

# Legal Protection of Domestic Worker's Rights

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**Abstract.** Domestic housekeepers are an important part of the daily life of householders. Sometimes, they even become the employer's confidant to take care of all the household needs. Domestic servants are included in the workforce which is vulnerable to unfavorable actions from employers. This research includes normative juridical research or often referred to as library research which means research conducted by tracing or analyzing and analyzing library materials or documents. According to Article 4 of Law Number 13 of 2003 Concerning Manpower, the goal of legal protection is to help workers achieve prosperity and improve the well-being of workers and their families. Legal protection for workers must be provided in accordance with the significant role they play in a business. Since every worker has the right to protection, there is no need to distinguish between the two. The PERMENAKER RI No. was issued by the government in response to the type of legal protection for domestic workers. 2 of 2015, concerning legitimate insurance for homegrown laborers (PRT). Users (employers) and domestic workers are required to enter into written or verbal work agreements outlining the rights and responsibilities of each party. These agreements must be known to the Head of the neighborhood association (RT) or by other names in the area where the domestic worker will be employed. Additionally, the work agreement lays out each party's rights and responsibilities with the intention of providing both parties with security and protection.

**Keywords:** Legal Protection, Domestic Workers, Legal Certainty

## 1. Introduction

Domestic workers have existed for a long time, even from the pre-colonial era. The existence of domestic workers is identified as lowly workers, even though their contribution is very large in helping with all household chores when we are busy doing outside work.

Domestic servants are an important part of the daily life of householders, sometimes they even become the employer's confidant to take care of all the household needs. The development of the scope of work done in the house is following the times. Its scope has become wider and more complex.[1] The job of a domestic worker is not only to take care of work related to the household, such as cooking, washing, caring for the garden, being skilled at driving a motorized vehicle to pick up children, caring for children and their parents, to accompanying the employer's children when it is time for them to study. In carrying out her work, a domestic worker is required to master many skills to support her work, which can even include handling electronic equipment and informatics, and is responsible for the latest and most sophisticated technological devices.

Ironically, socially, domestic work is not considered a profession. The acronym PRI is also understood as "helpers.". However, normatively, this domestic worker is not considered a

profession because the activities of a domestic worker are considered far from production activities. Employers pay domestic workers wages as remuneration for their labor. The wage amount is determined by an agreement with the employer, typically based on the market price in a particular region. In carrying out their work, many domestic workers experience acts of violence from their employers, where when they work, the homeowner has his own rules, which as he pleases, instruct domestic workers to do whatever they want. And not a few of those who refuse will experience violence.

Usually, domestic workers find employers through referrals from friends, neighbors, or even relatives, and do not have an employment contract. Work agreements occur only orally, conveyed by a mutual role understanding, so there is no clearness as far as the kind of work, hours worked, and compensation got. This has been the cause of numerous issues' emergence from the beginning. The domestic worker's employment contract is not between the employer and domestic worker, as is the case with assistants and domestic workers hired through the Domestic Worker Distribution Agency (LPPRT), but between the Distributor and the Employer so that the domestic worker again becomes an object to be traded by Naughty Domestic Worker Distribution Agency! or irresponsible.

It is very important for workers to shift their perception of and title from household worker to household assistant. The acceptance of the title "Household Assistant" will undoubtedly elevate household workers to the status of formal employees. Domestic Assistants can now openly advocate for their rights thanks to this new status. When it comes to organizing domestic workers, it is difficult because they are in the home of others or the employer. Where and for what purpose will they work? He needs to obtain permission from his employer first.'

It must be admitted that, Domestic workers have not been recognized as part of the same workforce as other workers like factory workers, company workers, and others up until this point. In fact, it must be acknowledged that society still does not accept the term "worker." People are generally more receptive to being referred to as "helpers" by household assistants. As a result, household assistants fall under the informal sector's scope of employment.

The struggle for workers' rights is limited because the informal sector includes domestic workers. The current laws and regulations regarding manpower do not address the issues faced by domestic workers. Homegrown laborers don't get the very lawful security that ensures their work as their partners who work in plants, organizations, and others.[2]

Workers and laborers are defined by Law No. 13 of 2003 on Manpower. "Worker/labor is any person who works by receiving wages or other forms of remuneration," states point 3 of Article 1. It would appear, based on this understanding, that household workers ought to be included among the formal sector workers who are protected by law.[3]

The fundamental principles for creating ideal systems and institutions, as well as conditions for productive, harmonious, dynamic, and just work, have been outlined in Law No. 13 of 2003. From the formulation of the Article, there are 2 (two) elements of the definition of workers, namely people who work for other people (employers) and wages as compensation for work done. Article 1 point 4 states that "Employers are individuals, entrepreneurs, legal entities, or other entities that employ workers by paying wages or other forms of compensation."

Weaknesses or deficiencies in these juridical references have that effect. domestic workers have not received legal protection. For this reason, it is necessary to have social and legal recognition which will certainly make it easier to make laws and regulations that can directly protect domestic workers and users of domestic worker services, as well as correct public perceptions so that domestic workers can obtain their rights. they are the same as workers in the formal sector.[4]

The presence of the State, which was originally expected to provide guarantees for the protection of the basic rights of domestic workers, turned out to be the opposite, even exploitative of the interests of domestic workers.[5] Indications of weak legal protection for domestic workers can be seen from the problems in economic life with a hegemony that does not see domestic workers as objects of production that deserve protection, but as objects that can be exploited.

The PERMENAKER RI Number 2 of 2015 about Legal Protection for Domestic Workers (PRT) is a crucial legislation to provide Household Assistants with legal clarity in order to exercise their rights and fulfill their tasks.[4] Obviously, this likewise applies to support clients who utilize family colleagues. The two players can keep away from maltreatment of force in the functioning connection between family associates and administration clients.

## **2. Method**

This research includes normative juridical research or often referred to as library research which means research conducted by tracing and analyzing library materials or documents.[6] The value of science in a study is highly dependent on the approach used, if it is not precise then the weight of the research is less accurate.[7] This research was used based on a conceptual approach, namely the type of approach that provides a settlement analysis point of view in legal research seen from the legal concepts behind it or seen from the values contained in the normalization of a regulation relating to the concepts used. The method used in this research is qualitative research which is used to obtain data so that conclusions can be drawn, and presented descriptively, with graphs and diagrams explaining the problem.[8]

The examination approach utilized is the rule approach, in which the methodology is taken by analyzing all regulations and guidelines worried about issues connected with land.

## **3. Findings and Discussion**

### **3.1 Domestic Workers' Rights in Laws and Regulations**

Privileges are a condition intrinsic in human existence. This right is possessed by an individual and can be delighted in by its presence. On the off chance that somebody has these privileges, that individual openly utilizes his freedoms with no strain or danger from any party. To safeguard so an individual has the opportunity to utilize his privileges and there is security so an individual can keep on partaking in his freedoms, it is concurred that common liberties exist. These common freedoms have been controlled since December 10, 1948, in the Widespread Statement of Basic liberties (UDHR), which contains common political privileges and financial, and socio-social privileges. Then, at that point, in 1966, the Unified Countries made 2 (two) separate instruments specifically the Worldwide Contract on Common and Political Privileges and the Global Agreement on Monetary, Social, and Social Freedoms.

The presence of this show on basic freedoms isn't just an ethical proclamation that isn't legitimately restricting, yet with the presence of this show, it tends to be lawfully restricting on the execution of common liberties. Laborers' privileges are not the same as laborers' common freedoms. Common freedoms are privileges given naturally by God All-powerful that are inborn in each person as an outcome as an individual, while fundamental freedoms as laborers are freedoms that are inborn in each specialist as a result of being a representative.

Work privileges emerge as an outcome (consequence) of a functioning connection among laborers and bosses/organizations. Work freedoms in Indonesia are managed in Regulation no. 13 of 2003 concerning Labor supply. There are somewhere around 8 (eight) essential rights of laborers, in particular:[9]

Basic rights of workers in employment relations.

Each specialist has the option to acquire, improve and foster work possible as per their gifts, interests and capacities. Each specialist has the privilege to acquire insurance:

- 1) Occupational security and wellbeing;
- 2) Morals and respectability;
- 3) Treatment that is as per human poise and values and strict qualities; And
- 4) Every specialist has the privilege to shape and turn into an individual from a worker's guild. (Legitimate premise, Regulation No. 13 of 2003 concerning Labor supply and Regulation No. 21 of 2000 concerning Worker's guilds/Worker's organizations).

Basic rights of workers to social security and occupational safety and health (K3).

Every worker and his family have the right to obtain labor social security which includes:

- 1) Work Accident Insurance;
- 2) Death Guarantee;
- 3) Old Age Guarantee;
- 4) Health Care Guarantee.

Word related wellbeing and wellbeing reserve the privilege to request that businesses agree with all word related security and wellbeing prerequisites. Express issues with working at work where the necessities for word related security and wellbeing as well as the self-security hardware required are in uncertainty. (Legitimate Premise of Regulation No. 13 of 2003 concerning Labor, Regulation No. 3 of 1992 concerning Government managed retirement for Laborers, Regulation No. 1 of 1970 concerning Word related Wellbeing, Official Declaration No. 22 of 1993 concerning Sicknesses Emerging Because of Work Relations, Unofficial law No. 14 of 1993 concerning the Execution of Government managed retirement for Laborers, Guideline of the Clergyman of Labor No. 04 of 1993 concerning Strict Occasion Recompenses and Guideline of the Clergyman of Labor No. 01 of 1998 concerning Execution of Medical services for Laborers with Better Advantages from the Upkeep Assurance Bundle Wellbeing Essential Federal retirement aide Laborers.

Workers' Essential Right to Wages Insurance Each laborer has the privilege to procure a pay that satisfies a respectable living for mankind.

The lowest pay permitted by law just applies to laborers who have worked for under 1 (one) year. Audit how much wages for laborers with mutiple (one) year of administration. Managers in setting wages may not segregate between male specialists and female laborers for work of equivalent worth. Business people are obliged to pay wages to laborers, on the off chance that the actual specialists are wiped out so they can't take care of their responsibilities. Business visionaries are obliged to pay wages

to laborers, in the event that specialists don't come to work in view of the things alluded to beneath, with the accompanying circumstances:

- 1) Married workers are paid for 3 (three) days;
- 2) Marrying their children, paid for 2 (two) days;
- 3) Circumcise their children, paid for 2 (two) days;
- 4) Baptism of children, paid for 2 (two) days;
- 5) The wife gives birth or has a miscarriage, paid for 2 (two) days;
- 6) Husband/wife, parents/in-law or child/son-in-law dies, paid for 2 (two) days and;
- 7) Family member in one house dies, paid for 1 (one) day.

The basic right of workers to restrictions on working time, rest, leave and holidays.

The essential right to draw up an Aggregate Work Understanding (PKB) Worker's organizations/worker's organizations, leagues, and confederations of worker's organizations/trade guilds that as of now have a record number reserve the option to settle on aggregate haggling concurrences with businesses. The readiness of the aggregate work understanding is completed by consideration. Aggregate work arrangements should be made recorded as a hard copy in Latin letters and utilizing the Indonesian language. In 1 (one) organization, just 1 (one) aggregate work understanding can be made which applies to all specialists/workers in the organization. The most extreme legitimacy time of the aggregate work understanding is 2 (two) years. The aggregate work understanding can be stretched out for a limit of 1 (one) year in light of a composed arrangement between the business and the exchange/trade guild. Dealings for the production of the following aggregate work understanding can start no later than 3 (90 days) before the finish of the ongoing aggregate work arrangement.

The essential right to strike Strikes as a fundamental right of laborers/workers and worker's guilds/worker's guilds are done in a legitimate, precise, and serene way because of bombed discussions. Inside 7 (seven) working days before the strike is done, laborers/workers and worker's organizations/trade guilds are expected to tell recorded as a hard copy to the business and the office liable for neighborhood labor supply undertakings. In the event that a strike is to be completed by laborers/workers who are not individuals from an exchange/trade guild, the notice will be endorsed by the delegate of the specialists/workers named as the facilitator or potentially individual responsible for the strike. On the off chance that a hit is completed with the notification of under 7 (seven) working days, then, at that point, to save the method for creation and company resources, the business visionary might go to impermanent lengths by:

- 1) prohibit striking workers/laborers from being in the location of the production process; or
- 2) if it is deemed necessary to prohibit striking workers/laborers from being present at the company premises.

Special essential freedoms for ladies laborers Female specialists/workers who are under 18 (eighteen) years of age are precluded from being utilized between 23.00 to 07.00. Business people are precluded from utilizing pregnant ladies laborers/workers who, as indicated by the specialist's explanation, are hazardous to the wellbeing and security of their belly and themselves on the off chance that they work between 11:00 p.m. what's more, 11:00 p.m. at 07.00. Business visionaries who utilize female specialists/workers between 23.00 to 07.00 am required:

- 1) provide nutritious food and drink; and
- 2) maintain decency and safety while at work.

Business people are expected to give transport transportation to female specialists/workers who go to and get back from work between 23.00 to 05.00 a.m. Business visionaries are precluded from ending a lady laborer on the grounds of marriage, pregnancy, labor, premature delivery, or breastfeeding her child.

The fundamental freedoms of laborers are safeguarded against cutbacks. Business visionaries, laborers/workers, worker's guilds/worker's organizations, and the public authority, should really bend over backward to guarantee that there is no end of work. On the off chance that all endeavors have been made yet end of business can't be kept away from, then the expectation of firing work relations should be haggled by the business and the exchange/trade guild or with the specialist/worker if the specialist/worker being referred to isn't an individual from a worker's guild/worker's organization. On the off chance that the exchanges don't bring about an understanding, the business visionary can fire the business relationship with the specialist/worker in the wake of getting an expectation from the modern relations question settlement organization. An application for a limitation of end of work is submitted recorded as a hard copy to the modern relations debate settlement establishment joined by the reasons on which it is based. End of work without the foundation of a modern relations question goal establishment is invalid and void by regulation. However long the choice of the modern relations question settlement establishment has not been specified, the two bosses and laborers/workers should keep on completing every one of their commitments. Business people can go astray from these arrangements as suspension of laborers/workers who are currently firing their work relationship while as yet being obliged to pay compensation and different privileges regularly got by laborers/workers.

### **3.2 Laws and Regulations in Protecting Domestic Workers Obtaining Their Rights as Workers**

If you look at the elements of good workers based on terminological and juridical understanding, domestic workers can be categorized as workers.[4] Even so, Law Number 13 of 2003 concerning Manpower has not yet protected domestic workers as workers there is not even a single article that protects domestic workers, even though Article 1 point 4 of the UUK determines that employers are individuals, and in criminal provisions are often mentioned with whom.[9]

Lawful assurance for homegrown laborers isn't legitimately perceived in this country. Moreover, the guideline of homegrown laborers is additionally not uniform for all locales of Indonesia. This game plan is obviously unique as indicated by the social traditions and propensities for every area. The circumstances referenced above delineate that notwithstanding the shortfall of solid legitimate insurance, it additionally represents the shortfall of lawful assurance for the homegrown laborers themselves. This affects the feeble dealing force of homegrown laborers before their managers under the watchful eye of the law. Impacting the high instances of misuse and brutality against homegrown laborers themselves isn't unimaginable.

The consequences of an overview by the global work association (ILO) show that in 2002 the quantity of homegrown specialists in Indonesia was more than 2.6 million and the majority of them were ladies and little kids, in the mean time, the aftereffects of a quick evaluation from the Public Organization for Homegrown Laborer Promotion ( JALA PRT) in 2009 expressed that around 10-16 million of center and upper-working class families in Indonesia utilize homegrown specialists. The Global Work Association (ILO) noticed that the quantity of homegrown laborers in Indonesia is assessed at 2,593,399 (ILO-IPEC Study 2002) they serve around 2.5 million families. In the interim, consistently around 600,000-700,000 ladies relocate abroad to function as homegrown specialists. Acquittal Worldwide's report, referring to information from the Service of Ladies and Kids' Strengthening, expressed that numerous homegrown laborers were overwhelmed by youngster laborers matured around 12 or 13 years.

Meanwhile Law no. 13 of 2003 concerning Manpower (regulates guarantees for the protection and fulfillment of the rights and obligations of workers working in the domestic/household sector. A domestic worker is a non-economic job so domestic work is placed in a position that is not feasible and far from the standard of a worker. The standard of work referred to includes the scope of work, working hours, wages, leave, and dispute resolution for domestic workers. The definition of labor in the Manpower Act is only limited to people who can produce goods or services for others or themselves.

The motivation behind legitimate security as expressed in Article 4 of Regulation Number 13 of 2003 concerning Labor is to safeguard laborers in acknowledging flourishing and expanding the government assistance of laborers and their families. Given the significant job of work or laborers in an organization, the reason for legitimate security for laborers should be completed likewise. Without separating one from the other on the grounds that essentially, every laborer has the privilege to insurance. Likewise, remembering that the labor force has chances, like that in the event that there is a harmony among privileges and commitments, work relations can run as expected.

The privileges that are frequently abused are the option to compensation, the option to restrict working hours, the option to rest, the option to rest, the option to take off from the house, the option to impart, the option to coordinate, the right to compassionate treatment, the right to government backed retirement. This peculiarity is problematic to Article 28D passage (2) of the 1945 Constitution which expresses that "everybody has the option to work and get fair and legitimate remuneration and treatment in a functioning relationship".

Homegrown specialists can't expect Permenaker No. 2 of 2015 concerning the Assurance of Homegrown Specialists. This guideline can't arrive at Regulation no. 13 of 2003 in work relations. Also, the guideline doesn't indicate the privileges of homegrown specialists, for example, normalization of wages, guideline of working hours, rest periods, week by week leave, yearly leave, correspondence and affiliation freedoms, as well as composed and non-verbal arrangements. Regardless of whether it is definite, without affirmation in the law, the infringement will be viewed as a simple slip-up, as something that can be settled genially. This

is obviously unexpected on the grounds that as a country that maintains common freedoms, the public authority's political will has not yet seemed to safeguard homegrown laborers.

The thought of regulation is a social thought that can't be formal, implying that it is coordinated towards the standards of regulation (*rechtsidee*), specifically equity. To fill this ideal of equity with substantial substance it should be seen from the side of irrevocability, and to finish the ideal of regulation and conclusion, conviction is required. Accordingly, the law has 3 (three) significant perspectives, specifically: equity, sureness, and irrevocability. The part of equity alludes to rise to privileges under the watchful eye of the law, the part of irrevocability alludes to the reason for equity, specifically propelling goodness in human existence, and that implies deciding the items in the law, while the part of sureness alludes to the assurance that the law (which contains equity and standards that advance goodness), and fills in, generally speaking, that should be complied. The part of equity is the best structure of regulation, while the part of conviction is the functional system of the law.

Regarding the term legal certainty, several meanings can be put forward. According to Sudikno Mertokusumo, legitimate conviction is the assurance of equity against erratic activities which implies that somebody will actually want to get something anticipated in specific conditions.[10] In view of the authority interpretation from the Public Regulation Improvement Organization (BPHN), it is expressed that legitimate sureness (*rechtszekerheid*) is an assurance for individuals from the public that the law will be applied accurately and reasonably, while in the Huge Indonesian Dictionary, it is expressed that legitimate conviction is a lawful instrument of a country fit for ensuring the freedoms and commitments of each and every resident.[11]

The law decides the interests of society that can be expanded into legitimate freedoms that can be implemented. Privileges are given to freedoms advocates who are much of the time known as legitimate elements (lawful substances, *rechtspersoon*) which can be normal people (*naturlijke*) and can likewise be non-regular lawful elements, specifically legitimate substances in view of the aftereffects of legitimate fiction.

Legitimate security from the business' power is carried out assuming that regulations and guidelines in the field of work that require or compel bosses to go about as expressed in the regulation are executed by all gatherings in light of the fact that the enforceability of the law can't be just juridically estimated, however is estimated humanistically and thoughtfully.[ 13]

Furthermore, according to Imam Soepomo as quoted by Asri Wijayanti, the provision of worker protection covers five areas of labor law, namely:

- 1) Field of Workforce Deployment/Placement;
- 2) Field of Work Relations;
- 3) Occupational Health Sector;
- 4) Work Security Sector;
- 5) Social Security for Workers.[13]

The job of the Homegrown Laborer Dispersion Office is a LPPRT business substance that has gotten composed consent from the Lead representative or a named official to enlist and appropriate homegrown specialists. LPPRT' who will disperse homegrown laborers, should have SIU-LPPRT from the Lead representative or delegated official. To get SIU-LPPRT as alluded to in Article 12, LPPRT should present a composed application by joining:

- 1) Copy of deed of establishment and/or deed of change of business entity that has been approved by the competent authority;
- 2) Copy of the articles of association which contains activities engaged in the field of domestic worker distributor services;
- 3) Copy of company domicile certificate;
- 4) Copy of Taxpayer Identification Number (NPWP);



- 5) Copy of proof of ownership of office facilities and infrastructure as well as own office equipment;
- 6) Organizational and personnel structure charts; and g. Work plan of at least 1 (one) year.

According to PERMENAKER RI No.2 Year 2015, article 22:

- 1) LPPRT is prohibited from collecting fees from domestic workers
- 2) LPPRT has the right to receive service fees from Users.
- 3) The fee for services as referred to in paragraph 2) is determined based on an agreement between the LPPRT and the User.

LPPRT is prohibited from channeling domestic workers to corporate users or business entities or other entities that are not individuals. Article 23 states that LPPRT has obligations:

- 1) Selecting potential Users;
- 2) Ensuring that prospective domestic workers are in good health and able to work well;
- 3) Monitor the PRT that has been distributed to Users; d. Returning service fees as referred to in Article 22 paragraph (3) in the event that the domestic worker is not willing to continue working for at least 6 (six) months.

Assurance of laborers/workers is expected to ensure the satisfaction of the essential privileges of laborers/workers and assurance equivalent open door and treatment without separation on any premise to understand the government assistance of laborers/workers and their families while considering advancements in the advancement of the business world.

The type of lawful assurance for homegrown laborers has been replied by the public authority with the PERMENAKER RI No. 2 of 2015, concerning lawful assurance for homegrown laborers (PRT). Clients (managers) and homegrown specialists are expected to pursue composed or oral work arrangements containing freedoms and commitments that can be perceived by the two players and known by the Top of the local affiliation or by different names in the space where the homegrown laborer will work, and in the work understanding it is made sense of about the privileges and commitments of each party which means to give conviction and security to the two players.

#### **4. Conclusion**

Domestic servants are included in the workforce which is vulnerable to unfavorable actions from employers. Many domestic workers are treated inhumanely by their employers. So departing from this it is necessary to intervene in the government to regulate laws that can protect citizens who work as domestic workers. Laws governing the protection of domestic workers are not yet fully effective in dealing with domestic workers who do not get their rights as workers. However, it does not specifically regulate the form of protection from various domestic workers' problems, including workplace relations, discrimination, violence, wages, and others. Only Law No. 23 of 2004 concerning the Elimination of Domestic Violence explicitly indicates protection for domestic workers as part of the family. Legal protection, both preventive and repressive, is being sought by the State, but the slow response to the preparation of laws and regulations has not been able to stem a large amount of discrimination, violence, and unequal employment relations among domestic workers. The policymakers should immediately draft a law on the protection of domestic workers.

The motivation behind legitimate security as expressed in Article 4 of Regulation Number 13 of 2003 concerning Labor supply is to safeguard laborers in acknowledging flourishing and working on the government assistance of laborers and their families. Given the significant job of work or laborers in an organization, the reason for legitimate security for laborers should be done likewise. Without separating one from the other in light of the fact that each laborer essentially has the privilege to assurance.

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