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by Mutia Cherawaty Thalib

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Legal Design of Domestic Workers Protection Based on Gorontalo Community Local Culture

Mutia Cherawaty Thalib

Faculty of Law, Universitas Negeri Gorontalo (UNG), 96128, Indonesia

Email: mutiathalib_barry2@yahoo.com

Abstract. This study was conducted with an empirical juridical approach. The juridical approach was done by identifying community norms and legal policy related to the domestic workers existence, while the empirical approach was done by observing social phenomenon of housemaid and local culture that underlies the working relationship between employer and domestic workers (housemaid). In-depth interviews and group discussions were done to obtain the data. The result shows that the domestic workers existence in Gorontalo cannot be relied upon the domestic service market because it is increasingly eroded by socio-cultural changes that evolve in the rapid rise society awareness of human rights and technological development. Huyula's culture values, timoa, ambu, bilohe, and tolianga remain as survival strategies for some domestic workers who last longer with their work. For new domestic workers, the bargaining position is increasingly high with the poor quality of work. Some of the rural workers who still hold the principle of "dila biasa" (uncustomary principle), moomu (unwilling), moolito/ moqolito (shame), affect their resilience in working as domestic workers. On the other hand, domestic work relations as a social institution is not supported by strong instruments like the government. Consequently, it needs an integrated thinking and step by step designing of the form of protection for domestic workers based on the local culture values of Gorontalo people.

Keyword: Legal Design; Protection; Domestic Worker; Local Culture

1. Introduction

The existence of domestic workers is still a polemic, since there is no clear domestic workers concrete arrangement, as other workers have already arranged through Act No. 13 of 2003 on Employment. Nevertheless, as a precautionary measure, the Employment Minister for the Republic of Indonesia has issued Decree of the Minister of Employment of the Indonesia Republic No. 2 of 2015 on the Protection of Domestic Workers, pending the draft law on the Protection of Domestic Workers discussed and endorsed by the Indonesia legislative council into the law.

Regarding to the previous research result conducted by the researcher, it can be generally described that the domestic workers rights fulfillment in reality had not been met well, and it even caused many problems. Similarly, the domestic workers obligation fulfillment, revolving around domestic workers quality on the process and their low achievement, also caused many problems [1]. In particular, the existence of housemaid as domestic workers in the local labor market has a downward trend in the last 3 to 5 years. It is unbalanced with the higher need of housemaid service. Meanwhile, the local housemaid employment agencies or institutions officially operating in Gorontalo have not existed. The right protection and supervision for domestic workers has not been protected by the regional regulation, since there is no domestic workers regulation, as it is currently undergoing bill discussion



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and endorsement by the parliament. In early 2015, the Employment Minister of Republic of Indonesia issued Employment Minister Regulation No. 2 of 2015 on the Protection of Domestic Workers as a Guideline for the Domestic Workers Minimum Protection, which regulates the employment relationship between individual service users and domestic workers as service providers through working agreements, both orally and written with the local Government involvement such as the chairman of the residents in the residence area of service user. The other reason is the low quality of domestic workers both from aspects of work skills and work culture[2].

According to the matters explained above, research questions arise as follows: (1) How is the Domestic Workers Protection in Gorontalo?, (2) What is the perspective of local culture viewed from historical aspects and its influence on the existence of Domestic Workers in Gorontalo?

2. Method

This study employed a juridical-empirical approach. Identifying the norms, laws, and policies for the domestic workers is the notion of juridical approach, while observing phenomena, such as social events and scopes of local culture, is the focus of empirical approach. The idea of observing such phenomena is based on the relationship between the employer and the workers. Interviews and group discussions with selected respondents are used to obtain more data and explore the issue further.

3. Result and Discussion

3.1. Understanding Domestic Workers

Domestic workers refer to people who work for an individual in a household; their jobs are mainly about helping domestic works. Their income is not only monthly salary in the form of money, but also other types of reward. This applies to domestic workers who either stay or not stay in the house of their employer in carrying out their job.

Domestic Workers should be the persons work for an individual in a household to carry out the domestic work by receiving wages and/ or other forms of remuneration including those who are staying and who are not staying (Article 1 Point 1 Labor Ministerial Regulation No. 02 of 2015).

3.2. The Aspects of the Domestic Workers Protection

3.2.1. Protection of Rights in CEDAW. Women's Rights as workers are generally contained in the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) that are relevant to the rules of law for development programs, which have been used as normative standard by the women's rights observers. One of them is the protection for the obstacles that women face concerning the dominant human rights, such as the state's attention to human rights is more focused on the public sphere than on the private sphere. It is therefore necessary to specifically formulate the regulation of human rights in private life.

In contrast to the instruments within the laws protecting human rights, CEDAW concerns more on the women at disadvantage. They suffer from oppression due to external factors, such as gender discrimination from societies or cultures, particularly inequality of the women's rights within the public domain (e.g. common beliefs about women in society) and the private domain (e.g. women's position in their family and work place). CEDAW also sets some instruments for the country regarding to the obligation to ensure the instruments of human rights which encompasses the rights to be respected, fulfillments of the rights, and protecting the rights and freedom through establishing a situation, including institutional, to include normative principles and effective procedures as an effort to protect these policies without delay. This is in accordance with the Article 2:

- a. "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- b. To establish legal protection of the rights of women."

Further measurements are included in the Article 11 of CEDAW which states that “state parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular [3]:

“The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; and The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”.

3.2.2. Legal protection. The concept of Indonesian law of protection has Pancasila, the foundational and philosophical ideology of the life of the nation, as its grounding. The principle of legal protection in Indonesia that recognizes and protects the dignity of human being is originated from Pancasila. On the other hand, the tenet of legal protection against the government act is originated from the recognition and protection of human rights, as this legal system aims at setting and restricting the obligation of the citizen and the government. The legal protection plays a major role in a nation of law; this is because all the people within such a nation have an obligation to uphold the law. It is common for a nation to have a reciprocal relationship between all the civilians. This leads to the duties and rights of those people; as a result, each citizen has his or her rights to ask for legal protection. The concept of legal protection is to protect the human rights from the miscarriages of justice so that the rights of the citizens are being fulfilled.

The specific arrangements regulate the domestic workers existence, which so far are not yet existed, due to the domestic workers characteristics, which have not been accommodated in Law no. 13 of 2003 on Employment. Practically, what has been done in the working relationship is to make a contract of work or a written agreement. In the Indonesia Codification of Civil Law, it is set forth in Article 1338. This method can be found in modern societies, and even then is performed only between housemaid service users with housemaid distributors. In Gorontalo, there has been such practice, but because it is not supported by the existence of the operational permit from the regional government, the agency is no longer operating[2].

3.3. *The Domestic Workers Existence and Local Culture*

The research result shows, in terms of sociological aspect, there are still phenomenon of working relationship which lead to the unequal rights and obligations that are motivated by knowledge, skill, culture, social economy, and housemaid's own view and society toward domestic workers position.

Discussing the socio-cultural life of Domestic Workers in particular is not separated from the cultural essence of Gorontalo society in general, which has values that are always inherited, interpreted, and implemented in line with the process of social change. The invasion impacted in Gorontalo on the ideology and local wisdom of the people led to a massive change in the government and economic system. An authoritarian kingdom system was inevitable because some lower-position chiefs called Baate was not regarded nonetheless. On top of that, some people escaped to forests (become Polahi) considering that Dutch soldiers were supportive to authoritarian kingdoms. People were also obliged to give some gold for their taxes that forced them to be a slave if they could not pay. Human trafficking became a common phenomenon and preceded with a significant increase of Wato or slaves working under landlords. This signifies that imperialism economic system and feudalism were present at the time[4].

One of the local cultures of the people of Gorontalo is the *Huyula Culture*¹, which contains the noble values of *Pancasila*² and describes the life of a community full of spirit of mutual cooperation

and togetherness. However, some people start abandoning this belief. In the development, Huyula culture began to be abandoned by society. The presence of globalization of local wisdom of Gorontalo is increasingly marginalized, exposed to the behavior of Gorontalo people who have begun to ignore Huyula culture which has the values of cooperation, responsibility, and tolerance [5]. Alim S. Niode, a sociologist/ humanist, stated that the socio-cultural capital of other Gorontalo people, not only Huyula, but also the *timoa*, *ambu*³, *bilohe*⁴, *toliana*⁵, which remain a strategy for survival in marginal position, no longer serves as a social spirit that guides the discovery and creation of culture. Mental cognitive culture and socio-cultural formations of people fell into the pit, so there was a crisis on the system of social and cultural meaning. For the job-seekers who are "forced to work as housemaids", they work with "trial and error", because there is no other choice. When the work atmosphere became "uncomfortable", they will abandon their job and move to another workplace.

In the last few years, the regional development has been getting better. It is characterized by increasing economic growth and better community civilization, shown by population data aged 15 years and over by activity types during the past week in Gorontalo. In 2015, the force labor consists of Working Population which amounted to 92.195 persons with 6.031 in unemployment. There were 20.826 Non-Work Force Junior High Schoolers, 28.129 household members, and 4.306 others. Further described, labor force participation rate is 64.83% while the unemployment rate is 6.14%⁶.

The domestic workers' existence is different in the past until the present. The domestic workers' bargaining position is increasingly high with poor work quality; the household work culture is very low, as some rural workers still hold the principle of "dilabiasa" (uncustomary principle), moomu (unwilling), moolito/ moqolito (shame). Another picture shows, there are relationships based on family relationships, in which working relationships are maintained, even for children. In general, families with a high level of education able to understand and place the position of housemaid as part of human rights, which dignity needs to be maintained. Even the employer's attention to the quality of housemaids dropping out of school is often done by including housemaids on the B and C equivalent study. This is shown from previous research results, in which housemaids are empowered through skills courses to continue their education to universities.

3.4. Model of Protection for Domestic Workers in Gorontalo City

As the social situation change, norms in family customs and beliefs are also gradually shifted, particularly in the existence of household workers. The differences between the existence household employees in the past, present, and future urge a set of laws protecting these workers to be established. However, the instruments considering the issue are still in process since the government is already busy in handling other priorities, so the task is left the local government to design measurements concerning the rights of household workers. This is closely related to the legal awareness of people. The notion of legal awareness refers to the act of a community rather than an individual since its grounding originates from social structures, customs, and functions within the law concerning a particular society [6]. Indonesia employs positivistic-oriented law system in which the problems regarding the professional relationship in a household as a part of family custom heavily focus on domestic norms. On the contrary, the family customs are developed globally according to the dynamics of study on laws, and it does originate from only one perspective.

Protection Forms against the domestic workers can be done by preventive and repressive efforts. The preventive protection model intended in this case is a Mutualistic Partnership Model with social engineering. Through the establishment of "Sahabat Pramuwisma" container, in which there are training programs that include knowledge and skills. Mutualistic partnership is a partnership of two or more parties who are equally aware of the importance of doing partnerships, namely to mutually

benefit and gain more benefits, so that will achieve goals more optimally, making it easier for each party in realizing its goals. The repressive way of partnership model is a linear "collaborative of partnership" that is not to distinguish the size, status/ legality, or strength of the partners. The main emphasis is on the vision, the mission of mutual filling with each other, and in handling the problems of domestic workers, whether included in the realm of Criminal Law, Civil Law, Human Rights, and others related to the function of local government institutions Province, namely Social Service and Local Government of Gorontalo City that is on the Department of Population Control, Protection of Women and Children and Police, Non Governmental Organization (NGO), and Legal Aid Institution through mentoring program.

4. Conclusion

4.1. Conclusion

The Domestic Worker's existence changes as social change takes place, from the past to the present, which cannot be avoided. One of the problems is the female workers declining presence as domestic workers both in terms of quantity and quality aspects. Among others, it is caused by the society civilization development, the increasing understanding on human rights, technological growth, economy, as an impact on the local culture decreasing values of society in the form of Huyula culture.

4.2. Suggestions

The domestic workers rights protection needs to be done regarding to the equal standing between the Procuring Entity and the Service Provider needs as domestic workers, by seeking solutions to all aspects of domestic workers' problems, especially to housemaids. One of them is the local culture of society, which has not been accommodated as part of the employment agreement, along with a process of awareness of the reality of community change. So it is necessary for the cooperation of all elements; government, NGO's, employers, Service Providers, and housemaids, to revive the domestic work market by promoting local cultural values in the working relationship, lawful, justice because it is based on cultural values as the character of Indonesian nation.

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Hopefully this journal will be useful for the development of law and social-culture science.

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