

## Legal Protection for Domestic Workers: The Experience of Indonesia

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### ABSTRACT

Given its social and economic invisibility and the accompanying low social status, domestic work is often exploitative. This research was aimed to find out and formulate the substance of legal protection for domestic workers in legislation in the field of labor in terms of the perspective of justice. It uses a statute, case, and socio-legal approaches. It was conducted in 3 (three) major cities, namely Jakarta, Yogyakarta and Makassar. The results of research showed that the substance of legal provisions in general for the protection of domestic workers, especially in labor legislation basically has not been able to guarantee justice and legal certainty because the responsibility of State has not been implemented in the existing legal substance. The paradigm of harmonization and the principles of legal agreements in the field of labor have not guaranteed justice and legal certainty for domestic workers. It is evidenced by the view of the profession of domestic workers who are positioned as informal workers, in addition they are not being accommodated as an element protected by law, it is also related to the protection of basic rights and labor social security does not cover the existence of domestic workers.

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### 1. Introduction

Domestic workers in the domestic life of people in Indonesia have a very important social role. However, as it turns out into practice, domestic work is a low paying activity. Domestic workers salaries are often far below the minimum wage, when it exists. The lack of working benefits is a common trend in domestic work. A large number of countries explicitly exclude domestic workers from the scope of laws granting maternity protection to women workers.<sup>1</sup>

<sup>1</sup> International Labour Organization (ILO). (1999). *Maternity protection at work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Reports V(1) and V(2), ILC, 87<sup>th</sup> Session, 1999 (Geneva), p. 27.

Domestic workers cannot be compared to blue collar that are the lowest class in the economic and social system in Indonesia, their presence socially like an invisible air but can be felt and is very important. In its history, domestic workers in Indonesia have never formed professional associations. It indicates the presence of women in the workforce is increasingly important and necessary. This is evident from the increasing number of employers who employ women workers in the company. The reason for this is that women are more conscientious, careful and obedient in carrying out their duties as a worker.<sup>2</sup>

Normatively, although largely Government Regulations regulating the issues of women and men workers as domestic workers abroad, most of 2.6 million Indonesians who become domestic workers in Indonesia<sup>3</sup> are still outside the formal legal system. Instead, the employment relationship between domestic workers and employers is generally only regulated based on trust. For most of these domestic workers, trust is sufficient, they are treated as family members, with new and interesting experiences, and can return home someday with an income they will not get on other occasions. 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 sexual harassment and exploitation.<sup>4</sup>

The government of Indonesia is considered to have failed in protecting some domestic workers from harassment and exploitation.<sup>5</sup> The indicator of government failure according to *Human Rights Watch* is the presence of hundreds of thousands of girls in Indonesia and even some of these domestic workers are only 11 years old, doing works such as cooking, cleaning the house, washing clothes, caring for children, and sometimes working to their employer's business. These girls live and work in the shadow of society, hidden behind the locked doors of their employers' homes, isolated from their family and peers, and with little regulatory oversight by the government. In fact, many Indonesian government officials do not even recognize that these children are truly workers.<sup>6</sup>

In Indonesia, based on a rapid assessment from JALA PRT,<sup>7</sup> it is estimated that there are 10.744.887 domestic workers taking into account 67% of middle and upper-middle class households employing 30% of domestic workers. While, the number of Indonesian migrant domestic workers to the Middle East and Asia Pacific, and also neighboring countries such as Malaysia, Brunei and Singapore is approximately 6 million.

Based on the research of *Human Rights Watch*, it is found that many of the employers withhold any payment and wages until the child has returned to the employer's home, and many employers do not pay the child at all or pay less than the amount they

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<sup>2</sup> Lalu Husni and Ani Suryani. (2018). "Legal protection for woman domestic workers based on the international convention." *Journal of Legal, Ethical and Regulatory Issues* .

<sup>3</sup> ILO-IPEC. (2004), *Bunga-bunga di Atas Padas: Fenomena Pekerja Rumah Tangga Anak di Indonesia*, Flowers on the Rock: the Phenomenon of Child Domestic Workers in Indonesia, ILO Jakarta, p. 21.

<sup>4</sup> Organisasi Perburuhan Organisasi Perburuhan Internasional (2006), 1<sup>st</sup>, International 2006, *Peraturan tentang Pekerja Rumah Tangga di Indonesia Perundangan yang ada, Standar Internasional dan Praktik Terbaik*, 1<sup>st</sup> edition, Kantor Perburuhan Internasional, Jakarta, p. 1

<sup>5</sup> Human Rights Watch, (2009), *Pekerja di Dalam Bayang-Bayang Pelecehan dan Eksploitasi terhadap Pekerja Rumah Tangga Anak di Indonesia*. Printed in the United States of America, New York, p. 1

<sup>6</sup> *Ibid*, p. 1

<sup>7</sup> Odi Shalahuddin, 21 February 2014, *Lindungi Pekerja Rumah Tangga Indonesia*, Website: <http://m.kompasiana.com/post/read/636922/2/lindungipekerja-rumah-tangga-indonesia.html>, accessed on 8 September 2014.

promised. The tactic of withholding salary prevents child domestic workers who live far from their own homes from leaving exploitative situations. In the worst cases, even girls are physically, psychologically, and sexually harassed by their employers or their employer's family members, in addition to exploitation of their labor.<sup>8</sup>

The myths of unfair treatment of domestic workers persist in the current era of globalization, due to the general lack of knowledge about the conditions faced by many domestic workers, which is a result of the lack of government supervision and investigation into the lives of workers domestic workers, and from a continuing discriminatory view of the position of girls and women in society. Conditions that can reflect the low legal protection of domestic workers can be a barrier to law enforcement itself, because the household sector which is a privacy area with database that is not available accurately becomes an obstacle in the verification process, and puts the domestic worker in a weak position.

Another indicator of the continued failure of the government of Indonesia in reforming labor law that is discriminative makes domestic workers vulnerable to harassment and exploitation. Exceptions of all domestic workers from basic workers' rights granted to formal workers by Act No. 13 of 2003 concerning Labor, Indonesian labor laws such as minimum wages, overtime pay, eight hours of work per day, and forty hours of work per week, one day off a week, holidays and social security have a discriminatory effect on women and girls, which constitute the majority of domestic workers. Exceptions to the law also encourage continued harassment of the value of domestic work and domestic workers.

In 2010, members of the *International Labor Organization* (ILO) including Indonesia will hold a meeting to discuss proposals for a new international agreement governing decent working conditions for domestic workers. A fact that Indonesian citizens are among the tens of thousands of domestic workers who are harassed in other countries is recognized by the government, among others through the establishment of a special police clinic for women returning to Indonesia with injuries caused by harassment. However, advocacy for the protection of Indonesian domestic workers abroad will only have credibility if Indonesia is also seen to recognize and take action against the harassment of domestic workers within Indonesia itself, including child domestic workers. Indonesia must act quickly to improve the situation at home, rather than taking risks by gaining a reputation as one of the countries with the worst child domestic worker protection.

## **2. Method**

This research is uses a statute, case, and socio-legal approaches. It was conducted in 3 (three) major cities, namely Jakarta, Yogyakarta and Makassar. The sampling technique is a stratified random sampling, as a technique that accurately describes heterogeneous population traits, so the population concerned must be divided into uniform strata and from each stratum can be taken sample randomly. In a stratum sample, the chances of being selected between strata may be the same or different. The requirements to describe the strata are clear criteria in determining variables, there must be preliminary data from the population to be stratified, knowing the number of elements of the strata.

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<sup>8</sup> Human Rights Watch, 2009, *Opcit*, p. 2

The population and sample were divided among domestic workers and employers. Also, the two populations are distinguished from the strata of NGOs who are considered more objective than domestic workers and employers in providing views. The selection of samples in all populations is also not based on gender, with the consideration that what is examined is about the aspects of legal protection and social security of domestic workers that do not distinguish between genders. The following details the samples are:

	Cities	Jakarta	Makassar	Yogyakarta
<b>Types of Work</b>				
Domestic Worker		15 peoples	20 peoples	15 peoples
Employer		15 peoples	20 peoples	15 peoples
NGOs		1 Institution	1 Institution	1 Institution

### 3. Substance of Legal Protection for Domestic Workers

In positive legal provisions in Indonesia, the regulation on domestic workers has not yet been regulated, so that domestic workers are substantially still following the provisions in the Labor Act, namely Act No. 13 of 1999 concerning Labor. Although, part of the party still views the profession as domestic workers, this is not a profession that is equated with blue collar or labor. Based on the facts, it can be understood that the legal protection of domestic workers has not been legally recognized in this country. Likewise, the regulation of domestic workers is not uniform in all parts of Indonesia. This arrangement is certainly different according to the cultural customs and habits of each region.

Such conditions illustrate in addition to the absence of strong legal protection, it also illustrates the lack of legal certainty for domestic workers themselves. This has an impact on the weak bargaining of domestic workers against their employers before the law. It is not impossible to influence the high number of cases of harassment and violence against domestic workers themselves. Therefore, it is interesting to review the existence of the Domestic Workers profession in existing legal studies to formulate an ideal concept of legal protection for domestic workers in a country, especially Indonesia. Certainly, this research can be done by abstracting legal concepts related to the existence of domestic workers, so it can describes the legal substance, especially the protection of domestic workers.

In developing countries such as Indonesia, limited employment and poverty cause employment as domestic workers to form a significant proportion in the national workforce. Women who dominate the work as domestic workers make an additional contribution to the family economy, and even become the backbone of the family. Until now, the absence of protection and recognition of the existence of the domestic work sector has placed domestic workers in an easy condition to be subject to exploitation and harassment and has made domestic work one of the most marginalized types of work. This fact causes the need to protect the existence of domestic workers in Indonesia.

Efforts to recognize and protect the existence of domestic workers are not only done at the national level but have also been carried out at the international level. It is shown by the approval of the Convention on Decent Work for Domestic Workers by the International Labor Organization (ILO). Improving working conditions has been a concern of ILOs since 1948 by adopting a resolution on the working conditions of domestic workers, continuing in 1965 the ILO also adopted a resolution regarding calls for normative action in the field of working conditions for domestic workers where the government of Indonesia and the President of the Republic of Indonesia gave State Speeches in front of the ILC Forum to provide support for the ratification of the convention.

Ratification of the Domestic Workers Protection Act becomes very necessary, because besides having the main objective of protecting domestic workers working domestically it is useful for increasing the protection of Indonesian domestic workers working abroad. By Domestic Workers Protection Act, the psychological condition of the government of the Republic of Indonesia in negotiating and diplomacy to improve the domestic workers protection with the abroad will be stronger.

The fulfillment of protection guarantees in the international and national level and ultimately at the regional level has obligations based on the mandate of the Domestic Workers Protection Act making an important local regulation in creating a decent work situation of domestic workers so that the decent work situation of domestic workers is not understood in the narrow sense only at work. The scope of the decent work situation must be widely understood considering that domestic workers work in the home of service users but reach across regional, national and international levels so that the guarantee of protection covers from home to return home due to their special nature. To know the views of domestic worker respondents about the responsibility of State to protect their rights in labor legislation, can be seen in Table 1.

**Table 1.** The response of domestic workers on the responsibility of State in guaranteeing their rights as domestic workers

No	Assessment	Respondent						Amount	
		Makassar		Jakarta		Yogyakarta		F	%
		F	%	F	%	F	%		
1	Guarantee	7	35,00	2	13.33	3	20,00	<b>12</b>	<b>24,00</b>
2	Not Guarantee	11	55.00	9	60.00	3	20.00	<b>23</b>	<b>46.00</b>
3	Do not know	2	10.00	4	26.67	9	60.00	<b>15</b>	<b>30.00</b>
<b>Total</b>		<b>20</b>	<b>100</b>	<b>15</b>	<b>100</b>	<b>15</b>	<b>100</b>	<b>50</b>	<b>100</b>

Source: Primary data, (edited).

Table 1 shows that the State' responsibility in providing legal protection to domestic workers, especially in the legislation of labor, from the point of view of domestic workers in three locations in is only 12 people or 24% who states that legal protection from the aspect of legal substance has been guaranteed,<sup>9</sup> but as many as 23 people or

<sup>9</sup> Interview with 3 respondents of Domestic Workers on 17 September 2014 obtained an explanation that guarantees some legal protections for domestic workers including: Protection of child labor, protection of domestic violence, and protection against sexual exploitation. Various labor rights on the

46% who stated not guaranteed and as many as 15 people or by 30% who do not know. This data shows that the majority of domestic workers, as many as 35 people or 70% understand the State' responsibility to protect the rights of domestic workers, while only 15 people or 30% do not understand the State' responsibility to protect their rights. From 35 domestic workers, the majority said that the State was not yet responsible for protecting the rights of domestic workers, and the minority believed that the State was responsible for their rights as domestic workers, because they were treated and fulfilled their rights. The employer treats and fulfills their rights according to the wishes of the domestic workers.

Seeing the position of domestic workers as described above, it can be understood that domestic workers really need to get legal protection from the State specifically that is different from workers in other sectors. This view is certainly based on the reason that workers in other sectors work in public spaces that can easily be monitored or controlled by the community, and have certain hours of work that the rest can return to their respective homes. Whereas, domestic workers work in private spaces that are closed so it is very closed to access control and supervision of their environment, besides that domestic workers generally live within the scope of the family and no specific working hours are determined.

ARUM<sup>10</sup> from ILO in Jakarta explained that domestic workers need legal protection from the State due to:

- a) Domestic workers are not recognized as a profession  
As domestic workers are not considered a profession, they do not get constitutional and legal rights as a profession. Thus, as a laborer, the domestic workers do not get legal protection guarantees as workers in general.
- b) Many domestic workers do not have family relations with employers  
Especially in urban areas in general domestic workers are recruited from various regions without basing on kinship or family relations. Usually these areas that provide labor as domestic workers are areas with low or weak socio-economic conditions.
- c) Many unique of domestic workers  
As domestic workers do not have standardized and regular work structures, programs and systems, it is unique. By this uniqueness so it is not regulated in labor legislation. The uniqueness of domestic workers is that the legal relationships that occur between domestic workers and employers are mostly based on family relationships, thus making it very vulnerable to economic exploitation, or not fulfilling the basic rights of domestic workers as workers.
- d) There are no labor standards for domestic workers as workers  
Many parties do not see domestic workers as not workers and even in statistical data that do not officially count domestic workers as part of the labor data in Indonesia. This fact proves that the government itself has not recognized domestic workers as part of the workforce, maybe even domestic worker data is part of the unemployment data in Indonesia.

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principles have not been protected such as labor social security, leave entitlements, holidays, minimum wage, and so on.

<sup>10</sup> Interview with Mrs. ARUM from ILO in Jakarta on 10 June 2014

#### 4. Principles of Harmonious Agreement and Paradigm of Domestic Workers

The peaceful condition in a household is the main prerequisite for creating a harmonious condition in the household.<sup>11</sup> Peace in domestic life requires association in the context of friendship between family members in the household. Between family members, one another are a true friend in everything. In the case of a harmonious relationship between domestic workers and employers in the household, the friendship established by the two is friendship that can provide peace for one another. The way to build harmonious relations between employers and domestic workers is that each party must take the following steps:

- a. Mutual understanding  
Mutual understanding between domestic workers and employers must be built on the awareness and understanding that each party has advantages and disadvantages of each. Each party has different backgrounds and interests. An employer with more adequate education compared to domestic workers who may not have completed junior high school certainly has different points of view in understanding a problem. Therefore, employers and domestic workers need to understand strengths and weaknesses each other, and accept it gracefully without any prolonged remorse.
- b. Communication  
The communication is a cool and friendly, empathetic and sympathetic communication relationship between the employer and domestic workers, not rigid and tense communication. Build effective communication between the employer and domestic workers in a family atmosphere will foster mutual respect and protect each other so that in addition to preventing domestic violence, harassment and offense, it will also build strong solidarity between family members and domestic workers. Domestic workers will feel treated like other family members.
- c. Love each other for God  
Loving each other for God (*mahabbah fillâh*) between the employers and domestic workers can create close friendship between them. The sense of love for God is based on faith and obedience to God.
- d. Receiving and giving each other  
One way to realize friendship between the employers and domestic workers is each respect while fulfilling the rights of the other. Both are competing with each other to fulfill obligations that will cause the rights of others to be fulfilled.
- e. Appreciation and respect  
Harmonization will not be realized without being based on mutual respect for each other between the employer and domestic workers. This appreciation and respect regardless of each background and position, but sincerely sees the dignity of being human.

As explained above, it confirms that the majority of employers also understand their relationship with domestic workers, and they understand that their relationship with domestic workers is harmonious, whereas only 13 out of 50 consider the relationship to be harmonious with the domestic worker. Based on the data from the research in three

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<sup>11</sup> Ramirez-Machado, José Maria. (2003). "Domestic work, conditions of work and employment: A legal perspective." *Conditions of Work and Employment Series 7*.

location can be concluded that as many as 32 people or 68% stated that the harmonization of the legal relationship between domestic workers and employers was basically guaranteed, although variations in three sites were domestic workers by 10 people at Makassar, 8 at Jakarta and 14 at Yogyakarta. Then, for the employers, each location was 10 in Makassar, 10 in Jakarta and 14 in Jogjakarta with a total of 34 people stating that the legal relationship between domestic workers and employers was harmonious.

Such conditions, according to the opinion of the writer that could be caused by several factors such as the existence of kinship between domestic workers and employers.<sup>12</sup> The application of eastern cultural values which are polite, mutual cooperation and mutual respect or it may be that the harmonious relationship is only on the surface, but in reality domestic workers feel they are not treated fairly with the low wages given and so on. This data can also show that the level of formal education and welfare in the form of wages for domestic workers does not affect the level of harmonization of the relationship between domestic workers and employers.

As explained above, a legal relationship between domestic workers and employers in Indonesia, especially in regions and some in urban areas is based on family relationships and not in the context of workers professionally. Therefore, it is very rare to find a domestic worker who works based on the contract of agreement between the domestic worker and employer. In fact, based on other research, it was obtained that most respondents stated that the agreements made between employers and domestic workers were mostly verbally and without agreement on how much wages per month, what the field of work and how many hours per day had to work. The agreement made only agreed to be ready to work and ready to employ, while regarding wages, hours of work and workload while on going.

A legal agreement if meets the provisions of Article 1320 BW, the terms of agreement as stipulated in Article 1320 BW do not always have to be made explicitly in written, but by conducting the conditions specified in a contract can result in obligations arising from other parties to fulfill the rights of people who have carried out these conditions. According to Munir Fuadi "*not all contracts can be seen clearly with an agreement.*" However, to some extent even a contract is deemed to have been formed, indeed the will agreements in the type of contract are called implied contracts or quasi contracts. This implied contract is found both in the continental European legal tradition and Anglo Saxon.<sup>13</sup>

In most contracts between domestic workers and employers, they actually meet the elements of the implied contract as described above; in BW it is not explicitly explained about the definition of "engagement". However, in the provisions of Article 1233 BW it is only formulated that an engagement other than the law, an engagement can also be born from an agreement. Thus, it can be interpreted that the engagement is not necessarily an agreement, while the agreement is certainly an engagement. Subekti provides the difference between the engagement and the agreement as follows that: the engagement is a legal relationship between two people or two parties, based on which one party has the right to demand from other, and the other party is obliged to fulfill

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<sup>12</sup> International Organization for Migration. (2010). *Labour migration from Indonesia, Overview of migration of Indonesian migrant workers in several destination countries in Asia and the Middle East*. Jakarta: IOM.

<sup>13</sup> Munir Fuady, (2001), *Hukum Kontrak (Dari sudut pandang Hukum Bisnis)* Citra Aditrya Bakti, Bandung: pp. 50-52.



that demand.<sup>14</sup> While, the agreement is an agreement where someone promises to someone else or where two people promise to do something.”<sup>15</sup>

The quasi contract is included in the sense of engagement, even though there is no prior promise, but a party may have the right to demand for something from another party, for the achievements that have been made.<sup>16</sup> Likewise, domestic workers are mostly not done with written agreements or oral agreements but are not detailed in agreement, then based on the *quasi-contract* theory a contract between the employer and domestic workers has occurred if the domestic worker has worked for the employer, so that it arises respective rights and obligations.

The majority of domestic workers have the same position in making work agreements, so there are contractual principles that fulfill their sense of justice. However, a small number feel the injustice of the existing work agreement. This is ensured as a result of inequality or position as a worker with the employer. This is caused by an urgent need or forced to agree to a work agreement made because it requires money and the interesting is that the hesitant worker understands that what he has done and what he has received as a domestic worker has fulfilled his conditions as a domestic worker and the needs of the employer on the other side.

As results of research at three location from 50 respondents from domestic workers and 50 from employers, it can be concluded that only 39 people or 39% stated that the application of the principles of agreement in the substance of labor legislation there have been guaranteed justice, as many as 17 people or 17% who said they did not provide justice. As many as 44 people or 44% are still doubtful about the guarantee of justice in applying the principles of the agreement in the substance of the applicable labor legislation, can be interpreted as a view that tends to state that there is no guarantee of justice in the existing labor legislation. This is possible because of the general view that positions of domestic workers are not profession, so that the legal protection and justice that exists in the labor legislation system only applies to workers in formal sector and excludes domestic workers. Certainly, this view has an impact on the implementation of the application of legislation in the field of employment.

Differences in the respondent's views of domestic workers in three locations namely Makassar, Yogyakarta and Jakarta are also based on differences in the respondent's psychological aspects towards legal protection both State and Regional of domestic workers. The views of respondents in Yogyakarta are more likely to state that legal protection is guaranteed, compared to respondents in Makassar and Jakarta who do not yet have regional regulations and governor regulations on domestic workers. Hence, it is obtained that the indicators of the principles of agreement in the provisions of labor laws only apply to formal workers, but for domestic workers are classified as informal workers do not apply, so disputes by domestic workers with the employer not subject to BW and labor law.

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<sup>14</sup> Subekti, (1990), *Hukum Perjanjian*. Cet ke XII PT. Intemasa, Jakarta, p.50

<sup>15</sup> Subekti, (2003), *Pokok-pokok Hukum Perdata*, PT. Intemasa, Jakarta, p.123.

<sup>16</sup> Maria, K. & Glenda. (2015). *Tibe boniface introduction: Domestic and care work of migrant women and the right to family life*. England: Palgrave Macmillan.

## 5. Conclusion

Domestic workers, legal protection both in terms of the legal substance of legislation and work relationships through agreements has not been fully accommodated to the principles of justice. This is due to the constitutional provision for the protection of domestic workers which have not been explicitly accommodated in regulations and also the meaning of legal protection for workers protected constitutionally in Article 28 of the 1945 Constitution has not been elaborated in legislation. Therefore, the substance of the employment law cannot guarantee justice and legal certainty for domestic workers. It occur because the responsibility of State has not been implemented in the existing legal substance, harmonization paradigm, and the principles of agreement in the substance of labor laws and regulations have not implicitly guaranteed that domestic workers are part of the workforce in general.

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### Conflict of Interest Statement:

The author(s) declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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