

## CHAPTER I

### INTRODUCTION

#### 1.1 Background

In our life, we as humans have basic rights or known as “human rights”. It is our basic need in order to have a normal life. Human rights as the name implies, means that everyone in society has them. Every country should uphold the human rights of each and everyone of their citizens. There are several milestones in the history of the struggle for human rights in Indonesia to date where human rights already have their own laws in the Indonesian legal system. Proclamation of Independence on 17 August 1945 is the culmination of the struggle to abolish colonialism with the enactment of the 1945 Constitution which includes the recognition of human rights.<sup>1</sup> Indonesia regulates human rights in Article 28 of the 1945 Constitution of Republic of Indonesia. It regulates basic human rights such as right to live, right to have education, freedom of expression, right to have a job. Indonesia also has their own regulation for human rights. Law Number 39 of 1999 on Human Rights explained the meaning of human rights in Article 1 which states:

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<sup>1</sup> Ubaedillah Rozak Abdul, “Pendidikan Kewarganegaraan”, (Jakarta: ICE UIN Jakarta, 2009), pg. 45

“Human rights mean a set of rights bestowed by God Almighty in the essence and being of humans as creations of God which must be respected, held in the highest esteem and protected by the state, law, Government, and all people in order to protect human dignity and worth.”

Indonesia has one of the largest populations in the world which makes searching for jobs very difficult. This with the lack of quality education in Indonesia makes it more difficult for many people to get decent jobs. Many people who do not have higher education choose to become laborers or low-income workers such as domestic workers. Domestic workers according to Article 1 of Ministry of Manpower Regulation number 2 of 2015 on Domestic Worker Protection a (“PERMENAKER number 2 of 2015”): “people who work for individuals in the household to carry out household work and receive wages and / or other forms of reward.”

This line of work is very common in Indonesia, especially in big cities like Jakarta, Surabaya, and Jogja. However many domestic workers do not get fair wages from their employees. This directly violates Article 28D paragraph 2 of the 1945 Constitution which states “every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.” There are still a lot of cases in Indonesia where domestic workers do not receive fair wages. There are some outsourcing companies that help

domestic workers to ensure that they get fair wages, however there are still a lot of workers out there that are not protected.

The Central Bureau of Statistics stated that the average wage for domestic workers is Rp.419.739.<sup>2</sup> Based on the *Jaringan Nasional Advokasi Pekerja Rumah Tangga* (“JALA PRT”) records, the average domestic worker earns a salary of 20-30 percent below the UMR. In Semarang, the average monthly salary is 600 thousand rupiah, Makassar around 600-700 thousand rupiah, in Medan around 500-600 thousand rupiah, in Lampung around 400-500 thousand rupiah, and in Yogyakarta it is around 700-800 thousand rupiah.<sup>3</sup> Those numbers are very low to live for a month especially those who already have a family. With this amount of wage, domestic workers cannot meet the standard quality of living. Domestic workers who are part of an outsourcing company may have better luck as the company will make sure that domestic workers get a more reasonable income. However even the highest income a domestic worker gets, it is still below the minimum wage. The reason for this problem is that people’s income is already allocated towards other needs such as daily needs, school payments, house installments, car installments, etc. Domestic workers' wages are the last thing that

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<sup>2</sup> Liputan 6, "Upah Riil Asisten Rumah Tangga Febuari 2020 Sebesar Rp 401.916 per Bulan". <https://www.liputan6.com/bisnis/read/4203265/upah-riil-asisten-rumah-tangga-febuari-2020-sebesar-rp-401916-per-bulan>, Accessed 18 Feb 2021

<sup>3</sup> Tirto.id., “Nasib Pekerja Rumah Tangga dan Mengapa Mereka Perlu Dilindungi”. <https://tirto.id/nasib-pekerja-rumah-tangga-dan-mengapa-mereka-perlu-dilindungi-ehpT>, Accessed 18 Oct 2021

people think about, as a result they will only get paid with the remaining savings that the employer has.<sup>4</sup> This way of thinking occurs because people think that domestic workers duties are only basic daily concerns and not a very important matter. Also people also think that domestic workers' duties do not require a high level of education and high level of skills.

The main reason why domestic workers do not get the minimum wage is because they are not included in the Labor Law. The definition of manpower includes workers or laborers who are currently involved in an employment relationship and workers who have not worked.<sup>5</sup> The International Labor Organization (“ILO”) is an organization that accommodates labor international labor issues under the auspices of the United Nations. They create an international labor standard for countries to use in their own legal system. International labor standards evolve from a growing international concern that action needs to be taken on a particular issue, such as providing working women with maternity protection, or ensuring safe working conditions for agricultural workers.<sup>6</sup> The ILO convention No. 189 offers special protection for domestic

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<sup>4</sup>HousingEstate, "Gaji Pembantu Di Atas Rp1 Juta (Terlalu Mahalkah?)". <https://housingestate.id/read/2015/04/08/gaji-pembantu-di-atas-rp1-juta-terlalu-mahalkah/>, Accessed 18 Feb. 2021

<sup>5</sup> Hardijan Rusli, “Hukum Ketenagakerjaan”, (Jakarta: Ghalia Indonesia, 2003), pg. 12

<sup>6</sup>ILO, "How International Labor Standards are created". <https://www.ilo.org/global/standards/introduction-to-international-labor-standards/international-labor-standards-creation/lang--en/index.htm>, Accessed 11 Mar. 2021

workers. The convention establishes rights and principles, and requires states to take a series of steps with the aim of making decent work a reality for domestic workers.<sup>7</sup>

A country is subject to ILO regular supervisory system once it has ratified a convention or protocol. This means that a country is binding itself to commit to all obligations which are set under such convention, and has to report to ILO periodically.

Another problem for domestic workers are underage children. Indonesia has several regulations regarding children. First in Article 330 of Indonesian Civil Code: “Minors are those who have not reached the full age of twenty one years and who have not previously entered into matrimony”

This Article does not mention the word “children” specifically but it mentions the word “minor” to regulate the capability of someone to make an agreement. Agreement is the result of negotiations between a Labor union that registered at the agency responsible for manpower affairs and an entrepreneur, or several entrepreneurs, or an association of entrepreneurs which contains the terms of work, rights and obligations of both parties that have been agreed upon. This agreement must be made in writing in Latin letters

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<sup>7</sup> International Labor Organization, “Konvensi No. 189 mengenai kerja layak bagi pekerja rumah tangga”. [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms\\_166645.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_166645.pdf) , Accessed 9 Sep. 2021

and in the Indonesian language.<sup>8</sup> Of course when hiring someone to be a domestic worker there must be a working agreement between the employee and employer. If we follow this regulation then people under the age of 21 are not capable of making an agreement therefore they cannot make a working agreement with their employer. The second regulation regarding children is Law 23 of 2002. In Article 1 paragraph 1, it states :“A child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb.” This law was enacted to ensure that a child's right to live, grow, and develop is protected. Furthermore, Article 4 point 2 ILO convention No. 189 states “Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.”

Then there are two laws concerning child labor. First is Law 20 of 1999 which is a ratification of the ILO convention No. 138 concerning minimum age for admission to employment. Article 1 of this convention states:

“Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a

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<sup>8</sup> Ahmad Rizki Sridadi, “Pedoman Perjanjian Kerja Bersama”, (Malang; Empatdua Media, 2016), pg. 6

level consistent with the fullest physical and mental development of young persons”

This convention stated that the minimum age for admission to employment or work shall not be less than 15 (fifteen) years old. However, the convention also states that if the work has the potential to jeopardize health, safety, or morals, the children must be not less than 18 (eighteen) years old, except for light work must not be less than 16 (sixteen) years old. If we see the duties that domestic workers have it may jeopardize their health, safety, and morals. Moreover if they become domestic workers, it will get in the way of their education. Second is Law 1 of 2000 which is a ratification of the ILO convention No. 182. This law regulates the elimination of the worst forms of child labor. Article 1 of this convention states

“Every member who ratifies this convention is obliged to take action urgently and effectively to ensure the prohibition and elimination of the worst forms of child labor is an urgent matter”

The aim of this convention is to protect child labor from inappropriate jobs or as mention in this Article as worst forms of child labor. Article 3 of the convention mention the worst forms of child labor are:

- a. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and

serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

- b. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c. the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children

As we can see from point (a), “it mentions forced or compulsory labor” which is similar to what a domestic worker is. This can mean that a child cannot be a domestic worker in Indonesia.

From the problems stated above, we know that domestic workers are in need of a regulation that protects them. Lita Aggraini,

Coordinator for JALA PRT said that domestic workers are part of the “*soko guru*” for national and global economy but are unnoticed. The proof is there are no laws regulating the protection of domestic workers. From April 2018 until 2020 there are 1.458 violence cases towards domestic workers in various types. In addition, there is a social security survey in 2019 which states 4,296 domestic workers



do not get health insurance and must pay themselves from low wages.<sup>9</sup> Moreover, they are also not recognized as formal workers so they do not receive Social Security. Hendri Saparini and M. Chatib Basri from the University of Indonesia stated that informal sector workers are workers who work in all types of work without any state protection and for these efforts are not subject to tax. The ILO in 2010 referred to informal workers as vulnerable workers. They do not get basic rights like formal workers such as work accident insurance, health insurance, working hours and other benefits. These vulnerabilities are also increasingly apparent with lower productivity and significantly lower incomes.<sup>10</sup>

The ILO convention No.189 wants to treat domestic workers similarly to regular workers. Article 10 states “Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.”

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<sup>9</sup> Kompas.com, “Jala PRT: Pekerja Rumah Tangga Soko Guru Ekonomi yang Luput Perhatian”. <https://nasional.kompas.com/read/2020/07/05/19031311/jala-prt-pekerja-rumah-tangga-soko-guru-ekonomi-yang-luput-perhatian?page=all>, Accessed 20 Feb. 2021.

<sup>10</sup> reaktor.co.id, “Pengertian Pekerja Formal ‘White Collar’ dan Pekerja Informal ‘Blue Collar’”. <https://reaktor.co.id/pengertian-pekerja-formal-white-collar-dan-pekerja-informal-blue-collar/>, Accessed 28 Sep. 2021

The only law that regulates domestic workers is PERMENAKER 2 of 2015. Indonesia actually has proposed the formation of law to protect domestic workers. In 2004 the House of Representatives proposed the domestic worker protection bill. However, it has yet to be finished. In 2011, ILO issued the No. 189 convention concerning decent work for domestic workers. This also has not been ratified by the Indonesian government. If we look at Article 3 paragraph 1 of the convention, it states<sup>11</sup>: “Each Member must take measurable steps to ensure effective protection of the human rights of all workers' households, as provided for in this Convention.” We can see from the Article, the convention’s intention is to make sure that domestic workers are protected. If we see the rest of the convention, almost all the Article starts with the phrase “Each Member must” this means that the responsibility to protect the domestic workers are in the hands of the members.

Indonesia has not ratified the convention, but they have made a regulation of their own for domestic worker which is the PERMENAKER 2 of 2015. It mainly discusses the rights and obligations of both domestic worker and their employer. On the other hand, ILO convention No.189 mainly discuss about what each member of the convention must do in order to protect domestic

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<sup>11</sup> ILO, "K189 Konvensi Tentang Pekerjaan Yang Layak Bagi Pekerja Rumah Tangga.". [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/legaldocument/wcms\\_166544.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/legaldocument/wcms_166544.pdf), Accessed 20 Feb. 2021

workers. We can see the difference from the Articles of both regulations. PERMENAKER 2 of 2015 do not put as much responsibility on the employer as the ILO convention No. 189 does.

Indonesian government might not ratify the convention for a number of reasons such as the obligation to report to the ILO on a regular basis. However, they can consider to make domestic worker a part of the formal worker. This can help domestic workers improve their quality of life since the government will help take care of them. There are a lot of things that the government can do to help domestic workers. They can provide training program before they become domestic workers. They can help with their wages when they become a domestic worker, and they can help give them insurance after they retire from their job. This can happen if domestic workers are regulated as formal workers.

JALA PRT points out that domestic workers are not part of the development of the country. Domestic workers often work under inappropriate situations, very long hours, not certainty in rest time, weekly day off, and paid leave. Lita Aggraini again explained that because there is no protection towards domestic workers, it creates some implication to the rights which are supposed to be regulated by the government.

One of the reasons as to why domestic workers still do not have protection is because there might be a conflict of interest

between the law makers and the domestic workers themselves. A lot of government officials have a domestic worker working for them. If the domestic worker protection law is enacted and it regulates matters such as how long can domestic work in a day or how much is their minimum wage are, then the cost for hiring them would be so much more expensive. This is when Indonesia can use ILO convention No. 189 as a guideline for their own legal system. Since the ILO convention No. 189 was published, there are 29 countries that have ratified it to their legal system. Some of those countries are Argentina, Brazil, Germany, Philippines, and Portugal. Indonesia however, have not ratified the ILO Convention No. 189 and have only enact the PERMENAKER 2 of 2015 since ratifying an international convention will give international obligation to Indonesia such as reporting to the convention periodically.

The ILO convention No. 189 sets some minimum standards for domestic workers. They are working hours, wage, occupational health and safety, standard on children domestic worker, standard on live-in worker, standard on migrant domestic worker, private labor agency, and dispute settlements, complaint. Indonesia does not necessarily need to ratify the ILO convention No. 189 but they can use it to make adjustments to their law on domestic workers protection, namely PERMENAKER 2 of 2015. Indonesia should consider using the ILO convention No. 189 when continuing the

process of formalizing domestic workers as a guideline. Indonesia can review both regulations and adjust to what are the best regulations that can be used in Indonesia.

In this thesis, the Author will focus on the formulation of the domestic worker protection law. Domestic workers who are not included in the Labor law need their own law to protect their rights and their life. The rights of domestic workers such as a reasonable wage, reasonable working hours, and appropriate working environment. It also has to protect them from abuse or exploitation. Moreover the law should be able to protect underage children from being a domestic worker. The author hopes that this research can give a new perspective throughout this legal analysis on the Formalizing the Domestic Worker Sector in Indonesia in Consideration of International Labor Organization Convention Number 189 on Domestic Workers.

## **1.2 Formulation of Issue**

In regards to the topic of this thesis, the Author will discuss the following formation of issues:

1. What are the key protections of domestic workers' rights according to ILO Convention No. 189?
2. How does formalizing domestic workers, in consideration of the above key protection under ILO Convention No. 189,

could create a legal system that can guarantee the protection of domestic workers rights in Indonesia?

### **1.3 Research Purposes**

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

1. To know how the Indonesia legal system protects domestic workers' rights.
2. To know whether Indonesian law is enough to protect domestic workers' rights or does Indonesia need to make domestic workers into the formal sector to make sure the domestic workers' right is protected.

### **1.4 Research Benefits**

#### **1.4.1 Theoretical Benefits**

Theoretically, the Author hopes that this research will give an insight of the protection of domestic workers in the Indonesian legal system. From this research, the Author hopes that this research will determine whether Indonesia should formalize the domestic workers or do the existing system is enough to protect domestic workers. All in all, the Author hopes that this research will provide further knowledge on Indonesia law, especially in the field of labor and domestic workers, along with other regulations including ILO convention, and Ministerial Regulations.

#### 1.4.2 Practical Benefit

Practically, the Author hopes that this research can provide an input for the government to formalize the domestic worker sector. The Author realizes that there is a lack of protection provided by the government for domestic workers in Indonesia. The PERMENAKER 2 of 2015 is not enough and a more significant action is needed such as formalizing the domestic workers sector.

Furthermore, the Author hopes that this research can be useful for the general public, employer, and outsourcing companies who directly and/or indirectly have a relation to domestic workers and are still having issues regarding the regulations for a domestic worker. Also have confusion regarding the rights and obligations of domestic workers. This research also intends to remind the government about the importance of domestic workers in Indonesia and to encourage formalize the domestic workers for the benefit of their well being.

### 1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER 1: INTRODUCTION

This chapter consists of the introduction, which is further divided into five parts, which are background, research question, research purpose and research benefits.

## CHAPTER 2: LITERATURE REVIEW

In the literature review chapter, the Author will divide this chapter into sub-chapters. First, the Author will elaborate on ILO convention No. 189. Second, the Author will elaborate on the definition of domestic worker along with their rights and obligations. Third, the Author will explain the definition of formal sector, informal sector, employment, and the *PERMENAKER*. Fourth, the Author will elaborate on the laws, regulations and policies that regulate labor in Indonesia.

## CHAPTER 3: RESEARCH METHOD

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the Author uses to discuss the issues in this thesis.

## CHAPTER 4: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the research problems along with its solution. This chapter will be divided into two further sub-chapters and each sub-chapter will answer the



respective research question as stipulated in chapter two of this thesis. The first sub-chapter will consist of analysts on how the Indonesian legal system protects domestic workers rights. The second sub-chapter will analyze whether the PERMENAKER 2 of 2015 is enough to protect domestic workers' rights or does Indonesia need to ratify the ILO ILO convention No. 189 to its legal system to make sure the domestic workers' right is protected.

#### CHAPTER 5: CLOSING

In this last chapter, the Author will explain the conclusion as an answer to the issues that have been analyzed in chapter four. Aside from giving a conclusion, the Author will also give suggestions and recommendations towards these issues to make sure that domestic workers' rights are protected.