



## Protection of The Reproduction Rights of Female Workers

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### ABSTRACT

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*The study aims to analyze the protection of the reproduction rights of female workers through preventive and repressive legal protection facilities. This research uses empirical legal research methods by observing various facts in the field in the form of research that begins with literature studies as an initial data source. The author conducts observations and interviews to obtain data or materials relevant to the object studied. Based on the study results, it can be concluded that the protection of the reproduction rights of female workers is further regulated in employment agreements, collective labor agreements, or company regulations are still many who ignore the rules contained in the Labor Act. Employment Agreement only further regulates what is not regulated in the Employment law. When the Employment Agreement, Collective Labor Agreement, or Company Regulation rules conflict with the Law, the agreement is null and void.*

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### A. Introduction

The protection of female workers is essential in business activities and inseparable from human rights. Moreover, many female workers often experience violations of their rights as workers. For example, pregnant female workers in

Sumedang and Jambi were forced to resign. In addition, violations of the right to menstrual leave against female workers are also involved experienced by female oil palm plantation workers in Medan. Meanwhile, the regulation regarding various protections for the rights of female workers is more fully regulated in Law 13 of 2003 concerning Employment Law. The rights of female workers include the right to equality wages, rights to safety and security, menstrual leave, maternity leave, breastfeeding, and protection from other discriminatory actions.<sup>1</sup>

The growing issue of nonconformity in the content of employment agreements in some of the companies that were the location of this study with the rules contained in Employment Law, which resulted in the difficulty of female workers obtaining menstrual leave and maternity leave. The provision of menstrual leave is stipulated in Article 81 paragraph (2) of the Employment Law, which reads, "Women workers who in menstruation feel pain, are not obliged to work on the first and second day of menstruation." Likewise, female workers who are pregnant and about to give birth are entitled to (leave) 1.5 (one and a half) months before the time of delivery and 1.5 (one and a half) months after giving birth according to the calculations of doctors or midwives, but different in reality. Employment Law also regulates cursing (rest during working hours) where female workers who have given birth and have passed their maternity leave can breastfeed their children at work. To improve the health and survival of the baby by providing lactation corners that are the obligation of the company.

To date, most studies have investigated the protection of reproduction rights.<sup>2</sup> For example, Nadhira Wahyu Adityarani paid attention that the rights of female workers include the rights of reproduction, the rights of occupational health and safety, the rights of honor, and the rights of the wage system.<sup>3</sup> As such, further study is necessary to understand how the law protects the reproduction rights of the female worker. Fathul Muin stated everyone has the right to work and get fair and decent compensation and treatment in working relations.<sup>4</sup> Even, Hesti argued that the protection of women workers is a human right.<sup>5</sup> Budi

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<sup>1</sup>Hesti Widyaningrum and Adi Nur Rohman, "Perlindungan Hak Pekerja Perempuan melalui Sertifikasi HAM Perikanan yang Berperspektif Gender", *Jurnal Hukum & Pembangunan*, Vol. 51, No. 2, 2021.

<sup>2</sup>Mulyani Djakaria, "Perlindungan Hukum Bagi Pekerja Wanita Untuk Memperoleh Hak-Hak Pekerja Dikaitkan dengan Kesehatan Reproduksi", *Jurnal Bina Mulia Hukum*, Vol. 3, No. 1, 2018.

<sup>3</sup>Nadhira Wahyu Adityarani, "Hak Cuti Melahirkan bagi Pekerja Perempuan sebagai Penerapan Hukum Hak Asasi Manusia dan Perlindungan Hukum Bagi Perempuan di Indonesia", *Jurnal Fundamental Justice*, Vol. 1, No. 1, 2020.

<sup>4</sup>Fathul Muin, "Perlindungan Hukum terhadap Tenaga Kerja Indonesia (Tinjauan terhadap UU Nomor 39 Tahun 2004 tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia)", *Cita Hukum*, Vol. 3, No. No. 1, 2015.

<sup>5</sup>Widyaningrum and Rohman, *op.Cit.*

Santoso and Ratih Dheviana Puru H argued that employment agreements and Company Regulations could be fundamental legal institutions in Employment law. Employment law is one of the essential things because employment agreements have given birth to legal relationships, namely the working relationship between workers and employers. The employment agreement will be determined the rights and obligations of each party. Workers and employers will be bound to exercise their respective rights and responsibilities in such employment relationships.<sup>6</sup> The previous research showcased that the discourse of reproduction rights still has paid little attention by scholars.

To fill this void, this study aims to analyze the protection of the reproduction rights of female workers through preventive and repressive legal protection. This study contributes to the literature by examining how government protects reproduction rights through preventive and repressive protection. Departing from the real issues mentioned above, it asks how the government has implemented the regulation to protect female workers in the office or company without abandoning their own particular identity as a woman.

This study departs from the argument that the party's employment relationship, rights, and obligations are mutually reciprocated in the employment agreement. This study recommends that the government protect the female workers as an integral part of the protection of citizens since it is the obligation of the State.

## **B. Method**

This research using empirical legal research or so-called socio-juridical research is a study that looks at the law in its application or the context of its reality in society through observation at the research site. The data used is primary data in the form of data obtained when conducting interviews with respondents. Secondary data is data obtained based on documentation studies and literature studies-the received information by the authors from the study's findings. The result was analyzed qualitatively by grouping existing problems using legal arguments to explain, interpret, and review. Then the data obtained is connected with theories or laws and regulations obtained from the study of documents to answer problems.

This research was conducted in Makassar, namely at PT. Bank B South Sulawesi Regional Office, Hotel C, PT. TOE and UD. E, and the Ministry of Manpower and Transmigration of South Sulawesi Province in October and November 2020. The company that is the object of this study does not allow the

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<sup>6</sup>Budi Santoso and Ratih Dheviana Puru, "Eksistensi Asas Kebebasan Berkontrak dalam Perjanjian Kerja", *Jurnal Arena Hukum*, Vol. 6, No. 3, 2012.

author to mention the company's name, so the author will only note the initials to maintain the company's Asia and the company's good name.

### C. Finding and Discussion

Reproduction health is a collection of methods, techniques, and services that support reproductive health and well-being through prevention and solving reproductive health problems. Health problem sexual health, life status, and personal relationships, not merely consultation and care related to reproduction and sexuality transmitted diseases.<sup>7</sup> Legal protection is the protection of dignity and the recognition of human rights held by legal subjects under the legal provisions of arbitrary or as a set of rules or rules that will protect one thing from another.<sup>8</sup>

The idea of female reproduction rights is a development of human rights (Personal, political, legal, economic, judicial, and socio-cultural rights). The inherent natural rights of female workers such as menstruation, pregnancy, childbirth, and breastfeeding, protected by the State and outlined in Article 82 of Law No. 13 of 2003 on Employment jo Article 79 of Law No. 11 of 2020 on Copyright work is shortened to Employment Law for further writing. This right is what the author then intended as reproduction rights. The protection of reproduction rights is part of the protection of occupational safety and health, which is the obligation of employers in terms of their fulfillment in the work environment.

According to R. La Porta in the Journal of Financial Economics, the form of legal protection provided by a country has two properties, namely prohibited and punitive.<sup>9</sup> The most apparent form of legal security is the existence of law enforcement institutions such as courts, prosecutors, police, and other non-litigation (non-litigation) dispute resolution agencies.<sup>10</sup> Protection is meant by prohibited rules, while protection intended to be punitive (sanction) enforces the laws. There are two types of legal protections, they are:<sup>11</sup>

#### a. Preventive Protection

Preventive legal protection is prohibited. In this preventive legal protection, the subject of law can raise their objection or opinion before a

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<sup>7</sup>Azizati Salmas Marsiami, "Pengaruh Penerapan Game Edukasi Kesehatan Reproduksi (Kepo) terhadap Keterampilan Remaja", *Jurnal Ilmiah Kesehatan*, Vol. 10, No. 2, 2021.

<sup>8</sup>Nesa Gede, I Putu Saputra and I Wayan Wiryawan, "Pelaksanaan Perlindungan Hukum terhadap Pekerja Bangunan Pada UD. Wirajaya Berdasarkan Undang-Undang Ketenagakerjaan", *Jurnal Kertha Semaya*, Vol. 8, No. 4, 2020.

<sup>9</sup>Hülya Bilgin, Vuslat Muslu-Bayrak, and Gülsen Korfali, "Investor Protection and Corporate Gpvernance", *Journal Of Financial Economics*, Vol. 58, No. 3, 2000.

<sup>10</sup>*Ibid.*

<sup>11</sup>Zennia Almaida, "Perlindungan Hukum Preventif dan Represif Bagi Pengguna Uang Elektronik dalam Melakukan Transaksi Tol Nontunai", *Jurnal Repertorium*, Vol. 7, No. 1, 2020.

decision gets a definitive form. In the case of employment, the example of preventive legal protection means before creating an employment relationship. It is made in advance a labor agreement that contains the terms of work to avoid disputes in the future.

This preventive effort is one form of legal protection the government provides to prevent violations. Preventive legal protection aims to protect workers through legislation, covering various aspects of employment such as welfare, health protection, occupational safety protection, and legal protection in association, given the rampant danger, abuse, or inequality caused by the agreement detrimental to workers. With legal protection, workers are expected to increase production and welfare for a better quality of life.<sup>12</sup>

In Employment law, this preventive effort can be an employment agreement that contains work rules, normative rights of workers, and the obligations of workers and employers. Work agreements must be made in detail and clearly to prevent violations in the future. In addition, this preventive effort can also be in the form of coaching activities by the Department of Manpower and Transmigration as a preventive effort through the dissemination of Employment Norms, technical advisors, and assistance, known as Educational Preventive. The author will elaborate further on the Employment Agreement, Collective Labor Agreement, and Company Regulations to achieve the objective of providing preventive legal protection by the company related to reproduction rights.

#### 1) Employment Agreement

The essence of a legal relationship in labor law is the birth of a legal relationship that stems from an agreed labor agreement between the two. The employment agreement in Dutch is called *Arbeidsoverenskoms*. The employment agreement must contain provisions relating to the employment relationship, namely the rights and obligations of workers and the responsibilities of employers.<sup>13</sup>

The employment agreement does not require a specific form that can be made in written or unwritten, following Article 51 paragraph (1) of the Employment Law. It allows for the occurrence of an oral employment agreement. The employment agreement made in writing must refer to Article 51 paragraph (2) of Employment Law: "The required work agreement in writing is implemented following applicable laws and regulations." For the

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<sup>12</sup>Agus Antara Putra, I Nyoman Putu Budiarta, and Desak Gde Dwi Arini, "Perlindungan Hukum terhadap Pekerja dengan Perjanjian Kerja Waktu di Indonesia", *Jurnal Interpretasi Hukum*, Vol. 1, No. 2, 2020.

<sup>13</sup>Abdul Aziz, Aan Handriani, and Herlina Basri, "Perlindungan Hukum Hak Pekerja Pada Perjanjian Kerja Waktu Tertentu dalam Ketenagakerjaan", *Jurnal Surya Kencana Satu*, Vol. 10, No. 1, 2019.

employment agreement to have legal force and legal certainty should be made in written form to prove if one day needed by the parties.

In the employment agreement, there are several elements. Namely, there is an agreement between parties, goals to be achieved, achievements that must be implemented, and certain forms and the tone of certain conditions.<sup>14</sup>

The principle of freedom of contract is freedom in making agreements with anyone, any content, and its implementation so that it does not conflict with religious norms, public order, morality, and statutory regulations. In any act, it should be based on the other party's agreement and based on freedom as long as it does not conflict with the law.<sup>15</sup>

In practice, many parties misinterpret applying this principle, coupled with verbal labor agreements that are juridically recognized for existence, providing an opportunity for some parties to make labor agreements at will without regard and comply with the applicable rule of law. This oral employment agreement is still widely applied in various private companies. Even two out of four companies in this study use oral employment agreements.

The two companies that use the employment agreement orally are PT. TOE and UD. E. When conducting the first interview with Hamliani, as one of the employees at PT. TOE who had used maternity leave, it is known that at the time of recruitment, employees are only informed of their rights orally at the time of the interview. Workers claim to have never been given or signed a written employment agreement; workers who graduated from the company were told by email and immediately entered work without the signature of the contract first, as well as UD. E in the recruitment system only through interviews, without the signature of the previous contract. Workers who are in a weak position, who need a job, armed with a sober understanding, feel reluctant to question the employment agreement in writing because their focus is accepted in the company. It causes ignorance of the rights that have been guaranteed and regulated in the Employment Law. The company utilizes it in terms of granting maternity and maternity leave. Granting maternity and maternity leave at PT. TOE is only two months of rest, and it is given at once after giving birth. The fact is contrary to the provision of maternity and maternity leave. It is contained in Article 82 of the Employment Law, "Female workers are entitled to rest for 1.5 (one and a half) months before the time to

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<sup>14</sup>Ruben L Situmorang, "Tinjauan Yuridis tentang Perjanjian Kerja Bersama Ditinjau dari Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan", *Lex Privatum*, Vol. 1, No. 1, 2013.

<sup>15</sup>Fatihani Baso, Andi Yaqub, Kamaruddin and Yuniarni Ayu Kurnia, "Asas Hukum Ekonomi Syariah: Menilik Praktik Perjanjian Lisan Pembuatan Batu Merah di Desa Kota Bangun", *Jurnal Al-Ahkam*, Vol. 17, No. 2, 2021.

give birth to children and 1.5 (one and a half) months after giving birth according to the calculations of obstetricians and midwives". The position of this employment agreement should be considered null and void, as it is contrary to the Employment Law.

In addition to maternity and maternity leave, through questionnaires that forty respondents have distributed, it is known that the four companies require a doctor's certificate for female workers who want to exercise menstrual leave rights on the first and second day when menstruating. Three of these companies even implemented a cutting salary system per day for workers who did not enter the office during menstruation without a doctor's certificate. It is contrary to what is set out in Article 81 of the Employment Law. In addition, violations also occurred regarding the provision of lactation corners by companies for female workers who want to breastfeed at work. The four companies that were the object of the study did not provide a lactation corner as stipulated in Article 83 of Employment Law, where female workers who want to breastfeed only use mushollah as a nursery room.

Employment agreements have significant benefits for the parties to the contract. It should be realized because the employment agreement made and adhered to properly will create peace of mind of work a guarantee of certainty of rights and obligations for the workers and employers. Further, benefits that can be enjoyed later are that productivity will increase to develop their companies and open new jobs more broadly.<sup>16</sup>

## 2) Collective Labor Agreement

The Collective Labor Agreement, from now on abbreviated CLA, is an agreement resulting from negotiations between trade unions or some trade unions recorded in the agency responsible for employment with employers or some employers or employer's associations. CLA contains the terms of work and the rights and obligations of both parties, following Article 132 Employment Law. In other words, CLA is a reference used by companies and trade unions to reach joint decisions regarding the rights and obligations of each party.

As it is known, disputes regarding CLA can occur not only during the implementation of CLA manufacturing negotiations but also at the time of CLA implementation. At the time of negotiations on the creation of CLA, disputes can arise due to disagreements regarding CLA's making, including the type of dispute of interest (Article 1 number 4 of the PPHI Law). In contrast, disputes arising due to the non-fulfillment of rights due to differences

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<sup>16</sup>Ni Putu Rosita Novanda and I Ketut Rai Setiabudhi, "Perlindungan Hukum terhadap Hak Menyusui Anak Selama Waktu Kerja di Tempat Kerja Bagi Pekerja Perempuan", *Jurnal Kertha Semaya*, Vol. 6, No. 12, 2018.

in implementation or interpretation of CLA provisions are among the types of rights disputes (Article 1, number 3 of the PPHI Law).<sup>17</sup>

The preparation of CLA has its purpose for companies and workers. One of the objectives is to emphasize the rights and obligations of the parties. That is, these two things are directly proportional. If the responsibility has been done, then the request will be accepted. CLA aims to build peaceful industrial relations within the company to minimize conflict. Finally, CLA aims to jointly determine the terms of employment relations that have not been regulated in the regulations.

The content of CLA is determined jointly by the parties, which must include the rights and obligations of the parties. In addition, there are also additional rules that have wage increases, leave, working hours, etc. The period and date of start of CLA must also be listed as evidence, signed by the parties who drafted CLA. The four companies did not have a joint employment agreement related to this study.

### 3) Company Regulation

Company Regulation, which is referred to as CR according to Article 1 number 20 Employment Law, is a regulation made in writing by employers that contain the terms of work and company order. Employers who employ workers of at least ten people must make a CR that comes into force after being ratified by the Minister of Manpower or appointed officials. But this obligation does not apply to companies that already have CLA. It is stipulated in Article 108 Employment Law.

The company's regulations are structured and become the responsibility of the businessman concerned. The provisions in it must not conflict with applicable laws and regulations.

Information was obtained based on research conducted from October 26 to November 9, 2020, on four companies. Two companies regulated reproduction rights in the Company Regulation (PT. Bank B and Hotel C) and two others arranged in the Oral Work Agreement (PT. TOE and UD. E. However, three of these four companies do not apply menstrually, maternity, and maternity leave following the right of menstrual, maternity, and childbirth leave stipulated in the Laws and Regulations (Employment Law). In the provisions of Employment Law, it is apparent that if the Employment Agreement, CLA, and CR are contrary to the applicable law, then the Work Regulations, PKB, and PP are considered null and void.\

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<sup>17</sup>Zainal Arifin, Emi Puasa Handayan, and Saivol Firdaus, "Penyelesaian Perundingan Perjanjian Kerja Bersama (PKB) yang Tidak Menemui Kesepakatan (Studi Kasus di PJT I Malang)", *Jurnal Hukum Acara Perdata*, Vol. 6, No. 1, 2020.



## b. Repressive Protection

Supervision by the Department of Manpower and Transmigration Legal protection is related to the role and function of the law as a regulator and protector of the interests of the community, concerning the part of the government in providing protection can not be separated from the law because the safety of the law is essential to protect following other statutes and regulations. Therefore, the law is a tool to provide protection and legal functions to regulate association and solve problems that arise in society.

It cannot be immediately said that the State, in this case, the government, will go directly into the field to provide employment protection for workers to prevent violations of the reproduction rights of female workers. However, the government can provide that protection through the provisions of the legislation (Nation Concept) and law enforcement officials as implementers of the law.

Legal protection by Department of Manpower and Transmigration through the Labor Supervisor is repressive protection to ensure the implementation of labor laws and regulations (Article 176 Employment Law). The performance of employment supervision is regulated in Article 9 paragraph 1 of Permenaker No. 33 of 2016 concerning Employment Supervision Procedures conducted through the following stages: (a) Preventive educative is a coaching activity as a preventive effort through the dissemination of Employment Norms, technical advisory, and mentoring. (b) Repressive non-justisial is a forced effort outside the court to meet the provisions of labor laws and regulations in the form of a Memorandum of Examination as a warning or a statement of ability to comply with labor laws and regulations based on examination and/or testing. (c) Repressive justisial is a forced effort through the court institution by conducting an investigation process by the labor supervisor as an Employment Civil Servant Investigator.

The implementation of Employment Supervision is regulated in Article 9 paragraph 2 of Permenaker No. 33 of 2016 on Employment Supervision Procedures through the following activities: a) Coaching; b) Examination; c) Testing; and/or d) Investigation of Employment Crimes. Supervising employees is to oversee the enactment of labor laws and regulations. Suppose from the examination results of employment staff employees. It turns out that the complaint or findings contain the truth. In enforcing existing provisions, if the enforcement action against employers to immediately carry out their normative obligations to workers is not heeded, supervisory employees issue the determination of normative rights. If, after the discharge of the supervisory employee, it remains not fulfilled by employers, workers/unions, or workers' heirs, then they can demand their rights through the courts.

Based on the interviews with several female workers as respondents and employers, there has never been any from the Department of Manpower and Transmigration who did not respond directly to the company to examine the implementation of Employment Law. It also caused many female workers to be less concerned about information about workers' rights. It can be seen from their lack of attention to employment agreements with employers and company rules regarding the provision of menstrual leave, pregnancy and childbirth, and breastfeeding rules. Employers then misuse this. Workers have not defended their rights not because they do not want them. Still, the workers do not know how to protect them, do not dare to do so, and most importantly, economic factors inevitably require them to submit to even discriminative rules.

#### **D. Conclusion**

The protection of female workers' reproduction rights through preventive and repressive means of defense is not fully implemented with companies that apply employment agreements. That violates the provisions contained in the Employment Law related to the reproduction rights of female workers who are connected to menstrual leave rights, maternity and maternity leave, and the condition of lactation corners that are not at all fulfilled. The lack of knowledge of female workers of their rights guaranteed by the Law gives the impression that the Department of Manpower and Transmigration has not carried out maximum supervision either through preventive control of educative, repressive non-judicial, or judicial repressive.

This research is inseparable from several limitations known through observations throughout the study. This research has not discussed the protection of women workers from a human rights perspective. Therefore, further research is expected to discuss the protection of female workers from the perspective of Human Rights.

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