

Conflict Resolution Among Marginalised People Within the Framework of Socio-Legal Perspective

(Case Study of Banjarese Domestic Workers in Malaysia)

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This research primarily aims to review the legal consciousness of mistreated Indonesian (Banjarese) migrant domestic workers by critically examining the interaction of socio-cultural contexts and the Malaysian employment law, within the framework of socio-legal perspective.

Among Banjarese domestic workers who migrated to Malaysia and mistreated badly in the host country, their reluctance to use the legal system or justice-related services to deal with the experienced mistreatment is a unique phenomenon.

The current research reveals how domestic workers have been involved in legal proceedings. It was reported that of the 6% of available legal proceedings (110 of 1,732), conviction had been made by 5%, investigation had been reported by 4% and on-going prosecution was represented by 1%. Most domestic workers said that no complaint had been filed (89%, n=98).¹

In order to answer those complicated and intriguing questions, the proponents of legal consciousness argue that courts are just one of the many avenues that disputants have in their catalogue of choices. Even though the judiciary is believed to monopolize the enforcement of legal norms, it is not the only source of normative messages in society. Courts are not even the institutions that handle the majority of legal conflicts and neither occupy the center of legal life. To the contrary, only a minimal fraction of disputes that we can label as legal enter the judiciary and from that number is really difficult to know how many are actually resolved.² Thirty years ago, Galanter et.al pointed out that very few cases of dispute were resolved. This minimal

¹ Hannah Andreovski and Samantha Lyneham, "Experiences of Exploitation and Human Trafficking among a Sample of Indonesian Migrant Domestic Workers," *Australia's national research and knowledge centre on crime and justice* 471 (2014): 6.

² M. A. Gomez, "All in the Family: The Influence of Social Networks on Dispute Processing (a Case Study of a Developing Economy)," (Stanford University (UMI Number: 3253485) Retrieved August 20, 2009, from Dissertations and Theses database., 2007), 23.

resolution was even smaller than the number of cases the court was supposed to deal with, the fraction of which was much smaller than the actual cases of dispute.³

One way to explore legal consciousness is to study people's attitudes on bringing lawsuits within the framework of "legal dispute processing". In fact, to raise a grievance in order to seek redress for the mistreatment is not a simple one. What has kept domestic workers from bringing lawsuits to redress their dispute was the complicated mechanism and procedures that they might find it difficult to meet. The complicated stages were beyond their legal knowledge that some of them gave up the process. To have a lawsuit, a domestic worker who had mistreatment had to transform the grievances into a dispute, implying that the mistreated domestic worker identify the existence of a problem (naming the experience), attribute the problem to another party (blaming), and eventually, claim some remedy from the blamed party (claiming).⁴ A dispute is signified by the rejection and denial from the blamed and a formal grievance is characterized by public sphere requiring formal grievance procedure. The dispute pyramid depicts the stages by which domestic workers have to pass when making a lawsuit in employment.⁵

This research is to undertake a socio-legal analysis the various ways in which the Banjarese domestic workers construct and shape their legal consciousness based on their interpretation, tactics, aspiration and sense of identity. It has been highly suggested that their peculiar position within the intersection of cultural gender-biased, racial discrimination as migrants and underclass household work structures will effect and color the pattern of the legal dispute processing they develop.

Labor Migration into Malaysia

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

³ Bliss Cartwright, Marc Galanter, and Robert Kidder, "Introduction: Litigation and Dispute Processing," *Law & Society Review* 9, no. 1 (1974). Marc Galanter, "Afterword: Explaining Litigation," *Law & Society Review* 9, no. 2 (1975). Marc Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society," *UCLA Law Review* 31, no. 4 (1983). Marc Galanter, "The Day after the Litigation Explosion," *Maryland Law Review* 46, no. 3 (1986). Marc Galanter, "Adjudication, Litigation and Related Phenomena," in *Law and the Social Sciences*, ed. L. Lipson and S. Wheeler (New York: Russel Sage Foundation, 1987).

⁴ W. L. F. Felstiner, R. L. Abel, and A. Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming," *Law & Society Review* 15, no. 3/4 (1980-1981a).

⁵ Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society." Yolande Wouters and Francis van Loon, "Civil Litigation in Belgium: The Construction of the Pyramid of Legal Dispute – a Preliminary Report," *Droit et Societe* 20, no. 21 (1992).

search of better lives and employment opportunities elsewhere. It has been estimated that number of people who have settled down in a country other than their own is nearly 232 million.⁶ New figures from the UN Department of Economic and Social Affairs (UN-DESA) show that 232 million people, or 3.2 per cent of the world's population, live abroad worldwide, compared with 175 million in 2000 and 154 million in 1990.⁷

Aside from international migration, according to the International Labor Organization (ILO), most international migration today is related to seeking employment. More than 90 per cent of all international migrants are workers and their families.⁸ Furthermore, foreign-born from Asia only recently overtook foreign-born from Latin America and the Caribbean as the largest diaspora group. In 1990, international migrants born in Asia and Europe accounted for the largest number of foreign-born living outside their major areas, both numbering about 21 million. By 2010, Asians had increased to 37 million, foreign-born from Latin America and the Caribbean to 30 million and foreign-born Europeans numbered 20 million. And last but not least, Within Asia, foreign-born from Southern Asia were the most likely to reside outside their region of birth (23 million).⁹

There has been a recent trend within the international labor migrant, where women made up about half of all migrants for several decades. In 2005, the percentage of female migrants has reached nearly 50 percent of all migrants, up from 47 per cent in 1960.¹⁰ This phenomenon – called ‘feminization of migration,’¹¹ has resulted in an increased number of women who migrate independently, including in Asia.

⁶ ILO (International Labour Organization), "Labour Migration," (2015). <http://www.ilo.org/global/topics/labour-migration/lang--en/index.htm> (accessed 22 June 2015).

⁷ United Nations Department of Economic and Social Affairs, "Number of International Migrants Rises above 232 Million," (2013). <http://www.un.org/en/development/desa/news/population/number-of-international-migrants-rises.html> (accessed 22 June 2015).

⁸ ILO (International Labour Organization), "Labour Migration: Facts and Figures," (2014). http://www.ilo.org/global/about-the-ilo/media-centre/issue-briefs/WCMS_239651/lang--en/index.htm (accessed 25 June 2015).

⁹ Department of Economic and Social Affairs United Nations, "International Migration 2013: Migrants by Origin and Destination," *Population Facts* no. 3 (2013) (accessed 25 June 2015).

¹⁰ UN (United Nations), "Trends in Total Migrant Stock: The 2005 Revision," (2006). http://www.un.org/esa/population/publications/migration/UN_Migrant_Stock_Documentation_2005.pdf (accessed June 30, 2010).

¹¹ Feminization of migration is a recent trend in migration. The term constitutes the changing the gendered patterns of migration and higher rate of women migrating independently. Furthermore, it also denotes that their independent migration is rather in the framework of searching jobs, than merely as family dependents together with their husbands. In fact, the research on gender roles in migration has attracted more attention substantially.

Such a migration for domestic work opportunities overseas has been prevalently practiced for a quite long time but was tremendously apparent in the late 1970s. Nowhere else in the world was the trend as significant as in Asia.¹² The great number of female migrant flow from Asian countries was approximated to be 800,000 each year which steadily increased over years.¹³ Such was the case for Indonesia, the Philippines, and Sri Lanka, which supplied the great number of female migrants for domestic employment overseas.¹⁴

In terms of migrant destination, the most popular one for Asian migrants until 1990s was the Middle East. However this trend has shifted from the Middle East to other Asian countries whose economies have boomed in recent decades. Even by 1997, destinations such as Malaysia, Singapore, Japan, Hong Kong, and South Korea had surpassed the Middle East.¹⁵ These countries rely upon migrant workers to fill labor shortages that arise when the domestic labor force cannot meet the labor demands created by their fast-growing economies. On the other hand, their citizens are unwilling to take up low-paying, labor-intensive jobs with poor working conditions.

The great employment opportunities, although in the field of domestic position, has lured a great number of labor migration particularly in Southeast Asia in the second half of the twentieth century.¹⁶ The increasing labor movement across the state borders had resulted in more complex and significant labor management by Malaysian authorities. It was reported that Indonesians ranked third in labor number below Chinese and Indians during the first half of the 20th century.¹⁷ These developments have been shaped by economic, social, and demographic changes in the region, consistent with accelerated globalization, which has profoundly affected Indonesian labor migration to Malaysia.¹⁸ Thus, there has been an argument that Indonesians in

¹² United Nations.

¹³ Nana Oishi, *Gender and Migration: An Integrative Approach* (University of California, San Diego: The Center for Comparative Immigration Studies, 2002).

¹⁴ Nancy V. Yinger, "The Feminization of Migration: Limits of the Data," (2007). <http://www.prb.org/Articles/2007/FeminizationofMigrationLimitsofData.aspx> (accessed June 30, 2010).

¹⁵ P. Wickramasekera, *Asian Labour Migration: Issues and Challenges in an Era of Globalization* (Geneva: International Labour Office, 2002).

¹⁶ Ibid., 18.

¹⁷ Graeme Hugo, "Migration in the Asia-Pacific Region," in *Policy Analysis and Research Programme of the Global Commission on International Migration* (2005a), 1.

¹⁸ Amarjit Kaur, "Mobility, Labour Mobilisation and Border Controls: Indonesian Labour Migration to Malaysia since 1900," in *15th Biennial Conference of the Asian Studies Association of Australia* (Canberra 2004a).

Malaysia make up the largest irregular migration flow in Asia and globally are second only to Mexicans migrating to the United States.¹⁹

Historically, Indonesian migration to Malaysia has started since a long time ago.²⁰ Currently, Indonesians are the largest group of foreign workers that forms 83 percent of the total foreign labors in Malaysia.²¹ They fill up labor shortages shaped by Malaysia's economic policies of the "New Economic Policy" in 1971 which aggressively chased export-oriented industrialization and public sector expansion. The policies brought about great job growth in urban areas and consequently invited a mass migration of rural Malaysians to the cities. Another contributing factor to the wide-open job opportunities was the booming growth of industries, particularly in manufacturing and construction, which had not lured the local job seekers. The unfavorable employment statuses in both fields attributed with low-paying works have left the job opportunities unoccupied optimally. Another coupling factor is the lack of adequate work opportunities with commensurate income in the domestic state and the rapidly increasing demand for domestic workers among the middle-class group has led to the greater flow of migrant workers into Malaysia.

In the 1947 Census of Malaya when a break-down of the Indonesian population in the country according to their various areas of origin was last made, the five islands from which the Indonesian migrants came were Java, Kalimantan, Sumatra, Bawean and Sulawesi, in that order of numerical importance. The total Indonesian population in Malaya was .309,150, consisting of 189,400 Javanese, 62,400 Banjarese, 26,300 Sumatrans, 20,400 Boyanese and 7,000 Bugis. The remainder were migrants from other parts of Indonesia.²²

The Banjarese, who hailed from the immediate hinterland of Banjarmasin in South Kalimantan, formed 20 per cent of the recorded Indonesian population in Malaya. Although the bulk of the Banjarese immigrants were rice-cultivators, a few of them were also engaged in growing rubber and coconuts on their own smallholdings.

Legal Protection on Domestic Workers

¹⁹ According to Liow: "the long-term, undocumented migration flow of Indonesians into Malaysia is arguably the second largest flow of illegal immigrants after the movement across the U.S.-Mexico border." Joseph Liow, "Malaysia's Illegal Indonesian Migrant Labour Problem: In Search of Solutions," *Contemporary Southeast Asia* 25, no. 1 (2003): 44.

²⁰ T.S. Bahrin, "The Growth and Distribution of the Indonesian Population in Malaya," *Bijdragen* 123 (1967).

²¹ Human Rights Watch (Organization) and Nisha Varia, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia* (New York: Human Rights Watch, 2004), 8.

²²

Nowadays, many countries in the world have established a complex system of laws and institutions expected to protect the interest of domestic workers. This model of legal protection has broader significance in legal theory, it also reflects assumptions in dominant research paradigms in law and society, and even this model and its critique have been applied to other areas of law.²³ However, this legal protection model seems to be highly speculative, since employment discrimination has faced a unique problem. Sutton maintains that “Job discrimination is largely, though not wholly, a private sector phenomenon. Effective reform must change the behavior not only of government agencies but also of private employers.” He further asserts that it is definitely difficult project for at least two reasons. The first is ideological, in the sense that family of common law legal system (like Malaysia) have traditionally been suspicious of government intervention in the private sphere, in particular in the economic market place. The second is a matter of legal enforcement, since the maid mistreatment has likely been occurred in the domestic sphere.²⁴ An official from the Malaysian Ministry of Human Resources who wish to remain anonymous said: “This issue is difficult to monitor. They are one by one (in individual households), how can we monitor? *It is up to them to report.* To get an organization to monitor maids is unlikely. Who is going to do that?”²⁵ Further, Schneider pointed out that how to persuade victims to take on a rights defined self is a critical problem. In line with this, Merry underlined that this situation is also profound to a range of other rights-based social reform movements that rely on victim activism and rights claiming in order to promote reform such as disability rights and employment rights.²⁶

From the legal protection model perspective, the law is authoritative and effective instrument that offers victims with a tool by which they can use to force perpetrators to comply with legal rules. This model adopts that those who have suffered injuries will recognize their harms and invoke the law through litigation. In brief, they assume that those in the protected class are able and convinced to bear these burdens.²⁷ This kind of strategy is called as “litigious

²³ Kristin Bumiller, "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection," *Signs* 12, no. 3 (1987): 422.

²⁴ J. R. Sutton, *Law/Society: Origins, Interactions, and Change* (California, USA: Pine Forge Press, 2001).

²⁵ Human Rights Watch (Organization) and Varia, 60.

²⁶ Mark Goodale and Sally Engle Merry, *The Practice of Human Rights: Tracking Law between the Global and the Local*, Cambridge Studies in Law and Society (Cambridge; New York: Cambridge University Press, 2007), 344.

²⁷ Bumiller: 106.

policies,”²⁸ or Complaint-Driven Enforcement Model²⁹ , where the enforcement relies on individuals bringing their rights of action. However, strategies of equal protection may inadequately deliver the burdens imposed on domestic workers because they accept the authoritative discourse of law rather than inquiry the compatibility of legal rules with their legal conception. For the employment law, to change social circumstances through the formal legal system, domestic workers must recognize that they have suffered a harm, decide to do something about it, and take action.

As a matter of fact, it is now trite to recapitulate that the modern justice system through aggressive prosecution and legislation of punitive laws against batterers, has failed to respond adequately to crime generally and to domestic mistreatment in particular.³⁰ Many research showed that strong legal protection makes a difference, but it also displayed that even in the United States of America where legal protection is strong, some victims are not afforded their rights.³¹ In other words, amendments of the Malaysian Employment Act 1955 to include domestic workers appears to be insufficient to guarantee the full provision of victims’ rights in practice. It can be argued that it appears to be necessary, but not a sufficient condition to guarantee the protection of domestic workers’ rights, “... because a host of intervening factors, such as knowledge, funding, and enforcement, mediates the actual “delivery” of victims’ rights.”³²

Research Methodology

This study employed socio-legal research in conducting the research on the protection of Banjarese domestic workers in Malaysia. In this type of research, law itself turns problematical both in the sense that it may be a contributor to the social problem, and in the sense that although

²⁸ Thomas F Burke, *Lawyers, Lawsuits, and Legal Rights* (Berkeley: University of California Press, 2002), 4.

²⁹ Human Rights Watch (Organization), *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States* (New York: Human Rights Watch (Organization), 2001), 32.

³⁰ Randy E. Barnett and John III Hagel, *Assessing the Criminal. Restitution, Retribution, and the Legal Process* (Cambridge: Ballinger Publishing, 1977).

³¹ The Human Right Watch Report (2001) concluded that The United States has failed to protect migrant domestic workers’ rights and to guarantee that workers have an “effective remedy” if their rights are offended. As a matter of fact, the report indicated that there were only six out of twenty-seven domestic workers attempted to file complaints against their employers. Though most of the workers knew that their employment conditions violated U.S. law they did not wish to or did not know how to file legal complaints against their employers see further Human Rights Watch (Organization), *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States..*

³² Dean G. Kilpatrick, David Beatty, and Susan Smith Howley, *The Rights of Crime Victims: Does Legal Protection Make a Difference?* (Washington, DC: National Institute of Justice, U.S. Department of Justice, 1998), 2.

law may offer an answer or part of an answer, other non-law answers, including political and social re-arrangement, are not prevented and may so be selected.³³

Based on the above assumptions, it can be argued that this research was primarily a qualitative. It designed to discover then analyzed mistreated Banjarese domestic workers' legal consciousness in accessing legal justice. The qualitative approach is more suitable to be applied in this research since human experience is contextually shaped and accordingly, is contextually integrated. This perspective puts qualitative research in naturalistic style which prohibits construction and modification of context to keep research in normal everyday context.³⁴

Case study strategy in this study is really useful to answer the inquiry questions for various causes. Case study enables the assignment of a particular sense and objective to a particular object or event through the provision of idea about its local context and situational constraints.³⁵ Therefore, the results of case studies are obtained from the real-world.³⁶ Since it attends details, nuances and interdependences, a holistic comprehension may be obtained from the investigated phenomenon to result in total and natural comprehensive picture.³⁷ This research aims at identifying the Banjarese domestic workers' legal consciousness when they consider getting involved in legal dispute processing. This process is inherently attributed to Malaysian legal system and social constraint. Accordingly, this purpose justified the choice of case study method.

In this study, mistreated Banjarese domestic workers were entities that constituted cases. They are Latifah from Banjarbaru, Jumanah from Pleihari and Hesti from Landasan Ulin. Those 3 (three) Banjarese domestic workers involved in this study had distinguished themselves from the majority of domestic workers who experience mistreatment during their service in Malaysia. They were representatives of unique phenomena, which are rarely accessible to scientific investigation.

Interviews with three employers who had employed Banjarese domestic workers for several years yielded interesting information on issues of control and of the stereotypical identities of

³³ Mike McConville and Wing Hong Chui, eds., *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007); *ibid.*

³⁴ John W. Creswell, *Qualitative Inquiry & Research Design : Choosing among Five Approaches*, 2nd ed. (Thousand Oaks: Sage Publications, 2007).

³⁵ Robert E Stake, *The Art of Case Study Research* (Thousand Oaks: Sage Publications, 1995), 16.

³⁶ Jan Dul and Tony Hak, *Case Study Methodology in Business Research* (Oxford: Butterworth-Heinemann, 2008), 5.

³⁷ M. Q. Patton, *Qualitative Evaluation and Research Method* (Newbury Park, CA: SAGE Publications, 1990), 51.

Banjarese domestic workers. To obtain different detailed information, employers with different backgrounds were interviewed. The employers were represented by different professional background: a male lecturer at the university, a female retired person, and a female businesswoman. Further interview with Domestic Workers Agencies, Officials of Indonesian Embassy and Consulate General, Non Governmental Organizations (NGOs) were also conducted.

Using in-depth interviews, and documentary research, this methodology can effectively identify the daily experience of Banjarese migrant domestic workers in normal and contextual settings. Case study employed in this study is suitable since it is contextually arranged to result in dynamic process with multivariables. Done in this way, transformative process, which is one of the characteristics of dynamics of qualitative research, will be clearly portrayed. How Banjarese migrant domestic workers develop legal consciousness is a transformative and dynamic process from accepting the defeat to claiming the rights and redress against the perpetrators.

Migrant domestic workers within the intersection of gender, class and race

Race, ethnicity, gender and class are socially constructed to produce and maintain social stratification among people within the society.³⁸ Social stratification has classified people in different classes based on particular aspects. Being mostly *female*, migrant, and unskilled, domestic workers are classified into the least respected class. The low stratum is attributed to such numerous reasons as race, ethnicity, gender and status socially constructed by the employers, agencies and the society in general. The socially constructed images of domestic workers resulting from through the intersection of race, ethnicity, gender and status have resulted in stimulate oppression, rights violation, and discrimination in the society. Gender-bias has traditionally and customarily worsened the status of underpaid workers. The justification may derive from the traditional perspective of free maternally-attributed housework. Being a paid domestic worker, a woman is thought to be better off than doing purely unpaid housework. In an informal conversation in Kuala Lumpur an employer who hired an Indonesian/Banjarese housemaid explained that: "The maids are actually fortunate to secure a job in Malaysia and earn a salary in Ringgit Malaysia in addition to free shelter, clothing, and food, which is

³⁸ J. Misra and I. Browne, "The Intersection of Gender and Race in the Labor Market," *Annual Review of Sociology* 29, no. (2003): 490.

comparatively much higher than that earned in the same domestic work in Indonesia. Even worse, they may have earned much less or even no salary when they have to work for their own families." The low-ranked status is also attributed to the migrant status, implying the unavailable alternatives but receiving the domestic works at any payment level. Equally important, low education seems to contribute to the negative labeling for domestic workers. Most domestic workers are those with limited access to formal employment due to their failure to compete in rarely available job opportunities prevalently experienced by the people in such developing countries as Indonesia. Failing to meet the formal requirements and limited work opportunities in both formal and informal sectors has led the marginalized people, mostly unskilled women, go abroad to secure a job.

All participants in the case study were rural and isolated women with average schooling of either elementary or lower secondary level. The presentation of this case study is in line with Hannah Andreovski and Samantha Lyneham's findings³⁹ that domestic workers exploited in Malaysia had only a basic level of formal education. Forty percent of respondents received elementary-level (primary school) education or no formal education at all (n=736) and less than one-third completed high school (29%; n=525). Accepting the job as a domestic worker is inevitably their only chance of employment and the seemingly fascinating migrant domestic work has lured the needy and desperate women wishing to give up the long-standing poverty and escape from their own marital despair at once.⁴⁰ The majority of these women seek employment in the domestic service sector, as domestic work attracts high wages (compared with other occupations in Indonesia) for positions that require minimal skills.

The influx of domestic workers is characterized by ethnic minorities, alien workers, or unskilled workers from under-developed and economically poor countries. Accordingly, lower employment sector has been heavily assigned to race and ethnicity. Being ethnically-minor, alien, unskilled, and migrant has put them in different treatment from other racial-ethnic backgrounds or nationalities. Categorized in this group of unfortunate workers, female unskilled

³⁹ Andreovski and Lyneham.

⁴⁰ The current research by Hannah Andreovski and Samantha Lyneham reveals that just over one-third of Indonesian domestic workers in Malaysia were married (38%, n=692); a similar number reported being single (n=679, 37%), 14 percent (n=259) were divorced and eight percent (n=141) were widowers. Over half of respondents reported having at least one child (56%, n=1,006), one-third (n=396) of whom were not married (ie were single, divorced, widowed or separated). See *ibid*.

migrant domestic workers from such countries as Indonesia belong to 'others'.⁴¹ Belonging to this stigmatized group, domestic workers influence have been trapped in the ethnically-and-racially-based social hierarchy and unequal treatment as reflected in the exclusion of migrant domestic workers from the local labour law. Such a discriminating law is not applied to the local domestic workers who enjoy privileged local legal protection and other national legislations and laws. Holding the status as the citizen of Malaysia, they are favourably treated. Another discrepancy clearly practiced through lower wage for longer working hours among particular migrant domestic workers. Higher payment is generated by domestic workers from Philippines while domestic workers from Indonesia, Bangladesh and Myanmar are relatively underpaid.⁴² Preference of employers and agencies to recruiting domestic workers from Indonesia, Bangladesh and Myanmar instead of domestic workers from Philippines is apparently due to the facts that they are less educated, cheaper and more docile than domestic workers from Philippines.⁴³ In a telephone conversation, an agent in Kuala Lumpur promoted Indonesian maids to be more profitable for domestic work employment due to their characteristically being more diligent, more docile and cheaper.⁴⁴

In addition, being racially and ethnically different has put the domestic workers in systematic oppression and infringement of rights of domestic workers. The condition is justified with the stigmatized status of being 'others' or 'outsiders' by the society. Stigmatized class of 'others' or 'outsiders' has resulted in negative assumption about domestic workers. Since they are perceived to be lazy and unintelligent and accordingly they are not eligible for rights and benefits.⁴⁵

The negative images deriving from racial and ethnical status of domestic workers indeed have resulted in oppression and violation of domestic worker rights. Their status of being others or outsiders has limited their access to nation-wide.⁴⁶ The status of being an outsider of the society is indeed referred to race and ethnicity. The negative images of domestic workers in

⁴¹ Misra and Browne: 502.

⁴² Nicola Piper, "Rights of Foreign Workers and the Politics of Migration in South-East and East Asia," *International Migration* 42, no. 5 (2004): 77.

⁴³ Ibid.

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⁴⁵ J Elias, "Struggles over the Rights of Foreign Domestic Workers in Malaysia: The Possibilities and Limitations of 'Rights Talk'," *Economy and Society* 37 no. 2 (2008): 293.

⁴⁶ Ibid., 294.

Malaysia are only applied to the migrant domestic workers instead of the local people who are working in the domestic sector. Accordingly, they are discriminatively and unequally treated.

Gender has been a sensitive issue in any social aspect. Such is also the case in domestic works mostly performed by women. Using gender as another basis of stigmatization for domestic workers, the society has practiced discrimination and infringement of the rights of female domestic workers. Underpaid female domestic workers are traditionally classified as informal sector in a private house. In spite of their living-in the house, they are degraded to merely household helpers instead of family members.⁴⁷ Not only do employers treat female domestic workers as household helper but they are also the left hand of the wife. The female employer has direct supervision of domestic workers compared to male employer since domestic workers are portrayed as the assistant of the wife. A female employer who is a teacher in Changlun explained that it is a female employers who exercised direct supervision on domestic workers since male employers had no adequate time to do so. Beside that, male employers are not allowed to get close to female domestic workers. I have frequently heard that some female domestic workers are said to have seduced their male employers.

Attribution to lower class of employment is related to the commonly perceived hierarchy of social class. Becoming the members of this group, domestic workers have to suffer continuous practice of oppression, discrimination and infringement of rights by employers. They are classified in lower class of employment since they perform 3Ds (difficult, dirty and demeaning) works. In Malaysia, class hierarchy is practiced between local people and migrant workers and within migrant workers. This stratification is based on the status of employment in the society. Migrant workers are socially classified into skilled workers in high class employment and unskilled migrant workers in lower class job. Domestic work is classified into the lowest class of employment. Domestic work is characterized by unskilled labour and is commonly viewed as unreal work due to the informality or household. It is perceived that only ethnic minorities, those with low economic condition, or those migrant workers from neighbouring countries are suitable for the work. Furthermore, skilled migrant workers in Malaysia are viewed as one of the actors behind the economic growth and consequently they are eligible to have privilege in enjoying numerous rights same as the local people. Thus, with the privileged rights skilled migrant

⁴⁷ Ibid., 292.

workers are socially respected in the society.⁴⁸ On the contrary, for the society and middle class employers, employing the domestic workers will mean that they are socially respected.⁴⁹

Violation, infringement, and abuse admittedly derive either from race, ethnicity, and gender or intersection of them. It seems that the intersection of the three aspects has contributed much on the prevailing violations of rights by the society (employers and employment agencies) in Malaysia. Consequently, they are stigmatized and portrayed and consequently they are prone to oppression, discrimination and infringement of domestic workers rights. In addition, this intersection also establishes social hierarchy within the society in which domestic workers are in the lowest level. Modern servitude or slavery is practiced through mistreatment of migrant domestic workers as the commodity that employers may purchase from the labour market through employment agencies.

Indonesian maids, despite "their lowly' position or status as servants," strongly felt that they still had the right to demand respect from their employers. But from the middle-class employers' perspective the fact that they provided their live-in Indonesian maid full board and lodging and monthly wages meant that they had the "moral right" to dictate the latter's every move without any demarcation over public (work, duties) and private (the maid's personal life, privacy) domains. The researcher had an opportunity to have a conversation with a male employer in Sintok. He happened to be an employee of one university in Malaysia. This employer said that his domestic workers escaped from the home and gave up the job. Madly he complained: "I have no idea why she run away from home. I have paid much money to the Agency, almost RM 8.000. When she first worked here, she knew nothing while the Agent said that she was a skillful and well-trained worker. The fact is that she broke the washing machine and cooker. She burned some of our clothes while ironing. I suffered financially. I have provided her proper clothes and food just like what we have. She got her own bedroom as well so that she could take a rest comfortably and conveniently. As a domestic worker who worked at home, she should have been available to work 24 hours as necessary. Moreover we have little child who can easily wake up. We have given all she needed. But she abandoned the home and gave up the job.

⁴⁸ Jr Robert Hughes and Maureen Perry-Jenkins, "Social Class Issues in Family Life Education," *Family Relations* 45, no. 2 (1996): 292.

⁴⁹ Martin Ruhs and Ha-Joon Chang, "The Ethics of Labor Immigration Policy," *International Organization* 58, no. (2004): 72. This article clarified that hiring domestic worker is similar to possessing or owning material items that symbolize an achievement to maintain higher social status in the society as middle class family.

Legal consciousness of injustice and strategy of resistance

Legal consciousness of injustice is an important aspect in social interaction where possible social gaps may exist. Mutually beneficial interaction will be difficult to achieve due to the embedded status discrepancy between one person and another. The people involved in the interaction are equally potential to infringe others' rights, and accordingly, good legal consciousness of injustice has to be grown up in order to frame a fair and just relation.

Being a slow-moving mechanism, law is largely inaccessible to everyday citizens. Consequently, the law has been subjective and consistently it is difficult to result in equitable outcomes for everyday people and the less powerful. With the Against the Law consciousness, individuals may either accept the problem or "lump it." However, this consciousness frequently may take the forms and levels of defiant action. The following is the excerpt from Ewick and Silbey about Against the Law consciousness and the way it leads to resistance:

Law is a product of power. Rather than objective, legality is understood to be arbitrary and capricious. Unwilling to stand before the law and unable to play with the law, people act against the law...people talk about the rules, tricks, and subterfuges they use to appropriate part of the law's power.⁵⁰

Resistance has been a kind of strategic attitude or behaviour to deal with the unexpected moments or events. Considering the significance, it has to be appropriately studied. To analyze the role of law in everyday resistance to inequality within this against-the-law orientation, Marshall introduced a theoretical framework which she calls the legal consciousness of injustice. This framework is intended to understand the bottom-up relationship between law and social change since it is believed that changing social, political, and cultural values might lead to everyday life conflicts. Equally important to law are political debates and organizational practices since they might result in disputes.

The framework is employed in an empirical study of sexual harassment in a particular workplace. In a specific way, attempts are taken to identify how women confront their experiences with unwanted sexual attention at work. In particular, she examines the interpretation and response to experiences. Arguably, the assigned meaning of these experiences reflects more than just legal rules but also broader political and social debates about equality and the role of women in the workplace. These meanings have become the basis for women to come

⁵⁰ Ewick and Silbey, 28.

to decision of whether to complain or to ignore the behaviour or even to participate in sexual joking and banter with co-workers. The women's decisions and management responses shape the meaning of sexual harassment laws in particular workplaces.⁵¹

Inequality is not an exclusive stand-alone issue. It results from unequal position and power between the involved parties and results in unfair process and unjust outcome. As Marshall reveals, inequality is believed to construct everyday life. Such crucial aspects of daily life as schools, jobs, neighbourhood, and healthcare are influenced by system of stratification based on class, race, sex orientation, and ethnicity. We take for granted whatever we routinely do in our daily lives. We live the broad social forces the way they are due to the inevitability and naturalness of these routines. In spite of the unfortunate nature, inequality has to be widely accepted aspect of social life.⁵²

While some people take oppression for granted as the inherent part or risk of life, some others refuse any kind of unequal treatment. Historically, challenges had emerged at particular moments. These challenges normally occur in public policy arenas, such as courts or legislatures while resistance may occur in both public policy and everyday life. The emerging "new" social movements have politicized the personal and explicitly encourage everyday resistance. Therefore, resistance can be found in private or public aspects and accordingly will result in different responses from the people involved in disputes.

When people obtain and develop new oppositional interpretations of their experiences, new expectations, desires, needs, and grievances will result. People will adopt new meaning of their daily lives. Since they have new concept about what they deserve to have in life, they become demanding for better treatment. While the demands are based on new idea of life, adaptation and adjustment are required. Unless they are adapted and adjusted, opposition from spouses, children, neighbours, co-workers, or teachers may result. Therefore, unless inequality is challenged wisely and properly, it may result in unexpected everyday life conflict from which social changes will seemingly result.⁵³

McCann and March reveals that resistance "...entails efforts by subaltern groups either to renegotiate the terms of dominant power relations or to construct a new separate, alternative

⁵¹ Anna Maria Marshall, *Confronting Sexual Harassment: The Law and Politics of Everyday Life* (Hants, UK: Ashgate Publishing Company, 2005b), 2-3.

⁵² Ibid., 1.

⁵³ Ibid., 2.

forms of practical activity..."⁵⁴ In *Weapons of the Weak: Everyday Forms of Peasant Resistance*, Scott examines the mechanisms by which the less powerful resist entrenched authority. He ethnographically investigated the peasant workers in Southeast Asia where elites had material and cultural domination. Based on his previous work on peasant rebellions, he concluded that there was not any enduring distinction between resistance and conformity. It was stated that the less powerful may take some kinds of largely individual resistant acts frequently committed under the guise of compliance. Scott suggests that everyday forms of resistance can include such wide spectrum of actions as foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage, and others."⁵⁵ This implies that resistance may take either such hard form as frontal opposition or such soft forms as the aforementioned acts.

Only few people are capable of developing some form of resistance to the supposed injustice as a copying strategy. It is most likely that resistance is predominantly expressed by individuals with an *Against the Law* consciousness. Considering the significant role of against-the-law consciousness in the resulting resistance, it is important to recall the dynamic and interactive nature of these categories of consciousness. Empirically, the applications of Ewick and Silber's schema have demonstrated that there are multiple types of legal consciousness among individuals. Although "consciousness forms are not always in correspondence to actors," this typology enables us to understand the mechanism and interpret the sometimes "multi faceted, contradictory, and variable legal consciousness" of individual environmental activist.⁵⁶

Strategies deployed by domestic workers as alternative onto litigation

According to Foucault resistance is inevitably inherent in the exercise of power. This is particularly true since the "effective exercise of power need not imply the removal of liberty."⁵⁷ This implies that to comprehensively study the power, it is necessary to concurrently study 'total structure of actions brought to bear' on the actions of others in particular cases, and of the resistances and evasions encountered by those actions.⁵⁸ Based on this perspective, as 'subjects of

⁵⁴ Michael McCann and Tracey March, "Law and Everyday Forms of Resistance: A Socio-Political Assessment," *Studies in Law Politics and Society* 15, no. (1995): 230.

⁵⁵ J. Scott, *Weapons of the Weak* (New Haven: Yale Univ. Press, 1985), xvi.

⁵⁶ Ewick and Silbey, 50; Susan S. Silbey, "Making a Place for Cultural Analyses of Law," *Law & Social Inquiry* 17, no. 1 (1992): 46.

⁵⁷ B Hindess, *Discourses of Power: From Hobbes to Foucault* (Oxford: Blackwell Publishers, 1996), 101.

⁵⁸ Foucault 1982 cited in *ibid.*, 101.

the effects of power and hegemony' domestic workers are equally capable of 'exercising their power on their own account' since they are themselves 'in a position to act on the actions of others'.⁵⁹

The focus of study on resistance by subordinated or dominated groups has shifted from collective violent uprisings and revolutions aimed at overthrowing systems and dominant ideologies to also encompass non-confrontational, fragmented and more ad-hoc styles of resistance pervasively practiced in everyday relations.⁶⁰ Some examples of these nonviolent forms of resistance identified by Scott, in his work on smallholders and landless labourers in Peninsula Malaysia are foot-dragging, discursive protests, ridicule, and petty acts of noncompliance, sarcasm, dissimulation, and perseverance against overwhelming odds.⁶¹

Other strategies were also reviewed by Romero. Among others are chicanery, confrontation, tricks, silence and mockery. These strategies are utilized by domestic workers to manipulate their being degraded by employers.⁶² Meanwhile, Dill revealed that domestic workers tactically employed deferential acts or 'to play the part expected of them' by white employers. These acts are aimed at 'fooling' white employers while she noted that Cock supposed that domestics put on deferential acts as a 'protective disguise' to maintain their integrity and personalities intact.⁶³ Therefore, these researchers similarly view domestics' displays of deferential acts as consciously employed strategies to manipulate employers and to lessen subjugation by defining what they would or would not give to employers in terms of time, commitment and personal involvement.⁶⁴

Later works documenting how domestic workers resist certain aspects and effects of power have taken a broader view of power and of the means while underscoring paid domestic work. For example, Yeoh and Huang, in viewing the negotiations of public space use in Singapore between domestic workers and the host society, assume that domestic workers display certain styles and strategies to challenge the dominant discourse of the fixed identities as workers, domestics and aliens without any right of public space occupation'.⁶⁵ Further, Yeoh and Huang

⁵⁹ Ibid., 101.

⁶⁰ L Abu-Lughod, "The Romance of Resistance: Tracing Transformations of Power through Bedouin Women," *Am. Ethnol* 17, no. (1990); Constable.

⁶¹ Scott.

⁶² Ibid., 138-139.

⁶³ Ibid., 138-139.

⁶⁴ all cited in *ibid.*, 138.

⁶⁵ B. S. Yeoh and S. Huang, "Negotiating Public Space: Strategies and Styles of Migrant Female Domestic Workers in Singapore," *Urban Studies* 35, no. 3 (1998): 599.

noted cumulatively, the actions of individual domestic workers to re-immense themselves in their native culture and individual strategies are not deliberately arranged. Rather, they are habitual routinised practice that results in routinised colonisation such public spaces as parks and shopping malls on Sundays. This routinised occupation shows that they are not weak at all.⁶⁶ However, they also stressed that these strategies and styles do not always successfully eliminate the discriminative borders since there are more complex social relations underpinning the boundary construction.⁶⁷

Likewise, Chin has documented that Indonesian domestic workers in Malaysia have had such infrapolitical activities as foot dragging, feigning illness, smearing employers' possessions with blood, and dressing and acting differently on rest days as means of challenging the extracting and exploitative practice of the dominant party.⁶⁸ She went further by highlighting that they also employed these strategies to contest the identity construction process based on symbolic and material dimensions of class intertwined with gender, race/ethnicity, religion and nationality'.⁶⁹ However, she questioned whether these activities were effective to contest the employer-constructed identities due to the potential backfire and further negative representations of foreign domestic worker in and through the dominant discourse of paid domestic work as narrated by the dominant party.⁷⁰

While these works recognize the more complex workings of power and its effects (e.g., power exercised through discourse as illustrated in Chin's research and the effect of contestation over the use and 'colonization' of public space in challenging the 'self other boundary' in Yeoh and Huang's works, they focus merely on the effects of noncompliance acts while overlooking domestic workers' deference/compliance or deliberate attempts to conform to idealized images and identities of domestic workers in the host states.

Admittedly, the strategies described in these case studies are similar to resistance strategies detailed by Scott (1985)⁷¹. Here are some strategies exercised by migrant domestic workers in practicing their resistance to their employer's power in different forms of conflict that they had been involved.

⁶⁶ Ibid., 598-599.

⁶⁷ Ibid., 599.

⁶⁸ Christine B. N. Chin, *In Service and Servitude: Foreign Female Domestic Workers and the Malaysian "Modernity" Project* (New York: Columbia University Press, 1998).

⁶⁹ Ibid., 126.

⁷⁰ Ibid., 126.

⁷¹ Scott.

In response to scolding or complaints from employers, as consummate actors, migrant domestic workers shout out a recited “Yes, ma’am,” disguising their true feelings (dissimulation). In the case of Latifah, she considered her employer as ‘stubborn’ and determined not to change her argument, even though she was wrong. Once, Latifah was asked to cook a certain food (she cannot recall what it is). She argued the people in the house never wanted that food. The Datin seemed to be not happy and showed her anger. She insisted forcefully to cook the food. Since then, Latifah realised that her employer never accepted the word ‘no’, any refusal or contradiction. She always pretended to cope with any situation, to make her employer happy. According to Latifah, her employer would always be happy to see her absolute obedience to the employer.

Likewise, Jumanah knew very well that talking back to the employer would result in even worse situation. Jumanah said that:

“When I was at the training center in Indonesia, the teachers always reminded us not to argue to the employer, although we are right. Otherwise, the employers would be more upset. We were taught not to say even a word when the employer got angry.”

Jumanah (translated from Bahasa Indonesia)

It happened also to Hesti. In times when she had to face up the fact that the female employer was angry with her and scolded her Hesti kept herself not to be reactive. She listened what the employer said but responded no single word. This kind of defensive mechanism was proven to be successful. The anger diminished and vanished gradually.

“Being not reactive was effective to stop the conflict. Allowing the employer to burst into anger was good to release the temper to obtain emotional stability. Meanwhile, listening to what she said was a wise way for me to know what she expected, while introspecting if I had probably done wrong.”

Hesti (translated from Bahasa Indonesia)

To swear honesty against accusation is what Nia Kurniawati did in response to the criminal conviction from her employer. Nia did so when conflict had mounted to the intolerable tension. Once she was accused of stealing, which she strongly denied. Although they could not prove the accusation, they insisted that she had wronged them. Getting rid of further dispute and conflict, she offered her 4-month salary to compensate the loss. This represented, unfortunately, a kind of admission of guilty.

“I was accused of stealing some money. Of course I didn’t, but they insisted I did, although they failed to prove. I don’t want to get involved in dispute or conflict. I offered them to deduct my salary to compensate that loss; as much as 4-month salary.”

Such was also the case for Jumanah. The common way to prove innocence among the migrant domestic worker, as Jumanah did, was swearing which was hardly believed by the accuser. To assure her not being guilty for stealing, Jumanah naively offered the employer to charge the loss to her, and offered her to deduct her salary to compensate the accused loss, although she was strongly affirmed that she did not do the accused act. In her case, the missing skirt was finally found.

“I am swearing, in the name of Allah I did not do it. Please cut my salary even a year, but I did not steal it.” Nevertheless, the sister-in-law did not believe on me and kept suspecting me on stealing. During a month she got angry, cut me off, and spoke above me and threatened to cut my salary. Finally she found the skirt somewhere in her room.”

Jumanah (translated from Bahasa Indonesia)

Leave their workplaces legitimately (desertion). This was what Latifah had done. Actually, she always got along very well with her employer, but not with her daughter in law who lived in the same house. The daughter in law was a bit silent and speak very little or not at all. When she got angry she just went silent and became very noncommunicative. One day, Latifah made a mistake and she did not talk at all. On the contrary, she wrote a letter and dropped it to Latifah’s room. Unfortunately, this was very painful for her as she is very much into self-expression.

“Can you imagine how painful it was, if we had lived at the same house and never talked? I simply glanced at that letter and then burned it. It hurted me and made me feel worse than if she had just done the deed with true courage.”

Latifah (translated from Bahasa Indonesia)

At that time, I was stressed and think to step out, finding a place away from everybody. I felt it would be helpful to have a friend, relative or significant others with me. I eventually went to my uncle’s home in Kuala Lumpur, about 2 (two) hours driving by taxi. I thought this might help me to keep my self calm during the tough times. I told him about what happened and the person that upset me. Fortunately, he understood and readdressed the situation to my employer. It took me only 3 (three) days to straighten the situation and I went back to Damansara and started to work again.

Third party mediation. Hesti, an independent and brave girl was frequently assigned in shop assistance. Her extensive interaction during the shop-assisting service has opened up her mind

about the inherent legal rights of domestic workers. She had good contact with the local policemen who always friendly greeted her whenever they met. She also had a good relation with the other some Chinese people from whom she learned not to speak harshly or behave rudely. Her good relation with the local policemen had become a kind of protector or resolver to her.

“The policemen once came to my employer and advised them not to be harsh and rude to the employees. Since then, the employer showed much better appreciation and respect to the employees. No more blaming!”

In addition, it appears that a significant number of Indonesian women might use “black magic” to protect themselves from unreasonable employers; hence, Indonesian training centres regularly search and confiscate “black-magic”- related special stones, roses, and slips of paper with Arabic writing from departing domestic workers. Women also devise strategies to resist exploitation by family members in their home countries. In some conversation with Latifah, implicitly she disclosed that reciting the wirid dan zikir suggested by her spiritual teacher would calm down any anger and madness and bring in mercy and love to her. Likewise, Latifah had conflict with other domestic workers. They were jealous for the close and favorable contact with the employer and had accused her of having exercised some form of magical spells to the employer. She declined the accusation and claimed that what she had performed had been the obligatory and advisable shalats and a bit longer of zikir recitation.

Many of these strategies are doable because domestic workers actually witness the power dynamics of family members and are aware of the family’s daily routine and schedule. This study provides evidence of various strategies of resistance used by domestic workers that go beyond those detailed by Scott.

Conclusion

A great number of studies have theoretically and empirically explored whether social status and legal life are related. Consensually, law is perceived an elite-controlled instrument to achieve their objectives. It is widely perceived that legal agencies are too exclusive that people with lower-status have no or limited access. If they happen to have, lower-status people will stand as defendants against the people with higher standing. Sociologically, it is hypothesized that, higher-rank people are more likely to file complaints against the inferiors. In addition, the use of the law is more prevalent among higher-ranking individuals than lower-status individuals⁷²

⁷² M. P. Baumgartner, "Law and the Middle Class," *Law and Human Behavior* 9, no. 1 (1980).

Equally important, reluctance seems to contribute to the low rate of complaint. Some cultures develop a reluctance to confront. Particularly, the poor are reluctant to deal with the courts. They are reluctant because the society strongly stigmatize law encounter for whatever reason and in spite of innocence. In these cultures, litigation is equivalent to trouble making and police investigation may be socially interpreted as guilty until proven innocent. In spite of the importance of these cultural factors, it is found that for the poor, avoidance to the legal system reflects a parochial traditionalism rather than a rational response. To this phenomenon, Hill suggested in a study of 17th Century England that as long as the content and application of the law is stacked against the poor, the poor will see the law a threat.⁷³

Almost all of the participants of the study had little understanding of their rights under Indonesian or Malaysian law and the contracts they had signed. Further, they also had very limited awareness of redress mechanisms available to them should they suffer mistreatment. While some domestic workers seemed to know where to go if they had a problem in the destination country, they had not been informed and had no knowledge of the procedures or documentation required to seek redress.

In response to the difficult employment, domestic workers have developed some strategies. The resistance strategies are aimed at alleviating the physical and psychological burdens. As detailed by Scott (1985), employees will call or talk to friends with the absence of the employer. Or else, they only complete the observable works and leave the unnoticed parts. On the one hand, employers develop higher trust to domestic workers because they have daily interaction. On the other hand, employers exercise lower control on domestic workers. In fact, many domestic workers exercise some strategies of resistance such as dissimulation, murmuring in her own language, swearing honesty against accusation, leaving their workplaces legitimately (desertion), third party mediation and using “black magic”. Many of these strategies are successfully executed because domestic workers know very well about the family power dynamics and the family’s daily routine and schedule. This study provides evidence of various strategies of resistance used by domestic workers that go beyond those detailed by Scott. Researcher found that domestic workers provide information to employers about neighboring families and use “family” claims in negotiating with their employers. In addition, it appears that

⁷³ Michael R. Anderson, "Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in Ldcs," in *WDR Meeting* (1999).

a significant number of Indonesian women might use “invocation of zikir” to protect themselves from unreasonable employers.

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