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## Facing Gender Equality Barriers within the Human Rights Framework

Mutmainnah<sup>1</sup>, Mukhamad Murdiono<sup>2</sup>

<sup>1</sup>Universitas Negeri Yogyakarta, Fakultas Ilmu Sosial, Hukum, dan Ilmu Politik, Yogyakarta, Indonesia, [mutmainnah.2023@student.uny.ac.id](mailto:mutmainnah.2023@student.uny.ac.id)

<sup>2</sup>Universitas Negeri Yogyakarta, Fakultas Ilmu Sosial, Hukum, dan Ilmu Politik, Yogyakarta, Indonesia, [mukhamad\\_murdiono@uny.ac.id](mailto:mukhamad_murdiono@uny.ac.id)

Corresponding Author: [mutmainnah.2023@student.uny.ac.id](mailto:mutmainnah.2023@student.uny.ac.id)<sup>1</sup>

**Abstract:** Gender equality is a fundamental element of Human Rights and an important aspect of modern society today. However, gender stereotypes remain a significant obstacle to achieving social justice, creating a noticeable gap between the principles outlined in the constitution and the social realities faced by women and gender minority groups. This research aims to examine the protection of fundamental rights and the principle of gender equality, focusing on the role of the constitution in supporting gender equality, as well as identifying the obstacles and challenges in implementing the constitution that ensures gender justice and human rights protection in Indonesia. The methodology used is a normative legal approach through an in-depth and comprehensive literature study to thoroughly identify the research problems. The study found that although gender equality is recognized as a fundamental human right in the Indonesian Constitution, many obstacles hinder its implementation. Therefore, collaboration between various parties, including the government, educational institutions, civil society organizations, and NGOs, is necessary to ensure that gender equality can be effectively implemented and women's rights can be protected in Indonesia.

**Keywords:** Gender Equality, Constitution, Human Rights.

### INTRODUCTION

As a fundamental part of human rights, gender equality refers to the idea that all individuals, regardless of sex, should be treated fairly and granted equal access to opportunities across all sectors of life, including politics, employment, social spheres, and education (Novitasari, 2021). Equal access to resources, opportunities, and rights such as employment, education, decision-making, and protection from violence must be guaranteed for both men and women. From the perspective of constitutional law, which establishes equal legal rights for all genders, Amartya Sen's theory supports this concept by emphasizing that gender equality is a key prerequisite for sustainable human development. Professor Amartya Sen identifies seven forms of gender inequality, namely (Fajrussalam & Syafanisa, 2023):

1. Household Role Inequality refers to one of the most common forms of gender disparity in which women are often expected to complete domestic responsibilities such as childcare and household duties before pursuing employment outside the home. In contrast, the same expectations are not imposed on men who work outside the household.
2. Special Opportunity Inequality refers to gender disparities in access to professional training and higher education, which continue to persist even in industrialized countries.
3. Mortality Inequality refers to the disproportionately high mortality rate among women resulting from gender-based disparities within the population, particularly due to limited access to adequate healthcare services and proper nutrition.
4. Natality Inequality refers to a societal preference for male children over female children, resulting in higher rates of selective abortion of female fetuses compared to male fetuses.
5. Basic Facility Inequality occurs when women in developing countries struggle to obtain equal access to education and development opportunities due to prevailing societal perceptions that men have a greater entitlement to pursue higher education.
6. Professional Inequality refers to discrimination in the workplace, such as unequal opportunities for career advancement or promotion within professional institutions.
7. Ownership Inequality refers to disparities in the right to acquire and own assets, including basic property such as land and housing. Limited access to property ownership restricts women's participation in commercial, economic, and social activities.

Gender equality between women and men includes the concept that the rights, responsibilities, and opportunities possessed by women and men, as well as girls and boys, must be provided equally. This concept of equality does not mean that women and men must become the same in all aspects, but rather ensures that the rights, obligations, and opportunities they have do not depend on their sex. This means that whether someone is born male or female should not be a determining factor in their access to equal rights and opportunities. Gender equality is more directed toward the principle that the interests, needs, and priorities of both women and men must be considered fairly and equally. It also recognizes that there is diversity within the groups of women and men, each having different experiences, challenges, and perspectives. In addition, gender equality is not only about ensuring equal access to rights and opportunities, but also about ensuring that gender differences do not become obstacles for individuals to reach their full potential. Gender justice, which is an integral part of this equality, leads to the provision of a level playing field, where men and women have fair opportunities to achieve equal outcomes in various aspects of life, including education, employment, health, and social participation. This is very important because without gender justice, gender equality will be difficult to achieve. Success in achieving gender equality and recognition of human rights requires the availability of fair opportunities and equal access for all individuals, regardless of their gender. Therefore, gender equality becomes a prerequisite for achieving broader social justice and ensuring the protection of basic rights for all parties without discrimination.

The main goal of gender equality is to ensure that women and men have fair access to and benefit from society's resources, opportunities, and rewards. And, as part of this, women must have equal participation in defining what is valued and how it can be achieved. Equity is a tool, while equality is the goal. Gender equity includes elements of interpretation of social justice, which is often influenced by traditions, customs, religion, or culture—factors that frequently disadvantage women. The Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women's Rights Law, states that countries must:

1. Act to eliminate violations of women's rights, whether committed by individuals, groups, or organizations,
2. Strive to modify social and cultural patterns of behavior that stereotype gender or place women in inferior positions,
3. Ensure that women have equal rights in education and equal access to information,
4. Eliminate discrimination against women in their access to healthcare services,
5. End discrimination against women in all matters related to marriage and family relations.

Women must face issues of gender equality in almost every aspect of life, including in public and private spheres, household matters, and reproductive issues. In society, gender inequality commonly occurs both in the workplace and within the family, and can result in various forms of injustice. Namely (Azizah, 2024):

1. Labelling one gender with undesirable attributes is known as stereotyping, and it usually leads to injustice. For example, women are considered more suitable for positions such as secretaries or kindergarten teachers because they are viewed as friendly, neat, and approachable. However, the role of secretary is not limited to women; men can also become secretaries.
2. The idea that one gender is inferior to the other or holds a secondary role is known as subordination. For instance, women have traditionally been assigned household work, which has led to the belief that they are "domestic figures" or "supporters behind the scenes." (Lestari et al., 2024)
3. The term marginalisation describes the condition or practice of excluding one gender from the mainstream or primary work sectors, resulting in poverty. For example, machines, which are typically operated by men, are now taking over tasks previously performed manually by women as a result of technological advancements (Damanik, 2024).
4. When one gender is treated in a way that requires them to work significantly more than the other gender, it is called a Double Burden. What causes the Double Burden? Various observations indicate that women perform around 90% of household labor. Additionally, women who work outside the home are also required to perform household chores and other domestic responsibilities in addition to working in the public sector.
5. In addition to physical acts such as rape or assault, violence also includes non-physical actions such as sexual harassment, threats, or coercion. This can occur in public spaces, the workplace, or the home. Violence refers to an attack on an individual's physical or psychological well-being.

Many laws and programs aimed at eliminating gender-based discrimination and ensuring equal participation and protection of rights for all people without exception reflect the concept of gender equality. Law No. 23 of 2004 concerning the Elimination of Domestic Violence and Articles 45–51 of Law No. 39 both regulate women's rights in Indonesia. In addition, through Law No. 7 of 1984, Indonesia has ratified a number of international agreements related to women's rights, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Through Presidential Regulation No. 181 of 1998 issued on October 9, 1998, and later strengthened by Presidential Regulation No. 65 of 2005, Indonesia has also institutionalized the National Commission on Violence Against Women (Komnas Perempuan) (Fajrussalam & Syafanisa, 2023).

The government's efforts to eradicate gender discrimination were related to the 2009 General Elections and the Constitutional Court's decision to abolish affirmative action policies

for women in Parliament. Gender Mainstreaming (PUG) is an important agenda in Indonesia that focuses on gender issues. There are two points included in the consideration of this Presidential Instruction:

1. The implementation of gender mainstreaming strategies in every stage of national development is considered crucial to strengthen the position, role, and quality of life of women. The purpose of this measure is not only to empower women in various aspects of life, but also to encourage the achievement of gender equality and gender justice in all fields, including family life, society, as well as at the national and state levels.
2. The operational activities of all central and regional government agencies and institutions include gender mainstreaming into all development processes (Khairunnisak et al., 2023).

The purpose of this study is to gain a deeper understanding of how the concept of gender equality and the protection of human rights are implemented within Indonesia's legal framework. In addition, this study will offer policy recommendations aimed at strengthening the implementation and enforcement of these principles in current public policies and legal practices. Based on the background previously presented, this research focuses on several key questions: what dynamics and challenges arise in the implementation of the Indonesian constitution that guarantees gender justice and human rights protection, and how the Indonesian constitution establishes the protection of human rights in the context of gender equality (Hutabarat et al., 2024).

## **METHOD**

A normative juridical approach (legal research) is used in this study. The normative juridical method is carried out by using primary legal texts while examining relevant theories, concepts, legal principles, and statutory regulations. This method, often referred to as a literature strategy, involves reading books, laws, and other materials that discuss Indonesia's constitutional view on gender equality and its relationship to the protection of human rights. A case approach is also used by examining cases relevant to the topic being studied and that have resulted in court decisions with lasting legal authority.

This study will include a review of various theories proposed by experts in the fields of law, gender studies, and human rights, particularly in relation to gender equality and the protection of human rights. One of the approaches that will be discussed is feminist legal theory, which examines how the law can function as a tool to uphold human rights and achieve gender equality. These various theories will discuss important concepts such as reproductive rights, the structure of the legal system that tends to be patriarchal, and gender-based approaches to legal analysis. In addition, this research will also explore broader understandings of human rights in general, paying attention to how these theories can enrich the understanding of the relationship between law and gender justice within the context of Indonesian society.

A case approach will also be used in this study. By using the case approach, the researcher will analyze court decisions related to human rights protection and gender equality. This method allows the researcher to understand how the 1945 Constitution and other laws are applied in specific situations.

## **RESULTS AND DISCUSSION**

### **The Role of the Constitution in Ensuring the Protection of Human Rights and Gender Equality**

The fundamental principles of equality before the law, equal protection, and non-discrimination are stated in Article 27 and Article 28I paragraph (2) of the Indonesian Constitution. The integration of these principles with the protection of human rights is essential

for the development of an inclusive and just legal system. These principles affirm that all individuals, regardless of social status, skin colour, religion, or gender, have equal rights to legal recognition, respect, and protection. Therefore, equality before the law and equal protection under the law form the foundation for fulfilling human rights for every individual without exception (Sari et al., 2021).

The relationship between these values and the protection of human rights becomes increasingly important in efforts to achieve social justice and diversity in society. Without equal protection for all individuals and equality before the law, human rights cannot be effectively safeguarded. On the other hand, prejudice can hinder access to basic rights that should be entitled to every person, such as justice, employment, and education (Audina, 2022).

These principles must be followed in public policymaking, law implementation, and regulatory enforcement. All citizens should be able to enjoy their rights without barriers or discrimination. To achieve this, discriminatory practices must be eliminated through a paradigm shift in culture and systems. Regarding how the constitution regulates the protection of human rights in relation to gender equality, there are several national laws, namely:

- a. Law on the Ratification of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) Number 7 of 1984: To eliminate discrimination against women and promote gender equality, this law ratifies the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.
- b. The Human Rights Committee issued General Comment No. 28 of 2000 on equality of rights between men and women, which is included in Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. This comment asserts that states that have ratified the Covenant must not only protect but also take proactive measures for empowerment throughout their territories. These measures also include preventing the use of customs, history, religion, or culture as justification for violating women's rights (Sutrisno & Salsabela, 2022).
- c. Human rights, including the right to gender equality, are guaranteed and protected by various statutory regulations. One important regulation in this regard is Law Number 39 of 1999 on Human Rights. This law provides a strong legal foundation to protect the fundamental rights of every individual, including women's rights, and ensures that the principle of gender equality is applied in all aspects of societal life.
- d. Law Number 1 of 1974 concerning Marriage serves as the legal foundation regulating various aspects related to the institution of marriage in Indonesia. This law includes provisions aimed at ensuring fairness within marital relationships, including efforts to support gender equality within the context of marriage.
- e. Law on Child Protection No. 23 of 2002: This law protects children's rights, particularly the rights of girls, and provides a legal basis to prevent discrimination and violence against children, although it is not specifically related to gender equality.
- f. Presidential Instruction Number 9 of 2000 concerning Gender Mainstreaming requires every government institution, at both national and regional levels, to actively integrate gender perspectives into every aspect of planning, implementation, evaluation, and budgeting of their programs.
- g. Presidential Decree Number 181 of 1998 established the National Commission on Women, an institution designed to strengthen the protection and promotion of women's rights in Indonesia.
- h. Law Number 22 of 2022 concerning Corrections: This regulation is designed to provide special protection for female inmates, covering various aspects relevant to their needs during imprisonment. One of the main focuses of the law is ensuring that female inmates have the right to proper healthcare, including adequate access to reproductive health services (Isa, 2019).

Several laws explicitly protect the constitutional rights of women, which is a positive step. However, further research is needed to understand the implementation and expansion of these rights (Zahroh, 2023). Law No. 1 of 1974 on Marriage, although revised several times, is still considered insufficient in protecting women and does not fully support gender equality. One of the main criticisms is the minimum age requirement for marriage. Although the 2019 amendment increased the minimum age to 19 years for both parties, there are still legal loopholes that allow marriage at a younger age with court permission.

This increases the possibility of underage marriage, especially for girls who are more vulnerable to exploitation, abuse, and inequality within marriage. The provisions related to marriage guardians in the Marriage Law play a very important role. Many women still depend on a marriage guardian in the marriage process, because although the 2019 reform removed the requirement for adult women to obtain approval from a marriage guardian, its implementation at the local level remains unclear. Several provisions in the Marriage Law have not fully guaranteed the rights of women in the context of marriage, as elements of gender inequality still exist. Although there have been several improvement efforts, consistent and effective implementation remains a major challenge.

### **Dynamics and Challenges of Gender Equality and Human Rights Protection in Indonesia**

According to the Office of Women's Empowerment and Child Protection, gender equality is a fundamental human right guaranteed by the Indonesian Constitution. This has a significant impact on various aspects of community life, whether in the political, economic, social, or cultural spheres. Gender equality is considered an essential element that can empower both men and women, providing them with opportunities to break free from the cycle of poverty and ultimately improve their overall quality of life. Furthermore, gender equality requires that men and women be treated equally in their rights, whether in the context of civil, political, economic, social, or cultural rights. This principle asserts that no individual should be denied or unfairly treated in exercising their rights solely because of gender differences.

Indonesian society is still influenced by patriarchal cultural norms that restrict women's freedom and violate their rights. The lives of women are still dominated by these traditions, making gender equality difficult to achieve in Indonesia. Patriarchal culture is characterized by a set of beliefs, habits, and behaviors that grant greater authority or control to men in all aspects of life, while women are often placed in lower roles with limited control over their own lives (Gani, 2019).

Men and women are treated differently in terms of education, employment prospects, property rights, access to health services, and involvement in decision-making, among other aspects of this patriarchal culture. The perception of women as "companions" or "assistants" to men still persists in some situations. As a result, they often lack adequate access to proper education and employment opportunities. One of the most evident obstacles to achieving gender equality is gender discrimination in the workplace. Although legal prohibitions against gender discrimination in the workplace exist, many companies still treat employees differently based on gender. For example, in terms of compensation, promotion, or access to training and career development opportunities, men and women are often not treated equally (Sutrisno & Salsabela, 2022; Wati & Aswen, 2023).

In addition, the country does not sufficiently enforce human rights, even though this is essential for protecting individual rights. One of the main causes is the lack of public understanding of human rights. Although many Indonesians are familiar with the concept of "human rights," they are unclear about its meaning and practical implementation. This is largely due to the lack of formal education on human rights in society and educational institutions. Based on the 2019 Annual Report of the National Commission on Violence Against Women (Komnas Perempuan), the number of women experiencing sexual violence has increased in various regions. Although these cases have received media and public attention, legal action

against perpetrators is often insufficient (Sudirman & Susilawaty, 2022). Concrete steps must be taken to address this issue, including educating students about gender equality and human rights at all levels of education, preparing law enforcement officers to be more proactive in serving and protecting society, and increasing public awareness efforts. To ensure that human rights are effectively implemented in Indonesia, government institutions, educational institutions, civil society organizations, and non-governmental organizations must work together (Wibowo et al., 2022).

## CONCLUSION

Although Indonesia has implemented several laws to protect women's rights and promote gender equality, there are still many obstacles that hinder their effective implementation. The government has taken positive steps, such as enacting laws to protect women from domestic violence and discrimination. However, some laws still contain loopholes that allow gender discrimination and actions that violate women's rights, despite existing legal protections. These barriers make the implementation of the law more difficult to execute consistently and successfully. For example, the Marriage Law highlights shortcomings in addressing gender inequality that still exists in marital practices. In addition, women are still not adequately protected by existing economic laws and regulations related to the placement of Indonesian women working abroad.

Therefore, greater and more structured efforts are needed to strengthen the existing regulations, address the shortcomings in these laws, and take concrete steps to ensure comprehensive protection for women in various aspects of their lives. This includes the fields of economic policy, employment, and marriage, all of which need to be strengthened so that true gender equality can be achieved and women's rights can be effectively protected.

Gender equality is one of the fundamental human rights contained in the Indonesian Constitution, which must be upheld by ensuring that every individual, regardless of gender, has equal rights in all aspects of life. Although gender equality has been established as a legal principle, there are still many barriers that hinder its implementation in various social contexts. One of the main challenges is the existence of strong patriarchal practices among Indonesian society. These patriarchal practices include various values, norms, and habits that grant greater dominance and power to men. This is based on the perception that women are often considered less capable or less important in various aspects of life, causing their abilities to be underestimated or not consistently appreciated.

Gender discrimination remains a significant issue in many sectors, particularly in the workplace, in addition to existing cultural barriers. Although the government has established laws specifically prohibiting discrimination based on gender, in reality, many companies still treat male and female employees differently. One form of this discrimination is reflected in the wage gap, where men often receive higher salaries than women for the same job. Additionally, when it comes to promotion or career advancement opportunities, women are often overlooked or considered less important than men. Opportunities for career development are also unequal, with women facing more obstacles, while men often have greater access to training and professional development. These challenges highlight that there is still a long way to go to achieve genuine gender equality in Indonesia.

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