



# *The Policies for Domestic Worker Protection Between Indonesia and Philippines (Kasambahay Law)*

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**Abstract**—A substantial workforce is employed in Indonesia's informal employment sector of domestic labor. The allure of domestic delivery resides in its significant demand, lucrative compensation, and the absence of prerequisite expertise for entry-level positions. Being a domestic worker is perceived by many as a potentially transformative opportunity, especially by individuals hailing from lower-middle-income households. Nevertheless, a legal framework that guarantees and upholds protection for domestic laborers is presently lacking. Since 2004, the Job Creation and Labor Law has been deemed inadequate to protect domestic workers, significantly increasing their vulnerability. Therefore, it is crucial to conduct additional research on the human rights of domestic workers and establish a legal framework to ensure their future justice. Additionally, raising public awareness about the plight of domestic workers is essential. By conducting a comparative analysis of positive law in Indonesia and the Philippines, the research employs the method of juridical analysis. An assessment of the protection of domestic laborers in Indonesia is the objective. A crucial aspect to consider is the existence of domestic worker legislation in the Philippines. The study also identifies several legal loopholes that may have adverse consequences for domestic laborers, drawing from a comparison with the Kasambahay Law in the Philippines. Considerations such as employment security, working hours, and equitable compensation for domestic workers are of the utmost importance.

**Keywords**—Domestic Workers, Legal Protection, Kasambahay Law, Human Right, Justice

## I. INTRODUCTION

In Indonesia, domestic workers or housemaids are an integral component of the economy. The demand for domestic laborers continues to rise in tandem with the escalating needs of individuals and the increasing demands of their schedules. The overall worth of the domestic worker sector is favorable.[1] The regulations continue to impede progress toward achieving the objectives of the Domestic Workers Protection Bill (ILO 189 Convention) and ensuring the prosperity of domestic workers. ILO data indicate that approximately one in every twenty-five women globally is employed as a domestic worker (Kompas, "Portrait of Domestic Workers in Indonesia"). Typically between the ages of 17 and 50, these women are rural-dwelling individuals with limited educational attainment.

The 15th of February was designated as Domestic Workers Day to bring attention to the necessity of implementing regulations concerning domestic workers. These concepts are not novel; their present state is that of promotion. Since its introduction in 2004, the Protection of Domestic Workers Draft Law, or PPRT Bill, has been ratified on multiple occasions. At the moment, it is a component of the National Legislation Program. Nonetheless, the ratification process for that measure is still dragging on. As a consequence, members of civil society have reiterated their demand that the government expeditiously ratify the PPRT Bill in January 2023.[2]

CNN Indonesia published an article titled "A Peek at the Salaries of Domestic Workers in Indonesia" (n.d.). Numerous concerns arise regarding the working practices of domestic laborers. Lisa Angraini, the National Coordinator of the Domestic Workers Advocacy Network and a representative of Jala PRT, asserts that numerous domestic workers are exposed to avoidable workplace hazards due to their ambiguous workstations, which permit them to be utilized for various purposes. For instance, domestic laborers should be primarily responsible for elderly care, housekeeping, and preparing simple meals. However, certain domestic workers engage in activities such as repairing house installations, caring for untrained minors, and handling potentially hazardous animals, including dogs and other feral and aggressive creatures.[3]

Wiwik Afifah emphasized the fact that, as per his research from 2018, only Law No. 23 of 2004 remains in effect regarding the cessation of domestic abuse and offers legal safeguards for domestic workers. Nonetheless, the precautions implemented remain constrained to averting violence against domestic workers and fail to address additional essential concerns that are indispensable for this sector. In the meantime, numerous other problems must be addressed to safeguard domestic laborers in Indonesia.[4]

The following is the research conducted by Sri Istiawati in 2021. The Minister of Manpower of the Republic of Indonesia issued Regulation No. 2 of 2015, mandating the formation of contracts between potential clients and domestic employees. This regulation was discovered. In addition, distribution must be facilitated by a distribution agency, which requires authorization from the Governor and equivalent-level officials. To thwart the dissemination of unauthorized labor.[5]

After compiling and aggregating legal safeguards for domestic laborers from various prior research sources, the author conducted a juridical analysis utilizing the framework of the existing law or constituted. The author subsequently performs a comparative analysis of the domestic worker protection legislation in the Philippines among the nations that have enacted such legislation. Following that, the research findings were implemented, drawing intriguing conclusions from the results of comparative and legal analysis to collect reliable information regarding the deficiencies in Indonesian legislation regarding the protection of domestic workers.

## II. LITERATURE REVIEW

Everything associated with employees prior to, during, and subsequent to the workday is employment. The employment factor, as a human resource, has been empirically demonstrated to be a critical determinant in the Republic of Indonesia's national development implementation in the current era. Indeed, the labor factor exerts a significant influence on the trajectory of a nation, as it is a determinant element in the success or failure of an enterprise or endeavor. Labor comprises all individuals who possess the capability to perform work, whether within or outside of an employment arrangement, in order to generate products or services that fulfill the requirements of individuals, families, and the broader community. Labor is any individual who is capable of performing labor in order to generate goods or services, either for personal gain or on behalf of the community. Workers are defined as any individual who is or will be engaged in labor, whether within or outside the context of employment, with the purpose of producing products or services that fulfill the demands of society and are at least 15 years old.[6]

An employment relationship is one that results from a work agreement between the entrepreneur and worker/laborer, which the entrepreneur and laborer either create or mutually concur upon. In accordance with Regulation Number 13 of 2003, stringent conditions govern termination for employees who are absent or in violation of company policies. In contrast, this is not the case with Law No. 11 of 2020 pertaining to job creation, which permits employers or organizations to terminate employment relationships for a variety of subjective reasons. A termination of employment relations (PHK) entails the potential loss of livelihoods, which can evoke significant apprehension among workers and laborers. The termination of employment relations between employers and employees should not be executed capriciously; rather, specific conditions must be met by both parties to ensure that the dismissal does not undermine their shared sense of justice. Diverse factors contribute to layoffs, including globalization, the transition to a knowledge-based economy, the need to adapt to changing circumstances, and national and international crises that have compelled businesses to seek out structures that are more adaptable, streamlined, dynamic, and mobile. Organizations and businesses initiate the development of strategic alternatives in response to this shifting environment in order to respond to new internal and external conditions and make efficient use of all available resources. The strategy of organizational downsizing is among these alternatives. As a consequence, numerous employees and laborers find layoffs intolerable; in fact, the Job Creation Law regulates the criteria that employers and companies use to justify redundancies.[7]

Several protection measures are available to domestic laborers in Indonesia while they await the arrival of a legal expert in their field. Regarding safeguarding domestic laborers, Regulation No. 2 of 2015, issued by the Minister of Manpower of the Republic of Indonesia, is significant. A legal document that delineates the responsibilities and rights of domestic laborers. The regulations about the distribution of domestic laborers in Indonesia are among the most crucial. However, these regulations still require improvement. An area that remains

unregulated relates to the management of working hours. There are no clear regulations regarding the working hours of domestic workers; even after the Job Creation Law was enacted, there were no such regulations, and domestic workers were still considered informal workers, so they could not be included in the worker category of the Job Creation Law. As per Regulation No. 2 of 2015 issued by the Minister of Manpower of the Republic of Indonesia, consumers and domestic workers are solely required to enter into a formal agreement and reach a consensus regarding the domestic worker's responsibilities. This issue gives rise to further complications as it contradicts the principle of legality, which states that punishment is non-existent in the absence of law (*nullum crimen, nulla poene siene lege*). The incumbent Minister of Manpower Regulation failed to address the numerous challenges in this particular instance. Difficulties include the following: How will this contract be legally enforceable? What penalties are associated with violations of this legislation? [8]

### III. METHOD

The author employs a research methodology known as juridically normative research. Normative juridical research is an academic discipline that centers on the examination of legal materials through the processes of reading, researching, and analyzing them. The data acquired through the literature review method is derived from a qualitative legal analysis of documents. The author then analyzes data based on systematic rules using descriptive analytics in order to provide an overview of the issues addressed in this work.

### IV. RESULT AND DISCUSSION

This ambiguity may create a loophole, as the contractually prescribed working hours may be subject to the employer's discretion and exploit educational gaps among potential employees. Additionally, the definition of the work responsibilities of domestic workers is ambiguous, which significantly increases the likelihood that they will be subjected to oppression or unjust treatment.[9]

Domestic workers encounter additional challenges when their employment is terminated unilaterally, and there needs to be a specific compensation plan to determine how they will be reimbursed. Because they are considered informal laborers, domestic workers have a significantly increased chance of receiving compensation subjectively from their clients or not receiving any payment. Unfortunately, this situation has become the norm as a result of various circumstances. Due in part to the ambiguity surrounding the function of domestic workers, there is a substantial demand for parties seeking trained staff. This demand for clarity also benefits agents, who can generate significant profits.[10]

Among the explanations for this phenomenon is a sociological viewpoint. Community members, including consumers and domestic workers hold opinions regarding the status of domestic workers. This way of thinking enables domestic workers to recognize their position as powerless and feeble individuals. Domestic workers do not perceive themselves as fellow employees deserving of equal protection and privileges.

Individuals who derive advantages from this sociological comprehension are also motivated to preserve the status quo to sustain the same benefits in the long run. A legal intervention is required in this situation. Legal intervention can eradicate erroneous comprehension of social structures, according to the theory of legal sociology. The practice of assigning domestic laborers to the lowest social strata has transpired in numerous Indonesian regions and is regarded as a common occurrence.

The state must provide additional protection in light of this circumstance. In addition, domestic laborers are safeguarded against domestic violence under the current protection law (Domestic Violence Law No. 23 of 2004). Domestic laborers are protected to a certain degree through the implementation of this legislation. Conversely, this legislation offers a negligible amount of safeguarding for domestic laborers. Currently, this legislation merely protects domestic workers against specific forms of abuse, including verbal, physical, and psychological mistreatment; furthermore, it does not incorporate established metrics. Domestic workers are occasionally constrained due to their location on private property, which is subject to substantial control. In the future, there must be a shared concern regarding developing a PPRT bill that is considerably more comprehensive.[11]

Furthermore, it offers an expanded definition to ensure domestic workers are not exposed to many security risks during employment. Additionally, it is imperative to ensure that domestic workers are provided with adequate training and a well-defined exit strategy in the event of an adverse incident. The fundamental tenet of crime prevention is that prevention is preferable to legal enforcement. As a result, criminology is essential for mitigating undesirable dangers. Furthermore, additional preventive measures, such as establishing proactive protection institutions, are required. This proactive protection institution must exist to ensure the safety of domestic laborers. When faced with difficulties, domestic laborers will likely have the ability to find protection or resolutions with the assistance of a proactive protection agency.

The issue is that the existing level of protection for domestic workers is limited to situations in which they are obligated to perform particular job duties on their overall condition or status of competence. A common occurrence is that domestic workers must perform hazardous tasks, such as repairing high-voltage electronic devices or caring for infants with immature psychological development. Despite the pressures domestic workers face, how

Indonesian law can protect them remains to be seen. In contrast to the Job Creation Law, however, there is a greater need for clarity regarding how employees are obligated to perform particular tasks at workstations and the appropriate conduct and response they should exhibit in response to this issue. Therefore, It is of the utmost importance that a solution to this issue be discovered soon.

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Under these circumstances, the Philippines then achieved a breakthrough by enacting the Kasambahay Law, which protects Philippine laborers. The term "Kasambahay" refers to residential helpers in the Philippines. This Kasambahay regulation also safeguards Batang Kasambahay. Batang Kasambahay relates to individuals who are under the age of 18 and are employed as domestic laborers. As a legal breakthrough, the Kasambahay regulation is acknowledged to have the potential to resolve the issue of domestic laborers. It is recognized as a necessary solution in other developing nations with a significant workforce of domestic laborers.[13]

A significant innovation introduced by the Kasambahay Law is the restriction of labor hours. It is critical as a significant number of domestic laborers require prescribed work hours. In addition to addressing working hours regulations, the Kasambahay regulations also govern the manner in which employees who surpass the standard eight-hour workday are compensated. This advancement in working hours is crucial due to the fact that they affect a great deal of factors.

According to a systematic literature review by Steffey M., extended work periods can have adverse health effects. The result manifests as an individual's immune system and overall health deteriorate. They are more susceptible to contracting diseases, which can decline their overall quality of life. Therefore, excessively lengthy work hours can diminish an individual's quality of life and compromise their safety.[14] Additionally, we must take into account the fact that a significant proportion of domestic laborers are female. Long work hours devoid of adequate leisure periods are detrimental to a woman's pregnancy, according to research by Cai C. et al. This ought to be avoided, given that pregnancy is a physiological process that virtually all women will undergo. Additionally, domestic workers who put in lengthy hours are rendered more vulnerable due to the significantly diminished quality of life experienced by the infants. To ensure that domestic workers have the human right to a high standard of living, any country that fails to safeguard the Kasambahay legally would deny them the opportunity to improve their living conditions.[15]

In addition to emphasizing working hours, Kasambahay Law emphasizes the importance of minimum wages. An increase in the minimum wage of one thousand Philippine Pesos, or nearly half of the average salary of a housekeeper in Indonesia, was substantial. The imposition of a minimum wage is highly consistent with social justice principles, an indispensable factor in Indonesia. Exploitation is highly probable in the absence of a minimum wage. Regulation No. 2 of 2015, which pertains to domestic workers in Indonesia and was issued by the Minister of Manpower of the Republic of Indonesia, is considerably less efficient and effective than the minimum wage regulations in the Philippines. This is because the former imposes more significant barriers on labor suppliers and users, preventing them from manipulating the system or exploiting the vulnerabilities of potential domestic workers who may need more education or skills. Indonesia is obligated to adopt it about wages because it satisfies the state's responsibilities as outlined in Article 28H, paragraph 1 of the 1945 Constitution, which mandates direct state intervention to ensure that all individuals, irrespective of their understanding of the rule of law, are entitled to a decent standard of living. Infractions of disregarding an individual's means of subsistence may result in legal action against the perpetrator.[16]

An assessment of the Kasambahay Law about the 1989 ILO standards reveals that it satisfies every stipulation, encompassing safeguards against sexual harassment and discrimination. Even though Indonesia has implemented regulations to safeguard domestic laborers against sexual harassment. However, the law as it stands needs to be revised. Such is the structure. A multitude of forms of sexual harassment exist. In addition to the diverse manifestations of sexual harassment, the subsequent concern pertains to the efficacy of punitive measures and the due process for establishing guilt. Domestic laborers need explicit legal protection with these conditions being met. Subsequently, the legislation safeguarding domestic workers from violence concludes with an entirely celebratory notion.[17]

Compared to the Kasambahay Law, protecting Indonesian domestic laborers under *Lex Specialis* remains unattainable. There is even a need for widespread recognition regarding the equality of trained workers with other laborers. Additionally, domestic laborers lack knowledge; they are transported from their residences and promptly tasked with labor without understanding their rights as their responsibilities escalate. Due to their inability to defend themselves, domestic laborers are marginalized groups.[18] Ultimately, domestic workers in the

sociological strata merely satisfy their requirements as exploited laboring individuals without distinct boundaries. Present circumstances ensnare domestic workers, who, when considering the broader implications, are exceedingly susceptible to modern human enslavement.

Modern human enslavement refers to laborers who lack sufficient protection. This is the reality for domestic laborers without laws that adapt to their circumstances. This phenomenon of modern servitude has persisted for quite some time. Nevertheless, this aspect has been disregarded and inconsistent with social justice, a fundamental tenet of Indonesia. In the Philippines, Kasambahay Law can serve as a safety net, but it is not applicable in Indonesia.[19]

Particularly in remote or subdistrict locations, the stakeholders responsible for direct oversight to prevent the exploitation of modern slavery have not been accorded the consideration they merit. At present, the paradigm of labor protection is confined to the company context and labor service oversight, as dictated by regional laws and regulations. Moreover, their emphasis remains on the manufacturing sector instead of domestic laborers. From this vantage point, protection is minimal and needs to be more comprehensive. In light of this, judicial analysis dictates that the current protection systems must be substantially revised in opposition to the ILO 1989 standard.[20]

Subsequently, it is imperative to acknowledge that the current legislation fails to safeguard against unjust business competition adequately. Presently, the lack of legislation significantly amplifies the appeal of the domestic worker market, leading to a proliferation of entities engaged in distributing domestic workers. Despite its potential economic benefits, this phenomenon can give rise to forthcoming challenges. This regulation is regarded as a catalyst for long-term interests and does not impede economic expansion. The perspective that regulation impedes economic development is in direct opposition to two constructive elements that can mutually reinforce one another. Suppose these two concepts are perceived as opposed. In that case, we will be confronted with an array of novel challenges that jeopardize the welfare of society at large, which is the paramount consideration in formulating our economic and legal systems.[21]

The PPRT Bill has been operational in Indonesia thus far; however, deliberations remain ongoing. Conversely, measures safeguarding domestic laborers have been established in the Philippines for quite some time. The domestic laborer industry in the Philippines is mutually beneficial due to this protection. Resolving the demographic incentive in areas with many employees may be possible. However, they can burden the state financially and require more excellent expertise. Even from a criminological standpoint, it may encourage the escalation of criminal activity due to economic injustice and inequality. In light of this comprehensive and systematic analysis, it is essential to highlight the PPRT Bill, which can protect a holistic sense.[6]

## V. CONCLUSION

The study's findings suggest that the current legal frameworks in Indonesia need to safeguard the rights of domestic laborers adequately. Specifically, critical elements such as the proper regulation of wages and working hours and the clarity of rights and responsibilities still need to be addressed. This state demonstrates the crucial necessity for comprehensive revisions in pertinent laws. In light of the escalating market demand and the escalating number of domestic workers annually, Indonesia is compelled to safeguard the interests of its citizens as soon as possible so that they may be treated relatively and concentrate on developing a people-driven economy capable of fostering global prosperity. Indonesia must also comprehend references to international standards, particularly the ILO's Convention 189 guidelines and the guidelines contained in domestic worker-related laws such as the Philippines' Kasambahay Law. These standards are deemed indispensable when formulating new regulations to increase their effectiveness and influence. Everything is comprehensive. To promote the smooth progression of legal reform and facilitate its organic yet efficient expansion. In addition, the government must adopt a more balanced approach to legal and regulatory development, prioritizing social equality and sustainable economic growth over rapid economic growth alone. Implementing this measure is necessary to guarantee that the legal framework adequately protects and ensures the equitable treatment of domestic laborers. In this context, achieving social justice and welfare, as opposed to merely satisfying immediate requirements, should be the primary indicators of economic sustainability. Population expansion should not be the sole criterion.

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