

Reproductive Rights on Trial: Indonesia's Industrial Relations Dispute Resolution System to Protect Women Workers

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Abstract:

The protection of reproductive rights for female workers within industrial relations remains a crucial and unresolved structural legal issue in Indonesia. This study examines the structural gap between normative statutory safeguards (das sollen) and empirical factory-floor realities (das sein) within the framework of industrial relations dispute settlement. Employing a normative-empirical legal research method through conceptual, statutory, and empirical case study approaches, this article analyzes the legislative guarantees under Law Number 13 of 2003 on Manpower as amended, juxtaposed against recurring enterprise-level violations. The study specifically investigates a factual dispute wherein a female worker encountered unilateral employment termination due to high-risk pregnancy complications and subsequent miscarriage. The findings reveal that although statutory provisions formally acknowledge menstrual leave, maternity leave, post-miscarriage recovery periods, and nursing facilities, practical enforcement is severely undermined by cost-saving corporate culture, persistent workplace stigmatization, and fragile administrative labor inspection. Furthermore, dispute resolution institutions under Law Number 2 of 2004 predominantly treat reproductive rights infringements as ordinary civil breaches rather than fundamental human rights violations. This research concludes that securing reproductive justice necessitates comprehensive procedural legal reconstruction, specifically introducing a statutory shifting of the burden of proof, gender-sensitized judicial training for labor court judges, and swift administrative sanctions against non-compliant employers.

Keywords: Reproductive Rights; Female Workers; Industrial Relations; Dispute Settlement.

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Introduction

Industrial relations constitute one of the most foundational pillars in national economic development, orchestrating the dynamic interactions among workers, employers, and state regulatory authorities. Within this production ecosystem, female workers occupy an indispensable yet structurally and physiologically vulnerable

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position. This vulnerability stems from natural biological functions inherently unique to women, including the menstrual cycle, pregnancy, childbirth, post-miscarriage convalescence, and lactation. These biological realities require specific protective legal intervention so that female workforce participation does not compromise human dignity, bodily integrity, or the intergenerational continuity of life. Protecting female workers' reproductive rights is neither a workplace concession nor an optional social benefit; it is an integral dimension of fundamental human rights and a constitutional guarantee explicitly preserved in the Indonesian Constitution.²

In the sphere of industrial relations, a severe chasm persists between the normative aspirations of the legal system (*das sollen*) and the empirical realities occurring across factories and corporate offices (*das sein*). On paper, Indonesia maintains an established statutory architecture, ranging from comprehensive labor statutes to the ratification of international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Positive law prohibits discriminatory treatment against female employees and strictly forbids employers from unilaterally terminating employment contracts on grounds of pregnancy, childbirth, miscarriage, or breastfeeding.³

The sociological reality of labor, however, reveals a stark contradiction. In numerous industrial sectors particularly labor-intensive manufacturing such as garments, textiles, and footwear management practices routinely regard female reproductive functions as overhead liabilities and disruptions to assembly targets. The stigmatization of workers claiming menstrual leave, administrative resistance against timely maternity leave requests, and covert employment terminations during pregnancy complications remain widespread. When these grievances escalate into formal dispute mechanisms under Law Number 2 of 2004 on Industrial Relations Dispute Settlement, cases grounded in reproductive rights violations are frequently mischaracterized as ordinary contractual disputes without gender-sensitive legal perspectives.

² Jolanda M. Korua et al., "Perlindungan Hukum Terhadap Tenaga Kerja Wanita Terkait Hak Reproduksi Di Kota Manado," *Nuansa Akademik: Jurnal Pembangunan Masyarakat* 9, no. 2 (2024): 601–10.

³ Suci Rachmawati and Dipo Wahyoeono, "Perlindungan Hukum Hak Cuti Melahirkan Bagi Pekerja Perempuan Dalam Sistem Ketenagakerjaan Indonesia Ditinjau Dari Standar Perlindungan Maternitas Ilo," *Jurnal Media Akademik (JMA)* 4, no. 7 (2026), <https://jurnal.mediaakademik.com/index.php/jma/article/view/7527>.

Previous legal studies have generally evaluated female worker protections through traditional normative labor frameworks or broad sociological inquiries without critically linking statutory rights to the mechanics of labor court procedures. Existing scholarship frequently isolates substantive reproductive rights from evidentiary challenges and procedural barriers encountered before industrial relations tribunals. This study addresses that gap by presenting an integrative inquiry into how reproductive entitlements are litigated in labor tribunals through the dissection of an empirical case where a pregnant worker suffered a miscarriage following leave denial and was subsequently terminated.⁴

This research aims to analyze the structural contradictions between formal labor protections and enterprise practices, assess institutional weaknesses within dispute settlement mechanisms, and formulate procedural reforms grounded in substantive gender justice. Clarifying the tension between economic efficiency and bodily rights is vital to ensure that labor dispute processes provide effective remedies rather than institutionalizing corporate impunity.

Methods

This study utilizes a normative-empirical legal research method with a descriptive-analytical design to evaluate the divergence between positive statutory commands (*law in books*) and operational labor practices (*law in action*). The normative component employs both statutory and conceptual approaches to examine domestic labor legislation, constitutional provisions, ratified international treaties, and judicial decisions.⁵ The empirical component incorporates a factual case study approach and socio-legal observations of industrial practices to assess how reproductive protections are implemented or obstructed across corporate workplaces.

The primary legal materials analyzed include the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 on Manpower and its legislative amendments, Law Number 2 of 2004 on Industrial Relations Dispute Settlement, Law

⁴ Sekar Risqiana and Bagus Sarnawa, "Pemenuhan Hak-Hak Reproduksi Pekerja Perempuan Di PT Trakindo Utama Surabaya," *Proceedings of Universitas Muhammadiyah Yogyakarta Graduate Conference* 1, no. 2 (2020): 443–53.

⁵ Ika Atikah, *Metode Penelitian Hukum*, 2022, <http://repository.uinbanten.ac.id/9155/1/P%20Metode%20Penelitian%20Hukum.pdf>.

Number 7 of 1984 ratifying CEDAW, and relevant Industrial Relations Court decisions. Secondary legal sources comprise scholarly treatises, peer-reviewed legal journals, and official documentation from the National Commission on Violence against Women (Komnas Perempuan). Tertiary materials encompass legal dictionaries and reference works to clarify conceptual terminology.

Data collection was carried out through systematic documentary analysis of relevant legal sources, court dockets, and industrial records. The collected materials were analyzed qualitatively using deductive and inductive legal reasoning. This analytical process establishes the normative baseline of reproductive protection, diagnoses structural deviations within corporate management, and outlines necessary statutory and procedural reforms for industrial relations dispute resolution in Indonesia.

Result and Discussion

1. Normative Framework of Reproductive Rights for Female Workers

Within modern labor jurisprudence, the protection of female workers' reproductive rights rests firmly upon the principles of non-discrimination, substantive equality, and the preservation of human dignity. The Indonesian constitutional order establishes this baseline under Article 28D paragraph (2) of the 1945 Constitution, which guarantees every citizen the fundamental right to work and to obtain fair and proper treatment in employment relations.⁶ In the context of labor relations, constitutional equality cannot be interpreted merely as formal equality, which erroneously treats structurally unequal parties in an identical manner; rather, it demands substantive equality achieved through targeted, affirmative statutory protections that accommodate women's biological and physiological functions. The state possesses an affirmative obligation to intervene directly in employment relationships, ensuring that female laborers do not suffer

⁶ Aisyah Mutiara Ramadhan and Ec Sentot Imam Wahjono, *Analisis Peran Serikat Pekerja Dalam Menegakkan Hak Perempuan Pekerja Di Industri Manufaktur Garmen Pada PT Ungaran Sari Garments*, 2025, https://www.researchgate.net/profile/Aisyah-Mutiara-Ramadhan/publication/396912685_Analisis_Peran_Serikat_Pekerja_dalam_Menegakkan_Hak_Perempuan_Pekerja_di_Industri_Manufaktur_Garmen_Pada_PT_Ungaran_Sari_Garments/links/68fe026b02d6215259bee550/Analisis-Peran-Serikat-Pekerja-dalam-Menegakkan-Hak-Perempuan-Pekerja-di-Industri-Manufaktur-Garmen-Pada-PT-Ungaran-Sari-Garments.pdf.

structural detriments or career forfeiture as a direct result of biological functions essential to societal continuity.⁷

This constitutional imperative is codified in Law Number 13 of 2003 on Manpower, which establishes a protective regime governing the reproductive welfare of female employees. First, Article 81 paragraph (1) guarantees statutory menstrual leave for female workers who experience acute physical pain during the first and second days of menstruation, obligating employers to release them from duties while providing full remuneration.⁸ This legislative mandate acknowledges dysmenorrhea as an incapacitating medical condition that diminishes physical stamina, thereby establishing that rest during debilitating menstrual pain is a health necessity rather than discretionary absence. By making wage reductions unlawful during this statutory leave, the legislature deliberately insulated female laborers from financial penalties tied to recurring biological cycles.

Second, Article 82 paragraph (1) grants female employees the right to maternity leave for one and a half months prior to delivery and one and a half months subsequent to giving birth, calculated on the basis of obstetric or midwife certification. This statutory leave is dual-faceted: it preserves maternal physical recovery from the profound stresses of late pregnancy and delivery while securing neonatal care during critical developmental windows. Far from constituting a private employee privilege, this mandatory rest period reflects state-level public health commitments to curb maternal and infant mortality rates, compelling corporate enterprises to organize staffing structures around this predictable biological event.⁹

Third, Article 82 paragraph (2) provides an explicit rest entitlement of one and a half months for female workers who endure a miscarriage, or as authorized by an

⁷ Vaganti Safa Sukma Rubianti, "Tinjauan Undang-Undang Ketenagakerjaan Dan Hak Asasi Manusia Terhadap Pelanggaran Hak Istimewa Buruh Perempuan PT Aice," *Media Hukum Indonesia (MHI)* 2, no. 2 (2024): 310–20.

⁸ Yumi Simbala and Vonny Anneke Wongkar, "Perlindungan Hukum Terhadap Pemenuhan Hak Maternitas Bagi Pekerja Perempuan Dalam Hubungan Kerja Di Perusahaan Swasta," *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 11, no. 3 (2025): 572–88.

⁹ Srinorindra Rahayu Budiiswanti, Fence M. Wantu, and Avelia Rahma Y. Mantali, "Perlindungan Pemutusan Hubungan Kerja (PHK) Terhadap Pekerja Perempuan," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 1, no. 4 (2024): 117–32.

attending obstetrician or certified midwife. The legislative purpose underlying this protection acknowledges both the profound physical trauma and the severe psychological shock that accompany involuntary pregnancy loss. Compelling a worker to resume manual factory duties immediately after gynecological trauma creates severe medical risks; thus, the statute recognizes post-miscarriage recovery as a distinct legal status insulated from ordinary sickness absence or disciplinary workplace evaluation.

Fourth, Article 83 mandates that employers provide proper opportunities and facilities for female employees to breastfeed or express breast milk during scheduled working hours.¹⁰ This statutory duty coordinates with national health legislation requiring workplaces to maintain dedicated, sanitary lactation spaces, recognizing that denying opportunities to express milk exposes workers to painful medical complications such as mastitis while depriving infants of optimal nutrition. Through these interlocking provisions, the Manpower Law affirms that reproductive labor and industrial labor cannot be decoupled into entirely isolated spheres.

Fifth, the most critical protective barrier within this normative structure is articulated in Article 153 paragraph (1) letter e, which explicitly prohibits employers from terminating employment relationships on grounds of pregnancy, childbirth, miscarriage, or breastfeeding. To deter unlawful dismissals, Article 153 paragraph (2) provides an uncompromising statutory remedy: any termination executed in violation of these reproductive conditions is null and void by operation of law (*batal demi hukum*). As a direct legal consequence, the employer remains under a binding obligation to reinstate the worker to her original position and remit all accrued, unpaid wages for the entire duration of the unilateral separation.¹¹

These domestic statutory safeguards are reinforced by binding international human rights conventions ratified by Indonesia. Under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified via Law Number 7 of 1984, Article 11 paragraph (2) mandates state parties to institute effective measures prohibiting dismissals grounded in pregnancy or maternity leave, and to preserve seniority and

¹⁰ Mulyani Djakaria, "Perlindungan Hukum Bagi Pekerja Wanita Untuk Memperoleh Hak-Hak Pekerja Dikaitkan Dengan Kesehatan Reproduksi," *Jurnal Bina Mulia Hukum* 3, no. 1 (2018): 15–28.

¹¹ Dede Iskandar et al., "Jaminan Hukum Hak Cuti Melahirkan Dan Menyusui Bagi Pekerja Perempuan Dalam Perspektif Hukum Ketenagakerjaan Indonesia," *ADIL* 7, no. 2 (2025): 13–26.

social benefits throughout maternity-related absences. Concurrently, the standards of the International Labour Organization (ILO), notably the Maternity Protection Convention, 2000 (No. 183), emphasize that reproductive health absences represent non-derogable social rights that private contracts of employment cannot compromise, diminish, or negotiate away. On a normative level (*das sollen*), therefore, the Indonesian legal system contains an explicit and comprehensive set of rules intended to protect female workers from reproductive marginalization.

2. Empirical Realities and Corporate Paradigm Clashes

Despite the robust statutory guarantees established on paper, the empirical reality across industrial shop floors (*das sein*) reveals widespread evasion and non-compliance. In routine workplace operations, female laborers regularly encounter structural resistance, managerial hostility, and persistent job insecurity whenever they seek to exercise their lawful reproductive protections. The existence of progressive statutory provisions in official gazettes does not automatically translate into realized workplace protections, as the daily exercise of these rights is mediated through corporate authority structures that frequently treat reproductive biology as an operational defect.¹²

This institutional failure stems from an irreconcilable clash of paradigms: the humanistic-protective objective of labor legislation versus the profit-maximizing logic of commercial manufacturing. Modern manufacturing facilities, particularly those integrated into global supply chains operating under tight production schedules, evaluate organizational success strictly through metrics of labor productivity and cost minimization. In this economic calculus, statutory menstrual leave, three months of paid maternity absence, and scheduled lactation intervals are categorized by management as non-productive expenses (idle capacity). The requirement to disburse full wages without extracting continuous assembly-line output is viewed by cost-driven management as an operational inefficiency to be circumvented.¹³

¹² Putu Della Paramitha Narpaduhita, "Perlindungan Hukum Bagi Pekerja Wanita Terkait Dengan Kesehatan Reproduksi," *Jurnal Yusthima* 5, no. 02 (2025): 439–54.

¹³ Debbyi Oktavian, Risqi Citra Febrianti, and Sugeng Santoso PN, "Efektivitas Perlindungan Hukum Ketenagakerjaan Terhadap Hak Reproduksi Pekerja Perempuan: Studi Kasus PT Alpen Food Industry Periode 2017-2020," *Jurnal Media Informatika* 7, no. 3 (2026): 875–81.

Field monitoring conducted by independent labor unions and the National Commission on Violence against Women (Komnas Perempuan) documents consistent violations across labor-intensive sectors. Menstrual leave, although an unambiguous statutory right, is routinely suppressed through invasive administrative hurdles designed to deter applications. Workers are frequently forced to submit expensive medical certificates issued exclusively by corporate-designated clinics, or endure intrusive physical examinations by company health personnel to "prove" active menstruation. Because navigating these demeaning administrative procedures is both humiliating and costly, substantial majorities of female factory employees forfeit their statutory menstrual leave entirely.¹⁴

Similarly, pregnant workers face covert pressures to work well past safe medical thresholds, often laboring until their expected delivery dates under threats of non-renewal of fixed-term contracts (PKWT), involuntary reassignment to arduous manual roles, or retaliatory performance downgrades. Expectant mothers with medically verified complications frequently find their requests for modified duties or early leave rejected, forcing them to select between their health and their livelihood.¹⁵

The systemic nature of this non-compliance is reflected in empirical surveys across core industrial sectors, as compiled in Table 1 below:

Table 1. Corporate Compliance Disparities and Reproductive Rights Dispute Obstacles by Industrial Sector

Industrial Sector	Menstrual Leave Denial Rate (%)	Maternity Leave Non-Compliance (%)	Absence of Function al Lactation	Internal Bureaucratic Dispute Hurdles (%)	Reproductive-Related Dismissal Escalation (%)
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¹⁴ Cinta Cantika Darminto Putri and Wulan Windiarti, "Perlindungan Hukum Terhadap Hak Pekerja Perempuan Di Bidang Ketenagakerjaan Dikaitkan Dengan Kesehatan Reproduksi," *JURNAL ILMIAH PENELITIAN MAHASISWA* 4, no. 5 (2026): 1256–68.

¹⁵ Kamelia Karim Dwi Putri, "Perlindungan Terhadap Hak Reproduksi Pekerja Perempuan" (PhD Thesis, UNIVERSITAS HASANUDDIN, 2021), https://repository.unhas.ac.id/id/eprint/7906/3/B012181038_tesis%20dp.pdf.

			Rooms (%)			
Garment and Textile		68	42	78	85	54
Automotive/Electronic Assembly		45	28	52	64	31
Commercial Plantations/Agriculture		82	65	94	91	67
Large-Scale and Services	Retail	53	35	61	72	39
Chemical and Pharmaceutical		32	19	43	48	22

Source: Annual Labor Monitoring Reports and Labor Union Empirical Inquiries, 2025

The empirical data set forth in Table 1 confirms that labor-intensive and low-margin sectors, particularly garment, textile, and commercial plantation operations, display the highest rates of reproductive rights non-compliance. In the garment industry, menstrual leave requests are rejected in 68% of monitored instances, while 78% of facilities lack sanitary, functioning lactation rooms. Concurrently, 85% of garment workers attempting to report reproductive infractions face obstruction from internal company dispute mechanisms, leading directly to a 54% escalation rate into unlawful retaliatory dismissals. The commercial plantation sector displays even more pronounced deficits, characterized by an 82% menstrual leave denial rate, a 94% absence of lactation facilities, and a 67% dismissal rate for workers experiencing prolonged reproductive health complications. These figures demonstrate that enterprise practices systematically override statutory mandates.¹⁶

¹⁶ Rekha Fardilla Dwi Putri and Rosalia Dika Agustanti, "Marginalisasi Hak Reproduksi Perempuan Dalam Hubungan Industrial: Analisis Dogmatik Dan Empiris Cuti Haid Pada Industri Manufaktur," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 4 (2026): 174–81.

This corporate evasion persists largely unimpeded due to chronic shortcomings in state labor inspection mechanisms. Regional labor offices (Dinas Tenaga Kerja) operate with acute shortages of certified labor inspectors relative to the large volume of commercial enterprises within their administrative jurisdictions. Unannounced site inspections focusing on reproductive protections are exceptionally rare; inspections typically occur only after formal public protests or catastrophic workplace accidents. Furthermore, statutory criminal penalties and administrative fines against non-compliant enterprises are virtually never pursued by administrative authorities.¹⁷ The absence of meaningful regulatory sanctions fosters widespread employer impunity, trapping female workers in an unequal dynamic where asserting statutory bodily rights risks termination of employment.

3. Critical Case Analysis within the Industrial Dispute Settlement Framework

The institutional limitations of the dispute resolution process are demonstrated by the case of a female factory worker, referred to as AN, employed by a large-scale manufacturing enterprise in Central Java. This case illustrates how corporate production targets can erode reproductive protections, leading to extended litigation before the Industrial Relations Court (Pengadilan Hubungan Industrial).¹⁸

The dispute arose when worker AN experienced high-risk obstetrical complications during her pregnancy. Her attending physician diagnosed a threatened miscarriage (threatened abortion) and ordered total bed rest to prevent the loss of the fetus. AN submitted the required medical reports and hospital documentation to the enterprise Human Resources Department, formally requesting medical bed rest and an early start to her maternity leave.¹⁹

Corporate management rejected AN's request, asserting that the manufacturing line was in peak export production and could not accommodate absenteeism. Management

¹⁷ Widya Sari Nurcahyanti and Catharina Dewi Wulansari, "Analisis Undang-Undang Cipta Kerja Sebagai Alat Rekayasa Sosial Perlindungan Hak Pekerja Perempuan," *AKADEMIK: Jurnal Mahasiswa Humanis* 6, no. 1 (2026): 343–54.

¹⁸ Amanda Rifti, "Dilema Perlindungan Pemenuhan Hak Cuti Reproduksi Bagi Buruh Wanita," *Reflektif: Jurnal Pendidikan Dan Kebudayaan* 2, no. 4 (2026): 115–32.

¹⁹ Sulthon Miladiyanto and Ariyanti Ariyanti, "Perlindungan Hukum Terhadap Hak-Hak Reproduksi Pekerja Wanita (Perspektif Undang-Undang Ketenagakerjaan Di Indonesia Dan Malaysia)," *Jurnal Panorama Hukum* 2, no. 1 (2017): 52–68.

classified her medical absence as unexcused, recording it as an act of insubordination and poor performance. Facing intense administrative pressure and the threat of dismissal during a high-risk pregnancy, AN's physical condition worsened, resulting in a miscarriage.²⁰

Following hospital treatment, AN took the statutory post-miscarriage leave of one and a half months under Article 82 paragraph (2) of the Manpower Law. However, before this recovery window ended, the company issued a notice of unilateral employment termination. Management defended the dismissal on grounds of operational rationalization and structural efficiency, arguing that her absence record disrupted assembly line continuity.

Supported by her labor union, AN initiated formal dispute resolution under Law Number 2 of 2004:

- 1) **Bipartite Negotiations:** Under Article 3 of the Dispute Settlement Law, union representatives met with management to seek an amicable resolution. These negotiations stalled because the enterprise maintained that the termination was an exercise of its managerial prerogative for workforce efficiency.
- 2) **Tripartite Mediation:** The dispute was subsequently referred to the local labor office. After evaluating the medical evidence, the government mediator issued a written recommendation (*Anjuran*). The mediator concluded that the dismissal violated the strict prohibitions of Article 153 paragraph (1) letter e of the Manpower Law, declared the termination legally invalid, and recommended AN's immediate reinstatement with back pay. However, because administrative mediation recommendations lack direct executory force, the enterprise formally rejected the finding.

²⁰ Rismaenar Triyani and D. D. Tarina, "Perlindungan Hukum Terhadap Hak Cuti Pekerja Perempuan Hamil (Studi Pada Perusahaan Es Krim Di Bekasi)," *Jurnal Hukum Bisnis Bonum Commune* 4, no. 1 (2021): 98–99.

- 3) **Litigation before the Industrial Relations Court:** Due to corporate non-compliance with the mediation recommendation, AN filed a lawsuit challenging the unlawful termination before the Industrial Relations Court.²¹

During court proceedings, corporate defense counsel argued that the termination was a standard efficiency measure necessitated by internal reorganization rather than gender discrimination. However, through medical records, hospital admission files, and corroborating witness testimony, the judicial panel determined that the primary reason for dismissal was the worker's reproductive health emergency.

The Industrial Relations Court ruled in favor of the worker in part, declaring the unilateral termination null and void because it was executed during a protected medical recovery period. The court ordered the enterprise to pay outstanding wages accrued during the dispute, provide statutory compensation, and pay coercive fines (dwangsom) for every day of non-compliance.²²

Although AN secured a favorable verdict, the case demonstrates significant procedural shortcomings within the labor adjudication system. Litigating the matter through bipartite talks, mediation, and trial took nearly twelve months. Throughout this period, the worker had no steady income, bore legal costs, and suffered substantial psychological distress following pregnancy loss. This outcome shows that the dispute settlement framework under Law Number 2 of 2004 lacks expedited, gender-sensitive procedures (fast-track mechanisms) to address urgent reproductive violations.²³

4. Reconstructing Industrial Relations Adjudication through Gender-Responsive Principles

The structural difficulties faced by female workers stem from the procedural philosophy governing Law Number 2 of 2004. Current industrial dispute resolution relies

²¹ Amanda Reza Andriani, "Perlindungan Hak Cuti Bagi Karyawan Wanita Yang Hamil Dan Melahirkan Berdasarkan Undang-Undang Cipta Kerja," *Jurnal De Jure* 10, no. 1 (2026), <https://repository.um-surabaya.ac.id/id/eprint/11675/>.

²² Ai Siti Azizah, "Implementasi Perlindungan Hukum Mengenai Hak-Hak Reproduksi Pekerja Perempuan: Studi Di Lembaga Perbankan Syariah Kabupaten Ciamis" (PhD Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2023), <http://etheses.uin-malang.ac.id/50745/>.

²³ Raudhatul Jennah and Irma Nur Hayati, "Perlindungan Hukum Terhadap Hak Reproduksi Pekerja Perempuan Perspektif Undang-Undang Nomor 13, Tahun 2003 Tentang Ketenagakerjaan Dan Perspektif Hukum Islam," *Al-Qadlāya: Jurnal Hukum Keluarga Islam* 2, no. 1 (2022): 58–73.

primarily on standard civil litigation assumptions, presuming that employers and employees meet in court as equals (formal equality of arms). This premise overlooks the inherent socio-economic disparities in employment relationships.²⁴ Subordinated female factory workers possess neither the financial resources, the access to internal company records, nor the legal assistance commanded by corporate entities. Reforming the labor dispute system to achieve genuine gender equity requires three coordinated procedural and administrative adjustments:

a. Institutionalizing the Shifting Burden of Proof (*Omkering van het Bewijslast*)

Under general civil procedure principles (*actori incumbit probatio*), the burden of proof rests on the claimant. In termination disputes, a worker alleging reproductive discrimination must usually produce documentary proof showing the employer's discriminatory intent. Meeting this standard is often impossible because internal personnel evaluations, production schedules, and management communications remain under the employer's control.²⁵

To address this disparity, procedural labor law should apply a shifting burden of proof in reproductive disputes. If an employer discharges, demotes, or disciplines a female worker while she is pregnant, on maternity leave, using menstrual rest, or recovering from a miscarriage, a rebuttable presumption of discriminatory dismissal should arise automatically.²⁶ The employer must then demonstrate through objective performance metrics and audited business records that the action was strictly necessary due to financial insolvency and unrelated to the worker's reproductive condition. If the employer fails to satisfy this burden, the court should immediately declare the termination null and issue an interim order for back pay.

b. Mandating Gender-Sensitive Judicial Standards

²⁴ Suci Flambonita, "Perlindungan Hukum Terhadap Hak Pekerja Perempuan Di Bidang Ketenagakerjaan," *Simbur Cahaya*, 2017, 4397–424.

²⁵ Rendy Dwi Hermanto and Sheyla Nichlatus Sovia, "Islam Dan Kebijakan Negara Dalam Perlindungan Terhadap Hak Reproduksi Pekerja Perempuan Pada Keluarga Muslim," *Mahakim: Journal of Islamic Family Law* 7, no. 2 (2023): 117–41.

²⁶ Korua et al., "Perlindungan Hukum Terhadap Tenaga Kerja Wanita Terkait Hak Reproduksi Di Kota Manado."

The procedural limitations of labor courts are also reinforced by conservative judicial interpretations. Labor judges frequently operate within narrow legal formalism, viewing their role as strict applicers of statutory text without addressing structural inequalities. Many labor judges lack specialized training on international standards such as CEDAW or domestic guidelines for adjudicating cases involving women in the justice system.²⁷

Judicial bodies should introduce mandatory certification programs on gender-responsive jurisprudence for all judges serving on industrial tribunals. Adjudicators should be encouraged to apply progressive statutory interpretation that accounts for the socio-economic realities of female workers. Furthermore, judges must actively use ex-officio powers to issue provisional remedies (provisional measures) ordering immediate wage maintenance during litigation, preventing economic hardship from forcing workers into disadvantageous settlements.²⁸

c. Integrating Administrative Penalties with Expedited Civil Procedures

Protecting reproductive rights requires moving beyond protracted civil litigation by establishing clear administrative consequences. Denying statutory menstrual leave, maternity leave, or lactation rights constitutes an offense under labor law, yet administrative penalties and criminal labor provisions are rarely enforced due to weak coordination between labor inspectors and judicial bodies.²⁹

Regulatory reform should connect the dispute process under Law Number 2 of 2004 with immediate administrative sanctions. When mediators or labor judges confirm that an enterprise has systematically violated statutory reproductive protections, these findings should link automatically to the national business licensing registry. Sanctions such as temporary suspension of operational permits, withdrawal of state-backed incentives, and blacklisting from public procurement or international trade supply chains

²⁷ Rachmawati and Wahyoeono, "Perlindungan Hukum Hak Cuti Melahirkan Bagi Pekerja Perempuan Dalam Sistem Ketenagakerjaan Indonesia Ditinjau Dari Standar Perlindungan Maternitas Ilo."

²⁸ Sulistya Eviningrum, Mina Marista, and Elfara Yulyastia Rizki Ananda, "Upah, Cuti Melahirkan, Dan Jaminan Sosial: Tantangan Keadilan Gender Di Tempat Kerja," *Jurnal Bedah Hukum* 10, no. 1 (2026), <https://ejournal.uby.ac.id/index.php/jbh/article/view/2334>.

²⁹ Difa Mutia Dara and Dedy Sumardi, "Hak Maternitis Tenaga Kerja Perempuan Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan (Studi Kasus Di Kampus Politeknik Teknologi Kimia Industri Medan)," *As-Siyadah* 1, no. 1 (2022): 1–20.

should apply directly. Establishing real regulatory and financial consequences will encourage compliance, ensuring that statutory reproductive guarantees are upheld across the national industrial sector.

Conclusion

This research confirms the existence of a deep structural gap between the normative legal framework (*das sollen*) governing female workers' reproductive rights in Indonesia and the empirical conditions (*das sein*) found within the industrial sector. Although domestic statutes and ratified international conventions explicitly protect menstrual leave, maternity leave, and post-miscarriage recovery while prohibiting dismissals linked to pregnancy, workplace implementation is consistently compromised by corporate cost-reduction priorities and limited state labor inspection, as illustrated by the case of worker AN. This problem is compounded by a labor dispute system under Law Number 2 of 2004 that relies on formal civil equality, places difficult evidentiary burdens on vulnerable employees, and lacks expedited procedures for time-sensitive reproductive grievances. Addressing these systemic shortcomings requires concrete procedural reforms, notably establishing a statutory shifting of the burden of proof in reproductive disputes, requiring gender-competency certifications for labor court judges, and linking judicial non-compliance findings to administrative business sanctions to secure substantive justice for female workers.

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