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STANDARDIZATION OF EMPLOYMENT RELATIONS BASED ON ILO CONVENTION 189: AN EFFORTS TO CREATE LEGAL CERTAINTY IN THE DOMESTIC SERVICE INDUSTRY IN INDONESIA

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Abstract

This research is based on concerns about the position of Domestic Workers in Indonesia who are still in a blind spot of national law because even though our constitution, namely the 1945 Constitution, firmly guarantees the right to work and a decent living for every citizen, in reality, domestic workers are often not considered as workers in the formal sense who have an equal bargaining position. The main focus of this study is to dissect how the absence of standard standards in domestic work relations has a direct impact on the loss of legal certainty and the systemic injury to their constitutional rights where by using a juridical approach combined with empirical facts in the field, this research found that without coercive regulations, basic rights such as minimum wages, working hour limits, and reproductive rights for female domestic workers only become commodities that depend on the mercy of their employers alone. This is clearly contrary to the spirit of Article 27 paragraph 2 and Article 28H paragraph 2 of the 1945 Constitution regarding recognition and fair legal protection for all people without exception. Even when compared with international standards in the ILO Convention 189, there is a clear disparity in the current state's protection commitment. This research ultimately confirms that legalizing domestic work standards is not just This is not merely an administrative matter, but rather an urgent effort to end structural discrimination and restore the human dignity of domestic workers as a legitimate part of the Indonesian workforce entitled to substantive justice.

Keywords: Domestic workers, legal certainty, employment relations

INTRODUCTION

As a state based on the rule of law and the Pancasila and the 1945 Constitution, Indonesia has a constitutional mandate to guarantee the rights of every citizen to work and a decent living. The main pillar of employment regulation in Indonesia is Law No. 13 of 2003 concerning Manpower. This law is designed to provide a framework for protection, improve welfare, and regulate industrial relations between workers and employers fairly. It regulates various normative rights, such as the wage system, working hours, social security (health and employment), occupational safety and health (K3), and termination procedures (PHK). Although Law No. 13 of 2003 defines workers as anyone who works for wages, orders, and

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rights and obligations in practice there are significant legal gaps regarding domestic workers (PRT).

Currently, employment relationships between service users (employers) and domestic workers in Indonesia are largely based on oral agreements, which, from a legal perspective, create significant legal uncertainty. Without clear job descriptions, measurable wage standards, and agreed-upon working hours, these relationships are vulnerable to disputes that are difficult to resolve due to the lack of strong contractual evidence. Furthermore, the domestic or household nature of domestic workers' work often leads to their categorization as an informal sector worker, not explicitly covered by labor laws. As a result, millions of domestic workers in Indonesia often find themselves in a weak bargaining position, working without written contracts, uncertain working hours, and lacking access to social security equivalent to workers in the formal sector. Without legal certainty, service users are also at risk of receiving substandard services, while workers are at risk of economic exploitation. The recent enactment of special laws (such as the Domestic Workers Bill, which has been fought for for more than 20 years), the gap before the bill's enactment has led to a high number of Human Rights violations in the domestic sphere, and according to JALA PRT data, there were 3,308 cases of violence against domestic workers recorded between 2021 and 2024. This data was obtained from JALA PRT (National Network for Advocacy of Domestic Workers), which covers physical, psychological, economic violence, and even human trafficking. Despite Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), this instrument focuses more on domestic violence and fails to comprehensively guarantee the labor rights of domestic workers as "workers." Globally, the International Labour Organization (ILO) has recognized the urgency of protecting domestic workers through ILO Convention No. 189 of 2011 concerning Decent Work for Domestic Workers. This convention sets minimum standards for countries to provide equal basic rights to domestic workers, ranging from daily rest hours and minimum wages to protection from all forms of harassment. However, to date, the Indonesian government has not ratified the convention.

Given that Indonesia is one of the largest senders of domestic workers abroad and a significant user of domestic workers domestically, ratification of ILO Convention 189 is highly urgent. This ratification is not merely a fulfillment of international obligations, but rather a real commitment to synchronize national regulations (legal formation) so that they are oriented towards the protection of Human Rights. If we look a little deeper at the articles in the employment law and compare them with the ILO Convention 189, it will certainly show inequalities, such as in the creation of contract agreements, in the employment law there is

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Article 1 number 14 which regulates work agreements between workers and employers which are difficult to implement.

Why is that, because the employer in the employment law, the employment relationship occurs between entrepreneurs or legal entities, while the head of the family or employer to domestic workers, is often legally not considered an "employer" or "business entity", as a result because the legal subject who provides the work does not meet the criteria of "employer" then automatically the rules regarding formal employment contracts in employment law are often considered invalid, in contrast to the ILO convention 189 in article 7 "Each Member State shall take steps to ensure that domestic workers are informed of the terms and conditions of their employment in a manner that is understandable, transparent and accessible, wherever possible through a written contract in accordance with law, regulations or collective labor agreements". Article 7 explicitly emphasizes transparency and steps to mitigate risks to employers, as well as domestic workers, this is the topic of the author's research in raising the issue of standardizing employment relations for domestic workers based on the ILO convention 189 in an effort to create legal certainty in the domestic service industry in Indonesia.

METHOD

To analyze and describe the legal implications of the lack of standardization of employment relations in the domestic services sector, as well as its impact on the degradation of legal certainty and the fulfillment of the constitutional rights of domestic workers in Indonesia.Theoretical Benefits: This research is expected to contribute to the development of labor and business law, particularly in enriching studies on the formalization of the domestic services sector. Furthermore, this research is useful for strengthening the theoretical foundation related to the harmonization of international law (ILO Convention 189) into the national legal system to provide more comprehensive guarantees of constitutional rights protection. Practical Benefits: This research offers a framework for standardizing employment relations that can be used by the parties (employers and domestic workers) to create legal certainty and professionalism in the domestic services industry in Indonesia

RESULT AND DISCUSSION

Legal implications of the absence of standardization of employment relations in the domestic services sector on legal certainty and protection of the constitutional rights of domestic workers in Indonesia

The lack of standardized employment relationships in the domestic services sector in Indonesia creates a legal vacuum that directly negates legal certainty for Domestic Workers

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(PRT). Legally, the employment relationship of domestic workers remains trapped in the private and domestic sphere, based solely on verbal agreements without strong regulatory support, considering that Law No. 13 of 2003 concerning Manpower tends to focus more on the formal industrial sector. The implication is that the status of domestic workers is not explicitly recognized as legal subjects "workers" equivalent to factory workers, so that normative rights such as limits on working hours, the right to rest, and minimum wage standards do not have legal enforcement.

Empirically, upon closer examination, we discover that the absence of these standards perpetuates exploitative practices hidden behind the narrative of "family relations." In the field, domestic workers often face immeasurable workloads (multifunctional) and unlimited working hours without overtime compensation. This lack of clarity in standards severely weakens domestic workers' bargaining power with employers, where termination of employment can occur at any time without any guarantee of severance pay or a clear dispute resolution mechanism through the Industrial Relations Court (PHI).

From a constitutional perspective, this situation constitutes a violation of the basic rights guaranteed by the 1945 Constitution, particularly Article 27 paragraph (2) concerning the right to decent work and a decent living, and Article 28D paragraph (1) concerning fair legal certainty. The state has almost neglected to provide protection to its citizens working in the domestic sphere because it recently passed special laws (such as the Domestic Workers Law), but in practice, it still relies on labor laws, so it will take quite a long time to transform informal employment relationships into formal ones. This creates legal discrimination, where state protection only applies to workers in the formal sector, while domestic workers are left without social security and equal legal protection.

When compared to international standards such as ILO Convention No. 189 on decent work for domestic workers, Indonesia is still far behind because it has not ratified or harmonized adequate regulations. Although there is Regulation of the Minister of Manpower No. 2 of 2015 on the Protection of Domestic Workers, which is considered to have found a legal umbrella for domestic workers, this regulation is considered to have no legal "fangs" because it is more administrative in nature and does not contain strict criminal sanctions or fines for violators of domestic workers' rights, as a result, the protection standards in Indonesia are still very far from the principles of decent work that are recognized globally.

Finally, the Constitutional Court's stance in several judicial reviews has often been to leave the technical arrangements regarding worker protection to lawmakers (an open legal policy). However, as long as the legislature does not immediately establish standard

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employment relations through law, the constitutional rights of domestic workers will continue to erode. This lack of standardization is not merely an administrative issue, but rather a systemic failure to recognize the human dignity of domestic workers as part of the national workforce entitled to fair legal protection. Below is a comparison table to show the disparity in employment relationship standards :

Employment Relationship	**Formal Sector (Law Number 13 of 2003)**	**Domestic Sector (Domestic Workers)**	**International Standard (ILO Convention 189)**
Clarity of Employee Status	Expressly recognized as a legal entity	Considered "helpers" or informal partners.	Fully recognized as professional workers
Regarding Working Hours/Time	Maximum 40 hours/week (anything more is considered overtime)	Unlimited (often 24-hour standby).	There must be clear limits on working hours and rest periods.
Regarding Wages	Based on the Minimum Wage (UMK/UMP)	Based on verbal agreement (often below the minimum).	Must be equivalent to the national minimum wage.
Regarding Social Security	Mandatory registration with BPJS Ketenagakerjaan and Health	Voluntary, depending on the employer's generosity	Must receive social security coverage
Regarding Dispute Resolution	Through the PHI mechanism (Mediation to Court)	Dominant through family or criminal channels if there is violence	Must have easy access to formal legal mechanisms

In relation to the table above, the constitutional court often issues decisions such as constitutional court decision number 75 / PUU-XX / 2022 which emphasizes that the rights in Article 28D of the 1945 Constitution are universal, however, in the employment context, the

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constitutional court is of the opinion that differential treatment is permitted as long as there are objective reasons, the current absence of standardization is considered a legislative omission because the state has not provided a legal instrument (Law) to operationalize the constitutional rights of domestic workers, as a result, the rights written in the 1945 Constitution for domestic workers are only "rights on paper" without real protection.

Nowadays, the absence of standardization of employment relations results in "The law only stops at the gate of the employer's house", meaning that the absence of standardization of employment relations results in a clear violation of Article 28H paragraph (2) of the 1945 Constitution which states "Everyone has the right to receive facilities and special treatment to obtain the same opportunities to achieve equality and justice".

The absence of standardization of employment relations in the domestic sector shows the state's neglect of the constitutional rights of Domestic Workers, this creates legal uncertainty and perpetuates systemic discrimination, especially against women's reproductive rights, so without clear regulations, the legal protection promised by Article 27 paragraph (2), Article 28D paragraph (1), and Article 28H paragraph (2) of the 1945 Constitution will only function as a passive norm, to realize just and civilized humanity for all Indonesian workers, standardization through a strong legal framework is the main requirement for changing domestic employment relations from private informal nature into professional and socially just employment relations.

CONCLUSION

Ultimately, the absence of standardization of employment relations for Domestic Workers (PRT) in Indonesia is not merely an administrative problem, but rather a systemic failure of the state in providing legal certainty. Juridically, the absence of standard regulations makes PRTs continue to be in a "grey area" where they work like laborers, but do not receive normative rights because their status is considered informal. Empirically, this condition perpetuates exploitative practices neatly wrapped up in a "family" narrative, where basic rights such as humane working hours, decent wages, and reproductive rights for female workers are often considered a voluntary choice of employers, not a legal obligation. When linked to the constitutional mandate, this legal vacuum clearly reflects the existence of discrimination against citizens. How is it possible that Article 27 paragraph (2) and Article 28D paragraph (1) of the 1945 Constitution guarantee protection for every citizen, while at the same time, millions of domestic workers are left without an adequate legal umbrella? A comparison with the ILO Convention 189 further clarifies how far our protection standards are from the principles of

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decent work recognized by the world. Without concrete steps to legalize domestic work standards, recognition of the human dignity of domestic workers will only be discourse on paper. The state must immediately realize that social justice should not stop at the gate of the residence, it must enter and protect every individual who works in it.

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