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Legal Protection for Female Workers from the Perspective of Human Rights and Gender Equality

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Abstract:

The protection of female workers is an essential component of fulfilling human rights and the principle of gender equality in labor relations. Although Indonesia has various regulations in place to protect female workers, their implementation still faces challenges such as discrimination, unequal treatment, limitations on the fulfillment of reproductive rights, and weak oversight of workers' rights enforcement. This study aims to analyze the implementation of legal protections for female workers from a human rights perspective and to examine the protection of reproductive rights, gender equality, and the effectiveness of law enforcement. The study employs an empirical legal method with a descriptive-analytical approach through field research and literature review. Primary data were obtained through interviews and observations, while secondary data were derived from relevant laws and regulations and legal literature. The results indicate that normative protections are in place through the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999, Law No. 13 of 2003, and Law No. 6 of 2023; however, their implementation has not been optimal. In conclusion, it is necessary to strengthen oversight, legal awareness, complaint mechanisms, and law enforcement to ensure the effective protection of female workers.

Keywords:

Female Workers; Gender Equality; Human Rights; Legal Protection; Reproductive Rights.

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1. Introduction

Human rights fundamentally recognize every human being as a subject with equal status, dignity, and rights, free from discrimination. This principle also applies to employment relationships, as everyone is entitled to fair opportunities and treatment in the workplace. In the context of female workers, the principle of equality becomes even more critical because women have historically faced various forms of discrimination, marginalization, and subordination in the workplace. Although women are legally entitled to equal access to employment and income, the practical implementation of these rights has not yet fully reflected the principles of equality and justice. Research by Banjarani and Andreas shows that female workers in Indonesia still face issues of discrimination, disparities in the fulfillment of labor rights, and harassment in the workplace, even though Indonesia has ratified various international instruments regarding gender equality and labor protection (Banjarani & Andreas, 2019).

The protection of female workers is inseparable from the protection of reproductive rights. Women's biological characteristics necessitate special protections related to menstruation, pregnancy, childbirth, miscarriage, and breastfeeding. Such protections do not constitute discrimination against male workers but rather serve as a means to achieve substantive equality in employment relationships. In practice, female workers still face obstacles in exercising these rights. Studies on female workers employed in night shifts indicate that safety, health, and special protections remain critical issues in employment relationships and require oversight by the government and labor authorities (Muslim, 2020). Furthermore, the protection of female workers who experience harassment in the workplace is also a legal issue because it is directly related to dignity, safety, and the right to a work environment free from violence and degrading treatment (Tobing, 2020).

In the Indonesian legal system, protections for female workers have a strong constitutional and legal foundation. Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees citizens the right to work and a livelihood that is decent and humane, while Article 28D, paragraph (2) guarantees the right to work and fair and decent treatment in employment relationships. These principles are reinforced by Law No. 39 of 1999 on Human Rights, which establishes equality of rights and freedoms as a fundamental aspect of human rights protection. In the field of labor, Law No. 13 of 2003 on Labor regulates equal opportunities and treatment in employment while providing special protection for female workers, including provisions regarding night work, reproductive health, rest, and maternity rights.

Changes to labor policy through the Cipta Kerja regime have introduced new dynamics regarding the protection of female workers. Law No. 6 of 2023 enacted Government Regulation in Lieu of Law (Perppu) No. 2 of 2022 on Cipta Kerja into law and repealed Law No. 11 of 2020 on Cipta Kerja. It is important to examine these changes because labor regulations must continue to ensure a balance between the flexibility of industrial relations, the interests of the business world, and the protection of workers' fundamental rights. Firmansyah et al. (2021) demonstrate that, from the perspective of feminist legal theory, the protection of female workers must be viewed as an effort to eliminate discrimination, marginalization, and subordination that may arise through the construction or application of the law.

These issues highlight a gap between legal protections and the implementation of women workers' rights. In fact, an ILO study on maternity leave in Indonesia found that the existence of statutory leave rights does not always guarantee that women workers receive the benefits, payments, and job protection they are entitled to (Setyonaluri et al., 2023). Therefore, legal protection for female workers must be

understood not only as compliance with statutory provisions but also as part of the state's obligation to guarantee human rights, gender equality, and justice in labor relations. Given these conditions, this study is important for analyzing the construction and implementation of legal protections for female workers from a human rights perspective, particularly regarding equality, reproductive rights, occupational safety and health, and the effectiveness of legal protections in industrial relations in Indonesia.

Based on this argument, there are two research questions:

RQ1: How is legal protection for female workers implemented from a human rights perspective, based on Indonesian laws and regulations?

RQ2: How do the protection of reproductive rights, gender equality, and the effectiveness of law enforcement contribute to guaranteeing the rights of female workers?

2. Methods

This study employs an empirical-juridical methodology with a descriptive-analytical research design, which examines applicable legal provisions while also assessing their implementation in society, particularly regarding the legal protection of female workers from a human rights perspective. The empirical-juridical approach is used to determine the alignment between legal norms governing the protection of female workers and their implementation in employment relationships.The data sources for this study consist of primary and secondary data. Primary data was obtained through field research by gathering information from parties involved in labor relations and the protection of female workers.

Data collection was conducted through interviews and observations to obtain information regarding the exercise of female workers' rights, equal treatment in labor relations, protection of reproductive rights, the right to rest periods and leave, as well as forms of protection against discrimination and treatment that is detrimental to female workers. Meanwhile, secondary data was obtained through library research by examining laws and regulations, legal texts, scholarly journals, previous research findings, and legal documents relevant to the research subject.

The legal basis for this study refers to the 1945 Constitution of the Republic of Indonesia, specifically Article 27, paragraph (2), regarding the right to work and a decent standard of living, and Article 28D, paragraph (2), regarding the right to work and to receive fair and decent treatment in employment relationships. This study also draws upon Law No. 39 of 1999 on Human Rights as the basis for protecting the principles of equality and freedom from discrimination. In the field of labor, the study refers to Law No. 13 of 2003 on Labor, specifically the provisions regarding the protection of female workers, including Article 76 on night work, Article 81 regarding the rights of female workers during menstruation, Article 82 regarding maternity and miscarriage leave, Article 83 regarding opportunities for breastfeeding, and Article 84 regarding the right to wages while taking certain types of leave.

In addition, this study examines regulatory developments through Law No. 6 of 2023 on the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation as a Law, along with its implementing regulations related to labor. Law No. 6 of 2023 serves as the legal basis for the Job Creation Law currently in effect and must be taken into account when analyzing the evolution of worker protection within Indonesia's labor law system.Informants were selected using purposive sampling, which involves choosing individuals deemed to have knowledge and experience relevant to the issue of protecting female workers. The collected data was then analyzed qualitatively, linking the field research findings to applicable legal provisions and theories. The analysis was conducted using a descriptive-analytical approach to identify forms of legal protection, the exercise of female workers' rights,

obstacles to their implementation, and the responsibilities of the state and employers in providing protection. Conclusions were then drawn deductively—that is, starting from general legal provisions and principles and linking them to empirical facts regarding the protection of female workers—to arrive at systematic conclusions regarding the effectiveness of legal protection for female workers from a human rights perspective.

3. Results and Discussion

3.1. Implementation of Legal Protection for Female Workers from a Human Rights Perspective

The research findings indicate that legal protection for female workers has essentially been given a sufficiently strong normative foundation within the Indonesian legal system. This protection stems from the principle of equality among human beings and the prohibition against discrimination, as guaranteed in the 1945 Constitution of the Republic of Indonesia. Article 27, paragraph (2), guarantees every citizen's right to work and a decent livelihood, while Article 28D, paragraph (2), guarantees the right to work and to receive fair and decent compensation and treatment in employment relationships. This principle must be interpreted to mean that women have the same status as men in obtaining employment, advancing their careers, receiving wages, and enjoying legal protection in industrial relations.

From a human rights perspective, equality in the workplace does not merely mean providing equal opportunities in a formal sense, but also ensuring that female workers can actually enjoy their rights. This is important because female workers have specific biological and social conditions that require special protection. Banjarani and Andreas (2019) explain that the protection of and access to female workers' rights are an essential part of the state's obligation to ensure the fulfillment of women's rights in employment relationships. Thus, special protection for female workers cannot be viewed as preferential treatment, but rather as a means to achieve substantive equality.

Legally, Law No. 39 of 1999 on Human Rights establishes that every person has the right to equal treatment and freedom from discrimination. This principle is further implemented in labor law through Law No. 13 of 2003 on Labor. Several provisions specifically provide protection for female workers, including regulations regarding night work, the right to time off during menstruation, the right to leave for childbirth and miscarriage, and the opportunity to breastfeed. Therefore, the existence of these specific provisions demonstrates that the state recognizes the need for different protections based on the biological conditions of female workers.

In the practice of labor relations, the implementation of these protections still faces a number of challenges. Research on the protection of women workers' rights indicates that the existence of regulations does not automatically guarantee that all of their rights are fulfilled. Andriani and Phahlevy (2022), for example, emphasize the importance of government oversight of the implementation of provisions that protect women workers. Legal protections lose their effectiveness if they are not accompanied by adequate oversight and enforcement mechanisms.

Another issue arises regarding the exercise of the rights of female workers who work at night. Night work poses certain risks to the safety, health, and security of female workers. Muslim (2020) points out that protections for female workers who work at night must take into account employers' obligations to ensure the safety, decency, and health of female workers. Thus, regulations regarding night work are not merely about limiting working hours but are part of the state's and employers' obligations to create a safe work environment.

From a human rights perspective, the protection of female workers must also include the right to be treated free from discrimination. Wulandari (2022) found that

discrimination against women in the workplace is still linked to low legal awareness and a lack of outreach regarding the protection of female workers. These conditions demonstrate that the issue of protecting female workers stems not only from regulatory gaps but also from workplace cultures and practices that have not yet fully treated women as equals.

Equality issues are also evident in the area of wages. The principle of equal pay for work of equal value requires that male and female workers receive equal pay for work of equal value. Herlian, Lestari, and Diana (2022) show that the gender pay gap remains a problem in the context of protecting female workers in Indonesia. Therefore, legal protection must not only provide women with access to the workforce but must also ensure equality in the economic compensation for the work they perform. Furthermore, discrimination can take the form of restrictions on opportunities to obtain positions, unequal treatment in employment relationships, and even termination of employment due to female workers' biological conditions. These phenomena contradict the principle of nondiscrimination and the objectives of labor law. Research by Firmansyah et al. (2021), conducted through the lens of Feminist Legal Theory, highlights that legal protections for female workers must be directed toward eliminating discrimination, marginalization, and the subordination of women within both the legal framework and employment relationships.

Thus, the research findings indicate that, in theory, Indonesia already has a legal framework that provides fairly comprehensive protection for female workers. However, the main issue lies at the implementation level. There is a gap between law on the books and law in action, particularly when workers are unaware of their rights, employers fail to fulfill their obligations, and oversight mechanisms are not functioning optimally. The protection of female workers' human rights therefore requires synergy among regulations, government oversight, employer compliance, and workers' legal awareness.

3.2. Protection of Reproductive Rights, Gender Equality, and the Effectiveness of Law Enforcement for Female Workers

One of the key findings of the study is that reproductive rights are a fundamental aspect of the protection of female workers. Reproductive rights relate to menstruation, pregnancy, childbirth, miscarriage, and breastfeedingcon ditions that are biologically inherent to women. Therefore, labor laws provide special protections to ensure that these conditions do not become grounds for employers to discriminate. The protection of reproductive rights is fundamentally part of the right to health, the right to decent work, and the right to fair treatment. Law Number 13 of 2003 provides a number of specific protections. Article 81 governs the rights of female workers experiencing menstruation, Article 82 grants rest periods to female workers who give birth or suffer a miscarriage, and Article 83 provides opportunities for female workers to breastfeed their children. These provisions demonstrate that Indonesian labor law recognizes that women's reproductive conditions require special protection within the employment relationship.

However, a problem arises regarding the gap between normative rights and their actual implementation. Research by Setyonaluri et al. (2023) on maternity leave in Indonesia indicates that, although female workers are legally entitled to up to three months of maternity leave with a corresponding obligation for employers to pay wages the existing scheme does not always enable them to fully exercise these rights. The study, which surveyed 479 women of reproductive age who had experienced pregnancy or childbirth while employed, identified issues concerning access to leave duration, benefits, and job protection.

These findings have significant implications from a human rights perspective. Rights that exist merely in regulations but are difficult to exercise in practice cannot be considered effective protection. Human rights protection requires that rights be genuinely enjoyed by rights-holders. Therefore, female workers should not face the

threat of job loss, reduced career opportunities, or pressure from employers when exercising their maternity rights.

The issue becomes increasingly complex when pregnancy is viewed as a factor that reduces worker productivity. Such a perspective can give rise to covert discrimination for instance, companies may be reluctant to hire women of reproductive age or may offer fewer promotion opportunities to married women with children. Rohmany, Alfirdaus, and Fitriyah (2023) demonstrate that female workers continue to face discrimination linked to gender relations and the structure of employment relationships. This indicates that norms of formal equality have not yet fully eliminated discriminatory practices against women.The protection of reproductive rights is also linked to the state's obligation to formulate gender-responsive labor policies. The state's role extends beyond merely enacting regulations; it must also ensure their implementation through labor inspection. Andriani and Phahlevy (2022) emphasize the importance of the government's role in overseeing the fulfillment of female workers' rights. Without effective oversight, companies may disregard legal provisions, given that workers often find themselves in a weaker bargaining position.

Effective protection also requires a complaint mechanism that is accessible, safe, and poses no risk of retaliation against workers. Female workers who experience rights violations often face a dilemma, as filing a complaint can impact their employment relationship. In this context, legal protection must encompass both preventive and remedial measures. Preventive protection is implemented through company regulations, the dissemination of information regarding workers' rights, supervision, and legal education; meanwhile, remedial protection is carried out through industrial relations dispute resolution mechanisms, the filing of complaints with labor authorities, and law enforcement in the event of violations.

Another relevant issue is workplace violence and sexual harassment. The protection of female workers cannot be separated from the right to work in an environment that is safe and dignified. Tobing (2020) discusses the importance of legal protection for female workers who experience harassment within the employment relationship. These circumstances demonstrate that the protection of female workers must encompass physical, psychological, social, and legal dimensions.

In terms of regulatory developments, this protection must also be viewed in conjunction with Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 on Job Creation into Law. Changes to labor regulations under the Job Creation regime necessitate ensuring that the flexibility of employment relationships does not diminish the protection of female workers' fundamental rights. Firmansyah et al. (2021) caution that changes in labor policy must take into account the perspective of gender justice so that the law does not inadvertently reinforce the marginalization of women.Based on the overall findings, the effectiveness of protecting female workers can be assessed through three aspects. First is legal substance specifically, the existence of regulations ensuring protection regarding equality, reproductive rights, and the health, safety, and security of female workers. Second is legal structure namely, the capacity of the government and relevant institutions to conduct oversight and take action against violations. Third is legal culture referring to the level of awareness among workers and employers regarding the understanding and fulfillment of their respective rights and obligations. These three aspects must operate concurrently.

Thus, protecting female workers from a human rights perspective requires more than just the existence of legislation. This protection must be translated into employment practices that are free from discrimination, provide equal opportunities, respect reproductive rights, ensure health and safety, and offer effective mechanisms for lodging complaints and resolving violations. The gap between norms and

practice highlights the need to strengthen labor oversight, raise legal awareness, and consistently enforce sanctions against employers who violate the rights of female workers.

6. Conclusion

Legal protection for female workers from a human rights perspective rests on a solid legal foundation within the Indonesian legal system. Constitutional guarantees provided by the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, and Law Number 13 of 2003 concerning Manpower establish that female workers hold a status equal to that of male workers and are entitled to fair and decent treatment, free from discrimination. Special protections for female workers particularly regarding menstruation, pregnancy, childbirth, miscarriage, breastfeeding, night work, and occupational health and safety constitute an application of substantive equality rather than a form of discrimination against male workers.

However, research findings indicate that the existence of regulations does not fully guarantee the practical implementation of such protections. A gap persists between legal standards and their actual application, particularly regarding the fulfillment of reproductive rights, maternity protection, equal employment opportunities, remuneration, and protection against workplace discrimination and harassment. This situation is driven by low legal awareness, the relatively weak bargaining position of workers, suboptimal employer compliance, and the need to strengthen labor oversight.

Therefore, the protection of female workers requires an approach that focuses not only on formulating regulations but also on the effectiveness of their implementation and enforcement. The government needs to strengthen labor oversight, raise awareness regarding the rights of female workers, provide accessible and secure complaint mechanisms, and ensure effective sanctions for violations. Employers also bear the responsibility of creating a work environment that is safe, healthy, equitable, and free from discrimination. In this way, legal protection for female workers can be tangibly realized as part of upholding human rights and gender justice, and fostering fair industrial relations.

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The data that support the findings of this study are available from the corresponding author upon reasonable request.