
**ANALYSIS OF LEGAL REGULATIONS RELATING TO MENAGE, PREGNANCY AND PARENTH LEAVE
BASED ON POSITIVE LAW IN INDONESIA**

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ABSTRACT

The role of women is not only in the house but also has the opportunity to work just like a man. Women have a lot of potential both in terms of intellectual abilities and skills which then encourages a woman to enter the world of work. This research is a normative research method, namely legal research conducted by researching literature or secondary data which emphasizes the matter of statutory provisions related to menstruation and maternity leave. Based on the results of the research, arrangements regarding the right to leave for menstruation, pregnancy and childbirth are based on the positive law currently in effect in Indonesia. Leave is one of the solutions in women's performance in overcoming these problems. With the issuance of Law Number 13 of 2008 concerning the rights of women workers. Regarding the right to menstruation leave, female workers convey this to the company so that they are not required to work on the first and second day during menstruation. The right to maternity and maternity leave is regulated in Article 82 paragraph (1) of Law Number 13 of 2003 which states that female workers only get 1.5 (one and a half) months of rest before she gives birth and 1.5 (one and a half) months after she gives birth. the baby which must be based on calculations made by doctors and midwives. In this way, women workers receive protection for their own roles and health background, which men cannot have, such as menstruation, pregnancy, childbirth and breastfeeding babies.

Keywords: Right to Leave, Role of Women, Workers, Law, Company

INTRODUCTION

Nowadays, understanding the differences between genders has become an interesting thing to discuss. Gender itself is a difference between men and women in roles, functions, rights, responsibilities and behavior which are formed by social values, culture and customs (Gultom, 2021). In society, of course, there are many different assumptions regarding the roles of men and women, such as that men should work and earn a living and women should stay at home and be housewives. However, with the development of the times and the introduction of the meaning of women's emancipation, the role of a woman is no longer only at home but women also have the same rights and opportunities to work. The development of this era or better known as the entry of society into the era of globalization means that many women end up working in addition to the demands of the situation to help support their family's economy.

A female worker is every woman who works to obtain wages or salaries and also compensation. In reality, there are of course many assumptions about the differences between male and female workers. Such as regarding the power between male and female workers, where female workers tend to be weaker, apart from that, the status of female workers, some of whom are still single and some are also married, of course for a woman this has an influence on the continuity of work. his family then have

differences regarding existing moral norms. (Anisantari, Nur, 2021). Not only that, there are external differences that are specifically experienced by a woman, such as having to menstruate every month, being pregnant and giving birth or experiencing a miscarriage and also having to breastfeed.

Even though there are differences between male and female workers, in reality a woman has a lot of potential both in terms of intellectual, ability and skills which then encourage a woman to enter the world of work. One of the basic considerations regarding the selection of women to enter the world of work is that women are considered to be more careful, careful and obedient in carrying out their obligations as workers. (Adji, Rahmat, 2023). However, many female workers who work in the industrial sector are very vulnerable to violations and discrimination of their human rights (Narindra, 2018).

Based on Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it is stated that "Every citizen has the right to work and a life worthy of humanity." In this verse we can understand that every person has the right to get a job and also work protection. (Lianto, Najicha, 2022) As a legal country, Indonesia of course has its own regulations related to employment law, which in this case has an important role, namely regulating relationships between entrepreneurs and workers. These regulations regarding employment are regulated in Law Number 13 of 2003 concerning Employment.

According to Article 1 paragraph (1) of Law Number 13 of 2003, the definition of employment is all matters relating to labor before, during and after the work period. Apart from that, this law also explains that labor is every person who is able to do work to produce goods or services either to meet their own needs or for the community. Not only does it explain the meaning, but Law Number 13 of 2003 also explains that "Every worker has the same opportunity without discrimination to obtain work". From this article it can be interpreted that there is no difference in employment opportunities for both female and male workers. Apart from that, it cannot be denied that the presence of female workers for companies and the surrounding community is something that is very necessary. Legal protection itself is a series of actions by legal determiners in the form of guarantees to legal subjects to provide legal certainty and supremacy so that workers are protected from undesirable things. (Fadhila, Suharno, et al, 2021)

However, based on the existing reality and also the external differences between women and men which then gives rise to a lot of discrimination against female workers and it is appropriate for this to result in female workers getting some concessions related to the safety and security of female workers. Based on this, there are several articles in the Employment Law which regulate and contain women's rights. This special arrangement is an effort to protect female workers. This arrangement is as stated in Article 76 paragraphs (1) to (4) and also regulations regarding special leave for female workers, namely weekly leave, annual leave, long leave and paid leave. give birth to.

Then, as time progressed, the Omnibus Law or Job Creation Act emerged which received a lot of responses and reactions from various groups because it was considered to ignore the leave rights of female workers, which in the Job Creation Law was not stated clearly as stated in Employment Law (Anisantari, Nur, 2021).

The existence of differences regarding the regulations regarding leave rights for female workers creates confusion and unrest among the community. Because if we look further into the reasons underlying the regulation of women's special leave rights, it is not something that should not be regulated clearly.

So, from the description that has been presented, a formulation of the problem that will be discussed in this research arises regarding how the rights to menstrual, pregnancy and childbirth leave are regulated when viewed from the perspective of positive law currently in force in Indonesia?

RESEARCH METHODS

Based on the background that has been created, in this discussion the author uses normative research methods. Normative legal research methods can also be interpreted as legal research at the level

of norms, rules, principles, theories, philosophies and legal rules in order to find solutions or answers or problems in the form of legal vacancies, norm conflicts or norm ambiguity. (Nurhayati et al, 2021).

The data collection technique used in this article is through library research or secondary data. Secondary data means data collected from second hand or other existing sources. Secondary data is obtained from primary materials: such as laws and regulations related to the research topic. (Silalahi, 2006). Meanwhile, secondary materials are obtained through books, research journals and information related to primary and secondary legal materials such as through electronic media. (Yusyanti, 2020)

RESULTS AND DISCUSSION

Discussion of Leave in General

Work is a source of livelihood for a few people. Of course, by employing people there are many aspects, especially the need for workers from the company. Working is also a worker's obligation to carry out efforts to advance the company and is also important because the initial goal of working is also to get a decent wage. Obtaining decent work is regulated in Article 27 Paragraph (2) of the Constitution of the Republic of Indonesia that every citizen has the right to work and a living that is worthy of humanity, where every right that should be obtained must be fought for and there is no distinction between workers from the company in the measures implemented and for which there are regulations. And leave is a right that currently still has inequalities in it, whether from internal or external factors. (Harahap, N, 2020).

Leave for employees is something that is included in the requirements because obstacles do not know time so that absence is necessary as a right that every employee has. The right to leave is a right for workers/laborers which can be interpreted as temporary or certain absence which is accompanied by information from the worker/laborer and this right to leave is a right that must be given by employers to workers (Azzahra, Sundry, 2022). Leave is usually used for reasons such as illness, permission, childbirth, menstruation, and so on. (Rizki et al, 2021). Everyone has their rights according to the agreement during work. In this case, the right to annual leave is the most common leave or one that is often a challenge for companies in sorting it out. Law Number 13 of 2003 provides the right to rest and annual leave, namely the right to leave that workers receive and must provide. This right is granted for a minimum of 12 months of work and continuously in accordance with Article 79 Paragraph (2) Letter C of Law Number 13 of 2003 concerning Employment. (Putra, R, 2018). Leave can be a unique phenomenon.

Leave can be a unique phenomenon, for example, in the situation where many people still question whether collective leave will reduce annual leave, which is the quota or right that workers have while still working at the company. Shared leave and annual leave are different aspects. Collective leave is a rest period determined by the government or agency in the hope of being able to carry out activities such as worshipping, participating in celebrations, etc. This is different from annual leave, whose rights must be protected, especially by workers, so that synergy in work and collective prosperity can be carried out with new energy which will also have a good impact on the company. (Devita et al, 2021). And both should not be a problem or one should be sacrificed unilaterally.

If leave is underestimated, it can become an inevitable phenomenon. Moreover, leave for reasons beyond the company's control, such as illness, menstruation, childbirth, and so on. These triggers can result in damage to workers' trust in the company resulting in them refusing to organize and provide means to fulfill their work or what is often found is demonstrations and work strikes.

Leave Regulations for Women in Current Development and Problems

In the period 2010-2020, according to Kominfo, Indonesia's population increased by 32.05 million and with this increase the population growth rate was an average of 1.25 percent per year (Kominfo, 2023). This proves that job expectations are expected to increase for both male and female workers. As a breadwinner, competition is becoming increasingly competitive and the work force is getting tougher as time goes on, especially for women. The average age of the current workforce population is at least 15

years, which is when young women have entered puberty, which is marked by the onset of menstruation. And the problems faced by the female workforce do not stop there, because women of a certain age will face pregnancy and childbirth which will greatly affect their performance and stamina at work. This needs to be considered because women have the same rights to work as men who literally do not menstruate and give birth.

Leave is one solution for women's performance in overcoming these problems. And the journey in perfecting the regulations regarding leave for women has experienced many challenges and obstacles, of course because these regulations only apply to working women. Starting from Law Number 12 of 1948 concerning work, it regulates menstrual leave in Article 13 Paragraph (1) which reads "Female workers may not be required to work on the first and second days of menstruation". However, there are improvements to this rule in Article 81 Paragraph (1) of Law 13 of 2003 concerning employment which explains the additional requirements for proving that the woman is feeling sick and notifying the employer. And this proves to the public that fairness in providing leave for women has been around for a long time. Women need protection, especially when working, because as time goes by, life's needs are different and it is not uncommon for women to have to work long distances to meet their needs or serve their profession (Anggraini et al, 2020). There is a regulation regarding this, namely "Women have the right to special protection in carrying out their work or profession against things that could threaten their safety and/or health regarding women's reproductive function as regulated in Law Number 39 of 1999."

So far, the leave regulations for women still do not feel fair because they do not cover all professions such as doctors and midwives or mothers who have to be separated from their babies because they have to work in remote areas because of their work (Sinaga, 2016). What is regulated in Article 7 of Government Regulation Number 33 of 2012 which excludes mothers who are separated from their babies, which still feels very unfair. In fact, this leave is not only related to the aspect of giving birth but also breastfeeding, which in Article 6 of Government Regulation Number 33 of 2012 concerning the provision of exclusive breast milk states that "Every mother who gives birth must provide exclusive breast milk to the person she is giving birth to."

However, this concern does not stop for women throughout Indonesia because Law Number 13 of 2003 concerning Employment did not apply after Law Number 11 of 2020 concerning Job Creation was passed and the Job Creation Perppu eliminated the rights of female workers and in fact there are still many companies that do not comply with the regulations above with evidence from the National Commission on Violence Against Women that cases of discrimination, violence and violations of maternity rights still exist among female workers (Zachra, 2023). Again, wages are not guaranteed which is often played with and discrimination occurs because the possibility of applying for leave is considered not carrying out work obligations (Karo, Yana, 2020) and results in a lack of wages or even not getting them at all.

History of the Issuance of the Job Creation Law, Especially Workers' Leave Rights

The Job Creation Law or Law Number 11 of 2020 concerning Job Creation (abbreviated as the Ciptaker Law or CK Law) is a law in Indonesia which was passed on 5 October 2020 by the DPR RI and promulgated on 2 November 2020 with the aim of creating jobs and increasing foreign and domestic investment by reducing regulatory requirements for business permits and land acquisition. (Paddock, 2020)

President Joko Widodo, in his inauguration speech on 20 October 2019, conveyed his plans regarding the formulation of an omnibus law with the DPR. He stated that there are two laws that will be included in it, namely the Job Creation Law and the MSME Empowerment Law (Rizal, 2020). In February 2020, the Indonesian government submitted a universal sweeping law to the DPR with a target for deliberations to be completed within 100 days (Samboh, 2020). The draft version of the bill was criticized by elements of the Indonesian media, human rights groups, labor unions, and environmental organizations for supporting oligarchy and limiting people's civil rights. On the other hand, the Indonesian

Chamber of Commerce and Industry supports this bill (News, 2020).

After revisions were made to several articles, the Job Creation Bill was passed by the DPR on Monday, October 5 2020, three days earlier than the scheduled ratification date. The passage of the bill also came before the next day of rallies planned by the union. Hours before it was passed, 35 investment companies sent a letter warning the government about the dangerous consequences of the bill for the environment (Paddock, 2020). The ratification of the Job Creation Bill was supported by seven parties, namely the Indonesian Democratic Party of Struggle, Golkar, Gerindra, NasDem Party, National Awakening Party, National Mandate Party, and United Development Party, while the two parties that rejected it were the Democratic Party and the Prosperous Justice Party (Ghaliya, 2020) .

The contents of the Job Creation Law relate to employment, namely wages referring to the local UMP, PKWT and PKWTT work contracts, leave and holiday rights, severance pay, provision of job loss insurance, termination of employment, leave rights for female workers. In this case the author focuses on what rights are given to female workers. All of this has been regulated in Law Number 13 of 2003 concerning Employment, including regarding Menstrual Leave, Pregnancy and Childbirth Leave, Leave due to miscarriage (myrobin.id, 2022).

Regulations regarding Menstrual Leave, the Employment Law does not regulate the form of notification of menstrual leave to employers, including whether or not it is mandatory for female workers who are menstruating to notify employers with a doctor's letter. Then for regulations regarding maternity and childbirth leave. Regulations regarding maternity/childbirth leave are regulated in Article 82 Paragraph (1) of Law Number 13 of 2003 concerning Employment, namely as follows: "Female workers have the right to rest for 1.5 (one and a half) months before it is time to give birth to the child and 1.5 (one and a half) months after giving birth according to the obstetrician or midwife's calculations." Next, the regulations regarding leave due to miscarriage, Article 82 Paragraph 2 of the Employment Law states that:

"Female workers/laborers who experience a miscarriage have the right to rest for 1.5 (one and a half) months or in accordance with a certificate from an obstetrician or midwife" (dw.com, 2023)

The Job Creation Law has drawn criticism because it is feared that it will benefit company owners (especially foreign companies), conglomerates, capitalists, investors (especially foreign investors) and harm workers' rights and increase deforestation in Indonesia by reducing environmental protection. A series of demonstrations to reject this law are still ongoing and demand that this law be repealed (Sapto, 2020). Even though it has been passed by the DPR, there are defects in the legislative process in the form of changes to the material content of the law which could have implications for criminal penalties. The Job Creation Law has been declared "conditionally unconstitutional" by the Constitutional Court, where the law must be revised by a maximum of 25 November 2023 (KRI, 2021).

Regulations Regarding Menstrual and Maternity Leave for Female Workers

In the era of developments in science and technology and the manifestation of women's emancipation, women can now work and can hold certain positions (directors, echelon officials, school principals, etc.) where previously it was thought that women only worked to take care of the household, including cooking and washing. With open access for women in the world of work, there needs to be protection for their own roles and their own health background. Biologically, women have a reproductive role that men cannot have. These reproductive roles include menstruation (often referred to as menstruation), carrying the baby she is carrying, giving birth to the baby, and breastfeeding the baby (Darwin, 2005). Therefore, women's role in reproduction is very meaningful and full of struggle.

Age range 16-50 years, women are categorized as being of active reproductive age. Every month during active reproductive age, when fertilization does not occur, menstruation will occur. When experiencing menstruation, each person feels different effects. There are women who experience pain, dizziness, malaise, and some even faint. For some women, menstruation is still a taboo subject and they even feel awkward saying it or discussing it out loud. However, the state provides a platform to protect

women's rights, especially female workers.

The issuance of Law Number 13 of 2008 can be used as a reference for companies in paying attention to the rights of female workers. These rights are in the form of:

a. Menstrual Leave Rights

Menstruation or menstruation is a woman's reproductive cycle when fertilization does not occur. In Article 81 of the Employment Law which states regarding menstrual leave, that:

(1) If female workers are experiencing menstruation, if they feel sick (severe pain, dizziness, vomiting, or fainting), it would be best to immediately contact the company so that they are not required to work on the first and second day of menstruation.

(2) The implementation of paragraph (1) must be regulated in the work agreement, company regulations, or cooperation agreement between the worker and his company.

However, the Manpower Law does not explain the form of notification that is given to the company. In this case, it is also ambiguous whether or not female workers who are menstruating are obliged to provide information and use an official letter from a doctor to the company.

b. Maternity and Paternity Leave Rights

Regarding this matter, it is regulated in Article 82 Paragraph (1) of Law Number 13 of 2003 concerning Employment which states that "Female workers only get rest for 1.5 (one and a half) months before giving birth and 1.5 (one and a half) months after she gives birth to her baby, this must be based on calculations made by the doctor or midwife."

If in reality there is a birth that does not match or is sudden according to the Estimated Birth Day (HPL) calculation, the female worker and her family must notify HRD of the place where the worker works. Regarding the right to leave and childbirth according to the Convention On The Elimination Of All Forms of Discrimination Against Women (CEDAW), Article 12 specifically states that women's rights are also to receive health services, especially family planning, pregnancy, childbirth and the period after childbirth (Maryam, 2012) .

It is felt that the Employment Law is still ambiguous and the explanation of each paragraph is still lacking, so law reform is needed (revising several laws). The President of the Republic of Indonesia, Mr Joko Widodo, touched on the legal concept of omnibus law (Fitryantica, 2019). In this case, two laws are mentioned, namely the Job Creation Law and the MSME Empowerment Law. However, with the promulgation of the Omnibus Law, there are pros and cons in society. One of them concerns the leave rights of female workers, because it is considered to discriminate against women.

This form of discrimination is the exclusion of female workers' leave rights, such as menstrual leave, maternity leave and other leave (Anusantari, 2021). In the Omnibus Law on Job Creation, regarding the right to leave, it is regulated in Article 79 paragraph (3) that "Leave must be given to workers as intended in paragraph (1) in the form of annual leave no later than 12 working days after the worker has worked continuously after work. for 12 months." The article only mentions annual leave without mentioning other types of leave. This is what has sparked a reaction in society regarding women's leave rights being removed. However, actually, menstrual and maternity leave still exists, but it depends on the policies given by the company to its workers.

CONCLUSION AND SUGGESTION

In the world of work, leave is one of the rights of employees because in terms of time constraints, absences are necessary. There is Law Number 13 of 2003 concerning Employment which does not apply after Law Number 11 of 2020 concerning Job Creation which eliminates the rights of female workers. Women say that the case against female workers is discrimination, violence and violations of rights. In fact, this leave is not only about giving birth but also breastfeeding, which is in Article 6 of Government Regulation Number 33 of 2012 concerning the provision of exclusive breast milk. Age range 16-20 years, women are categorized as being in active reproductive age, that is, every month in active reproductive

age when fertilization does not occur, menstruation occurs. And women of a certain age will face pregnancy and childbirth which will greatly affect their performance and stamina at work. So leave is needed for women's performance in overcoming these problems. So far, leave regulations for women have felt unfair, with the issuance of Law Number 13 of 2008, it can pay attention to the rights of female workers.

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