

## From Legal Gaps to Decent Wages: Ensuring Domestic Workers' Rights in Indonesia

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### Abstract

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Domestic workers constitute part of the informal labor sector, which has long been excluded from recognition as a formal profession within Indonesia's labor system. In practice, domestic workers in Indonesia often face various forms of exploitation, including excessive workloads, extended working hours, and inadequate wages. This discrimination stems from the absence of specific legal provisions recognizing and protecting domestic workers within the national labor legislation. This study focuses on the urgent need for legal regulation concerning the protection of wage rights for female domestic workers in Indonesia. Employing a sociological legal research method, the data collected were analyzed qualitatively. The findings indicate that, philosophically, the principle of a just and civilized humanity has not been sufficiently integrated into the formulation of labor regulations, resulting in the exclusion of domestic workers, particularly regarding wage protection. Furthermore, current labor laws fail to accommodate the needs of domestic workers due to their capitalist and patriarchal orientation. Juridically, labor regulations remain centered on formal employment and have yet to incorporate protections for informal sector workers. Sociologically, gender-biased constructions continue to frame domestic work as merely "assisting" tasks rather than professional labor, thereby reinforcing the notion that domestic workers do not deserve fair wages or reasonable working hours. This leads to systemic exploitation. ILO Convention Number 189 mandates that every individual has the right to decent work and fair wages as a foundation for achieving a dignified standard of living. This right must be guaranteed by the state, particularly for citizens who are structurally vulnerable within the labor hierarchy.

### 1. Introduction

The migration of impoverished and middle-income groups from rural to urban areas in Indonesia has become a persistent trend. This phenomenon is primarily driven by the unequal distribution of development between rural and urban regions. A significant number of individuals relocating from villages to cities are unable to be absorbed into the urban industrial sector due to their limited skills and the sector's insufficient capacity to accommodate the growing labor force. As a consequence, many urban migrants are compelled to seek employment in the informal sector, which is relatively more accessible. This sector includes occupations such as domestic workers, babysitters, gardeners, and other similar roles.

Domestic workers in Indonesia are often regarded as individuals engaged in assisting with tasks within the scope of household affairs. In reality, however, domestic workers constitute part of the informal labor sector, despite the absence of specific legal recognition in national legislation. These workers typically operate within unequal power relations and possess limited bargaining power in the employment relationship. Consequently, they are

frequently subjected to discriminatory treatment, including physical, psychological, and sexual abuse; non-payment of wages; lack of autonomy in decision-making due to debt bondage to employers; absence of rest days; restrictions on physical freedom; and various other forms of exploitation.

The International Labour Organization (ILO) has reported that, as of 2012, there were at least 2.6 million Indonesian citizens employed as domestic workers or domestic helpers. The majority of these workers are women with low levels of education, while male domestic workers constitute the smallest group, following women and children. According to ILO data, the distribution of domestic workers is concentrated in several regions, with the highest number found in DKI Jakarta (801,566), followed by East Java (402,762), Central Java (399,159), West Java (276,939), Banten (100,352), Bali (99,277), South Sulawesi (62,237), Lampung (60,461), and the Special Region of Yogyakarta (39,914). Other provinces with comparable numbers include North Sumatra, Riau, South Sumatra, West Nusa Tenggara (NTB), East Nusa Tenggara (NTT), West Kalimantan, and East Kalimantan. However, this data, as presented by the ILO, is not officially recorded or maintained by the Ministry of Manpower and Transmigration of the Republic of Indonesia<sup>1</sup>

Law Number 13 of 2003 concerning Manpower stipulates that the purpose of its enactment is to provide protection for workers, with the intention of ensuring the fundamental rights of workers and guaranteeing equal opportunities and treatment without discrimination on any grounds, in order to realize social justice in employment relations. The objective of ensuring the welfare of workers and their families, while taking into account the evolving progress of the business sector, underlies the formation of the Manpower Law. However, the enactment of this legislation does not extend to the regulation of domestic workers. The term "worker" as defined in Article 1 point 4 is interpreted as "a person who works to receive wages or other forms of remuneration." The government asserts that employers of domestic workers may fall under the category of "employers," but are not considered "entrepreneurs" or "business entities" within the meaning of Law Number 13 of 2003. As domestic workers are deemed not to be employed by an "entrepreneur," their legal status falls outside the scope of this legislation. Consequently, their rights to wages, decent working hours, and legal Protections against exploitation are not guaranteed under this law.

In December 2017, the Legal Aid Institute of the National Network for Domestic Workers Advocacy recorded 249 reported cases involving domestic workers, including instances of violence, complaints of unpaid wages, dismissals prior to religious holidays, and the non-payment of holiday allowances. Moreover, according to a survey conducted by JALA PRT on social security access among 4,296 domestic workers organized across six cities, 89% (3,823) did not receive health insurance, and 99% (4,253) were not covered by employment social security schemes. The majority of domestic workers bore the cost of medical treatment themselves when ill, often resorting to debt, including borrowing money from their employers debts that were later deducted from their wages. Furthermore, based on employment-related complaint data compiled by LBH Jakarta, there were 18 reported cases involving domestic workers in 2016, including several instances of unpaid wages for months, unilateral

<sup>1</sup> Muhtadi Muhtadi, "Perlindungan Hukum Bagi Pekerja Rumah Tangga Di Bandar Lampung," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 4 (2015): 642–56, <https://doi.org/10.25041/fiatjustisia.v8no4.318>.

termination of employment, dismissals just before holidays, and unpaid holiday allowances. Data reported by Kompas also revealed that the most prevalent form of violence experienced by domestic workers was psychological abuse (41%), which includes harassment, humiliation, isolation or confinement, and defamation. Another 37% experienced economic abuse, such as denial of fair wages, termination due to illness, and the withholding of holiday allowances due to unilateral decisions by employers. The remaining 22% were subjected to multiple forms of abuse, including sexual violence and severe physical injury.<sup>2</sup> Domestic workers receive wages below one million rupiah, which clearly fall short of meeting the standard for a decent living for workers.<sup>3</sup> The existence of Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers delegates matters of wages and working hours to the employment agreement between the employer and the domestic worker. From the perspective of equality, such agreements are made under unequal conditions, as domestic workers generally possess weak bargaining power. Ideally, the regulation should establish standardized provisions regarding fair wages and decent working hours for domestic workers.

The issue of violence against domestic workers has been studied by Luh Nila Winarni from Ngurah Rai University, whose research focuses on the protection of domestic workers from violence within the Indonesian legal system. Her study also emphasizes the fulfillment of the human rights of domestic workers. In addition, Sakka Pati from Hasanuddin University conducted research on legal protection for domestic workers as part of Indonesia's legal experience. This research adopts a justice-based perspective and was conducted in three provinces: Jakarta, the Special Region of Yogyakarta, and Makassar. The empirical findings reveal that there is no existing labor legislation capable of ensuring justice and legal certainty, as the state's responsibility has not been implemented in the substance of the prevailing laws. The rights of domestic workers are currently recognized only through employment agreements, which, in practice, do not provide sufficient guarantees for rights that have never been explicitly regulated. Hartati from Jambi State University conducted a study entitled "Regulation of Wages for Domestic Workers in the Perspective of Law Number 13 of 2003 concerning Employment." This research uses the Manpower Law as a basis for discussing the wages of domestic workers. However, it concludes that the application of the law is inapplicable, as domestic workers are not classified as formal workers and are not regulated under the said legislation. Sherlyn Nathalia Cheung conducted a study on "The Urgency of Legal Protection for Domestic Workers as Informal Workers." Her article examines the issues faced by domestic workers, particularly in light of their lack of legal protection, and explores possible measures to strengthen the bargaining position of domestic workers as laborers. Based on these four prior studies, it is evident that no research has specifically focused on the issue of domestic workers' wages as a critical matter requiring regulation. Therefore, a study on the urgency of regulating decent wages for domestic workers is necessary to demonstrate

<sup>2</sup>Bagong Suyanto, "Pelindung PRT Siapa Peduli," 6 Februari, 2023, <https://www.kompas.id/baca/opini/2023/02/04/pelindungan-prt-siapa-peduli>.

<sup>3</sup> Muhammad Yafi Azhari and Abdul Halim, "Hak-Hak Pekerja Rumah Tangga Dan Perlindungan Hukum Di Indonesia," *Media Iuris* 4, no. 2 (2021): 173, <https://doi.org/10.20473/mi.v4i2.25492>.

the philosophical, juridical, and sociological foundations underlying the need for wage protection for domestic workers.

Based on the aforementioned conditions, there is an urgent need for the regulation of domestic workers within Indonesia's positive legal framework. This paper seeks to examine the issue in greater depth and aims to propose solutions to address the urgency of regulating the wage rights of female domestic workers.

## 2. Methods

This research constitutes sociological legal research, which is a process of identifying patterns of regularity or patterns of relationships both correlational and causal among various phenomena that manifest the presence of law in social reality.<sup>4</sup> Sociological legal research is often referred to as empirical legal research. In this study, the method is employed to address the central issue concerning the reasons why female domestic workers are engaged in work without receiving a decent wage. Consequently, it is necessary to explore the legal implications of the absence of fair remuneration and to construct a legal protection framework for the right to decent wages. Empirical legal research originates from legal issues and utilizes actual behavior as a social phenomenon one that is unwritten and experienced sociologically within the community.

The types of data used in this study consist of both primary and secondary data, including legal materials. Primary data were collected through snowball sampling, followed by interviews and focus group discussions. Research informants included part-time/live-out domestic workers, members of the Regional House of Representatives, and representatives of non-governmental organizations supporting domestic workers, such as Center for Social and Development Research and Indonesian Women's Coalition. Secondary data sources comprised legal materials that explain and supplement the primary data. The research was conducted in Malang Regency and Malang City, with data collection taking place between September 2023 and March 2024.

The data were analyzed using a qualitative juridical method. This analysis was conducted in three stages: the data management stage, the descriptive stage, and the explanatory stage. These stages involved identifying patterns embedded within the data, uncovering the reasons underlying such patterns, and providing explanations by responding to previously formulated research questions. Finally, the analysis sought to relate the findings to broader theoretical frameworks or existing policy strategies.

## 3. Results and Discussion

### 3.1. The Absence of Regulatory Provisions on Domestic Workers in Law Number 13 of 2003 Concerning Manpower

Juridically, the reason why Law Number 13 of 2003 concerning Manpower does not provide legal protection for Domestic Workers lies in the definitions set forth in Article 1 point 3, point 4, and point 14, in conjunction with point 15. These provisions result in a normative gap (vacuum of norm) specifically in Article 1 point 3. The legal arguments for the existence of this normative gap include the following:

<sup>4</sup> Soetandyo Wignjosoebroto, *Ragam-Ragam Penelitian Hukum* (Jakarta: Yayasan Obor Jakarta, 2009), <https://opac.ut.ac.id/detail-opac?id=31763>.

*First*, Article 1 point 3 of Law Number 13 of 2003 concerning Manpower states: "A worker/laborer is any person who works by receiving wages or other forms of compensation." This provision clearly and explicitly defines who is referred to as a "worker/laborer." The phrase "receiving wages or other forms of compensation" affirms the meaning of the term "worker/laborer." In other words, a person who works cannot be classified as a laborer if they do not receive wages or any other form of compensation. Based on the wording of this article, domestic workers should fall under the category of workers/laborers, as the phrase "any person" includes domestic workers. Even live-in domestic workers (commonly referred to as *ngenger*), who may not receive monetary compensation but instead receive benefits such as their employer covering their children's education, should still be considered workers under receiving compensation in a non-monetary form.

*Second*, Article 1 point 4 of Law Number 13 of 2003 concerning Manpower states: "An employer is an individual, entrepreneur, legal entity, or other body that employs labor by paying wages or other forms of compensation." This provision may be summarized as follows: (1) the term "employer" includes: (a) individuals, (b) entrepreneurs, (c) legal entities, and (d) other bodies; (2) the scope of "employer" is broader than that of "entrepreneur" in other words, while every entrepreneur is an employer, not every employer is necessarily an entrepreneur; and (3) the term "employer" is juxtaposed with "labor," which, by extension, has a broader meaning than merely "worker/laborer." This provision could be applied to domestic workers. The rationale is that the employer of a domestic worker can be classified as an "individual," which is explicitly mentioned in this provision as one category of employer. In practice, most employers of domestic workers are not entrepreneurs, business entities, or institutions, but private individuals. Therefore, Article 1 point 4 should be interpreted as encompassing the employment relationship between domestic workers and their employers.<sup>5</sup> Article 1 point 4 does not explicitly specify the situation in which the employer is an individual who hires a domestic worker for personal purposes, rather than for capital accumulation. In the case of domestic workers, they are employed not to generate profit or accumulate capital for the employer, but to perform household tasks for the employer's private benefit. As such, the concept of "employer" about domestic workers is not adequately regulated under Law Number 13 of 2003 concerning Manpower.

*Third*, Article 1 point 14 of Law Number 13 of 2003 concerning Manpower states: "An employment agreement is an agreement between a worker/laborer and an entrepreneur or

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<sup>5</sup> In social reality, female domestic workers are sometimes employed by companies and/or business entities. This implies that, in such cases, the employer qualifies as an "entrepreneur," thereby establishing an employment relationship between the domestic worker and the entrepreneur, which should entitle the worker to legal protection under the Manpower Law. However, in practice, only a small portion of female domestic workers are employed by entrepreneurs, while the vast majority are employed by private individuals who are not classified as entrepreneurs or business entities. Empirical data indicates that in 2009 there were approximately 10,744,887 female domestic workers, and this number has been estimated to increase at an average rate of 1.4% per year. These workers are particularly vulnerable to exploitation and violence. The vast majority of these approximately 10.7 million domestic workers are employed by individuals rather than formal business entities. Furthermore, there is an absence of specific data regarding domestic workers employed under the "pocokan" model those who work part-time or on a non-continuous basis across one or more households.

employer that sets out the terms of employment, rights, and obligations of both parties." This provision can be interpreted to mean that there are two categories of legal subjects who may enter into an employment agreement: (1) between an entrepreneur and a worker/laborer, and (2) between an employer and a worker/laborer. This implies that domestic workers may be regarded as legal subjects within an employment agreement specifically, as workers/laborers who enter into such an agreement with one type of employer, namely a private individual, as referred to in Article 1 point 4. Although Article 1 point 14 distinguishes between the terms "entrepreneur" and "employer," the distinction creates a degree of legal inconsistency when compared with Article 1 point 4, which defines an entrepreneur as a subset of the broader category of employers. Therefore, Article 1 point 14 introduces a terminological inconsistency by treating "entrepreneur" and "employer" as separate concepts, although Article 1 point 4 considers the entrepreneur to be encompassed within the definition of "employer."

*Fourth*, Article 1 point 15 of the Manpower Law (Law Number 13 of 2003) provides that: "An employment relationship is a relationship between an entrepreneur and a worker/laborer based on an employment agreement, which includes the elements of work, wages, and command." This provision is further affirmed by Article 50, which states: "An employment relationship arises because of an employment agreement between an entrepreneur and a worker/laborer." These two provisions can be interpreted as follows: (1) the legal subjects who may enter into an employment relationship are entrepreneurs and workers/laborers; (2) the legal basis for the employment relationship is the existence of an employment agreement; and (3) the essential elements of an employment relationship include the existence of work, wages, and a hierarchical command structure. This means that a legal relationship cannot be considered an employment relationship if the legal subjects involved are not an entrepreneur and a worker/laborer, or if it lacks one or more of the elements of work, wages, and command which are the defining characteristics that distinguish an employment relationship from other legal relationships. Accordingly, the relationship between domestic workers and their employers is not recognized as a formal employment relationship under Article 1 point 15 and Article 50 of Law Number 13 of 2003 concerning Manpower.

The aforementioned legal facts constitute one of the contributing factors to the absence of legal protection guarantees for Domestic Workers under Law Number 13 of 2003 on Manpower. This situation arises because Domestic Workers are not employed by entrepreneurs, and thus they do not qualify as legal subjects within the context of an employment relationship that can be equated with entrepreneurs, nor are they employed within a corporate or business entity. This interpretation becomes even clearer when linked to the definition of "entrepreneur" in Article 1 point 5 and "company" in Article 1 point 6 of the Manpower Law. Article 1 point 5 stipulates:

"Entrepreneur shall mean: a. an individual, partnership, or legal entity that operates its enterprise; b. an individual, partnership, or legal entity that independently operates an enterprise owned by another party; c. an individual, partnership, or legal entity residing in Indonesia who represents an enterprise as referred to in point a or b, which is based outside the territory of Indonesia."

Article 1 point 6 reads as follows:

" Company is defined as follows:

- a. any form of enterprise, whether or not it has legal status, owned by an individual, a partnership, or a legal entity, whether privately or state-owned, that employs workers/laborers by paying wages or other forms of compensation;
- b. social enterprises and other types of enterprises that have management and employ individuals by paying wages or other forms of compensation."

Based on the definitions of "employer" and "company" as stipulated in Article 1 point 5 and 6 of the Manpower Law, it becomes evident that domestic workers are not considered legal subjects employed by an entrepreneur, nor do they work within a company. Empirically, domestic workers are employed within a household setting and are hired by individual employers (natural persons rather than entrepreneurs) as the party providing employment. Consequently, the distinction between domestic workers and formal laborers lies like the employer: formal laborers are employed by entrepreneurs for capital accumulation, whereas domestic workers are employed by individuals without the objective of generating capital.

The regulation of fair wages and decent working hours for female domestic workers is an urgent matter. Philosophically, this urgency stems from the absence of integration of the values enshrined in the Second Principle of Pancasila "just and civilized humanity" in the formulation of the Manpower Act, which should ideally encompass not only the formal employment sector, namely industrial labor, but also the informal employment sector, such as domestic work. The legal status of domestic workers, which remains unrecognized under Law Number 13 of 2003 concerning Manpower, results in the lack of legal protection guarantees for this group. This normative vacuum leads to the absence of standards regarding fair wages and decent working hours in the employment relationship between domestic workers and their employers. Philosophically, domestic workers are human beings with equal dignity to others, and thus, they should be treated equally, both in terms of gender and in socio-economic contexts, including in their legal standing. Gender bias has contributed to the marginalization of domestic workers within state politics, as evidenced by the failure to establish specific legal protections. Delegating wage determination and working hours to market mechanisms constitutes a form of injustice, as it places marginalized groups, such as domestic workers, at a significant disadvantage due to structural inequalities.

The absence of specific regulation places domestic workers in a position of vulnerability. In 2011, the International Labour Organization (ILO) urged the Indonesian government to adopt legislation aimed at protecting domestic workers, as existing legislative products had systematically failed to accommodate their needs. In response, in 2015, the Ministry of Manpower issued Ministerial Regulation Number 2 of 2015 concerning the Protection of Domestic Workers (Permenaker No.2/2015). This regulation comprises 30 articles, 19 of which focus on matters related to Household Affairs and Domestic Worker Placement Agencies, while the remaining 11 articles address issues concerning domestic workers and their employers. However, these provisions remain general and lack comprehensiveness. Permenaker No.2/2015 does not address critical issues such as the formal recognition of domestic workers, the right to fair wages, regulation of working hours, access to social security, mechanisms for responding to violence, and other forms of protection. According to

Syawal<sup>6</sup> Ministerial Regulation Number 2 of 2015 (Permenaker No.2/2015) has functioned as a shield for the Indonesian government to evade international scrutiny regarding its commitment to the protection of domestic workers. Simultaneously, it serves to legitimize the 'business practices' of Domestic Worker Placement Agencies, which in practice have become a significant source of injustice faced by domestic workers.

The absence of comprehensive recognition of domestic workers with the existence of their rights shows that the rule of law has not been drafted with a human rights perspective, especially the principles of justice and equality. Lawmakers should use the principle of substantive justice and the principle of affirmation as their seriousness in upholding human rights in the process of drafting labor law products. Substantive justice deals with relationship between citizen and the government. Substantive justice primary motto to provide rights and obligation to citizenship.<sup>7</sup>

The principle of substantive justice is adopted from the CEDAW International Convention, it recognizes that women are in an unequal position, and therefore must be treated differently in order to obtain equal benefits and outcomes.<sup>8</sup> This means that men and women are biologically different, therefore treating them the same will bring injustice to women. This principle is in line with John Rawl's theory of justice, with the principle of difference (the difference principle) and the principle of equality of opportunity (the principle of fair equality of opportunity). The essence of the difference principle is that social and economic differences should be organized to provide the greatest benefit to those who are most disadvantaged. The term socio-economic difference in the principle of difference leading to inequality is the prospect of an individual to obtain the basic elements of well-being, income and authority. Temporary, the *principle of fair equality of opportunity* refers to those who have the least opportunity to achieve prospects of prosperity, income and authority, and so should be given special protection. Situations of inequality should be regulated in such a way as to benefit the weakest sections of society the most.<sup>9</sup> The difference between the principle of substantive equality and the principle of special action/affirmation is that the target object of the principle of justice from feminist legal theory is based on power relations between men and women, while John Rawls' principle is based on power relations between socio-economic classes. The principle of substantive equality has not been able to answer equality of access, participation, control and benefits for women's rights.

### 3.2. The Wages of Domestic Workers do not yet meet the standard of a living wage

Article 1 point 30 of Law Number 13 of 2003 defines "wage" as "the right of workers/laborers to receive payment expressed in monetary form as compensation from employers or job providers to workers/laborers, determined and paid based on an

<sup>6</sup> Syahwal, "Domestic Workers Struggle For Recognition And Redistribution In The Age Of Cannibal Capitalism," *Mimbar Hukum* 36 (2024): 519–48.

<sup>7</sup> Abhinav Raj, "A Study On " Substantive Justice And Procedural Justice "" 8, no. 4 (2023): 764–71.

<sup>8</sup> R valentian Sagalla dan Ellin Rozana, *Pergulatan Feminisme dan HAM*, (Bandung: Institut Perempuan, 2007) hlm. 16-18

<sup>9</sup> John Rawls and Uzair Fauzan dan Heru Prasetyo (Penerjemah), *Teori Keadilan : Dasar-Dasar Filsafat Politik Untuk Mewujudkan Kesejahteraan Sosial Dalam Negara* (Yogyakarta: Yogyakarta: Pustaka Pelajar, 2006), <https://simpus.mkri.id/opac/detail-opac?id=9809>.

employment agreement, mutual agreement, or statutory provisions, including allowances for the worker/laborer and their family for work and/or services that have been or will be performed." Based on this provision, it is understood that wages, in principle, must be expressed in monetary terms. Although Article 1 point 3 of Law Number 13 of 2003 allows for the possibility that wages or compensation may be provided in non-monetary forms, those wages must first be stated in monetary terms. In practice, domestic workers generally receive wages in cash, though it is not uncommon for them to be compensated through goods or services. For instance, some receive meals, and for live-in domestic workers, lodging, food, electricity, and access to water for laundry are often calculated as part of their compensation.

Article 88 paragraph (1) of Law Number 13 of 2003 stipulates that workers are entitled to earn a decent income, which refers to the amount of income or earnings received by workers from their employment, enabling them to meet the reasonable needs of both themselves and their families. These needs include food and beverages, clothing, housing, education, health care, recreation, and old-age security. Based on this provision, employers are obligated to provide fair wages to workers to ensure a decent standard of living in accordance with human dignity, encompassing not only primary needs such as food, clothing, and housing, but also tertiary needs such as education and recreation. As a consequence, employers are prohibited from paying wages below the minimum wage set by the government, as regulated under Article 88 paragraph (4) in conjunction with Article 90 paragraph (1) of Law Number 13 of 2003.

As is commonly understood, Law Number 13 of 2003 mandates that a decent wage must be based on the standard of decent living needs. Article 1 point 1 of Minister of Manpower Regulation Number 13 of 2012 defines "Decent Living Needs or DLN" as the standard of needs for a single worker to live decently in physical terms for one (1) month. The components of decent living needs are divided into seven categories: food and beverages, clothing, housing, education, health care, transportation, recreation, and savings. These categories are further detailed into 60 specific components of decent living. In the case of domestic workers, the wages received whether on a daily, weekly, or monthly basis typically only cover 28 of these components.<sup>10</sup> In terms of Decent Living Needs, the standards are not different; however, the distinction lies in the fact that the wages of domestic workers are insufficient to meet all 60 KHL components and can only cover approximately 28. For instance, under Component II,

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<sup>10</sup> The 60 Components of a Decent Standard of Living are discussed and determined by the Wage Council, which includes representatives from labor unions. However, these standards do not apply to Domestic Workers. According to findings from focus group discussions (FGDs) and monthly meetings conducted with members of the Anggrek Maya domestic workers' group, participants reported that their wages are only sufficient to cover approximately 28 components of a decent standard of living. Even then, distributing their income across these components requires considerable effort and careful prioritization. The limited allocation to only 28 components is primarily due to the low wages received, which often necessitate financial supplementation from their spouses' income to meet essential needs. The 28 components typically covered include: underwear, water dipper, dishwashing soap (and other cleaning agents), broom, plates and glasses, Liquefied Petroleum Gas (LPG), kitchen utensils (such as kettles, buckets, and other basic items), bed sheets, internet data quota, sanitary pads, soap, toothpaste, motorcycle taxis (ojek), fuel, and modest rewards for children during school promotion periods or for local recreational activities during religious holidays. There is generally no allocation for regular savings, except for a small amount ranging from IDR 5,000 to 10,000 every week for the holidays.

which pertains to household necessities such as electricity, water, irons, wardrobes, tables, and chairs, these expenses are typically borne by the husband. Meanwhile, the domestic worker's wages are allocated for items such as glasses, plates, LPG, bed sheets, laundry soap, kettles, and other kitchen utensils. The components unmet by the domestic worker's wage are usually supplemented by the husband's income. A shift has also occurred in Component IV, Education, where expenditures on reading materials are now covered by government school operational assistance, while a new essential need has emerged, namely, internet data packages. This requirement is particularly significant given that employers often contact domestic workers for additional services or changes in work schedules. Other needs that cannot be met by the domestic worker's income are covered by the husband's wages, although not all needs, such as housing and furniture, are fulfilled. Necessities such as food and clothing are met jointly by the domestic worker and the husband due to limited income. Domestic workers typically earn around IDR 50,000 per day, with working hours ranging from 3 to 8 hours or more.

In fulfilling their daily needs, domestic workers both male and female share financial responsibilities, with the allocation adjusted according to the type of work performed by each worker. Wage calculations, based on basic living needs, are typically averaged and distributed according to the number of days the domestic worker is present, considering that they do not work every day and usually work between 1 to 6 hours per day. Any additional hour of work up to one hour is generally not considered overtime and is often accepted without compensation. However, if the working hours exceed 8 hours per day, domestic workers are entitled to overtime pay, the rate of which depends on the employer's financial capacity. As for the specific agreement with the domestic worker known as Anggrek Maya<sup>11</sup>, in cases where members of the domestic workers' union work for a full 8-hour shift, the agreed overtime wage is IDR 15,000, bringing the total daily wage to IDR 65,000. For domestic workers who perform labor on religious holidays and national public holidays, the established rate is IDR 75,000 per attendance, with a maximum of 8 working hours. If the working hours exceed 8 hours, there is, as of yet, no formal agreement within the Anggrek Maya Domestic Workers' Union regarding additional compensation. In practice, any compensation for excess hours worked on holidays is subject to the discretion of the employer. Some domestic workers report receiving only IDR 50,000 on public holidays, with no increased rate. Nevertheless, they accept this wage due to the urgency of meeting their daily needs. Although there is a wage agreement established within the domestic workers' union, in reality, each domestic worker's ability to negotiate wages with their employer varies. To date, the Anggrek Maya Domestic Workers' Union has not undertaken advocacy efforts on this issue.

Wages, as a fundamental right of formal workers, must be fulfilled without discrimination and the same principle should equally apply to domestic workers. The regulation of a decent standard of living through fair wages and freedom from discrimination is embodied in Article 2 of Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment (hereinafter referred to as GR 35/2021), which stipulates that:

<sup>11</sup> Interviews with Ms. Nuriyati and Ms. Wiwik as heads of the domestic workers union for the 2016-2020 and 2021-2025 periods.

- (1) Every worker/laborer shall have the right to a decent standard of living in accordance with human dignity.
- (2) Every worker/laborer shall have the right to a decent standard of living in accordance with human dignity.

The wages of domestic workers remain unregulated, and there is currently no established calculation for their minimum wage. However, this absence of regulation does not negate the right of domestic workers to receive a fair and decent wage. According to the theory of Positive Legal Rights, the right to wages constitutes an absolute entitlement that must be actively regulated by the state. The failure of the state to regulate such a right does not imply that the right is nullified or no longer exists; rather, it continues to exist as an integral part of human rights. The provision of fair and decent wages for domestic workers is a fundamental step toward ensuring a dignified and humane standard of living.

Government Regulation Number 35 of 2021 concerning Fixed-Term Employment Agreements, Outsourcing, Working Hours, Rest Periods, and Termination of Employment stipulates in Article 22 that overtime pay shall be calculated using a specific formula, namely:

- a. 1,5 times the hourly wage for the first hour of overtime.
- b. 2 times the hourly wage for each subsequent hour of overtime.

In the regulatory formulation mentioned above, domestic workers are not included. Nevertheless, it may still serve as a reference framework, particularly for pocokan domestic workers, who generally work under two models: daily-based pocokan and hourly-based or part-day pocokan arrangements. For pocokan domestic workers who work from 07:00 to 15:00, if they are required to work overtime beyond 8 hours, they are entitled to receive overtime wages from their employer. On the other hand, pocokan domestic workers who work for a quarter of a day approximately 5 to 7 hours often receive the same wages as those who work the full 8 hours. If they are asked to work overtime, they generally calculate overtime as work performed beyond 8 hours. However, if the total working time remains under 8 hours, they often waive overtime compensation, particularly when meals such as lunch and dinner are provided by the employer.

The regulation of overtime pay for Domestic Workers remains unclear, reflecting the ambiguous legal status of Domestic Workers within existing legislation. According to the concept of legal protection developed by Prof. Satjipto Rahardjo, protection entails efforts to safeguard an individual's interests by allocating human rights and power to enable them to act in the pursuit of those interests. This concept affirms that every person holds sovereignty over themselves in exercising their human rights and is entitled to the protection of their interests. In the context of work that extends into overtime, Domestic Workers are entitled to overtime wages, as their right to rest and to spend time with family constitutes a protected interest. When a Domestic Worker undertakes overtime work, this interest is postponed or even denied, and such a loss must be compensated proportionately in the form of overtime wages. This overtime remuneration must be in the form of monetary payment not good to ensure that Domestic Workers retain full autonomy over the use of that compensation, particularly for meeting the needs resulting from the sacrificed personal time.

The obligation to pay overtime wages lies with the employer, as stipulated in Article 39 of Government Regulation Number 35 of 2021, which states that overtime pay must be

provided by the employer if the worker performs work beyond regular working hours, on weekly rest days, or during public holidays, either as a substitute or as compensation for additional work. Based on this provision, overtime constitutes an extension of working hours, which also applies to domestic workers, whether during regular workdays, weekly days off, or official holidays. Unfortunately, the concept of overtime pay remains largely unfamiliar to both domestic workers and their employers. As a result, many employers do not fulfill their obligations to pay overtime, and domestic workers often do not claim their right to such compensation. However, through domestic worker education initiatives, such as the PRT School and monthly discussions organized by the Anggrek Maya group, members of domestic worker organizations have begun to gain awareness of their right to receive overtime pay<sup>12</sup>. For domestic workers who do not receive overtime pay, compensation is often provided in the form of meals, such as lunch and dinner.

The absence of legal recognition and regulation for domestic workers has resulted in the lack of specific provisions governing their wages and overtime pay. In contrast, Article 33 of Government Regulation Number 35 of 2021 concerning Wages for Daily Workers provides a framework for calculating monthly wages, which is determined as follows:

- a. The daily wage is multiplied by 25 (twenty-five) for Workers/Labourers who work 6 (six) days per week; or
- b. The daily wage is multiplied by 21 (twenty-one) for Workers/Labourers who work 5 (five) days per week.

Based on the formula above, a simulated wage calculation for a domestic worker employed daily (*pocokan*) who works 8 hours per day for 6 days a week results in a monthly wage of IDR 1,250,000. Accordingly, the hourly wage would be approximately IDR 6,250. When compared to the wage of formal sector workers, the ratio is approximately 1:2.68. For daily-based domestic workers who work fewer than 8 hours per day, the wage calculation can refer to Article 33 of Government Regulation Number 35 of 2021 concerning Wages Based on Unit of Output, which stipulates that the monthly wage shall be equal to the average earnings over the previous 12 (twelve) months. This provision applies because domestic workers typically work 5–8 hours per day and are paid based on the completion of assigned household tasks. Based on this calculation, their average hourly wage is approximately IDR 3,468. In comparison, the minimum monthly wage for formal workers in Malang Regency is IDR 3,355,300. Assuming 200 working hours per month, the hourly wage for formal workers is IDR 16,776.5. Thus, the hourly wage ratio between domestic workers and formal sector workers is approximately 1:4.8.

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<sup>12</sup> Based on findings from a Focus Group Discussion (FGD) with domestic workers, it was reported that overtime wages are typically paid in the amount of IDR 15,000, or added to the standard daily wage – raising it from IDR 50,000 to IDR 65,000. When work is performed on national holidays or major religious celebrations, the wage increases to IDR 75,000. However, not all employers provide overtime compensation. In many cases, instead of monetary payment, employers offer additional meals, which domestic workers are allowed to take home. Nevertheless, among the participants, three domestic workers reported having considerate employers who compensate overtime more appropriately. These workers stated that they receive overtime pay ranging from IDR 20,000 to IDR 25,000 when working more than eight hours per day.

This condition reflects a disparity that Nancy Fraser refers to as cannibalistic capitalism. This concept operates within industries that exert significant influence over the domestic sphere. Fraser argues that capitalism has evolved beyond merely an economic system into a broader social order that consumes non-economic values, a transformation she describes as cannibalistic capitalism. This shift underscores the importance of social reproduction alongside commodity production, as capital accumulation increasingly relies on both processes<sup>13</sup>. Cannibalistic capitalism marginalizes women by structurally positioning them within the domestic sphere, assigning them the primary responsibility for household duties. Domestic labor, despite its substantial contribution to both the family economy and the broader public sphere, remains economically undervalued. As a result, the role of social reproduction becomes feminized, while the public sector continues to be dominated by men. This marginalization gives rise to a double burden or even a multiple burden for women, particularly domestic workers. The vulnerability of domestic workers is further exacerbated by the absence of comprehensive legal protection, including lack of formal recognition, rights to wages, regulated working hours, social security entitlements, and other essential protections.

The significant wage gap between formal workers and domestic workers constitutes an economic disparity that directly affects the financial conditions of domestic workers. This economic and social inequality places an obligation on the state to implement regulatory measures that promote justice and enhance the utility of law. It is recognized that the welfare of domestic workers does not solely depend on legal frameworks, but also arises from the prevailing social order and norms embedded in everyday life. As Satjipto Rahardjo asserts,<sup>14</sup> Legal certainty, as commonly understood, is not an automatic product of the law. The existence of a legal state does not inherently produce certainties within society. Legal certainty requires more than juridical processes; it also involves psychological and political processes. Socio-historically, the issue of legal certainty emerged alongside the capitalist mode of economic production. Based on this perspective, the position of domestic workers in the economic system has yet to be fully acknowledged. Employers generally do not hire domestic workers for capital accumulation, and domestic workers are not situated in an equal position within the wage system. The process of formulating legislation, as an embodiment of legal certainty, is not determined solely by juridical procedures, but is also influenced by economic, social, and cultural factors.

### 3.3. The Unequal Relationship Between Domestic Workers and Employers

Domestic Workers are predominantly women. In patriarchal societies, women are often constructed as entities whose primary responsibilities are domestic. As a result, domestic work is frequently not recognized as formal employment, but rather as a natural duty of women within the household. When individuals are too busy or unable to complete domestic tasks themselves, the services of Domestic Workers are enlisted to "help". This notion of "helping"

<sup>13</sup> Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (New York: Great Britain, 1997), [https://books.google.co.id/books?id=ELZpAwAAQBAJ&printsec=frontcover&redir\\_esc=y#v=onepage&q&f=false](https://books.google.co.id/books?id=ELZpAwAAQBAJ&printsec=frontcover&redir_esc=y#v=onepage&q&f=false).

<sup>14</sup> Satjipto Rahardjo, *Hukum Dalam Jagat Ketertiban* (UKI Press, 2006).

reflects a broader patriarchal ideology that positions domestic work largely performed by women not as legitimate labor, but as an extension of familial obligations. Consequently, domestic labor is framed sociologically not as employment, but as assistance to a household, thereby undermining its economic and legal recognition. As a comparative, the Philippines, as a developing country similar to Indonesia, has enacted legislation for the protection of domestic workers, known as the *Batas Kasambahay*. This law recognizes domestic work as part of the formal labor sector and mandates a standard employment contract, a minimum wage, and social security coverage, all of which must be provided by the employer marking the first time such protections have been legally required.<sup>1516</sup> In contrast, South Africa continues to classify domestic workers as part of the informal labor sector, with relevant regulations established under the Basic Conditions of Employment Act, Number 75 of 1997, specifically in Sectoral Determination 7: Domestic Worker Sector South Africa, Number R 1068. According to Sectoral Determination 7 (SD7), a domestic worker is defined as "any worker or independent contractor who performs domestic work in a private household and who receives, or is entitled to receive, pay." This includes individuals performing tasks such as gardening, cleaning, childcare, eldercare, and driving. SD7 provides a regulatory framework for their employment and protection, ensuring access to specific rights and benefits.<sup>17</sup> Both countries adopt differing legal concepts in positioning domestic workers within their labor frameworks. The Philippines recognizes domestic workers as part of the formal labor sector, while South Africa continues to classify them within the informal employment category. As a country with strong cultural values, Indonesia must preserve the cultural context surrounding the existence of domestic workers. However, this cultural recognition must be complemented by legal regulation that affirms their status and rights not as subordinates or mere helpers, but as workers entitled to legal protection and recognition.

Various forms of discrimination are experienced by domestic workers. Domestic workers agencies advertise their services by displaying images of workers in uniform or neatly dressed on their websites. They project "domestic helpers" as modern professionals and promote uniforms as a deterrent or line of defense against employers' fears that "attractive" workers could become pregnant or cause sexual jealousy in the home.<sup>18</sup> On the other hand, workers (domestic workers) may accept strict control to maintain their jobs or avoid harassment, including enduring the stigma of being considered servants. Some see wearing a uniform as putting on armour in a "struggle" for survival, part of a "politics of place" in which they play the role of cheerful and competent servants.<sup>19</sup> Or, to borrow a phrase used by

<sup>15</sup> Chiho Ogaya, "The Rights Movement for Domestic Workers in the Philippines," *Open Edition Journal*, 2020, <https://doi.org/https://doi.org/10.3917/ried.242.0169>.

<sup>16</sup> Chiho Ogaya, "Batas Kasambahay and Organizing the Local Domestic Workers: The Case of UNITED," *Open Edition Journal*, 2020, 4, <https://doi.org/https://doi.org/10.3917/ried.242.0169>.

<sup>17</sup> In On Africa IOA, "Sectoral Determination 7 of Domestic Workers: A Catalyst for Change?," *Polity*, November 2013, <https://www.polity.org.za/article/sectoral-determination-7-of-domestic-workers-a-catalyst-for-change-2013-11-21>.

<sup>18</sup> Olivia. Charol Chan Killias, "Follow the Maid: Domestic Worker Migration in and from Indonesia. Copenhagen: NIAS Press," *JSTORE* 161–164 (2018).

<sup>19</sup> Catharina Williams, "'Knowing One's Place': Gender, Mobility and Shifting Subjectivity in Eastern Indonesia" 53 (2005), <https://doi.org/https://doi.org/10.1111/j.1471-0374.2005.00126.x>.

Encarnación Gutiérrez-Rodríguez in relation to domestic work in Europe, women must accept the dual metaphor of "the mop and the smile" even as their bodies are "marked" as inferior.<sup>20</sup> Discrimination against domestic workers is not limited to Indonesia; it also occurs in many of the countries mentioned above. Sociologically, gender-biased constructions have framed domestic work performed by domestic workers as merely "assistance" rather than professional labor. Consequently, domestic work is not recognized as a formal occupation. This perception leads to a situation in which domestic workers are seen as undeserving of fair wages and decent working hours, and many are subjected to exploitation and abuse. ILO Convention Number 189 and the 1945 Constitution of the Republic of Indonesia affirm that every individual has the right to decent work and fair remuneration as a means to achieve a dignified and prosperous life. These rights are fundamental and must be guaranteed by the state, particularly for structurally vulnerable citizens. Article 6 of ILO Convention Number 189 mandates that each Member State shall take measures to ensure fair terms of employment and decent living conditions for domestic workers. This obligation aligns with the 1945 Constitution of the Republic of Indonesia, which guarantees the right to employment and a livelihood that upholds human dignity, as stipulated in Article 27(2). These two legal instruments should serve as normative references for legislative bodies in formulating labor laws that include and protect domestic workers.

Domestic workers are often referred to as "helpers" rather than recognized as "workers."<sup>21</sup> According to Human Rights Watch, the labeling of domestic workers as "helpers" reinforces a cultural reluctance to formalize the employment relationship between domestic workers and their employers, many of whom come from rural or familial backgrounds. Instead, employers often view their role as paternalistic providing protection, food, shelter, education, and pocket money to domestic workers in exchange for their labor. In Javanese culture, this practice is commonly referred to as *ngenger*.<sup>22</sup>

They work for households, often without clear terms and employment contracts, are not recorded in any books, and are excluded from the scope of labor laws and regulations. Domestic workers do all household chores. Domestic workers are also less appreciated in the family. Domestic workers are rarely referred to as workers, but only as servants. Domestic workers are called by many harsh names, namely *babu*, *pembokat*, *kacung* and so on. They are treated inhumanely. Domestic workers are very vulnerable to becoming victims of violence in the household environment where they work.<sup>23</sup>

<sup>20</sup> Mary Austin, "Activist Styling: Fashioning Domestic Worker Identities in Indonesia," *International Quarterly for Asian Studies* 53, no. 1 (2022): 25–51, <https://doi.org/10.11588/iqas.2022.1.18545>.

<sup>21</sup> The results of an interview with Mrs. Nuriyati, Chairperson of the Anggrek Maya Domestic Workers Union, reveal the following: "By being referred to as Domestic Workers, we are recognized as people who work, even though it is true that we also help. But if we are called workers, it means our labor is acknowledged. It means we are respected as workers who have the right to wages, the right to express our opinions, and the right to rest days. In contrast, if we are merely referred to as 'helpers,' we are not seen as having such rights, because the role of a helper is considered simply as assisting."

<sup>22</sup> ILO Office in Jakarta., *Peraturan Tentang Pekerja Rumah Tangga Di Indonesia, Perundangan Yang Ada, Standar Internasional Dan Praktik Terbaik*, 2006.

<sup>23</sup> Luh Nila Winarni, "Protection of Domestic Workers in Indonesian Legal System," *International Journal of Business, Economics and Law* 15, no. 5 (2018): 1–8, <http://print.kompas.com/baca/metropolitan/2015/10/05/UU->.

The patriarchal aspects of the relationship between employers and domestic workers are reinforced by the fact that domestic work is carried out within the private household and is not regarded as economically productive. In Indonesian culture, this relationship is often perceived as personal rather than professional. Although domestic workers contribute significantly to the functioning of the household enabling family members to engage in productive activities both inside and outside the home their labor is not recognized or valued as a professional service within the economic domain. On one hand, Indonesian society generally supports a considerable level of government involvement in various aspects of the economy and public life. On the other hand, the household is seen as a private sphere, considered beyond the legitimate reach of state intervention.

The gender injustice rooted in patriarchal constructs within society is similarly reflected in legislative institutions responsible for formulating laws and regulations. Legislators tend to regard the normative gap concerning domestic workers as a non-priority issue, especially when compared to matters driven by political or economic interests. However, the absence of legal recognition and protection of the rights of domestic workers is an urgent matter, given that their services significantly contribute to the productivity of employers and the preparedness of children to pursue education. Despite this contribution, domestic work remains unrecognized as a formal profession subject to valuation, as it is culturally perceived in Indonesia as merely "helping" within the household. This perception prevents the establishment of a formal employment relationship between domestic workers and their employers.

The phenomenon occurring in Indonesia affirms the relevance of Weix's statement: "inside the home and outside the family."<sup>24</sup> This statement is intended to illustrate how processes of inclusion and exclusion simultaneously occur in the context of domestic work. As is commonly understood, the home serves as the workplace for domestic workers. However, the designation of the home as a workplace often obscures the employment relationship between domestic workers and their employers particularly for live in domestic workers. The relationship is culturally constructed as one of kinship rather than labor, a discourse that continues to be reproduced despite its detrimental impact on domestic workers. This perspective generates a latent potential for exploitation, as it blurs professional boundaries and undermines the recognition of domestic workers' rights as formal laborers.

### 3.4. State Neglect in Protecting Domestic Workers

The high prevalence of cases involving domestic workers necessitates normative resolution, beginning with constitutional protections as part of their fundamental human rights, and extending to regional regulations. Article 27(2) and Article 28D (2) of the 1945 Constitution of the Republic of Indonesia form the legal foundation. Article 27(2) states: "Every citizen shall have the right to work and to a life worthy of human dignity," while Article 28D(2) affirms: "Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment." Consequently, the substantive content of legislation must align with constitutional legal foundations, as the quality of any law is determined by the soundness and coherence of its normative content.

<sup>24</sup> Kathleen M. Adams & Sara Ann Dickey, "Home and Hegemony: Domestic Service and Identity Politics in South and Southeast Asia," *Michigan: University of Michigan Press*, 2000, 137-56.

On the other hand, the essence of lawmaking lies in the establishment of legal norms that are externally binding and general. This means that such regulations do not identify specific individuals but apply to all legal subjects who meet the criteria outlined in the provisions governing patterns of conduct.<sup>25</sup> Referring to this theory, domestic workers should be entitled to legal protection under the Manpower Act, as they are legal subjects who fulfill the elements outlined in the provisions concerning patterns of conduct governed by labor regulations. This is also in line with Article 28D(1) of the 1945 Constitution of the Republic of Indonesia, which states: "Every person shall have the right to recognition, guarantees, protection, and certainty before the law that is just, and to equal treatment before the law." The phrase "just and equal treatment before the law" serves to emphasize that all legal subjects must be treated fairly and equally before the law, meaning there should be no discrimination or differentiation among legal subjects in statutory regulations, including the Manpower Act. The exclusion of domestic workers as legal subjects within employment relations has led to their lack of recognition, protection, and legal certainty in the employment context rights that are otherwise granted to workers in general. This exclusion constitutes a form of injustice and structural discrimination perpetrated by the state, in this case represented by the legislators responsible for enacting the Manpower Act.

Nancy Fraser argues that the problem of injustice does not solely stem from misrecognition within the realm of floating signifiers; rather, injustice is also institutionalized through maldistribution, resulting in economic inequality. Fraser emphasizes the interconnection and interrelation between cultural injustice and economic injustice, which are often overlooked due to the reduction of recognition politics to a mere politics of identity.<sup>26</sup> Economic injustice is not merely a 'secondary effect' of misrecognition; in the context of domestic workers, it is manifested in the wage disparities they experience.

This disparity does not stem from measurements of productivity in terms of quantity or quality, but rather from deeply embedded gender bias. It is undeniable that the patriarchal culture deeply rooted in Indonesia significantly contributes to this inequality. Julia I Suryakusuma It has been explained that since the New Order era, Indonesia has propagated the slogan of 'State Ibuism,' which subordinates women to men.<sup>27</sup> State Ibuism views women merely as complements and companions to their husbands, as mothers and educators of their children, and as household managers. As articulated by Tronto, this paradigm grants men a form of "privileged irresponsibility." Privileged irresponsibility refers to the privilege of being exempted from responsibility. Tronto uses this term to describe the division of labor in contemporary society, wherein certain individuals are 'permitted' to avoid caregiving work because they are assigned other roles deemed more important.<sup>28</sup>

<sup>25</sup> Yuliandri, *Asas-Asas Pembentukan Perundang-Undangan Yang Baik: Gagasan Pembentukan Undang-Undang Berkelanjutan* (Jakarta Rajawali, 2010), <https://simpus.mkri.id/opac/detail-opac?id=8073>.

<sup>26</sup> Martesa Husna Laili and Arie Damayanti, "Gender Wage Differentials in Indonesia: Empirical Evidence in Manufacturing Sectors," *Jurnal Ekonomi Dan Pembangunan Indonesia* 18, no. 3 (2018): 1-21, <https://doi.org/10.21002/jepi.2018.12>.

<sup>27</sup> Julia I Suryakusuma, *The State and Sexuality in New Order Indonesia*, ed. Laurie J. Sears (London, 1996).

<sup>28</sup> Joan Tronto, *Caring Democracy* (New York, 2013).

The consequence of this paradigm is that work performed by women is perceived as part of familial obligations, and therefore excluded from the category of productive labor.<sup>29</sup> This paradigm ultimately impacts women's overall well-being. It is ideologically constructed and deeply entrenched across all sectors. In patriarchal societies, the work performed by women is not considered "real work." Women are predominantly perceived as caregivers for the family and household, while men are associated with "productive work." Friedrich Engels linked the oppression experienced by women to these very structural and ideological conditions.<sup>30</sup> Within the framework of gender theory, roles are commonly categorized into three domains: productive roles, reproductive roles, and social roles. Work performed by women is often perceived as a natural obligation stemming from their gender, rather than as labor within the context of productive roles. Instead, it is classified under reproductive roles. Domestic workers employed in household sectors are not considered to make significant or productive contributions, and thus are assigned a social identity lacking bargaining power. However, reproductive labor performed by women plays a critical role in sustaining the labor force and contributes significantly to capital accumulation and poverty reduction.<sup>31</sup> The failure to recognize the value generated by domestic workers results in their receiving disproportionately low wages. This is not merely a conspiratorial oversimplification. Evidence reveals that the average wage received by domestic workers amounts to only 20–30% of the Provincial Minimum Wage in the regions where they are employed.<sup>32</sup> Thus far, the House of Representatives of the Republic of Indonesia, in its deliberation of the Draft Bill on the Protection of Domestic Workers, has frequently questioned the wages of domestic workers. However, many legislators themselves have been reluctant to disclose the wages they pay their domestic workers. As a result, it remains unclear whether the wages provided to domestic workers comply with the regional minimum wage standards. This situation illustrates how the ideology of state-endorsed maternalism (Ibuisme Negara) has obscured the productive role of domestic workers, prioritizing their reproductive functions instead. In another context, Rawls poses the fundamental question of "How is it possible to build a just and stable society based on the principles of liberty and equality when the people living in it hold different religions, cultures, and moral views?"<sup>33</sup> He answered with Political Liberalism, a political conception of justice that allows plural societies to coexist fairly.<sup>34</sup> However, this concept needs to be examined more deeply with feminist legal theory which brings the concept of Women's

<sup>29</sup> Silvia Federici, *Revolution at Point Zero: Housework, Reproduction, and Feminist Struggle* (New York: New York: PM Press, 2012).

<sup>30</sup> Friedrich Engels and Ernest Untermann, "The Origin Of The Family, Private Property And The State," *Politics and Kinship: A Reader*, 2021, 217–23, <https://doi.org/10.4324/9781003003595-17>.

<sup>31</sup> Based on a Focus Group Discussion (FGD) conducted with members of the Anggrek Maya Domestic Workers' Union, domestic workers stated that their income plays a crucial role in sustaining their household economy. Their earnings are allocated toward meeting essential complementary needs such as food, children's education, and other components deemed necessary for a decent standard of living. The expenditures of domestic workers cover 28 essential needs, whereas the Decent Living Needs (Kebutuhan Hidup Layak/KHL) framework includes 62 sub-items.

<sup>32</sup> International Labour Office, *Profil Pekerjaan Yang Layak INDONESIA* (ILO, 2012).

<sup>33</sup> Sunaryo Sunaryo, "Konsep Fairness John Rawls, Kritik Dan Relevansinya," *Jurnal Konstitusi* 19, no. 1 (2022): 001, <https://doi.org/10.31078/jk1911>.

<sup>34</sup> Michael Sandel, "Review of John Rawls Political Liberalism," *Harvard Law Review*, 1994.

experience<sup>35</sup> as domestic workers can be heard without generalizing or using gender-neutral concepts that result in women being left behind in the law.

The draft domestic worker bill has been around for 19 years, even included in the national legislation program. However, until the end of the House of Representatives session in 2024, there has been no specific discussion on this bill. In 2025, the DW Bill was re-entered in the 2025 National Legislation Program. Kompas as a mass media that participated in the advocacy of the Domestic Workers Bill stated that the Domestic Workers Protection Bill has undergone various processes of study, comparative studies, dialogue, revision, and discussion even until the last position of the Domestic Workers Protection Bill has become an initiative bill of the House of Representatives on March 21, 2023.<sup>36</sup> The Legislative Analyst Team for People's Welfare at the Legislative Analysis Center of the Expertise Agency of the Indonesian House of Representatives stated that until now (2024) there is still no sign that the bill will be discussed and passed. PlucCenter for AgeCl The slow process of discussing the Domestic Workers Protection Bill is one of the challenges faced by Indonesia.<sup>37</sup> The slow legislative process carried out by the House of Representatives is a reflection that the legislative perspective is less supportive and may not even use a human rights or gender justice perspective. Because with these two perspectives, it has shown the urgency of the existence of rules that must be formed.

If domestic workers continue to be classified as informal workers and thus excluded from the scope of the Labor Law, their status as a vulnerable group nevertheless demands legal protection, as a form of respect for their particular position under human rights law. The affirmative nature of such protection must underlie the drafting of a Domestic Workers Protection Bill (RUU PPRT). However, despite having been proposed for twenty-one years, the bill has yet to be deliberated or passed by the legislature. As of 2025, the Domestic Workers Bill (RUU PPRT) has once again been included in the National Legislative Program (Prolegnas). However, its status does not qualify as a "carry-over bill"—a classification reserved for draft legislation whose deliberation is continued from the previous legislative period. Consequently, the RUU PPRT must undergo deliberation from the beginning, despite having been in process for over two decades in the Indonesian House of Representatives (DPR). Based on interviews with Eva Kusuma Sundari and the Indonesian Domestic Workers Advocacy Network (JALA PRT), the DPR is expected to establish a Working Committee (Panitia Kerja or PANJA), after which the bill will be proposed as a legislative initiative by the Legislative Body (Badan Legislasi or BALEG).

The draft that has been advocated for over 20 years<sup>38</sup> will be subject to significant revisions, with the forthcoming version—draft number 67—expected to differ substantially. Eva Kusuma Sundari, who has been involved in the advocacy of the bill since its inception, expressed deep concern over the DPR's preference for regulating the protection of domestic

<sup>35</sup> Triantono, "Feminis Legal Theory Dalam Kerangka Hukum," *Progressive Law and Society (PLS)* 1, no. 1 (2023): 14–26.

<sup>36</sup> Atalya Puspa, "Kawal Regulasi Perlindungan Pekerja Rumah Tangga," *Media Indonesia*, September 2024, <https://epaper.mediaindonesia.com/detail/a-9847>.

<sup>37</sup> Kajian Singkat, Terhadap Isu, and Aktual Dan, "Urgensi Pelindungan Terhadap Pekerja Rumah Tangga" XVI, no. 18 (2024).

<sup>38</sup> <https://www.amnesty.id/referensi-ham/prt-mendesak-ruu-pprt-disahkan/03/2025/>

workers solely through individual employment agreements between employers and domestic workers, without stipulating clear provisions regarding minimum wage, working hours, or other fundamental labor rights.

Although the DPR recognizes the status of domestic workers in the bill and provides for a form of employment relationship through contractual agreements, such arrangements are inherently unequal and fail to ensure fair labor standards. The bill includes provisions for domestic workers' access to social security programs (BPJS), yet notably omits any reference to ILO Convention No. 189 concerning decent work for domestic workers as a normative framework. Moreover, criminal sanctions against labor recruitment agencies that engage in fraudulent, coercive, or exploitative practices are absent from the draft bill, with such matters being deferred to the general provisions of the Indonesian Penal Code (KUHP).

This trajectory of legislative advocacy for the RUU PPRT underscores a concerning tendency among DPR members to align more closely with the interests of employers rather than fulfilling their role as representatives of the people. Discriminatory treatment against domestic workers stands in direct contradiction to human rights, which are guaranteed by the Constitution. Therefore, within the framework of a welfare state governed by the rule of law, the state is obligated to respect, protect, and fulfill the fundamental rights of all its citizens without exception, including the fundamental rights of domestic workers. One of the key manifestations of these obligations is the enactment of legislation, specifically the Draft Law on the Protection of Domestic Workers.

Wages, as a fundamental component of labor relations, must be fulfilled without discrimination. The regulation of fair and non-discriminatory wages, as stipulated in Article 2 of Government Regulation Number 35 of 2021, emphasizes workers' rights to a decent standard of living and the right to equal treatment in the application of wage systems (free from discrimination). Employment contracts governing the relationship between employers and domestic workers represent an essential mechanism for safeguarding the rights of domestic workers. However, contracts that are drafted without equality will inevitably position domestic workers in a subordinate role, resulting in unfair conditions in both the formulation and implementation of such agreements, particularly due to the greater economic necessity faced by domestic workers. The negotiation of wages is often left to market dynamics (i.e., between employers and domestic workers), which reinforces inequality. As Satjipto Rahardjo asserts, "leaving the resolution to the mechanisms of the social market will place the lower segments of society as those who suffer the most."<sup>39</sup> In order to improve the welfare and quality of life of every citizen, the government, as the state administrator, has an important and strategic role in economic development. The state is obliged to guarantee the rights of every citizen to decent work and livelihood, as well as the realization of the highest possible public welfare.<sup>40</sup> The regulation of domestic workers' wages as informal workers is part of the state's seriousness in realizing women's equality as part of human rights. Cultural feminist

<sup>39</sup> Satjipto Rahardjo, *Negara Hukum Yang Membahagiakan Rakyatnya* (Yogyakarta: Genta Publishing, 2009), <https://lib.ui.ac.id/detail?id=20164010>.

<sup>40</sup> Lisnawaty et al., "Urgency of Regulation of Administrative Sanctions on Employers Who Do Not Pay Severance," *Jurnal Hukum Bisnis Bonum Commune* 8, no. 1 (2025): 155-73, <https://doi.org/10.30996/jhbmc.v8i1.12872>.

theory believes that “formal” equality does not mean “substantive” equality. This concept explains that while women are treated in the same way as men in law, this is not enough to achieve equality. The law should reflect the different conditions of men and women and treat them differently in areas where they are different.<sup>41</sup> In some contexts, these distinctions represent legal commitments as special treatment necessary to achieve equality. Various countries choose the concept of affirmative in the practice of implementing gender equality, so the emergence of affirmative action can be seen as a response to a history of social systems and institutionalized discrimination where women have different experiences than men.

Domestic workers constitute one of the vulnerable groups<sup>42</sup>, although domestic workers are not specifically regulated under the Human Rights Law, they occupy a structurally vulnerable position both in the context of employment relationships and in their broader social and economic lives. Vulnerable groups are further marginalized in the absence of support or intervention from the state, which, as a legal subject, holds the obligation to ensure the fulfillment of rights. As Afifah asserts, the existence of legislation should comprehensively support the inclusion of all members of society, particularly vulnerable groups, in terms of access, participation, control, and benefit. This support also includes the obligation to reduce discriminatory practices, which constitute violations of human rights.<sup>43</sup> Domestic workers are entitled to special protection as stipulated in Law Number 39 of 1999 on Human Rights, Article 5 paragraph (3), which states: "Every person who belongs to a vulnerable group in society has the right to receive more favorable treatment and protection about their specific characteristics." The structural vulnerability of domestic workers necessitates affirmative action from the state to ensure they can catch up in terms of rights fulfillment and to address the impacts of gender bias. According to Tom Campbell<sup>44</sup>, a professor of jurisprudence, affirmative action can be described as a policy issued to a specific group that has not had adequate representation in society in history due to discrimination. In addition, Elizabeth S. Anderson, an American philosopher of moral and political philosophy, defines affirmative action as any policy that aims to (a) seek to remove barriers in systems and norms against groups as a result of a history of injustice and inequality, and/or; (b) seek to promote an inclusive society as a prerequisite for democracy, integration and pluralism; (c) seek equality

<sup>41</sup> Nancy Levit and Robert R. M. Verchick, *Feminist Legal Theory A Primer*, 2nd ed. (New York: New York: New York University Press, 2016), <https://www.jstor.org/stable/j.ctt15zc6kc>.

<sup>42</sup> Article 5(3) states that “vulnerable groups include, among others, the elderly, children, the poor, pregnant women, and persons with disabilities.” The absence of domestic workers in this categorization results in their exclusion from the classification as a vulnerable group. Meanwhile, Article 42 stipulates that “Every citizen who is elderly, physically and/or mentally disabled has the right to receive care, education, training, and special assistance at the expense of the state, in order to ensure a decent life in accordance with human dignity, to enhance self-confidence, and to improve the ability to participate in societal, national, and state life.” This article demonstrates the state’s obligation to undertake affirmative actions for vulnerable groups to address the gap in the fulfillment of their rights.

<sup>43</sup> Wiwik Afifah, “Bantuan Hukum Kelompok Rentan,” *DiH: Jurnal Ilmu Hukum* 16, no. 1 (2020): 124–38, <https://doi.org/10.30996/dih.v16i1.3045>.

<sup>44</sup> Reshina Kusumadewi, “Affirmative Action for Women in the Legislative Election and Political Party,” *Masyarakat Pemantau Peradilan Indonesia*, September 2019, <https://mappifhui.org/affirmative-action-for-women-in-the-legislative-election-and-political-party#:~:text=Cultural%20feminism%20theory> believes that, In addition Elizabeth S.

based on identity classifications (race, gender, ethnicity, sexual orientation, etc.).<sup>45</sup> In the political sense, affirmative action is taken to accelerate women gaining their rights. The proposed legislation on the protection of domestic workers represents a legal policy that is inherently connected to social life and forms one of the pillars of national development. This legal policy seeks to realize the ideals of law grounded in legal certainty, justice, and utility.

#### 4. Conclusions

The urgency of regulating the right to wages for domestic workers arises, in part, from their exclusion as informal workers under the existing Labor Law framework. This exclusion stems from the definition of "employer," which is limited to entrepreneurs or individuals who accumulate capital through the use of labor services. Consequently, the employment relationship between domestic workers and their employers is not legally recognized, resulting in the absence of regulation regarding the rights of domestic workers, particularly their right to wages. Moreover, the need for legal protection is further underscored by the low wage levels received by domestic workers compared to other categories of labor, such as formal employees or daily contract workers. In many cases, overtime pay which is an essential component of a living wage is not provided. The dignity of labor is not solely reflected in the wages paid but also in the recognition of the time devoted by workers to perform their duties. The concept of a decent wage for domestic workers entails ensuring justice and protection in the form of fair compensation for their working hours, aimed at achieving their overall well-being. Establishing minimum wage standards for domestic workers serves to guarantee that they are not subjected to arbitrary treatment, prevents the commodification of their labor by employers, promotes greater discipline among workers, and encourages employers to exercise due diligence in hiring practices. Moreover, legal regulation of wage protection for domestic workers is crucial given the inherently unequal employment relationship, which renders their bargaining position particularly weak during wage negotiations. This structural imbalance necessitates affirmative action by the state to address the long-standing deficiencies in the fulfillment of domestic workers' rights to fair remuneration and to mitigate the adverse effects of persistent gender bias. In addition, the state needs to show its commitment to the protection of domestic workers as a vulnerable group by immediately discussing the Bill on the protection of domestic workers.

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<sup>45</sup> Hendri Sayuti, "Hakikat Affirmative Action Dalam Hukum Indonesia (Ikhtiar Pemberdayaan Yang Terpinggirkan)," *Menara Riau: Jurnal Ilmu Pengetahuan Dan Pengembangan Masyarakat Islam* 12, no. 1 (2013): 41–47.

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