

LEGAL PROTECTION OF HOUSEHOLD HELPERS IN THE EMPLOYMENT RELATIONSHIP WITH THE EMPLOYER

P-ISSN

XXXX-XXXX

E-ISSN

XXXX-XXXX

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Date Submission

21 January 2026

Date Accepted

21 January 2026

Date Published

21 January 2026

DOI

Abstract

Domestic workers (PRT) are workers in the domestic sector who have an important role in supporting household activities, but their position in the Indonesian labor law system remains in an area of normative uncertainty. This study aims to analyze the position of domestic workers in the Indonesian labor law system and the form of legal protection provided to domestic workers in employment relations with employers, along with obstacles in its implementation. The research method used is normative legal research with a statutory, conceptual, and case approach, through a literature study of relevant primary, secondary, and tertiary legal materials. The results of the study indicate that in fact the relationship between domestic workers and employers has fulfilled the elements of an employment relationship in the form of work, wages, and orders. However, legally domestic workers have not been recognized as subjects in the industrial relations regime according to the Manpower Law because households are not categorized as companies. Legal protection for domestic workers currently rests on the Minister of Manpower Regulation Number 2 of 2015, constitutional guarantees of the 1945 Constitution, human rights instruments, and provisions of civil and criminal law. However, the implementation of this legal protection faces various obstacles, including weak regulatory standing, a social paradigm that views domestic work relationships as familial, a low level of legal understanding of domestic workers, and minimal state oversight. This study concludes that a legal vacuum exists that leaves domestic workers outside the formal protection of labor law, making them vulnerable to exploitation and rights violations. Therefore, regulations at the legal level are needed that expressly recognize domestic workers as part of the workforce entitled to fair, humane, and certain legal protection.

Keywords : domestic helpers, legal protection, employment relations, employment.

Introduction

Domestic workers (PRT) or domestic assistants (ART) are a common occupation, particularly in Indonesia. Data from the International Labour Organization (ILO) in 2022 shows that approximately 67.1 million people work as domestic workers worldwide, and approximately 17.2 percent (11.5 million) of these are domestic workers working outside their home country. Data from Indonesia in 2022 estimated the number of domestic workers at around 5 million, with the majority being women.

The employment relationship between domestic workers and their employers is one of the oldest and most common forms of employment in Indonesian society. Domestic workers

play a crucial role in supporting household activities and even enabling the employer's family members to engage in economic and social activities outside the home. However, domestic workers are often viewed as a personal, familial, and informal employment relationship, and are therefore not explicitly positioned as an employment relationship subject to labor law. This situation creates vulnerability for domestic workers due to the lack of clear legal standing guaranteeing their rights as workers.

Normatively, Law Number 13 of 2003 concerning Manpower, in conjunction with Law Number 6 of 2023 concerning the Stipulation of the Job Creation Regulation in Lieu of Law (Perppu) into Law, regulates the employment relationship between workers/laborers and employers within the company. However, domestic workers working in households are not explicitly recognized as workers within the industrial relations framework as defined in the law. As a result, various provisions regarding minimum wages, working hours, social security, occupational safety and health, and industrial relations dispute resolution mechanisms do not automatically apply to domestic workers. This regulatory gap creates legal uncertainty and opens up opportunities for human rights violations, such as inadequate wages, inhumane working hours, and physical and psychological violence.

In practice, the relationship between domestic workers and employers is often subordinate, with domestic workers in a very weak bargaining position. The absence of written employment agreements, economic dependency, and minimal legal knowledge among domestic workers exacerbate this situation. In fact, in many cases, domestic workers are treated not as workers, but as "helpers" positioned outside of formal legal protection. This situation demonstrates a gap between social reality and the prevailing labor law.

Efforts to protect domestic workers have been made through several policies, such as Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers. However, this regulation's status, at the ministerial level, limits its binding power and effectiveness. Furthermore, the absence of a specific law governing domestic workers further clarifies that legal protection for this group of workers has not received adequate attention within the national labor law system.

From the perspective of human rights and the principles of a welfare state adopted by Indonesia, every worker has the right to protection, fair treatment, and humane working conditions. This aligns with the mandate of Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees the right of every citizen to work and to receive fair and decent treatment in employment relationships. Therefore, domestic workers, as part of the workforce, should also receive adequate legal protection.

The issue of the status of domestic workers in the employment law system and the forms of legal protection available to them are important to examine in depth. This study is necessary to assess the extent to which positive law in Indonesia recognizes and protects domestic workers, while also identifying gaps and weaknesses in existing regulations. This is expected to lead to the development of a more equitable legal framework that provides legal certainty for domestic workers in their employment relationships with employers.

Based on this description, this research will focus on the discussion of the position of domestic workers in the employment law system in Indonesia and the forms of legal

protection that can be provided to domestic workers in employment relationships with employers.

Methods Research

This research uses a normative legal research method (normative juridical), namely research that focuses on the study of legal norms contained in laws and regulations, legal principles, doctrines, and court decisions related to legal protection for domestic workers in employment relationships with employers. Normative research was chosen because the problems studied are related to the legal status of domestic workers in the employment law system and the form of legal protection that should be provided normatively according to positive law in Indonesia. The approaches used in this research include several approaches, namely the statute approach, the conceptual approach, and the case approach. The statutory approach is carried out by examining various relevant laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower in conjunction with Law Number 6 of 2023, Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers, and other regulations related to human rights and labor protection. A conceptual approach is taken by examining legal concepts regarding employment relations, legal protection, human rights, and the concept of workers in labor law. Meanwhile, a case-based approach is taken by examining several cases related to violations of domestic workers' rights to see how the law is applied in practice.

The legal sources used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations, court decisions, and official legal documents related to employment and the protection of domestic workers. Secondary legal materials consist of legal literature, books, scientific journals, research findings, and expert opinions relevant to the research topic. Tertiary legal materials consist of legal dictionaries, encyclopedias, and other sources that assist in explaining the primary and secondary legal materials.

The legal materials were collected through library research, which involves searching, collecting, and reviewing various legal materials relevant to the research problem. All collected legal materials were then analyzed qualitatively using legal interpretation methods, including grammatical, systematic, and teleological interpretation, to gain a comprehensive understanding of the position of domestic workers within the labor law system and the forms of legal protection that should be provided. The analysis was conducted by outlining, connecting, and comparing various existing legal provisions with the reality of the position of domestic workers in employment practices. The results of the analysis are then compiled systematically and logically to answer the research problem formulation, so that conclusions are obtained regarding the legal position of domestic workers in the employment law system in Indonesia and the forms of legal protection that can be provided in employment relationships with employers.

Results and Discussion

The Position of Domestic Helpers in the Indonesian Employment Law System

The status of domestic workers (PRT) within the Indonesian labor law system remains a normatively grey area. On the one hand, domestic workers actually perform work for others in exchange for wages, thus fulfilling the elements of an employment relationship. However, on the other hand, the national labor law does not explicitly include domestic workers as subjects within the scope of industrial relations as stipulated in labor laws and regulations.

Conceptually, an employment relationship under Indonesian labor law is based on three main elements: work, wages, and orders. These elements are affirmed in Article 1, number 15 of Law Number 13 of 2003 concerning Manpower. Sociologically, the relationship between domestic workers and their employers actually fulfills all three elements. Domestic workers perform certain domestic work, receive wages in return, and are under the orders of their employers. However, obstacles arise because the law regulates employment relationships in the context of "companies", whereas households are not qualified as companies in the sense of employment law.

As a result of this normative construction, domestic workers are not included in the category of workers/laborers directly protected by the Manpower Law. Provisions regarding minimum wages, working hours, rest periods, social security, occupational safety and health, and mechanisms for resolving industrial relations disputes do not automatically apply to domestic workers. Therefore, although domestic workers are substantively in an employment relationship, they are formally and legally outside the legal protection system of employment law.

This lack of recognition results in domestic workers being viewed more as a normal civil relationship based on trust and personal agreements between the domestic worker and employer. This relationship is often perceived as a familial relationship, rather than a professional one. This paradigm results in the absence of written employment agreements, unclear rights and obligations, and a lack of standards for proper employment treatment. In many cases, domestic workers work without clear working hours, without holidays, and without protection against occupational risks.

Efforts to provide normative recognition to domestic workers have actually been made through Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers. This regulation explicitly recognizes the term "Domestic Worker" and regulates the rights and obligations of domestic workers and employers, including the recommendation of a written employment agreement. However, the ministerial regulation's status as a subordinate law means it lacks binding force and cannot fundamentally change the status of domestic workers in the labor law system.

From a constitutional perspective, domestic workers, as citizens, have equal rights to work and receive fair and proper treatment in employment relationships, as guaranteed in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution. Therefore, ignoring the status of domestic workers in the labor law system actually contradicts the principles of human rights protection and the concept of a welfare state adopted by Indonesia. The state should be present to ensure that all forms of work, including domestic work, receive adequate legal protection.

Furthermore, from the perspective of legal protection theory, the existence of the law aims to protect the weaker party in a legal relationship. In the relationship between domestic workers and employers, domestic workers' bargaining position is very weak due to economic dependence, relatively low levels of education, and a lack of legal understanding. This situation demands stronger legal intervention to create a balanced employment relationship.

In judicial practice, cases involving domestic workers are often resolved through criminal channels (for example, in cases of violence) or general civil proceedings, rather than through industrial relations dispute resolution mechanisms. This further confirms that

domestic workers are systematically not recognized as subjects of labor law. The lack of access to industrial relations dispute resolution mechanisms causes domestic workers to lose the legal means to demand their rights as workers.

Thus, it is understandable that domestic workers remain outside the formal structure of industrial relations within Indonesia's labor law system. Domestic workers find themselves in a paradoxical position: they are, in fact, workers, but legally, they are not yet fully recognized as such within the labor law system. This situation indicates a legal gap that directly impacts the weak legal protection of domestic workers.

This problematic status highlights the urgency of establishing legislation that explicitly recognizes domestic workers as part of the workforce entitled to the same legal protections as other workers. Without such recognition, domestic workers will continue to exist in informal settings, vulnerable to exploitation and rights violations.

Forms of Legal Protection Given to Domestic Helpers in Employment Relations with Employers and Obstacles in Implementing Legal Protection for Domestic Helpers in Indonesia

Legal protection for domestic workers (PRT) in employment relationships with their employers essentially embodies the principle that every worker has the right to fair, humane, and dignified treatment. Although domestic workers are not yet explicitly recognized as subjects within the industrial relations regime under the Manpower Law, various legal instruments in Indonesia have provided a normative basis for protecting domestic workers, including through employment approaches, human rights, and criminal and civil law.

Legal protection for domestic workers can be seen primarily in Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers. This regulation serves as a specific instrument that explicitly governs the relationship between domestic workers and employers. The regulation stipulates the rights of domestic workers to obtain information about their service users, receive agreed wages, receive healthy food and drink, have adequate rest periods, take leave, have the opportunity to worship, and receive good treatment from their employers. Furthermore, it also stipulates the obligation of employers to draw up employment agreements, both written and verbal, outlining the rights and obligations of the parties. These provisions demonstrate the state's efforts to provide minimum standards of protection in domestic employment relationships.

Furthermore, legal protection for domestic workers can also be derived from the constitutional guarantees in the 1945 Constitution of the Republic of Indonesia. Article 27 paragraph (2) and Article 28D paragraph (2) guarantee that every citizen has the right to work and fair and decent treatment in employment relationships. This constitutional norm applies universally regardless of the type of employment, so in principle, domestic workers are also included among those protected by the constitution.

From a human rights perspective, Law Number 39 of 1999 concerning Human Rights also provides protection for everyone from degrading treatment, exploitation, and violence. In practice, many cases involving domestic workers are related to human rights violations, such as physical and psychological violence, withholding of wages, and restrictions on freedom. In this context, human rights and criminal law instruments serve as the basis for protection when serious violations by employers occur.

Another legal protection can be seen in the potential application of civil law to the relationship between domestic workers and their employers. This employment relationship can essentially be constructed as an employment contract, as regulated in the Civil Code, specifically regarding obligations and agreements. With an employment contract, domestic

workers have a legal basis to demand fulfillment of their rights if their employer defaults, for example, by failing to pay wages as agreed.

However, although various forms of legal protection are normatively available, in practice, various obstacles hinder their effective implementation. The first obstacle is the non-recognition of domestic workers as workers within the scope of the Manpower Law, making all formal labor protection mechanisms, including labor inspection and industrial relations dispute resolution, inaccessible to domestic workers.

The second obstacle is the weak position of Minister of Manpower Regulation Number 2 of 2015 within the hierarchy of laws and regulations. This regulation lacks strong coercive power and is not accompanied by a clear sanction mechanism for employers who violate its provisions. As a result, the implementation of protection often depends solely on the good faith of employers. The third obstacle is social and cultural factors that still view the relationship between domestic workers and their employers as a familial one, not a professional one. This paradigm results in many employers not feeling obligated to meet appropriate employment protection standards. In fact, domestic workers themselves are often unaware that they have rights that must be respected.

The fourth obstacle relates to the low level of education and legal understanding of domestic workers, resulting in their lack of knowledge of legal remedies when their rights are violated. Furthermore, domestic workers' work in the private sphere of the household complicates state oversight and hinders access to legal aid.

The fifth obstacle is the lack of an adequate data collection and oversight system for domestic workers. Unlike workers in companies who are administratively registered, domestic workers work in the informal sector, which is difficult for labor inspection systems to reach.

Due to these various obstacles, legal protection for domestic workers in Indonesia remains normative and ineffective in implementation. This highlights the need for stronger regulations at a higher level, increased oversight, and a shift in societal paradigms so that domestic work relationships are viewed as employment relationships with clear legal consequences. Without these measures, domestic workers will remain vulnerable to exploitation and rights violations in their employment relationships with their employers.

Conclusion

The position of domestic workers (PRT) in the Indonesian labor law system has factually fulfilled the elements of an employment relationship due to the existence of work, wages, and orders, but from a formal legal perspective, they have not been recognized as part of the subject of industrial relations as regulated in the Manpower Law. The absence of this recognition causes domestic workers to be outside the scope of normative protection related to wages, working hours, social security, occupational safety, and industrial relations dispute resolution mechanisms. Although there have been regulatory efforts through the Minister of Manpower Regulation Number 2 of 2015, their weak position in the hierarchy of laws and regulations has not been able to provide certainty and effective legal protection. This condition indicates a legal vacuum that is contrary to the principle of human rights protection and the concept of a welfare state that guarantees everyone the right to fair and decent treatment in employment relations. Legal protection for domestic workers (PRT) in employment relationships with employers is normatively based on Minister of Manpower Regulation Number 2 of 2015, constitutional guarantees in the 1945 Constitution, human rights instruments, and civil and criminal law provisions. However, this protection is not yet effective because domestic workers are not yet recognized as subjects within the labor law regime, thus preventing them from accessing formal protection mechanisms such as labor

inspection and industrial relations dispute resolution. Weak regulatory standing, erroneous social paradigms, poor understanding of the law regarding domestic workers, and minimal state oversight are the main obstacles to the implementation of legal protection. As a result, domestic workers remain vulnerable to exploitation, rights violations, and inhumane treatment in domestic employment relationships.

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