



# Legal Renewal to Fulfill the Protection of Women's Right in Human Right Perspective

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**Abstract.** This study reveals the phenomenon of women's rights in the context of human rights. So that the issue studied is how to reform the law in providing fulfillment of the protection of women's rights in the context of human rights by looking at how the laws and regulations containing human rights have provided concrete guarantees so that women's rights can be fulfilled. With the renewal of the law by referring to responsive legal theory in which the law made is able to provide substantive justice as well as procedural justice.

**Keywords:** Legal reform · women's rights

## 1 Introduction

The State of Indonesia as a legal state, as formed based on agreed regulations made by regulated institutions, and its position in historical development has the authority to form and formulate regulations. The Indonesian state with the development of its state administration system as outlined in the state constitution, namely the 1945 Constitution, the contents of which start from the preamble and the body is a formula that shows the Indonesian state is a state of law.

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The attention of the government of the Republic of Indonesia to constitutional human rights has existed since the founding fathers of the country drafted the 1945 Constitution. The protection of human rights, this is in line with the provisions of Article 28I paragraph (4) and (5) of the 1945 Constitution of the Republic of Indonesia, that the state is obliged to protect, fulfill and respect human rights.

Furthermore, it is stated in Law Number 39 of 1999 concerning Human Rights, which furthermore the enforcement of human rights itself is set forth by the existence of a regulation concerning the Law on the Human Rights Court Number 26 of 2000, which is expressly regulated in Article 4, namely "The human rights court has the task of and the authority to examine and decide cases of human rights violations".

In general, the protection of human rights has been clearly and unequivocally regulated in the body of the 1945 Constitution of the Unitary State of the Republic of Indonesia which also includes specifically providing protection for women's rights. The history of the struggle of Indonesian women shows that since the early 19th century a number of female figures have fought for the independence and independence of the nation, including improving the position, role and progress of Indonesian women. The first Indonesian women's congress was held on December 28, 1928 and was an important milestone for the "unity of the Indonesian movement" and an integral part of the Indonesian national movement. The struggle of Indonesian women, who from the beginning have been fighting for their human rights and their enforcement, is stated through the recognition of equal rights with men in the 1945 Constitution and its amendments.

The concept of human rights in Indonesia is trapped in two views, namely universalistic and particularistic as stated in The Jakarta Message and in the Kuala Lumpur Declaration. Cannot be separated and no one ruler and no system can reduce it. These human rights come from a higher level than the maker of any law, because these rights come directly from the creator.

Therefore, human rights in the view of universality are rights that absolutely belong to humans and are not given by any power organization, and these rights penetrate space and boundaries. The characteristics of race, gender and religion as well as social position and citizenship are not a benchmark to see or view someone as having or not having human rights. Furthermore, particularist thinking that sees human rights based on the contextual aspects of each country, Human rights are seen from the aspect of their own habits or values that are in accordance with the culture and customs that exist and develop in a particular culture.

## **2 Research Method**

In accordance with the title and the problems to be discussed in the research and in order to provide useful results, this research conducted by normative juridical research (normative legal research method). The normative juridical research method is library law research that This is done by researching library materials or secondary data sheer.

This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. The scope of normative legal research according to Soerjono Soekanto includes:

1. Research on legal principles.

2. Research on legal systematics.
3. Research on the level of legal synchronization vertically and horizontally.
4. Comparative law.
5. Legal history

In this research, the scope of this research will be conducted research by drawing on legal principles, which are carried out on written and unwritten positive laws. This research can be used to draw on legal principles in interpreting laws and regulations. In addition, this research can also be used to find legal principles that are formulated both implicitly and explicitly.

The approach method used in the preparation of this thesis is normative juridical research (normative legal research method). Method normative juridical research is library law research that is carried out by examining library materials or secondary data. With using deductive thinking method (way of thinking in withdrawal) conclusions drawn from something general that has been proven that he was right and that conclusion was aimed at something of his nature special).

Thus the object analyzed with an approach that is Qualitative research is a research method that refers to the legal norms contained in the legislation. This research was conducted using a data collection tool namely: literature study or document study (documentary study) to collect secondary data related to the proposed problem, by studying books, legal journals, research results and statutory regulations.

Normative juridical research as mentioned above is a research by analyzing the problems in research through an approach to legal principles and refers to norms the law contained in the existing laws and regulations in Indonesia and using data types from library materials which are usually called data secondary.

Criticism of law is always aimed at the inadequacy of law as a means of change and as a means to realize a substantive justice. The erosion of authority, the abuse of legal activism and the breakdown of law and order became the main topics of discussion in the process of radical law reform and focused on the barrenness and corruption of the legal order.

Departing from the criticism of liberal legalism (liberal legalism) it has the aim of justice that can be achieved through a system of rules and procedures which he admits to be objective, impartial and autonomous. In this regard, the legal reform of the fulfillment of women's rights is certainly very influential on the principles of human rights which are used as the basis for the formation of legislation.

Legal reform is a renewal of the main points of thought, also interpreted as a renewal of basic concepts or ideas—not just changing the textual formulation of articles. According to Nonet and Zelznik, there are three developments in the legal order in a politically organized society in the form of a state. The three types of legal order are repressive legal order, autonomous legal order, and responsive legal order.

### **3 Findings and Discussion**

The idea of human rights for the Indonesian people is to become a long historical record, the government's efforts to make policies as outlined in the legislation, namely

the Human Rights Law and the Law which is the ratification of the women's protection convention as well as the existence of institutions that represent the existence of Komnas HAM and Komnas Perempuan..

Awareness of human rights is no longer a public campaign, but it is necessary to instill values that live in the Indonesian people as well as for the government and the state. This is because human rights, including women's rights, can be included in policies as an effort to fulfill women's rights, requiring a strong awareness base of rights, so that democracy or freedom can be implemented and institutionalized.

Gender equality that arises and becomes a thought that starts from small groups to groups that are later institutionalized is a logical consequence of the neglect of human rights. Gender does not see and refers to the differences between men and women, but gender emphasizes the differences in roles, functions and responsibilities between men and women. Gender is something that is built from socio-cultural which is of course not only constant, but very dynamic in line with the times. The basic principle of the UN charter is the equality of men and women, it can be seen from the meaning of human in human rights, which means complete humanity without seeing and being partial to men or women.

Gender equality from the point of view of human rights is based on the 1945 Constitution. Indonesia is a country based on law and not on power. Indonesia as a state of law must fulfill the elements of a state of law consisting of: (1) guarantees for human rights; (2) division of power; (3) government based on legal regulations; and (4) administrative justice. In addition, Indonesia is a country that recognizes and upholds Human Rights (HAM) and basic human freedoms as rights inherent in humans by nature, so that human rights must be protected, respected and enforced in enhancing human dignity. Regulations governing human rights are contained in the 1945 Constitution and Law No. 39 of 1999 concerning Human Rights. Several international agreements related to human rights have also been ratified, such as the International Convention of Civil and Political Rights (ICCPR) through Law No. 12 of 2005 and the International Convention of Economic, Social, and Cultural Rights (ICESCR) through Law No. 11 Year 2005.

Furthermore, after the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, hereinafter referred to as CEDAW with Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women by the Government of Indonesia in 1984, mandates ratifying countries to adopt principles and provisions to eliminate inequality, subordination, and acts of discrimination based on sex, which harm women not only in the civil, political, economic, social and cultural fields, as well as in public and private spheres, but also including actions in policies and laws and regulations.

CEDAW contains 3 (three) main principles:

First, the Principle of Substantive Equality, this principle is also known as the corrective approach, namely an approach that does not focus on equal treatment before the law but also includes equality in the *de jure* sense of the actual or real impact of the law. His main concern is to ensure that the law corrects existing inequalities and influences the outcome by ensuring substantive equality of opportunity, access and benefit for women.

Second, the principle of non-discrimination, the definition of discrimination in this convention is any distinction, exclusion or restriction made on the basis of sex, which

has the effect or purpose of reducing or eliminating the recognition, enjoyment or exercise of human rights and fundamental freedoms in the field of political, economic, social, cultural, civil or otherwise by women irrespective of their marital status, on the basis of equality of men and women. And based on UN recommendations, violence against women was added. Third, the Principles of State Obligations which include the following:

1. Guaranteeing women's rights through laws and policies and guaranteeing results;
2. Ensuring practical implementation and rights through action steps or special temporary rules, creating conditions conducive to increasing opportunities and women's access to existing opportunities and enjoying equal/fair benefits from the results of using those opportunities.
3. The state not only guarantees but also realizes women's rights.
4. Not only guarantee de-jure but also de-facto.
5. The state must not only be responsible and regulate it in the public sector but also implement it against the actions of the people.

National law has stated explicitly that human rights include women's rights in Law No. 39/1999 on human rights, even though the neglect of women's rights is still felt and occurs quite often, therefore there needs to be a better legal reform in providing protection of women's rights in the context of human rights.

Nevertheless, the government has tried to formulate laws and regulations related to human rights and also women's rights, namely, among others:

1. Law Number 39 of 1999 concerning Human Rights.
2. Law Number 23 of 2004 concerning the Elimination of Domestic Violence.
3. Law Number 12 of 2006 concerning Citizenship.
4. Law Number 13 of 2006 concerning the Protection of Sanctions and Victims.
5. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons.
6. Law Number 10 of 2008 concerning General Elections.
7. Law Number 44 of 2008 concerning Pornography
8. Law Number 11 Year 2009 concerning Welfare

Therefore, the required legal reform is to borrow the opinion of Philip and Nonet, that the most appropriate is the existence of a responsive law that is able to respond to the circumstances that occur so that there is no longer any neglect of rights. Also in line with the opinion of Mr. Satjipto Rahardjo who considers it an ideal type of law, because it is a type of law that fights for procedural justice and substantive justice,

## 4 Conclusion

CEDAW contains basic principles that should be fulfilled in the legislation that follows. The provisions of CEDAW need to be further transformed in the national legal system. So that the neglect of women's rights no longer occurs and awareness of the gender

movement that is capable and influential on the ineffectiveness of policies issued by the government.

Law is a reflection of human rights, so that the law contains justice or not. Human rights that are conceived and regulated or guaranteed by law are no longer seen as mere reflections of power, but must also radiate protection of the rights of citizens. Laws based on human values reflect norms that respect human dignity and recognize human rights themselves. Norms that contain noble values that uphold human dignity and guarantee human rights.

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