

The Urgency of Policies to Combat Violence against Domestic Workers



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ABSTRACT: This article answers the importance of Policies for Combating Violence Against Domestic Workers (PRT) that are firm and comprehensive in providing legal protection. This problem arises from the lack of clarity in the current regulations, namely regarding security for carrying out the teachings of a religion, especially the teachings of Islam. So far, Indonesia does not yet have a law that specifically regulates efforts to deal with criminal acts of violence against domestic workers. This article will discuss the urgency of the Policy for Combating the Crime of Theft Against Domestic Workers. The research method used research that is normative juridical, namely research with a focus on the study of the application of norms in positive law in Indonesia. Regulations regarding legal protection for domestic workers are still not clear or explicit. The rules used relating to the protection of domestic workers still use Article 2 paragraph 1 letter C and article 2 regulates domestic workers. Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This article is still felt to be less effective. Therefore, it is deemed necessary to immediately enact a separate law relating to the legal protection of domestic workers (PRT) so that they can guarantee security and protection when working as domestic workers.

KEYWORDS: Criminal act; Domestic Workers; policy, Violence

I. INTRODUCTION

Article 28 G paragraph (1) of the 1945 Constitution of the second amendment states that: "Everyone has the right to the protection of his person, family, honor, dignity and property under his control, and the right to security and protection from threats of fear to do or not to do something which is a human right". These basic provisions essentially provide guarantees for the protection of personal, family and society which is realized by the development and reform of appropriate laws, thus in legal reform including criminal law must consider the values that live in society.¹

One of the efforts to realize this life system and ensure the equal position of citizens in law requires effective and balanced law enforcement efforts by taking into account the rights of victims and the community in a judicial process, both in the context of public law and private law with all its developments.

The development of public law, especially criminal law, as stated by E.Y. Kanter and S.R. Sianturi, is seen as an act of damaging or harming the interests of others and followed by retaliation. This retaliation is generally not only the obligation of someone who is harmed or exposed to action, but extends to the obligation of the whole family, family and even some things become obligations of society.

The development of criminal law above is also manifested in the Crime of Violence against Domestic Workers (PRT) which is a development of the scope of crime in the family. Recent developments show that physical, psychological, sexual violence and neglect of domestic workers (PRT) in fact occur, so concrete action is needed in the form of law enforcement on violence against domestic workers (PRT).

The crime of violence against domestic workers (PRT) is a crime that can be considered as a certain crime, because the crime has its own characteristics, lies in its specific subject, namely the perpetrator and victim are within the scope of the household. So according to Hermien Hadiati Koeswadji, certain criminal acts regulated in special regulations outside the Criminal Code are interpreted by special criminal laws. The legal subjects of domestic workers in these provisions are persons and subordinates who are in a certain time and space. Indeed, the government is responsible for preventing domestic violence.

¹ Nyoman United Putra Jaya, *The Relevance of Customary Criminal Law in National Criminal Law Reform* (Bandung: Citra Aditya Bakti, 2005), p. 115.

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The busyness that exists in the career family makes them not always able to do all the household chores. Therefore, this family usually presents the figure of a domestic worker (PRT) to help with daily household chores. In the labor sector, the existence of domestic workers is not included in the category of work in government and private institutions. Therefore, domestic workers are put into an informal scope. The informal sector filled with domestic workers such as domestic workers is vulnerable to various acts of violence and certainly requires extra protection from the state.²

Violence against domestic workers is a crime that abuses and tarnishes humanity, and should be categorized as a crime against humanity.³ Ironically, in Indonesia the list of victims of domestic workers due to violence committed by employers is still ongoing day by day. One example of the case of Mariyati (age 15) in Tangerang who received attention from various institutions because of her tragic death, was killed by her employer just because she was accused of stealing bread and even buried in her yard. Fortunately, the barbaric incident was known to his employer's driver who was then reported to the police⁴.

Meanwhile, the National Commission on Human Rights (Komnas HAM) released the results of reflections or year-end notes on a number of human rights implementation problems in Indonesia. One of them is related to the problem of human rights violence in vulnerable or marginalized groups. Komnas HAM conveys groups that are at risk of experiencing human rights violations covering various social aspects of society.⁵

These groups include persons with disabilities, migrant workers, **domestic workers**, indigenous peoples, and the elderly. Domestic workers are the group most abused. Komnas HAM said that throughout 2017-2022 ALA domestic workers documented at least 2,637 cases of violence against domestic workers.⁵ Violence against domestic workers includes multifaceted violence, including both physical and economic violence. The number of multitype violence reached 41 cases. Multitype violence is psychological, physical, economic, and sexual violence given to domestic workers.⁶ Because of this habit led to an increase in jobs as domestic workers out there. However, state attention to domestic workers is still minimal, causing cases against workers in this family sphere.⁷

Currently, arrangements related to Protection to Domestic Workers (PRT) regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), Law No. 13 of 2003 concerning Manpower jo. Law No. 11 of 2020 concerning Job Creation (Manpower Law) and Law No. 40 of 2004 concerning Social Security (Social Security Law) are still unable to provide protection to domestic workers from violent criminal acts committed by perpetrators. The true meaning of the elimination of domestic violence related to domestic workers in this law is to prevent all forms of violence that occur to domestic workers (preventive purposes), protect victims of domestic violence (protective purposes), crack down on perpetrators of violence against domestic workers (repressive purposes), and maintain harmonious and prosperous integrity between domestic workers and homeowners (consolidative purposes) that is the embodiment of the principle of equal rights and respect for human dignity.

The vagueness and absence of the Domestic Worker Law has resulted in no guarantee that domestic workers in Indonesia are free from exploitation and injustice. Acts of exploitation of domestic workers, injustice of the balance of their rights and obligations and even acts of violence against domestic workers should be used as the basis for the need for special regulations governing domestic workers in Indonesia.

Based on the polemics that occur in the social life of the community and the many victims of Domestic Workers (PRT) from acts of domestic violence that have sprung up, this attracts the author to write scientific papers, writing scientific papers will focus on the importance of the establishment of the Law on Legal Protection to Domestic Workers (PRT) which is studied by taking into account previous laws before the establishment of the Law on Legal Protection to Future domestic workers. Based on some of the problems that have been mentioned above, the formulation of the problem that can be raised in writing this article is: What is the Urgency of the Establishment of a Law on Legal Protection for Domestic Workers (PRT)? What is the policy on combating Violence Against Domestic Workers in Indonesia?

II. RESEARCH METHODS

The research used in writing this article is normative legal research and principles used in *legal disciplines* According to Peter Mahmud Marzuki "Legal Research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues

² Ana Sabhana Azmy, *The State and Women Migrant Workers: Reviewing the Protection Policy of the 2004-2010 Susilo Bambang Yudhoyono Administration*, (Jakarta: Yayasan Pustaka Obor Indonesia, Jakarta, 2012, 2012), p. 5.

³ Alimuddin, *Settlement of Domestic Violence Cases in Religious Courts* (Bandung: CV. Mandar Maju, Bandung, 2014), p. 38.

⁴ "DOMESTIC WORKER CASE," Hukumonline, 2019, <http://www.hukumonline.com/domestic-worker-case>. ⁵ Bachtiarudin Alam, "2,637 cases of violence occurred against domestic workers during 2017-2022," Merdeka.com, 2022, p 1.

⁵ Nature, p. 1.

⁶ Siti Rahmawati, "Criminal Law Policy in the Protection of Domestic Workers Victims of Violence," *LEX Renaissance* 05, No 4 (2020): p 846.

⁷ Muhammad Yafi Azhari and Abdul Halim, "Domestic Workers' Rights and Legal Protection in Indonesia," *Media Iuris* Vol. 4 No. (2021): p 174, <https://doi.org/10.20473/mi.v4i2.25492>.

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faced"⁸⁹, the data used in this study are data in the form of analysis using a conceptual approach, a *statutory approach* (*statute approach*), and a case approach (*case approach*). There are 2 (two) sources of legal materials in this study, namely primary legal materials and secondary legal materials.

The type of research used in this study is *Doctrinal Research*. This type of research is used to analyze applicable laws and regulations (positive law) to find formal juridical truth. The primary legal material in this study consists of the Constitution of the Republic of Indonesia 1945, Law Number 1 of 1946 concerning the Criminal Code (KUHP), Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), Law No. 13 of 2003 concerning Manpower jo. Law No. 11 of 2020 concerning Job Creation (Manpower Law) and Law No. 40 of 2004 concerning Social Security (Social Security Law).

III. DISCUSSION

A. The Urgency of Establishing a Law on Legal Protection for Domestic Workers

Domestic Worker is a job that is needed today, almost every family has a domestic worker (PRT) to take care of the house because they do not have time to take care of it due to busy work outside the home. This happens because many activities are carried out by homeowners. The case of domestic workers is a problem that often occurs every year in Indonesia, problems that occur in domestic workers in the form of gender, sexual violence and trafficking in persons¹⁰. In addition to discrimination, domestic workers also do not have a decent life because the provisions of their rights have not been fulfilled.

The word Domestic Worker, abbreviated as the word domestic worker, is often referred to as a domestic helper. The word "worker" which indicates that there is an equal relationship between two parties who have an agreement over the employment relationship, is different from the word "helper" which is understood as a lower *level position*. Therefore, domestic workers often get injustice from the employers where they work. The assumption that domestic workers are low jobs is further reinforced by society's view that domestic workers are home-based jobs, do not require formal education requirements to apply for them, and do not have formal protection of their rights and obligations.¹¹

Domestic workers, who are underestimated by most people, create their own concerns for these workers. Even though domestic workers are included in the labor class as stipulated in the Manpower Law, special rules related to domestic workers are still needed. In carrying out the work of domestic workers doing it as work in the informal sector, eventually many underestimate the work of domestic workers and assume there is no governing arrangement.¹²

The existence of domestic workers until now has not been recognized as the same workforce as other workers. In social life, domestic workers are considered helpers. The large number of workers within the scope of domestic workers deserves more attention. Based on a report by the State Ministry of Women's Empowerment that describes the current condition of domestic workers in Indonesia, namely: most of them are women, with immature age, in poor conditions, indefinitely working, and experiencing violence and slavery (domestic slavery).

Providing protection to domestic workers is a form of necessity as a country that guarantees the rights of every domestic worker also received attention from the *International Labour Organization* (ILO), namely in 2011 the ILO convened the ILO has issued Convention Number 189 concerning Decent Work for Domestic Workers. This Convention is evidence that domestic workers need to be legally protected as human rights.¹³

The Convention mandates standards for domestic workers, such as basic rights for workers, promotion and protection of the human rights of all workers. Respect and protect fundamental principles and rights in the workplace such as freedom of association and the elimination of all forms of forced or compulsory labor, the elimination of child labor, the elimination of discrimination in employment and occupation. Effective protection from all forms of abuse, harassment and violence. Fair working conditions and decent living conditions. In addition, domestic workers must be informed before they work in an easy-to-understand manner.

In Indonesia, informal domestic workers work 6 or 7 hours a week and 40 hours or more a week, earning Rp. 1,000,000 per month, the largest domestic worker province is West Java at 859,000. According to ILO data, approximately 70.49 million

⁸ Amiruddin and Zainal Asikin, *Introduction to Legal Research* (Jakarta: Rajawali Pers, 2018), p. 33.

⁹ Peter Mahmud Marzuki, *Legal Research Revised Edition* (Jakarta: Kencana, 2013), p. 35.

¹⁰ Halim, "Domestic Workers' Rights and Legal Protection in Indonesia," p. 174.

¹¹ Iman Pasu Marganda Hadiarto Purba Siti Maizul Habibah, Oksiana Jatiningsih, "The Human Rights Guarantee for Domestic Workers through a Work Agreement in Surabaya," *Human Rights Journal* 12, No 2 (2021): p 245, <https://doi.org/http://dx.doi.org/10.30641/ham.2021.12.245-260>.

¹² I Made Udiana I Dewa Ayu Dila Pariutami, "LEGAL PROTECTION OF DOMESTIC WORKERS' RIGHTS THAT ARE NOT IN ACCORDANCE WITH THE UNDERHAND AGREEMENT," *Kertha Semaya* Vol 8 Nomo (2020): p 1297, <https://doi.org/https://doi.org/10.24843/KS.2020.v08.i08.p15>.

¹³ Kartika Dewi Mulyanto, "The Urgency of Ratification of the Convention on Decent Work for Domestic Workers: Efforts to Increase Protection," *Law: Law Journal* Ol. 1 No. (2018): pp. 111, <https://doi.org/10.22437/ujh.1.1.109133>.

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people work in the informal sector, of which 61% are women. In total about 9 million workers are displaced, 60-70% of whom are women as domestic helpers abroad. Data from 2015 estimates the number of domestic workers in Indonesia to reach 4 million.

Data recorded by Komnas Perempuan, it is confirmed that violence against women still often occurs, especially violence in domestic violence / RP. It was recorded that in 2015 there were 11,207 cases of violence against women in the family and/or personal relationships, including domestic workers. According to the National Ministry of Women's Empowerment Report, the report describes the current situation of Indonesian domestic workers as most women, minors, in poor situations, have no limits on working hours, and experience violence and slavery. At the same time, according to the annual records of the National Committee on Queuing Violence against Women, this number is increasing every year. Experienced very high growth reaching 35% in 2011 and 2012. In 2015 the number of cases increased by 9% compared to 2014.¹⁴

According to ILO estimates the number of Domestic Workers (FDHs) in developed countries is low, at 0.9% and in developing countries accounts for a much larger proportion in Latin America and the Caribbean, 11.9% followed by the Middle East at 8.0%, Africa at 4.9%, and Asia at 3.5%. The ILO says there are 52.6 million workers in the world, and domestic workers are an important source of employment.¹⁶

Based on the presentation of the data presented above, this has an impact on the emergence of domestic workers as victims. This is as stated by the Indonesian Domestic Workers Advocacy Network that from 2007 to 2011, Indonesia experienced 726 serious acts of violence against domestic workers, including 536 cases of wage arrears, of which 348 were domestic workers and cases of arrest, abuse, and serious injury to death totaling 617 cases. Not only that, domestic workers have experienced unilateral layoffs, layoffs and salary reductions, because the Covid-19 pandemic has had a major impact on work and health. In addition, JALA PRT collected, 417 domestic workers experienced violence such as physical, psychological, and economic violence in 2020.¹⁵

Based on a series of problems that have been presented above, if examined from the context of Human Rights (HAM), there is a discrepancy in the fulfillment of the rights to obligations that have been carried out by domestic workers. This often happens because of vagueness in the laws and regulations governing domestic workers' problems such as low or unpaid wages, working hours that have no restrictions, inadequate facilities that support domestic workers for security, health and safety, vacation or leave rights, unrestricted workload and vulnerable to physical violence and the severity of human rights violations.

Legal protection for domestic workers can only be implemented if there is a clear legal basis to apply to domestic workers and make them human beings who must be protected especially in the world of work, especially positioning domestic workers in employment agreements to have the same position as employers (employers). In providing protection of civil rights, domestic workers arising from the existence of labor relations, especially in normative rights, can adopt the provisions of basic workers' rights stipulated in the UUK.

Policies that can be used to protect domestic workers are not yet legally recognized in the country. Likewise, regulations for domestic workers are also not uniform for all regions of Indonesia. This arrangement is certainly different according to the cultural customs and customs of each region. The conditions mentioned above illustrate in addition to the absence of strong legal protection, it also illustrates the absence of legal certainty for domestic workers themselves. This has resulted in weak *bargaining* of domestic workers vis-à-vis their employers before the law.

It is not impossible to influence the high cases of violence against domestic workers themselves.

B. Policy on Combating Violence Against Domestic Workers in Indonesia

From the past until now, violence against domestic workers has been difficult to stop. Because violence in domestic workers is very difficult to control because it occurs within the household, victims do not want to report violence due to fear of the homeowner, on the other hand this helplessness is also caused by the lack of comprehensive regulations related to domestic workers, this lack of regulation of domestic workers' rights is the dominant factor that makes victims of domestic violence still increasing, This is because their domestic victims do not know where to report and do not know which laws they should use to protect themselves.

Then, this domestic violence is more common in people who are in close contact with the perpetrator. In this case, just like women and children, they live in the same house with the perpetrator. Thus, women and children in families unwittingly become victims because the perpetrator of domestic violence is usually the husband or father of the child.

To protect victims of violence against domestic workers, the government issued a law.

The legal rules in question are the Constitution of the Republic of Indonesia 1945, Law Number 1 of 1946 concerning the Criminal Code (KUHP). Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), Law No. 13 of 2003 concerning Manpower jo. Law No. 11 of 2020 concerning Job Creation (Manpower Law), Law No. 40 of 2004 concerning Social Security (Social Security Law) and Permenaker No. 2 of 2015 concerning Protection of Domestic Workers (PRT).

¹⁴ Mulyanto, p 12. ¹⁶ Mulyanto, p 12.

¹⁵ "Press Statement by the Women's Institute Welcoming the International Day for the Elimination of Violence Against Women 'The State Must Protect Women Domestic Workers'" (Indonesia, 2022), <http://www.institutperempuan>.

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In Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it also regulates domestic workers, namely Article 2 paragraph 1 Letter C and article 2 regulates Domestic Workers. In Law Number 23 of 2004 concerning the Elimination of Domestic Violence, domestic workers are equated as family members¹⁶ and there is no explicit mention of domestic workers.

Meanwhile, if you understand the perspective of Law Number 13 of 2003 concerning Manpower has not provided protection for domestic workers as workers, there is not even a single article that provides protection for domestic workers, even though Article 1 number 4 of the Law determines that the employer is an individual person, and in criminal provisions it is often mentioned with whose goods.¹⁷ Not only that, in the application of the law, there are still several rights owned by domestic workers, especially for women, which cannot be implemented, including reproductive rights, maternity leave rights, protection rights from sexual violence and discrimination in wages, positions, and benefits discrimination.¹⁸ Although Law Number 13 of 2003 concerning Manpower, stipulates standard rights for workers in Indonesia which is defined as "A person who works and earns wages and or other forms of wages". But this is not intended or given to domestic workers¹⁹ which implies the non-fulfillment of the right as citizens to be protected by the State under the UUK.

However, if the condition of domestic workers is considered Permenaker No. 2 of 2015 concerning Protection of Domestic Workers can also be relied on because this regulation cannot reach Law No. 13 of 2003 in employment relations. Moreover, the regulation does not specify domestic workers' rights such as wage standardization, regulation of working hours and rest periods, weekly leave, annual leave, communication and association rights, and written and nonverbal agreements.

Meanwhile, when viewed using our Constitution, namely the Constitution of the Republic of Indonesia Year 1945 conception of state responsibility in human rights (*state responsibilities*), as seen in Article 28 I (4) and (5), which states "The protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government and to uphold and protect human rights in accordance with the principles of the rule of law democratic, then the implementation of human rights is guaranteed, regulated, and set forth in laws and regulations." Both are key in seeing the constitutional responsibility that must be carried out by the state, in this case the government, to carry out efforts to promote human rights.²⁰

The rules that apply in Islamic banking almost all refer to general regulations made by the Financial Services Authority only, while the rules of the Financial Services Authority do not explain in detail the development of Islamic banking in *Digital Banking*. Therefore, it is necessary to clarify the mechanism for implementing digital-based Islamic banking activities to distinguish between Islamic banks and conventional banks. This is because it will have an impact on the pattern of progress of Islamic banking itself, especially in Muslim-majority Indonesia.

Various activities of community life have been realized in the form of laws in order to ensure the creation of justice, legal certainty and expediency, but in fact even though they are manifested in the form of laws, it turns out that in their implementation many are not obeyed by the community. According to Gustav Radbruch, law must contain 3 identity values, namely: the principle of legal certainty (*rechmatigheid*) which is reviewed from a juridical angle, the principle of legal justice (*gerechtigheit*) which is reviewed from a philosophical angle, and the principle of legal expediency (*zweckmatigheid*) or *doelmatigheid* or utility.²¹

One of the factors for the non-fulfillment of the legal ideals as referred to above is the lack of comprehensive regulation of Domestic Workers (PRT) in laws and regulations. Law reform policy is very necessary because the policy in the form of law formation is part of the activity in regulating society consisting of a combination of human individuals with all its dimensions²² so that this can have implications for the prevention of victims of violence committed by perpetrators to domestic workers even though the formation of laws is not easy to formulate.²³ This difficulty lies in the fact that the activity of forming laws is a form of communication between the institution that establishes, namely the holder of legislative power and the people in a country.²⁴

¹⁶ Tina Marlina, Montisa Mariana, and Irma Maulida, "Law No. 23 of 2004 on the Elimination of Domestic Violence," 5 *Abdimas Awang Long* § (2022), p 4, <https://doi.org/10.56301/awal.v5i1.442>.

¹⁷ Ida Hanifah, "LEGAL PROTECTION POLICY FOR DOMESTIC WORKERS THROUGH LEGAL CERTAINTY," *Journal of INDONESIAN LEGISLATION* Vol 17 No.2 (2020): p 197.

¹⁸ Desia Rakhma Banjarani and Ricco Andreas, "Protection and Access to the Rights of Women Workers in Indonesia: A Review of Law Number 13 of 2003 concerning Manpower under ILO Conventions," *Human Rights Journal* Vol 10. 01 (2019): pp. 115-126.

¹⁹ Hanifah, "LEGAL PROTECTION POLICY FOR DOMESTIC WORKERS THROUGH LEGAL CERTAINTY," p. 195.

²⁰ Hanifah, p. 196.

²¹ Muhammad Urfi Amrillah, "The Urgency of Establishing a Digital Banking Law for Sharia Banking in Indonesia," *LEX Renaissance* Volume 5, (2020): pp. 929-930.

²² Putera Astomo, "The Formation of Laws in the Framework of National Law Reform in the Democratic Era," *Journal of the Constitution*, Volume 11, (2014): p 576.

²³ Astomo, p. 576.

²⁴ Pierre Andre Cotte, *The Interpretation of Legislation in Canada* (Canada: Les Editions Yvon Balais, Inc., Quebec, 1991), p. 4.

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Based on the description above, the researcher believes that the comprehensive elaboration of domestic workers submitted which is then made in the form of laws and regulations is increasingly important to be done not only to protect domestic workers (PRT) but also to realize the ideals of law that are in accordance with society.

The establishment of the Domestic Workers (PRT) Legislation is a form of authority given to the Central Government in order to accommodate the special conditions that exist in society and / or further elaboration of higher laws and regulations. The Domestic Workers (PRT) regulation is one of the tools in carrying out social transformation and democracy as a manifestation of society. On that basis, the establishment of domestic worker regulations must be carried out in accordance with principles. So that the formation of Domestic Workers (PRT) is more targeted and coordinated.

IV. COVER

A. Conclusion

From the analysis submitted, the conclusion that can be drawn is that the policy on Combating Violence Against Domestic Workers (PRT) used when going through several scattered laws is still felt to lack a sense of justice or has not fulfilled the expected legal ideals. Policies that can be used to fulfill this sense of justice through the establishment of laws and regulations that specialize in Domestic Workers (PRT).

B. Suggestion

Based on the conclusions of this study, it is recommended to the Government of the Republic of Indonesia and the House of Representatives of the Republic of Indonesia to discuss legal protection arrangements for Domestic Workers (PRT) so as to protect against acts that are contrary to the law when they want to carry out housework. So that with this regulation, it automatically provides legal certainty to the community and Domestic Workers and law enforcement (police and public prosecutors) in carrying out comprehensive legal actions against the perpetrators.

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