

## WOMEN WORKER PROTECTION: A SYSTEMATIC REVIEW ON MATERNITY PROTECTION IN INDONESIA

Amriyati, Siti Nurbaiti, Masri Rumita, Fraya Layola Nainggolan

Universitas Trisakti, Indonesia

Email: amriati@trisakti.ac.id, siti.n@trisakti.ac.id, masri.rumita@trisakti.ac.id, fraya.layola1704@gmail.com

### ABSTRACT

#### KEYWORDS

women worker protection, women worker maternity protection

Implementing maternity protection at the workplace is found significant benefits and cost savings to businesses, but many young women workers in garment factories in Indonesia remained vulnerable within their maternity period. This research was focused on why to have a clear and comprehensive overview on the need of women workers protection; how is women worker maternity protected. Through a Systematic Literature Review, data base was obtained through seven prominent publishers by writing key words “women worker protection and maternity protection”; inclusive articles were sorted by publication time 2012 – 2022; and the considerations of specific relevance of the article with this research questions. Other literature sources were also used to be added for more comprehensive literature review for the the research questions. It was found that breastfeeding was neglected by 33.6 million young working women in Indonesia, which costed US\$1.5–9.4 billion annually, despite the prescription of the Constitution that worker shall have humane livelihood; fair treatment, and human dignity, in line with ILO and the SDG. Rights and measures on family leave, maternity leave, childcare and family services, social security and working conditions provisions will resulted in improved work performance, enhance female workers loyalty and reduce turnover. State shall more tightly supervise on the implementation of Law for protection of women worker rights and employer’s social solidarity, communality, and brotherhood

### INTRODUCTION

40% of the paid workforce worldwide was women (Gallup, 2017). Work is mostly giving a positive effect on the health of women and men and on the well-being of households, communities and economies. Work outside the home provides women with social support and helps build their self-esteem, however in many countries, women also do unpaid work of all domestic and care, such as cooking, cleaning and caring for children. Conducting both paid and unpaid work will result in conflict, stress, and tiredness (Organization, 2011). Most worldwide paid working women say their earning is the main family income source (26 per cent) and their earning is used significantly for the family (30 per cent) (Gallop, 2001).

In Indonesia, when women do not do breastfeeding, it costs US\$1.5–9.4 billion annually, the highest in South East Asia. Half of the 33.6 million working women of reproductive age in Indonesia (15–49 years) are informal employees, the rest is formal workers. Under ILO coverage classification of paid maternity leave, Indonesia is the 10 to 32% range, indicating the coverage is not yet optimal even in the formal sector (Siregar et al., 2021). Of all Indonesian labour force, 51 percent was female 80 percent was male. Lower percentage of women worker compared to that of male was due to: marriage,

children below two years of age in the household, low educational attainment, and changing economic structure from agriculture, which was more family friendly, to industrialization. The trend of participation of women in labour force was increasing among the younger generation, especially those with more educated living in urban areas.

Pregnancy and maternity are important time for working women and their families to be concerned with. Expectant and nursing mothers require protection to prevent any possible physical and mental harm both for the mothers and the infants. They need adequate time to give birth, to recover from delivery, and to nurse the babies. Nevertheless, they still need income security and protection to ensure the employment for economic sustainability of the family. In most low- and middle-income countries, paid maternity leave is limited to formal sector employment or is not always provided in practice. The ILO estimation was that more than 800 million women lack economic security during childbirth and gave effects on the health, nutrition and well-being of mothers and their children (Organization, 2019).

Women can play as economic agents to reduce poverty, strengthen economies, contribute to businesses, and transform societies, they possess huge potential. Many global employers reported that implementing maternity protection at the workplace (e.g. offering leave, employment security and non-discrimination, breastfeeding arrangements, etc.) can resulted in significant benefits and cost savings to their businesses such as lower staff turnover, decreased absenteeism, higher rates of return after leave, reduced health costs, and higher employee morale and loyalty. However, many young women workers in garment factories in Indonesia remained vulnerable throughout maternity, the rights of maternity protection were neglected by many employers, so that these young women workers were afraid that the maternity leave may threaten and economic security and as well threatening their livelihoods (Jain & Torres, 2021).

The role of working women, as example in Oman, play a big part of the skilled human resources inventory. Nevertheless, those working women in the private sector need flexible working hours, privacy at work and reduced work hours (Belwal, Belwal, & Al-Hashemi, 2020). Study in Brazil showed access to maternity and paternity leave was inequal from the perspective of social stratification of gender, class, race and age (Sorj & Fraga, 2020). Women workers and mothers were forced to face dual work/family matters and suffered in rushed and pressed for time. Policy reform needs account on equal sharing for men and women in paid work and unpaid work of family caring which will be a robust, multi-faceted and integrated policy (Pocock, Charlesworth, & Chapman, 2013).

This research was focused on: first, why is it necessary to have a clear and comprehensive overview on the need of women workers protection; second, how is women worker maternity protected. This research is aimed to describe a clear and comprehensive overview on the need of women workers protection; and to describe on how women worker maternity is protected.

### **Research Limitation**

The general concept of the function of law in the protection of order and safety for human, among others generates the protection of workers, this study is only limited in the why and how women workers shall be protected, specifically those in maternity period, which needs further research on the implementation.

## Literature Review

### Women Worker Protection

The foundation wisdom of labor law is about aiding the position of employees who are lack of bargaining power over the employer (Langille, 2011). Legal protection of workers is the fulfillment of the basic right inherent and is protected by the constitution (Shalihah, 2016). Article 27 paragraph (2) of Indonesia 1945 Constitution prescribes: "Every citizen shall have the right to work and to earn a humane livelihood". It infers that employment or work needs to produce reasonable remuneration and fair treatment, the state shall create employment for its citizens and the employment system shall provide decent life both for workers and employer's business. Workers shall be respected with human dignity.

ILO suggested five key areas of government policies to uphold the sustainable Development goals, SDGs: (Women, 2021) "achieving equal pay for work of equal value; preventing and eliminating violence and harassment in the world of work; creating a for both women and men; promoting women's equal representation in leadership in harmonious work-life balance the world of work; investing in a future of work that works for women".

Work-Life Balance Practices (WLBPs) can be considered as one of those practices for woman worker protection. The practice includes three categories of practices: (Kato & Kodama, 2017) "First, flexible scheduling policies/programs such as flextime; telecommuting; and satellite office; Second, temporary transitional part-time work (e.g., female employees return to work after maternity leave as a temporary transitional part-time worker for a fixed period of time); and Third, company child care assistance (including onsite day care centers and a reimbursement program for those who use government-run daycare centers)." The literature showed two advantages of WLBP: First, employees is able to improve managing the work and family responsibilities; being aware of the corporate's care resulting in the employees' more commitment to their work. (Drago and Hyatt, 2003; Berg, Kalleberg, and Appelbaum, 2003 Yanadori and Kato, 2009). Law protects the rights possessed by person individually or collectively. Quoted from Ihering interest theory, the foundation of rights is interest, not will. Law protects interest, as quoted from Duguit suggest that the basic of Law is social solidarity. Human dignity is reflected in social solidarity, communality, and brotherhood (Amriyati, 2022).

The ILO Workers with Family Responsibilities Convention, 1981 (No. 156) provides the rights and measures on family leave, childcare and family services, and social security and working conditions provisions, so that workers are able to reconcile their work and family life.

It was concerned that leave arrangement protection cannot be accessed to all workers. Mothers are the primary users of parental leave, some are unpaid or paid at a low rate. State governments need to take steps to address these gaps in the implementation of the Convention (Equality, 2004). Other arrangements besides maternity leave to facilitate work and family life balance can be as follows: leave to look after a family member who is sick; leave for family medical reasons; leave for weddings and funerals. The leave policy shall not be subject to discrimination nor creating conflict between employment and family responsibilities. Providing more autonomy and flexibility to workers can create a positive organizational climate that may also lead to improved performance.

Women found work and family matters were conflicted in the following areas: overload, organisational support, growth opportunities and contact possibilities with colleagues. All were contributed to exhaustion levels. Job demands is the most contribution to high exhaustion beside family matters and health-related problems. It was suggested for employers or job decision makers to consider job redesign, flexible work schedules and goal setting to eliminate women workers tiredness (Mostert, 2008). Individuals who are stressed from keeping up both family and work responsibilities can result in change in behaviour in the forms of mood swings, unfriendly attitudes and behaviour. It is a strong potential of negatively affecting employees as well as employers. The negativity includes: include reduced work effort, reduced performance, and increased absenteeism and turnover (Dizaho, Salleh, & Abdullah, 2016).

### Maternity Protection

Maternity protection is the availability of laws and regulations on leave duration, remuneration and source of cash benefits as prescribed in ILO Convention No. 183. The aim of protecting women workers in maternity period is a harmonious work–life balance for both women and men. Care responsibilities can be shared between women and men to promote and sustain women’s economic empowerment, similar to that of men.

The ILO Maternity Protection Convention, 2000 (No. 183) represents the minimum standards to provide maternity protection for women workers, whereas the ILO Maternity Protection Recommendation, 2000 (No. 191) encourages additional measures. Key elements of maternity protection include: Maternity leave duration, amount of maternity leave cash benefits, source of maternity leave cash benefits, breastfeeding breaks and breastfeeding facilities. Maternity protection is defined as whether the country has maternity protection laws or regulations on leave duration, remuneration and source of cash benefits as prescribed in ILO Convention No. 183. Effective prevention and management of conditions in late pregnancy, childbirth and the early new-born period may reduce maternal deaths, antepartum and intrapartum-related stillbirths and early neonatal deaths significantly. Then it is crucial to give careful attention to the quality of preventive and curative care during this critical period.

Maternity protection is provided in 1948 Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. Maternity Protection Convention, 2000 (No. 183) is a specific protection instrument for the preserve of mothers’ health and the infants, as well as for economic and job security so that it promotes equal opportunities in employment and occupation for women. The convention recommends the state, the employer dan worker organizations to consider the following measures: pregnant or breastfeeding women are not obliged to perform work which may cause significant risk to the mother's health or that of her child (Article 3); a period of maternity leave of not less than 14 weeks; maternity leave shall include a period of six weeks' compulsory leave after childbirth; the prenatal portion of maternity leave shall be extended without reduction in any compulsory portion of postnatal leave when necessary. (article 4); Cash benefits shall ensure proper conditions of health and suitable standard of living for the woman and her child (Article 6 point 2). Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary. (Article 6 point 7). For legal protection certainty, the benefits shall be provided through compulsory social insurance or public funds (Article 6 point 8). Employer shall not terminate a woman during her maternal and nursing leave. The same or equivalent position paid is guaranteed upon the end of her maternity

leave. (Article 8). The right to one or more daily breaks or a daily reduction of hours of work shall be given to breastfeed her child and during this absence shall be counted as paid work time. (Article 10)

Maternity leave raises the probability that women will remain in the labor force and return to their former employer after childbirth. By strengthening women's attachment to the labor force and increasing their investment in firm-specific experience and training, a job-protected maternity leave can enhance the productivity of female workers (Van der Meulen Rodgers, 1999). Job-protected maternity benefits promote women's attachment to the labor force and increase their firm-specific human capital. Women appear to value not just the financial benefits but the employment guarantees that accompanying their benefits. Maternity leave mandates on firms without compensation from public funds can create greater inequity, women's wages will fall to cover the cost imposed on firms. It suggested that maternity leave policies to be realized through public provision of benefits in a national insurance system.

Maternity protection for women workers is not only the interest of the workers, but also that of the employer since the commitment of workers as a result of their awareness towards the employer's care is the employer's interest.

Indonesian national instrument and International instruments on maternity protection is as follows. ILO Convention 183 on Maternity Protection and Recommendation 191 Year 2000 recommends state to put steps to ensure measures on any risks at work which may endangering the health of women reproduction. Women have the rights of protection towards work which endangering their reproduction (Article 49 Human Rights Law Number 39 Year 1999). The Rights on health and safety at work including the protection of women reproduction is stipulated in Article 11 Law Number 7 Year 1984 on the adoption of the Convention on the Eradication of all kinds of Discrimination towards Women. Employment Law Number 13 Year 2003 orders central government or local government under each authority is authorized to give the sanction upon any violation of work discrimination. (Article 190). It is unlawful to terminate women for reasons of: pregnancy, child delivery, miscarriage, breastfeeding. (Article 153). Breastfeeding facility shall be available at work place and public place. Article 128 (3) Law Number 36 Year 2009 on Health. Breast feeding room shall meet healthy measures. Article 9 (2) of Health Minister Regulation Number 15 Year 2013 on the Procedure to Provide Breast Feeding Facility. Government regulation Number 33 Year 2012 on exclusive breastfeeding Article 30 stipulates workplace to provide breastfeeding facilities at workplace.

## RESEARCH METHOD

The research was conducted in Jakarta during Oktober and November 2022, employing a Systematic Literature Review. Data base was obtained through several steps. First, seven prominent publishers were opted to gain related articles. The publishers were: springer <https://link.springer.com>, emerald <https://www.emerald.com/insight>.

The four publishers were firstly opted from which research articles could be accessed freely. Related articles were chosen by writing key words "women worker protection and maternity protection". Of the articles initially found were sorted by publication time 2012 – 2022. Then a matrix was made to classify each included article within: code, title and publisher, research problem, method, finding n suggestion, research limitation. Next data sorting was based on the considerations of specific relevance of the article with this research from reviewing: title, problem dan finding in the articles.

Other literature sources were also used out of those 4 publishers when sorted data from the 4 publishers still did not provide certain related literature to be added for more comprehensive literature review to answer the research questions.

Data analysis was conducted through coding and sub-coding data from those research finding in the included literature. Coding was made with the following criteria: concept and practice. Sub coding in the concept is with the following criteria: worker; women worker protection; maternity protection; practice: barrier. Then Countries code wider internationally view was Africa, Asia, Australia, Europe Sub-coding was made under each countries in of the continent. Of each of the codes and sub-codes, is written the extracting key data found from the literature. All of extracting data was synthesized for clear information to answer this research question. There were seven barriers to access health insurance among female workers in Indonesia, they were: maternity care in non-healthcare facilities, younger age, poor education, single (never in union/divorced/widowed), poor, and don't know the danger signs of pregnancy. (Qurnia Andayani At.Al., 2021).

Records identified from:

Springer included in review 3. Initially 9,702 Results; screened with area Law became 477; sorted by oldest year 2010 became 69 articles listed from newest 2022 first up to the oldest, only include those articles related to maternity protection.

Emerald articles for review remained was 2. From emerald open access was found 848 articles, then number was sorted by year from 2010 to 2022, it found 284, listed from oldest to newest. From research gate publication was found 9 for review by search publication, it sorted by newest publication and topic relevance with woman worker protection and maternity protection

From <https://www.ilo.org> was found 3 articles for review. From publication area and women worker protection and maternity protection was initially found 4012 articles. 208 articles from year 2020; 262 articles from year 2021; 301 articles from year 2019, 175 articles from year 2018; and 230 articles from 2017.

## RESULT AND DISCUSSION

Upon the review on literature on women worker protection with maternal protection specifically, followed is result and discussion on the why of women worker protection, specifically in Indonesia; and how maternity worker protection in Indonesia.

### Why Women Worker Protection

Work is mostly giving a positive effect on the health and economy, 26 percent earning of most worldwide women is the main family income source and 30 per cent of their earning is the family significant source. (Gallup-Healthways Well-Being Index. 2017), then 800 million women who experienced lack economic security during childbirth effected in the health, nutrition and well-being of mothers and their children. (World Health Organization 2018). In most low- and middle-income countries, paid maternity leave is limited to formal sector employment or is not always provided in practice (World Health Organization 2018).

Half of the 33.6 million working women of reproductive age in Indonesia (15–49 years) worked as formal workers and the other half as informal workers. (Womens-economic-participation-in-Indonesia-June-2017). The rights of maternity protection were neglected by many employers, leaving these young women workers were threatened with economic security and livelihoods. (Better Work Indonesia, 2017). Meanwhile, women

neglecting breastfeeding in Indonesia costed US\$1.5–9.4 billion annually, the highest in South East Asia (Womens-economic-participation-in-Indonesia-June-2017).

The foundation wisdom of labor law is about aiding the position of employees who are lack of bargaining power over the employer. (Brian Langille, 2011). The fulfillment of the basic right of the workers as mandatory by the constitution is seen as legal protection. (Fithriatus Shalihah, 2017). Article 27 paragraph (2) of Indonesia 1945 Constitution prescribes on: worker wage meeting humane livelihood; fair treatment, respected with human dignity. As suggested by ILO that work shall be harmonious balance with life; and work shall work for women. It is relevance with the SDG (International Labour Organization 2021. Empowering Women at Work Government Laws and Policies for Gender Equality)

As one of those practices for woman worker protection, Work-Life Balance shall consider flexible scheduling policies/programs company and/or government child care assistance. WLBP creates the improvement of work and family responsibilities management and employees commitment towards work. (Drago and Hyatt, 2003; Berg, Kalleberg, and Appelbaum, 2003 Yanadori and Kato, 2009). Here reflecting protection of the rights of individual employee of humane livelihood; fair treatment, respected with human dignity, at the same time respect the rights of employer and employees collectively of mutual interest instead of will in social solidarity, communality, and brotherhood. (Amriyati, 2022).

Not all workers could access leave arrangement, mothers were the primary users of parental leave, some are unpaid or paid at a low rate. (ILO Committee of Experts on the Application of Conventions and Recommendations of Workers with Family Responsibilities Convention, 1981 No. 156 General observation, 2020). Workers are able to reconcile their work and family life with the rights and measures on family leave, childcare and family services, and social security and working conditions provisions under The ILO Workers with Family Responsibilities Convention, 1981 (No. 156). Work autonomy and work schedule flexibility, job redesign, and goal setting will resulted in improved performance and reduce turnover (Mostert Karina, 2008, Esther, Kadarko et al, 2016, ILO Committee of Experts on the Application of Conventions and Recommendations of Workers with Family Responsibilities Convention, 1981 No. 156 General observation, 2020)

#### Worker Maternity Protection in Indonesia

Risks at work which may endangering the health of women reproductive, state obligation towards the measurements, and the rights of women on health of their reproductive are all protected by International instruments such as ILO Convention 183 on Maternity Protection and Recommendation 191 Year 2000, Article 49 Human Rights Law Number 39 Year 1999. The protection shall include: Maternity leave duration, amount of maternity leave cash benefits, source of maternity leave cash benefits, breastfeeding breaks and breastfeeding facilities. (World Health Organization. Maternity protection 2018).

Indonesia women worker protection is mainly prescribed in Employment Law Number 13 Year 2003. The protection includes: two day woman period paid leave, 3 month child birth paid leave, paid 1.5 months miscarriage leave, breastfeeding paid break time and breastfeeding facilities, women productive risky work condition prohibition, termination prohibition for pregnant, childbirth, and miscarriage reasons, harassment prohibition.

Under International instrument, Maternity protection is provided in 1948 Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. Maternity Protection Convention, 2000 (No. 183).

Indonesia maternity protections are provided in Article 11 Law Number 7 Year 1984 on the adoption of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; Article 153 Employment Law Number 13 Year 2003 forbidding termination for reasons of: pregnancy, child delivery, miscarriage, breastfeeding; Article 82 Employment Law Number 13 Year 2003 provides the rights to have 1.5 months leave before child birth and 1.5 months after child birth, and Article 84 provides the rights of paid maternity leave. Article 128 (3) Law Number 36 Year 2009 on Health stipulating breastfeeding facility at work place and public place; Breast feeding room shall meet healthy measures. Article 9 (2) of Health Minister Regulation Number 15 Year 2013 on the Procedure to Provide Breast Feeding Facility. Government regulation Number 33 Year 2012 on exclusive breastfeeding Article 30 stipulates workplace to provide breastfeeding facilities at workplace. Employment Law Number 13 Year 2003 orders central government or local government under each authority is authorized to give the sanction upon any violation of work discrimination. (Article 190). Protection during critical period in late pregnancy, childbirth and the early new-born period is aimed to prevent maternal deaths, antepartum and intrapartum-related stillbirths and early neonatal deaths significantly. (World Health Organization. Standards For Improving Quality of Maternal and Newborn Care in Health Facilities. 2016), meanwhile protection is also for economic and job security for the promotion of equal opportunities in employment and occupation for women.(Maternity Protection Convention, 2000 (No. 183).

Job-protected maternity leave can enhance female workers loyalty and productivity. The compensation is suggested in a national insurance system. (Yana van der Meulen Rodgers 1999, Maternity Protection Convention, 2000 No. 183 Article 6 point 8, International Labour Office ILO 2020). Maternity protection for women workers is not only the interest of the workers, but also that of the employer since the commitment of workers as a result of their awareness towards the employer's care is the employer's interest.

## CONCLUSION

33.6 million of working women in Indonesia were of reproductive age (15–49 years) The rights of maternity protection were neglected by many employers in Indonesia, then breastfeeding was neglected and it costed US\$1.5–9.4 billion annually, the highest in South East Asia. Law protects workers in the position of weaker place upon employers of higher bargaining power to create the balance of interest between these two parties as the Indonesian Constitution prescribes that worker shall have humane livelihood; fair treatment, and respected with human dignity, in harmony with ILO that work shall be harmonious balance with life; and work shall work for women, which are all with the SDG. The protection of women worker rights also at the same time protects the interest of employer for social solidarity, communality, and brotherhood. Mothers are the most users of parental leave, if there is any, with either unpaid or paid at a low rate. Rights and measures on family leave, maternity leave, childcare and family services, social security



and working conditions provisions will result in improved work performance, enhance female workers loyalty and reduce turnover.

State shall ensure the avoidance of work risks which may endangering the health of women reproductive. The measurements, and the rights of women on health of their reproductive are all protected by International instruments such as ILO Convention 183 on Maternity Protection and Recommendation 191 Year 2000, 1948 Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. In Indonesia, women worker protection is mainly prescribed in Employment Law Number 13 Year 2003. The protection includes: two day woman period paid leave, 3 month child birth paid leave, paid 1.5 months miscarriage leave, breastfeeding paid break time and breastfeeding facilities, women productive risky work condition prohibition, termination prohibition for pregnant, childbirth, and miscarriage reasons. Other national instruments for maternity protection include: Article 49 Human Rights Law Number 39 Year 1999, Law Number 7 Year 1984 on the adoption of the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), Law Number 36 Year 2009 on Health, Health Minister Regulation Number 15 Year 2013 on the Procedure to Provide Breast Feeding Facility. Government regulation Number 33 Year 2012 on exclusive breastfeeding.

It is suggested to have stronger State supervision on the implementation of the rights and measures on family leave, maternity leave, childcare and family services, social security and working conditions provisions, which can result in improved work performance, female workers loyalty enhancement, and turnover reduction

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