



LEGAL PROTECTION AGAINST GENDER DISCRIMINATION IN TERMINATION OF EMPLOYEE EMPLOYMENT DUE TO PREGNANCY OUT OF WEDDING

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Gender Discrimination; This study investigates how the Indonesian Manpower Law can
Premarital Pregnancy; protect female workers from gender discrimination related to
Protection of Female Workers. pregnancy, especially premarital pregnancy. Law No. 13 of 2003 on
Manpower provides protection for female workers, but the culture of discrimination still often occurs. The normative legal method using laws and regulations in this study to investigate relevant regulations and their implementation in practice. The study shows that female workers who are laid off due to premarital pregnancy have the right to seek justice. However, many working women are not aware of their rights, and regulations are still weak. Therefore, workers' rights must be protected through stricter supervision, better legal protection, and ease of reporting violations.

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A. Introduction

Talking about the role of women in society is something very interesting and cannot be finished. The number of women who have careers has increased in recent years, with the progress of the times. (Rr. Nurasih, 2007) This is a development that will continue to occur because women in the modern era are increasingly competing to pursue careers. Because of her status as a career woman, she tends to experience discrimination or differentiation based on gender. Discrimination practices still exist even though the issue of gender equality, rights and freedoms has been recognized and disseminated. (Rosalina, 2015)

Working is a necessity for everyone. Because someone gets income or other things like opportunities and dignity to improve anything better by working. And every citizen in the country has the right to work and a decent life. With the help of the state and supporting its people about human rights. (Rahmawati, 2022)

An employment relationship occurs when an employment agreement has been made in which the employer states his willingness to employ the worker and the

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worker binds himself to receive wages. (Hardjoprajitno, 2014) It seems that currently women have the same abilities as men. Men and women are equally entitled to facilities and technological advances. However, the reality is different.

One example of gender discrimination against female workers is about their reproductive rights, such as pregnancy. Pregnant women have unstable emotional levels, which makes them more stressed, which has an impact on their productivity. Physical conditions that are easily tired and unstable diseases can affect the productivity of pregnant female workers. The output produced tends to decrease, so employers are vulnerable to unilateral layoffs. (Reynisa Ikko Damayanti, 2019)

However, there are also provisions for layoffs before they are carried out, for example, employers can first give warning letters to their employees, consecutively from the first to the last. (Sutedi, 2009)

For example, the case of "an outsourcing employee in a private company. She got pregnant out of wedlock and has been pregnant for 3 months. Yesterday I was told by the outsourcing team that frontliners who get pregnant out of wedlock and have been pregnant for 4 months are required to write a resignation letter to the company, as if they were fired for being pregnant in a subtle way. Whereas previously there was no PKWT regarding this matter either in writing or verbally and the outsourcing party where I work said that it was a separate regulation made by the company." (Nugraha, 2024)

Law Number 13 of 2003 states that companies are prohibited from terminating the employment of female workers who are pregnant, giving birth, having a miscarriage, or breastfeeding their babies. The author once read an article explaining this. Although there is no law that regulates the marital status of employees, this regulation should apply to all pregnant female workers, regardless of their marital status. (Lutfi, 2024)

With the background that has been explained, this journal examines what laws or regulations discuss this issue and to what extent these regulations are implemented in real practice.

The author found, after investigating the issue, that although there are regulations made to address all workers' interests in the world of work, they are considered less effective by some parties, especially the protection of female workers. (Mambu, 2010) This situation is worsened by the ignorance of female workers regarding their rights. There are also irresponsible parties, ignoring existing regulations and taking advantage of them. If something like the discussion above happens, what actions can be taken if an employee is laid off because she is pregnant outside of marriage.

B. Method

This journal is researched in a normative legal way, Normative legal research sees law as a normative system with the aim of interpreting, understanding, and

applying legal rules. Normative legal research looks at basic legal materials such as laws, regulations, and regulations.

This type of research usually involves reading literature or books to gain information and a good understanding of a particular legal problem. In this process, researchers collect and analyze various legal sources to gain an understanding of the problem. Often, the results of this research are used to provide legal recommendations or solutions to practical problems. The normative method used in the law is very important.

C. Result & Discussion

1. Regulations and Governing Laws

Regulations and laws governing the protection of female employees Based on Law No. 13 of 2003 concerning Manpower:

Article 76:

(2) *"Employers are prohibited from employing pregnant female workers/laborers who, according to a doctor's statement, are at risk for the health and safety of their pregnancy or themselves if they work between 23.00 and 07.00."*

This article explains that if there are female workers who are pregnant, employers are PROHIBITED from employing them between 23.00 – 07.00. If there is a statement from a doctor about her health.

Article 82:

(1) *"Female workers/laborers have the right to rest for 1.5 (one and a half) months before giving birth and 1.5 (one and a half) months after giving birth according to calculations by an obstetrician or midwife."*

In this article the law explains that women who are pregnant HAVE THE RIGHT to get leave before and after giving birth.

Article 153:

(1) *"Employers are prohibited from terminating employment for the following reasons:*

- a. the worker/laborer is unable to come to work due to illness according to a doctor's statement for a period not exceeding 12 (twelve) months continuously;*
- b. the worker/laborer is unable to carry out his/her work due to fulfilling obligations to the state in accordance with the provisions of applicable laws and regulations;*
- c. the worker/laborer is carrying out religious worship as ordered by his/her religion;*
- d. the worker/laborer is married;*

- e. the female worker/laborer is pregnant, has given birth, has a miscarriage, or is breastfeeding her/her baby;*
- f. the worker/laborer has blood ties and/or marital ties with other workers/laborers in the same company, unless otherwise regulated in the employment agreement, company regulations, or collective labor agreement;*
- g. the worker/laborer establishes, becomes a member and/or administrator of a workers/labor union, the worker/laborer carries out workers/labor union activities outside of working hours, or during working hours with the agreement of the employer, or based on provisions regulated in the employment agreement, company regulations, or collective labor agreement;*
- h. workers/laborers who report employers to the authorities regarding the employer's actions that commit criminal acts;*
- i. due to differences in understanding, religion, political beliefs, ethnicity, skin color, class, gender, physical condition, or marital status;*
- j. workers/laborers who are permanently disabled, sick due to a work accident, or sick due to employment relations for which according to a doctor's certificate the recovery period cannot be ascertained.*

(2) Termination of employment relations carried out for the reasons referred to in paragraph (1) is void by law and the employer is obliged to re-employ the workers/laborers concerned. "

In this article, point e, it is explained that employers are prohibited from laying off their employees on the grounds that "female workers/laborers are pregnant, have given birth, have miscarried, or are breastfeeding their babies." So, it is clear in the law that this action is PROHIBITED.

Law no. 39 of 1999 concerning Human Rights:

Article 49:

(2) "Women have the right to receive special protection in carrying out their work or profession against things that can threaten their safety and/or health in relation to women's reproductive function.

(3) Special rights inherent in women due to their reproductive function are guaranteed and protected by law."

This article explains that women HAVE the RIGHT to receive special protection in working, especially those that are dangerous to their safety and health in relation to their reproductive rights. And the special rights that women have, such as their reproductive functions, are GUARANTEED AND PROTECTED by law.

The explanation above is about several regulations or laws that regulate the protection of women, and to what extent are these regulations implemented in practice

Basically, Article 151 of the Job Creation Law, in conjunction with Article 37, Article 38 and Article 39 of PP.35/2021 stipulates that employers, workers, labor unions, or the government must try to avoid layoffs for any reason. If layoffs cannot be avoided, employers must provide a letter of notice of layoffs regarding the intent, reasons, and compensation to workers. If workers refuse to be laid off within the specified time period, they must notify the employer. After that, the notice of layoffs can then be given Bipartite protection. (Fardalaw, 2024)

Female workers are entitled to adequate maternity leave after giving birth to give them enough time to recover and care for their newborn. They also have the right to return to work after their maternity leave is over, meaning they should not be fired or disadvantaged for taking this leave. However, some companies still require female workers to voluntarily resign when they are pregnant. (Sharendova T. T., 2023)

Workers should have the same rights without discrimination, but the number of female workers may be less than male workers, and many also doubt the quality of women in working. Therefore, in order to avoid gender discrimination in the world of work, the implementation of human rights for women must be achieved.

Gender inequality is one of the problems with the implementation of human rights against women. Because of this, some companies choose not to employ women, because they are considered more vulnerable than men. Because of this, protection is certainly needed for women, especially protection for female workers, especially their reproductive rights.

Because women's reproductive rights are often ignored. To protect them, there are regulations that prohibit women from working at night, work that could endanger their health or reproductive rights. (Sinukaban, 2021)

As a woman, pregnancy and childbirth are natural for them. Therefore, it is illogical for employers or companies to order their employees who are pregnant or want to go through the process of giving birth or after giving birth to resign from their company. (Waluyo, 2023)

2. Legal Actions That Can Be Taken in Termination of Employment of Employees Due to Pregnancy Outside of Marriage

Industrial relations problems between workers and employers can arise from a variety of factors, including termination of employment (PHK) or the inability of workers to fulfill their responsibilities. However, industrial relations problems can also occur between workers themselves. For example, this can include the dynamics of the relationship between employers and employees during business operations. (Husni, 2000)

If in an incident there is a female worker who is laid off because she is pregnant outside of marriage, it violates the provisions of Indonesian law. Law No. 13

of 2003 concerning Manpower explains the protection for female workers who are pregnant, including those who are pregnant outside of marriage. This law gives the right for female workers who are laid off due to pregnancy to file a complaint and seek justice through available legal channels.

What actions can be taken if a female employee is laid off who is pregnant/pregnant outside of marriage

Basically, workers whose rights have been violated can sue for the case. There are several alternatives that victims can do for employment disputes as explained. (Maswandi, 2017)

1. Bipartite

This protection is used to resolve Industrial Hub conflicts between workers and companies or company owners (Entrepreneurs). This settlement involves all participating parties, without involving moderators or third parties. To reach a bipartite agreement, Law Number 2 of 2004 Articles 3 to 7 state that they must discuss each party's complaints. (Waluyo, 2023) The two-party negotiations must be completed within 30 days. Otherwise, the negotiations are considered to have failed if they do not reach an agreement.

2. Consolidation

This is one of the things that can be done if there is a conflict in industrial relations carried out by a conciliator. This process begins with people involved in industrial problems submitting their problems to the appointed conciliator. A collective agreement is the result of a conciliation forum, not an agreement. One example of an agreement that has been signed by the parties involved is a collective work agreement. Conciliation itself is regulated by Article 17-28 of Law Number 2 of 2004 concerning the settlement of industrial relations.

3. Mediation

Mediation using a mediator. A person who functions as a mediator in industrial relations matters functions to mediate the disputing parties. If the parties reach an agreement during the mediation process, another mediator can be used as an additional mediator who can help provide his/her opinion to the parties. Mediation is regulated in Law Number 2 of 2004 concerning the Settlement of Industrial Relations from Articles 8–16.

4. Arbitration

One alternative for resolving industrial relations problems without going to court is arbitration. Article 1 (1) of Law Number 30 of 1999 concerning Alternative Arbitration for Dispute Resolution states:

1. *"Arbitration is a method of resolving a civil dispute outside of the general courts based on an arbitration agreement made in writing by the disputing parties."*

Article 1 number 15 of Law No. 2 of 2004 concerning the settlement of industrial relations explains arbitration as

"settlement of disputes of interest and disputes between labor unions in a company, outside the industrial relations court through a written agreement from the

disputing parties to submit the settlement of the dispute to an arbitrator whose decision is binding on the parties and is final."

After the parties reach an agreement on the method of arbitration, arbitration is pursued. Articles 29 to 54 of Law Number 2 of 2004 regulate arbitration.

5. Industrial Relation Court

If there is still no agreement after using several alternative dispute resolutions as above, the next path is the court. The Industrial Relations Court (or PHI) is the last option for parties to resolve their industrial relations problems. The parties to the case can sue the Industrial Relations Court.

D. Conclusion

The law has explained women's rights in the world of work, but human rights violations against working women still often occur, even though men and women should have the same rights. The reason companies do not hire women is because they need legal protection, women are often seen as more vulnerable than men, especially their reproductive rights. Many women and girls still experience discrimination in their workplaces, especially pregnant and pregnant women. Pregnant women are particularly vulnerable to layoffs because they are considered to interfere with their productivity. It is unwise, however, as fellow human beings, to view women's reproductive functions as a barrier to their duties.

The rights of women workers as women, pregnancy and childbirth are something normal for them. Therefore, it is unreasonable for employers or companies to force female workers who are pregnant or have just given birth to resign or be fired from their jobs, for a certain period or permanently.

If a female worker is laid off because she is pregnant outside of marriage, it is illegal in Indonesia. Law No. 13 of 2003 concerning Manpower provides protection for female workers who are pregnant, including those who are pregnant outside of marriage. The law also gives them the right to file complaints and seek justice through legal channels available to them.

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