

The Challenges and Practical Execution of Safeguarding the Right to Menstrual Leave for Women Employed Within the Manufacturing Industry

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ABSTRACT: The protection of women in the workforce is mandated by the Indonesian Constitution and is detailed in Law No. 13 of 2003 on Manpower. A key provision is the entitlement to menstrual leave, which grants female employees the right to refrain from work on the first two days of their menstrual cycle if they suffer from pain. This research aims to assess the practical execution of menstrual leave rights within Indonesia's manufacturing sector and to identify the primary challenges obstructing this entitlement. The study employs a normative-empirical legal methodology. Findings indicate a significant divergence between the legal guarantees (*das sollen*) and the actual practices on the ground (*das sein*). Although legally protected, the use of menstrual leave is often impeded by complex internal corporate procedures, inadequate dissemination of information, and a pervasive culture of stigmatization towards those who request the leave. Management frequently views this absence as detrimental to production efficiency, causing employees to often forgo the right to avoid negative perception. Consequently, the existing legal framework has proven ineffective. Government intervention is essential, requiring stricter labor monitoring and comprehensive educational efforts targeting both employers and workers, to ensure that menstrual leave is established as a form of substantive justice.

KEYWORDS: Legal Protection, Female Workers, Menstrual Leave, Manpower Law

INTRODUCTION

The engagement of women in the workforce constitutes a critical pillar for Indonesia's national development and sustained economic growth. Statistical evidence demonstrates a continuous year-on-year rise in female labor force participation, spanning diverse sectors from agriculture to modern industries, particularly manufacturing and services. This pivotal role necessitates a robust framework of comprehensive legal protection. Such protection is crucial not only for securing women's fundamental labor rights but also for accommodating their distinct biological and social requirements, which differ from those of their male counterparts (Hidayat & Dalimunthe, 2022). The acknowledgement of women's specific roles and needs in the workforce is firmly grounded in Indonesia's constitution, the 1945 Constitution. Article 28D paragraph (2) guarantees that every individual has the right to employment, along with fair and decent treatment and remuneration within the employment relationship. This principle of justice is realized in positive law by granting special protections; these measures are not intended to be discriminatory, but rather function as a form of affirmative action or preferential treatment aimed at achieving substantive equality in the work environment. This protection is essential because female workers frequently encounter a dual vulnerability, navigating their professional roles while also managing domestic responsibilities (Anwar, 2020).

The specific labor law regime in Indonesia, codified primarily in Law No. 13 of 2003 concerning Manpower (the Manpower Law), delineates several key protective rights for women employees. These safeguards encompass restrictions on employing women during specific hours, entitlements such as maternity and childbirth leave, the right to breastfeed, and comprehensive occupational safety and health provisions tailored to their biological conditions (Law No. 13 of 2003). These regulatory measures represent the state's acknowledgement that women's physical status and reproductive capacity necessitate dedicated periods for rest and recuperation, distinct from the needs of male workers. One of the most distinctive and fundamental protective provisions is the Right to Menstrual Leave. Article 81 paragraph (1) of the Manpower Law explicitly affirms that female employees/laborers who experience pain during their menstrual cycle and duly inform their employer are exempt from working on the first and second days of menstruation. This regulation represents a critical milestone in Indonesian labor legislation, highlighting regulatory

The Challenges and Practical Execution of Safeguarding the Right to Menstrual Leave for Women Employed Within the Manufacturing Industry

sensitivity to the physiological needs of female workers, particularly the impact of dysmenorrhea (menstrual pain) which can severely impair productivity.

Despite this provision being long-standing and legally guaranteed, its practical implementation, particularly within labor-intensive industries like manufacturing, is fraught with numerous challenges. The manufacturing sector is characterized by intense production quotas, stringent time discipline, and frequent shift work. Within such a setting, where efficiency is paramount and downtime is minimized, the right to menstrual leave is often perceived as an operational impediment. Furthermore, some employers have allegedly misused this right to justify limiting the hiring or career advancement of female employees. Research indicates that the application process for menstrual leave is frequently made cumbersome, often demanding invasive requirements such as mandatory examination by a company doctor, which infringes upon worker privacy and causes discomfort (Sari, 2021).

These implementation issues create a clear disparity (*gap*) between the legal provision (*das sollen*) and the social reality (*das sein*). This gap stems from ambiguous interpretations of the statutory phrases "feels pain" and "notifies." Given that menstrual pain is inherently subjective and workplace medical standards for its verification are absent, employers gain latitude to exercise harmful discretion against employees. Concurrently, a prevailing stigmatization exists among workers, where applying for menstrual leave is often equated with laziness or unprofessionalism. This stigma deters many women from exercising their right. The anticipation of non-legal repercussions—such as negative performance assessments or forfeiture of overtime—compels them to remain at work despite experiencing pain. This situation unequivocally infringes upon workers' human rights and undermines the fundamental protective essence mandated by the legislation. Accordingly, an in-depth study examining the Implementation and Challenges of Protecting Menstrual Leave Rights for Female Workers in the Manufacturing Sector is critically warranted. The manufacturing sector was selected due to its significant concentration of female laborers and the inherent vulnerability of its work environment regarding violations of rest entitlements. This research seeks two main objectives: (1) to juridically analyze the application of Article 81 of the Manpower Law as it is integrated into employment agreements and company regulations within the manufacturing sector, and (2) to identify the key internal (company-level) and external (social and regulatory oversight) factors that constitute the primary challenges to the implementation of menstrual leave rights. Ultimately, the findings are intended to offer tangible contributions toward strengthening the enforcement of women workers' rights in Indonesia.

RESEARCH METHODS

The methodology employed is normative-empirical legal research, which is designed to investigate the discrepancy between the stipulated legal norm found in Article 81 of Law No. 13 of 2003 (*das sollen*) and the actual implementation practice of menstrual leave rights within the manufacturing sector (*das sein*). The study utilizes both a statutory approach and a sociological/case approach. Data collection involves gathering primary data (derived from interviews with employees and management) and secondary data, which includes primary legal materials (the Manpower Law) and secondary legal materials (literature and scientific journals). The data is subjected to qualitative-descriptive analysis to interpret the effectiveness of the legal protection framework and subsequently formulate evidence-based policy recommendations.

RESULT AND DISCUSSION

A. The Legal Framework: Basis for the Protection of Women in the Workforce and Menstrual Leave Entitlement

The safeguarding of women in the workforce is not merely a policy choice but constitutes a constitutional imperative deeply rooted in Indonesia's commitment to substantive justice. This fundamental principle transcends the concept of formal equality, which dictates treating everyone the same, by explicitly acknowledging the inherent differences in biological conditions and social roles between male and female employees (Santoso, 2021). The Indonesian Constitution mandates that the state must take action to ensure that these differences do not translate into disadvantage or discrimination in the employment sphere. Accordingly, the principle of substantive justice necessitates the application of special treatment often referred to as affirmative action measures within labor law. These measures are designed to achieve true equality of outcomes in the workplace, ensuring that female workers can participate fully and safely without prejudice to their physiological and reproductive health. Indonesian labor legislation explicitly incorporates these protective requirements, thereby fulfilling a core responsibility of the state to uphold the dignity and rights of its citizens. Without these specific protections, women would be forced to compete under conditions that fundamentally disregard their unique needs, rendering the constitutional guarantee of "fair and proper treatment" hollow. This tiered protection structure ensures that legislative measures proactively address vulnerability rather than passively waiting for discrimination to occur.

The Challenges and Practical Execution of Safeguarding the Right to Menstrual Leave for Women Employed Within the Manufacturing Industry

Within this comprehensive legal structure, the right to menstrual leave stands as one of the most foundational specific forms of legal protection tailored to female employees. This crucial entitlement is explicitly enshrined in Article 81 of Law No. 13 of 2003 concerning Manpower (the Manpower Law). The provision grants female employees who report experiencing pain during the first and second days of their menstrual cycle the right to be excused from work. The single procedural condition attached is that the employee must notify their employer of their condition. Hidayat and Dalimunthe (2022) underscore the critical role of this regulation: it functions as a crucial health safety mechanism. Its primary design goal is to prevent workers from compelling themselves to work under acute physical duress and pain, conditions that are both detrimental to their long-term health and counterproductive to the employer's operational goals. By codifying this right, the state acknowledges that menstruation is a natural biological process, and the accompanying pain (dysmenorrhea) is a legitimate reason for absence, just as any other temporary physical ailment.

The juridical essence of Article 81 lies in the state's formal and unequivocal recognition of the condition of dysmenorrhea. Dysmenorrhea, or acute menstrual pain, is a condition whose severity varies widely among individuals but can substantially impair a worker's concentration, mobility, and overall capacity to work. The symptoms can range from mild discomfort to severe, debilitating cramps, nausea, and migraines. Medically, the need for rest during dysmenorrhea is well-established. Wulandari (2019) asserts that compelling a worker to undertake strenuous physical activity or maintain high concentration levels during periods of severe dysmenorrhea may exacerbate long-term reproductive health issues. Furthermore, the pain itself causes a drastic decline in daily work productivity, making the worker less effective and potentially exposing them to workplace risks. Therefore, the leave serves as a reciprocal benefit: it protects the worker's health while preventing inefficient and compromised work output. Crucially, the Manpower Law mandates that the granted menstrual leave is fully paid and must not be deducted from the employee's annual leave entitlement. This provision confirms the state's view that menstrual leave is a non-negotiable health right, distinct from and superseding general vacation time. This ensures that women are not penalized economically for fulfilling a biological necessity.

This specific protection demonstrates regulatory sensitivity toward reproductive functions that aligns Indonesia with progressive labor standards found in other Asian jurisdictions. Several other nations, including Japan, South Korea, and Taiwan, have implemented analogous menstrual leave policies, recognizing the need to integrate biological realities into labor management (Setiawan, 2017). This global trend reinforces the ethical and practical necessity of the Indonesian regulation. The overarching objective of these legal protections is clear: to ensure that the workplace does not become a site of physical exploitation that systematically disregards the natural biological needs of women employees. The employer's duty to grant this leave is consequently deemed an absolute obligation once the two statutory conditions are met—the procedural requirement (notification) and the material condition (experiencing pain). The simple fulfillment of these terms establishes menstrual leave as a non-negotiable worker's right. Any internal company policy or managerial discretion that seeks to deny this right, complicate its access, or penalize its use fundamentally violates the spirit and letter of the Manpower Law and the broader constitutional mandate for substantive justice in the Indonesian workforce.

B. The Disparity Between Legal Norm and Implementation Reality (*Das Sollen* vs. *Das Sein*) in the Manufacturing Sector

The practical implementation of menstrual leave rights within the manufacturing sector reveals a substantial chasm. This sector, characterized by its labor-intensive nature, stringent production targets, and rigid shift systems, frequently prioritizes operational efficiency over the realization of employee rights (Purnomo, 2018). The corporate imperative to ensure continuous production directly clashes with the employee's entitlement to rest during periods of illness. Consequently, the legal norm (*das sollen*) which guarantees this leave is often counteracted or negated by prevailing internal company practices (*das sein*). Employers often perceive menstrual leave primarily as an operational cost and impediment. Anwar (2020) notes that numerous companies treat any form of employee time off as time-loss, failing to recognize it as an investment in human capital. This outlook motivates management to institute complex and opaque procedures designed specifically to suppress the rate of leave applications. Ultimately, this practice establishes a covert procedural barrier for employees seeking to exercise their right. Internal corporate policies frequently undermine the underlying intent of the Manpower Law. Sari (2021) points to practices where companies mandate an examination by an in-house doctor or paramedic. While ostensibly framed as a measure to prevent misuse (*moral hazard*), this requirement effectively violates employee privacy and imposes an inequitable burden of proof. Given that dysmenorrhea is a subjective condition that cannot be objectively verified in a brief workplace setting, this mandatory examination functions as a tool of intimidation against employees.

The Challenges and Practical Execution of Safeguarding the Right to Menstrual Leave for Women Employed Within the Manufacturing Industry

The prevailing managerial supervision system further exacerbates the issue. Production line supervisors, driven by stringent performance targets, frequently resort to verbal or implicit rejection of leave applications, even when the right is formally protected (Arifin, 2023). The resultant fear of punitive measures, such as wage deductions, administrative sanctions, or detrimental performance evaluations, compels employees to engage in presenteeism—attending work despite being ill. This phenomenon of *presenteeism* not only compromises the workers' health (Wulandari, 2019) but also simultaneously diminishes the overall quality of the product output.

C. Major Challenges in Menstrual Leave Implementation

The subjectivity of pain constitutes the central interpretive challenge in enforcing Article 81. The legislation merely stipulates that the worker must be "feeling pain," an inherent ambiguity that creates wide latitude for interpretation between management and employees. Employers frequently exploit this vagueness to demand almost impossible standards of proof, despite the fact that menstrual leave ought to be granted based on the principles of trust and humanity (Anwar, 2020). This onerous burden of proof ultimately compromises the fundamental rights of the employees. Social stigmatization and a pervasive masculine work culture present formidable barriers to accessing this right. Female employees who frequently request menstrual leave are susceptible to being labeled as weak, spoiled, or lacking discipline, both by their peers and by male supervisors (Kusuma, 2020). The fear of internalizing this negative perception significantly deters women from exercising their legal entitlement, even when rest is medically necessary. This stigma is a direct manifestation of a work environment that lacks gender sensitivity and fails to accommodate biological differences.

The weakness of legal enforcement and supervision constitutes a significant structural issue. Handayani (2022) highlights that the regional Manpower Office frequently suffers from inadequate human resources and budgetary allocations necessary to conduct intensive and preventive oversight across all industrial zones. This results in reactive supervision, wherein actions are only taken in response to formal complaints; such an approach is often delayed and proves incapable of preventing systematic violations occurring within factories. Furthermore, the sanctions typically imposed—often limited to administrative reprimands—fail to provide a sufficient deterrent effect on large corporations. The limited proactive role played by labor unions in advocating for this specific right is an additional contributing factor. Arifin (2023) observes that in numerous manufacturing firms, labor unions (SP) are either structurally weak or are heavily affiliated with management, which compromises their willingness to rigorously enforce menstrual leave implementation within the Collective Labor Agreement (PKB). Consequently, the education and awareness efforts concerning this right, targeting both union members and the general workforce, remain highly inadequate.

D. The Legal Urgency of Implementing Menstrual Leave

The government must urgently draft and enact Implementing Regulations derived from the Manpower Law. The Ministerial Regulation of Manpower (Permenaker) should mandate a strict yet streamlined standard procedure for menstrual leave applications (Sari, 2021). Crucially, the Permenaker must explicitly affirm that simple verbal or written notification suffices, thereby restricting unnecessary medical intervention. This regulatory clarity is essential to eliminate the discretionary loopholes frequently exploited by employers. Labor supervision must be significantly enhanced in both quantity and quality. Handayani (2022) recommends allocating sufficient budget and increasing the specialized workforce of Labor Inspectors dedicated to the manufacturing sector. Inspectors should transition to a proactive approach, conducting periodic gender-sensitive compliance audits rather than simply awaiting formal complaints. These audits must incorporate confidential interviews with employees to secure accurate field data concerning the actual practices of menstrual leave utilization.

The application of sanctions must be made substantially stricter and possess a clear deterrent effect. Violations concerning menstrual leave entitlements should incur financial penalties that are material and significant, exceeding the operational cost of the leave itself (Hidayat & Dalimunthe, 2022). Furthermore, criminal sanctions should be considered for instances of systematic refusal or coercing employees to work while suffering from severe pain, thereby upholding the dignity of workers through robust legal enforcement.

Education and gender sensitivity training must be established as mandatory programs for all management personnel. Purnomo (2018) asserts that transforming the work culture fundamentally relies on educational initiatives. Companies should be required to provide comprehensive training to supervisors, HR personnel, and operational managers covering female reproductive health, the necessity of work-life balance, and the adverse effects of workplace stigmatization (Kusuma, 2020). Concurrently, Labor Unions must be empowered and granted full access to educate their members on this right, thereby positioning menstrual leave as a central topic in Collective Labor Agreement (PKB) negotiations (Arifin, 2023).

The Challenges and Practical Execution of Safeguarding the Right to Menstrual Leave for Women Employed Within the Manufacturing Industry

CONCLUSIONS

The protection afforded to female workers via the Right to Menstrual Leave represents a critical expression of substantive justice mandated by the Manpower Law. This right formally recognizes the distinct biological needs of women employees and is intended to safeguard both their health and their dignity. Despite possessing a clear legal foundation, the actual implementation of Menstrual Leave in the manufacturing sector demonstrates a significant norm-practice disparity. Enforcement is compromised by company procedures that introduce undue complexity, the inherent subjectivity of pain which employers exploit to demand excessive proof, and a deeply rooted stigmatization culture that deters workers from exercising their right. Furthermore, systemic failures in government oversight and the absence of adequate deterrent sanctions aggravate these violations. This systemic failure not only infringes upon employee rights but also incurs negative consequences for long-term health and productivity. Therefore, resolving this gap necessitates comprehensive regulatory intervention, the strengthening of law enforcement through rigorous supervision, and widespread educational initiatives to cultivate a supportive and gender-sensitive work environment. Based on the research findings and conclusions regarding the challenges faced in implementing menstrual leave rights, the following strategic recommendations are proposed to effectively strengthen the protection framework for women in the workforce

Mandatory Regulatory Enforcement: The government (specifically the Ministry of Manpower) must urgently issue a detailed and strict Ministerial Regulation of Manpower. This regulation should establish streamlined standard procedures for leave application, emphasize the principle of trust over scrutiny, and explicitly restrict unnecessary medical examinations to prevent infringing upon employee privacy.

Enhanced Oversight and Penalties: The regional Manpower Office must significantly increase the frequency of gender compliance audits within the manufacturing sector and augment the number of specialized Labor Inspectors. Crucially, sanctions must be imposed in the form of material financial penalties that provide a substantial deterrent effect against companies proven to systematically obstruct or complicate the access to menstrual leave rights.

Anti-Stigma and Gender Sensitivity Education: Companies should be mandated to conduct periodic gender sensitivity training for all tiers of management and production line supervisors. The objective is to dismantle the negative stigmatization surrounding the use of menstrual leave, fostering a supportive work culture that ensures both the health and sustained productivity of female employees.

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