

# The Implementation of Law Ministry of Manpower Concerning Domestic Workers Protection in West Surabaya

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**Abstract**— The word Domestic Workers are often abbreviated "PRT" (Pekerja Rumah Tangga) in Indonesia. It is often referred to with the term "Domestic Helper". The word "Worker" which indicates that there is an equal relationship between the two parties who have an agreement on the work relationship. It is different with the word "Helper" which understood as a low position (lower level) from employer. The word "worker" shows that there is a work relationship which same interests of both parties to the agreement through an agreed contract. Therefore, legal protection for both parties is needed. With the existing of Law Ministry of Manpower No. 2 year 2015 concerning Protection of Domestic Workers, it is necessary to know how to implementing the balance of rights and obligations of both parties in West Surabaya, East Java, Indonesia. This Research used a qualitative approach. The balance of rights and obligations of both parties already implemented but need strengthening in some aspects if it refers to the rules of protection of the Domestic workers in Indonesia.

**Keywords**— Domestic Workers, Protection, Right and Obligation

## I. INTRODUCTION

The word "Worker" from domestic workers is a new discourse which developed by non-governmental organizations and international labor organizations (International Labor Organization / ILO) to replace the word "Maid or Helper".[1] According to Domestic Workers Convention, 2011 No.189, Domestic Worker is a person who work perform in or for a household or households, engaged within an employment relationship, and performs domestic regularly not occasionally or sporadically.[2]

There is another paradigm to describe a person who work in house. Any and every person who employed wholly or partly to do some duties such as cook, house servant, waiter, butler, groom, mop, sweep, gardener and another house work is named "Domestic Servant". Domestic Servant also interpreted as informal employment because their existence lacks of basic social and legal protection.[3]

Legal protection for domestic workers is not strong enough in Indonesia. Their fundamental labour rights are

not strong protected by any regulation. It is impacted to a suitable potential legal frame work to protect their rights. National legislature should be concerned to regulate the protection domestic worker. Actually, RUU PRT as the regulation to protect domestic workers was drafted in 2004. Unfortunately, 14 years later the draft has yet to be enforced. The only one regulation which protected domestic worker is Law Ministry of Manpower. The things are needed to be protect are standardized minimum wage, regulated working house, regular days off and protection from mistreatment and violence.[4]

A person who is employed in domestic work within a work relationship of a domestic worker is a worker. According to Minister of Manpower Regulation of the Republic of Indonesia Number 2 of 2015 concerning Protection of Domestic Workers, domestic workers are people who work for individuals in the household to carry out household work by receiving wages and / or other forms of compensation.

The word "Workers" indicates that the employment relationship there are interests from both parties who agree through an agreed agreement. Therefore, legal protection for both parties will be needed. In general, it can be explained that the definition of legal protection is the act of protecting or providing assistance in the legal field.[5] The act of protecting and providing assistance in the context of the work relationship between domestic workers and employers is the need for continuing work agreements between the two parties to guarantee the implementation of their rights and obligations. The large number of violations of the rights of domestic workers has become one of the driving factors for the emergence of awareness of the need for a comprehensive rule on domestic workers who can protect their rights.

The Draft Law on the Protection of Domestic Workers actually has been proposed by the House of Representatives since the DPR for the 2004-2009 period. It was included in the 2004-2009 National Legislation Program. In the 2009-2014 period, that draft was again included as one of the priorities in the

2010 National Legislation Program.[1] Until now it has not been thoroughly discussed. The absence of Law on the Protection of Domestic Workers has impacted in no guarantee of domestic workers in Indonesia who are free from exploitation and injustice. The act of exploiting domestic workers, injustice over the balance of rights and obligations and even acts of violence against domestic workers should be used as the basis for the need for special regulations governing domestic workers in Indonesia.

The relationship between domestic workers and employers is an informal relationship and that is why there are no legal provisions that are presented to regulate their relationship. The results of Retno Dwiyanti's research revealed that the psychological contract between the employer and the domestic workers was a reciprocal relationship which was manifested in the compatibility between income and obligations with family relations approaching.[6]

Legal protection is a very important part of ensuring the implementation of rights and obligations. The limited regulation to guarantee the rights and obligations has resulted in many acts of exploitation, injustice practices and even violence against domestic workers in Indonesia. Therefore, there needs to be a formal legal umbrella that protects them. Law Ministry of Manpower No. 2 year 2015 concerning Protection of Domestic Workers strives to carry out such protection. As a new rule for the areas of work that are perceived to be informal, it becomes interesting to know how the implementation of the balance of rights and obligations between domestic workers and employer in West Surabaya, East Java, Indonesia.

## II. RESEARCH METHODS

This research was conducted using the method of socio-legal legal research. Socio-legal studies, on the other hand, often employs sociology (and other social sciences) not so much for substantive analysis, but as a tool for data collection.[7] In this case the law is seen as a norm and fact at once. As a norm, this study will examine the arrangements for protecting the rights and obligations of domestic workers and analyze how the rules apply to them. As a fact, this study intends to examine how the practice of protecting the rights and obligations of domestic helpers in the field. This socio-legal research is carried out by conducting library studies and empirical studies through interviews. Literature studies are carried out with primary, secondary and tertiary legal materials. The primary law is Law Ministry of Manpower No. 2 year 2015 concerning Protection of Domestic Workers. Secondary legal material is a thesis, research and relevant articles and tertiary materials are dictionaries and books relating to the theme of this research.

## III. RESULT AND DISCUSSION

The relationship between one party with another party will emerge rights and obligations. These relationships are certainly based on the existence of interests from both parties. In order to avoid the problem for the implementation of the balance of rights and obligations in the process of fulfilling these interests, rules are needed to guarantee them. To ensure that the legal regulations can continue and be accepted by all members of the society, the existing legal regulations must be in accordance and must not be contradicted by the principles of justice of the society.[8] The existence of these laws and regulations is needed to provide legal protection for the parties. One relationship in society is a work relationship. Employer and employee have the mutual interests which are characterized by different rights and obligations. Agreement regarding the rights and obligations of both parties can be stated in the work agreement or in contract.

A contract is basically an agreement between two parties creating a legal obligation for both of them to perform specific acts. According to the Law Dictionary, Contract is agreement between two people / parties to do specific thing as prestation.[9] According to contract theory by Van Dunne, contract is a legal relationship between two parties or more based on an agreement to cause legal consequences.[10] In addition, according to Yahya Harahap, contract is a legal relationship involving the law of wealth/property between two or more people/parties, which gives rights to one party and obligations to the other party about an achievement.[11] It can be concluded that the contract is an agreement between two parties even written or unwritten to achieve something that causes legal consequences in rights and obligations. To ensure the certainty of legal protection against the parties it is better to write the agreement in writing (contract). Based on the type, the agreement between domestic workers and domestic workers is a reciprocal agreement that gives rise to rights and obligations for each party. In addition, it is also categorized as a two-sided agreement because it creates legal consequences for both parties. It is good for domestic workers as well as employer.

The implementation of these rights and obligations certainly has challenges and obstacles in their implementation. Both regarding the fulfillment of rights and obligations, as well as regarding the balance of rights and obligations between the two parties. Therefore, the law comes through instruments that govern the implementation and fulfillment of these rights and obligations. The legal instrument aims to ensure the certainty of the implementation of these rights and obligations. Providing benefits so that there is no conflict between the parties who agree and achieve justice for the parties themselves.

According to Law Manpower for protection of Domestic Workers, the rights of domestic workers are obtain information about employer, get good treatment from employer and family members, get healthy food and drink, get salary according to work agreements, get adequate rest periods, get leave rights in accordance with the agreement, get an agreement to worship in accordance with the religion

and beliefs adopted, get holiday allowances, and the right to communicate with their family (Article 7). The duty of domestic workers is to do their duties and responsibilities in accordance with the work agreement, complete the work well, maintain ethics and manners within the employer's family and notify the employer in sufficient time if domestic worker will stop working (article 8).

The rights of Employers are to obtain information about domestic workers, get domestic workers who are able to work well, get good work results (Article 10). The employers obligations are to pay salary in accordance with the work agreement, provide healthy food and drinks, give the right of rest to domestic workers, provide opportunities for worship in accordance with the religion and beliefs adopted, give holiday allowance once a year, give leave rights in accordance with the agreement, include social security, treat domestic workers well, and report domestic workers to RT heads (Article 11). Observing the Law Ministry of Manpower that governing rights and obligations between domestic workers and employers, it has been found the balance between rights and obligations. The obligation of domestic workers become the rights of employers, and the rights of domestic workers become the obligations of employers.

There are two types of Domestic workers in West Surabaya. First type is Domestic workers who live with their employers and family members. The second type is Domestic Workers who come and leave every day because they are living with their family members. Mostly in west Surabaya, Domestic Workers is not living with their employer.

Ms. Karmi, 28, graduated from elementary school, resident of Dukuh Karangan Gang SC, No. 15 Surabaya decides to go home and leave because staying with her husband and the distance between the house and working place is not far away. It can be reached by bicycle. Ms. Karmi works for six (6) days a week. His work every day is cooking, washing clothes, ironing and other homework. Mrs. Karmi was only paid fifty thousand (Rp. 50,000) / day. B There are no holidays except Sundays. If the holiday will be deducted by a salary of fifty thousand. She does not know about law ministry of manpower for domestic workers protection. She just recognized about it when she was interviewed.

Mrs. Muntamah, 38 years old, from Jombang. She graduated from elementary school, became a domestic worker through his friend. She will be paid by employer IDR 1.4 Million every month. She never heard and never got news about the rules of domestic workers from the government. She did not know that government have legal policy to protect their rights. The agreement with employer done at the first meeting to decide salary, the duties, the duration of work every day, overtime and holidays. The agreement made is an unwritten agreement. Even though the employer provides one as facility to her, she decided not stay with the employer because of family reason. The working hours are from 07.00-

14.00. Ms Muntamah duties are sweeping, mopping the floor, watering flowers, and washing clothes. But, for cooking, Ms Muntamah no need to do because of employer demands. If she has overtime the employer committed to give extra money.

Ms Fatonah, 27 years old, she is originally from Rembang, Pasuruan, East Java. Same with Mrs Karmi and Ms Muntamah, she only graduated from elementary school. She also did not stay with employer. She never heard about law ministry of man power concerning legal protection for domestic worker. The agreement with employer only is in oral agreement to decide the salary and her duties as domestic workers. She has paradigm that domestic workers are just the helper. She said that her position in lower level before employer. The salary of domestic workers is small. She always starts her work at 06.00 am and will be finished at 11.00 am. She works only for 5 hours. it will be free on Sunday and national holidays. She has two weeks day off for Eid al-Fitr and 2 days for Eid al-Adha. Her salary per month is IDR 900.000. Every year salary rises by employer. She gets onemonth salary for Eid al-Fitr every year. She also gets lunch every day from the employer. The employer is also give space to her to do Sholat. According to Ms. Fatonah, written contract for agreement is not important. It is too complicated to do that contract for domestic worker according to her. The simple agreement more practical is oral agreement. She glads the government cares to protect their rights.

Mrs. Ita, 27 years old, is a domestic worker in West Surabaya who also does not stay with her employer. She works from 9:00 a.m. to 5:00 p.m. she is work for house chores besides cooking for the family of employers. Different with the previous domestic workers, Mrs. Ita was also asked to take care children of her employer. She was given a salary IDR 1.5 million every month. She gets onemonth salary for Eid al-Fitr every year also. Agreement with employer is only oral. It is same as the others, only agree on the issue of salary and duties. Mrs. Ita will get a holiday on Sunday and on national holidays. She did not recognize that duties and rights domestic workers are guaranteed according to law ministry of manpower. Nevertheless, he never thought that these things should also be agreed upon at the beginning of the agreement.

Mrs. Kasemi, 42 years old, a resident of Surabaya, is also a domestic worker who works starting at 07.30-11.00 doing homework and cooking for employer. It is similar with the others, Mrs. Kasemi also only had oral agreements with employer and only agreed on the issue of salary and the work she wanted to do. She said that the most important thing needs to talk and agreed in the first meeting is about salary and the list of duties only. Sundays and national holidays are a holiday for her. Every month, she gets IDR 1.5 million per month. She gets onemonth salary for Eid al-Fitr every year

also. The employer also gives meals of she wants to. There is a room provided for do prayers. She claimed that there has never been a problem with the employer. She agreed that government must protect their right and duties. She did not know anything about ministerial regulations regarding the protection of domestic workers.

The majority of domestic workers in West Surabaya do not live / settle with domestic workers / employers. Regarding the understanding of domestic workers in West Surabaya regarding the Manpower Minister's Regulation on the protection of domestic workers it can be concluded that domestic workers do not know about it, especially about the contents of the regulation. They do not really understand what their rights and obligations are as well as the rights and obligations of domestic workers / employers. Generally domestic workers make oral agreements in advance with PRT users. Generally what is found is about salary and what work is done. Regarding the work done, generally only cleaning the house without cooking. However, there are also those that include cooking and caring for children. The salary amount is also very diverse, there are 900 thousand and there are also 1.5 million. Comparing to domestic workers salary average in Jakarta which is only between IDR 1 Million and 1.2 Million (\$66 and \$79) each month (it is only 30 percent of the provincial minimum wage), salary average almost same in West Surabaya.

In practice, from all the interviews, there is actually a balance of rights and obligations of the parties. However, there are several obligations of the domestic worker who have not been implemented, namely, the provision of social security, and reporting to the head of the RT. The absence of a written agreement regarding the employment relationship shows how weak the protection of the rights of domestic workers if the work user wants to terminate employment and vice versa.

#### IV. CONCLUSION

Almost domestic workers in West Surabaya convinced if their position is a Helper in relation to employer. Indeed, in the context of legal relations, both domestic workers and employers have the same position in work relationships with mutually agreed achievements. All domestic workers were interviewed did not know about the Law Ministry of Manpower to protect their rights. The implication to both parties they do not know about rights and obligations according to that regulation. There are no domestic workers used written contract with their employer. If referring to ministerial regulations concerning the protection of domestic workers, there are several rights that are not accepted by domestic workers in West Surabaya because they do not live in residence with domestic workers or their employers. The rights such as getting proper food and drink,

getting good treatment from users and family members, obtaining leave rights in accordance with the agreement, the right to practice worship according to the beliefs they embrace, get holiday allowances, and the right to communicate with their families and obtain social security are obtained by domestic workers in West Surabaya properly and correctly. In practice as a whole, actually both domestic workers and employers in West Surabaya already have a balance in the implementation of their rights and obligations, only protection against the implementation of Rights and Obligations if there is no clear mechanism. This becomes a very important part for formulating the mechanism so that the rights and obligations of each are protected.

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