

## Policy of Legal Protection Formulation for Domestic Workers in Indonesia Based on Constitutional Rights

Triana Sofiani<sup>1\*</sup> Sudarsono<sup>2</sup> Rachmad Syafa'at<sup>3</sup> M.Ali Syafa'at<sup>4</sup>

1.Doctorate Candidate at Law Faculty, Faculty Of Law, Brawijaya University, Malang and Lecturer of Sekolah Tinggi Agama Islam Negeri (STAIN) Pekalongan, Jawa Tengah

2.Professor of Law, Faculty of Law, Brawijaya University, Malang

3.Secretary of Doctorate Law Studies Program, Faculty of Law, Brawijaya University, Malang

4.Lecturer at Doctorate Law Studies Program, Faculty Of Law, Brawijaya University, Malang

\* E-mail of the corresponding author: sofianitriana@gmail.com

### Abstract

This normative research was motivated by the existence of domestic workers in Indonesia. Those domestic workers still do not get legal protection guarantee from the Law of the Republic of Indonesia Number 13 of 2003 on Manpower as the other common workers. There is still no specific regulation on domestic worker protection. This situation makes the domestic workers are easily exploited. They are easily discriminated and they easily get violence in their labor relations. This situation is contrary to their constitutional rights as citizens as well as workers. Policy of legal protection formulation for domestic workers to be essential to be realized. This is as the effort to satisfy the justice and ensure the legal certainty in the employment relationship in accordance with the constitutional rights. In concrete, the model of policy legal protection formulation for domestic workers, realized through several programs, those are: 1) legal reform; 2) law making and; 3) Integrated Service Center For domestic Workers.

**Keywords :** Formulation Policy, Domestic Workers, Constitutional Rights , Justice and legal certainty.

### 1. Introduction

Republic of Indonesia which based on Pancasila Law is the Republic of Indonesia – based on Pancasila Ideal. It means that it is a *welfare state* that support the dignity and prestige of Human, and also protect the dignity and prestige of every citizen. Protection that is gave by the constitution is one of State existence function to guarantee the welfare of the whole citizens, as stated in Preamblule of Constitution of Republic of Indonesia, that is to establish a Government of Republic of Indonesia that protect the whole Nation of Indonesia and the entire Indonesia and to develop its general welfare. These constitutional commitments become base of constitutional right guarantee to get justice for people, including the Domestic workers, in Indonesia Local term it is called as PRT.

The guarantee of the rights constitutional of domestic workers, the details is explained in Article 27 paragraph (2) and Article 28D paragraph clause (2) Constitutional of the Republic of Indonesia 1945, stated: "Every citizen, have right to work and decent living for humanity. "(Article 27 clause 2) and" Every person has the right to work and get *honorarium* and fair and decent treatment in working relationships ". (Article 28D clause 2). The responsibility of protection and fulfillment of those Constitutional Rights are the responsibility of country, which should be guaranteed by law as the consequence of the impliccation of the welfare state.

Moving on from that country commitment, Law of the Republic of Indonesia Number 13 on Manpower as legal protection for workers / laborers 2003 should also provide legal protection for domestic workers as a form of constitutional mandate, that is juridacally the higher regulation than Manpower Law. In fact, Law of the Republic of Indonesia Number 13 on Manpower as legal protection for workers / laborers 2003 only gives legal protection guarantee for workers/ laborers in formal industrial sector. So that domestic workers who work in informal sephere do not get the protection of the Labor Law, even though they are people who work for and getting their honorioum in other forms, as the provisions of Article 1 clause (3)on Labor Law .

Ironically, there is no specific Law that regulates domestic workers regulation until now. For Bill of Domestic Workers protection that have been included in the National Legislation Program since the period of House of Representatives of Republic of Indonesia on 2004-2009 and House of Representatives of Republic of Indonesia on the period 2009-2014 was stopped in the middle of the process. Indonesian government also has not ratified the Convention to 100 ILO No. 189 on Decent Work for Domestic Workers. That is the next step of the government's political attitude that supports the Convention on Decent Work for that Domestic Workers. This situation makes the area of domestic workers as area that does not have Legal Protection.

That issue becomes more interesting and important to study, when in reality the number of Domestic Workers in Indonesia in 2010, as many as 10,744,887 and 99% of it were women. This number is estimated increasing in average of 1.4% every year and they are vulnerable to exploitation and violence in labor relations (*Rapid Assessment Results JALA PRT in 2010*). Some cases often afflict domestic workers in the employment relationship, such as: physical violence, psychological and sexual abuse committed by the employer and the

employer's family; exploitation by agencies Domestic Workers by hiring them from one employer to another employer; agencies take domestic workers' salary every month; there are no clear work mechanisms and work systems in the employment relationship; low salary even no payment; heavy workload; long working hours; no social security, welfare, safety and health, no leave entitlements and other rights that they should obtain as the workers.

Starting from above facts, this study aims to analyze and find a model of policy legal protection formulation for domestic workers in the future. This is an effort to satisfy justice and ensure the legal certainty in the working relationship, based on the constitutional rights as included in Article 27 clause (2) and Article 28D (2) on Constitution of the Republic of Indonesia 1945.

## 2. Research Method

Research in this *normative juridical tradition* with used philosophical approach, Law Approach and conceptual approaches (*Sunaryati Hartono: 1994, Abdul Kadir Mohammed: 2004*). Sources of legal materials, included: primary legal materials, secondary, and tertiary legal materials. The procedure of law materials collection is done through some stages, such as: 1) search of legal materials; 2) systematization; 3) classification and; 4) analysis that is done by *prescriptive analytical* with using legal logic, legal interpretation and legal arguments for a conclusion in response to the legal issues that have been formulated in this research.

## 3. Theory Framework

The theory is used as the analysis in this study, are: the welfare state theory, the theory of legislation and feminist legal theory.

### 3.1. The welfare state theory.

The Welfare state theory, used with the assumption that, as a sovereign state governments have the duty and responsibility for the well-being and the fulfillment of the basic rights of citizens can not be achieved alone. The concept of the welfare state requires the role of the state to expand its responsibilities to the socio-economic problems faced by many people (Jimly Asshiddiqie, 1994). In the context of Domestic Workers, the state is obliged to regulate wages, provide protection and security and other social welfare, fair manner in accordance with constitutional rights.

### 3.2. The theory of legislation.

Legislation is the process of forming the state regulations, both at the national and at the regional level (Maria Farida Indrati Soeprapto, 1998).

Theory of legislation used as the analysis with the assumption, that legislation must either contain the binding pattern of behavior in general, which applies to any legal subject that meets the elements of a pattern of behavior, so that Law No. 13 of 2003 on Employment should also apply to women domestic workers because they are one of the legal subjects that meet the elements of a pattern of behavior in terms of labor law norms.

### 3.3. Feminist legal theory.

Feminist legal theory, used as the analysis in this study, with the assumption that the Act No. 13 of 2003 on Employment which have not provided protection for domestic workers that in fact the majority of whom are women, can occur due to the strong patriarchal values are constructed by society and the state. Therefore, the legal protection for women domestic workers also based constitutional rights will be realized, if the experience of women domestic workers who incidentally is understood and reflected in the legislation formation process.

According to Susan Edwards, that: "...to examine law's claims, law's essentialism, law's masculinism and exclusion of women...(in order to) render masculinity, masculinism, structure of patriarchy – heterosexism as open to account and challenge...(for) the inexorable fact remains that law is holistically, root and branch, viscerally, temporally male...". (Susan Edwards, 1998).

The statement can be interpreted that, there are limitations or restrictions of a generally applicable law to reinforce the social function between males and females. The law also described no more as a tool to assert the existence of patriarchy in a society.

## 4. Result and Discussion

### 4.1 Concept of Formulation Policy.

According to Harold D Lasswell and Abraham Kaplan policy formulation is a program to achieve the goals, values and practices that are targeted (M Irfan Islamy: 2002). Carl J. Friedrich defined policy formulation as a series of actions proposed by someone, group or government in a particular environment by showing a series of barriers and opportunities of the implementing of proposed policy to achieve certain goals (M Irfan Islamy: 2002). Policy formulation by Jame E. Enderson is a series of actions that have a specific purpose, followed and implemented by a person or group of actors to solve a particular issue (M Irfan Islamy: 2002). Furthermore, the concept of formulation policy by Barda Nawawi Arief is a plan or program from law makers about what would do in facing certain issue and how to do or how to implement something that has been planned or programmed

(Barda Nawawi Arief : 2001).

Based on that understanding, the components of policy formulation, including: a) a series of actions that is planned or programmed; b) a particular purpose and; c) solving particular issue. It means that formulation policy is a series of planned or programmed actions for a specific purpose in an effort to solve issues that occur in the reality of society. Policy formulation must consider the value system that becomes a collective agreement, which in the context of Indonesia is Pancasila values (M Irfan Islamy, 2002). Policy of Legal protection formulation for domestic workers should also be guided by a system of shared values that is strengthened by the Indonesian people, namely Pancasila. So that, it can provide a sense of justice for them in employment relations related to the constitutional rights of citizens as well as workers.

#### **4.2 Policy of Legal Protection Formulation for Domestic Workers-based on Constitutional Rights.**

Policy of legal protection formulation for domestic workers is intended as an effort to satisfy justice and legal certainty guarantee to the rights of domestic workers in labor relations, based on constitutional rights. It means policies and programs to solve the various issues faced by domestic workers need to be arranged soon. So, it can guarantee fairness and legal certainty over their rights in labor relations, based on their constitutional rights.

In the context of the welfare state in Indonesia, policy of legal protection formulation for domestic workers is intended as a form of state responsibility in ensuring the rights of all citizens. According to Jimly Asshiddiqie, Indonesian State as Saxon welfare states, are required to expand its role and responsibilities to solve socio-economic issues faced by all people (Jimly Asshiddiqie: 1994). It means that the state in this case is represented by the government must intervene to solve the various issues faced by the entire society. It is including the issues of domestic workers through its policies and programs, in order to realize the goal of the state as stated in the Fourth paragraph of Preamble Constitution of the Republic of Indonesia 1945.

In concrete, the model of legal protection formulation policy for domestic workers as an effort to overcome various issues in the reality of the employment relationship is realized through several programs. Among others: the law reform, law making and the Integrated Service Center For Domestic Workers.

##### **4.2.1 The Law Reform.**

Law reform is the process by which law is changed into law that contains the values and needs of the community, based on the society aspirations and justice not the interests of certain people and groups (Soetandyo Wignjosoebroto, in: Donny Donardono: 2007). Law reform is not only meant as a replacement or renewal of legislation, but it is based more on the transformation of basic assumption of a legal system which is based on the ideas of social discrimination and inequality into the ideas of equality and justice (Moh. Mahfud MD: 2010). Law reform should be an effort to make the law as an institution that is able to carry out their work as the needs and demands of society. It means that the law reform is *on going process* that is as the transformation of a set of values into new better values, as the basis of the legal system. Fundamental transformation that is started from this value devices, continued until its substansi, structures, procedures and legal culture (*Esmi Warrasih, 2005*). Law reform in this context is not only interpreted as a legal reform but also as law reform, so that not only substantially remodel the contents of Law regulation. So, it is not only formalistic-procedural, but it also remodels the awareness of the law maker even the public awareness, based on the values that have become collective agreement. That is the values of Pancasila as the Indonesian national law ideals. Furthermore, it can be understood that, law reform is the answer to how the law is held based on the framework of the establishment of the ideal Law state.

Started from above opinion, reality of law reform in domestic workers should also be done through re-arrangement of value system that is based on the traditional-conventional based on patriarkhism- feudalism values (this patriarkhism-feodalism values is the source of the issues on exploitation, discrimination, violence and ignorance of domestic worker's right) to value foundation, that is more egalitarian (fair and gender equality) and democratic based on values of Pancasila that emphasizes on women's experience. That egalitarian-democratic value foundation in the later stages of thinking is served as the basis for the law makers, so there will be awareness to revise the Law of the Republic of Indonesia Number 13 of 2003 on Labour becomes Principal Employment Law in Indonesia. That including a specific clause on Domestic Workers as well as providing a mandate to form a special law regarding the protection of domestic workers. It means that Law of principal manpower that has been revised, served as the legal basis for the establishment of Law to create a special Law on the Protection of Domestic Workers.

Revision of the Law of the Republic of Indonesia Number 13 of 2003 on Manpower becomes Law of principal manpower Law in Indonesia, it includes special clause on domestic worker that becomes an important and urgent thing to be done. It is referred to some mandates. First, it was stated by Article 27 clause (2) Constitution of the Republic of Indonesia in 1945: "Every citizen has the right to work and decent human beings". Second, the Article 28D clause (1) stated: "Everyone has the right to recognition, protection guarantee, and fair legal certainty and equal treatment in front of Law", and third the Article 28D clause (2): "Everyone has the right to work and to get the payment and fair and decent treatment in working relationships". In addition, to ensure the principal rights of domestic workers (sense of fairness, certainty guarantee, equality of opportunity

and treatment without any kind of discrimination) in order to realize their welfare and their families welfare, based on human dignity as the mandate of Article 28 paragraph (2) the Constitution of the Republic of Indonesia in 1945.

Revision of the Law of the Republic of Indonesia Number 13 of 2003 on Menpower into Principal Employment Law in Indonesia is actually not something that cannot be done by the Law Maker. It is because the actual domestic worker juridically can be legally categorized as workers / laborers, as well as provisions Article 1 clause (3) of the Law of the Republic of Indonesia No. 13 of 2003 on Employment. Although politically and sociologically, Domestic Workers are not categorized as a workers/laborer. Therefore, the most important thing is the political will and good intentions of the Law maker, so with full awareness of the Law Maker, Domestic Workers in Indonesia will be one of legal subject that gets Labor Law Protection from Law of employment.

Still in the above discourse, the case in other countries for example: in South Africa the domestic worker is still included into regulation of principal Law on Employment which becomes the foundation of specific law that regulating domestic workers in South Africa, namely the provision of *Sectoral Determination 7: Domestic Worker Sector South Africa, No. R 1068*. Domestic Workers in this country are also accommodated in the various laws which are applicable to other workers in general. In South Africa, domestic workers can also bring cases of alleged violations in the employment relationship to the industrial court, called as Reconciliation Commission, Mediation and Arbitration (*Commission for Conciliation, Mediation and Arbitration*). There is also in Philippines, although the nomenclature of domestic workers using the phrase "kasambay" which means "servant" and not a "worker", but still a special Law on the domestic worker protection in the Philippines, called as *Republic Act No. 10361 For The Protection And Welfare Of Domestic Workers in Philippines* or it is known well as the *Batas of Kasambay (Batas Kasambay)*. It also based on Law of Employment Pricipal in that Country. It means that domestic workers in the Philippines are explicitly defined as "workers" and not a "servant". Thus, they are accommodated by the Basic Employment Act, and they are also accomodated by Law on Employment Principal

Actually, steps that were done by South Africa and the Philippines have also been carried out by Indonesian government, but only at the level of regional regulation and it also only apply to domestic workers in that local area. For example, the breakthrough made by the DKI Jakarta and the Local Government of Yogyakarta. Provincial Government of DKI Jakarta, since 2004 has legalized Provincial Regulation Jakarta No. 6 of 2004 on Employment, which contained a clause on the domestic worker that is called in a term "Housemaid"(pramuwisma). Chapter XI of Article 50 which consists of 5 clause and 51 articles which consists of 3 clause regulate the Implementation of Domestic worker Welfare and mandates the governor to follow up on license of Providers and Suppliers of Domestic worker Agencies. In 2010 was born the Provincial Governor Regulation of Jakarta No. 191 of 2010 Concerning to the operational approval of Providers and Suppliers of Domestic Worker Agencies. The Provincial Government of jakarta is using the term "housemaid" (pramuwisma), and according to the Rules and Regulation of the Governor of DKI Jakarta, the term "housemaid" (pramuwisma) interpreted as "maid" of the house and not as the "servant" of the house. However, the courage and good intentions of the Government of Jakarta to provide protection for domestic workers who work in the area, even accommodate them in the labor regulations as other general workers deserves to get compliment and shoul be a good example for the central government (Nasional Indonesia). While in the city of Yogyakarta, Yogyakarta Provincial Regulations No. 13 of 2009 on the Implementation of Employment also regulates the Domestic Workers. Chapter VIII, Article 37 which consists of 3 clauses, specifically regulates Domestic Workers and gave a mandate to the Mayor to follow the Local Regulation. In 2011, the Mayor of Yogyakarta was born Regulation No. 48 of 2011 on Domestic Workers. In 2011, the Mayor of Yogyakarta Regulation No. 48 on Domestic Workers 2011 was established.

Some cases above can actually be used as a reference for Law Maker in Indonesia on Nasioanal level. It is because the most important fact is the existence of the political will of the Law Maker. Thus, there will emerge a good intention to provide the legal protection for domestic workers through the Law on Employment and the Law, specified on the Protection of Domestic Workers.

#### **4.2.2 Law Making.**

Law making is is the making of legislation that includes the stages of planning, preparation, discussion, authorization or determination, and promulgation. Legislations are written rules that contain a binding legal norms in general, and it was established or designated by the state agency or official authorized through the procedures that were made in legislations (Article 1 clause (1) and (2) of Law of Republic of Indonesia Number 12 on 2011 Concerning the Establishment of Legislations).

Quality legislations will be realized, if the formation of legislations pays attention to three foundation, among others: a philosophical foundation, juridical foundation and sociological foundation. A legislations are said to have a philosophical foundation (*filisofische grondslag*), if the formulation is justified philosophically. It means that it is based on the way of life of the nation and the ideals of truth, justice, and morality. A legislations are said to have juridical foundation (*rechtsgrond*), if it has the legal basis, legality or foundation contains the

higher level on Law Provision. Meanwhile, legislations is said to have a sociological foundation (sociologische grondslag), if its provisions in accordance with the general faith, law awareness of society, values, and laws that live in society so rules that are made will run effectively. The importance of those foundations is that legislation regulation that is formed can has the legal validity and it runs effectively and reaches the social justice sense.

In Indonesian context, the worth formation of legislations (law making) in Indonesia will follow the guidelines and guidance provided by the ideals Pancasila state law, which by Attamimi termed as the "guiding star". It means that Pancasila should be a reference and foundation for establishment idiil-philosophical legislation in Indonesia, or as a principle norm (*grund norm*) for the presence of legislations in Indonesia. Establishment of legislations, and even Law regulation should not deviate from the Pancasila. Law making must consider the principles. First, principle that is based on law ideals and fundamental norms embodied in Pancasila as a general legal principle for legislations. Second, principle that is based on the basic law of the state. Next, the principle of legal state, principle that is based on the principle of constitution state, and also principles of fairness, principles of balance, principles of harmony, and principles of conformity. Then, principle of order, principle of peace, principle of guidance, and principle of humanity (Maria Farida Indrati Soeprato: 1998). According to Esmi Warrasih, values and principles needs to get major concern in the law making process, because it contains the principles of moral and society ethical values to achieve the ultimate purpose of the law, which gives the greatest happiness for as many people( Muryanto, Law Journal volume XXV, No. 1 April 2011).

Law making in the context of this discussion is intended to make the Special Law on the Protection of Domestic Workers as a follow-up of revision product on Law of the Republic of Indonesia Number 13 of 2003 on Manpower. This special Law is important to be made, because sociologically legal relationship that is built on the reality of the work of Domestic Workers and employers as someone who gives the work is different from the legal relationship of workers/ laborers in general. The relationship specificity of domestic workers and employers becomes a reality that cannot be denied. This is because domestic workers work in the area of domestic (household), doing the type of household work, which of course is also characterized by family relationship. The relationship between domestic worker and employer in the law context is called as *hibridis* relationship. It means that one side is based on law norms and the other side is based on the social values of family. It becomes unique and different working relationships than general working relationship. On the other hand, the increasing number of violence case, exploitation case, and right violation of domestic workers by their employers or domestic agencies, should also be the consideration to form a special Law on the protection of domestic workers.

This is in accordance with the differentiate principle (*the difference principle*) and the principle of fairness in equality of opportunity (*the principle of fair equality of opportunity*) that underlies the thinking of John Rawls's theory of justice. The essence of the difference principle is that social and economic differences should be regulated to provide the greatest benefit to those who get more disadvantaged. The term socio-economic difference in principle of differences into inequality is someone's prospect to get welfare, to get income and to get the authority. Meanwhile, the principle of fair equality of opportunity is to show them who has the less opportunity to reach the prospect of welfare, the prospect of income and the prospect of the authority, so that they should get special protection through the law regulation to achieve justice that is desired. (Uzair Fauzan and Heru Prasetyo: 2006).

According to Blackett (Adelle Blackett: 1998), special regulation for domestic workers is the key to protect their rights with the assumption of: (1) special regulation will give you the recognition that domestic workers are involved in an employment relationship and the recognition of that domestic workers also give the contribution to economy field. (2) special regulation can handle the particular problems faced by domestic workers. This Special issue of domestic workers can be interpreted as a problem that occurs because of the peculiarities of the employment relationship and the scope and type of domestic workers' work that is different from the other general workers' work. Special problems that often afflict domestic workers, for example: long working hours; many types of work; family is private area, so that cases of domestic worker violence is considered as the private matter and other people should not interfere the problems; low wages of the domestic workers even they are not paid, etc. (3) special regulation is required by Domestic Workers, because if they are arranged in a general Law, of course, it will just arrange the main point, thus to make it clearer it needs to be made the further making of a special regulations.

Special regulations of Domestic Workers in the Indonesian context actually has been made in the form of the Bill on the Protection of Domestic Workers. The Bill on the Protection of Domestic Workers has entered the National Legislation Program (Prolegnas) since the period of the Parliament of 2004 to 2009, and even it has become a priority Prolegnas in the House of Representatives in the year period from 2009 to 2014. However, lack of awareness and political will of the law maker to success the Bill, resulting Bill is stopped in the middle of the process. Patriarkhisme value is a value that is based on male domination of women, it is the root of all these issues, and thus it indirectly reduces the existence of domestic workers, because they are women. According to Rahmat Syafa'at, Domestic Workers condition can be determined to be " its existence the same as its

nonexistence" (Rahmat Syafaat: 1998), so that the law makers in Indonesia did not consider that it is important to promptly authorize the bill on the Protection of Domestic Workers.

Substantially, the concept of act on the Protection of Domestic Workers in Indonesia or abbreviated in a term of PPRT Bill, that has been formulated respectively by JALA PRT (National Network for Domestic Workers Advocacy) in the draft-9 and also by the Legislatures of the House of Representatives, covers some subject matter. Those are :

*First*, the concept of the Bill on the Protection of Domestic Workers as JALA PRT versions, covers the subject matter, among others:

- 1) General provisions which includes some definitions, among others: definition of Domestic Workers, employers definition, definition of household work, labor relations definition, definition of employment agreements, wage definition, definition of the minimum wage, protection definitions, definitions of violence, child definition, definition of working hours, leave definition, definition of domestic union, definition Providers of Domestic Workers, definition of supervision, coaching definition, definition of termination, dispute definition, definition of mediation.
- 2) Basic philosophical and juridical, principles and objectives.
- 3) Category of Domestic Workers based on its work time and the type of work.
- 4) A minimum age provisions of the Domestic Workers that is 18 years old.
- 5) Provisions relating to the employment relationship, a written employment agreement, the terms of working conditions, changes and extension of employment contracts and retirement of employment.
- 6) The rights of domestic workers. Rights of domestic workers are divided into civil and political rights (sipol) as well as economic right, social and cultural rights (ESC). Civil and political rights included: the right of personal liberty; right to argue; embrace freedom of religion and belief; the right to apply their religion or belief in accordance; freedom to communicate and socialize; right on freedom of assembly, association and united; right to engage in political activities either actively or passively. The economic right, social and cultural rights (ESC) include: first, the payment right as the work contract agreement shall not be lower than the minimum wage stipulated in the legislation. Right to get information regarding the amount of wages that is received. The Overtime payment, form and manner of payment, time of payment, details of payment components and increasing payment per year. Holiday allowance rights, right to daily and weekly rest, annual leave entitlements, menstruation, pregnancy and childbirth, social security rights, security, safety and occupational health, sexual and reproductive health rights; right to acquire the knowledge, skills, and work expertisement, right of the work retirement.
- 7) Domestic Workers obligations, among others: obey and do all the provisions of the Employment Agreement; ask permission to the employer if they cannot do the work with reason and; do the work based on the correct and safe procedures.
- 8) Employer rights and obligations. Employer Rights, namely: get clear information and correct information about the identity of their domestic workers and the skills of their domestic workers; obtain the result of domestic worker as the working contract agreement. Employer obligations, namely: providing facilities, working facilities and working infrastructure that ensures the health safety and the safety of their Domestic Workers.
- 9) Government obligations, among others: conducting the education and training as well as supervision and guidance.
- 10) The solving of employment conflict is done: a) deliberation maximum on 7 (seven) working days; b) mediation involving (SKPD) education in the field of labor at the district level / district / city / province as a mediator, written recommendation by the mediator maximum on ten (10) days. c) Employment relation court in the case of one of them refused the written recommendation; d) an order for execution at the local District Court

*Second*, the the concept of the Bill on the Protection of Domestic Workers Legislature House of Representatives version, dated June 5, 2013, contains the principal provisions, among others:

- 1) General provisions which includes some definitions, among others: definition of Domestic Workers, Domestic Workers candidate, housekeeping jobs, employers, providers of domestic workers, recruitment, training, placement, employment relations, employment agreements, protection of domestic workers, the protection of the employer , wages, accumulated working time, holidays, retirement of employment, the Central Government, Local Government and the Minister.
- 2) Principles and objectives.
- 3) Category of Domestic Workers based on working time.
- 4) Categorization of housekeeping job.
- 5) Work minimum age is 18 years.
- 6) Working relationship, with a written or verbal agreement, the probationary period of 3 (three) months.
- 7) Reporting and cataloging employment agreement.

- 8) The procedure to change and extend the working agreement by agreed of both parties.
- 9) The rights and the obligations of Domestic Workers. Rights of domestic workers are: to get the payment as in Employment Agreement, to get religious holiday allowance or other allowance as in employment agreement, to get a break time. To obtain a guarantee of protection of health, protection of safety, and protection of security in conducting the housekeeping activities, and also to obtain the freedom of religion and belief and to get the opportunity to conduct the appropriate religious worship and belief. To decide the retirement of employment agreement if the employer breaks the regulation or not obey the provisions agreed upon in the employment agreement. To get a good and humane treatment from the Employers and their family, and to form and/ or being the member of an organization or trade union/domestic workers based on legislation regulations. Domestic workers' obligations are: to obey and carry out the provisions of the Employment Agreement; Employer maintaining the good name and his family; to maintain decency and safety in the workplace; and to ask the permission to the employers if they cannot conduct or come to workplace by giving the reason.
- 10) The Employers' Rights and Employers' Obligations. Employer deserves to get some rights. First, to obtain information on the PRT (domestic workers), then to determine (domestic workers) PRT according to his needs, and also to obtain the result of domestic worker' work according to the agreement. Moreover, the employers may fire the domestic workers before its time in agreement if the domestic workers break the Employment Agreement or not obey the provisions of the Employment Agreement. Employers' obligation: to create a Work Agreement with PRT (domestic workers), to obey and conduct the provisions of the Employment Agreement, and to provide the freedom of religion or belief embraced. To provide an opportunity to PRT (domestic workers) in conducting the religion or or their belief, and also to provide religious holiday allowance or other appropriate allowances as in Employment Agreement, to provide rest time for PRT (domestic workers). To provide the guarantees of security protection for PRT (domestic workers), to give health protection, and also to give safety protection. To give domestic workers the freedom of association, and PRT (domestic workers) are treated well and humanely. Employers provide the appropriate facilities based on the agreement, to provide clear guidance on the procedures in conducting their works, employers provide the PRT (domestic workers) an opportunity to communicate and / or get information from their family members, and to maintain a good reputation, dignity, and the dignity of domestic workers.
- 11) Labor Dispute Settlement through: a) the maximum deliberation 7 (seven) days; b) mediation involving one or more employees of government agencies that have responsible for labor affairs in each office / agency county / city as a mediator; c) a written recommendation by the mediator, a maximum of 30 (thirty) days since receiving the complaint.

Both concepts have their own weakness. However, at least those concepts have already scope the constitutional rights, and also those have already scope the human rights of the domestics workers (PRT). Those concepts obligate everyone to *to protect, to fulfill* those rights.

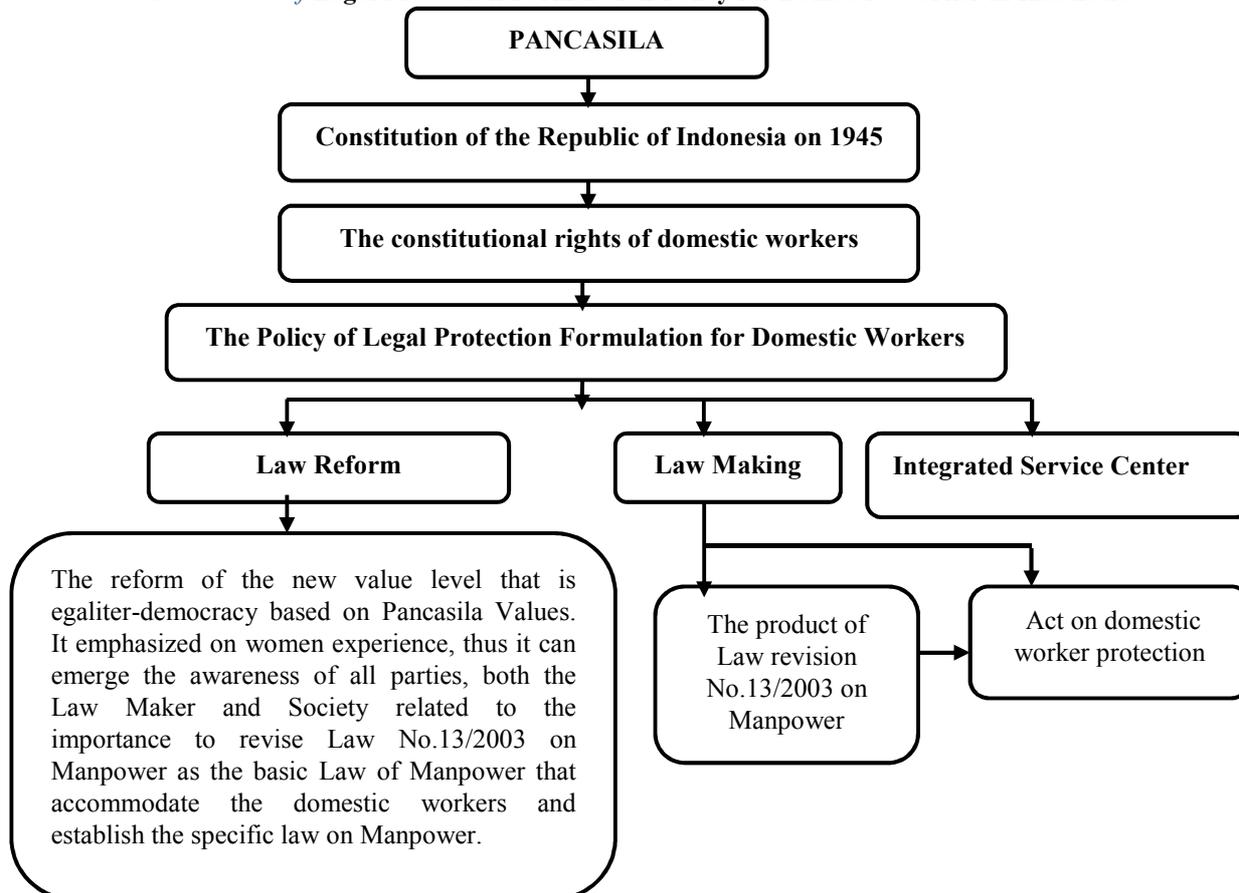
Some important things to be observed from both versions, is: for version JALA PRT turns out better accommodate the complete basic legal considerations, including Law No. 13 of 2003 on Labour, ILO Conventions and the best practices related to the best implementation that is conducted by other countries. It has already had specific regulation on domestic workers. the bill of this JALA PRT version also made a breakthrough to the settlement of labor disputes through courts working relationship. While the concept of the PPRT Bill as Baleg House of Representatives version does not contain complete legal considerations. There are a weakness points too from the bill of Baleg version. For example; a) the provisions of the employment relationship in agreement contract was submitted on agreement of both parties. This situation absolutely gives disadvantages. As we know that the situation of PRT (domestic workers) is weak both socially or economically. This situation will give some effects to the agreement that they made, between the employers and the domestics workers. b) the settlement of labor disputes was only limited to the administrative settlement that is executed by the local Manpower Office Agency.

#### **4.2.3 Integrated Service Center For Domestic Workers.**

In each District / City of Integrated Service Centre should be established for domestic workers, under the Ministry of Labour in cooperation and integrated with the Ministry of Women's Empowerment, Police, Ministry of National Education, Ministry of Health, NGOs including community organizations, religious organizations and organizations of domestic workers. Those integrated service programs have particular goals. Integrated service programs are intended as an attempt to: a) it provides legal services to domestic workers (PRT) who have some problems. It also attempts to develop some prevention programs and activities. Moreover, it provides the rehabilitation assistance to domestic workers who suffered from violence and exploitation cases. Then through an integrated referral system and integrated facility services, so domestic workers (PRT) can get and access the counseling and temporary shelter house anytime that they need help. b) besides that, the intergrated service programs also give the counseling service, give some information and education ( KIE) for domestic workers (PRT). The goals pof these activities are to increase the quality, to increase the capability, and also to increase

the understanding of domestic workers on their rights in menpower relationship. So, domestic workers (PRT) will have a high bargaining value in front of their employers, in front of their employment agencies, and even domestic workers will have dignity in front of society. c) these programs also conduct the data collection of domestic workers (PRT). The goal of this activity is to know the amount of domestic workers, and the profile of domestic workers to decide what is right next service program. d) the last is other activities that are related to it. Formulation of a policy framework for the legal protection of domestic workers mentioned above, can clearly be seen in chart1 below.

**Chart 1**  
*Framework of Legal Protection Formulation Policy for Domestic Worker in Indonesia*



Based on opinion above, it can be concluded that there are some goals that have to be reached on the policy of legal protection formulation for domestic workers (PRT), and those legal protections are based on constitutional rights. The goals are: a) It intends to give recognition on prestige and dignity to domestics workers (PRT) as human beings that have rights to work and get the appropriate lifeas human being. b) it intends to give justice for domestic workers (PRT) in the employment relationship. c) it intends to guarantee the certainty of the protection on domestic workers (PRT) as the constitutional rights menjamin and as human rughts. d) it intends to give the recognition of domestic workers' position, that they are employees that also have special chracteristics too. e) it intends to prevent the discrimination, exploitation, harassment and violence to domestic workers (PRT). f) it intends to conduct the welfare for domestic workers and also for their families' welfare. g) it intends to regulate the employment relationship that is based on humanity value, justice value, and equality values. Those goals have to be based on the foundation and the principles of Human rights, besides it also has to be based on non-discrimination, gender equality and gender justice that is based on Pancasila Value. It can be sured that those goals can be realized well. Moreover, it can be achieved by the awareness and also the commitment of all parties. The awareness and the commitment of the government, the Law Maker, and also the society.

### Conclusion

The policy of legal protection formulation on domestic workers, that is based on constitutional rights should be done by some programs. Those programs are: *first, it is (law reform)*. This program is to reform the value levels which its character is patriarkhisme-feodalisme into the value level that is more egaliter (justice and equality gender). Besides it also reforms the value level that its character is patriarkhisme-feodalisme into democrasi based on the value of Pancasila by emphasizing the gender of women. Secondly, the other program is by making

th legislation regulations. It is done through the establishment of Law on domestic worker protection. *Thirdly*, the third program is the intergrated service program for the domestic workers. The goals of this program are to give the legal service, to give the consultation service, to give information and education for domestic workers, and to do the data collection of domestic workers, and other activities that are related to it.

### References

- Abdul Kadir Muhammad, (2004), *Hukum dan Penelitian Hukum*, Bandung : PT. Citra Aditya, p. 51
- Adelle Blackett, (1998), *Making Domestic Work Visible: The Case for Specific Regulation*, ILO Geneva,33
- Barda Nawawi Arief, (2001), *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Bandung: Citra Aditya Bakti, p. 75
- Esmi Warrasih, (2005) *Pranata Hukum: Sebuah Telaah Sosiologis*, Semarang: Suryandaru Utama, p.67
- Jimly Asshiddiqie, (1994), *Gagasan Kedaulatan Rakyat dalam Konstitusi dan Pelaksanaannya di Indonesia*, Jakarta: Ichtar Baru Van Hoeve, p. 223.
- John Rawls, (2006 ), *A Theory of Justice*, London: Oxford University press, 1973, diterjemahkan dalam bahasa Indonesia oleh Uzair Fauzan dan Heru Prasetyo, *Teori Keadilan*, Yogyakarta: Pustaka Pelajar ,p.34.
- Maria Farida Indrati Soeprapto, (1998), *Ilmu Perundang-Undangan: Dasar-dasar Dan Pembentukannya*, Yogyakarta :Kanisius, p.97.
- M Irfan Islamy,(2002) *Prinsip-prinsip Perumusan Kebijakanaksanaan Negara*, Jakarta: Bumi Aksara, p.15
- Moh. Mahfud MD,(9 Januari 2010) ” Keniscayaan Reformasi Hukum: Upaya Menjaga Jati Diri Dan Martabat Bangsa” *Makalah* dalam Konvensi Kampus VI dan Temu Tahunan XII Forum Rektor Indonesia (FRI) di Universitas Tanjungpura Pontianak, p. 6.
- Muryanto, “Urgensi Pembaharuan Hukum Indonesia Berdasarkan Nilai-nilai Pancasila,” dalam *Jurnal Hukum volume XXV, Nomor 1 Aprli 2011*, p.433.
- Rahmad Syafaat, (1998), *Buruh Perempuan: Perlindungan Hukum dan hak Asasi Manusia*,IKIP Malang,45
- Soetandyo Wignjosebroto, (2007), “Pembaruan Hukum Masyarakat Indonesia Baru”, dalam: Donny Donardono, *Wacana Pembaharuan Hukum di Indonesia*, Jakarta: Ford Foundation & HuMa, 94.
- Susan Edward, (1998),*Sex, Gender and Legal Process*, London, Blacksto, 96.
- Sunaryati Hartono, (1994), *Penelitian Hukum di Indonesia Pada Akhir Abad ke- 20*, Bandung: Alumni, 105
- Republik Indonesia .Undang-undang Dasar tahun 1945
- Republik Indonesia. Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan (Lembaran Negara Republik Indonesia Tahun 2003 Nomor 39, Tambahan Lembaran Negara Nomor 4279).

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