

European Union Work-Life Balance Directive: A Lesson for Indonesia

Rofi Aulia Rahman^{1*}, Aimee Joy David², Jumi Apriza³, József Hajdú⁴

¹² Faculty of Law, Universitas Surabaya, Indonesia

³ Faculty of Economic and Business, Universitas Islam Indonesia, Indonesia

⁴ Faculty of Law and Political Sciences, University of Szeged, Hungary

*email: rofiauliarahman@staff.ubaya.ac.id

DOI: <https://doi.org/10.31603/variajusticia.v18i3.7732>

Submitted: October 2022 Revised: November 2022 Accepted: Desember 2022

ABSTRACT

Keywords:
Carer's Leave;
Equal
Treatment;
Flexible
Employment;
Paternity Leave;
Work-Life
Balance

The aim of this article is to compare the legal development of the work-life balance directive in the European Union (EU) and Indonesia. The objective of the Work-Life Balance Directive is to enhance the existing EU legal framework for family-related leave and flexible work arrangements. The directive includes the introduction of paternity leave (the equivalent second parent/parent will be able to take at least 10 working days of maternity leave around the birth of the child, compensated at least at the rate of sick pay); the strengthening of the right to leave for birth for 4 months and the right to request flexible leave (e.g., part-time or gradually); and the establishment of nursing leave (5 days/year) for workers caring for permanency-impaired relatives. This policy can serve as a model for Indonesia in terms of defending worker rights and promoting a healthy work-life balance. Nonetheless, the Indonesian legal framework governing the work-life balance remains obscure. Therefore, the Indonesian legal system must modify existing regulations and/or pass new laws to ensure the quality of working time and life are balance which gradually could impact to the families economic stability.

1. INTRODUCTION

With the establishment of the European Pillar of Social Rights¹ in 2017 (hereinafter: EPSR), the European Commission aims to establish inclusive justice on worker and families live by proposing Work-life balance directive.² Susch directive promotes parents and caregivers³ to balance their professional and family responsibilities. In line with that, the EPSR's Action Plan⁴ aims to update the existing EU legal framework

¹ European Commission, "European Pillar of Social Rights," 2021.

² Article 153(1) of the Treaty on the Functioning of the European Union (TFEU)

³ See Article 1 of the Work-Life Balance Directive

⁴ European Commission, loc cit

by establishing and enhancing new standards for parental, paternity and caregiver leave⁵ to address the current issues of social rights in EU.

Following the withdrawal of the former Directive 92/85/EEC on maternity protection (2015) and Parental Leave Directive, the EU Commission decided to take a broader approach to address women's underrepresentation in the labour market.⁶ One of the deliverables of the EPSR is the Work-life Balance Initiative, which addresses the work-life balance challenges faced by working parents and carers. The Work-Life Balance Directive (hereinafter: W-LBD)⁷ took into account the societal developments over the past decade and aims to improve families' access to family leave and flexible work arrangements to better balance their work and family lives.⁸ W-LBD also promotes a more equitable distribution of parental responsibilities between men and women. It is based on the outcomes of the two-stage public consultation and consultation with social partners, as well as the accompanying analysis of the impact assessment.

The W-LBD had been discussed in the European Union in August 2019, and Member States will continue to adopt it until August 2022.⁹ The W-LBD regulations give positive impacts to gender equality by encouraging women's involvement in the labour force, eliminating unequal parental responsibilities between men and women, and narrowing the gender pay gap. These policies account for demographic shifts, such as the impact of Europe's aging population.

As a result of these measures, the directive aims to improve not only work-life balance but also contribute to an increase in women's employment¹⁰ and families' economic stability. The unequal distribution of care responsibilities between men and women is one of the primary causes of employment disparity. After families have children, there is a significant widening of occupational disparities between men and

⁵ Paternity leave means the worker may leave the job temporarily to take care of their family for birth or other condition. See Barbara and Janta and Katherine Stewart, "Paternity and Parental Leave Policies across the European Union," 2018.

⁶ Modernizing the EU's *acquis* has the added benefit of ensuring that men and women receive the same level of fundamental protection across the EU. Legislative and non-legislative measures establish modern policy frameworks that aim to protect fundamental rights of workers.

⁷ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

⁸ See Lisa Waddington and Mark Bell, "Similar, yet Different: The Work-Life Balance Directive and the Expanding Frontiers of EU Non-Discrimination Law," *Common Market Law Review* 58, no. 5 (2021): 1401, <https://doi.org/10.54648/cola2021087>.

⁹ The Directive, which was passed by the European Parliament in April 2019, entered into force on 1 August 2019. Member States have three years to adopt the laws, regulations and administrative provisions necessary to comply with the Directive.

¹⁰ Despite the fact that women in the European Union are becoming increasingly qualified and tend to outpace men in terms of educational attainment, their labour force participation and, consequently, their economic independence remain significantly lower than that of men. In 2015, the average employment rate for women aged 20-64 in the European Union was 64.3%, compared to 75.9% for men; when full-time employment is considered, the gap increases to 18.0% on average. See European Commission, "An Initiative to Support Work-Life Balance for Working Parents and Carers," 2017.

women, reflecting the difficulty for women to balance childrearing with their professional obligations.

The fundamental problem is that the current EU legal framework offers few incentives for men to assume an equal share of caregiving responsibilities. The absence of paid paternity and parental leave in most of the EU Member States contributes to fathers' low uptake of leave. Gender inequality in the design of work-life balance policies reinforces stereotypes about gender and the differences between work and care. Consequently, emerging policies on equal treatment should aim to address issues of stereotypes in employment and male and female roles, and social partners are encouraged to play their crucial role in educating workers and employers about discrimination and raising awareness of it. In addition, it has been demonstrated that fathers' use of work-life balance arrangements, such as leave or flexible working arrangements, reduces the proportion of unpaid family work performed by women and frees up more time for paid work.¹¹

This article aims to provide a contextual framework for the new work-life balance legislation enacted in the EU which could provide a lesson for Indonesia. The hypothesis is that perhaps some of the elaborated provisions might be influential for Indonesian legal scholars and practitioners in shaping the country's work-life balance policy and legislation.

2. RESEARCH METHOD

This article uses a doctrinal legal research method with statutory, conceptual and comparative approach. Those approach are used to critically evaluate existing laws related to work-life balance framework in Indonesia since many weaknesses that the law could not address the workplace issue of human rights. It also analyzes new legal framework of work-life balance in European Union. This study begins by explicating and analyzing the new EU work-life balance directive followed by analyzing the weaknesses of legal framework of work-life balance regulation in Indonesia. There is a need of new concept and regulation in Indonesia's work-life balance framework to tackle the issue of employment and social security rights in Indonesia.

3. RESULTS AND DISCUSSION

3.1. The aim of the EU Work-Life Balance Directive

Insufficient efforts to balance work and caregiving responsibilities typically affect women more severely in the EU¹², since many men are deterred from taking use of parental leave and flexible work schedules. As a result, many women are forced to quit the workforce or reduce their working hours. Women in the EU are significantly more likely

¹¹ W-LB Directive preliminary considerations No. 11

¹² See Eurofound, "Working Anytime, Anywhere: The Effects on the World of Work," 2017.

than men to work part-time on average (31.3 percent of women compared to 8.3 percent of men).

Concurrently, the digitalization of the economy is changing the way how people work and conduct their business by opening up new opportunities for remote work, greater autonomy, and flexible schedules that may be used to better balance work and family responsibilities. The evolution of business models is also creating new employment opportunities and career paths. There are several industries that are rapidly changing and offering new options such as more opportunities for self-employment and new forms of activities that leave behind traditional working ways.¹³

The working-age population of Europe is both aging and declining. The impacts of an aging population will worsen in the future.¹⁴ According to projections, the EU will have only two people of working age for every person aged 65 or older by 2060, down from four in 2013.¹⁵ Women may be disproportionately affected by this as they are more likely to act as informal caregivers for sick or elderly family members.

There is a need for better regulation of work-life balance that allows for more equal parental responsibilities in couples and removes barriers to women's participation in the labour market and career advancement to address the current economic and social challenges.¹⁶

The W-LDB offers a series of legislative measures aimed at modernizing the current EU legal and policy frameworks with the following objectives: supporting a better work-life balance for parents and caregivers, promoting a more equal distribution of parental leave among men and women, and addressing the underrepresentation of women in the workforce. Furthermore, the 2013 Recommendations for Investing in Children also include supporting parental engagement in the labour force as one of their main tenets.

The W-LDB introduces the right to request flexible working arrangements for workers with children or other dependent relatives, which complements the present EU acquis regarding the Parental leave and Part-time work Directives.¹⁷ This can considerably help enhancing workers' work-life balance and have a favorable effect on women's participation in the labour market.¹⁸

The W-LDB specifies the minimum standards for paternity leave, parental leave, and caregiver leave, as well as flexible work options for parents and caregivers. As previously stipulated by Directive 2010/18/EU, the Directive applies to all workers with

¹³ Concurrently, they may boost part time and informal employment and blur the distinction between work and personal life.

¹⁴ White paper on the future of Europe European Commission COM (2017) 2025.

¹⁵ European Commission, "The 2015 Ageing Report: Economic and Budgetary Projections for the 28 EU Member States (2013-2060)," 2015.

¹⁶ See European Commission, 2017, *ibid*

¹⁷ See Thorsten Lunau et al., "A Balancing Act? Work–Life Balance, Health and Well-Being in European Welfare States," *European Journal of Public Health* 24, no. 3 (2014): 426, <https://doi.org/https://doi.org/10.1093/eurpub/cku010>.

¹⁸ See Soo Jung Jang and Allison Zippay, "The Juggling Act: Managing Work–Life Conflict and Work–Life Balance," *Families in Society: The Journal of Contemporary Social Services* 92, no. 1 (2011): 88, <https://doi.org/https://doi.org/10.1606/1044-3894.4061>.

employment contracts or other employment relations, including contracts relating to part-time employees, employees with fixed-term contracts, and individuals with an employment contract or employment relationship with temporary agents.¹⁹

3.2. Measures under the W-LBD

3.2.1. Legal measures

3.2.1.1. Paternity leave

The W-LBD primary goal is to enhance the design and gender-balanced uptake of leaves for family reasons and flexible working schedules. The Member States must provide parental and maternity leave under EU legislation. Moreover, Member States can take additional steps to facilitate work-life balance, raise the proportion of women in the workforce, and promote more equitable caregiving within couples. However the actions enacted by the Member State differ greatly in terms of their types, contents, and scope.²⁰

The introduction of paternity leave under the W-LBD means that fathers can take at least 10 working days of paternity leave on the occasion of the birth of their child and they would be compensated at least at the level of sick pay.^{21,22} In general, all EU Member States provide some type of parental leave once a child is born, though the length of the leave, the quantity of pay, and whether the leave is a family or individual right all differ between Member States.

According to the W-LBD, Member States have the discretion to decide whether to permit paternity leave to be used in flexible ways and if it can be taken partially before or only after the child is born. Regardless of the worker's marital or family status as determined by national law, the right to paternity leave shall not be made subject to a job qualification period or length of service requirement.²³

The prevalent practice today is for fathers to take a few days off immediately after their child is born (usually paternity leave), but they hardly ever extend it into a lengthier parental leave.²⁴ In the first few years of a child's life, parental care can be balanced with

¹⁹ W-LB Directive preliminary considerations No. (17).

²⁰ See OECD, "Dare to Share – Deutschlands Weg Zur Partnerschaftlichkeit in Familie Und Beruf" (Paris, 2017), <https://doi.org/https://doi.org/10.1787/9789264263420-de>.

²¹ The paternity leave payment or allowance shall ensure an income at least comparable to that which the worker would receive in the case of a halt in the worker's activities due to the worker's condition of health (sickness pay or benefit), subject to any statutory cap. MS may condition eligibility for a payment or allowance on previous employment of no more than six months immediately before the estimated date of birth of the child.

²² As proposal for a new Directive was produced in 2018, it was suggested that leave provisions be rewarded at least at the level of sick pay. Nevertheless, sick pay compensation amounts varied widely throughout the EU28. Just 14 MS offer sick pay that is considered as well paid (at least 66 % of previous earnings). See Barbara Janta and Katherine Stewart, *op cit*

²³ Article 4 of the W-LBD.

²⁴ See Janna van Belle, "Paternity and Parental Leave Policies across the European Union" (Santa Monica and Cambridge, 2016).

the help of subsequent parental leave. Nevertheless, 90% of fathers in the EU do not take advantage of their parental leave rights.²⁵

Parental leave and paternity leave can occasionally be difficult to distinguish and understand. This is due to the fact that some countries only grant a share of parental leave reserved for fathers and not paternity leave per se.²⁶ Typically, leave payments are to come from employers and often employees, contributory insurance funds, and sometimes from general taxation.²⁷

Father is one of the main subject to drive family future. Therefore, the father must involve in every development of family aspect. With the establishment of W-LBD, the father has a right to leave as an individual and non-transferable right. Several studies have pointed to the potential benefits of such ‘fathers’ leave’: fathers are far more likely to take parental leave when it is their individual and non-transferable right²⁸; as dedicated leave entitlements for fathers (called ‘daddy quotas’) were introduced, uptake among fathers rose in several EU countries²⁹; fathers’ leave affect the sharing of household chores by men and,30 men’s engagement in unpaid work and employment rates of women have been found to be positively correlated.³¹

3.2.1.2. Parental leave

Currently all Member States (MS) guarantee that every worker has an individual right to a parental leave of four months which must be used prior to the child becoming a certain age (up to 8 years old) to be determined by each Member State or by collective agreement. This age was chosen in order to ensure that each parent can equally and successfully exercise their right to parental leave. However it is not possible to transfer two months of parental leave.

The particular MS must define an appropriate notification period that workers must provide to their employers when exercising their right to parental leave.³² MS must also ensure that the employee's request for maternity leave specifies the start and end

²⁵ Anna Borg, “Work-Life Balance: Public Hearing: Work-Life Balance for Parents and Carers” (Brussels, 2018).

²⁶ There are only 7 MS providing parental leave with paid leave, such as Portugal, Denmark, Italy, Poland, France, Germany and Romania.

²⁷ Sonja Blum, Alison Koslowski, and Peter Moss, “13th International Review of Leave Policies and Related Research 2017,” 2017.

²⁸ See Erika Schulze and Maja Gergoric, “Maternity, Paternity and Parental Leave: Data Related to Duration and Compensation Rates in the European Union” (Brussels, 2015).

²⁹ Janna van Belle, op.cit

³⁰ See Lenna and Nepomnyaschy and Jane Waldfogel, “Paternity Leave and Fathers’ Involvement with Their Young Children: Evidence from the American ECLS-B,” *Community, Work & Family* 10, no. 4 (2007): 427–53, <https://doi.org/https://doi.org/10.1080/13668800701575077>.

³¹ See Andreas Kotsadam and Henning Finseraas, “The State Intervenes in the Battle of the Sexes: Causal Effects of Paternity Leave,” *Social Science Research* 40, no. 6 (2011): 1611–22, <https://doi.org/https://doi.org/10.1016/j.ssresearch.2011.06.011>. See also Helen Norman, Mark Elliot, and Colette Fagan, “Which Fathers Are the Most Involved in Taking Care of Their Toddlers in the UK? An Investigation of the Predictors of Paternal Involvement,” *Community, Work & Family* 17, no. 2 (2014): 163–80, <https://doi.org/https://psycnet.apa.org/doi/10.1080/13668803.2013.862361>.

³² MS must consider the needs of both workers and employers in this regard

dates of the leave. MS may require maternity leave with a minimum working time or a maximum working time of one year.

The MS may establish conditions under which an employer, after consultation in accordance with national law and after agreement or common practice, is permitted to delay the granting of maternity leave for a reasonable period of time on the grounds that taking maternity leave at the time of request would significantly disrupt the employer's operations. Employers are required to submit written explanations for parental leave delays.

MS can take the required steps to guarantee that workers have the right to request parental leave in a flexible manner and stipulate its application procedures. The employer must evaluate and respond to such requests, taking into account the needs of both the worker and the employer. The employer must provide written justification for any refusal to such a request within a reasonable amount of time following the request.

In addition, the MS shall evaluate the necessity of adapting the access conditions and application procedures for parental leave to the needs of adoptive parents, parents with disabilities, parents of children with disabilities or a long-term illness.³³

The parental leave (payment or allowance) is established by the MS or social partners in a manner that facilitates the parental leave for both parents.³⁴

3.2.1.3. The carers' leave

Five days of annual leave shall be granted to workers who provide personal care or support to a relative.

The unequal treatment between men and women is one of the primary causes of the employment gap. The gender employment gap expands significantly once families have children, showing the difficulty for women to balance child-rearing and work obligations. In contrast, fatherhood has the reverse effect on men's employment rates which were 12 percentage points higher than those of non-fathers and 18 percentage points greater in some nations. Several men claim that they would prefer to work fewer hours than they really do and think this to be detrimental to their home life. In certain countries - Czech Republic, Estonia, Hungary, Ireland, and Slovakia - due to the caregiving responsibilities more than 25% of women are inactive in the labour market.

The W-LBD specifies that MS may define additional specifics on the scope and conditions of carers' leave in accordance with national law or practice. Depending on national law or custom, the exercise of this privilege may necessitate adequate justification. The MS may distribute carers' leave based on a reference period other than one year, per individual requiring care or support, or per case.³⁵

3.2.1.4. Extending the right to request flexible working arrangements to carers and working parents of children up to eight years old

³³ Article 5 of the W-LBD.

³⁴ Article 8 of the W-LBD.

³⁵ Article 6 of the W-LBD.

In the 1990s, the initial EU legal framework for family-related leaves and flexible working arrangements was established. After two decades, it is vital to draw conclusions from the experience gained and the lower-than-anticipated progress made in achieving equal treatment of women and men in the labour market. The updated framework should reflect new work patterns and forthcoming trends. The availability of flexible work options such as telework, flextime, reduced work hours, and job sharing also plays an important role.

The availability of flexible working arrangements can deter workers from accepting positions that are beneath their full professional potential and skill level or from leaving the labour market to assume caring responsibilities. Despite new working trends and technology advancement, the majority of European employees still adhere to set work schedules and do not fully embrace flexible work arrangements such as remote work, flexible scheduling, and decreased work hours (part-time work).

Despite new work trends and technological advancements, the majority of European workers continue to adhere to fixed work schedules and do not fully implement flexible working arrangements such as remote work, flexible work schedules, and reduced work hours (part-time workers). Hence, the W-LBD supplements the existing EU Parental Leave and Part-time Work Directives by granting workers with children or dependent relatives the right to request flexible working arrangements. This can considerably improve the work-life balance of workers' and have a positive effect on women's participation in the labour market.

MS must take the appropriate steps to guarantee that workers with children under a set age, which must be at least 8 years old, and carers have the right to request flexible working arrangements for caring purpose. Such flexible working arrangements may be subject to reasonable duration limitation.

When flexible work arrangements are limited in time, the worker has the right to return to their original schedule. On the basis of a change in circumstances, the worker has a right to return to the former work schedule before the end of the agreed-upon period. The employer must examine and respond to a worker's request for an early return to the original work schedule, taking into account the employer and the worker needs.³⁶ Moreover, MS may condition the right to request flexible working arrangements on a minimum period of employment or length of service which shall not exceed six months.

3.2.2. Policy measures

The directive is also complemented by a series of policy measures meant to assist Member States in attaining the goals of a better work-life balance and a more equitable distribution of caring responsibilities:

3.2.2.1. Encouraging the use of European funds to improve the provision of formal care services

³⁶ Article 9 of the W-LBD.

In many cases, eligibility for early childhood education and nursing is limited to part-time job.³⁷ In addition, school hours and school holidays often collide with the full-time work of parents. Therefore, increasing the availability of early childhood education and care, out-of-school care, and the provision of long-term nursing services (including home-based services) for dependents will create additional choices for women to enter or remain in the labour market.³⁸ Investing in early childhood education and high-quality nursing is widely seen as a beneficial social investment to address the inequalities and difficulties faced by less fortunate children. In addition, investment in the care industry leads to the development of job creation. The expansion of long-term care provide positive impact on all aspects includes reducing the ohysical and psychological probel for elderly, also it could increase the health of the carers, and well-being.

To enable parents to participate in the labour market, it is necessary to assess the quantity of available places, as well as the quality, accessibility, and cost of these services (inadequate capacity, regional variance, fistance, opening hours, eligibility requirements). Childcare should be combined with other social services,³⁹ such as health and job services, to serve poor families and children more effectively.

Overall, child care and long-term care are crucial tools for reducing women's employment barriers.⁴⁰ Care infrastructure must be accessible, affordable, and readily available for parents and caregivers to remain in or enter the labour force.

3.2.2.2. *Ensuring protection for parents and carers against discrimination or dismissal*

The W-LBD ensure the protection for parents and carers against any form of discrimination in a workplace. The protection is very notable because the worker is also human beings which can have a birth. Therefore, the leaves must be provided by the employee to increase the quality of worker's life.⁴¹

3.2.2.3. *Removing economic disincentives for second earners within families*

The MS tax and benefit systems vary in terms of financial incentives or disincentives for second-life seekers to enter or remain in the workforce, such as a joint tax system, transferable tax credits, or discounts for single-income households. The majority of second-income (or low-income) individuals in the EU are female. Through tax credits or other means, only a few nations offer substantial discounts on their own

³⁷ In the absence of childcare services for children and other dependents, workers with dependents, predominantly women, are forced to reduce their working hours or leave the labour force. Although the EU established Barcelona's goal in 2002 to increase the availability of formal child care options by 2010, the majority of states have not met it. See Barcelona European Council, "Presidency Conclusions," 2002.

³⁸ European Commission, "Investing in Children: Breaking the Cycle of Disadvantage," 2013.

³⁹ OECD, "Who Uses Childcare? Background Brief on Inequalities in the Use of Formal Early Childhood Education and Care (ECEC) among Very Young Children," 2016.

⁴⁰ See Ylenia Brilli, Daniela Del Boca, and Chiara D. Pronzato, "Does Childcare Availability Play a Role in Maternal Employment and Children's Development? Evidence from Italy," *Review of Economics of the Household* 14 (2016): 27–51, <https://doi.org/https://doi.org/10.1007/s11150-013-9227-4>.

⁴¹ Marion Guerrero, "Strategic Litigation in EU Gender Equality Law" (Luxembourg, 2020).

childcare expenses.⁴² Women with young children have the highest risk of exclusion from the labor market among middle-income individuals.⁴³ Therefore, the initiative aims to assist EU Member States in removing economic barriers that impede women's labour market participation.

3.3. Administrative measures

3.3.1. Employment and social security rights

MS shall ensure that at the end of paternity, parental, and caregiver leave, workers have the right to return to their job or an equivalent position under conditions that are not less favorable, and that they are entitled to any improvement in working conditions to which they would have been entitled if they had not taken leave. During these holidays, social security and retirement payments are guaranteed, and employment relationships are reestablished.⁴⁴

3.3.2. Non-Discrimination disclosure

MS must take appropriate steps to prohibit unequal treatment of workers on the basis of their having proposed for paternity, parental, or carer's leave, or having exercised the flexible working option as explained in Article 9 of the W-LBD.

3.3.3. Protection from dismissal, adverse treatment, and burden of proof

Dismissal. MS must take the necessary measures to prohibit the dismissal of workers, because they have applied for, or have taken, paternity, parental, and carer's leave or have exercised the right to request flexible working arrangements referred to in Art. 9 of the W-LBD. If any workers believe they were terminated because they have requested or taken paternity, parental, or carer's leave or have exercised the right to flexible working arrangements, they may request that the employer present justified grounds for their termination. The employer is required to provide written justification for the termination.

Adverse treatment. MS shall implement the procedures required to protect workers, including employee representatives, from any adverse treatment or repercussions resulting from a complaint submitted inside an enterprise or judicial proceedings to ensure compliance with the W-LBD's provisions.

Burden of proof. MS shall take the appropriate steps to ensure that workers who believe they have been terminated for applying for paternity, parental, or carer's leave, prove, before a court or other competent authority, facts that could lead to a presumption that they have been terminated on such reasons. The burden of proof lies with the employer to establish that the termination was based on other grounds.⁴⁵

⁴² See Francesca Bettio and Alina Verashchagina, "Fiscal System and Female Employment in Europe," 2009.

⁴³ European Commission, "Secondary Earners and Fiscal Policies in Europe," 2015.

⁴⁴ Article 10 of the W-LBD.

⁴⁵ Article 12 and 14 of the W-LBD.

3.3.4. Penalties

The MS may set the rules on the penalties applicable to infringements of national provisions adopted in the W-LD, or the relevant provisions already in place relating to the rights covered by this Directive and take all steps necessary to guarantee their implementation. The prescribed penalties shall be effective, reasonable, and deterrent.⁴⁶

3.3.5. Equality bodies

Based on Article 20 of Directive 2006/54/EC,⁴⁷ MS shall ensure the equality bodies in conducting promotion, analysis, monitoring and support for all persons without any form of discrimination in their workplace by the employer, manager, staff, etc. Such action must be eradicated which eventually could increase the quality of work environment.

3.3.6. Level of protection (non-derogation principle)

MS may implement or maintain practices more favorable to workers than those stipulated by the W-LB Directive. In the areas covered by the W-LB Directive, the application of such directives cannot be used to justify a decrease in the general level of worker protection. The prohibition on such a reduction in the level of protection shall not affect the right of Member States and social partners to adopt, in light of changing circumstances, legislative, regulatory, or contractual provisions other than those in force on 1 August 2019, as long as the minimum standards comply with the Directive.⁴⁸

3.3.7. Reporting and review

Prior to draft a report by the European Commission, the MS must provide all pertinent information regarding the implementation of the W-LB Directive by August 2, 2027. The information must include the factual and accurate data on the implementation of all types of leave as promulgated in W-LBD. The data is used for monitoring and evaluation of the Directive's implementation, particularly as it pertains to equal rights. After that, the EU Commission will present the report to the European Parliament and Council. If necessary, a legislative proposal will accompany the report.

The following must be included with the report: an analysis of the relationship between the various forms of leave stipulated in the W-LB Directive and other forms of leaves, for example birth, adoption, and parental leave. Those leaves also must be granted to self-employed individuals.⁴⁹

3.4. Indonesian Work-Life Balance

Work-life balance is a crucial issue for every employee in government and private institutions today because there will be a decrease in employee productivity and

⁴⁶ Article 13 of the W-LBD.

⁴⁷ Article 15 of the W-LBD.

⁴⁸ Article 16 of the W-LBD.

⁴⁹ Article 18 of the W-LBD.

performance if an organization does not think about the work balance of employees properly and is not managed properly.⁵⁰ In Indonesia, work-life balance was the biggest concern for Indonesians despite financial problems⁵¹. However, Indonesia doesn't have a special work-life balance Act because all work and labour regulations are regulated through Law No. 13 of 2003.⁵²

Two of the purposes of Law No. 13 of 2003 are giving protection for workers to achieve welfare and increasing the welfare of workers and their families.⁵³ Those purposes are realized in Chapter X Law No. 13 of 2003. But in 2020, Law No. 13 of 2003 was amended with Law No. 11 of 2020. There are a few changes in a few of its articles.

Based on Law No. 13 of 2003 with its amendment, the working time in Indonesia consists of 40 hours a week with either 7 hours a day for 6 working days or 8 hours a day for 5 working days.⁵⁴ It is also followed by 1 rest day for the six working days or 2 rest days for the 5 working days. But there are some exceptions to the working time for some industries.⁵⁵ Some industries require less working time. It usually has some characteristics such as completion for less than 7 hours a day and less than 35 hours a week, flexible working time, and is done outside of job location. Some industries require more working time, such as mining, energy and natural resources, agribusiness, etc.

Employers can also require employees to work overtime as long as there is an agreement between employees and employers; working overtime can only be done 4 hours a day and 18 hours a week.⁵⁶ The agreement to do overtime must be written or through digital media. Employers also have some obligations when their employees are doing overtime, such as: giving overtime pay, giving a chance to rest, and giving food and drinks of at least 1.400-kilo calories.⁵⁷ However, Law No. 13 of 2003 juncto Law No.11 of 2020 ordered that working overtime must be avoided because employees need enough time to rest and care for their families.⁵⁸ Overtime should be done only when there is an emergency in the workplace.

Employees are not required to work during official holidays.⁵⁹ But employers can order their employees to work during official holidays if their job should be continuous. Their job is mostly related to the public interest and public welfare. Therefore, it is impossible to stop the job even during official holidays. Consequently, employers still need to pay overtime to employees who work during the official holidays.

⁵⁰ See Christian Wiradendi Wolor, "The Importance of Work-Life Balance on Employee Performance Millennial Generation in Indonesia," *Journal of Critical Reviews* 7, no. 9 (2020), <https://doi.org/https://dx.doi.org/10.31838/jcr.07.09.203>.

⁵¹ The Jakarta Post, "Survey Shows Indonesians Worry about Work-Life Balance," 2012.

⁵² Law No. 13 of 2003 is an umbrella act for labour in Indonesia.

⁵³ Article 4 Law No. 13 of 2003

⁵⁴ Article 77 Law No. 13 of 2003 juncto Law No. 11 of 2020 on Job Creation

⁵⁵ Article 23 Government Regulation Number 35 of 2021

⁵⁶ Article 78 Law No. 13 of 2003 juncto Law Number 11 of 2020. There is criminal penalty if employers do not carry out the obligations in Article 78

⁵⁷ Article 29 Government Regulation Number 35 Of 2021

⁵⁸ *Op Cit*

⁵⁹ Article 85 Law No. 13 of 2003

However, employers sometimes do not obey these regulations regarding working time in Indonesia. For instance, one of the obligations for employers who expect their employees to do overtime is to give food and drinks of at least 1.400-kilo calories. The obligation to give food and drink cannot be substituted with money. But there are some cases where employers substitute that obligation.⁶⁰ Yet there is no penalty for said employers.

Another example is during the Covid-19 pandemic, which forced government and private institutions' employees to work from home (hereinafter: WFH). WFH can have a positive and negative impact on the work-life balance of employees.⁶¹ Before the WFH policy was implemented in Indonesia, employees worked a normal working time of 8 hours a day for 5 days. However, after WFH was implemented, employees were expected to work within the normal time and during the weekend without overtime pay.⁶²

Yet another example is the use of technology that has enabled working to be more flexible. Employers can contact employees after working hours using email or WhatsApp because using that information technology is not constricted by time. Hence it has created an imbalance between work and life. Employees who answer their employers using information technology after working hours can be considered overtime, but the employers do not pay this type of overtime.⁶³

To achieve a work-life balance for employees in Indonesia, employers should obey the regulation regarding work time. However, from the examples above, employers still expect their employees to work overtime without overtime pay or any benefits. The implementation of the regulation of working time in Indonesia is still not maximum. Therefore, Indonesia's employees' work-life balance cannot be achieved fully.

Law No. 13 of 2003 also regulates leave for employees. There are a few types of leave in that Act that enables employees to have a work-life balance. However, the

⁶⁰ See Diana Kusumasari, "Jika Perusahaan Tidak Memberi Makan Dan Minum Pada Waktu Lembur," 2011.

⁶¹ WFH can increase work-life balance because it enables employees to have the flexibility to take care of family members. However there are no clear boundaries between work and personal life when employees do WFH, hence it can impact work overload which increases stress for employees, see Wirawan Dodi, Rofida Khusnul, and Roz Kenny, "Work from Home : Measuring Satisfaction between Work – Life Balance and Work Stress during the COVID-19 Pandemic in Indonesia," *Economies* 9, no. 3 (2021): 96, <https://doi.org/https://doi.org/10.3390/economies9030096>. Especially for female employees, initially, WFH was welcomed because it enables female employees to take care of the household while completing office work. However, doing both responsibilities simultaneously makes women overwhelmed and challenged because of the accumulation of work along with their duties as housewives. See also A Arwin, I Ivone, and Ruri Aditya Sari, "The Effect of Work From Home on Work Life Balance and Work Stress on Female Workers," *Enrichment: Journal of Management* 12, no. 1 (2021): 317–20, <https://doi.org/https://doi.org/10.35335/enrichment.v12i1.223>.

⁶² See the case of this particular employee, Bernadetha Aurelia Oktavira, "Ini Hitungan Lembur Karyawan Saat Bekerja Dari Rumah Atau WFH," 2022.

⁶³ It is legal for employers and employees to use information technology for work. However, if employers give orders to employees after working hours and told the employees to do the work right away, it is considered overtime. Hence employers should give overtime pay. See Kartini Laras Makmur, "Menjawab WA Di Luar Jam Kerja Termasuk Lembur? Ini Penjelasan Hukumnya," 2017.

regulation regarding leave in Indonesia is still unclear hence making workers in Indonesia unable to achieve a work and life balance fully.

First is the worship leave.⁶⁴ Employers should give employees enough chance to do worship that is required by their religion. Employers should also provide a place for worship in the workplace and allow employees to take a leave for religious purposes. Employees who take a religious leave are entitled to full pay.⁶⁵ Employers who do not give enough chance for their employees to worship can be penalized.⁶⁶

The second is menstrual leave for women. In Law No. 13 of 2003, women are entitled to have menstrual leave.⁶⁷ Menstrual leave is given for the first and second days of the menstrual cycle. However, this provision is discretionary because many employers only allow one day a month or even no menstrual leave at all.⁶⁸

The third is maternity leave for women who are pregnant. Maternity leave is given for 1,5 months before and after giving birth. If a woman has a miscarriage, she is entitled to maternity leave for 1,5 months. Employees who take maternity leave are entitled to full pay. However, maternity leave in Indonesia is fully funded by employers. Hence, women must rely solely on the employer's compliance and affordability to pay the full salary during the leave periods.⁶⁹ A study also estimated that maternity leave is applied to less than a third of female workers in Indonesia, and not all female employees are entitled to the scheme.⁷⁰

Law No. 13 of 2003 and its amendment do not give a clear regulation regarding paternity leave. In Article 93, it is said that employees who take a leave for their child's birth are still entitled to pay for 2 days.⁷¹ Therefore, if fathers want to take paternity leave for more than 2 days, they are only paid by the employers for 2 working days.⁷² Regulations regarding paternity leave in Indonesia are influenced by traditional gender roles and social expectations in Indonesia. Indonesian society believes that a woman's role is to care for the home, whereas the man's role is to be a provider for the family. Hence it prevents men from taking paternity leave even though taking paternity leave can have some benefits for the family.⁷³

⁶⁴Article 80 Law No. 13 of 2003

⁶⁵Article 84 Law No. 13 of 2003

⁶⁶Article 185 Law No. 13 of 2003

⁶⁷Article 81 Law No. 13 of 2003

⁶⁸ International Labour Organization, "Restructuring of the Social Security System (Part 6)," 2003.

⁶⁹ See International Labour Organization, "Online Discussion – Maternity Leave and Benefit: Are Women Protected?," 2021.

⁷⁰ *ibid*

⁷¹ See Article 93 Paragraph 4 Law No. 13 of 2003. It means that employers will only pay 2 days for fathers who take paternity leave.

⁷² The University of Sydney, "Paternity Leave in Indonesia," 2019.

⁷³ By taking paternity leave fathers to demonstrate that they are willing to be engaged in family life and do their share of the childcare. Thus, it increases the likelihood of higher relationship and co-parenting quality. Longer periods of paternity leave are positively associated with relationship quality, relationship support, and co-parenting quality. Longer periods of paternity leave may provide fathers with the time that can be used to learn how to be a more equitable caregiver. See Lisa Waddington and Mark Bell, "The Right to Request Flexible Working Arrangements under the Work-Life Balance Directive – A Comparative

Also, Law No. 13 of 2003 and its amendment do not give clear parental and carer leave regulations. It only regulates parental and carer's leave for certain things such as children's baptism, wedding, circumcision, and the death of family members.⁷⁴ Employees are entitled to paid leave for two days for children's weddings, circumcision, and baptism. Whereas for the death of immediate family, employees are entitled to paid leave for two days, and the death of family members in the same house, employees are entitled to paid leave for one day. This regulation showed that Indonesian labour law does not comprehensively accommodate parental and carer's leave. It also showed how the paid leave is based upon employer's compliance which can result in non-paid leave in practice.

Law No.13 of 2003 and its amendment do not regulate and give protection to informal workers in Indonesia. Based on data by Badan Pusat Statistik (Central Bureau of Statistics), in February 2021, there will be 78,14 million informal workers in Indonesia.⁷⁵ According to ILO, informal economy refers to all economic activities by workers that are – in law or practice – not covered (or insufficiently covered) by formal employment arrangements with characteristics such as a lack of protection for non-payment of wages, retrenchment without notice or compensation, unsatisfactory occupational health and safety conditions and an absence of social benefits such as pensions, sick pay and health insurance.⁷⁶ Consequently, informal workers are not protected by Law No. 13 of 2003 with its amendment and derived regulations. Hence there is also no protection of work-life balance for informal workers in Indonesia.

For instance, domestic work is often done verbally without a written contract. Hence there is almost no legal protection for work-life balance like overtime pay, paid leave, etc. Another instance is the own-account worker, a type of work where workers are self-employed without an employer they report to, such as street vendors, ojek online, etc.⁷⁷ These workers don't have a legal protection of their work-life balance either.

Article 27 Paragraph 2 of the Indonesian Constitution guarantees that every citizen, whether formal or informal workers, has a right to work. But there is still no clear and inclusive regulation regarding work-life balance in Indonesia. Hence workers in Indonesia still cannot fully achieve work and life balance.

4. CONCLUSION

EU's worklife balance directive is a notable basis to increase the work and life of EU society and economic stability. The right to a better life is part of a fundamental rights that EU member states must protect them. Therefore, providing imbalance work and life environment might be categorized as a violation of human rights. Currently, worklife

Perspective," *European Labour Law Journal* 12, no. 4 (2021), <https://doi.org/https://doi.org/10.1177/203195252110382>.

⁷⁴ Article 93 Law No. 13 of 2003

⁷⁵ See Dwi Hadya Jayani, "Berapa Jumlah Pekerja Informal Pada Februari 2021?," 2021.

⁷⁶ See International Labour Organization, "Informal Economy in Indonesia and Timor-Leste," 2022.

⁷⁷ *ibid*

balance directive within Indonesian legal system is still vague, hence, the existing laws could not ensure the quality of life in and outside the job. Labour and job creation act have weaknesses and might fail to protect worker's life in and outside workplace since the norms within those laws did not provide the same aims and legal framework as EU directive has shown. Therefore, amending and/or enacting a specific regulation on work-life balance directive as EU enacted is needed to ensure the protection of fundamental rights of worker's life and families economic stability in Indonesia.

REFERENCES

- Arwin, A, I Ivone, and Ruri Aditya Sari. "The Effect of Work From Home on Work Life Balance and Work Stress on Female Workers." *Enrichment: Journal of Management* 12, no. 1 (2021): 317–20. <https://doi.org/https://doi.org/10.35335/enrichment.v12i1.223>.
- Bell, Lisa Waddington and Mark. "Similar, yet Different: The Work-Life Balance Directive and the Expanding Frontiers of EU Non-Discrimination Law." *Common Market Law Review* 58, no. 5 (2021): 1401. <https://doi.org/https://doi.org/10.54648/cola2021087>.
- Belle, Janna van. "Paternity and Parental Leave Policies across the European Union." Santa Monica and Cambridge, 2016.
- Bettio, Francesca, and Alina Verashchagina. "Fiscal System and Female Employment in Europe," 2009. <http://ec.europa.eu/social/BlobServlet?docId=5545&langId=en>.
- Blum, Sonja, Alison Koslowski, and Peter Moss. "13th International Review of Leave Policies and Related Research 2017," 2017. <http://www.leavenetwork.org/fileadmin/Leavenetwork/>.
- Borg, Anna. "Work-Life Balance: Public Hearing: Work-Life Balance for Parents and Carers." Brussels, 2018.
- Brilli, Ylenia, Daniela Del Boca, and Chiara D. Pronzato. "Does Childcare Availability Play a Role in Maternal Employment and Children's Development? Evidence from Italy." *Review of Economics of the Household* 14 (2016): 27–51. <https://doi.org/https://doi.org/10.1007/s11150-013-9227-4>.
- Commission, European. "An Initiative to Support Work-Life Balance for Working Parents and Carers," 2017. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2017:252:FIN>.
- Commission, European. "European Pillar of Social Rights," 2021. <https://ec.europa.eu/commission/sites/beta-political/files/social-summit-european-pillar-social-rights-bookleten.pdf>.
- Commission, European. "Investing in Children: Breaking the Cycle of Disadvantage," 2013. <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013H0112>.
- Commission, European. "Secondary Earners and Fiscal Policies in Europe," 2015. http://ec.europa.eu/justice/gender-equality/files/documents/150511_secondary_earners_en.pdf.
- Commission, European. "The 2015 Ageing Report: Economic and Budgetary Projections for the 28 EU Member States (2013-2060)," 2015. https://ec.europa.eu/economy_finance/publications/european_economy/2015/ee3_en.htm.
- Council, Barcelona European. "Presidency Conclusions," 2002. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/71025.pdf.

- Dodi, Wirawan, Rofida Khusnul, and Roz Kenny. "Work from Home : Measuring Satisfaction between Work – Life Balance and Work Stress during the COVID-19 Pandemic in Indonesia." *Economies* 9, no. 3 (2021): 96. <https://doi.org/https://doi.org/10.3390/economies9030096>.
- Eurofound. "Working Anytime, Anywhere: The Effects on the World of Work," 2017. <https://www.eurofound.europa.eu/publications/report/2017/working-anytime-anywhere-the-effects-on-the-world-of-work>.
- Guerrero, Marion. "Strategic Litigation in EU Gender Equality Law." Luxembourg, 2020.
- Jang, Soo Jung, and Allison Zippay. "The Juggling Act: Managing Work–Life Conflict and Work–Life Balance." *Families in Society: The Journal of Contemporary Social Services* 92, no. 1 (2011): 88. <https://doi.org/https://doi.org/10.1606/1044-3894.4061>.
- Janta, Barbara and, and Katherine Stewart. "Paternity and Parental Leave Policies across the European Union," 2018. <https://ec.europa.eu/social/BlobServlet?docId=19932&langId=en>.
- Jayani, Dwi Hadya. "Berapa Jumlah Pekerja Informal Pada Februari 2021?," 2021. <https://databoks.katadata.co.id/datapublish/2021/05/07/berapa-jumlah-pekerja-informal-pada-februari-2021>.
- Kotsadam, Andreas, and Henning Finseraas. "The State Intervenes in the Battle of the Sexes: Causal Effects of Paternity Leave." *Social Science Research* 40, no. 6 (2011): 1611–22. <https://doi.org/https://doi.org/10.1016/j.ssresearch.2011.06.011>.
- Kusumasari, Diana. "Jika Perusahaan Tidak Memberi Makan Dan Minum Pada Waktu Lembur," 2011. <https://www.hukumonline.com/klinik/a/fasilitas-makan-saat-lembur-cl6488>.
- Lunau, Thorsten, Clare Bamba, Terje A Eikemo, Kjetil A van der Wel, and Nico Dragano. "A Balancing Act? Work–life Balance, Health and Well-Being in European Welfare States." *European Journal of Public Health* 24, no. 3 (2014): 426. <https://doi.org/https://doi.org/10.1093/eurpub/cku010>.
- Makmur, Kartini Laras. "Menjawab WA Di Luar Jam Kerja Termasuk Lembur? Ini Penjelasan Hukumnya," 2017. <https://www.hukumonline.com/berita/a/menjawab-wa-di-luar-jam-kerja-termasuk-lembur-ini-penjelasan-hukumnya-lt59d78f3db338f>.
- Nepomnyaschy, Lenna and, and Jane Waldfogel. "Paternity Leave and Fathers' Involvement with Their Young Children: Evidence from the American ECLS-B." *Community, Work & Family* 10, no. 4 (2007): 427–53. <https://doi.org/https://doi.org/10.1080/13668800701575077>.
- Norman, Helen, Mark Elliot, and Colette Fagan. "Which Fathers Are the Most Involved in Taking Care of Their Toddlers in the UK? An Investigation of the Predictors of Paternal Involvement." *Community, Work & Family* 17, no. 2 (2014): 163–80. <https://doi.org/https://psycnet.apa.org/doi/10.1080/13668803.2013.862361>.
- OECD. "Dare to Share – Deutschlands Weg Zur Partnerschaftlichkeit in Familie Und Beruf." Paris, 2017. <https://doi.org/https://doi.org/10.1787/9789264263420-de>.
- OECD. "Who Uses Childcare? Background Brief on Inequalities in the Use of Formal Early Childhood Education and Care (ECEC) among Very Young Children," 2016. http://www.oecd.org/els/family/Who_uses_childcare-Backgrounder_inequalities_formal_ECEC.pdf.
- Oktavira, Bernadetha Aurelia. "Ini Hitungan Lembur Karyawan Saat Bekerja Dari Rumah Atau WFH," 2022. <https://www.hukumonline.com/klinik/a/hitungan->

- lembur-saat-WFH-lt5eb62114158ff.
- Organization, International Labour. “Informal Economy in Indonesia and Timor-Leste,” 2022. <https://www.ilo.org/jakarta/areasofwork/informal-economy/lang-en/index.htm> .
- Organization, International Labour. “Online Discussion – Maternity Leave and Benefit: Are Women Protected?,” 2021. https://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS_832065/lang-en/index.htm.
- Organization, International Labour. “Restructuring of the Social Security System (Part 6),” 2003. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/projectdocumentation/wcms_182439.pdf.
- Post, The Jakarta. “Survey Shows Indonesians Worry about Work-Life Balance,” 2012. <https://www.thejakartapost.com/news/2012/11/01/survey-shows-indonesians-worry-about-work-life-balance.html> .
- Schulze, Erika, and Maja Gergoric. “Maternity, Paternity and Parental Leave: Data Related to Duration and Compensation Rates in the European Union.” Brussels, 2015. [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/509999/IPOL_STU\(2015\)509999_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/509999/IPOL_STU(2015)509999_EN.pdf) .
- Sydney, The University of. “Paternity Leave in Indonesia,” 2019. https://investinginwomen.asia/wp-content/uploads/2019/06/FS_Paternity-Leave-Indonesia.pdf.
- Waddington, Lisa, and Mark Bell. “The Right to Request Flexible Working Arrangements under the Work-Life Balance Directive – A Comparative Perspective.” *European Labour Law Journal* 12, no. 4 (2021). <https://doi.org/https://doi.org/10.1177/203195252110382>.
- Wolor, Christian Wiradendi. “The Importance of Work-Life Balance on Employee Performance Millennial Generation in Indonesia.” *Journal of Critical Reviews* 7, no. 9 (2020). <https://doi.org/https://dx.doi.org/10.31838/jcr.07.09.203>.

