

Menstrual Leave from a Health Law Perspective in Indonesia

DODDY KRIDASAKSANA¹, BUDI SANTOSO², KHOLIS ROISAH³, AGA NATALIS⁴

¹Doctoral Student Universitas Diponegoro and Lecturer Universitas Semarang, Jalan Arteri Soekarno Hatta, Semarang City, Indonesia;

²Professors of Law, Universitas Diponegoro, Jalan Professor Soedarto, S.H., Semarang City, Indonesia;

³Professors of Law, Universitas Diponegoro, Jalan Professor Soedarto, S.H., Semarang City, Indonesia;

⁴Lecturer Universitas Semarang, Jalan Soekarno Hatta, Semarang City, Indonesia.

Correspondence to Doddy Kridasaksana, S.H., M.Hum: doddykridasaksana4@gmail.com, Mobile: 081325567789

ABSTRACT

Background: Menstrual leave is a mandatory right that must be fulfilled by employers for the women while working. However, this matter is difficult to implement for the entrepreneurs, in which the presence of women is perceived as spoiled because they take menstrual leave. This condition contradicts with the condition of the women who experience period pains on the first day of the period that hinders the activities at work. Therefore, it is important to research the menstrual leave from the perspective of health law in Indonesia.

Aim: To understand and analyze menstrual leave from the perspective of health law in Indonesia.

Methodology: This research uses a qualitative method with a normative juridical approach. The data collection technique is conducted through a literature study.

Conclusion: Menstruation for women is a monthly cycle. It is not easy for women to carry out their activities especially on the first day of the period. As regulated in Law Number 13 of 2003 concerning menstrual leave for workers and Law Number 36 concerning Health. However, the situation is contrary to the reality, where the company does wrongdoing such as, does not issue menstrual leave or does not write down the absence of menstrual leave in an agreement.

Keywords: Menstrual, legal aspect, employment

INTRODUCTION

The growth of industry in Indonesia experiences an increase, followed by the growth of women workforces that works in the industry sector. The more the women workforces who work from year to year, the more the women have dual roles, which is the women role in the family, as well as the women role in their careers¹. There are differences in the men workforces and the women workforces, which are the physical, biological, psychological, and socio-culture. From the biological point of view, women experience different reproduction phases from men, which are menstruation, pregnancy, giving birth, breastfeeding, and menopause. One of the women's reproduction systems that are different from men is the menstruation period².

Menstruation is divided into two which are abnormal menstruation and normal menstruation. Menstruation that is accompanied by pain until the women cannot work is called abnormal menstruation³. While the menstruation is not accompanied by pain is called normal menstruation. During menstruation, especially those who experience abnormal menstruation, oftentimes experience pain until the workers are not able to perform their jobs⁴. Therefore, prevention efforts must be shown on the causes, including the influence of work and the work environment. It can also be caused by various factors including stress, weight loss, excessive workout, and hormonal disorders⁵.

This is directly proportional to the passing of Law Number 13 of 2003 regarding menstrual leave. Where the company is obliged to provide all the rights of women workers, especially the right to menstrual leave⁶. Protection of workers is intended to guarantee basic labor rights and ensure equality, opportunity, and treatment without discrimination on any basis to realize the welfare of workers⁷. But in reality, taking leave during menstruation is

considered difficult for women who then choose not to take menstrual leave even though there are arrangements. From the previous introduction, therefore the objective of this research is analyzing menstrual leave from the perspective of health law in Indonesia.

METHODOLOGY

This study uses a qualitative research method with a normative juridical approach. The normative juridical research method is research on positive legal principles written in statutory regulations and aims to conceptualize law as a written principle⁸. Soerjono Soekanto argues that only legal research that is carried out by doing a literature study or secondary data can be called normative legal research⁹. Data collection is carried out by a literature review to collect legal materials, such as laws, law books, and legal research journals related to the topic of this research.

RESULTS AND DISCUSSION

Menstruation is a bleeding process that is regular or periodic and cyclic¹⁰. Menstruation means a periodic symptom of the release of blood and mucosal lining in the uterus through the vagina¹¹. According to Islam the definition of menstruation is blood that comes out of a woman's womb in a healthy state and is not caused by giving birth or illness at a certain time¹². Broadly speaking, menstruation is a routine activity for women every month. Menstruation for women also has benefits that are rarely known such as¹³:

1. Recognizing symptoms and preventing disease. Blood, texture, and smell of menstrual blood can provide information to identify early symptoms of whether a woman has the disease or not so that precautions can be taken earlier.

2. Can slow down the aging process. Women usually experience a slower aging process than men because the iron content in their bodies decreases during menstruation and more importantly, reduced iron in women can reduce the increase in heart disease, Alzheimer's (dementia), and stroke.
3. Natural cleanser. Menstruation will release a lot of bad bacteria in the reproductive system and excess iron in a woman's body so that it can reduce the risk of cardiovascular cancer and many other diseases.
4. Get rid of anger and frustration. It is believed that menstruation can release the frustration of a "stuck" heart. According to traditional Chinese medicine, the liver has an important role in the menstrual cycle where when the energy of the heart is "stagnant", women will often be angry, tight in the chest, and frustrated.
5. Mood and appearance can get better. For a better mood and appearance, it is obtained from the hormones present during menstruation, usually on the 3rd or 4th day of menstruation, women will have a better feeling and appearance than before.
6. Higher satisfaction of sexual intercourse between wife and husbands. During the onset of menstruation, testosterone and libido increase so that for certain women, having sexual intercourse when menstruating can greatly increase satisfaction compared to when they are not menstruating.

Even so, during menstruation, women often complain of pain during menstruation which causes them to not focus while working. Therefore, the government collaborated to issue special rights for women, named menstrual leave¹⁴. However, this is very different from the reality, where a woman who is going to take menstrual leave is facing difficulty to take leave. In fact, according to medical health, relaxing the condition of the body on the first and second days of menstruation is very important for health. In this case menstruation leave also has negative and positive sides.

Positive sides of menstrual leave¹⁵:

1. Menstrual leave provides flexibility and freedom to rest for women workers/laborers because generally during menstruation women experience headaches, stomachaches, and nausea.
2. Menstrual leave is considered to give respect and appreciation of women in their essence.
3. Basically, menstrual leave includes the provision of full wages, meaning that female workers are still paid even though they do not work for two days.

Negative sides of menstrual leave¹⁶:

1. Some female workers/laborers are menstruating but are not experiencing pain and ask for permission to take menstrual leave.
2. Some female workers/laborers do not experience menstruation but claim to be menstruating and ask permission to get paid leave. In essence, menstruation is used as an excuse to skip work and still get paid.
3. The reason for menstruation that is used by female workers/laborers not to come to work can be detrimental to the company, especially if the majority of workers are women.

There are many ways to prove whether the female worker/laborer is menstruating or not. The most unethical

way is to prove their blood to find out whether the woman worker/laborer is lying or honest. Proof in this way is considered degrading and disrespecting women. Giving a doctor's letter to superiors is also a way to prove whether the female worker/laborer is menstruating or not.

Therefore, women do not have to force themselves to work when they are menstruating because they already have the right for taking menstrual leave. If a company does not believe in it, prove it immediately for personal health. To overcome this, Law Number 36 of 2009 Article 10 states "Everyone must respect the rights of others to obtain a healthy environment, whether physical, biological, or social".

From the article, it can be understood that when a woman is menstruating, a company should immediately give her permission to leave, not acting otherwise i.e. complicating the leave. In the regulation, no law regulates in detail and certainly regarding whether a menstrual leave is mandatory or not or whether it applies to only someone who experiences menstrual pain or all women. Since not all company implements this, some companies can be subject to sanctions if they do not appreciate workers' rights. However, this condition is adjusted to the work agreement letter that has been agreed upon whether menstruation leave is stated or not, if it does not state anything regarding menstrual leave, the company will not provide the leave.

In the statement, it can be stated that the special rights of women should be more fulfilled, especially menstrual leave. The leave is considered a 'spoiled' leave. This assumption arises because some groups of women are strong during menstruation, but some women are weak during menstruation. Therefore, the government must provide a formula to overcome this problem so that there are no violations committed by the company to workers and making menstrual leave easier. In terms of workers, do not ever skip work in the name of menstrual leave because this is very troubling and detrimental to the company because it cannot perform its activities as usual.

CONCLUSION

Menstrual leave is a special right for women that must be appreciated and respected. With the passing of Law Number 13 of 2003 concerning Manpower and Law Number 36 of 2009 on Health, it can provide fresh air for women where menstruation may cause women to be lazy to do some activities due to the pain. Even though it is regulated in law, in reality, many companies commit deviations such as; not mentioning the menstruation issue in the work agreement or not allowing menstrual leave. There are several factors where a company does not allow leave, such as workers are considered spoiled because it is only menstrual leave, workers often deceive the company with menstrual leave when in fact they are not menstruating. Therefore the company makes it difficult to permit the leave. It should be noted that although menstruation causes pain, menstruation also provides many benefits for the body such as recognizing symptoms of disease, inhibiting aging, eliminating anger and stress, as a natural cleanser, creating better mood and appearance, and giving high satisfaction when having sex.

Acknowledgments: Thanks to the Universitas Semarang and Universitas Diponegoro, for supporting this research.

REFERENCES

1. Putri NM, Purwanti EY. Analysis of Women Labor Supply Married and Affecting Factors in the Brebes Regency. Diponegoro J Econ. 2012;1(1):1-13. [In Indonesia]
2. Hoyt LT, Falconi A. Puberty, and Perimenopause: Reproductive Transitions and their Implications for Women's Health. Soc Sci Med. 2015;132:103-112. doi:10.1126/science.1249098.Sleep
3. Proctor M, Farquhar C. Diagnosis and Management of Dysmenorrhoea. Br Med J. 2006;332(7550):1134-1138. doi:10.1136/bmj.332.7550.1134
4. Petraglia F, Bernardi M, Lazzeri L, Perelli F, Reis FM. Dysmenorrhea and Related Disorders. F1000Research. 2017;6:1-7. doi:10.12688/f1000research.11682.1
5. Stults-Kolehmainen MA, Sinha R. The Effects of Stress on Physical Activity and Exercise. Vol 44.; 2014. doi:10.1007/s40279-013-0090-5
6. Lahiri-Dutt K, Robinson K. "Period problems" at the Coalface. Fem Rev. 2008;89(1):102-121. doi:10.1057/fr.2008.5
7. Arifin S, Martitah, Sumarto S. Regulation Barriers To the Tea Picker Welfare Realization (a Case Study in the West Java, Indonesia). Int J Business, Econ Law. 2019;19(5):87-94. https://www.ijbel.com/wp-content/uploads/2019/09/K19_238.pdf.
8. Wibawa KCS, Natalis A. Animals Prospectus as a Legal Subject of Environmental Law In Indonesia (A Study of Ecofeminism). In The International Conference on Environmental and Technology of Law, Business and Education on Post Covid 19, ICETLAWBE 2020, 26 September 2020, Bandar Lampung, Indonesia. ; 2020:1-10. doi:10.4108/eai.26-9-2020.2302557
9. Sari N. Consumer Protection of Drug in Indonesian Law: Examining The Paternalism Theory. Adv Soc Sci Educ Humanit Res. 2019;317(IConProCS):177-182. doi:10.2991/iconprocs-19.2019.37
10. Larasati T, Alatas F. Primary Dysmenorrhea and Risk Factor of Primary Dysmenorrhea in Adolescent. Majority. 2016;5(3):79-84. [In Indonesia]
11. Yang H, Zhou B, Prinz M, Siegel D. Proteomic Analysis of Menstrual Blood. Mol Cell Proteomics. 2012;11(10):1024-1035. doi:10.1074/mcp.M112.018390
12. Mazokopakis EE. Sexual activity during menstruation in the holy bible and Quran. Int J Fertil Steril. 2020;14(1):78. doi:10.22074/ijfs.2020.6060
13. Committee on Adolescent Health Care. Menstruation in Girls and Adolescents. Am Coll Obstet Gynecol. 2015;651:1-4.
14. Jewitt S, Ryley H. It's a Girl Thing: Menstruation, School Attendance, Spatial Mobility, and Wider Gender Inequalities in Kenya. Geoforum. 2014;56:137-147. doi:10.1016/j.geoforum.2014.07.006
15. Sukmarani ME, Nugroho A. Legal Protection for Female Workers / Laborers for Menstrual Leave (Study at PT Wahyu Manunggal Sejati). J Novum. 2016;3(4):1-12. [In Indonesia]
16. Levitt RB, Barnack-tavlaris JL. The Palgrave Handbook of Critical Menstruation Studies. Springer Singapore; 2020. doi:10.1007/978-981-15-0614-7