

UUMILC 2017
9TH UUM INTERNATIONAL LEGAL CONFERENCE

**LEGAL PROTECTION AGAINST WOMEN WORKERS
HOUSEHOLD (PRAMUWISMA) AS VICTIMS OF PERSECUTION**

Ferdricka Nggeboe (a)*

*Corresponding author

(a) Lecture Master of Law University of Batanghari Jambi, Slamet Riyadi Broni Road No. 01, Jambi, Indonesia,
ferdricka.nggeboe@yahoo.com, Tel.:+62-852-663-94688

Abstract

The important role of Domestic Workers (Maid) is indispensable in helping the lives of the households that employ them. Domestic Workers are entitled to compensation / wages agreed between Domestic Workers and employers (employers or wage earners). The amount of wage given should be based on the minimum wage of each region. But in reality there are still many Domestic Workers earning wages that are inconsistent with the number of jobs performed, then in carrying out their work is not supported by adequate facilities, and more concerning is the torture perpetrated by the employer, whether minor abuse or severe maltreatment Disability, or persecution that leads to the death of domestic workers. Domestic workers are also human beings who have rights that must be protected and respected for their rights. Unlawful treatment by employers is certainly against human rights. The problems mentioned above need to be analysed by referring to the formulation of the problem of how to protect the rights of women domestic workers as victims of ill-treatment, as well as what efforts are made to enable domestic workers to be protected by their rights. This crime must be stopped and should get the attention of all parties.

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Keywords: Legal Protection of Domestic Workers, Victims of Persecution.



1. Introduction

Domestic Workers are familiar things in people's lives, especially families. The important role of Domestic Workers is needed in helping households. Someone who employ them better known in the community are called employer. As it is known that Domestic Workers have a variety of jobs depending on the needs of employers of the place of work, such as washing, cooking, cleaning the house, parenting the employer, and others. The Domestic Workers receive the agreed remuneration / wage between domestic workers and the employer based on the minimum wage of each region.

But in reality domestic workers get unsuitable wages, facilities. All of that are not feasible. It often depending on the ability of the employer is much different from the agreement plus the torture that led to death. The cases have been happening in Indonesia, one of which is a horrendous case in November 2014 in Medan City in the case of slavery and abuse of domestic workers who are accommodated in Syamsul Anwar's house on Jalan Beo intersection Jalan Angsa and Madong Lubis, Medan (Mahardiansyah, 2014).

On the other hand, according to data from the National Commission on violence against women, the cases of torture by domestic workers are mostly experienced by women as women as domestic workers are more than men. The number of complaints of torture received by domestic worker is increasing as published through Tempo.Co, Jakarta, National Housekeeping Advocacy Network (Jala PRT). The published recorded 103 cases of violence against domestic servants during January-February 2016, but only four cases were reported in Mass Media. National Coordinator of the PRT Net, Lita Anggraini mentioned that during 2016 there were 103 cases of torture against servants by employers, and 21 cases of torture by the dealer, torture in the form of physical torture, psychological violence and also economic violence due to unpaid wages (Anggrainii, 2016)

The phenomenon shows that torture against domestic workers has disrupted human rights. Human rights are essentially the basic rights of every human being brought by birth, therefore Bambang Waluyo mentions that the protection and respect for these basic rights enables everyone to live their lives in dignity (Waluyo, 2016). Violence against the Domestic Workers is a crime, therefore Abintoro Prakoso mentioned that crime is a humanitarian issue and also some social problems (Angkasa, 2017). Domestic Workers include workers who deserve the same position as other workers because domestic workers are included in the terms of the workers or workers. It is included in the laws and regulations. Law No. 13 of 2003 on Manpower Article 1 point 3 states that: "Worker / labourer is any person who works by receiving wages or other forms of remuneration".

As a matter of fact, Domestic Workers as workers are considered to be not the same as other workers such as factory workers, corporations, and others. It should even be admitted that today the term "worker" has not yet been accepted by society. In general, people are more receptive to calling Domestic Workers as "helper". Therefore, Domestic Workers are included in the scope of work of the informal sector (Adi, 2000). The weakness or lack of these juridical references has had the effect that Domestic Workers lack legal protection. The recognition of domestic workers as workers equal to the formal sector is lacking. Recognition of the existence of domestic workers as workers is the first step to gain recognition socially and legally. Domestic workers are often the victims of inhumane treatment, the distorted behaviour of domestic workers as expressed above is only a small fraction. Space in the National Law Symposium mentions that the Influence experienced by victims in addition to physical and

emotional suffering, material, mental, and impact on the family and social that tends to incriminate victims (Prakoso, 2017).

2. Problem Statement

Legal and social protection for women as domestic workers is included both juridical and social aspects. Juridical aspects, including: first, the assumption that the domestic workers are not workers; and second, the workplace of domestic workers is potentially violent. Social aspects include: first, unequal power relations; Second, the low and undervalued social status of domestic workers, and third, the culture of the community; domestic workers activity or job is not considered a productive work (Sri Turatmiyah, 2013)

Jobs for domestic workers to date are still commonly referred to as 'assistants', this term indicates the stigma in society regarding the status and social standing of one's life in society. In Indonesian Dictionary there is actually a more appropriate and humane appeal to this profession, namely as a maid servant, but unfortunately this title is very rarely used both in everyday in society, as well as the terminology in Indonesian legislation. The general view of the profession of domestic servants in society thus generating stigma among others is due;

1. The stratification system in society, that is the difference between the haves and the have nots, and the custom of immigration from village to city

2. Traditional relationship system, patron client and mutual helping as a form of devotion to the person who hired them

3. The current condition has evolved that the work of helping others in the household, earned a reward (wage system) but not large, because the work enters the area of domestic work, and to date there are no specific formal rules governing the existence of domestic workers. But the work of domestic workers may be categorized as workers working in a particular company or agency so that the existence of underserved domestic workers who owe their right to the mercy and benevolence of the employer

4. The absence of rules on the protection of domestic workers into the special rules of labour law (industrial relations) causes the rule of law applied to perpetrators of violence against domestic workers still use Article 351-355 about the persecution as set forth in the Criminal Code.

The existence of legislation is very important to provide legal certainty to domestic workers in obtaining their rights and carrying out their obligations. Of course this applies also to service users who hire Domestic Workers. Both parties may avoid the abuse of power in the working relationship between Domestic Workers and their service users

The presence of rule of law is important for governing the interests of society which intended to provide a sense of security to individuals and groups in society in carrying out their daily activities. The rules in question are one that regulates the interests in the form of rights and obligations of domestic workers, so that the domestic worker gets a sense of security and comfort that is feeling calm, without any fear of threat of violence (physical or psychic) or other deeds can harm him in doing his job. This fact illustrates the existence of labour-related regulations, (Labor Law No. 13 of 2003) but not specifically regulating domestic workers, although there are rules governing the protection of violence against all persons within the scope of households (Manpower Regulation No. 13/2003). -World No. 23 of 2004) but

perpetrators of violence against domestic workers have never applied this rule. And the issuance of Regulation of Minister of Manpower no. 2 year 2015 still unable to overcome the many acts of domestic violence to domestic workers.

3. Research Questions

The research questions are formulated as follows:

- 1) How is the legal protection of the rights of women domestic workers (maids) as victims of persecution
- 2) What efforts should be done to enable women domestic workers to be protected by their rights

4. Purpose of the Study

- 1) Describe and review the rules governing the protection of women domestic workers as victims of ill-treatment
- 2) Describe and review the efforts undertaken for women domestic workers to be protected their rights

5. Research Methods

This research based on empirical normative, but not conducted in-depth research, Socio legal jurisprudence studies emphasize the importance of putting the law in its social context (Nuswardini, 2012). The authors take writing materials based on data and references from the books related to the problem which is then analysed through the concept approach of the legislation in connection with the guarantee of legal protection against Domestic worker (housemaid).

6. Findings

6.1. Legal Protection The rights of women domestic workers (maids) as victims of ill-treatment

The discussion on legal protection of domestic workers has become a world issue, which is based on several considerations, such as; First recognizes the important contribution of domestic workers to the global economy, which includes increased employment opportunities that can increase per capita income. Second, domestic work is underestimated. They regarded as a slave to the employer's will, especially if the worker is a girl and a girl who is weak, lacks of courage. Futhermore, she does not understand of her rights.

Within the scope of the world the attention of domestic workers (prambers) has had a very enabling rule to protect domestic workers from enjoying their full rights in the form of the International Domestic Workers Convention in 2011 called the Domestic Workers Convention, 2011 (K189), The Convention on Decent Work for Domestic Workers, 2011).

Based on Article 1 K189, domestic workers are:

article 1

For the purposes of this Convention:

- a) the term "domestic work" means work performed within or for one or more households;
- b) the term "Domestic Worker" means any person who is engaged in domestic work in an employment relationship;
- c) a person who performs domestic work only occasionally or sporadically and not as a means of earning a living, is not a domestic worker.

Indonesia already has a legal protection for domestic workers namely the Criminal Code of the Criminal Code, Law Number 13 Year 2003 on Manpower and Law Number 23 Year 2004 on the Elimination of Domestic Violence. Protection of domestic workers under Law No. 13 of 2003 on employment declares that workers are entitled to receive wages or remuneration in any form and have the right to equal treatment without discrimination and protection, wages and welfare under applicable law.

Forms of protection of Domestic Workers are reaffirmed by the Ministry of Manpower and Transmigration of the Republic of Indonesia as the department that deals with labor issues, on January 19, 2015, the Ministry of Manpower of the Republic of Indonesia has issued Regulation of the Minister of Manpower No. 2 Year 2015 on the Protection of domestic workers . The basis of the consideration of the issuance of this ministerial regulation is in the framework of providing protection to domestic workers and the participation of domestic workers' users to provide the rights of domestic workers as agreed by the parties.

There are several terms which in the rules provide the following definitions:

1. Workers

Worker according to Law Number 13 Year 2003 Concerning Employment is any person who works by receiving wages or other forms of remuneration

2. Household

The scope of households in Law Number 23 Year 2004 on the Elimination of Domestic Violence includes:

- a. Husband, wife, and child;
- b. Persons who have a family relationship with a person as referred to in letter a because of the blood relationship, marriage, dairy, nurturing, and guardianship, who are resident in the household; And / or
- c. People who work to help the household and settle in the household.

3. Domestic Workers

Domestic Workers under the Regulation of the Minister of Manpower No. 2 of 2015 on the Protection of Domestic Workers is a person who works for an individual in a household to carry out housekeeping work by receiving wages and / or other forms of remuneration.

4. Household Work

Domestic Work according to Regulation of the Minister of Manpower No. 2 of 2015 on the Protection of Domestic Workers is work done within the scope and interests of the household.

5. Victims:

Limitations on victims in the Witness and Victim Protection Act. 13 of 2006 jo Law no. 31 years 2014 is also still limited to victims of crime. The victim is mentioned as a person suffering physical,

mental, and / or economic loss caused by a crime. Whereas, victimization activity does not occur solely because of crime, but also due to accidents of transportation, accidents, human made disaster or natural disaster and other causes Which is beyond evil.

According to Bambang Waluyo victims can be categorized into four criteria:

- a. Personal victim; Is any individual as an individual who suffers from the soul, physical, material or non-material;
 - b. Victims of institutions; Is any institution that suffers and losses in carrying out its functions that cause prolonged losses resulting from government policies, private policies, and natural disasters;
 - c. Environmental casualties; Is any natural environment which contains the blooms of plants, animals, people and society as well as all the living bodies that grow and its sustainability is highly dependent on the natural environment that has experienced deforestation, sloth, flood, and fire caused by the wrong government policy And human acts both individuals and irresponsible societies
 - d. Victims of society, nation and state; Are discriminatory, unfair, discriminatory, unjust, overlapping share of development and civil rights, political rights, economic rights, social rights, cultural rights are no better every year (Waluyo, 2012).
6. Protection

Protection under Law No. 23 of 2004 on the Elimination of Domestic Violence is any effort aimed at providing a sense of security to victims committed by family, advocates, social institutions, police, prosecutors, courts or other parties, temporarily or by virtue of Determination of the court.

Legal protection of domestic workers (prambers) is clearly established

1. Domestic Workers Convention, 2011 (K189) convention on decent work for domestic workers, 2011)
2. International Publication Labour Organization (ILO)
3. Law No. 13 of 2003 on Manpower
4. Law Number 23 Year 2004 on the elimination of domestic violence
5. Regulation of the Minister of Manpower No. 2 Year 2015 on protection of domestic workers
6. In the Criminal Code (Penal Code) in Chapter IX Article 89 of the Criminal Code states that "making people faint or making people powerless is equated with violence". Regarding the violence that occurs in domestic workers, the perpetrators may also be charged with articles in the Criminal Code that regulate;
 - a. Article 351 of the Criminal Code on torture,
 - b. Article 353 of the Criminal Code concerning maltreatment with plans,
 - c. Article 354 of the Criminal Code concerning severe maltreatment,
 - d. Article 355 of the Criminal Code concerning severe maltreatment committed with prior plans.

Related to the Indonesian criminal law, the perspective of Indonesian law according to Teguh Prasetyo and Abdul Halim Barkatullah, it is necessary to add the importance of the fundamental values prevailing in society, in order to avoid a gap between social ideals and positive punishment (Barkatullah,

2012). Theoretically in the positive criminal law prevailing in Indonesia, the protection of more victims is "abstract protection" or "indirect protection". This means that various formulations of criminal acts in the legislation so far there has essentially been a protection in abstracto directly against the interests of the law and the rights of victims. Because a crime according to positive law is not seen as an act of attacking or violating the legal interests of a person (victims) personally and concretely, but only seen as a violation of "norm or order of law in abstracto". As a result the victim's protection is not directly with in concreto, but only in abstracto. In other words, the criminal sanction and criminal responsibility system is not directed to immediate and concrete victim protection, but only the victim's protection is indirect and abstract. So the perpetrator's responsibility is not the responsibility for the direct or concrete loss or suffering of the victim, but rather of personal or individual accountability. Indirect protection in the positive law regulation has not been able to provide maximum protection. Because the reality in Indonesia shows that the law that is applied certainly has not been able to guarantee the certainty and sense of justice (Arief, 1998).

The concept of human rights is viewed as a legal right, then it has two normative consequences:

1. The obligation of the person in charge (the party charged with the obligation) to respect / not violate the rights or fulfill the claim arising from the rights; and
2. Reparation if the obligation is violated / not fulfilled (Gultom, 2006).

Since it was issued on January 19, 2015 up to June 16, 2017, the regulation of Manpower Minister no. 2 Year 2015 is not been implemented throughout Indonesia yet, especially in Jambi Province as information obtained by the author on the Field of Manpower and Placement of Labor and Productivity Office of Social Employment and Transmigration Jambi Province although they know that has been issued Permenaker No. 2 Year 2015 on the Protection of domestic workers.

As it is known that the regulation of Manpower Minister No. 2 Year 2015 Chapter VII Other Provisions Article 28 explains "The Implementation of this Ministerial Regulation is further stipulated by the Governor" and to date there has been no Governor Regulation as a follow up of this regulation of Manpower Minister. The household domestic workers draft has been the draft law proposal since the House of Representatives for the period 2004-2009, since the bill is listed in the National Legislation Program (Prolegnas) 2004-2009. In the period 2009-2014, the PRt bill re-entered into one of the priorities in 2010 prolegnas (Susiana, 2012). Furthermore 2014-2019 becomes a question of whether the act of domestic workers was enacted and the reality until June 2017 has not been done discussion of the draft of this law.

In the meantime, if there is persecution (physical violence) against domestic workers, then, the perpetrators are threatened with the rules contained in the Criminal Code, not the Labor Law, or the Law on the Elimination of Domestic Violence. The data that the authors obtained from the Jambi City Police Department, said that during the year 2016 to June 2017 there are only 5 cases and that until processed in the District Court Jambi only 1 case. There are many factors that cause only very few cases of abuse of domestic workers reported to the authorities, as well as only 1. case filed to the Court for trial. The vulnerability of a domestic worker position makes him or her unprotected and also not protected by the Employment Act

From the description above, it can be concluded that Permenaker No. 2 Year 2015 About household protection has weaknesses in its implementation in the community, as follows:

1. This Permenaker is not made in accordance with the applicable Laws Act, because there is no law that specifically contains legal protection against domestic workers.
2. In this article the Permenaker still contains that the Domestic Helper's employment agreement and the user may enter into an oral agreement, whereas the fact of the agreement is in writing, the domestic worker as a weak party in the field of his rights law often violates the user and many workers Households become victims of crime.
3. This regulation of Manpower Minister as a form of State protection against domestic workers to the scope of the household, but on the other hand this permenaker provides an opportunity in the form of agreement both parties so as to provide opportunities to the user as superior and workers as inferior, Rights of domestic workers.
4. The regulation of Manpower Minister is more regulated LPPRT as a domestic worker suppliers agencies than providing legal protection against domestic workers so it can be equated formal labor rights in general.

6.2. Employment by domestic workers to ensure their rights are protected

The discussion on criminal offenses that is relating to the perpetrator and victim constitutes the object of a special study in criminology and victimology. The discussion of domestic workers in the social scope of society is a social subject in which the stigma created by society on the status of a worker is very low. Indonesia has set social policy in the form of policies to realize social welfare (policy welfare policy) and policies provide social protection (social defense policy). The policy for social protection (social defense policy) is one of the efforts to prevent crime that actual or potential to occur. All efforts to prevent and overcome these crimes / crimes are included in the area of criminal policy (criminal policy)

The concept of theoretical protection of victims can be done in various ways, either through juridical steps accompanied by non-juridical measures in the form of preventive measures. The concept of protection against victims of crime is given depending on the type of suffering / loss suffered by the victim. For example, for mental / psychological losses, surely the form of compensation in the form of material / money is not sufficient if not accompanied by mental recovery efforts of the victim. On the contrary, if the victim suffers only material loss (such as, the property is lost) the psychic service seems too much. The concept of victim protection through juridical steps is one of them through criminal law policy both in terms of material law and in terms of formal law as written below

Based on the weaknesses of regulation of Manpower Minister No. 2 Year 2015 on the Protection of Labor and supported by the following normative reasons:

1. That women domestic workers should not be weak and convey everything about the rights they should receive and be protected. The government should pay attention to the position of domestic workers in the informal sector to formal workers. This shift is important because it brings a positive impact on domestic Work which originally was only domestic work (the majority of women and children) became economic value jobs.

2. The assertiveness of domestic workers and the limits of work and attitudes that must be done, should have been discussed first before they start their work and must be written in writing in the form of work agreement between the two parties it is time for domestic work to be considered more seriously in Any analysis of economic work so that ultimately not be underestimated to the status of marginal and does not exist.
3. Domestic Workers shall not be discriminated in respect of the work of Domestic Workers with high economic and trust value. Sometimes domestic workers in addition to doing kitchen work, cleaning the house, are also considered responsible for reproductive activities (childbirth, parenting, working in the domestic area) in terms of occupation and social status, but in essence Domestic Workers are very urgent in family life and It is appropriate that they get the same rights, protections and benefits as other workers of economic value. With the formulation of legislation giving recognition that domestic workers is equivalent to other work so as to realize welfare for domestic workers.
4. Demand legal recognition of the types of employment of domestic workers, equality of employment, welfare and legal certainty that can provide protection directly to domestic workers as guaranteed by legislation.
5. The existence of laws on domestic workers will strengthen Indonesia's bargaining position in the eyes of other countries, especially destination countries (Singapore, Malaysia, Saudi Arabia, etc.) of Indonesian citizens in encouraging tighter regulation of the protection of Indonesian migrant workers.

Indonesia has also followed international conventions with International Labour Organization (ILO) countries to discuss new international standards on the provision of decent work conditions for domestic workers in June 2010, but it is unfortunate that Indonesia's commitment to the convention is limited to a recommendation which means no "binding force" .

Efforts that can be done by the government in the framework of protection against domestic workers, among others, namely;

1. Improving the performance of domestic workers, skills education for the improvement of human resources (attitude, mental, work ethic)
2. Improvement of the quality of Domestic Workers, education, special skill training for the purpose of social and physical protection, empowerment of independence
3. In addition to the Government's role as the bearer of the function of facilitation, regulation, advocacy and empowerment, there should be a synergistic performance with the Social Service, National Development Board, National Education Department, Ministry of Religious Affairs and others so that domestic workers can be treated more humane

The form of legal and ham protection to be obtained by domestic workers in order to reduce violence in the form of persecution, it must be done;

1. At the beginning of the work must be agreed as an employment agreement with the employer in writing, on a decent and humane wage
2. It should be clear how many hours of work in a day and one week (8 hours a day and 6 working days per week under the Employment Act)

3. It should also be noted about the right to Rest and work leave, weekly, monthly and annual resting rights for domestic workers
4. Needs of Social security, health insurance, accident and death
5. Protection of occupational safety and health
6. Improved skills according to qualification
7. Protection against the arbitrary power of the employer

So that the efforts made can produce what is expected, then it is important, to immediately ratify the domestic workers bill on the protection of domestic workers as a form of government of Indonesia to support the existence of binding agreements, and can act quickly in dealing with cases related to domestic workers. Community can help by changing habits to provide better attitudes and attention to domestic workers.

7. Conclusion

- The legal protection of domestic workers in Indonesia is already available but has not fulfilled the objectives that can raise the dignity and degree of humanity, and It still discriminate decent work and income according to the skills, expertise and abilities;
- The success of placing the position of domestic workers to be respected in accordance with the dignity and degree of humanity and protected workers' rights will not be realized. If the Government only keeps silent, women's organizations and related institutions must synergize with the Government so that what is desired is more humane treatment can be realized.

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