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**SOCIO-LEGAL FRAMEWORK ON PROTECTING
MIGRANT WORKERS IN MALAYSIA: CASE STUDY OF
INDONESIAN MIGRANT DOMESTIC WORKERS**

MUHAMMAD HELMY HAKIM



**DOCTOR OF PHILOSOPHY
UNIVERSITI UTARA MALAYSIA
2015**

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MIGRANT WORKERS IN MALAYSIA: CASE STUDY OF
INDONESIAN MIGRANT DOMESTIC WORKERS**





Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
(College of Law, Government and International Studies)
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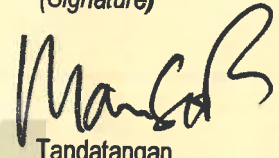
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Abstract

Malaysia has more than 400,000 registered domestic workers from various countries, and Indonesian making up 90% of them. The Indonesian migrant domestic workers (IMDWs) also rate the highest in number of victims. With respect to vulnerabilities, they have fallen victims and entrapped in various discriminations. Unfortunately, they do not get due attention. This research primarily aims to assess legal consciousness of mistreated IMDWs by examining critically the interaction of their socio-cultural contexts and the Malaysian employment law within the framework of legal dispute processing. Given this, on a general basis, this research is to examine why only a few mistreated IMDWs, came forward to file lawsuit for adjudication. Additionally, the study is also undertaken to carry out socio-legal analysis with regard to developing patterns of disputes. Finally this study determines to identify the principal barriers which obstruct access to justice as experienced by mistreated IMDWs. This study employs a qualitative approach using case study techniques which are broadly applied in social science researches. The study reveals that IMDWs who are engaged in disputes have shown reluctance to exercise their rights since they were perceived as "legitimately defeated". Trigger events, cultural context and personality styles are factors that have blocked their transformation from naming, blaming and initially claiming which ultimately have resulted in the development of strategies by IMDWs. This study provides evidence of various strategies of resistance used by domestic workers, such as dissimulation, murmuring in their mother tongue, swearing honesty against accusation, leaving their workplaces legitimately (desertion), third party mediation and using "zikir". The obstacles that IMDWs face can be grouped into: (1) problems related to justice institutions and (2) problems related to justice seekers themselves.

Keywords: Indonesian Domestic Workers, Legal Consciousness, Legal Protection, Malaysian Employment Law

Abstrak

Malaysia mempunyai lebih daripada 400,000 pembantu asing berdaftar dari pelbagai negara, dan Indonesia membentuk 90% daripadanya. Pembantu asing Indonesia juga merupakan jumlah paling ramai yang menjadi mangsa. Berikutan sifat kerentanan, mereka telah menjadi mangsa dan terperangkap dalam pelbagai bentuk diskriminasi, malangnya mereka tidak diberikan perhatian sepenuhnya. Tujuan utama kajian ini adalah untuk menilai kesedaran undang-undang keatas pembantu asing Indonesia yang dizalimi dengan cara penyelidikan secara kritikal terhadap interaksi konteks sosio-budaya mereka dan undang-undang buruh di Malaysia, dalam rangka pemprosesan pertikaian undang-undang. Dalam hal ini, kajian secara umumnya bertujuan untuk mengkaji sebab musabab mengapa hanya segelintir pembantu asing Indonesia yang dizalimi memfailkan saman bagi membuat tuntutan terhadap layanan buruk yang diberikan. Di samping itu, kajian ini juga menganalisis sosio- undang- undang mengenai kaedah untuk membangunkan corak pertikaian. Akhir sekali, kajian ini cuba mengenal pasti beberapa halangan akses kepada keadilan yang dialami oleh pembantu asing Indonesia yang dizalimi ini. Kajian ini dijalankan melalui pendekatan kualitatif dengan menggunakan teknik kajian kes yang digunakan secara meluas dalam penyelidikan sains sosial. Dapatan kajian mendedahkan bahawa pembantu asing Indonesia yang terlibat dalam pertikaian, sama ada menolak untuk menggunakan undang-undang mahupun menuntut tindakan undang-undang kerana menganggap bahawa diri mereka " sah dikalahkan " (*legitimately defeated*). Terdapat beberapa faktor seperti peristiwa pencetus, konteks budaya dan gaya personaliti yang menghalang transformasi mereka dari menamakan (*naming*), menyalahkan (*blaming*) dan mendakwa (*claiming*) yang mana telah membangunkan beberapa strategi untuk para pembantu yang dizalimi ini. Kajian ini memberikan bukti pelbagai strategi rintangan (*resistance strategy*) yang digunakan oleh pekerja domestik, seperti seperti kepura-puraan, memaki dalam bahasa sendiri, bersumpah kejujuran terhadap tuduhan, meninggalkan tempat kerja yang sah (*desertion*), pengantaraan pihak ketiga dan menggunakan "zikir". Antara halangan yang dihadapi oleh pembantu asing Indonesia boleh digolongkan kepada masalah yang berkaitan dengan institusi keadilan dan masalah yang berkaitan dengan pencarian keadilan itu sendiri.

Kata Kunci: Pembantu Asing Indonesia, Kesedaran Undang-Undang, Perlindungan Hukum, Undang-Undang Buruh Malaysia

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Appendix A

Sample Appendix (Replace Accordingly)

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CHAPTER ONE

INTRODUCTION

1.1 Introduction

This study mainly aims at evaluating the legal awareness of mistreated migrant workers by critically examining how the situation of migrant workers are formed and influenced by social-cultural contexts and the Malaysian employment law and how disputes are legally proceeded. In other words, this kind of research might be considered as the bottom-up approach, which is usually defined in sociology of law literature as the theory of social-legal analysis.

This socio-legal analysis of the situation of Indonesian migrant domestic workers would not be achieved without a prior discussion of the relationship between labor migration, feminization of migration and legal protection of domestic workers. Therefore, a brief overview of these relationships and their implications will be discussed. In addition to some statements, this chapter will include research questions, objectives, and the significance of research. Finally, thesis organization will conclude this chapter.

1.1.1 International Labor Migration

Globalization within the economic sphere, is not simply characterized by liberalization of trade, services, investment, and capital, but also marked by transnational movements of people in search of better lives and employment opportunities elsewhere. It has been estimated that number of people who have

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