

JURIDICAL ANALYSIS OF THE RIGHTS OF FEMALE WORKERS IN EMPLOYMENT AGREEMENTS IN PRIVATE COMPANIES BASED ON LAW NUMBER 13 YEAR 2003 ON LABOUR

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Abstract: Inequality between the rights of women and men workers is still very real, with frequent violations of the maternity rights of women workers. Some companies still violate these rights, such as prohibiting pregnancy, providing health services that favour men and employers, and issues related to women's reproductive organs. Although rights such as menstrual leave, maternity leave, and breastfeeding leave are stipulated in Law No. 13/2003, women workers often experience difficulties in applying for leave in accordance with their rights in the workplace. Companies use the excuse that the employment contract agreement that has been agreed upon by both parties does not bind the company to grant leave in accordance with the rights of female workers. This research aims to analyse the rights of female workers in collective bargaining agreements by referring to the rules in Law Number 13 Year 2003 on Manpower. In addition, this research also examines the legal implications in the event of default from one or both parties. The approach method used is the Normative Approach, examining the law as a norm that applies in society by using library materials or relevant secondary data. This research is expected to clarify the obligations and rights of female workers as well as the legal consequences in the event of a violation or default in the employment agreement. The results show that breach of the employment contract is a civil law problem that can be resolved administratively with the payment of compensation, but this has the potential to sacrifice the continuity of employment of employees in the company.

Keywords: *Worker Protection, Employment, Women Workers' Rights, Agreement.*

I. INTRODUCTION

At this time in the development of labour law enforcement, gender inequality is still very much felt, that based on the entity, women workers should also receive the same rights as male workers and their natural needs as "women" should also be fulfilled.

The National Commission for Women (Komnas Perempuan) explained that there are still some companies that violate the maternity rights of female workers, forms of violations such as the prohibition of pregnancy and required not to be pregnant, pro-male health clinics and services and employers, and so on (Dewi, 2022). The figure of a woman is a weak figure when viewed physically, because women have something else, namely the reproductive organs. This reproductive organ should be a concern for employers when employing a female worker, but sometimes employers have not been able to pay attention to matters relating to women and these things are the rights that every female worker should get (Maulida, 2021).

The rights of women workers regulated in Law Number 13 Year 2003 concerning labour include the right to menstrual leave, maternity leave, and breastfeeding leave, which should have been regulated in such a way in the Law that public or private companies must obey to maintain and facilitate the rights of these women workers (Maulida, 2021). Based on data from the Central Statistics Agency (BPS) in 2022 TPAK (Labour Force Participation Rate) men have a labour force participation percentage rate of 83.83% and women have a percentage of 56.43% (BPS, 2022).

Based on the sources above, there is one case related to the rights of women workers, this case was experienced by a female worker with the initials (NS). The worker explained that it was very difficult to apply for maternity leave, menstrual leave, and breastfeeding leave at the private company where NS worked because it was complicated by the company which argued that the work contract agreement that had been signed by employees and was not contained in the contents of the agreement so that the private company or the company argued that there was no obligation or obligation from the company to easily provide leave permits concerning the rights of female workers, whereas this was contained in the work agreement between employers and workers.

Regarding the case above, this study has a research objective to juridically analyse the Rights of Women Workers in the Collective Labour Agreement between the Company and the suitability of the rules in Law Number 13 Year 2003 concerning Manpower, and will examine the legal consequences if one or both parties make defaults.

II. RESEARCH METHOD

The research approach method used is a normative approach which in essence this approach examines the law conceptualised as norms or rules that apply in society. According to Soerjono Soekanto and Sri Mamudji, normative legal research is legal research conducted by examining library materials or secondary data only (Soekanto, dkk). Thus, the material studied in normative legal research is library material or secondary data that has a correlation with the problem under study.

III. RESULT AND DISCUSSION

The results of an interview with NS, who is one of the employees of a private company in Majalengka Regency on Saturday 16 August 2023, explained that the rights of women workers in Law Number 13 of 2003 are not included in the work agreement or contract of the private company. This can be seen from the employment agreement between the Employer and NS, in Article 5 of the employment agreement does not contain the rights of women workers.

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In relation to the above case, the company where NS works should already contain the rights of female workers, as this has been regulated in the Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower as well as the conventions of the *International Labour Organization* (ILO). The following is a list of women's rights that have been regulated in the legal umbrella that needs to be known (blog, 2023):

1. Maternity and paternity leave entitlements. Law Number 13 Year 2003 Article 82 regulates the right to maternity and paternity leave for women. Female workers are entitled to rest for 1.5 months before giving birth and 1.5 months after giving birth. However, for this right, the worker's family is obliged to inform the company of the birth of their child within 7 (seven) days after giving birth and must provide proof of birth or birth certificate to the company within six months after giving birth.
2. Right to protection during pregnancy. Law Number 13 Year 2003 Article 76 paragraph (2) states that employers are prohibited from employing pregnant women who could be harmful to their womb and themselves. Therefore, companies are obliged to guarantee the protection of pregnant female workers, because pregnant workers are in a very vulnerable condition and therefore must be prevented from excessive workloads.
3. Right to miscarriage leave. Workers who experience miscarriage also have the right to maternity leave for 1.5 months accompanied by a gynaecologist's certificate. This is regulated in Article 82 paragraph 2 of Law Number 13 Year 2003.
4. Labour costs. Based on Law No. 3/1992 on Labour Social Security, companies that employ more than 10 workers or pay wages of at least IDR 1,000,000/month are obliged to include their employees in the Jamsostek program. One of the Jamsostek programmes is health care insurance that covers examinations and maternity costs.
5. Right to breastfeed. Article 83 of Law No. 13/2003 states that breastfeeding workers should be given at least some time to breastfeed or pump breast milk during working hours.
6. The right to menstrual leave. Many women still don't know about this. But in reality, every female employee has the right to menstrual leave on the first and second day of her menstrual period. This is stated in Article 81 of Law Number 13 Year 2003.
7. Overtime Regulation. According to Article 76 of Law No. 13 Year 2003, female workers who are less than 18 (eighteen) years of age are prohibited from being employed between 11:00 p.m. and 07:00 a.m. . Companies are also prohibited from employing pregnant female workers between 11:00 pm and 7:00 am. In addition, the company is obliged to provide shuttle transport for female employees, whether pregnant or not, for those who go to and from work between 11:00 p.m. and 5:00 a.m.
8. Termination of Employment for Special Reasons. The Minister of Manpower Regulation, Permen 03/Men/1989, regulates the prohibition of termination of employment (PHK) of female workers on the grounds of marriage, pregnancy, or childbirth. It is also stipulated in ILO convention No. 183 of 2000 Article 8 that upon returning to the workplace, companies are prohibited from discriminating against female workers who have just returned after maternity leave. They have the right to re-occupy their position and get the same salary as the salary received before maternity leave.

The basic rules mentioned above, when viewed from the definition of the work agreement itself according to Wiwoho Soedjono is a legal relationship between a person acting as a worker/labourer and an employer. A work agreement between individuals on one

side and the other party as an employer to carry out a job for wages (Soedjono, 1987). Meanwhile, according to Article 1601 of the Civil Code defines a work agreement as:

“An agreement whereby one party, the labourer, binds himself or herself to perform work under the direction of the other party, the employer, for a specified period of time for a fee.”

This is further clarified by Article 1320 of the Civil Code regarding the validity of the agreement:

1. Agreement between the two parties;
2. The capacity of the parties;
3. A certain matter; and
4. A halal cause.

Article 1320 of the Civil Code explains for the third point where there is a certain thing, one of which is related to the rights and obligations between workers and employers, but in the work agreement made by both of them there is a discrepancy with the provisions of the rules in Law Number 13 Year 2003 concerning Labour.

The legal consequences received by employers if they commit default, namely if the employer uses deception, a series of lies, a false name and a false situation with the intention of benefiting themselves, will be subject to criminal, civil and administrative sanctions in accordance with the type of default. The NS case if associated with default, where the Employer with the intention of benefiting themselves, this is clearly stated in Article 5 of the Work Agreement between NS and PT. Private, the contents of Article 5 points are not formulating the rights of women workers and there is a discrepancy in the rules regarding Women Workers in Law Number 13 Year 2003 concerning Labour.

IV. CONCLUSIONS

The enforcement of women workers' rights in the workplace is important, especially regarding the right to maternity leave, paternity leave, and other rights that should be guaranteed and facilitated by the company. The discrepancy between the contents of the employment agreement and the regulations governing women's rights in Law No. 13/2003 on Labour shows that there are violations and legal discrepancies that need to be considered in the context of women's employment.

In the legal context, errors in the enforcement of women workers' rights that lead to default by companies can result in criminal, civil, or administrative sanctions. Therefore, it is important for companies to ensure that employment agreements are made in accordance with legal provisions governing the rights of women workers to avoid violations and legal consequences that may arise.

However, the Labour Law should be a preventive basis and limitation for companies, both private and non-private, in making unilateral employment contracts for their employees. And towards the enactment of the Labour Law, it must also protect and maintain the rights of women workers not only in action but also in reaction to legal actions, or ideally the employment agreement or employment contract if it later contradicts the applicable law then its validity is null and void, but the capabilities and abilities of workers are not eliminated so that they still get a job in the same company with the substance of an employment agreement or employment contract that is different from before in accordance with applicable laws and regulations.

Thus, employees are not trapped in ignorance of the applicable law as a result of signing an employment relationship that has a substance that is more detrimental to employees by exploiting the rights of employees, especially women workers, which is contrary to the law. It is not justified that later on it is a civil product then the by-product has

occurred a fixed contract and harms the rights of employees that cannot be resolved or prevented by other laws.

Repressive efforts on the occurrence of a contract or unilateral employment contract agreement on the exploitation of labour rights are considered very detrimental to both female and male workers, because both female and male workers in their position or position are individuals who have a very high tendency or dependence on the income they will get from the results of their hard work and performance in the company, so that the follow-up to the exploitation of their rights is very small interest and follow-up of the workers considering that they then have to return to sacrifice time, energy, and thoughts to look for income from other places to meet their daily needs.

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