

## **THE RIGHTS PROTECTION OF DOMESTIC SERVANT: A CASE STUDY IN THE CITY OF BANDUNG, INDONESIA**

**Kokom Komalasari**

**Didin Saripudin**

**Indonesia University of Education, Bandung, Indonesia**

### **Abstract**

The job of domestic servant is identical with the image of 'servant' and the servant must submit to his or her employer. Therefore the job of domestic servant is an informal sector job, which is very susceptible to the violation of worker's rights. However, it does not lessen the interest of women with low educational background to involve in that job sector. It is due to this job does not need specific competence and money capital, besides that the opportunity to go into this sector is opened widely along with the development of woman's dual role in urban area, and the availability of domestic servant distributor agent. This agent is ideally participated in giving knowledge and protection on the rights of domestic servants and establishing commitment of domestic servants to do their obligation in job relationship with their employer. Based on the case stuffy of Yayasan Sosial Purna Karya Kota Bandung, it is found that (1) generally, domestic servants have low socio-economic background; (2) generally the condition of working environment is not quite sufficient especially related to the security of social and health rights, working hour, and wage or salary; (3) domestic servant distributor agent is very useful for domestic servants in distributing the jobs, achieving knowledge and training in managing household, and protection of the right arranged in the contract; (4) there are some rights and obligations among domestic servants, manpower distributor agent, and employer that must be conducted equally; (5) until now there is no specific law that protects the rights of domestic servant as a an employee.

**Key words:** right protection, domestic servants, manpower distributor agent.

### **Introduction**

Economic crisis 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 (fore

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 (2004), from 2,6 millions domestic servants in the world, 688.132 persons are in Indonesia and 95% of them are women. 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 and in the other side they are family breadwinners, especially in urban area. Bandung as one of the big cities and West Java capital becomes the object of migrants from outside Bandung to risk their life as domestic servants. These migrant who become domestic servants are usually asked by their friends, distributed by the distributor in their village, or the most frequently one is distributed by manpower distributor agent.

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 agent is 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, the writer is 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?
4. What is the protection of domestic servants' rights?

## **Theoretical Foundation**

### **1. Definition of Domestic Servant**

Domestic servant is a rowk 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 date. December 19, 1959 in which the job of domestic servant is categorized as the job in informal sector thus the protection of them is not included in labor law context. In the consideration of the decision, Central Committee stated that they did not manage the problems related to domestic servant and the job that is taken charge by custom law.

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

But the problem is that not all the laws above do not 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 if domestic servant in Indonesia does not get appreciation so that they do not get the protection whether from law or social well. In fact, as the household worker, 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 two factors triggering the existence of domestic servant such as the poverty and the needs of domestic servant that is recently burdened to women. 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 citizen not for foreign women work force (such as Indonesian).

There should be an awareness of government and service user to improve upon 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 proceed. In its reality, that norm has influenced on the limitation of women access to the public world and has decrease 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 interest. It means that nation can participate through its policies to change norms or values that has been existing. In this context, Indonesia government, since New Order, has tried to encourage the women role in public world to participate in national development, especially in economic sector.

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) 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 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.

Of course it does not give the harmful implication for women, especially when they work or take a role n public world. Various policies, rules and programs intended for women worker are based on those stereotype 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.

## **2. The protection of domestic servants' right**

There are many weaknesses of the protection on domestic servants rights. These weaknesses are reviewed from some aspects as follow here:

### **a. Social aspect**

### 1) *Imbalance authority relationship*

Until now, job relationship between employers and domestic servants is based on imbalance authority relationship in which they positioned domestic servants as subordinate of them.

Imbalance 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 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 take a benefit from this situation.

### 2) *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 that the profession of domestic servants is not well respected and their salary is very low.

### 3) *Social culture*

The social problem experienced by domestic servants is not exempted from thinking pattern of patriarchy community that is gender bias and also feudalistic behavior, either traditional or modern feudalistic.

It can be concluded that cultural context still have feudalistic-capitalistic nuance that still have trend directing to a slavery condition that positions domestic servants as slave who must absolutely serve their employer with their totality. In this slavery practice, it seems 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.

### 4) *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 smooth of family living activities, especially for the couple that works in public sector. In this case, domestic duty is replaced by household worker.

However the role and contribution of domestic servant is 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 positions themselves to do paid job and women do unpaid job.

#### **b. 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, accident in working place, future insurance.

The job scope of domestic servant is in household that is assumes as private domain. It makes domestic servants not protected if they get maltreatment fro their employers. Because until now, community and also law officer do not think that violence in household that is 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: first, 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. 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, is very susceptible to experience violence due to their gender.

## Research Method

This research uses qualitative method. The method used in this qualitative method is case study, which is a study conducted intensively, exclusively and thoughtfully toward an organization, institute or specific phenomena (Yin, 2002: 4).

The location of this research is concentrated in Yayasan Sosial Purna Karya Bandung whose address is Jl. Stasiun Kiara Condong No. 6A. The subject of this research is:

- Domestic servants distributed throughout Bandung by Yayasan Sosial Purna Karya Bandung
- Employer in which they hire the domestic servants above.
- The head of Yayasan Sosial Purna Karya Bandung.
- The head of Social Department.
- The head of Manpower Department (Protection division)

This research uses purposive sample so the number of sample is determined by information consideration. The determination of sample is quite sufficient if it has reached saturation point. In collecting data, observation, interview and documentation study are used.

## Research Finding

### 1. Socioeconomic status background of domestic servants

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

**Table 1**  
**Educational background of domestic servants applicant**  
**In Yayasan Purna Karya 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 work as domestic servants because of economic needs to support their family (parent and their brothers/ sisters) and to add their husband's income that is not sufficient to support their family life. It is in line with the research finding by LBH APIK Jakarta presenting that most of domestic servants work 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%).

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

The preference of job as domestic servant is thought as suitable choice because there is no other choice for them who work with low education and have specific skill, except the skill in managing household. Although they realize that his job has big negative risk, as informed on TV about violence action on domestic servants by their employers, they always have wish to work for a good employer. And if they get undesired employer, then distributor social institution can consider changing their employer. It is suitable with the LBH APIK Jakarta that the preference of job as domestic servant is due to insufficient educational background, skill and competence to work in other sectors. Informal sector of household is regarded as the job that does not need special skill and competence because they are accustomed to do that in their daily life.

## **2. Working environment condition of domestic servant**

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

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



The kinds of job performed are sweeping, mopping, washing and so on. They start to work before their employers wake up about 5 o'clock, take a rest at the time that is not determined clearly and then they can stop working after their employers sleep that is not clear when they will sleep, sometimes it is late at night. Therefore, this job does not have working hour, they work every day whenever their employers need. They do not get holiday, except they ask for permission to have leave to go hometown and the time given is not more than a week (except feast day of Ramadhan, it can be 2 weeks).

The salary they get as domestic servants is varied. It is determined by the long period they work for their employers. Their average salary is between Rp.200.000 – Rp. 300.000, and some employers give them Rp. 500.000. The salary is given every three month, but some employers give it annually, and even some of them give it irregularly. The raise of their salary is annually, but some of them are not raised. But generally they get bonus and THR.

Insufficiency and uncontrolled employers' behavior toward domestic servants is due to the condition that the job of domestic servant is ignored, but in fact this job has important role in the smooth of their employers' activities. Both parties have interdependency. In such relationship, there is take and give mechanism in which each party takes a benefit. (Sunyoto, 1998: 141) Because of the image of domestic servant is a 'maid' and the servants must obey their employers, they often position their employers in the higher and dominant position. In contrast, they frequently put their positions in lower and dominated position. Finally this fact positions the job of domestic servants as informal sector job which is 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 is no special law that secures 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 is the existence of right and obligation that should be performed by all parties such as employer, domestic servant and distributor agent.

The job relationship between employer and domestic servant is usually stated orally, by relying on the familial relationship basis. The rights and obligations of each party are 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.
  - 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.
  - 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.
  - 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.
  - 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 is stated in written contract. The rights and obligations of the relationship are:
    - 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.
      - 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. 110.00 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.

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.

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.

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 the right 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.

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.

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.

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.
  - 3) Must take care of the health of domestic servant applicant by routine check-up.

#### **4. Protection of domestic servants' law**

##### **a. Protection through Constitution law**

Recent constitution law, especially UU No. 13. 2003 about the work force, has not give the protection for domestic servants. It is due to that no article of that law arranges the rights and obligations of domestic servants. Beside that, the prevalence of UU No. 3/ 1992 about work force social security, cannot help the existence of domestic servants. As stated in the performance rule article 2 statement 3, this government rule states 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 program.'

As we know, the service user (employer) only hires one, two or three domestic servants. Therefore the Jamsostek register for domestic servants depends on their employer and even there is no Jamsostek register for them.

Because there is 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 states that matters related to domestic servants especially stated in article 2 statement 1 explaining about the household affair domain which includes:

- (1) Husband, wife and children;
- (2) People who have familial relationship with the specified one in the letter a because of cognation, marriage, nursing, mothering and trusteeship, living in a household; and / or
- (3) People who work for helping household and stay at that household.

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

## **b. Protection through employee distributor agent.**

After domestic servants work, distributor agents do not leave them from law relationship that has been done for certain period of time with the requirement that the domestic servants work for the employers who take them from distributor agent. It is because the distributor agents have 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 is included in continual contract. By the definition of the contract agreed by distributor agent and domestic servants, its achievement is done continually as long as the domestic servants are willing to have contract with distributor agent.

The protection from distributor agent for domestic servants is 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 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 conscript 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 (KTP, or prevailed preference identity).
- 3) Must have healthy physic.
- 4) Do not have an affair with legal officer.
- 5) Minimum age is 15 years old.

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

During their living in distributor agent, domestic servant applicants are given knowledge and training about the job that they are willing to do. The material is how to operate electronic devices such as washing machine, gas stove, rice cooker and etc. besides that, they get religion and spiritual material, domestic servant applicants must get religious speech by requiring them to follow religious discourse that is usually conducted near distributor agents. They are educated in courtesy in behaving and talking, included the proper appearance in their dress. They are also given the counseling about the rights and obligations of domestic servants to their employers. They get some food and health insurance. For the meal needs, they usually cook by themselves while learning about the variety of food. All education and training given by distributor agent is intended to give them skill. But it is 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 that is suitable with their skill, moreover if they follow foreign people. However, distributor agents do not have to direct to be a 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 that has 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**

1. Generally domestic servants have low socioeconomic background.
2. 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.
3. Employee distributor agents give significant benefit for domestic servants to get knowledge and training, and the protection of rights in line with the agreement.
4. 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.
5. The protection of employee distributor agents toward domestic servants is only limited to what has been agreed previously.
6. 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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