

# The Urgency of Ratification Draft Bill On Protection of Indonesian Domestic Workers: A Human Rights Perspective

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## Abstract

*Domestic workers are very vulnerable to various violations of labour rights, such as exploitation, low wages, unclear working hours, and uncertainty about work eligibility. This problem can be confirmed by data submitted by several institutions focusing on domestic workers' rights. According to the Indonesian Migrant Workers Union (SBMI), there are approximately 4 million domestic workers in the country, with 2.7 million facing labour rights violations and experiencing physical and sexual violence. Additionally, the National Domestic Workers Advocacy Network (Jala PRT) reported 2,148 cases of economic, physical, and psychological violence from 2015 to 2019. Komnas Perempuan recorded 2,344 cases of violence against domestic workers from 2005 to 2022, and received 29 direct complaints between 2017 and 2022, including reports of physical violence and unpaid salaries. Although the Republic of Indonesia Minister of Manpower Regulation No. 2 of 2015 addresses domestic worker protection, it lacks specific safeguards for their rights. Consequently, domestic workers are exceedingly vulnerable to various forms of discrimination and rights violations. Establishing legal protections at the statutory level is imperative to address these issues.*

**Keywords:** Domestic Workers; Legal Protection; Human Rights.

## Abstrak

Pekerja rumah tangga sangat rentan terhadap berbagai pelanggaran hak-hak buruh, seperti eksploitasi, upah rendah, jam kerja yang tidak jelas, dan ketidakpastian kelayakan kerja. Permasalahan ini dapat dibuktikan melalui data yang disampaikan oleh beberapa lembaga yang fokus pada hak-hak pekerja rumah tangga. Menurut Serikat Pekerja Migran Indonesia (SBMI), terdapat sekitar 4 juta pekerja rumah tangga di negara ini, dengan 2,7 juta diantaranya menghadapi pelanggaran hak-hak buruh dan mengalami kekerasan fisik dan seksual. Selain itu, Jaringan Nasional Advokasi Pekerja Rumah Tangga (Jala PRT) melaporkan 2.148 kasus kekerasan ekonomi, fisik, dan psikis pada tahun 2015 hingga 2019. Komnas Perempuan mencatat 2.344 kasus kekerasan terhadap PRT pada tahun 2005 hingga 2022, dan menerima 29 pengaduan langsung pada tahun 2017. dan tahun 2022, termasuk laporan kekerasan fisik dan gaji yang belum dibayar. Meskipun Peraturan Menteri Ketenagakerjaan Republik Indonesia No. 2 Tahun 2015 mengatur tentang perlindungan pekerja rumah tangga, peraturan tersebut tidak memberikan perlindungan khusus terhadap hak-hak mereka. Akibatnya, pekerja rumah tangga sangat rentan terhadap berbagai bentuk diskriminasi dan pelanggaran hak asasi manusia. Membangun perlindungan hukum di tingkat undang-undang sangat penting untuk mengatasi permasalahan ini.

**Keywords:** Pekerja Rumah Tangga; Perlindungan Hukum; Hak Asasi Manusia.



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## A. INTRODUCTION

Domestic workers are an occupation that has long existed in Indonesia. From the start, this occupation unfortunately seemed to be surrounded by various problems, such as being vulnerable to treatment like modern slavery, neglected welfare, and even personal safety during working hours. It becomes very regrettable that similar problems ironically still happen even in modern times. In fact, if the data on the need for domestic workers in Indonesia is deeply explored, the demand for domestic workers is considered quite large. According to a survey by the International Labour Organization (ILO) Jakarta, the number of domestic workers in Indonesia in 2015 reached 4.2 million people and is estimated to increase to 5 million in 2021.<sup>1</sup> The demand for domestic workers is driven by various factors, including household members' full-time work schedules, inability to perform domestic tasks due to age or health issues, and simultaneous responsibilities such as caring for newborn children or even elder parents. This situation demonstrates domestic workers' importance and the significant demand for their services because they are urgently needed.

The vulnerability of domestic workers can be referred to a variety of data, including data on incidents of violence, silencing attempts, violations of employment rights, and discrimination. For instance, based on data from the Coordinator of the National Domestic Workers Advocacy Network (JALA PRT), Lita Anggraini revealed that from the year 2012 to 2021, a total of 400 domestic workers experienced various forms of acts of violence, including physical and psychological, economic, sexual violence, and human trafficking. According to the same source, in August 2021, 82 percent of 868 domestic workers did not have national health insurance. Furthermore, almost 100 percent of domestic workers do not have access to employment social security benefits such as work accident insurance, death insurance, and pensions.<sup>2</sup>

The 1945 Constitution of the Republic of Indonesia guarantees every individual the right to decent work and pursue a decent life. This provision is articulated in Article 27, paragraph (2), which states that every citizen has the right to work and to a dignified existence. Additionally, the right to work is recognized as a fundamental human right in the state constitution. This provision is regulated in Article 28D paragraph (2), which affirms that every individual, without exception, has the right to receive just compensation and fair treatment in the context of employment. Drawing from these two articles, which represent the state's commitment to safeguarding the human right to work for all, it is clear that Indonesia has substantial work to do in addressing the vulnerability of domestic workers to discrimination. The concept of decent work aims to enhance opportunities for personal development and social

<sup>1</sup> Sonya Hellen Sinombor, "PRT Penyangga Kehidupan Modern," Kompas.id, 2021, <https://www.kompas.id/baca/nusantara/2021/11/01/prt-penyangga-kehidupan-modern>.

<sup>2</sup> Anugrah Andriansyah, "JALA PRT: 400-an Pekerja Rumah Tangga Alami Kekerasan Pada 2012-2021," VOA, 2022, <https://www.voaindonesia.com/a/jala-prt-400-an-pekerja-rumah-tangga-alami-kekerasan-pada-2012-2021/6399197.html>.

integration, enabling individuals to express their concerns freely, cooperate, and participate in decisions that affect their lives. That concept requires providing equal opportunities and fair treatment for both men and women. Additionally, decent employment is essential for alleviating poverty. Therefore, the advancement of decent work should be integrated into policy development.<sup>3</sup>

The Law No. 39 of 1999 on Human Rights (Human Rights Law) not only upholds everyone's right to work as guaranteed by the 1945 Constitution but also outlines explicitly the right to decent work, which is regulated in Article 38, paragraph (1). Furthermore, Article 38, paragraph (2) emphasizes the freedom of individuals to choose their preferred occupation. Moreover, article 38, paragraphs (3) and (4) address gender equality in a work relation and also equality pay on wages. Article 49, paragraph (1) underlines the importance of providing special protection to women in the workplace, especially in matters that could potentially impact their health and safety. These provisions serve as clear legal evidence of Indonesia's commitment to ensuring the right to decent work for all individuals within its jurisdiction.

It is essential to recognize that the protection of guaranteed rights to decent work and equal treatment is not only established in various statutory regulations as national legal instruments. Various international human rights instruments explicitly regulate the protection of the right to decent work. Article 23, paragraphs (1) and (2) highlight the right to work for everyone, including freedom of choice, employment without discrimination, fair wages, social security protection, and association. Additionally, the International Covenant on Economic, Social and Cultural Rights (ICESCR), as ratified through Law No. 11 of 2005, also regulates the recognition of the right to work, encompassing fair and favorable working conditions, the right to form a labour union, and social security. Indonesia has also ratified various international conventions regarding labour and worker rights, such as ILO Convention No: 29 /1930 concerning Forced or Compulsory Labour, ILO Convention No: 87/1948 concerning Freedom of Association and Protection of the Right to Organize, and ILO Convention No: 100/1951 concerning Equal Remuneration for Male Workers and Female Workers for work of equal value, among others. These international covenants share the common principle that protection related to the right to decent work and various related aspects applies to everyone without exception, including informal workers such as domestic workers.

Considering Indonesia's status as a state that has ratified various international human rights conventions related to worker protection, it becomes an obligation for the Indonesian state to implement various regulations and protection mechanisms. Domestic workers also become one of the key factors in the nation's economic development based on both quantity and high demand of many households. Despite playing a crucial role in ensuring the needs functioning of households, domestic workers frequently experience violations of their rights as a worker.<sup>4</sup> It becomes very ironic how precarious the situation is regarding the protection of domestic workers' rights and their access to decent work.

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<sup>3</sup> ILO Indonesia, *Sekilas ILO Di Indonesia* (Jakarta: ILO Jakarta, 2007).

<sup>4</sup> Windi Arista, "Perlindungan Hukum Terhadap Pekerja Rumah Tangga Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Hukum Uniski* 11, no. 2 (2022): 115–36, <https://doi.org/https://doi.org/10.52237/jhuniski.v11i2>.

Many people in society think that being a domestic worker doesn't need specific or special skills. That situation built a wrongful accusation, which led to many negative impacts and became the reason the discrimination started. The perception that domestic work is easy and open to anyone creates a power dynamic that leaves workers in a vulnerable position, limiting their options when faced with any mistreatment. The aforementioned statement implies that domestic workers have never received official recognition as a legitimate profession.<sup>5</sup> The professional status of domestic workers is considered distinct from any formal employment sector and is not acknowledged by Law No. 13 of 2003 on Manpower (Manpower Law), which pertains to employment regulations. This lack of acknowledgment from any Indonesian regulations leads to a consequence of domestic workers become do not have a legal basis, especially about rights and protections, leaving them vulnerable to various forms of exploitation.

The informal classification of domestic work shapes societal perspectives and attitudes, resulting in a diminished understanding of workers' rights, even the fundamental ones. The status quo consequently creates a blurred definition of work responsibilities, obligations and their rights. While employees of private companies sign contracts specifying their working hours and the requirement for overtime compensation, domestic workers without formal agreements face uncertainty, primarily if they reside in their employer's home. Conversely, the skill set needed to fulfill household duties continues to become increasingly complex. Employers' expectations and the quality of facilities and requirements are on the rise. For instance, homes are becoming more sophisticated, with valuable furnishings, delicate clothing needing special care, and children with higher demands, necessitating domestic workers to adapt to these evolving dynamics.<sup>6</sup>

The informality of domestic work arises from the lack of specific legal protections at the statutory level. Manpower Law's provision can not reach to domestic workers, as it only covers formal employment. As a result, its provisions cannot be effectively enforced for either the domestic workers or the person who hired them. In 2015, formal recognition of domestic workers in Indonesia was established through the Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 of 2015, which focuses on the protection of domestic workers. However, this falls short of expectations, and the regulatory framework has not yet been established at the statutory level. Therefore, there is a need for statutory regulations that specifically address the mechanisms and protection of domestic workers.

The Draft Bill on the Protection of Domestic Workers (PPRT) has been repeatedly proposed in the National Legislation Program (Prolegnas) since 2004. Historically, the draft was already included in the Indonesian House Representative's (DPR) Prolegnas list in 2004 – 2009, but it was not discussed at all during that period. In 2009, the Indonesian Democratic Party of Struggle (PDI-P) again proposed the PPRT Bill to be included in the National Legislation Program for the 2009 – 2014 period through a proposal from Commission IX of the DPR. On November 30, 2009, the results of the DPR plenary session decided that the PPRT

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<sup>5</sup> Ida Hanifah, "Kebijakan Perlindungan Hukum Bagi Pekerja Rumah Tangga Melalui Kepastian Hukum," *Jurnal Legislasi Indonesia* 17, no. 2 (2020): 193–208, <https://doi.org/10.54629/jli.v17i2.669>.

<sup>6</sup> Dedy Ramanta, "Mendorong Informalitas PRT Menjadi Sektor Formal," *Dewan Perwakilan Rakyat RI*, accessed August 15, 2024, <https://berkas.dpr.go.id/akd/dokumen/BALEG-RJ-20200622-044521-6129.pdf>.

Bill became the DPR Prolegnas Priority Bill for 2010. Still, the legislative process seemed to be at a standstill. In 2011, it was included again as a Priority Prolegnas with progress in the form of the academic text of the PPRT Bill. From 2012 to 2013, this bill was discussed, and the Working Committee (Panja) even carried out working visits to the regions and conducted comparative studies in several other countries, such as Argentina and South Africa. In 2014, the legislative journey for the PPRT Bill was stopped, as was the case in the following years because it was not included in the Prolegnas list. In the 2019 – 2024 period, this draft regulation is again included in Prolegnas.<sup>7</sup> The PPRT Bill was finally passed as an initiative bill by the DPR on March 21, 2023, after going through a number of review procedures, comparative studies, discussions, changes, and debates for two decades. However, there has been no indication so far that the bill will be debated or approved.<sup>8</sup>

The PPRT Bill is a crucial regulation as it formalizes the employment relationships of domestic workers and provides mechanisms for their protection. The urgency of the matter at hand further emphasizes the need for in-depth examination. Consequently, the authors have highlighted the necessity of ratifying the PPRT Bill in this research.

## **B. METHOD**

This research uses a normative juridical method that concentrates on a literature study using secondary data in the form of primary legal materials, specifically statutory regulations.<sup>9</sup> It adopts a statutory approach, conducting an examination of the positive legal provisions applicable in Indonesia regarding legal protection for domestic workers.<sup>10</sup> The study discusses this through a conceptual approach and provides an analytical opinion on the solution in a legal analysis that scrutinizes the underlying concept of the law, as evidenced by its value contained in the norms of a rule related to the concept used.

## **C. RESULTS AND DISCUSSIONS**

### **1. The Urgency of Ratification Draft Bill on of Protection of Indonesian Domestic Workers: Human Rights Perspective**

Indonesia acknowledges the importance of human rights, including the right to decent work for every person in its jurisdiction, including informal and domestic workers. This means that the right to work is not only about having a job but also about having work that is suitable, decent, and fair. In the context of human rights, the state is responsible for ensuring that everyone's human rights are respected, fulfilled, and protected without exception. This state

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<sup>7</sup> Sonya Helen Sinombor, "Perjalanan Panjang 19 Tahun Yang Mulai Berujung," Kompas.id, 2023, <https://www.kompas.id/baca/humaniora/2023/03/22/perjalanan-panjang-19-tahun-yang-mulai-berujung>.

<sup>8</sup> Yoanes Litha, "20 Tahun Tanpa Kejelasan, Aktivist Desak Pengesahan RUU Perlindungan PRT," VOA Indonesia, 2024, <https://www.voaindonesia.com/a/tahun-tanpa-kejelasan-aktivis-desak-pengesahan-ruu-perlindungan-prt/7504064.html>.

<sup>9</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2023).

<sup>10</sup> Abel Parvez, Andi Vallian Superani, and Imas Novita Juaningsih, "Rekonstruksi RUU PPRT Sebagai Upaya Perlindungan Hukum Dalam Penanggulangan Kekerasan Terhadap PRT Perempuan Dan Anak," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022): 232–50, <https://doi.org/https://doi.org/10.15294/ipmhi.v2i2.54782>.

obligation entails making every effort to guarantee these rights for all individuals as workers.<sup>11</sup> Hence, it is the responsibility of the state to ensure the provision of the right to dignified work for all individuals within its jurisdiction. Feasibility in this context encompasses not only the ability of the job to enable a person to lead a dignified life but also the conditions under which the work is performed. This situation implies that there are multiple factors that determine whether a work can be deemed as dignified, such as clear working hours, fair wages, the right to take breaks, social security, and various other considerations. These principles are outlined in various international human rights agreements and domestic legal frameworks.

The guarantee of the right to decent work is addressed in various national laws and international human rights instruments. These provisions include Article 23 of the Universal Declaration of Human Rights (UDHR), Article 27 paragraph (2) of the 1945 Constitution, Articles 38, 49, and 64 of Human Rights Law, and Articles 6 and 7 of the ICESCR. All of these provisions mandate the state to ensure that everyone, including domestic workers, has access to decent work and employment rights. Those stipulations give a mandate to the state as their primary obligation, particularly the government, to protect, promote, uphold, and fulfill these human rights.

Discrimination is a fundamental issue that is often encountered by domestic workers. The definition of discrimination refers to Article 1, number 3 of the Human Rights Law. This form of discrimination involves differentiation based on several factors, notably social and economic status. Sadly, these differentiations are normalized within society's structures and even enshrined in regulations that result in a curtailment of their rights. Regrettably, the government seems to have paid no heed to this pressing issue. When considering regulations and work relationships, domestic workers are often treated differently from formal workers. Due to their minimal skills and lower levels of education, they are frequently perceived as being limited to relying solely on their inherent energy to carry out their work. As a consequence, the work of domestic workers is often regarded as low-level and is unfairly categorized as unskilled labour. Employers frequently view domestic workers as mere "objects" in the employment relationship rather than as individuals. This situation fosters an environment where employers are inclined to act arbitrarily against domestic workers.<sup>12</sup>

The misunderstanding that creates an unfavorable situation for domestic workers that has already arisen can significantly impact the well-being and standard of decency in a working relationship. For instance, due to being perceived as less skilled or having lower potential than formal workers, many employers oppose providing fundamental welfare rights to domestic workers, such as fair wages that meet basic living standards. Currently, the average nominal salary for domestic workers is IDR 437.066,00.<sup>13</sup> Based on data from the Okezone news portal, in 2022, the salary range in several regions, such as Jakarta, is IDR 2.300.000,00 – IDR 2.500.000,00. West Java is IDR 1.800.000,00 – IDR 2.300.000,00. Central Java is around IDR

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<sup>11</sup> Hikmal Yusuf Argiansyah and M Rizki Yudha Prawira, "Analisis Hukum Hak Atas Privasi Dan Perlindungan Data Pribadi Berdasarkan Perspektif Hak Asasi Manusia," *Jurnal Hukum Pelita* 5, no. 1 (2024): 61–75, <https://doi.org/https://doi.org/10.37366/jh.v5i1.3946>.

<sup>12</sup> Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi*, 1st ed. (Jakarta: Sinar Grafika, 2009).

<sup>13</sup> CNN Indonesia, "Mengintip Gaji Pekerja Rumah Tangga Di Indonesia," CNN Indonesia, 2023, <https://www.cnnindonesia.com/ekonomi/20230119151003-92-902575/mengintip-gaji-pekerja-rumah-tangga-di-indonesia>.

2.000.000,00 – IDR 2,500.000,00, and East Java is IDR 1.800.000,00 – IDR 2.500.000,00.<sup>14</sup> The current numerical value is significantly unbalanced in relation to daily needs like food, water, clothes, and other relevant basic needs. This scenario is creating more significant challenges for domestic workers to sustain a suitable livelihood and work environment. It also impacts their entitlements to rights, including periodic salary increases, social security, and additional perks.

One implication of the discrimination that happened because of this situation is the assumption that domestic work is not a job with a specific high skill set and can be performed by anyone. Consequently, many employers unwittingly assign tasks without considering working hours. This often occurs among live-in domestic workers, who may end up doing household chores around the clock at their employers' behest. Domestic workers play a pivotal role in the functioning of households. Busy upper-middle-class families often delegate virtually all household tasks, including laundry, cooking, cleaning, and childcare, to domestic workers due to their demanding schedules. Consequently, domestic workers may be deprived of essential rights, including the right to rest, privacy, and leisure activities. The absence of limits on working hours and rest can lead to potential exploitation. Additionally, female domestic workers' reproductive health rights, such as taking leave or resting during menstruation or after a miscarriage, are often overlooked.

The number of domestic workers in 2015 was 4.2 million, and it increased to 5 million in 2022, most of them are women. The patriarchal cultural norms contribute to the exploitation of domestic workers. In a capitalist society, domestic or household work is often undervalued and disproportionately falls on women. This contributes to the high number of women working in the domestic worker sector.<sup>15</sup> In addition to facing exploitation, female domestic workers are highly vulnerable to violence. Data from JALA PRT shows that from 2018 to 2023, there were 2,641 cases of violence against domestic workers, with the majority involving psychological, physical, and economic violence in the workplace. Many domestic workers have experienced unpaid wages, unilateral termination of work relationships, or unilateral wage cuts when they are sick and unable to work. They also lack access to health insurance and often do not receive wage increases, even after years of service. Additionally, their employment is often terminated without any severance pay. When it comes to law enforcement, only 15 percent of perpetrators of violence against domestic workers receive punishment in accordance with Law no. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), while the rest receive light sentences or are acquitted of all charges.<sup>16</sup>

In the context of recognizing the protection of domestic workers, there is Convention No. 189 on Domestic Workers Convention (Covenant No. 189), which regulates the urgency of

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<sup>14</sup> Shelma Rachmahyanti, "Intip Gaji Pembantu Rumah Tangga Tahun 2022 Di Sejumlah Wilayah Indonesia," Okefinance, 2022, <https://economy.okezone.com/read/2022/05/10/622/2591764/intip-gaji-pembantu-rumah-tangga-tahun-2022-di-sejumlah-wilayah-indonesia>.

<sup>15</sup> Tri Asep Tumbara, "Pekerjaan Rumah Tangga Dianggap Bukan Kerja, Ini Asal Mula Penindasan Dalam Rumah," Konde.co, 2024, <https://www.konde.co/2024/04/pekerjaan-rumah-tangga-dianggap-bukan-kerja-ini-asal-mula-penindasan-dalam-rumah/>.

<sup>16</sup> Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Siaran Pers Komnas Perempuan Tentang Hari Pekerja Rumah Tangga Nasional 2024: 'Tahun 2024, Titik Kritis Bagi RUU PPRT,'" Komnas Perempuan, 2024, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-hari-pekerja-rumah-tangga-nasional-2024>.

regulating and recognizing the protection of domestic workers, one of which is domestic workers. The Indonesian government is encouraged by this ILO convention to immediately pass laws and regulations that will become the basis for legal protection for domestic workers. The provisions of this covenant depart from basic principles and rights in the workplace, namely (1) freedom of association & equality to conduct negotiations, (2) elimination of all forms of forced labour, (3) effective elimination of child labour, and (4) elimination of discrimination. This covenant requires each member country to take steps so that every domestic worker can receive protection from all forms of abuse, harassment, and even forms of violence. This also includes decent working conditions. For example, if a domestic worker lives in the employer's house, then the living conditions must be ensured while still respecting privacy.

According to Convention No. 189, the state is responsible for establishing a mechanism to formalize the working relationship between domestic workers and their employers through a written agreement. This agreement should include details such as the identities of the parties involved, the address of the place of work, the start date and duration of employment, the specific tasks to be performed, the calculation and schedule of wage payments, provisions for food and accommodation (if applicable), any trial period, conditions for repatriation (if applicable), and the terms and mechanisms for termination. The provisions outlined in Article 7 of Convention No. 189 serve as a standardized template for the working relationship between domestic workers and their employers. This formal documentation serves not only to delineate the rights and responsibilities of both parties, but also functions as a legally binding agreement. In the event that either party breaches the terms of the agreement, it can serve as the basis for legal recourse.

Covenant No. 189 also regulates work rights and eligibility standards for domestic workers. This provision certainly makes sense, considering that however, the position of employers and domestic workers are not equal. The bargaining position of the employer seems to be higher because it is considered to have the resources which are the goal of the employee himself. For example, the employer is the one who pays the worker, not to mention that the house is both a place to live and a place to work, there are many people looking for similar jobs and other factors. This means that work based on a cooperation agreement between the two parties is not enough. There needs to be basic provisions regarding workers' basic rights and eligibility standards that employers must meet. The covenant regulates the obligation to pay salaries directly on a regular basis, at least once a month, as regulated in Article 12, to obtain a healthy working environment, as regulated in Article 13, and social security protection in Article 14.

Standards regarding the right to decent work for domestic workers in Covenant No. 189 also regulate the state as well. Covenant No. 189 regulates each member country to include every vital point in the protection of domestic workers in a statutory regulation. Apart from that, each country is also asked to regulate mechanisms regarding the protection of migrant domestic workers recruited or placed by private labour placement agencies from practices that have the potential to lead to trafficking in persons or illegal immigrants. Furthermore, the state is also required to create a mechanism for handling complaints from all parties that is effective and easily accessible, including implementing labour inspections and law enforcement, as well



as providing sanctions for all forms of violations in accordance with applicable statutory provisions.

It is crucial to promptly ratify Convention No. 189, especially given that Indonesia has already ratified ICESCR and various ILO conventions related to labour and decent work rights. This provision not only demonstrates the state's genuine commitment to safeguarding domestic workers but also presents an opportunity to establish and regulate mechanisms for their protection within statutory regulations.

## **2. The Urgency of Ratification Draft Bill on of Protection of Indonesian Domestic Workers: Juridical Review**

According to the paradigm developed by legal scholar Lawrence Freedman, the quality of a country's legal system is determined by dynamic variables, including legal culture, legal substance, and legal structure. This concept is rooted in the fundamental purpose of law, as articulated by Roscoe Pound, to serve public, social, and private interests.<sup>17</sup>

It is important to acknowledge that in a lawful society, the law holds the highest authority. This means that all aspects of governance, including law enforcement, must abide by the law, regardless of any individual or entity, including the government itself. The drafting of the PPRT Bill is based on this fundamental principle, ensuring its alignment with the Indonesian *ius constituendum*. One area of focus for the International Labour Organization (ILO) is the discussion surrounding domestic workers. In 2011, the ILO introduced Convention No. 189, which addresses Decent Work for Domestic Workers, highlighting the necessity of legal protection for domestic workers as rights-bearing individuals. Currently, 37 countries, including Uruguay, the Philippines, Italy, and others, have ratified the Convention No. 189.<sup>18</sup>

The needs of both households as employers and domestic workers highlight the lack of sufficient protection and fair work mechanisms for domestic workers. Many domestic workers often work without a legally enforceable work agreement, leaving them vulnerable to intimidation. They also face discrimination, as well as various forms of violence, such as physical and sexual abuse. Uncertain wages, irregular work schedules, and other forms of exploitation further contribute to their challenging work environment.

The Indonesian government bears a significant responsibility to establish comprehensive legal recognition and regulation of labour rights within statutory laws. While the right to decent work is acknowledged in Indonesia's constitution, specifically the 1945 Constitution of the Republic of Indonesia, the Human Rights Law, and the ratification of the Covenant on Economic, Social, and Cultural Rights, it is imperative to further fortify legal protection. Legal protection plays a pivotal role in ensuring that individuals and society as a whole can fully exercise all the rights granted by law. Additionally, it provides a mechanism to safeguard human rights in the event of violations by individuals or entities.<sup>19</sup>

It becomes of utmost importance to establish comprehensive and robust regulations to safeguard domestic workers' rights and their well-being. These legal protections should be

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<sup>17</sup> Satjipto Rahardjo, *Ilmu Hukum* (Bandung: Citra Aditya Bakti, 2000).

<sup>18</sup> International Labour Organization, "C189 - Domestic Workers Convention, 2011 (No. 189)," ILO, accessed August 18, 2024, [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189).

<sup>19</sup> Rahardjo, *Ilmu Hukum*.

meticulously designed to not only uphold but also respect and acknowledge the dignity and fundamental rights of these individuals as rightful participants in the workforce. The framework for this protection should be both proactive and reactive - proactive in the sense that it should encompass preemptive regulatory measures and reactive in its capacity to address any issues or disputes pertaining to domestic workers within the context of their employment through a fair and impartial judicial system.<sup>20</sup>

The provision of Manpower Law No. 13 of 2003 does not encompass domestic workers. This happens due to the fact that the scope of employment relations is limited to those between workers and employers. Employee or labour defined by article 1 paragraph (3) as an individuals who receive payment in exchange for their work, whether it be in the form of wages or other compensation. Providing labours with fair and decent work is not only a matter of upholding their rights, but also to contributes to their overall well-being. It is crucial for the labours to be physically and mentally capable when performing their job duties. Meanwhile, according to Article 1 number 15, an employment relationship is defined as a relationship between an entrepreneur and a worker based on a work agreement.<sup>21</sup> The need for protection to the domestic workers and urgency to establish legal recognition becomes a visible problem here.

The term "employer" in this context is specifically intended for entrepreneurs. Furthermore, Article 5 of the Manpower Law regulates that entrepreneurs are defined as individuals, partnerships, or legal entities that run a business company whether they are their own, not theirs and whether they are inside or outside the territory of Indonesia. However, when it comes to domestic work relations, the employer is often not an entrepreneur, or at least not a representative of an entrepreneur as defined in Article 1, number 5. As a result, this impacts other provisions such as basic workers' rights, dispute resolution procedures, and sanctions. Consequently, the enforcement of the Manpower Law does not extend and cannot reach the protection of domestic workers as the employment relationship no longer fulfills its elements.

The Manpower Law does not cover domestic workers for their protection and legal rights. Instead, the closest legal provisions related to safeguarding domestic workers can be found in Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers. This regulation outlines the requirements for domestic workers, including the need for personal identity documents, a minimum age of 18 years, and obtaining permission from the spouse if married. Employers are also required to create a work agreement that delineates the rights and responsibilities of both parties, which must be acknowledged by the local authorities. Article 6 of this regulation details elements of the work agreement, such as the parties' identity, their rights and obligations, the agreement's duration, and the place and date of its creation. Article 7 enumerates the rights of domestic workers, including access to employer information, fair treatment, wages as per the work agreement, adequate food and drinks, sufficient rest, appropriate leave entitlements, religious practice opportunities, holiday allowances, and communication with their families. Additionally, this provision also outlines

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<sup>20</sup> Trianah Sofiani, *Perlindungan Hukum Pekerja Rumah Tangga Berbasis Hak Konstitusional* (Yogyakarta: Deepublish, 2020).

<sup>21</sup> M Rizki Yudha Prawira and Muhammad Raihan Yulistio, "The Role of Labour Inspector in Preventing and Overcoming Child Labour Exploitation: A Critical Review," *Veteran Law Review* 7, no. 1 (2024): 87–102, <https://doi.org/https://doi.org/10.35586/velrev.v7i1.7869>.

the obligations and prohibitions that must be adhered to by domestic worker distribution institutions.

The Minister of Manpower Regulation Number 2 of 2015 falls short of providing domestic workers with the means to live a decent life, and the legal protection for domestic workers is deemed inadequate. The regulation's requirement for a work agreement seems ambiguous as it allows for verbal agreements, creating a potential loophole in cases of dispute due to lack of evidence. The regulation should mandate written agreements to ensure enforceability. Despite being outlined in articles 5 and 6 of the Manpower Regulation, the lack of legal enforcement has resulted in inadequate implementation of these provisions. Research indicates that many domestic workers still need formal agreements with their employers, as there are no penalties for non-compliance. An agreement is crucial in establishing the rights and responsibilities of both parties. Without a formal agreement, employers can evade legal responsibility for any mistreatment of domestic workers. The protection afforded to domestic workers by Minister of Manpower Regulation No. 2 of 2015 is deemed insufficient. A comprehensive law governing domestic workers is necessary to establish wage standards and oversee their placement. These concerns are addressed in the ILO Convention No. 189/2011 on Decent Work for Domestic Workers, which could serve as a model for similar legislation in Indonesia.

The urgency of the PPRT Bill is increasingly evident when considering the legal situation and the pressure on various international human rights instruments, particularly those pertaining to labour, which still need to be ratified. Lita Anggraeni, National Coordinator of the National Domestic Workers Advocacy Network, outlined seven reasons why it is crucial for the immediate ratification of the PPRT Bill: 1) Categorization of Domestic Workers: The passage of this Bill would result in the classification of domestic workers into two groups, namely part-time and full-time domestic workers. 2) Terms and Conditions of Work: Many domestic workers currently need standardized work contracts directly with employers. 3) Education and Training for Domestic Workers: This education and training, which can be provided free of charge through government-facilitated job training centers, would ensure that domestic workers are adequately trained for household work. 4) Dispute Resolution: The Bill would enable dispute resolution through deliberation or mediation, addressing the difficulties domestic workers currently face in obtaining justice when disputes arise. 5) Supervision: This provision aims to protect domestic workers and create a safe and comfortable working environment for them. 6) Prohibition of Domestic Service Providers: The PPRT Bill aims to eliminate the issues caused by domestic worker service providers, often creating problems for employers. 7) Sanctions for Distributors: The Bill would address issues such as human trafficking, hiring and falsifying identities, and the rotation and confinement of domestic workers.<sup>22</sup>

Furthermore, to prevent various types of fraud and other irresponsible practices, this provision also establishes regulations for parties involved in distributing domestic workers. Domestic worker distributors are required to possess a business license issued by the local Regent or Mayor in order to operate. There are clear administrative sanctions for distributors

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<sup>22</sup> Harris Y.P. Sibuea, "Isu Sepekan Bidang Hukum: Urgensi Pembahasan RUU Perlindungan Pekerja Rumah Tangga" (Jakarta, 2020), [https://berkas.dpr.go.id/pusaka/files/isu\\_sepekan/Isu\\_Sepekan---I-PUSLIT-November-2021-215.pdf](https://berkas.dpr.go.id/pusaka/files/isu_sepekan/Isu_Sepekan---I-PUSLIT-November-2021-215.pdf).

who fail to obtain this required document. Additionally, there are specific prohibitions for distributors, including: charging fees to domestic workers, withholding essential documents such as identification cards, and indiscriminately distributing workers to business entities or institutions that do not qualify as individual employers.

Apart from that, domestic workers also have the right to receive job training or education, both from the government and from suppliers. Training or education carried out by the domestic worker distributor is mandatory. The training or education provided revolves around knowledge related to work relations, improving work skills and expertise, and related social and cultural norms. There are sanctions that can be imposed on labour suppliers who do not carry out this obligation.

The ratification of the PPRT Bill is crucial as it not only ensures legal protection for domestic workers but also signifies the commitment to upholding international standards of workers' rights as prescribed by organizations like ILO and the ICESCR. The ongoing legislative process on the effort to ratifying the PPRT Bill provides a valuable opportunity for Indonesia as a state to showcase its dedication to safeguarding the human rights of all individuals, particularly concerning fair and dignified employment, including that of domestic workers.

The regulations concerning the PPRT Bill extend beyond the protection of domestic workers. The regulation also encompasses the rights and responsibilities of other related parties, such as the employer. The provisions outlined in the draft legislation delineate the obligations of domestic workers as they fulfill their roles. These obligations include adhering to established work relationships, maintaining a high standard of work quality, and providing timely notifications if they are unable to perform their duties. Therefore, the ratification of this bill is also aimed at safeguarding the interests of employers, thereby fostering professionalism and enhancing the quality of work delivered by domestic workers.

#### **D. CONCLUSION**

The legal recognition of domestic workers in Indonesia is currently not addressed in specific legislation. However, international conventions such as the UDHR, ICESCR, and the ILO Convention No. 189 provide guidelines for the rights of domestic workers. The existing protection for domestic workers under Permenaker No. 2/2015 is still insufficient, highlighting the need for the ratification of the PPRT Bill. This bill would serve as a legal framework to safeguard the human rights of domestic workers and align with the principles outlined in the ILO Convention No. 189/2011 concerning Decent Work for Domestic Workers. The ongoing legislative process in the effort to ratify the PPRT Bill provides a valuable opportunity for Indonesia to showcase its dedication to safeguarding human rights, particularly concerning fair and decent work, including that of domestic workers.

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