

# The Highest Attainable Standard of Health for Female Workers in the Pandemic from Human Rights Perspective Case Study in Indonesia

Linda Fatmawati Saleh<sup>1,\*</sup> Firdaus<sup>1</sup>

<sup>1</sup> Ministry of Law and Human Rights of the Republic of Indonesia

\*Corresponding author. E-mail : [lindafatmawatisaleh@gmail.com](mailto:lindafatmawatisaleh@gmail.com)

## ABSTRACT

The guarantee of the right to health is regulated in the Indonesian constitution. COVID-19 has a disproportionate economic impact on female workers. Policies in the form of limiting physical and social distance have a distinctive impact on women, especially in relation to the position of women workers (laborers) and women in the family (Mother). This overlapped workload puts women at the highest risk of exposure because of their roles as workers, caregivers, and home health workers. When women are tired of taking care of their family, household, and activities (laborers) at the same time, their immune system tends to weaken. The risk of being exposed to the virus is also increasingly vulnerable. In addition, there are still companies that neglect the rights of women workers in order to pursue the efficiency and effectiveness of company production. The problem is how to protect human rights for women workers in order to get the highest standard of health during the COVID-19 pandemic. The aim of the study is to propose regulations on the highest health standards for female workers during the pandemic. This research is descriptive normative legal research. The results showed that there were still many female workers who did not get the highest standard of health during the COVID-19 pandemic, namely preventive, curative and rehabilitative health services. The author's suggestion is that there is a government policy related to health insurance and protection with the highest attainable standards of health for female workers.

**Keywords:** COVID-19, highest attainable standards of health, labor, women.

## 1. INTRODUCTION

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. Implemented based on the principles of non-discrimination, participation, protection, and sustainability which are very important for the formation of Indonesia's human resources, increasing the resilience and competitiveness of the nation, as well as national development. [1]

The importance of health as a human right and as a necessary condition for the fulfillment of other rights has been recognized internationally. The right to health includes the right to a healthy life and work, the right to obtain health services, and special attention to maternal and child health. Article 25 of the Universal Declaration of Human Rights (UDHR) states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, shelter and health services, necessary social services, as well as the right to security when unemployed, sick, disabled, abandoned by his partner, old age, or other conditions resulting in a decline in the standard of living that occurs outside his control.[2]

Besides, we can also see the substantive issues arising in the implementation of The International Covenant on Economic, Social and Cultural Rights General Comment No.14 (2000) The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) states.[3]

Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life of dignity. The realization of the right to health

may be pursued through numerous complementary approaches, such as the formulation of health policies, or the implementation of health programs developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable.

President Joko Widodo advised residents to carry out social distancing or maintain social distancing. This pattern means limiting unnecessary physical contacts in order to reduce the rate of spread of the new type of coronavirus (SARS-CoV-2). As a result, the policy of studying and working from home was adopted. However, there are several types of work that do not allow the implementation of the system. And because of this, people of certain professions become even more vulnerable because of the inevitable physical contact.

With the impact of the COVID-19 pandemic, many companies have had to close, employees have even been dismissed at home, and the wheels of the economy have, of course, stopped, resulting in a rising poverty curve. However, at this time, officially, for example, the DKI Jakarta government still allows industrial sectors that are allowed to continue operating in the midst of the threat of COVID-19 transmission (Governor Regulation Number 33 of 2020). These sectors include health, food, food and beverage, energy, communication, services, communication media, banking finance including capital markets, logistics and distribution of goods, retail such as stalls, grocery stores, and other strategic industries. Like it or not, workers who work in these eight sectors must be willing to go to work as usual (Work From Office) when other sectors have to stop operating, and their employees work from home. The large-scale social restrictions period must legally be protected, and people's right to health should not be neglected, such in the case of vulnerable employers/employees because they continue to work in this difficult period. Law number 13 of 2003 concerning Manpower has the aim of empowering the workforce in an "optimal" and "humane" manner. The words "optimal" and "humane" are the keywords for the working relationship between employers and workers that can run in the corridor of ethics, decency, and law.[4]

Minister of Manpower Ida Fauziyah revealed that 623,407 female workers were affected by the corona pandemic that has spread domestically in recent months. Some of them were sent home, laid off, and returned from apprenticeship due to the disease, adding that the number is actually lower than that of

men, who reached 1,552,521 people. However, he said in a burden, the problems borne by women during the COVID-19 period were more than men. The number of female workers who are affected is lower than that of men, but several studies have shown that women can suffer additional burdens due to the pandemic.[5]

According to Ida, there were four additional burdens felt by women during the COVID-19 pandemic. First, the decline in income due to the pandemic. Second, an increase in the burden of taking care of the household due to working from home (WFH). Third, women must oversee the learning process of children who learn from home (school from home). Fourth, increasing domestic violence against women. Ida received reports that cases of violence against women increased by 25 percent-33 percent in the world due to the pandemic.

Several aspects are determining factors ranging from how often the profession requires workers to pick up the phone to cases of bowing intensity - such as cleaning workers and others. To get good health services, people today have to pay high costs. Low-income people often do not get good health services. Several incidents show that the orientation of the hospital for profit can defeat humanity. A patient in a critical condition sometimes has to complete various requirements and financial bureaucracy before getting service, and it is not impossible that the patient will die at that time.

Given the important role of labor in the implementation of development, and as a tool for political and economic strength, especially in the production process, it is only natural that health protection is carried out with the highest standards through the maintenance and development of the welfare of workers, especially women workers.

Therefore, as stated in the background section, it is important to identify the form of the vulnerability of a vulnerable group in the enjoyment of human rights, in this case, to the enjoyment of the right to health. This identification determines the steps to be taken by the state regarding the specificity of this vulnerable group (female workers).

Based on the description above, the formulation of the problem is how to fulfill the right to health with the highest standards for women workers (laborers) who bear double burdens, as laborers and as women in the family (Mother) during the Corona Virus Disease 19 Pandemic.

This research was conducted with the aim of knowing and understanding the implementation of

the fulfillment of health rights with the highest standards for women workers (laborers) who bear double burdens, as laborers and as women in the family (the mother) during the Corona Virus Disease 19 Pandemic in Indonesia.

The theoretical purpose of this research is to contribute ideas to the government in order to fulfill the right to health with the highest standards for female workers, in which there must be an affirmative policy issued by the government during the COVID-19 pandemic for this.

Theoretically, the benefits of this research are expected to provide information for similar research and provide scientific information on studies of women's health rights.

## **2. RESEARCH METHOD**

### **2.1. Approach**

The approach in this research is normative juridical research. In this study, several approaches were also used, including the intersectional feminism approach, the legislative approach, and the conceptual approach. In this study, library materials and document studies were used as the main materials.

### **2.2. Data Collection Method**

The data collection technique (legal material) used in this research is a library study by conducting document studies in private libraries, the regional office library of the Southeast Sulawesi Ministry of Law and Human Rights, the Legal Information Documentation Network, and several sites on human rights.

### **2.3. Technical Data Analysis**

The data or legal materials collected will be classified and categorized into their respective sections. The data that has been obtained is then analyzed using qualitative methods based on the logic of deductive thinking. Logic is the science and ability to reason, think correctly. Further classifying, measuring, and testing the data with the concepts of theoretical foundations, principles, and existing laws and regulations in order to obtain an overview and answer to the formulation of the problem.

## **3. ANALYSIS AND DISCUSSION**

### **Highest Attainable Standard of Health**

After endorsing the ratification of the UN Economic and Social Council through Law Number 12 of 2005, Indonesia as a State Party, binds itself to the norms and values of human rights, especially economic, social and cultural rights. Indonesia is committed to realizing the enjoyment of the rights contained in this instrument by guaranteeing its realization in a progressive manner.

Efforts to realize economic, social, and cultural rights have actually been reflected in the first two objectives of the establishment of the Unitary State of the Republic of Indonesia as outlined in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely: a) protecting the whole people of Indonesia and the entire homeland of Indonesia, and b) to advance general prosperity and to develop the nation's intellectual life. This shows that the UN Economic and Social Council is in line with the objectives of the establishment of the Unitary State of the Republic of Indonesia. Thus, it becomes an important instrument to encourage efforts to achieve the goal of establishing the Republic of Indonesia.

Article 12 paragraph (1) of the UN Economic and Social Council states that: "States Parties to the UN Economic and Social Council Covenant recognize the right of everyone to enjoy the highest attainable standard of physical and mental health." The right to health is one of the fundamental rights that can affect the enjoyment of other human rights, as well as an important foundation for the achievement of the goal of establishing a nation. Thus, it is important to pay attention to the realization of the right to the highest attainable standard of health.

The realization and fulfillment of the right to health basically must be based on the principle of non-discrimination, including for vulnerable groups. This framework is contained in the minimum core obligation number 1 compiled by the Committee on Economic, Social and Cultural Rights of the United Nations, namely ensuring access to health facilities for goods and services without discrimination, especially for vulnerable and marginalized groups.[6]

The Committee also emphasized that, despite severe resource constraints, whether caused by the adjustment process, economic recession, or other factors, vulnerable groups should still be protected by implementing relatively low-cost programs. The minimum core obligations should also be seen as the first step, not the final stage in the process of

realizing economic, social, and cultural rights. Therefore, this principle should not be viewed as a minimalist approach that presumes only the minimum core obligations that are legally binding.[7]

Shadow pandemic is a concept that explains the phenomenon of increasing violence against women during the COVID-19 pandemic. Family as a 'gendered institution' is an important focus in feminism studies. Feminism sees the family in a patriarchal society as a manifestation of unequal gender relations, in which women's gender roles are subordinated and constructed. In a patriarchal social structure, women are attached to the role of sex-affective production, which is tasked with providing emotional care for boys and men, as well as sexual satisfaction for men. Meanwhile, work within the family, such as car work or housework, tends to be considered to have lower economic value and is considered unskilled work.

Several studies related to the COVID-19 pandemic with an intersectional feminism approach found layered challenges faced by women and also the importance of women's roles in the current pandemic situation. Lokot and Avakyan revealed the findings of high symptoms of COVID-19 infection among certain minorities. According to him, in the United States, African Americans are experiencing a greater impact of the COVID-19 pandemic due to decades of social inequality and health inequality, including their low access to health insurance. In addition, Lokot and Avakyan also revealed the problem of access to sexual and reproductive health services during times of crisis, which tends to ignore women with disabilities, adolescents, and gender minority groups.[8]

There are several factors driving women's involvement in the industrial sector, namely due to economic pressures or increasingly unreachable family economic needs, husbands do not work, and increase husband's income. In addition, on average, women who work in the industrial sector are in the middle to lower economic groups whose levels of education and expertise are still low. In addition, according to Suleman, there is gender inequality in education where there are differences in the rights and obligations of women and men in receiving formal education.[9]

### **Double Burdens of Women Workers**

Women workers who work in the industrial sector will face two demands, namely as housewives and as breadwinners. Both roles are obligations and responsibilities that must be optimally performed

simultaneously. However, this situation often creates serious conflicts within a woman worker. Some of the conflicts experienced by women workers are usually related to work and family.

Often women workers have family pressures that affect work, for example, the presence of young children, weak support from their families, and family conflicts. In addition, in a work environment such as long working hours, long trips, workloads. Humans can not be separated from the demands of the roles that must be played in the development of their lives; this is the case with women workers. Female workers have the role of the wife in the family, namely as a companion to their husband and the one who bears their offspring. Meanwhile, her role as a mother is to care for, guide, and educate her children to grow up. If a woman worker can perform both roles optimally, then the woman is considered a complete social and cultural being.[9]

Childcare is a form of care work. Globally, childcare, including accompanying children in school education, is more the responsibility of women. A report published by the Overseas Development Institute (ODI 2016) states that in 37 countries (equivalent to 20% of the global population), 75% of childcare is done by women. One of the derivatives of the policy during the COVID-19 pandemic was the application of long-distance schooling using online methods. Most of the interviewees for this study saw distance schooling as an additional workload for women in the household. Distance school activities require parents to accompany children to learn and access the internet. In addition, attending school remotely also requires skills and technology to interact remotely using the internet.

Housewives who are also laborers and have to work in factories while still have to be responsible for accompanying their children to school remotely. When children have to do schooling from home, women often do not have the skills or capacity to assist children in learning. Access to technology such as the use of the internet is also an obstacle faced by women.[7]

According to Agnes Widanti, there are several problems related to the dual role of women laborers[10] namely (1) 'Nature' is used as a justification for the role of women and the domestication of women, (2) The view of men who are still ambiguous in demanding women in terms of domestic duties and the obligation of wives to help husband earn a living. (3) Village elders believe that gender differences are "natural" that cannot be

denied. If women deny it, the social order will be chaotic; for example, there will be many divorces. This statement is in line with Talcott Parson's opinion that the dependence of women on men is natural. (4) A group of women workers whose groups consist of women and men workers who believe that male domination means protection of men for women. (5) Male workers and community leaders, in addition to demanding that women help their husbands earn income (work), also demand that women continue to carry out their domestic duties fully because domestic duties are integrated with women. (6) The wives argue to the contrary that it is unfair if a wife who has worked outside all day is still given full house duties. It is better if husband and wife share the household duties. (7) Wives who work outside the house to help earn family income are blamed for the cause of divorce and the increase of women getting pregnant outside of marriage.

Talcott Parsons said that the use of women is to do household chores. With a clear arrangement that women are only in the household, competition between husband and wife will destroy domestic harmony[11] The result of this theory is that men become paid public creatures while women become unpaid domestic beings. The change from village women to factory workers is felt by groups of women workers who come from the village as changes that affect their behavior. They feel that what is experienced in the village in the life of a poor farmer who relies on the work of the entire household: father, mother, and children to sustain life, is no longer experienced in family life in the city. The burden of the family is strictly separated between domestic duties, which are the responsibility of women, and public duties, which are the responsibility of men. In practice, it turns out that times have changed. Men remain public beings, but women, apart from domestic beings, are now also required to work as public beings because of insufficient income. The double burden is felt to be unfair and gives birth to male domination.

### **Regulations on Women Workers and Work Agreements**

Rapidly growing companies is one of the factors supporting the progress of economic development in Indonesia. To achieve the companies' target, human resources are needed, namely workers. However, it often happens that these workers are neglected, especially in the fulfillment of their rights.[12] The rights of workers that are often ignored by the Company are women workers.[13]

At this time, women also support the needs and welfare of family life by working both as civil servants, but also as private employees working in factories, industries, or micro, small and medium enterprises. This is done to support income due to the great economic demands of the family. In fact, it is not uncommon to find a woman working in a position as the main breadwinner to meet the needs of family life because the man (husband) does not have a job. Therefore, indirectly the role of women workers in Indonesia contributes to national development.[13]

In order to provide legal protection, specifically in Law no. 13 of 2003 in the general explanation section, it is stated that legal protection for workers, including protection of workers' basic rights to negotiate with employers, protection of occupational safety and health, special protection for female workers, children, and persons with disabilities, as well as protection on wages, welfare, and social security of workers. In the state of Pancasila law, legal protection for women workers is directed at efforts to prevent disputes between employers and workers, resolving disputes between employers and workers through deliberation, and the judiciary is the last means in efforts to resolve disputes between employers and workers.

Law no. 13 of 2003 Article 86, paragraph (1) states that every worker has the right to obtain protection for: a) occupational safety and health, b) morals and decency, c) treatment in accordance with human dignity and values, and religious values. Prior to the enactment of the Manpower Law no. 13 of 2003, laws and regulations that provide legal protection to workers are very minimal. Although it is recognized that the legal protection arrangements in the Manpower Act No. 13 of 2003 have not answered all the problems that are so broad and complex, they are at least one step further and are expected to provide legal protection for workers, especially those concerning working conditions, working conditions as well as social security and social security. Other work protection and can be used as a reference in settlement of industrial relations disputes. The implementation of legal protection, maintenance, and improvement of welfare is the responsibility and obligation of the state. The benefits of legal protection can provide a sense of security to workers so that they can concentrate more on increasing motivation and work productivity.[14]

With the passage of time, women are slowly gaining an equal place with men in various fields of work. It's not the time for someone to be judged on their

performance based on gender. It is the individual's abilities and expertise that determine one's career success. Even so, the nature of a woman is unavoidable and still has its own place that must be guarded.[15]

Therefore, it is very important to understand the existence of a work agreement in accordance with the labor law and employment agreement. Both female workers and male workers, knowing every item in the law and work agreements is a must. Especially for women, knowing and understanding their rights and obligations in a job will provide a sense of comfort and legal certainty during work.

The employment agreement for a new employee is very important because it contains very basic statements that contain the parties' agreement to follow all agreements. A work agreement letter between the company and female workers contains at least three main points regarding the protection of female workers; the three main points are: First, protection for women's reproductive functions. The form is in the form of giving rest during menstruation, pregnancy, childbirth, or miscarriage. In addition, by providing opportunities to breastfeed children during working hours. Protection is also realized in the form of night work arrangements for women, provision of shuttle vehicles, and additional nutritious food and drinks. Equally important is the protection of the safety and decency of the workers.

In the condition of the COVID-19 pandemic, this threat of experiencing problems for female workers will double, namely the risk of being infected with the COVID-19 virus, the risk of lack of protein-energy due to the reduced ability of the family's economy to provide food, and even the risk of stress so as to unite their health. The focus of attention on the health sector at this time is handling the pandemic, but the health of female workers should not be forgotten. For this matter, female workers actually make work agreements by including the right to health during the COVID-19 pandemic as one of the terms of the agreement.

Second, corrective protection, in the form of monitoring the possibility of a ban in the form of termination of employment on the grounds of pregnancy, childbirth, miscarriage, or breastfeeding.

Third, protection regarding equal employment opportunities and treatment without discrimination is manifested in the form of a prohibition on discrimination in terms of wages, employment, and position. In this case, employers may not discriminate between men and women in terms of wages, promotions, and rights to social security.[16]

### **Health Rights of Women Workers**

Health development as one of the goals of national development is directed at the realization of a healthy lifestyle for everyone and the attainment of the highest public health status. In this connection, the scope of national development in the health sector is very broad, so its implementation must be planned, comprehensive, gradual, and sustainable.

With the obligations and responsibilities of the government in fulfilling the right to health services as referred to in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Law Number 36 of 2009 concerning Health, the government is given the authority to plan, regulate, organizing, fostering and supervising the implementation of health efforts that are evenly distributed and affordable by the community[17], including women.

Indonesia, in line with the rule of law, certainly regulates everything based on the law, including manpower. Manpower development has many dimensions and linkages. This linkage is not only with the interests of the workforce during, before, and after the employment period but also with the interests of the entrepreneurs, government, and society. This requires a comprehensive arrangement.[17]

In fact, the rights of women workers are also regulated in several international conventions, including International Labor Organization (ILO) Convention No.100 and Law Number 80 of 1957 concerning Equal Wages and Wages for Male and Female Workers for Work of Equal Value. . It is stated in the Convention, "Wages include regular, basic or minimum wages or salaries and any additional income, which must be paid directly or indirectly, or in cash or in kind by employers with labor in connection with the work of workers."

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been ratified by Law No. 7 of 1984, regulated several aspects related to women's rights to work and the state's obligation to guarantee this right. This is contained in Article 11, which states that:

1) States parties are obliged to make appropriate regulations to eliminate discrimination against women in the field of work in order to guarantee equal rights on the basis of equality between men and women, in particular: a. The right to work as a human right; b. The right to equal employment opportunities, including the application of the same selection criteria in hiring employees; c. The right to

freely choose a profession and a job, the right to promotion, job security, and all work benefits and facilities, the right to receive vocational training and retraining including internships, further vocational training, and further retraining; d. The right to receive the same wages, including benefits, both for equal treatment in respect of work of the same value; e. The right to receive the same wages, including benefits, both for equal treatment in respect of work of the same value, as well as equal treatment in assessing the quality of work; f. The right to social security, particularly in terms of pension, unemployment, sickness, disability, old age, and other disabilities to work, the right to paid leave; g. The right to protection of occupational health and safety, including efforts to protect the function of continuing the offspring.

2) In order to prevent discrimination against women on the basis of marriage or pregnancy and to guarantee their effective right to work, States parties are obliged to make appropriate regulations: a. To prohibit, by being imposed with sanctions dismissal on the basis of pregnancy or maternity leave and discrimination in dismissal on the basis of marital status; b. To enact provisions for maternity leave with pay or with social benefits that are comparable without losing the original job; c. To encourage the provision of social services necessary to enable parents to combine family obligations with work responsibilities and participation in community life, in particular by promoting the establishment and development of a network of child care centers; d. To provide special protection to women during pregnancy in the types of work that prove to be dangerous for them. 3) Legislation that is protective in relation to matters covered in this article must be reviewed periodically based on science and technology and revised, revoked, or expanded as needed.

Having a dual role for a woman is not easy; there are often problems, and it creates pressure from several aspects, where women are required to complete their work in both the public and domestic sphere. This demand will become a pressure for a woman who plays a dual role, and this will affect her mental and even psychological health, especially during this pandemic.

The main basis that the protection of human rights is the obligation of the government is the principle of democracy that, in fact, the government is given the mandate of power to protect the rights of citizens. Moreover, the concept of a welfare state as a modern state concept has given more power to the government to act.

This power is solely for advancing and achieving the fulfillment of human rights. The government is no longer just safeguarding someone not to violate the rights of others or have their rights violated but must strive to fulfill these rights. Likewise, with the right to health, it is the government's obligation to fulfill it. The obligation of the government to fulfill the right to health as a human right has an international juridical basis in Article 2, paragraph (1) of the Convention on Economic, Social, and Cultural Rights. Article 28 I paragraph (4) of the 1945 Constitution states that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. This government obligation is also emphasized in Article 8 of the Law on Human Rights in the Health Sector. Article 7 of the Health Law states that the government is in charge of organizing health efforts that are evenly distributed and affordable by the community. Article 9 of the Health Law states that the government is responsible for improving the degree of public health.

Efforts to fulfill the right to health can be carried out in various ways, including prevention and cure. Prevention efforts include the creation of conditions that are adequate for health, both ensuring the availability of food and jobs, good housing, and a healthy environment. Meanwhile, healing efforts are carried out by providing optimal health services. Health services include aspects of social security for health, adequate health facilities, qualified medical personnel, and service financing that is affordable to the community.

#### **4. CONCLUSIONS**

In the COVID-19 pandemic situation, there are several groups that have a higher vulnerability than the general population. This vulnerability includes health problems. One of those who are included in this vulnerable group is female labor. The large number of female workers who are exposed to the COVID-19 virus shows that female workers have not received adequate rights to health, so that maximum efforts are needed from the government to provide protection for the highest health rights for women workers.

Considering the important role of women workers in the implementation of development, and as a tool for political and economic strength, especially in the production process, it is only natural that health protection is carried out with the highest standards

through the maintenance and development of the welfare of women workers.

As suggestions for this research, : (1) In fact, the Law on Health includes women workers (laborers) as a category of vulnerable groups who are entitled to special facilities and treatment in terms of access to health services; (2) There should be a government policy that is affirmative and supports progressive realization related to the fulfillment of the right to health with the highest attainable standard of health for female workers in Indonesia, such as incorporating norms regarding the health rights of women workers during a pandemic in government regulations, as implementing regulations of the Law of the Republic of Indonesia No. 11 of 2020 on Job Creation.

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