

## Progressivity of Legal Protection in Realizing Social Justice for Domestic Workers

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### **Abstract:**

Legal protection of domestic workers in Indonesia currently does not have a legal regulation. The Manpower Law also does not accommodate legal protection for domestic workers who are not considered as a worker. The only one regulation related to domestic workers in Indonesia is a ministerial regulation with a legal force that does not accommodate all the fulfillment of rights and obligations that are unclear to domestic workers especially who are recruited directly. The government has not yet established a special agency/ institution to provide legal protection for domestic workers that make Non-Government Organization (NGO) involved more in handling this matter. The absence of a legal regulation for the protection of domestic workers is a major cause of rights violations for domestic workers itself. In dealing with these conditions, the authors propose the need for the establishment of special law of domestic workers who are recruited directly and manifested through the establishment of the Domestic Workers Handling Institution as a solutive step in realizing civilized justice for domestic workers as a worker. The formation can be done in several ways, first, providing legal certainty and guarantee through the establishment of a specially hired domestic labor law, which includes the rights, and obligations of workers and employers. Secondly, to establish an institute for Domestic Workers Handlings that have the competence such as data of domestic worker, training and protection for domestic worker as a worker. In this writing, the author uses primary, secondary, and non-legal material. Legal material is obtained through literature research method then the material obtained is analyzed qualitatively and presented descriptively. The expected outcome is the realization of legal protection for domestic workers as a worker who is recruited directly as mandated by the constitution.

**Keywords:** Domestic Worker; Legal Protection; Progressivity

### **INTRODUCTION**

Justice is a basic human right that must be respected and guaranteed for its fulfillment by the state. This high expectation of justice is even formulated into the fifth precept in Pancasila, which is the ethical and moral foundation in building the political,

governance, formation and law enforcement and various other aspects.<sup>1</sup> In parallel, the recognition of important contribution of domestic worker to global economy at a significant proportion of the national labor force and remains one of the historically disadvantaged and marginalized groups that is vulnerable to discrimination in terms of working conditions and employment, and against human rights abuses has led to the birth of the Convention on Decent Work for Domestic Workers in 2011.<sup>2</sup>

Human rights (HR) have always been a matter of concern in every step taken by the state, especially the country that calls itself a state law.<sup>3</sup> Indonesia as a state law has guaranteed HR,<sup>4</sup> decent work and livelihood for its citizens, as set forth in the Constitution of the Republic of Indonesia Article 27 Paragraph (2).<sup>5</sup> Speaking of work, domestic workers have been an actual problem since recent years. In Indonesia, the number of domestic workers recorded as many as 579,059 people.<sup>6</sup> Other data supporting the International Labor Organization (ILO) also estimates that there are 2.6 million domestic workers.<sup>7</sup>

Nowadays, the situation of domestic workers is far from the concept of prosperity, justice, and the fulfillment of human rights on how it should be, where as the existence of domestic workers is really needed by the society. The numerous needs of domestic workers are not directly proportional to the level of welfare they receive. Domestic workers potentially experience physical abuse or torture by household members, especially employers and employers children where domestic workers work.<sup>8</sup> Domestic workers are also often underestimated even their rights such as the right to education, health, an adequate standard of living, legal protection and other rights are not fulfilled.<sup>9</sup>

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<sup>1</sup> Arif Rachman Nur. (2016). *Legal Aid Democracy: Pengembalian Entitas Bantuan Hukum dalam Mewujudkan Aksesibilitas Hukum Bagi Masyarakat Indonesia dan Pembangunan Hukum Nasional*. Jakarta: Scientific Papers. p.1.

<sup>2</sup> See in Considering Section in Convention Number 189 on Decent Work For Domestic Workers 2011.

<sup>3</sup> Article 1 Paragraph (3) the 1945 Constitution of the Republic of Indonesia.

<sup>4</sup> Proven by the presence of Law of the Republic of Indonesia Number 39 Year 1999 on Human Rights.

<sup>5</sup> Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. "Every citizen shall have the right to work and a worthy livelihood of humanity".

<sup>6</sup> Data from Central Bureau of Statistics (here in after BPS) Year 2001.

<sup>7</sup> Hartini Retnaringsih. (2008). "Upaya Peningkatan Kesejahteraan Pekerja Rumah Tangga". *Jurnal Kajian*, 13 (1): 143-144.

<sup>8</sup> This concept is in line as described by Maslihati Nur Hidayati. (2011). "Upaya Perlindungan Pekerja Rumah Tangga sebagai Kelompok Masyarakat yang Termarginalkan di Indonesia". *Al-Azhar Indonesia Journal Pranata Sosial*. 1 (1): 16. See also in Leni Widi Mulyani. (2014). "Problematika Pekerja Rumah Tangga dalam Hal Kelayakan Bekerja Berdasarkan Konvensi ILO Nomor 189 tentang *A Decent Work for Domestic Worker*". *Clinical Legal Education Journal*. 1 (1): 17-21.

<sup>9</sup> Moh. Dendy Setiawan. (2016). "Perlindungan Hukum Bagi Pekerja yang Bekerja di Rumah Tangga Menurut Hukum Positif yang Berlaku di Indonesia". Mataram: Undergraduate Thesis Universitas Mataram. p. 10.

Based on the research conducted by Maslihati Nur Hidayati<sup>10</sup> as well Kokom Komalasari<sup>11</sup> and supported by data in 2014 that there were 408 cases of domestic workers violence,<sup>12</sup> 376 cases until October 2015<sup>13</sup> and 217 cases until September 2016.<sup>14</sup> The cases recorded were multi cases involving physical violence, economic violence, and human trafficking. Confinement is also often experienced by domestic workers, prohibited from socializing, not receiving proper food, resting in small and crowded places, until working hours demanding that they be ready to be ordered anytime. Physical violence experienced which is frequently happening because according to employer, domestic workers do not perform their job properly because they did not get training about their job.

A strategic issue in the field of labor law that often escapes from public attention is related to the existence of domestic workers. Especially if it intersects to rights of domestic workers must receive. It has been 10 years have passed since the Law Formulation on Domestic workers only initiated in 2007 but never discussed by the People's Legislative Assembly and until now still a part of the National Legislation Program. The lack of seriousness of the Indonesian government in providing a legal umbrella for domestic workers is a major cause of violations of domestic workers rights arbitrarily by job provider or employers. Manpower Law is expected to protect all workers including domestic workers yet in fact it is not discussing domestic workers at all.

Questioning on regulation, in Southeast Asia, the Philippines is an example of best practice in relation to the treatment of domestic workers. Through a law called *Batas Kasambahay* or *Magna Charta for Domestic workers* has determined their rights which

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<sup>10</sup> The bad conditions experienced by domestic workers are often invisible because of the lack of legal guarantees related to their work, low social status and the fact that they work in private homes. This closure makes bad condition to the domestic workers is unknown, obscured or disregarded.

<sup>11</sup> Kokom Komalasari through the results of similar research obtained conclusion that: 1) In general, domestic helper has low socioeconomic background; 2) The working environment is generally inadequate, especially with regard to social and health rights, hours of work, and wages or income; 3) Bureau of employment services is beneficial to domestic helper in channeling work, obtaining education and training of the household, and protecting the rights set forth in the agreement; 4) Domestic helper's right include the right to health insurance, residential facilities, rest, entertainment, wages or reasonable income, the right to receive appropriate treatment/ protection from acts of violence; 5) until now there is no special legislation that protects the rights of domestic helper as a worker. Therefore, there is a regulation that specially regulate domestic helper based on Survey of Research Data of Universitas Pendidikan Indonesia, Faculty of Social Science Education, Kokom Komalasari, Didin Jahidin, Protection of the Rights of Domestic Helper (Case Study at Social Institution of Purnakarya Kota Bandung) [http://penelitian.lppm.upi.edu/detil/209/perlindungan-hak-hak-pembantu-rumah-tangga-\(studi-kasus-pada-yayasan-sosial-purnakarya-kota-bandung\)](http://penelitian.lppm.upi.edu/detil/209/perlindungan-hak-hak-pembantu-rumah-tangga-(studi-kasus-pada-yayasan-sosial-purnakarya-kota-bandung)), (Accessed on 1<sup>st</sup> March 2017).

<sup>12</sup> <http://www.jpnn.com/news/2014-terjadi-408-kasus-kekerasan-prt>, (Accessed on 2<sup>nd</sup> March 2017).

<sup>13</sup> <http://www.tribunnews.com/nasional/2015/10/04/376-kasus-kekerasan-pembantu-rumah-tangga-mencuat-sepanjang-2015>, (Accessed on 2<sup>nd</sup> March 2017).

<sup>14</sup> <http://nasional.kompas.com/read/2016/09/15/16403781/hingga.september.2016.kekerasan.terhadap.prt.capai.217.kasus>, (Accessed on 2<sup>nd</sup> March 2017).

include: minimum wage increases, salary and bonuses at the end of the year, the inclusion of social security systems, working hours standard and rest days, leave with wages, privacy, the right to communicate, the right to be provided by the contract employer of the Department of Labor and Employment, to the prohibition of forced labor and violence.<sup>15</sup>

In Indonesia, the Regulations related to domestic workers who are not through DW Distributors Institution (LPPRT) or in other words directly recruited are still a problem. Despite the increasing number of regulations governing domestic workers problems overseas, in fact the vast majority of Indonesia's 2.6 million domestic workers remain outside of the formal regulatory system. Instead, the employment relationship between domestic workers and employers generally is only governed by trust.

The nature of employment relationship that is only based on trust and occurs informally between domestic workers and employers implies the potential for violence and violation of the right to domestic workers. Resolution disputes concerning rights and obligations are usually done informally. Directly recruited domestic workers do not have standard provisions regarding wages, working hours and the type of work they have to work on. It all depends on the will of the employer.

This shows that the establishment of special regulations and institutions for the handling of domestic workers is needed as a means of receiving access to justice. Even, justice who is the goal of law also cannot be enforced without the protection of the law, at that time there is no human rights.<sup>16</sup>

Dealing with these conditions, the authors propose the necessity for the establishment of a new institution namely Domestic Workers Handling Institution. With the aim of presenting a more complete institution, creating performance efficiency related to the handling of domestic workers, to minimize the occurrence of indications of violation of domestic workers rights. This institute is also expected to be a real representation in providing justice and legal protection for domestic workers, as an institution that can address the problems of domestic workers in a multidimensional way, without diminishing the role of other existing institutions.

Based on the background above, then the problem in this paper on how is the legal protection for domestic workers in Indonesia today? and how does the concepts domestic workers handling institution as a solutive step in realizing civilized justice for domestic workers who are recruited directly?

## METHOD

Based on the identification of the problems above, this research is a normative research, namely research by reviewing the provisions regulating the Legal Protection to domestic workers and the fact that occurred. Normative legal research is also called doctrinal legal research.<sup>17</sup>

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<sup>15</sup> Authors are referring to International Labour Organization. (2006). *Peraturan tentang Pekerja Rumah Tangga di Indonesia, Perundangan yang Ada, Standar Internasional dan Praktik Terbaik*, Jakarta: International Labour Organization. p. 46-48.

<sup>16</sup> Constitutional Court of the Republic of Indonesia Decision Number 88/PUU-X/2012, p. 33.

<sup>17</sup> Johny Ibrahim. (2005). *Teori dan Metode Penelitian Hukum Normatif*. Malang: Bayumedia Publishing. p. 216-219. See also: Nurunnisa. (2016). "Sanksi Pidana bagi Anak dalam Perspektif Keadilan Restoratif". Makassar: Thesis Doctor in Law at Postgraduate Program, Hasanuddin University. p. 119.

This study uses several approaches, namely: (1) Statute approach, that is by reviewing legislation relating to legislation<sup>18</sup> studied namely Legal Protection for Domestic workers; (2) Conceptual Approach<sup>19</sup> is a type of approach to find the concept of justice value in the protection of Domestic workers constructed from a combination of law in book and law in action.

Based on this approach, this study uses primary legal materials and secondary legal materials supplemented with non-legal materials related to the legal issues studied. The sources used in this study consist of: (1) Primary legal materials consisting of laws and regulations related to the issues studied. The primary legal materials used in this writing are; a). The 1945 Constitution of the Republic of Indonesia; b). Law of the Republic of Indonesia Number 13 Year 2003 on Manpower; c). Law of the Republic of Indonesia Number 39 Year 1999 on Human Rights; d). Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 Year 2015 on Protection of Domestic workers; (2) Secondary law materials consist of literature related to the issues studied derived from books, journals, newspapers, expert opinions and articles from the internet, while non-legal materials include data relevant to the legal issues studied.

The technique of collecting legal materials used is literature research, which is a data collection technique by using documents, records, reports, electronic media books and materials relevant to legal issues studied.

After the legal material is collected, then an analysis is made upon the material. The legal material is a process of arranging the order of data, organizing it into the pattern, category and unity of basic description. Data obtained through document studies will be analyzed qualitatively and then presented descriptively by describing, explaining and illustrating the Legal Protection for Domestic Workers in Indonesia along with analyzing existing problems and formulating solution.

## RESULT AND DISCUSSION

### Legal Protection

Legal protection is a matter of protecting legal subjects through applicable legislation and enforced by a sanction. Legal protection can be divided into two, namely:<sup>20</sup>

1. Preventive Legal Protection  
Protection afforded by the government with the aim of preventing prior to the offense. It is contained in legislation in order to prevent a violation and to provide guidelines as well restrictions in the conduct of obligation.
2. Repressive Legal Protection  
Repressive legal protection is ultimate protection in the form of sanctions such as fines, imprisonment, and additional penalties provided in the event of a dispute or an offense has been committed.

According to Setiono, legal protection is an act or attempt to protect the public from arbitrary acts by authority, which is inconsistent with the rule of law, to realize order and tranquility therefore enable humans to enjoy their dignity as human beings.<sup>21</sup>

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<sup>18</sup> Peter Mahmud Marzuki. (2007). *Penelitian Hukum*. Jakarta: Kencana. p. 96.

<sup>19</sup> Johny Ibrahim. *Op.Cit.*, p.119.

<sup>20</sup> Muchsin. (2003). *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*. Surakarta: Master of Laws Postgraduate Program Sebelas Maret University. p. 14.

According to Satjipto Raharjo, "The law protects the interests of a person by allocating a power to him to act in the framework of his interests. The allocation of power is conducted measurably, in a sense, determined by its breadth and depth. Such power is called right. But not every power in society can be called a right, but only a certain power which is the reason for attachment of that right to a person".<sup>22</sup>

### **Workers**

The term worker appears as a substitute for the term laborer. In the days of feudal or Dutch colonial era formerly what was meant by the workers were the men of brute labor such as porters, foremen, builders, and others. These people by the Dutch government were formerly called blue collars, while those who did "smooth" jobs such as administrative clerks who could sit at the table were called "white collar". Usually the people belonging to this class were the nobles who worked in the office as well as the Dutch and other Timur Asing.<sup>23</sup>

Since Indonesia has declared independence, the position of labor in this country in all aspects received attention. Similarly, from the beginning to the present day all aspects of the position and life of the labor receive a decent place in accordance with the position and life of other people's group. The Minister of Labor of the Republic of Indonesia, for example, was replaced to the term Minister of Manpower of the Republic of Indonesia, the labor of Pancasila Industrial Relations which is now continuously being developed is replaced by the term Workers or Manpower.<sup>24</sup>

After the enactment of Law of the Republic of Indonesia Number 13 Year 2003 on Employment the term worker is replaced by the term laborer so that the term worker/laborer is: "Every person who works by receiving wages or compensation in other forms".<sup>25</sup>

### **Domestic Workers**

Domestic workers means work performed within or for one or more households;<sup>26</sup> domestic workers means any person who is engaged in domestic work in an employment relationship;<sup>27</sup> a person who performs domestic work only occasionally or sporadically not a means of earning for living, is not a domestic work.<sup>28</sup>

According to Regulation of the Minister of Manpower Number 2 Year 2015 on the Protection of Domestic Workers, domestic workers, here in after abbreviated as PRT, is a person who works for an individual in the household to carry out house keeping work by receiving wages and/ or other forms of compensation.<sup>29</sup> Based on the

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<sup>21</sup> Setiono. (2004). *Rule of Law (Supremasi Hukum)*. Surakarta: Master of Laws Postgraduate Program Sebelas Maret University. p. 3.

<sup>22</sup> Satjipto Rahardjo. (2000). *Ilmu Hukum*. Bandung: Citra Aditya Bakti. p. 53.

<sup>23</sup> Zeni Asyhadie. (2007). *Hukum Kerja*. Jakarta: PT Raja Grafindo Persada. p. 19.

<sup>24</sup> Iman Sjahoutra Tunggal. (2004). *Hukum Ketenagakerjaan Indonesia*. Jakarta: Harvarindo. p. 6.

<sup>25</sup> Article 1 Number 3 Law of the Republic of Indonesia Number 3 Year 2003 on Employment.

<sup>26</sup> Article 1 letter a Convention on Decent Work for Domestic Workers, 2011.

<sup>27</sup> *Ibid.*, Letter b.

<sup>28</sup> *Ibid.*, Letter c.

<sup>29</sup> Article 1 Number 1 Minister of Manpower of the Republic of Indonesia Regulation Number 2 Year 2015 on Protection of Domestic Workers.

understanding above, domestic workers perform domestic work to be subsequently compensated in the form of wages or other forms.

### **Legal Protection of Domestic Workers in Indonesia**

The right to obtain decent work has been guaranteed by the constitution of article 28D paragraph (2), which is in line with Article 28D Paragraph (1), which guarantees the right of legal protection for every person. In the context of universal human rights protection, the Universal Declaration of Human Rights has regulated the protection of the freedom of others including all kinds of practices of slavery. Particularly on the protection of labor, in the context of international law, Indonesia has ratified the core of ILO Conventions on fundamental rights in employment, namely: ILO Convention Number 87 on Freedom of Association and Protection of the Right to Organize;<sup>30</sup> ILO Convention Number 98 on Right to Organize and to Collective Bargaining;<sup>31</sup> ILO Convention Number 29 on Forced Labor. ILO Convention Number 105 on the Abolition of Forced Labor;<sup>32</sup> ILO Convention Number 100 on Equal Remuneration for Male and Female Workers for Work of Equal Value;<sup>33</sup> ILO Convention Number 111 on Discrimination in Respect of Employment and Occupation;<sup>34</sup> ILO Convention Number 138 on Minimum Age for Admission to Employment;<sup>35</sup> ILO Convention Number 182 on the Prohibition and Immediate Action for the Elimination the Worst Forms of Child Labor.<sup>36</sup>

The Government of Indonesia has not ratified the ILO Convention Number 189 on Decent Work for Domestic Workers on 16 June 2106.<sup>37</sup> By not ratified this Convention denotes the government's unwillingness to provide legal umbrella for the protection of domestic workers that has been promised since 2004.<sup>38</sup> The law formulation has been included in the National Legislation Program (Prolegnas) since 2009-2014 and returned to Prolegnas in the period 2014-2019.<sup>39</sup>

The government has issued special regulations for domestic workers but only in the form of Minister Regulation (Permen). Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 Year 2015 on Protection of Domestic workers does have a regulatory character but unable to contain criminal provisions in case of

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<sup>30</sup> Ratified with Presidential Decree of the Republic Indonesia Number 83 Year 1998.

<sup>31</sup> Ratified with Law of the Republic Indonesia Number 18 Year 1956.

<sup>32</sup> Ratified with Law of the Republic Indonesia Number 19 Year 1999.

<sup>33</sup> Ratified with Law of the Republic Indonesia Number 80 Year 1957.

<sup>34</sup> Ratified with Law of the Republic Indonesia Number 21 Year 1999.

<sup>35</sup> Ratified with Law of the Republic Indonesia Number 20 Year 1999.

<sup>36</sup> Ratified with Law of the Republic Indonesia Number 1 Year 2000. Check it directly the primary source in: Maidin Gultom. (2012). *Perlindungan Hukum Terhadap Anak dan Perempuan*. Bandung: PT Refika Aditama. p. 57.

<sup>37</sup> Kompas, *Diskriminasi Kerap Terjadi, Pemerintah didesak Rancang UU Perlindungan PRT*, accessed dari <http://nasional.kompas.com/Kelinread/2016/09/15/23490581/diskriminasi.kerap.terjadi.pemerintah.didesak.rancang.uu.perlindungan.prt> (accessed on 28<sup>th</sup> February 2017).

<sup>38</sup> KOMPAS, *Hingga September 2016, Kekerasan terhadap PRT Capai 217 Kasus*, accessed from <http://nasional.kompas.com/read/2016/09/15/16403781/hingga.september.2016.kekerasan.terhadap.prt.capai.217.kasus> (Accessed on 28<sup>th</sup> February 2017).

<sup>39</sup> House of Representative of the Republic of Indonesia, *Program Legislasi Nasional*, accessed from <http://www.dpr.go.id/prolegnas/index/id/125> (Accessed on 24<sup>th</sup> February 2017).

violation of the right of domestic workers.<sup>40</sup> This regulation is not enough to be a legal umbrella for the protection of domestic workers due to the absence of sanctions regulated in case of violation of the rights of domestic workers. The content of the Permen also regulates the Institute of Domestic Workers (LPRT), while the domestic workers who work not through the LPRT only contain general provisions. As for the rights and duties of domestic workers, in this Permen is still stipulated in abstract nature such as giving of wages according to work agreement not according to requirement because domestic workers can not demand Regional Minimum Wage (UMR) like worker.<sup>41</sup>

The practice of employing domestic workers in Indonesia is closely related to cultural attitudes reluctant to formulate formal regulations because Indonesian society tend to be reluctant to use formal regulations as a means of resolving disputes. The relationship between employers-domestic workers is largely based on trust. The practice stipulates domestic workers as helpers strengthening cultural reluctance to formalize the relationships between domestic workers and their employers, many of who come from distant relatives or same villages of origin. Instead, employers view their role as a paternalistic role, in which they protect, feed, shelter, educate and provide compensation to domestic workers in return for their service.

The paternal aspect of this employment relationship, which is combined with the fact that most tasks are carried out within the family home and are not considered economically productive,<sup>42</sup> means that Indonesian culture generally views this relationship as a personal relationship. On the other hand, Indonesian society supports a considerable degree of governmental involvement in various aspects of the economy and life, but, on the other hand, home is considered to be personal and beyond the reach of state intervention.<sup>43</sup>

The employment relationship between domestic workers and employers is still based on trust and there is no written agreement in the form of contract. Domestic workers who work through domestic workers dealer only make agreement with dealer. The absence of a written agreement/ employment contract makes the rights and obligations of domestic workers are unclear. It is often experienced that unlimited working hours and demand that domestic workers should be ready at any time if ordered by the employer. If the domestic workers are considered as a worker, then his maximum working hours is 40 hours in one week.<sup>44</sup> The workload of domestic workers is also unlimited, for example, workers in industries that have certain job desks that have been agreed from the beginning. Domestic workers who are still considered

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<sup>40</sup> See: Article 15 Law of the Republic of Indonesia Number 12 Year 2011 on Regulation Formation.

<sup>41</sup> Article 11 letter (a) Minister of Manpower of the Republic of Indonesia Regulation Number 2 Year 2015 on Protection of Domestic Workers.

<sup>42</sup> Kertas Posisi Usulan Revisi Perda DKI Jakarta No. 6 Tahun 1993 tentang Pramuwisma [*Position Paper and Recommendations for the Revision of Jakarta City Local Ordinance No. 6 of 1993 on Domestic Workers*]. (2000). Jakarta: LBH APIK. p. 3.

<sup>43</sup> International Labour Organization. (2006). *Peraturan tentang Pekerja Rumah Tangga di Indonesia, Perundangan yang Ada, Standar Internasional dan Praktik Terbaik*. Jakarta: Kantor Perburuhan Internasional. p. 15.

<sup>44</sup> See: Article 77 Law of the Republic of Indonesia Number 13 Year 2003 on Employment.



helper must be willing to do all the orders of the employer with a lower wage than the UMR.

Status of domestic workers who are not considered "workers" because they are not contained in the Manpower Law but are more often considered "helper" to make domestic workers can not be protected by the Manpower Law. Unclear rights and obligations such as minimum wages, rest, leave; social security, collective contracts and agreements, and provisions on termination of employment make the position of domestic workers as "workers" unclear because there is no regulation specifically regulating the protection of domestic workers. Domestic workers, physical violence that is persecution, also often experience receiving inhumane treatment and even murder often occurs in Indonesia. In 2014 there were 408 cases of domestic workers violence,<sup>45</sup> 376 cases until October 2015<sup>46</sup> and 217 cases until September 2016.<sup>47</sup> The data of this violence case were multi-cases such as physical violence, psychic violence, and economic violence.

The Ministry of Manpower does not yet have a special section that handles domestic workers while the Manpower Law can not protect domestic workers is legal uncertainty for domestic workers. The absence of legal protection of domestic workers from government makes Non Profit Organization (NGO) such as National Network of Domestic Workers Advocacy (JALA PRT) to intervene to fill the absence of government's role.

### **The Concept of the Handling Institution of Domestic Workers as a Solutive Step in Achieving Civilized Justice for Directly Recruited Domestic Workers**

#### **1. Establishment of Special Rules (Act) PRT**

The existence of a special law of domestic workers certainly causes the consequences of the recognition and protection of the rights of domestic workers. The formation of this special regulation is the key to ensuring those rights, in this case this special regulation is directed to domestic workers who are directly recruited, a series of existing regulations.

The matters that are absolutely regulated in this special regulation of domestic workers include: 1) Recognition that domestic workers engage in an employment relationship and contribute to the economy, 2) Addressing specific issues facing domestic workers, such as how to set wages, working hours, holidays, until the wage calculation when domestic workers eat and live within the employer's home (3) Law enforcement and legal protection of domestic workers, 4) Recognition of Lentera as one of the institutions that will handle domestic workers, especially those recruited directly, and 5) Employers obligations to provide employment contract.

Employment contract of domestic workers are an important instrument in protecting and guaranteeing the rights they must obtain. Currently, the absence of employment contract for recruited domestic workers is directly a source of violation of right that

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<sup>45</sup> <http://www.jpnn.com/news/2014-terjadi-408-kasus-kekerasan-prt> (Accessed on 25<sup>th</sup> February 2017).

<sup>46</sup><http://www.tribunnews.com/nasional/2015/10/04/376-kasus-kekerasan-pembantu-rumah-tangga-mencuat-sepanjang-2015> (Accessed on 25<sup>th</sup> February 2017).

<sup>47</sup><http://nasional.kompas.com/read/2016/09/15/16403781/hingga.september.2016.kekerasan.terhadap.prt.capai.217.kasus> (Accessed on 25<sup>th</sup> February 2017).

they should receive. In the absence of contracts, domestic workers always can be asked to work, be treated arbitrarily even not knowing their rights and responsibilities.

In detail, this Law should clearly regulate:

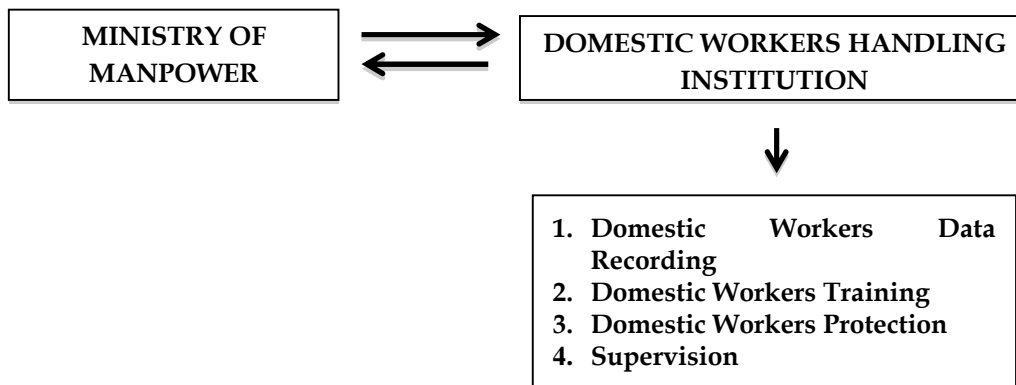
- a. Employment contract between domestic workers and employer.
- b. Right and obligation of domestic workers.
- c. Right and obligation of the employer.
- d. Terms of wages (including if domestic workers live and eat at employer's home).
- e. Terms of working hours.
- f. Terms of employment type.
- g. Prohibition of violence (physical and psychic).
- h. Resolution attempts in case of problem occur.
- i. Position and Function of Domestic workers Institutions.
- j. Sanctions.

## 2. Establishment of Domestic Workers Handling Institutions

The large number of domestic workers who work in Indonesia without going through the services of LPPRT or being directly recruited is one of the most difficult factors in supervising domestic workers who experience violation of right such as violence, unpaid wages, long working hours, and criminal acts. Establishment of a special institution dealing with domestic workers is urgently needed to address any potential violations of the rights of domestic workers and provide legal protection for them.

This institution will be under the authority of the Ministry of Manpower manifested as part of the sub-division of the Ministry of Manpower structure. The recruitment of persons who will work at this institution is conducted by the Ministry of Manpower, which of course has the qualifications and competencies as required.

### Scheme of Domestic Workers Handling Institutions



Source: Primary data, 2017 (Edited).

The matters, which become the competence of this institution, are:

- 1). Domestic workers data recording, which is working in Indonesia and recruited directly.

Data recording is created to obtain real amount about the number of domestic workers who work in Indonesia, especially those recruited directly. With real data

every year, it can be easier to know the real data of domestic workers. Moreover, nowadays data on domestic workers recruited directly is very little and not up date. The lack of data is definitely difficult to find out the number and problems as well efforts to handle the problems of domestic workers who were recruited directly.

2). Domestic Workers Training

Training is conducted with the aim of providing skills for domestic workers in carrying out their work. Training can be provided in the form of course programs (education and training) that are carried out for few days continuously. The main focus is to provide training and overview to domestic workers in doing their work. This is important because often employers abuse domestic workers because their work is not good or in appropriate. Moreover, domestic workers that recruited directly do not usually have skills before they work.

3). Domestic Workers Protection

The protection intended here in is the guarantee of the fulfillment of the rights that domestic workers must receive. The establishment of a special law on domestic workers recruited directly is a form of legal protection progressivity for domestic workers. The form of protection can be through of providing employment contract and is required by employers to conduct into such contracts before employing domestic workers. Other forms of protection may be accompaniment of domestic workers if the employer commits an act that has violated the rights of domestic workers. The form of protection that will be created is to establish a hotline service and complaint posts.

## CONCLUSION

Legal protection of domestic workers in Indonesia currently does not have legal regulation. The Manpower law also does not accommodate legal protection for domestic workers who are not considered workers. The only regulation related to domestic workers in Indonesia is a ministerial regulation with a legal force that does not accommodate all the fulfillment of clear rights and obligations for domestic workers. The government has not yet established a special agency/ institution to provide legal protection for domestic workers who are recruited directly which make NGOs involved more in handling this matter. The absence of a legal umbrella for the protection of domestic workers is a major cause of violation of right for domestic workers.

The establishment of special law on domestic workers recruited directly and realized through the establishment of the Domestic Workers Handling Institution as a solutive step in realizing civilized justice for domestic workers is conducted in several ways, firstly, providing legal certainty and guarantee through the establishment of special law of domestic workers who are recruited directly which contains the rights and obligations of domestic workers and employers. Secondly, to establish a Domestic Workers Handling Institution that has the competence, such as data recording of domestic workers, domestic workers training, and of domestic workers protection.

For the sake of the creation of civilized justice in the handling of the problem of domestic workers, it is recommended to the government, in order to consider the authors proposals and to immediately issue regulations on domestic workers who recruited directly and all supporting devices. As for the society, in order to participate

to provide input to jointly combat all forms of violation of right against domestic workers.

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