



- SHIMBA 2022
- Other Years
- SHIMBA 2022
- Ethics and Malpractice Statement
- Back to CCER

SHIMBA

Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia

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Showing 1–32 of 32 results Page size: 19 25 50 1

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Poverty Mapping in the Border Region of the Country: A Study on Indonesia and Malaysia, Kepulauan Riau
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Sri Wahyuni, Nanik Rahmawati, Marisa Elsera, Taufiqurrahman Taufiqurrahman, Nikodemus Niko

Adoption and Diffusion of Urban Policy Innovation in Kepulauan Riau
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Chaeryanba Sholeh, Fiman Fiman

Arrangements as a Legal Protection Against Traditional Cultural Expression of Malay Traditional Communities in Kepulauan Riau Province
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Marnia Rani, Hos Arie Rhamadhan Sibarani

Community Service Order: Challenges and Expectations as a New Type of Sanction in the Criminal Code Draft (RKUHP)
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Endri Endri, Inrandi Syahputra

Construction of Electoral Law to Increase The Participation of Coastal Communities in Simultaneous Elections in Kepulauan Riau Province
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Dewi Haryanti, Pery Rahendra Sucipta, Ryan Anggia Pratama

Health Mapping of Dompok Urban Village Community
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Rahma Syafri, Annissa Valentina, Siti Aletia, Emmy Solina, Sri Wahyuni

Indonesia – Malaysia – Singapore Relations Before The 1824 Treaty of London
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Anastasia Wivik Swastika, Desri Gunawan, Glory Yolanda Yahya

N/Avo Analysis on the Resilience of the Food Security Program in the Berakit Village Border Area, the Bintan Regency
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Annissa Valentina, Rizqi Aprilia Putri, Okki Rizki Azizi, Mahadiansar Mahadiansar

Strengthening Institutional and Capacity Building in the Kepulauan Riau Provincial Government
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Fiman Fiman, Chaeryanba Sholeh

The Effectiveness of Company Social Responsibility Towards the Environment in the Province of Kepulauan Riau
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Nazaki Nazaki, Rio Yusril Maulana, Oksep Adharyanto, Dori Septawati, Rizki Pradana Hidayatullah, Joni Sandra

The Budget Policy Strategies and Directions in Priority Border Areas of Natuna
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Adi Putra, Eki Darmawan, Rizky Octa Putri Charin

Traditional Ship Design "Lancanguning" for Competition
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Ruzmi Samin, Khodjah Khodjah, Edy Akhyar, Anton Hekso Yulianto

Analysis of Public Service Malls in Improving One-Stop Integrated Services in the Development Sector of the Republic of Indonesia
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Suryadi Suryadi, Marnia Rani, Lia Nuraini, Muhammad Fajar Hidayat

Analysis of the Potential for Original Village Government Revenue Based on Marine and Coastal Resources in Bintan Regency
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Edison Edison, Ramadhani Setiawan

Application of the Passive National Principle to Excise Crimes that Occur in the Outside Port Limits Area on the Border of Indonesia and Singapore
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Erdianto Effendi, Ledy Diana

BPHTB Payment Problems Before Signing the Sale and Purchase Deed at PPAT: The Case of Tanjungpinang City
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Lia Nuraini

Building a Nationalist-Religious Border Society in Tanjungpinang, Riau Islands
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Dai Wahyuni, Indah Andika Octavia

Fiscal Decentralization: Reformulation of the General Allocation Funds (GAF) Policy for Archipelagic Provinces in Indonesia
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Blimar Arianto, Oksep Adharyanto, Winata Wira, Nurhasanah Nurhasanah, Sekar Nur Wulandari, Zulkarnaen Adjaya, Pery Rehendra Sucipta

Identification of Maritime Pillars
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Ruzmi Samin, Edy Akhyar

Institutional Development in the Border Areas: a Hexa Helix Approach in Kepulauan Riau Province
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Fitri Kumaningah, Eki Darmawan, Mahadiansar Mahadiansar, Joviano Nov Ribeiro

Marine Awareness and Ocean Governance: Ararufa, Timor Seas, and Torres Strait
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Vivian Louis Forbes

Maritime Bordering Practices in Indonesia: Immigration Border Clearance Challenges
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Ridwan Arifin, Intan Nurkmalawati

Maritime New Century: The Re-Rise of the Spice Route and the Re-establishment of the Straits of Malacca in Regional Trade in Indonesia
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Widya Nugraha

Political and Social Boundaries across Borders: Challenge and Practice Evidence from Entikong Indonesia-Malaysia Land Border, West Kalimantan
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Nikodemus Niko, Purnyawan Iltrakong, Teguh Setiandika Igiati, Caslavera Caslavera, Yudhanto Satyagraha Adiputra, Novita Anggrahy

Requirement Analysis for Diversion in Juvenile Criminal Justice Proceedings
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Ayu Efridawati, Heni Widyaningrum, Glory Yolanda Yahya, Desri Gunawan, Melissa Rahel

Reserve Component Mobilization for State Defense: A Critical Study from International Human Right Perspective
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Muliana Mursalin, Rilo Pambudi Sidiq, Laili Afriana Hidayati

Stakeholder Analysis of Coastal Management Policy in Indonesia
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Dian Prima Saftir, Abdul Hakim, Mujibur Rahman Khairul Mukti, Fadillah Putra, Rafika Afiyanti

The Role of Local Knowledge in Improving Housewife's Economic Prosperity: The Case of "Siri Na Pance" in Makassar, Indonesia
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Andi Pattaran, Nur Izzah Rizal, Resaj Amalia Pamelteri, Nursafira Muslim

The Role of Social Assistance Programs to the Community
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Nanik Rahmawati, Sri Wahyuni, Taufiqurrahman Taufiqurrahman, Marisa Elsera, Emmy Solina

The Symbolic Battle of Coastal Culture in Zapin Dance in Palembang
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Robby Hidayat, Robert Budi Lakasana, Agung Suharyanto, Wilihani Wilihani, Muhammad Fabian Antzqi, Rully Rochayati, Amir Razak

The Urgency of Legal Certainty in the Protection of Domestic Workers in Indonesia: A Study in Yogyakarta City
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Fibriliatus Shalhah, Retno Damarina

Marine Coastal Waste Management in the Coastal Area of Gresik Regency as an Effort to Maintain The Potential of Marine Resources
 Research Article in Proceedings of the 1st International Conference on Social-Humanities in Maritime and Border Area, SHIMBA 2022, 18-20 September 2022, Tanjung Pinang, Kep. Riau Province, Indonesia
 Wisnu Kurniawan, Dita Bihayu, Oksep Adharyanto, Iman Iman

The Urgency of Legal Certainty in the Protection of Domestic Workers in Indonesia: A Study in Yogyakarta City

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Abstract. This study aims to determine the informal sector labor relations pattern among domestic workers in the Special Region of Yogyakarta. The type of research used is empirical juridical research using primary and secondary data, with the technique of concluding using deductive methods. The results showed that in the application of the informal sector labor relationship pattern to domestic work, there are still many who are categorized as violating human rights with a barometer of unsavory recruitment methods, illegal levies from domestic worker service delivery service companies, irregular working hours, workloads that are not following previous employment agreements, very minimal wages, so that it has an impact on the non-fulfillment of the needs of decent living for domestic workers and their families, and in addition to this labor relationship not only adversely affects workers but employers or employers also experience problems while hiring domestic workers, on this basis, the author recommends that the government together with the Pakyat Representative Council immediately pass the Draft Law on the Protection of Domestic Workers.

Keywords: Urgency; legal certainty; protection of domestic workers

1 Introduction

Indonesia is a country of law, which follows what is stated in Article 1 Paragraph (3) of the 1945 Constitution. As a state of law, all aspects of society, nationality, and statehood, including the government, must always be based on the law. As a law country, it applies the basic idea of law or legal purposes, including justice, expediency, and certainty [1][2][3]. Discussing the purpose of the law, especially regarding certainty, is the duty of the law because it aims to create order in society. Quoting from the opinion of Fence M. Want, "[4] *a law without the value of legal certainty will lose meaning because it can no longer be used as a code of conduct for everyone*". This means that legal certainty is needed by a state that carries the concept of a legal state and legal certainty also needs to be a guide to carrying out a life system [5].

The importance of legal certainty in all lines of state life, especially laws related to labor relations, why is because humanity, in essence, to meet the needs of life, must work to earn wages. In other words, work is significant and needed by everyone because with that work, the source of a person's life. In the employment relationship, of course, there are employers and workers who both need each other. It is not uncommon for the interests of both parties to the conflict with each other, so to create order, arrangements regarding the relationship between the two parties are necessary [6].

The constitution has mandated in Article 27 Paragraph (2) of the 1945 Constitution that every citizen has the right to work and a decent livelihood for humanity. Still, the ideal ideals (*swollen*) of the article are far from reality (*sein*) not a few Indonesians have difficulty getting a job at the industrial stage 4.0 towards the stage *of society era*, namely *society 5.0* [7]. The informal sector itself is an unorganized, disorderly, and majority unlawful sector or the informal sector is synonymous with *unorganized, unregulated, unregulated*, unregistered, and is a place for those who are poorly educated and unable to compete for established job positions in the formal sector, one of which is the informal sector is domestic workers [8] Hardionoto, the informal sector was chosen to solve the low educational background and skills, especially domestic workers [9].

According to the *International Labour Organization* (I.L.O.) convention, No. 189 in Geneva on the Decent Work of Domestic Workers, the term domestic worker in this convention is interpreted as "domestic worker" or domestic worker and not "domestic servant" or domestic servant [10]. A household worker is employed to take care of the housework and is paid by the employer. Usually, the realm of domestic workers' work is identified by washing dishes, cooking, sweeping, ironing, and taking care of other home affairs. [11]

The migration of the lower economic community groups from villages to cities is experiencing a continuous trend. Domestic workers usually come from rural areas of the transition, and this is because many farm workers in rural areas have lost their jobs, causing people who are in the lower class category to decide to find work in cities. The assumption of rural communities about cities promising decent jobs. People from village to town, many are not absorbed in the modern industrial sector in urban areas; therefore, to meet their needs and survive, urbanites choose informal jobs that are easily accessible regardless of educational status or [12] *skills*; this is not with a large number of domestic workers [9].

The migration of the lower economic community groups from villages to cities is also offset by demand from urban residents. Domestic workers are needed jobs now because almost every family in the town does not have time to take care of household affairs due to the busy work outside the home. This happens in the life of urban society, and every modern woman is no longer just a housewife but also a worker in the public sphere. This habit has led to an increase in domestic workers out there [13]

The Indonesian population works as domestic workers, most of whom are dominated by women with low education and children. Releasing data from the I.L.O., followed by the National Commission on Violence Against Women, states that based on the analysis of national labor survey data, 2008 – 2015 tends to increase from 2008 to 2.6 million and in 2015 to reach 4 four million domestic workers. The data above shows that domestic workers contribute immensely or are needed, especially in fulfilling family life. Still, the regulation of domestic workers' labor relations is ignored[14][10].

This can be seen from the delayed ratification of the Draft Law on the Protection of Domestic Workers, which has been submitted since 2004 into the national legislation program for the term of service of the House of Representatives – Republic of Indonesia until now it is still included in the National Legislation Program for the 2019-2024 period and has become a draft law that is prioritized in 2020. The urgency of ratifying the Draft Law on the Protection of Domestic Workers was intensified by several parties, considering that the issue of domestic worker protection also became a social and legal phenomenon because there was no legal regulation on the protection of domestic workers.

The authorities cannot supervise the problems experienced by domestic workers because they are beyond their capacity. Therefore, many employment relationships are based on unwritten or lesson employment agreements, so they are prone to violations. Domestic workers

must work without working hours, minimum wage provisions, and holidays. In essence, there is no straightforward arrangement between the rights and obligations between domestic workers, employers, and domestic workers. For example, a case launched by the media during the *Jogja Daily*, which reported the case of a domestic worker from Cilacap, who worked in the Kapannewon Godean area of Yogyakarta, received torture and an unsuitable wage from the employer, and the domestic worker was detained at his employer's house and prohibited from going out with a contract work [15].

The problems that occur with the certainty of domestic workers' labor relations are exciting to study; therefore, this paper is written with the title "The urgency of legal certainty in the protection of domestic workers in Indonesia (study in Yogyakarta City)," where the author of this paper takes the formulation of the problem, namely how the urgency of legal certainty in the protection of domestic workers in Indonesia (study in Yogyakarta City), this study aims to find out and analyze the speed of legal certainty in protecting domestic workers in Indonesia (reflection in the city of Yogyakarta).

2 Literature Review

Several previous studies have examined the legal protection of domestic workers, namely Muwahid this research is entitled "Legal Protection of Female Workers in the Domestic Work Sector in the City of Surabaya." This study examines the implementation of legal protection for domestic workers of domestic workers in the city of Surabaya and the obstacles to the implementation of legal protection for domestic workers in Surabaya. The similarity between the study of the research results above and the study that will be the researcher is that they both discuss domestic workers. The difference is that the investigation focuses more on studying domestic workers in Surabaya. The research conducted by Muwahid focused on discussing Law Number 13 of 2003 concerning Manpower, which in the law only regulates related formal work while associated with the protection of unregulated domestic workers (work in the informal realm), thus causing or impacting the application of legal protection to informal sector female workers in workers in Kota Surabaya is still not optimal, this is evidenced by not a few domestic workers in the city of Surabaya who do not get their rights as workers, for example, domestic workers have not received the City Minimum Wage as stipulated by Upah Minimum Kota in Surabaya City, leave rights, social security rights, and work accident insurance, as well as not infrequently non-imposed treatment from employers.

The research conducted by Siti and Irwasyah was entitled "Legal Review of Protection of Domestic Workers." The similarity of this study is that it is equally focused on studies related to legal protections for domestic workers. The difference from this study is that this research focuses on regulations that have regulated domestic workers. The results of this study show that the laws and regulations in the field of labor held through Law Number 13 of 2003 concerning Manpower do not reach the group of Domestic Workers. Meanwhile, the Regulation of the Minister of Manpower Number 2 of 2015 concerning protection for domestic workers is still too weak because it has not been able to provide guarantees for the position and legal protection for Domestic Workers, both in the system of wages, work safety, occupational health or the labor social security program.

Sonhaji's research entitled "Protection of Domestic Workers in the National Legal System." The similarity of this study examines the protection of domestic workers. This research focused on Ministerial Regulation Number 2 of 2015 concerning the Protection of Domestic Workers and was carried out at the Kencana Foundation in Semarang. This study stated that Ministerial

Regulation Number 2 of 2015 concerning the Protection of Domestic Workers could not be adequately implemented, and there were still shortcomings and obstacles. These obstacles include the violence experienced by domestic workers, the existence of wages that are not following the promise, and the disregard for the rights of domestic workers [4]. Kartika in her research said that it is necessary to ratify I.L.O. Convention No. 189 of 2011 on Decent Work for Domestic Workers to strengthen the legal protection of domestic workers' rights, improve the economic interests of domestic workers, and increase the degree of Indonesian domestic workers [16].

3 Research Method

This type of research is juridical and empirical. This study used primary data and secondary data. Primary data, raw data from interviews, researchers interviewed representatives of PT Srikandi Duta Mulia (the channeler) and representatives of PT Esma (which is engaged in distributing domestic workers). In addition to the interviews, researchers also distributed questionnaires for domestic workers and domestic worker users. Researchers also use a statutory approach and document studies in secondary data [17].

4 Result and Discussion

4.1 Forms of Protection for Domestic Workers

Relationships between fellow members of society are very diverse, namely, relationships caused by the interests of community members. The variety of connections results in members of society needing rules that can ensure balance so that the relationship does not cause overlapping needs and anticipate problems that will arise from the interests of each community member. To keep the legal regulations acceptable to each member of society and continuously, the existing legal regulations must be appropriate and not conflict with the principles of justice of the community, especially those relating to domestic workers [18].

Indonesia as a country of law as mandated by the 1945 Constitution in Article 27 Paragraph (2), which states that *"every citizen has the right to work and a decent livelihood for humanity,"* and in Article 28 D Ayat (2), which says that *"everyone has the right to work and get fair and decent remuneration and treatment in employment relations."* This is an effort to end the principles as a state of law to complete and protect human rights, especially in the right to labor relations.

The protection of domestic workers is included in the protection scope of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Domestic workers, when viewed from a layman's perspective, have a risk get violence in the form of both physical and psychic violence because the position between domestic workers is always below the part of the employer. Domestic workers are often subjected to unfair treatment, such as wage problems, physical violence, and sexual harassment. According to the 2016 International Labor Organization survey, in Indonesia alone, there were 2,593,399 domestic workers, most of whom were female. The regulation of domestic workers in the protection of Law Number 23 of 2004 concerning the Elimination of Domestic Violence can be seen in the articles below [19]

- Article 1 Paragraph (1) stipulates that "domestic violence is any act against a person, especially women, which results in the emergence of physical, sexual, psychological misery or suffering and or domestic neglect including threats to commit coercion, unlawful deprivation of independence within the scope of the household."
- Article 2 Paragraph (1) letter c provides that "the scope of the household includes persons who work to assist the household and settle in the household," as letter c is viewed as a family member for a certain period while in the household concerned.
- Article 2 Paragraph (1) letter c provides that "the scope of the household includes persons who work to assist the household and settle in the household," as letter c is viewed as a family member for a certain period while in the household concerned.
- Article 9 Subsection (1) provides "the obligation to give life, care or maintenance to the person as referred to in Article 2". These obligations include providing primary needs to the people they depend on, including domestic workers living in families.

The international regulation on domestic workers is contained in the International Labour Organization Convention Number 189 concerning the Decent Work of Domestic Workers. This convention was created based on the phenomenon of domestic workers who are still seen as trivial and not seen and not considered as a job [19]. [20]Convention 189 is a convention that explicitly regulates how to do decent work for domestic workers. This I.L.O. Convention is encouragement and basis for the Indonesian government to immediately make special laws and regulations that will later become the juridical basis for the legal protection of domestic workers.

Indonesia has regulations or regulations that regulate Manpower, namely Law Number 13 of 2003 concerning Manpower. Article 1 number 2 of Law Number 13 of 2003 concerning Manpower states, "*Labor is everyone who can do work to produce goods and services to meet their own needs and for the community.*" The content of the article above, if it is related to the realm of domestic worker work which is identical to producing services, such as washing, sweeping, ironing, and cooking, domestic workers, have entered the scope of the definition of labor regulated by Law Number 13 of 2003 concerning Manpower. Of course, this should include domestic workers. Still, the law excludes domestic workers from its scope, which means that domestic workers are not given protection under Law Number 13 of 2003 or, in focus, law Number 13 of 2003. The regulatory emphasis is only on formal work, so it can be said that informal employment, such as domestic workers, does not get legal protection from Law Number 13 of 2003.

Although it has been accommodated in several laws related to the protection of domestic workers, it is considered that it is still insufficient to be associated with the security of domestic workers in Indonesia, so special regulations are needed that regulate domestic workers in Indonesia, starting from pre-employment, during work and after work, just like formal category work.

4.2 Results of Field Studies Related to Domestic Workers in the Special Region of Yogyakarta

Yogyakarta Special Region (D.I.Y) is a city that is often a destination for people in other regions, not only as a tourist destination or a place to gain knowledge but also as a place to find a livelihood. Releasing data from the Central Statistics Agency (B.P.S.) of D.I.Y Province, the 2020 population census recorded a population of 3,668,719 D.I.Y; of course, this number is enormous, and in the livelihood, of course, it is very varied.

Based on data from bps D.I.Y Province from February 2021 to February 2022, the available number of formal workers decreased by 0.15 percentage points from 42.85 percent in February 2021 to 42.69 percent in February 2022. In contrast to standard labor, informal workers in February 2022 increased by 0.15 percentage points compared to February 2021. This results from the increasing number of working inhabitants with the status of self-employed and free labor [21].

Workers based on the above data are informal workers, one of whom is a domestic worker. D.I.Y, of course; as a city, of course, many residents have fairly busy activities, automatically absorbing a lot of domestic workers to help take care of home affairs, so it is interesting to research related to the legal relationship of domestic workers in D.I.Y. The results of the research conducted are related to the Urgency of Legal Certainty in the Protection of Domestic Workers in Indonesia (Study in the Special Region of Yogyakarta), among others, concerning:

Dealer

Based on data obtained from the Manpower and Transmigration Office of the Special Region of Yogyakarta, it is stated that there is only one household labor distribution company registered with the relevant agency, namely the Srikandi Duta Mulia Company. The rest is not there, but interestingly from the data obtained, it is revealed that other household labor distribution companies still exist or are still operating in D.I.Y . have not been registered with the Manpower and Transmigration Office of the Special Region of Yogyakarta. Of course, this impacts the government's lack of supervision; thus, this could affect the protection of domestic workers in Yogyakarta.

Recruitment

The recruitment model of domestic workers is based on data obtained from the research. It is not uncommon for formal or informal dealers to recruit domestic workers by utilizing or through social media such as Facebook. This kind of recruitment model with social media certainly has advantages that make it easier for dealers to get workers or domestic workers without having to search directly by entering and entering the area of villages, but not necessarily the recruitment model in this way also has weaknesses, such as the absence or difficulty of identifying traces of criminals that have been carried out and are not known related to their ability to work.

Service Users

A pattern often encountered in some domestic worker users is that after the warranty period, domestic workers begin to be lazy to work. For many reasons, so sometimes users dismiss or find new domestic workers. This kind of pattern turns out to be frequent or often experienced by users; in addition to this problem, users also often experience the loss of goods or money, sometimes when users leave domestic workers at home alone, domestic workers bring in random men (female domestic workers), run away by carrying the user's belongings and abandoning the children of domestic worker service users.

The problems experienced by domestic worker service users if they take domestic workers from formal or informal dealers are related to relatively expensive administrative costs of around one million (one-time taking domestic workers from related parties). This administrative fee will not apply to users when taking domestic workers from formal or informal dealers if when taking domestic workers the relevant party has passed the warranty period (warranty from the initial collection of domestic workers). Interestingly, the reality that domestic worker service users often experience is that domestic workers who ask to stop or be dismissed have passed the

warranty period, so inevitably, users who will take domestic workers have to pay back administrative fees.

Problems that users face are often conveyed to informal and formal dealers. Still, the dealers often get out of hand or do not want to take responsibility for the mistakes of domestic workers, often blaming users, as is the case with users borrowing money. The service user complains to the dealer, and the channeler blames the service user for providing a monetary loan. It turns out that the hired domestic workers do not return the money and run away without news.

Worker

The absence of an explicit employment agreement related to the working time between service users and employed domestic workers often makes domestic workers experience an overload of work with the same salary. Few domestic workers complained to the dealer, but the dealer only gave a casual response without being accompanied by actions to reprimand the service user. This is because the bargaining position of domestic workers and service users is not balanced. Often, domestic workers do not complain much to other parties for fear of being laid off from work.

Wages in domestic workers' labor relationships involve three parties: domestic workers, service users, and domestic worker service providers. Since this employment relationship involves three parties, it is not uncommon for domestic workers to experience discrimination regarding wage rights. Based on field data, labor dealers, both formal and informal, when service users will hire domestic workers, there an agreement that every month, the salary will be given to the dealer and then only given to domestic workers, not infrequently also the distributor cuts the wages of domestic workers. Field data shows that domestic workers often complain about pay cuts made by dealers.

It is not uncommon for domestic workers to experience or receive unpleasant abuses from dealers and employers. The non-indulgent treatment that domestic workers get from the distributing party is harsh words, insults, and threats related to wage cuts. In contrast, the treatment that domestic workers gain from their employer includes abusive treatment, being yelled at with inappropriate words, and even committing harassment, such as holding women's intimate areas.

4.3 Domestic Workers' Employment Relationships Based on Familial Relationships

Due to the nature of informal relations, the kinship between domestic workers and employers resulted in the settlement of disputes concerning the rights and obligations of domestic workers to be carried out informally. Such an employment relationship based on research data obtained by researchers in D.I.Y turns out to be frequent. Domestic workers are only paid a small wage and are not even born. Domestic workers cannot ask for more regarding payments for the length of hours worked and the workload carried out with a working relationship on behalf of the family. Sometimes employers give domestic workers jobs for wanting to help economically disadvantaged workers because they are considered their own family, thus giving wages to workers at will. This kind of thing certainly impacts the welfare of domestic workers' lives, so there is a need for special regulations that accommodate domestic workers' labor relations based on family relationships.

Based on the research results on the working relationship of domestic workers in the Special Region of Yogyakarta, it can be said that the urgency of legal certainty related to domestic workers is not only needed by workers but also by service users. Few Indonesians work in the informal sector or become domestic workers due to low education, economic factors, and lack

of employment. This is also an extra concern for the government to provide legal certainty for migrant workers, users, and dealers, so it is necessary for the government to immediately pass the Draft Law on the Protection of Domestic Workers into Law.

4.4 The Urgency Of Legal Certainty For The Protection Of Domestic Workers Through The Passage Of The Domestic Worker Protection Bill

The Universal Declaration of Human Rights has five types of human rights, namely, personal rights (the right to guarantee individual freedom), legal rights (the right to legal protection), civil and political rights, the right of subsistence (the right to ensure the existence of resources to support life), and economic rights [22].

Human rights in the economic sphere are included in developing labor rights. Especially human rights in the economic field are part of The International Bill of Human Rights. The Bill of Rights in America and the Declaration of The Rights of Man and Citizen in France, both documents containing a list of human rights and documents, were born in reaction to rulers violating individual freedom rights. Concerning workers' rights, Imam Soepomo divided this worker protection into 3 (three) types, namely [23]

- Economic protection, which is a type of protection relating to efforts to provide workers with a wage according to what is done and where the compensation is decent to meet the needs of the worker's life and social security;
- Social protection, that is, protection related to civic enterprises or efforts to provide social protection for workers or social security; and
- Technical protection is a type of protection to protect workers and the dangers of the work done or can be interpreted as occupational safety protection.

The importance of human rights protection in labor relations, because according to the view of workers looking at labor relations is a perspective of human rights. From the standpoint of human rights for workers, human rights should be given to all workers without distinguishing permanent employment from flexible work. Work protection must be applied to avoid discrimination due to flexible labor relations [24].

The protection of domestic workers is provided with the principles of respect for human rights, justice, and equality. The protection aims to provide legal recognition of the types of domestic workers' work, recognition that domestic workers have economic value, prevent all forms of discrimination, harassment, and violence against domestic workers, protection for domestic workers in realizing welfare, regulate labor relations that uphold the values of humanity, justice, and equality [25][19].

Based on the description of the data above experienced by domestic workers and employers as the results of the study described above, due to the weak condition of domestic workers, especially in a bargaining position, workers do not have the power to deal with employers and dealers both formal and informal. They do not also forget that the problems that the giving party also experiences during the employment of domestic workers are the driving factors that need to be there is legal certainty regarding the labor relationship of domestic workers through the ratification of the Draft Law on the Protection of Domestic Workers.

The draft law on the protection of domestic workers defines domestic workers as people who work for an employer to perform domestic work for wages. Based on the definition above, the domestic worker's work relationship, which is based on an unpaid family relationship, is not classified as a domestic worker. It can be said to be voluntary work. Not to forget also the draft law regulates the minimum limit for domestic workers to be employed at 18 years, seeing the

reality that exists in the domestic worker community and the average minor who should still be in school.

The main points of thought contained in the Draft Law on the Protection of Domestic Workers regulate the welfare of domestic workers, protection for domestic workers to ensure the fulfillment of the fundamental rights of domestic workers, the interest of domestic workers and their families, regulation guarantees of security and improves the quality of life. Domestic workers are entitled to education and training. Protecting the fundamental rights of domestic workers is undoubtedly a breath of fresh air for domestic workers whom employers and dealers have often ignored. Based on the research results described above, it is clear that domestic workers have rarely obtained fundamental rights, education, and training; this kind of thing should be realized immediately by the government.

There are efforts to create a balance of labor relations and protection of employers to ensure a balance of rights and obligations in the employment relationship between domestic workers and employers. Regulation of the rights and obligations of employers or service users is essential because, based on the research data above, service users often dominate compared to employers. Still, service users also often get problems with the actions of domestic workers, as described above.

The draft domestic protection law also answers the question that the workload given to domestic workers consistently exceeds the workload promised or not in the employment agreement. Given domestic workers' broad scope of work, it is necessary to limit working time, workload, and job categories. In the domestic worker's law candidates, this grouping of work is done by domestic workers, ranging from the cooking work group, the laundry work group, the inner house cleaning work group, the outer house cleaning work group, and much more. Such a division of labor is essential to prevent labor exploitation.

There are limitations on the scope of work or wiggle room for domestic worker service providers in the draft law on the protection of domestic workers, in the form of or only managing information about domestic worker requests and not being allowed to carry out recruitment, training education, and placement. This limitation effort is, of course, very much needed considering that based on the data above, there are not a few domestic workers who carelessly recruit someone to be hired without knowing their background, and this limitation is also seen as an effort so that the channeler does not control or cut the wages of domestic workers carelessly. Until now, the channel can carry out recruitment, education, and job training.

Last but not least, the draft law also provides for the issue of *san sane* for domestic workers, which currently there is still no clarity on who is obliged to supervise domestic workers. The supervision intended by this draft law serves to ensure the protection of domestic workers. This supervision is designed to be carried out by the Dinas or Regional Apparatus Work Unit in the field of Manpower by involving the Rukun Tetangga or Rukun Warga dan Kelurahan. Pengawasan represents the government as an effort to protect domestic workers, most of whom are dominated by women vulnerable to violence.

The points of mind in the Domestic Workers Protection Bill above contain many things that have not been detailed in the labor relationship of domestic workers, and there are even legal sanctions contained in the content of the draft law. There are many problems that domestic workers face; there is no guarantee of the rights of domestic workers, and in this case, the protection of this profession is still inadequate. These problems include unpaid salaries, outrageous salaries, harassment or violence, whether physically, psychologically, sexually, or domestic neglect from both the dealers and employers, so that to realize legal objectives, especially legal certainty for domestic workers, it is necessary to mobilize the Indonesian government to pass the Draft Law on the Protection of Domestic Workers.

5 Conclusion

Article 27 Paragraph (2) and Article 28 D Paragraph (2) of the 1945 Constitution of the Republic of Indonesia mention human rights in the economic field, especially regarding every citizen entitled to a decent job. Still, in reality, there are not a few citizens who find it challenging to find a job or cannot find a better job (formal work) and tend to choose informal work or be domestic workers (everyday work). It is not without risks that this household job, primarily for women and children, has many problems ranging from arbitrary pay cuts by formal and informal dealers, sexual violence, and too much workload from the employer. Meanwhile, the problem faced by service users is that domestic workers are arbitrary in household work, deceiving, and incompetent. Thus, the vacuum of legal certainty requires the government to immediately pass the Draft Law on the Protection of Domestic Workers, which includes regulations on the rights and obligations of domestic workers and employers, the flow of domestic workers' services and sanctions, which will certainly guarantee the rights of the parties involved in this labor relationship.

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