

Implementation of Permenaker No. 2 of 2015 From The Channeling Agency In Channeling Workers

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Abstract

This study aims to examine the Implementation of Permenaker No. 2 of 2015 From The Channeling Agency In Channeling Workers. Work as a domestic worker (DW) is an important source of livelihood for the lower middle class for women and men in developing countries such as Indonesia, because the work is carried out in the household and is considered informal work, there are no clear regulations governing it, as a result it is often not noticed and considered a very low job. Lembaga Penyalur Pekerja Rumah Tangga (LPPRT) is expected to be a bridge as well as a protector of domestic workers regulated in PERMENAKER RI No.2 of 2015. Starting from the initial recruitment process, then the selection process and up to job placement, during work, and after returning to the area of origin. The main problem faced by domestic workers, as well as the obstacles experienced in obtaining their rights, both men and women working as domestic workers, is legal certainty and clarity of their social status. This research focuses on the conflict of interest of the channeling agency when distributing domestic workers because the channeling agency that provides the service fee is the employer.

Keywords: *Legal Protection; Domestic Worker; Channeling Institutions*

Abstrak

Penelitian ini bertujuan untuk mengkaji Implementasi Permenaker Nomor 2 Tahun 2015 tentang Penyelenggaraan Pendistribusian Tenaga Kerja di Bidang Pendistribusian Tenaga Kerja. Pekerjaan sebagai pekerja rumah tangga (PRT) merupakan sumber penting mata pencaharian kalangan menengah kebawah bagi perempuan dan laki-laki di Negara berkembang seperti Indonesia, karena pekerjaan tersebut dilakukan di dalam rumah tangga dan dianggap sebagai pekerjaan informal, tidak ada peraturan yang mengaturnya secara jelas, akibatnya sering tidak diperhatikan dan di anggap sebagai pekerjaan yang sangat rendah. Lembaga Penyalur Pekerja Rumah Tangga (LPPRT) diharapkan menjadi jembatan sekaligus pelindung pekerja rumah tangga yang diatur dalam PERMENAKER RI No.2 Tahun 2015. Mulai dari proses awal rekrutmen selanjutnya proses seleksi dan sampai dengan penempatan kerja, selama bekerja, dan setelah kembali ke daerah asal. Masalah utama yang dihadapi PRT begitu pula hambatan-hambatan yang dialami untuk mendapatkan hak-hak mereka, baik laki-laki maupun perempuan bekerja sebagai PRT adalah kepastian hukum dan kejelasan status sosial yang ada dalam dirinya. Penelitian ini berfokus kepada konflik kepentingan dari Lembaga penyalur saat menyalurkan pekerja rumah tangga karena Lembaga Penyalur yang memberikan fee jasa adalah pihak pemberi kerja (majikan).

Kata Kunci: Perlindungan; Pekerja Rumah Tangga; Lembaga Penyalur

INTRODUCTION

The Preamble of the 1945 Constitution of the Republic of Indonesia has mandated that one of the objectives of the Republic of Indonesia is to protect the entire Indonesian nation and all of Indonesia's blood.¹ In addition, the state is also obliged to be able to prosper its people. This is a great mandate for the state to all its people without exception. The state must be present if its people are not treated fairly and properly, the state must ensure that all its people get the same treatment and have the same rights in accordance with human rights and the mandate of the constitution.

As citizens, domestic workers have basic rights that must be fulfilled by the state, therefore the state and society have a responsibility to position and treat domestic workers as citizens who have the same rights and obligations as other citizens.² Therefore, as citizens, domestic workers have the right to be protected in carrying out their work.³ The issue of domestic workers in Indonesia cannot be separated from the prevailing cultural system in society. The current paternalistic relationship emphasizes the view that domestic workers are part of a family, so the working relationship is one of kinship or informal work. The absence of laws and regulations that specifically protect domestic workers is partly due to the fact that domestic workers' services in Indonesia are not considered an employment relationship.⁴ This has become a problem of interpretation among Indonesian society on how to refer to and treat domestic workers so that they receive improper treatment. Domestic workers who are considered as their own relatives and family by their employers are often treated unfairly and even resort to violence so that the working relationship between the employer and the worker is not professional like a working relationship.

The state, in this case, should be the initiator and clearly define the rights and obligations of domestic workers in carrying out their profession so that they get their rights as workers.

In 2004, the government began to formulate and draft a Domestic Workers Protection Bill, but until now the law that the workers had hoped for has yet to be passed. In the last 20 years, various civil society organizations have proposed and fought for the PPRT Bill to the DPR. For two decades, the PPRT Bill has undergone various study processes, comparative studies, various dialogue processes, revisions and discussions, until the last position was passed as a DPR initiative bill on March 21, 2023. However, until now there is no sign that the bill will be discussed and passed.⁵

¹ Preamble of the 1945 Constitution of the Republic of Indonesia

² Ratification of the International Labor Organization (ILO) Convention no.189 "concerning Decent Work for Domestic Workers," article 1 letter b

³ Draft Bill on PPRT, General, 2024

⁴ Ibid

⁵ <https://www.voaindonesia.com/a/tahun-tanpa-kejelasan-aktivis-desak-pengesahan-ruu-perlindungan-prt/7504064.html>, accessed on August 24, 2024.

The drafting of the PPRT Bill began in 2002, initiated by civil society groups. Furthermore, from 2004 to 2009, the first draft of the PPRT Bill entered the National Legislation Program (Prolegnas) of the House of Representatives (DPR RI) but was not yet passed because there were still differences of opinion regarding the regulation. In the period 2009 to 2014, the second draft of the PPRT Bill entered the Annual Priorities in 2010, 2011, 2012, 2013, and 2014. In 2010, the Working Committee was formed and conducted research in 10 cities, then in 2011 and 2012 the Working Committee conducted comparative studies to South Africa and Argentina. The next stage was also a public test of the PPRT Bill in Malang, Makassar, and Medan. The draft then became the PPRT Bill version of Panja Commission IX and was submitted to Baleg but then there was no follow-up.⁶

Problems that often occur between domestic workers (PRT) and employers are about how the rights and obligations of each party are often detrimental to domestic workers, although there are also some things that happen that are detrimental to employers. To date, the government through the Ministry of Manpower only has one legal product that provides signs to mediate various problems arising from friction between workers and employers, namely the existence of Permenaker No. 2 of 2015 concerning the Protection of Domestic Workers. However, this Permenaker does not explain in detail the rights and obligations of each party in conducting cooperation in the bonds of a job and there is no clarity on the status of domestic workers (PRT) in it.

Article 1 of the Minister of Manpower Regulation No. 2 of 2015 states that Domestic Workers, hereinafter abbreviated as DWs, are people who work for individuals in households to carry out household work by receiving wages and/or other forms of compensation.⁷ However, Permenaker No. 2 of 2015 does not specify the rights of workers such as wage standardization, working hours and rest periods, weekly leave, and annual leave, the right to communicate and unionize, and written and non-verbal agreements. Permenaker No. 2 of 2015 does not refer to Law No. 13 of 2003 Chapter X on Protection, Wages and Welfare such as Article 77 on working time, Article 78 on overtime work, Article 79 on rest and leave, Article 86 on occupational safety and health, Article 88 on wages, Article 89 on wage standardization and Article 99 on labor social security.⁸

In addition, the regulation also regulates the institution that distributes domestic workers (LPPRT) as an official institution that can provide services in the form of labor

⁶ Ratification of International Labour Organization (ILO) Convention no.189 “concerning Decent Work for Domestic Workers,”

⁷ Minister of Labor Regulation No. 2/2015 on “protection of domestic workers” Chapter 1 General Provisions

⁸ Nur Hidayati, Protection of Domestic Helpers According to Minister of Manpower Regulation No. 2 Year 2015, Journal of Humanoria Development Vol.14 No.3, December 2014

selection and placement to users (employers). LPPRT is a business entity that has obtained a written permit from the Governor or a designated official to recruit and distribute domestic workers.⁹ Until now, no organization or foundation that distributes domestic workers has spearheaded the work on the fate of domestic workers in terms of legal protection and empowerment. Even the government has never initiated a campaign to raise awareness of domestic workers.¹⁰

The main problem faced by domestic workers is the clarity of their status as workers and the unclear legal protection that makes domestic workers vulnerable to unfair treatment from employers and even the channeling agency. Therefore, the author wants to further examine the conflict of interest of the channeling agency as a mediating forum between domestic workers and employers. Therefore, the researcher will conduct a study entitled “Implementation of Permenaker No.2 of 2015 from the channeling agency in channeling workers”.

LITERATUR REVIEW

The literature review section contains a review of the literature, concepts, and theories used in the research, and can also be a review of previous literature (state of the art). Namely employment relations according to Law no.13 of 2003, the theory of legal protection of workers by Soepomo (2003), the theory of labor law by Abdul Khakim (2003), the theory of informal sector work by Keith Hart (1971), the theory of formal sector work by Satarudin, et al (2021).

RESEARCH METHODS

This research is designed using an empirical legal approach. Empirical legal research is one type of legal research. Basically, one of the differences between empirical legal research and normative legal research is that empirical legal research starts from primary data, namely data obtained directly from the community through field research. Meanwhile, normative legal research is based on secondary data. Empirical legal research is conducted through interviews and documentation. This research can be realized on research on the effectiveness of the current law or on research on legal identification.¹¹ The sources of legal materials used in this research are statutory legal materials, namely the Civil Code, Law Number 13 of 2003 concerning Manpower, Minister of Manpower Regulation No.2 of 2015 concerning Protection of

⁹ Minister of Manpower Regulation No. 2/2015 on “protection of domestic workers” Chapter 1 General Provisions

¹⁰ Fanny Tanuwijaya, Legal Protection of the Constitutional Rights of Domestic Helpers, Repository University of Jember, July 2014

¹¹ Jonaedi and Jhonny Ibrahim, Normative and Empirical Legal Research Methods, Mold To (Depok: Prenadamedia Group, 2018). H. 149

Domestic Workers. Furthermore, secondary legal materials, namely legal materials obtained from literature studies (Library research), namely by reading law books, legal journals, and also from the internet related to the problems studied. The legal material collection technique used in this research is a documentation technique which is carried out by inventorying and categorizing legal materials such as laws and regulations, literature and other legal materials.

RESULTS AND DISCUSSION

Protection of Domestic Workers who are channeled through Channeling Institutions

The Unitary State of the Republic of Indonesia is a state with a legal concept, as stipulated in Article 1 paragraph 3 of the 1945 Constitution, Indonesia is a state of law. One of its principles is the protection of human rights.¹² As explained in Law No. 39/1999, human rights are inherent human rights that must be respected by everyone. According to the law, human rights can provide moral strength to protect and guarantee human dignity. However, the rule of law has not been established in its entirety in accordance with the provisions of the constitution, so it is very prone to human rights violations.¹³ Domestic workers also have legal protection but the regulations are divided separately to protect them, namely the 1945 Constitution, Civil Code, Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 23 of 2002 on Child protection, Law No. 20 of 2002 on the National education system, Law No. 39 of 1999 on human rights and Law No.13 of 2003. Despite these regulations, they do not directly regulate domestic workers. Therefore, the government issued Minister of Manpower Regulation No. 2/2015 on the Protection of Domestic Workers. However, the regulation still has many shortcomings, in which there is still no seriousness in how the protection of domestic workers is enforced.

Minister of Manpower Regulation No.2/2015 on the Protection of Domestic Workers does not refer to the previous regulation “Law No.13/2003 on Manpower” because it looks complicated, especially when it comes to issues about trade unions and dispute resolution mechanisms. Previously, the Minister of Manpower claimed that this Permenaker is more than ILO Convention No. 189 on decent work for domestic workers. According to Article 3 of ILO Convention 189, “domestic workers should be treated like other workers in the formal sector”. However, if this Permenaker is not based on the Manpower Law, the capacity of this Permenaker cannot be used as a support and can even be said to be far below the minimum standard. It is recommended

¹² Andryan, 'Implications of the Supreme Court's Decision on the Right to Materil Test on the Legality of the Leadership of the Regional Representative Council of the Republic' (2018) 18 De Jure Journal of Legal Research [127].

¹³ Dessy Artiana, 'The Politics of Gender Equality Law in Indonesia' [2010] Riau University Law Science.[48].

that the Permenaker be based on the “Labor Law” or regulations related to employment, because domestic workers are also jobs that should not be differentiated in the eyes of the law.

Permenaker No.2/2015 on the Protection of Domestic Workers, which should be based on Law No.13/2003 on Manpower, instead refers to Law No.23/2014, Government Regulation No.38/2007, and Presidential Decree No.121. The basis for this ministerial regulation is misguided by not referring to the Manpower Law, this is the reason that this ministerial regulation is a form of supervision of the channeling agency. The reason for Law No. 23 of 2014 is that there is a need for supervision of channeling agencies in each region.¹⁴ However, the authority of the Minister of Manpower in the context of implementing regional government has been limited to central, provincial and district / city government affairs.¹⁵ Then Government Regulation No. 38 of 2007, which is to avoid overlapping authority. Then Presidential Decree 121/2014 stipulates that the establishment of the Ministry of Manpower has a legal basis.¹⁶

Based on the substance in the Permenaker on the Protection of Domestic Workers, it is more concerned with regulating the channeling institutions. Sanctions do not contain sanctions against employers and also do not contain criminal sanctions to strengthen the legal umbrella for Domestic Workers and are only limited to administrative sanctions aimed at channeling institutions not service users or workers. Therefore, this regulation only focuses on regulating channeling agencies and is still very weak and far from what is expected as a legal product for the protection of domestic workers.

The channeling agency only has a limited role to bring together job seekers with employers who are in accordance with their needs and the employer (employer) provides a fee in return for his services in finding domestic worker candidates according to his needs. The existence of a labor channeling agency provides employment opportunities for prospective domestic workers in need by reviewing in accordance with the recruitment, placement and protection mechanisms in accordance with the rules of each channeling agency. In Permenaker Number 2 of 2015 concerning the Protection of Domestic Workers Article 23 regulates the obligations of channeling agencies:

- 1) Selecting prospective users.
- 2) Ensure that prospective domestic workers are in good health and able to work properly.
- 3) Monitoring domestic workers who have been distributed to users.
- 4) Returning the service fee

¹⁴ Choirunnisa and Rainingsih Hardjo, 'Analysis of the Process of the Formation of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 2 of 2015 concerning the Protection of Domestic Workers' Fisip UI'.

¹⁵ Makmur and Mohammad, Op.Cit.[50].

¹⁶ Choirunnisa and Hardjo, Op.Cit.[10].

In the agreement between LLPRT Val The Consultant Surabaya and the employer, it is stated that the channeling agency only helps to provide the identity of the channeled workers. The labor that has been channeled is the responsibility of the employer. The channeling agency is not fully able to protect the workers who are channeled, the manager of the channeling agency only says how to select prospective workers and service recipients through their nature and behavior. The channeling organization is also not responsible if the worker has debts, uses the telephone, or steals from her employer's house, and if the domestic worker is sick, the employer pays for her treatment. The results of the interview conducted on August 24, 2024 with LLPRT Val The Consultant are:

1. Unable to fully protect domestic workers who have been channeled.
2. Unable to take responsibility if the domestic worker has a problem with her employer and only assists in mediation.
3. The only way to see the personality and honesty of the worker is by conducting an orientation period for 3 days before the worker is dispatched.
4. There is no special agreement between the channeling agency and the channeled worker, the agreement between the channeling agency and the worker only uses a statement letter of the worker's willingness to follow the rules of the agency.

The advantages of LLPRT Val The Consultant according to the interview results are:

1. The organization does not employ minors, with a minimum age limit of 18 years and a maximum age limit of 45 years.
2. Providing replacement of workers / DWs if there is no match with the employer in accordance with the choice of package from the channeling agency.
3. Checking the employer's identity through ID cards, finding out what he/she does for a living and having a decent place to live.
4. Requirement for the user/candidate employer at the time of worker collection through a written agreement with the channeling agency.
5. Provide guidance on how to be kind and honest to employers.

ILO Convention No.189 states that domestic workers have the same legal rights in the workplace as other workers and professions. Despite their important role, domestic workers are still not recognized as workers. Domestic workers represent the largest group of women workers in households both domestically and abroad. Currently, the ILO estimates that there are around 2.6 million domestic workers in Indonesia, including children under the age of 18 (eighteen). Domestic workers are highly vulnerable to violence and harassment. As informal workers, they do not have a strong legal umbrella if they experience injustice or even violence by their employers. The government should be the driving force by treating domestic workers as equal workers

and treating domestic workers as a noble profession so that the community will follow suit.

Forms and Types of *conflict of interest* of Domestic Worker Agencies

A conflict of interest is a situation in which a person in a position of trust, such as a lawyer, politician, executive or director of a company, has conflicting professional and personal interests. These conflicting interests can make it difficult for the person to perform their duties. A conflict of interest can arise even if it does not give rise to unethical or improper conduct. A conflict of interest can reduce trust in a person or a profession¹⁷.

In the context of development in the life of the nation and state today, companies are no longer faced with responsibilities based on aspects of economic profit alone, on the other hand the value of the company is reflected in financial conditions and must also pay attention to social and environmental aspects. Companies and entrepreneurs are no longer just carrying out economic activities to create profits for the continuity and profitability of their business, but are also responsible for social and environmental aspects. The premise is that depending solely on financial health does not guarantee that the company can grow sustainably. Sustainability will be guaranteed if the company pays attention to other related aspects, namely social and environmental aspects.¹⁸ Especially companies engaged in the service sector, one of which is the Domestic Worker Distribution Agency Company (LPPRT). This company is one of the hopes for the sustainability of social life at large, starting from the lower middle class to the upper middle class who really need its existence. The benefits of a labor channeling institution include:

1. Benefits for the Government, can reduce unemployment because the Institution helps people to find work and be accommodated in the institution and trained, especially in the field of housework.
2. Benefits for Employers, makes it easier to find labor according to their needs and desires.
3. Benefits for Workers, helping to find work even though they only have minimal skills.

In order to establish a company, a labor channeling institution must have an operational license as explained in Article 1 point 5 of Ministerial Regulation Number 2 of 2015, it must have a Business License from the Governor or the responsible agency in accordance with its domicile. The establishment of an LPPRT in accordance with the applicable provisions means that prospective job seekers and prospective service

¹⁷ https://id.wikipedia.org/wiki/Konflik_kepentingan . Accessed on September 1, 2024.

¹⁸ B Rudito, A Budimanta, A Prasetijo. Indonesia Center for Sustainable Development. 227, 2004.

recipients will not be harmed and will not be involved in fraud because they already have an operational license. Furthermore, in article 22 of Permenaker No.2 of 2015 that:

- 1) LPPRT is prohibited from collecting service fees from PRT.
- 2) LPPRT has the right to receive service fees from users.
- 3) The amount of service fee as referred to in paragraph (2) is determined based on an agreement between the LPPRT and the User.

Paragraph 2 explains that the LPPRT has the right to receive service fees from users (employers) which means that the main source of income of the channeling agency is from employers, so the channeling agency which is expected to be the mediator between the interests of employers and workers will slightly shift its position if based on this regulation. The results of interviews conducted on August 24, 2024 with LPPRT Val The Consultant regarding conflicts of interest faced by the Company are:

1. Conflict of interest The owner, CEO and owner of LPPRT Val The Consultant does not deny that the Company's main interest is profit, and their income only comes from fee payments from clients (employers), so that the interests of employers are prioritized.
2. Conflict of interest between staff employees and workers, staff employees are required by the Company to find workers according to the needs and desires of the client (employer), so that workers are selected more selectively according to the criteria requested, and workers who are not suitable will wait longer than others.
3. Conflict of interest of workers, the majority of workers who register at LPPRT Val The Consultant are those who are having problems in their lives. Starting from internal family problems with parents, spouses, children, in-laws, siblings to problems with debt and other problems. Unlike workers who want to work abroad, they usually only have financial problems.

Conflicts of interest will always exist in a company whose main purpose of establishing a company is to make a profit. Therefore, the legal basis becomes the main fortress to limit the extent to which the interests of the channeling company can be implemented in the employment relationship between domestic workers and employers.

CONCLUSION

The legal protection of domestic workers has been outlined in the Minister of Manpower Regulation No. 2 of 2015, but the substance contained in the regulation expects other parties (LPPRT) to be the main actors in the protection of domestic workers. The channeling agency is expected to be the arm of the government in protecting workers, but LPPRT is also not equipped with clear rules to do so. On the other hand, the channeling agency as a company also has other interests, especially profitable interests in running its business, so that the expected protection of domestic workers cannot be fully guaranteed by one government-owned legal product, namely Permenaker No.2 of 2015.

Through this research, it is hoped that the government, especially the Manpower sector, will continue to strive for the protection of domestic workers through more detailed and clear legal products concerning the protection of domestic workers as a whole, including channeling institutions to take part in this protection. Channeling agencies should also pay more attention to the workers they channel, go deeper into the background and origin of prospective employers, supervise domestic workers and actively participate in mediating if there is a conflict. Furthermore, the community is expected to stop seeing working as a domestic worker as a dishonorable thing, as all workers have the same rights and protection.

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