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The Rights Protection of Domestic Servant: A Case Study in the City of Bandung, Indonesia

ABSTRAK

Pekerjaan pembantu rumah tangga mirip dengan imej tentang "jongos" yang harus mengabdikan diri sepenuhnya kepada majikan. Pembantu rumah tangga, dengan demikian, merupakan pekerjaan yang rentan terhadap pelanggaran hak-hak pekerja. Namun hal ini tidak mengurangi ketertarikan para wanita dengan latar pendidikan yang rendah untuk terlibat dalam sektor kerja tersebut dikarenakan ianya tidak memerlukan kemampuan khusus dan modal uang. Selain itu, kesempatan untuk masuk dalam sektor ini juga terbuka luas seiring dengan perkembangan peran ganda wanita dan ketersediaan agen penyalur pembantu rumah tangga. Agen ini idealnya berpartisipasi dalam memberikan pengetahuan dan perlindungan kepada hak-hak pembantu rumah tangga dan menciptakan komitmen untuk melaksanakan kewajiban dalam hubungan kerja dengan majikan mereka. Berdasarkan studi kasus pada Yayasan Sosial Purna Karya di kota Bandung, ditemukan beberapa fakta social, misalnya, bahwa (1) para pembantu rumah tangga memiliki latar belakang sosial dan ekonomi yang rendah; (2) kondisi lingkungan kerja tidak mencukupi bagi keselamatan social, kesehatan, jam kerja dan penghasilan; (3) agen penyalur pembantu rumah tangga memang dirasakan ada manfaatnya; serta (4) hingga saat ini belum ada perundangan khusus yang melindungi hak pembantu rumah tangga.

Kata-kata kunci: pembantu rumah tangga, agen penyalur tenaga kerja, serta hak , kewajiban dan perlindungan pekerja.



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INTRODUCTION

Economic crisis in Indonesia, that has been continuing since 1997, has influenced on the less job opportunity for women in formal sector, such as in the company. The women with low educational background prefer working in informal sector, for example, to be a domestic servant. Contrasting with other jobs, this job does not need specific skill and capital (for example, entrepreneurship or trading need business capital and entrepreneurship skill). However, in other side, this job is susceptible to the right violation and violence action. According to ILO (International Labour Organization) in 2004 that 688,13 of 2,6 millions domestic servants in the world are in Indonesia and 95% of them are women (Saripudin, 2005). And this job is very susceptible to experience physical, social and social abuse.

The opportunity to work as domestic servant is opened widely, along with the change of mother role function or the development of mother dual role, in one side they are housewives but in the other side they are family breadwinners, especially in urban areas. Bandung, as one of the big cities and the capital of West Java, becomes the object of migrants from outside Bandung to risk their life as domestic servants. These migrants, who become domestic servants, are usually asked by their friends, distributed by the distributor in their village, or the most frequently they are distributed by manpower distributor agents (Iswati, 2001).

Talking about domestic servant distributor agent, the role of this agent is very important in distributing domestic servants, but they frequently get severe accusation because it orientates to the commercial value achievement and ignores humanistic value. The agents are often accused that they do not give knowledge and protection toward the domestic servants' rights and do not establish domestic servants' commitment well to do their obligation in job relationship with their employer.

In its relation to the problem, we are interested in further examining about the protection of domestic servants' rights who are distributed by domestic servant distributor agent. This examined problem specifically include: (1) What is the socio-economic background of domestic servant?; (2) How is the work environment condition of domestic servant?; (3) What are the right and obligation of employer, domestic servant and domestic servant distributor agent?; and (4) What is the protection of domestic servants' rights?

DEFINITION OF DOMESTIC SERVANT

Domestic servant is a row force doing household work by getting salary. There are many assumptions that domestic servant is not a worker. This assumption is stated in *Putusan P4 Pusat*, No.70/59/111/02/c, of December 19, 1959 in which the job of domestic servants is categorized as the job in informal sector, thus the protection of them is not included in labor law context (Warjiati, 1998). In considering the decision, Central Committee stated that they did not manage the problems related to domestic servant and the job taken charge by custom law.

If we take a look at the definition of labor in UU (*Undang-Undang*) No.22/1957, about the completion of labor dispute, that “*Labors are people who work for their employer by getting wage*” (article 1a); or the definition of job in UU (*Undang-Undang*) No.12/1948 about Working Law, that “*Job is the work done by the labors for their employer in a job relationship by getting wage*” (article 1a). Therefore, domestic servants must be included in the context of labor law, and also in other work force rule such as UU (*Undang-Undang*) No.13/2003 about the fundamental rule of work force.

But the problem is that not all the laws above explicitly state the term of domestic servant as worker. Thus in its implementation, domestic servant is not assumed as the worker included in the context of labor law protection.

Generally, the existence of domestic servants in Indonesia does not get appreciation so that they do not get the protection, either from law or social. In fact, as the household workers, they have an important productive role for a family or household. Consequently, they are susceptible to face various kind of violence (physical, sexual, psychological and economic). Because there is an imbalance of class and power relationship, the domestic servants are seldom able to fight against the violence they face.

There are two factors triggering the existence of domestic servant such as the poverty and the needs of domestic servant recently burdened to women (Anderson, 1983). In fact, not all this service users treat badly domestic servants who work for them. Some countries have arranged the sufficient law protection of domestic servants such as Malaysia, Singapore and Thailand that have clear limited working hour and working boundary, although it is only prevailed for their own citizens not for foreign women work force (such as Indonesian). There should be an awareness of government and service user to improve domestic servants' fate and awareness of domestic servants to fight for their rights.

The division of sexual job in patriarchy community has put women as domestic being (household workers), since childhood (the role as daughters) until adulthood (the role as wives/housewives). On the contrary, men are more positioned to play role in public world. The difference of these genders is a social norm that is taken for granted by individuals and even it becomes a self-concept through socialization process that is continually proceeded (Saputra, 2007). In its reality, that norm has influenced on the limitation of women access to the public world and has decreased the joy of women for their basic needs as human being, that is in improving their potency.

One of the variables to eliminate that effect is national intervention for the women's interest. It means that nation can participate through its policies to change norms or values that have been existing. In this context, Indonesia government, since the New Order (1965-1998), has been trying to encourage the women's role in public world to participate in national development, especially in economic sector (Siagian, 1998).

The examples of the policy are the recruitment of household worker to foreign countries, women labor in many factories, and introducing the “equal

partnership of women and men" (through GBHN, *Garis-garis Besar Haluan Negara*), then it is more popular with "the dual role" of women (because it encourages women to take a role in public but still maintains their domestic role). This dual role is strengthened by UUP (*Undang-Undang Perburuhan*) No.1/1974 which states that in one side it gives opportunity for women to act actively in the community, but in the other side it still positions them as household manager. Thus, from those policies, it can be concluded that government has extended the role of women by still maintaining their traditional role (Warjiati, 1998).

Of course, it does not give the harmful implication for women, especially when they work or take a role in public world. Various policies, rules and programs intended for women worker are based on those stereotyped assumptions. Then, *work feminism* exists, which is the categorization of women work related to feminine values. Those policies finally cause various injustice and violence such as overburden, wage discrimination, low job status and low wage, no promotion and so forth. A domestic servant is a form of work that more reflects the phenomena above (Anderson, 1983).

THE PROTECTION OF DOMESTIC SERVANTS' RIGHT

There are many weaknesses of the protection on domestic servants' rights. These weaknesses are reviewed from some aspects, especially in social, juridical and economic aspects. In social aspect, there are four matters concerning about the domestic servants' rights:

Firstly, Imbalanced authority relationship. Until now, job relationship between employers and domestic servants is based on imbalanced authority relationship in which they positioned domestic servants as subordinate of them. Imbalanced or asymmetric position is strengthened due to the dependence of domestic servants on their employers economically (service user). Moreover, they also need some job so that they are willing to get the low income. And consequently, the bargain position of "capital owner" is absolutely over the domestic servant position. It is so limited access for domestic servants to state their interest that they do not have courage to fight against, especially when they experience violence action whether from their employer or even the agent who takes a benefit from this situation.

Second, The low social status of domestic servants and they are not well-respected. Because it is assumed to be the natural job of women and there is an assumption that household working is the work without skill and unprofessional in giving contribution the profession of domestic servants is not well respected and their salary is very low.

Third, Social culture. The social problem experienced by domestic servants is not exempted from thinking pattern of patriarchy community, which is gender bias and also feudalistic behavior, either traditional or modern feudalistic. It can be concluded that cultural context still has feudalistic-capitalistic nuance having trend directing to a slavery condition in which the position of domestic

servants as slaves who must absolutely serve their employer with their totality. In this slavery practice, it seems that there is an ownership right of someone on the other one and it is very potential in causing the violence toward the subordinated people, in this case is domestic servant (Pitlo, 1959; and Soekanto, 1981).

Fourth, The job performed by domestic servants is not regarded as productive job. Economic contribution given by domestic servants is very significant and clear because the existence of domestic servant service has important role in the smoothness of family living activities, especially for the couple who works in public sector. In this case, domestic duty is replaced by household worker. However, the role and contribution of domestic servant are frequently ignored by the development planner or policy maker. The important meaning of this job is frequently obscured by the view that household work is thought as woman's natural job. In fact, household job identical with woman's natural job is the reflection of job division based on gender (social construction) in which men position themselves to do paid-job and women do unpaid-job (Warjiati, 1998).

Meanwhile on the *juridical and economic aspect*, the violation of labor law frequently occurs as follow here: there is the violation of job contract (for example, they are told to be hired as domestic servant, but in fact, they are hired as sex worker); there is no clear mechanism and working system (wage, working hour, etc.); unpaid wage, low wage, long working hour (it can be stated as forceful job and a form of exploitation) and also dangerous working condition without protection; there is no health insurance, life insurance, future insurance, and some accidents in working place (Iswati, 2001).

The job scope of domestic servant is in household that is assumed as private domain. It makes domestic servants not protected if they get maltreatment from their employers. Because until now, community and also law officer do not think that violence in household experienced by the people involved in it, including domestic servants, as non public or domestic problem that should not be intervened by outsider. The factors stated above (job relationship established on imbalance authority relationship, low appreciation of domestic servant status, and specific job scope) make domestic servants tend to get various kinds of violence.

From the data about violence cases of domestic servants, it still shows that the law protection of domestic servant status is still low. There are two things: *firstly*, law protection related to work force problems or related to the profession of domestic servant (labor law context), in this case domestic servants are not regarded as workers and consequently their position is out of the labor context; and *second*, law protection is related to the experienced violence due to their gender and because the nature of their job is in domestic context (violence on women in the criminal law domain). Domestic servants, who are generally women, are very susceptible to experience violence due to their gender (Soepomo, 1987; and Ismadi *et al.*, 1992).

RESEARCH METHOD AND FINDINGS

This research used qualitative method. The method used in this qualitative method was case study, which was a study conducted intensively, exclusively and thoughtfully toward an organization, institute or specific phenomena (Yin, 2002:4). The location of this research was concentrated in *Yayasan Sosial Purna Karya* in Bandung, located in Jalan Stasiun Kiara Condong No.6A. The subjects of this research are: (1) Domestic servants distributed throughout Bandung by *Yayasan Sosial Purna Karya*; (2) Employer in which they hire the domestic servants above; (3) The head of *Yayasan Sosial Purna Karya* in Bandung; (4) The head of Social Department; and (5) The head of Manpower Department (Protection division). This research used purposive sample, so that the number of sample is determined by information consideration. The determination of sample was quite sufficient if it reached saturation point. In collecting data, observation, interview and documentation study were used. And some research findings were following:

1. SOCIO-ECONOMIC STATUS BACKGROUND OF DOMESTIC SERVANTS

The average age of domestic servants coming into distributor agent was between 14 to 20 years old with educational background of Elementary School, Junior High School and who never got any educational basis.

Table 1
Educational Background of Domestic Servants Applicant
in *Yayasan Purna Karya* in Bandung

No	Educational Background	The total number
1	Elementary School	12 persons
2	Junior High School	2 persons
3	Drop-out	4 persons
4	Uneducated	1 person

Generally they worked as domestic servants because of economic needs to support their family (parent and their brothers/sisters) and to add their husband's income that was not sufficient to support their family life. It was in line with the research finding by LBH (*Lembaga Bantuan Hukum*) APIK Jakarta presenting that most of domestic servants worked in big cities due to economic factors, such as making a living (69.5%), having family burden (48,5%), and having difficulty in getting the job in village (9.5%) (see <http://.www.lbh-apikjkt.co.id>, 20/6/2008).

Domestic servants preferred to work as domestic servants and left their hometowns to wander in the big cities triggered by the social condition that assumed it is better to wander in city, although only as domestic servant, than being unemployed in village and being insulted by the society. There was also an assumption that making a living for woman was a kind of religious worship because it lessened the family life burden.

The preference of job as domestic servant was thought as suitable choice because there was no other choice for them who worked with low education and had specific skill, except the skill in managing household. Although they realized that their job had big, negative risk, as informed on TV about violence action on domestic servants by their employers, they always had wish to work for a good employer. And if they got undesired employer, then distributor social institution could consider changing their employer. It was suitable with the LBH APIK Jakarta that the preference of job as domestic servant was due to insufficient educational background, skill and competence to work in other sectors ([http//.www.lbh-apikjkt.co.id](http://.www.lbh-apikjkt.co.id), 20/6/2008). Informal sector of household was regarded as the job that did not need special skill and competence because they were accustomed to do that in their daily life.

2. WORKING ENVIRONMENT CONDITION OF DOMESTIC SERVANT

Working environment condition of domestic servant was varied. There were some employers who treated them well because they treated domestic servants well as their own family, but in contrast there were some employers who treated them very discipline in which they have everything done as what they want.

The facility given to them was quite sufficient, but some of the facilities were insufficient. In the case of medication, if they were sick, the expense was burdened to them by spending their money or wage to have medication and they were not given social insurance by their employer.

The kinds of job performed were sweeping, mopping, washing and so on. They started to work before their employers wake up about 5 o'clock, took a rest at the time that was not determined clearly and then they could stop working after their employers slept in which it was not determined when they would sleep, sometimes late at night. Therefore, this job did not have working hour, they worked every day whenever their employers needed. They did not get holiday, except they asked for permission to have leave to go hometown and the time given was no more than a week (except feast day of *Ramadhan*, it could be 2 weeks).

The salary they got as domestic servants was varied. It was determined by the long period they worked for their employers. Their average salary was between Rp. 200.000 – Rp. 300.000 (in 2007), and some employers gave them Rp. 500.000. The salary was given every three month, but some employers gave it annually, and even some of them gave it irregularly. The raise of their salary was annually, but some of them were not raised. Generally they got bonus and THR (*Tunjangan Hari Raya*).

Insufficiency and uncontrolled employers' behavior toward domestic servants was due to the condition that the job of domestic servant was ignored, but in fact this job had important role in the smoothness of their employers' activities. Both parties had interdependency. In such relationship, there was take-and-give mechanism in which each party gained a benefit (Soepomo, 1993:141). Because of the image of domestic servant was a "maid" and the

servants must obey their employers, they often positioned their employers in the higher and dominant position. In contrast, they frequently put their positions in lower and dominated position. Finally, this fact positioned the job of domestic servants as informal sector job which was categorized as susceptible job to get the violation of servants' rights, such as the right to get reasonable salary, the right to get health service, the right to get entertainment, the right to take a rest (Iswati, 2001); and there was no special law that secured the rights of domestic servant as informal sector worker.

3. THE RIGHT AND OBLIGATION OF EMPLOYER, DOMESTIC SERVANT AND DISTRIBUTOR AGENT

The effect of job relationship among employer, domestic servant and distributor agent was the existence of right and obligation that should be performed by all parties such as employer, domestic servant and distributor agent (Kartasapoetra *et al.*, 1994). The job relationship between employer and domestic servant was usually stated orally, by relying on the familial relationship basis. The rights and obligations of each party were following here:

The rights of domestic servant to employer: (1) Having the right to get reasonable salary; (2) Having the right to get sufficient place and facility; (3) Having freedom in doing their religious worship suitable with their belief and religion; and (4) Must have security in performing their job.

The obligations of domestic servant to employer: (1) Must work well and honestly; (2) Should not protest the employers' command in doing their job as long as it does not oppose the law; and (3) Cannot go out without the employers' permission.

The rights of employer to domestic servant: (1) Having the right to ask domestic servant to work; and (2) Having the right to report to the law officer if the domestic servants steal or do the action that harms their employer.

The obligations of employer to domestic servant: (1) Treat domestic servants based on the human right; (2) Pay the salary that has been agreed; and (3) If there is an accident risk when the domestic servants work, the employer must responsible for the accident.

Meanwhile, the job relationship between employer and distributor agent was stated in written contract. The rights and obligations of the relationship were:

The rights of employer to distributor agent: (1) Asking for the change of domestic servants if they do not forbear staying, in the condition less than two months; and (2) Taking back the guarantee money as much as 50% if they make a cancel in the change to get domestic servant from distributor agent and if the domestic servants work for less than two months.

The obligations of employer to distributor agent: (1) Must spend Rp. 110.000 for a domestic servant that is done when they take a domestic servant; (2) Must take the domestic servants back if they do not forbear staying; and (3) Must report the distributor agent if the employer move to other address.

The rights of distributor agent to employer: (1) Having the right to the legal officer if the employers do not pay the salary when the domestic servants work for them, treat them badly or violate human right; and (2) Having right to charge the employer when they take domestic servants from distributor agent.

The obligations of distributor agent to employer: (1) Be able to change the domestic servants if they work less than two months; (2) Be able to give back guarantee money as much as 50% if the employers cancel the change of domestic servant; and (3) Be responsible if the domestic servants steal the property of employer to find them.

During relocation, domestic servants must obey the rule determined by the owner of distributor agent. However, domestic servant applicants have rights when they are in relocation.

The rights of domestic servant applicant to distributor agent: (1) Can be free to choose their employer; (2) There is no compulsion to work if it is not suitable with their will; and (3) Having the right to get job training.

The obligations of distributor agent to domestic servant applicant: (1) Must behave well to employer candidate; (2) Are not allowed to go out without the permission of distributor agent officer; and (3) Are not easily persuaded by people around distributor agent environment who are not responsible for them.

The rights of domestic servant applicant: (1) Having the right to have the recruitment expense of domestic servant applicant by the employer; and (2) If there is a family of domestic servant applicant who visits them, it must be in distributor agent's knowledge.

The obligations of distributor agent to domestic servant applicant: (1) Must give training and guiding to all domestic servant applicants; (2) Obligated to hire them in the reasonable place; and (3) Must take care of the health of domestic servant applicant by routine check-up.

4. PROTECTION OF DOMESTIC SERVANTS' LAW

Recent constitution law, especially UU (*Undang-Undang*) No.13 in 2003 about the work force had not given the protection for domestic servants. It was due to that no article of that law arranged the rights and obligations of domestic servants. Beside that, the prevalence of UU No.3/1992 about work force as social security can not helped the existence of domestic servants. As stated in the performance rule article 2 statement 3, this government rule stated that "every entrepreneur who hired employee as many as 10 person or more, or hires at least Rp. 1.000.000,- must register their employee in JAMSOSTEK [*Jaminan Sosial Tenaga Kerja*] program" (Kartasapoetra *et al.*, 1994).

As we know, the service user (employer) only hired one, two or three domestic servants. Therefore, the JAMSOSTEK register for domestic servants depended on their employer and even there was no JAMSOSTEK register for them. Because there was no specific requirement to arrange the case of domestic servant, governments must pay attention by establishing UU No.23/2004 about the elimination of violence in household affair which stated that matters related to

domestic servants especially stated in article 2 statement 1 explaining about the household affair domain which included:

(1) Husband, wife and children; (2) People who had familial relationship with the specified one in the letter a because of cognation, marriage, nursing, mothering and trusteeship, living in a household; and (3) People who worked for helping household and stayed at that household (*Undang-Undang No.23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga*).

By the prevalence of UU No.23/2004 about the elimination of violence in household, then domestic servants had protection not to treat bad by the employer or other related party.

After domestic servants work, distributor agents did not leave them from law relationship that had been done for certain period of time with the requirement that the domestic servants worked for the employers who took them from distributor agent. It was because the distributor agents had responsibility for all attitudes of domestic servants during their work for their employer. Based on the type of contract, its content and achievement, this contract was included in continual contract. By the definition of the contract agreed by distributor agent and domestic servants, its achievement was done continually as long as the domestic servants were willing to have contract with distributor agent.

The protection from distributor agent for domestic servants was only limited to what has been agreed in the previous contract such as responsible for all loss and problems caused by domestic servants, or even take action against the maltreatment of employer toward domestic servants. Distributor agents were responsible for solving the problem well through familial relationship solving or even through law procedure.

5. MANAGEMENT SYSTEM OF DOMESTIC SERVANT IN EMPLOYEE DISTRIBUTOR AGENT

To search for domestic servants, distributor agents conscripted the coordinator in some regions, especially in West Java, Central Java and East Java. Then domestic servant applicants must follow the selection steps to meet the given requirement such as: (1) Must have permit from parent or husband; (2) Must have legal identity card or KTP [*Kartu Tanda Penduduk*], or prevailed preference identity; (3) Must have healthy physic; (4) Do not have an affair with legal officer; and (5) Minimum age is 15 years old.

During their living in distributor agent, domestic servant applicants did not oblige to pay, in this case, distributor agents would take charge from employers, that was realized in the recruitment expense of domestic servants. Distributor agents and domestic servant applicants agreed a written contract. From the agreement, they would have law relationship that caused the rights and obligation of both parties.

During their living in distributor agent, domestic servant applicants were given knowledge and training about the job that they were willing to do. The material was how to operate electronic devices such as washing machine, gas stove, rice cooker and etc. Besides that they got religion and spiritual materials, domestic servant applicants must get religious speech by requiring them to follow religious discourse usually conducted near distributor agents. They were educated in courtesy in behaving and talking, included the proper appearance in their dress. They were also given the counseling about the rights and obligations of domestic servants to their employers. They got some food and health insurance. For the meal needs, they usually cooked by themselves while learning about the variety of food.

All education and training given by distributor agent was intended to give them skill. But it was not solely to interest the employer but also to give more value for each domestic servant. Moreover, when they work in the future, at least they will be respected more if they have good value. The risk of additional value ownership is payoff suitable with their skill, if they follow foreign people. However, distributor agents should not direct them to be perfect domestic servant if they can get the job suitable with their skill and competence.

Employer candidates who look for domestic servant applicants via distributor agent must follow the requirement been determined by distributor agents. Employer candidates must previously examine the provided contract, after agreeing about this contract they can chose the suitable domestic servant applicant for them. After having suitable domestic servant, employers sign the contract with distributor agents, and complete administration of guarantee money. For a domestic servant, the guarantee money is Rp. 110.000 and the allocation is usually 50% for distributor agent that becomes the properties of the agent and the rest 50% for regional coordinator as the expense for taking domestic servant applicants from the villages to the distributor agents. By the agreement, it causes the rights and obligations between employers and distributor agents.

The relationship between distributor agents and domestic servants is usually done by using oral agreement, in which the agreement is determined about the rule of domestic servants during their work and the salary they will get. This oral agreement does not have strong law power if there is a problem in working with their employers. Because of the minimum education of domestic servants, many domestic servants are trapped in a harming agreement for themselves. So that many domestic servants experience maltreatment, violence, salary that is not fully paid or even never paid. On that condition, the domestic servants cannot defend the rights they should get.

CONCLUSION

Generally domestic servants have low socio-economic background. Domestic servants receive certain salary and facility, although it is not sufficient especially related to the social and health insurance, working hour and salary

or income. Employee distributor agents give significant benefit for domestic servants to get knowledge and training, and the protection of rights in line with the agreement.

About the rights and obligations, basically the rights and obligations of domestic servants and their employers have mutual relationship and reciprocal each other in its nature; each party respects each other in their rights and obligations. The protection of employee distributor agents toward domestic servants is only limited to what has been agreed previously. Until now there is no special law arranging the protection of domestic servants' rights as an employee. Therefore, there should be a special law that arranges about domestic servants.

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