concludes by identifying the key actors that can lead a successful public-private collaboration to implement these recommendations in Indonesia.

2- Legal constraints surrounding women's economic activities in Indonesia

Over the past 50 years, there have been significant improvements in the overall rights of Indonesian women. According to WBL 2023, women's legal rights increased from 20 percent of men's rights in 1970 to over 70 percent in 2022. However, many regulations governing economic activities in Indonesia still need to be adapted to accommodate women's increased economic participation. The 1970s brought about greater equality in decision-making, which boosted women's economic security. Some notable changes include removing the requirement for the husband's consent for married women when making choices regarding residence, employment, or contracts (GoI 1974) and harmonizing the retirement age (GoI 1977). Despite these positive changes, there are still contradictory provisions within the legal framework that impose social norm constraints on women in the private sector. Inadequate laws against discrimination in the workplace and marriage persist. For instance, Law No. 1/1974 on Marriage reinforces traditional gender roles (men as breadwinners and women primarily responsible for family welfare), and continues to limit women's decision-making powers.[2] Consequently, women in more traditional families often face significant barriers when making personal or economic decisions, particularly when starting a business or obtaining loans without their husband's permission. More recently, Indonesia has introduced various laws affecting the activities of micro, small and medium enterprises (MSMEs). For instance, Law No. 20/2008 facilitates the development of MSMEs by establishing provisions for their establishment, registration, licensing, and assistance, while also enhancing access to finance, technology, markets, and business development services. It places an emphasis on fostering entrepreneurship, innovation, and competitiveness to stimulate economic growth and job creation. These laws are gender-neutral and do not recognize, nor address, the specific challenges faced by women in terms of discrimination, harassment, and childcare. To provide concrete suggestions, this issue focuses on three aspects of the current regulations: labor, tax, and asset ownership (primarily through inheritance).

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[2] Article 31 specifies that the husband has the right and obligation to make decisions within the household and community, while the wife is expected to follow and support those decisions. This provision limits women's decision-making power within the marriage and reinforces the notion that men should be the primary decision-makers.

a. Labor law constraints

The main shortcomings in the Labor Law in Indonesia relevant to women are in childcare and equal pay. The Indonesian Labor Law (Law No. 13/2003 on Manpower), as amended by Law No. 2/2022 on Job Creation and Government Regulation No. 35/2021, serves as the regulatory framework for employment provisions in Indonesia. These regulations govern various aspects of employment, including working hours, holidays, rest periods, wages, overtime, leave, and termination of employment. While they provide a foundation for employment rights and conditions, there is room for improvement in certain areas to enhance gender equality in the private sector and encourage women's participation in the labor force. Specifically, the current provisions in Law No. 2/2022 on Job Creation and Government Regulation related to childcare, parental leave policies, and equal pay could be revised to address gaps. Ensuring adequate support for childcare responsibilities, implementing fair and equitable pay practices, and enhancing transparency in employment practices would make the work environment more inclusive and equitable for women.

i. Childcare and parental leave policies

Childcare and parental leave provisions play a crucial role in promoting women's economic inclusion and enhancing their participation in the formal sector, while also recognizing their caregiving responsibilities. Unfortunately, the existing regulations regarding such an essential aspect of women's lives in Indonesia have certain limitations. Under the current regulations, women are entitled to paid maternity leave for a duration of 3 months split in half between pre- and post-birth, as stipulated in Articles 82 and 84 of the Labor Law. This falls slightly below the International Labor Organization's (ILO) Maternity Protection Convention, which recommends a minimum of 14 weeks (about 3.5 months) of maternity leave. More importantly, however, providing only two days of paternity leave to fathers, as outlined in Law No. 13/2003, Art. 93(4)(e), places an additional burden of unpaid care work on women. This imbalance in parental leave provisions contributes to perpetuating gender disparities and reinforcing traditional gender roles. [3]

Moreover, Indonesian employees scarcely benefit from childcare support from their employers or the Government of Indonesia (GoI) upon their return to work. The private sector does not receive systematic financial or non-financial support to establish childcare facilities. This means that, in financially constrained MSMEs, female employees face specific challenges in accessing childcare facilities and resources when they return to work after maternity leave. . To address these issues, Law No. 23/2002 on Child Protection regarding childcare could be revised. These revisions could include providing financial and non-financial support to the private sector for establishing childcare facilities, ensuring equal access to childcare services for all employees, and extending paternity leave to promote shared caregiving responsibilities.

ii. Equal pay

The issue of equal pay is more relevant to female employees' income than female business owners. The current Labor Law in Indonesia does not include provisions mandating equal pay for equal value of work between genders. In addition, there are no specific measures outlined in the law to address wage transparency or bridge the existing pay gaps. This places a comparatively higher financial burden on women when they face childcare expenses. It is worth highlighting that the issues of equal pay and wage transparency are addressed in the ILO's Equal Remuneration Convention for 1951 (No. 100). This

[3] Some larger companies may have more balanced policies based on their capacities. Introducing more balanced regulatory mandates could lead to an harmonization of practices.

convention emphasizes the principle of equal remuneration for men and women workers for work of equal value, and encourages member countries to take necessary measures to ensure its implementation.

iii. Additional regulatory constraints related to obligations imposed on employers

The following articles, which aim to protect female workers, may paradoxically increase discrimination against women employees, and affect employers' decisions on hiring women or paying them equally to men. They can give rise to a perception of female labor being more expensive and less flexible.

Labor Law	Provisions
Article 76(3)	Entrepreneurs who employ female workers/ laborers to work between 11 p.m. and 7 a.m. are under an obligation: a. To provide them with nutritious food and drinks; and b. To maintain decency/ morality and security in the workplace.
Article 76(4)	Entrepreneurs are under an obligation to provide return/ roundtrip transport for female workers/laborers who work between 11 p.m. and 5 a.m.
Article 81	Female workers/laborers who feel pain during their menstrual period and tell the entrepreneur about this are not obliged to come to work on the first and second days of menstruation.

However, simply removing these articles in their entirely could be counterproductive in the Indonesian context. Instead, they could be made flexible enough to minimize the costs incurred by employers, depending on company size.

b. Tax constraints

The optional joint taxation system for married Indonesian women can adversely affect their independence and ability to make financial decisions. Article 8 of Law No. 7/1983, modified by Law No. 36/2008 on Income Tax, provides guidance on two tax filing methods for employed married women: jointly with their husband as a family unit, or separately as individuals. There are certain conditions under which a wife can file her tax return individually, including: (i) if her income has already been taxed through her employer; (ii) if the husband and wife conjointly declare formally to separate their property or income legally; or (iii) if the wife wishes to meet her tax obligations individually. The issue arises because, while it is more beneficial for a couple to file their taxes jointly, it may not be advantageous for the wife as a secondary earner if she falls into a higher marginal tax bracket. For instance, in dual-earner families where women choose to have their tax file numbers, they may end up paying higher income tax compared with dual-earner families with a single-family tax file number, which is typically the husband's. This discrepancy in tax treatment may disproportionately burden women, reducing their incentive to seek separate income. These losses could be covered through other provisions, such as additional tax deductions for couples or through employers, or tax deductions on childcare expenses (Niesten 2023). But, after careful examination, no such provision was found in the Income Tax Law or in the provisions for Corporate Income Tax. Introducing such deductions or considering an individual taxation system has the potential to promote employment, support families, and enhance the quality and accessibility of care services.

c. Assets ownership through inheritance

The ability of Indonesian women to inherit assets is determined by the country's Islamic laws, which provide more inheritance rights to men. According to Article 176 of the Compilation of Islamic Laws in Indonesia, a woman's right to inherit is limited in families that have both female and male children. According to this article, assets are divided between male and female beneficiaries at a ratio of 2:1. This means that heiresses may receive a smaller share of the inheritance than their male counterparts. While Article 183 allows inherited parties to agree on the distribution of property, the default provision of a 2:1 ratio can result in unequal inheritance for women. It is important to note however that this is an evolving issue on which discussion of potential reforms are underway.

These laws reinforce traditional gender roles and dynamics within households. Men are typically considered the head of the household and tend to own key assets, such as the family home, while women are often seen as their husbands' helpers. The limited ownership of property and inheritance rights contributes toward the reluctance of women entrepreneurs to apply for bank loans and reduces their bargaining power within the household. Without sufficient collateral, they face challenges in meeting the requirements set by financial institutions, hindering their access to capital and opportunities to start or grow their business. Addressing this issue requires a comprehensive approach that involves legal reforms to ensure equal inheritance rights for women and facilitates women's ownership of property through housing finance mechanisms.

3- Recommendations to address the regulatory challenges in Indonesia

a. Labor Law

After conducting a study on the potential impacts of changing Labor Law regulations that may constrain women's employment, revisions to improve overall Labor Law constraints could be considered. Indonesia could then implement measures to address discrimination against women in the field of employment and remove or mitigate some of the obligations imposed on employers for employing women. The revisions could include:

(i) ***Childcare:*** The GoI can support the provision of improved childcare services by instigating regulations that are favorable to the establishment of the following childcare facilities through PPPs:
- **On-site childcare**: A childcare center established by an employer or an appointed third party on company premises.
- **Off- or near-site childcare**: A childcare center established by an employer or several employers in the same geographical area.
- **Employer-supported childcare**: Financial support provided to childcare centers or directly to parents to benefit a company's employees.

(ii) ***Paternity leave:*** The GoI should consider adjusting or harmonizing the obligations on companies for their female workers in certain sectors or during certain working hours.

(iii) ***Equal pay:*** The GoI should consider enacting legislation to ensure equal remuneration for work of equal value.

b. **Taxation**

The taxation mechanisms can be improved, especially for married women, through revisions of marriage rights. To reduce the tax burden for Indonesian women, the country could consider moving toward an individual tax system and removing gender references in the Tax Law. Implementing tax credits for childcare would also be beneficial by increasing the use of private childcare facilities and reducing childcare expenses, which otherwise often lead women to stay at home.

c. Assets ownerships/ Inheritance

To improve inheritance rights, Indonesia may want to consider closing the gender gap regarding inheritance law by giving women equal inheritance rights. Financial sector reforms could accompany these measures to support women's acquisition of immovable assets and access to business loans without collateral (through credit guarantee schemes, for instance). Complementary policies can be introduced in the financial sectors to improve women's access to finance. [4] Commercial banks can also provide additional support teams for women applicants.

4- Inspiring G-20 countries' best practices addressing similar issues

Many G-20 countries have faced regulatory issues similar to those in Indonesia and have taken successful actions in recent years to improve women's economic participation. For each challenge, this section provides some key examples to inform the public-private dialogue and concrete recommendations.

a. Labor Law

Gaps	Best practices
Obligations for employers specific to female employees that limit incentives to hire women.	**Jordan** issued an order in 2020 to remove any requirements related to women's employment in relation to working hours and type of employment. It is hoped that this will increase women's participation in the private sector.
Absence of government-funded childcare infrastructure, financial support to private sector, or community-based childcare services in Indonesia.	a. **The Republic of Korea** has constructed an extensive system of affordable early childhood education and care (ECEC) through public and private services. Policies implemented by the Rep. of Korea include direct subsidies to many providers and generous childcare benefits for parents. As a result, the share of children under age 3 enrolled in ECEC increased from 3 percent in 2001 to 41 percent in 2018. **Link to Childcare Act** **Link to the provided services** b. **Japan** provides 14 weeks of paid childcare leave (Childcare and Family Care Leave Act, Art 9).

[4] An upcoming publication focusing on access to finance will provide some recommendations.

	c. Iceland provides three months of non-transferable leave with 80 per cent of salary for both parents
Unclear provision for equal pay	**a. Saudi Arabia's labor law provides equal pay rights and equal opportunities for females and males**. It also amended the definition of a worker to include both male and female workers. According to Art. 3 of the Saudi Arabian Labor Law (Kingdom of Saudi Arabia 2005) work is a citizen's right. All citizens have equal rights to work without discrimination based on gender, disability, age, or any other form of discrimination, whether during the work or hiring process, or when the position is advertised. **c. Jordan has recently made significant efforts implement and enforce of equal pay initiatives.** The GoJ has been exploring interesting initiatives on this such as digitization of wage payments for easier tracking among others. **b. Mandatory measures for equal pay can also be found in French law.** For example, Decree 2022-243 on the Gender Equality Index requires French companies with more than 50 employees to publish the score obtained on the gender equality index every year on their website. If it is less than 75 out of 100, they have three years to comply. Otherwise, they are financially sanctioned up to 1 percent of their payroll.

b. Taxes

Gaps	Good examples
Different taxation mechanisms for married women and lack of supportive tax deductions	a. In the **Netherlands**, a 50 percent reduction in childcare fees for all parents and a simultaneous increase in tax credits for low-income working parents increased the female labor supply and the number of hours worked (WBL 2022, Chp 2). b. Additional fiscal policy strategies were suggested in GTZ (n.d.) on taxation and gender equality: • **Capacity-building in tax policy units** within the Ministry of Finance and tax administration, as well as of decision-makers and women's organizations, to increase openness toward gender-responsive policies throughout the public sector. In the Rep. of Korea, government officials must attend specific training to learn how to prepare a Gender Budgeting Statement (a document that contains information on gender budgeting targets and the beneficiaries of government spending to promote gender equity) in order to be able to prepare them. • **Gender-sensitive revenue incidence analysis**. The annual budget is accompanied by an official assessment of the budget's overall impact in promoting gender equality, including a gender-disaggregated analysis of specific policy measures (both revenue- and expenditure-related). The assessment must be conducted by the central budget authority (or under its authority),

	• **Research to increase knowledge regarding gender equality and revenue-raising/tax policies and expenditures**.

c. Assets ownership/Inheritance

Inequal rights to inherit limit women's access to credit	Many countries have equal inheritance rights for women and men with inheritance law that does not differentiate based on gender. Examples include France, Sweden, China, and Thailand.

d. Other constraints: Leadership positions

The issue of women's participation in the private sector also arises as they consider their career growth opportunities. The lack of clear regulation fostering equal opportunities for leadership positions stunts the evolution of female employees in corporations. To date, there is no provision in Indonesian law for minimum female representation on company boards (GoI 2007). Similar to several European countries, including Germany, Italy, Belgium, France, and the Netherlands, Indonesia could impose mandatory quotas requiring gender diversity on boards of directors of companies. The country could consider taking the OECD approach (OECD 2020) by introducing the following changes:

- Laws that set a minimum quota for women on boards.
- Rules on disclosure of the gender make-up of company boards and diversity policies.
- Comply-or-explain provisions on gender in corporate governance codes.
- Voluntary targets for gender diversity on boards and in senior management.

5- Conclusion

To encourage more women to participate in the private sector, the GoI needs to address specific issues related to childcare, equal pay, incentives for hiring women, taxation, and asset ownership. This requires a collaborative public-private effort between the GoI and private entities that strives to improve gender inequality in the Indonesian labor force. The following will be the main actors in achieving this collaboration:

- **Ministries**: The key ministries are the Ministry of Women's Empowerment and Child Protection (PPPA), the Ministry of Cooperatives and SMEs, the Ministry of Tourism and Creative Economy, and the Ministry of State-Owned Enterprises. These ministries have collectively supported MSMEs and gender equality. Other key public entities include the National Commission on Violence against Women (Komnas Perempuan), and the Ministry of Manpower. The Ministry of Manpower is particularly active in improving the competency and quality among women workers through training at job training centers (BLK). Komnas Perempuan's mission is to eliminate violence against women by creating measures that promote women's human rights.
- **Private organizations and civil society** such as the Indonesian Employer's Association (APINDO), the Association of Indonesian Women Business Owners (IWAPI), and Women World Banking.

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