

The Strategic Law Position of Women in Politics

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Abstract

In Indonesia since the reforms, political participation of women, especially women's representation in decision-making become an important agenda of the government and the legislature. Affirmation and strengthening policies continue to be pursued. In the representation of women in decision-making, of course, one must have followed with a mindset, as well as the ability of the competent. But the fact is, the condition of women's political participation in some Asian developing countries such as Indonesia is still concerning as their participation rates are low due to Social and cultural processes that are more likely to exclude women, especially in government. Therefore, efforts need to change the mindset of society on women's lives. This urges the author to study the problem further in research using a Normative-Juridical Research Method which is literature research. The Result shows that indeed the mindset that men are the one who should be in the seat of government and women stays in the "kitchen" are very deeply rooted in the Indonesian Culture as seen by the fact that in 2014–2019, growth in the number of women as members has stalled, and even gone backward as the proportion of the total, to 97 out of 560, that is 17.3%, therefore efforts is needed substantially, structurally and especially Culturally so that Woman emancipation in politics can be realized.

Keywords: Politic, Women, Law.

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INTRODUCTION

Law is law, which applies and is recognized and rules that must be followed in social life. Ironically, many things, people don't know about the law [1]. Every aspect of human life is never separated from the law. All policies are based on rules, such as Regional Regulations (Regional Regulations). In other words, it is higher than policy rules, but sometimes we underestimate that. In general, the law is associated as a rule regarding the behavior of individual people in the community who have imposed sanctions. Therefore, its legal strength. Birth law to regulate and harmonize the implementation of different interests between community members. For this reason, state organizations are the highest among groups or groups of people who have sovereign ideals. It has been formed, regulated, and managed the state which contains provisions on state structure and state norms stipulated in writing or live in the reality of state practices relating to the constitution, state institutions and their functions, the mechanism of relations between institutions, and the principle of relations between institutions state power institutions with citizens, as stated in the regulations of the 1945 Constitution. However, according to Mohammad Mahfud MD [2], the law is a product of political decisions so that the law can

be seen as a crystallization of political thinking interacting among politicians. To avoid political crystallization, which can lead to the emergence of a male-centric dominance by an institution or organization. Thus, there must be a division of the implementation of this power, so that power that is not concentrated on one side can result in the inhibition of authoritarian government and the role of the community in determining political decisions.

In Indonesia since the 1999's reform, women's political participation, especially women's representation in decision making, has become an important agenda of the government and the legislature. Various affirmation and strengthening policies continue to be pursued. In inclusive democracy, society as one of the important pillars of democracy has a very important role in realizing wider and meaningful women's political participation. The present fact states that although quantitatively there are more Indonesian women than men, the development of the position and political role of Indonesian women is very slow. Qualitatively, Indonesian women have not proportionally influenced and determined Indonesian political processes and products. The present fact states that although quantitatively there are more Indonesian women than

men, the development of the position and political role of Indonesian women is very slow. The fact now stated that although a quantitative increase of Indonesian women more than men, but the development of the position and role of women in Indonesia is very slow politics.

In Indonesia, the implementation of the state power body is divided into three institutions, namely; legislative, executive, and judiciary, which refers to the theory of "*trias politica*" doctrine put forward by John Locke (1632 - 1704) and Montesquieu (1689 - 1755) which translates to "separation of powers". First, legislative power or making rule functions. Based on the 1945 Constitution, Several institutions that carry out this task, MPR, DPR, and DPD; Second, executive power or the power to implement the law (rule application functions). The executive power held by the head of state is the president assisted by the vice president. The President of the Republic of Indonesia is the head of state and head of the Indonesian government; Third, judicial power or demanding authority for violations of the law (adjudication rules). This institution has the power to decide on the case, the sentence for each violation of the law that has been carried out and carried out. Such institutions, such as the highest judicial court and the Constitutional Court.

However, although there is so many sectors in politics where women's viewpoint and knowledge is needed, the condition of women's political participation in some Asian developing countries such as Indonesia is still concerning as their participation rates are low due to Social and cultural processes that are more likely to exclude women, especially in government as the law itself does not accommodate it. Therefore, efforts need to change the mindset of society on women's lives. This urges the author to study the problem further in research with the main problem of how to realize a strategic law that can realize women's emancipation in politics.

METHOD OF RESEARCH

The author in this study uses the constructivism paradigm, a paradigm that views that the science of law only deals with laws and regulations. The research approach used is sociological legal research or commonly called sociological juridical research. In this study, the law is conceptualized as an empirical phenomenon that can be observed in real life. While the type of research used in completing this study is a descriptive-analytical juridical research method, namely research conducted by examining library materials (secondary data) or library legal research [3], then described in the analysis and discussion.

Research Result and Discussion

According to the data from National Development Planning Board (*Bappenas*) and the United Nations Population Fund, the number of women in Indonesia stands at 132 million, from a total population of 265 million, or roughly 50%, as expected. Yet since

the fall of Suharto until the latest election in 2014, the number of women that have become lawmakers has never reached even 30%.

Regulations have been issued with the hope of boosting the number of women in the Dewan Perwakilan Rakyat (DPR), as Indonesia's House of Representatives is known. In 2002, for instance, Law Number 31 concerns Political Parties, and, in 2003, Law Number 12 concerning General Elections, both sought to increase the proportion of women's representation in the parliament. The regulation should have helped realize women's emancipation in politics however, in reality, it is useless as the structure and, especially, the culture still does not approve it.

In the 1999 election, women occupied 44 seats in the DPR or a mere 8.8% of the total. This proportion increased to 65 seats in the 2004 election, an increase to 11.8% overall. Women's representation was highest after the 2009 elections, with a proportion of 17.9%. Unfortunately, between 2014–2019, growth in the number of women as members has stalled – and even gone backward as the proportion of the total, to 97 out of 560, or 17.3% [4].

The lack of representation has wider consequences. The low number of women participating in parliament also influences the priority placed on regulations that would favor women in society. Unfortunately, women activists are still struggling to push the DPR to ratify a sexual violence bill, a crucial fight in the war to unwind misogynist elements of Indonesian law.

But even this bill has been challenged by Indonesian women themselves aligned to ultra-conservative groups. Against a backdrop of the rising of fundamentalism, populism, and militarism in Indonesia as more needs to be done.

In the years leading up to independence, women's organizations in Indonesia flourished after the launch of the Indonesian Women's Congress (Kowani) in 1945.

During the Sukarno era, 1945–1966, women made up names of some of the leading politicians in political parties. Women such as Kartini Kartaradjasa and Supeni were well-known in the Indonesian National Party (PNI). Walandauw was a leading figure in the Indonesian Christian Party (*Parkindo*), Mahmuda Mawardi and Wachid Hasyim prominent in the Nadhlatul Ulama Party, and Salawati Daud was a famous female figure from the Indonesian Communist Party (PKI).

During the authoritarian "New Order" regime (1966–1998), women were represented in Indonesia's national legislature in small numbers and had little impact [5]. Women's representation in national

parliament averaged 9 percent and at its highest in 1992 reached only 12.4 percent [6]. Women's involvement in the public sphere mostly occurred through religious organizations (such as *Nahdlatul Ulama*, *NU*, and *Muhammadiyah*, the largest Muslim organizations in Indonesia), or through state-corporatist organizations such as *Dharma Wanita* (for the wives of civil servants), or Family Welfare Empowerment (*Pemberdayaan Kesejahteraan Keluarga*, *PKK*). Such bodies stressed that women's primary responsibilities lay in the domestic sphere. Patriarchal views concerning men's leadership of the family were enshrined in law through the 1974 marriage law as the state promoted men's social and political role while downplaying women's role in the public sphere. The domestication of women during this period has had a major influence on public perception of the role of women in politics in the subsequent so-called reformation era.

Many studies of why women have found it difficult to play a political role, especially by winning seats in legislatures, in post-Suharto Indonesia zero in on institutional barriers, including lack of support for women in the rules that govern Indonesia's system of political representation [7]. To elect members of legislatures at all levels, Indonesia uses a system of proportional representation (PR), by which legislators are elected in multi-member districts. In Indonesia's first post-Suharto election, the country inherited a "closed-list" version of PR, in which voters simply marked their preference for a party on the ballot paper. The order of candidates on that party's list then determined which candidate(s) would take the seat(s) the party won in that electoral district: if a party won one seat, it would go to the candidate at the top of the list; if it won two, the top two candidates would be awarded the seats, and so on. This system turned out to be disadvantageous to women because the major parties were heavily male-dominated and placed men at the top of their candidate lists. As a result, the number of seats held by women in parliament declined in the first election in the post-authoritarian era in 1999, from 11.6 percent in 1997 to 8.8 percent in 1999.

In successive elections, Indonesia moved to a system of open-list PR (the system was first fully implemented in 2009), in which voters can choose between marking a preference for a party on the ballot paper (as before) or indicating a preference for one of the candidates on the party list. To allocate seats in an electoral district, the votes for each party and all its candidates are added up; the seat(s) go to the candidate(s) with the largest individual vote totals. The introduction of the open-list system had the effect of enhancing the importance of personal campaigning by candidates because it effectively meant that candidates from the same party list were competing against each other. The open-list PR system has thus enhanced the role of vote-buying, informal campaign teams, and efforts to promote the personal profile of individual candidates (Aspinall

and Sukmajati, 2016). The results have further undermined Indonesia's already relatively weak parties [8].

Shifting the weight of campaigning away from parties to individual candidates has the potential to pose major obstacles to women candidates, given that Indonesian society is marked by significant gender inequality. For example, workforce participation rates are relatively low and women's earnings average around half that of men's, with the result that women often are less well endowed with financial resources than men (World Economic Forum, 2020).⁴ Women candidates, except for dynastic and celebrity candidates, also tend to be less well known, reflecting that, in relative terms, women lack positions of authority and influence within important political networks; to cite one example, women are underrepresented in the senior levels of the civil service, an important pool of recruitment for political candidates. Though parties largely remain male-centric, should they wish to promote women candidates they now have less leverage to do so, because under open-list PR voters determine which of a party's individual candidates win seats.

The low number of women elected to the DPR in 1999 shocked many women's movement activists. After much lobbying, in 2003 a new law on elections was introduced that included a voluntary quota system. Beginning with the 2004 election, it required each political party "to consider" nominating women candidates of at least 30 percent. Because it was ambiguous and lacked non-compliance provisions, the measure contributed to only a slight increase of women's representation in the DPR in 2004.

In 2008, the candidate quota was strengthened in three main aspects: (1) it required political parties to implement a system where one of every three candidates on their lists had to be a woman; (2) local election commissions were asked to verify that party lists complied in each electoral district; and (3) parties were asked to include 30 percent of women in their executive boards although sanctions remained weak, women's representation in 2009 increased significantly to 17.86 percent, bringing Indonesia close to the then world average of 19 percent. These results were greeted with optimism; institutional intervention had proven effective. Before the 2014 election, the quota provisions were again strengthened: parties would now not be allowed to compete in electoral districts where they were non-compliant [9]. However, hopes for another rise in women's representation were dashed; instead, there was a slight decline.

This takes us to the 2019 election, the focus of the current special issue. While women's representation did increase in 2019 at both national and provincial levels, enthusiasm from women's advocates has been muted. In particular, the rise in numbers of women

elected has been overshadowed by concerns about the characteristics of many of the women elected [10]. While women are taking their seats in legislatures in larger numbers than ever before, reflecting a rise in what is known as descriptive representation, the rise in women connected to political elites has raised questions about the extent to which these women will advance the interests of the women they represent, known as substantive representation [11]. Political networks and financial resources remain central to women's electability and the key barriers to their success.

Women as leaders often face obstacles that originate from the culture of the community, given that men function as protectors and family heads. All these obstacles return to the problem of women's dual role as a mother or as career women. In response to this problem, not many women have finally given up on the situation, closed their aspirations, leadership and intellectual qualities to be accepted among the community. If observed, the belief that women's issues will be resolved when women go directly to the level of public and political policy is strongly influenced by the discourse of capitalistic democratic thinking that now dominates the culture of our society with the principle of 'sovereignty in the hands of the people. So the idea of empowering the political role of women in the eyes of democracy is always directed at making women able to place themselves and take part in the power elite. In response to this problem, not many women have finally given up on the situation, closed their aspirations, leadership and intellectual qualities to be accepted among the community. In response to this problem is not many women eventually surrender to circumstances, closing all their aspirations, leadership qualities and for the sake of intellectual acceptance in the community.

Our experience with communities on the ground is in the process of providing education and guidance to the rules, as citizens. Many women still don't know very well about the rules as citizens. Let us (women), children do not know about student rights and obligations as citizens, and do not know the responsibilities and goals of the state, while the 1945 Constitution (Amendment 4), which reads; "Then from that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to advance public welfare, educate the nation's life, and participate in carrying out world order based on independence, lasting peace and social justice, the Indonesian National Independence it is the Constitution of the Republic of Indonesia, which is formed in the composition of the Republic of Indonesia people's sovereignty based on God Almighty, just and civilized Humanity, Indonesian Unity, and democracy led by local wisdom in Representative Consultation, and by fostering social justice for all the people of Indonesia are "clearly our goal, but there are still many people who are not aware of citizenship rights.

With our new rules Law Number 12 of 2011 concerning the establishment of legislation, a rule is written that contains generally binding legal norms and is formed or appointed by state institutions or authorized officials through the procedures specified in the law. So, in the existing law-making process it is called *Regeling* and *beschikking*. To speak *Regeling* means the rules of speech are set hierarchically, usually set (*Regeling*), while *beschikking* is or contains administrative determination. For this reason, the new law in 2011 is contrasted with Law Number 10 of 2004. If you have talked about the rules, such as any policies taken by the government, you must follow the rules that still exist.

The role of women and men is the same, it has also been mandated by the Indonesian constitution in the 1945 Constitution; on the part of Article 28D paragraph 1 it says "every person has the right to equal treatment before the law". That means both men and women are the same before the law, play a role in politics, play a role in the world of education, play a role in the world of health, and play any form in the progress and integrity of the beloved country namely the Unitary State of the Republic of Indonesia. Furthermore, in Article 28D paragraph (3) of the 1945 Constitution, the second amendment mandates "*every citizen has the right to obtain equal opportunities in government*".

The Indonesian government system describes state institutions, the relationship between state institutions, and the way state institutions work in achieving the goals of state government. As a state institution within the Indonesian system from the government to work together and support each other to realize government goals in the country of Indonesia. Therefore, we should comply with the rules of law that apply in people's lives. Law is a law, which is determined jointly, if we violate the law itself, of course, are labeled as violating the rules. One example of a violation of law relating to women is *betel* marriage. Women who conduct a *betel* marriage, there is no legal force, if a woman is pregnant, there is no recognition of children's rights, it is her responsibility. This is a legitimate religion, but as a rule, the state does not exist, if it is fought for but will not win. This case must be an important lesson for all of us, especially women. Where, in this position, women suffer losses and do not get justice under the law. Legally not only, but also injustice accepted by women. Now we are day, we still see a lot of women's rights taken, especially after marriage. This possibility arises because, women cannot fight for their own rights, and especially women politically cannot fight men.

As women, especially women in parliamentary institutions, they must understand and understand the rules more. But many women don't know. Unlimited female bandwagon. How women can compete with men, if as long as the female stick is only male interests that complement each other. If we follow the argument from

the view of feminism, that every woman must also have the right to be able to choose what she thinks is good not determined by men [12]. Therefore, being a woman must have the capacity of an individual political communicator. Because where they can improve the welfare of women to represent groups, be escorted, and influence the agenda of policy-making in the process of political development.

In Indonesia since reform, women's political participation, especially women's representation in decision-making has become an important agenda of the government and the legislature. Affirmation and strengthening policies continue to be pursued. The representation of women in decision-making, of course, must be followed with a mindset and competent abilities. But the reality is, we are very concerned about the condition that women's political participation tends to be of little strength. Indeed, instinctively, not all women can, and are not easy for women, to leave their husbands, children and families. In addition, there are still women out at night; surely they have a negative image.

Women's political participation is expected not only to participate in voting but also participation in becoming legislators both at the central and regional levels. Today's society generally states that women can be chosen because they have the ability to fight for the aspirations and needs of the community besides that women have the ability to campaign and approach the community well. The presence of women in the political arena is expected to reduce the number of discrimination against women. Society's thinking about women who are considered as weak creatures must be finished tripe. In addition, a woman sitting in a leadership chair will inspire other women to add to the ranks of women.

Although during this politics and political behavior are seen as masculine activities (men), which in this field requires courage, independence of speech, and aggressive actions, Women are more understanding and able to apply. What is impossible, women can, many benefits that we can afford, only abilities but no desire. Many women have good competencies to be honed further, but cannot because of difficulties in changing the way of thinking in the community, this practice relates to the issue of the separation of the role of women as housekeepers (wives and mothers) with the role of men as heads of households and breadwinners. As such, such an assumption developed among Indonesian society, making it difficult for women to go to the public domain, especially entering the political arena. However, too often, women who are involved in the political field, are not able to provide capabilities optimally, for example in the "Legal Drafter" (law designer), it is not easy to become a "Legal Drafter" of legal control. However, that does not mean women only go together, have fun and for that, cannot take policy or make a concept. For this reason, in the future women are expected to be able to take policies and have a high power of innovation in

drafting political development in Indonesia. Women must be able to capture opportunities, not giving or being helped by rules continuously. Indonesian women live.

Women in their lives have a heavier task burden than men. The dual role of a woman today in addition to having responsibility in the home as a mother also outside the home as a career woman. Through this dual role, women must regulate both of their roles so that they are not neglected. The role of women and men is the same, it has also been mandated by the Indonesian constitution in the 1945 Constitution; on the part of Article 28D paragraph 1 it says "*every person has the right to equal treatment before the law*".

That means both men and women are the same before the law, play a role in politics, play a role in the world of education, play a role in the world of health, and play any form in the progress and integrity of the beloved country namely the Unitary State of the Republic of Indonesia. Furthermore, in Article 28D paragraph (3) of the 1945 Constitution, the second amendment mandates that "*every citizen has the right to obtain equal opportunities in government*".

Even this opportunity continues to be given, including the stipulation of a 30% quota of women in parliament through Law Number 8 of 2012 concerning General Elections of Members of the House of Representatives, Regional Representatives, and Regional Representatives. This is a great opportunity for women to show their existence and capacity to be able to compete with men in the political field. The existence of political parties is one manifestation of community participation as well as an important place in developing democratic life. In the frame of the social and political life of the Indonesian people in general it provides a broad and friendly space for women to take part in politics, including being a leader.

Indonesian women have a role in political development, both involved in parties, the legislature, and in government. Participation in this political field is not merely just a supplement but must play an active role in political decision-making concerning the interests of the continuity of the nation and the State. Political participation like this of course will mean if women are involved in it. The high level of women's participation can be demonstrated in understanding political issues and their involvement in these activities. Conversely, if the level of female political participation is low, it is considered to be less good because it can be interpreted that women are less concerned with political or state matters. Given that women's rights are now guaranteed by law, as well as the quality role of women who have increased, it is appropriate for Indonesia to claim women's commitment to helping to overcome the problems of the nation and state.

Gender differences are no longer an excuse for women to engage in politics. The thinking and culture of the community that overrides the existence of women must be renewed. Participation in politics for women can be started from small things that encourage government programs, for example, PKK, Posyandu. Family planning and other activities move mothers towards shared interests. If women can organize the community then a woman can see higher service such as being a member of the legislature to the head of government. Female leaders, positions that can be achieved if they can improve results better than before and have good work performance so that leader women will be recognized by subordinates and others. This leadership is seen from the form of its maturity in dealing with various problems faced, especially in the field it leads without leaving its feminine nature. Female leaders have the power of being firm, strong, and firm in the sense that they can make the right decisions like things a man can do.

CONCLUSION

The mindset that men are the one who should be in the seat of government and women stays in the “kitchen” are very deeply rooted in the Indonesian Culture as seen by the fact that in 2014–2019, growth in the number of women as members has stalled, and even gone backward as the proportion of the total, to 97 out of 560, that is 17.3%, therefore efforts is needed substantially, structurally and especially Culturally so that Woman emancipation in politics can be realized as The political role of women and the law in the eyes of democracy is always directed at making women able to place themselves and take part in the power elite as well as mastering existing laws. Women must have the capacity as individual political communicators. Because where they can improve the welfare of women to represent groups, be escorted, and influence the agenda of policy-making in the process of political development. Therefore, Indonesian women must have a role in political development, both involved in parties, the legislature, and in government. Women's participation in this political field is not merely a complementary matter but must play an active role in political decision-making concerning the interests of the continuity of the nation and the State.

REFERENCES

1. Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-

- corruption Indonesia in 2030. *The Social Sciences*, 13(8), 1307-1311.
2. Ismayawati, A., & Efferi, A. Peer Review: Pemikiran Mohammad Mahfud MD tentang Politik Hukum Islam di Indonesia.
3. Pratama, T. G. W. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law.
4. Republika.co.id. (2020). *Bappenas: Kesenjangan Gender Indonesia Masih Cukup Lebar*, Taken From <https://www.republika.co.id/berita/qhdjoj428/bappenas-kesenjangan-gender-indonesia-masih-cukup-lebar>, on 01 December 2021.
5. Bessell, S. (2010). *Increasing the proportion of women in the National Parliament: opportunities, barriers and challenges*. In: Aspinall, E., Mietzner, M. (eds) *Problems of Democratisation in Indonesia: Elections, Institutions and Society*. Singapore: Institute of Southeast Asian Studies, 219–242.
6. Badan, P. S. (2015). *Anggota Dewan Perwakilan Rakyat (DPR) menurut jenis kelamin, 1955–2014*. Available at: <https://www.bps.go.id/statistable/2014/09/12/1172/anggota-dewan-perwakilan-rakyat-dpr-menurut-jenis-kelamin-1955-2014.html> (accessed 20 October 2020).
7. Hillman, B. (2017). *Increasing women's parliamentary representation in Asia and the Pacific: the Indonesian experience*. *Asia & the Pacific Policy Studies*, 4(1); 38–49.doi:10.1002/app5.160
8. Ufen, A. (2009). *Political parties and democratization in Indonesia*. In: Bunte, M., Ufen, A. (eds) *Democratization in Post-Suharto Indonesia*. New York: Routledge, 153–173.
9. Puskapol. (2015). *Potret Keterpilihan Anggota Legislatif Hasil Pemilu 2014*. Depok: Pusat Kajian Politik FISIP UI.
10. White, S., Aspinall, E. (2019). *Why does a good woman lose? Barriers to women's political representation in Indonesia*. New Mandala Research Brief. Available at: www.newmandala.org/wp-content/uploads/2019/12/White-Aspinall-Why-Does-a-Good-Woman-Lose.pdf (accessed 20 January 2021).
11. Wängnerud, L. (2009). *Women in parliaments: descriptive and substantive representation*. *Annual Review of Political Science*, 12(1); 51–69.doi:10.1146/annurev.polisci.11.053106.123839
12. Saparinah, S. (2010). *Berbeda tapi Setara: Pemikiran tentang Kajian Perempuan*, Kompas, Jakarta, 51.