

Transformation of Indonesian Domestic Worker Protection Laws Based on Comparisons with Hong Kong

Puteri Chintami Oktavianti, Pujiyono Suwadi, Sunny Ummul Firdaus

Department of Law, Faculty of Law, Universitas Sebelas Maret, Indonesia
Email: puterichintamio.22@student.uns.ac.id

Abstract

Millions of domestic workers in Indonesia are a source of livelihood for those in the lower middle class. Sadly, protection for domestic workers has yet to be adequately implemented. It has sparked debate among human rights activists and other human rights groups who hope a particular law will protect domestic workers. It means that legal transformation is needed. This research was conducted to conduct a juridical analysis of what legal transformation model would be appropriate for domestic workers in Indonesia by conducting a comparative test with the case of domestic workers in Hong Kong. The research results show that from the start, Indonesia must clarify the status of domestic workers as one of the elements of workers in Indonesia and create a Lex Specialist for domestic workers. At the same time, Indonesia also needs to take lessons from Hong Kong regarding the importance of an independent body to supervise law enforcement to protect domestic workers because the formation of a law without a sound law enforcement system means the expected results will not be by the vision and mission when forming the law.

Keywords: domestic workers, Hong Kong, Indonesia, law, protection, transformation.

Legal transformation to protect domestic workers in Indonesia must be fought for now. If seeing the rapid use of technology has greatly affected the pace of trade throughout the world where buying and selling activities between sellers and buyers can be carried out without space and time limits (unlimited) (Suwadi et al., 2023). One in 25 women in the world works as a domestic worker Panolih (2021). In Indonesia, working as an Indonesian domestic worker is a realistic option for most people because this job does not require a high education and can be done by many people. Statistics by the International Labour Organization also show

similar statistics, with domestic workers in Indonesia reaching 4.2 million people in a five-year survey. The number is expected to continue to increase because market demand for domestic workers increases over time Unair News, (2021). Of all this data, there is still the possibility that PRT data has yet to be recorded. Based on initial predictions, the number of female domestic workers reached 84 per cent Bagong (2023). Looking at this number, in general, the issue of protecting domestic workers also concerns the fate of women. Meanwhile, we understand that the position of women in many of our communities is vulnerable because of patriarchal

culture and also physical threats from figures who can be said to be far superior (Maharani & Ediyono, 2023). Problems like this require comprehensive legal solutions (Basyir, 2014).

Apart from the number and issues of feminism contained in it, legal transformation is a mandate from international agreements. It is contained in the standards of Convention No. 189 of the International Labour Organization, which states that domestic workers have rights. Several things that deserve attention are as follows: Article three emphasizes that domestic workers are obliged to receive complete human rights protection like other workers. Then, Articles 4 and 11 reaffirm that domestic workers are allowed to organize and apply for protection of their rights like other workers Dinda (2022) International Labour Organization (2011). The ILO reaffirms its commitment to protecting domestic workers through recommendation number 201. Recommendation 201 provides details on how to fight for the rights of domestic workers. With this fundamental basis, legal transformation and even the legal deconstruction of protection for domestic workers must be carried out legally; even though this is not an easy thing to compare, researchers made a comparison with the protection of domestic workers in Hong Kong. Hong Kong has several domestic workers, reaching 400,000 people (Agarwal, 2022). Of course, this is considered very large because Hong Kong is a much smaller country than Indonesia. It makes Hong Kong an exciting research object because it helps us understand the legal and field problems faced by migrant domestic workers there (Hall et al., 2019).

Methodology

The research used a legal comparison method between Indonesia and Hong Kong. Beside that this normative legal study used secondary data comprising primary and secondary legal materials based on the law as a norm. The normative legal method was used because the

data were based on laws and regulations, reports and some journals (Suwadi et al., 2022). The nature of the research used is prescriptive research, which can be seen as problems that will be discussed (Pujiyono et al., 2020). The results of this legal comparison are used as a basis for recommendations for legal transformation in Indonesia and a way to resolve the problem of legal protection for domestic workers in Indonesia. The research hopes to give us a big picture of how laws should be designed to benefit the wider community and not just certain groups. Secondary sources in journals and other research are used as learning and comparison media, which can help provide more comprehensive results. The research questions asked in this research are: How can legal transformation be learned through studying the Domestic Workers Protection Law in Hong Kong?

Results And Discussions

Worker Status

Hong Kong recognizes all workers using law no—57 (Chapter 57). It is an omnibus of labour law in Hong Kong. One thing that is regulated is the status of domestic workers. In Hong Kong, domestic workers usually come from non-Hong Kong citizens. Therefore, Hong Kong policy focuses on regulating visa permits for non-Hong Kong citizens. Hong Kong is one of the countries that is quite advanced in regulating the rights of domestic workers. One thing that is regulated in Hong Kong is the minimum salary and minimum food allowance. It gives workers comfort and clear status (Constable, 2019). Interestingly, Hong Kong has extensive policies, one of which prohibits domestic workers from working in several places at once. One visa can only be used for one place of work, and the job description must be specific. Giving multiple job desks to workers at once is illegal in Hong Kong. With this, workers' rights can be fulfilled.

In Indonesia, the protection and recognition of the status of domestic workers are still limited to the Minister of Manpower Regulation, namely

the Republic of Indonesia Minister of Manpower Regulation No. 2 of 2015. This Minister of Manpower Regulation regulates the rights and obligations of domestic workers and the regulations for the distribution of domestic workers in Indonesia. This Permenaker is considered a legal product whose power is under the law. Therefore, pressure for the government to push for a special law for domestic workers continues to be pushed. The problem is that the status of domestic workers in the omnibus law needs to be recognized. Thus, the protection they have is quite limited, and this raises concerns and feelings of insecurity. RI Minister of Manpower Regulation no. 2 of 2015 does not clarify the status of domestic workers, for example, when they are laid off (Habibah et al., 2021; Parvez et al., 2022). Another issue in domestic workers becomes increasingly complex because domestic workers are often underage and do not even have a clear contract. However, the absence of law makes resolving domestic workers' legal problems ambiguous. These domestic workers are not recognized as formal workers. Resolving their fate is much more difficult because there is no formal word recognition.

The first lesson in the much-needed legal transformation is to clarify the status of domestic workers. This step requires the preparation of clear and concrete laws to provide legal certainty regarding the rights and obligations of domestic workers. By providing this clarity, it will be significantly easier for domestic workers to obtain the rights they should obtain by contributing to the household. Applicable legal products must ensure that domestic workers have equal access to fundamental rights such as fair wages, reasonable working hours, and protection against harassment or discrimination. Providing this clear status can also increase respect for domestic workers as an essential part of the social structure and help create a fairer and more equitable work environment for all. Thus, this legal transformation not only supports the individual rights of domestic workers but also

encourages the formation of a more inclusive and equal society (Parreñas et al., 2018).

Rights And Obligations

In Hong Kong, the rights and obligations of domestic workers are regulated in the legal system. Factors such as minimum wages, visa status, and other aspects have been integrated into favourable laws to protect the rights of domestic workers. This regulation provides a sense of security for domestic workers in Hong Kong, ensuring they have equal access to fundamental rights, including fair wages. However, this also needs to be understood in the context of the mass migration of domestic workers to Hong Kong. The presence of many migrant domestic workers shows that the migration problem in Hong Kong cannot be separated from diplomatic matters. The Hong Kong government, in order to maintain good relations with the countries of origin of migrant workers, provides clear incentives to reduce the potential for diplomatic conflict (Manurung & Sa'adah, 2020; Lui et al., 2021; Suryanti & Sinaga, 2022). It needs to be acknowledged that the problems of migrant workers in Hong Kong have relevance to experiences in other countries, such as Malaysia and Saudi Arabia, where violations of migrant workers' rights can increase tensions in relations between countries. Therefore, protecting domestic workers in Hong Kong is not only an internal issue but also has a significant diplomatic dimension (Sulistiyono et al., 2023; Hasan, 2021).

Meanwhile, in Indonesia, the issue of domestic workers is still considered a local problem because the majority of domestic workers are Indonesian citizens. Apart from that, in terms of legal sociology, domestic workers are still considered lower class. In fact, a person who endeavours in a creation has the natural right to own and control a creation (Suwadi et al., 2024). Some domestic workers even have to carry out work that endangers themselves, and there is no contract stated in accordance with the domestic workers' needs. This problem requires changes to be made as soon as possible to protect domestic

workers who are also part of the Indonesian nation. Several arguments have emerged in response to this unhealthy paradigm. First, there is the view that local communities still tend to view domestic workers as second-class citizens. Such beliefs continue to grow in society, entrenched in thought patterns that must be changed. Second, there is an opinion that this condition continues to be allowed because many people need domestic workers to carry out various jobs with low wages. This way of thinking, in essence, reflects a form of approach similar to the practice of slavery, where domestic workers were considered weak and in need of much help Rahardjo (2009). It is essential to overcome the view that domestic workers' issues are only a local problem because protecting their rights has a significant impact on national welfare. Necessary changes include increasing awareness of domestic workers' rights, more explicit laws, and vigorous law enforcement to protect them from exploitation and unfair treatment. By making these changes, we can ensure domestic workers receive equal rights to other jobs and create a more just and inclusive society in Indonesia (Ariyanti, 2017).

Resolving the rights of domestic workers must ultimately be reached through lex specialist. The primary reason why the rights and obligations of domestic workers need to be regulated through lex specialist is because the profession is unique and requires special knowledge and skills. Lex specialist also provides a legal basis that is specific and relevant to the conditions of domestic workers, covering aspects such as working hours, fair wages, working conditions, and protection against harassment or discrimination. The importance of the lex specialist also lies in the fact that domestic workers are often not included in the same occupational categories as other professions. It can result in inequalities in legal protection and access to fundamental rights. Therefore, drafting a lex specialist for domestic workers is critical in upholding their rights and obligations. By ensuring the existence of lex

specialist, we can ensure that domestic workers receive legal protection appropriate to their circumstances.

Supervision

Indonesia and Hong Kong have laws that monitor domestic workers. However, some weaknesses can cause violations of workers' rights and obligations. In Hong Kong, even though it has better legal protection than Indonesia, various violations of the rights of domestic workers still occur. One of the main problems is salary withholding, where some employers are reluctant to pay salaries according to the agreement or withhold part of the amount. Apart from that, there needs to be a better match between the job description and the work that domestic workers are supposed to do, which can create uncertainty in the scope of their duties. Not to mention discussing the illegal levies charged to TKW, which makes the situation even worse. Violations of domestic workers' rights in Hong Kong also include harsh and inhumane treatment by employers, although not as bad as in Saudi Arabia. It is far from the mental health principles promoted to help workers adapt to their increasingly complex needs. Although there are regulations prohibiting such treatment, weak oversight and enforcement can provide an opening for such abuses to occur. This incident encouraged the formation of the idea of good punishment supervision in Hong Kong. A good and correct form of legal supervision involves several main principles to ensure continued justice, openness and protection of human rights.

The first step is for transparency to become a fundamental principle, where the supervision process must be accessible to the general public. Information related to supervision, legal decisions and judicial procedures must be available clearly and easily understood by the public (A. Widyawati et al., 2022). The domestic worker protection law drafted in Indonesia must also provide a scientific basis and academic text regarding the points proposed for protecting and supervising domestic workers. Making laws without a clear basis contradicts the state's

interest in providing certainty for its people. This certainty is something that the community needs so that they can carry out their duties comfortably and fulfil their welfare. The government/legislators also need to think that the welfare of domestic workers cannot be equated with the concept of welfare for other workers. Domestic workers must receive equal treatment, but their uniqueness and differences must also be respected as a process that occurs differently each time (Atmaja, 2017).

Furthermore, independence is an essential aspect of adequate legal supervision. Those carrying out supervision, such as supervisory agencies or courts, must be free from political pressure or external influences that could affect the objectivity of their decisions. The sustainability and stability of supervisory institutions must also be maintained to ensure long-term fairness. In Indonesia, the Indonesian Supreme Court has decided that any judge's decision should include all legal, philosophical, and sociological issues; consequently, the justice that must be accomplished, realized, and accounted for is legal, moral, and social justice-oriented (Pujiyono & Riyanta, 2020). It is a challenge in Hong Kong, as in Indonesia. There are interested parties who see this as a loophole for human trafficking. However, at the same time, there are better steps than banning domestic workers because this dimension of domestic workers is also an opportunity to solve the unemployment problem. It is a big issue that must be discussed to ensure the independence of the body overseeing the interests of domestic workers because, as Lord Acton said, power tends to corrupt. Domestic workers who are in a weak position have the potential to become victims of interests with much greater power (Andriansyah, 2021).

The next principle is accountability, where every person or institution involved in the justice system must be responsible for their actions and decisions. This includes applying sanctions if ethical violations or abuses of power are found. Community involvement in the monitoring

process can also increase accountability. Apart from being retributive, punishment is also a form of public trust in the legal process. The public must be assured that the law is impartial and that everyone gets equal justice (Simanjuntak, 2023). It is also important to know that protecting human rights is an essential principle in excellent and correct legal supervision. The oversight process must ensure that individual rights are respected and protected and prevent abuse of power that could harm human rights. Overall, excellent and correct legal supervision requires a combination of transparency, independence, accountability, and protection of human rights to ensure a justice system that is effective, fair, and trustworthy to the public. It still needs to be stated in the existing laws in Hong Kong and Indonesia.

In Indonesia, the main weakness related to inequality in recognition for domestic workers is a serious problem. Several principles are needed to maintain public trust. First, transparency in determining and implementing policies related to domestic workers is a priority. Information related to domestic workers' rights, obligations, and protection must be easily accessible to the public. Second, the independence of supervisory institutions must be strengthened to avoid political influence or specific interests that could harm domestic workers. Third, accountability mechanisms must be clarified and strengthened, including strict sanctions for domestic workers' rights violations. Fourth, human rights protection must be integrated into every aspect of supervision, ensuring that the rights of domestic workers are respected and protected.

Conclusion

Legal transformation is urgently needed to protect domestic workers in Indonesia. Conditions in Indonesia show that domestic workers, who mainly consist of women, have yet to receive equal recognition in the legal framework, even though their role is increasingly vital in overcoming poverty. Although the

domestic worker market continues to grow, the main weakness is the lack of adequate protection and supervision. In this context, reaffirming realistic forms of supervision in Indonesia must be strengthened with certain principles to maintain public trust. First, transparency in determining and implementing policies related to domestic workers must be a priority. Information regarding domestic workers' rights, obligations, and protection must be easily accessible to the public to provide clarity. Second, the independence of supervisory institutions needs to be strengthened, avoiding political influence or special interests that could harm domestic workers. Furthermore, accountability mechanisms must be clarified and strengthened, including strict sanctions for domestic workers' rights violations. Human rights protection must also be integrated into every aspect of supervision, ensuring that the rights of domestic workers are respected and protected. By prioritizing these principles, realistic and trust-based monitoring can ensure that the domestic worker market in Indonesia functions as a solution to overcome poverty without neglecting the rights and welfare of domestic workers.

Comparison with Hong Kong shows that more comprehensive legal arrangements and the implementation of good supervision can provide

more effective protection for domestic workers. Therefore, legal transformation in Indonesia needs to involve learning from the experiences of other countries that have succeeded in protecting the rights of domestic workers. When discussing lex specialist, it becomes very important to draft a special law that recognizes the specificity of the domestic worker profession. This will ensure that the rights and obligations of domestic workers are regulated and appropriate to the context of their work. Adequate supervision also requires ensuring that the lex specialist is applied fairly and comprehensively. Finally, protecting human rights is essential for good and correct legal supervision. By safeguarding the human rights of domestic workers, the supervision process can provide sustainable justice and maintain human dignity. Domestic workers' rights and welfare must be prioritized with cooperation between the government, supervisory institutions, and the community to achieve legal transformation. Legal reform that effectively protects domestic workers will support their rights and help shape a more inclusive and equal society. Therefore, legal reform for protecting domestic workers in Indonesia is a strategic step to create positive changes in their lives.

WORKS CITED

- Agarwal, A. (2022, April 26). Hong Kong's foreign domestic workers: end our abuse. FairPlanet. <https://www.fairplanet.org/story/hong-kongs-foreign-domestic-workers-end-our-abuse/>
- Andriansyah, A. (2021, Februari 15). Pengesahan RUU Perlindungan PRT: Penegasan untuk Menyejahterakan PRT. VOA Indonesia. <https://www.voaindonesia.com/a/pengesahan-ruu-perlindungan-prt-penegasan-untuk-menyjahterakan-prt/5778716.html>
- Ariyanti, F. (2017, June 15). Derita TKI di Hong Kong, Kena Pungutan hingga Rp 40 Juta. liputan6.com. <https://www.liputan6.com/bisnis/read/2936908/derita-tki-di-hong-kong-kena-pungutan-hingga-rp-40-juta>
- Atmaja, G. M. W. (2017). Metodologi Penelitian Hukum Dalam Penyusunan Naskah Akademik .Kegiatan Pembinaan Perancang Peraturan Perundang-Undangan Di Daerah Tahun Anggaran 2017 Diselenggarakan Kantor Wilayah Kementerian Hukum Dan Ham Bali Denpasar. https://simdos.unud.ac.id/uploads/file_penelitian_1_dir/627fe316b0fa7c50022a26711d35ffb3.pdf
- Basyir, A. (2014). Pentingnya Naskah Akademik Dalam Pembentukan Peraturan Perundang-Undangan Untuk Mewujudkan Hukum Aspiratif Dan Responsif. Jurnal IUS Kajian Hukum Dan Keadilan, 2(5), 285-306. file:///F:/13-07-2024/managierius,+Abdul+Basyir.pdf

- Constable, N. (2019). Telling tales of migrant workers in Hong Kong: transformations of faith, life scripts, and activism. In Routledge eBooks (pp. 107-125). <https://doi.org/10.4324/9781315873930-6>
- Habibah, S. M., Jatiningsih, O., & Purba, I. P. M. H. (2021). Jaminan Hak Asasi Manusia bagi Pekerja Rumah Tangga melalui Perjanjian Kerja di Surabaya. *Jurnal HAM*, 12(2), 245. <https://doi.org/10.30641/ham.2021.12.245-260>
- Hall, B. J., Garabiles, M. R., & Latkin, C. A. (2019). Work life, relationship, and policy determinants of health and well-being among Filipino domestic Workers in China: a qualitative study. *BMC Public Health*, 19(1). <https://doi.org/10.1186/s12889-019-6552-4>
- Hasan, N. N. N. (2021). News between Malaysia and Indonesia: editorial interest in conflict of interest. *the European Proceedings of Social & Behavioural Sciences*. <https://doi.org/10.15405/epsbs.2021.06.02.40>
- International Labour Organization. (2011). ILO Convention Number 189 Domestic Workers Convention. Geneva: ILO. https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189#:-:text=Every%20domestic%20worker%20has%20the,and%20health%20of%20domestic%20workers
- Lui, I. D., Vandan, N., Davies, S. E., Harman, S., Morgan, R., Smith, J., Wenham, C., & Grépin, K. A. (2021). "We also deserve help during the pandemic": The effect of the COVID-19 pandemic on foreign domestic workers in Hong Kong. *Journal of Migration and Health*, 3, 100037. <https://doi.org/10.1016/j.jmh.2021.100037>
- Maharani, A. F. P., & Ediyono, S. (2023). Perspektif Feminisme Dalam Kesetaraan Gender Di Indonesia. ResearchGate. <https://www.researchgate.net/publication/366866302>
- Manurung, S. A., & Sa'adah, N. (2020). Hukum Internasional Dan Diplomasi Indonesia Dalam Perlindungan Tenaga Kerja Migran Indonesia. *Jurnal Pembangunan Hukum Indonesia*, 2(1), 1-11. <https://doi.org/10.14710/jphi.v2i1.1-11>
- Panoli, Krishna P. (2021). Portrait of Domestic Workers in Indonesia. www.kompas.id <https://www.kompas.id/baca/metro/2021/03/04/potret-pekerja-rumah-tangga-di-indonesia>
- Parreñas, R. S., Silvey, R., Hwang, M. C., & Choi, C. A. (2018). Serial Labor Migration: Precarity and Itinerary among Filipino and Indonesian Domestic Workers. *the International Migration Review/International Migration Review*, 53(4), 1230-1258. <https://doi.org/10.1177/0197918318804769>
- Parvez, A., Superani, A. V., & Juaningsih, I. N. (2022). Rekonstruksi RUU PPRT Sebagai Upaya Perlindungan Hukum Dalam Penanggulangan Kekeerasan Terhadap PRT Perempuan dan Anak. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2(2), 232-250. <https://doi.org/10.15294/ipmhi.v2i2.54782>
- Pujiyono, & Riyanta, S. (2020). Corporate criminal liability in the collapse of Bank Century in Indonesia. *Humanities and Social Sciences Letters*, 8(1), 1-11. <https://doi.org/10.18488/journal.73.2020.81.1.11>
- Pujiyono, P., Wiyono, P., & Manthovani, R. (2020). Nationalization as a Threat to the Economy Market in Visa and Mastercard Business in Indonesia. *Journal of Critical Reviews*, 7(1), DOI: <http://dx.doi.org/10.22159/jcr.07.01.28>
- Rahardjo, Satjipto. (2009). *Penegakan Hukum: Suatu Tinjauan Sosiologis*. Yogyakarta : Genta Publishing. <http://library.stik-ptik.ac.id/detail?id=9217&lokasi=lokal>
- Shabrina, Dinda. (2022). Legal Protection for Domestic Workers to Avoid Modern Slavery. www.mediaindonesia.com. <https://mediaindonesia.com/humaniora/487361/perindungan-hukum-untuk-prt-hindari-perbudakan-modern>
- Simanjuntak, G. F. (2023). Ancaman Pidana Mati Perspektif Teori Retributive Dan Teori Utilitarianisme Di Indonesia. <https://publisherqu.com/index.php/pediaqu/article/view/152>
- Sulistyono, N. B. B., Paryanti, N. a. B., Sinaga, N. N. A., Purbowati, N. L., Cendhayanie, N. R. A., Sungkono, N., Syamsunasir, N., & Gaol, N. S. L. (2023). Malaysia - Indonesia Conflict: In the National Interpretation 1963 - 2010. *Journal of Namibian Studies*, 33. <https://doi.org/10.59670/jns.v33i.555>
- Suryanti, M. S. D., & Sinaga, M. (2022). Indonesian government diplomacy on protecting Indonesian migrant workers in Papua New Guinea during COVID-19 pandemic. *Nation State/Nation State*, 5(1), 49-58. <https://doi.org/10.24076/nsjis.v5i1.716>
- Suwadi, P., Ayuningtyas, P. W., Septiningrum, S. Y., & Manthovani, R. (2022). Legal comparison of the use of telemedicine between Indonesia and the United States. *International Journal of Human Rights in Healthcare*. <https://doi.org/10.1108/ijhrh-04-2022-0032>
- Suwadi, P., Manthovani, R., & Assyifa, A. K. (2023). Legal comparison of electronic contract in electronic commerce between Indonesia and the United States based on the United Nations Commission on

- International Trade Law. *Journal of Law and Sustainable Development*, 11(3), e714. <https://doi.org/10.55908/sdgs.v11i3.714>
- Suwadi, P., Sofyan, A. C., & Ramdhani, R. S. (2024). Legal comparison between national collective management institutions in Indonesia and United States. *RGSA*, 18(4), e04572. <https://doi.org/10.24857/rgsa.v18n4-015>
- Suyanto, Bagong. (2023). Protection of Domestic Workers, Who Cares?. www.kompas.id . <https://www.kompas.id/baca/opini/2023/02/04/pelindungan-prt-siapa-peduli>.
- Unair News. (2021), Komnas Perempuan Speaks Out Regarding the Problems of Domestic Workers in Indonesia. news.unair.ac.id. <https://news.unair.ac.id/2021/05/10/komnas-perempuan-angkat-cepat-terkait-problematics-domestic-workers-in-Indonesia/?lang=id>.
- Widyawati, A., Pujiyono, P., Rochaeti, N., Ompoy, G., & Zaki, N. N. B. M. (2022). Urgency of the legal structure reformation for law in execution of criminal sanctions. *Lex Scientia Law Review*, 6(2), 327-358. <https://doi.org/10.15294/lesrev.v6i2.58131>