

LEGAL PROTECTION OF DOMESTIC WORKERS FROM A NATIONAL LAW PERSPECTIVE

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Submitted : 04/06/2021 Reviewed: 08/09/2021 Accepted: 17/09/2021

Abstract: *The regulation number 13 of 2003 concerning Labour (Labour Law) has regulated the basic principles for the creation of productive, harmonious and just working conditions. However, the law does not substantively regulate domestic workers. We use the normative research with a statute approach. The presence of Minister of Labour Regulation Number 2 of 2015 concerning Protection of Domestic Workers which is expected to reach things that are not regulated in the labour law is in fact far from what was expected. Domestic workers can't hope for this ministerial regulation because there are differences between the rights of workers in the labour law and the rights of domestic workers in the Minister of Manpower Regulation Nomor 2 of 2015 which can be said to be discriminatory. Domestic workers are categorized into the scope of the informal sector causing limited rights that can be obtained.*

Keywords: *Domestic Workers; employment; Labour Law; Manpower.*

DOI: *10.32801/lamlaj.v6i2.260*

INTRODUCTION

Domestic Workers (PRT) have existed for a long time, it is estimated that they existed since the days of the archipelago kingdom, the colonial era, as well as in the era after Indonesia's independence. Currently, domestic workers have developed and experienced a change in orientation to work relationships. Especially in big cities, the presence of do-

mestic workers is needed.¹ In return for their work, domestic workers receive wages from their employers. The amount of wages depends on the agreement between the domestic worker and the employer which is often based on market prices in a particular area. In some cases, wages are also based on the employer's financial condition.²

¹ "Omnibus Law - Ruu Cipta Kerja," *Gajimu.Com*, accessed November 29, 2020, <https://gajimu.com/>.

² Dwi Astuti, *Jejak Seribu Tangan* (Yogyakarta: Liberty, 1999), 49.

Despite the increasing number of Government Regulations that regulate the issue of working women and men as domestic workers abroad, most of the 2.6 million Indonesians who become domestic workers in Indonesia are still outside the formal legal system.³ From what we can see so far, the relationship between domestic workers and their employers is only regulated based on the will of the parties (trust). This happens because usually domestic workers find their employers through information from the closest people such as relatives, friends or even their own neighbours, very few go through the domestic worker employment agency, the latter is less trusted by the community because it often happens that the distributed domestic workers run away or terminate the work agreement before the end of the agreed period, then they are redistributed by the Channeling Institution to another party. So that most domestic workers work patterns that occur in the community on the basis of trust, agreements in work only occur verbally by understanding each other's roles.

Employers see themselves as a paternalistic role, where they protect, feed, shelter, education and pocket money to domestic workers in return for the labor provided.⁴ This paternal aspect of the employment relationship, combined with the fact that most tasks are carried out within the family home and are not con-

sidered economically productive,⁵ means that Indonesian culture in general views this relationship as a personal relationship.⁶

Due to the informal, familial and paternalistic nature of the relationship between domestic workers and employers, the settlement of disputes concerning rights and obligations is usually carried out informally. This means that domestic workers do not have access to mechanisms such as industrial courts, which is currently being established to settle disputes involving workers in the formal sector.⁷ The domestic workers are very rarely mentioned as workers, but merely as a "helper", would strengthen the community's cultural reluctant to formalize the relationship between domestic workers and their employers.

With the inclusion of domestic workers in the informal sector, the struggle for workers' rights is limited. This is because the problems of Domestic Workers (PRT) are not covered by the provisions of the applicable labor legislation. Domestic workers do not get legal protection that guarantees their work the same as their counterparts who work in factories, companies, and others.⁸

Workers in Law Number 13 of 2003 concerning Manpower (Law Number 13 of 2003) are defined as everyone working by receiving a wage or compensation in other forms. Meanwhile, what is referred to as an employ-

³ ILO-IPEC, *Flowers on the Rock: The Phenomenon of Child Domestic Workers in Indonesia* (Jakarta, 2003), 21.

⁴ ILO, *Peraturan Tentang Pekerja Rumah Tangga Di Indonesia: Perundangan Yang Ada, Standar Internasional, Dan Praktik Terbaik* (Jakarta, 2006), https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-jakarta/documents/publication/wcms_122275.pdf, 9.

⁵ Lembaga Bantuan Hukum Perempuan Indonesia (LBH APIK), *Kertas Posisi Usulan Revisi Perda DKI Jakarta Nomor 6 Tahun 1993 Tentang Pramuwisma* (Jakarta, 2002), 3.

⁶ Ibid, 1-2.

⁷ ILO, *Peraturan Tentang Pekerja Rumah Tangga Di Indonesia: Perundangan Yang Ada, Standar Internasional, Dan Praktik Terbaik*, 9.

⁸ Syarief Darmayo and Rianto Adi, *Trafiking Anak Untuk Pekerja Rumah Tangga* (Jakarta: PKPM Unika Atma Jaya, 2000), 8.

er in the law are individuals, entrepreneurs, legal entities or other entities that employ workers by paying wages or other forms of remuneration.

Law No. 13 of 2003 has regulated the basic principles to create an ideal system and institution, so as to create productive, harmonious, dynamic and equitable working conditions.⁹ If referring to the definition that is normative in Law No. 13 of 2003 concerning Manpower, then Domestic Workers are part of it. This is because Domestic Workers are people who work by receiving wages or other forms of remuneration.¹⁰ However, the Manpower Act does not substantively regulate domestic workers. Thus, because they do not have the status of formal workers, domestic workers do not have a legal basis to protect their rights and positions.

In particular, the regulation of domestic workers is regulated in the Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers (Permenaker Number 2 of 2015). One of the things that attracts the attention of the Minister of Manpower Regulation Number 2 of 2015 is that the regulations are not made based on Law Number 13 of 2003 concerning Manpower or Government Regulations related to Manpower, but are considered based on Law Number 23 of 2014 concerning Regional Government.

Article 7 of the Minister of Manpower Number 2 of 2015 concerning the Protection of Domestic Workers alludes to the rights of domestic workers. However, when compared to the rights possessed by workers as stated

in Law Number 13 of 2003 concerning Manpower, there are differences even though they are both workers. Therefore, in this article, we will discuss the Legal Protection of Domestic Workers from the Perspective of National Law.

METHOD

The type of research used is a normative research with a statute approach with a view and examining problems through existing legal rules. The data source used is secondary data which is divided into three groups, namely primary legal materials, secondary legal materials, and tertiary legal materials. All of which are legal materials used by the author as a basis for solving the problems to be discussed. Regarding data collection, the author did it by studying the literature and other legal materials related to research, then all of them were processed through qualitative analysis, namely formulating legal materials that had been collected in order to answer the issue.¹¹

ANALYSIS AND DISCUSSION

Employment Law Provisions in Indonesia

In Article 1 Number 2 of Law Number 13 of 2003 it is stated that the workforce is everyone who is able to do work to produce goods and/or services both to meet their own needs and for the community. This understanding explains the meaning of labor in Law Number 14 of 1969 concerning the Basic Provisions of Manpower which provides the understanding that manpower is anyone who is able to do a job well inside and outside the

⁹ Adrian Sutedi, *Hukum Perburuhan* (Jakarta: Sinar Grafika, 2009), 23.

¹⁰ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Jakarta: Sinar Grafika, 2009), 12.

¹¹ Alfian Mahendra and Beniharmoni Harefa, "Perlindungan Hukum Terhadap Identitas Anak Sebagai Pelaku Tindak Pidana Dalam Proses Peradilan Pidana," *Kertha Semaya : Journal Ilmu Hukum* 8, no. 10 (2020): 1633, <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/60891>.

employment relationship in order to produce goods or services to meet the needs of the community.¹²

Panyaman Simanjuntak stated that manpower is “people who are already or are working, who are looking for work, and who carry out other activities such as going to school and taking care of the household. According to the provisions of Article 1 Number 3 of Law Number 13 of 2003 concerning Manpower, what is meant by a worker is anyone who works by receiving wages or other forms of remuneration. The types of workforce include:

- a. Government employees
- b. Formal worker
- c. Informal workers
- d. People who have not worked or are unemployed.

Employment Relationship

The employment relationship is a work bond between a person (worker/labor) who does a certain job, and someone (entrepreneur) who provides work or gives orders for a job that must be done properly and correctly.¹³ Meanwhile, according to Law No. 13 of 2003 concerning Manpower, Article 1 number (15) explains that the employment relationship is the relationship between the entrepreneur and the worker/labourer based on a work agreement that has elements of work, wages, and orders. Based on this understanding, there are 3 elements of the Employment Relationship, namely:

- 1) Job,

- 2) Command,

- 3) Wages.

Of the three elements, all three must be fulfilled and none of them should be reduced in order to be categorized as an employment relationship. Thus, it can be concluded that the emergence of an employment relationship is due to the existence of a written or verbal work agreement between the worker and the employer who have bound themselves, working together to carry out work that produces goods and or services. Employment relationships basically include matters regarding:¹⁴

- 1) Making an Employment Agreement (which is the starting point for an employment relationship),
- 2) Workers’ obligations (i.e. doing work, which is at the same time the employer’s right to the work),
- 3) Employer’s obligation (i.e. paying wages to workers, which is at the same time the right of the worker to wages),
- 4) Termination of employment relationship,
- 5) Method of dispute settlement between the parties concerned.

Everyone in maintaining their survival must carry out work, because without doing work that person cannot earn a living to maintain his life. In carrying out this work, the following must be distinguished:

- 1) Employment of workers for self-interest, whether carried out by themselves or by utilizing the energy of their family members (wife and children), such work implementation is not regulated by labor law because the work relationship takes place in a household, the re-

¹² “Omnibus Law - R UU Cipta Kerja.”, Lalu Husni, *Pengantar Hukum Ketenagakerjaan* (Jakarta: Rajawali Press, 2010), 22.

¹³ Soedarjadi, *Hak Dan Kewajiban Pekerja – Pengusaha* (Yogyakarta: Pustaka Yustisia, 2009) , 12.

¹⁴ “Pengertian Hubungan Kerja,” accessed May 20, 2020, <http://www.sarjanaku.com>.

sults will also be enjoyed. by the members of the house itself and similarly if there is a risk it will be borne together by them.

- 2) Implementation of work in the sense of working relationships with members of the community, where the worker/labourer depends on the provision of other people for their living, which is generally a reward for the hard work of deploying labor for the benefit of the person who does it.¹⁵

In other words, the employment relationship is born from the existence of work and the implementation of work, from the employment relationship it will eventually show the position of the parties which basically describes the rights and obligations between workers and employers and vice versa.

Labor Rights and Obligations

In national development, the role of the workforce is very important, so that the protection of workers is very necessary to guarantee the basic rights of workers/labourers and ensure equal opportunity and treatment without discrimination on any basis to realize the welfare of workers/labourers.¹⁶ Labor rights have been regulated in Law Number 13 of 2003 concerning Manpower¹⁷ which states that: Every worker/labourer has the right to protection of:

- a. Occupational health and safety;
- b. Morals and decency; and

- c. Treatment in accordance with human dignity and values and religious values.

According to Darwan Prints, what is meant by right here is something that must be given to someone as a result of a person's position or status, while an obligation is an achievement in the form of goods or services that must be done by someone because of his position or status.¹⁸ Regarding the rights for workers as follows:

- 1) Right to receive wages or salaries (Article 1602 of the Civil Code, Articles 88 to 97 of Law Number 13 of 2003; Government Regulation Number 8 of 1981 concerning Wage Protection);
- 2) The right to work and decent income for humanity (Article 4 of Law Number 13 of 2003);
- 3) The right to freely choose and change jobs according to their talents and abilities (Article 5 of Law Number 13 of 2003);
- 4) The right to develop vocational skills to acquire and add more skills and skills (Article 9 of Law Number 13 of 2003);
- 5) The right to obtain protection for safety, health and treatment in accordance with human dignity and religious morals (Article 3 of Law Number 3 of 1992 concerning Jamsostek);
- 6) The right to establish and become a member of the Labor Union (Article 104 of Law Number 13 of 2003);
- 7) The right to annual rest, every time after he has worked for 12 (twelve) consecutive months at one employer or several employers from one employer organization (Article 79 of Law Number 13 of 2003);

¹⁵ Gunawi Kartasapoetra et al., *Hukum Perburuhan Pancasila Bidang Pelaksanaan Hubungan Kerja* (Bandung: Amrico, 2008), 28.

¹⁶ Adrian Sutedi, *Hukum Perburuhan*, Cetakan II. (Jakarta: Sinar Grafika, 2011),14.

¹⁷ Article 86 Paragraph (1) Law Number 13 Year 2003 concerning Manpower.

¹⁸ Darwin Prinst, *Hukum Ketenagakerjaan Indonesia* (Bandung: PT. Citra, 2000), 213.

- 8) The right to full wages during the annual break (Articles 88-98 of Law Number 13 of 2003);
- 9) The right to an annual payment, if at the time the employment relationship is terminated he has had at least six months from the time he was entitled to the last annual rest, i.e. in the event that the employment relationship is terminated by the employer without urgent reasons given by the worker, or by workers for urgent reasons given by the employer (Article 150-172 of Law Number 13 of 2003);
- 10) The right to negotiate or settle industrial relations disputes through bipartite, mediation, conciliation, arbitration and settlement through the Industrial Relations court, as regulated by Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.

In working relations between employers and workers, of course there will be obligations on both parties. Provisions regarding these obligations are regulated in Law Number 13 of 2003 concerning Manpower, among others as follows:

Article 102 Paragraph (2): "In carrying out industrial relations, workers/laborers and their trade/labor unions have the function of carrying out work in accordance with their obligations, maintaining order for the sake of production continuity, channeling aspirations democratically, developing their skills and expertise and participating in advancing the company and fight for the welfare of members and their families.

Article 126:

- (1) Entrepreneurs, trade unions/labor unions and workers/labor are obliged to implement the provisions contained

in the collective work agreement.

- (2) Entrepreneurs and trade unions/labor unions are obliged to notify all workers/laborers of the contents of the collective work agreement or its amendments.

Article 136 Paragraph (1) "The settlement of industrial relations disputes must be carried out by employers and workers/laborers or trade unions/labor unions through deliberation to reach consensus".

Article 140 Paragraph (1): "At least within 7 (seven) working days before the strike is carried out, workers/laborers and trade unions/labor unions are obliged to notify in writing to the entrepreneur and the agency responsible for the local manpower sector"

Labor Protection

In implementing the protection of labor, should be sought protection and appropriate care for all workers in performing their daily work, especially in the field of occupational safety and regarding their daily work, especially in the field of occupational safety and concerning the norms of protection of labor.¹⁹ The scope of protection for workers or laborers according to the Manpower Act is as follows:²⁰

1. Protection of the basic rights of workers or laborers to negotiate with companies;
2. Protection of occupational safety and health;
3. Special protection for workers or laborers of women, children, and persons with disabilities;

¹⁹ Lalu Husni, *Pengantar Hukum Ketenagakerjaan* (Jakarta: Rajawali Press, 2010), 69.

²⁰ Eko Wahyudi, *Hukum Ketenagakerjaan* (Jakarta: Sinar Grafika, 2016), 32.

4. Protection of workers' wages, welfare and social security.

The purpose of legal protection as stated in Law Number 13 of 2003 concerning Manpower is to provide protection to workers in realizing welfare and improving the welfare of workers and their families. The importance of the role of the workforce actually encourages legal protection for workers to be carried out properly without discrimination. This is to create a harmonious and smooth working relationship system. Soepomo in Asikin, labor protection is divided into three types, namely:²¹

- 1) Economic protection, namely the protection of workers in the form of sufficient income, including if the workers are unable to work against their will.
- 2) Social protection, namely the protection of workers in the form of occupational health insurance, and freedom of association and protection of the right to organize.
- 3) Technical protection, namely the protection of workers in the form of work security and safety.

Basically in the relationship between workers and employers, legally, workers are seen as free people because of the principle of the Indonesian state, no one should be enslaved. Sociologically, the worker is not free as a person who is forced to accept a working relationship with the entrepreneur even though it is burdensome for the worker himself, especially at this time with the large number of workers who are not proportional to the available field. which is relatively small and no guarantee is given. In addition, workers have risks in their work. Given this, the company must

provide legal certainty to the workforce or workers.

Form of Working Relationship between Domestic Worker and Employer in Indonesia

In Indonesia, generally domestic workers meet with their employers from the closest environment. This is intended so that the position of the worker in a household can be trusted, loyal and get a good relationship at work. Because of this relationship that can be considered very close, usually at work as domestic workers, they do not have a written employment agreement. Agreements in work occur only verbally, conveyed by understanding each other's roles, so there is no clarity and certainty in terms of type of work, hours of work, problems of wages received, and so on.

Not much different from domestic workers who are channeled through the Domestic Worker Distribution Agency (LPPRT), the work contract that occurs is not between the domestic worker and the employer, but between the distributor agency and the employer. It can be seen that domestic workers are considered as objects to be traded by irresponsible domestic worker distribution agencies.

The working relationship between domestic workers and their employers is generally only regulated based on trust. For many – perhaps most – of these workers, trust is enough; they are treated as family members, experience new and exciting experiences, and may return home one day with an income they would not otherwise have. However, for some of these workers, trust is a poor substitute for formal protection, and the absence of regulations leads to physical, mental, emotional or

²¹ Ibid, 33.

sexual harassment and exploitation.²²

Changing the perception and designation from domestic worker to domestic assistant is something that is quite meaningful for workers. The designation and acceptance of domestic assistant will certainly give domestic workers a new status as formal workers. The new status allows Domestic Assistants to fight for their rights more openly. In terms of organizing domestic workers, it is not an easy matter considering that they are in someone else's domain or in the employer's house, so that wherever and for anything that a domestic worker will do, she must first obtain permission from her employer.

The current situation in the relationship between domestic workers and their employers is experiencing an atmosphere that can be said to be suspicious, which means that the employer gets a "new task" to always pay attention to the work of domestic workers and the behavior of domestic workers. Meanwhile, from the domestic worker's point of view, this "attention" becomes a burden in itself which can ultimately lead to a lack of concentration of domestic workers on their work.²³

The Position of Domestic Workers in Indonesian Labor Law

The law is always related to the role and the law as a regulator and protector of the interests of the community, Bronisław Malinowski, said: *"that the law does not only*

*play a role in violent situations and that the law also plays a role in daily activities"*²⁴.

Rights are given to rights advocates who are often known as legal entities which can be natural individuals and can also be non-natural legal entities, namely legal entities based on legal inventions.²⁵ Regarding legal protection, Philipus M Hadjon said there are two powers that are always a concern, namely government power and economic power. In relation to government power, the issue of legal protection for the people (who are governed), against the government (which governs).²⁶

In the context of legal protection for workers, Zainal Asikin said *"Legal protection for workers is very necessary considering their weak position. Furthermore, it is stated that legal protection from the employer's power is carried out if the laws and regulations in the field of labor that require or force the employer to act as in the legislation are actually implemented by all parties because the validity of the law cannot be measured juridically alone, but is measured sociologically and philosophical."*

The current government interpretation of Law Number 13 of 2003 concerning Manpower does not reach domestic workers into the general legal system regarding employment relations. Although "worker"

²² ILO, *Peraturan Tentang Pekerja Rumah Tangga Di Indonesia: Perundangan Yang Ada, Standar Internasional, Dan Praktik Terbaik*, 1.

²³ Rorotskie H. Naibaho, "Pembantu Rumah Tangga (Studi Antropologi Perkotaan Antara Pembantu Dan Majikan)" (Fakultas Ilmu Sosial dan Politik Universitas Sumatera Utara, 2010), <https://adoc.pub/pembantu-rumah-tangga-studi-antropologi-perkotaan-tentang-pe.html>.

²⁴ Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2006), 13.

²⁵ Hatjono, *Konstitusi Sebagai Rumah Bangsa* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2008), 377.

²⁶ Philipus M Hadjon, "Perlindungan Hukum Dalam Negara Hukum Pancasila," in *Politik, Hak Asasi Dan Pembangunan Hukum Dalam Rangka Dies Natalis XV/ Lustrum VIII* (Surabaya: Universitas Airlangga, 1994).

is defined in Article 1 as “a person who works for wages or other forms of remuneration”, the problem of interpretation stems from the fact that two terms for employer are used in the Act. “Employers” (business entities) are subject to all general obligations to provide “protection for the welfare of their workers, safety and health, both mental and physical” (Article 35).²⁷

The government states, employers of domestic workers are classified as “employers”, he is not a business entity and this is not an “entrepreneur” within the meaning of the law. This is in return for the economic contribution that domestic workers make to their employers by giving them the freedom to engage in more profitable activities. Since domestic workers are considered not to be employed by “employers”, they are not provided with the protection afforded by law to other workers. In addition, they are not given the protection for to the labor dispute settlement mechanism, such as the industrial court established under Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes.²⁸

Therefore, we can see that the position of domestic workers is legally biased and inconsistent because it is not substantially regulated in the Manpower Act and other implementing regulations, but is specifically regulated in the Minister of Manpower Regulation Number 2 of 2015 concerning Protection of Domestic Workers. This seems odd considering that domestic workers are also workers. There is a different treatment between workers who work

for companies and workers who work in households.

The vulnerable position of domestic workers will be weakened due to the absence of the same legal protection as workers who work in companies. The differences contained in the Manpower Act and the Regulation of the Minister of Manpower regarding the Protection of Domestic Workers can be said to be discriminatory.

The rights for domestic workers regulated in the Ministerial Regulation are different from the rights possessed by workers as regulated in the Manpower Act. In the Manpower Act, workers’ rights include:

- 1) Basic rights in employment relations;
- 2) Basic rights to social security, occupational safety and health;
- 3) The basic right of workers to wage protection;
- 4) The basic right of workers to limit work time, rest, leave and holidays;
- 5) The basic right to make Collective Labor Agreements;
- 6) The basic right to strike;
- 7) Special basic rights for women workers; and
- 8) The basic right of workers to be protected against termination of employment.

Meanwhile, the rights of Domestic Workers as stipulated in the Regulation of the Minister of Manpower Number 2 of 2015 article 7 include:

- 1) Obtain information about Users;
- 2) Get good treatment from Users and their family members;
- 3) Get wages according to the Work Agreement;
- 4) Get healthy food and drink;
- 5) Get enough rest time;
- 6) Get the right to leave in accordance

²⁷ ILO, *Peraturan Tentang Pekerja Rumah Tangga Di Indonesia: Perundangan Yang Ada, Standar Internasional, Dan Praktik Terbaik*, 10.

²⁸ *Ibid*, 10.

with the agreement;

- 7) Get the opportunity to worship according to their religion and beliefs;
- 8) Get holiday allowances; and
- 9) Communicating with his family.

From each of the rights possessed by workers in the Manpower Act and the Domestic Workers mentioned above, it shows that there are substantial differences in terms of legal protection. Specifically, the difference in legal protection lies in: protection of wages, protection of social security, protection of work safety, protection of occupational health, and protection against termination of employment.

Domestic workers cannot hope for the Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers. This regulation cannot reach Law Number 13 of 2003 in employment relations. Moreover, the regulation does not specify the rights of domestic workers such as standardization of wages, regulation of working hours and rest periods, weekly leave, annual leave, the right to communicate and associate, as well as written and non-verbal agreements. Even if they are detailed, without confirmation in the law, the violation will be considered as a mere mistake, as something that can be resolved amicably. This is of course ironic because as a country that upholds human rights, the government has not shown the political will to protect domestic workers.²⁹

Similarly, the new rules in the Omnibus Law by Law Number 11 Year 2020 About

Copyright Work on employment clusters, which was passed on November 2, 2020 and then, it can be seen that this law did not accommodate such Informal Workers Domestic Workers.

Lita Anggraini, as the Coordinator of the National Network for Household Advocacy (Jala PRT), even said that the Omnibus Law on Job Creation has reduced the standards and objectives of the decent work principle for the formal sector. Moreover, the informal sector is considered increasingly marginalized.³⁰

Until now, the existence of domestic workers has not been recognized as the same workforce as other workers, such as factory workers, company workers, and others. It must even be admitted that nowadays the term “worker” has not been accepted by society. In general, people are more receptive to referring to Household Assistants as “helpers”. Therefore, Domestic Assistants are included in the scope of work in the informal sector. With the inclusion of domestic workers in the informal sector, the struggle for workers’ rights is limited.

Legal Protection of Domestic Rights

Legal protection is a protection given to legal subjects, namely individuals or legal entities in the form of devices, both preventive and repressive, both verbally and in writing. Legal protection is to provide protection for human rights that have been harmed by others and this protection

²⁹ Ida Hanifah, “Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum,” *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 204, <https://e-jurnal.peraturan.go.id/index.php/jli/article/view/669>.

³⁰ Irfan Kamil, “Jala PRT: UU Cipta Kerja Tak Mengakomodasi Pekerja Informal,” *Kompas.Com*, last modified 2020, accessed December 4, 2020, <https://nasional.kompas.com/read/2020/10/19/16483911/jala-prt-uu-cipta-kerja-tak-mengakomodasi-pekerja-informal>.

is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be provided by law enforcement officials to provide legal protection a sense of security, both physically and mentally from disturbances and threats from any party.³¹

According to Phillipus Hadjon, there are two forms of legal protection. First, preventive legal protection, which means that the people are given the opportunity to express their opinion before the government's decision gets a definitive form which aims to prevent disputes from occurring. Second, repressive legal protection that aims to resolve disputes.

Protection of workers/laborers is intended to guarantee the fulfillment of the basic rights of workers/ laborers and to guarantee equal opportunity and treatment without discrimination on any basis to realize the welfare of workers/ laborers and their families while taking into account the progress of the business world. Legal protection has the meaning as protection by using legal means of protection provided by law, aimed at the protection of certain interests, namely by converting the interests that need to be protected into a legal right. In legal science, "Rights" are also called subjective law. Subjective law is an active aspect of legal relations provided by objective law (norms, rules, recht). The legal protection of the rights of domestic workers in Indonesia is examined in the following description:

a) Protection of Wages

Protection for wages, the difference between workers and domestic workers is very clear. If the wages of workers are regulated and protected by Government Regulation Number 78 of 2015 concerning Wages and regulations governing the Regional Minimum Wage and Provincial Minimum Wage and Regency/City Minimum Wage, it is not the other way around for Domestic Workers. Domestic workers get wages, in general only based on an agreement with their employer and some are not based on an agreement. In the sense that the employer determines for himself how much wages will be given by the employer to the domestic worker. The bargaining position of domestic workers is very weak and there are no regulations governing the wages of domestic workers, just the actions and decisions of employers.

b) Protection of social security, occupational safety and health

For social security, occupational safety and health of workers are protected by labor laws and regulations. Social security workers are protected by the Social Security for Workers (Jamsostek) which is now known as the Social Security Administering Body (BPJS) as regulated in Law Number 24 of 2011 concerning BPJS Health. Likewise with work safety, where workers are protected by Law Number 1 of 1970 concerning Occupational Safety and Occupational Health, workers are protected by Law Number 36 of 2009 concerning Occupational Health, which specifically in Chapter XII Articles 164 to Article 166 regulates and protects

³¹ Satjipto Rahardjo, "Penyelenggaraan Keadilan Dalam Masyarakat Yang Sedang Berubah," *Jurnal Masalah Hukum* 10 (1993): 121.

workers. This condition is certainly different from Domestic Workers, where Social Security, Occupational Safety and Occupational Health do not exist and are not regulated. If anything happens to the Domestic Worker in carrying out his work, only empathy and compassion from the employer can help the domestic worker.

c) Termination of Employment

Likewise with Termination of Employment (PHK), workers are protected by Law Number 13 of 2003 concerning Manpower. Companies or employers cannot arbitrarily terminate employment. There must be certain conditions that can be objectively accounted for for termination of employment by the company or employer. This is in contrast to Domestic Workers, where the employer can terminate the employment relationship with the Domestic Worker at any time without certain conditions. This is due to the absence of a legally binding agreement. Employers and domestic workers only made an agreement to the extent of unilateral and verbal regulations with 2 witnesses. Subjective considerations, solely from the employer, become the reason for terminating the employment relationship of Domestic Workers.

From the description above, it can be seen that the legal protection of the rights of domestic workers is still very minimal. The Regulation of the Minister of Manpower Number 2 of 2015 concerning the Protection of Domestic Workers which is expected to protect the rights of domestic workers is in fact very far from what is desired. In addi-

tion, and the Omnibus Law, the Job Creation Law does not accommodate the protection of the rights of domestic workers and even other informal workers.

According to Paulus Dwiyanarta, there are several factors so that domestic workers must be given legal protection as workers who work in companies or entrepreneurs, namely:³²

- 1) First, the working relationship between domestic workers and service users is an ordinary working relationship. This means that the working relationship between domestic workers and service users is a working relationship that has the same characteristics as a working relationship both according to legal experts and according to the provisions of the applicable law. There are three main elements in the employment relationship, namely the existence of orders to work (under the orders of others), wages and work. These three elements are contained in the working relationship between domestic workers and their service users. Therefore, the working relationship between domestic workers and service users can be referred to as an ordinary employment relationship.
- 2) Second, judging from the characteristics and characteristics of domestic workers are not different from ordinary workers/labor. How-

³² Paulus Dwiyanarta, *Perlindungan Hukum Terhadap Pekerja Rumah Tangga*, Paulus Dwiyanarta, 2009, <http://paulusdwi.blogspot.com/2009/03/perlindungan-hukum-terhadap-pekerja.html>.

ever, as domestic workers, they are not included in the group of workers who are protected by applicable labor laws. Domestic workers who are workers in the informal sector are not subject to labor laws. Legal protection for domestic workers is enforced by customary law.

- 3) Third, the scope of work of domestic workers is prone to violence. Violence can be perpetrated by domestic workers or service users (and family members). In addition, in their working relationship, various disputes may arise. Disputes that occur must be resolved in a good and fair manner.
- 4) Fourth, work has value because it is attached to human existence as a human being. In essence, all work has a high value. The nobility of work lies in the dignity of the human being who works. Through this view, domestic workers are included in the field of work that is noble and dignified. Employment in the domestic sector is not lower or lower than other types of work. By recognizing and accepting the noble and dignified value of the work of domestic workers, it means that the scope of work of domestic workers is included in the scope of labor or employment.

In order to realize legal protection for the rights of domestic workers as a result of being untouched or unprotected in Law 13 of 2003 concerning Manpower along with other labor laws and regulations, efforts must be taken aimed at protecting the interests of domestic workers. According

to Roscoe Pound in the theory of interest, there are 3 (three) classifications of interests that must be protected by law, namely: individual interests, social interest, and public interest.³³

In developing countries such as Indonesia, limited employment opportunities and poverty mean that domestic workers make up a significant proportion of the national workforce. Women who dominate work as domestic workers make additional contributions to the family economy, and even become the backbone of the family. However, until now, to the lack of protection and recognition of the existence of the domestic work sector led to domestic work in a state that is easy to be an object of exploitation and violence and make housework into one kind of work most marginalized. This fact causes the need to protect the presence of domestic workers in Indonesia.³⁴

Efforts to recognize and protect the existence of domestic workers are not only carried out at the national level but have also been carried out at the international, this is indicated by the approval of the Convention on Decent Work for Domestic Workers by the International Labor Organization (ILO). The improvement of working conditions has been a concern of the ILO since 1948 by adopting a resolution on the working conditions of domestic workers, then in 1965 the ILO also adopted a resolution on calls for normative action in the field of working conditions for domestic workers. Where the Government of Indonesia in this

³³ Marmi Emmy Mustafa, *Prinsip-Prinsip Beracara Dalam Penegakan Hukum Paten Di Indonesia Dikaitkan Dengan TRiPs-WTO* (Bandung: PT Alumni, 2007), 58.

³⁴ Hanifah, "Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum."

case the President of the Republic of Indonesia gives a state speech in front of the ILC Forum (International Labor Conference) to provide support for the ratification of the convention.³⁵

Legal protection for domestic workers for their rights is very important to guarantee legal certainty in obtaining their rights and carrying out their obligations. Ensure this also applies to businesses that have obtained permission from the Governor or appointed officials to recruit and channel domestic workers employed by users through the Domestic Worker Distribution Agency (LPP) so that all parties can avoid working relationships between domestic workers and service users.

CONCLUSION

The legal position of Domestic Workers (PRT) is still biased and inconsistent. The classification of domestic workers into the scope of informal work limits their rights as workers. Regarding the legal protection of the rights of domestic workers in Indonesia's positive law is still low. The existence of a regulation that regulates the rights of domestic workers is currently only contained in the work agreement between workers and employers as well as the Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers which was originally expected to protect the rights of domestic workers, in fact it is far from what is desired. The protection of the rights of domestic workers such as protection for wages, protection for social security, occupational safety and health, and termination of employment is not covered by the Ministerial Regulation.

Suggestion

Based on the analysis that has been described previously, it is time for a law to specifically regulate domestic workers. This is important because the type and nature of domestic work has its own characteristics, so that the legal protection for domestic workers of their rights can answer and solve the problem and is important not only for domestic workers but also for households that employ them. Furthermore, of course it will also have an impact on the productivity of the family itself which will contribute to the development of the nation and state.

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³⁵ Ibid.

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