

Labor Politics of Employment Protection Legislation for Non-regular Workers in South Korea

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I. INTRODUCTION

Over the past 10 years, non-regular employment has become a core labor policy issue in South Korea (hereafter Korea). The increase of non-regular employment has been a common phenomenon among industrialized economies. Likewise, this atypical employment has sharply proliferated in Korea, particularly along with changing corporate employment strategy after the economic crisis of 1998. The diffusion of non-regular labor has led to the growing segmentation of labor markets in the country, in that those workers suffer from inferior working conditions and vulnerable employment status, compared to regular workers. The intensifying trends of labor polarization, chiefly associated with the proliferation of non-regular employment, has created a nationwide concern over social exclusion and economic discrimination of these marginal workers.

Under this context, labor unions and NGOs have demanded the protective legislation to prevent the over-use and discrimination of non-regular labor, while employers and business associations have consistently insisted on institutional reforms for guaranteeing labor market flexibility and opposed any legal constraints on the use of these non-standard employment types. Accordingly, employment protection legislation for non-regular labor has been a polemic issue of industrial relations and national politics in Korea. A variety of actors, including labor unions, business associations, the governments, political parties, NGOs, and academics, have taken part in the contentious and complicated processes of labor politics concerning the enactment and revision of the non-regular labor protection legislation from the early 2000s up to the present. The processes of non-regular employment legislation has involved diverse arenas, such as policy consultation of the Tripartite Commission, top-level negotiations of industrial relations representatives, political negotiations at the Congress, and, sometimes, on-the-street confrontations.

Our study is to examine the historical evolution of employment protection legislation for non-regular workers from the theoretical perspective of strategic-relational approach, formulated by Jessop (1990). The strategic-relational perspective helps decompose the complex processes of non-regular employment protection legislation, in which structural

contexts, actors' interests and strategic choices, and various forms of interaction between those actors are embedded. This case study of Korea could offer a theoretical lens and analytical framework to explore and understand the labor politics of non-regular employment protection legislation, which becomes a controversial policy issues in developed and developing economies. Our paper is comprised of five chapters: Chapter Two discusses the strategic-relational theory and proposes an analytical framework to examine the labor politics of non-regular employment protection legislation. Chapter Three briefs the trends and present state of non-regular employment in Korea. Chapter Four delineates the historical evolution of labor politics concerning the non-regular employment protection legislation during the past 10 years, ranging from the People's Government through the Participatory Government to the Conservative Government. Chapter Five concludes with some theoretical and policy implications drawing from our case study.

II. STRATEGIC-RELATIONAL PERSPECTIVE ON THE MAKING OF LAWS

The strategic-relational perspective offers a useful lens to analyze the political process of law-making. This approach, reflecting the dialectic of structure and strategy (Jessop 1990), theorizes the state as form-determined social relations (Jessop 1990) or materialized cohesion of power relations (Poulantzas 1978), rather than reducing it to an apparatus of class domination or a neutral mediator. The neo-Marxist state theory rejects both economic determinism and class reductionism, and sheds light on strategic selectivity of the state. The state's strategic selectivity has a dual meaning. First, the state is characterized as a site and an object, where strategic interaction and power relations of social actors take place and get embedded. The character of the state is form-determined by strategic interaction and power relations of social actors, entailing conflicts and bargaining, rather than shaped by the simplified logic of class domination or non-class consensus regime. Second, the state has a discriminating influence over political interaction of social actors, in that it privileges interests and strategic choice of a particular class or political group over those of others under the specific stage of politico-economic context (Jessop 1990).¹ For instance, the ruling party, taking the state's institutional power, tends to represent the interest of its political constituents and supporters, and bureaucrats, administering the state's organs, foster their group inclination and vested interest to prefer particular policy action to others (Lee & Yoo

¹ This theoretical reasoning originates from Offe(1974)'s notion of 'structural selectivity', denoting the state's biased policy-making inclination to safeguard the capitalist class interest. However, Jessop (1990), critical of Offe's deterministic view, refines the state's selectivity from the strategic-relational perspective, by replacing the structural class bias with the contingent one.

1998). In sum, the state could be seen as the relational arena of social actors' strategic interaction as well as a 'subjective inclination' toward policy-making, from the theoretical viewpoint of strategic selectivity.

At the same time, the strategic-relational perspective underscores the contingency and indeterminability embodied in the dynamics of the state's policy-making, which involves intense interaction of various actors having conflicting interests and contesting strategies under the 'fluid' politico-economic context (Jessop 1990).² The outcomes of the state's policy-making are not pre-determined by the logic of class domination or economic structure at all, but uncertain and accidental and unexpected due to the inherent complexity of the dynamics. According to the theoretical reasoning of Jessop (1990), the indeterminacy and uncertainty of the state's policy-making processes are basically attributed to complex interaction of different causal chains; however, they are furthered by a variety of 'real' factors, such as concerned actors' bounded rationality, time constraints, the uncoordinated contention of 'states within state' or failed intra-organizational bargaining within major social groups like labor unions and business associations, and the happening of unforeseen domestic or overseas incidents. As a result, the state's policy-making tends to become "a process without subject" (Poulantzas 1978). In particular, the democratic regime inevitably entails the uncertainty of institutionalized processes for interest intermediation (Przeworski 1991). In this light, the strategic-relational approach could offer an insightful lens to 'decode' the complicated and contingent processes of the state's policy-making.

According to Foucault (1980), the law is a "normalized power structure", in that it provides an institutional foundation for the state's power exercise and normative authority to regulate socio-economic relations. Therefore, the making of laws is a key part of the state act. At the same time, social actors try to exert influence over the making process of laws and engage in an overt contest for safeguarding their own interests, since the law functions as a game rule to frame opportunity structure and power relations of those actors. Accordingly, the law is treated as a product of complicated political interaction among the concerned actors, from the strategic-relational perspective. Jessop (1990) points out that the law should not be viewed as apparatus of class domination, but as an autonomous entity, in which the interests and 'externalized' strategies of concerned parties are interwoven in a relational form of cohesion under the structural constraints of economic conditions and political power relations. In short, the politics of strategic relations is embedded in the processes of law-making.

² Jessop (1990) presents the theoretical notion of "contingent necessity", a juxtaposition of contingency denoting 'indeterminability' and necessity signifying an assumption that "everything that happens is caused".

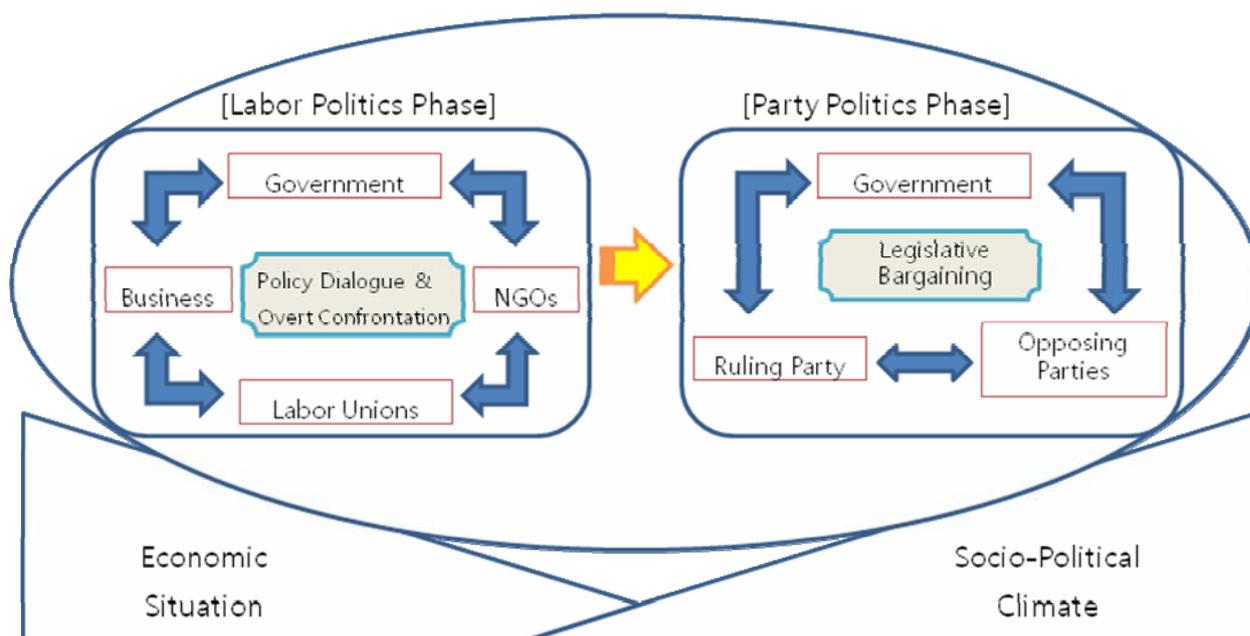
Labor laws, which set an institutional framework to regulate labor market exchange and industrial relations interplay, have been a contested terrain of the capitalist state, manifesting interest conflicts between employers and labor unions (or workers). Workers or labor unions intend to protect their interests and enhance the terms and conditions of working life through the making of labor laws. In contrast, employers and business associations oppose the making of labor laws to incur increasing labor costs and restrain their discretion as to the purchase and deployment of labor power. Under the globalizing context, employers have demanded the loosening of employment protection legislation on the pretext of enhancing corporate competitiveness, which is often faced with organized labor's strong opposition. Accordingly, the making of labor laws tends to entail acute interest conflicts between employers associations and workers organizations. The government engages in this contested process, with its selective stance toward the making of labor laws, whether pro-labor or pro-business or as an in-between mediator. Civil activist groups (NGOs), which are concerned about the worsening quality of working life, may take active part in the (re-)making process of labor laws, particularly where labor unions have low organizational coverage and weak social leverage. In addition, academics and media also participate in the contest of public discourse concerning the making of labor laws by making a voice in accordance with their own ideological inclination. These actors bring distinct interest and strategic intention into the making of labor laws, and get involved in the interactive process of policy consultation, whether in an institutionalized form or informal manner. They sometimes take a variety of strategic action, such as labor unions' general strike, NGO's making policy issues public, and business groups' co-opting approach, in order to turn the making of labor laws to their advantage. In this political process, each actor may experience intra-group split and strife, making the interaction more complicated.

The making of labor laws goes through two stages. The first is the stage of legislative agenda setting, where three parties and other social actors engage in intense interaction to determine whether to enact the law and how to devise it. The second is the stage of enactment or revision at the Congress, where political parties and the government get involved in negotiations on the detailed contents of legislation. The first stage is accompanied with policy consultation and overt confrontations among concerned actors, while the second stage is basically characterized as party politics, which is often affected by those actors' mobilized pressure and public discourse outside the Congress. In the two stages, the externalized strategies of social actors, including the government, and political parties are conditioned by contextual structures, comprised of economic situations and socio-political climate. Under a particular economic-political circumstance, some actors have a big advantage over others in exerting influence on the making process of labor laws. Along

with the changing situations (i.e. economic fluctuations, political scandals, and unexpected social incidents), however, the strategic (and power) relations of actors in the bargaining process could be reversed. Thus, the strategic selectivity of social actors (and political parties) is structured by those contextual factors, in that the scope of their strategic choice is chiefly constrained and reshaped by the external conditions.

[Figure 1] illustrates an analytical framework for examining the political processes of non-regular employment protection legislation from the strategic-relational perspective.³

[Figure 1] Framework for Analyzing the Politics of Employment Protection Legislation



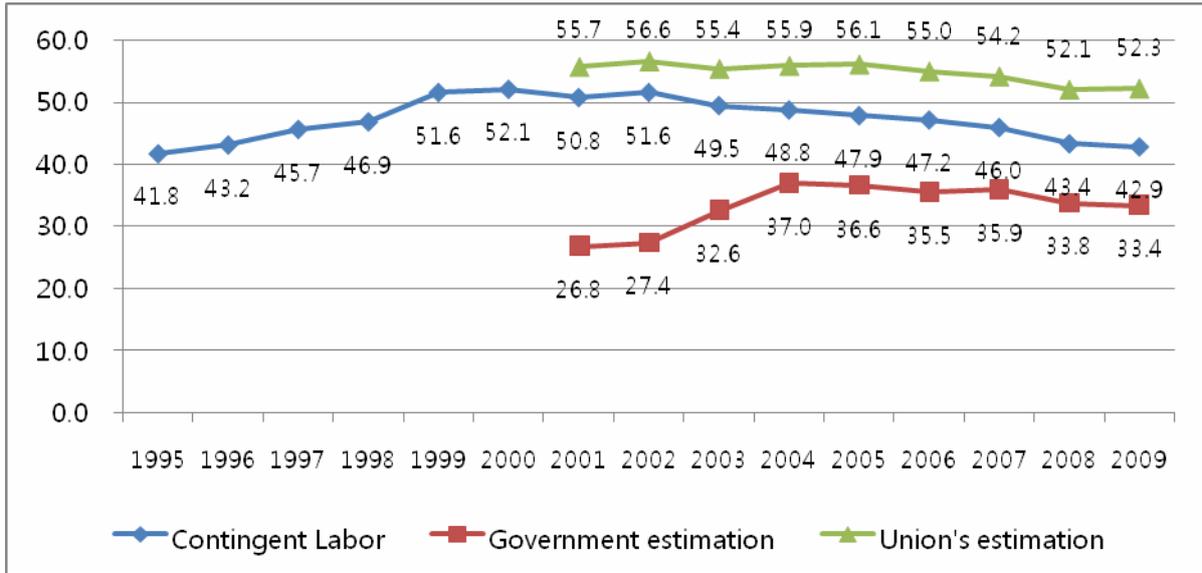
III. TRENDS AND STATE OF NON-REGULAR EMPLOYMENT IN KOREA

As exemplified in [Figure 2], non-regular employment, which had been a substantial part of the working population in the 1990s, soared sharply after the financial crisis of 1997-1998 in Korea. Against the backdrop of the economic crisis, many firms downsized regular employees and re-filled their positions with non-regular workers. [Figure 3] illustrates how Korean firms increased the use of non-regular labor and reduced the payroll of regular employees in the early 2000s. As a consequence, the share of contingent workforce, comprised of temporary and daily labor estimated by the Economically Active Population

³ Although the enforcement and judicial interpretation of labor laws could be similarly analyzed from the strategic-relational perspective, this paper focuses on the making process of non-regular employment protection laws.

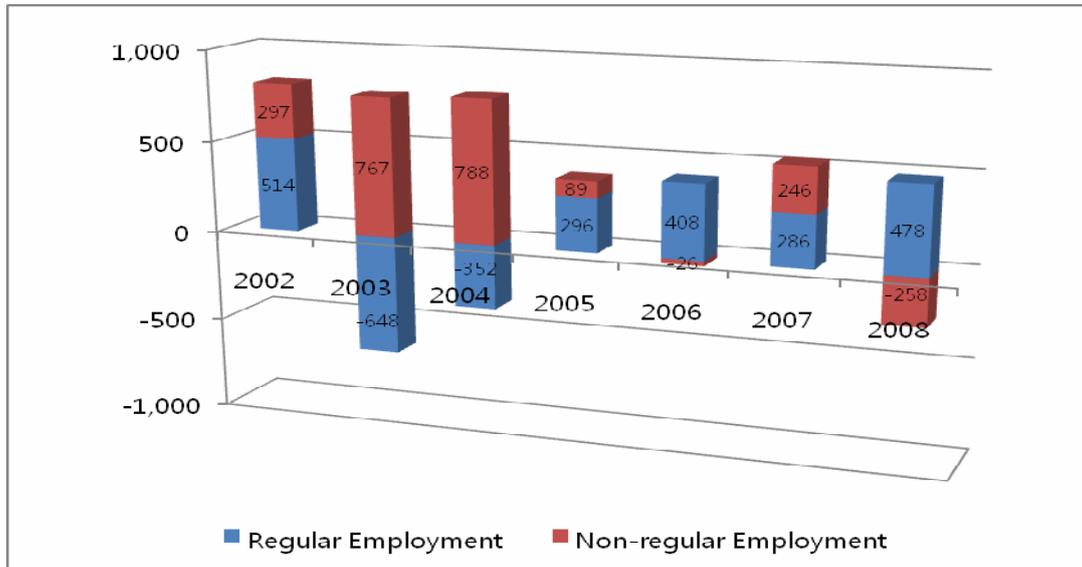
Survey, increased from 41.8% in 1995 to 52.1% in 2000. The size of non-regular employment has risen from 26.8% in 2001 up to 37.0% in 2004 and down to 33.4% in early 2009, according to the official estimation of the Korean government, which started conducting the Economically Active Population- Supplementary Survey from 2001, along with the growing social concern over the non-regular labor issue. By contrast, the labor union circle has presented quite different estimation, insisting that the majority of wage workforce has been under the non-regular employment, ranging from 55.7% in 2001 to 52.3% in early 2009. As such, there has been an intense debate on how to estimate the size of non-regular workforce, drawing upon the Economic Active Population-Supplementary Survey conducted yearly between 2001 and 2006 and bi-annually from 2007 on by the National Statistics Office. As [Table 1] illustrates, the difference in the estimation of non-regular employment between the government and the labor union depends upon how to categorize workers under recurrent renewal of temporary employment contracts (category ①). The Tripartite Commission, which was involved in the design of the Economically Active Population (EAP) – Supplementary Survey, reached an agreement regarding the definition of non-regular employment in July 2002. According to the Tripartite Commission’s definition, the government has estimated the size of non-regular employment by drawing on the official indicators (②+③) of EAP- Supplementary Survey. The Korea Confederation of Trade Unions (KCTU), which was excluded in policy consultation of the Tripartite Commission, has insisted that temporary workers under the recurrent employment contract have to be included in the estimation of non-regular employment, in that their employment and working conditions are as vulnerable and inferior as those of other non-regular workers (Kim 2009). As of March 2009, the number of the recurrent temporary workers amount to over 3 million and 18.8% of the wage working population. Given the differing estimation made by the government and the labor circle, the share of non-regular employment has declined over recent years, which is chiefly attributable to the implementation of labor policy and employment protection legislation to protect those vulnerable workers between 2005 and 2006.

[Figure 1] Trends of Non-regular Employment in Korea



(Source) Economically Active Population & Supplementary Survey in each year
 (Note): Contingent labor is estimated as the averaged number of each year; Non-regular employment by the government and labor union is estimated as of August each year, but 2009, when the number is calculated as of March.

[Figure 2] Changes in Regular and Non-regular Employment in Korea



(Source) Economically Active Population – Supplementary Survey in August each year

[Table 1] Categorization of Employment Types in Economically Active Population Survey

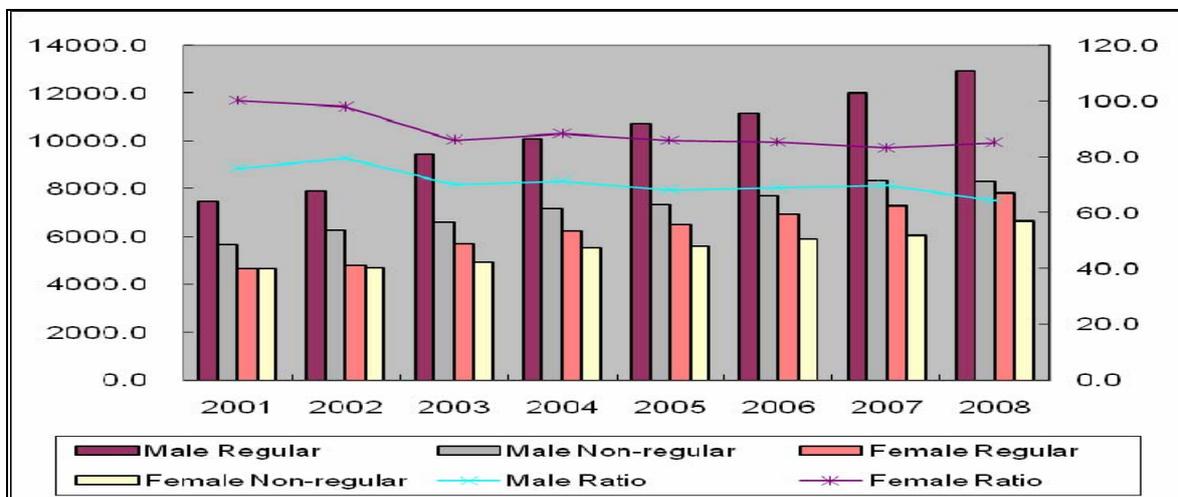
		EAP-Supplementary Survey		Total
		Regular	Non-regular	
EAP	Permanent	① 7,687 (47.8%)	② 1,487 (9.2%)	①+② 9,174 (57.1%)

Survey	Contingent	④ 3,015 (18.8%)	③ 3,887 (24.2%)	③+④ 6,902 (42.9%)
Total		①+④ 10,702 (66.6%)	②+③ 5,374 (33.4%)	16,076 (100.0%)

Note: Non-regular employment includes the fixed-term labor, on-call labor, part-time labor, dispatched labor, contracted labor, home work, and dependent self-employed. Government's estimation = ②+③; Union Circle's estimation = ②+③+④

Non-regular workers in Korea have suffered from differentiated compensation and inferior working conditions. As illustrated in [Figure 4], the discrepancy of hourly wages between regular and non-regular workers has been widening for both male (from 75.9% in 2001 to 64.4% in 2008) and female (from 100.2% to 85.2% during the same period). The wage differentials between regular and non-regular workers are even larger for male than for female. As summarized in [Table 2], a large number of non-regular workers in Korea have been commonly excluded from statutory social welfare schemes and fringe benefits provided by firms. Over 60% of non-regular workforce is still excluded from social and legal protection, such as employment insurance, national pension, overtime work payment, and paid vacations, although the coverage of the social and statutory protection for non-regular workers has slowly expanded over the recent years. Non-regular workers are also excluded from labor unions' protection, as exemplified by the fact that only below 3% of them are unionized (Lee & Kwon 2008). Moreover, many studies have shown that non-regular jobs in Korea are not a "stepping stone", but a trap, in that non-regular workers are entrapped in their marginal jobs, rather than being able to move upward to regular position (Nam & Kim 2000; Han & Jang 2000).

[Figure 4] Trends in Wage Gap Between Regular and Non-regular Workers in Korea
(Hourly Wages in Korean Won, Regular Employee=100)



(Source) Economically Active Population – Supplementary Survey, each year

[Table 2] Social Protection of Regular and Non-Regular Workers in Korea

	Regular Workers		Non-regular Workers	
	2004	2008	2004	2008
Employment Insurance	61.5%	65.8%	36.1%	39.2%
Medical Insurance	73.8%	78.0%	40.1%	41.5%
National Pension	72.5%	77.3%	37.5%	39.0%
Severance Payment	67.4%	74.5%	31.3%	35.6%
Overtime Work Payment	65.8%	53.5%	27.5%	28.0%
Paid Vacations	55.8%	65.4%	22.2%	33.6%
Bonuses	58.2%	71.2%	24.5%	27.9%

(Source) Economically Active Population-Supplementary Survey

As such, non-regular employment in Korea, which has proliferated during the last 10 years, has become a core policy issue, due to its over-use and discrimination. Under this context, such social actors as labor unions, business associations, the government, and NGOs have got involved in a strategic-relational interaction for the making of non-regular labor protection legislation since early 2000s.

IV. EVOLUTION OF LABOR POLITICS CONCERNING NON-REGULAR EMPLOYMENT PROTECTION LEGISLATION

In this section, we delineate how labor politics concerning non-regular employment protection legislation has evolved over the past three governments, by focusing on strategic-relational interaction between the governments and other social actors..

(1) The period of People's Government (1998~2002)

Non-regular employment drew social attention as a focal issue of industrial relations in early 1998, when the People's Government, led by President Kim, Dae-Jung, enacted the dispatched workers protection law under the economic crisis. This law, which failed to be implemented by the former Civil Government (1993~1997) due to labor unions' strong resistance, was made as part of the social pact made in February 1998 and allowed employers to legally use the dispatched labor, which was prohibited until then, in some occupations and industrial sectors designated by the positive list. At the time, labor unions, whose strategic reaction was constrained under the contextual pressure of the economic

crisis, could not help accepting the government's reform drive to legislate the dispatched workers protection law in accordance with the IMF's economic restructuring guideline to promote labor market flexibility as its condition of relief loan (Lee & Yoo 1998). The KCTU, whose leadership endorsing the social pact stepped down by the non-confidence resolution of local union representatives, showed the post-factum opposition against the introduction of the dispatched workers protection law, but was unable to stop the legislation. However, it is noteworthy that the government enacted this law as part of a "big deal" to exchange labor rights enhancement (for teachers and public servants) for labor market flexibility (allowing layoffs and the use of dispatched labor) (Lee & Yoo 2001). The government, aware that labor unions, particularly the KCTU, blocked the legislation of labor market flexibility by mobilizing powerful general strike action in the former administration, tried to resort to the process of social dialogue involving union representatives under the context of the economic crisis.

Korean firms launched massive downsizing of regular employees under the economic crisis, and expanded the use of non-regular labor along with the rapid economic recovery from the second half of 1999. As a result, non-regular employment sharply proliferated, as illustrated in [Figure 1], and their discriminated working conditions created the growing concern among labor unions and NGOs. In this context, a number of non-regular workers, such as daily laborers, contracted workers, and dependent self-employed, tried to organize their own labor unions⁴ and engaged in intense collective action against their employers' suppression. With the mounting concern over the non-regular labor, the Joint Committee for protecting the labor rights of non-regular workers and abolishing the discrimination, comprised of two national centers of trade unions (FKTU and KCTU) and 24 civil and labor NGOs, was formed in May 2000 and demanded the non-regular employment protection legislation in September of the year. Confronted with the increase of non-regular labor-related disputes and the escalating pressure of labor unions and civil NGOs, the government announced its first policy proposal concerning non-standard workers in October. However, the government's proposal was severely criticized by both labor unions and business associations having contesting interest, so that it failed to put into effect.

Meanwhile, the Tripartite Commission also adopted the non-regular labor issue as its agenda of policy consultation. The Economic-Social Subcommission of the Tripartite Commission began discussing about the fact-finding and policy-making of non-regular employment in April 2000, yet made little progress, mainly owing to the wide interest gap

⁴ During the year of 2000, 91 labor unions were organized to represent around 36 thousand non-regular workers, and 844 non-regular workers obtained the regular employment status through their bitter struggles (Park & Kim 2002).

between labor unions and business associations. As the Joint Committee raised its public voice demanding the non-regular employment protection legislation and the FKTU strongly demanded the forming of a subcommission to handle the non-regular labor issues from early 2001, the Tripartite Commission finally established the Non-regular Labor Policy Subcommission in July 2001, comprised of six representatives of the three parties – labor unions, business associations, and the government – and six academics representing public interest. Because the KCTU withdrew its participation in the Tripartite Commission since early 1999, it was excluded from the policy consultation process of the Non-regular Labor Policy Subcommission. Therefore, the labor politics concerning the non-regular employment protection legislation took a form of dual process: on the one hand, a policy negotiation process inside the Tripartite Commission, and, on the other, a mobilizing process of public pressure by the KCTU and civil NGOs outside the Commission.

The Non-regular Labor Policy Subcommission, which held 114 meetings in total, including workshops and public conferences, and conducted field interview research during the period of its operation (from July 2001 to July 2003), reached an agreement regarding the criteria of statistical estimation for non-regular employment and the strengthening of workplace supervision and expansion of social insurances for non-regular workers in May 2002. The Subcommission also discussed about the legislative recommendations for the four types of non-regular employment – fixed-term, part-time, dispatched, and dependent self-employed (named as special employment), yet was not able to produce an additional agreement until the end of the People's government, due to sharp and persistent interest difference of the union and business representatives. [Table 3] summarizes the public representatives' policy recommendation as well as the contending positions of labor unions

[Table 3] Legislative Proposals by Concerned Parties in the Policy-Consultation Process of the Tripartite Commission

	Union Representative	Business Representative	Public Representative
Fixed-term	<ul style="list-style-type: none"> - Regulating the use of fixed-term labor only for limited valid reasons - Imposing the duration limit of fixed-term employment for two years - Treating fixed-term workers exceeding two years as permanently employed - Stipulating the principle of the equal pay for equal value-work 	<ul style="list-style-type: none"> - Opposing the stipulation of limited valid reasons for the use of fixed-term labor - Allowing the duration of the employment contract for three years - Opposing employer's obligation to turn fixed-term workers into a permanent position - Opposing the stipulation of the "equal pay for equal value-work" principle 	<ul style="list-style-type: none"> - Introducing the time limit of fixed-term contract and treating fixed-term workers exceeding the limit as permanently employed - Stipulating prohibition of discrimination - Introducing employer's obligation to elucidate working conditions in a written form
Part-time	<ul style="list-style-type: none"> - Setting a separate limit of daily working time for part-time workers - Introducing the extra work allowance for part-time workers 	<ul style="list-style-type: none"> - Opposing the introduction of part-time working time limit and extra allowance 	<ul style="list-style-type: none"> - Stipulating the principle of proportionate protection and prohibition of discrimination for part-time workers - Paying extra work allowance for exceeding the pre-defined limit of part-time work - Introducing employer's obligation to make written employment contract
Dispatched	<ul style="list-style-type: none"> - Limiting the use of dispatched labor only for professional jobs - Allowing the use of dispatched workers only for two years - Prohibiting dispatched workers from doing the same job over two years 	<ul style="list-style-type: none"> - Changing the positive list for the use of dispatched labor into the negative list - Abolishing the time limit of dispatched labor in use - Allowing to use dispatched labor in the same job without time limit 	<ul style="list-style-type: none"> - Regulating the illegal use of dispatched labor by letting employers employ them in regular jobs - Stipulating prohibition of discrimination - Introducing tripartite council to adjust the coverage of dispatched labor in use - Promoting labor rights of dispatched workers at their working sites
Dependent Self-employed	<ul style="list-style-type: none"> - Guaranteeing the legal entity of worker for dependent self-employed in the trade union law - Extending the definition of worker in the labor standards law 	<ul style="list-style-type: none"> - Opposing the recognition of worker entity for dependent self-employed in the trade union and the labor standards laws - Resolving the issues of dependent self-employed by the civil or commercial laws 	<ul style="list-style-type: none"> - Proposing the special law to guarantee quasi-workers (dependent self-employed) labor rights to organize and bargain - Suggesting additional policy-consultation to prepare for labor and social protection

and business associations with regards to the non-regular employment protection legislation. In short, union representatives insisted on strictly regulating the use of non-regular labor and prohibiting its discriminatory working conditions, whereas business representatives strongly opposed the introduction of any regulation to restrict employers' discretion to employ at will and cause additional labor costs to employers. In the policy-consultation process, the government didn't show a clear stance on the legislative direction concerning non-regular employment, nor made active effort to mediate between labor unions and business associations. The KCTU and non-regular workers unions pressured the policy consultation process of the Tripartite Commission by mobilizing a number of campaigns demanding the abolition of non-regular employment.

(2) The period of Participatory Government (2003~2007)

Under the new Participatory Government, led by President Rho, Moo-Hyun, the Non-regular Labor Policy Subcommittee tried to finalize its policy recommendation regarding the non-regular employment protection legislation, but failed to reach a tripartite agreement due to uncompromising interest discrepancy between union and business representatives. After all, it concluded with a policy recommendation proposal addressed only by the six representatives of public interests in May 2003. As illustrated in [Table 3], the public representatives' recommendation was a compromise proposal of the middle ground to regulate the over-use and discrimination of non-regular labor. Accordingly, the recommendation was rejected by both labor unions and business associations; however, it became a significant ground of reference for the following tripartite negotiation with regard to non-regular employment protection legislation. After the closing of the Non-regular Policy Subcommittee, the Tripartite Commission decided re-establishing a subcommittee to discuss about the legislative issues of dependent self-employed in September 2003 by accepting the public representatives' suggestion. The so-called Special Employment Policy Subcommittee provided a variety of activities to devise legislative solutions for dependent self-employed until the mid of 2006, yet produced little compromise between union and business representatives.

The Participatory Government didn't have a clear plan to bring in new legislation to resolve the issues of non-regular employment at the beginning of its regime. When the new government took office in early 2003, its long-term policy program didn't include any legislative plan for non-regular employment protection, except introducing the statutory regulation to guarantee the equal treatment of those workers. During 2003, civil NGOs expressed stronger voice on the vulnerable and discriminated situation of non-regular workers, and labor unions organized a series of nationwide campaigns for demanding

statutory protection of non-regular employment. Under the pressure of NGOs and labor unions, the government began making active legislative effort from the early 2004⁵. Interestingly, however, the government, which was expected to take a pro-labor policy stance toward non-regular labor issues, showed a pro-business position in making the non-regular employment legislation. This was associated with the worsened economic situation and the failed attempt to build cooperative relationship with the KCTU. In 2003 and 2004, the country's economy fell into a grave slump, and the government's effort to induce the KCTU to re-join the Tripartite Commission was unsuccessful by the national center's weak leadership and rank-and-file's engrained mistrust toward the Commission.⁶ Under this context, the government made public a legislative proposal concerning the protection of three non-regular employment types - fixed-term, part-time, and dispatched – in September 2004. The government's proposal appeared closer to the position of business associations, rather than to that of labor unions, as illustrated in [Table 4]. The government's proposal arouse the strong opposition of the two national centers of trade unions – FKTU and KCTU -, which agreed on campaigning joint countermoves to block the government-initiated legislation and joined a nationwide committee to prevent the retrogressive revision of labor laws and protect the labor rights of non-regular workers, comprised of 101 civil and labor NGOs.⁷ Meanwhile, the Democratic Labor Party (DLP), which made its first entry into the Congress by gaining ten seats in the 2004 general election⁸, put forward a counter-proposal to limit the use and discrimination of fixed-term and dispatched labor to a certain degree. The government handed in the proposal of non-regular employment legislation to the Congress in November 2004. However, it was not passed under the strong opposition of labor unions and mounting criticism of public opinion, making the ruling party inactive in enacting the non-regular employment laws

[Table 4] Proposals Concerning Non-regular Employment Legislation in 2004

⁵ In February 2004, the Participatory Government established the non-regular employment policy office in the Ministry of Labor, which was in charge of policy-making concerning non-regular labor issues. This office was dissolved by the Conservative Government in early 2009,

⁶ Many activists and union members of the KCTU have blamed the Tripartite Commission as the ringleader to have the massive lay-off clause legislated in the early 1998.

⁷ Immediately after the Ministry of Labor announced its proposal of non-regular employment legislation, non-regular workers representatives of the two national centers engaged in sit-down protest at the ruling party office for a week. In addition, a number of academics and lawyers called a press conference to demand the withdrawal of the government's legislative proposal of non-regular employment at the time.

⁸ In the general election held in April 2004, the Democratic Labor Party obtained 13.1% of national voting.

	KTCU & DLP	Business	Government
Equal Treatment	<ul style="list-style-type: none"> - Stipulation of "Equal Pay for Equal Work" principle - Prohibition of discrimination by employment type 	<ul style="list-style-type: none"> - Opposing the stipulation of "Equal Pay for Equal Work" principle 	<ul style="list-style-type: none"> - Opposing the principle of "Equal Pay for Equal Work"; stipulating the prohibition of irrational discrimination - Introducing the corrective procedure of discrimination
Fixed-term	<ul style="list-style-type: none"> - Allowing the use of fixed-term labor only for rational reasons - Limiting the length of fixed-term employment to 1 year 	<ul style="list-style-type: none"> - Opposing the limit of fixed-term employment for reasons of use - Allowing the use of fixed-term labor by three years 	<ul style="list-style-type: none"> - Opposing the limit of fixed-term employment for reasons of use - Allowing the use of fixed-term labor by three years (temps exceeding 3 years to turn into regular position)
Dispatched	<ul style="list-style-type: none"> - Abolishing the dispatched worker law - Punishing illegal use of dispatched workers by making them regular status - Strengthening the accountability of employers using dispatched labor 	<ul style="list-style-type: none"> - Expanding the eligible sectors for the use of dispatched labor by adopting the negative list - Opposing the suspension period 	<ul style="list-style-type: none"> - Adopting the negative list of dispatched labor (except manufacturing) - Introducing the suspension period to prohibit the use of dispatched workers in the same job

The pending situation of the non-regular employment legislation in the Congress remained unchanged and even became worse in 2005, although the government attempted to enforce its legislative plan in a unilateral manner. In March of the year, the presidents of the two national centers announced a joint statement to demand the resumption of social dialogue, including the KCTU, for discussing about the compromising solution of non-regular employment legislation, and to warn the government and the ruling party that their unilateral enforcement would face strong general strike action of labor unions. In April 2005, the National Human Rights Commission addressed its official statement endorsing the labor union's position, thereby damaging the authenticity of the government's proposal. Between April and May, when the government tried to enforce the legislation in a unilateral way, the leaders of the two national centers engaged in hunger strike and called general strike. In July 2005, the FKTU decided withdrawing from the Tripartite Commission for declaring its intention to protest against the government's legislative proposal.⁹ As a result, the government, faced with the persistent opposition of labor unions and civil NGOs, failed to pass its legislative proposal in the Congress and finally gave up the hard-line position to enforce the legislation at the end of 2005.

⁹ In addition, the FKTU's withdrawal from the Tripartite Commission was attributed to the death of a union officer at a rally to demand the labor rights of dependent self-employed and the pro-business position of the Minister of Labor, Dae-Hwan Kim.

From the early 2006, the government began approaching the non-regular employment legislation in a changing manner of resorting to the 'soft' process of social dialogue. In February, President Rho replaced the pro-business Minister Kim, Dae-Hwan with an ex-labor lawyer, Lee, Sang-Soo, and the government made active efforts for resuming the policy consultation process involving the FKTU and the KEF (Korea Employers Federation). In order to induce the FKTU to take part in the policy consultation process, the Ministry of Labor embraced some of union's demands, including the term limit of two years for the use of fixed-term worker and the retention of positive list for the use of dispatched labor in its legislative proposal, in the face of the opposition of economic ministries. The FKTU's decision to return to the Tripartite Commission in February 2006 dissolved the coalition of the two national centers opposing the government-initiated legislation¹⁰, and thereafter created an uncompromising schism between the two national centers and among civil NGOs and labor activists groups in the making process of non-regular employment laws. The focal source of contention between the two national centers was how to approach the legislation: the FKTU and civil NGOs took a pragmatic stance by insisting that it would be better to introduce partial statutory regulations on the use and discrimination of non-regular employment under the given context of tripartite power relations, than to play the "all or nothing" game, whereas the KCTU and labor activist groups showed a strict position opposing the legislation against their principles to prohibit the irrational use of non-regular labor. A good example illustrative of the distinct stances of the two sides is how to regulate the use of fixed-term labor. The FKTU accepted the term limit of two years as a means to regulate the use of fixed-term labor without the specification of usable reasons, by taking employers' tough opposition to new regulation into account. By contrast, the KCTU demanded that the use of fixed-term labor is allowed only for some specific reasons (i.e. regular employees' short-term vacancies due to pregnancy and sickness, seasonal business, temporary projects, and intended to oppose any legislation, in case that their demand was not accepted).

Although the FKTU rejoined the policy-consultation process concerning the non-regular employment legislation, the government was not able to produce a tripartite agreement to compromise on this legislative issue in between the FKTU and the KEF having a wide gap of differing positions. As the policy-consultation of the Tripartite Commission proved fruitless, the government tossed the legislative issue to the Congress in the fall of 2006. Between

¹⁰ The dissolution of the FKTU-KCTU coalition was associated with the sudden resignation of the KCTU President Lee, Soo-Ho, which was active in building cooperative relationship with the FKTU in October 2005. President Lee resigned his position, since he felt accountable for the corruption of his senior officer.

October and November 2006, the ruling party invited six representatives – the FKTU, the KCTU, the KEF, the KCCI (Korea Chamber of Commerce & Industry), Ministry of Labor, Tripartite Commission – in the Congress and attempted to make a final compromise for the non-regular employment legislation. During a series of the tripartite meetings, those representatives made some progress in reaching accord on many legislative clauses, but didn't resolve the key issues (i.e. how to regulate the use of fixed-term labor and penalize the illegal use of dispatched labor), mainly due to the KCTU's stubborn stance. As the tripartite meetings failed to produce an agreement, the ruling party began negotiating with the major opposition party about the passage of two non-regular employment laws. Since all representative of tripartite negotiation but the KCTU gave an implicit understanding to the final legislative proposal, as summarized in [Table 5], the ruling and major opposition parties agreed upon the enactment of those laws.¹¹ However, the KCTU and the Democratic Labor Party (DLP) rallied a series of campaigns, including general strikes, to block the passage of the non-regular employment laws. Confronted with stiff opposition of the KCTU and the DLP, the ruling party chose to enforce the passage of the laws brought up by the authority of the Chair of the Congress in the end of November 2006. The laws were put into effect in a gradual way by taking the firm size into account: effective for firms having 300 employees and more from July 2007, firms having 100~299 employees from July 2008, and firms having less than 100 employees from July 2009.¹² As such, the non-regular employment legislation, reflecting a compromise of tripartite interests, could be completed through intense political processes of 5 years.

Prior to July 2007, when the laws started being put into effect, many large firms turned their temporary (fixed-term) workers into regular or permanent employees. However, a few firms, like E-land (department store), Korail (public transportation) and Giryung Electronics (manufacturing), undertook a massive lay-off of fixed-term workers or replaced them with contracted labor, thereby creating a grave social concern over the side-effects of the non-regular employment laws. In this context, the Tripartite Commission formed the Subcommittee on Non-regular Workers for discussing about the follow-up policy-making to deal with the side-effects and deficiencies of the legislation in May 2007. Note that the Participatory Government took active policy action to carry out a series of special

¹¹ The major opposition party, the Grand National Party, which took a pro-business conservative position speaking for the interest of business associations, did not oppose the ruling party's legislative proposal, since the business associations gave implicit endorsement to it.

¹² The non-regular employment laws are not applied to small firms having less than 5 employees.

investigation into illegal use of dispatched labor at manufacturing firms¹³ and convert non-regular workers to permanent status in the public sector during its term.

[Table 5] Key Contents of Non-regular Employment Laws

		The Existing Laws	Non-regular Employment Laws
Fixed-term	Prohibition of Discrimination	- No clause	- Introduction of 'prohibiting discrimination' clause - Labor Relations Commission's corrective action of discriminative cases
	Renewal of Employment Contract	- No clause	- 2 year limit on the use of fixed-term labor (Fixed-term workers exceeding two years limit regarded as permanently employed)
Part-time	Prohibition of Discrimination	- No clause	- The same clauses as fixed-term labor
	Extra Work Payment	- No clause for part-time workers	- Adoption of the limit of extra work (weekly 12 hours)
Dispatched Labor	Prohibition of Discrimination	- No clause	- The same clauses as fixed-term labor
	Duration & Eligible Sector of Labor dispatching	- Limit of two years - Positive List	- The same limit of two years - Retention of Positive List, yet expanded
	Treatment of dispatched workers used over two years	- Legally regarding the workers as employed in regular jobs	- Enforcing employers to employ over-used dispatched workers - Enforcing employers to employ dispatched workers in illegal use

(3) The period of Conservative Government (2008~the present)

President Lee, Myung-Bak, who won the presidential election in December 2007, announced the so-called MBnomics, including an extensive de-regulation plan, at the beginning of his administration. The advent of the Conservative Government, which gained the absolute majority of the Congress in the general election of May 2008, signaled the formation of business-led power relations by giving big advantage to employers and business groups. This new government, which made clear its pro-business administrative direction, collected business associations' demand on deregulation of labor policy area, including the non-regular employment laws, and made a public pledge to undertake aggressive policy-making for promoting labor market flexibility. Moreover, the economic slump, triggered by the financial crisis of the United States taking place in the fall of 2008, provided a specious pretext for the government's attempt to deregulate the non-regular

¹³ The government's special investigation became a source of complaints from labor unions and NGOs, since it ultimately gave many large firms an indulgence to their illegal use of dispatched labor, which is not allowed in the manufacturing sector.

employment laws. In particular, the Ministry of Labor has propagated the possibility of massive dismissal of fixed-term workers who reach the term limit of two years by July 2009 in order to justify its move to revise the non-regular employment laws. The Ministry argued in the early 2009 that around one million fixed-term workers would lose their jobs without extending the term limit to 4 years in the laws.¹⁴

However, the government's move to revise the non-regular employment laws has been confronted with strong opposition from labor unions, opposition parties, and civil NGOs. The government's rationale for revising the laws is entirely refuted by those opposing groups. The opposing groups have insisted that the non-regular employment laws have to some extent contributed in the conversion of fixed-term workers to permanent employees since the enforcement of the laws in July 2007, and that the government's speculation about the dismissed size of fixed-term workers is grossly exaggerated by taking advantage of the present situation of economic crisis (Eun 2009).¹⁵ They have demanded the further strengthening of protective regulations on non-regular employment, rather than deregulating of the existing laws. As summarized in [Table 6], the reform agenda commonly proposed by the opposing groups includes the enhancement of the complaining procedure for discriminative cases, the provision of financial incentives for firms converting non-regular workers to regular employees, the expanded accountability of employers using dispatched labor, and the introduction of additional statutory regulations over in-house subcontracting and dependent self-employed workers¹⁶. By contrast, the government have rejected these demands and tried to deregulate the existing laws by extending the term limit of fixed-term from two year to four years and the expanding the eligible sectors for the use of dispatched labor, even though its deregulatory action is short for what business associations have demanded. In accordance with the government's deregulatory policy direction, the Subcommittee on Non-regular Workers in the Tripartite Commission has changed its agenda of policy consultation from the regulatory solutions to tackle the side-effects of the existing laws to the deregulatory revision of them.

¹⁴ Yet, the estimated number of the government reduced to around 700 thousand by June.

¹⁵ Many academics, critical of the government's position to deregulate the non-regular employment laws, estimated that 273 thousand fixed-term workers at maximum would reach the statutory term limit for next 12 months, which shows a wide discrepancy with the government's estimation. It is noteworthy that the number of fixed-term workers sharply dropped from 2,614 thousands in March 2007 to 2,293 thousands in March 2008, yet has increased to 2,560 thousands in March 2009. This changing trend of fixed-term employment appears to reflect employers' reaction to the government's deregulatory move (Eun 2009).

¹⁶ In March 2009, a local president of the Cargo Driver Union protested to his death against the government's refusal to recognize labor rights of dependent self-employed workers. His death has created growing tension between the government and the dependent self-employed workers unions.

[Table 6] Key Issues Concerning Non-regular Employment Legislation in 2009

	Union & NGO	Business	Government
Prohibition of Discrimination	<ul style="list-style-type: none"> - Expansion of complainant to labor union and worker representatives - Expansion of comparable jobs to discriminative case - Extension of complaining period for discriminative case to 6 months 	<ul style="list-style-type: none"> - Opposing any revision to strengthen the complaining procedure of discriminative case 	<ul style="list-style-type: none"> - Not accepting the expansion of complainants and comparable jobs - Extending complaining period to 6 months
Fixed-term	<ul style="list-style-type: none"> - Retaining imposition of the 2 year limit on the use of fixed-term employment - Provision of incentives to firms turning fixed-term workers into regular status -(KCTU) Adoption of specific reasons for the use of fixed-term labor 	<ul style="list-style-type: none"> - Abolition of the duration limit on the use of fixed-term employment 	<ul style="list-style-type: none"> - Extension of the term limit to 4 years - Provision of incentives (exemption of social insurance fee) to small firms turning fixed-term workers into regular status
Dispatched	<ul style="list-style-type: none"> - Expanding the accountability of employers using dispatched labor - Opposing the extension of duration limit of dispatched labor -(KCTU) Abolition of the dispatched worker law 	<ul style="list-style-type: none"> - Replacing the current Positive List with the Negative List to guarantee employers' extended use of dispatched labor 	<ul style="list-style-type: none"> - Extension of the term limit to 4 years - Expanding the eligible sectors for the use of dispatched labor by revising Ministry Ordinance
Contracted & Dependent self-employed Labor	<ul style="list-style-type: none"> - Introducing statutory regulation over in-house subcontracting - Guaranteeing labor rights and social insurance for dependent self-employed 	<ul style="list-style-type: none"> - Opposing any regulation on subcontracting and dependent self-employed 	<ul style="list-style-type: none"> - Not accepting any regulation on subcontracting and dependent self-employed

In March 2009, the government announced its revision plan of the non-regular employment laws and asked the ruling party, Grand National Party to take an initiative to undertake the legislative reform. However, the ruling party, which had concern over growing criticism of opposing parties and labor and civil organizations, were reluctant to make a proposal of the revised legislation. After all, the government proposed its revision to the Congress in late April. Opposing parties (Democratic Party and Democratic Labor Party), labor unions (both the KCTU and the FKTU) and a number of civil NGOs, which showed divided stances toward the passage of the non-regular employment laws in November 2006, has built a unified front to block the government-led revision to deregulate the laws. Even the FKTU, which contributed to President Lee's seizure of power by its policy coalition with the

Grand National Party, has made clear its position to oppose the government's pro-business deregulation plan of the non-regular employment laws. Confronted with the strong opposition, the ruling party tried to make a compromising proposal to suspend the effect of the two year limit for fixed-term workers, rather than extending the term limit to four years, as the government demanded. The ruling party's comprising proposal was refused by opposing parties and labor-civil organizations, in that the suspension of the laws has the same effect as the government's revision proposal has in weakening the regulatory force of the laws. In June, the National Human Rights Commission delivered its official opinion to oppose the government's revision proposal for the simple reason that this proposal lacked a due process of social dialogue and would result in the increase of non-regular employment. Moreover, the sudden death of the former President Rho, Moo-Hyun in late May has stirred the sharp diffusion of negative public opinion toward the government¹⁷, whose targeted investigation many people thought is associated with his tragic death. Thus, this unexpected political accident further constrained the government and the ruling party from making a move to revise the laws. Against the backdrop of the unstable political situation, the government and the ruling party try to enforce the passage of the revised non-regular employment legislation by convening a special session the Congress, while the opposing parties and labor-civil groups show a determined stance to block it by force. As such, the contention and uncertainty of labor politics concerning the revision of the non-regular employment laws are growing at present.

V. CONCLUSION: SUMMARY AND IMPLICATIONS

Against a background of growing labor polarization, the non-regular employment legislation in Korea has been a polemic issue of labor politics over the past 10 years. [Table 7] decomposes the evolution of making the non-regular employment laws into three elements – contextual structure, concerned actors' interests and strategies, and legislative outcomes – in accordance with the strategic-relational theoretical perspective, in order to shed light on how contested interactions concerning the non-regular employment legislation have evolved over the three governments. We can draw some implications from this case study, as follows. The legislative processes and the enacted laws are proven the materialized cohesion of actors' strategies and contextual structure. In particular, the making

¹⁷ According to a public poll conducted right after the death of President Rho, the approval rating of the ruling party fell behind that of the major opposition party, Democratic Party. The reversal of the approval rating between the Grand National Party and the Democratic Party is for the first time since 2005.

of labor laws tends to involve a sharp interest contest between organized labor and employers associations. (As delineated in Section IV), the concerned actors get actively involved in the making process of labor laws, by taking strategic action to safeguard their own interests. The government also takes part in the political interaction of the law-making with its 'strategic selectivity', as evinced by the legislative approach of the three governments in Korea. The interests and strategic measures of the actors, including the government, are conditioned and even constrained by contextual situations, particularly economic and political circumstances (i.e. economic crisis, political power shift, and changing public opinion).

The contextual structure and the actors' strategies combine to make the interactive processes of law making and their outcomes uncertain and indeterminable. Although the government has tried to take the initiative in the making process of non-regular employment laws, the final outcomes have not been what it originally intended to make. The government's strategic intention tends to be refracted by the tense policy negotiation with/between the concerned actors as well as changing contextual situations. The strategies of the actors often expose intra-group interest contest (i.e. fission of strategic approach between the FKTU and KCTU, the inter-ministry bargaining), thereby making the interactive process of law making more complicated and uncontrolled. Sometimes, unrelated social and political issues create an overflowing impact on the legislative process of labor laws moving in the unexpected direction. To sum up, the interactive processes concerning the non-regular employment laws are characterized as strategic-relational. The non-regular employment laws, into which actors' interests and strategies as well as contextual structure have permeated, have a dual nature of employment protection and labor flexibility, which dissatisfy both organized labor and business groups. As a consequence, the laws become a focal issue of the on-going strategic-relational contest among the concerned parties, thereby producing considerable confusion about of their institutional legitimacy.

[Table 7] Evolution of Labor Politics concerning Non-regular Employment Legislation

	Contextual structure	Actors' interest & strategy	Legislative outcomes
People's Government (1998-2002)	<ul style="list-style-type: none"> - IMF's pressure for labor market restructuring under economic crisis - Experience of labor unions' powerful resistance blocking the former government's legislative attempt - Political power shift to the liberal government 	<ul style="list-style-type: none"> - Government: forced to enact the dispatched workers law as a policy measure to gain the IMF's relief loan; later, forming the policy-consultation process to produce a legislative proposal for non-regular labor protection - Union: forced to endorse the introduction of the dispatched labor law by policy exchange under the crisis; later demanding the statutory regulation of non-regular labor - Business: consistently demanding reform policy for labor market flexibility 	<ul style="list-style-type: none"> - Enactment of the dispatched workers law legalizing the use of this employment type - Forming the tripartite commission to deal with problematic issues of non-regular employment
Participatory Government (2003-2007)	<ul style="list-style-type: none"> - Growing social concern over labor polarization and non-regular labor issues - Worsening economic performance and persistence of the political contention, constraining the government's reform drive - Weakening public confidence in KCTU due to its militancy and internal corruption 	<ul style="list-style-type: none"> - Government: pressured to legislate non-regular labor protection, yet desiring to limit the regulation lest firms' competitiveness and labor flexibility should be damaged - Union: divided up between the pragmatic (FKTU) and the maximalist (KCTU) approaches toward non-regular labor protection legislation - Business: minimizing the statutory regulation on the use of non-regular labor - NGO: demanding policy action to resolve non-regular labor issues resulting in social polarization 	<ul style="list-style-type: none"> - Enactment and revision of the non-regular employment laws, reflecting an interest compromise between tripartite actors, except KCTU - Forming a tripartite commission to deal with side-effects of non-regular employment laws
Conservative Government (2008-now)	<ul style="list-style-type: none"> - Political power shift to the pro-business government - Outbreak of economic crisis - Revival of democratic civil movement against the government's self-righteousness 	<ul style="list-style-type: none"> - Government: pursuing the pro-business labor policy to promote labor market flexibility - Union & NGOs: having a common ground to fight against the retrogressive revision of non-regular labor laws - Business: making aggressive demand for deregulatory revision of non-regular labor laws 	<ul style="list-style-type: none"> - Political and discourse contention concerning the deregulatory revision of non-regular employment laws under way

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