MINISTRY OF EDUCATION AND TRAINING MINISTRY OF JUSTICE
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LAW ON DOMESTIC LABOR RELATIONS IN VIETNAM

SUMMARY OF THE PHD THESIS

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INTRODUCTION

1. Rationale

Domestic labor (DL) is a type of work that appeared relatively early in history and has made a significant contribution to socioeconomic development. In the current period, when the economy is growing, the demand for domestic workers is increasing. Domestic workers are a labor force that is of great interest to the world. Most of the workers come from rural areas, with low educational attainment (some are even illiterate), and practice by their own habits and experiences. In the employment relationship between the homeowner and the maid, the employer is always in an active position. In fact, the majority of domestic workers do not have a probationary period, they may not be hired when unsatisfactory. About one-third of domestic workers have conflicts with their host families, which are mainly caused by disagreements over working methods, behavior, and wages. The main way to resolve disagreements is to negotiate directly between the employer and the domestic worker. The lack of written agreements puts workers at risk of labor abuse. It is the inequality in this relationship that easily gives rise to disputes and contradictions in reality.

For a long time, Vietnamese labor law did not have adequate provisions on domestic labor. The Labor Code (Labour Code) from 2012 to 2019 has had a breakthrough change by legalizing the issue of domestic labor to protect this labor relationship. However, in practice, the implementation of these regulations has not been effective because of this inequality in labor relations. Moreover, due to the lack of state management measures, there are still many shortcomings, so many complex social problems have arisen, affecting social order and safety, as well as the interests of stakeholders. Therefore, it is required to continue researching to come up with solutions to improve the law on domestic labor relations, creating a solid legal basis to regulate this labor relationship.

Currently, although there have been a number of studies on domestic labor, the approach to domestic labor relations from the perspective of jurisprudence is still limited. Since the Labor Code of 2019 took effect (January 1, 2021), there have not been many research works on domestic labor. For the above reasons, the author chose the topic "***Law on domestic labor relations in Vietnam*** " as the research topic for my doctoral thesis.

2. Research purposes and tasks

The purpose of the thesis is to clarify the theoretical issues of domestic labor relations (DLR) and the law on domestic labor relations. This is the basis for developing

recommendations with a reference value to improve the law and the efficiency of law enforcement on DLR in Vietnam.

To achieve the above purposes, the research tasks of the thesis are determined to include:

- Synthesize, classify and evaluate research works on DLR and the law on DLR in Vietnam;

- Building a theoretical framework on DLR;

- Analyze and assess the current status of legal provisions on DLR, and the practice of law enforcement on DLR in Vietnam;

- Select appropriate recommendations and solutions to improve the law and improve the efficiency of law enforcement on DLR in Vietnam.

3. Object and scope of research

3.1. Research object

The research object of the thesis is the legal contents related to DLR; the practice of building and implementing the law on DLR in Vietnam; international experience in the improvement of the law on DLR.

3.2. Research scope of the thesis

In terms of content, the thesis limits the scope of research to focus on legal issues related to the regulations on the establishment, implementation, and termination of DLR and legal measures to ensure law enforcement on law on DLR.

In terms of space, the thesis focuses on researching theoretical issues, the current status of regulations, and the practice of law enforcement on DLR in Vietnam. The theoretical issues and provisions of international law and the laws of some countries in the world on domestic labor are also studied to refer to the experience for Vietnam's labor law.

In terms of legal documents: The thesis studies the legal status of DLR in Vietnam through provisions in current legal documents such as the Labor Code 2019 and guiding documents; 2013 Constitution; Law on Social Insurance 2014; Employment Law 2013; Law on Occupational Safety and Health 2015; etc.

4. Research Methodology

In order to achieve the research objectives set out, in the process of researching the thesis, some basic research methods have been used as follows:

- Methods of analysis and synthesis: used throughout the thesis to study the overview of theoretical issues on DLR, to comment on and interpret the actual legal provisions on DLR.

- The historical method is used to study and clarify the process of formation and development of Vietnamese law and international law on domestic labor.

- The legal comparison method is used to find out the similarities and differences between the laws of Vietnam and the laws of some countries in the world, and regulations and recommendations in ILO Conventions to draw experiences and lessons in the development and application of foreign laws related to domestic labor. This method is used sporadically in chapters 2 and 3 of the thesis.

- Method of deductive, inductive, and synthetic synthesis: this is a method in terms of expressing and arranging, and organizing ideas that are used flexibly to suit the content and purpose of expression in the whole thesis.

5. New contributions of the thesis

In terms of theory, the thesis provides theoretical knowledge on DLR and the law on DLR based on the viewpoints and policies of the Party and State on labor policies and laws in general, and the law on DLR in particular, contributes to enriching the academic side of the science of labor law, perfecting the legal basis for DLR in Vietnam.

In practical terms, the thesis has contributed to a relatively complete and comprehensive clarification of the legal status of DLR in Vietnam through analysis and commentary on current regulations and practice of law implementation. Specific explanations and comparisons and contrasts between the legal provisions on DLR in Vietnam and international law help highlight the progress and limitations in the current regulations. Thereby, the thesis has pointed out the theoretical and practical requirements necessary to amend and supplement a number of legal provisions on DLR in Vietnam.

6. Structure of the thesis

In addition to the introduction, conclusion, list of references, and appendices, the thesis is structured into the following parts:

Literature Review.

Chapter 1: Theoretical issues on domestic labor and the law on domestic labor relations.

Chapter 2: Legal status of domestic labor relations in Vietnam

Chapter 3: Recommendations to improve the law and solutions to improve the law enforcement on domestic labor relations in Vietnam.

LITERATURE REVIEW

1. Literature review of research works

1.1. Group of research works on theoretical issues of domestic labor and the law on domestic labor

- Asha D'Souza (2010), Moving towards Decent work for Domestic workers: An Overview of the ILO's work, ILO Bureau for Gender Equality.

- Yogita Beri (2020), A Study on Female Domestic Workers in India, Journal of Interdisciplinary Cycle Research, Volume XII, Issue VI, P. 1397;

- Caro, E., Bailey, A., & Van Wissen, L (2012), “Negotiating between patriarchy and emancipation: Rural-to-urban migrant women in Albania”, in Gender, Place and Culture magazine;

- S Grover (2017) Revisiting the Devyani Khobragade controversy: The value of domestic labor in the global south, Asian Journal of Women's Studies;

- Author Kateryna Byelova (2014), "Social and legal empowerment of domestic workers in Brazil", Master Thesis, Norwegian University of Life Sciences

- A Triandafyllidou (2016), Irregular migrant domestic workers in Europe: who cares?

- Do Thi Dung (2018), "Law on domestic work in Vietnam"

- The book "Homework in Vietnam" (2018) by GFCD edited by Dr. Ngo Thi Ngoc Anh;

- The report "Decent work for domestic workers" was made under the authorization of the ILO and the Ministry of Labour, Invalids and Social Affairs and published in Publishing House. Labor - Society in 2012;

- Master's thesis: "Household labor law and practice in Hanoi" (2015) by Nguyen Thi Viet Anh;

- Master's thesis: "Law on domestic helper labor - Status and direction of improvement" (2015) by Tran Linh Trang.

- Doctoral thesis "Law on domestic worker labor in Vietnam" (2020) by Nguyen Thi Phuong Thuy;

- The article "On the concept and role of domestic workers" published in Law Journal No. 11/2016, author Do Thi Dung;

1.2. Group of research works on legal provisions on domestic labor and practice of law enforcement

- Research "The Absence of State Law: Domestic Workers in India" by the group of authors Neetha N. and Rajni Palriwala published in the Canadian Journal of Women and Law in 2011;

- The book "Effective protection for domestic workers: A guide to designing labor laws" (2012) of the International Labor Organization (ILO).

- Research on “The ILO Domestic Workers Convention and regulatory institutions in Argentina, Chile and Paraguay. A comparative study of working time and remuneration regulations” by Lorena Poblete;

- Report “Protecting the rights of Domestic Workers” (2014), Anita Liu

- The book "Domestic service and the formation of European identity: understanding the globalization of domestic work, 16th-21st centuries" (2004) of housework, 16th-21) by A Fauve-Chamoux;

- The book "Recognition of the Rights of Domestic Workers in India: Challenges and the Way Forward" by the author group Upasana Mahanta and Indranath Gupta in 2019;

- The book "Law on Domestic Labor in Vietnam" in 2018 by Dr. Do Thi Dung (editor) in 2018

- The book "Domestic labor in Vietnam" in 2018 of GFCD by Dr. Ngo Thi Ngoc Anh (Editor)

- Research report “Risks of domestic workers due to the COVID-19 pandemic” in 2020 of the International Labor Organization (ILO);

- Thesis "Law on domestic labor - Current situation and directions for improvement" in 2015 by Tran Linh Trang;

- Thesis "The current status of the law protecting the rights of domestic workers in Vietnam" in 2018 by Nguyen Quynh Phuong;

- Thesis "Labor contract for domestic workers according to Labor Code 2012" in 2015 by Nguyen Thi Thao;

- Thesis "Domestic labor under Vietnamese law from practice in Hanoi" in 2015 by Pham Trung Giang

- The article "Law on domestic worker labor and recommendations for improvement" in 2014 by Dao Mong Diep published in the Journal of Law;

- The article "Domestic labor - from a legal perspective" in 2016 by Le Thi Hoai Thu, Nguyen Thi Phuong Thuy published in the Journal of Democracy and Law;

- The article "From regulations to practice of exercising rights of domestic workers", Legislative Research Journal, No. 04 (332) February 2017, by Dao Mong Diep and Truong Thanh Khoi;

- The article "Working conditions and employment for domestic workers - Current situation and recommendations", Journal of Democracy and Law No. 2 (311) 2018, author Nguyen Hien Phuong

1.3. Group of research works on improving regulations and the effectiveness of law enforcement on domestic labor

- The book "Law on domestic labor in Vietnam" in 2018 by Dr. Do Thi Dung (editor), Judicial Publishing House;

- The book "Domestic labor in Vietnam" in 2018 of GFCD by Dr. Ngo Thi Ngoc Anh (editor);

- The project "Protecting the rights of domestic workers in Vietnam" GFCD includes reports: "Overview of the domestic labor situation in Vietnam from 2007 to present" (2013); “Review of laws, policies, international and Vietnamese studies related to domestic labor” (2013); “Developing a policy to protect the rights of domestic workers in Vietnam” (2013).

- Master's thesis "Domestic labor according to Vietnamese labor law from practice in Ho Chi Minh City" in 2017 by Nguyen Chung Phuoc Luu;

2. An overview of the literature review and issues that need further research

2.1. An overview of the literature review

Firstly, the works have deeply analyzed the general theory of domestic labor and the law on domestic labor. Clarifying the concept of DL, analyzing the specific characteristics of domestic workers. These results will be studied by the author of the thesis with inheritance in order to provide a more complete and modern concept of domestic labor and the law on DLR, to explain the characteristics of domestic labor, the role of domestic labor and the principles of governing the law on DLR more appropriately, the adjusted content of the law on DLR is more comprehensive and profound.

Secondly, each research work has made a certain contribution when assessing the legal status of domestic labor in Vietnam in each specific historical period. These are valuable resources that the author can absorb and continue to develop and use as a database for evaluations in the thesis.

Thirdly, regarding the proposal to improve the law, there have been a number of domestic and foreign research giving different views. Proposals focus on amending and supplementing legal regulations and improving the efficiency of law enforcement on DLR in Vietnam.

2.2. Issues that need further research

First, study more specific theoretical issues on domestic work, access to progressive world views, and international labor standards on domestic labor. Analyze the views on domestic labor, give a more comprehensive definition of domestic labor, analyze and deepen the characteristics, roles, and classification of domestic labor.

Second, develop concepts and analyze the content of the law governing DLR to ensure that it is consistent with international perspectives and international labor standards on DLR, specifically, in-depth research on the establishment, implementation, and termination of DLR; settle disputes over domestic labor and state management of DLR.

Third, comprehensively analyze and evaluate the current state of Vietnam's law on DLR according to each adjustment content, and at the same time evaluate the actual implementation of the law on DLR in Vietnam from which to draw the following points: shortcomings and limitations as a basis for proposing recommendations to amend, supplement and perfect the law on DLR and recommendations to improve the effectiveness of the law enforcement on DLR in Vietnam.

Fourth, study the requirements for perfecting the law on DLR in Vietnam in the current period. Propose recommendations to improve the law on DLR in Vietnam and recommendations to improve the effectiveness of the law enforcement on DLR in practice.

3. Theoretical basis of research

3.1. Theoretical basis of research

The theoretical bases applied by the PhD student in the process of completing the thesis include (i) the theory of contracts; (ii) the doctrine of human rights; (iii) the theory of equal rights

3.2. Research questions and research hypothesises

Firstly, in terms of theory

* Research question: What is the concept of domestic workers? Characteristics of domestic workers in domestic labor relations?

- Research hypothesis: domestic workers have their own characteristics compared with workers working in other fields and environments.

* Research question: The concept of domestic worker relationship? The concept of law on domestic labor relations? The principles governing the legislation on domestic labor relations? What does the law on domestic labor relations govern?

- Research hypothesis: the law on domestic labor relations includes the totality of legal provisions promulgated or recognized by the State to regulate social relations between domestic workers and domestic workers. and employers. The system of regulations on domestic labor relations will focus on solving problems of establishing, implementing, and terminating domestic labor relations and legal measures to ensure the implementation of domestic labor relations. present labor-family relations.

Second, about the legal situation:

* Research question: What have the current legal provisions on domestic labor relations been evaluated and commented on? which problems were shown?

- Research hypothesis: The current Vietnamese labor law regulations are built in the direction of maximum protection of the interests of employees, the disadvantaged in labor relations in general, and in labor relations. domestic help in particular.

Third, about requirements and solutions to improve the law and improve the efficiency of law enforcement

* Research question: Given the shortcomings and limitations of the current law in regulations on domestic labor relations, the urgent issue is the need to improve the law on domestic labor relations. What requirements should be met?

- Research hypothesis: With the current legal conditions in Vietnam, there is no complete and reasonable solution to overcome the limitations and inadequacies of the current law.

* Research question: What are the solutions to improve the law on domestic labor relations?

- Research hypothesis: Solutions related to the development and improvement of laws, mechanisms, and policies to ensure the maintenance of harmonious labor relations in general and domestic labor relations in particular, contributing to economic and social development

* Research question: Given that the legal provisions are appropriate but in reality the enforcement is not effective, what solutions are needed to improve the effectiveness of law enforcement?

- Research hypothesis: This is a problem related to the consciousness of law enforcement subjects. It is because it is a subjective matter that the State can hardly control, so it is necessary to raise the legal awareness and responsibility of the enforcer.

CHAPTER 1
THEORETICAL ISSUES ON DOMESTIC LABOR AND THE LAW ON DOMESTIC LABOR RELATIONS

1.1 Theoretical issues about domestic labor

1.1.1 The concept of domestic labor

The first definition of the domestic worker was given by the ILO in 1951. Accordingly, a domestic worker is defined as “A person who performs work in a household, according to the different forms and durations of work to be paid wages, this may be by one or more tenants and the employer must not seek profit from this work”.

From the basic definition of ILO, many countries around the world have also introduced a definition of domestic labor. Definitions of domestic labor by countries are very diverse and are based on different points of view and criteria.

Firstly, from the perspective of domestic labor as work performed in the home for one or more households, Clause 1, Article 179 of Vietnam's Labor Code 2012 clearly states that "a domestic worker is a domestic worker who does regular household chores of one or more households ”;…

Secondly, considering the nature of domestic work as unprofitable work, excluding jobs that support commercial or professional activities can be done at home.

Third, from the perspective of listing the jobs that domestic workers do, including cleaning, cooking, washing, helping animals; taking care of children, helping people with disabilities, gardening, driving...

Within the scope of this thesis, the author mainly approaches and researches domestic labor relations according to the latest regulations of the Labor Code 2019, which is recorded in Article 161 of the Labor Code 2019 specifically: *“Domestic worker is an employee who regularly performs household chores in one or more households. Household chores include housework, housekeeping, child care, sick care, aged care, driving, gardening, and other household chores that are not related to the household. commercial activities.”*

1.1.2. Characteristics of domestic labor

- The form of expression of the relationship of domestic workers is usually through labor contracts

- The working environment of domestic workers is mainly within the household, so it is self-contained and isolated.

- Domestic workers regularly perform household chores and are not related to commercial activities

- The work of the employee must mainly affect the satisfaction of individual needs or of the whole household.

1.1.3. Classification of domestic workers

1.1.3.1 Based on the working time

According to the time of work, domestic workers can be classified into two types: full-time domestic workers and part-time domestic workers.

1.1.3.2. Based on the place of residence of domestic workers

Based on the place of residence of domestic workers, domestic workers are divided into two categories: domestic laborers living in the home of the employer and domestic laborers not living in the home of the employer.

1.1.3.3. According to the content of the work of domestic workers

Based on the content of work, domestic workers can be divided into categories such as domestic workers who take care of the family; Domestic workers who do work to serve family activities.

1.2. Legal issues on domestic labor relations

1.2.1. The concept of labor law on domestic labor relations

From the studies on domestic labor relations and the provisions of international law on domestic labor relations, it can be understood that "The law on domestic labor relations includes the totality of legal provisions promulgated or recognized by the State. to regulate the social relations arising between domestic workers and employers, to regulate issues related to the establishment, implementation, and termination of domestic labor relations as well as measures to ensure the implementation of the law on domestic labor relations".

1.2.2. Principles governing the law on domestic labor relations

- Prohibition of maltreatment, forced labor, sexual harassment, and violence against domestic workers

- Ensure decent jobs and benefits for domestic workers

- Protect property and safety for members of the employer's household

- Ensure conformity with international labor standards and State management of domestic workers

1.2. 3 . Contents of the law on domestic labor relations

1.2.3.1. Law on establishing domestic labor relations

First, the subjects who establish a domestic worker relationship

- Domestic workers: Domestic workers must have full legal capacity and labor behavior capacity.

- Employer: The Employer must have legal capacity and behavioral capacity.

Second, the form of establishing domestic labor relations: Domestic labor relations also arise based on the legal form of labor contracts.

Third, the content when establishing the domestic labor relationship:

- Rights and obligations with respect to wages and salaries of domestic workers and employers

- Rights and obligations regarding working conditions, social insurance, and health insurance

- Rights and obligations regarding working time and rest time

- Rights and obligations related to the probationary period for domestic workers

- Rights and obligations related to labor discipline and material responsibility

Fourth, the order and procedures for establishing a DLR: An employer and a domestic worker establishing an employment relationship must be based on a form of the establishment called a domestic labor contract. Therefore, when establishing a DLR, the domestic worker and the employer must follow the principles of entering into labor contracts and the order and procedures for entering into labor contracts.

1.2.3.2. Law on implementation of domestic labor relations

The implementation of a legal relationship is a legal act by two parties in order to perform their committed rights and obligations and must comply with the general principles of contract performance in the spirit of cooperation, goodwill and honesty in the best interest of the parties. In the domestic labor relation, the subjects have enforced the law through the parties' exercise of their rights and obligations for each other.

1.2.3.3. Law on termination of domestic labor relations

During the contract performance, the parties carry out the performance of their rights and obligations towards each other. Up to a certain time, one of the two parties will appear legal acts leading to the termination of rights and obligations in the domestic labor relation. There are many ways to determine the legal basis for terminating the DLR. From the perspective of the legality of the act, the grounds for terminating an individual labor law relationship are of two types: legal and illegal termination.

1.2.3.4. Legal measures to ensure the implementation of the law on domestic labor relations

(i) Handling of administrative violations on domestic labor relations

The law on handling administrative violations in labor relations clearly stipulates prohibited acts for employers in domestic labor relations. bear the corresponding fine; authority to sanction violations of the employer and the fine level for each violation of the employer.

(ii) Settlement of disputes about domestic labor

Disputes arising between domestic workers and employers are also labor disputes, so when settling disputes, they must also comply with relevant regulations in the process of settling labor disputes.

(iii) State management of domestic labor

State management of labor is a special form of labor management and has great effectiveness in practice. However, state management of domestic workers is still one of the problems facing many difficulties in most countries around the world.

Conclusion of Chapter 1

Within the scope of this thesis, the author approaches the study of domestic labor relations within the scope of labor relations. Accordingly, the legal theoretical framework of DLR is built according to the process of establishment, implementation, and termination of labor relations. To ensure job security, the author also develops and analyzes legal measures to ensure law enforcement on domestic labor relations.

CHAPTER 2
LEGAL STATUS OF DOMESTIC LABOR RELATIONS IN VIETNAM

2.1. Legal status of the establishment of domestic labor relations

First, the subjects who establish a domestic labor relation

(i) For employees who are domestic workers

Article 88 of Decree 145/2020/ND-CP stipulates: "Employee who is a domestic worker is an employee as prescribed in Clause 1, Article 3 of the Labor Code…" Accordingly, the domestic worker is an employee working for the employer according to the agreement, being paid a salary, and subject to the management, administration, and supervision of the employer. The minimum working age of an employee as a domestic worker must be 15 years of age.

(ii) For the employer

Article 161 of the Labor Code 2019 stipulates: "Employee who is a domestic worker is an employee who regularly performs household chores of one or more households", so from this regulation, it can be understood that the employer is one or more households that need to employ domestic workers.

Second, the form of establishing domestic labor relations

Clause 1, Article 162 of the Labor Code 2019 stipulates that "Employers must sign a written labor contract with the domestic worker". However, over 90% of labor contracts for domestic workers are agreed by orally. The reason for not signing a written labor contract with the employer is mainly that they feel it is not necessary to have a written agreement. As for the domestic workers, because they are acquaintances and relatives, they do not need to sign a written labor contract.

Third, the content when establishing a domestic labor relation

Contents when establishing labor relations with domestic workers are specified at Point c, Clause 1, Article 89 of the Government's Decree 145/2020/ND-CP detailing and guiding the implementation of a number of articles of the Labor Code on labor conditions and relations, or also the content of the labor contract between the domestic worker and the employer, including the rights, obligations and interests of each party such as salary, the form of payment, working time, rest, working conditions, insurance, ...

Fourth, the order and procedures for establishing domestic labor relations

The order and procedures for establishing labor relations with domestic workers is the order and procedures for entering into a domestic labor contract, including the steps that the parties must take when entering into a labor contract. Specifically:

- Provide information before signing a labor contract
- Probation
- Sign a labor contract
- Notify to commune-level People's Committees

2.2. The legal status of the implementation of domestic labor relations

When the DLR is established and has legal effect, the parties must strictly and fully comply with the terms of the labor contract. The employee must properly perform the domestic worker's work as agreed, the employer must ensure the working conditions for the domestic worker as committed. The full compliance with commitments and agreements is the basis for ensuring the legitimate rights and interests of the parties in the labor relationship.

During the term of the labor contract, the law prescribes prohibited acts for the employer such as ill-treatment, sexual harassment, and violence against domestic workers; Assigning jobs to domestic workers not under labor contracts; and keeping employee identification documents.

2.3. The legal status of termination of domestic labor relations

Termination of domestic labor relations is expressed through the termination of labor contracts.

About the grounds for terminating the labor contract: According to the provisions of Point e, Clause 1, Article 89 of Decree 145/2020/ND-CP and Article 34 of the 2019 Labor Contract. According to the provisions of Point d, Clause 1, Article 89 of Decree 145/2020/ND - CP, during the performance of the labor contract, the employer and employee have the right to unilaterally terminate the labor contract without any reason but must give at least 15 days notice.

Regarding procedures for terminating labor contracts: When unilaterally terminating a domestic worker's labor contract, the employee and the employer must give a notice 15 days in advance. However, in some cases, because of the seriousness of the reason for termination, the law allows a shorter notice period for the employee and the employer.

Regarding the legal consequences of terminating the labor contract: When terminating the labor contract, the parties are entitled to benefits and must perform certain obligations whether the termination is legal or illegal. The purpose is to ensure a stable life for domestic workers while they are unemployed or looking for a new job as well as to ensure the legitimate interests of the employer.

- Termination of labor contracts in accordance with the law: domestic workers are entitled to severance allowance; be fully paid for all amounts related to their interests such as debt payment, salary, food and accommodation expenses,...; The employer is entitled to hand over the property and pay the debt (if any) and is responsible for notifying the termination of the labor contract to the competent authority.

- Illegal termination of labor contracts: The obligations of employees and employers when unilaterally terminating a labor contract illegally are specified at Point dd, Clause 1, Article 88 of Decree 145/2020/ND-CP in accordance with regulations in Articles 40 and 41 of the Labor Code 2019 on the obligations of employers and employees when unilaterally terminating labor contracts in general. However, in practice most of these regulations are not implemented.

This fact is partly caused by the lack of legal understanding of both parties, but largely due to the psychological habits of both the employer and the domestic worker to consider this labor relationship not necessary to sign a written labor contract. When it is not suitable, the parties can agree to terminate the labor contract in a very simple way.

2.4. Legal measures to ensure the implementation of the law on domestic labor relations

2.4.1. Handling of administrative violations on domestic labor relations

Decree 12/2022/ND-CP stipulating penalties for administrative violations in the field of labor, social insurance, and Vietnamese workers working abroad under contracts, Article 48 of the Committee Commune-level People's Committees, district-level People's Committees and provincial-level People's Committees have the power to impose administrative sanctions against employers in the cases specified in Article 30 of this Decree.

Although the law has very strict regulations on prohibited acts for employers, in reality, it is quite common for domestic workers to be violated. In addition to the violations of the employer, there are still some cases of domestic workers taking advantage of the work and trust of the employer to commit acts such as theft, fraud, and even fraud, murder.

2.4.2. Settlement of disputes about domestic labor relations

Disputes in domestic labor relations are personal disputes between two parties, the domestic worker and the employer. The Labor Code 2019 in Article 187 has provisions on agencies and individuals competent to settle individual labor disputes. Agencies, organizations, and individuals competent to settle individual labor disputes include Labor mediators; Labor Arbitration Council; and the People's Court.

2.4.3. State management of domestic workers

* Labor Inspector

Currently, the work of labor inspection is increasingly focused, most of the labor institute inspectors have well fulfilled their responsibilities seriously and effectively. Decree No. 22/2022/ND-CP also specifies the competence to sanction administrative violations of labor inspectors; Chief Inspector of the Department of Labor - Invalids and Social Affairs; Chief Inspector of the Ministry of Labor - Invalids and Social Affairs; and Head of the Ministry-level labor inspection team.

* State management

The Labor Code of 2019 specifically stipulates the content of state management of labor and the authority to perform state management of labor in Articles 212 and 213. On the basis of regulations on contents of state management of labor and State management authority over labor, Decree No. 145/2020/ND-CP provides specific guidance on stipulating responsibilities for managing domestic labor.

Conclusion of chapter 2

The current law on DLR has quite complete and specific provisions, suitable for the specific work of domestic workers. Most of the contents on the establishment, implementation and termination of DLR as well as the contents of measures to ensure the implementation of domestic labor relations are reasonably regulated by law and overcome the limitations of the previous regulations, in order to create a basic legal corridor to maintain a harmonious, stable and sustainable domestic labor relationship and ensure the rights and interests of the parties in the labor relationship.

In addition to the advantages, the law on DLR in our country today still inevitably has inadequacies and is less feasible in the content of the law on DLR from regulations on labor contracts; regulations on working conditions and employment conditions for domestic workers to the issue of state management of domestic labor; dispute resolution in the field of domestic labor. These limitations are the basis for solutions and recommendations to improve the law as well as improve the effectiveness of the law enforcement on domestic labor relations mentioned in Chapter 3 of the thesis.

CHAPTER 3
RECOMMENDATIONS TO IMPROVE THE LAW AND SOLUTIONS TO IMPROVE THE LAW ENFORCEMENT ON DOMESTIC LABOR RELATIONS IN VIETNAM

3.1. Requirements on improving the law on domestic labor relations in Vietnam

3.1.1. Theoretical basis of improving the law on domestic labor relations in Vietnam

Currently, the employment of domestic workers in families with good economic conditions, especially in big cities such as Hanoi and Ho Chi Minh City. Ho Chi Minh… is becoming more and more popular. In fact, this is an inevitable phenomenon that takes place according to the law of labor supply - demand.

Vietnam is one of the few countries in the Asia and Pacific region to bring domestic workers under the scope of labor law. From the Labor Code 2012 until now is the Labor Code 2019 and Decree No. 145/2020/ND-CP accompanying the regulations that domestic workers must have a written contract, meeting the most standards, including limits on hours of work and hours of rest. This is to ensure the working conditions for domestic workers because they are mostly people with no education or low level of education, often the weaker party compared to the employer. labor in labor relations.

In the past time, although these documents have taken effect, there are still complicated issues arising from domestic labor relations such as: labor abuse, trespassing, and physical and mental violence, sexual harassment; the situation of employees voluntarily leaving the contract without warning, stealing, even kidnapping, killing the landlord to rob the property... still exists. Therefore, the management of DLR needs to have more positive and effective measures. Since then, it is required to constantly improve the provisions of the law to protect the interests of both parties and avoid complicated social problems arising.

3.1.2. The practical basis of improving the law on domestic labor relations in Vietnam

3.1.2.1. Completing the law on domestic labor relations in Vietnam in order to overcome limitations in current Vietnamese law and problems in the practical implementation of the law on domestic labor relations

Domestic worker in Vietnam was first recognized in the Labor Code in 1994, Decision No. 10/2007/QD-TTg, continued to be concretized in the Labor Code in 2012 and is now the Labor Code in 2019 with implementation guidance in Decree No.

145/2020/ND-CP. This is an important step that shows the State's interest in building a legal framework for domestic labor, as well as gradually bringing domestic workers to become stable in the labor market. However, the law on domestic labor, besides its advantages, still inevitably exists, has limitations, lacks flexibility and is not effective in enforcement. In addition, the practical implementation of the law on domestic labor relations is still inadequate.

3.1.2.2. Ensuring compatibility and compliance with national legal systems and international labor standards on domestic labor relations

Completing the law on domestic labor relations must be towards unity and synchronization in the national legal system. Consistency is reflected in both the labor law system in general as well as in the legal regulations on domestic labor relations, in each group of regulations on domestic labor relations in particular (laws on establishment, implementation, and termination of domestic labor relations); avoid conflicts and overlaps between groups of legal provisions.

In addition, in the current international integration context, the improvement of the labor law in general and the law on domestic labor relations, in particular, must be consistent with relevant international labor standards. This not only facilitates international integration but also helps to improve the quality of domestic workers, thereby developing the domestic labor market.

3.1.2.3. Completing the law on domestic labor relations towards the goal of building a sustainable, harmonious, and progressive labor relationship

Sustainable, harmonious, and progressive labor relations are a desire that any employee, any employer, or any society wants to achieve. Therefore, the completion of the legal provisions on labor relations in particular and domestic labor relations, in particular, are suitable for the movement and development of society to ensure the following regulations. The regulations are effectively implemented in practice and ensure the building of labor relations to help the family become more stable, harmonious, and progressive, thereby helping to improve people's living standards and contribute to the development of domestic workers. socio-economic development of the country.

3.1.2.4. Completing the law on domestic worker labor relations in Vietnam should ensure the harmonization of the rights and interests of the parties involved in the domestic worker labor relationship.

The improvement of the provisions of the law on domestic labor relations must both ensure the interests of employees, help them have the right to rest, the right to social insurance, and health insurance, and be respected to dignity and the body as other subjects; while ensuring the interests of employers when hiring domestic workers because when they hire employees to work for them, they also need to enjoy values commensurate with the salary they have paid to employees, as well as the employees' respect for them. This is a very important issue in maintaining a harmonious and sustainable labor relationship.

3.2. Some recommendations to improve the legal regulations on domestic labor relations

Firstly, It is necessary to supplement specific instructions for the form of entering into a written labor contract in an electronic form in the decree guiding the implementation of the Labor Code.

The Labor Code 2019 has added regulations on the form of a written contract via electronic means to suit the development of technology. However, the application of the form of electronic labor contract signing to domestic labor relations is a problem. Therefore, Therefore, in the decree guiding the implementation of the Labor Code, there should be more specific regulations on this contract form, to avoid the case that the employer takes advantage of the employee's ignorance to let the employee sign labor contracts with unfavorable terms.

Secondly, it is necessary to amend the regulations on working hours and rest time for domestic helpers.

It is necessary to amend the regulations on working time and rest time towards more flexibility and supplement the regulation on overtime, specifically the regulation on rest time for 6 consecutive hours in 24 hours. If the employer requires the employee to work, it must be counted as overtime and the overtime salary is calculated according to the provisions of the Labor Code. In addition, there should be provisions on limiting evening work for domestic workers, for example until 22:30 or 23:00. When supplementing this regulation on working time limit, it also creates a basis for regulations on overtime and overtime pay in emergency cases. Employers require employees to work at night or employees agree.

Third, amend the regulations on health insurance and social insurance contributions for domestic workers

Currently, regulations on subjects participating in health insurance and social insurance in the Labor Code 2019 and Decree 145/2020/ND-CP with the Law on Social Insurance 2014 are in conflict. When finalizing the law on domestic labor relations, it is necessary to amend this provision to be consistent with the provisions of the Law on Social Insurance to avoid problems in the application of the provisions of the law, thereby ensuring maximum benefits for employees, especially female workers.

Fourth, remove the regulation on the period of temporary suspension of domestic labor contracts

Due to the nature of domestic work, which is to support the employer's family with day-to-day household or caregiving tasks, the issue of contract suspension usually does not occur. Moreover, the current regulations do not have specific provisions on the maximum period of postponement of the contract performance, which may cause difficulties for the employee, if the two parties suspend the performance of the labor contract for too long and the employer wants to terminate the labor contract. but the employees do not agree, so it is easy to create disputes. Therefore, the current labor law should remove the provision on suspending the performance of domestic labor contracts to match the characteristics of this relationship in practice.

Fifth, supplement separate regulations for domestic workers who are women and children

The 2019 Labor Code of Vietnam has developed a number of regulations to protect the rights of female domestic workers. This Code strictly prohibits employers from maltreatment, sexual harassment, forced labor, and the use of force against domestic workers. However, there are currently no regulations that clearly explain and describe what acts are considered labor coercion. What behavior is sexual harassment? Therefore, Vietnamese law needs to have specific guidelines with ILO-like practices for domestic workers, employers as well as law enforcement officers, trade union officials, and other law enforcement officers. Relevant agencies and organizations can easily apply in practice to protect the rights of domestic workers.

3.3 Some solutions to improve the efficiency of law enforcement on domestic labor relations in Vietnam

First, strengthen the work of propagation of the law on domestic labor

The problems arising from the domestic labor relationship mainly stem from the lack of understanding of the law by both the employee and the employer, so propaganda

to raise awareness of both parties is the most important solution. This is the responsibility of many levels and branches, but directly and most importantly, officials at the grassroots government and the mass media.

Second, strengthen vocational training and skills for domestic workers

Currently, domestic help is a job that brings a stable and long-term income, so it can be considered a livelihood for employees. On the other hand, this is also the solution to human resource problems in our country. Therefore, vocational training for domestic workers is a practical need. In fact, this problem is still in short supply in our country, workers who export abroad are trained and consulted, but domestic workers do not have many training institutions.

Third, continue to improve the role of local authorities in the management of domestic labor relations:

Firstly, strengthen the management of domestic labor, the use of domestic labor. The staffs at the grassroots need to strengthen the inspection, grasp the area, review and ask the families using domestic workers to actively declare the use of domestic labor.

Secondly, the management of job placement establishments and vocational training institutions for family teachers ensures the responsibility of the centers to employees and employers.

Thirdly, strengthen the inspection and examination of the implementation of the law on domestic labor. Through inspection and examination, it is possible to promptly detect and handle violations, thereby deterring and preventing violations in the field of domestic labor.

Fourthly, establish an organization representing domestic workers and promote the organization's activities

Conclusion of chapter 3

Based on the theoretical basis in Chapter 1, and the results of the assessment of the legal status of DLR in Chapter 2, Chapter 3 of the thesis has determined the theoretical and practical basis for the improvement of the law on DLR, thereby proposing recommendations to improve the law on domestic labor relations and solutions to improve the effectiveness of the law enforcement on DLR. Through the research process, the thesis draws the following conclusions:

1. From the theoretical basis on the position and role of domestic labor to the requirements of international integration, the improvement of the law on DLR must meet

the requirements of overcoming limitations and inadequacies in legal regulations and the problems in practice.

2. Based on the completed requirements, the law on DLR needs to be further amended and supplemented to suit reality. In addition, the Labor Code 2019 and the new effective decrees have overcome the shortcomings and limitations of the old regulations, and only a few regulations that are not really consistent with reality to be revised relating to the establishment, enforcement, and termination of DLR. Since then, in this chapter, the author has proposed some solutions to improve the law on DLR in Vietnam today.

3. Along with the improvement of the law, it must be implemented synchronously with measures to improve the effectiveness of the law enforcement on DLR. Recommendations to improve the effectiveness of the law enforcement on DLR include: strengthening the management of domestic workers; raising people's awareness about domestic labor; strengthening vocational training for domestic workers; strengthening inspection and examination in the implementation of the law on DLR; establish a representative organization for domestic workers.

CONCLUSION

Domestic labor relations in Vietnam have similar characteristics to domestic labor relations in countries around the world. This relationship has become popular and indispensable in industrial society and has many positive contributions to socio-economic development related to the creation of jobs and income for the people. From that practice, the law has increasingly concretized regulations related to domestic labor relations, thereby showing the State's deep interest in the labor force of domestic workers. Along with that, all levels and sectors have been very active in organizing the implementation of the law on DLR in order to raise the awareness of law observance for all people so that they can ensure their rights in a timely manner. Social organizations such as the Women's Union and vocational training institutions operate more firmly to help domestic workers confidently integrate into life. Law enforcement agencies have closely coordinated between the Labor Code 2019 and the laws on health insurance, the law on social insurance, etc., and other sub-law documents to ensure the interests of the parties in the domestic labor relations, especially employees.

However, the law on DLR still has some limitations that need to be overcome. Many regulations are still unclear and not suitable for implementation. At the same time, the management of domestic workers, the propaganda and dissemination of the law on DLR are still weak. Accompanied by a limited understanding of the legal provisions related to DLR, this limitation makes a significant number of employees and employers not understand clearly about the work of domestic workers. regulations on obligations to the employees, his responsibilities and rights in this labor relationship. This leads to the provisions of the law on DLR are not guaranteed to be strictly adhered to and implemented. Therefore, the provisions of the law on DLR still have some limitations to be amended and supplemented; as well as the effectiveness of law enforcement in practice is still weak and needs to be improved. It is hoped that in the coming time, the law on DLR will be improved and innovated more and more towards building a harmonious, sustainable, stable, and progressive labor relationship, contributing to the socio-economic development of the country.