

GENDER-BASED LEGISLATION REGULATIONS TO SAFEGUARD THE CONSTITUTIONAL RIGHTS OF WOMEN IN INDONESIA

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GENDER-BASED LEGISLATION REGULATIONS TO SAFEGUARD THE CONSTITUTIONAL RIGHTS OF WOMEN IN INDONESIA

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Abstract

Indonesia as The legal state declares this matter in the Indonesian constitution, namely in Article 1 Paragraph 3 of the 1945 Constitution which reads “Indonesia is a Law State.” The consequences of this are also written in Article 27 paragraph 1, namely “All citizens together in the law and government and are obliged to uphold the law and government with no exceptions. Based on this, the authors raise the issue as follows 1. Why does the Legislation have to be gender based? 2. How to guard against women’s constitutional rights in Indonesia? To answer this, then this paper uses this source of legal material consisting of a. Primary sources or authorities were the Constitution State of the Republic of Indonesia in 1945. b. Secondary legal document for reading materials related to the problem under study. c. Tertiary legal materials, in the form of dictionaries and legal encyclopedias. That within the state of law, the rules of legislation that are created must contain the values of justice for all people. Speaking of truth, the solution must be to instill gender equality. Gender equality means the balance of conditions for men and women to obtain opportunities and their rights as human beings, so that they can play a role and participate in political, legal, economic, socio-cultural, educational and defense and security activities, and similarities in enjoying the results of development. Gender equality also includes eliminating discrimination and structural injustice for both men and women. Gender justice is a process and fair treatment of women and men. The 1945 Constitution of the Republic of Indonesia applies to every Indonesian citizen. It can be seen from the formulation that uses the phrase “everyone,” “all citizens,” “every citizen,” or “every citizen,” which shows that each citizen owns the constitutional rights without distinction, either based on ethnicity, religion, political beliefs, or gender. These rights are recognized and guaranteed for every citizen for both men and women.

Keywords: Women; constitutional rights; gender.

A. INTRODUCTION

The rule of law mainly aims to provide legal protection for the people. Therefore, the legal protection for the people according to Philip M.Hadjon that legal protection for the people against government actions is based on two principles, namely the principle of human rights and the principle of the rule of law. (Fatria Khairo, 2016).

Indonesia as a legal State declares this matter in the Indonesian constitution, namely in Article 1 Paragraph 3 of the 1945 Constitution which reads “Indonesia is a Law State.” The consequences of this are also written in Article 27 paragraph 1, namely “All citizens together in the law and government and are obliged to uphold the law and government with no exceptions. (1945 Constitution).

This principle of equality eliminates discrimination. Therefore every citizen has equal rights before the law and government regardless of religion, ethnicity, gender, position, and class.

With the recognition of equal rights of citizens, it means that between men and there is no difference between women. Admitting the principle of equality before the law and government in the Constitution shows that the founders of the Indonesian state, before establishing the country, were well aware of the importance of

protecting human rights. Juridically, at the international and national level, Indonesian legal and regulatory instruments recognize the principle of equality between men and women.

However, at the level of implementation of state administration, discrimination, and injustice towards women. Women are always left behind and marginalized in the fields of economics, education, health, employment, and politics. One of the reasons is the patriarchal culture that developed in Indonesian indigenous peoples. In a society with patriarchal culture, men have a more significant role in holding power,

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which can automatically degrade the purpose and existence of women even though women have the same rights or opportunities to participate in every aspect of community and state life. Based on this, the author is interested in bringing up the article entitled **“Gender-Based Legislation Regulations to safeguard the constitutional rights of women in Indonesia.”**

B. PROBLEMS

1. Why should the legislation be gender based?
2. How to guard against women’s constitutional rights in Indonesia?

C. METHODOLOGY

The source of legal material used in answering questions that appear is used by several legal documents consisting of:

- a. Document of primary sources or authorities, namely the 1945 Constitution of the Republic of Indonesia.
- b. Secondary sources (secondary sources consisting of literature, results of research, seminars, journals, articles, and reading materials related to the problem being studied.
- c. The tertiary legal material, in the form of dictionaries and encyclopedias Law

D. DISCUSSION

1. Legislative Regulations Must Be Gender-Based

That within the state of law, the rules of legislation created must contain the values of justice for all people, as quoted by Jimly Asshiddiqie, from Wolfgang Friedman in his book, “Law in a Changing Society”, distinguishes between organized public power (the rule of law in the formal sense), and the rule of just law (the rule of law in the material sense). The state of law in the official (classical) sense concerns the notion of law in a narrow mind, namely in the sense of written legislation, and not necessarily guarantee substantive justice, the rule of law in the spirit of material (the modern) or the state of just law is the embodiment of the rule of law in the broadest sense that concerns the notion of justice in it, which is the essence rather than merely functioning of legislation in a narrow sense (Jimly Asshiddiqie, 2010).

In the formation of law, it is necessary to be guided by the principles of the structure of regulations excellent and ideal. This is intended to avoid mistakes and defects in the formation of norms.

The principles of the formation of good legislation according to IC van der Vlies in his book entitled *Handboek Wetgeving* are divided into two groups, namely: Formal principles:

- 1) The policy of a clear goal (*beginsel van duidelijke doelstelling*), namely every formation of legislation must have clear objectives and benefits for what is made;

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2) The principle of the right organ/institution (*beginsel van het juiste orgaan*), that is, every type of legislation must be made by an institution or organ forming the regulatory authority in force; the bill can be canceled (*vernietigbaar*) or null and void by law (*vanrechtswege nieteg*), if an unauthorized institution or organ make it;

3) The principle of urgency in making arrangements (*het noodzakelijkheidsbeginsel*);

4) The policy of implementation (can be implemented) (*het beginsel van uitvoerbaarheid*), that is, every formation of legislation must be based on the calculation that the bill formed will later be useful in society because it has received support both philosophically, juridically, or sociology from the stage of its preparation;

5) Consensus principle (*het beginsel van de consensus*).

An article in the Act must not be formulated vaguely and must be clearly and detailed formulated regarding acts that are qualified as criminal acts, and their understanding must not be too broad and complicated. So that it has the potential to be misused by the authorities and certain parties because the unclear Article will be flexible, subjective, and highly dependent on the interpretation of the powers. Therefore it is potentially and factually creates legal uncertainty and violates human rights.

3 The content of the Laws and Regulations must reflect the principle:

1. Principle of protection, that each Content Material Laws and Regulations must function to protect to create public tranquility;

2. Humanitarian principles, that each Content Material of Laws and Regulations must reflect the protection and respect for human rights and the proportional dignity of every citizen and citizen of Indonesia; 17 Gender-Based Legislation Regulations To Safeguard The Constitutional Rights Of Women In Indonesia Fatria Khairo

3. Nationality principle, that each Content Material of Laws and Regulations must reflect the diverse nature and character of the Indonesian nation while maintaining the principle of the Unitary State of the Republic of Indonesia;

4. Family principle, that each Content Material of the Laws and Regulations must reflect deliberation to reach consensus in every decision making;

5. Principle of mediation, that each Content Material of Laws and Regulations always takes into account the interests of the entire territory of Indonesia and the content of the Laws and Regulations made in the regions is part of the national legal system based on the 1945 Constitution and State Constitution of the Republic of Indonesia;

6. The principle of *Bhinneka Tunggal Ika*, that the Material of the Laws and Regulations must pay attention to the diversity of the population, religion, ethnicity, and class, specific conditions of the region and culture in the life of the community, nation and state;

7. Principle of justice, that each Content Material of the Laws and Regulations must reflect fairness proportionally for every citizen;

7 The principle of equality of position in law and government, that every Content Material of the Laws and Regulations may not contain things that are discriminatory based on background, among others, religion, ethnicity, race, class, gender, or social status;

9. Principles of order and legal certainty, that every Content Material of Laws and Regulations must be able to create order in society through assurance of certainty;

9 Principle of balance, harmony, and harmony, that each Content Material of the Laws and Regulations must reflect balance, harmony, and harmony, between individual interests, society, and the interests of the nation and state; (Firman Freaddy Busroh, 2016)

Based on the description above, it should be appropriate in a statutory regulation to include gender participation because in this case, every Indonesian citizen has constitutional rights equal to male Indonesian

citizens. Women also have the right not to be treated discriminatively based on their status as women, or the basis of other differences.

2. Escorting Women's Constitutional Rights in Indonesia

Women's rights championed since the 18th century began with formulating "feminism" by a British feminist, Mary Wollstonecraft. In the Wollstonecraft formula, women's rights were analyzed, and women's rights were limited to law and custom (culture) related to the state's constitutional system. Peeling feminism according to Wollstonecraft has a perspective on the lack of education in women, so that they are unable to carry out their rights left behind by men. The role of women in the family at that time in carrying out their rights, both as individuals (as citizens), as mothers, as wives, must be carried out within the framework of the national legal system of the country concerned.

In juridical women's rights in the fields, economy, social, culture, civil and politics which are the substance of the CEDAW Convention, have been internationally recognized including Indonesia which has ratified the Convention in 1984 and at the same time has an obligation to implement it. After the ratification of the CEDAW Convention, world women's meetings were continued at the Women's Conference II in 1980 in Copenhagen, III in Nairobi in 1985 and 1995 in IV in Beijing. The struggle of women and women's activists worldwide continues to be active in following the development of the world by attending international meetings, such as the 1992 United Nations Conference on the Environment in Rio de Janeiro, 1993 Human Rights, Population and Development in Cairo in 1994 and other international meetings.

After participating countries have ratified the CEDAW Convention, the state concerned is obliged to periodically report the implementation of the CEDAW Convention in the form of National Report to the Commission on the Status of Women / CSW, in fact, discrimination against women in the world is still ongoing. This was reported in the Women's Conference in Beijing in 1995. In the meeting, it was agreed to issue a "Beijing Platform for Action" (BPFA), which criticized the 12 critical areas facing women worldwide, such as women's rights in education, health, employment for children -girl. After the Beijing Declaration of Platform for Action and Plan for Action (BPFA Action Plan) in 1995, the Women's Status Commission / CSW in 2000 in the 23rd session of the UN General Assembly reported on the development of participating countries in the CEDAW Convention. (LMGandhi Lapien, 2012)

Talking about Indonesian women's constitutional rights. It is better to understand in advance what the constitution is. The term constitution comes from the word *constituer* (French) which means forming which 18

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in this case has the meaning of composing, arranging, and compiling a country. In English constitute words can mean lifting, establishing or collecting. Then the Dutch language, the term constitution is known as *gronwet* which means the constitution. The term constitution generally describes the entire constitutional system of a country. The system consists of rules that form, regulate or govern the state.

Based on the opinions of experts, there are two understandings or understandings of the constitution. First, in a broad sense, the constitution is an overall rule and basic provisions (a fundamental law which includes written fundamental law and the basic unwritten law governing a government held in a country. Second, in a narrow sense, the constitution is a law the basis, which is a document that contains the basic rules and provisions of a state's constitutionality. The constitution itself is aimed at limiting the power of state administrators so that they cannot act arbitrarily and can guarantee the rights of citizens. This constitution is an idea called constitutionalism. The purpose of constitutionalism is an idea that views the government as a collection of activities organized by and in the name of the people. (Firman Freaddy Busroh & Fatria Khairo, 2018)

In addition, there is also a function of the constitution being formed own first function a limiting or controlling the power of the ruler so that in exercising his power is not arbitrary to his people. Then the second

function gives a framework and legal basis for the change of society that is aspired in the next stage. Third, the constitutional purpose is a structural basis for the administration of the state according to a particular legal system that is respected by all its citizens, both the ruler and the people. Besides being a juridical constitution, it also has sociological and political meanings. This means that the constitution reflects the social-political life in a society as a reality. The 1945 Constitution of the Republic of Indonesia is a constitution that was born from the identity of the Indonesian nation as a whole and contains noble ideals.

The life view of the Indonesian Nation is embodied in the formulation of the principles of Pancasila which was used as a state philosophy of life based on the 1945 Constitution of the Republic of Indonesia. Pancasila in the context of national and state life is present as grondslag philosophy and common platforms to ensure togetherness in the presence of the nation in realizing common goals and ideals. (The People's Consultative Assembly Socialization Team, 2013)

Pancasila as the philosophy of the life of the nation and state became philosophical foundations in the preparation of the Constitution. The state must fulfill and protect the constitutional rights of citizens in the form of recognition of human rights, the existence of an independent judiciary that is not affected by the authorities and all government actions must be carried out on a legal basis. Human rights differ from citizens 'rights because citizens' rights only apply to citizens, while human rights are universal.

The human rights contained in the 1945 Constitution of the Republic of Indonesia can be said to be constitutional rights of Indonesian citizens. This means that human rights are inherent rights of every human person who must be adequately protected by the state as a human being. This is what distinguishes between human rights and the understanding of citizen rights (the citizen 's rights). Constitutional rights according to Prof. Jimly Asshiddiqie is the rights guaranteed in and by the 1945 Constitution of the Republic of Indonesia. After the amendment to the 1945 Constitution, the principles of human rights were included as the subject matter. These principles form the basis of citizens' constitutional rights which give birth to an obligation for the state to fulfill them. As the rule of law, one of the absolute elements that must exist is the fulfillment of basic rights and the protection of human rights. The guarantee of human rights protection in the constitution as the highest law means that the state is also prohibited from committing violations of human rights and even the primary task of protecting human rights is the state.

Regulations concerning Human Rights in the 1945 Constitution of the Republic of Indonesia are contained in CHAPTER XA relating "Human Rights", regulated from articles 28 A to Article 28 J. Human rights which cover all areas of life, in marriage (article 28 B, especially children are given special arrangements for protection from violence and discrimination in paragraph 2), develop themselves (article 28 C), recognition, courtesy, protection and fair legal certainty and equal treatment before the law (article 28 D), free embracing religion (article 28 E), communicating and obtaining information (article 28 F), personal, family, honor and so on (article 28 G), inner and outer prosperous life (article 28 H), right to life, right not to tortured, and so on (article 28 I) and article 28 J which is the obligation of every citizen to respect the human rights of others. Citizens 'constitutional rights which include human rights and citizens' rights guaranteed in the 1945 Constitution of the Republic of Indonesia apply to every Indonesian citizen. It can be seen from the formulation that uses the phrase "everyone," "all citizens," "every citizen," or "every 19 Gender-Based Legislation Regulations To Safeguard The Constitutional Rights Of Women In Indonesia Fatria Khairo citizen," which shows that each individual citizen owns the constitutional rights without distinction, either based on ethnicity, religion, political beliefs, or gender. These rights are recognized and guaranteed for every citizen for both men and women.

E. CONCLUSIONS

1. Laws and Regulations Must Be Gender-Based

That within the state of law, the rules of legislation that are created must contain the values of justice for all people. Speaking of justice, the solution must be to instill gender equality. Gender equality means the equality of conditions for men and women to obtain opportunities and their rights as human beings, so that they are able to play a role and participate in political, legal, economic, socio-cultural, educational and defense and security

activities, and similarities in enjoying the results of development. Gender equality also includes eliminating discrimination and structural injustice for both men and women. Gender justice is a process and fair treatment of women and men.

2. Escorting Women's Constitutional Rights in Indonesia

⁵ The 1945 Constitution of the Republic of Indonesia applies to every Indonesian citizen. It can be seen from the formulation that uses the phrase "everyone," "all citizens," "every citizen," or "every citizen," which shows that each individual citizen owns the constitutional rights without distinction, either based on ethnicity, religion, political beliefs, or gender. These rights are recognized and guaranteed for every citizen for both men and women.

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