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LEGAL DISCRIMINATION: HOW INDONESIAN LAW FAILS TO PROTECT DOMESTIC WORKERS

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International principles of law define certain core labor rights that are to be afforded to every worker. Specifically, every working man or woman is entitled to wages which provide for an adequate standard of living, a fair limitation of working hours, the right to rest throughout the work day and the right to take a holiday.¹ Yet, Indonesian domestic workers—a working class composed largely of women and children—are denied these basic rights everyday.

An Indonesian domestic worker is most often a woman,² and she tends to be from either a rural part of the country or a poor urban slum.³ She might even be a child as one-third of the 2.6 million domestic workers in Indonesia are under the age of 18, the average age at which a woman begins domestic work being 13.⁴ She probably dropped out of school when she was 12 because her family could no longer afford to pay her tuition.⁵ Unfortunately, as a worker unprotected by current Indonesian labor laws, she may experience some form of physical, mental or sexual abuse at the hands of her employer.⁶

Although Indonesia has ratified most international multilateral treaties regarding the preservation of human rights, it has been criticized by human rights organizations Amnesty International (“AI”) and Human Rights Watch for continuing to ignore the labor rights of domestic workers.⁷ These organizations cite the Indonesian government’s narrowly written labor laws as the instrument which is used to oppress domestic workers.⁸

The leading Indonesian labor law is the Manpower Act (“the Act”), which defines the obligations of employers to protect the interests of their employees, and indeed the core international standards regarding salary and working hours are included within the law.

However, the International Labor Organization calls upon the Indonesian government to recognize that the current labor laws discriminate against domestic workers.⁹ Specifically, the Act defines two separate types of employers: those who manage an enterprise and those who do not. The Act only applies to those employees who work for an enterprise. Domestic workers are considered “helpers” as opposed to “employees;”¹⁰ thus, they are not afforded the protections under the Act.¹¹

Despite the criticisms of human rights organizations, the Indonesian government strongly defends its worker classification. One official explains, “While Indonesian society supports a significant degree of government involvement in many aspects of the economy and public life, the household is considered sacrosanct and almost always off-limits with regard to state intervention.”¹²

Nonetheless, as AI points out, the consequences of such classification has a dire affect on the worker’s access to protection under their domestic labor laws.¹³ For example, AI reports that domestic workers are subjected to massive underpayment and often live in conditions which are inadequate and abusive.¹⁴

Salaries of domestic workers are on average one-half to one-third of the national minimum wage. Forty domestic workers interviewed by AI were paid on average US\$16 to US\$32 per month. Meanwhile, the minimum wage for that same period was US\$80 per month.¹⁵

The Indonesian government claims that the denial of minimum wage protection to domestic workers is valid.¹⁶ They argue that because domestic workers are provided with room and board it is difficult to calculate an appropriate wage thereafter. Furthermore, government officials argue that setting a minimum wage might prevent some employers from hiring domestic workers thus creating a detriment both to the homes who benefit from domestic service and the women who depend on such employment.¹⁷

Meanwhile, domestic workers interviewed by AI complained of working unreasonably long hours. The interviewees worked an average of 70 hours a week, some as long as 22 hours per day.¹⁸ The women received the same salary regardless of the number of hours worked.¹⁹

In addition to long hours and inadequate salaries, many women face cases of physical abuse and sexual assault. One woman interviewed by AI was subsequently beaten to death by her employer with an iron bar.²⁰ Though the employer was convicted, he received a prison sentence of only two years, and that sentence was reduced on appeal.²¹ As a result, women are often reluctant to report the abuse for fear of losing their job, or, in cases of sexual abuse, fear of social stigma in a society where talk about sexual relations is taboo.²² The few women who do choose to report instances of abuse have little recourse as they are not entitled to the employment dispute mechanisms created by the Manpower Act. The workers' only realistic options are informal mediation procedures that are paid for by the employer, thus creating bias against the domestic worker.²³

WILL NEW LAWS PROTECT DOMESTIC WORKERS?

Two draft laws to improve the conditions facing domestic workers have recently been submitted to the Provincial Parliament. The draft law on protection of domestic workers for east Java includes provisions on fair working conditions, freedom from violence and the right to organize by way of a union. The second draft law regulates the age at which women can become domestic

workers.²⁴ While AI concedes that the drafts are a step in the right direction, they do not afford domestic workers the same protections as the Manpower Act.²⁵ For example, the maximum work day proposed by the draft law is 10 hours while the Manpower Act maximum is eight.²⁶

AI argues that the current treatment of labor laws “which varies between domestic workers and other workers, creates a two-tier system, which ‘legally’ reinforces discrimination against domestic workers” and creates a system that continues to ignore the daily mistreatment experienced by the 2.6 million women and girls who are subject to the whim of their domestic employers.²⁷ In short, until domestic workers fall under the protection of current Indonesian labor law, Indonesia will continue to promote a policy that prescribes legal discrimination²⁸ and often ignores serious cases of abuse.

NOTES

1 Amnesty International, *Exploitation and Abuse, the Plight of Women Domestic Workers*, <http://www.amnestyusa.org/news/document.do?id=ENGASA210012007> (last visited Mar. 19, 2007).

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 Alan Boulton, *The Regulation of Domestic Workers in Indonesia; Current Laws, International Standards and Best Practice*, June 2006, <http://www.ilo.org/public/english/region/asro/jakarta/download/dwregulation.pdf> (last visited Mar. 19, 2007).

10 *Id.*

11 *supra* note 1.

12 *supra* note 9.

13 *supra* note 1.

14 *supra* note 1.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *supra* note 6.

23 *Id.*

24 *supra* note 1.

- 25 *Id.*
- 26 *Id.*
- 27 *Id.*
- 28 *Id.*