

IMPLEMENTATION OF LEGAL PROTECTION FOR DOMESTIC WORKERS IN MEDAN CITY

SURIA NINGSIH¹, ERNA HERLINDA¹, AGUSMIDAH¹

¹Universitas Sumatera Utara, Medan, Indonesia

¹Corresponding Author: Suria.ningsih@usu.ac.id

Abstract

The research was conducted to see the Implementation of Legal Protection for Domestic Workers in Medan City through the Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers. In developing countries such as Indonesia, domestic workers occupy a relatively large position, even though informal work is always synonymous with minimum protection, low wages, no old age and pension benefits, and even no guarantee of continuity of employment. This type of research is empirical juridical by collecting secondary data in the form of primary, secondary and tertiary legal materials through library research coupled with field research through interviews and distributing questionnaires. Data were analyzed qualitatively. The results of the research show that through the Regulation of the Minister of Manpower of the Republic of Indonesia No. 2 of 2015 concerning the Protection of Domestic Workers, the term domestic helper or babu has changed its name to become a domestic worker and the term employer has changed its name to become a user. In addition, this Minister of Manpower Regulation requires users or employers and domestic workers to make written or oral work agreements containing rights and obligations that can be understood by both parties and known by the Head of the Rukun Tetangga or by other names in the area where the domestic worker is working. it will work. The work agreement explains the rights and obligations of each party which aims to provide certainty and legal protection for both parties. Users can recruit prospective domestic workers directly or through domestic worker recruitment agencies (LPPRT). The domestic worker distribution agency is a business entity that is required to have a business license for the Domestic Helper Distribution Agency (SIU - LPPRT) and has obtained written permission from the Governor. For the City of Medan, this rule does not yet apply because implementing regulations in the form of governor regulations do not yet exist.

Keywords : Implementation, Legal Protection, Domestic Workers

1. INTRODUCTION

Legal protection is to provide protection for human rights that are harmed by other people, and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is various legal remedies that must be given by law enforcement officials to provide a sense of safe, both mentally and physically from interference by various threats from any party¹.

Legal protection is not only for society in general, but also for workers in particular, including domestic workers (PRT). Often domestic workers are not considered as a profession, so that the fulfillment of their rights is often only based on the mercy or generosity of the user (employer). Even normatively, domestic workers are also not considered as a profession because the activities of domestic workers are not the same as those of companies (Amiruddin et al., 2023). This is because domestic workers work for the user (employer) and are very private, so that each domestic worker has different rules imposed by the user or employer, and must comply if they want to work for a long time and survive. Domestic workers often work all day without clear hours of rest, because they work not only in the household sector, but also in all the very complex work they do, up to taking care of their employer's children.

¹ www.tesishukum.com



In addition, domestic workers in carrying out their work are not regulated in legal norms like formal workers, due to the absence of supervision from the competent authority, and the absence of a work agreement agreed upon by both parties. When viewed from the above conditions, domestic workers (PRT) often experience problems, namely the problem of low wages below the minimum wage and also often their wages are not paid.

Domestic workers also do not have facilities that support security, health, work safety, holiday rights, leave, and also tend to experience physical violence and human rights violations (Surjaatmadja et al., 2019). If we address this, it is clear that domestic workers do not receive the same legal protection that guarantees their work as their counterparts who work in factories, companies, and others.² Law No. 13 of 2003 concerning Manpower defines workers or laborers in article 1 point 3 as any person who works by receiving wages or other forms of compensation. Based on the above understanding, it appears that domestic workers should be included in the definition of formal sector workers who are protected by law.

Legal protection for domestic workers can only be implemented if there is a clear legal basis to apply to domestic workers and make them workers in a juridical sense, especially positioning domestic workers in work agreements as having the same status as users or employers. If one looks at it in plain view, the legal protection for domestic workers is very weak and often creates many problems, including users or employers who can arbitrarily terminate employment (PHK) unilaterally for reasons of incompetence, illness, and so on. without giving severance pay to their domestic workers, whether they are domestic workers who live at the home of the user (employer) or come home in the morning and go home in the evening.

Therefore it is very necessary to have public recognition of domestic workers as formal workers, through government action, so that domestic workers obtain their rights according to or equal to formal workers. It is hoped that the state's concern will be able to provide guarantees for the protection of these basic rights of domestic workers, not the other way around by employing domestic workers who are distributed from individual to individual or user or employer without being based on legal regulations. One of the concrete forms of the existence of a legal protection policy for domestic workers is regulated in the Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers. For this reason, it is interesting to see how the government's policy regulates legal protection for domestic workers.

2. REFERENCE REVIEW

According to the Big Indonesian Dictionary (KBBI), policy is a series of concepts and principles that form the outlines and plans for implementing a job, leadership and how to act in government. According to Woll (1966) public policy is a government activity to solve a problem in society either directly or through various institutions that affect a people's life. Policy in practice has 2 (two) meanings, namely :

- a. Policy in the sense of freedom, which is in a particular subject (or equated with the subject). To have an alternative that is accepted as the best based on the values of living together or a certain country in the use of certain powers that exist on that subject in overcoming problematic humans in relation to living together in that country. In other words, policy is a certain scope of freedom in making alternatives that are accepted as the best based on the values of a particular society or country in overcoming human problems in a series of lives together or in a certain country and in a certain place.
- b. Policy in the sense of exit, to overcome human problems in relation to living together or in a particular country, as a result of using freedom of choice which is accepted as the best based on the values of living together or in a particular country. In other words, the way out in overcoming human problems is meant as a result of freedom in choosing the best at the time and place based on the values of a particular society or country.³

² <http://id.wikipedia.org/pekerjarumahtangga> 9 February 2020

³ Willy D.S. Voll, *Dasar-Dasar Ilmu Hukum Administrasi Negara*, (Jakarta: Sinar Grafika, 2013), Pg.140

The aim of the policy is the satisfaction or peace and interests of those who are subject to the policy, namely the people. In a democracy, the people are the holders of sovereignty. Thus administrative policies are directed to the people and in the interests of the people because state administration exists or is held in the interests of the people. Policies based on morality or law. Policy is always related to accountability, meaning that the policy can ideally be accounted for both morally and legally.

The purpose of formulating or making public policies is to create order, peace, peace and public welfare. This is in line with the concept of a welfare state which is adopted by most countries in the world today. In carrying out government policies, there are three sources of government authority, namely attribution, delegation and mandate. Attribution is the granting of government authority by legislators to government organs. The formation of legislation carried out either by the original legislators (*originaire wetgevers*) or the legislators who are represented (*gedelegeerde*) gives power to a government organ formed on that occasion or to an existing government organ. Delegation is the transfer of governmental authority from a government agency or official to another government agency or official. After the authority is handed over, the authorizer has no more authority. Authority obtained through attribution or delegation can be mandated to subordinate bodies or employees if the official who obtains the authority is unable to do it himself.

E. Utrecht, state administrative powers in the field of legislation include :

1. The authority to make regulations on their own initiative, especially in dealing with critical situations where there are no regulations yet without depending on the central legislature.
2. 2. The government is given the task of adjusting the regulations that are held with events that actually occur in society.

Ministerial Regulation is a type of regulation stipulated by the minister. New Ministerial Regulations are recognized and have binding legal force as long as they are ordered by higher regulations or formed based on authority (Article 8 paragraph 2 of Law Number 12 of 2011 concerning Formation of Legislation). As the highest public policy, the implementation of this Ministerial Regulation is further regulated by the Governor and becomes a reference for all other public policies at the regional level.

The term domestic worker is not found directly in the provisions of Law No. 13 of 2003 concerning Manpower. In terms of protecting domestic workers, Law No. 13 of 2003 does not specifically protect and stipulate standard rights for workers in Indonesia which are defined as someone who works and gets wages and or other forms of compensation. If we look at the contents of the law, domestic workers should be given protection under the manpower law, but in reality we find the opposite (Article 1 point 3 of the manpower law).

Various workers' rights which are the basic rights of workers applicable to workers in general should be stipulated for domestic workers. This means that the protection of the rights of domestic workers must be fulfilled in every employment relationship. Starting from the existing Manpower Laws, it appears that these laws have not provided justice and protection for domestic workers.⁴

Law was created as a means or instrument to regulate the rights and obligations of legal subjects. According to Sudikno Mertokusumo, law functions to protect human interests. In order for human interests to be protected, the law must be implemented. Thus the rights of domestic workers must be protected as people who work day and night by the user or the employer. Looking at the hours of work, not all domestic workers have the same working hours, so the wages or salaries of domestic workers who work not staying overnight or living at the user's or employer's house should not be the same as workers who stay overnight or live at the employer's house, because domestic workers who If you work 8 hours a day and don't stay overnight at the user's or employer's house, they should get wages like factory workers or laborers in general, while domestic workers whose working hours are less than 8 hours and don't live at the user's house, their right to wages is calculated based on the hours worked every day (Regulation of the Minister of Manpower No. 13 of 2012).

⁴ Padmo Wahyono, *Politik Hukum*, Pg.160



3. RESEARCH METHOD

This type of research is empirical juridical which is carried out in 2 stages, namely the first stage is a study of normative law and the second stage is a study of the implementation of regulations by collecting secondary data through library research and primary data through questionnaires, interviews and FGDs.

4. RESULT AND DISCUSSION

A. Legal Protection for Domestic Workers Based on Minister of Manpower Regulation No. 2 of 2015.

In Indonesia, the right to work is a basic right of every human being (Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia): Every citizen has the right to work and a living that is worthy of humanity", and is even convinced that it is a human right (Article 28 D paragraph (2) UUD NRI 1945): Everyone has the right to work and receive rewards and treatment that is fair and proper in work relations. From the two articles above which form the constitutional basis, there are sufficiently strong reasons for Indonesia to make regulations protecting its citizens, regardless of the type of work, so that they can get a job and a decent living from this job, including domestic workers (PRT).

Domestic servants (PRT) are not yet covered by labor law protection, they are categorized into the non-formal/informal economic sector. In contrast to workers who are in the formal sector, such as workers who work in industrial sectors which are protected by labor law. Domestic servants are considered not employed by "employers", they are not given the protection provided by the labor law for other workers. This arises because the legal concept in the Manpower Act itself does not regulate non-formal employment relations. In fact, workers who do non-formal jobs feel that they are included in the concept of workers/laborers in Article 1 point 3 of the labor law, namely everyone who is able to do work to produce goods and/or services both to meet their own needs and to meet their own needs. public. The relationship between domestic workers and their employers is generally only regulated based on trust, in contrast to the working relations mechanism in the formal sector which also provides a dispute resolution mechanism in the industrial relations court.

The legal concept built in Law no. 13 of 2003 concerning Manpower places work agreements between workers and employers (not companies) being recognized, see in Article 14. However, in terms of the rights and obligations that must be implemented regarding the normative rights of workers/laborers, only employers with the entrepreneur category are obligated. For example, provisions regarding the right to work time and rest time, from articles 77 to 85 are only aimed at employers, not other employers. So it is clear that for domestic workers whose employer is an individual employer this provision does not apply. And so on including K3, wages, social security and severance pay.

Imam Soepomo⁵ detailing the scope of labor protection in three respects, namely: a. Economic protection, namely protection of workers in the form of sufficient income, including when workers do not work against their will, b. Social protection, namely protection of workers in the form of occupational health insurance and freedom of association and protection of the right to organize, c. Technical protection, namely labor protection in the form of security and safety.

Work protection is realized in a field of law, namely labor law, and is now increasingly popular with the term Labor Law. The background to the emergence of this field of law is due to the fact that the parties involved in work relations are in an unequal position. O. Kahn Freund⁶ stated that the

⁵ Imam Soepomo, *Pengantar Hukum Perburuhan*, Jakarta : Djambatan, 1995, Pg.46

⁶ Dalam Geoffrey Kay and James Mott, *Political Order and The Law of Labour*, The Macmillan Press Ltd, London, 1982, hal.112. Juga dalam tulisan Claire Kilpatrick, *Has New Labour Reconfigured Employment Legislation?*. Industrial Law Journal, vol. 32, No.3, September 2003, hal.13

emergence of Labor Law was due to the unequal bargaining position contained in employment relations (between workers/laborers and employers/employers). For this reason it can also be seen that the main objective of Labor Law is to eliminate inequality in the relationship between the two.

H. Sinzheimer⁷ even emphasized that a work agreement is said to be valid when the agreement of both parties is only a "voluntary compliance" with the conditions set unilaterally by the entrepreneur/employer. These are the views that arise from the reality of work relations in which one party has a higher position and vice versa is lower than one another.

This view strengthens the existence of support for the authorities (state) to neutralize inequality for the sake of job protection for the parties, thus statutory regulations are instruments that create this situation.

B. Legal Protection for Domestic Workers

In developing countries, informal work occupies a large enough position, even though informal work is always synonymous with minimum protection, low wages, no old age and pension security, and even no guarantee of continuity of work. Domestic servants are categorized as the informal sector more because there is no element of a working relationship which includes the subject or party that provides work, namely not entrepreneurs, but individual employers and to do work that is not categorized as business/company activities but activities around household management, both as Helpers carry out household activities such as washing clothes, cleaning the house, looking after the house, cooking food for family members, looking after the children (baby sitters), looking after the elderly (elderly). Domestic workers are considered not correlated with micro and macroeconomic productivity.

Workers involved in the informal economy tend to be in a state of low wages. In Indonesia this condition is determined by the level of education, where generally the informal work sector is carried out by those who are not certified, or have primary or junior high school certificates.

C. Legal protection for domestic workers in Medan City

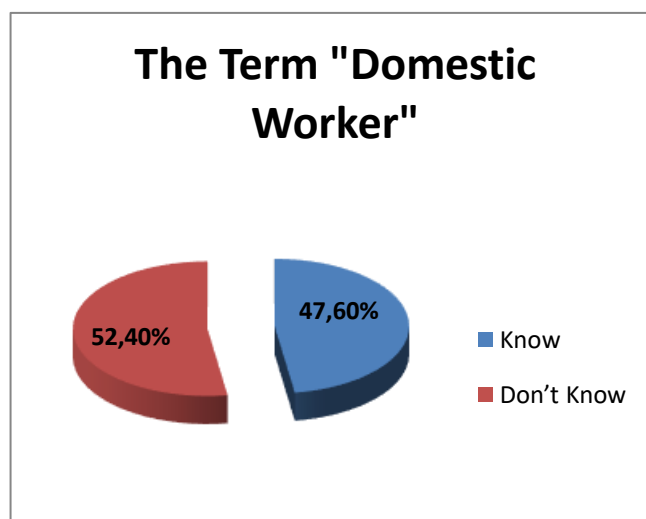
In carrying out research activities, the research team has collected primary data and secondary data. Primary data was obtained through distributing questionnaires and interviews with informants. The following results are obtained :

Questionnaire

Table 1. Knowledge of the Term "Domestic Worker"

The Term "Domestic Worker"	Frequency (F)	Percentage (%)
Know	20	47,6
Don't Know	22	52,4
Total	42	100

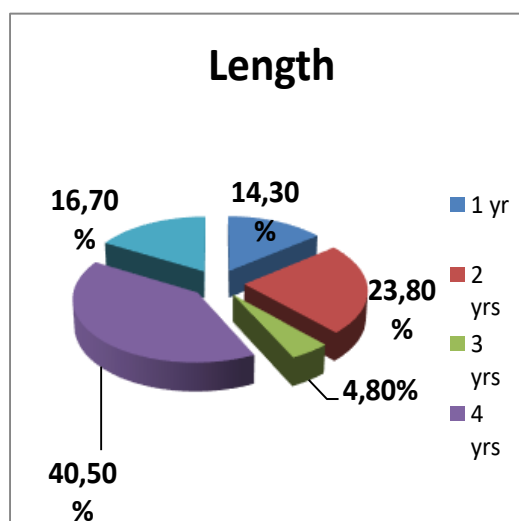
⁷ Cited from Lord Wedderburn, *Collective Bargaining or Legal Enactment : The 1999 Act and Union Recognition*, Industrial Law Journal, Vol.29, No.1, March 2000, Pg.3



Based on the data above, it is known that the number of respondents who know the term “domestic worker” is 22 people (52.4%) and 20 people who do not know (47.6%).

Table 2. Length of Work as a Domestic Worker

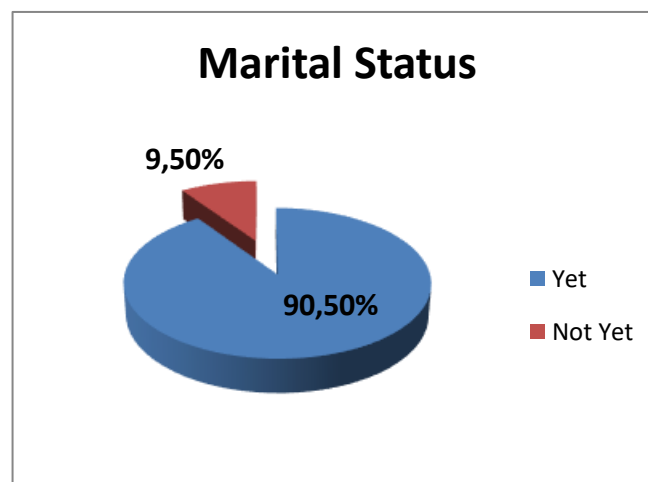
Length	Frequency (F)	Percentage (%)
1 year	6	14,3
2 years	10	23,8
3 years	2	4,8
4 years	17	40,5
5 years	7	16,7
Total	42	100



Based on the above data it is known that the majority of respondents worked for 4 years as many as 17 people (40.5%), 2 years as many as 10 people (23.80%), 5 years as many as 7 people (16.7%), 1 year as many as 6 people (14.3%), and 3 years as many as 2 people (4.8%).

Table 3. Marital Status of Workers “Domestic Worker”

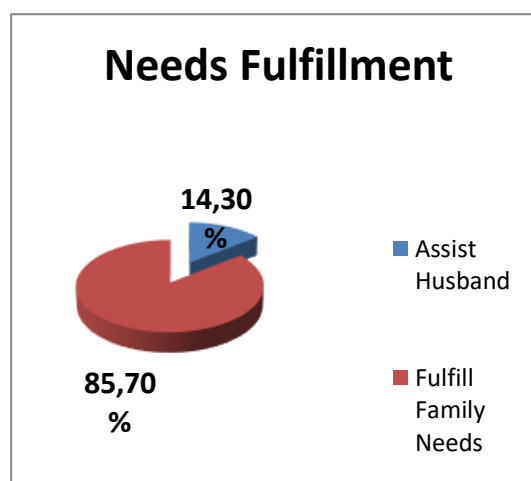
Marital Status	Frequency (F)	Percentage (%)
Yet	38	90,5
Not Yet	4	9,5
Total	42	100



Based on the data above, the majority of respondents with the status of already married as many as 38 people (90.5%), and not yet married as many as 4 people (9.5%)

Table 4. Needs Fulfillment

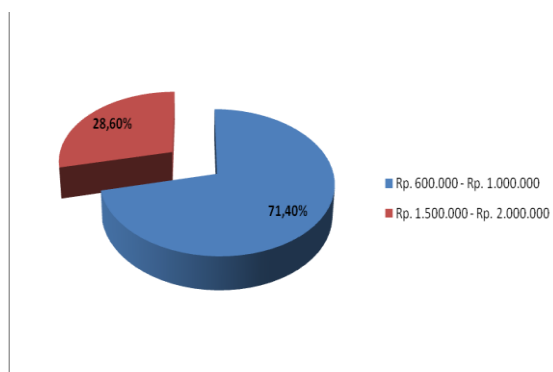
Needs Fulfillment	Frequency (F)	Percentage (%)
Assist Husband	6	14,3
Fulfill family needs	36	85,7
Total	42	100



Based on the data table above, the majority of respondents work as domestic workers to meet family needs as many as 36 people (85.7%) and help their husbands as many as 6 people (14.3%).

Table 5. Monthly "Domestic Worker" Wages

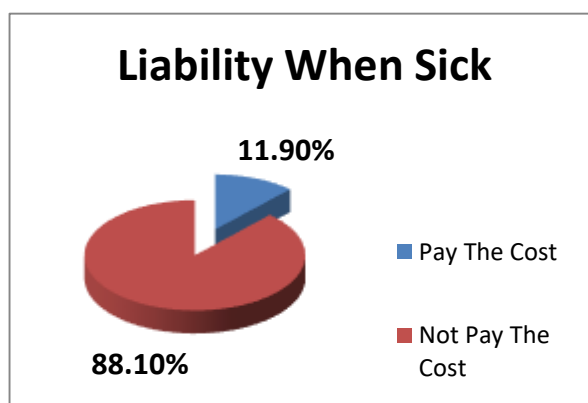
Wages	Frequency (F)	Percentage (%)
Rp 600.000 s.d Rp 1.000.000	30	71,4
Rp 1.500.000 s.d Rp 2.000.000	12	28,6
Total	42	100



Based on the data above, the majority of respondents earn Rp. 600,000 to Rp. 1,000,000 as many as 30 people (71.4%) and Rp. 1,500,000 to 2,000,000 as many as 12 people (28.6%).

Table 6. Employers Pay for Domestic Workers (Domestic Workers) When Sick

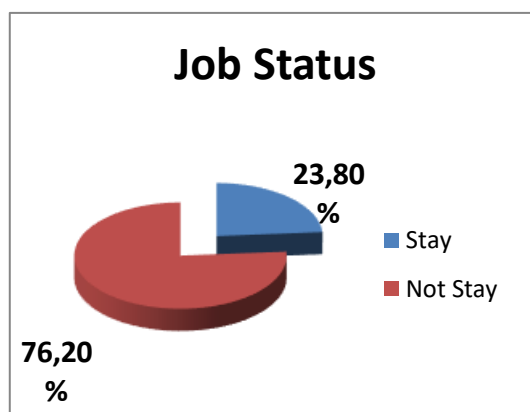
Liability When Sick	Frequency (F)	Percentage (%)
Pay The Cost	5	11,9
Not Pay The Cost	37	88,1
Total	42	100



Based on the data above, the majority of respondents who were not borne by their employer when they were sick were 37 people (88.1%) and borne by their employer when they were sick were 5 people (11.9%).

Table 7. Job status

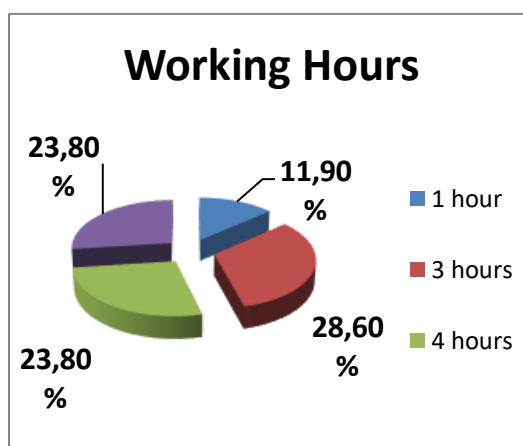
Job Status	Frequency (F)	Percentage (%)
Stay	10	23,8
Not stay	32	76,2
Total	42	100



Based on the data above, the majority of respondents went back and forth to work as many as 32 people (76.2%) and stayed at work as many as 10 people (23.8%).

Table 8. Working hours in one day (for Returning Domestic Workers)

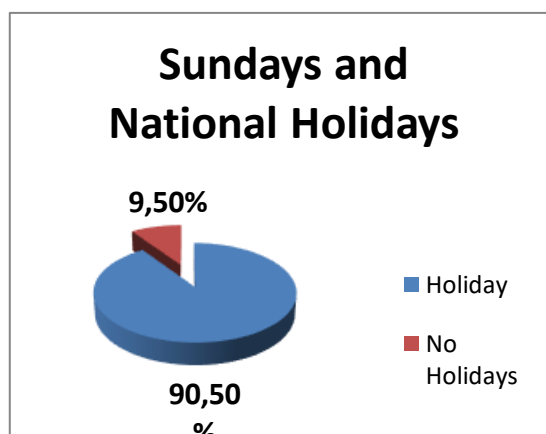
Working hours	Frequency (F)	Percentage (%)
1 hour	5	11,9
3 hours	12	28,6
4 hours	10	23,8
15 hours	10	23,8
Total	42	100



Based on the data above, it is known that the majority of respondents have working hours of 3 hours for as many as 12 people (28.6%), working hours for 4 hours and 15 hours for each are 10 people (23.8%) and working hours for 1 hour are 5 people (11.9%).

Table 9. Sundays and National Holidays

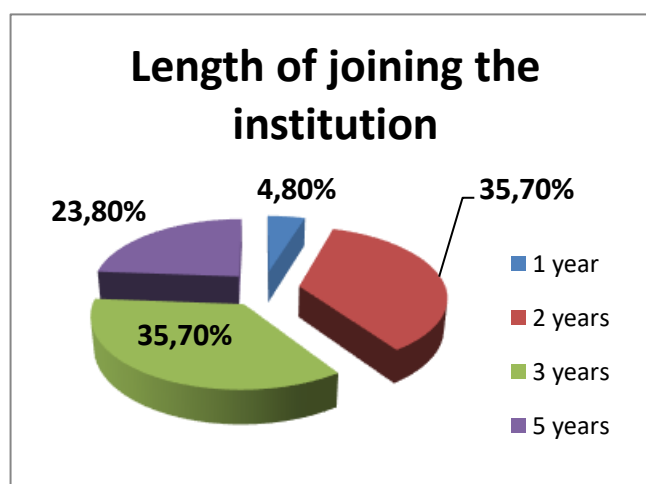
Sundays and National Holidays	Frequency (F)	Percentage (%)
Holiday	38	90,5
No Holidays	4	9,5
Total	42	100



Based on the data above, it is known that the majority of respondents are given holidays on Sundays and national holidays as many as 38 people (90.5%) and not given holidays on Sundays and national holidays as many as 4 people (9.5%).

Table 10. Length of joining the institution

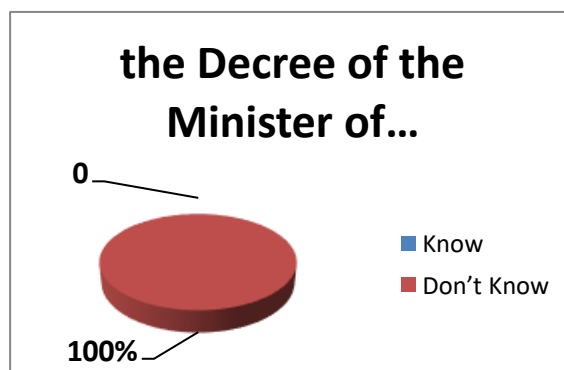
Length of joining the institution	Frequency (F)	Percentage (%)
1 year	2	4,8
2 years	15	35,7
3 years	15	35,7
5 years	10	23,8
Total	42	100



Based on the above data it is known that the majority of respondents joined the institution for 3 years as many as 15 people (35.7%), 2 years as many as 15 people (35.7%), 5 years as many as 10 people (23.8%) and 1 year as many as 2 people (4.8%).

Table 11. Knowing the Decree of the Minister of Manpower No. 5 of 2014

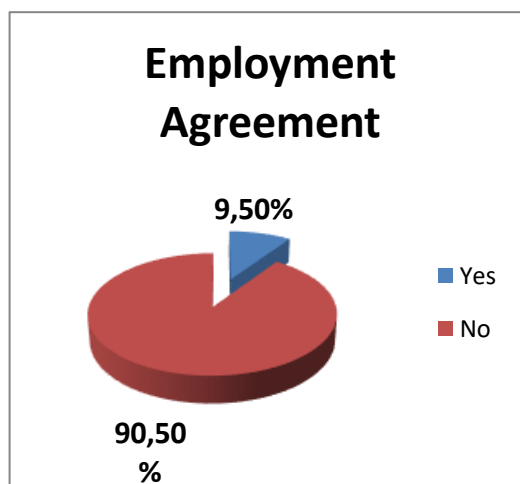
Knowing the Decree of the Minister of Manpower No. 5 of 2014	Frequency (F)	Percentage (%)
Knowing	-	-
Not Knowing	42	100
Total	42	100



Based on the data above, it is known that all respondents did not know about the Decree of the Minister of Manpower No. 5 of 2014 as many as 42 people (100%).

Table 12. Enter into a written or oral agreement with the employer

Employment agreement	Frequency (F)	Percentage (%)
Yes	4	9,5
No	38	90,5
Total	42	100

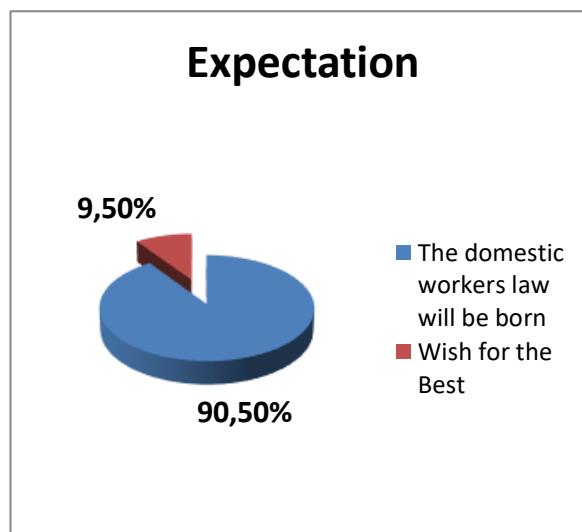


Based on the data above, it is known that the majority of respondents do not have a work agreement with the employer where they work as many as 38 people (90.5%) and have work agreements as many as 4 people (9.5%).

Table 13. Expectations for the employment of Domestic Workers

Expectations	Frequency (F)	Percentage (%)
The domestic workers law will be born	38	90,5

Wish for the best	4	9,5
Total	42	100



Based on the data above, it is known that the majority of respondents have hopes for the birth of the Law on Domestic Workers as many as 38 people (90.5%) and hope for the best as many as 4 people (9.5%).

Based on the informant's explanation⁸ that actually legal protection for domestic workers has long been a problem in society. In fact, in 2006, the Ministry of Manpower and Transmigration had already started drafting a bill on domestic workers. Meanwhile, Permenaker No. 2 of 2015 Concerning the Protection of Domestic Workers qualifies as a "policy rule" because it was formed not on the basis of orders from higher laws and regulations (on the basis of authority). In contrast to Ministerial regulations which are formed on the basis of orders of higher statutory regulations, which qualify as statutory regulations. And even though Permenaker No. 2 of 2015 wants a Governor Regulation, until now there is not one in North Sumatra Province.

Regarding the permission of the Domestic Worker Distribution Agency, Frans Bangun explained in a formal juridical manner, citing North Sumatra Governor Regulation number 66 of 2017 concerning Delegation of Authority for Licensing and Non-Licensing Services to the Investment and One-Stop Services Office of North Sumatra Province.

For the protection of domestic workers who do not work through a domestic worker channeling agency, Frans recommends that the Provincial Government of North Sumatra make a policy similar to what has been made by the regional government on the island of Java, namely that non-distribution domestic workers make oral or written agreements, witnessed by the Head of the RT/RW or the Head of the Environment, so that if later on problems arise, the Head of the RT/RW or the Head of the Environment can act as a mediator because they are the ones who are responsible for their territory.

Meanwhile other informant⁹ say that domestic workers (PRT) or commonly known as helpers are not included in the protection of labor law as stipulated in Law no. 13 of 2003 concerning Manpower. Because domestic workers are considered not to be employed by "employers", they are not given the protection provided by the UUK for other workers. Basically, the relationship between domestic workers and their employers is generally only regulated based on trust, in contrast to the working relations mechanism in the formal sector which also provides a dispute resolution

⁸ Interview with Frans Bangun, Labor Inspector of North Sumatra Province, on 29 December 2020

⁹ Interview with Mymoonah Sitanggang, Secretary of the Medan City Employment Service, December 29 2020

mechanism in the industrial relations court. He added that even though domestic work is non-formal work, it is not included in the protection of the UUK, meaning that if there is a dispute it cannot be brought to the Industrial Relations Court so that the Medan City Manpower Office cannot act as a mediator. Even if someone comes to face it will be directed to the other party.

5. CONCLUSION

1. To cover the legal vacuum regarding the protection of domestic workers, for which there is no regulation in Law no. 13 of 2003 concerning Manpower and as a manifestation of the presence of the state in protecting its citizens as mandated by Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia, Minister of Manpower Regulation No. 2 of 2015 concerning the Protection of Domestic Workers which is a reference for the Regional Government to make further regulations regarding the protection of domestic workers as stated in Article 28 that the Implementation of this Ministerial Regulation is further regulated by the Governor.

2. This Regulation of the Minister of Manpower consists of IX chapter 30 Article which contains general provisions, work agreements between users and domestic workers, requirements, rights and obligations of domestic workers, requirements, rights and obligations of users, requirements for agencies distributing domestic workers, terms and procedures for making SIU-LPPRT including the obligations and prohibitions of PRT Distribution Agencies. At the end of this Ministerial Regulation, it is also regulated regarding Guidance and Supervision of LPPRT and administrative sanctions that can be imposed if there is a violation of this provision.

3. Domestic servants are categorized as the informal sector more because there is no element of a working relationship which includes the subject or party giving the job, namely not an entrepreneur, but an individual employer and to do work that is not categorized as a business/company activity but activities around household management. It is hoped that through this regulation a policy regarding the protection of domestic workers will be born, which so far has not been regulated even though domestic work is a noble job and an integral part of national development.

4. Up to now, in the city of Medan, there is no legal regulation providing protection for domestic workers, especially those recruited not through dealers, because until now the Governor's regulations are the implementing regulations of Permenaker No. 2 of 2015 does not yet exist.

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