

Legal Protection for Domestic Workers from The Perspective of Indonesia's Labour Law

by Ida Hanifah .

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Protection for Domestic Workers from The Perspective of Indonesia's Labour Law

1

Ida Hanifah Faculty of Law
Universitas Sumatera Utara, Indonesia

Geetha Subramaniam
Faculty of Business Management
Universiti Teknologi MARA, Malaysia

Tan Kamello
Faculty of Law, Universitas Sumatera Utara, Indonesia

Abstract

Being a domestic worker is an occupation to many Indonesians in the informal sector due to various reasons such as difficulty in getting a formal job, the economic demand, and housewives' need for help to handle household chores. Domestic workers are not valued enough and, due to the lack of regulations governing their affairs, they do not have proper legal or social protection. Basically domestic workers should qualify for the legal status of "worker", as they possess the following elements of having an occupation, taking instructions and receiving compensation. The applicable employment regulations, as specified in the Labor Law, have not included domestic workers as a subject and so they have not formally had legal protection, thus making them prone to exploitation.

Keywords: protection, domestic worker, labor law

I. Introduction

The subject of employment is increasingly wide and complex from time to time with all its challenges and implications, which are strategic issues and very interesting to address. Every person needs to work to meet their necessities and to improve their wellbeing; It is something people must have to support their life. Employment opportunities, however, are very limited So not everyone has the luck to find a job, especially in the formal sector such as factory workers, employees, and so on. The difficulty in getting a job, the pressing economic demands, as well as the fact that many women work outside the home and need other people's help to handle household chores have created 40b opportunities to some people to choose to take up Informal work, such as being a domestic worker as this job does not require capital and special skills like formal jobs. Domestic work is a kind of formal work done b women because of the limited work Opportunities (Cohen, 2000; Constable, 1996; Parenas, 2001)^{[1] [2] [3]}. The 1945 Constitution of Indonesia generally regulates basic human rights, including th' basic rights of domestic workers as humans who are Equal to other fellow citizens before the law. Domestic Workers also have an

equal status and are entitled to legal protection as other labor. This legal equality is specified in the 1945 Constitution, i.e. in Article 27 (1) and reinforced in Article 28 D Section (1).

Domestic workers may not have working hours and they are often not properly treated by their employers, so there occurs exploitation. This situation is possible because domestic workers are weak in terms of bargaining power (Lord Wedderburn, 2000)^[4] The workers do not have enough power before their employers as the skills and education are poor and there is no worker's organization to help them fight their interests. In addition, the existing government policies are not sufficiently responsive and accommodative to the changes happening in the society (Sutedi, 2009)^[5] Such an inequality forces workers to rely on the strength within themselves to do the job and it allows employers to treat them unfairly. The employment relation between domestic workers and employers are not yet formally regulated in the laws particularly in the employment regulations. It is only regulated based on customs and beliefs that are authoritarian in nature. Employers dominate the economic resource, providing job opportunities, and domestic workers are those seeking one.

In their employment, domestic workers are also entitled to compensation and fair and proper treatment like other citizens as specified and protected in Article 28 D (2) of the Constitution. In reality, though, they are not or rarely called workers but are treated as servants. This society's view considers the relation between the domestic worker and the employer as private. Employers see their role as one that is paternalistic: they protect them, provide them with food, home, education, and give them pocket money to compensate their service beside their work in a public or domestic area that is considered economically unproductive. This gives rise to strategic issues related to Employment Law that are often misused by the public. The unfair and unjust condition domestic workers live in is often overlooked due to the lack of legal security for their job and their low social status. Situations such as this leave domestic workers unprotected and even make them susceptible to sexual violence, including rape. Generally, their existence in Indonesia is not appreciated enough that they do not have any appropriate legal or social protection.

Ramires Machado (2003)^[6], survey on 60 countries find that 19 countries have special laws or regulations concerning domestic workers and another 19 have special provisions concerning domestic workers in their Employment Law. In Asia, the Philippines seems to have an example of the best practice in relation to treatment on domestic workers (Parrenas, 2000)^[7]. Large scale campaigns are organized to increase people's awareness of domestic workers' problems and to promote improved protection for them as well as develop a progressive model of domestic workers protection. Another country that provides good protection for domestic workers is South Africa, which stands out as a world leader in protecting them. In South Africa, domestic workers' problems are closely related to racism because nearly all domestic workers are black South Africans and most employers are white South Africans (ILO, 2004)^[8]. Among the countries with more extensive regulations designed to protect domestic workers is Canada, where domestic workers are employed in homes for two full years under a care program aimed to ensure they are given the right to receive at least a minimum salary, besides the rights to have a

room to live and to join an organization. Employers provide domestic workers with private rooms that they can lock, and the room's structure must be in good condition and not requiring reparation and must meet the standards of livable buildings for people (Cohen-Mansfeld, Garms-Homolova and Bentwich, 2013)^[9].

II. Discussion

The Legal Status of Domestic Workers under the Employment Law

Domestic worker or helper is a term used to refer to a person working within the scope of the employer's household. It is an occupation mostly done by women (Albin, 2012)^[10]. A "domestic worker" can be defined as a worker who sells his or her service by doing household chores for compensation. The kind of work is attractive to low-income women because aside from being a source of income, it also provides them with home and food (Mkandawire-Valhmu, 2009)^[11]. On the one hand this job emerges as a result of the fact that some people want work and the opportunities are limited while on the other, the existence of domestic workers is very important due to economic pressure. In general, those who employ domestic workers are city dwellers. It is inseparable from the change of women's function in the family where they now also work. Besides, more access in terms of education, social life, economy, and culture means middle-class women who live in cities tend to leave household chores for activities in public spaces, moreover, women's right to participate in public spaces has been guaranteed by law as specified in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified by Indonesia through Law No. 7 of 1984. With this it is appropriate that domestic workers should do their job securely, safely, and comfortably.

If we refer to the definition of work as containing elements such as: a) action or activity, b) continual nature, and c) compensation; the one done by domestic workers can be categorized as work. The various kinds of domestic work are mostly done as a Primary job, not a Side Job, by domestic workers. In working, they need skills, although those are not obtained from education or certain training. Their skills come only from experience and are not related to domestic workers' level of education. Basically, domestic workers do housewives' daily work that is not a profession. To be called a profession, according to Brandeis, an occupation must reflect some supporting characteristics such as: 1. Intellectual, 2. Pursued largely for others, 3. The amount of financial return is not the accepted measure of success, 4. Supported by a professional association and such association regulates, among others, the various provisions concerning the code of ethics, and it is responsible to develop and promote the profession, 5. Having Professional qualification standards (Shidarta, 2006)^[12]. Based on those characteristics, domestic workers' occupation cannot be categorized as a profession but rather, a form of occupation in general. This means that such occupation is not different from other kinds of jobs in the formal sector such as those done by office clerks, factory workers, and company employees. Domestic work in Indonesia is generally identical to other occupations in the sector but juridically domestic workers are treated differently as workers, especially in the regulations on employment. Employment Law No. 13 of 2003 Article 1 Section 3 specifies that workers are everyone

working to receive pay or other forms of compensation. Domestic workers receive commands from their employers. Domestic workers do household chores for their employers and on the contrary the employers give them pay or compensation. The command element existing in the relation between the domestic worker and the employer shows there is an employment relation (Khakim, 2007)^[13]. Principally, the employment relation between domestic workers and their employers is established after both parties enter into an employment agreement, but domestic workers' employment relation with their employer is not covered by the Employment Law because the law regulates employment relations between business owners and their employees while the occupation of domestic workers is not related to the operation of the business. According to the provisions of the Employment Law, domestic workers have the definition of a worker, which is a person who accomplishes a job to produce goods or services and receives pay, but if we see Article 1 Section 5 of the Law concerning the employment relation between business owners and their employees based on the employment agreement with elements of worker, compensation, and command, it may be problematic whether the status of employers can be considered similar to that of business owners.

Legal Protection for Domestic Workers' Normative Rights

Looking at the definition of worker both terminologically and legally, domestic workers in doing their occupation can be categorized as workers. However in reality, the Employment Law has not provided sufficient protection for them as so. This condition gives way to violation of their normative rights as workers by their employers.

Basically their occupational existence is not much different from those of workers in other areas. It is Proper that domestic workers be treated in the same as other workers. Their basic rights (workers' normative rights) applicable to workers in general should also be so to domestic workers. This means the protection for domestic workers' normative rights should refer to the Employment Law as well, moreover, We see such normative rights as workers' basic rights that must be met in every employment relation.

Workers' normative rights, as specified in the employment Law, can become a standpoint for seeing the Condition of domestic workers in their employment relation, moreover as their status is still legally unclear currently. This is very important for them to fight for their normative rights. It may even result in different treatments in the implementation of workers' normative rights for domestic workers. These differences are caused by several factors, such as:

1. The different understanding on the status of domestic Workers as workers.
2. The lack of basic knowledge on workers' basic rights.

Workers' normative rights for domestic workers are not fully met as Specified in the implementation of these rights still varies from one another. For a clearer understanding, it can be explained as follows.

a. Pay/Salary Protection

Workers do their work to obtain compensation in the form of a principal pay/salary, fixed benefits, and Variable benefits. In practice, though, the compensation for domestic workers varies. There are some factors that determine the principal pay/salary, namely:

- 1) The types of work done
- 2) The number of family members in the employer's household
- 3) The economic level of the employer's household
- 4) The custom of the society
- 5) The economic level of the district/municipality.

In terms of pay/salaries for domestic workers, there is no established system that regulates this matter. Nonnaitiy pay/salaries for domestic workers are determined by individual employers based on their assessment. There is no common standard for determining a pay/salary. Moreover, it has been found that 86% of domestic workers receive a low pay/salary, averaging under Rp 550,000 (five hundred titty thousand) or about US\$46 per month.

There are other fonns of income that domestic workers often receive, given both formally and informally. This additional income for domestic workers too is determined by their employers. The employer factor is very significant so that domestic workers may receive different amounts from one another.

b. Working hours.

Domestic workers' working hours may vary from one another. The kind of work a domestic worker does determines their working hours, both what time they start work or how long they work. It has been found that 48% of domestic workers start work before 07.00 am in the morning. Even though legally it is forbidden to make female workers, including female domestic workers, work from 11.00 pm to 07.00 am, except the employer can fulfill their obligations as specified by Employment Law, i.e. providing nutritious food and beverages, and ensuring that the workplace is ethically and physically safe.

The same thing with how long they work, it has been found that 36% of domestic workers work more than 7-8 hours/day. It means there is an exploitation of domestic workers who work for 3 (three) or more kinds of work every day, and of domestic workers who work and live in their workplace (the employer's house).

c. Benefits

a) Religious Holidays (THR)

Religious holiday benefits are one of workers' rights given on religious holidays. Religious holiday benefits consist of an amount of money and certain goods worth equal to their pay/salary per month.

b) Health Benefit

Health benefit is only given when domestic workers get sick. It only covers treatment costs. However, there have been cases in which not all treatment costs are covered, meaning that employers do not pay such costs entirely, and there are domestic workers who do not receive any health benefits.

c) Bonus

Bonus is an appreciation given by employers to domestic workers who have been working continuously for a period of time. The right to this benefit is still rarely paid by the employers.

d) Rest/Leave/Menstruation Allowance

This allowance is rarely given. Some have given allowances to domestic workers for when they have a rest, leave, or a period, but the level of implementation is still low.

d. Layoff Compensation

Related to the termination of the employment between a domestic worker and her employer, as a worker she should receive compensation. But this research shows that the provision of such compensation is not well implemented. Although there is a kind of layoff compensation given to domestic worker, but in practice it only takes some forms that are not good enough.

III. Conclusion

. Domestic helpers are workers in a socio-political sense because they have to keep working, continuously in order to receive compensation in the form of Pays/salaries. Although they are recognized as workers, their legal status unclear under the Employment Law as what they do is not related to the productive activities of business owners as their employers.

The employment relation between domestic workers and their employers must be based on the provisions of an Employment Agreement as Specified in the Civil Code, instead of the provisions of the Employment Law. The relation cuts from an employment agreement that may be agreed by both parties or made unilaterally, and may be in writing or verbal. The employment relation between the domestic worker and the employer are subordinating in nature. Therefore, the relation is dominated more by the employer than the domestic worker.

There is still no such regulation to protect domestic workers' rights in the Province of North Sumatra. People have been implementing normative rights for them according to their own perception and situation, which are usually in favor of employers.

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