

CHAPTER I

INTRODUCTION

A. Backgrounds

We live in an age that continues to grow over time, this age development led to modernization. Modernization is a change that occurs in people's lives where in this change the community begins to abandon various traditional habits and patterns of life that are no longer relevant, leading to a pattern of life that is far more modern and in accordance with the times¹. This affects many factors in our life, in terms of technology everything has become more practical and efficient.

On the business side, competition between companies is increasingly fierce. They compete in terms of creativity, quality and how well they promote their product.

In the economic side, this forces them to find a better profit to meet their daily needs. Employment is one of, if not the, most important aspects of a modern economy. For households, employment is not just the primary source of income but also the principal means to participate productively in the economy and society. For the country as a whole, a healthy level of employment and creation of decent work opportunities are central to fostering equitable, inclusive and sustainable economic growth.

Workers or laborers are part of the workforce, namely workers who work, whether they work for themselves, work relations or under the influence of employers and for their services. The workers or laborers receive wages or other forms of compensation. In Article 27 paragraph (2) of the 1945 Constitution of

¹ "Pengertian Modernisasi Dan Dampak Yang Ditimbulkannya | Pengertian Dan Definisi," accessed July 31, 2019, <https://pengertiandefinisi.com/pengertian-modernisasi-dan-dampak-yang-ditimbulkannya/>.

Indonesia is stated: *"That every citizen has the right to work, and decent life for humans."*

The term "every citizen" can be interpreted as valid for all citizens both male and female, there is no sex differentiation in it. In this 21st century, the mindset about women is just housewives have long been abandoned. A lot of women are working because of their desire for their carrier. With the development of the times and the increasing cost of needs, many women have entered the world of work. Urgent economic demands and the opportunity to work have provided a strong attraction for female workers.

Today, women participate in improving family welfare not only as housewives but also working to help husbands in increasing income because of the demands of the family's economic needs. Women have some potential that is not inferior to men, both in terms of intellectual, ability, and skills. In this current condition in society, men and women have the same rights to get a job. In Indonesia, a working relationship is formed that involves two parties between the company or employer and the workers.

A working relationship between employers and workers arising from agreements that are held for a certain period of time or not². With the existence of this agreement, it will create an obligation to both parties. Employee needs to provide health insurance, year-end benefits, timely salaries according to agreements and work environment security in employment or in carrying out their work receive special attention from the government and society, this can be seen

² Abdul Khakim, *Hukum Ketenagakerjaan Indonesia* (Bandung: PT. Citra Aditya Bakti, 2007).

in several regulations that provide concessions as well as restrictions relating to a woman in general such as maternity leave, menstrual leave, and providing shuttle transportation for female workers between 11 pm to 7 am. In Indonesia, provision relating to workers regulated in Regulation No. 13 of 2003 on Manpower which will then be referred to as Manpower Law. There are several Articles in Manpower Law that concerning female workers such as Article 76 that stated:

- 1) *"female workers that under 18 years old prohibited from being employed between 23.00 to 07.00.*
- 2) *Employers are prohibited from employing pregnant women workers who, according to doctors, are dangerous for their health and the safety of their wombs also themselves if they work between 23:00 and 07:00.*
- 3) *Employers who employ female workers between 23:00 to 07:00 must:*
 - a) *provide nutritious food and drinks; and*
 - b) *maintain decency and security while at work.*
- 4) *Employers are required to provide shuttle transportation for female workers who depart and return to work between 23:00 to 05:00.*
- 5) *The clause referred to in paragraph (3) and paragraph (4) are regulated by a Ministerial Decree"*

This Article specifically regulates about the conditions that employers have to provide to the female workers in case they have to work at time that mentioned and it's clearly mentioned that female workers under eighteen years old are prohibited to work at the specific time that mention. Also in Article 81 of Manpower Law mentioned that *"Female workers, who experience menstruation pain and notify employers, do not have to work on the first and second days of menstruation."* This regulation usually needs to be accompanied by medical certificate. In the work field this Article doesn't applied, because most employers thought that this not important matter, even though in some company they do put this in their work agreement. Other reason that this Article is not easy to be applied is the company don't have that much employee to fill the absent of another employee.

Another important regulation is regarding pregnant female workers, in this Article 82 stated that:

- 1) *“Female workers have the right to get a rest for 1.5 (one and a half) months before the time to give birth and 1.5 (one and a half) months after giving birth according to the obstetrician or midwife's calculations.*
- 2) *Female workers who had a miscarriage have the right to get a 1.5 (one and a half) month break or in accordance with a certificate from the obstetrician or midwife.”*

Other than in the Manpower law the regulations relating to female workers are also included in Indonesian Law No. 39 of 1999 on Human Rights (Human Rights Law) Article 49:

- 1) *“Women have the right to choose, be elected, and appointed in work, position, and profession in accordance with the requirements and regulations.*
- 2) *Women have the right to get special protection in carrying out their work or profession on matters that can threaten their safety and or health with regard to their reproductive function.*
- 3) *Special rights inherent in women due to their reproductive functions, guaranteed and protected by law. ”*

In Indonesia, labor participation is still dominated by men. Women labor force participation is far behind in 54% compared to men labor force participation in 83% moreover the wages of female workers is 32% lower than male workers³.

Even though the percentage of the female labor force increased by 0.04% from the previous year, but still not equal to the number of the male labor force. This causes the majority of women not to earn and contribute a large part of the poverty rate in Indonesia, also from the difference in payment between female workers/laborer and male workers safe to say that there is gender discrimination in Indonesia labor force. Furthermore, there are few issues regarding female

³ “Pekerja Masih Didominasi Pria, Sri Mulyani: Wanita Hanya 54% : Okezone Economy,” accessed July 22, 2019, <https://economy.okezone.com/read/2019/03/13/320/2029605/pekerja-masih-didominasi-pria-sri-mulyani-wanita-hanya-54>.

workers there such as wage discrimination as mentioned above, protection of reproductive rights and the latest about outsourcing contracts targeting female workers.

Regarding wage discrimination, female workers receive wages that are relatively smaller than male workers even though female workers and male workers work in occupations with the same work value. Even though in Article 6 of Manpower Law stated that *“Every worker has the right to receive equal treatment without discrimination from their employer.”* The wage different between female workers/laborer accommodated by Instructions of The President of The Republic of Indonesia Number 9 of 2013, it states that the company has the right to set a Provincial Minimum Wage below the average. The regulation that was formed was to save the company from bankruptcy. Most women workers are sacrificed by getting unbalanced wages.

Also regarding outsourcing contracts targeting female workers, most of the case is usually female workers especially during pregnancy, are dismissed before giving birth and rehired after giving birth. This is done by the company to avoid cover costs for childbirth costs. Several cases that could be mention is case No. 13/Pdt.Sus-PHI/2014/PN.Tjk and No. 69/G/2014/PHI.Sby whereby the female labor that works there get fired even though in maternity leave also didn't get the payment that they deserve even though the pregnant. Automatically this outsourcing contracts also violating female workers/laborer rights to have maternity leave.

Furthermore, another problem faced by female workers is that there is still a lot of sexual harassment. According to Never Okay's study of 1,240 respondents in 34 provinces, around 44% of Indonesian female workers experienced sexual harassment in the workplace, of which 89,8% was in the form of verbal abuse, around 87,9% of physical abuse, and around 70,6% of signaling harassment, sexual harassment also befalls male workers by 40%⁴. According to CATAHU 2018/2019 by National Commission for Women, violence in the public reached 3,915 cases (28%), where sexual violence ranked first in 2,521 cases (64%), followed by physical violence: 883 cases (23%), psychological violence 212 cases (5%), and special categories namely trafficking in 158 cases (4%), and cases of migrant workers 141 cases (4%)⁵. One of the cases is case No. 85/PDT.SUS-PHI/2015/PN.BDG. The culprit is not only male employees such as mechanics, operators, chiefs, security guards, and factory parking officers; but also the boss and HRD person.

In Malaysia, the labor force participation percentage is not much different compared to Indonesia. Female labor still far behind male labor in 55,6% and male labor in 80,7%, moreover the average gender pay gap in Malaysia is 21%⁶. Based on the Malaysian legal context, which underlies the concept of equality before the law and the same legal protection listed in Article 8 paragraph 2 of the Federal Constitution stated:

⁴ "Hak Pekerja Perempuan Belum Merdeka," accessed July 23, 2019, <https://www.voaindonesia.com/a/hak-pekerja-perempuan-belum-merdeka/4822236.html>.

⁵ "Lembar Fakta Dan Poin Kunci Catatan Tahunan Komnas Perempuan Tahun 2019," accessed September 13, 2019, <https://www.komnasperempuan.go.id/read-news-lembar-fakta-dan-poin-kunci-catatan-tahunan-komnas-perempuan-tahun-2019>.

⁶ "The Truth About The Gender Wage Gap In Malaysia," accessed July 24, 2019, <https://www.imoney.my/articles/gender-wage-gap-malaysia>.

“Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”

The Article states that there shouldn't be any discrimination against citizens because of their beliefs, race, and descent, place of birth or gender in any place such as office or in their employment or also when doing some administration, holding properties and doing business or their profession of any trade even in vacation. In the context of employment in Malaysia related to individual relations issues, Malaysia does not have laws or explicit provisions for employment discrimination. However, a number of cases were registered in court while several complaints were filed to the Ministry of Human Resources. The cases that existed not only categorized as discrimination, some of them are classified as unfavorable or unfair treatment. Some cases related to discrimination or unfavorable or unfair treatment is *Beatrice Fernandez v Malaysia & Anor Flight System* [2005] 2 C.L.J. 713 when an applicant, a flight attendant, is dismissed because of pregnancy in a joint agreement that binds all flight attendants. Another case is *Noorfadilla bint Ahmad Saikin v Chayed bin Basirun and Ors* [2012] 1 CLJ 769 a Guru Sandaran Tidak Terlatih ('GSTT') a government teacher whose meme placement can be withdrawn when found pregnant.

Furthermore in Malaysia there is still a sexual harassment. One of the cases are *Mohd Ridzwan bin Abdul Razak v Asmah Hj binti Mohd Nor* whereby that the Plaintiff claimed that defendant (Asmah Hj binti Mohd Nor) committed defamation of the character by reporting that Plaintiff had done sexual

harassment, saying profanity, making inappropriate jokes and offers to get married, and even using vulgar words as the password for his laptop. Based on the problems from both countries described above, the author is interested in writing study research with the title: **“Comparative Law Perspective on the Legal Protection of Female Workers Between Indonesia and Malaysia”**.

B. Research Questions

Based on the background described earlier, the problems that will be discussed in this paper are:

1. How is the settlement procedure regarding female workers issue in Indonesian and Malaysia?
2. Which State Law is better at providing legal protection for female workers?

C. Research Objectives and Benefits

1. Research Objectives

Based on the formulation of existing problems, the objectives of the research are:

- a. To analyze how the procedure of settlement in female workers issue in Indonesia and Malaysia.
- b. To analyze the similarities and differences in legal protection for female workers in Indonesia and Malaysia.

2. Research Benefits

Based on the formulation of existing problems, the benefits of the research are:

- a. To be able providing information to academics, especially law faculty students regarding the settlement of female labor issue in Indonesia and Malaysia.
- b. To be able providing information to academics, especially law faculty students regarding legal comparisons of female workers from both countries.