

JURIDICAL ANALYSIS OF THE DRAFT LAW ON PROTECTION AND LEGAL CERTAINTY (RUU PPRT) FOR FEMALE DOMESTIC HELPERS IN MEDAN



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Abstract

The legal protection of domestic helpers is one at the implementation level that should be protected by the state considering that the constitution itself has guaranteed certainty, equality, and legal protection to all Indonesian citizens without excluding them. The state, as a facilitator in the private sphere, should be responsible for protecting women domestic workers by formulating comprehensive regulations along with the institutions that organize them so as to shape the sociocultural society towards a domestic worker-friendly direction. Unfortunately, the existing laws do not accommodate legal protection for female domestic workers. Their only hope now is in the Ministerial regulation, but at that level, there are still polemics such as overlapping. Based on these problems, it is necessary to reconstruct the law that answers in substance, structure, and culture. The research method used qualitatively is the PPRT Bill Approach. his research concludes that the absence of adequate legal protection for female domestic workers is due to the absence of legal recognition that can provide certainty and legal protection for them. Therefore, it is necessary to initiate legal protection for domestic workers on the basis of the Draft Law on the Protection and Legal Certainty of Female Domestic Helpers in Indonesia and especially in Medan.

Keywords: Law on Protection, Female Workers, Protection, Legal Certainty

INTRODUCTION

The more developed and sophisticated a neighborhood is in a region, so many of the issues that arise are more complex. This applies to both homegrown (e.g., traditional villages) and relatively heterogeneous neighborhoods (*par exemple, des logements*). The current labor problems of domestic helpers cannot be said to be simple because various cases can occur against these workers. According to data from the coordinator of the national advocacy network for domestic workers (JALA PRT) Lita Anggraini, said more than 400 domestic workers (PRT) experienced various acts of violence from 2012 to 2021, the latest data until December 2021 there were an average of 400 violence against domestic workers from various aspects such as psychological, physical, economic, sexual harassment, and human trafficking (VOA Indonesia, 2002). Minor offenses include paying salaries far below the regional minimum wage (in Bahasa UMR), abusive behavior/speech that dehumanizes domestic workers, neglecting or ignoring their health, not considering their ability to work long hours without adequate nutrition and even committing criminal offenses such as sexual harassment, rape, torture and murder against domestic workers, especially women.

Domestic workers work in an environment where they are not subject to legal standards comparable to formal employment, are not under the supervision of government authorities, and do not have labor contracts. Some of the issues often faced by domestic workers and in need of protection are as follows: Yesi, a household assistant (ART), was injured as a result of alleged violence by her own employer, Tuesday (7/6/2022). Not only was he tortured, but this resident of Pagar Banyu Village, Arma Jaya District, North Bengkulu Regency, Bengkulu, was also deprived of a salary by his employer who was a member of the police examples of human rights violations.

Actually, the government and local authorities should consider this situation. An example of a real situation that occurred in a provincial Medan, for example: a) A female domestic worker from East Nusa Tenggara who experienced injustice in her work for 10 years in the form of not being paid and being intimidated by her employer from the news of the APIK legal aid Agency case; b) A female domestic worker from Sulawesi experienced violence by her employer and was deaf.

We must realize that although many cases have been publicly disclosed by the media, only a small number of them have been brought to trial or processed by provincial and municipal working agencies. This gives the impression that their rights are not protected and safeguarded.

As the authors emphasize the problem, they intend to discuss the interaction between women's issues and the idea of protection of domestic workers based on the constitution with the title "Juridical Analysis of the Law on Protection and Legal Certainty (RUU PPRT) for Female Domestic Helpers in Medan". This research will be narrowed down to answer two main problems, namely: First, Protection and Legal Certainty in the Protection of Domestic Workers Bill. Second, Analysis of the Implementation of the Protection of Domestic Workers Bill for Female Domestic Helpers Especially in the Medan Area.

This research aims to juridically analyze the Draft Law on the Protection of Domestic Workers and find out how it will be if the Draft Law on the Protection of Domestic Workers is applied in Indonesia and later applied by the next Medan government.

REVIEW OF LITERATURE

Draft Law on the Protection of Domestic Worker

This research has studied the PPRT Bill. Parvez A., Superani A.V., and Juaningsih I. N. (2022) year wrote an article in the journal entitled "Reconstruction of the PPRT Bill as an Effort for Legal Protection in Overcoming Violence Against Women and Children Domestic Workers". claimed that domestic workers are women and children now their only hope is ministerial regulation, but there is still discussion on this topic, such as confusion. That the lack of adequate legal protection for female domestic workers is due to the lack of legal recognition that can provide certainty and protection. Therefore, a Draft of Law on the Protection of Domestic Helpers needs to be created to restore legal protection to domestic workers. The bill should emulate Batas Kasambahay, a Philippine law, and establish a specialized agency to oversee domestic workers this journal as a whole discusses prt but the discussion is still lacking in terms of facts in the field so this journal will discuss facts and data in the field.

Further research was published in the journal Ida Hanifa (2020). Legal compliance, according to her research, is a proper protection against arbitrary action, which means that under certain circumstances, one can get what one expects. With the main goal of protecting domestic workers working abroad, the creation of a new state to protect domestic employees is an important step. This journal discusses legal certainty and the lack of ideas on what to do so the authors want an additional bill for domestic workers in this journal.

Research that discusses the protection of domestic helpers is research by Nur Hidayati (2014) which states that according to the Suara Merdeka Daily article “Permenaker to Protect Domestic Workers”, many cases of domestic helpers (PRT) that have emerged in various regions of Indonesia such as Medan, Bogor, Bekasi, Tangerang, etc., how that informal workers (PRT) need protection because until now there has been no clear regulation that provides legal certainty. Article 27 (1) of the European Union 1945 states that every citizen has the right to justice. Likewise, Article 27 (2) of the 1945 Constitution explicitly states that every citizen has the right to have a job and income that is decent for humanity, even if there are domestic helpers (DWs). Article 28 (2) Everyone has the right to work and to fair and just treatment at work. It is necessary to establish regulations that protect and guarantee the rights of domestic workers to avoid any form of discrimination against domestic workers. To ensure that all individuals receive equal opportunities and justice before the law, rules can be established. Domestic workers should be treated with the same dignity as any other type of work. One of the appropriate ways for the national presence to protect all its employees is the worker protection sector (PRT). In this journal, it is lacking in terms of data, only focusing on statutory regulations so this journal is the basis for the authors to add in terms of existing data.

RESEARCH METHOD

This scientific study uses normative or doctrinal legal research (Sukismo, 2008). Doctrinal legal writing is a research literature on secondary data and current legal rules (Rony Hanatijo Soemitro, 1998). This paper is intended to solve the problem (Soerjono Soekanto, 1984). by using a concept approach, a statutory approach, and a comparative approach (Johny Ibrahim, 2007).

In this research, a statutory approach is used (Peter Mahmud Marzuki, 1998). This statutory approach considers the instruments and provisions of positive law applicable in Indonesia related to the legal protection of female domestic workers. This research was conducted using a comparative approach and a conceptual approach. The purpose of this approach is to determine an improvement effort and literature data, including publications, archives, official documents, books, previous studies, and laws and regulations, were used in this study. In this research, secondary data are considered from their link to the primary source, such as secondary sources that explain the primary source such as books, regulations, articles, and journals on the topic of legal protection of women domestic workers. Normative legal research emphasizes book studies, which means that data is presented while analyzed. This data is analyzed using quantitative techniques (Parvez et al., 2022)

To collect and analyze data, a deductive approach was used. This approach starts with general matters and goes to specific conclusions based on accepted rules of logic. This research uses secondary data as the basic law including 1) PPRT BILL, 2) Constitution of the Republic of Indonesia 1945, 3) Employment Law No. 13 of 2003, 4) Law No. 6 of 2004 5) Journal-Journal based on logical rules acceptable (Sri Soemantri Martosoewignjo, 1987). This study used the internet and book searches to find legal sources. Legal document searches were used to obtain legal documents necessary for the owner. In addition, the search for legal materials was also conducted through the websites of the ILO, the Ministry of Law and Human Rights, the Women's Detention Centre Class 2 A Tanjung Gusta Medan, as well as the relevant offices of the Medan city government These data were obtained both through literature studies and data searches via the internet. The data collection provides mutual verification, correction, fitting, and detailing (Anton Bakker dan Ahmad Charris Zubair, 1990).

RESULTS AND DISCUSSION

Protection and Legal Certainty in the PPRT Bill

The state does not recognize legal protections and guarantees for domestic workers. Similarly, the regulation of domestic workers has not been uniform across Indonesia. Such regulations will undoubtedly differ depending on each region's cultural customs and traditions. Not only is there no strong legal protection, but the situation has also shown that

people working at home have no legal security. This situation makes it difficult for home workers to negotiate with their employers before the law. This can affect a large number of cases of violence and harassment against domestic staff members, as well as other types of malignancy (Hanifah, 2020).

The PKDRT Law covers forms of domestic violence which include physical violence, psychological violence, sexual violence, and economic violence or family neglect. As it is well known that before the PKDRT Law was introduced, the violence known in Indonesian law was only physical violence with the term persecution (Umi F & rdiyah, n.d.)

Normatively legal certainty can be realized if regulations are made and promulgated sure because it organizes clearly and logically. Clear in the sense of not giving rise to doubts (multiple interpretations) and logical in the sense of being a system of norms with other norms so that do not clash or give rise to a conflict of norms. Norm conflicts arising from uncertainty Rules can take the form of contestation of norms, reduction norms, or distortions of norms.

In carrying out his work, every worker and the employer has a relationship, namely a working relationship. Work relations are regulated in Article 1 point 15 of the Law Employment is “the relationship between employers and workers based on work agreements that have elements work, wages and orders.” The working relationship is one legal relationship conducted by a minimum of 2 legal subjects about a job. Legal subjects who do employment relationship is the employer or employer with workers/laborers, and employment relations are the essence of industrial relations (Asri Wijayanti, 2010).

The working relationship exists because it exists employment agreement between workers and employers. Agreement work based on Article 1 point 14 of the Labor Law is “the agreement between the worker/laborer and the employer or provider work that contains the terms of work, rights, and obligations of the para party”. A domestic worker is usually not bound by a work agreement written, but only through an oral agreement with employers. The work agreement itself can be made by way of written or oral in accordance with the provisions in Article 51 paragraph (1) of Labor Law. This means an employment agreement between employers with the domestic worker fulfilling the requirements for the validity of the agreement and with bound by the parties to the agreement, the parties must

carry out the agreement he made is already valid as laws for those who make them (I Made Udiana, 2011).

The regulation regarding PRT actually already exists with the promulgation of the Permenaker PPRT. This Permenaker PPRT is: specifically made to provide protection to domestic workers, Apart from that, the rights and obligations of domestic workers and users are also regulated domestic worker Regarding the work-at-home agreement there are some drawbacks that can be observed in the Permenaker PPRT (Abdul Khakim, 2017).

From this explanation, the PPRT Permenaker actually has not been able to reach the Labor Law, especially related remuneration. If the Labor Law granting Wages for workers have been protected by the government determines the wage policy as contained in Article 88 of the Labor Law, while the provision of wages for Domestic workers is only determined by an agreement that has been agreed upon by employers and domestic workers. There is a legal vacuum for domestic workers in the Labor Law Legal protection not only participates in violent situations and conflict but also plays a role in daily activities (Soeroso, 2006).

According to Achmad Ali that there are 4 (four) things related to the meaning of legal certainty, namely: a) The law is positive, meaning that it is legislation; b) The law is based on facts, not something the formulation of the assessment that will be later done by a judge; c) The fact must be formulated in a way that is clear, thus avoiding internal confusion meaning, besides being easy to implement; And d) Positive law should not be changed frequently (Achmad Ali, 2009).

The community is clearly seen when the community generally complies with or implements the rule of law, on the other hand, if the law is not complied with it means that it can be said that the law has not yet guaranteed the creation of legal certainty. There are many factors that cause people not to comply with or do not comply with the law (in the sense of the law) and the main factor is that the law is felt to be contrary to the fabric of values and legal awareness that grows and develops in people's lives. Therefore, in order to create legal certainty, a legal product should be aligned with the legal values and aspirations of the community itself. In connection with efforts to achieve legal certainty (M. Soebagio dan Slamet Supriatna, 1987).

The domestic workers' bill since the 2004-2009 DPR period has begun to be proposed whereas the driving force is ILO Convention No. 189 Concerning Decent Work for Domestic Workers. The Convention establishes fundamental rights and principles and requires The state is taking steps to achieve decent work for domestic workers (Alamsyah, 2017).

This year, the Draft Law on the Protection of Domestic Workers (RUU PPRT), approved as a DPR Initiative Bill, has caused controversy among the public. The content of the DW Bill is discussed in this session.

Dispute resolution, domestic workers can resolve their disputes with suppliers through the Trade Union Mediation Conference. The Trade Union Mediation Council has the right to become a member or administrator of a trade union or labor union. Supervision With the help of neighborhood and neighborhood associations, the protection of domestic workers is ensured by supervision by state government agencies or work units related to employment.

Vocational Training Centers can provide information on jobs and scholarships. No one is authorized by the Service Provider to handle requests for domestic workers, and the Service Provider cannot handle recruitment, training, or placement. Sanctions for distributing agents who make attempts to traffic in human beings (domestic workers), who hire domestic workers with false identities, change the location of domestic workers and recruit domestic workers. Transition Period To prepare instruments as a result of the PPRT law, a transition period of 3 to 5 years is required (DPR RI, 2022).

Analysis of the Implementation of the PPRT Bill for Female Domestic Helpers Specifically in the Medan City Area

Often born into poverty and low levels of education, their services in helping to do work that is closely related to households, and caring for the employer's children are sometimes of value, the presence of a man in a working family both in the formal and non-formal fields (Dr Syamsidah M.Pd dan Dr. Amir Muhidin M.SI., n.d.).

According to the Suara Merdeka Daily article in 2023 "Permenaker to Protect Domestic Workers", the many cases of domestic helpers (PRT) that have emerged in various parts of Indonesia such as Medan, Bogor, Bekasi, Tangerang, etc., show that informal workers (PRT) need protection because until now there has been no clear

regulation that provides legal certainty. Legal certainty guarantees that in certain circumstances, a person can get what was planned. With the main objective to protect domestic workers working abroad, the creation of a domestic worker protection law is an important step. A domestic worker can be considered a worker if she has the characteristics of an effective worker based on legal understanding and terminology (Nur Hidayati, 2014).

This theory was developed by Lawrence Freedman, a renowned jurist, who suggested that the factors that determine the effectiveness or ineffectiveness of a nation's laws are legal substance (or legal substance), legal structure (legal structure), and legal culture (culture juridique) (Yuliandri, 2010). All this is due to the important role that law plays, according to Roscoe Pound, who inspired Lawrence Freedman, that law should be used as a tool of social engineers and should be used for public, social, and private interests (Satjipto Rahardjo, 2014). To make the PPRT Bill in accordance with the *ius constituendum* in Indonesia, philosophical ideas serve as the basis.

Legally formal guarantees for the rights of women workers have been regulated in the constitution, the question then becomes how are the arrangements regarding the protection of the rights of women workers in the law on manpower and its implementing regulations? Does the substance of the various provisions accommodate the needs and interests of female workers who have different characteristics from male workers? To answer this question, this paper attempts to analyze the arrangements regarding the protection of the rights of women workers contained in the law on manpower and its implementing regulations which contain substance regarding the rights of women workers have been regulated in the constitution (Susiana et al., n.d.).

In general, the presence of domestic helpers in Indonesia is lacking can get an award so they don't get good protection legally and socially appropriate. Even though as a worker their household has an important reproductive role in a family/household. As a result, they are susceptible to various forms of violence (physical, sexual, psychological, and economic). Because there is inequality in class and power relations, it is rare that the auxiliaries are able to fight back the violence they face (Dwiyanti, n.d.).

The position of domestic workers can be seen from 2 aspects, namely from a juridical perspective and from an economic perspective. From a juridical perspective, the position between domestic workers and employers is the same, in accordance with the

provisions in Article Paragraph (1) of the 1945 Constitution. Meanwhile, from an economic perspective, the position between domestic workers and employers is different, where the position of the employer is higher than that of the domestic worker. The Manpower Act in Article 1 Point 3 emphasizes what is meant by 'workers/laborers are people who work and receive wages or other forms of remuneration'. From this explanation, domestic workers can be classified as workers, because all the elements in the article are fulfilled by domestic workers (Luh & Aryawati, n.d.).

Theoretically, it is known that there are three types of work protection, namely as follows: a) Social protection, namely a protection related to community efforts, the purpose of which is to enable workers to develop their lives as human beings in general. Social protection is also known as occupational health; b) Technical protection, namely the type of protection related to efforts to protect workers from the dangers of accidents caused by work tools or materials being worked on. This protection is more commonly referred to as work safety; c) Economic protection, namely a type of protection related to efforts to provide workers with sufficient income to meet their daily needs and their families. This type of protection is usually referred to as social security (Zaeni Asyhadie, 2007)

Until now, the local government has not considered the cases of domestic workers, especially women in Medan. This is because there are no clear rules in the DW protection law. As a result, there has been little response from the state government, especially the SKPD responsible for employment, to domestic workers' claims. Local regulations that have yet to regulate the protection of domestic workers are included in this. So far, local governments have only received complaints from domestic workers who are victims of trafficking. Meanwhile, other domestic worker cases are fully assigned to the police.

As of now, the North Sumatra provincial government does not have a specific policy or agency to manage DWs and DW service providers. Perda No. 6 Year 2004 on Trafficking, which came into effect in 2004 is a departmental regulation relating to domestic workers although not directly related to it. During implementation, the PPAKB Bureau, an entity under the supervision of the Regional Secretariat, is responsible for coordinating and handling cases related to sexual violence such as domestic worker trafficking. This task is carried out in collaboration and synergy with relevant SKPD and cross-sector organizations.

The PPAKB Bureau has confirmed the existence of potential problems for domestic workers. It involves issues of physical, psychological, and sexual violence (including rape), as well as lack of pay.

With the aim of protecting domestic workers, the PPAKB Bureau said that in cases where domestic workers are victims of violence, the SKPD involved in the case should consider the testimonies of people directly affected, as well as supporting NGOs and communities. All of this is achieved through collaboration and the establishment of collaborative working networks. In addition, according to the type of violence committed, the handling of domestic violence victims will be carried out by the Medan Police PPA Unit and the North Sumatra Police Unit.

According to the PPAKB Bureau, the duties of local governments with respect to the protection of domestic workers should include the creation of a legal umbrella (e.g., local regulation), taking into account the culture, circumstances, and development of the region: a) The government should continue to engage in awareness campaigns to strengthen the role of the family in collaboration with religious personalities, social, cultural, and other organizations in society; and b) Training is needed for domestic workers and families to help develop their economy through the involvement of communities, businesses, and unrelated third parties.

The PPAKB Bureau expressed its strong support for the PPRT Bill and the specific regulatory requirements for DWs. The PPRT Bill is critical as it serves as the legal basis for DWs in managing all types of illegal practices. These regulations should include elements such as age restrictions, social protection (including health insurance and healthcare), wages that should be comparable and equivalent to the local maximum wage, working hours, and health and leave entitlements.

In terms of local government responsibilities, once the PPRT law has been passed, local governments should follow up by socializing the law to the general public and establishing integrated teams to deal with PPRT according to the culture, situation, and characteristics of each region. Also, the PPAKB Bureau said that there are no official statistics on the number of women domestic workers. reasons why BPS does not include domestic workers among the subjects required for data

The issue of protection of domestic workers is not directly the responsibility of Disnakertrans Prov Sumut. However, Disnakertrans manages DWs where there is a dispute between employers with a collective agreement (CB). So far, there is no agreement regarding the determination of domestic workers' wages. While wage determination should be based on the number of hours worked by the domestic worker, it seems that supervision is difficult to determine the exact amount.

We must also be careful in defining domestic workers. As domestic workers remain in family ties with their employers, it is possible that some of them do not receive wages in social life. Employers usually fund the training of domestic workers. This is done in exchange for payment for domestic workers who continue to be relatives. According to Disnakertrans, the lowest level of government should supervise domestic workers.

The PPRT Bill is crucial as it will serve as a legal framework to protect domestic workers in all aspects of their activities, as domestic workers are vulnerable parties who are often victims of violence and injustice in the workplace. The bill must be targeted. To ensure that it is effective, it is necessary to establish and consider the possibility of increasing the number of managers and infrastructure needed to supervise domestic workers if it is planned in the next bill that this should be done by professional authorities. You should also monitor domestic worker service providers.

In accordance with the Inter-regional Labour Agreement (AKAD) Principles, any recruitment of labor, including female domestic workers, must be supervised by each labor office in each region. This supervision is based on a mutual agreement (MoU). However, monitoring of domestic workers can be done using village or municipal registries or records. Now the Department of Labour has the opportunity to obtain information about domestic workers with the help of the municipality (Aida Milasari, 2005).

Legal protection of women working as domestic workers The PRRT Bill should protect domestic workers in general domestic work, babysitters, cooks, gardeners, washers, and laundry workers, as well as domestic workers who work with other people living in the house. In addition, the wage cap should be adjusted to the regional and national minimum wage. Also, it is necessary to have social security obligations, including health care insurance, death insurance, and other insurance.

Based on the presentation of these ideas, a bright spot has been found for the protection and legal certainty of female domestic workers from the problems of low or unpaid wages, unrestricted working hours, insufficient facilities for security, health, and safety, unrestricted workload, and vulnerability to physical violence and human rights violations. Every problem must be fully resolved and a solution must be found. Because they don't just have to be written rules that cannot be changed, laws must be able to protect globally. According to Lili Rasjidi and I.B. Wya Putra, the law serves to create predictive and antipathic protection (Lili Rasjidi and I.B. Wya Putra, 1993). Therefore, the positive impact of legal protection and stability of domestic workers for women should go beyond the boundaries of positive rules.

CONCLUSION

The regulation of domestic workers has not been uniform across Indonesia. Such regulations will undoubtedly differ depending on each region's cultural customs and traditions. Not only is there no strong legal protection, but the situation has also shown that people working at home have no legal security. This situation makes it difficult for home workers to negotiate with their employers before the law. This can affect a large number of cases of violence and harassment against domestic staff members, as well as other types of malignancy.

In general, the presence of domestic helpers in Indonesia is lacking can get an award so they don't get good protection legally and socially appropriate. Even though as a worker their household has an important reproductive role in a family/household. As a result, they are susceptible to various forms of violence (physical, sexual, psychological, and economic). Because there is inequality in class and power relations, it is rare that the auxiliaries are able to fight back against the violence they face,

From a legal standpoint, arrangements that protect female domestic workers in Indonesia, particularly in the Medan city area, are essential to provide domestic workers, employers, and other related parties with legal stability. With this condition, domestic workers will also be protected and will have a clear place in employment.

There is no specific law that regulates domestic workers juridically in Indonesia. Domestic workers are not included in the category of trained workers according to Article

13 of the Employment Act 2003. Also, the number of employed domestic workers is huge and growing every year. Efforts to protect and ensure the legal safety of female domestic workers must also protect employers.

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