

## Research Article

# The Principle of Meaningful Participation in the Formation of the Maternity Leave Policies in Indonesia

Ayunita Nur Rohanawati,<sup>1\*</sup> Yustika Ardhany<sup>2\*</sup><sup>1</sup>Department of Administrative Law, Universitas Islam Indonesia, Yogyakarta, Indonesia<sup>2</sup>Faculty of Law, Universitas Islam Indonesia, Yogyakarta, Indonesia**ORCID**Ayunita Nur Rohanawati: <https://orcid.org/0000-0003-3564-3711>Yustika Ardhany: <https://orcid.org/0000-0002-3285-6618>**Abstract.**

The maternity leave policy in Indonesia is in the process of transitioning from a three month leave as per the Indonesian Employment Law to a six month leave in accordance with the Maternal and Child Welfare Bill ('MCH Bill'). The government delayed the legalization of the bill due to the policy being controversial among the public, especially employers and workers. The controversy that occurred was a reaction to the exclusion of certain voices in the process of forming the MCH Bill. This research aimed to highlight the problem related to meaningful participation in the formation of maternity leave policy in Indonesia. The methodology used in this study is the legal doctrine method with a statutory and a conceptual approach. In the process of forming legislation in Indonesia, the principle of meaningful participation must be applied to accommodate the aspirations of all parties involved in the implementation of the law. In the context of the establishment of the MCH Bill, the meaningful participation of employers and workers is crucial because they are the main actors in the production process and the main actors in the MCH Bill.

**Keywords:** Maternity Leave, Meaningful Participation, MCH Bill

## 1. Introduction

The Maternal and Child Welfare Bill ('MCH Bill') has become a recent topic of discussion as it has gone through a long process of debate in the parliament since the beginning of 2022. The main reason for the establishes of the MCH Bill is based on empirical facts which show that maternal and child mortality rates in Indonesia remain high. Data in the report submitted by the Indonesian House of Representatives indicate a spike in maternal and child mortality. The number of maternal deaths from 2019 increased by 300 cases, thus in 2020, the death rate would amount to approximately 4,400 cases.[1] It is the same with the infant mortality rate in 2019 which increased by nearly 40% to 44,000 cases in 2020.[1] The high child mortality rate is motivated by stunting in

Corresponding Author: Ayunita  
Nur Rohanawati; email:  
[ayunita.nur@uii.ac.id](mailto:ayunita.nur@uii.ac.id)**Published** 26 May 2023Publishing services provided by  
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children, hence in this case, a mother plays the significant role to maintain the child's growth and development as well as possible. Thus, the presence of the MCH Bill is the right answer to realize the welfare of mothers and children.

The discussion on the MCH Bill did not then get full approval or response from the community or stakeholders. To begin with, the increase in maternity leave in the MCH Bill has the potential to stir problems in its implementation. Considerably, the additional time for maternity leave has drawn rejection from the business community as one of the stakeholders who would be the users of the Bill. The Indonesian Employers' Association (Apindo) considers that the provisions for maternity leave contained in the Manpower Law are very ideal. Unlike the case with the provisions on maternity leave regulated in the MCH Bill, Apindo considers that this is very burdensome for employers and will be very possible if the company prefers to employ male workers. This is due to the existence of Article 5 paragraph (1) and paragraph (2) of the MCH Bill which states that mothers who carry out maternity leave cannot be dismissed from their work and get full rights for the first three months and 75% for the following three months.

In addition, there is no legal certainty regarding the timing of leave for pregnant women. In Article 82 of Law no. 13 of 2003 on Employment, female workers are entitled to 3-month of maternity leave. Meanwhile, in the MCH Bill, it is written that the maternity leave is increased to at least six months. If it is reported in the closing provisions chapter in the draft of the MCH Bill, it does not currently regulate the invalidity of Article 82 of the Manpower Law. Thus, when the MCH Bill is passed, it will create an ambiguous norm regarding the provisions on maternity leave that are enforced whether in the Employment Law or the MCH Bill. Furthermore, based on the background above, the problem with this issue is the process of legislation regarding maternity leave in Indonesia. Therefore, it is interesting to analyze how the principle of meaningful participation is in the establishes of maternity leave policies in Indonesia.

## 2. Methods

This is legal doctrinal research that uses a statutory and a conceptual approach. The data used are the secondary data obtained through literature study. The secondary data consists of existing laws and regulations, books, expert opinions, and scientific journal articles, which are relevant to the proposed problem.

### 3. Result and Discussion

Female workers have the same rights and obligations as male workers in general. However, when it comes to the different biological conditions between women and men, female workers have special rights that are attached to their special biological conditions that require these female workers to take leave for resting. In this paper, the rights of female workers are related to the right to maternity leave which will be discussed in detail, especially related to how the maternity leave policy is developed in Indonesia and discussions related to the efforts to amend the policy by the Indonesian House of Representatives.

Maternity protection is a fundamental human right and an indispensable element of comprehensive work-family policies. It is crucial to promoting maternal and child health and preventing discrimination against women in the workplace.[2] Maternity protection includes maternity leave, health protection at work for pregnant and breastfeeding women; insurance and medical benefits; employment protection and non-discrimination; and breastfeeding support after returning to work. It also includes a number of workplace family-friendly policies and practices, including flexible working arrangements, paternity and parental leaves, and childcare support.[3] In some countries, policies related to maternity leave are considered as important leave to ensure the welfare of children and parents. The programs prepared within include providing compensation and job protection from working time, as well as providing recovery time for female workers after giving birth and to be able to care for newborns.[4]

Maternity leave policies are generally regulated by the International Labor Organization (ILO). The policy as intended was adopted by Indonesia to be implemented in Law No. 13 of 2003 on Employment ('Employment Law'), in which it regulate the time-off for giving birth to female workers for 3 months, as stated in Article 82 paragraph (1) in 2020 the Employment Law (some of the articles have been amended, but some remain valid). The shift in the legal regime is then found in in Law Number 11 of 2020 on Job Creation (UUCK). Its maternity leave policy has not been changed and consistent with the duration of time as stated in the Employment Law.

The maternity leave policy in the MCH Bill has the objectives of improving the quality of life for mothers and children in order to achieve physical and spiritual well-being. In addition, the existence of the MCH Bill is also expected to become a regulation that guarantees efforts to respect, promote, protect, and fulfill the rights of mothers

and children. However, the reality of the present conditions in Indonesia shows that there is an increase in the price of fuel which will then trigger an inflation. The inflation greatly affects the condition of companies in Indonesia. It is deemed so because when the inflation chart shows an increase, the food, transportation, and communication companies will in return suffer the impact of the inflation. Under these conditions, the maternity leave provisions regulated in the MCH Bill will be burdensome for employers in providing wages. Due to maternity leave accompanied by payment of full wages which is aimed to improve the health and welfare of mothers.[5]

In comparison, maternity leave arrangement in many countries have been regulated in various ways. For instance, Brazil has increased the period of maternity leave from four to six months. This is considered as a form of contribution to increase the prevalence of exclusive breastfeeding in the Brazilian state capital.[6] Contrastingly, Hungary provides maternity leave of up to three years, calculated from the birth of the child.[7]

In addition to the two countries above, Japan actually enacted the Equal Employment Opportunity Law (EEOL) in 1986, many of which assessed the impact of the enactment of this regulation on women's participation in the labor market in Japan. What can be seen is that the proportion of working women has not increased. The aforementioned trend is despite the fact that the EEOL came into effect in 1986, the maternity leave law came into effect in 1992 and women's participation in the labor market has been increasing over time.[8]

Policy related to maternity leave in California has its own peculiarity, namely Paid Family Leave (PFL) which contains provisions for maternity leave. The core of this policy is the absence of workers at work to care for sick family members or the presence of new family members (newborns). This policy is the first policy in the United States that took effect on July 1, 2004 and is the main reference for female and male workers to carry out their family obligations and as the main reference for implementing maternity leave in California.[9]

As the interesting fact in Indonesian, the provisions Article 5-point d of Law no. 11 of 2012 on the Formation of the Laws state the principles that must be adopted when forming appropriate legislation. Those include taking into account how effective the regulation will be when it is enforced to the society, which can be viewed from a philosophical, juridical, and sociological perspective. Then, Article 96 states that there is a need for public participation in oral and written forms regarding the substance of the draft law that is being discussed. Community participation is considered important

because basically this participation forms the basis for an accountable government.[10] Thus, the authors consider that it is necessary to carry out further discussion in relation to the material regarding maternity leave in the MCH Bill. Because the observational facts indicate that the current condition of Indonesia is very unlikely to implement the maternity leave provision. This can be seen from the existence of economic circumstances in Indonesia which are leaning towards inflation, hence it can be ascertained that the conditions in every company in Indonesia fall into hardship. Thus, the company's obligation to provide full wages when maternity leave is carried out is considered to be challenging and even has the potential not to be carried out by the company. The form of community participation required at this time is not sufficient if it is only limited to hearings or consultations.[11] Public participation must be in accordance with the provisions for meaningful participation as regulated in the judge's consideration in the Constitutional Court Decision Number 91/PUU-XVIII/2020 on the Examination of the Job Creation Act. In this case, public participation is required by fulfilling the right to be heard, the right to be considered, and the right to be explained.

#### 4. Conclusion

In this study, the authors conclude that the policy relating to 6-month maternity leave still has the potential of not being implemented by the stakeholders. This is due to the economic condition in Indonesia which is currently in the state of inflation. Thus, the rule regarding maternity leave of 6 months with the obligation for the employers to provide full wages for the first 3 months and 75% wages for the remaining 3 months will be unmanageable for the employers. Given the present economic condition, when the MCH Bill is passed, it has the potential of not being properly implemented.

With that being said, the process of drafting the MCH Bill, especially in relation to the substance that regulates maternity leave, requires the principle of meaningful participation from both the community and the stakeholders. This is based on the existence of one of the principles that must be met in the formation of legislation, namely the "enforceability" principle. Therefore, to form good quality laws in terms of substance and implementation, policy makers must implement public participation with the principle of meaningful participation.

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