

The Urgency of Ratifying the Protection of Domestic Workers Bill as An Inclusive Legislation

Juneidi D. Coloay¹.

¹ Fakultas Hukum, Universitas Sam Ratulangi.

E-mail: coloay.id@gmail.com (CA)

Abstract: This research aims to examine the urgency of ratifying the Protection of Domestic Workers Bill as inclusive legislation. This issue has been growing over the last decade, where many academics and practitioners are voicing support for the ratification of this Bill. The research method in this article is normative legal research. The results of this study indicate that, firstly, there is a legal vacuum related to the protection of domestic workers, where there are no specific regulations governing legal protection for domestic workers. Secondly, the Protection of Domestic Workers Bill is an inclusive legal product that should immediately be ratified in order to protect domestic workers from discriminatory treatment. In conclusion, the enactment of the Protection of Domestic Workers Bill into law is actually a form of inclusive legislation in protecting the domestic workers themselves, as it will create a legal certainty. It is also important to form village supervisory teams to monitor and prevent violence against domestic workers as early as possible. That is basically a form of follow-up action to the provisions of Article 25, paragraph (2), letter e of the Protection of Domestic Workers Bill.

Keywords: Domestic Workers, Inclusive Legislation, The Protection of Domestic Workers Bill.

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1. Introduction

Nowadays, with the increase in employment opportunities and the increasing intensity of workers in the public sphere, which is characterized by conditions where husband and wife work together in the public sphere, this has brought a new dimension of complexity to the private sphere. Where the result of these conditions is that domestic work becomes marginalized and out of reach of household actors. This condition ultimately encourages household actors to look for other alternatives to help alleviate the complexity of household work by looking for a Household Assistant (ART) to be able to take care of domestic work that household actors (husband and wife) cannot do due to work demands in the public field (Ida Hanifah, 2020).

The types of work, duties, and responsibilities of household assistants in carrying out domestic work are definitely diverse and depend on the work agreement agreed between the two parties. Hence, each household worker does not necessarily have the same duties; they may even have relatively different salaries depending on the

workload assigned and agreed upon. However, in general, these domestic jobs include and are not limited to cleaning the house, cooking, washing clothes, and taking care of children.

The provisions related to household assistants have basically been proclaimed to be comprehensively regulated in the Draft Law on the Protection of Domestic Workers (RUU PPRT) as a special legal instrument that regulates the household itself. Where in the bill, the household assistant (ART) is explained in terms of the Domestic Workers (PRT). In Article 1, number 1 of the PPRT Bill, it is explained that domestic workers are people who work for an employer to carry out household work.

The existence of household assistants in this condition plays an important role in resolving household complexities. However, this is unfortunately not in line with the welfare of the household assistants themselves, who can be said to be underestimated and given little attention to guaranteeing their rights if compared to skilled or professional labors (Muthukuda Niriella, 2014). What is even worse is that household members often receive discriminatory treatment and become victims of sexual violence. This is because most domestic workers are women, so their power relations are so steep that they often become victims of discriminatory actions (Fajrianto, 2023). It cannot be denied that this issue is a classic issue that is also global in nature, where almost all countries throughout the world experience problems related to domestic workers, which are multidimensional.

Countries such as El Salvador, Guatemala, Malaysia, Morocco, the Philippines, Saudi Arabia, Singapore, Sri Lanka, Togo, the United Arab Emirates, the United States, and Indonesia are countries that have many cases involving domestic workers as victims. The cases often involve physical, mental, and sexual violence, food shortages, forced confinement, and forced labor (Fajrianto, 2023). In Indonesia itself, the cases of violence against domestic workers are a very serious problem. According to the National Domestic Workers Advocacy Network (JALA PRT), there were 376 cases of violence reported in 2015. Then, from January to September 2016, there were 217 cases recorded by JALA PRT (Fikriyana Shofwatun, 2021). Then, based on reports from the Integrated Service Center for Handling and Protection of Victims of Gender-Based Violence and Children (PPT-PKBGA), the majority of victims are female domestic workers who are young women from low-income families; women whose parents have passed away; widows or divorced women; women with limited education and skills; and women who are in economic crisis (Fikriyana Shofwatun, 2021). This shows that the problem in the realm of domestic workers is one of the issues that the government must concentrate on.

One of the ways to overcome this problem is by making efforts to pass the PPRT Bill. The bill is considered to provide better guarantees of rights for domestic workers. This bill is basically a discourse that has been under discussion for a long period of time, starting in 2004, when the bill was first included in the DPR's legislative program (Prolegnas), but until now, the PPRT Bill has not been passed. In recent times, the discourse on ratifying the PPRT Bill has become increasingly discussed. Moreover, this bill has been included in the DPR's priority national legislative program since 2023.

Based on this, the author considers it necessary to research the urgency of ratifying the PPRT Bill as a form of representative legislation in protecting the rights of domestic workers in the future. This article will focus on two main issues: first, the legal vacuum in the protection of domestic workers, and second, the importance of the Draft Law on the Protection of Domestic Workers as an inclusive legal regulation.

2. Method

This article uses normative legal research methods. Teguh Prasetyo states that normative law research is a process of law discovery by searching for legal sources, legal rules, and legal regulations to solve a legal problem (Teguh Prasetyo, 2019). This means that this study is library research that uses primary legal materials in the form of statutory regulations and secondary legal materials in the form of related legal books and journals. In the context of similar issues and viewpoints, there is a study written by Sonhaji in 2020, published in the Administrative Law and Governance Journal under the title "Perlindungan Pekerja Rumah Tangga dalam Sistem Hukum Nasional". The study focused only on obstacles to the implementation of legal protection for domestic workers, and there is still no discussion that reviews from a juridical point of view the material in the Domestic Workers Protection Bill (Sonhaji, 2020). Therefore, this writing can be a follow-up study in the theoretical and conceptual development related to the importance of the passage of the Domestic Workers Protection Bill, since this writing focuses on the juridical aspects present in the charge of the Domestic Workers Protection Bill.

3. Result & Discussion

3.1. The Legal Vacuum in the Protection of Domestic Workers

In terms of positive legal rules, work in the domestic sphere, such as domestic workers, does not receive much attention from the state and government. Conditions in the status quo today place domestic workers in a vulnerable position due to the lack of legal protection. Facts on the ground show that domestic workers are very vulnerable to discriminatory treatment, such as not receiving their salaries for several months, and there is no clear certainty regarding the duties and responsibilities they have to carry out, where they are often asked to do any work beyond their capacity (Mario Borneo Tarigan, 2021).

On the other hand, domestic workers are also vulnerable to becoming victims of sexual violence, where one of the main factors in the occurrence of sexual violence against domestic workers is the existence of power relations. Domestic workers tend to be unable to do anything if they become victims of sexual violence committed by their employers because they have a weak status in their work, where they are held hostage with their jobs potentially being lost (fired) if they resist. Apart from that, power relations are also inherent in the status of domestic workers, who tend to be women who, in this case, are vulnerable to becoming victims of sexual violence from men who consider themselves superior (Mario Borneo Tarigan, 2021). This double burden is what makes domestic workers hostage to a cycle of discriminatory treatment that robs them

of their rights. Therefore, there is a need for the state to play a role in solving this problem by providing clearer guarantees and legal protection for domestic workers (Muhammad Yafi Azhari & Abdul Halim, 2021).

Juridically, existing legal regulations are still unable to provide legal protection for domestic workers. For example, the Job Creation Perppu on Amendments to the Employment Law still classifies work relationships between workers and employers based on work agreements between employers and workers/laborers, even though the work relationship between employers and domestic workers is a work relationship between individuals. The logical consequence of this is placing domestic workers outside the regulation of the Labor Law regime. This means that in the status quo mechanism, there is no clear legal protection for domestic workers. So this legal vacuum seems to place domestic workers as someone who works in a situation of modern slavery, whose rights are taken away (Muhammad Yafi Azhari & Abdul Halim, 2021). This clearly contradicts constitutional values, where Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia clearly guarantee the rights of every person and citizen, to obtain work and compensation as well as fair and decent treatment in the employment relationship.

Due to that aforementioned vulnerability, domestic workers around the world have long advocated their rights in national and international fora (Shayak Sarkart, 2020). From a global perspective, there have actually been some international instruments that are related to the protection of domestic workers, especially women domestic workers. For instance, there are international instruments such as The International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and International Convention on the protection of the rights of All Migrant Workers and Members of their Families (MWC) which provide the legal protection for domestic workers worldwide (Muthukuda Niriella, 2014).

Furthermore, there is also an international organization like the International Labor Organization (ILO), which persistently fights for the proper rights of domestic workers, as they have made ILO Convention Number 189 of 2011 concerning Decent Work for Domestic Workers (Arinto Nugroho et al., 2018). However, it is ultimately powerless in its enforcement in the context of Indonesia since it is clear that Indonesia's civil law system still adheres strongly to monism with the primacy of national law. Where the rules are dominantly regarded as legitimate and have strong coercive power merely if it has been ratified in positive law (Andi Tenripadang, 2016). Therefore, it is really necessary to ratify the Domestic Workers Protection Bill into law. Several neighboring countries, such as Malaysia, Thailand, and Singapore, already have a statutory provision that recognizes the existence of domestic workers and provides proper legal protection, although it is limited to domestic workers of their own nationality (Mario Borneo Tarigan, 2021). Hence, they can be an example for Indonesia to immediately provide special legal protection for domestic workers.

3.2. The Importance of the Draft Law on the Protection of Domestic Workers as An Inclusive Legal Regulation

It is believed by many parties that the ratification of the PPRT Bill into law will be able to provide more legal protection and guarantees to domestic workers. The content material in the PPRT Bill provides certainty regarding the status of work in the domestic sphere, which also needs to be recognized and guaranteed rights. This can be seen in the provisions of Article 11 of the PPRT Bill which guarantees the rights for domestic workers to be able to work for reasonable hours, to be able to obtain leave rights, to receive wages and holiday allowances in accordance with the agreement, and even to be able to terminate their employment relations as is the case in the field of work- other jobs guaranteed by these rights in the Employment Law. The ratification of this bill could provide a step forward towards the state's recognition of the existence of work in the domestic realm as a job, so that those who work in this realm must have their rights protected and receive fair treatment by the state as a form of moral equality in line with the principle of equality before the law (Michael Foran, 2022).

Apart from that, the implementation of the PPRT Bill can also provide clear legal certainty regarding the scope of work of domestic workers. In Article 7 of the PPRT Bill, it is explained that the scope of work of domestic workers includes: cooking work group; washing clothes; cleaning the house; cleaning the yard and/or garden of the employer's residence; caring for children; looking after sick people and/or people with special needs; driving; looking after the house; and/or taking care of pets. The domestic worker's scope of work can apply both collectively and selectively, depending on the work relationship agreed in the work agreement between the domestic worker and the employer.

Regulations regarding the scope of work can clearly answer the problems often faced by domestic workers, where they often experience uncertainty regarding what work they have to handle, which makes them appear as if they are experts in everything, thus ending in human exploitation, which is not in line with human rights principles. By determining the type of work that will be their duties, which is included in the work agreement, it certainly makes domestic workers a legal entity whose rights are more respected.

In addition, the PPRT Bill is considered to have a feminist perspective, where the bill can protect women from acts of sexual violence that are often experienced by female domestic workers. Those who work as domestic workers tend to be women and girls, who are very vulnerable to becoming victims of sexual violence perpetrated by their employers (Mario Borneo Tarigan, 2021). With the enactment of the PPRT Bill into law, domestic workers will receive clear legal protection when there are acts of discrimination, harassment and violence, both physical and non-physical, committed by their employers. Based on Article 30 of the PPRT Bill, it clearly states that employers can be subject to a maximum prison sentence of 8 (eight) years or a maximum fine of Rp. 125.000.000,00 (one hundred twenty-five million rupiah) if proven guilty of committing discriminatory acts, harassment, and violence, both physical and non-physical, against domestic workers.

From a broader perspective, the PPRT Bill not only favors domestic workers but also benefits employers. This is because the PPRT Bill also emphasizes the presence of third parties, such as domestic worker distributors, who can help employers who need domestic workers. Even domestic worker distributors are obliged to carry out education and training for domestic workers so that employers will get domestic workers who are truly qualified. Moreover, there is a trial period for domestic workers, which is carried out for 1 (one) month with a work agreement. If, during the trial period, the employer does not wish to continue the employment relationship with the domestic worker, the domestic worker distributors must provide a replacement domestic worker. With this mechanism, employers also benefit because they will still be able to handle domestic affairs without needing to look for new domestic workers, because there is a replacement mechanism. This can certainly make the domestic conditions of each family continue to be productive.

4. Conclusion

The legal vacuum in the status quo, where domestic workers are normatively not recognized in the Employment Law regime, has shown the need for clear legal protection and guarantees for domestic workers by immediately passing the PPRT Bill. Juridically, the enactment of the PPRT Bill into law is actually a form of inclusive legislation in overcoming problems in the domestic realm, such as household work. The PPRT Bill can not only provide legal protection for domestic workers who often experience discriminatory treatment and sexual violence, but can also help employers to be safer and more comfortable in employing domestic workers because there are domestic worker distributors as third parties whose job is to guarantee qualifications from prospective domestic workers who will work through education and training programs. As a novelty, in the monitoring mechanism by the national government and local government, the author encourages the formation of village supervisory teams to monitor and prevent violence against domestic workers as early as possible. This is basically a form of follow-up to the provisions of Article 25, paragraph (2), letter e of the PPRT Bill. It is important to have a village supervisory team as a form of swift action when problems arise between domestic workers and their employers.

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