

Legal Protection for Household Workers: Efforts in Law Enforcement

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ABSTRACT

Working as household workers is considered an informal profession so their rights always become neglected. Facts indicate that domestic workers get improper wages, obtain less health protection, have little rest periods, and loose leave rights (entitlements). Not to mention the various forms of discrimination, the violence, torture and sexual abuse were experienced by domestic workers, causing psychological impact for them. Such facts are exacerbated because to this day the government and the legislature have not been able to make specific rules for domestic workers as legal protection. Whereas the ILO has laid a very good foundation for the protection of the rights of domestic workers. Based on that, it is highly feasible that the government is immediately possible to ratify the ILO Convention to realize the workers' human rights in Indonesia. This research is descriptive with a normative juridical approach. The sources of data were secondary and the data collection tool was carried through documents. The results show the absence of legislation that specifically addresses the rights and obligations of domestic workers provides a very open space for the emergence of discrimination against domestic workers.

Keywords: *legal protection, domestic workers, human rights*

INTRODUCTION

The provision of employment is one of the government's obligations in accordance with what is mandated in the 1945 Constitution of the Republic of Indonesia in Article 27 paragraph (2) which states: "Every citizen has the right to work and a decent life". On this basis the government issues various rules and policies to provide protection and opportunity to them (Soedarjadi, 2008: 1). This provision is then further elaborates in Article 5 and Article 6 of Act Number 13 of 2003 concerning Manpower. Article 5 states: "Every workforce has the same opportunity without discrimination to get a job". Then Article 6 states: "Every worker/laborer has the right to get the same treatment without discrimination from employers".

The paradigm that has developed so far is that the so-called workers are people who work in a company who gets a monthly salary, the right to leave, the right to access to health, and the guarantee after retirement, which later become known as formal workers. Considerable attention to the formal workers has forgotten the non-formal workers who generally work in households. Forgetting the rights of domestic workers makes them as people who work without knowing the deadline, with minimum salary, with no right to leave, no right to health access, and without pension supports. All the standards actually do not seem to be available for domestic workers.

Domestic workers (but not domestic servants) refer to people who work for

others by receiving wages but they have not received any legal protection as it should be. According to the *International Labour Organization* (ILO), as quoted by Agusmidah, that domestic workers, both at home and abroad, are categorized as non-formal workers, who work in the households and are outside the scope of labor regulation (2017: 18). The (legal) relationship between the work of domestic workers and their employers has not been covered by formal legislation, but is only limited to the habits of the community based on trust.

Based on this, the object of this research is that domestic workers have not yet been protected by law, so that perpetrators of crimes against them are only subjected to articles contained in the Criminal Code.

METHODS

The paper is descriptive with a normative juridical approach and intended to provide accurate data about humans, other conditions or symptoms (Soekanto, 2007: 10). The source of research data was secondary from documents in the library. The paper is qualitative and its analysis is basically a presentation of existing theories, so that some of these theories can be drawn into conclusions in this study.

RESULTS AND DISCUSSION

1. Domestic Workers and Their Problems

Until now there has been no formal definition of domestic workers in the legal system and legislation in Indonesia. The term PRT (pembantu rumah tangga 'household servants') is a new discourse developed by non-governmental organizations and ILO to replace the word 'helper' (servant) (Susiana, 2012: 257). Changing this term into domestic workers is expected that they can be formal workers who are protected by labour law.

Actually, the term domestic workers refer to 'domestic helpers' or 'domestic workers', addressing to those works in the household environment and earn wages/salaries from their employers (Trimaya, *www.rechtsvindingonline.com*, accessed dated January 5, 2018). The term 'worker' is used to refine its name because the term 'maid' is considered to be less human. Many also considered housekeepers not workers; this assumption is for example laid down in the Decision Committee for Settlement of Labor Disputes Center No. 70/59/111/02/C dated December 19, 1959, that housemaid's jobs are categorized as employment in the informal sector and the protection against them is outside the context of labor law. In considering the decision, the Central Committee stated that they did not take care of matters concerning domestic help and work that was controlled by customary law (Komalasari and Saripudin, 2007: 4).

When looking at the definition of workers in Law No. 22/1957 (Regarding Settlement of Labor Disputes), that "Workers are those who work for employers by receiving wages" (article 1 (a)), as well as the definition of work in Law No. 12/1948 concerning the Employment Act of 1948, that "work is work carried out by workers for employers in an employment relationship by receiving wages" (article 1 (a)), therefore, domestic servants should be included in the context of labor law. Likewise, it requires to pay attention to other labor regulations, as in Law No. 13 of 2003 concerning Manpower. The problem is, because all of the above laws do not explicitly mention the term domestic servant as workers, so that in its implementation, domestic servants are considered not as workers who are included in the labor law protection.

The ILO states that until 2012 there were at least 2.6 million Indonesians working as *domestic helpers* (International Labour Office, 2006: 7). Most of them were women with low education, while male workers group was the smallest number

after women and children. This amount according to the ILO existed in Jakarta with the largest number of 801,566, in East Java 402,762, in Central Java 399,159, in West Java 276,939, in Banten 100,352, in Bali 99,277, in South Sulawesi 62,237, in Lampung 60,461, in Yogyakarta 39,914, and in other provinces such as North Sumatra, Riau, South Sumatra, NTB, NTT, West Kalimantan, East Kalimantan, where the numbers are not far apart. Data on the number of domestic workers as disclosed by the ILO were apparently not owned by the Ministry of Manpower and Transmigration (Muhtadi, 2014: 643)

The increasing number of women workers in the public sectors is the impact of industrialization policies. The New Order government had made industrialization policies. The practical meaning of industrialization is to advance productive forces to become more modern, so that they can be mass-accessed, and of high quality (Oktavianus, 2018). In this case, economic investment was developed through industries in various fields. The Indonesian government also undertook rural industrialization in 1984, which was determined by Presidential Instruction No. 5 of 1993 concerning the Instruction of Disadvantaged Villages (IDT) (Tjiptoherijanto and Soemitro, 1998: 15-42). Saptari (in Retnaningsih, 2008: 150) argued the impact of industrialization made women in the middle and lower classes who get a double burden, because they had to work at home and outside the home.

In general, the existence of domestic workers in Indonesia has not received an award so that it does not get proper legal and social protection. In fact, they have an important productive role in family/household. As a result, they are vulnerable to various forms of violence (physical, sexual, psychological, and economic) and because of the imbalance between classes and power relations; it is very rare for them to be able to resist the violence they face. Domestic workers are

groups of workers and people who have a variety of unique problems themselves.

These problems are complicated issues which are actually concerned with humanity and justice. Unfortunately, with this complicated problem, the most serious concern from the government is still very small. Domestic workers in general are women, both children and adults, few are men. The majority of female domestic workers, resulting in attention to domestic workers groups cannot be separated from the agenda of the women's movement in Indonesia, because this problem cannot be separated from the biased gender perspective, for example placing domestic work often applied to domestic workers as unproductive work, has no social, economic and political value. The stereotypical view of this work and its workers is one source of the emergence of the complexity of the problems surrounding the work of domestic workers. (Turatmiyah and Annalisa, 2013: 50)

There are two main factors behind the presence of domestic workers, namely due to poverty and to domestic labor. Actually, not all service users apply domestic workers who work for them. Some countries have also regulated adequate legal protection for domestic helpers such as Malaysia, Singapore and Thailand which have limited working hours and clear job restrictions even though they are still valid for their own citizens not for foreign workers, such as Indonesia (Komalasari and Saripudin, 2007: 5)

Sociologically, the work of domestic workers is considered not a work, so that the problem of wages, working hours, social security, holiday allowance, severance pay, disputes, etc. is still considered unnecessary and is only based on with mutual trust. This happens because of historical factors. The history of work as a domestic servant can be traced from the nobility's life in the Keraton period in Java, in which generally, the maid in this period became a 'court servant' for the Keraton families who were considered by the community as a group who had a

high degree, so being a servant at that time was an honor. The development then shows that being a maid in the household occurs because there is a kinship with the work function which is also very simple, starting as a child keeper, cooking, cleaning the house, or taking care of the house (Mulyani, 2014: 17-37). But at present, the work of domestic help is no longer based on kinship, but rather because of expertise. Since industry is developing so that the real domestic servant (DS) is none other than domestic worker.

Juridical, the existing labour law, still does not directly touch domestic workers as part of formal workers. This condition must be anticipated immediately given the growing prevalence of domestic servant distribution industries and the increasingly complex legal issues related to the relationship between domestic workers and their employers. The norms that regulate protection for domestic workers can indeed be found in Law No. 23 of 2004 concerning Elimination of Domestic Violence (UU PKDRT) (Turatmiyah and Annalisa, 2013: 49-58) but only on the part of domestic workers as victims of violence, has not touched the protection of domestic workers in the workplace as a whole, namely economic, social and technical (Agusmidah, 2017: 22).

Economically, the existence of domestic workers contributes significantly to family life and finances, and even has a positive impact on the community in the neighborhood. Although Article 27 paragraph (2) of the 1945 Constitution guarantees every citizen to get a job and livelihood that is appropriate for humanity. Likewise, Article 28D Paragraph (2) provides guarantees for people to work and get rewarded and fair and decent treatment in work relationships, even Article 28H Paragraph (1) outlines that everyone has the right to live physically and mentally, to get good and healthy environment, and to have the right to get health services.

In reality, the status of domestic workers is not the same as that of workers

who are regulated and recognized by Law Number 13 of 2003 concerning Manpower. The findings of the National Domestic Workers Advocacy Network (NDWAN) as mentioned by the Women's National Commission showed there were 726 cases of violence and severe abuse experienced by domestic workers. Similarly, media monitoring conducted by Rieke Diah Pitaloka revealed 48 cases of violence against domestic workers throughout 2007-2012 that were exposed to the public (Muhtadi, 2014: 644). In addition to the various violations against domestic workers, the state and the community still provide stigma and discriminatory treatment which is shown, among others by: 1) a strong perception that domestic work is not/low in skills, which results in neglect of their rights, 2) the assumption that domestic work is domestic and informal, so it does not need to be regulated by a legal instrument that guarantees their rights and protection as other workers in the formal sector, and 3) domestic work has not been recognized as a job, so protection is very much based on the employer's kindness. This seems to reinforce modern slavery and distance the basic rights of domestic workers to the protection and fulfillment of rights (Muhtadi, 2014: 643)

Cases of violence and exploitation of domestic workers continue to repeat. Several cases experienced by domestic workers who were processed by law turned out to still ignore the sense of justice for victims. Aside from being a much needed worker, domestic workers are also citizens who have human rights that should be protected by the government and society (Turatmiyah and Annalisa, 2013: 50). The number of violations of domestic workers' rights has become one of the factors driving the birth of the awareness of the need for a comprehensive regulation on domestic workers who can protect their rights. The Domestic Workers Protection Bill (DWPB) has actually been a draft law proposed by the House of Representative (HR) since the 2004-2009 HR period,

considering that the bill was included in the National Legislation Program (NLP) in 2004-2009. In the 2009-2014 period, the Domestic Workers Bill again entered into one of the priorities in the 2010 National Legislation Program (Susiana, 2012: 252).

Retnaningsih said that poverty is one of the factors that trigger a person to become a domestic worker, in addition to other factors such as low education, lack of knowledge and skills, high unemployment and limited employment opportunities, and so on. Poverty that is never resolved increases the number of domestic workers, but the most logical thought that can explain the existence of domestic workers is the meeting of interests between two parties, namely domestic workers themselves who need money to live and employers who need domestic workers (Retnaningsih, 2008: 157). Historically, domestic workers were devoted to jobs, but gradually became a profit-based job. Even though poverty is still a driving factor for a person to become a domestic worker, the relationship orientation between domestic workers and employers becomes different. In this case, domestic workers should not be treated as employers, and domestic workers should also be selected through various requirements such as general knowledge, literacy, and domestic work skills.

The increasing number of women workers in the public sector has an impact on the increasing number of domestic workers in Indonesia. In reality, women workers in the public sector must leave their homes and families, meaning leaving a large proportion of domestic work. In fact, as long as women workers in the public sector are not at home, work in the domestic sector must continue to run, such as providing food, washing clothes, caring for children, and others. This of course has an impact on the increasing need for domestic workers, who must be tasked with carrying out domestic work for women workers in the public sector. In this context, domestic workers who in the past were called helpers (because they did help), now their role is

clearly changing into workers in the employer's household (Retnaningsih, 2008: 160-161).

Work in the public sector has implications for the double burden of women workers, where they have the responsibility to make a living outside while being responsible for domestic work. At some point, women workers in the public sector are unable to carry out their domestic work because they are bound to the institution where they work. At this point, the need for domestic workers for a family is very important. Logically, the more women work in the public sector, the more the need for domestic workers will be (Retnaningsih, 2008: 162).

In terms of domestic workers themselves, the development of industrialization also raises its own demands. At some point, domestic workers are required to have sufficient general knowledge and skills. If not, employers at the socio-economic level above will refuse, because they have many choices. In other words, there are standard demands in domestic work, because domestic workers are really expected to be able to work various jobs in the employer's household. However, the problem of the ability of domestic workers to date is still a dilemma, because in general domestic workers come from poor families, who do not have sufficient education and skills (Retnaningsih, 2008: 162).

2. The Concept of Legal Protection

The fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia states: "Then than to form an Indonesian state government that protects all the people of Indonesia and all of Indonesia's bloodshed and to advance the general welfare, educate the life of the nation, and participate in order a world based on independence, eternal peace and social justice ... and so on, gives the mandate to the legislators to provide legal protection for all Indonesian people without

regard to their social status (*equality before the law*).

According to Fitzgerald (Salmond's legal protection theory) the law aims to integrate and coordinate various interests in society because in a traffic of interest, protection of certain interests can be done by way of various interests on the other hand (Rahardjo, 2001: 53). Legal interest is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected (Rahardjo, 2001: 69). Legal protection must look at the stage of legal protection born of a legal provision and all the legal regulations given by the community which basically constitute the community's agreement to regulate behavior relations between community members and between individuals and the government that are considered to represent the interests of the community.

Legal protection theory as restated by Mertokusumo, where the existence of law in society is a means to create peace and order, so that in the relations between members of the community, one can maintain their interests. Law is nothing but protection of human interests in the form of norms or methods. Law as a collection of rules or methods contains general and normative contents; general because it applies to everyone, and is normative because it determines what is permissible and should not be done, and determines how to implement compliance with the method (Mertokusumo, 2003: 39).

The purpose of legal protection is expected to obtain essential *justice (real justice)* or responsive justice, accommodating for legal interests that are comprehensive, both from the criminal aspect and from the civil and administrative aspects, therefore achieving responsive justice requires legal awareness of all levels of society which include government agencies and the public to comply with the law itself.

According to Mertokusumo, the law aims to achieve order in society so that it is

hoped that human interests will be protected to achieve its objectives and tasked with sharing rights and obligations between individuals in society, dividing authority and prioritizing legal solutions and maintaining legal certainty. According to Subekti (in Mertokusumo) the purpose of the law is to serve the purpose of the State, namely to bring prosperity and happiness to its people. (2003: 57).

Legal protection is basically functioned as a condition of the existence of the law itself in terms of regulating the relationships contained in society. So basically talking about the law is the same as talking about the definition of law itself, because it is elements rather than the purpose of the law itself (Prodjohamidjojo, 2001: 21). Legal protection is a condition that concerns the operation of human life as a common life. A general orderly state implies an order that is generally accepted as a minimum appropriateness needed, so that life together does not turn into anarchy. Legal protection issues are often discussed using different terms by various authors. Some say it is a cause for a state of peace, some call it a result of legal certainty. Whatever the meaning used for legal protection, the main objective is to achieve public order.

According to Rahardjo, legal protection is to provide protection for human rights which are harmed by others and that protection is given to the public to enjoy all the rights granted by the law. (2001: 54). According to Geme, what is meant by legal protection is related to the actions of the state to do something with (impose exclusive state law) with the aim of providing assurance of the rights of a person or group of people (Geme, 2012: 99)

According to Salim and Nurbani, protection is an effort or form of service that is legalized by law to legal subjects and matters that are protected objects (2013: 262). Legal protection theory is a theory that examines and analyzes about the form or purpose or purpose of protection, protected legal subjects and objects of protection

provided by law to the subject. (Salim and Nurbani, 2013: 263)

The elements listed in the definition of legal protection theory; includes:

1. the existence or form of protection or purpose of protection;
2. legal subject; and
3. object of legal protection. (Salim and Nurbani, 2013: 263)

Legal protection is an illustration of the functioning of the legal function to realize legal objectives, namely justice, usefulness and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, whether it is preventive or repressive, both in writing and unwritten in order to enforce the rule of law.

A protection can be said as legal protection if it contains the following elements:

- a. There is protection from the government to its citizens.
- b. Legal certainty guarantee.
- c. Relating to the rights of citizens.
- d. There are penalties for those who break them.

Protection and law enforcement are very important, because they can realize the following:

- a. Upright law supremacy

The rule of law means that the law has absolute power in regulating human relations in various kinds of life. In other words, all actions of citizens and government are always based on applicable law. The upholding of the rule of law will not be realized if the prevailing rules are not enforced by both the community and law enforcement officials.

- b. Upright justice

The main objective of the law is to realize justice for every citizen. Every citizen can enjoy his rights and carry out his obligations is a form of justice. This can be realized if the rules are enforced.

- c. Realizing peace in life in society

A life colored by a peaceful atmosphere is everyone's hope. Peace will be realized if everyone feels protected in all areas of life. This will be realized if the applicable

rules are implemented (Darwis, www.irwankaimoto.blogspot.com, accessed January 2, 2018).

3. Legal Protection to Domestic Workers as Efforts to Human Rights Enforcement

The history of the development of domestic workers, starting from the previous employment period, during the period of slavery. The development of labour law in Indonesia is always related to the legal politics imposed by the authorities at that time. In this explanation, the development of employment will be divided into three periods, namely:

1. The period before the Proclamation of August 17, 1945, included the period of slavery, the Dutch East Indies colonial period, and the Japanese Occupation.
2. The period after the Proclamation of August 17, 1945, covers the period of the Soekarno Government and the Soeharto era.
3. Post-Reformation Period, includes the reign of BJ Habibie, Abdurrahman Wahid, Megawati and Soesilo Bambang Yudhoyono (Wijayanti, 2009: 18).

The juridical reason for the protection of domestic workers has actually been stated in Article 27 of the 1945 Constitution, stated that each citizen has the right to work and livelihoods that are appropriate for humanity, Law No. 39 of 1999 concerning Human Rights, Article 1 point 12 of Law No. 23 of 2002 concerning Child Protection states that children's rights are a part of human rights that must be guaranteed, protected, and fulfilled by parents, family, community, government and the state, and Article 4 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, namely: preventing all forms of domestic violence, protecting victims of domestic violence, cracking down on perpetrators of domestic violence, and maintaining harmonious and prosperous household integrity.

Juridical, domestic workers are free, because this country prohibits slavery or servitude. However, sociologically,

domestic workers are just the opposite, they are not free. Domestic Workers as people who have limited life provisions other than energy. The low level of education among domestic workers closes their ability to obtain their rights. As long as the rules of the relationship between employers and domestic workers are handed over by both parties, it is difficult to achieve a balance of interests so that the values of justice are not achieved. (Situmorang, *www.repository.usu.ac.id*, accessed on January 2, 2018)

Protection of workers is intended to guarantee the basic rights of workers/labourers and guarantee equal opportunities and treatment without discrimination on any basis to realize the welfare of workers/labourers and their families. Therefore a clear norm is needed for legal protection for workers to protect their basic rights as workers.

Recognizing the importance of workers for companies, governments and communities, it is necessary to think that workers can maintain their safety in carrying out their work. Similarly, it needs to be endeavored for the peace and health of the workers so that what they face in the work can be considered to the maximum extent possible so that vigilance in carrying out the work is guaranteed. These thoughts are a workers' protection program, which in daily practice is useful to be able to maintain the productivity and stability of the company (Hofi, et al., *www.unej.ac.id*, accessed on December 25, 2017)

Worker protection can be done, either by providing guidance, or by increasing recognition of human rights, physical and technical protection and social and economic through the norms that apply in the work environment. Therefore, this worker protection will include:

1. Occupational safety norms: which includes the safety of workers who are related to machines, aircraft, work tools, materials and work processes, the condition of the workplace and the environment and how to do the work;

2. Healthy work norms and hygiene healthcare companies which include: maintaining and enhancing the health of workers, conducted by regulating the provision of medicines, treatment of labour pain, organize supply place, manner and terms of employment that meets hygiene corporate health and wellness of workers to prevent disease, either as a result of work or general illness and to establish health conditions for work housing;
3. Work norms which include; protection on employment relating to working time, the system of wages, rest, leave, working women, children, morality, worship according to the religious beliefs of each purportedly by the government, the obligation social community and others to maintain the enthusiasm and morale of work which ensures high workability and maintains a treatment that is in accordance with human dignity and morals;
4. To labourer who has accident and/or disease germs from the employment, are entitled to compensation of care and rehabilitation due to an accident or illness due to work. His heirs are entitled to compensation. (Kartasapoetra and Indraningsih, 1982: 43-44)

Domestic servants (DS) are entitled to decent work conditions. ILO produces ILO Convention No. 189 Regarding Decent Work Domestic Helpers (DH), Conventions which are protection for domestic helpers throughout the world. After going through a long struggle, finally the 100th ILO annual Conference produced ILO Convention No. 189 Regarding Decent Work of Domestic Helpers (DH). This convention, which is a protection for domestic helpers around the world, will become a foundation for recognizing and guaranteeing that domestic servants get decent working conditions as workers in other sectors. Domestic servants (DS) are vulnerable to exploitation and abuse, such as low salaries and abuse, because they are considered not formal workers and are not entitled to work

conditions such as workers in the formal sector.

Under the Convention, a domestic worker is “someone employed in domestic work in an employment relationship”. A domestic worker may work on a full-time or part-time basis; may be employed by a household or by several employers (household); may live in the household of the employer (the worker lives inside) or may live in his own residence (living outside). A domestic worker might work in a country where she is not a citizen. All domestic workers are covered by Convention No. 189, although countries can decide to exclude some categories, with very strict conditions. (Hofi, et al., *www.unej.ac.id*, accessed on December 25, 2017)

With Convention 189 of 2011 is clearly regulated regarding so-called domestic work and a person who works in a household. At least the notion of understanding above is clearly enough to define both. Both of these definitions have been covered by this Convention. Basic rights of domestic workers in ILO Convention No. 189 of 2011, namely:

1. Promotion and protection of human rights of all domestic workers (Opening; Article 3);
2. Respect and protection of basic principles and rights at work: (a) freedom of association and effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) elimination of child labor; and (d) elimination of discrimination in terms of employment and occupation (Articles 3, 4, 11);
3. Effective protection from all forms of abuse, harassment and violence (Article 5), Fair employment conditions and decent living conditions (Article 6).

However, the existence of ILO Convention No. 189 is not necessarily felt concretely as an umbrella protection before ratification through the formal legal system

in Indonesia. Until now there is no law that specifically regulates domestic workers.

The government's interpretation of Law No.13 of 2003 concerning Manpower does not reach domestic workers into the general legislation system regarding employment relations. Even though “workers” are defined in Article 1 as “someone who works to get wages or other forms of compensation”. The government states, employers of domestic workers can be classified as “employers”, he is not a business entity and thus is not “entrepreneur” in the sense of the Act, the arena of domestic workers is considered not to be employed by “entrepreneurs”, they are not given the protection provided by the law against other workers. In addition, they are not given access to work dispute resolution mechanisms, such as an industrial court established under Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement. Based on the interpretation of the substance of Law No. 13 of 2003, thus legally the existence of domestic workers does not get legal protection.

The many problems faced by women as domestic workers are due to the lack of guarantee of their rights, in this case the protection of the domestic worker profession is still inadequate. These problems, for example, from unpaid salaries, unnatural salaries, harassment or violence, whether physically, psychologically, sexually or neglected by a household. Women as domestic workers have the potential to experience physical violence or torture by household members, especially employers and employers' children where domestic workers work. (Turatmiyah and Annalisa, 2013: 52).

In cases of domestic violence such as neglect, the most vulnerable parties to become victims are women/wife, children and domestic workers. Domestic servants as stipulated in Article 2 paragraph (1 c) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (EDV) that “the scope of the household includes

those who work to help the household and settle in the household". This is also regulated in Article 9 paragraph (1) of Law No. 23 of 2004, that "the obligation to provide life, care, or maintenance to the person as mentioned in Article 2". These obligations include providing primary needs to people who are dependent, including domestic workers who live permanently in the family. This form of neglect of families is included in the category of criminal acts of omission. Omission is the occurrence of an offense because someone neglects an order or does not act, because giving life to people who are under his control is an order of law, so that if he does not provide the source of life to those who depend on it means he has neglected order/do not do (Muchsini, 2011: 18)

Examples of cases of murder and mistreatment of domestic workers with Defendant Syamsul Anwar (46) who is a domestic servant (DS) persecutor in Medan, North Sumatra were sentenced to 17 years in prison. This decision is lower than the demands of the previous prosecutor, which is 20 years in prison. It is claimed that Syamsul has committed acts that are regulated and threatened with Article 2 paragraph (1) of Law 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons Article 55 Paragraph (1) of the 1st Criminal Code Article 44 Paragraph (3) of Law 23 of 2004 concerning Elimination Domestic violence joins Article 55 paragraph (1) of the 1st Criminal Code, and Article 181 of the Criminal Code joins Article 55 paragraph (1) of the 1st Criminal Code. Defendant Syamsul was also required to pay a fine of Rp. 125 million for three months in prison, and obliged to pay additional restitution to heir Hermin a.k.a Cici who was a domestic worker who was killed.

Arifin was accused in the persecution at the home of Defendant Syamsul at Beo Street on Angsa Street intersection, Medan. There were three domestic workers who were persecuted, Endang Murdianingsih (55) from Madura,

Rukmiyanti (42) from Demak, and Anis Rahayu (31) from Malang. The police released the victims in November 2014. The police also developed the case, knowing that a domestic worker named Hermin a.k.a Cici was killed at Syamsul's house. His body was later found in Barusjahe, Karo on October 31, 2014.

Until this day, no domestic worker agency or foundation has pioneered the improvement of the fate of domestic workers in terms of legal protection and empowerment. Likewise in the academic world, it is very rare to find research results that thematically raise the issue of domestic workers. Ironically, the government has never initiated a campaign to raise awareness of domestic workers. Nevertheless, there are a number of things that might be worthy of the agenda as meaningful efforts to provide protection for domestic workers, including:

1. *Advocacy*, raising the surface of domestic workers' cases in order to get the response of many parties to be agents in a change in a better direction;
2. *Paralegal*, as a form of legal awareness and action to protect domestic workers from various pressures of employers. Service centers need to be established as part of the form of organization, including efforts to initiate the formation of a special domestic workers union organization. The formation of trade unions in this case does not mean creating rules from nothing to exist but also placing the organizational community of the domestic workers affiliated to the established Trade Union organizations;
3. *Law reform*, legal reform formulated in various policies based on alignments to domestic workers in the framework of protection and empowerment as well as coaching work relations. *This law reform* can be done by providing local legal instruments (*Perda*) as a result of evaluation and assessment of the reality of the relations between employers' domestic workers and the accompanying

problems. With the existence of this legal tool, it is a momentum for the government in the field of law to immediately carry out basic protection as a form of commitment and consistency, the government immediately establishes law (*law making*) which specifically provides protection for domestic workers. In general, this effort can be interpreted as protecting or providing assistance in the field of law efforts aimed at providing a sense of security given to legal subjects in the form of legal instruments both preventive and repressive. The regional regulation must pay attention to the following issues:

- a) Regional regulations must pay attention to other relevant laws and regulations. For example, protection for domestic workers must be able to take action against perpetrators of violence who avoids legal sanctions. Therefore, the implementers of the law and the criminal trial must be prepared to enforce the law without discrimination;
- b) Civil society organizations such as academics and NGOs, labour agents, and domestic workers themselves must be involved in drafting regional regulations or other regulations;
- c) Prepare guidelines for implementing regulations on how to apply these regulations. The guidelines for implementing this regulation must be clear and in line with other regulations and encourage coordination with law enforcement. If not, the law cannot be implemented;
- d) Socialize and communicate all information relating to the law to protect domestic workers to all parties involved in this matter, such as employers/masters, labor agents, and domestic workers. The aim is to get support and commitment from policy makers to carry out the law.
- e) Make a systematic law and use simple legal terms to make it easier for policy makers to implement it. The language used in the law must be clear in order to avoid misunderstandings that can provide opportunities for abuse. If this legal abuse occurs, domestic workers will not be protected because they do not have the power to bargain to negotiate their interests legally (Muhtadi, 2014: 649-651).

Many normative, legal and even political reasons can strengthen the argument that legal protection for domestic workers (DW) is time to be regulated in separate laws and regulations. First, *the* existence of the law on domestic workers as a form of legal protection for domestic workers as a *starting point* for the government to gradually bring the workers in the informal sector to become formal workers. This shift is important because it has a positive impact on the work of domestic workers who were originally only domestic jobs (the majority of women and children) are jobs of economic value.

In connection with this matter, *Margaret Benston*, in the book *The Political Economy for Women*, as quoted by Julianthi, said that it was time for domestic work to be thought more seriously in every analysis of economic work so that it would not be underestimated as a marginal status and did not exist. *Frederick Engles* in his book *The Origin of The Family, Private Property and State* as quoted by Yulianthi, also said that women's work became economically invisible because of the fact that there was a division of sexual work in families and society. Furthermore, Mubyarto added that women were not unemployed if they included domestic work as a job (in Wati, 2012: 190).

Second, existence of legislation on domestic workers' will strengthen bargaining position (bargaining position) Indonesia in the eyes of other countries especially labour destination countries (Singapore, Malaysia, Saudi Arabia, etc)

Indonesian citizens in encouraging their tighter regulation on the protection of migrant workers Indonesia. Indonesia has also participated in a joint international convention with ILO countries to discuss new international standards regarding the provision of decent working conditions for domestic workers in June 2010, but unfortunately Indonesia's commitment to the convention is only a recommendation which means it does not have "binding power" (Wati, 2012: 190).

Third, discrimination against domestic workers is due to the majority (90%) of women and children, there are several discriminatory indicators for domestic workers, namely: marginal groups, subordinate groups, vulnerable groups, and informal workers groups. Discrimination against domestic workers, socially shows that there is a stigmatization or labeling of the role of domestic workers, that is, marginalized groups seen from socio-economic status are most groups with weak and marginalized economies, while subordinate groups experience domestic discrimination, layers in the context of position and condition as women, community, layers of citizens' rights. What's more with the existence of culture/culture that is very influential especially cultural narration, which causes injustice and gender bias (Wati, 2012: 191).

Gender inequality is manifested in various forms of injustice, namely marginalization, subordination, stereotype formation, violence, longer and more workload (*doube barden*) and socialization of values and gender roles (Fakih, 1999: 12). This manifestation of gender injustice is often present in the beliefs of each person, family, to the level of the State and global politics. In this area, it is very important to include a gender justice perspective.

Domestic workers fall into the category of vulnerable groups, these discriminatory social phenomena cause domestic workers to be vulnerable to

violence both physical and psychological violence (abuse, murder, exploitation, improper compensation, no bargaining position, etc.). Domestic workers do not have a position so that their position is very weak and there is no legal protection. Domestic workers are included in the formal workers' group, discrimination against domestic workers causes domestic work not of economic value. Domestic Workers are considered responsible for reproductive activities (giving birth, raising children, working in the domestic area) judging from the type of work and social status, but essentially domestic workers are very urgent in family life and they should get the right, the same protection and benefits as other workers of economic value. With the establishment of legislation giving recognition that domestic workers are equal in value to other jobs so that welfare for domestic workers is realized (Wati, 2012: 192).

Protection of domestic workers is given in light of the principle of respect for human rights and justice and equality. The protection aims to provide recognition that domestic work has economic value, preventing all forms of discrimination, harassment and violence against domestic workers, protection of domestic workers in realizing prosperity, regulating work relations that uphold human values, justice and equality. Form of protection the law against women as domestic workers is included in: the 1945 Constitution Article 27 paragraph (1, 2), Article 28 D, in the Convention on Social and Cultural Economic Rights that has been ratified by the Indonesian Government into Law No. 11 of 2005 concerning the Convention on Social, Economic and Cultural Rights, the Criminal Code, Law No. 13 of 2003 Article 5 which regulates that everyone has the same right to get a job without discrimination, Law No. 23 of 2004 concerning the Elimination of Domestic Violence, in Article 1 paragraph (1) that domestic violence is any act that results in misery or suffering physically, sexually,

psychologically and or neglected by the household including threats to coerce, deprivation of liberty unlawfully within the household, then Article 2 paragraph (1) letter c which regulates that the person who works helps the household and stays in the household, as the letter c is seen as a family member within a certain period of time while in the household concerned. Legal protection for domestic workers is also contained in Law No. 39 of 1999 concerning Human Rights, and ILO Convention No. 189 concerning Decent Work of Domestic Workers (PRT) as a driver for the Indonesian government to immediately make legislation which will later become a juridical basis for legal protection of these domestic workers. Legal protection for domestic workers is also contained in Law No. 39 of 1999 concerning Human Rights, and ILO Convention No. 189 concerning Decent Work of Domestic Workers (PRT) as a driver for the Indonesian government to immediately make legislation which will later become a juridical basis for legal protection of these domestic workers. Legal protection for domestic workers is also contained in Law No. 39 of 1999 concerning Human Rights, and ILO Convention No. 189 concerning Decent Work of Domestic Workers (PRT) as a driver for the Indonesian government to immediately make legislation which will later become a juridical basis for legal protection of these domestic workers (Turatmiyah and Annalisa, 2013: 53)

CONCLUSIONS

Legal protection for domestic workers does not exist in Indonesia to date. Existing regulations only regulate employment in which domestic workers are not included in the regulation. It is seen from the various cases that occurred in domestic workers, the laws used were the Criminal Code and the Law on the Elimination of Domestic Violence.

In fact all of the above regulations only discuss protection in general and are

partial in nature, so that again domestic workers are decent work to be respected, again marginalized. The absence of legislation that specifically addresses the rights and obligations of domestic workers, provides a very open space for the emergence of discrimination against domestic workers. The seriousness of all parties, especially the government and the legislature, to make domestic workers law is expected as an effort to provide maximum legal protection for domestic workers.

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