

Women's Rights as Human Rights: A Critique of the Patriarchal Perspective in the Legal System and Its Implementation in Indonesia

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Info Articles	Abstract
<p>Article History Received : 2022-09-02 Revised: 2022-09-09 Published: 2022-09-30</p> <p>Keywords: <i>Women's Rights, Human Rights, Gender Equality</i></p>	<p>This study examines women's rights as part of human rights within the Indonesian legal system. Although Indonesian law provides protection for women, its implementation still faces numerous obstacles. The study finds that the existing human rights system tends to be masculine and patriarchal, often ignoring issues of violence and discrimination within the domestic sphere. The persistent patriarchal culture in Indonesia is a major obstacle hindering the achievement of gender equality. It analyzes the various obstacles women face in participating in public life, particularly in politics and government, including direct, fundamental, and structural barriers. This study uses normative legal methods by analyzing various national and international legal instruments, academic literature, and related secondary data. The results indicate that improvements in legal implementation, changes in patriarchal culture, women's empowerment, and institutional reform are needed to truly achieve gender equality. This article also provides a comprehensive understanding of the complexity of women's rights issues and offers strategic recommendations for improving the system as a whole.</p>

I. INTRODUCTION

Human rights (HAM) from an Islamic perspective are based on sharia law, derived from revelation. Sharia emphasizes that every human being is born free and has rights and freedoms, as well as duties and responsibilities. All of this is based on the principles of justice and equality, where there is no discrimination in treatment. In the Islamic perspective, freedom and responsibility are interconnected; one cannot achieve goals without freedom, and freedom itself cannot be realized without responsibility.

The human rights system in Islam includes the principles of equality, freedom and respect for others. The principle of equality states that all humans are equal in the eyes of Islam. A person's superiority before Allah is only because of his piety. This is reinforced by the Qur'an, Surah Al-Hujarat verse 13, which confirms that Allah created humans from male and female and made them into nations and tribes so that they would know each other. This verse also states that the most noble person in the sight of Allah is the person who is most pious. (Aprita & Yonani, 2020).

Women are one of God's creations, truly equal to men. Physical differences between the two

should not be used as an excuse to demean women. These differences should enable women to be more loved, valued, respected, and given a sense of security. In the real world, women are often victims of oppression because they are perceived as weak, while men are considered the greatest and undefeatable heads of the family. Because they feel weak, women often experience unfair treatment, both physically and mentally. In fact, their physical differences actually complement and mutually support each other, thus creating a harmonious life.

Human rights (HAM) are fundamental rights that all individuals, including women, should have. The fight for gender equality continues, ensuring women receive equal rights with men. Women are often perceived as weaker and unequal, leading to neglect or even denial of their rights.

To protect women's rights, the Indonesian government has established various regulations, including:

- Law No. 39 of 1999 concerning Human Rights.
- Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT).
- Law No. 12 of 2006 concerning Citizenship.

- d. Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (PTPPO).
- e. Presidential Instruction No. 9 of 2000 concerning Gender Mainstreaming (PUG).
- f. Presidential Decree No. 65 of 2005 concerning the Prevention of Violence against Women.

For years, women's struggles for equality and justice have not yet elevated their dignity and status to equal those of men. Gender inequality and women's underdevelopment remain unresolved, even though several women have held important government positions, including President Megawati Soekarnoputri. Women continue to experience discrimination and underdevelopment in various aspects of life, including the legal sector. (Kania, 2015)

The strong patriarchal culture in Indonesia is one of the reasons why women have never been equal to men. In fact, Indonesian society itself cultivates patriarchy in everyday life, often unaware that this is what causes women to be relegated to second-class status.

The dream that everyone wants to achieve is the realization of human rights and dignity as rational beings. Regarding the existing regulations on human rights, clear and firm efforts are needed to provide appropriate solutions for the sake of achieving equal rights and human welfare, especially in providing protection and empowerment of women. The purpose of writing this article is to be a source of knowledge for everyone to know the rights of women that are still not fully owned by women. With this article, it is hoped that it can be read so that all people can appreciate and respect women more.

II. RESEARCH METHODS

This research is written using a normative legal approach that focuses on the study of applicable laws and norms regarding women's rights. This approach was chosen to gain a deeper understanding of the legal framework governing women's rights and the differences between legal norms and their application in real practice. This article is a descriptive-analytical research that aims to describe, analyze, and evaluate the situation of women's rights in the Indonesian and international legal systems, as well as identify

obstacles to their implementation. This article uses a library research method with primary data sources in the form of Indonesian laws and international legal instruments, and secondary data sources in the form of books and journals relevant to this research.

III. RESULTS AND DISCUSSION

A. Research result

Based on a literature review of various laws and regulations, international human rights instruments, and previous research, it was found that women's rights are an integral part of human rights that must be guaranteed by the state. However, in practice, various challenges remain in fulfilling and protecting women's rights at both the global and national levels.

First, from a human rights perspective, women have the same rights as men, as stipulated in various international instruments, such as the 1948 Universal Declaration of Human Rights (UDHR), which affirms that every human being is born free and equal in dignity and rights without discrimination based on sex. This principle is also reinforced by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which emphasizes the importance of eliminating discrimination against women in all aspects of life.

Second, in the Indonesian context, the protection of women's rights has been regulated in various laws and regulations, such as the 1945 Constitution of the Republic of Indonesia, particularly Article 27 paragraph (1) which affirms the equality of every citizen before the law, as well as Law Number 39 of 1999 concerning Human Rights which guarantees the protection of the rights of every individual without discrimination. In addition, Indonesia has also ratified various international instruments related to the protection of women's rights as a form of the state's commitment to ensuring gender equality.

Third, research results show that women's rights in Indonesia encompass various areas, including politics, citizenship, education, economics, and protection from all forms of violence and discrimination. In politics, for example, women have the right to participate in government, both through the right to vote and be elected in general elections, and to be involved in the public policy-making process. In the area of citizenship, women also have the same right to obtain citizenship in accordance with applicable regulations.

However, despite various regulations regarding equality and the protection of women's rights, the reality in society shows that various forms of gender inequality persist. Discrimination, violence against women, limited access to education and the economy, and a strong patriarchal culture remain factors that hinder the optimal fulfillment of women's rights.

Fourth, the study also shows that the current approach to human rights tends to focus on violations committed by the state and occurring in public spaces. Meanwhile, many forms of violence against women occur in the domestic or private sphere, such as domestic violence. This situation results in various cases of violence against women not always being viewed as human rights violations, but rather as purely criminal matters.

Therefore, a more comprehensive approach is needed to view women's rights as part of human rights. Efforts to empower women, raise public awareness of gender equality, and strengthen policies and law enforcement are crucial steps in optimally protecting and fulfilling women's rights.

Overall, the results of this study indicate that although a legal framework regarding the protection of women's rights is available at both the international and national levels, its implementation still requires stronger

attention and commitment from various parties so that the principles of gender equality and justice can be truly realized in people's lives.

B. Discussion

1. Women's Rights as Human Rights

A number of women's rights activists around the world believe that existing human rights laws and systems tend to be masculine and patriarchal. These systems are structured from a male perspective, thus benefiting men more than women. This is reflected in several factors, including:

- a. There is a separation between the public and private spheres for men and women;
- b. There is an understanding that human rights violations are actions carried out by a country;
- c. There is an approach that uses the concept of similarities and differences in several main human rights instruments;
- d. A clear separation between civil-political rights and economic, social and cultural rights.

The traditional human rights approach focuses more on rights in the public sphere, while issues arising in the domestic sphere are often overlooked for reasons of privacy. Yet, cases of discrimination and violence against women often occur within the domestic sphere. In the conventional view, this violence is often considered merely a common crime, not a human rights violation. This concept assumes that the primary human rights violators are the state or its officials. For example, torture is only considered a human rights violation if it is committed by state officials in a public place. This view ignores the fact that women often experience torture and violence at home, where the state often fails to provide adequate protection or action.

Nevertheless, there are several international legal instruments that have recognized the principle of non-discrimination based on sex.

In essence, the principle of non-discrimination guarantees equality for every individual under the law and the right to fair treatment. However, its application often only addresses specific protections for women

during the reproductive phase, such as childbirth and breastfeeding. This view is based on the belief that differences between men and women are limited to physical and biological differences. (Munawaroh & Suryani, 2020)

As a result, this perspective often fails to address the deep-rooted problems women face, such as violence and discrimination. These problems are not simply biological issues, but rather the result of deeply rooted, centuries-old power imbalances in society. Therefore, this approach is not fully effective in providing comprehensive justice and protection for women.

Because biological differences are considered the sole distinguishing factor, women are often at a disadvantage, requiring special treatment and protection. This situation significantly creates an imbalance in the pursuit of true justice. Without guarantees or a legal basis specifically designed to eliminate the barriers women face, providing women with the same treatment as men will never ensure that every woman has equal access to basic rights, such as education and healthcare.

Furthermore, the classical human rights approach tends to separate civil and political rights from economic, social, and cultural rights. This fragmented focus makes women's protection less comprehensive, as the issues women experience often overlap between these various types of rights. This hinders the achievement of comprehensive and substantial equality.

There have been significant efforts to oppose the death penalty as a means of upholding the right to life. However, this right must also be viewed from a social and cultural perspective, as not all individuals are treated equally.

As a concrete illustration, the mortality rate for women during childbirth remains high due to limited access to health services and facilities. A similar situation also applies to female migrant workers, who are vulnerable to death due to unfair treatment and a lack of legal protection. Such incidents deserve primary attention in studies of the right to life,

given their close connection to women's daily experiences.

A series of critiques of the limitations of the human rights system from the perspective of women's experiences opened the way for a new paradigm regarding human rights. The ideas championed by women activists later gained recognition through an international instrument, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1976 and entered into force in 1979. The Convention affirms that discrimination against women is rooted in power imbalances in society, which are reinforced and legitimized by legal and political structures.

More than just a statement, this convention also offers various concrete strategies and steps that participating countries must implement to effectively eliminate discrimination against women in all aspects of life. Therefore, CEDAW is considered one of the most important international frameworks in the fight for women's rights. Its presence is seen as a significant advancement for the international community, which previously had a very limited and narrow perspective on the realities faced by women worldwide.

The existence of CEDAW has not immediately brought about significant changes in public perception. Deeply rooted patriarchal views often lead to misinterpretations, as if the convention grants special privileges to women and potentially reduces the equality of rights between men and women.

From a different perspective, this convention is also interpreted as narrowing the meaning of women's rights, because these rights seem to be limited to the provisions stated in the convention only.

Nevertheless, the women's rights movement continues to demonstrate consistency in pushing for international recognition of the issue of discrimination, with the aim of changing the broader public's perspective. Some of their significant efforts, as noted by: (Rohana, 2008) includes:

1. In 1975, Mexico hosted the International Conference on Women and the International Tribunal for Women.

2. In 1980, the World Conference on Women and the NGO Forum took place in Copenhagen.
3. A similar forum was continued in Nairobi in 1985 and held again in 1990.

This ongoing series of activities led to the formation of several international human rights groups under the auspices of the United Nations (UN). Ultimately, these conferences led to the birth of the Vienna Declaration and Platform for Action in 1993, marking a crucial turning point in the evolution of the concept of human rights globally.

The Vienna Declaration describes human rights as universal, comprehensive, and interconnected principles. It affirms that women's rights are an integral part of universal human rights, and therefore must guarantee full equality for women in the political, civil, economic, social, and cultural spheres, at national, regional, and international levels, and eliminate discrimination based on gender.

Following the Vienna Conference, violence against women is now formally identified as a manifestation of gender-based violence, a fundamental human rights issue. Therefore, any effort to end this violence is considered an integral part of broader efforts to strengthen human rights globally.

In the resulting Framework for Action, the Vienna Declaration firmly emphasized that women's human rights must be integrated and an integral part of all human rights programs and activities undertaken by the United Nations (UN). Furthermore, the declaration called for all human rights instruments to include and pay special attention to issues related to women.

This responsibility does not rest solely with the UN. The Vienna Declaration also calls on governments worldwide, other international organizations, and non-governmental organizations (NGOs) to collectively intensify their efforts to provide stronger and more effective protection for the human rights of women and girls.

B. Regulation of Women's Rights in the Indonesian Legal System

Based on the legal system in Indonesia, women's rights are accommodated and regulated in various regulations, as explained by Rohana:

1. Women's Rights in Politics

Women in Indonesia have the same political rights as men to participate in national and governmental life. These rights are clearly guaranteed and protected, including:

a. The right to participate in government, including playing an active role in the formulation and implementation of public policy.

b. The right to vote and be elected, both in general elections, regional head elections and legislative elections.

2. Women's Rights in the Field of Citizenship

Every person residing in a country has the right to citizenship according to the country in which they reside. Under the Citizenship Law in force in Indonesia, every individual has the right to obtain Indonesian citizen status, provided they meet the established requirements. This right is not granted automatically; rather, it is obtained after an individual can prove that they have met all the criteria and procedures required by law, thus legally being recognized as a citizen.

For women, the right to citizenship is a fundamental right that must be guaranteed. This means that every woman has the right to citizenship as long as she complies with applicable legal procedures. This principle is also in line with international legal instruments, such as Article 15 of the Universal Declaration of Human Rights (UDHR), which affirms that everyone has the right to a nationality and that it may not be arbitrarily revoked.

3. Women's Rights in the Field of Education and Teaching

Education is a fundamental need for every human being because it plays a crucial role in improving the quality of life, shaping thought patterns and behavior, and even influencing socio-economic conditions. Access to education can be obtained through formal, non-formal, and informal channels.

In the context of human rights, everyone has the right to receive a decent education,

regardless of gender. This means that women have the same rights as men to education at all levels. With equal access, women can develop their potential and contribute fully in various areas of life.

4. Women's Rights in the Professional and Employment Sectors

Based on the principle of equality, women have a series of rights that must be fulfilled in the workplace, starting from the stages before, during, and after employment. In the initial stage, namely before starting work, a woman has the right to have the same opportunities as men to apply for and get a job. This means that recruitment should not be based on gender, but rather must be entirely based on a woman's abilities and competencies. This allows for a fair and non-discriminatory selection process. While working, women have the right to receive wages commensurate with the tasks assigned. Women's rights in the workplace include guarantees of a safe and healthy work environment, as well as equal access to career development, both in the form of promotions and participation in training programs. When the employment relationship ends, women workers have the right to receive fair severance pay commensurate with the performance and quality of work achieved.

5. Women's Rights in Health

Women's health rights are particularly important because their biological condition makes them more vulnerable, particularly regarding reproductive functions. Women naturally experience natural processes such as menstruation, pregnancy, and childbirth, which require extra attention and protection.

Therefore, legal systems and health policies must provide adequate protection for women, including access to appropriate, safe, and quality health services. This protection is intended to enable women to carry out their biological functions without facing undue risks, while ensuring a better quality of life.

6. Women's Rights to Take Legal Actions

In the past, women were often placed in a subordinate position compared to men, so that to carry out legal actions they often had to obtain permission or be under male authority.

This situation clearly reflects inequality in legal standing.

Recognizing this inequality, various rights have begun to be recognized by law, both at the national and international levels. This recognition aims to ensure that women have full independence in carrying out legal actions, without needing to rely on male approval or direction.

7. Women's Rights in Marriage

In a marriage, if a husband and wife are unable to continue living together and decide to divorce, both have equal rights and obligations. This equality is crucial, especially when it comes to childcare and the division of joint property. After a divorce, both parties are entitled to a fair share of the assets acquired during the marriage.

Despite the guarantee of women's rights, they still face various difficulties in participating in the public sphere. Women from diverse religious backgrounds, regions, and socio-economic conditions often encounter barriers stemming from their own gender identity. These barriers are closely linked to patriarchal social, cultural, economic, institutional, and political discourses. (Hamzah & Salsabila, 2024)

In the political context, there are specific barriers that affect women's participation. These barriers can be grouped into three main forms: direct, fundamental, and structural:

a. Direct obstacles

These obstacles come from internal factors and conditions experienced directly by women, for example:

1. Low self-confidence in the world of politics;
2. Lack of skills and understanding of political issues;
3. Women are less interested in political issues;
4. Women have problems related to funds or financial resources;
5. Women lack confidence in participating in politics;
6. Women have difficulty getting involved in the political process;
7. Women have a large workload at home;

8. The number of women who are active members of political parties is still small;
9. Political parties are less supportive of women;
10. There is an assumption that politics is negative or unclear.

b. Fundamental obstacles

This category includes deeper barriers, both those stemming from the culture and structure of political parties, including:

1. Political culture is still masculine and dominated by men.
2. The political agenda of the party is more beneficial to men
3. Lack of internal party democratic practices
4. Political orientation that is too focused on the power of capital or business.
5. Election system
6. Practices of nepotism and elitism within the party
7. violence in the political sphere
8. The rise in corruption cases has lowered the political image.

b. Structural barriers

These types of barriers stem from broader social and institutional patterns, including:

1. There is a difference in the discussion between the public and private spheres.
2. There are forms of patriarchy in the public sphere as well as in the private sphere.
3. There are social behaviors that treat men and women in a patriarchal manner.
4. There is a tendency towards religious fundamentalism.

Women's participation in government is still hampered by various factors.constraints, which can be classified into several forms, namely:

a. Direct obstacles

The obstacles referred to include:

1. Limited job opportunities for women.
2. Lack of ability for women to move or move up in the world of work.
3. Lack of sufficient requirements or qualifications required.

4. The unemployment rate among women is still quite significant.

5. A culture that restricts women's freedom in choosing a profession.

6. There are acts of demeaning or showing sexually intimidating attitudes in the workplace.

b. Fundamental obstacles

1. There is a disproportionate number of men in top management positions and in decision-making.

2. There is freedom and the influence of a relaxed work culture in work.

3. The quota for women in certain policies or roles is still limited.

c. Structural barriers

These obstacles include:

1. Views on the roles of men and women
2. Cultural institutions that tend to emphasize male characteristics
3. There is a job market that is divided based on gender.

In addition to the barriers mentioned above, women also face various other challenges, including discursive or ideological barriers, socioeconomic constraints, political and institutional barriers, and personal factors related to psychology. These are outlined below:

1. Discursive/ideological barriers

A significant obstacle women often encounter when attempting to participate in the public sphere is the ideological construct that separates the private from the public sphere. Generally, there is a belief that work should be divided based on gender. In this view, women are positioned as "private citizens" with primary roles as mothers and wives within the home, while men are considered to have a more productive and dominant role in the public sphere.

The separation between the public and private spheres significantly shapes the opportunities available to Indonesian women. The gender role ideology that separates these two spheres often goes unrecognized, making it difficult for women to gain social recognition, leading to limited resources, both from family and government, to enhance their "human capital." This creates a vicious cycle: women

who lack financial resources also have less social and economic power. This situation creates significant barriers for women in their efforts to participate and compete in a political arena that is structurally dominated by men.

2. Socio-Economic Barriers

Patriarchal social values and cultural patterns in Indonesia limit women's freedom of movement in politics and government. Patriarchy can be understood as a social system that places men in a dominant position, while women are subordinate and potentially exploited. The tendency for men to dominate women is often associated with physical differences, with men perceived as strong because of their muscles, while women are perceived as weak. However, this patriarchal view is a social construct that continues to evolve with societal development. Biological differences should no longer be a reason to view women as powerless. With current advances in science and technology, women have the means to increase their strength and effectiveness in carrying out various roles in life.

Politics remains a predominantly male-dominated domain. While social and cultural conditions in Indonesia are diverse, and women face varying obstacles depending on their backgrounds, there are some common obstacles faced by all women in Indonesia due to the duties and responsibilities they take on in family matters. Women's involvement in society as a whole influences the structure of relationships between men and women and social behavior, which tends to be patriarchal. (National Commission on Violence Against Women, 2023)

According to a survey conducted by the United Nations Development Programme (UNDP), strongly patriarchal views regarding gender roles in Indonesia remain prevalent. The survey, which measured public attitudes and perceptions of women's roles in the social, economic, and political spheres, yielded alarming results:

- a. Data shows that 77.6% of respondents—consisting of men and women—still believe that men are the

main figures in decision-making and social leadership.

- b. As many as 95% of respondents confirmed the view that the role of head of the family should be held by a man.
- c. Meanwhile, 94% of respondents believe that women can only work if they have permission from their husbands.

The results of this survey reflect the continued widespread gender inequality in terms of knowledge, behavior, and habits in various regions of Indonesia.

Social and cultural practices that develop within a number of subcultures in Indonesia limit women's equitable access to productive resources and opportunities to develop their capacities. This situation contributes to women's limited capital, as they are rarely recognized as community leaders and lack independent authority and influence.

3. Political and Institutional Barriers

Post-New Order Indonesia has indeed transitioned to a democratic system, but the prevailing election regulations still tend to maintain the dominance of political elites. Voters are given the opportunity to choose parties and legislative candidates from a predetermined list, which was originally intended to reduce the monopoly of party leaders. However, in reality, this mechanism has not resulted in significant changes in the distribution of political power.

Women who are members of political parties and intend to run for legislative office are often placed at the bottom of the candidate lists released by the parties. One reason for this is the difficulty women face in negotiating. This situation indicates that political parties in Indonesia are still ineffective in developing and supporting female cadres.

Women often fail to secure key positions in political parties due to perceived political inexperience. As a result, they struggle to influence the party's agenda, especially when female candidates' campaigns lack optimal support from the party.

One of the main obstacles women face in formal politics is limited financial support, both from political parties and from female candidates themselves. This situation

highlights the need for Indonesia to continue reforms in the electoral, political, and institutional spheres to strengthen the democratic system. These reforms play a crucial role in expanding public participation and ensuring that women's voices and perspectives are included in the governance process.

Beyond financial factors, the lower literacy rates among some women compared to men also place them at a disadvantage. When women enter the public sphere, they often encounter institutional cultures, human resource management patterns, and bureaucratic regulations and systems that remain masculine. Many public institutions also lack adequate gender awareness, let alone the technical capacity to integrate gender issues into policies. (Prasetyo & Lestari, 2024)

As a result, women face significant difficulties in securing leadership or decision-making positions in the public sector. Furthermore, the absence of affirmative action exacerbates the gender gap at the management level of public institutions.

4. Personal and Psychological Barriers

In Indonesia, both the state and society often view women's roles narrowly as wives and mothers, placing them in a subordinate position to men. This view is then exploited to control women's lives and sexuality.

Women accustomed to their primary roles as family caregivers and reproductive actors tend to limit their political and public participation. Some of the personal and psychological barriers that hinder them include poor political skills, lack of self-confidence, the belief that politics is "dirty," and the heavy responsibility of caring for a family.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

It can be concluded that although Islam and national law in Indonesia grant women rights, many challenges and obstacles remain that hinder the realization of full gender equality. In Islam, human rights prioritize the principles of equality, freedom, and respect, where the only

difference between people is their level of piety. However, in practice, the strong patriarchal culture in Indonesia still results in women frequently experiencing discrimination and unfair treatment.

The human rights system is also generally considered masculine and patriarchal, as it focuses more on public issues and ignores domestic violence. The victims are predominantly women. Despite international efforts, such as the Convention on the Elimination of Discrimination against Women, its implementation has not resulted in significant change due to the perception that it prioritizes women's interests and erodes equality.

In Indonesia, many factors still hinder women's involvement in public life, such as politics and government. These factors include women's lack of interest and confidence in politics, male dominance, and the perception that politics is negative or "dirty." Furthermore, in the workplace, women also face issues such as sexual harassment and intimidation. Therefore, stronger and clearer action is needed to address these barriers, ensuring the rights and well-being of all people, especially women.

B. Suggestion

1. Strengthening the Implementation of Law: The government must be more active in providing understanding and implementing laws that protect women, such as Law Number 39 of 1999 and Law Number 23 of 2004, so that they are not just text on paper, but are actually implemented in society.
2. Education and Cultural Change: Communities need to be taught to stop practicing patriarchal culture that devalues women. This can be achieved through community campaigns, incorporating equality into school curricula, and engaging community and religious leaders to participate in fostering values of equality and mutual respect.
3. Women's empowerment: Improving women's access to education, training, and financial resources is crucial. This will increase women's

confidence and empower them to participate in public life, including politics and government.

4. Institutional reform: Political parties and government institutions need to make changes from within by removing masculine barriers and ensuring fair quotas or affirmative action for women in key positions

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