



Fulfillment of Human Rights Law toward Women as Domestic Workers in Indonesia

Vanessa Yovita Nauli; Joko Setiyono

Master of Law Study Program, Faculty of Law, Diponegoro University Jl. Imam Bardjo, SH No. 1-3 Pleburan
UNDIP Campus, Semarang 50241, Indonesia

Email: Nessayovita@gmail.com

<http://dx.doi.org/10.47814/ijssrr.v5i11.786>

Abstract

Fulfillment of human rights towards female workers as domestic workers hereinafter referred to as domestic workers and providing legal protection, the existence of domestic workers is not something foreign in Indonesia because the concept of work has long been applied by Indonesian people. Domestic worker is a type of work that belongs to the non-formal sector, even though this type of work is always needed by many parties at any time, both by those who provide work and those who offer services. In fact, not infrequently many Indonesian people make work as domestic workers their main job. Regardless of how much demand there is for the services a domestic worker is capable of providing,

Keywords: *Fulfillment of Human Rights; Domestic Workers; Women*

Introduction

The state is responsible for ensuring the creation of a state order that upholds the fulfillment of citizens' rights and must be able to comprehensively translate the mandate of the 1945 Constitution of the Republic of Indonesia. The policies formed must be oriented towards social justice.¹In realizing social justice, one of the efforts that can be made by the government is to guarantee the protection of domestic workers. The constitution does ideally provide the basic rights of citizens, but the problem is the lack of regulations that really actualize the values of Pancasila in relation to employment. Guaranteed protection, fair legal certainty and equal treatment before the law based on the constitution for domestic workers are still utopian hopes. Equal rights and social justice originating from the basic norms of the constitution must be able to be translated into more specific regulations governing the protection of domestic workers.

¹Jimly Asshiddiqie, "The Struggle of the Role of Government and Parliament in the History of a Comparative Study of the Constitutions of Various Countries": UI Press, 1996. Pg. 87

The discussion about the importance of protecting women as domestic workers is actually not a new issue in Indonesia. Many parties, especially trade unions, which for many years have been fighting for the legal protection of domestic workers, can be realized in Indonesia. The urgency regarding the juridical protection of domestic workers involves many things, at least there are three main factors which form the basis for the need for these juridical regulations to be made immediately. First, as an effort to stop the high rate of violence against women as domestic workers perpetrated by their employers and/or their own employers' families. Second, there are no regulations that maximally protect women workers as domestic workers from threats of violence. Third,².

The lack of legal protection for domestic workers for these women causes a lot of harm to befall these domestic workers. In the end, the arrangement regarding the employment relationship between employers and job recipients is only based on a belief system. This does not mean that it is not justified, but if you only rely on work relationships only on a belief system, of course there are many weaknesses. The most prominent weakness is that the trust system cannot create any law, so it is clear that it cannot comprehensively protect the interests of these parties, especially the interests of domestic workers.

Based on this point of view on the urgency of protecting domestic workers, the fact has emerged that the high number of cases of violence against domestic workers is still a major problem that must be resolved. Violence against domestic workers cannot be interpreted narrowly, namely in the form of sexual violence or physical abuse. Another type of violence that is important to highlight is the non-payment of salary by the employer after the domestic worker has fulfilled his obligations within the specified timeframe to his employer.

Based on the description above, two problem formulations will be found which will be the focus of the study in this journal, namely first, How are the Human Rights of women as domestic workers fulfilled in Indonesia?; and secondly, what is the legal basis for providing protection to domestic workers by women?

Research Methods

This research is categorized into the type of normative legal research, this is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational views, critical analysis and philosophy, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined.³And will be analyzed with analytical descriptive method, namely by describes the applicable laws and regulations related to legal theory and positive law enforcement practices related to the matter.⁴

Discussion

A. The Urgency of Fulfilling Human Rights Against Women as Domestic Workers in Indonesia

The juridical protection of domestic workers is directly mandated by article 28 D paragraph 2 of the 1945 Constitution of the Republic of Indonesia which guarantees that everyone has the same right to work and receive compensation as a concrete manifestation of the work that has been done. The article also emphasizes that there is no difference for everyone in terms of fairness and proper treatment in establishing work relationships. The reality that has happened to domestic workers has proven that the

²Agusmidah, "Building Rules for Domestic Workers, Realizing Human Rights", Journal of Hukum Samudra Keadilan, Volume 12, Number 1, January-June 2017, p. 19

³Compare, Ishaq, Legal Research Methods and Thesis Writing, Thesis and Dissertation, Bandung: ALFABETA, 2017, p. 45

⁴Peter Mahmud Marzuki, Legal Research, Kencana Prenada Media Group, Jakarta, 2011, p. 22

assertion of citizens' rights in terms of justice related to the same matter has different implications. Domestic workers as a form of work in the non-formal sector tend to receive less attention from a legal perspective.

Sociologically, it must be admitted that the stigma against domestic workers tends to be considered as having a lower social class. This tendency stems from the mindset of the people who think that domestic workers are the same as helpers or errand boys. The effect of this mindset which in the end causes problems such as the amount of wages, working hours, the availability of social security to the problem of solving problems between domestic workers and their employers are considered unimportant so that in the end they are not given much attention.⁵ If the values of social equality are truly respected, then it is fitting that any type of work, both in the formal and informal sectors, be equally protected by strict and binding rules.

Protection of domestic workers is a form of realizing human rights which cover various aspects, all of these aspects have become a consensus with the founding fathers of the country and in practice have the highest moral strength. This is a form of effort to guarantee that basic rights for workers of any kind can be realized without having to experience discrimination in any form. Given the importance of the aspect of protection for domestic workers, it is necessary to formulate ideas that support the formation of rules that maintain safety when carrying out work. Likewise, it is necessary to increase attention to the safety and calm aspects of domestic workers so that productivity at work is more guaranteed.

Through daily practice, this rationale can increase the dignity of every person who works as a domestic worker. Bearing in mind that domestic workers are something that has been firmly rooted in Indonesia since ancient times. Even so, the work they have to do is in many fields ranging from caring for the house to helping take care of the children of their employers, so in general what domestic workers do is not the expertise of a profession. So that in ancient times the term domestic worker was identified as a person who was unable to live alone. Therefore, the concept of domestic workers needing protection has been around for a long time. So, fulfilling the protection of domestic workers is actually a social enforcement effort.

Based on economic reasons, domestic workers bind themselves to employers who are considered more capable from an economic point of view. It is also based on economic reasons that domestic workers still choose to work even though there is no minimum salary limit that must be determined. They have no other choice because of the intense competition in the world of work, so they must continue to carry out their role as domestic workers. The phenomenon that often happens to domestic workers is that they often experience violations and violence, which are often committed by their own employers. Physical, psychological and even sexual violence is not uncommon for domestic workers, especially for women. Not to mention the social stigma that tends to look down on the employment sector, which causes domestic workers to experience discrimination within their own society.

The purpose of law according to Gustav Radbruch is to guarantee benefits, justice and legal certainty, in which these three aspects are the rights of everyone. The reality that is happening right now is that domestic workers still do not have legal certainty regarding how the government is carrying out efforts to protect this work sector. Work as a domestic worker is not a job in the formal sector, but the presence of a domestic worker is an important type of work. So far, domestic workers have helped many families to complete all kinds of household affairs, when the employer was focused on working outside the home. However, apart from the services provided by these domestic workers, until now the existence of domestic workers is still not supported by qualified juridical instruments.

⁵Research conducted by Human Rights Watch, *Workers in the Shadow of Abuse and Exploitation of Indonesian Child Domestic Workers*, February, 2009

Evaluation of various regulations related to employment issues so far has shown that there is no law that directly touches on aspects of protecting the safety and security of domestic workers. The presence of the Minister of Manpower Regulation number 2 of 2015 concerning the protection of domestic workers can initially have a positive impact on the protection of domestic workers. However, in fact, the Minister of Manpower Regulation has many loopholes and deficiencies in addressing existing problems. The most obvious shortcoming is related to how much protection is provided by the state for domestic workers, for example there are cases of wages and leave by employers that are not in accordance with the original agreement. The second gap can be seen from the content of the Minister of Manpower Regulation which tends to focus on Domestic Worker Distribution Agencies rather than discussing the enforcement of rights held by domestic workers in detail. This is what makes the gap between work in the formal sector and domestic workers in the non-formal sector increasingly felt.

Economic protection is something that is very important for domestic workers because after all domestic workers work to get their rights to defend their lives and lives. However, although considered important, this economic protection has not been systematically accommodated in the form of regulations. So far, the legal basis used in dealing with problems experienced by domestic workers still uses general laws and regulations such as the Criminal/Civil Code, there are no rules that specifically regulate the resolution of problems experienced by domestic workers. The implication is that it is difficult for domestic workers whose rights have been violated to obtain legal action due to the limitations of these regulations. Should be based on the principle of welfare, the government can provide adequate legal protection for domestic workers.⁶

The government's interest in creating a state that is decent for work for all occupational groups is actually one of the efforts to improve the work system and the concept of the working relationship between domestic workers and employers. So far, the work system tradition that has been applied between domestic workers and employers places domestic workers as subordinates who are set aside. The government's concrete step to realize social equality for domestic workers is to empower the potential of domestic workers. Empowerment can be done by organizing domestic workers according to their respective abilities and expertise. Apart from that, what needs to be done is to improve the status of the employer, which is identical to the employer and helper, so that it is changed to the principle of partnership status between the employer and the domestic worker. This effort is made to foster a sense of mutual respect and respect,

In the context of the law on manpower, article 86 explicitly says that workers/laborers have the right to receive protection for three aspects, namely: Occupational safety and health, morals and decency as well as behavior that is in accordance with human dignity and values and religious values. This protection only concerns the welfare of workers in the formal sector. Meanwhile, the protection of workers in the non-formal sector has not yet been set forth in the form of a law. The absence of regulations that specifically protect domestic workers can certainly trigger an increasing number of violence against domestic workers. There are several forms of violations that may be easily recognized because they leave physical marks on domestic workers, but it cannot be denied that there are types of violations against domestic workers that are considered normal by public stereotypes. One form of violation that may seem trivial but inhumane is the provision of inappropriate facilities and housing for domestic workers. A strong legal umbrella for domestic workers is not a mere constitutional formality but rather to ensure the protection and welfare of workers in all sectors, because domestic workers are like formal sector workers who need to be looked after and protected.

The legal protection for domestic workers provided by the Regulation of the Minister of Manpower is so weak because in carrying out their work, domestic workers cannot be said to have a

⁶Anita Dhewy, "Domestic and Migrant Domestic Workers, *Journal of Women*, Vol. 22 No. 3, August 2017, p.III.

working relationship with their employer, it is always the employer. Because the relationship that exists between the two is a work agreement on the basis of trust which is optional, which can be written or verbal. Protection of the rights of domestic workers is not fully fulfilled, the right to leave, for example. There is no guarantee that the right to leave will be obtained considering that the agreements made tend to be verbal. It is also feared that the amount of salary and wages that do not receive protection from the law will affect the work results of domestic workers.

At the level of empirical practice, the reality is that there is a stigma in society that domestic workers are not part of the formal workforce. However, as fellow workers, they still need security and safety protection as a basic need. So far there are no clear standards regarding protection for domestic workers, so it is not surprising that there are still many cases of violations committed against domestic workers. The fulfillment of these fundamental rights for domestic workers is still far from expectations. Domestic worker is a type of work that is really needed in recent times, but this situation has not been supported by qualified juridical instruments.

Based on the existing Manpower Law, it does not include domestic workers within the scope of its contents. So far, domestic workers have relied on the Law on the Elimination of Violence. The Law on the Elimination of Violence alone is unable to meet the need for protection for domestic workers because substantially the law only covers aspects of cases related to violations against domestic workers. Even though the more fundamental arrangements should examine the employment aspect of the domestic worker, so that even non-formal workers such as domestic workers get their dignity as fellow citizens whose rights are guaranteed by the constitution.

B. Legal Basis for Providing Human Rights Protection for Domestic Workers by Women

Human rights legal protection for women as domestic workers is based on the need for legal certainty that strictly regulates the work system, work relations and detailed discussion of the rights and obligations of domestic workers, which so far has been neglected. In the legal context, it is an obligation for the State to carry out regulatory reforms to form a Draft Law on the Protection of Domestic Workers. The aspects discussed in the theoretical study are: Workers, Work Relations, Working Hours Coverage, Rights and Obligations of Domestic Workers, and Legal Protection of Domestic Workers.

Based on article 1 paragraph 3 of Law Number 13 of 2013 concerning Manpower, it provides a definition of a worker or laborer as any person who works by receiving wages or other forms of compensation. The important points contained in this definition are at least two things: first, the worker is every person who works, second, from the results of his work he can receive wages or other forms of compensation. Therefore, in simple terms, every type of work that contains these two points can be referred to as a worker. However, the Labor Law does not include domestic workers within the scope of the regulation. This is because the working relationship between the domestic worker and the employer is not a working relationship between the company or the employer and the worker/labourer⁷.

Based on the Regulation of the Minister of Manpower Number 2 of 2015 concerning Protection of Domestic Workers are people who work for individuals in the household to carry out household work by receiving wages and/or other forms of compensation. The societal paradigm has so far assumed that domestic workers are not workers because domestic workers are considered and identified with helpers or errands. Therefore, the term worker has not yet found a specific definition in formal regulations. The International Labor Organization (ILO) replaced the word maid with the term worker so that people would appreciate the realm of domestic work performed by domestic workers. Based on this explanation, the understanding of domestic workers contains several main elements, namely:

⁷Article 1 number 15 of Law Number 13 of 2013 concerning Manpower can classify an employer as an employer, so it is not a business entity, so it is not included in the meaning of an entrepreneur

Based on Article 1 paragraph 15 of Law Number 13 of 2013 concerning Manpower, employment relations are relations between employers and workers/laborers based on work agreements that have elements of work, wages and orders. Based on this definition, it can be seen that an important element in an employment relationship is the existence of parties consisting of employers and workers/labourers. This employment relationship results in a work agreement where the work agreement is made in writing or contractually and is recorded in the agency. One of the differences between the working relationship between domestic workers and employers so far lies in their work agreements, which tend to use verbal agreements. Even though the Labor Minister Regulation has provided conditions for making work agreements.

This verbal agreement is a tradition that is continuously carried out due to the absence of rules that clearly regulate the terms of the working relationship between domestic workers and employers. Ultimately, the absence of rules causes employers to use their own customs and habits in dealings with domestic workers. The implication is that all matters related to domestic workers are relative, starting from relative self-protection to relative wages. Basically, the employment relationship gives the same position to employers and recipients of work, even though their social and economic status is different. This does not apply to the working relationship between the employer and the domestic worker, because the Manpower Act regulates disputes over employment relations. Whereas, for domestic workers there is no special effort for them to prosecute labor relations disputes. Therefore, the agreement that occurs between the employer and the domestic worker is not suitable to be called an employment relationship but is referred to as an agreement based on trust⁸.

The Regulation of the Minister of Manpower Number 2 of 2015 Concerning the Protection of Domestic Workers does not provide clear provisions for how long a domestic worker must complete each day. It is possible that the absence of regulations regarding the maximum working hour limit for domestic workers will lead to excessive violations and exploitation. As a form of self-protection against domestic workers being exploited, the government must oblige employers to determine a maximum limit, for example no more than 8 hours a day, as stated in the initial contract agreement. Several countries have set limits on the maximum working hours of domestic workers, such as in Spain a maximum of 8 hours and 12 hours in South Africa.⁹

According to the Regulation of the Minister of Manpower No. 2 of 2015 concerning Protection of Domestic Workers, article 7 regulates the rights that must be obtained by domestic workers while working. This right regulates starting from the provision of wages, food and drink, the right to worship according to one's religion and to communicate with his family. However, even though the granting of rights has been regulated by these regulations, there are still weaknesses. This weakness can be seen from the concrete monitoring by the government to ensure that these rights are not violated by employers. There is a need for higher regulations so that legal certainty for domestic workers is not easily violated. The regulation must contain a discussion regarding sanctions and legal action in the event of a violation of the rights of domestic workers.

Obligation is a responsibility that must be carried out by domestic workers. Talking about the obligations of domestic workers, it should have been regulated in article 8 of the Minister of Manpower Regulation. Domestic workers have the following obligations:

- a. carry out the duties and responsibilities in accordance with the Employment Agreement;
- b. get the job done well;

⁸Abdul Khakim, "Legal Aspects of Employment Agreements, Company Regulations, and Collective Labor Agreements (PKB)", Bandung, PT. Citra Aditya Bakti, 2017, p. 109.

⁹Data obtained from ILO Project on "Spontaneous Action for the Protection of Domestic Workers from Forced Labor and Trafficking in Southeast Asia" in 2006

- c. maintain ethics and manners in the User's family; and
- d. notify the User in sufficient time when the PRT will stop working.

The Minister of Manpower Regulation already regulates the rights and obligations of domestic workers. However, there needs to be a specific legal umbrella to regulate more substantive legislation materials and this can only be realized through the process of drafting laws.

Domestic workers also have the right to get decent working conditions as happened to formal sector workers. Exploitative behavior and arbitrary acts against domestic workers must end immediately. These changes must begin with changes in community stereotypes about this job. Adverse assumptions such as being considered not a type of work that is productive, has no economic value, has no social position, has no political advantage and this assumption is a type of work for the uneducated must be immediately abolished. Recognition of the dignity of every person who works as a domestic worker must also be supported by the government's concrete actions in providing adequate protection for domestic workers, so that they can be free from all forms of violence and discrimination.

Where there are humans there is law, according to Cicero. In this way, law and society are an inseparable unit. All freedoms in society are limited by law, because law has a coercive nature and binds all members of society. Therefore the law must be obeyed. Likewise with the problems that occur in domestic workers. The government must realize that perhaps so far there have been many cases of violations and violence against domestic workers due to the lack of regulations that can protect the basic rights of domestic workers. Without strict control by the government, this violent behavior can continue. Although there is no legal vacuum for the protection of domestic workers,

As a form of state practice based on the constitution or constitutionalism, Article 28H of the 1945 Constitution of the Republic of Indonesia has outlined that everyone, whoever it is, has the right to a prosperous life and life both physically and mentally. Aside from being a worker who economically substitutes himself for his employer, domestic workers are also part of Indonesian citizens who of course have the same basic rights as other citizens. These basic rights as stated in Article 28H must always be protected by the government and the whole community. Therefore, all forms of violence and exploitation of domestic workers must be legally processed as fairly as possible. However,

Indonesia as a country that upholds the enforcement of human rights should have a strong legal basis to immediately enact a law that specifically regulates the protection of domestic workers in all aspects. Equality is one of the main joints in a country that applies democratic principles. In this context, equality means that regardless of the type of work, one must still be given adequate legal protection. As stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a country based on law. In order to reflect the contents of this article, all forms of discrimination and inequality that occur against domestic workers must be resolved immediately with legal certainty.

Conclusion

Fulfillment of human rights law through legal protection of women as domestic workers in Indonesia is an effort to realize social justice for domestic workers. Social justice for domestic workers aims to improve the concept of employment for domestic workers, where so far there has been no clear regulation. The ambiguity of the concept of employment for domestic workers has actually been felt from the start since domestic workers began to bind themselves to their employers.

The legal basis for providing legal protection for human rights to domestic workers by women is still not strong enough so that the absence of regulations that strictly regulate the employment of domestic

workers causes many problems that must be faced by domestic workers in order to obtain their basic rights. It is hoped that the presence of this Draft Law will be able to provide a legal umbrella for domestic workers from all forms of discrimination. Protection of domestic workers is given as a form of respect for the state's respect for the enforcement of human rights in Indonesia, and the orientation that must be addressed is the recognition of all elements of society towards domestic workers as work that has dignity and worth.

References

Books and Journals

Abdul Khakim, "Legal Aspects of Employment Agreements, Company Regulations, and Collective Labor Agreements (PKB)", Bandung, PT. Citra Aditya Bakti, , 2017.

Jimly Asshiddiqie, "The Struggle of the Role of Government and Parliament in the History of Comparative Study of the Constitutions of Various Countries": UI Press, 1996.

Journal

Anita Dhewy, "Domestic and Migrant Domestic Workers, Journal of Women, Vol. 22 No. 3, August 2017.

Agusmidah, "Building Rules for Domestic Workers, Realizing Human Rights", Journal of Hukum Samudra Keadilan, Volume 12, Number 1, January-June 2017.

Legislation

The 1945 Constitution of the Republic of Indonesia.

Law Number 13 of 2003 Concerning Manpower.

Law Number 23 of 2004 Concerning the Elimination of Domestic Violence.

Regulation of the Minister of Manpower Number 2 of 2015 concerning Protection of Domestic Workers.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).