



Legal Analysis of the Rights of Pregnant or Maternity Women Workers in Indonesia

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Abstract. Every company certainly needs employees as personnel who carry out every activity in the company organization. Normative labor rights are often ignored by companies, for example, there are labor wages that are still below the Provincial Minimum Wage (UMP), inappropriate workplace facilities, not providing work leave, and employing women, especially pregnant women without paying attention to and protecting decency and security while at work. Many are found in some employment contracts in some companies that require women to voluntarily resign when the woman becomes pregnant. The research method in this thesis is carried out with normative juridical research. Collection of legal materials in the form of primary and secondary materials in the form of literature studies, observations, questionnaires, and interviews. The analysis carried out is qualitative. The results show that the rights of female employees have been fully fulfilled, it's just that there are some shortcomings such as breastfeeding room facilities are still lacking.

Keywords: Legal Protection, Pregnant Women Workers, Maternity Women Workers

INTRODUCTION

Every company certainly needs employees as personnel who carry out every activity in the company organization. In addition, employees are the most important assets that have a significant impact on a company's performance. The firm may continue to run manually in the absence of sophisticated machinery, but it cannot operate at all in the absence of workers.

However, in reality, the normative rights of labor are often ignored by companies, for example, labor wages are still below the Provincial Minimum Wage (UMP), facilities in the workplace are not appropriate, do not provide work leave and employ women, especially pregnant women, without paying attention to and protecting decency and safety while at work and the provision of shuttle even often in termination of employment (PHK).

Many are found in some employment contracts in some companies that require women to voluntarily resign when the woman becomes pregnant. When the woman begins to become pregnant, she must forcibly submit her resignation, even though pregnancy is an external nature and is included in the reproductive function. This forced resignation is because pregnant women are considered unable to carry out their work optimally so it will

interfere with the company's productivity. This neglect of normative rights is often carried out, one of which is due to the lack of understanding of labor regarding normative rights.

PT Dharma Kyungshin Indonesia (DKI) is one of the Automotive Component Manufacturers (Wiring Harness) in Indonesia which was established on February 18, 2020. This company is a Joint Venture Company between Dharma Group (Indonesia) and Kyungshin Corporation (South Korea). PT Dharma Kyungshin Indonesia produces cables, especially electrical cables and battery cables (<https://id.linkedin.com/company/dharmakyungshin>). How are the rights of protection for women workers who are pregnant and/or giving birth carried out by PT Dharma Kyungshin Indonesia?

This study, conducted by PT. Dharma Kyungshin Indonesia attempts to investigate the applicability of protective rights to pregnant and/or postpartum female workers. In addition, this study is also intended to find out the legal views of PT. Dharma Kyungshin Indonesia on the labor rights of pregnant and/or lactating women.

LITERATURE

Article 86 paragraph (1) of Manpower Law Number 13 of 2003 states that every worker has the right to occupational safety and health protection (K3). K3 activities aim to offer safety assurances and promote worker health by reducing accidents and occupational disorders. So that female workers who are pregnant can ask to do work that is not heavy and dangerous as a form of safety guarantee for themselves.

The ILO Convention No. 155 of 1981 on Occupational Safety and Health affirms reproductive health protection as part of K3. The explanation of this Convention mentions the parts of an effective K3 policy including protecting workers with disabilities, women workers in particular related to working conditions and conditions, occupational health and safety, and pregnancy.

Article 81 paragraph (1) of Manpower Law Number 13 of 2003 specifies that female personnel/workers who are menstruating feel pain and tell employers are not required to work on the first and second days of menstruation; Article 84 states that every worker/laborer who exercises the right to menstrual rest is entitled to full wages; Article 93 paragraph (2) point b states that employers are obliged to pay wages for female workers/workers who carry out menstrual breaks; and article 186 paragraphs (1) and (2) jo. Law Number 11 of 2020 concerning Job Creation states that it is a criminal offense, employers who do not pay wages

for female workers/workers who are carrying out menstrual breaks, are subject to imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp. 10,000,000,- and a maximum of Rp. 400,000,000,-.

Meanwhile, pregnant and female workers who give birth are protected by their rights through the provisions of Law Number 13 of 2003 concerning Manpower article 82 paragraph (1) which states that female workers/workers are entitled to rest for 1.5 (one and a half) months before the time to give birth to children and 1.5 (one and a half) months after giving birth according to the calculation of obstetricians or midwives; Article 84 states that every worker/laborer who exercises the right to maternity rest is entitled to full wages; Article 185 paragraphs (1) and (2) jo. Law Number 11 of 2020 concerning Job Creation states that it is a criminal offense, employers who do not provide the right to rest before and after childbirth to female workers/laborers, are subject to imprisonment for a minimum of 1 (one) year and a maximum of 4 (four) years and/or a fine of at least Rp. 100,000,000 and a maximum of Rp. 400,000,000,-. Law Number 13 of 2003 concerning Manpower article 93 paragraph (2) point c states that employers are obliged to pay wages for women workers/workers who exercise the right to rest before and after childbirth; Article 186 paragraphs (1) and (2) jo. Law Number 11 of 2020 concerning Job Creation states that it is a criminal offense, employers who do not pay wages are subject to imprisonment for a minimum of 1 (one) month and a maximum of 4 (four) years and/or a fine of at least Rp. 10,000,000 and a maximum of Rp. 400,000,000,-.

Breastfeeding Opportunities and Breastfeeding Facilities have also been regulated in Law Number 13 of 2003 concerning Manpower article 83 which states that female workers/workers whose children are still breastfeeding must be allowed to breastfeed their children if it must be done during work time; Law Number 36 of 2009 concerning Health in article 200 provides criminal threats for parties who obstruct breastfeeding with the following provisions: Any person who intentionally obstructs the exclusive breastfeeding program as referred to in Article 128 paragraph (2) shall be sentenced to imprisonment for a maximum of 1 (one) year and a maximum fine of Rp100,000,000.00 (one hundred million rupiah). This provision is further regulated in Government Regulation Number 33 of 2012 concerning Exclusive Breastfeeding Article 2 which states that it guarantees the fulfillment of the right to exclusive breastfeeding from birth to 6 months of age; Article 30 paragraphs (1), (2), and (3): Affirm workplace support to support the Exclusive breastfeeding program in the workplace is regulated through an employment agreement, namely by providing

special facilities for breastfeeding and/or milking; and Article 128 paragraph (3) of Law Number 36 of 2009 concerning Health states that the provision of special facilities for breastfeeding is held in workplaces and public facilities.

The requirements for breastfeeding places are regulated in the Regulation of the Minister of Health of the Republic of Indonesia No. 15 of 2013 concerning Procedures for Providing Special Facilities for Breastfeeding and/or Milking Mother's Milk¹, in article 9 paragraph (2) states the prerequisites for breastfeeding rooms, which must meet the following conditions: (a) the availability of a special room with a minimum size of 3x4 m² and/or adjusted to the number of female workers who are breastfeeding; (b) a lockable door that is easy to open/close; (c) tile/cement/carpet floors; (d) adequate ventilation and air circulation; (e) free of potential hazards in the workplace, including pollution-free; (f) the environment is quiet enough away from noise; (g) interior illumination is adequate and not dazzling; (h) humidity varies from 30-50 percent, with a maximum of 60 percent; and I there is a sink with running water for hand washing and washing dishes.

METHOD

This study employs qualitative research methodologies such as questionnaire and interview distribution. This research was conducted within Pt. Dharma Kyungshin Indonesia. Employees of PT Dharma Kyungsin are the main object of this study. This study used interview methods and questionnaires, so researchers prepared interview guidelines and questionnaires as instruments.

Researchers chose the HR section as a sample in this study because researchers consider that the HR department is the most trusted person to provide complete information and know thoroughly about legal protection for women workers who are pregnant/giving birth.

Words and actions are the primary data sources in qualitative research; the remainder are secondary data sources such as documents and others. Words and actions are words and actions of people observed or interviewed as primary sources of data. While other data sources can be written (secondary) and documentation sources such as photos.

Data analysis was performed using the Miles and Huberman model. The examination of qualitative data is done interactively and constantly until the data is saturated. Data

¹ *Regulation of the Minister of Health of the Republic of Indonesia No. 15 of 2013 concerning How to Provide Breastfeeding Facilities*

analysis activities include data extraction, data display, and verification, often known as conclusions drawing and verification.

DISCUSSION

From the results of the analysis conducted, it is known that the rights that have been obtained by employees at PT Dharma Kyungsin Indonesia include: a) The Right to Menstrual Leave; b) The right to maternity and maternity leave; c) The right to abortion leave; d) The right to breastfeeding opportunities and breastfeeding facilities; e) The right to be kept away from hazardous conditions while working; f) The right to a ban on layoffs due to pregnancy, childbirth, abortion or breastfeeding; g) The right not to hire employees who are pregnant at night. This is in line with Sinaga's statement (2021) which states that women's labor rights include: menstrual leave, maternity and maternity leave, miscarriage leave, breastfeeding opportunities and breastfeeding facilities, prohibition on employing pregnant female workers in hazardous conditions, prohibition of layoffs due to pregnancy, childbirth, abortion and breastfeeding, and provisions for hiring female workers at night.

All female employees get menstrual leave for one or two days with full salary by the company with the condition that they include a certificate of illness from a doctor if menstrual leave is more than two days. In addition, all female employees get the right to maternity and maternity leave for 3 months and are fully paid by the company with the condition that they include proof of pregnancy certificate from a doctor. If you want to add leave, you are allowed to take additional leave, but the additional leave is not paid by the company.

All female employees who experience miscarriages also get 1.5 months of abortion leave with full salary by the company with the condition that they include a certificate from a doctor. If the employee wants to add leaves, the company allows but the additional leave is not paid by the company. All female employees get the opportunity to breastfeed, it's just that the time during work breaks is rather unobtrusive.

After the issuance of Law Number 11 of 2020 concerning Job Creation, many concerns about the rights of women workers listed in Law Number 13 of 2003 concerning Manpower were eliminated. Regarding this matter, referring to articles 80 and 81 of the Job Creation Law states that the Manpower Law is still valid as long as it is not changed, deleted, or stipulated by the new arrangements by the Job Creation Law. Because several women's workers' rights in the Manpower Law mentioned above have not been changed, removed, or

stipulated by new arrangements, namely the Job Creation Law. Therefore, the provisions for the protection of women workers still apply today. However, for legal certainty, employers and workers/unions need to include maternity protection clauses in work agreements, company regulations, and collective labor agreements (Devita, 2021). In addition, provisions regarding not employing women at night also need to be ensured in the work bond (Aselina, 2021).

In the wage system provided during leave, based on existing provisions, the Company still provides wages to female workers who are on leave and the amount remains by UMP. However, with the passage of the job creation law, there are worries that there is no assurance that the system of individual earnings used to establish the minimum wage in certain sectors would not result in wages that are lower than the minimum wage (Khair, 2021).

The maximum length of the temporary labor agreement and the maximum extension period have not been precisely controlled as in the Manpower Law, but it is specified that it will be regulated in the Government Regulation. For the record, any technical rules enacted after the Omnibus Act's adoption should not exclude companies from the requirement to convert temporary workers to permanent personnel. This removes job security. The Certain Time Work Agreement (PKWT) under the Manpower Law was restricted to a maximum of 2 (two) years and could only be renewed 1 (one) time for a maximum term of 1 (one) year (Djakaria, 2018).

The company also provides breastfeeding room facilities, it's just that there is less room because the breastfeeding room is still united with the employee clinic room. Special treatment is also given to all female employees who are pregnant get special treatment and are kept away from dangerous conditions while working. Pregnant women who are still working, get special treatment, namely getting a chair while working and being moved to a lighter workplace area. The company does not lay off employees who are pregnant, giving birth, miscarriage, and breastfeeding. The company does not hire its pregnant employees to work at night.

Based on the observations of many employees who do not take menstrual leave. This is influenced by individual factors of the employees themselves who feel that some at the beginning of menstruation feel sick and some feel fine. This then causes very few employees to exercise their rights to menstrual leave.

PT Dharma Kyungshin Indonesia uses related to employment, job creation, and health along with derivative regulations in protecting female workers. In addition, labor laws are

also used, among others: a) Labor Law Number 12 of 1948 concerning Criteria for Labor Status and Protection; b) Law Number 12 of 1964 concerning Termination of Employment in Private Companies. All of these provisions are used by the company to guarantee the rights of women workers and maintain company productivity and peace between workers and employers.

The Law on Labor explains the rules for labor workers in terms of requirements to become a laborer, regulation of working hours and rest hours, provision of wages, protection of women workers, workplace and labor housing, responsibilities, prosecution of violations, and additional rules. The law on layoffs is aimed at ensuring more peace and security of work for the workers who, in addition to the peasants, must guarantee the main force in the revolution and must be teachers of a prosperous just society.

CONCLUSION

The protection rights of pregnant and lactating women workers based on the provisions of PT Dharma Kyungshin Indonesia are protected. These rights include: ha katas menstrual leave, ha katas maternity and maternity leave, ha katas abortion leave, ha katas breastfeeding opportunities and breastfeeding facilities, ha katas kept away from dangerous conditions while working, ha katas prohibition of layoffs due to pregnancy, childbirth, abortion or breastfeeding, and the right not to be employed at night.

To fulfill these rights, the Company also provides benefits to employees in the form of employment and health benefits, work leave allowances, meal allowances, work incentive allowances, holiday allowances, and old age allowances. However, the Company needs to improve breastfeeding rooms in terms of the number and quality of infrastructure provided in breastfeeding room such as non-slippery floors, better ventilation, quieter environment.

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