

Protection Of Indonesian Domestic Workers: A Study Of Law No. 13 Of 2003 Concerning Labor

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Abstract: The existence of domestic helpers or commonly referred to as household assistants or also known as domestic workers is increasingly needed at this time. However, the increasing need for domestic workers is not followed by the policy of providing protection for domestic workers themselves. Even the existence of domestic workers tends to be underestimated and even leads to forms of exploitation. The number of cases affecting domestic workers shows that protection for domestic workers can no longer be postponed. Meanwhile in Indonesia the existence of Law No. 13 of 2003 concerning Labor is considered still not providing protection to domestic workers itself because the relationship between domestic workers and employers is not a work relationship as referred to in the Act. The employment relationship referred to in the Manpower Act is the relationship between employers and workers, while the Entrepreneur referred to in the Act is the person who runs the company. Therefore the employer in the household sector that makes a work agreement to do work with domestic workers cannot be categorized as an entrepreneur. Because the relationship between domestic workers and employers, does not include employment relations as regulated in the Manpower Act. The policies that regulate the protection of domestic workers are outlined in the Minister of Manpower Regulation (Permenker). Permenaker, which regulates the protection of domestic workers, is felt to be not good enough because in terms of legislation the position is weak, while in terms of material protection provided it seems only exists and has not specifically provided protection for domestic workers. On the other hand, the draft protection law for domestic workers that has been prepared since 2004, has not yet been discussed in the National Legislation Program. Therefore, it is time for the government as an Executive institution together with the DPR as a Legislative institution to be encouraged to truly realize the draft law on the protection of domestic workers into law.

Keywords: legal protection, domestic workers, labor law

1 INTRODUCTION

OFTEN it is not realized that domestic workers or often referred to as domestic helpers or currently often popularized as household assistants, have a large contribution in the social life and economic life of the community. The presence of domestic workers in their daily duties is quite heavy, such as washing, cooking, cleaning the house including also taking care of children or looking after elderly household members or looking after sick household members. But ironically in many countries including Indonesia, jobs as domestic workers are generally underappreciated and not even legally protected. The fact is that until now domestic workers have not been interpreted as workers as referred to in employment relations, namely the relationship between employers and workers / laborers based on work agreements that have elements of employment, wages and orders. Whereas by looking at these elements, it is clear that the relationship between domestic workers and employers is a work relationship. Domestic workers will carry out work on the orders of the employer and the employer is obliged to pay wages for the work as promised or known as a work agreement. However, in general, most of the work agreements that exist between domestic workers and employers are made in writing or in other words verbally. While the wages given to domestic workers are based on the conditions and capabilities of the employer as an employer which usually refers to market wages in the area around the employer's residence (Khairuunnisa & Supriatna, 2018). Usually for domestic workers who live in the employer's house, in addition to rooms and beds, additional facilities are also provided such as bath soap, toothbrushes, and not even a few domestic workers who get health facilities when they are sick. At present there are quite a large number of domestic workers, there are 10.7 million people, although it must be admitted that the existence of domestic workers as workers still raises a polemic, especially for some employers as service users who think that domestic workers are not workers in the form of formal workers. referred to in legislation. While the definition of worker itself is any person who works by receiving wages or other forms of rewards. On the other hand, it is of the view that even though in their work domestic workers are related to

private householding even "family", they remain as workers because they are in accordance with what is meant in the Manpower Act. While other opinions that say that domestic workers are not workers are based on the reason that domestic workers are informal workers, which are certainly different from formal workers who are entitled to protection as referred to in the Manpower Act. It is further emphasized that the work relations that occur between domestic workers and employers as employers are built on trust so that existing employment relationships are set forth in the form of work agreements which are generally unwritten or oral. Unlike the case if the existing employment relationship between the employer and formal workers is generally made in the form of a work agreement in writing. Of course, if the work agreement is made in writing, the rights and obligations of each party will become more apparent. For example, workers who work in the formal sector with work agreements made in writing, then arrangements regarding working hours or work time for workers will be clearer. While for domestic workers who carry out domestic work or work in the formal sector, to regulate working hours or work time becomes unclear given the time spent working per day to adjust needs and needs. Furthermore, for formal workers the regulation of the amount of wages is based on an agreement while still referring to the rules for wages that should not be below the minimum wage provisions. While wages for domestic workers are based on agreement, there is no protection for minimum wages in providing wages so there is no minimum wage limit. Not to mention for formal workers clearly regulated the existence of the right to temporary leave for domestic workers setting leave to be left to the policy and generosity of the employer. With regard to health facilities for formal workers if they get sick, they are still given wages, while for domestic workers they seem not to be sick if the wages do not want to be cut. Likewise, if a dispute occurs, formal mechanisms are clearly regulated in resolving it through formal workers' organizations and settlements carried out through industrial relations court institutions. The lack of understanding and similarity in the perspective of domestic workers, especially for domestic workers (employers), has made the position of domestic

workers legally more vulnerable to violence. Therefore it is not surprising that there are often exploitation, suppression and intimidation experienced by domestic workers. In fact, based on Tempo notes, there were 402 cases of domestic workers in 2015 ranging from unpaid wages, violence and persecution to forms of abuse. Therefore the main issue to be discussed in this paper is how is the government policy in providing legal protection to domestic workers. To get answers to these problems, a research is conducted. The research itself is a scientific activity related to analysis and construction carried out methodologically, systematically and consistently. Methodology means that according to a particular method or method, systematic is based on a system, while consistent means the absence of things that conflict with a legal framework (Soekanto, 1981; Prayogo, 2018). As explained in the initial section that protection policies for domestic workers are a necessity. The writing method in this writing uses juridical normative and sociological juridical methods. The normative juridical method with descriptive research specifications is analytical, namely by researching and reviewing secondary data, related to the protection policy for domestic workers. This normative juridical method is used to answer the problem statement about legal policies taken in providing protection for domestic workers (Wirawan, 2018). While the sociological juridical method is by identifying and conceptualizing law as a real and functional social institution in the real life system. This sociological juridical method is used to answer the formulation of the problem of implementing protection for domestic workers in Indonesia. The main problem in this paper is how is the policy taken by the Government in providing protection for domestic workers? Does the existing law provide protection to domestic workers in Indonesia?

2 ANALYSIS AND DISCUSSION

Normally, the normative protection of workers' rights has been regulated both in the constitution and in the form of legislation. However, the issue of protection of workers' rights still causes problems. These issues are both those that stem from the weaknesses of the legal regulations, weaknesses in the implementation of legislation and the weaknesses of the parties in the employment relationship (Fahrojih, 2016). Specifically in the context of employment there are basic provisions contained in the Constitution of the 1945 Constitution which provide protection for workers. Article 27 paragraph (2) states that "Every citizen has the right to decent work and livelihood for humanity." Article 28 D paragraph (1) which states that "every person has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law". Next in Article 28 D paragraph (2) states that "Every person has the right to work and receive compensation and fair and proper treatment in work relations". Furthermore, in Law Number 13 of 2003 concerning Labor in article 4 letter c which states that the purpose of labor development is to provide protection to workers in realizing prosperity. Next in Article 31 which states that every worker has the same rights and opportunities to choose, get or move jobs and get a decent income at home or abroad. Furthermore, in Article 86 paragraph (1) which states that every worker has the right to obtain protection for occupational safety and health, morals and decency and treatment in accordance with human dignity and religious values. So both in the Basic Law and in the legislation have clearly guaranteed

protection for workers as the goal of the state to advance public welfare in order to achieve social justice for all the people of Indonesia. To achieve prosperity, it is the obligation of the state to provide employment for its citizens. However, the reality is that employment is very limited, so that not all of the existing workforce gets a job. Difficulties in obtaining employment lead to any form and type of work that will be carried out, including the choice to become a Domestic Helper (PRT). The definition of domestic workers is a person who works for an individual in a household to carry out household work by receiving wages and / or other forms of compensation. Work as a domestic worker is a job that does not require a special skill, so being a domestic worker is a choice for workers who are generally low educated because they do not require special competencies. Currently domestic workers do not only work to do housework, but more than that is trusted to take care of all other needs needed in a family. This reason makes the role of domestic workers important, especially with the progress of the times, the scope of work as domestic workers has become increasingly widespread and complex. Ironically, the existence of domestic workers is not considered as a proper job as a profession, so the fulfillment of their rights is often only based on the mercy and / or generosity of employers as employers. It is therefore not surprising that some people as domestic workers, see that the legal relationship that occurs between domestic workers and their employers is a personal relationship and not as a legal relationship between the employer and the recipient of the work. Meanwhile, the Manpower Act provides an understanding of employment relations as a relationship between employers and workers / laborers based on a work agreement that has elements of employment, wages and orders. So the employment relationship referred to in this Act, the employer is an entrepreneur who runs a company and not an individual. Therefore it is not wrong if a view arises on the existence of a personal legal relationship, because this relationship is based on the role of the employer as a protective employer because he has given food, provided a place to live, gives health, and even often gives education especially most from domestic workers living in the home of the employer. This causes there is no clear boundary between personal life and work, so that the length of work time for domestic workers becomes increasingly blurred and creates a tendency to be exploited by employers as employers. Not to mention the majority of domestic workers do not have clear work contracts both verbally and in writing regarding their rights and obligations, working hours and working days including holidays and wage arrangements that will be accepted including the absence of social security guarantees (health insurance and workplace accidents). The conditions in which domestic work is carried out in private homes make working conditions and treatment of domestic workers "escape" from the public view and therefore place domestic workers in conditions that are very vulnerable to the possibility of various acts of violence. As is well known, many violent incidents involving domestic workers are not only domestic workers who work in their own country and not a few domestic workers who work abroad (as migrant workers) have the same fate as. Therefore, the Amnesty International institution in its open letter addressed to the Minister of Manpower and Transmigration urged the Indonesian government in particular to immediately provide protection to domestic workers in Indonesia from gender-based discrimination, physical,

psychological and sexual violence and other human rights violations. Law No. 13 of 2003 concerning Labor is considered to discriminate against domestic workers because it does not place equal protection with other workers because without adequate legal protection domestic workers are often exploited economically and their rights to decent working conditions, health, education, and education are not recognized. Decent living standards and freedom of movement. The absence of regulations that provide legal protection specifically for domestic workers, causes domestic workers to be classified as informal workers, causing the position of domestic workers increasingly depressed and increasingly exploited. Although Law No. 13 of 2003 concerning Labor, has regulated all matters relating to labor, but indeed this Law does not regulate rights and obligations in the context of domestic workers. Even though domestic workers are workers, the relationship between domestic workers and employers is not included in the employment relationship as regulated in this Act. The word worker in the sense of domestic workers is a new discourse developed by non-governmental organizations and international labor organizations to replace servant words (Uwiyono et al., 2014). Changes to the term, contained the intention that domestic workers can be recognized as formal work and protected by labor law. Basically there are two categories in relation to someone doing work, that is, first to do work for himself and the second to do work for others. Working with others to get rewarded for what they do is (Susiana, 2012). But the fact is that there are still many views in the community that domestic workers are not workers. (LBH Apik, 2002). This weakness or lack of juridical reference has an impact that domestic workers lack legal protection. So the recognition of domestic workers as workers of the same degree as the formal sector is still lacking. This is important considering the recognition of the existence of domestic workers as workers is the first step to obtaining social and legal recognition (Komnas Perempuan & Solidaritas Perempuan/CARAM, 2003). The existence of social and legal recognition will certainly facilitate the making of legislation that directly provides protection to domestic workers. The existence of laws and regulations becomes very important because it can provide legal certainty to domestic workers in obtaining their rights. Of course this also applies to employers who employ domestic workers. So both employers and employers as recipients of employment can avoid abuse of power in employment relations between domestic workers and employers as employers. Even though domestic workers can be categorized as workers but in reality they are rarely referred to as workers, but only as servants. The practice of calling domestic workers as helpers reinforces cultural reluctance to formalize the relationship between domestic workers and their employers. As a result, employers in Java see the role of domestic workers as a paternalistic role, in which employers protect where in practice this is called *ngenger*. The paternal aspect of this employment relationship, combined with the fact that most tasks are carried out within the family home and are not considered economically productive, indicates that Indonesian culture generally views this relationship as a personal relationship (Op-Cit, hlm.3.). Even though it is clear that the relationship between the employer and domestic workers is a work relationship because it is marked by the existence of a work agreement even though it is not made in writing. The work relationship itself is a relationship between a worker and an employer

where the work relationship itself occurs after the employment agreement between the two parties. Work agreement in an agreement where one worker or laborer is willing to work by receiving wages and on the other hand the employer employs workers or laborers by paying wages (Soepomo, 2003). With the employment agreement, a working relationship is established between the employer (employer) and the work recipient (PRT) wherein the provisions of labor law will apply, including work conditions, social security, occupational health and safety, dispute resolution and termination of employment (Uwiyono et al, 2014). Cultural factors as outlined above affect the capacity of the Indonesian people to make laws for the protection of domestic workers as well as for enforcing existing laws. Although it is bound by various international treaty laws that provide universal general protection to domestic workers, there is no law that provides special protection for domestic workers. In fact, Law No. 13/2003 on Labor, discriminates against domestic workers by not defining domestic workers as workers or in other words not providing the same protection as protection to workers in general, by expressly providing protection to domestic workers. Even if there is a regulation by the Minister of Manpower, as stated in Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers, it is not yet juridically sufficient. Although the policy in the Minister of Manpower Regulation is a small and advanced step, however, it does not adequately answer the problem of limiting reasonable working hours; guarantee of adequate wages for a decent standard of living; clear definition of weekly rest and leave days, including annual leave, public holidays, sick leave and maternity leave, which makes domestic workers at risk of exploitation and violations of human rights. Regulation of the Minister of Manpower Number. 2 of 2015 also does not have a law enforcement mechanism if the rights of domestic workers are not guaranteed by the employer. Although the Manpower Act does not cover the protection of domestic workers, some applicable laws and regulations can indirectly be used as protection for domestic workers in general in certain fields, although they are still separately and limited. For example, the provisions contained in the Criminal Code (KUHP) have a direct impact on domestic workers, such as the prohibition on trafficking in women and children (contained in article 297); prohibition on slave trade (contained in articles 324-329) and the prohibition against violence or the threat of violence to force someone to do something that is not in accordance with their wishes. Furthermore, in Law No. 32 of 2004 concerning Regional Government which also gives power to the provincial government and regional government (Municipality / Regency) to make regulations regarding all sectors outside of defense and security, foreign policy, monetary and fiscal issues, judiciary and religion. The authority granted by this Act makes the current regional government able to independently issue regulations on issues such as industrial relations or other issues relating to domestic workers. There are even local governments that already have regulations related to domestic workers' problems, one of which is the Governor's Regulation Number 31 of 2010 concerning the Protection of Domestic Workers issued by the Regional Government of Yogyakarta. Other arrangements that are also related to domestic workers' problems are found in the Law No. 23 of 2004 concerning the Elimination of Domestic Violence. In addition to a number of laws and regulations as described above, the Government of Indonesia adopted a policy by ratifying and ratifying several

international legal norms that could provide universal protection to workers as stipulated in:

1. Universal Declaration of Human Rights.
2. The International Covenant on Civil and Political Rights (ICCPR).
3. International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights / ICESCR).
4. Covenant on the Elimination of All Forms of Discrimination against Women (Conventions on the Elimination of All Forms of Discrimination against Women / CEDAW).
5. Convention on the Rights of the Child.
6. Convention to suppress Trafficking in Persons and Exploitation of Other Prostitutions.
7. ILO Convention on Freedom of Association and the Right to Organize, 1948 (ILO Convention No. 87).
8. ILO Convention on the Right to Organize and Collective Bargaining, 1949, (ILO Convention No. 98).
9. ILO Convention on Forced Labor, 1930 (ILO Convention No. 29).
10. ILO Convention on the Elimination of Forced Labor, 1957 (ILO Convention No. 105).
11. ILO Minimum Age Convention, 1973 (ILO Convention No. 138).
12. ILO Convention on the Worst Forms of Child Labor, 1999 (ILO Convention No. 182).
13. ILO Convention on Income Equality, 1951 (ILO Convention No. 100).
14. ILO Convention on Discrimination (employment and occupation), 1958 (ILO Convention No. 111).

Since the Labor Law specifically does not regulate the protection of domestic workers because they are considered as informal workers, clear and firm rules are needed so that domestic workers get the same legal protection as other workers who work in the formal sector. Legal protection against domestic workers is time to be immediately regulated in separate legislation as a form of realization and implementation of the Constitution of the 1945 Constitution. The government is expected to gradually bring domestic workers who were previously considered as workers in the informal sector into workers in the formal sector. Therefore the shift of domestic workers from informal workers to formal workers is very important because it will have a positive impact on domestic workers, from what was originally only domestic work to economic value work. Margaret Benston in her book *The Political Economy for Women*, as quoted by Yulianthi, said that it was time for domestic work to be considered more seriously in every analysis of economic work so that it was not underestimated into marginal status and did not exist. Another opinion added that women were not unemployed if they included domestic work as a form of work, given that most domestic workers were female. The shift of domestic workers to the formal sector is also a good start for the government to gradually shift workers in other informal sectors to the formal region. Besides that all the most important is the existence of legal recognition of the type of work of domestic workers, the equality of work values, as well as welfare and legal certainty that can provide direct protection to domestic workers because it is guaranteed by legislation. In addition, the existence of laws that specifically regulate domestic workers will certainly strengthen Indonesia's bargaining potential in the eyes of

other countries, especially if the domestic worker works as a migrant worker. This will have a strong influence on countries that employ domestic workers from Indonesia to be able to provide protection to workers from anywhere. For this reason, the policy taken by the Indonesian government is to contribute to more stringent regulations on universal worker protection. The Indonesian government must also play a role and actively participate in various international conventions along with other countries to discuss the need for universal protection standards for domestic workers. This is important to understand because domestic workers do not have a bargaining position before employers, given the type of work carried out by domestic workers, categorized into vulnerable groups, which are vulnerable to violence both physical and psychological violence (abuse, exploitation murder, improper compensation, do not have a bargaining position, etc.) The existence of legislation that can protect domestic workers as workers is a necessity. Therefore understanding and recognition of domestic workers as workers is a must, because with the recognition that domestic workers are equated as formal workers will be able to bring protected domestic workers so that they are expected to become prosperous. In addition there must be legislation that specifically provides protection to domestic workers, but there is still a need for supervision so that existing regulations can be effective.

3 CONCLUSION

As a conclusion in this paper, considering that Law No. 13 of 2003 concerning Labor, it does not include the provision of protection to domestic workers, the policy taken by the government so that domestic workers can be protected is by applying Minister of Manpower Regulation No. 2 of 2015 concerning Protection of Domestic Workers. Although the Manpower Act provides a broad understanding of labor where domestic workers are included, the arrangement referred to in the employment relationship as regulated in the Act is the employer as the entrepreneur who runs the company. Therefore normatively domestic workers are not workers in the sense that they work in a company. Therefore, the view that domestic workers are not workers is based on the reason given the existence of domestic workers working in the informal sector, namely working in private households, making it difficult to carry out their supervision. The existence of domestic workers who are considered as informal workers brings legal consequences, where domestic workers are not clearly protected in Law 13 of 2003 concerning Manpower. In view of Law No. 13 concerning Employment has not provided protection to domestic workers, so the government should immediately be encouraged to make legal policies that can provide protection to domestic workers. One of the policies taken by the Government in addition to implementing Minister of Manpower Regulation No. 2 of 2015, also ratified several international conventions to take effect. Furthermore, the Government must be serious in providing protection to domestic workers through the acceleration by submitting a Draft Law on the Protection of Domestic Workers for the realization of concrete legal protection and meeting the expectations of all domestic workers in achieving prosperity.

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