

Legal policy unraveling the roots of violence and weak legal protection for domestic workers

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Abstract

The government has established the Indonesian Minister of Manpower Regulation Number 2 of 2015 concerning Legal Protection for Domestic Workers (PRT). The regulation stipulates that the User (employer) and PRT must make a written or verbal employment agreement that outlines the rights and obligations that can be understood by both parties and is known to the Head of the Neighborhood Association or by another name in the area where the PRT works. The employment agreement must also include the rights and obligations that must be The role of the Domestic Worker Placement Agency (LPPRT), which must have a SIU-LPPRT and have received written permission from the governor or appointed official to recruit and distribute PRT, is responsible for selecting PRT candidates to be used, ensuring PRT candidates are in good health and can speak well, supervising PRTs that have been given to the user, and returning service fees as stated in Article 22 paragraph (3) in the case of PRT not willing to continue working within a period of 6 (six) months.

Keywords: Legal policy, domestic workers, legal protection

Introduction

Current regulations refer to domestic helpers as workers. However, not everyone agrees with the status of domestic helpers as workers. They cannot be considered equal to the other four types of workers: civil servants, factory workers, company workers, and others. Generally, people prefer to refer to domestic helpers as "maids." The interpretation of the term "worker" in a legal context continues to evolve. According to the definition stipulated in Law Number 13 of 2003, along with Law Number 11 of 2020 concerning Job Creation, a worker is any person who works for wages or other forms of remuneration. The definition of a domestic helper should include the following sections. However, these laws do not substantially regulate domestic helpers. Ultimately, without other legal sources that can provide guarantees, domestic helpers will lack legal protection.

Domestic violence (DV) is a type of violence that occurs within the family. Anyone can be a victim of domestic violence, including men, women, children, and the elderly. Examples of domestic violence include physical, psychological, sexual, and financial abuse. Victims of domestic violence can experience serious physical and psychological disorders. According to Damayantidan Haniyah (2020), the scope of the household consists of husband and wife, children, family members, and individuals who work to help the household and live in it. Therefore, in accordance with the provisions of letter c, household members must be considered family members while they are in the household in question. Therefore, the rights of household members, such as law enforcement and government efforts to combat violence against household members, must be implemented optimally. Cases of violence such as hitting, kicking, pulling hair, pinching, and others may occur every day and are considered normal, even rape and incest (sexual relations with biological children) occur.

The victims are not only their wives, but also their husbands, their children—biological, adopted, foster, and

others—as well as people related to their families through marriage, breastfeeding, foster care, guardianship, and people who work to help with the household and live there. While the law does not explain the concept of violence against children, violence against children is any act against a child that causes physical, mental, sexual, psychological misery or suffering, or neglect. Therefore, violence against children is any act against a child that causes misery or suffering.

Problem Statement

Based on the explanation above, the main issues in this study are:

1. How the Legal Policy for Domestic Workers?
2. How to Implements legal protection for Domestic Workers in Indonesia?

Discussion

1. Legal Policy Domestic Workers

Formal sector workers have different characteristics than domestic workers. Their work, based in the private sphere, specifically the employer's household, is a key characteristic. This makes them difficult to access through labor inspection mechanisms commonly used in formal workplaces.

Furthermore, domestic workers' employment relationships are often individual and based on verbal agreements rather than written contracts. This situation leaves domestic workers with legal uncertainty, as it is difficult to protect their rights in the event of harassment or violations. Furthermore, employers often consider domestic workers to be "family members." While this allows for more flexible employment relationships, it also serves as a pretext for neglecting employers' responsibilities to provide basic worker rights, such as a living wage, rest periods, and social security. Another factor is the generally low level of education and skills of domestic workers, which prevents them from demanding fair treatment or seeking more lucrative employment.

Labor laws, such as Law Number 13 of 2003 concerning Manpower in Indonesia, do not yet establish a clear definition of what constitutes a domestic worker. However, based on the ideas put forward in the Domestic Worker Protection Bill, domestic workers are defined as workers who perform domestic work in one or more households for wages or a certain amount of remuneration. This definition aligns with ILO Convention No. 189 on Decent Work for Domestic Workers, which recognizes domestic work as any form of employment involving domestic work to meet requirements.

Social and cultural norms often influence domestic work, which is often perceived as unskilled work and more often associated with women's roles. In this sector, the dominance of women demonstrates the gendered aspects of domestic work, which often exacerbates their vulnerability to exploitation, discrimination, and physical, psychological, and sexual violence. Domestic workers are in a particularly vulnerable position and require more comprehensive legal protection due to these characteristics. In addition to providing necessary legal protection, domestic workers must have the opportunity to obtain basic rights as workers, such as formal recognition in the employment system, decent wages, reasonable working hours, social security, and protection from violence and exploitation.

Although there are several laws that can indirectly serve as references, the legal basis for protecting domestic workers (PRT) in Indonesia still faces many challenges. For example, Law No. 13 of 2003 concerning Manpower is the primary law governing employment relations in Indonesia. However, this law does not specifically regulate domestic workers as part of the protected workforce, so they are often overlooked in the formal employment system. In this situation, domestic work is considered work in the informal sector, which is vulnerable to exploitation due to the lack of clear and binding regulations. Universally recognized human rights principles also form the basis for the protection of domestic workers.

ILO Convention No. 189 on Decent Work for Domestic Workers, adopted in 2011 by the International Labour Organization (ILO), affirms that domestic work must be recognized as legitimate work and requires the same legal protection as other work in the formal sector. The Convention regulates various aspects of protection, such as the right to decent wages, adequate rest periods, social protection, and freedom from all forms of violence or exploitation.

The discussion of the Domestic Worker Protection Bill is part of an effort to create a stronger legal basis for protecting domestic workers in Indonesia. This bill aims to address the legal gap in protecting domestic workers by formally recognizing their work and establishing the rights and obligations of both workers and employers. Some of the bill's key points are as follows: It is hoped that the ratification of this bill will mark a significant milestone in improving the health of domestic workers and enhancing the working relationship between workers and employers.

In addition, various other laws in Indonesia can protect domestic workers. For example, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking can be used to protect domestic workers from modern slavery and exploitation. Law Number 13 of 1998 concerning the Welfare of the Elderly and Law Number 35 of 2014 concerning Child Protection can be implemented to

protect children working as domestic workers. However, several issues remain to be resolved before the existing legal framework can be implemented. One is the lack of oversight of employment relations in the domestic sector. Because this work is carried out in private settings, it is difficult for the government to monitor whether domestic workers are receiving their rights in accordance with applicable regulations. Furthermore, the implementation of existing legal protections is often hampered by a lack of legal awareness among domestic workers and employers.

Domestic worker regulations are the first step towards social justice and labor protection in the informal sector. With appropriate and clear regulations, domestic workers can work safely, comfortably, and prosperously. Furthermore, employers have a guidebook to fulfill their responsibilities as employers. To protect the rights of domestic workers in Indonesia, the ratification of the Domestic Workers Bill (RUU PPRT) and the recognition of the ILO Convention are initial steps towards its imminent passage.

To implement this difficult legal regulation, the public considers this work to be non-formal, thus not requiring national regulations. Furthermore, because this work is performed in the private sector, oversight is difficult. Legal violations against domestic workers are extremely difficult to identify. At the very least, the government's role in addressing domestic worker issues is not a top priority. Furthermore, a patriarchal culture often places women in this position, leaving these workers vulnerable to discrimination and exploitation. To address this, the government must strengthen oversight bodies and enact specific laws related to domestic worker employment.

2. Implements legal protection for Domestic Workers in Indonesia.

Domestic workers (PRT) are a crucial part of the informal workforce. However, these workers are highly vulnerable to exploitation, injustice, violence, and lack of legal protection. Therefore, legislation can protect these workers. The legal status of domestic workers is not regulated by labor law. Law No. 13 of 2003 does not cover domestic workers, so they do not have the same rights as other workers, such as wages, clear work schedules, and social security.

The government has not responded to the proposed Domestic Workers Law since 2004. If this bill is passed, it would provide a strong legal basis for these workers, regulating the rights, obligations, and legal protections of domestic workers. However, creating specific regulations for domestic workers presents many challenges and obstacles, such as the lack of recognition as formal workers, leading many people to still consider domestic workers as private workers rather than formal employees. This complicates the recognition and legal protection standards for domestic workers.

Because there is no binding law, as there is no national law governing this profession, legal protection for these workers depends on their employers. Many contracts are informal, so legal protections are inadequate. Domestic workers' education is low, making them less aware of their rights and vulnerable to violence and exploitation. This is despite efforts by the domestic worker legal protection sector to improve legal protection for these workers.

A clear employment contract between a domestic worker and their employer should cover wages, working hours, rest periods, and the right to social and health protection to avoid

conflicts of rights and obligations. Furthermore, there are specific challenges in implementing legal protection for domestic workers, despite existing regulations. These include a lack of knowledge and awareness, as many domestic workers are unaware of their rights and many employers are unaware of their obligations as employers. This lack of awareness and education about the law leads to numerous violations that go unnoticed by both employers and workers.

To provide legal certainty, laws have been enacted to regulate various aspects of community life. However, despite these laws, many regulations fail to comply with them when implemented. Certain factors contribute to non-compliance with laws because they are perceived as contradicting the community's sense of justice and legal principles, especially if they are not regulated by law. Therefore, establishing legal certainty is not sufficient simply to enact laws. A crucial consideration is the community's legal values, as ignoring these values when formulating laws and regulations will ultimately lead to legal uncertainty—a theory used in this study as a Grand Theory.

Achieving well-being is a life goal, but it seems elusive, especially for domestic workers. This results in domestic workers lacking legal certainty regarding their normative rights, meaning there are no laws to guarantee them. According to Mochtar Kusumaatmadja, besides order, another goal of law is to achieve justice, the content and scale of which vary depending on society and era. However, this situation will undoubtedly leave the fate of domestic workers uncertain. Legal certainty in human relations is necessary to achieve social order.

Although regulations protect domestic workers, enforcement of violations is lacking. Many workers are afraid to report violations for fear of losing their jobs or facing worse treatment. Furthermore, there is a lack of monitoring and support institutions for domestic workers, leaving them with no viable way to defend their rights. Legal protection for domestic workers in Indonesia is still needed. Although laws have been enacted to protect their rights, implementation remains challenging, such as a lack of public awareness, unclear employment status, and weak enforcement. Studies require greater efforts from the government, communities, and organizations to ensure that domestic workers receive fair and adequate rights and protection.

Conclusion

The goal of legal protection for workers must be fully implemented considering the important role of labor or workers in a company. There is no need to differentiate between them because every worker has the right to protection. Legal protection for domestic workers (PRT) in Indonesia remains very challenging, especially due to their informal status, lack of clear contracts and lack of strong legal guarantees. Due to the absence of specific laws such as the Domestic Worker Protection Bill, domestic workers are vulnerable to exploitation, discrimination, violence, and injustice, including in terms of wages, rest periods, and social security. The Indonesian government must immediately pass a specific law for domestic workers, increase supervision, and establish an effective complaints system. It is crucial to inform domestic workers and employers about their respective rights and obligations to

reduce inequality in the employment relationship and encourage recognition of the role of domestic workers as an important part of the household economy and society.

Recommendations

Therefore, efforts to improve legal protection for domestic workers in Indonesia must result not only in recognition and respect for their rights, but also in strengthening the principles of social justice as a foundation for building a more just, equitable, and sustainable society. Ensuring that domestic workers, who have often been excluded from policy and legal attention, are protected requires commitment from various parties. The Indonesian government is expected to be more proactive in addressing violence against domestic workers. They must also enact laws for domestic workers to prevent mistreatment and to ensure that migrant domestic workers have clearer protections.

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