

Menstrual Leave Policy; Between Gender Sensitivity and Discrimination Against Female Workers

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Abstract. The right to get a job and a decent job is a human right, that is why the concept of labor protection emerged. Job protection is specifically given to female workers. One of the special policies that protect female workers is the menstrual leave policy. The menstrual leave policy is a policy that should be appreciated; however, it turns out that this policy actually triggers discrimination against female workers. This research will discuss the basic considerations of special protection for female workers, normative provisions regarding menstrual leave for female workers and discriminatory practices in menstrual leave policies. The menstrual leave policy is the protection of workers and human rights. This policy is contained in Article 81 of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower. In practice, female workers do not take menstrual leave because they have the potential to experience discrimination in the form of verbal violence and economic violence.

Keywords. Menstrual leave, discrimination, women's jobs.

1. Introduction

Everyone has the right to work because the right to work is a human right. This can be seen in the provisions of Article 23 of The Universal Declaration of Human Rights stating (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests. This provision provides an understanding that work is the right of both men and women.

In order to meet the needs of a decent life, some women choose to work hard so that their needs are fulfilled. This condition makes the majority of job opportunities at the organizational level low and does not have to require special skills; therefore, it provides great opportunities for female workers. For the female workers/laborers who are not married yet, the problems that arise are different from those who are married which are more subjective in nature, although in general, there are no differences from the objective conditions. As part of citizens who have the same position and rights to work, women have a strategic role in their contribution to economic development and employment in Indonesia. This can be seen from the data of the last decade, which shows that the participation rate of women in the labor market has increased significantly,

although the percentage is small when compared to men. However, at least this has shown an increase in the significant role of women in economic activities in Indonesia. However, the female workforce structure has a low level of education. Thus, most women still take part in the informal sector or jobs that do not require advanced or specific quality knowledge and skills (Jaelani, 2018).

The uneven access to education for boys and girls, the stigma of women having to take jobs in the domestic sector and child labor also have implications for the percentage of female workers in the formal sector. The number of female workers in the formal sector is also less than men. This can be seen in the following table:

Table 1. Percentage of Formal Workers by Gender (Percent)

Gender	2019	2020	2021
Man	47.19	42.71	43.39
Woman	39.19	34.65	36.20

Source: National Labor Force Survey

When getting a job, a woman has rights that must be obeyed and fulfilled while working, namely getting wages that are in accordance with the work done, getting safe and healthy working conditions, equal opportunities to be able to improve her work to a higher level, including the right to receive training to improve the quality of their work (Khakim, 2009). Manpower is a key factor in work operations and a company's business has a crucial role as a support for the success of the business being run. To support its implementation, companies must pay attention to the social health conditions of their workers, one of which is female workers, considering that women have their own uniqueness physically, psychologically, and biologically. Women have a cycle of reproductive system experienced once a month or menstruation, pregnancy, childbirth and breastfeeding (Firnanda, 2021).

Normatively, the rights of women workers are regulated in several international conventions, including the International Labor Organization (ILO) Convention, C100 - Equal Remuneration Convention, 1951 (No. 100) (Rismansyah, & Hadid, 2020) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified by Law no. 7 of 1984, regulates several aspects related to women's rights to work and the state's obligations to guarantee these rights (Susiana, 2019). Great attention from the government and society towards female workers/laborers can be seen in several regulations that provide concessions and prohibitions concerning a woman's personality in general, such as maternity leave, working at night and so on (Irham & Edrisy, 2022).

Efforts to fulfil labor rights have been carried out since the enactment of Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower. This law is also expected to fulfil the right of every worker to be able to work and obtain proper benefits for the survival of himself and his family (Imanullah, & Najib, 2022). Article 81 of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower regulates the menstrual leave policy. Menstrual leave is a special right for women that must be appreciated and respected (Kridasaksana, 2020). Menstrual leave, which allows a menstruator to take time off if they are unable to attend work due to menstruation, is a policy that could affect menstruators in many ways, including their status in the workplace. The question is whether such a policy would benefit or disadvantage a

menstruator's well-being. In spite of progressive aims, could menstrual leave policies actually increase discrimination and negative attitudes toward menstruators? (Rachel B., & Tavlaris, 2020). In practice, the company and female workers are not familiar with the provision of menstrual leave, even though they are aware of the regulation, but the regulation is not implemented.

Patresia Kirandita in her research notes that because the implementation of giving menstrual leave is returned to the policy of the office, and there is no clear statement in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower that menstrual leave is mandatory for the company, some female workers cannot enjoy this menstrual leave entitlement. Even if menstrual leave is still given, each company applies its own mechanism. The mechanism includes the obligation to include a doctor's certificate, a policy that provides menstrual leave with the consequence of not getting paid, or being able to easily provide it and remain on paid leave as long as the worker informs the company (Kirandita, 2021). Some of these facts have become a debate over whether the menstrual leave policy is actually a gender sensitive policy, or a policy that is detrimental to female workers.

2. Result and discussion

2.1 Basis for special protection considerations for female workers

The state organizes the power to control the administration and politics to modify the market for the social welfare and economic capacity of its people. The welfare state refers to an ideal model of development that focuses on improving welfare through giving the state an important and greater role to provide comprehensive social services to its citizens (Darmawan, 2020). The purpose of the state in the concept of the welfare state is for the general welfare. Indonesia is as a country applying the concept of a welfare state, in which the state should be active in organizing the prosperity of its citizens, for the benefit of all the people and the state (Busroh, 2015). Prosperity is not only limited to material but also includes immaterial, as explained by the Commission on Social Justice explaining that welfare consists of 7 (seven) aspects including: (1) Poverty prevention; (2) Protect people against risks arising in the labor market and from family; (3) Changes; (4) Redistribute resources from richer to poorer members of society; (5) Redistribute resources of time and money over people's life-cycles; (6) Encourage personal independence; and (7) Promote social cohesion (Goodin, 1999). The increased welfare is an indicator of the creation of economic development. Todaro and Smith state that the success of a country's economic development is indicated by three main values, namely the development of the community's ability to meet their basic needs; increasing sense of community as a human being; and increasing people's ability to vote (Todaro & Smith, 2003).

Economic development is supported by the workforce; therefore, the protection of workers is very necessary given their weak position. Legal protection from the employer's power is carried out if the laws and regulations in the field of labor that require or force the employer to act as in the legislation are actually implemented by all parties because the validity of the law cannot be measured juridically only, but is measured sociologically and philosophically (Khakim, 2003). The weak position of the workforce is due to market competition where they are more in need of work. In addition, they also do not have an adequate level of education to fight for their rights. Labor protection can run optimally if the employer or in this case the contractor has legal awareness in implementing the protection.

Protection of workers can be carried out, either by providing guidance or by increasing the recognition of human rights, physical and technical protection as well as social and economic through norms that apply in the work environment (Asikin, et.al. 2010). The protection of these workers is carried out through the formation of laws that are responsive to their rights and the enforcement of these regulations. Employment protection as written by Zaenal Asikin includes aspects, namely 1) Legal protection, that is, if laws and regulations in the field of manpower can be implemented that require or force employers to act in accordance with these laws and are actually implemented by all parties involved related; 2) Economic protection, namely protection related to the efforts to provide workers with an income sufficient to meet their daily needs for them and their families; 3) Social protection, namely protection related to community efforts whose purpose is to enable the worker to enjoy and develop his life as a human being and as a member of the community; and 4) Technical protection, namely protection related to the efforts to protect workers from the dangers of accidents caused or related to occupational safety and health (Asikin, et.al. 2010).

The protection of workers as stated by Zaenal Asikin is almost the same as what Soepomo wrote. Soepomo as quoted by Abdul Khakim divides 3 (three) types of protection for workers, namely economic protection, namely the protection of workers in the form of sufficient income, including if the workforce is unable to work beyond their will; social protection, namely the protection of workers in the form of guarantees, occupational health, and freedom of association and protection of the right to organize; and technical protection, namely the protection of workers in the form of work security and safety (Asikin, et.al. 2010). The provision of worker protection covers five areas of labor law, namely the field of recruitment/placement of workers; the field of employment relations; occupational health sector; work security sector; and in the field of labor social security (Asikin, et.al. 2010).

Constitutionally, the protection of workers can be seen in the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia has guaranteed that in fact every individual has the right to be free from discriminatory treatment on any basis, and has the right to receive fair and proper treatment, as stated in Article 28D paragraph (2), Article 28G paragraphs (1) and (2), and Article 28I paragraphs (2) and (4). The importance of human rights for every individual is that their existence must always be recognized, respected, and protected, including through various products of legislation. The recognition of the existence of certain human rights has consequences for the need for efforts to protect these rights from the possibility of the emergence of actions that can harm humans themselves, whether carried out by other humans or by the government. One of the characteristics of a country called *rechstaat* or upholding the rule of law, for a democratic country the recognition and protection of human rights is a measure of the good and bad of a government (Kanyaka, 2019).

Labor protection is the protection of human rights. I Gede Arya B. Wiranata states that the protection of human rights is the obligation of the government or a legal state to regulate the implementation of these human rights, which means their implementation, regulating their limitations in the public interest, the interests of the nation and the state. Another view states that accountability does not have to be with the state, but also on all individual citizens. Therefore, together they have the authority to protect these human rights. This is due to at least several factors: (a) that the interest of human rights does not only concern the interests of the state but also involves the interests of citizens; (b) that human rights are completely rooted in normative considerations so that humans are treated as true human dignity; (c) that the

operationalization of human rights activities has a shared responsibility between humans in a state structure that interacts with each other and must be realized (Wiranata, 2009). Conceptually, responsibility is an inherent control over rights and freedoms. The idea of human rights obligations and responsibilities already has its own roots in the legal culture in Indonesia. Typical character values that have grown in the life of the Indonesian people since centuries ago contain the concept of obligations and responsibilities which Helmut Schmidt calls the distinctive values that are more dominant in Eastern societies (Mahfud M.D., 2010).

Labor protection in particular is the protection of female workers. Basically, the protection of female workers is based on 3 (three) things, including: 1) protective protection in which this protection policy is directed at the protection of reproductive functions for female workers, such as menstrual breaks, maternity leave, or miscarriage; 2) corrective protection, namely the protection policy is directed at warning the position of female workers, such as the prohibition of termination of employment for female workers due to marriage, pregnancy or childbirth. In addition, it also ensures that female workers are involved in the preparation of company regulations and work agreements; 3) non-discriminatory protection, namely the protection policy is directed at the absence of discriminatory treatment of female workers in the workplace (Irianto, 2006).

2.2 Normative provisions regarding menstrual leave for female workers

Protection of women workers is a legal protection in the field of employment. Legal protection from the state is realized by Soedarto's legal politics, in which legal politics is a policy of the state through state agencies authorized to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to. (Soedarto, 1983). Better protection of workers is aimed at improving wages, working requirements, conditions and relations, occupational safety and health as well as other social security (Rodee et.al., 2009). Companies or factories that employ women must pay attention to several things, including first, the power of women who are generally considered weak, subtle but persevering. Second, some moral norms must be prioritized so that female workers are not influenced by the negative behavior of male workers, especially when working at night. Third, the status of women workers varies from those who have the status of single to those who are married. The status of women workers will have an impact on the burden of women workers in their family environment. For female workers who are already married, of course, they have a greater burden on their families (Asyhadie, 2008).

Menstrual leave policies are contained in various laws and regulations in Indonesia. Article 49 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights regulates the rights of women. In this provision, it is stated that women have the right to vote/elect, to be appointed to jobs, positions, and professions in accordance with the requirements and laws and regulations. Women have the right to get special protection when carrying out their work or profession against things that can threaten their safety and or health related to women's reproductive functions. The special rights that exist in women are reproductive rights, because women's reproductive rights have been guaranteed and protected by law.

The protection of workers as stated in the preamble to the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower is intended to guarantee the basic rights of workers/laborers and to guarantee equal opportunity and treatment without discrimination on

any basis to realize the welfare of workers/laborers and their families on a permanent basis while paying attention to the development of the progress of the business world. Article 81 paragraph (1) of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower states that female workers/laborers who feel pain during menstruation and notify the entrepreneur are not obliged to work on the first and second day of menstruation. Paragraph (2) then explains the technical implementation which states that the implementation of the provisions as referred to in paragraph (1) is regulated in a work agreement, company regulation, or collective work agreement.

Article 81 paragraph (1) of the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower states that female workers/laborers feel pain due to menstruation on the first and second days and notify them that they are not required to work. If these two elements are not met, it is certain that the right to menstrual leave is not fulfilled. Thus, menstrual leave is a conditional right. In addition, it is also illustrated that the main basis for implementing menstrual leave is not on menstruation, but because of illness due to menstruation through a notification mechanism. Menstruation is no longer considered as a natural and recurring natural event for adult women (Istakhori, 2018). In the menstrual cycle, it is not all women will experience pain during menstruation. However, there are indeed women who experience severe pain during the first and second day of menstruation, or even during menstruation. This abnormal menstruation, pain during menstruation is called dysmenorrhea (Pramesti, & Yuliawati, 2021).

The Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation or the Omnibus Law is a law focusing on the issue of job creation and also adheres to a no work no pay system. The consequences of not clearly stating the right to menstrual leave, giving birth/breastfeeding for female workers provide a greater potential for violating the rights of leave for female workers. Moreover, with the regulation of hourly wages for workers, of course, if workers do not work, they do not get a salary (Anusantari & Nur, 2021).

2.3 Discriminatory practices in menstrual leave policy

Nowadays, there are many women who want to position themselves to be accepted by the world regardless of the type of task, profession and occupation. Sometimes the benefit factor of equality causes women not to realize that they have actually been controlled or experience ostracism against the Eve. Women are part of the world's agents of change from all sectors of the profession. However, in a patriarchal way, its position is always side-lined in the development process of a region or a country. Gender equality and justice is actually marked by the absence of discrimination between women and men. Male domination has occurred in all walks of life throughout the ages. Women are considered inferior to men. This is the longstanding doctrine of inequality between men and women. Gender is a global issue that will never end because of the position of women who want to get equal recognition in the eyes of men (Siregar, Sidharta, & Arlena, 2020).

The level of gender equality can be measured through the division of labor, access, control and benefits that are felt by both men and women and cannot be seen from one side only. In practice, household activities cannot be separated from the involvement of men and women. Those household activities include reproductive, productive and social activities. However, in reality there is still a gender gap in the household. Women generally have three roles at once, reproductive, productive and social. Meanwhile, men are more involved in productive activities.

Access and control over resources and benefits are dominantly felt by men (Sumilat, Erik, & Wahyuni, 2020). According to the Ministry of Women's Empowerment and Child Protection, the low level of female labor participation in Indonesia to date is caused by gender inequality which is still very visible in various fields. For example, the phenomenon that female workers earn far below the average male workforce, and have lower opportunities to enter the labor market (Said, et.al, 2016).

The role of women in the economy, especially in the world of work, is not yet optimal due to gender discrimination that has existed for a long time, the condition of women in the economic, social and cultural fields, politics, defence and security, and human rights is in an unfavorable position. If this unfavorable condition is not addressed, then inequality or gaps in the condition and position of women will still occur (Puspitosari & Maharani, 2014). Gender inequality is a system and structure in which both men and women are victims of the system. To understand how gender differences cause gender inequality, it can be seen through the various manifestations of existing injustices. Gender inequality is manifested in various forms of injustice, namely: marginalization or the process of economic impoverishment, subordination or the assumption of being unimportant in political decisions, the formation of negative stereotypes or labelling, violence, longer and more workloads (burden) and ideological socialization of gender role values (Fakih, 2016).

Menstrual leave is offered in some countries and companies; however, there is a lack of research examining perceptions or effects of the policy (Barnack-Tavlaris, Jessica L., et al., 2019). Underlying reasons can be mapped to increase in gender sensitization, viewing menstruation as a unique experience to women and not from an androcentric perspective. However, certain issues are likely to persist, namely fear of reverse discrimination, lack of awareness about the policy, and the policy's implications or the general lack of understanding of menstruation (Marathe, Sanjana V., & V. Raj, 2020). Gender inequality manifests in many forms in the workplace. First, workers are marginalized when they are going to take menstrual leave. The most common marginalization of female workers who take menstrual leave rights is for example wage deductions, paying the doctor's own examination fees to get sick letters, changing menstrual leave for money or sanitary napkins, but the amount is lower than the daily wage. Second, the stereotype (negative label) that female workers on menstrual leave are lazy. Workers who do not come to work even though they are on menstrual leave are labelled lazy and low productivity workers. Third, subordination or the assumption that menstrual leave is not important. Considering that menstrual leave is not important is the same as assuming that reproductive health for female workers is also not important. The fact that menstrual leave is considered the number two issue is known by various facts, including: the company does not socialize the rights of menstrual leave to workers, menstrual leave is not the main issue of the labor union, labor union officials do not understand reproductive health issues – including menstrual leave in it – because more focused-on fighting for other issues such as wages, contracts/outsourcing, bonuses, and other issues. Fourth, a double burden is also experienced by female workers who are on menstrual leave. Fifth, violence is also experienced by female workers during menstrual leave. The violence experienced by female workers are verbal abuse from superiors; being examined by security guards, superiors, or clinical doctors to prove that they are menstruating or being asked to put cotton on their genitals to prove the presence of menstrual blood; is forced to work even though they feel pain, fever, and even passed out; were given painkillers, even though they did not know the type of medicine; and the rest time is short

so it is difficult to change sanitary napkins and there is no enough clean water in the bathroom to clean the menstrual blood (Istakhori, 2017).

Menstrual leave policy on the one hand provides special protection for women, but on the other hand causes companies to avoid hiring women, or employing lower salaries for them. Women are often referred to as the secondary or marginal labor force. Called marginal because if there is a slight change in the labor market, they can leave or enter the labor market. Just because of the gender differences, women's wages are often lower than those received by men, so there is a need for gender equality in the labor market. However, sometimes the wage system still experiences injustice and imbalance between male and female workers. Gender equality and justice in the field of employment can be achieved through gender mainstreaming, in this case there is recognition of the contribution of women in the world of work, enabling women's access to the use and control of all available resources, and adequate protection for women workers so that exploitation of women workers does not occur and avoid sexual harassment of women workers in the labor market in Indonesia (Iskandar, & Sa'dia, 2020).

The process of protecting workers is carried out comprehensively and holistically by the government, employers and workers through the trade unions. The government as the holder of sovereignty is obliged to formulate legislation and regulations in the field of manpower. The government is also obliged to ensure the enforcement of these regulations and to implement industrial relations. The industrial relations are basically a process of fostering communication, consultation, deliberation and negotiation and are supported by high ability and commitment from all elements within the company (Sutedi, 2009). Employees with high levels of organizational commitment are more work-oriented than other employees. They get more satisfaction from work and view their jobs as fulfilling more of their personal needs (Thuy, Bich, et al., 2020)

The success of a number of countries to implement gender equality and protect the rights of women workers in the world of work, proves that women have a significant impact on the economic development of a country. Basically, from a population perspective, women are an important and fundamental development asset. The number, which reaches half of Indonesia's population, should be an advantage and be used for the creation of better economic development. Failure to realize this potential is a loss for economic development. Satjipto Rahardjo identifies characteristics that should exist in law enforcement for development, namely having environmental awareness, meaning that actions in law enforcement should be related to processes that take place in society, such as economics, politics and so on, being aware of their position and qualifications as an agency that must participate in driving changes and law enforcement that will be more involved in the matters of decision-making than just being the implementing agency (Rahardjo, 2004).

3. Conclusion

Menstrual leave policy is a labor protection policy, especially for the female workers. This policy is based on consideration of the concept of a welfare state and the protection of human rights. In the laws and regulations in Indonesia, the menstrual leave policy is contained in Article 81 of Law Number 13 of 2003 concerning Manpower. Nevertheless, the implementation of the menstrual leave policy still requires a number of requirements that tend to cause discrimination for women. Menstrual leave policy on the one hand is a gender sensitive policy, but on the other hand it places women as secondary workers. Taking menstrual leave has an

effect on performance appraisal and wage deductions. As a result, the female workers work by taking painkillers during their menstrual period, or even taking menstrual delayers in order to work optimally.

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