



# ***Integrating Preventive (Ex-ante) and Deterrent (Ex-post) Mechanisms in Labor Law Compliance and Enforcement: A Comprehensive Approach for Indonesia***

## **Mengintegrasikan Mekanisme Pencegahan (*Ex-ante*) dan Deterren (*Ex-post*) dalam Kepatuhan dan Penegakan Hukum Ketenagakerjaan: Pendekatan Komprehensif untuk Indonesia**

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#### **Abstract**

Employment law enforcement in Indonesia is caught in a dilemma between legal certainty and social justice. This article identifies compliance challenges, analyzes the relevance of preventive (ex-ante) and remedial (ex-post) mechanisms, and formulates an integrative model based on responsive regulation. The study uses qualitative method with a normative juridical approach with a comparative analysis of practices in Australia, the United Kingdom, and South Korea, and a review of Indonesian labor inspection data from 2023. The results indicate that law enforcement remains ineffective due to limited supervisory capacity, low legal awareness, and unequal industrial relations. Ex-ante mechanisms (such as education and compliance certification) can prevent violations, while ex-post mechanisms (such as progressive sanctions) ensure accountability. Integrating the two within a responsive regulatory framework balances voluntary compliance with credible deterrence. The study recommends five strategic steps: (1) reforming and digitizing the inspection system; (2) establishing a National Labor Compliance Commission; (3) revising Government Regulation No. 35/2021 to include ex-ante instruments; (4) strengthening the capacity of trade unions and employer organizations; and (5) improving the Industrial Relations Court with class action and fast-track mechanisms. This integration provides a normative foundation for a more responsive, fair, and adaptive labor law system in Indonesia.

#### **Kata Kunci:**

Kepatuhan Hukum;  
Mekanisme Ex-ante;  
Mekanisme Ex-post;  
Penegakan Hukum  
Ketenagakerjaan;  
Regulasi Responsif.

#### **Abstrak**

Penegakan hukum ketenagakerjaan di Indonesia terperangkap dalam dilema antara kepastian hukum dan keadilan sosial. Artikel ini mengidentifikasi tantangan kepatuhan, menganalisis relevansi mekanisme pencegahan (*ex-ante*) dan penanggulangan (*ex-post*), serta merumuskan model integratif berbasis regulasi responsif. Penelitian menggunakan jenis penelitian kualitatif dengan pendekatan yuridis normatif dengan analisis komparatif terhadap

praktik di Australia, Inggris, dan Korea Selatan, serta telaah data inspeksi ketenagakerjaan Indonesia 2023. Hasil menunjukkan penegakan hukum masih belum efektif karena kapasitas pengawas terbatas, kesadaran hukum rendah, dan hubungan industrial tidak setara. Mekanisme *ex-ante* (seperti edukasi dan sertifikasi kepatuhan) dapat mencegah pelanggaran, sedangkan mekanisme *ex-post* (seperti sanksi progresif) menjamin akuntabilitas. Integrasi keduanya dalam kerangka regulasi responsif menyeimbangkan kepatuhan sukarela dengan penangkalan yang kredibel. Studi merekomendasikan lima langkah strategis: (1) mereformasi dan mendigitalkan sistem inspeksi; (2) membentuk Komisi Kepatuhan Ketenagakerjaan Nasional; (3) merevisi Peraturan Pemerintah No. 35/2021 untuk memasukkan instrumen *ex-ante*; (4) memperkuat kapasitas serikat pekerja dan organisasi pengusaha; serta (5) meningkatkan Pengadilan Hubungan Industrial dengan mekanisme *class action* dan jalur cepat. Integrasi ini menjadi landasan normatif untuk sistem hukum ketenagakerjaan yang lebih responsif, adil, dan adaptif di Indonesia.

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## INTRODUCTION

### Background of Problem

The structural weaknesses in Indonesia's labor law enforcement system are increasingly critical amid global economic shifts, necessitating a fundamental rethinking of compliance mechanisms. The persistent dilemma between upholding legal certainty and ensuring social justice is exacerbated by systemic enforcement failures. These failures are rooted in what scholars identify as institutional weaknesses, including fragmented law enforcement across regions due to Indonesia's decentralized system, limited institutional capacity, and bureaucratic inefficiencies (Salim, et al., 2025; Kurniati & Abdillah, 2025). This results in widespread rights violations—from substandard wages to insufficient protections for non-standard workers—because the state's response remains predominantly reactive and punitive (Atmafatan & Malie, 2026). This over-reliance on *ex-post* (deterrent) mechanisms, triggered only after infringements occur, fails to cultivate a preventive legal consciousness or embed social compliance norms within industrial relations (Syed, 2024).

The urgency for reform is amplified by the rapid transformation of labor relations, driven by digitalization and new forms of employment like gig and remote work (Doellgast & Wagner, 2022). These transformations have fundamentally restructured the traditional employer-employee nexus, creating regulatory gray areas. Research indicates that remote workers, for instance, face significant uncertainty regarding working hours, occupational safety, wage protection, and, crucially, mandatory enrollment in social security programs (*BPJS Ketenagakerjaan*) (Atmafatan & Malie, 2026). The ambiguity in defining digital employment relationships and the jurisdictional challenges in supervision create fertile ground for violations, leaving a growing segment of the workforce with fragmented and unequal protection compared to conventional workers (Agarwal & Shah, 2024). This regulatory lag means the existing statutory framework is

perpetually catching up, and a purely punitive enforcement model is ill-equipped to address prevention in these new contexts.

Current regulatory approaches demonstrate a clear imbalance and inadequacy in addressing these layered challenges. On the preventive (*ex-ante*) front, protections are virtually absent at critical junctures like recruitment, where phenomena such as "ghosting" by companies leave candidates in legal limbo without recourse, highlighting a failure to establish basic legal certainty from the very first interaction. Conversely, newer *ex-post* social protection instruments, such as Government Regulation No. 6 of 2025 Regarding Amendments to Government Regulation Number 37 of 2021 Concerning the Implementation of the Job Loss Security (*Jaminan Kehilangan Pekerjaan/JKP*) Program, face significant implementation hurdles despite their normative intent. Studies find that the effectiveness of such programs is hampered by low employer compliance, limited socialization, and normative inconsistencies with other labor regulations, undermining their role as a reliable safety net. This disconnect reveals a system where preventive norms are weak and deterrent mechanisms are inconsistently applied, failing to create a credible and holistic compliance ecosystem.

Therefore, the compelling scholarly and practical argument emerges for an integrated model that synergizes *ex-ante* and *ex-post* mechanisms under a responsive regulatory framework. Experts argue that such integration balances voluntary compliance with credible deterrence. The goal is to transform labor law from being merely a coercive tool into an "educator" that fosters a collective legal consciousness. This approach involves front-loaded mechanisms like mandatory recruitment transparency, employer education, and enforceable compliance certifications to prevent violations. These are then supported by strengthened, streamlined deterrent mechanisms, including progressive sanctions and efficient dispute resolution, to ensure accountability. This dual track allows the law to be both a shield that protects proactively and a sword that punishes predictably, which is essential for achieving industrial peace and legitimizing the regulatory state in a transforming economy.

## Problem Identification

Despite legislative reform and a growing corpus of scholarship, several interrelated conceptual and empirical gaps continue to constrain both theoretical understanding and practical enforcement of labor law in Indonesia. *First*, prevailing legal and policy approaches remain anchored in deterrence orthodoxy—the assumption that compliance can best be achieved through threat of sanctions (Syed, 2023). This orientation reduces non-compliance to a problem of legal deficiency or insufficient penalties, overlooking the socio-economic and cultural dynamics that shape compliance behavior (Salim, et al., 2025).

Structural asymmetries between employers and workers, limited legal literacy, and the informal negotiation of labor norms in non-standard sectors all shape the reality of "law in practice." Hence, deterrence alone fails to capture the social ecology of compliance. *Second*, the rise of non-standard employment—including outsourcing and the gig economy—poses new regulatory challenges (Inversi, et al., 2023). These flexible arrangements are often mediated by digital platforms or multilayered subcontracting, making the boundaries of employment status, wage determination, and accountability opaque. Existing legal instruments, designed for the standard employment model, prove inadequate to capture these fragmented and algorithmic labor relations (Tucker, et al., 2019).

Consequently, enforcement mechanisms calibrated to traditional industrial settings risk becoming legally obsolete in the face of platform-mediated work. *Third*, institutional

weaknesses exacerbate the enforcement gap. Labor inspectorates are underfunded and overstretched; data systems are fragmented; and coordination among central, regional, and sectoral agencies remains minimal (Clibborn & Hanna-Osborne, 2023). Procedural barriers—such as the cost of litigation, the absence of collective representation, and fear of retaliation—further marginalize vulnerable workers, rendering formal legal channels inaccessible and ineffective. *Fourth*, the policy discourse itself is constrained by the political economy of reform.

The post-2010 regulatory agenda, heavily influenced by the imperatives of economic liberalization and investment competitiveness, tends to privilege labor flexibility over protection. This tension between economic and social objectives generates what scholars term regulatory dualism—a bifurcation between the “protected core” and the “precarious periphery” of the labor market (Indregard, et al., 2019). The institutional bias toward capital mobility undermines the spirit of social justice embedded in Indonesia’s constitutional and statutory commitments. *Fifth*, there is an acute scarcity of empirical studies evaluating the real-world effectiveness of preventive (*ex-ante*) mechanisms—such as cooperative compliance, labor education, and participatory regulation—in developing-country contexts (Dahl et al., 2022). While theoretical calls for “responsive regulation” abound, systematic evidence remains rare. Without rigorous empirical grounding, reforms risk reproducing the same enforcement failures they seek to remedy.

## Problem Formulation

This research seeks to address the following questions:

1. What are the key challenges of compliance and enforcement within Indonesia’s labor law regime, particularly concerning institutional capacity, governance, and socio-economic conditions?
2. What is the theoretical and practical relevance of *ex-ante* (preventive) and *ex-post* (deterrent) mechanisms, and how does their interaction influence compliance outcomes in the Indonesian context?
3. How can an integrative regulatory model, which synthesizes preventive education, participatory monitoring, and proportionate sanctioning, be formulated to promote voluntary compliance and institutional legitimacy in Indonesia?

## Research Objectives and Benefit

### *Research Objectives*

This study pursues three interrelated objectives:

1. To identify and critically assess the key challenges of compliance and enforcement within Indonesia’s labor law regime, focusing on institutional capacity, governance, and socio-economic conditions.
2. To examine the theoretical and practical relevance of *ex-ante* (preventive) and *ex-post* (deterrent) mechanisms, exploring how their interaction influences compliance outcomes.
3. To propose an integrative regulatory model—the Intertwined Compliance Framework for Indonesian Labor Law—that synthesizes preventive education, participatory monitoring, and proportionate sanctioning to promote voluntary compliance and institutional legitimacy.

### Benefits

Theoretically, this study contributes to the discourse on responsive regulation by extending it into a Southeast Asian civil law context, demonstrating that hybrid enforcement regimes can reconcile state authority with social partnership. Empirically, it offers a diagnostic framework for evaluating enforcement effectiveness across diverse labor market settings. Normatively, it advances the agenda of social justice within labor governance, reaffirming the constitutional imperative that economic development must not erode workers' dignity and welfare.

## THEORETICAL AND CONCEPTUAL FRAMEWORK

Departing from the Responsive Regulation Theory developed by Ian Ayres and John Braithwaite in their seminal work *Responsive Regulation: Transcending the Deregulation Debate* (1992), this paradigm has become a major milestone in the study of legal policy and compliance governance (Doellgast & Wagner, 2022). The theory emerged as a critique of the command-and-control model that dominated regulatory practices, which assumed that state authorities were inherently suspicious watchdogs and regulated entities were potential violators. While effective in the short term, this approach led to high compliance costs and social resistance (Ståhl, et al., 2025).

As a response, Ayres and Braithwaite introduced the “pyramid of sanctions,” which places strategies of persuasion and education at the base, escalating to severe penalties only when persuasive measures fail. Regulation is thus conceived as a dynamic process balancing trust and firmness (Doellgast & Wagner, 2022). In the context of labor law, responsive regulation offers a critical lens for enforcement amidst complex industrial relations, integrating educational strategies, social dialogue, and capacity building (. This approach encourages two key orientations: “*ex-ante* compliance” (preventive) and “*ex-post* enforcement” (deterrent). The *ex-ante* strategy focuses on prevention through legal education and voluntary compliance, while the *ex-post* strategy maintains the state's coercive function to address violations firmly (Syed, 2024; Amaral, et al., 2024).

In practice, responsive regulation has been implemented across various jurisdictions in fields such as occupational safety and industrial relations (Liu, et al., 2023). Australia's Fair Work Ombudsman, for example, employs a tiered intervention model. However, critics argue the model is idealistic, assuming mutual trust that is difficult to achieve in contexts with high corruption and power asymmetry (Bogoeski & Costamagna, 2022). The effectiveness of responsive regulation also depends on the institutional capacity of inspectors and consistent application of sanctions (Uddin & Rahman, 2023). Despite these critiques, the theory's core value remains relevant: law enforcement is not merely about punishment but about transforming behavior through dialogue and trust (Velluti, 2024).

## RESEARCH METHOD

This study employs qualitative approach with a normative juridical research method, which is substantiated by a conceptual and comparative legal analysis. The normative juridical approach focuses on the analysis of legal norms, principles, and doctrines contained within the existing statutory framework, including Law No. 13 of 2003 on Manpower, as amended by Law No. 11 of 2020 on Job Creation, and its implementing regulation, Government Regulation No. 35 of 2021 concerns Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of

Employment. This approach is essential for dissecting the formal legal structure governing labor relations in Indonesia (Syed, 2023).

To enrich the normative analysis, a conceptual approach is utilized to deconstruct and examine the core concepts of preventive (*ex-ante*) and deterrent (*ex-post*) mechanisms, drawing from established regulatory theories, particularly the responsive regulation framework (Doellgast & Wagner, 2022). Furthermore, a comparative approach is integrated by examining the labor regulatory and enforcement practices in several other jurisdictions, including Australia, the United Kingdom, and South Korea. This comparison provides valuable international perspectives and benchmarks, highlighting alternative models and best practices that could inform potential reforms in Indonesia (ILO, 2016).

The analysis is further grounded by an empirical examination of Indonesia's 2023 labor inspection data to illustrate the practical challenges and realities of enforcement on the ground. This combination of normative, conceptual, comparative, and empirical analyses allows for a comprehensive and multi-faceted investigation into the complexities of labor law compliance and enforcement in Indonesia, bridging the gap between 'law in the books' and 'law in action' (Resosudarmo, et al., 2023).

## RESULTS AND DISCUSSION

### Results

Based on a comprehensive analysis of Indonesia's legal framework, institutional reports, and empirical data from 2020-2024, the findings objectively reveal three interconnected, structural challenges that critically undermine labor law compliance and enforcement.

#### *Critically Under-Resourced and Inefficient Labor Inspectorate*

The capacity of the state's primary enforcement body is severely deficient. Data from Indonesia's Ministry of Manpower indicates a national ratio of approximately 1 labor inspector for every 7,700 companies, far exceeding the International Labour Organization's (ILO) recommended standard of 1 inspector per 10,000 workers and rendering effective supervision impossible (Muhyiddin, et al., 2024). This shortage is exacerbated by a reliance on manual, paper-based inspection processes and fragmented data systems, which limit oversight scope and enable regulatory avoidance (SBN, 2025; Bagherifam, et al., 2025). Furthermore, decentralization has led to inconsistent enforcement standards and poor coordination between national and regional inspectorates, creating jurisdictional gaps and uneven application of the law (Muhyiddin, et al., 2024).

#### *Pervasive Informality and Low Legal Consciousness*

A dominant feature of the Indonesian labor market is the scale of the informal sector, which operates largely outside the regulatory framework. Statistics Indonesia (BPS) reported that 58.7% of the workforce was in informal employment as of August 2023, lacking written contracts, social security, and access to formal grievance mechanisms (BPS, 2023). Within both formal and informal sectors, surveys indicate low awareness of statutory rights among workers and obligations among employers, particularly in SMEs (SBN, 2025). This is compounded by a cultural reluctance to report violations due to fears of job loss or retaliation, making many rights violations socially invisible and legally unreachable (Prasetyo & Amaral, 2024).



### Asymmetric Industrial Relations and Weak Social Dialogue

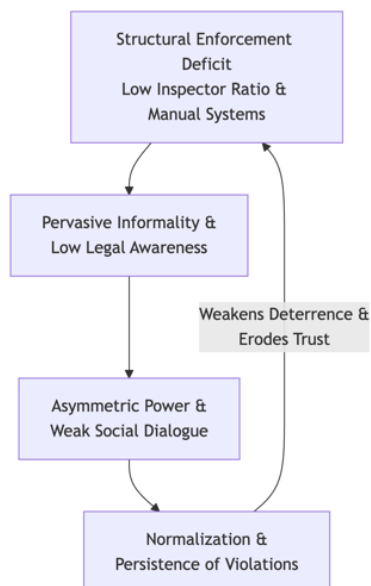
The bargaining power between capital and labor is fundamentally unbalanced. Union density in Indonesia's formal sector is approximately 7%, significantly limiting collective representation and the capacity for bilateral dispute resolution at the enterprise level (Prasetyo & Amaral, 2024). This weakness is strategically exploited in industries reliant on precarious work. For instance, in the textile and coal sectors, the use of prolonged fixed-term contracts and multi-tiered subcontracting (outsourcing) deliberately obscures employment relationships and dilutes employer accountability, making enforcement exceptionally difficult (Avgeri, 2024). The rise of platform-mediated gig work has further entrenched this asymmetry, as algorithms, rather than human managers, dictate work terms and obscure the identity of the liable employer (ILO, 2016).

**Table 1.** Core Data on Indonesian Labor Law Enforcement Challenges

Challenge Dimension	Key Finding	Data Source
Inspectorate Capacity	Ratio of ~1 inspector per 6,223 companies.	(Kementerian Ketenagakerjaan, 2023)
Informality	58.7% of workforce in informal employment (Aug 2023).	Badan Pusat Statistik (BPS, 2023)
Worker Representation	Approx. 7% union density in the formal sector.	(Prasetyo & Amaral, 2024)
Sectoral Violations	Textile & coal sectors noted for systemic subcontracting & contract misuse.	(Trimco Group, 2025)
Legal Awareness	Widespread lack of understanding of rights/obligations in SMEs.	(SBN, 2025)

Source: Research Data (2025)

The following visualization synthesizes how these factual challenges interact to create a self-reinforcing cycle of non-compliance:



**Figure 1.** The Vicious Cycle of Labor Law Non-Compliance in Indonesia

This factual analysis as viewed in Figure 1. reveals that the three core challenges—a critically under-resourced inspectorate, pervasive informality with low legal awareness,

and profoundly asymmetric industrial relations—do not operate in isolation. Instead, they interact dynamically to form a self-reinforcing cycle of non-compliance: enforcement deficits allow violations to become normalized in the informal sector, which weakens worker power and social dialogue, further entrenching the very conditions that make effective state oversight and deterrence improbable, thereby perpetuating the cycle indefinitely.

#### *Preventive (Ex-ante) and Deterrent (Ex-post) Mechanisms*

The conceptual framework of this study is built upon the integration of two complementary regulatory mechanisms: the preventive (*ex-ante*) and the deterrent (*ex-post*) approaches. The preventive (*ex-ante*) approach represents a paradigmatic shift from reactive enforcement towards a system oriented around prevention and voluntary compliance (Hassel, 2008). This model positions the state not merely as a sanctioning authority but as a facilitator, fostering a culture of compliance through legal education, compliance training, and incentives (Thomann, 2012). Key instruments of the *ex-ante* approach include compliance partnership programs, where companies receive guidance and support, and labor compliance certifications, which offer reputational benefits for adherence to labor standards (Burstyn, et al., 2010). Another vital tool is the 'enforceable undertaking,' a legally binding commitment by a company to rectify violations and implement systemic improvements, serving as an alternative to litigation (Tomba, et al., 2007).

Conversely, the deterrent (*ex-post*) approach remains essential for ensuring accountability when preventive measures fail. This approach relies on the credible threat of sanctions to discourage non-compliance (Badaoui & Walsh, 2022). Its effectiveness hinges on the principle of proportionality, where penalties are calibrated to the severity of the violation, ranging from administrative fines to criminal liability for egregious offenses (Yang, 2024). Advanced deterrent strategies include 'smart enforcement,' which uses data analytics to target high-risk industries and repeat offenders, and mechanisms like 'public shaming' or blacklisting non-compliant firms from public procurement to create strong reputational disincentives (Quinlan & Rawling, 2024). The integration of these two approaches creates a synergistic and adaptive regulatory system where trust-based cooperation is backed by credible coercion, fostering a more resilient and effective labor law regime (Syed, 2024).

#### *The Role of Ex-ante and Ex-post Mechanisms*

An integrated approach combining *ex-ante* and *ex-post* mechanisms is crucial for addressing these challenges. *Ex-ante* mechanisms can proactively prevent violations by fostering a culture of compliance. For instance, strengthening legal education and outreach programs can enhance legal awareness among both employers and workers (Ghai, 2003). The implementation of compliance certifications and enforceable undertakings, as practiced in jurisdictions like Australia, can provide positive incentives for companies to invest in robust internal compliance systems, moving beyond a purely punitive logic (Tomba, et al., 2007).

Simultaneously, *ex-post* mechanisms are indispensable for ensuring accountability and maintaining the credibility of the legal system. This requires not only the imposition of sanctions but also their consistent and transparent application. Progressive sanctioning, where penalties escalate for repeat or severe violations, can create a powerful deterrent effect (Quinlan & Rawling, 2024). Furthermore, enhancing the transparency of enforcement actions, for example, by publicizing the names of non-compliant

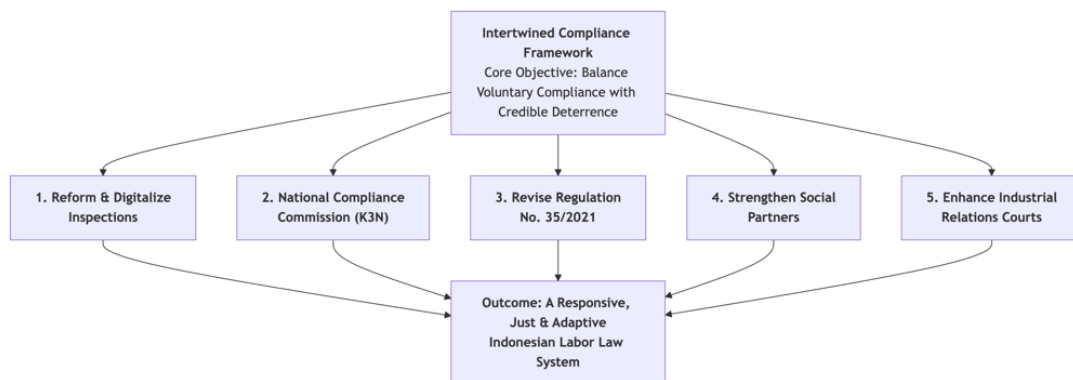


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companies, can leverage market and social pressures to encourage compliance. Strengthening the capacity of Industrial Relations Courts through mechanisms like fast-track litigation for straightforward disputes and allowing for class-action lawsuits can also enhance access to justice for workers and amplify the deterrent effect of legal action.

### *An Integrative Model for Indonesia: The Intertwined Compliance Framework*

Integrating these mechanisms under a responsive regulatory framework allows the law to function not merely as a coercive tool but as a moral educator, fostering a collective legal consciousness.



**Figure 1.** The Intertwined Compliance Framework for Indonesian Labor Law

Figure 1 presents the Intertwined Compliance Framework as a cohesive strategy to transform Indonesia's labor law enforcement. Its central purpose is to shift the system from a purely coercive model to one that acts as a moral educator, fostering voluntary compliance while maintaining credible deterrence. This transformation is achieved through the synergistic implementation of five strategic pillars: modernizing the inspection system, establishing an oversight commission, updating the legal foundation, empowering unions and employers, and streamlining judicial access. Together, these interconnected actions are designed to create a more responsive, equitable, and future-proof labor law system capable of upholding decent work standards amidst global economic changes.

This study proposes an Intertwined Compliance Framework for Indonesian Labor Law that balances voluntary compliance with credible deterrence. This model is built on five strategic policy pillars:

1. **Reforming and Digitizing the Labor Inspection System:** This involves not only increasing the number of inspectors but also equipping them with advanced training and digital tools for data-driven inspections and risk-based targeting of enforcement actions (Zhu & Gu, 2024).
2. **Establishing a National Labor Compliance Commission (K3N):** An independent body tasked with overseeing compliance strategies, promoting social dialogue, and managing a national compliance certification program.
3. **Revising Government Regulation No. 35/2021:** The regulation should be amended to formally incorporate preventive mechanisms such as compliance certification and enforceable undertakings, providing a clear legal basis for their implementation.
4. **Strengthening Social Partners:** This includes capacity building for both labor unions and employer organizations to enhance their ability to engage in effective social dialogue and bipartite dispute resolution at the enterprise level (Lillie, 2022).

5. Enhancing Industrial Relations Courts: Introducing fast-track litigation for simple cases and enabling class-action lawsuits for systemic violations would improve access to justice and the deterrent capacity of the judicial system (Barbosa, 2023).

By intertwining *ex-ante* and *ex-post* mechanisms, this framework provides a normative foundation for developing a more responsive, just, and adaptive labor law system in Indonesia, capable of navigating the complexities of global economic transformations while upholding the principles of decent work (Ghai, 2003).

## Discussion

The empirical results confirm that Indonesia's labor law system is trapped in a state of "structural ineffectiveness," where robust statutory norms on paper are nullified by systemic failures in implementation. This discussion interprets these findings through the lens of responsive regulation theory and comparative international practice to propose a pathway toward an integrated compliance model.

### *The Failure of Deterrence-Only Orthodoxy and the Imperative for Integration*

The data underscores the fallacy of relying solely on *ex-post* (deterrent) mechanisms within a context of institutional scarcity. As David Weil's (Weil, 2011) theory of "fissured workplaces" predicts, an under-resourced inspectorate facing complex corporate structures leads to regulatory avoidance rather than compliance. The widespread informality and fear of reporting are direct symptoms of a system perceived as punitive yet detectably weak. This validates the central premise of Ayres and Braithwaite's (1992) responsive regulation: that coercion unsupported by capacity and legitimacy breeds evasion. Therefore, the findings necessitate a paradigm shift from a deterrence-only model to one that strategically integrates *ex-ante* (preventive) mechanisms to build voluntary compliance and reduce the enforcement burden.

### *Building a Preventive (Ex-ante) Foundation: Education, Incentives, and Co-Regulation*

To address the root causes of low legal awareness and informality, Indonesia must institutionalize robust *ex-ante* strategies. *First*, legal education must transition from ad-hoc seminars to structured, sector-specific programs co-delivered with employer associations (APINDO) and unions, targeting SMEs and informal economy actors (Sitalaksmi, 2017). *Second*, the state must develop positive incentives. Following OECD (Indregard, et al., 2019) guidelines on performance-based regulation, compliance-linked benefits such as tax rebates, streamlined licensing, or public procurement preferences can make adherence a competitive advantage. *Third*, adopting "enforceable undertakings"—where violators commit to rectifying breaches and improving internal systems under supervision—would introduce a restorative, learning-oriented alternative to purely punitive sanctions, as successfully practiced in Australia and the UK.

### *Modernizing Deterrent (Ex-post) Mechanisms through Transparency and Proportionality*

For the deterrent function to be credible, the *ex-post* system requires modernization and transparency. The current administrative sanction regime lacks public accountability. Implementing a "naming and shaming" policy, as used by the UK's Director of Labour Market Enforcement, would leverage reputational risk as a powerful deterrent (Crown, 2025). Furthermore, the new Corporate Criminal Liability provisions in Law No. 1 of

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2023 is the new Indonesian Criminal Code (*Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*) must be actively applied to cases of severe, systematic violations—such as fatal safety negligence—to demonstrate that the sanction pyramid has a consequential apex. This proportionality, a core tenet of responsive regulation, ensures that the most severe sanctions are reserved for the most egregious, persistent offenders.

### *Synergistic Integration: A Proposed Hybrid Compliance Model*

The ultimate theoretical and practical contribution of this analysis is a hybrid model where *ex-ante* and *ex-post* mechanisms are interlocked. A digitalized, risk-based inspection system (E-Inspection) acts as the integrating platform. Companies with high compliance ratings from self-audits and certification (*ex-ante*) benefit from lighter-touch oversight, while those with violations are escalated up a transparent sanction pyramid (*ex-post*). This model, inspired by South Korea's "Smart Work Inspection" platform (Kim, 2023), creates a dynamic compliance ecosystem. It balances the cooperative ethos of prevention with the unwavering credibility of enforcement, transforming the state's role from a sporadic punisher to a consistent regulator and facilitator.

**Table 2.** Integrated *Ex-ante* and *Ex-post* Mechanisms for Indonesia

Mechanism Type	Proposed Instrument	Theoretical Basis & International Example
Preventive ( <i>Ex-ante</i> )	Compliance Certification & Incentives: Public rating and fiscal benefits for high-compliance firms.	OECD (2023) on Tax Administration 2023; OECD (2020) ESG Investing.
Preventive ( <i>Ex-ante</i> )	Enforceable Undertakings: Binding agreements for violators to remediate and improve systems.	Restorative justice principles; Fair Work Ombudsman, Australia (n.d.).
Deterrent ( <i>Ex-post</i> )	Transparent Sanctions Pyramid: Public "naming and shaming" of violators.	Responsive Regulation theory (Ayres & Braithwaite, 1992); UK Naming Scheme.
Deterrent ( <i>Ex-post</i> )	Corporate Criminal Liability: Prosecution for severe, systemic violations (e.g., safety negligence).	Law No. 1 of 2023 (newest KUHP of Indonesia); deterrence theory.
Integrative Platform	Digital Risk-Based Inspection System: Allocates oversight based on automated risk scores.	Digital inspection (SBN, 2025); South Korea's Smart Work Inspection (Kim, 2023).

Source: Research Data (2025)

### *Bridging the Formal-Informal Divide and Empowering Social Dialogue*

A responsive system must explicitly address the informal sector, not as an outlier, but as a core target. *Ex-ante* measures here include simplified compliance pathways and mobile-accessible legal literacy tools. Simultaneously, strengthening unions and alternative worker associations is not a peripheral issue but a central compliance strategy. As Euchner (2022) argues in his "moral economy of compliance," empowered social partners act as frontline monitors and mediators, extending the state's reach. Policies must facilitate union access to non-standard workers and protect whistleblowers, turning social dialogue into a tangible enforcement asset.

The systemic pathologies in Indonesia's labor law enforcement—chronic under-enforcement, normalized informality, and power asymmetry—cannot be solved by

doubling down on a broken deterrent model. The evidence compellingly argues for an integrated approach. By strategically intertwining preventive measures that educate and incentivize with modernized, transparent deterrent mechanisms, Indonesia can build a compliance system that is both legitimate and effective. This would shift the regulatory paradigm from one of perpetual catch-up and punishment to one of proactive co-governance, ultimately fostering a culture where respect for labor law is embedded in the moral economy of the workplace.

The successful integration of *ex-ante* and *ex-post* mechanisms requires a comprehensive policy reform agenda. *First*, reforming and digitizing the labor inspection system is essential. This involves not only increasing the number of inspectors but also equipping them with digital tools for data-driven inspections, risk-based targeting of enforcement actions, and real-time reporting systems (Zhu & Gu, 2024). Digital platforms can facilitate the sharing of inspection data across agencies, enabling better coordination and reducing duplication of efforts.

*Second*, establishing a National Labor Compliance Commission (K3N) would create an independent body tasked with overseeing compliance strategies, promoting social dialogue, and managing a national compliance certification program. This commission could serve as a neutral platform for tripartite engagement among government, employers, and workers, fostering a culture of cooperation and mutual accountability (Ghai, 2003).

*Third*, revising Government Regulation No. 35/2021 on Fixed-Term Employment Contracts, Outsourcing, Working Hours and Rest Periods, and Termination of Employment to formally incorporate preventive mechanisms such as compliance certification and enforceable undertakings would provide a clear legal basis for their implementation. This regulatory amendment would signal the government's commitment to responsive regulation and create a framework within which companies can voluntarily commit to compliance improvements (Tompa, et al., 2007).

*Fourth*, strengthening social partners through capacity building for both labor unions and employer organizations is crucial. Enhanced capacity would enable these organizations to engage in effective social dialogue and bipartite dispute resolution at the enterprise level, reducing reliance on formal litigation and fostering a culture of negotiation and mutual respect (Lillie, 2022).

*Fifth*, enhancing Industrial Relations Courts through mechanisms such as fast-track litigation for straightforward disputes and enabling class-action lawsuits for systemic violations would improve access to justice for workers and amplify the deterrent effect of legal action (Barbosa, 2023).

### *Comparative Insights from International Practice*

Examining labor law enforcement practices in other jurisdictions provides valuable insights for Indonesia's reform agenda. Australia's Fair Work Ombudsman exemplifies a responsive regulatory approach, employing a tiered intervention model that begins with education and negotiation before resorting to legal sanctions (Liu, et al., 2023). This model has proven effective in achieving high compliance rates while maintaining positive relationships with business actors. Similarly, the United Kingdom's Health and Safety Executive combines proactive guidance and support with credible enforcement, utilizing a risk-based inspection strategy that targets high-hazard industries and repeat offenders (Indregard, et al., 2019). South Korea's labor inspection system has increasingly incorporated preventive elements, including compliance partnerships and training

programs for employers, while maintaining strong deterrent mechanisms through substantial penalties for serious violations (Zhu & Gu, 2024).

These international examples demonstrate that responsive regulation is not merely theoretical but has been successfully implemented in diverse legal and economic contexts. However, the transfer of best practices must be contextualized to Indonesia's unique institutional landscape, including its civil law tradition, decentralized governance structure, and specific socio-economic challenges. The proposed Intertwined Compliance Framework for Indonesian Labor Law draws inspiration from these international models while adapting them to Indonesia's particular circumstances, ensuring both relevance and feasibility.

### Research Limitation

This study is primarily normative and doctrinal, relying on official data and policy analysis. Its limitation lies in the lack of original, large-scale survey data on employer and worker perceptions of compliance. Future empirical research should quantitatively measure the impact of specific *ex-ante* tools, like pilot compliance education programs or the deterrent effect of published violation lists. Furthermore, in-depth case study research into the enforcement challenges within specific "fissured" industries, such as digital platforms or complex manufacturing supply chains, would yield finer-grained insights for regulatory design.

While the proposed integrative framework offers significant potential, its implementation faces several challenges. Political economy constraints may hinder the establishment of new institutions like the K3N, particularly if powerful business interests perceive it as threatening their interests (Indregard, et al., 2019). Capacity limitations in the labor inspectorate, both in terms of personnel and expertise, require substantial investment in training and resources, which may be constrained by fiscal considerations (Clibborn & Hanna-Osborne, 2023). Cultural and institutional factors also play a role; in contexts where corruption is endemic or where trust between state and business is low, the assumptions underlying responsive regulation may not hold (Bogoeski & Costamagna, 2022). Furthermore, the enforcement of enforceable undertakings requires a sophisticated monitoring system and the willingness of companies to honor their commitments, which may not be universally forthcoming (Tompas, et al., 2007).

Additionally, the effectiveness of the proposed framework depends on the active participation of social partners, particularly labor unions. In Indonesia, where union density has declined and the labor movement is fragmented, mobilizing collective action for compliance monitoring and dispute resolution remains challenging (Lillie, 2022). Overcoming these obstacles will require not only legal and institutional reforms but also a broader shift in the political culture towards greater recognition of workers' rights and the importance of labor law compliance for social stability and economic sustainability (Ghai, 2003).

### Novelty and Contribution

The findings contribute to the theoretical discourse on responsive regulation by testing its applicability in a developing economy with a large informal sector. They demonstrate that the model's efficacy depends not just on the design of a sanction pyramid but on foundational investments in state capacity (digital infrastructure, inspector training) and the political will to foster genuine social dialogue. The Indonesian case suggests that for responsive regulation to transcend theory, it must be adapted to address pre-existing conditions of informality and institutional weakness.

## CONCLUSION AND RECOMMENDATION

### Conclusion

Indonesia's labor law system is at a critical juncture, where traditional enforcement models centered on deterrence have proven insufficient to address widespread non-compliance amidst rapid economic and labor market transformations. The persistent gap between statutory rights and workplace realities necessitates a paradigm shift towards a more holistic and adaptive regulatory strategy. This study concludes that integrating preventive (*ex-ante*) and deterrent (*ex-post*) mechanisms within a responsive regulatory framework offers a robust pathway to strengthening labor law compliance and enforcement. By synergizing proactive measures such as legal education, compliance incentives, and social dialogue with credible and proportionate sanctions, the proposed Intertwined Compliance Framework provides a comprehensive model to foster a culture of voluntary compliance while ensuring accountability. The successful implementation of this integrated approach, supported by institutional reforms and the empowerment of social partners, holds the potential to create a more just, effective, and resilient labor governance system that upholds workers' rights while supporting sustainable economic development in Indonesia.

### Recommendation

Based on the critical findings and integrated analysis, the following recommendations are proposed to operationalize the Intertwined Compliance Framework and break the cycle of non-compliance in Indonesian labor law.

1. Enact comprehensive institutional reform and digital transformation

The government must prioritize a fundamental overhaul of the labor inspection authority. This includes a significant recruitment and training drive to meet ILO standards, coupled with the full implementation and national rollout of a unified digital inspection platform (E-Inspection). This system should enable risk-based targeting, real-time reporting, and seamless data integration with social security (BPJS) and company registries to identify non-compliance proactively and allocate scarce resources efficiently.

2. Establish a mandated independent oversight body

To ensure coherent strategy and foster tripartite trust, a National Labor Compliance Commission (*Komisi Kepatuhan Ketenagakerjaan Nasional, K3N*) should be established by statute. This independent body would be tasked with overseeing the national compliance strategy, auditing the inspection system, managing a voluntary compliance certification scheme with tangible benefits, and serving as a high-level forum for preventive social dialogue.

3. Legally anchor preventive mechanisms through regulatory revision

Government Regulation No. 35 of 2021 concerns Fixed-Term Employment Agreements, Outsourcing, Working Time and Rest Time, and Termination of Employment should be amended to provide a clear legal basis for key *ex-ante* instruments. This revision must formally incorporate mechanisms such as a public compliance certification program and enforceable undertakings—binding agreements where violators remedy breaches and implement corrective plans under supervision, thereby emphasizing restoration over mere punishment.

4. Invest in the capacity of social partners as frontline compliance actors



The state should launch a dedicated capacity-building fund to strengthen labor unions and employer organizations. For unions, support should focus on organizing workers in non-standard employment, legal literacy, and effective negotiation. For employer associations, support should center on compliance management systems and best practice sharing. Empowered social partners are essential for effective bipartite resolution and extending the state's monitoring reach.

#### 5. Optimize judicial deterrence through procedural innovation

The Industrial Relations Court (PHI) system requires procedural reforms to enhance its accessibility and deterrent effect. A mandatory fast-track procedure should be introduced for clear-cut cases like unpaid wages, with strict 60-day resolution deadlines. Furthermore, clear rules for class-action lawsuits must be enacted to allow for efficient redress in cases of widespread, systemic violations affecting multiple workers.

These recommendations are not isolated interventions but interconnected components of a single reform agenda. Their concurrent implementation is essential to transition from a reactive, enforcement-heavy model to a proactive, integrated, and responsive regulatory system. By investing in prevention, modernizing deterrence, and empowering social dialogue, Indonesia can build a labor law ecosystem that not only punishes violation but actively cultivates a culture of compliance, ultimately ensuring that economic development is anchored in justice and the dignity of work.

### AUTHOR CONTRIBUTION STATEMENT

**Dicky Yulius Pangkey:** As the corresponding author, conceptualized the overarching research theme, coordinated the collaborative framework, supervised the integration of ex-ante and ex-post mechanisms, and played a key role in manuscript structuring, final review, and ensuring alignment with the comprehensive approach for Indonesia.

**Aga Kurniawan:** Conceptualized the research framework, developed the methodological approach integrating normative juridical and comparative analysis, and led the writing of the original draft, synthesizing the core arguments of the study.

**Togi M Mangunsong:** Contributed to the conceptual development of the research, conducted the investigation into enforcement challenges and institutional data, and participated in reviewing and editing the manuscript for coherence and depth.

**Joemarthine Chandra:** Performed the formal analysis of legal frameworks and empirical data, contributed to the comparative examination of international practices, and assisted in reviewing and refining the manuscript's analytical sections.

**Faisal Santiago:** Provided overall supervision of the research project, ensured administrative coordination, and contributed to reviewing, editing, and finalizing the manuscript to meet academic and publication standards.

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