

## LEGAL PROTECTION OF THE RIGHTS OF WOMEN WORKERS

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Received 30 March 2024 • Revised 30 April 2024 • Accepted 30 May 2024

### Abstract

Female workers are part of the workers who do work, either for themselves or working in an employment relationship or under orders from employers or other legal entities. The reasons why women enter the world of work include the increasing need and the desire to qualify themselves with the abilities they have. The problem is how the legal protection of the rights of female workers is viewed from Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law and what are the obstacles to providing legal protection for female workers. Qualitative Research Method using the Normative Juridical approach method. The results of the research are that protection for female workers in the Job Creation Law is not specifically detailed, but in general the Job Creation Law mentions worker protection without discrimination as stated in Article 153 which was amended from Article 153 of the Employment Law, in relation with protection for female workers at PT. Indo Marco Logistic includes 1) Protection of Female Workers regarding Menstrual Leave 2) Protection of the Right to Pregnancy and Childbirth Leave 3) Protection of the Right to Breastfeed 4) Protection of Female Workers Overtime and Barriers in Providing Legal Protection to Female Workers including 1) salary inequality between workers men and women who have the same responsibilities and qualifications. The work performed is similar, but the wages received by female workers are lower than their male counterparts. This is a violation of basic rights that must be corrected immediately. 2) Female workers often face discrimination during pregnancy. They are given the same workload without considering their physical and emotional condition. Maternity and paternity leave policies that should provide adequate rest are often ignored. 3) Companies employ female workers late at night without paying attention to health and safety risks. Female workers who are pregnant or have just given birth are prohibited from working from 23.00 to 07.00, but this rule is often ignored.

**Keywords:** Protection, Rights, Women Workers

## INTRODUCTION

The role of law in life is as a protective medium that provides a sense of security, peace and order to achieve peace and justice for everyone. The law should provide justice because the aim of the law is, among other things, the realization of justice. One form of protection for national developers is the existence of regulations governing employment. Expanding employment opportunities and protecting workers must be the main policy as a whole in all sectors. Sectoral and regional development programs must strive to create as many job opportunities as possible in exchange for commensurate wages.

Indonesia is a country based on law (*rechtsstaat*) only after the amendment to the 1945 Constitution is expressly stated in Article 1 and Article 3, in Indonesia a country based on law, the government must guarantee law enforcement and the achievement of legal objectives. There are three elements to law enforcement that are always considered, namely justice, expediency or usefulness (*doelmatigheid*), and legal certainty. In the doctrine, the main aim of law is order. Compliance with order is the basic requirement for an orderly society, another goal of law is the achievement of justice. To achieve order and interaction between people in society, it must reflect legal certainty.

Workers have an important role in national development, especially economic development in Indonesia. Therefore, workers need to be given legal protection, maintenance and increased welfare. Realizing the importance of workers for employers, government and society, it is necessary to ensure worker safety in carrying out their work. The aim of labor protection is to ensure the existence of a harmonious work relations system without any pressure from the strong on the weak. For this reason, every business actor is obliged to implement work protection provisions in accordance with applicable laws and regulations.

Female workers are part of the workforce who carry out work, either for themselves or working in an employment relationship or under orders from employers or other legal entities. The reasons why women enter the world of work include the increasing need and the desire to qualify themselves with the abilities they have. However, whatever the reason, a woman works, it is normal and permissible and makes a significant contribution to many parties directly or indirectly. Employment development needs to be directed towards creating harmony between entrepreneurs and workers which is imbued with Pancasila and the 1945 Constitution, where the parties appreciate and respect each other and understand the role of each party's rights and obligations in the continuity of the production process and participation in human resource development. Therefore, regulations regarding employers and workers need to be considered comprehensively, especially legal protection for workers which aims to guarantee workers' basic rights regarding opportunities and treatment without discrimination. This is the essence of the formation of labor laws to realize the welfare of workers which has implications for the progress of the business world in Indonesia.

In 2020, Law Number 13 of 2003 was amended with a new regulation regarding job creation, Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, Law This is known to have revoked and changed several previous regulations. One of them is amending Law Number 13 of 2003. The passing of the Job Creation Law caused polemics among the public. It was feared that this law would streamline the regulations that previously provided the legal umbrella for workers. The Job Creation Law contains articles that are considered more profitable for employers and removes several important points as guarantees for workers' rights, especially female workers.

In Law Number 13 of 2003, legal protection for female workers has been regulated. However, in the latest regulations, Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation as a Law, essential rights for women are not included, giving rise to a pro and con polemic among the public which gives rise to There are concerns that the essential articles for women will be removed. This is proven by the many criticisms of the government which are considered to have harmed the rights of workers, especially female workers. Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law also changes several provisions in Law No. 13/2003 concerning Employment including regarding working time, overtime work, breaks and annual leave. The Minister of Manpower (*Menaker*), Ida Fauziyah, has indeed provided clarification regarding the opinion regarding the eradication of women's rights in the Job Creation Law which emphasized that rest and leave time is still regulated in accordance with Law No. 13 of 2003 concerning Employment, however The Job Creation Law still mandates that more detailed regulations be regulated in government regulations (*PP*). However, in his explanation, the Minister of Manpower did not explain whether companies were still required to pay full wages during menstrual and maternity leave.

Protection of female workers will be increasingly threatened by the government's plans topassed the Job Creation Law. Many parties have criticized the regulations which the government hopes will attract more investors into Indonesia because they have the potential to harm the rights of workers, especially women. If in the 2003 Manpower Law, female workers who do not come to work due to menstrual leave are still required to be paid their wages, then indraft Omnibus Law, this right is not explicitly stated. One more gap that has not been accommodated by the new law is the protection of non-formal workers.

Based on the 2003 Indonesian Labor Law, female workers are allowed to take paid maternity leave for a period of 1.5 months before birth and 1.5 months after birth, the right to breastfeed during working hours and extra protection for mothers by the companies that employ them. Moreover, companies are prohibited from terminating employment contracts if female workers are absent due to pregnancy, childbirth, miscarriage or breastfeeding. The aim of establishing the Employment Law in 2003 was to support social equality and protect workers from abuse of power by any party on the basis of human rights.

Women's involvement in the world of work is a form of participation in national development. The development of industrialization provides an opportunity for women to be a part of meeting life's needs. However, the fate of female workers really depends on the state's care. It is possible that there will still be controversies occurring, such as discrimination against female workers in terms of wages, menstrual and maternity leave, as well as violations of other rights.

Labor and gender observers argue that the practice of suppressing the rights of women workers is a result of the perpetuation of patriarchal culture in the employment sector in Indonesia. Data from the International Labor Organization or ILO in 2018 shows that only half of Indonesia's female population has a job and the number never increases. Meanwhile, for men, the employment rate reaches almost 80 percent of the population.

In practice, there are still complaints from workers, especially female workers. These complaints include wage discrimination for the same job and for the same time. The fact that Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) seems to have been forgotten. This can be seen in the provision of the regional minimum wage (UMR) which is used as a standard for single male workers who have different needs from female workers/employees. Every woman has special rights that must be fulfilled and protected by law, but in practice there are also many problems that occur in female workers, one of which is that female workers who are menstruating continue to work as usual without any disturbance, but if their physical condition is not possible so that work does not become a problem, this is stated in Article 18 paragraph (1) of Law Number 13 of 2003 concerning Employment "Female workers/laborers who feel sick during their menstrual period and notify the employer are not obliged to work on the first and second days during menstruation."

LABOR Institute Indonesia revealed that there are four basic problems experienced by Indonesian female workers today. Executive Secretary of the Indonesian Labor Institute, Andy William Sinaga, said that the four problems often experienced by female workers in the workplace include gender-based violence (gender violation), female workers still have difficulty getting maternity rights and difficulty accessing BPJS (Guarantee Administering Agency) membership rights. Social) both health and employment as well as the difficulty of getting child and husband support when working as the main breadwinner.

Based on the explanation from the Minister of Manpower, the regulations governing guaranteed protection for female workers still use Law Number 13 of 2003. In connection with this problem, in the Karawang jurisdiction, there is one company operating in the field of logistics facilities, PT Indo Marco Logistic which employs male and female workers. There are approximately 30 female workers with different backgrounds and ages. Some of them are also married and have babies who automatically still breastfeed their children. Each company has its own rules which are included in the work agreement with its employees based on Law Number 13 of 2003 which has been amended by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming a Law. -Invite. Regarding the passing of the Job Creation Law, the author wants to examine in more depth the implications of the implementation of this Law for the fate of workers at PT. Indo Marco Logistics.

## RESEARCH METHOD

Qualitative Research Method using the Normative Juridical approach method, namely legal research is a form of scientific activity, which is based on certain methods, systematics and thinking, which aims to study one or several specific legal phenomena, by analyzing them by prioritizing secondary legal materials such as books -books, articles, papers, law books, statutory regulations.

## RESULTS AND DISCUSSION

### Legal Protection of the Rights of Women Workers in View of Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming Law

The government has formed a legal policy which is used to determine patterns for making laws and renewing them in a legislative process which is binding as a norm. The Omnibus Law was created as a driving force or trigger to strengthen capabilities and implement the legislative function of the DPR as a rule of law. In Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, the employment section is included in chapter four of the employment cluster. In Article 80 it is stated: "In order to strengthen and protect workers and increase the role and welfare of workers/laborers in supporting the investment ecosystem, this law amends, deletes and establishes new arrangements for several provisions regulated in:

- a. Law Number 13 of 2003 concerning employment
- b. Law Number 40 of 2004 concerning the Social Security System
- c. Law Number 24 of 2011 concerning Social Security Administering Agency
- d. Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers

Protection for women in the Job Creation Law is not specifically detailed, but in general the Job Creation Law states the protection of workers without discrimination as stated in Article 153 which was amended from Article 153 of the Manpower Law, which reads: Employers are prohibited from terminating workers. employment relationship with workers/laborers for the following reasons:

- a. Unable to go to work due to illness according to a doctor's statement for a period not exceeding 12 (twelve) months continuously;
- b. Unable to carry out his work due to fulfilling obligations to the state in accordance with statutory provisions;
- c. Carrying out the worship commanded by his religion;
- d. Marry;
- e. Pregnant, giving birth, miscarriage, or breastfeeding her baby;
- f. Having blood ties and/or marriage ties with other workers/laborers in the same company;
- g. Establishing, becoming a member and/or managing a trade/labor union, workers/laborers holding a trade/labor union outside working hours, or during working hours with the agreement of the employer, or based on the provisions stipulated in the work agreement, company regulations, or agreement work together;
- h. Complaining about entrepreneurs to the authorities regarding the actions of entrepreneurs who commit criminal acts;
- i. Different beliefs, religion, political sect, ethnicity, skin color, class, gender, physical condition or marital status and
- j. In the event of permanent disability, illness due to a work accident, or illness due to work relations, according to a doctor's certificate, the recovery time cannot be ascertained.

This article explains the special rights for female workers that employers may not terminate the employment relationship of women who are pregnant, giving birth, have miscarriages or are breastfeeding. Further provisions regarding protection mechanisms still apply to Law Number 13 of 2003 concerning Employment which does not revoke or change the provisions of the Article regarding special protection for women. So the protection of female workers still refers to Law No. 13 of 2003 concerning employment.

In connection with this problem, in the Karawang jurisdiction, there is one company operating in the field of logistics facilities, PT Indo Marco Logistic, which employs both male and female workers. There are approximately 30 female workers with different backgrounds and ages. Some of them are also married and have babies who are automatically still breastfeeding their children, apart from that, discrimination is still found during pregnancy, such as maternity and maternity leave. Each company has its own rules which are included in the work agreement with its employees based on Law Number 13 of 2003 which has been amended by Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation Becoming a Law. -Invite. Regarding the passing of the Job Creation Law, the author wants to examine in more depth the implications of the implementation of this Law for the fate of workers at PT. Indo Marco Logistics.

In relation to the protection of female workers at PT. Indo Marco Logistic includes:

- a. Protection of Female Workers regarding Menstrual Leave

Based on interviews with several employees of PT. Indo Marco Logistic, regarding the leave mechanism, especially leave for the first two days of menstruation, stated that the company did not specifically mention that there would be leave for female workers on the first and second day of menstruation. However, the company, in accordance with its decision letter, provides sick leave without a reduction in salary as long as there is a report on the general absence of workers, both men and women. In practice, so far based on the results of interviews with respondents, no worker has ever asked for leave because of stomach cramps during menstruation. Even if there were, basically it would be fine to report being sick, but no one has ever been given permission because it's not necessary. In Article 81 of the Employment Law Number 13 of 2003, it is stated that: "Female workers/laborers who feel sick during their menstruation period and notify the employer are not obliged to work on the first and second day of menstruation."

b. Protection of Pregnancy and Paternity Leave Rights

Company PT. Indo Marco Logistic provides maternity and maternity leave, a month before giving birth and a month after giving birth. However, this provision is also flexible according to the capabilities of the female workers who carry it out. There are those who even reach the age of nine and are still working to achieve their targets and get intensive work. This is absolutely the employee's own decision, the company neither recommends nor prohibits this. Taking maternity and childbirth leave does not reduce the worker's basic salary. But workers do not receive incentives because they do not achieve targets

c. Protection of the Right to Breastfeed

Even though working hours are relatively busy, female employees of PT. Indo Marco Logistic still provides employees who already have children with the opportunity to breastfeed their children, even within the company there is an empty room that can be used at any time by mothers who want to breastfeed or pump breast milk for their children. One employee said that working at PT PT. Indo Marco Logistic is very comfortable even for him who already has four children.

d. Protection of Female Workers During Overtime

PT. Indo Marco Logistic not only employs its employees during the day, at night all company activities continue to run. Overtime also applies when workers have to come to work on Sundays or other national holidays and are still given overtime pay in accordance with applicable regulations.

### Barriers to Providing Legal Protection to Female Workers

The obstacles faced in implementing legal protection for female workers are the existence of agreements between workers and employers which sometimes deviate from applicable regulations, the absence of sanctions from statutory regulations for violations that occur, the factor of workers themselves not exercising their rights for economic reasons. In order for this step to be effective, the state must explain it and try to translate it into the formulation of state law and enforce it by bringing its customers before the court. However, not many women themselves are aware that their rights are protected and that this has an influence on women's lives.

In employment dynamics, there are always disputes between workers and employers, where these disputes occur, including discrimination received by workers, both wage discrimination and other workers' rights. The state should be the guarantor of the fulfillment of the rights of every worker, especially female workers. In accordance with the provisions of the a quo article, it implies that women have the right to work and job protection as well as the survival of their families. As is the essence of Law Number 13 of 2003 concerning Employment, namely providing welfare to every worker/laborer in order to ensure the progress of the Indonesian business world.

Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) concerning Women's Political Rights contains special rights for women, where Article 4 explains affirmative action, namely positive discrimination for women.

Meanwhile, Article 11 explains the state's obligation to eliminate discrimination against women in the workplace. In this way, it can become a shield for female workers to continue to obtain their rights.

During the pandemic, the state should pay more attention to all aspects related to work mechanisms. Women workers must really get their rights as they should. One of them is that companies/workplaces provide pick-up and drop-off services for female workers as stated in Article 76 of Law no. 13 of 2003 concerning Employment. However, in reality female workers, especially urban workers, often do not get public transportation when they go home from work.

ICEDAW(International Convention on Elimination of All Forms of Discrimination Against Women) orders all countries in the world not to discriminate against women. In ICEDAW it is determined that discrimination against women is different treatment based on gender, namely:

a. Intentionally or unintentionally harming women;

- b. Prevent society as a whole from recognizing women's rights both at home and abroad; or
- c. Prevent women from exercising their human rights and basic freedoms.

Women have special protection in accordance with their reproductive function as regulated in article 11 paragraph (1) ICEDAW letter f that the right to work health and safety protection includes efforts to protect reproductive function. Apart from that, documents are often falsified, such as name, age, address and employer's name which are often different from those stated in the passport. Undocumented workers are not provided with work agreement documents. This also often happens to female workers who work abroad. Therefore, ICEDAW in article 15 paragraph (3) stipulates that participating countries agree that all contracts and all documents that have legal force, which are intended to limit the legal capacity of women, must be considered null and void.

The rights of women workers are guaranteed in the constitution, laws and several implementing regulations. These rights guarantees are in line with various international conventions that regulate the rights of women workers. However, there are still obstacles in providing legal protection for female workers in Indonesia. Here are some obstacles to pay attention to:

- a. In some sectors, there is salary inequality between male and female workers who have the same responsibilities and qualifications. The work performed is similar, but the wages received by female workers are lower than their male counterparts. This is a violation of basic rights that must be corrected immediately.
- b. Female workers often face discrimination during pregnancy. They are given the same workload without considering their physical and emotional condition. Maternity and paternity leave policies that should provide adequate rest are often ignored.
- c. Companies employ female workers late into the night without paying attention to health and safety risks. Female workers who are pregnant or have just given birth are prohibited from working from 23.00 to 07.00, but this rule is often ignored.

## CONCLUSION

Protection for female workers in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation as Law is not specifically detailed, but in general the Job Creation Law mentions worker protection without discrimination as stated in Article 153 which was amended from Article 153 of the Employment Law, in relation to the protection of female workers at PT. Indo Marco Logistic includes 1) Protection of Female Workers regarding Menstrual Leave 2) Protection of the Right to Pregnancy and Childbirth Leave 3) Protection of the Right to Breastfeed 4) Protection of Female Workers Overtime and Barriers in Providing Legal Protection to Female Workers including 1) There is salary inequality between workers men and women who have the same responsibilities and qualifications. The work performed is similar, but the wages received by female workers are lower than their male counterparts. This is a violation of basic rights that must be corrected immediately. 2) Female workers often face discrimination during pregnancy. They are given the same workload without considering their physical and emotional condition. Maternity and paternity leave policies that should provide adequate rest are often ignored. 3) Companies employ female workers late at night without paying attention to health and safety risks. Female workers who are pregnant or have just given birth are prohibited from working from 23.00 to 07.00, but this rule is often ignored.

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