

## **Protection of Domestic Workers in Local Cultural Historical Perspective at Gorontalo City**

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**Abstract:** *This study was conducted with an empirical juridical approach by identifying community norms and legal or policy principles related to existence of domestic workers. An empirical approach is used to observe the social phenomena of domestic workers and local cultural scope underlying the working relationship. The method used is to make regulation inventory related to protection of domestic worker, whether it is systematized or not. The survey is conducted by interview method to informant/respondent, spreading questionnaires and then in-depth data collection through input of city government, stakeholder, including society of domestic worker User, Traditional leaders, sociologists and culturist through the Discussion Group Forum. All inputs are analyzed qualitatively to formulate domestic worker protection aspects based on local culture. The results showed that existence of domestic workers in Gorontalo City increasingly eroded by socio-cultural changes of society that developed along with public awareness of Human Rights and rapid advance of technological developments. Cultural values of huyula, timoa, ambu, bilohe and tolianga become a strategy to survive. The most noticeable change is integration norms in family. Working relationships within domestic scope also change. The bargaining position of domestic workers is higher with poor quality of work. Some rural workers still hold the principle of dila biasa (not usual), Moomu (reluctant/reluctant), moolito/moqolito (shame/embarrassment). Even the work relationships as social activities institutions are not supported by strong State instruments. Therefore, an integrated step is needed between domestic workers, service user community, government and wider community to provide protection and certainty to domestic workers based on local cultural values of Gorontalo society.*

**Keywords:** *Protection, domestic worker, Local Culture.*

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### **I. INTRODUCTION**

Women role as public workers in Gorontalo City become higher and widespread along with its development in all areas of life. This has an impact on household lives, especially small, productive families, with out-of-home work activities as civil servants, public and private employees or entrepreneurs which recently higher. Productive household ages, having infants, toddlers, old and sick parents, would need help from others to perform household tasks, as home-workers or domestic workers.

The existence of domestic workers is still a polemic, because there is no clear and concrete arrangement of law. Other workers have arranged through Act No. 13 year 2003 on Manpower. Nevertheless, as a precautionary measure, Manpower Minister Indonesia has issued Decree of Manpower Minister of Indonesia Republic no. 2 year 2015 on Protection of domestic workers, while waiting the Bill on labor protection that discussed and passed by House of Representatives into Law.

Initial observation results show that fulfillment of domestic workers rights has not been met well, and even cause many problems (Mutia Cherawaty Thalib and Saiful Ibrahim, 2012). Similarly, obligations fulfillment by domestic workers also have many problems in relation with low quality of domestic workers and ability to process and the work still low. In particular, existence of domestic workers in local work market shows a downward trend in last 3 to 5 years. It is not balance with higher need for domestic worker services, whereas the local domestic worker or employment agencies or agencies working in city of Gorontalo do not yet exist. Protection and supervision of domestic workers rights has not been done by Regional Regulation, because there is no regulation on domestic workers. It is only a Bill waiting for discussion and endorsement by Parliament. In early 2015, Manpower Minister of Indonesia Republic issued Regulation of Manpower Minister No. 2 year 2015 on Protection of domestic workers as a Guidance on Minimum protection for domestic workers, which among others regulates the employment relationships between individual service users and domestic workers as providers through working agreements both orally and written with involvement of Local Government such as Neighbor Chief in area of user residence. Another reason the low quality of domestic workers is from aspects of work skills and work culture (Mutia Cherawaty Thalib and Nirwan Junus, 2015).

Based on above description, the research problem can be formulated as follows:

1. How is the protection of domestic workers in Gorontalo City?

2. How is the local culture perspective viewed from the historical aspect and the influence on existence of domestic workers in Gorontalo City?

## **II. RESEARCH METHODS**

This study uses an empirical juridical approach. The juridical approach is done by regulatory systematization, while the empirical approach is used to see the social phenomena within community related to norms and rules of society, both private and public among society. The study populations are user of domestic workers, domestic workers, and relevant local government such as social agency, legal chief, and other stakeholders including non-governmental organizations, indigenous figure, culture and all who have the same degree of uniformity. Samples are taken by purposive sampling to represent the existing population. Primary and secondary and primary are analyzed descriptively by qualitative method.

## **III. DOMESTIC WORKERS AND PROTECTION ASPECTS**

### **Definition and Scope of domestic workers**

Domestic workers domestic workers are persons who work for an individual in a household to carry out domestic work by receiving wages and/or other forms of remuneration, including those who stay and who do not stay. The scope of domestic work includes work inside and outside the household. These include:

- a. Domestic workers
- b. Housekeeper
- c. Caretaker;
- d. Baby sitter;
- e. Nanny;
- f. Governess;
- g. Caregiver.

Domestic workers who work outside the household are gardeners, private drivers, private security guards, and private teacher. Kepmenaker No 2 year 2015 stated that domestic workers are persons who work for an individual in a household to carry out housework by receiving wages and/or other forms of remuneration.

### **Protection Aspects of domestic workers**

#### **a. Protection Definition**

The concept of Legal Protection in Indonesia is based on Pancasila as the ideology of Indonesian nation. The principle of legal protection in Indonesia is the principle of recognition and protection of human beings dignity. Legal protection principle of Government acts are based on recognition and protection concept of human rights because it becomes limitation of public obligations and government. Legal protection is an important element in a country law. State of law also established laws to govern the citizens. It is common to know that a country will have a mutual relationship with the citizens. In that case it will create right and obligation to each other. Legal protection will become the right of every citizen. But on other hand, it can be felt that law protection is an obligation for country itself. Therefore, the state must provide legal protection to its citizens. In other words it can be said that protection of law as a separate feature of function of law itself, which has the concept that law gives a justice, order, certainty, benefit and peace. Satjipto Raharjo defines the Law Protection provide a human rights guidance to damaged peoples and protection is given to community in order they may enjoy all the rights granted by law.

#### **b. Protection Aspects for domestic workers**

##### **1) Rights Protection in CEDAW**

Women's Rights as workers are generally contained in CEDAW (Convention on Elimination of All Forms of Discrimination against Women) that have relevance to rules of law to development programs. It has been used as normative standard by observers of women's rights. One of them is the obstacles faced by women against the dominant human rights, such as the state's attention to human rights is more focused on public sphere than on private sphere. Therefore, it needs to formulate specifically the regulation of human rights in private life. In contrast to general human rights instruments that discriminate on basis of sex, CEDAW's attention is more focused on women as disadvantaged groups due to discrimination based on sex, especially on social and cultural pressures on discrimination against women, and most importantly the link between public space with private space, where the source of women's inequalities in family, workplace, and public life are social constructions, or social and cultural assumptions based abilities and roles of women. CEDAW also underscores the obligations of state to be fulfilled, namely the full realization of human rights in form of respect, fulfillment and protection of rights and freedoms, by creating an environment, including institutional frameworks, which permit normative standards and require mechanisms to be effectively protect those standards from threat of infringement. Article 2 emphasizes the State's obligation in legal sense:

- a. Taking appropriate legislative measures (alter and repeal discriminatory provisions, establish new rules);
- b. Providing legal protection for women.

Furthermore, CEDAW in Article 11 states that, "constitution is very important in providing equal protection in employment with respect to right to equal remuneration, benefits and services. The right to social security, health protection, and safe working conditions, including the protection of women's reproductive function by providing maternity leave while receiving payments and other benefits ... "

## 2) Legal Protection

There is no specific arrangement to regulate the existence of domestic domestic workers. The work of domestic workers has its own characteristics, which have not been accommodated in Law no. 13 year 2003 on employment. In practice, the working relationship is to make the contract of work/agreement in writing, in Civil Code is regulated in Article 1338. This method can be found in modern societies, and even between domestic worker users with domestic worker distributor Institution. Gorontalo ever has the role, but because it was not supported by operational permit, the institution did not longer operate (Thalib and Junus, 2015). Indonesia domestic worker protection is formulated in draft of Law. It is only included in discussion plan of Prolegnas in 2015 to fill the existing legal vacuum, Manpower Minister of RI has issued Regulation No. 2 year 2015 on Protection of domestic workers as the minimum protection guidance for domestic worker. The local government's response to this provision is not yet apparent. This is indicated by the absence of local government programs to follow-up of this provision. Attention to protection of domestic workers is evident from the existing Women's organization programs in Gorontalo Province in form of fostering and upgrading the abilities of women workers, including domestic workers.

## IV. DOMESTIC WORKERS IN LOCAL CULTURAL PERSPECTIVES IN GORONTALO CITY AND THE PROTECTION MODEL.

### Existence of domestic workers and Local Culture

The research result shows that in terms of sociological aspect, there are still phenomenon of work relationship which lead to unequal rights and obligations which are motivated by knowledge, skill, culture, socio-economic and domestic workers and society view toward domestic worker.

Socio-cultural life of domestic workers cannot be separated from the cultural essence of Gorontalo society values that always inherited, interpreted, and implemented in line with process of social change. One local culture of Gorontalo people is the *Huyula* Culture, which contains the noble values of Pancasila and describes the life of a community with full spirit of mutual cooperation and togetherness. In its development, *Huyula* culture began to be abandoned by society (Rasid Yunus, 2014: 13). According to Laliyo's opinion (Rasid Yunus, 2014: 9), globalization makes local wisdom of Gorontalo is increasingly marginalized, Gorontalo people have begun to ignore *Huyula* culture as the values of cooperation, responsibility and tolerance. Rahman defines value as an interpretation used to reward goods or things. Furthermore, Fraenkel defines the value as a manifestation of affective aspect and resides within a person, and as a whole and round of a system with various values (religious, socio-cultural, economic, legal, aesthetic, ethical, etc.), relates each other as a whole unity. This value system is very dominant in determining one's behavior and personality. Based on that opinion, value is an important human belief about what is appropriate and inappropriate (Rasid Yunus, 2014: 9). If this is linked to process of formation of family law nationally, it does not start from a vacuous space, but is closely related to societal practices.

The legal studies will be more comprehensive if following the development of Indonesian society, because the application of family law is closely related to factors that become traditions and deep-rooted in community life. Alim S. Niode (2006: 4-5), a Sociologist/Culturalist, stated that socio-cultural capital of Gorontalo people not only *Huyula* but also *timoa*, *ambu*, *bilohe*, *toliana*, but it remains a Survival Strategic in marginal position. It is no longer used as a social spirit to guides the discovery and creation of culture, then trapped consumerism magic, mental cognitive culture and social formations of society culture fall in silent. There was a crisis against the system of social and cultural meaning. The concept of kinship and common interest in economic system can be followed in history of social order change, with economic character of Gorontalo society since the beginning of its historical period, namely the common interest is above the individual interests. This economic system is created by *tiyombu* law as the implementation body of economic and welfare laws. The economic consists of 13 sub-systems related to legal system of individuals, among others is *Bayawa*, obligation imposed by Customary Law to a person to provide for his or her parents who can no longer afford to work. In concept of Family Law, it same with concept of alimentation right. There is also *Bubaya*, assistance of community members for government official's interests, such as cleaning the yard (Alim S. Niode, 2006: 96). *Segayut*, within Islamic government change period, brought about changes in economic system. One economic concept is the question of one's possession rightly only relative as a mandate from God.

The use of property itself must be in line with the will of God for public good (QS Al-Hadid: 7), so if there is poverty, the poor are given the right, for some rich people, especially those who are still close to family relations (QS Al-Ma'aridj: 24-25). Historically, glorious period of Islam gradually faded after 1755. Over the next 100 years, Dutch increasingly consolidated its power from Ternate that also dismissed royal government and also the local genuine of Gorontalo people. These actions bring great consequences to economy and government. The king's power became more authoritarian because the influence of lower-ranking leader as *Baate* was unknown, Invaders more favor to the king. Many people go to forests, and many become slaves, avoiding the obligation to surrender gold.

Slave trade is increasingly rampant, sociologically it increase the lower social classes, namely *Wato* (slave). Slavery is an indication that besides the imperialistic economic model, there is also a feudalistic system, characterized by presence of landlords who impose conditions that are too heavy for cultivators (Alim S. Niode, 2006: 96). During the independence period, with *Repelita* system, government proclaimed a "take-off" system, social change spurred in all aspects of life, including in modern economic sector, but in a way, government manages almost all the movement of development, including increasing populist economy with capital support. Cooperatives, banking and insurance begin to grow, , public began to recognize bank credit. According to Author, change of life order of Gorontalo people at time urged the weak economic community to follow the conditions prevailing in his era raw. It is not a choice. They choose to be Workers in household of rich people, whether local authorities or Entrepreneurs, mostly in groups that control the segments of local trade, such as Chinese, Arab, and Bugis/Makassar. At that time, it was very easy to find the labor services, even without the requirements. There is no concept affirmation of who is a domestic servant. It could be that domestic servants are called distant relatives, because of purpose of existence of domestic worker at that time, some people simply accommodate families from villages who want to get a better life in City, which not always money-oriented. It could just enjoy the atmosphere of city to get entertainment, there are small businesses in form of cookies production, there is a salon business, and in addition, there is also a goal to continue junior and senior high school in city, for Chinese Arabic homes, his orientation to become a saleswoman as well as a cooker or baby-sitter. At that time the working relationship did not recognize the agreement between the two parties in writing, but the relationship can be maintained long with a sense of kinship.

The existence of domestic workers in past is different from the present. The bargaining position of domestic workers is increasingly high with poor work quality, work culture in household is very low, by some rural workers who still hold the principles of *dila biasa* (not usual), *Moomu* (shy/reluctant), *moolito/moqolito* (shame/embarrassment) . This is shown by not being proficient in using electronic devices in house. In one side, a custom to go home in certain events are often done, demand to be able to enjoy the rights to gather with family to accommodates activities such as *Isra' Mi'raj* event (Islamic celebration), or commemorating the 7th day even on 40th day of family death. For under-30 workers, there is a reluctance even embarrassed to be called as a helper or domestic worker. Their motivation is only to become a seasonal domestic worker. For example before the holy month of Ramadan to Eid. After *Lebaran* (celebration) they leave, domestic workers usually do not come back to work. Bad work ethics often causes domestic violence, as sexual harassment, physical and psychological violence and even financial violence. Another condition shows the work relationship is based on kinship. Understanding of domestic workers rights, working relationship becomes preserved, even to child. In general, families with a high level of education can understand and put domestic workers as part of human rights that need to maintain the dignity. Even employers' attention to domestic workers education quality is often done enroll the domestic workers in B and C Packages education. Even from previous studies, there are domestic workers empowered through skills courses and continuing education to universities.

In responding to community needs, Coordinating Agency for Women's Organizations of Gorontalo Province has held skills and education coaching to groups of women of adolescence or productive age who are willing to become domestic workers, but when there is demand for job market, prospective domestic workers are not willing to work because of shame, not accustomed to become domestic worker. This suggests that highest problem to hinder existence of domestic worker services in employment is the culture change amid society for wider understanding on human rights.

### **Protection model for domestic workers in Gorontalo City**

Along with social change, there was also a change in norms integration within family. Context of work relations within domestic scope also changes. The existence of domestic workers can be photographed from the past, present and future life, as the dynamics of originator ideals of legal protection of domestic workers. Even the employment relationship in household as part of social order is not supported by a strong state instrument. The position of domestic workers in state legislation is still in queue, waiting for legislative discussion, because it is affected by complexity of society and state issues that considered more important, while the domestic workers' concerns are left to more private instruments. It is depend on users and service providers for the importance of work agreements to regulate the rights and obligations of parties. This is related to public legal

awareness. This concept gives the public what they do and calls for the law. Legal awareness does not see a person's behavior, but all the practices of society as reflections and forms of social structure. Legal awareness is the values within human being about the existing of law, or about the expected law, or the law functions within society (Ahmad Tholabi Kharlie, 2013: 81-82). The orientation of our legal studies tends toward positivistic, so the issue of working relationships in household as one part of family law refers to very domestic norm. If we follow the development of world, scientific studies of family law cannot develop alone without following the dynamics of global scientific thinking.

The domestic workers protection model can be implemented in an integrated manner between the concepts in Regulation of Manpower Minister of Republic Indonesia No. 2 year 2015 on Minimum Standards of domestic workers Protection, namely by paying attention to Article 3 to provide protection to domestic workers while respecting local customs and cultures. For modern society, the employment agreement can be made in writing to fulfill the legal certainty, following the steps contained in this Ministerial Decree, including the rights and obligations of parties based on cultural values of community. For employers and domestic workers who are still accustomed to oral agreements, it can be made an initial agreement to leads to rights and obligations of parties to be met within local cultural value to lay social order with national character nuances.

## V. CONCLUSIONS AND SUGGESTIONS

### Conclusion

The existence of domestic workers is changing along with social change, from the past and present, which cannot be avoided. One problem is lower supply of female workers as domestic workers both in terms of quantity and quality. Among others are due to lower local cultural values of community as *huyula*, *hulunga*, *Tiayo*, *Bayawa* and *Bubaya*. Domestic worker needs to be given a proper understanding to reflect the values of custom, shariah and religion in family, such as *dila biasa* (unusual), *Moomu* (reluctant/reluctant), *moolito/moqolito* (shame/embarrassment) in consideration the value of work in realm domestic in order do not become an obstacle to fulfill the rights and obligations in desired working relationship.

There are no specific arrangements to regulate the existence of domestic domestic. It is because the domestic workers have its own characteristics, which have not been accommodated in Law no. 13 year 2003 on employment. Nevertheless, protection of domestic workers in practice can be done by using other valuable instruments contained in Civil Code, Human Rights instruments and even the Regulation of Manpower Minister of Indonesia Republic no. 2 year 2015 as Minimum Standards for Protection of domestic workers.

### Suggestions

Rights protection of domestic workers needs to be preserved with regard to equal position between the needs of employer and service provider as domestic workers, by seeking solutions to all aspects of domestic shortage, as local community culture, has not been accommodated as part of employment agreement, accompanied by a process of awareness of reality of community change. So it is necessary to cooperate with all elements, both Government, NGOs, Employers, Service Providers and domestic workers to revive the domestic work market, by promoting local cultural values in working relationship, Lawful and justice, because based on cultural values to characterize the Indonesian nation.

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