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**JURIDICAL ANALYSIS OF THE RIGHTS OF MENSTRUATION LEAVE FOR PERMANENT AND NON-PERMANENT WOMEN WORKERS**

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**ABSTRACT**

In Law Number 13 of 2003, article 81 paragraph (1) concerning Manpower, states that female workers / laborers who are in their menstrual period feel pain and inform employers that they are not obliged to work on the first and second day of menstruation. In reality, the application of granting menstrual leave rights to female workers has not been fully implemented. The formulation of the problem in this study is how the form of implementation of legal protection for menstrual leave for female workers in companies. The method in this research is juridical normative with secondary data collection and the data obtained were analyzed qualitatively. Based on the results of the research, it shows that some companies have not implemented the right of menstruation leave to female workers, but there are also companies that have granted menstrual leave rights to workers. As at PT. Beka Engineering Pangkalan Kerinci, the company only provides hait leave for permanent employees. This is due to the fear of the harm that would be experienced if they provide menstrual leave to all permanent and non-permanent female workers.

**Keywords:** Female Labor ; Menstrual leave

**INTRODUCTION**

Outwardly, women are very different from men. Women have special things compared to men, such as having menstruation, getting pregnant, giving birth, having miscarriage to breastfeeding. These kinds of things will not be experienced by men, in other words only experienced by women. Therefore women get special treatment and special protection that is contained in the special rights of women workers / laborers.

Realizing the importance of workers / labor for companies, government and society, it is necessary to think about so that workers / laborers can maintain their safety in carrying out their work. Likewise, it is necessary to strive for the calm and health of workers / laborers so that what they face in their work can be considered as much as possible so that vigilance in carrying out the work is guaranteed. This thinking is a work program that in daily practice is useful for maintaining the productivity and stability of the company(1).

The special rights of women workers / laborers are one of the important things that must be considered, both by the government and by the company (employer). Women need to get special protection, considering that many cases against women are caused by a lack of supervision over the application of special rights of workers / laborers in companies. Given that women also have a physically more vulnerable than men.

The special rights of workers / labor are reviewed from Law Number 13 of 2003 concerning manpower, one of which is in Article 81 paragraph (1) which discusses women who are not obliged to work on the first and second day of menstruation. Menstrual leave in Law Number 13 Year 2003 Article 81 paragraph (1) states that "female workers / laborers who are during menstruation feel pain and inform employers, are not obliged to work on the first and second day of menstruation". However, some companies do not give menstrual leave, which means that the company has not been able to properly implement what has been regulated in the laws and regulations. For example, one female worker / laborer who works at PT. Beka Engineering Pangkalan Kerinci said that PT. Beka Engineering Pangkalan Kerinci only provides menstrual leave for female workers / laborers only, when female workers / laborers do not continue to feel pain during their menstruation, the female worker / laborer is only allowed to rest in the company room and in that room painkillers are also available. During menstruation, there are women workers / laborers who feel pain and some do not. This is what worries the company that this is used as an excuse for female workers / laborers not to come to work or to get leave every month. During menstruation,

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Menstruation, pregnancy, and miscarriage are quite common experiences for women. By nature all women experience this. This gives rise to special rights for women workers / laborers. So that there is an obligation from the employer or the company to fulfill the special rights of women workers / labor as stated in Law Number 13 of 2003 concerning Manpower.

In several companies, there are many female workers / laborers who do not know well what their rights are as female workers / laborers. This is due to the lack of socialization regarding the special rights of women workers / labor, or even because of the lack of knowledge of the women workers / laborers themselves due to their low level of education. This kind of thing sometimes causes the rights of women workers / laborers to be not fulfilled.

Based on the explanation above, the purpose of this study is to describe the form of application of legal protection for menstrual leave for female workers and to find out the company's obstacles and efforts in fulfilling legal protection for female workers who are on menstrual leave

## METHODS

In this research, it is normative legal research. Normative legal research (normative legal research), which is research conducted by reviewing the laws and regulations that apply or are applied to a particular legal issue. In this study, the primary data source is binding legal materials obtained through information and opinions from female workers / laborers and several companies that have not or have given menstrual leave rights to female workers. Secondary legal contributions, obtained from literature study and document study(2).

In this study, the secondary legal material is in the form of regulations related to the problem under study such as the Manpower Act and Law Number 13 Year 2003 article 81 paragraph 1. The data collection method used in this research is literature study, which is a review of the relevant laws and regulations as well as books or literature as reading. After conducting a literature study, it is followed by factual qualifications and legal qualifications. The qualification of these facts and legal qualifications is carried out by quoting literature related to the application of special rights of women workers / laborers in employment, especially in granting menstrual leave rights to women workers / laborers.

Qualitative method is a way of writing that produces analytical descriptive reports. Namely, by means of the resulting data selected, classified and identified for analysis in order to obtain conclusions that are in accordance with the problem. Analysis is also carried out on legal materials, carried out in descriptive, analytic, evaluative, interpretative and argumentative ways. The description can be a description of the materials obtained in the field in combination with secondary materials as they are. Henceforth, these materials are interpreted

## RESULTS AND DISCUSSION

### Legal Protection Of Menstrual Leave Rights For Female Workers

The law has the purpose of protecting human interests. The law has target to be achieved. Main goal law is to create order and balance. With the achievement of order In society, interest is expected people will be protected. To achieve The purpose is the law in charge of dividing authority and regulate how to solve legal problems and maintain legal certainty.(3)

Companies often use the term menstrual leave for employees who are predominantly women. The concept of menstrual leave is indeed aimed at female workers who feel that menstrual leave is indeed necessary because it is a special right given. The concept of menstrual leave, is a special leave given by the company to respect women who are naturally this way. However, menstrual leave at some companies is not evenly distributed. Generally, female workers feel ashamed and think this is inappropriate to convey, especially if they must use a certificate from a doctor. So that companies also only consider it not so important because many do not apply for menstrual leave(4).

Some companies use the term sick on menstrual leave. The definition of illness, according to the Big Indonesian Dictionary (KBBI), is a sickness in nature feeling uncomfortable in the body because you are suffering from something. So that the term sick is different from the term menstrual leave. If menstrual leave is given on the first and second day, then the concept of illness in this company is illness caused by complaints during menstruation which is usually experienced on the first and second day of menstruation. And if this happens, then in accordance with applicable company regulatory policies, workers are required to notify by means of a doctor's certificate that workers cannot participate in the production process activities (5).

The implementation of legal protection for the rights of women who are menstruating has not been implemented completely in most companies, it is undeniable that many female workers who experience menstruation during working hours, many of them when experiencing menstruation only use medical devices provided by the company, and ask for permission. briefly until the pain that he experienced disappeared instantly he was working again. The company has indeed provided complete medical equipment, especially for female workers in the company, but the rights that should be obtained for these women workers who experience menstruation and feel pain on the first and second days have the right not to work / rest at home based on article 81 paragraph 1 Law No.13 of 2003, which reads:

*"Female workers / laborers who feel pain during menstruation and inform the entrepreneur, are not obliged to work on the first and second day of menstruation."*

This means that female workers who feel pain during menstruation on the first and second days are not obliged to work, by notifying the employer, meaning by providing a doctor's certificate stating that they are sick so that they cannot carry out the production process activities and the entrepreneur is obliged to provide compensation per day absence. But in fact, not all clear regulations provide guarantees to workers, most employers do not want to lose. In fact, the policies taken by employers have a negative impact on workers and automatically affect the company. This reason is also stated in article 81 paragraph 2 of Law No.13 of 2003 which reads:

*"The implementation of the provisions referred to in paragraph (1) shall be regulated in a work agreement, company regulation, or collective working agreement."*

With this regulation, several companies made a policy that the implementation of legal protection for menstrual leave was based on the concept of illness. arising from menstruation on the first and second day, not on leave which is usually given regularly every month. A form of legal protection for leave, will be compensated with wages during the leave period. With terms and conditions that apply with a certificate from a doctor stating that he is sick. So, protection for menstrual leave is actually in accordance with statutory regulations. However, if calculated from the cost of expenses for a doctor's letter, it can exceed the compensation paid by the company. This of course does not affect the compensation wages during leave.

Legal protection for official employees at PT. Beka Engineering Pangkalan Kerinci, refers to the concept of preventive legal protection, which is to provide more freedom of opinion for the people, which also applies specifically to female workers. Freedom of opinion and complaints within the company.

### **Company Obstacles in Fulfilling Legal Protection for Female Workers on Menstrual Leave Rights**

The implementation of the provision of the right to menstrual leave by several companies has not been effective, because there are still several obstacles and obstacles in its implementation. In providing legal protection for the right to menstrual leave for women workers, there are several factors that hamper the implementation of the provision of menstrual leave for women workers, namely, both from the workers themselves and from the company(6). Most of the women workers did not fully understand the meaning of menstrual leave. They think that menstruation leave is not something that should be done while still working(7) . In addition, menstruation is a bit embarrassing if it is stated and the provision of menstrual leave which must be accompanied by a doctor's certificate makes them lazy to take care of it.

From the company side, the obstacle to the implementation of menstrual leave is the difficulty in proving whether an employee is currently menstruating or not. Therefore, several companies are trying to provide health facilities in the form of BPJS Health cards for examinations that can be used by workers for free. In addition,

according to several studies, to avoid social jealousy among workers, especially male workers, some companies only provide menstrual leave to permanent workers(8).

*"Wages are not paid if the worker / laborer does not work".*

These provisions are aimed at casual workers only. Meanwhile, permanent employees are regulated in the provisions of Article 93 Paragraph 2 (b) that:

*"The provisions referred to in paragraph (1) do not apply, and employers are required to pay wages if: (b) A female worker / laborer is sick on the first and second day of her menstrual period so that she cannot do work."*

### **Company Efforts to Overcome Obstacles in Fulfilling Legal Protection for Female Workers for Menstrual Leave Rights**

One of the efforts that can be made by companies to overcome the obstacles faced in implementing menstrual leave is to provide awareness efforts about things that are not yet known or realized by female workers that if during menstruation the worker feels pain, it is better to use menstrual leave to maintain the health of the worker. the worker himself. Other efforts that can be made by companies such as:

- a. The company provides the law in a preventive manner, through an open forum attended by workers which can be done every weekend or weekend. Or holding outreach to female workers about the right to menstrual leave for women workers.
- b. Provision of full wages, regulations on menstrual leave and provision of wages to compensate for absenteeism. Replacement wages from the company can be given to workers, especially for official workers who do not come to work with pain due to menstruation. Article 93 paragraph 1 which states(9):

*"Wages are not paid if the worker / laborer does not work".*

This article applies only to non-official workers who do not receive wages, because the status of workers or non-official employees, which means that they are not yet permanent, so that their rights have not been fully obtained. It is different from official workers whose status has become permanent workers. For the issue of menstrual leave, due to illness, Law No.13 of 2003 has provided protection, namely Article 93 paragraph 2 (b):

*"The provisions referred to in paragraph (1) do not apply, and employers are required to pay wages if: (b) A female worker / laborer is sick on the first and second day of her menstrual period so that she cannot do work."*

This means that companies must provide substitute wages for absenteeism per day to official workers who do not come to work because of illness caused by menstruation. In accordance with the work agreement and company regulations that have been made.

With health insurance from BPJS health, official workers who are bound by company regulations are subject to health insurance. The company also thinks about the good and bad impacts for all workers, therefore the company not only has to provide compensation in the form of full wages, it must also provide health insurance through the BPJS for health from the company so that the protection of the legal rights of official workers is carried out and fulfilled so that it does not cause social jealousy between female workers and male workers.

### **CONCLUSION**

From the explanation that has been delivered in the discussion section, it will be concluded as follows, Legal protection for menstrual leave for female workers who work in several companies has already been enforced in accordance with company regulations which contain and are sourced from Law No. 13 of 2003 concerning Manpower, article 81 paragraphs 1 and 2 concerning menstrual leave. However, menstrual leave is only granted to official / permanent employees. Meanwhile, non-official / non-permanent employees are not assigned. The reason is that the status and rights of non-official / non-permanent employees are normatively not fully obtained. Furthermore, that the implementation of menstrual leave is defined as being sick, the pain in question is pain that is felt and caused by menstruation which is mostly experienced by women, not the meaning of menstrual leave which is generally understood only on the first and second days.

Therefore, The obstacle that occurs in the implementation of menstrual leave is the need to obtain a doctor's certificate which results in laziness or the use of official employee rights to menstrual leave, because the income of both the employee and the company is reduced. This is because the full wages received during the two days menstrual leave are reduced by the cost of seeing a doctor so that the leave is issued and if the employee does not come to work, the income received by the company decreases and does not meet the target.

Employees cannot fight for their rights individually, but with the facilities and infrastructure of the association. Meanwhile, the company provides legal protection for menstrual leave due to illness, by giving a daily compensation fee by attaching a certificate from a doctor and also providing health insurance for official female workers, through BPJS.

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