

HOLIDAY ALLOWANCE FOR DOMESTIC WORKERS

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Abstract

Domestic workers or domestic workers in Indonesia are considered to still exist and are still relevant. The role of domestic workers is considered important in the domestic life of domestic workers, where domestic workers replace the user's duties and obligations in taking care of the household. After domestic workers have completed their obligations, domestic workers are entitled to their rights. The rights of domestic workers are regulated in Article 7 of the Minister of Manpower Regulation Number 2 of 2015 concerning Protection of Domestic Workers. One of the rights contained in Article 7 of Minister of Manpower Regulation no. 2 of 2015, namely the right to receive a Holiday Allowance or THR. However, in Minister of Manpower Regulation no. 2 of 2015 does not yet explicitly regulate the amount of THR that should be received by domestic workers, so this can be a loophole for domestic workers to give nominal THR arbitrarily. The existence of this problem calls for legal protection which is one of the urgencies for domestic workers to be given their rights. There needs to be involvement from various elements to realize legal protection for domestic workers. The exact amount of THR allocated to domestic workers should be explained in detail, whether regulated in a written work agreement, regulations that specifically regulate THR for domestic workers and its implementation is supervised by the competent government. The research method used in this research is normative juridical by examining several literature and regulations related to this article. The approach methods used in this research are the statutory approach, conceptual approach and comparative approach. Comparison of regulations regarding the informal sector such as domestic workers in Indonesia itself should be more detailed, such as Hong Kong which really pays attention to the welfare of domestic workers or what are usually called domestic servants. Thus, the regulation of the amount of THR for domestic workers is considered to be unclear, which can lead to misinterpretation and this shows the existence of legal ambiguity.

Keywords: Domestic Workers, Holiday Allowances, Legal Protection

INTRODUCTION

In social life, it is necessary to have a job to fulfill the demands of daily life and people work to earn income. Getting a job and a decent livelihood/income is a citizen's right and this is mandated in Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). In developing countries, economic activities are divided into two sectors, namely the formal and informal sectors (ILO 2015). Many Indonesians work in the informal and non-formal sectors.

Satudata Kemnaker, the official website of the data portal of the Ministry of Manpower of the Republic of Indonesia, noted that from 2019 to 2020 there was an increase in the percentage of the population working with informal status. In 2019 there were 55.88% of the population working with informal status and in 2020 there was an increase in the proportion of

the population working with informal status by 60.47% (Ministry of Manpower of the Republic of Indonesia 2024). Meanwhile, workers in the formal sector experienced a decrease in percentage, in 2019 there were 44.12% of workers in the formal sector and in 2020 the number of workers in the formal sector became 39.53% (Ministry of Manpower of the Republic of Indonesia 2024). Several factors also contributed to the increase in the percentage of workers in the informal sector, these factors include the impact of the co-19 pandemic, the number of workers in companies who were laid off, and the decline in commodity demand due to a decrease in people's purchasing power.

The International Labour Organization (hereafter referred to as ILO) characterizes the informal sector as workers who do not have a definite employment contract, uncertain benefits, uncertain social protection (ILO 2015). Work in the informal sector is spread across various fields, such as industry, trade, construction, agriculture, and services. One example of workers in the informal sector in Indonesia is domestic workers (hereafter referred to as DWs). In Indonesia, domestic workers are still placed in the informal sector, where this sector is dominated by women (Wiandiani, Aminah, and Iswarini 2020). Domestic workers in the Minister of Manpower Regulation Number 2 of 2015 concerning the Protection of Domestic Workers (hereinafter referred to as Permenaker No. 2 of 2015) are defined as,

“A person who works for an individual in a household to carry out household work by receiving wages and/or other forms of compensation.”

In performing their work, domestic workers have rights and obligations, and their rights and obligations are regulated in Permenaker No. 2 Year 2015. The rights of domestic workers are regulated in Article 7 of Permenaker No. 2 Year 2015, namely,

“Domestic workers have the following rights:

- a. Obtain information about the employer;*
- b. Receive good treatment from the User and their family members;*
- c. Receive wages in accordance with the work agreement;*
- d. Receive healthy food and drink;*
- e. Receive adequate rest time;*
- f. Receive leave in accordance with the agreement;*
- g. Having the opportunity to worship in accordance with their beliefs;*
- h. Receive a holiday allowance;*
- i. Communicate with his/her family.”*

Thus, if domestic workers have carried out their obligations, their rights must also be given. However, the provision of rights regarding THR in Article 7 letter H of Permenaker No. 2 Year 2015 is not clear enough so that it gives legal consequences of norm ambiguity, confusion of interpretation, and can be a loophole for employers to provide THR arbitrarily. This condition is very ironic when compared to formal workers/laborers in companies where most of their rights are accommodated and very explicitly explained through regulations. One of them is the Regulation of the Minister of Manpower Number 6 of 2016 concerning Religious

Holiday Allowances for Workers/Laborers in Companies (hereinafter referred to as Permenaker No. 6 of 2016), the Permenaker clearly explains the amount of THR for workers/laborers in the company that they should receive, so the regulation does not provide a gap for employers to provide the amount of THR arbitrarily.

This huge gap between formal workers and domestic workers should prompt legal protection regarding the urgency of THR for domestic workers and the specific and detailed regulation of the amount of THR intended for domestic workers. Some countries recognize the existence of domestic workers, such as Hong Kong, which explicitly regulates domestic workers in the Employment Ordinance 1968 (Cap. 57). The regulation is not only specific to employees, but also domestic servants (including gardeners, drivers, boat servants, and personal helpers). Hong Kong itself also implements the existence of THR but with its own language, concepts, culture, and traditions which is different. In Hong Kong, the term THR is Holiday Pay, which has been explained in the Employment Ordinance 1968 (Cap. 57) and the amount of Holiday Pay for employees and domestic servants has been regulated.

Thus, this research is expected to be used as an additional insight and contribution of thought for domestic workers to better understand the rights they must receive and this research is expected to be used as advice or input for the authorized government as a consideration regarding the amount of THR that must be received by domestic workers.

METHODS

This research uses normative juridical research. This research was chosen because this type of normative juridical research is in accordance with the issues raised, where this research analyzes several related regulations that are relevant to this research. Some of the regulations that are considered relevant are the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower, Minister of Manpower Regulation Number 2 of 2015 concerning Protection of Domestic Workers, Regulation Number 6 of 2016 concerning Religious Holiday Allowances for Workers in Companies, and regulations of the Hong Kong Employment Ordinance 1968 (Cap. 57). The approaches used in this research are statutory approach, conceptual approach, and comparative approach. The approach used in this research is in line with the legal issues in this research.

RESULTS AND DISCUSSION

1. The Urgency of Setting Holiday Allowances for Domestic Workers

The beginning of the emergence of THR began in 1951 during the reign of President Soekarno. The term THR was introduced by Prime Minister Soekiman Wirjosandjojo (Maldini 2020). The purpose of the THR at that time was to improve the welfare of the state apparatus. THR, which at that time was only intended for state officials, caused some social jealousy, especially the contract of workers / laborers in various companies. They demanded that the government pay attention to their welfare and be given THR as well because they also contributed to the national economy.

At the peak, the workers/laborers staged a demonstration strike to demand equal rights to the THR. In the end, the strike action produced results, Prime Minister Soekiman Wirjosandjojo instructed companies that employers should provide THR to their workers/laborers. The issuance of the Regulation of the Minister of Manpower of the Republic of Indonesia No. 04 of 1994 concerning Religious Holiday Allowances for Workers in Companies (hereinafter referred to as Permenaker No. 04 of 1994) is also one of the concrete steps to provide legal certainty regarding THR intended for

workers/laborers who work in companies. However, in 2016 the Government revoked Permenaker No. 04 of 1994 and replaced it with Permenaker No. 6 of 2016. In Article 1 number 1 of Permenaker No. 6 of 2016, there is a change in the narrative regarding the definition of THR,

“Religious Holiday Allowance, hereinafter referred to as Religious THR, is non-wage income that must be paid by employers to workers/laborers or their families ahead of the Religious Holiday.”

Permenaker No. 6/2016 as a legal umbrella regarding the right of THR to workers/laborers also explains when the THR is given, the requirements for THR recipients, the amount of THR, the procedures for giving THR, supervision of THR provision, fines and administrative sanctions if they do not heed the applicable regulations. THR, which is non-wage income, can be given in accordance with the time of the religious holidays of each religion of workers/laborers. THR is intended to help workers/laborers ahead of religious holidays, because the culture in the community considers that holidays require a lot of spending and the prices of basic commodities usually increase ahead of the holidays. Every year, the Minister of Manpower issues a circular letter regarding the Implementation of Religious Holiday Allowances and the provision of THR is an effort to meet the needs of workers/laborers and their families in welcoming religious holidays.

Informal sectors such as domestic workers are also entitled to receive religious holiday allowances, as explained in Article 7 letter h of Permenaker No. 2 Year 2015. However, this does not further interpret the amount of THR that domestic workers should receive. The basis of a more specific regulation regarding the religious holiday allowance for domestic workers is intended to,

- Protecting the Rights of Domestic Workers

Domestic worker is a type of work that plays an important role in the lives of domestic workers or employers. DWs work to take care of household chores in place of the work obligations that should be done by the DW user. After the household work is completed, the domestic worker is entitled to reciprocity in the form of wages and other rights stipulated in the work agreement between the two parties. The urgency of regulations governing THR for domestic workers is to protect the rights of domestic workers.

- DW Welfare

The existence of definite regulations regarding DWs' rights is also intended to provide welfare for DWs. As stated in the Preamble of the 1945 Constitution in the fourth paragraph, one of the duties and objectives of the Unitary State of the Republic of Indonesia is to protect the entire Indonesian nation and to promote the general welfare. Welfare is the dream of every Indonesian citizen and it should be the most important right of a citizen. With this allowance, domestic workers have additional non-wage income that can be used to fulfill their daily needs, especially around the holidays when expenses tend to increase. The need for food, new clothes, and other necessities often increases during holiday celebrations. THR provides an opportunity for domestic workers to celebrate the holidays in a better and more meaningful way.

- Strengthening the relationship between users and domestic workers

THR is expected to create a harmonious working relationship between users and domestic workers. A user who gives an allowance to a domestic worker can be

inferred that the user appreciates the work done by the domestic worker. In addition, the THR is expected to create a productive and progressive work environment.

- Providing Legal Certainty

The existence of regulations governing THR is expected to facilitate DWs about the certainty of their rights and obligations. With the existence of regulations governing religious holiday allowance for domestic workers, it is expected to be used as a guideline for both parties (users and domestic workers), so that this is also expected to minimize the occurrence of conflicts or disputes between users and domestic workers regarding their respective rights and obligations, but if in the future there is an unavoidable conflict between users and domestic workers, domestic workers can claim their right to religious holiday allowance from users if users do not carry out these obligations. It is hoped that the specific regulation of religious holiday allowance for domestic workers will also prevent exploitation and discrimination by users against domestic workers, which is rampant in informal working relationships (Kumala and Murtiningsih 2013).

- Encouraging work productivity

The existence of THR for domestic workers is very important, especially to increase productivity. Providing THR before the holiday is needed to cover daily expenses and prepare for the holiday (Maldini 2020). Domestic workers can improve family welfare, reduce financial pressure, and better manage their expenses through THR. Employees will be more motivated and excited to work when they feel appreciated by providing THR. With THR for domestic workers, it is hoped that domestic workers will be motivated to work harder and be more productive because of the user's appreciation and care by providing THR for domestic workers.

THR improves the working relationship between users and domestic workers, thus creating a productive work environment. All of these elements participate in improving overall productivity in the work environment, which ultimately helps users to ease the burden of doing household chores.

2. Setting the Amount of Hari Raya Allowance for Domestic Workers

A domestic worker is defined as a person who works for an individual in a household to carry out household work by receiving wages and/or other forms of compensation. In carrying out household work, there are rights and obligations attached to domestic workers and also to individuals in the household or domestic worker users. The rights and obligations of domestic workers and their users are regulated in Permenaker No. 2 Year 2015. One of the rights of domestic workers stipulated in Article 7 of Permenaker No. 2/2015 is the right to receive Hari Raya allowance. However, in Permenaker No. 2/2015, there is no further explanation in the regulation and whether it is included in the work agreement between the User and DW.

The position of domestic workers as informal workers with confusion regarding the amount of THR they should receive. Permenaker No. 2 Year 2015 also does not explicitly mention the amount of THR that domestic workers should receive and the “considering” point of the Permenaker does not refer to Law No. 13 Year 2003. This vagueness can be used as a loophole for users to provide THR with arbitrary amounts.

The culture of THR is not unique to Indonesia. In various countries, the concept of THR or similar allowances has variations in its implementation, depending on the culture, laws, and traditions of each country. One of them is Hong Kong, Hong Kong has a THR culture, but the term is different, namely “Holiday Pay” (E-

Legislation n.d.). Hong Kong itself has a different concept of holiday pay which is regulated in the Employment Ordinance 1968 (Cap. 57). The regulation in detail discusses labor regulations, where domestic workers or commonly referred to as domestic servants is also regulated in the regulation. Hong Kong itself applies Holiday Pay, where the meaning of “holiday” here includes,

a. Official holidays

Hong Kong sets several important days and on that day all employees and domestic servants are entitled to a holiday, there are 14 official holidays in Hong Kong in one year. These holidays include,

- First day of January
- Chinese New Year Day
- Second day of Chinese New Year
- Third day of Chinese New Year
- Ching Ming Festival
- Labor day
- Buddha's birthday
- Tuen ng festival
- Founding day of the Hong Kong Special Administrative Region
- The day after the mid-autumn festival
- National day
- Chung Yeung Festival
- Chinese winter solstice festival or Christmas day
- First working day after Christmas

b. Alternative day off

If a domestic servant is required to work on one of the legal holidays, the user shall provide an alternative day off within 60 days after the legal holiday. The user shall not make any payment to the domestic servant in exchange for the purchase of the holiday or the purchase of the holiday is illegal or unauthorized. However, if the user commits an offense such as failing to provide an official holiday, alternative holiday, or substitute holiday, or failing to pay holiday pay, the user may be subject to sanctions and fines.

c. Alternate holiday

An alternate holiday is an official holiday that falls on a domestic servant's rest day. If this happens, the domestic servant is entitled to a substitute holiday on another day (HelperPlace 2024)...

d. Days when employees/domestic servants must be given a day off

The meaning of the day when employees must be given a day off intends to reaffirm the existence of official holidays where domestic servants are entitled to a day off.

With the provision of holidays, it is expected that domestic servants can enjoy leisure time and make the best use of their rest time. holiday pay calculation in Hong Kong, domestic servants who work under an employment agreement for at least three months before the official holiday are entitled to holiday pay. Holiday pay must be paid to domestic servants no later than the next paycheck after the holiday. The amount of holiday pay is determined as follows,

- If the domestic servant has worked for 12 months or more, the holiday pay is calculated based on the average daily salary received during that period and divided by the number of working days.

$$\begin{aligned} \text{Total Salary} &= \text{monthly salary} \times 12 \\ \text{average daily salary} &= \frac{\text{total salary}}{\text{number of days in a year}} \end{aligned}$$

- If the domestic servant works for less than 12 months, the holiday pay is calculated based on the shorter period.

$$\begin{aligned} \text{Total salary} &= \text{monthly salary} \times \text{days of service} \\ \text{average daily salary} &= \frac{\text{total salary}}{\text{number of days of service}} \end{aligned}$$

The Hong Kong government's detailed and clear definition of domestic helpers and inclusion of domestic helpers in its legislation is considered to provide legal protection and legal certainty for the domestic worker sector. This is in stark contrast to the regulations in Indonesia. Law No. 13/2003 on Manpower, which specifically addresses employment in Indonesia, only addresses formal workers/laborers. The specific regulation regarding THR stipulated in Permenaker No. 6/2016 also limits its regulation to workers/laborers who work in companies. In this case, it seems to place informal workers such as domestic workers in legal uncertainty and lack of legal protection. The legal umbrella for domestic workers, Permenaker No. 2 Year 2015, does not further accommodate the regulation of the amount of THR rights for domestic workers and of course an update is needed in the regulation. The Draft Law on the Protection of Domestic Workers has not yet been passed and is still under discussion at Level I, of course this must be homework for the Government to immediately pass the PPRT Bill into the PPRT Law (Faturahmah 2024).

CLOSING

Conclusion

Domestic workers in Indonesia have the right to receive THR, but the current regulation, Minister of Manpower Regulation No. 2/2015, does not explain in detail the amount of THR that must be received. This creates a loophole for users to provide THR arbitrarily, which has the potential to harm domestic workers. There is a gap between regulations for formal and informal workers such as domestic workers, where formal workers are protected with clear and definite regulations regarding THR, while domestic workers are still in legal uncertainty regarding the amount of THR that must be received. Therefore, there needs to be clearer regulations to accommodate the rights of domestic workers in Indonesia.

Advice

The government needs to formulate clearer and more specific regulations regarding THR for domestic workers, including provisions on the amount and time of provision. This is important to provide legal certainty and protect domestic workers' rights. The need for socialization to domestic workers is also considered important in order to raise awareness regarding their rights and be able to demand what they should receive. Monitoring related to the implementation of regulations is also considered to be an urgency, because so far the supervision of domestic workers who are not bound by domestic worker distribution institutions is very less attention. Indonesia can compare and make reference to other countries such as Hong Kong, which neatly regulates in detail related to domestic workers. With these suggestions, it is hoped that the welfare of domestic workers can be improved and the relationship between users and domestic workers will become more harmonious.

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