

## The Analysis of Labor Law Arrangements against Women Workers

Audrine Gandhis Arsita Dini<sup>\*)</sup> and Nabitatus Sa'adah<sup>\*\*)</sup>

<sup>\*)</sup> Diponegoro University, E-mail: [audrinegandis@gmail.com](mailto:audrinegandis@gmail.com)

<sup>\*\*)</sup> Diponegoro University, E-mail: [nabitatuss@gmail.com](mailto:nabitatuss@gmail.com)

### Abstract.

*This article aims to identify and analyze labor law arrangements for women workers (Case Study of PT KEM). PT Kelian Equatorial Mining (KEM) is engaged in mining and metals. PT Kelian Equatorial Mining (KEM) has been established in Indonesia since 1992 located in West Kutai Regency, East Kalimantan Province. PT KEM obtained a Contract of Work from the government in 1985, then began mining for gold in 1992 and closed production in 2005 due to running out of mining products. This legal research uses a normative method which is carried out by means of literature study on secondary data. The results of this study indicate that there are several sources of law, both national and international, that protect women workers, including Act No. 13 of 2003 concerning Manpower. However, it is undeniable that violence, discrimination and sexual harassment against women in the workplace continue to occur. The government, law enforcers and companies need to pay attention to how to enforce the laws governing women workers, and make it easier to access reports of incidents related to violations of their rights at companies. In this way, the rights of women workers will be protected from any actions that harm them in relation to the work they do at the company.*

*Keywords: Employment; Worker; Woman; Violence.*

### 1. Introduction

Since the existence of women's emancipation initiated by Raden Ajeng Kartini, the paradigm about women has changed. The existence of equal rights between men and women encourages women to play a more active role in life. In the past, women were only seen as caretakers of the house, their only jobs were cooking, washing, caring for children and going to the market. But now there are many women who work to meet the needs of family life. Now many women are working both in the formal and non-formal sectors.

The phenomenon of women starting work also needs to be followed up with protection for women workers or laborers. The situation of women who are often underestimated by men and the existence of a paradigm that women are weak creatures, these female workers or laborers should receive legal protection<sup>1</sup>.

Protection for workers is needed to ensure the welfare of workers. This protection includes work safety and social security. There is special attention for women workers because physically in general women are weak. Likewise, with the decency of women in the work environment, there is a high possibility that immoral acts and actions can occur which can endanger the safety and decency of women workers, so they need to be guarded against and prevented.

In Indonesia, laws and regulations that specifically regulate the protection of women that apply are the ratification rules of an international treaty called CEDAW (Convention on the Elimination of All Forms of Discrimination against Women). Ratification of the international agreement applies in the form of Act No. 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination against Women. Other laws and regulations do not regulate the protection of women specifically, but regulate the protection of humans broadly without discriminating against certain groups.

In several laws and regulations there are also several articles that specifically provide special rules for the protection of women. One of them is contained in Act No. 13 of 2003 concerning Manpower.

In Indonesia, regulations that specifically mention the protection of women workers are contained in Articles 76, 81, 82 and 83 of Act No. 13 of 2003 concerning Manpower. However, the four articles only regulate night work hours and protection for women workers to get time off during menstruation, pregnancy, after giving birth, breastfeeding a child if the child is still breastfeeding, and when a miscarriage occurs. In Act No. 13 of 2003 concerning Manpower does not explicitly regulate protection against violence in the workplace, discrimination, and sexual harassment committed against women in the workplace. The rules that come closest to the protection of these matters are contained in Article 86 paragraph (1) of the Manpower Law, i.e. every worker has the right to protection of occupational safety and health; morals and decency; and treatment according to human dignity and religious values.

In fact, if examined, there are many cases in the workplace with women as victims. One of the dominating cases is the case of sexual harassment of female

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<sup>1</sup> Husni, Lalu, (2000), *Hukum Ketenagakerjaan Indonesia*, Edisi Revisi, PT. RajaGrafindo Persada, Jakarta, p.41

workers in the workplace. In fact, there are many cases of harassment of women in the workplace, but there are not many reports of such harassment. One reason is the lack of evidence that the victim has and also the threat that the victim will be fired if she dares to come forward. One example of cases of sexual harassment that occurred against female workers is the case at PT. Kelian Equatorial Mining, or commonly known as PT. KEM.

PT. KEM is a mining company located in West Kutai Regency, East Kalimantan. Since its inception, this company has often faced problems related to social and environmental issues, to rape and sexual harassment of its female workers and also residents of the villages around the company.<sup>2</sup>These cases of sexual harassment occurred over a long period of time, namely between 1987 and 1997<sup>3</sup> and carried out by male employees of PT. KEM, some of whom are foreign employees.<sup>4</sup>

Ironically, regarding sexual harassment, PT. KEM has its own formal regulations, namely the Harassment Policy which regulates definitions, rules, and procedures for handling cases of sexual harassment that have occurred.<sup>5</sup>Cases of sexual harassment against female workers at PT. KEM is just one example of many other cases of sexual harassment of female workers. The fact that PT. KEM itself already has a formal company regulation that prohibits sexual harassment and does not make cases of sexual harassment disappear because in reality these cases still occur. This shows that the protection of women workers is indeed necessary and there is a need for more protective regulations.

## 2. Research Methods

In the research contained in the form of this article, it uses normative legal research to analyze legal issues that arise and originate from legal norms. The primary legal materials are the 1945 Constitution, Law 13 of 2003 concerning Manpower, ILO Convention No. 183/2000 and ILO Recommendation No. 191/2000 concerning Maternity Protection, ILO Convention Number 100, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and other laws and regulations.

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<sup>2</sup>Indradi, Doni and Dewvina Oktora, Liputan 6, Operasional PT KEM Resmi Ditutup, <http://news.liputan6.com/read/95391/operasional-pt-kem-resmi-ditutup>, accessed on 1 January 2023

<sup>3</sup>Hukum Online, Komnas HAM Belum Tindaklanjuti Laporan Pelanggaran HAM di Kelian, <http://www.hukumonline.com/berita/baca/hol1444/komnas-ham-belum-tindaklanjuti-laporan-pelanggaran-ham-di-kelian>, accessed on 1 January 2023

<sup>4</sup>Aritonang, Polmart, Liputan 6, Korban Perkosaan Karyawan PT KEM Berunjuk Rasa, <http://news.liputan6.com/read/88838/korban-perkosaan-karyawan-pt-kem-berunjuk-rasa>, accessed on 1 January 2023

<sup>5</sup>Muk/APr, Online Law, Loc.Cit.

Secondary legal materials that explain primary law include books, articles, and online materials that address women workers. Tertiary legal materials are legal materials that have instructions and explanations for primary and secondary laws.

Data were obtained through literature studies on primary, secondary and tertiary legal materials. The legal materials obtained were analyzed using qualitative analysis methods with the law approach and case approach which would then be concluded by the object of research.

### **3. Results and Discussion**

#### **3.1. Protection of Women Workers Regulated by Law**

There are several Indonesian legal regulations that regulate the rights of women workers. The following regulations serve as guidelines on how to treat or grant rights and obligations to women workers, the object of this paper's study. The following are the regulations in question:

1. Article 27 paragraph (2) of the 1945 Constitution. Every citizen has the right to work and a life worthy of humanity. The meaning of the article is that every citizen including women workers/laborers.
2. Act No. 13 of 2003 concerning Manpower.
  - a. Article 76
    - Female workers/laborers who are less than 18 (eighteen) years old are prohibited from being employed between 23.00 to 07.00
    - Entrepreneurs are prohibited from employing pregnant women workers/laborers who, according to the doctor's statement, are dangerous to the health and safety of their womb and themselves if they work between 11:00 pm to 7:00 am.
    - Entrepreneurs who employ female workers/labor between 11:00 p.m. to 7:00 a.m. are required to provide nutritious food and drinks; and maintain decency and safety in the workplace
    - Entrepreneurs are required to provide shuttle transportation for female workers/laborers who go to and return from work between 23.00 to 05.00.
    - The provisions referred to in paragraph (3) and paragraph (4) are regulated by a Ministerial Decree.
  - b. Article 81
    - Female workers/laborers who feel sick during their menstrual period and inform the employer are not obliged to work on the first and second day of menstruation.
    - Implementation of the provisions referred to in paragraph (1) is regulated in work agreements, company regulations, or collective labor agreements.

c. Article 82

- Female workers/laborers are entitled to rest for 1.5 (one and a half) months before giving birth and 1.5 (one and a half) months after giving birth according to the obstetrician's or midwife's calculations.
- Female workers who experience a miscarriage are entitled to 1.5 (one and a half) month's rest or according to a certificate from the obstetrician or midwife.

d. Article 83

Women workers/labor whose children are still breastfeeding must be given proper opportunities to breastfeed their children if this has to be done during working hours.

e. Article 84

Every worker/laborer who uses the right to rest as referred to in Article 79 paragraph (2) letters b, c, and d, Article 80 and Article 82 has the right to receive full wages.

f. Article 93

- Wages are not paid if the worker/laborer does not work.
- The provisions referred to in paragraph (1) do not apply, and employers are obliged to pay wages if: the worker/laborer is sick so that he cannot do work; female worker/labourer who is sick on the first and second day of her menstrual period so she cannot do work; the worker/ laborer is absent from work because the worker/ laborer is married, married, circumcised, has his child baptized, his wife gives birth or has a miscarriage, the husband or wife or children or in-laws or parents or in-laws or family members in the same house die; the worker/laborer cannot do his job because he is carrying out his obligations to the state; the worker/labourer cannot carry out his work because he is carrying out religious duties ordered by his religion; the worker/laborer is willing to do the work that has been promised but the entrepreneur does not hire him, either because of his own mistakes or because of an obstacle that the entrepreneur should have avoided; workers/laborers exercise the right to rest; the worker/laborer performs the tasks of a trade union/labor union with the approval of the entrepreneur; and workers/laborers carry out educational tasks from the company.
- Wages paid to sick workers as referred to in paragraph (2) letter a are as follows:
  - for the first 4 (four) months, paid 100% (one hundred percent) of wages; - for the second 4 (four) months, paid 75% (seventy five percent) of wages; - for the third 4 (four) months, 50% (fifty percent) of wages are paid; - for the next month, 25% (twenty five percent) of wages are paid before termination of employment is carried out by the entrepreneur.
- Wages paid to workers/laborers who are absent from work as referred to in paragraph (2) letter c are as follows: - married workers/laborers, paid for 3 (three) days; - marrying off their children, paid for 2 (two) days ; - circumcision of the child, paid for 2 (two) days; - baptizing the child, paid for 2 (two) days; - wife

giving birth or miscarriage, paid for 2 (two) days; husband/wife, parents/in-law or child or in-law dies, paid for 2 (two) days; family member in one house dies, paid for 1 (one) day;

- Arrangements for the implementation of the provisions referred to in paragraph (2) are stipulated in work agreements, company regulations, or collective bargaining agreements.

3. Government Regulation no. 8 of 1981 concerning Wages Protection.

In the explanation of Article 10 paragraph (1) to paragraph (5) which explains that payment of wages does not fall to people who are not entitled. Every worker/laborer, both male and female, has the right to wages according to his work and the definition of an immature worker means both male and female workers who are 14 (fourteen) years old but have not reached the age of 18 (eighteen) years.

4. Regulation of the Minister of Manpower No. 8. Per-04/Men/1989 concerning Conditions for Night Work and Procedures for Employing Women Workers at Night.

5. Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number Kep. 224/Men/2003 Concerning the Obligations of Entrepreneurs Who Employ Women Workers/Labourers between 23.00 and 07.00.

The existence of this regulation is intended to provide a further explanation of Article 76 of Act No. 13 of 2003 concerning Manpower. Among other things, it regulates Entrepreneurs' Obligations regarding: Provision of nutritious food and drinks that are appropriate and meet hygiene and sanitation requirements by presenting a varied menu (in this case money cannot be replaced); Maintain decency and security while at work; Provide shuttle transportation for women workers/laborers and determine pick-up and drop-off locations at locations that are easily accessible and safe. The shuttle vehicle must be in proper condition and registered with the company concerned; Provide security guards at work; Provide adequate and separate bathrooms/toilets for male and female workers/labourers.

Apart from being regulated in Indonesian positive law, the protection of women workers has also been widely discussed by countries in the world and from the meetings of these countries several international conventions have been produced. Several of these conventions have been ratified by Indonesia and some are still under consideration for ratification.

ILO Convention No. 183/2000 and ILO Recommendation No. 191/2000 concerning Maternity Protection. The ILO is an international labor organization, an agency established by the United Nations whose function is to protect workers' rights to obtain decent and productive work. Maternity protection itself is needed to protect the health of female workers and the fetus they contain and/or the babies they are born and breastfeed from working conditions that are unsafe and unhealthy.<sup>6</sup>Some of the things regulated in this convention are more or less regarding:

1. In the context of protecting the health of workers as stipulated in PS 3, pregnant/breastfeeding women are not required to carry out work that is determined by the competent authority to harm the health of the mother or child.<sup>7</sup>
2. Stipulation of maternity leave for 14 weeks / 3.5 months (art. 4)
3. Job protection and non-discrimination after returning to work, women workers are guaranteed the right to return to the same position that is paid at the same level (art. 8).
4. Women workers are given the right to reduce working hours / daily breaks to breastfeed their children (art. 10)

Article 2 of ILO Convention No. 45 concerning the work of women in all types of underground mines. Stating that every woman regardless of age may not do underground mining work. The exception lies in Article 3: Women who hold leadership positions who do not do manual labor; Women working in health and welfare positions; The woman related to her studies had to be underground in order to train for a certain amount of time; Women who sometimes have to enter parts of underground mines for the purpose of doing work that is not manual work.

ILO Convention Number 100. This Convention concerns Remuneration for Men and Women for work of equal value. The right to receive wages arises when the employment relationship exists and ends when the employment relationship is terminated. In terms of setting wages, employers are prohibited from discriminating between male workers and female workers for work of equal value.

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<sup>6</sup>Izzatika, Mazia Rizqi Keuntungan Dan Tantangan Keikutsertaan Indonesia Dalam Konvensi Organisasi Perburuhan Internasional (Ilo) No. 183 Tentang Perlindungan Maternitas (2000) Dalam Kaitannya Dengan Kesetaraan Gender Dalam Dunia Kerja, 2013, p.14

<sup>7</sup>Art. 3 Convention No. 183 Convention concerning the Revision of the Maternity Protection Convention (Revised), 1952

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This convention has been ratified by Act No. 7 of 1984. In Article 11 the point is that participating countries must take appropriate measures to eliminate discrimination against women in terms of employment, to ensure equality between men and women, in particular:

- a. The right to work as an inalienable right of all human beings;
- b. The right to equal employment opportunity, including the application of the same selection criteria in terms of employment;
- c. The right to freely choose a profession and work, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, further vocational training and retraining;
- d. The right to equal remuneration, including benefits, and equal treatment with respect to work of equal value, as well as equality of treatment within evaluation of the quality of work;
- e. The right to social security, especially in cases of retirement, unemployment, sickness, illegitimacy and old age and inability to work, as well as the right to paid leave;
- f. The right to protection of health and safety in working conditions, including safeguarding the reproductive function.<sup>8</sup>

Article 2 of the Convention provides for provisions to prevent discrimination against women on the grounds of marriage or childbirth and to ensure their effective right to work, States Parties must take appropriate measures:

- a. Prohibit, subject to sanctions, dismissal on the basis of pregnancy or maternity leave and discrimination in dismissal on the basis of marital status;
- b. To introduce maternity leave with comparable pay or social benefits without loss of previous employment, seniority or social benefits;
- c. Encourage the provision of necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities;
- d. Providing special protection to women during pregnancy in types of work that may prove harmful to them.

In Paragraph 3 of this Convention it is explained that the protective legislation relating to matters covered in this article must be reviewed periodically based on scientific and technological knowledge and must be revised, repealed or extended if necessary.

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<sup>8</sup>Art 11. Convention on the Elimination of All Forms Of Discrimination against Women

Furthermore, Article 12 paragraph 1 regulates health care to ensure, based on the equality of men and women, access to health services, including those related to family planning. Then in paragraph 2 which regulates deviations from the provisions of paragraph 1 of this article, States Parties must ensure that women receive services appropriate to pregnancy, confinement and the postpartum period, provide free services if needed, as well as adequate nutrition during pregnancy and breastfeeding.

The provisions in Article 13 of this Convention regulate the economic and social life of women workers to ensure, based on the equality of men and women, the same rights, in particular:

- a. Right to family benefits;
- b. Entitlements to bank loans, mortgages and other forms of financial credit;
- c. The right to participate in recreational activities, sports and all aspects of life culture.

### **3.2. Analysis of Labor Law Arrangements against Women Workers Case Study of PT KEM**

In de jure terms, responsibility for the welfare and decent life of its citizens is the responsibility of the state, as guaranteed in Article 27 (2) of the 1945 Constitution "Every citizen has the right to work and a decent living for humanity" and Article 28 D "Everyone has the right to work and to receive just and proper compensation and treatment in a work relationship".

Basically the Manpower Law applies the principle of non-discrimination which is reaffirmed in article 6 of the UUK "every worker/laborer has the right to receive equal treatment without discrimination from employers". Furthermore, in the Elucidation of Article 6 of the UUK it is stated, Entrepreneurs must provide the rights and obligations of workers/laborers regardless of gender, ethnicity, race, religion, skin color, and political beliefs.<sup>9</sup>But the fact is that there is still treatment where women workers whose income is different from male workers even though the field they work in is the same. When women are the backbone of the family, things like this may still not be taken into account by the employer. The reasons for employers in differentiating the wages of women and men workers vary, for example, men are considered to have more work than women. Second, regulations regarding the rights of women workers which are considered

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<sup>9</sup>Gender Bias in the Marriage Law, <http://www.Hukumonline.com/klinik/detail/cl1634/bias-gender-dalam-undang-perkawinan>, accessed on 1 January 2023

to be detrimental, for example during maternity leave.<sup>10</sup> Even though the regulation was made to protect the rights of female workers, from the company's point of view, this regulation meant that female workers had fewer productive days than male workers.

Apart from discrimination in remuneration, another problem that exists for women workers is the vulnerability to sexual harassment in the work environment. Komnas Perempuan revealed that women most often experience various forms of sexual violence in sectors such as factory and plantation workers, service on ships and airplane flight attendants, and the entertainment industry.<sup>11</sup> In practice, there are things that are considered sexual harassment but are considered normal because it happens every day, such as catcalling. Even though the media has been provided to complain about this, usually the victim is afraid to report it for various reasons such as having received threats from the perpetrator or being embarrassed if many people know about it so not many things like this are resolved amicably or not even reported at all.

In article 76 paragraph 3 of the UUK, employers who employ female workers/labor between 11:00 p.m. to 7:00 a.m. are required to provide nutritious food and drinks; and maintain decency and safety in the workplace. Article 3 of the Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number Kep-224/Men/2003 of 2003 concerning Obligations of Employers Who Employ Women Workers/Labourers Between 23.00 and 07.00 stipulates that nutritious food and drink as referred to in the meet 1,400 calories and are given during breaks between working hours and cannot be exchanged for money, then in Article 4 it requires that the provision of food and drink, equipment and dining rooms must be proper and meet hygiene and sanitation requirements and the menu served must be varied. Even though the implementation of providing nutritious food and drinks can be further regulated in work agreements, company regulations or collective labor agreements, the obligation to provide nutritious food and drinks is not accompanied by a minimum standard of eligibility that applies to women in special conditions who require special portions of food, bearing in mind there is a possibility that the woman is a woman in the breastfeeding phase or a pregnant woman whose doctor has stated that working at that time does not endanger the health and safety of the pregnant woman and her womb. In the absence of proper standards for women in these special conditions, the rights of female

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<sup>10</sup>Edy Priyono, Discrimination on Wage for Women Laborers, [https://www.kompasiana.com/edy\\_priyono/discrimination-upah-buruh-wanita\\_54ffb38ea33311576350f9d1](https://www.kompasiana.com/edy_priyono/discrimination-upah-buruh-wanita_54ffb38ea33311576350f9d1), accessed on 1 January 2023

<sup>11</sup>Ragalman, Women Vulnerable to Sexual Violence in the Workplace, <http://majalahkartini.co.id/keluarga-karier/dunia-kerja/perempuan-rentan-alami-keKerasaan-di-place-kerja/>, accessed on 1 January 2023

workers/laborers with these special conditions to receive nutritious food and drink can be eliminated.

The obligation to maintain decency and limited safety while at work in this article is not enough to protect a woman worker because there is a possibility of a risk of security problems occurring outside the workplace, so this obligation should be interpreted as including outside the workplace considering there is a provision in Article 76 paragraph 4 which states that employers are required to provide shuttle transportation for female workers/laborers who go to and return from work between 23.00 to 05.00.

The provisions in the UUK do not yet protect women who work as housemaids, so that domestic helpers can be said to be non-formal work because there are no legal rules governing housemaids, even though it is common knowledge that the majority of housemaids is a girl. In the absence of legal regulations regarding domestic helpers, the risk for women working in this type of work is greater than the risks for female workers/laborers working for employers because the work is carried out in the private life environment of the employer.

Sexual harassment in general has the meaning of behavior or attention of a sexual nature that is unwanted and unwanted and results in disturbing the recipient of the harassment. Sexual harassment includes, but is not limited to: sexual payments for wanting something, coercion to perform sexual activities, demeaning statements about sexual orientation or sexuality, requests for sexual acts that the perpetrator likes, speech or behavior that has a sexual connotation; all of which can be classified as sexual harassment. This action can be conveyed directly or implicitly.<sup>12</sup>While the notion of sexual harassment in the workplace can be interpreted as any unwanted sexual act, request to perform sexual act, verbal or physical act or gesture of a sexual nature, or any other behavior of a sexual nature, which makes a person feel offended, humiliated and/or intimidated where such reaction is reasonable under the circumstances, and such action interferes with employment, is made a condition of employment or creates an intimidating, hostile or offensive work environment.<sup>13</sup>

In other words, sexual harassment is:

1. abuse of sexual behavior
2. requests for sexual favors

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<sup>12</sup>N.K Endan Triwijati, "Pelecehan Seksual: Tinjauan Psikologis", *Jurnal Fakultas Psikologi Universitas Surabaya* dan Savy Amira Women's Crisis Center, p.1.

<sup>13</sup>Kementrian Tenaga Kerja dan Transmigrasi dan International Labor Organization (ILO), 2011 "Pedoman Pencegahan Pelecehan Seksual di Tempat Kerja", Diterbitkan Berdasarkan Surat Edaran Menteri Tenaga Kerja dan Transmigrasi No. SE.03./MEN/IV/2011, Indonesia, p.6.

3. verbal or physical statements of performing or depicting sexual acts, or
4. unwanted sexual acts
  - a. the recipient has stated that the behavior is undesirable;
  - b. the recipient feels humiliated, offended and/or pressured by the act; or
  - c. the perpetrator should have been able to feel that the target (victim) would be offended, humiliated and/or pressured by the act.

Sexual harassment can take many forms. In general, there are five forms of sexual harassment.<sup>14</sup>

- i. Physical abuse includes unwanted touching with a sexual orientation such as kissing, patting, pinching, glancing, and scowling with lust.
- ii. Verbal harassment includes unwanted comments about a person's private life, body parts or appearance, jokes and comments implying a sexual nature.
- iii. Harassment with body language includes body language that suggests something of a sexual nature and/or gestures, repeated eye blinking, lip licking and other gestures using fingers.
- iv. Harassment of a written or graphic nature including exposure of pornographic materials, sexually explicit images, computer screen protectors or posters and harassment via e-mail and other means of electronic communication to others.
- v. Psychological/emotional abuse including persistent solicitation constant and unsolicited, unsolicited invitations to go on dates, insults, taunts and innuendos of a sexual nature.

Efforts to prevent sexual harassment in the workplace can be carried out with minimum requirements that can be seen from both the employee's and the employer's side. From the workers' point of view of this sexual harassment treatment, workers must take precautions by disseminating to all employees all of the company's policies regarding sexual harassment in the work environment and at the same time taking effective remedial steps. Meanwhile, from an employer perspective, at a minimum, all employers must do the following to prevent and resolve cases of sexual harassment:<sup>15</sup>

1. Create, ratify and inform all employees of a policy on sexual harassment in the work environment, including from recruitment to orientation.
2. Take effective and reasonable remedial action in the event of sexual harassment.

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<sup>14</sup>Better Work Indonesia, 2012, "Pedoman Pencegahan Pelecehan Di Tempat Kerja", [https://toolsfortransformation.net/wp-content/uploads/2017/05/Guidelines-on-the-Prevention-of-Workplace-Harassment\\_IND-3.pdf](https://toolsfortransformation.net/wp-content/uploads/2017/05/Guidelines-on-the-Prevention-of-Workplace-Harassment_IND-3.pdf), p. 7, downloaded on January 1, 2023

<sup>15</sup>Kemertrian Tenaga Kerja dan Transmigrasi dan International Labor Organization (ILO), op.cit, p. 11.

Employers or management must refrain from committing sexual harassment and try to create and carry out guidance to create a work environment free from sexual harassment by setting standards to eliminate all forms of harassment as undesirable actions that lead to sexual harassment.<sup>16</sup>

Employers/management need to make every effort so that third parties associated with the company, such as customers, job seekers or suppliers, do not experience sexual harassment by employers or workers.<sup>17</sup>

All employers, regardless of company size, must take appropriate steps to prevent sexual harassment in the workplace. This means that employers must actively implement preventive measures to minimize the risk of sexual harassment and to respond appropriately when it occurs.<sup>18</sup>

Companies need to disseminate information and conduct formal training to ensure that all workers are aware of and understand the company's policy on sexual harassment. Meanwhile, small companies can take the right steps by providing a copy of the policy to workers and holding informal discussions with workers to ensure workers understand the policy.<sup>19</sup>

Workers and employers are obliged to establish an in-house mechanism at the company or organization level to prevent and respond to cases of sexual harassment in the workplace. The mechanism includes the following elements:<sup>20</sup>

- a. A policy statement against sexual harassment;
- b. Clear definition of sexual harassment;
- c. Procedure for filing a complaint;
- d. Disciplinary rules and penalties for perpetrators and people who make false accusations;
- e. Protection and recovery measures for victims; Promotion programs and education to explain company policy on sexual harassment and to raise awareness of sexual harassment and its adverse consequences for workers, supervisors and company managers.
- f. Monitoring

Cases of Sexual Harassment Against Female Workers at PT Kelian Equitorial Mining (KEM). PT Kelian Equitorial Mining (KEM) is a subsidiary of the Rio Tinto Group which is engaged in mining and metals. Where 90% of its shares are

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<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Ibid., p. 12.

<sup>19</sup>Ibid.

<sup>20</sup>Ibid.

owned by the Rio Tinto Group and the rest are owned by PT Harita Jayaraya. Rio Tinto is a company originating from Australia where the industry is spread across 35 countries on six continents.

PT Kelian Equatorial Mining (KEM) has been established in Indonesia since 1992, located in West Kutai Regency, East Kalimantan Province. By using a loan-to-use forest area of 6,750 hectares. PT KEM obtained a Contract of Work from the government in 1985, then mined gold in 1992, closed production in 2005 due to running out of mining products, after that until 2015 it had ended all of its activities including returning environmental functions and management to the government. PT KEM produces 14 tonnes of gold and 10 tonnes of silver annually. However, on the other hand, this company has caused many problems, both legal, impact on the environment and social impact on society. Some of them are the problem of the absence of community involvement in changing the function of the production forest area into a loan-use forest area to be managed by PT KEM, then there is also the problem of not decomposing 77 million tons of tailings waste (pure iron ore waste) at the Nakam Dam and Namuk Dam, the headwaters of the Kelian River which is the Mahakam River Basin so that it has a direct impact on the people of West Kutai. Then other issues that have also not been resolved are human rights violations in the form of land grabbing of the Dayak Indigenous People's land, as well as sexual crimes against women. In the form of cases of rape and sexual harassment against villagers or female workers, the company together with local security forces burned down people's houses and destroyed traditional mining villages from 1982 to 1991, as told by the Mining Advocacy Network (Jatam). Until then it caused a reaction from thousands of residents who demonstrated against PT KEM in 2004. According to the fact finding team (TPF) (1999-2000) led by Benyamin Mangkoedilaga from Komnas HAM, TPF identified 17 cases, out of 21 which were reported as rape, sexual harassment or sexual intercourse under pressure. It is suspected that between 1987-1997 there were five cases in the Prampus camp and involved company ranks from high-ranking officials to security guards. Furthermore, the May 2001 Komnas HAM Team led by Prof. Dr. Saparinah Sadli followed up on the results of the TPF report, which led to the Team's report that cases of rape and sexual harassment were experienced by women, some of whom were in their teens. According to Abdullah Naem from the East Kalimantan Mining Advocacy Network (Jatam), in October 2013 that these cases were considered closed and PT KEM only gave some money to the victims. The case was never legally resolved and the results of the TPF did not follow up.

For the number of female workers, at PT KEM itself during the 2002 production period there were at least 15 female workers who had more than five years experience. They work day to night hours with a calculation of eight hours of work, with a salary of between Rp. 2-3 million per month. Where the average



work as heavy equipment operators, such as gliders, tractors, and dump trucks or a type of heavy vehicle to dig mines. Before working, they receive a special training period of three to six months. Even so, many of them have quit and moved to other jobs, because of the heaviness of the daily work they face. In the end PT Kelian Equatorial Mining (KEM) is still causing many problems that have not been resolved even though production has ended, there is a program for restoring environmental functions and making agreements with the local community and local government. However, the implementation and commitment from the company are still not running optimally, plus the burden on the local government and even the central government with environmental management and other impacts after the handover of the PT KEM mine.

#### **4. Conclusion**

The main issue that law enforcers can emphasize and need to pay attention to is the enforcement of the laws governing women workers. Given that women can get pregnant or menstruate (which is different from the gender of men who don't have these periods), this requires special treatment (positive discrimination). However, even though there have been arrangements to guarantee these things, there are still many irregularities and violations of the law committed by companies due to the lack of enforcement and the difficulty for workers to get their rights by reporting. In general, this is like the case at PT KEM where women workers do not report what happened to them due to pressure from the company and companies that do not enforce the laws that apply to them.

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