

LEGAL PROTECTION FOR WOMAN DOMESTIC WORKERS BASED ON THE INTERNATIONAL CONVENTION

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ABSTRACT

The purpose of this research is to know the legal protection for woman domestic workers regulated in fundamental international law on the protection of women. The results of this research are identified that the legal protection of woman domestic workers rights is consistent with International convention. According to Convention Decent work for domestic workers, minimum standard by the convention are basic rights of domestic worker, information on terms and conditions of employment, hours of work, remuneration, occupational safety and health, social security, standards concerning child domestic workers, standards concerning live-in workers, standards concerning migrant domestic workers, private employment agency measures to be put in place, dispute settlement, complaints and enforcement. In addition, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains the obligation to eliminate all forms of discrimination against women in the field of economy and employment.

Keywords: Legal Protection, Woman Domestic Worker, International Convention.

INTRODUCTION

The role of women will increase with the large number of women currently entering the workforce. It indicates the presence of women in the workforce is increasingly important and necessary. This is evident from the increasing number of employers who employ women workers in the company. The reason for this is that women are more conscientious, careful and obedient in carrying out their duties as a worker.

The mobility of labour in Asia can be traced back to colonial era in the early nineteenth century when labour was moved from one place to another to work on construction, plantation and mining projects (Yulius, 2014). The initial form of migration is not limited like what is currently occurring in which immigration regulations require a person to get permission before being able to move across national borders and migrants tend to migrate permanently until they settle in their destination (Hugo, 1992).

Labour migration has a different impact on each country. Impacts emerging in labour-sending countries relate to the recruitment process, pre-departure preparation and placement costs. The high rate of unemployment, poverty and dropping out of school created many low-skilled workers looking for work. These people will easily be attracted to work abroad, which promises greater wages for the same job in their own country (International Organization for Migration, 2010).

However, the risks posed to women workers who work in the sector must undergo human right violation, such as the exploitation, discrimination and harsh treatment of the employer

(Clíodhna, 2013). The absence of exploitative measures by employers to migrant workers is mentioned as an excessive expectation, since in Europe some terms are commonly mentioned by migrant care practitioners, which are more 'theoretical and illusory' than 'practical and effective' (Lalu, 2015). The forms of discrimination received by some domestic workers include the distinction of class, race, gender and nationality with the country's native citizens (Lalu, 2015). Such distinction is usually made on the basis of the inability of the employer to understand that everyone has the same human rights regardless of the distinguishing matters arising between the employer and the employee.

Protection for workers is needed, including work safety and social security. There should be special attention for women workers because physically women are generally weak. Furthermore, women in the workplace are possible to accept immoral actions and deeds that could endanger the safety as well as its morality, so that it needs to be guarded and prevented. State, as one party in the obligation to provide protection to its citizens, must be able to guarantee legal certainty for domestic workers who are outside its territory.

The attention to women migrant labour is based on several factors such as (1) the increasing number of women working outside the country of origin, (2) the micro and macro-economic improvements brought in by the remittances they produce and (3) their working characteristics that tend to cause problems, especially for those who work in the informal sector (Yulius, 2014).

From the above explanation, the problems' arising is: How are the legal protection of women's rights as domestic workers according to international convention?

RESEARCH METHODS

By using the statute approach, the research was conducted by reviewing all laws/regulations relating to the issues discussed and the conceptual approach, reviewing the views/concepts of experts relating to the theme of this research.

Legal materials used include primary, secondary and tertiary materials. Data collection technique is done by way of documentation studies, as well as analytical techniques in a perspective analysis.

RESULTS AND DISCUSSION

The problem of domestic worker is not only coming from countries that are in poor areas. Continental Europe is known as the continent with advanced economic development and high sense of egalitarianism, especially for woman domestic worker. As mentioned by the editorial of the European Journal of Women's Studies that:

“It is now more than 30 years ago since domestic work became a fiercely debated issue for feminists all over Europe; ‘salary for domestic work’ campaigns were launched in many countries as a result of (academic) feminist dispute about the role of housework in society” (Helma, 2007).

ILO, as an International institution focusing on labour issues, closely observes the developments and problems faced by domestic workers, specifically in the woman domestic worker. It is mentioned that:

“The increased participation of women in the workforce, the intensification of work and the absence of strong social policies permitting the balancing of work and family life, ensure the on-going importance of

and increased demand for, domestic workers in most developed and developing economies. Yet domestic work tends to be undervalued and poorly regulated, manifesting the lack of decent working conditions that is particularly characteristic of the informal economy. Thus, domestic workers have enabled many other workers, particularly women with families, to participate and advance in the productive, formal economy, thereby achieving greater affluence; however, they themselves often do not have the rights and protections necessary to ensure that they enjoy conditions of decent work” (ILO, 2012).

The term woman domestic worker is influenced by the new understanding of the migration of the population due to the idea of “The Feminization of Migration” (Kathy & Helma, 2000). It becomes the most important concern in this study, considering the number of domestic worker estimated by the ILO (2012), as much as 52.6 million people and 83% of them are woman domestic worker. International convention has put a good attention on the case of domestic worker, since there are 8 conventions related to domestic workers, which are:

- The Freedom of Association and Protection of the Right to Organize Convention, 1948;
- The Right to Organize and Collective Bargaining Convention, 1949;
- The Forced Labour Convention, 1930;
- The Abolition of Forced Labour Convention, 1957;
- The Equal Remuneration Convention, 1951;
- The Discrimination (Employment and Occupation) Convention, 1958;
- The Minimum Age Convention, 1973;
- The Worst Forms of Child Labour Convention, 1999.

The other conventions relating to domestic worker in the summary of ILO conventions are:

- The Wage-Fixing Machinery Convention, 1928;
- The Minimum Wage Fixing Convention, 1970;
- The Protection of Wages Convention, 1949;
- The Maternity Protection Convention, 2000;
- The Workers with Family Responsibilities Convention, 1981;
- The Termination of Employment Convention, 1982;
- The Private Employment Agencies Convention, 1997;
- The International Convention on the Protection of All Migrant Worker and Member of Their Families, 1990;
- The Migration for Employment Convention (Revised), 1949; and
- The Migrant Workers (Supplementary Provisions) Convention, 1975;
- Convention Decent work for domestic workers, 2011.

In addition to the Convention contained in the ILO summary, the international community recognizes several other international legal norms relating to domestic worker, including:

- The Universal Declaration of Human Rights/ UDHR, 1948;
- International Covenant on Civil and Political Rights/ICCPR, 1966
- International Covenant on Economic, Social and Cultural Rights/ICESCR, 1966;
- Convention on the Elimination of All Forms of Discrimination against Women/CEDAW, 1979;
- The Convention on the Rights of the Child, 1989;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950.

Recognition on domestic worker was initially widely discussed using the International Convention on the Protection of All Migrant Workers and Members of Their Families. This Convention arose from migration of migrant workers abroad, human rights violations for migrant workers such as forced labour, slavery, sexual harassment, trafficking and other human rights violations. Therefore, it makes the United Nations compelled to enact this convention. The convention still uses the general term "Migrant Worker" for workers who work outside their country's sovereignty by not distinguishing the types of work performed.

The opening of this Convention clearly states the importance of protection for migrant workers. The regulated scope is the whole migration process of migrant workers and members of their family, from the preparation of migration, departure, transit and during work by receiving wages in the destination country. Therefore, the term "migrant worker" refers to the person who will work, is working and has worked outside the territory of his/her country of origin by receiving the wage in question (Lalu, 2015).

Substantially, the rights of migrant workers and members of their families in this Convention are: (Lalu, 2015).

- Freedom to leave the country and come back to their home country as long as it is not against the law;
- The right to legal protection;
- Accepting humane treatment, free from torture;
- Freedom from forced labour and slavery;
- Freedom to follow religion and belief;
- The right to express opinions both orally and in writing;
- The right to express his/her personal freedom;
- Legal protection of private property and common property;
- Protection of the law of the state for acts of violence;
- The right during being a prisoner;
- Rights during court proceedings;
- Not imprisoned for breaching the employment contract;
- Rights during repatriation process;
- Consular protection and assistance from the country of origin;
- Recognized as a legal subject;
- Protection of discriminatory acts in the wage field;
- The right to form and join trade unions;
- The same treatment of social security with other citizens;
- Right to media care and survival;
- The right of the child to receive a name, birth registration and nationality;
- The right of the child to the same education as other citizens;
- The right to transfer income or savings and other property after the employment ends; and
- The right to obtain information free of charge on the rights of those listed in this Convention.

The Convention also regulates other rights of migrant workers and members of their family, which are: (Lalu, 2015).

- The right to information about the situation and conditions of the migration destination country especially with regard to residence and labour issues;
- The right to leave the migration country temporarily;
- Freedom in determining the area/territory of residence;
- The right to participate in political activity in the country of origin;
- The right to remain a national of origin and to obtain such facilities from the country of migration;
- The right of equal treatment with the local state in the field of education, housing, health, culture, protection of the dismissal of unemployment benefits and unemployment benefits;

- Guarantees of the needs of families of migrant workers;
- Duty-free import/export and tax on personal belongings, their own household appliances;
- The right to transfer income;
- The same treatment in the field of taxation;
- Wages-related rights;
- Guarantees for the administration of the family, for example marriage, death and others;
- Protection of rights while obtaining permanent residence and remaining indefinitely;
- The same treatment with local citizens in relation to the issue of termination of employment or unemployment; and
- Protection of rights in the event of expulsion of migrant workers.

The Convention also provides provisions for the recipient country to seek to improve the protection of migrant workers. They are: (Lalu, 2015).

- Each State shall cooperate in promoting sound, decent and humane conditions, including in the fulfilment of the social, economic, cultural and other needs of the migrant workers and members of their family;
- Each country shall provide adequate services to migrant workers and members of their families in relation to the issue of formation and implementation of migration policies;
- Each country shall facilitate adequate provisions for the social, economic and cultural needs of migrant workers to be fulfilled;
- The recruitment of migrant workers should be carried out by government or private institutions licensed by the government;
- Each country shall cooperate in the process of returning or improving the socio-economic conditions of migrant workers and members of their families;
- Each State shall cooperate in the prevention and eradication of illegal migrant worker placement activities;
- Each State shall prevent the occurrence of an uncertain situation or condition for migrant workers and their families;
- Each State shall treat migrant workers and their families as equal to their own nationals; and
- Each country shall provide facilities and compensation in the event that a migrant worker or his or her family dies.

The recognition of the dignity of domestic workers specifically and explicitly refers to the ILO Convention 189 (2011) on Decent Work for Domestic Workers. The number of problems faced by woman domestic worker is caused by the absence of guarantee of their rights; in this case, the protection of this profession is still not adequate.

One of the functions of the law is to provide protection to citizens, especially those who are in a weak position due to unequal legal relationships and legal standing (Lalu, 2015). Philipus divided two powers that are always concerned, namely “the power of government and economy. In relation to power, the issue of legal protection is concerned with the protection of the law for the people (governed) against the governing (government). Meanwhile, the issue of economic protection is the protection of the weak against the strong, such as protection for workers against the ruler” (Philipus, 1994).

In this case, the government should not merely seen as the role of the state, but also as the role of international organizations and all parties in protecting the people who need protection. Legal protection by the power of attorney is more emphasized on the element of the sovereign (power), so the protection given to the citizen can be seen in the legal instrument or the policy of the holder of that power ((Lalu, 2015).

The forms of protection that must be obtained by domestic worker according to Convention Decent work for domestic workers mentioned as minimum standard by the convention (ILO) are:

- Basic rights of domestic worker;
- Information on terms and conditions of employment;
- Hours of work;
- Remuneration;
- Occupational safety and health;
- Social security;
- Standards concerning child domestic workers;
- Standards concerning live-in workers;
- Standards concerning migrant domestic workers;
- Private employment agencies is measures to be put in place (Article 15):
- Dispute settlement, complaints, enforcement;

The legal protection for women as domestic worker is expressly stipulated in fundamental international convention concerning the protection of women from all forms of discrimination that is on the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as CEDAW). CEDAW contains the obligation to eliminate all forms of discrimination against women in the economic and employment field that is mentioned in article 11.

Understanding the legal protection for woman domestic worker is to provide a balanced and real space as well as the space given to men, as Lisa Smyth mentioned in the European Journal of Women's Studies: Enabling women to participate in reconceiving the social spaces, domestic and more 'public', which they routinely inhabit, might go some way towards reducing the moral tone and at the same time recognizing as an arena where citizenship is at stake (Lisa, 2008). Lisa put a balanced position of space for women into citizenship bets, because she considered that when a person has been given a citizenship, he/she will be given and bound to the same rules, regardless of the gender that most people think about today.

Barbara emphasized that it must renew the position between men and women so as not to privilege one party by providing equal justice (Barbara, 2010).

From the above opinion, the researcher can emphasize that women who in this case are woman domestic worker have a thing that must be executed by all stakeholders in giving and protecting their rights as mentioned above in various international conventions. Therefore, the dignity of women and the purpose of this woman domestic worker can be realized, both for personal economic progress, family and prosperity of the nation in the future.

CONCLUSION

The research can be concluded that the form of legal protection of women's rights as domestic workers according to international convention based on the Convention Decent work for domestic workers defined as the minimum standard by the convention is basic rights of domestic worker, information on terms and conditions of employment, hours of work, remuneration, occupational safety and health, social security, standards concerning child domestic workers, standards concerning live-in workers, standards concerning migrant domestic workers, private employment agencies is measures to be put in place, dispute settlement , complaints and enforcement. In addition, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contains the obligation to eliminate all forms of discrimination against women in the field of economy and employment.

SUGGESTION

The Government of Indonesia through the Ministry of Foreign Affairs should play an active role in providing protection to the woman domestic workers and continue to play a role in international relations to improve the pattern of protection. There are still some protections in the economic, socio-cultural and human rights not yet accommodated in the international conventions of woman domestic worker protection.

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