

# LEGAL PROTECTION FOR DOMESTIC WORKERS OF WOMEN UNDER THE INTERNATIONAL CONVENTION ON HUMAN RIGHTS

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## ABSTRACT

*Purpose of this research is to know the protection for female domestic workers from the Human right Perspective. The result the protection for female domestic workers under international conventions is in line with human right. The result of this research are identified that and legal protections for migrant domestic workers primarily for women domestic workers, where they are the most vulnerable subjects facing the violations human right such as physical violence of sexual. Human rights through its international legal instrument have become the main standard in the effort to create a regime of legal protections for domestic workers both when they are in their home country and especially when they are immigrants in the recipient country, the formation of international conventions such as the protection convention for migrant workers and its relatives and specifically the international Labour Organizations (ILO) thought Convention No. 189 of 2011 on decent work for domestic workers, in which the conventions are inseparable from the human rights contribution that oversees.*

**Keywords:** Legal Protection, Women Domestic Worker, the International Convention on Human Right.

## INTRODUCTION

Protection for workers is needed, including work safety and social security, because there is special attention for women a worker because physically and generally women are weak. Likewise, the decency of women in the work environment is not covered by possible immoral acts and actions that can endanger their safety and decency so that they need to be guarded and prevented. The state as one of the parties in the obligation to provide protection for its citizens must be able to guarantee legal certainty for domestic workers who are outside their territory (International Organization for Migration, 2010). The practice of illegal recruitment can cause workers to be trapped in a debt-tied situation to go abroad. Often the workforce is not trained properly and does not understand their rights so it is easy to exploit. The countries of destination and transit often face problems with illegal migration, organized criminal networks involving people trafficking and people smuggling and other social problems. The transnational nature of labour migration requires the involvement of sending countries, transit and destination countries to face these challenges (International Organization for Migration, 2010).

Migrate or to try a decent livelihood in another country with the aim of improving the economy of the family does not necessarily be obtained easily. Because some of them must be passed very difficult, some of them must accept actions that are not in accordance with human rights, there are the existence of exploitation, discrimination and harsh treatment of the employer<sup>1</sup>.

None of this also became the forerunner of the initial thinking so that an international human rights agreement was made, namely The Universal Declaration of Human Rights on December 10, 1948.

## METHOD

This research uses normative legal research, is research conducted on legal principles, legal principles in terms of values (norms), concrete legal rules and legal systems, (Sudikno, 2004) which relate to the material under study related to the issues discussed in the research.

Legal materials used are primary legal materials, secondary legal materials and tertiary legal materials. The approach used is the legislative approach and conceptual approach, the analytical technique used is quantitative (Sefriyani, 2017).

## RESULT AND DISCUSSION

Domestic workers are one type of the lowest point of the various types of work done by migrant workers, motivated by the type and nature of this work, which is one of the most controversial studies and debates by major academics especially when it will formulate the rules related to the job (Maria & Santos, 2005; Yulius, 2014).

This is related to the social status of domestic workers in which they are covered by their gender, race, legal status as immigrants and characteristics of their home country, moreover the assumption that domestic workers always involve unproductive people (have no certain skill or without education), which led to many of these workers receiving minimal protection by the rules of the recipient country (Ningsih, 2014).

There are two main criteria behind the violation of the rights of domestic workers, namely:

1. Seen from the subject, it always involves two main subjects, between the employer and the assistant, so it is not surprising, this profession work is often ruled out because of its very special nature. The principle of superiority to be the most important, mastery occurs committed by the employer to the assistant.
2. Viewed from the place of doing this work undertaken within a household that excludes domestic workers from the general category of workers established by the laws of a country, which then very differently contrasts from formal workers performing their work in offices, factories and homes industry, where the determination of working hours, even the minimum wage is set very clearly by the government of a country (Terri, 2011).

Domestic workers in the community are referred to as domestic servants even though the ILO convention provides a broader definition that covers not only domestic work but also parenting services, drivers and even gardeners (Ningsih, 2014).

Human rights then become one of the most important references as standard indicators to determine what is needed to bring about legal protection for domestic workers, both domestically and internationally (Ani, 2016; Philipus, 1987). Human rights are generally understood as inherent human rights natural, born of the belief that all human beings are born in a state of freedom and have the same position of the human race with each other, which demands mutual respect among fellow citizens. According to Prof. Koentjoro Poerbapranoto human rights are rights that are basic, meaning the rights possessed by humans in nature and cannot be separated from the human itself so that it is sacred (Krabe, 2002).

World conference on human rights provides the understanding that human rights are the basic rights inherent in every individual that is universal, invisible, interdependent and interlinked with each other<sup>2</sup>.

From these two meanings, actually can be found the same purpose and purpose of existence of human rights, the two meanings are complementary by meaning that human right is a right which is not separate from man itself and other human need to respect it. In this case, the violation of human rights can be interpreted as not appreciated by other human rights.

In its implementation, human rights were subsequently put forth in the declaration of human rights, beginning with a detailed determination of some economic, social and political rights established by the commission on human rights of United Nations, followed by a universal declaration on human rights on 10 December 1948 on fundamental human rights consisting of 30 articles.

By its very nature, this declaration has summarized the mean of human rights from all sides, both human rights from the moral, political and legal aspects. However, this declaration is limited only as a declaration not as a treaty, since it is only a declaration so UDHR does not have a force of law which is forcing or binding on the member states of the United Nations, in other words this declaration does not oblige every country to comply with the provisions included in the chapters (Marie & Dembour, 2011).

The realization of human rights for migrant domestic workers is commonly found in one of the major conventions of international convention on the protection of the rights of all migrants and members of their families, the convention being the first convention to give special attention to migrant workers when they are overseas, but a weak spot is found that most countries that ratify this convention come from developing countries even though in fact the most needed country is originally from developed countries.

The provisions set out in the Convention are deemed to be incompatible with the interests of developed countries, for example by the provision giving social rights to migrant workers such as health access, decent living places and time off to gather with the family for a certain period of time (Maria & Glenda, 2015).

Other conventions established later to realize the recognition of the rights of domestic workers, in particular and explicitly through the International labour organization that recognizes

the rights of migrant domestic workers through Convention No. 19 189 (2011). As has been described in the first discussion where there are special standards relating to the ultimate right and even the additional rights owned by domestic workers in detail.

## **Human Rights and Women Domestic Workers**

The Human Rights Watch report notes that tens of millions of women worldwide work as domestic workers, in more specific data, the ILO through a census conducted in 117 countries by 2010, there are 52.6 million women and men over 15 year working as workers households are dominated by women up to 43.6 million people or equivalent to 83%, while men only amount to 9 million or 17% of the total percentage of domestic workers (ILO, 2010).

From conservatism that determines the type of work such as cooking kitchen, taking care of children or parents, cleaning the house is a task given that has been going on for centuries (Maria & Santos, 2005). This then makes women the only suitable subject for this type of work.

In addition, the opening up of women's contribution to employment in the modern era led to an increase in the need for household services to be very significant, the role of women who take care of households has been replaced by the role of career women, where in feminism understanding all women have equal rights to work and contribute to the development of her country, this then encourages the emptiness of housekeeping to become an opportunity for women from low-income countries to do this work for reasons that are also not much different is to support the life of his family in the origin country<sup>3</sup>.

Women are one of the most concerned subjects of human rights law, given that the most frequent violations experienced by women domestic workers are the mildest violations such as unregulated working hours for such workers, they can work 14 to 18 hrs per day or even adjust according to the needs of their employers, the number of working hours does not seem to match the salary they get, the type of work they deemed does not require education or special skills cause they always receive the minimum salary.

Based on the human rights watch report noted that most female domestic workers are from developing countries such as the Philippines, Indonesia, India, Bangladesh, Sri Lanka, Nepal and Ethiopia. These countries are known as sending country with the greatest number compared to other countries. With the main objective of countries or countries with better financial condition from their asset countries, for example, Indonesian domestic workers choose Malaysia because it is considered close, and most choose the UAE area because of the value of currency and salary standards are considered large.

Human rights will play a crucial role in realizing a protective regime for domestic workers, especially for women. Human rights law which has been poured in international conventions as mentioned in the previous discussion will be effective if ratified by its member states, will also show the seriousness of countries in the international world against its seriousness to fight for human rights. The effectiveness of human rights law can also be seen from analyses released through the human rights watch report as well as through the ILO report

through its statistical data, these analyses will serve as a reference and reprimand to countries that still provide very little protection for workers domestic, the problems encountered in both the sending and recipient countries may serve as a reference when seeking solutions to the problems experienced by migrant domestic workers, in other instances such as when the United Nations calls on Oman to ratify ILO Convention No.189 (2011) as the fulfilment standard for the rights of women domestic workers.

## CONCLUSION

Legal protection for female domestic workers under international conventions is in line with human rights, particularly Human and Cultural Rights, including the right to information, social security, and special attention to child labour, complaints, dispute resolution and special attention to the lives of workers. Although the substances of this Convention has not been fully regulated human rights in the field of Economic and Social Culture.

## ENDNOTE

1. The enduring vulnerability of migrant domestic workers in Europe (Irish Research Council: [www.proquest.com](http://www.proquest.com)).
2. World Conference on Human Rights: Vienna declaration and program of action (25 June 1993) UN Doc. A/CONF.157/23, part I.
3. ILO, Domestic work policy brief (Making decent work a reality for migrant domestic work) [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/-travail/documents/publication/wcms\\_436974.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/-travail/documents/publication/wcms_436974.pdf).

## REFERENCE

- Ani, S. (2016). *Legal Protection Arrangement for Women Workers and Their Families by Law. No. 6 of 2012 concerning Ratification of the International Convention for the Protection of Migrant Workers and Their Families, Journal of Law and Development*. University of Indonesia, Jakarta.
- ILO. (2010). *Coverage of domestic workers in laws: Laws prime working condition*. Jakarta: International Labour Office.
- International Organization for Migration. (2010). Labour migration from Indonesia: An overview of Indonesian labour migration in some countries of interest in Asia and Middle East*. Jakarta.
- Krabe. (2002). *Constitutional, citizenship and human rights law*. Yogyakarta. Universitas Atma Jaya.
- Maria, D., & Santos, P. (2005). *Human rights and migrant domestic work (a comparative analysis of the socio-legal status of Filipina migrant domestic workers in Canada and Hong Kong)*. Boston: Martinus nijhoff publishers Leiden.
- Maria, K., & Glenda. (2015). *Tibe Bonifacio Introduction: Domestic and Care Work of Migrant Women and the Right to Family Life*. Palgrave Macmillan, England.
- Marie, B., & Dembour, T.K. (2011). *Are human rights for migrants? (Critical reflections on the status of irregular migrants in Europe and the United States)*. Routledge.
- Ningsih, S. (2014). Effectiveness of the convention ILO no. 189 against Philippines household workers. *Online Journal of Students*, 2(1), 1-10.
- Philipus, M.H. (1987). *Legal protection for the people of Indonesia*. Bina Ilmu Surabaya.

- Sefriyani. (2017). *International Law (an introduction)*. PT RajaGrafindo Persada, Jakarta.
- Sudikno, M. (2004). *Legal discovery*. Liberty, Yogyakarta.
- Terri, N. (2011). *Some women's work: Domestic work, class, race, heteropatriarchy and the limits of legal reform*. City University of New York School of Law.
- Yulius, P.H. (2014). *Identification of women potential in efforts to protect Indonesian migrant workers*. Bandung: Institute for Research and Community Service to the Catholic University of Parahyangan.

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