

The Urgency of Legal Protection for Domestic Workers as Informal Workers

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The Urgency of Legal Protection for Domestic Workers as Informal Workers

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ABSTRACT. One of the informal professions in Indonesia is a domestic worker. The problem is that domestic workers have not received maximum protection related to their wages, comfort and work safety which causes them belittled because the lack of their awareness about the rights they supposed to get. This article was made to examine the issues faced by domestic workers and what steps can be taken to improve the bargaining position of domestic workers. The research method used is empirical sociological, focusing on primary data and interviews, supported by secondary data. Data collection and analysis were carried out qualitatively by using Anthon F. Susanto model through the stages of data triangulation. The conclusion is that in Government Regulation Number 2 of 2015 there are no details regarding the rights of domestic workers and there are no laws protecting domestic workers so there are still many violations against domestic workers.

KEYWORDS. Domestic Worker, Informal Workers, Legal Certainty, Legal Protection

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Pendahuluan

One of the informal professions in Indonesia is a domestic worker. The problem is that a domestic workers have not received the maximum social and employment protection as well as decent work standards related to wages, working time, rest time, health, comfort, and work safety, which causes them to be underestimated and poorly treated. This problem occurs because of the low awareness of the rights that they must get if there is injustice at work due to a lack of knowledge and low education.

Working as a domestic workers has existed since ancient times. Two main points behind the existence of domestic workers are the poverty and this job is assigned to women. Being a domestic workers does not require funds and special skills like other jobs. A domestic workers must master

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various skills such as babysitters, cooking, ironing, laundry, washing dishes, and cleaning the house.²

Things that usually happen when someone hires a domestic worker are married couples who work and they're too lazy to do housework. They also do not have the skills to take care of housework, especially cooking and others, or even because of loneliness. Therefore, the role of domestic workers in daily life is essential.³

Domestic workers receive a salary from their employer in return for their work. The amount of wages depends on the contract. It's often based on the standard wage in a particular area. Domestic workers often seek employers through friends, neighbors, or even relatives, when they do not have an employment contract. Ironically, domestic workers are not considered as a job by society because it is not considered productive⁴.

The dynamics of domestic workers, do not survive the existing system. However, now they are trying to change the system, such as the day by day system or the per-job basis system. They work according to their duties and come home from day to day. The role of parenting is now taken by the babysitter. Domestic workers who are more educated prefer to work in factories. So the relationship between domestic worker and employer is unique and complex. Most of them also have family relations so that their relationship establish a flexible work between domestic workers and employers.

There are no special regulations for informal workers, especially domestic workers. So that legal problems often occur in labor law. There are 4.2 million workers demanding to legitimize law that has been neglected for 18 years. The preamble to the 1945 Constitution states that one of the national goals is to protect the entire Indonesian people and all the bloodshed of Indonesia. Therefore, the silence of the House of Representatives and the President needs to be questioned.

² Hanifah, I. (2020). Kebijakan perlindungan Hukum Bagi Pekerja Rumah tangga melalui Kepastian Hukum. *Jurnal Legislasi Indonesia*, 17(2), 194–208. <https://doi.org/10.54629/jli.v17i2.669>

³ Fadila, R. I., & Purba, N. (2021). Perlindungan Hukum bagi Asisten Rumah Tangga Menurut undang undang no. 23 tahun 2004. *Citra Justicia: Majalah Hukum Dan Dinamika Masyarakat*, 22(1), 94–102. <https://doi.org/10.36294/cj.v22i1.2108>

⁴ Yudistika, A. S. (2020). Advokasi hak-hak perempuan Asisten rumah tangga Oleh Lembaga Bantuan Hukum asosiasi Perempuan Untuk Keadilan (LBH APIK) Jakarta. *EMPATI: Jurnal Ilmu Kesejahteraan Sosial*, 7(2), 116–129. <https://doi.org/10.15408/empati.v7i2.11364>

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To prevent violence against domestic workers, it is essential to have regulation that ensure safety and respect for their rights. These regulations can encourage equality to obtain equal opportunities and justice before the law.

Based on previous research that examines the problem of women working as domestic workers, such as Dhewy (2017)⁵; Sonhaji (2020)⁶ stated that most domestic workers have low education so there is a need for legal protection by the government to prevent discrimination, violence, and neglect of their rights.

This article was made to examine the issues faced by domestic workers, especially regarding their effort due to their position who have not been protected by laws and what steps can be taken to improve bargaining positions of domestic workers as a labor.

Method

The research method used is empirical sociological, focusing on primary data and interviews, supported by secondary data, which includes primary, tertiary, and secondary legal materials, and a descriptive qualitative approach. Data collection and data analysis were carried out qualitatively by using the model of Anthon F. Susanto through the stages of data triangulation.

Analysis and Discussion of Legal Protection for Domestic Workers as Informal Workers

Domestic worker's role is very important. Domestic workers should have legal protection to ensure their rights at work. Legal protection covers fundamental worker rights, including protection of wages, working hours,

⁵ Sonhaji, S. (2020). Perlindungan Pekerja Rumah Tangga Dalam Sistem Hukum nasional. *Administrative Law and Governance Journal*, 3(2), 250–259. <https://doi.org/10.14710/alj.v3i2.250-259>

⁶ *Ibid.*

furlough payments, social insurance, dismissal compensation, and rest/furlough rights.⁷

As we know, the use of a domestic worker does not use a work contract because basically the employer gets the domestic worker from a company that provides domestic worker search services based on the area of work. Therefore, employers do not use employment contracts when hiring a domestic worker.

The legal protection given to domestic workers is to provide justice for them by preventing various acts of discrimination, harassment and violence against them so that domestic workers get prosperity, as well as fostering good relations with employers by upholding the principles of humanity, justice and equality.

Employment contract is very important for those who are just starting to work. Because from the contract, they will know how to regulate the rights and obligations of both parties. According to a survey conducted by the International Labor Organization (ILO), there are more than 10,7 million domestic workers⁸. Unfortunately, the number of productive workers is a poor sector. What if millions of domestic helpers became workers in the formal sector?

If domestic workers become the formal sector, there will be significant changes in the national economy. If domestic workers could access banks and credit institutions because they are known as workers in the formal sector, there will be transformation in domestic workers and their family's life.

From the 4.2 million domestic workers, there are the largest number of domestic workers in the Indonesia provinces, those are West Java with 859,000 workers, East Java with 779,000 workers, Central Java with 630,000 workers, Jakarta with 481,000 workers, and Banten with 244,000 workers. There are also characteristics of domestic workers they are working 6 or 7 days a week. They are 81% of adult workers and 92% of child workers. The average number of domestic workers who work 40 hours or more in a week is 60% adult workers and 76% child workers. Meanwhile, regarding the

⁷ Istiawati, S. (2021). Hukum Perlindungan Terhadap hak-hak pekerja rumah tangga. *Juripol*, 4(2), 104–109. <https://doi.org/10.33395/juripol.v4i2.11111>

⁸ Perempuan, K. (2021, June 15). *Siaran pers*. Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan. Retrieved November 5, 2022, from <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-peringatan-hari-pekerja-rumah-tangga-prt-internasional-16-juni-jakarta-15-juni-2021#:~:text=Konvensi>

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income of domestic workers, 28% of adult workers and 23% of child workers earn IDR 1,000,000/month.

Rights of Domestic Workers

1. Rights of Domestic Workers Based on International Labor Organization (ILO)

International Labor Organization (ILO) Convention No. 189 and Recommendation 201/R201 concerning decent work for domestic workers adopted from the International Labor Organization (ILO) provides special protection for domestic workers and establish rights and even fundamental worker rights regarding working hours, furlough rights, and normative rights. Where this convention also encourages countries to realize concrete steps for domestic workers because data from the International Labor Organization (ILO).

As we see migrant workers working the domestic sector, they are not ashamed or inferior to be called as a domestic worker who work in the informal sector. Unfortunately, domestic workers in Indonesia are often referred to servants. They don't have legal protection because they are not classified as workers in Law Number 13 Year 2003 concerning manpower.

Along with the dynamics that occur in society, domestic workers are now seen not as helpers but as workers. As workers, domestic workers must get the same rights and obligations like other professions. Therefore, as part of citizenship, domestic workers should have their right to be protected in their work/profession. So far, there has been no employment law in Indonesia that explicitly and strictly regulates domestic workers.

There is a bill about domestic workers based on the number of domestic workers in Indonesia. Cased on Statistics Indonesia data in 2008, reaching nearly 2 million people, 12% of them are child domestic workers under 18 years old, and 90% are women. The bill aims to ensure that domestic workers get legal protection for their profession and rights through training, coaching, and precise positions related to their profession.

The bill about domestic workers was discussed by Commission IX of the House of Representatives for the 2009-2014 period. Which became the basis for the formulation of this law on domestic workers was referred to the 1945 Constitution Article 28C.

The details of the rights of domestic workers that should be obtained are stated in the bill of The Protection of Domestic Workers which is following ILO Convention Number 189⁹, here are the details:

- Find workers with the same religion and beliefs
- Work at normal working hours
- Get leave following the agreement enclosed by the domestic workers and the employers
- Get wages and holiday allowances according to the agreement with the employer
- Get health social security as a beneficiary of contribution assistance
- Get employment social security by the agreement with the employer
- Terminating the employment relationship in the event of a violation of the employment agreement
- Health social security contributions are borne by the Government
- Employment social security contributions are borne jointly by the domestic worker and the employer.

2. *Legal Protection for Domestic Workers*

Protection for domestic workers is given based on human rights and justice, legitimizes the type of work of domestic workers legally, and legitimizes that domestic workers have economic value to prevent discrimination, harassment, and violence against domestic workers¹⁰. Protecting domestic workers aim to achieve prosperity and create working relationships that uphold human values, justice, and equality.

Legal protections for domestic workers are contained in Article 27(2) of the 1945 Constitution of the Republic of Indonesia. The article states that "every citizen has the right to work and to a decent life for mankind." Section 28D(2) also states that "everyone has the right to work in an employment relationship and to be treated fairly and equitably". In addition, Law No. 23

⁹ RI, S. D. P. R. (2021). *Situs Dewan Perwakilan Rakyat Republik Indonesia - DPR RI*. Dewan Perwakilan Rakyat. Retrieved November 5, 2022, from <https://www.dpr.go.id/uu/detail/id/125>.

¹⁰ Samodra, P. A., Solechan, S., & Suhartoyo, S. (2019). TINJAUAN YURIDIS TERHADAP PERLINDUNGAN HUKUM TENAGA KERJA INFORMAL KHUSUS PEMBANTU RUMAH TANGGA DI KOTA SEMARANG. *Diponegoro Law Journal*, 8(1), Article 1.

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of 2004 on the Elimination of Domestic Violence also indirectly includes protection for domestic workers in Articles 1(1), 2(1)(c) and 5.¹¹

Based on National Commission on Violence against Women (*KOMNAS Perempuan*), there are 11,207 cases of violence against women that still occur frequently, especially domestic violence (KDRT), which includes family/personal relationships, which involving domestic workers. According to the National Ministry of Women's Empowerment report, it describes that the situation of domestic workers in Indonesia is very bad because underage girls are the most employed as domestic workers, have no working hours, and experience violence and slavery. This bad situation has also violated the Regulation of the Ministry of Manpower Number 2 of 2015 article 4 which states that the requirements for domestic workers include:

- Have identification documents
- Minimum age of 18 years (eighteen years); and
- Have permission from their husband/wife for domestic workers who are married.

The establishment of the Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers on January 19, 2015, is a beginning step to protect the existence of domestic workers and ensure their prosperity because, so far, there are no law that regulates domestic workers or domestic workers. The Ministry of Manpower Regulation Number 2 of 2015 also protects and guarantees domestic workers in inappropriate actions that may be carried out by the Domestic Worker Distribution Agency¹².

In Government Regulation Number 2 Year 2015, there are no details on about domestic workers' rights, such as standard salary according to regional minimum wage, working hours, furlough rights, resting time, safety and health insurance¹³.

¹¹ Nirmalah, N. (2021). Perlindungan Hukum TERHADAP Asisten Rumah Tangga Ditinjau dari Undang-Undang cipta Kerja. *SOL JUSTICIA*, 4(2), 194–204. <https://doi.org/10.54816/sj.v4i2.461>

¹² Ismiatun, & Alamsyah, B. (2017). Perlindungan Hukum terhadap Pekerja Rumah Tangga Menurut Peraturan Menteri Ketenagakerjaan Nomor 2 Tahun 2015 dalam Perspektif Hukum Positif Hukum Indonesia. *Legalitas: Jurnal Hukum*, 9(10), 113–142.

¹³ Dila Pariutami, I. D., & Udiana, I. M. (2020). Perlindungan Hukum TERHADAP hak pekerja rumah tangga yang Tidak Sesuai Dengan perjanjian di Bawah Tangan. *Kertha Semaya: Journal Ilmu Hukum*, 8(8), 1291. <https://doi.org/10.24843/ks.2020.v08.i08.p15>

Based on the results of an interview with Mrs. Imah regarding her experience as a domestic worker since she was 14 years old due to economic demands. Mrs. Imah was once a victim of violence by her employer. “I was once pushed from the stairs, slapped until my temple was torn, and a glass was thrown by my employer, but I couldn’t report my case to the police because I had a contract with my employer for 1 year, so if I report it, I don’t get my salary. And also there are no protection provided by the agency because when I reported it to the agency, they even said I was the one who was stupid,” said Mrs. Imah in an interview on October 31, 2022.

According to Mrs. Imah, “There is an urge for counseling regarding how to report violence against domestic workers because many of them experience violence by their employers, but they are too afraid to report it. It is also necessary to have early education related to the rights that we can get as a domestic worker”.

Based on an interview with Ms. Sila, who has ten years of experience as a domestic worker, she often get violations from her employers. On the first day of work, Mrs. Sila had made several agreements with her employer, such as working hours, annual leave, and resting time. However, her employer often violated the agreement. “I was often told to work outside the agreed working hours, they told me to cook at 3 am and wash the sheets at 2 am”. Said Mrs. Sila in an interview on November 5, 2022.

She also said “During the Eid holiday in 2022, my employer was not allowed me to return to my hometown, even though we had already an agreement at first. I also cannot report it to the police because the agreement that made was verbal, not written”.

Mrs. Sila hopes that the bill on the protection law of domestic worker will soon be legalized so that domestic workers can get their rights and legal protection from employers who commit violence and deprive them of their rights.

Based on an interview with Mrs. Putu Suryanti related to her experience as a domestic worker since she was 24 years old, who intends to gain experience and earn an income to be able to continue her undergraduate studies, Mrs. Putu Suryanti also received assistance if there are inappropriate actions from the middleman who had offered her this job.

Satjipto Raharjo, in his book “*Ilmu Hukum*”, explains that legal protection protects human rights that others have harmed¹⁴. These protections

¹⁴ Satjipto, R. (2000). *Ilmu Hukum*. PT Citra Aditya Bakti.

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are given to the community for being able to take advantage of all rights granted by law.

As stated in Article 5(1) of the Human Rights Law of the Republic of Indonesia No. 39/1999, "Everyone, as an individual, has the right to be treated in the same way and is bound by the law and Article 5. Before paragraph 2, it stipulates that "human dignity is demanded and afforded protection" and that "everyone has the right to fair advice and protection by an objective and impartial court". . ". The government must therefore urgently ratify the Domestic Workers Protection Act, which has been neglected for 18 years.

Government Regulation Number 2 of 2015 has not been properly implemented regarding some rights that domestic workers should have. Therefore, there are still many problems and violations of the law when the rights of domestic workers are regulated according to Article 7 of the Regulation of the Ministry of Manpower Number 2 of 2015 as follows:

- Obtain information about the employers
- Obtain favorable care from the family members and employers
- Obtain salary in line with the work contract
- Obtain healthful consumptions such as foods and drinks
- Obtain suitable rest time
- Obtain the right to leave by the agreement
- Obtain the opportunity to worship according to their religion and beliefs
- Obtain vacation allowance
- Obtain the opportunity to communicate to their family

Minister of Labor Regulation No. 2 of 2015 describes legal protection using schemes for the implementation of normative rights as an workers¹⁵. However, there are still no details about the rights of domestic workers, such as wages in accordance with standards, working hours, furlough rights, resting time, safety and health insurance, social security rights and freedom of association rights, rights to worship according to their religion, and written agreements, not verbal agreements¹⁶.

So the Government Regulation has not been able to protect the property rights of Domestic Workers as a whole. As well as The Government

¹⁵ Jdih.kemnaker.go.id. (2021). *Jdih Kemnaker*. web counter. Retrieved November 5, 2022, from <https://jdih.kemnaker.go.id/katalog-589-Peraturan%20Menteri.html>

¹⁶ Azhari, M. Y., & Halim, A. (2021). Hak-hak pekerja rumah tangga Dan Perlindungan Hukum di Indonesia. *Media Iuris*, 4(2), 173. <https://doi.org/10.20473/mi.v4i2.25492>

Regulation regarding domestic workers also does not refer to Labor Laws, because Domestic Workers are also a job and profession¹⁷.

Domestic workers' legal protection is provided by Labor Law and the responsibilities of domestic workers to their distributors as companies contain:

- Equal opportunity and enforcement (Chapter III)
- Job training (Chapter V)
- Workforce placement (Chapter VI)
- Employment relations (Chapter IX)
- Protection, remuneration, and welfare (Chapter X)
- Termination of employment (chapter XII)

Antonio Gramsci acquaint the form of society's resistance to the authorities who take action against it. Oppression by the rulers is called hegemony. According to Gramsci, there are two ways of hegemony in society. Hegemony occurs because of the way of life, thoughts and views of the people who have accepted and imitated the way of thinking and lifestyle of the elite group that dominates and exploits it, so that it can be said that the dominant ideology was taken over by the dominant group. Second, a strong hegemony through the rules made by the corporate economic system in a hegemonic state, with a superior economic ideological position.

Boedhi Wijardjo and Herlambang Perdana expressed their views of the form of peasant resistance in fighting for their rights by stating reclamation which means "The form of resistance carried out by the peasants, to fight for their rights by prioritizing ways of community organization, networking as a strategy, using principles of non-violence, respecting democratic principles, respecting the values of human rights, justice, collectivity, and openness".

The theory of resistance that T. Keizerina Devi used in her postgraduate dissertation research at the University of Indonesia entitled "Peonale Santie Studies on Economic Globalization and Legal Change in East Sumatra (1870-1950)" is shown the results that the law in the form of legislation is only a piece of paper without power if it is not supported by economic power and political power. Likewise, the changes are not always

¹⁷ RI, D. P. R. (2020, June 17). *Dewan Perwakilan Rakyat Republik Indonesia Catatan rapat rapat ... - DPR*. Dewan Perwakilan Rakyat Republik Indonesia. Retrieved November 17, 2022, from <https://www.dpr.go.id/dokakd/dokumen/BALEG-RJ-20200622-044635-4752.pdf>

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because the law contradicts morals and justice alone, but economic interests can influence the changes.

Conclusion

1. In Government Regulation Number 2 Year 2015, there are no details on the rights of domestic workers, getting standard wages according to regional minimum wage, working hours, annual leave, resting time, safety and health insurance. These rights are not clarified in the Government Regulation Number 2 Year 2015 by the government. As a result, violations against domestic workers will become normal and commonplace and will even lead them into modern slavery. Meanwhile, according to Indonesian law, the state must end slavery in its own country.
2. There are no specific law that protects domestic workers, so there are still many violations of the law against domestic workers. And the difficulty in reporting cases of violations experienced by domestic workers is due to ignorance of the regulations that protect them and their rights.

Recommendation

1. Internally, domestic workers should develop a solid mental attitude, and then they can improve their skills through various training or workshops. Then they have to make some effort to increase their bargaining power. They can work two shifts a day through direct negotiation/specification/specialization of their type of work, where they are washing, cooking, taking care of the garden, or taking care of children. It needs to be instilled that the job is not despicable, because as a domestic worker, there is a reliance that must be built.
2. They should be trained by the institution/agency with an understanding of how to deal with the highest companies to get the appropriate training because they are multi-talented. They can get training through pre-employment from the government, province government, district or city government, NGOs (Non-Governmental

Organizations), and most importantly, they should establish an organization that cooperates with the institution/agency.

3. There is an urge for legal protection efforts by the government, by carrying out Law Reform, legalized the bill on the Protection of Domestic Workers, and providing service centers that can be of mediation and assist in the event of a dispute between the employer and the domestic worker.

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All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.

Winston Churchill