


The Philosophical of the Role of the Constitutional Court Related to the Certainty of Gender Equality Rights in Indonesia

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Abstract

Introduction: In the agenda of the supremacy of law in Indonesia, one of the tangible manifestations carried out is the establishment of the Constitutional Court in 2003. One of the powers of the Constitutional Court is judicial review which has a major role and influence in upholding human rights.

The Purposes of the Research: The purpose of this study is to analyze especially from the philosophical perspective of the role of the Constitutional Court in upholding certainty regarding gender equality in Indonesia. The main research authority is judicial review.

The Methods of the Research: The research method used in this study is a normative research method with a legal and philosophical approach. The method and approach will be used in examining the role of the Constitutional Court in upholding certainty regarding gender equality in Indonesia.

Results of the Research: A series of Constitutional Court decisions, including Number 22-24/PUU-VI/2008, demonstrates Indonesia's commitment to gender equality. These rulings changed election systems, ensuring equal opportunities for all candidates. The Court nullified affirmative action provisions in Law No. 10 of 2008, shifting from a 30% female representation goal. Decision Number 20/PUU-XI/2013 strengthened gender equality in politics, while Decision Number 82/PUU-XII/2014 supported women's electability in leadership roles. Decision Number 22/PUU-XV/2017 addressed gender-based discrimination in the Marriage Law. These decisions show the Constitutional Court's role in promoting gender equality, yet ongoing efforts are needed for further progress.

Keywords: The Constitutional Court; Human Rights; Inter Gender Rights.

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INTRODUCTION

One of the important tasks possessed by a modern state is to guarantee the inherent rights of its people, which are basically sourced and rooted in human rights. From a broader perspective, the birth of world peace is due to the desire of international community for peace so that human rights can be guaranteed and protected without exception.¹ This confirmation is substantiated by the inception of the Universal Declaration of Human Rights (UDHR) on December 10, 1948. The UDHR, a landmark document adopted by the United Nations General Assembly, serves as a foundational pillar in the realm of international

¹ Jessica Bain and Annick Masselot, "GENDER EQUALITY LAW AND IDENTITY BUILDING FOR EUROPE" 18 (n.d.).

human rights. Envisioned as a response to the atrocities of World War II, the declaration articulates fundamental rights and freedoms inherent to all individuals, regardless of nationality, ethnicity, or any other distinction. Its significance lies in providing a shared ethical framework that advocates for the dignity, equality, and rights of every person, laying the groundwork for subsequent human rights treaties and shaping the discourse on global justice and humanitarian values.² In Indonesia, the enforcement and protection of human rights existed before the birth of DUHAM in 1948. In the 1945 Constitution, the original text has been regulated regarding the inherent rights in Indonesian citizens. In its development, the 1945 Constitution underwent several changes along with economic, political, socio-cultural dynamics to other important factors. However, the implementation of these rights has not been fully realized properly. One of the problems that arises is the difference in opportunities and views between men and women. One of the factors that influence this is Indonesian culture itself. One of the influencing cultures is the culture developed in Java. Women, according to traditional culture, especially traditional Javanese culture, must submit to men, it turns out that this culture still exists nowadays even though it has been entered the understanding of gender equality from cultures outside Indonesia.³ The views and traditions contained in Javanese traditional culture cannot be entirely blamed if they are clashed with the understanding of gender equality, but this can be a cultural development for Javanese society to be more advanced and better, namely by adhering to gender equality in its culture.⁴ This emphasizes that there are still fundamental problems that have not been resolved yet in the Indonesian constitution, especially in its application.

In its development, Indonesian constitution underwent a very large constitutional political transition, one of which was the transition from the New Order period to the Reformation Order. One of the big agendas in the transition is the constitutional supremacy. One tangible manifestation of efforts in the constitutional supremacy in Indonesia is the establishment of the Constitutional Court. As asserted by Graziella Romeo that in general a country that adheres to a written constitution will regulate and emphasize Human Rights, in this case, the enforcement of the Human Rights is guaranteed by a strong constitutional judiciary.⁵ In Indonesia, the constitutional judiciary is the Constitutional Court. The Constitutional Court philosophically has an important role, namely as an enforcer of the ideology of Pancasila and the 1945 Constitution. At the implementation level, the Constitutional Court has one important position, namely as a human rights court, this is because the Constitutional Court is an institution that has the authority to examine the allegations of constitutional violations of human rights owned by the people in this case carried out by positive legislators, namely the House of Representatives (DPR) and / or the Government (President).⁶

The Constitutional Court has the authority to make corrections to legal products formed by the framers of laws. Therefore, the decisions of the Constitutional Court are often directly directed to the *addresat* of the decision to be able to follow up the decision of the Constitutional Court either by changing the law as a whole (through formal testing) or only

² Karel Vasak, "A 30 Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights," *Law J. Soc. & Lab. Rel.* 7 (n.d.).

³ Rifa' Rosyaadah and Rahayu Rahayu, "Protection of Women's Human Rights against Domestic Violence Cases in Indonesia in International Law Perspective," *Journal of Human Rights* 12, no. 2 (August 26, 2021): 261, <https://doi.org/10.30641/ham.2021.12.261-272>.

⁴ Rahmad Syafaat, *Women Workers, Legal Protection and Human Rights* (Malang: UM Publishers. Press, 2000).

⁵ Graziella Romeo, "The Conceptualization of Constitutional Supremacy: Global Discourse and Legal Tradition," *German Law Journal* 21, no. 5 (July 2020): 904–23, <https://doi.org/10.1017/glj.2020.50>.

⁶ Titon Slamet Kurnia, *The Constitution of Human Rights* (Bandung: Alumni, 2013).

part of it (through material testing). Therefore, the authority of the Constitutional Court which is the main topic of discussion in this study is the authority of *judicial review*.⁷ The main study in this study is to philosophically analyze the role of the Constitutional Court in the certainty of gender equality in Indonesia.

There are several previous studies that discuss the role of the Constitutional Court in upholding citizens' rights and human rights. In Titon Slamet Kurnia's research (2013) which focuses more on theoretical affirmation that the Constitutional Court through the authority of *judicial review* has an important role in protecting human rights.⁸ Then the research made by Janedjri M. Gaffar (2013) focuses on the background of the birth of the Constitutional Court which has a role in protecting human rights through its two authorities, namely testing laws against the Constitution and deciding disputes over election results.⁹ Saldi Isra (2014) in his research examines the existence of several articles regulating Human Rights and the role of the Constitutional Court in protecting Human Rights through *judicial review*.¹⁰ The next related research is made by Benito Asdhie Kodiyat MS and Eza Ista Maulida Sinaga (2019), the focus of their research emphasizes the protection carried out by the Constitutional Court through *constitutional complaints*.¹¹ From several previous studies that have been described, it can be said that this research has its own originality. The novelty values contained in this study are focusing on the role of the Constitutional Court in upholding the certainty of gender equality in Indonesia, especially women's rights. In this study, there are two research objectives to be answered. First, what is the reality of the existence of women's rights in the constitution and laws in Indonesia? Second, what is the role of the Constitutional Court in the equality of gender equality rights in Indonesia?

METHODS OF THE RESEARCH

The research method used in examining the role of the Constitutional Court in the certainty of gender equality rights equality in Indonesia is normative legal research. Normative legal research is defined as research related to legal standards contained in legal regulations and court decisions. Legal research can also be called doctrinal legal research.¹² In normative legal research, law is often conceptualized as what is written in law (law in book) or law is conceptualized as rules or legal standards that are norms of people's behavior that is considered appropriate.¹³ The main material in normative research is literature material.¹⁴ The primary sources in this study are the 1945 Constitution, several related laws and several Constitutional Court Decisions. Secondary legal materials in this study were sourced from journals, various references from books and other related studies. The approach used in this study is a philosophical approach.

⁷ In this study, the authors used the name *judicial review* because it is more commonly used than *constitutional review*.

⁸ Titon Slamet Kurnia, "PROTECTION OF HUMAN RIGHTS THROUGH LEGAL EXAMINATION BY THE CONSTITUTIONAL COURT," *Yuridika* 28, no. 2 (September 2, 2015), <https://doi.org/10.20473/ydk.v28i2.1884>.

⁹ Janedjri M. Gaffar, "The Role of Constitutional Court Decisions in the Protection of Human Rights Related to the Conduct of Elections," *Constitutional Journal* 10, no. 1 (May 20, 2016): 1, <https://doi.org/10.31078/jk1011>.

¹⁰ Saldi Isra, "The Role of the Constitutional Court in Strengthening Human Rights in Indonesia," *Constitutional Journal* 11, no. 3 (May 20, 2016): 409, <https://doi.org/10.31078/jk1131>.

¹¹ Benito Asdhie Kodiyat Ms, Eza Ista Maulida Sinaga, and Faculty of Law, University of Muhammadiyah North Sumatra, "The Authority of the Constitutional Court in Protecting the Constitutional Rights of Citizens through Constitutional Complaint," *DE LEGA LATA: Journal of Legal Sciences* 4, no. 1 (July 30, 2019): 160-74, <https://doi.org/10.30596/dll.v4i2.3174>.

¹² Jonaedi Efendi and Johnny Ibrahim, *Normative and Empirical Legal Research Methods* (Depok: Kencana, 2018).

¹³ Efendi and Ibrahim.

¹⁴ Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory and Practice)* (Depok: Raja Grafindo Persada, 2018).

RESULTS AND DISCUSSION

A. The Reality of the Existence of Women's Rights in the Constitution and Law in Indonesia

One of the important issues that has become a pseudo-problem in law enforcement in Indonesia is "pseudo" discrimination against women. Women are often the most vulnerable parties in gender discrimination and violence due to disparities between men and women in daily life. Regarding the problem of unfair discrimination that women often face, starting from social status, viewing and giving a bad stigma that women mean weak humans so they deserve to be victims.¹⁵ Efforts in enforcing the fulfillment of women's rights are also part of the fulfillment of human rights. Historically, there is a view that women are not necessarily or even unable to fill positions or positions that should be filled by men, but instead men can fill positions that should be filled by women, such a view positions women weaker than men that have an impact on the existence of human rights attached to women.¹⁶ Throughout history, women have been unjustly perceived as weak and inferior globally. This bias, deeply rooted in cultural and societal norms, has limited women's access to education and opportunities, relegating them to subordinate roles. Systemic challenges, perpetuated through literature, religion, and laws, have normalized gender stereotypes. Despite these obstacles, women have shown resilience and made contributions. Progressive movements advocating for women's rights have led to legal and social reforms, challenging historical narratives. While progress has been made, recognizing the historical context is essential for addressing persisting challenges and advancing gender equality.¹⁷ In its development, movements emerged that aimed to improve the status of women in all aspects. One of the major movements was the feminist movement. In this global era, the feminist movement is getting bigger. Andrew Heywood, in his book entitled "*POLITICAL IDEOLOGIES: An Introduction*" says that feminism always has a global orientation, namely the desire to develop female brotherhood, where the movement is transnational.¹⁸ Before discussing the regulation of women's rights in the constitution and laws in Indonesia, it is necessary to briefly examine several international legal instruments that have affirmed women's rights. The discrimination against women continues in many parts of the world, showing that understanding and efforts to achieve gender equality still face many obstacles.

In the context of discrimination against women in law enforcement in Indonesia, the theoretical view of Liberal Feminism is highly relevant. Liberal Feminism emphasizes the pursuit of gender equality through legal and institutional reforms. The described "pseudo" discrimination occurred reflecting persistent disparities between men and women, in terms of social status and defence of negative stigma. Liberal Feminism argues that individuals should have equal rights and opportunities regardless of gender.¹⁹ The narrative presented, in which women are considered weak and inferior, emphasizes the need for legal and social change to challenge such gender stereotypes. This theory advocates reforms in laws and policies to eliminate discriminatory practices that restrict women's access to education,

¹⁵ Rini Maryam, "TRANSLATING THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) INTO LAWS AND REGULATIONS," *Journal of Indonesian Legislation* 9, no. 1 (2012).

¹⁶ Helen H. Yu, "An Examination of Women in Federal Law Enforcement: An Exploratory Analysis of the Challenges They Face in the Work Environment," *Feminist Criminology* 10, no. 3 (2015): 259-78.

¹⁷ Ranjoo Seodu Herr, "Women's Rights as Human Rights and Cultural Imperialism," *Feminist Formations* 31, no. 3 (2019): 118-42, <https://doi.org/10.1353/ff.2019.0033>.

¹⁸ Andrew Heywood, *Political Ideologies: An Introduction, 5th Edition* (London: Palgrave Macmillan, 2012).

¹⁹ P. Priyadharshini et al., "Authenticity of Liberal Feminism in Namita Gokhale's Texts," *Linguistics and Culture Review* 5, no. S1 (July 8, 2021): 46-59, <https://doi.org/10.21744/lingcure.v5nS1.1312>.

opportunities, and increase their vulnerability.²⁰ Describing the historical perspective that women are unfairly regarded as weak and the efforts of the progressive movement to align with the Liberal Feminism agenda to eliminate systemic inequalities. The feminist movement, as a cross-border force, aims to address global issues related to women's rights and challenge stereotypes that place women as inferior. Consideration of international legal instruments that recognize women's rights is also in line with Liberal Feminism, which seeks to shape and strengthen the legal framework that promotes gender equality globally. The recognition of the existence of discrimination against women throughout the world underlines the need for sustained efforts to gender equality, which is a core principle of Liberal Feminism.²¹ Overall, the issues raised, in particular discrimination against women and efforts to address gender inequalities, can be analyzed from the perspective of Liberal Feminism, which advocates legislative and institutional changes to ensure equal rights and opportunities for all, regardless of gender.

After the Second World War, the United Nations ratified the *Universal Declaration of Human Rights* (UDHR) in 1948. Basically, the declaration affirms the protection to human rights without exception throughout the world as a form of the realization of world peace. Many views say that the UDHR is the most important achievement of peace after the second world war. The UDHR was announced on December 10, 1948, approximately three years after the end of the Second World War, a turning point in the history of the idea of human rights. Although non-binding, after the publication of this declaration, human rights have settled in the middle of the world of thought and politics, have become an integral part of international relationship and have become a global moral norm.²² UDHR is a revolution that has had a major influence in the international relationship and has affected many people since its founding. It is an important document that has been part of international customary law so far in the UN system. In addition, the main way to apply human rights principles is through UN treaties and declarations. In this case, the UDHR becomes an important basis. The UDHR has guided the development of all subsequent human rights treaties, including racial discrimination, women's rights, disability rights, and children's rights.²³ It can be said that one of the important issues regulated in the UDHR is women's rights. Then, one of the important conventions in the effort in upholding women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UN General Assembly in December 1979 and first ratified by Sweden in July 1980. CEDAW essentially protects a series of civil basic rights, political, economic, and social rights for women.²⁴ Indonesia itself has ratified CEDAW through Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. The CEDAW was born in 1979 as a response to global gender inequality. The international community is aware of the need for concrete action to address discrimination against women. With its entry into force in 1981, the

²⁰ Amy R Baehr, "A Capacious Account of Liberal Feminism," *Feminist Philosophy Quarterly* 3, no. 1 (March 23, 2017), <https://doi.org/10.5206/fpq/2016.3.4>.

²¹ Purwarno Purwarno, Sylvia Mardhatillah, and Andang Suhendi, "Liberal Feminism in Ika Natassa's Novel Critical Eleven," *KnE Social Sciences*, March 11, 2021, 559–81, <https://doi.org/10.18502/kss.v5i4.8712>.

²² G. Birinci, "A Brief History of the Universal Declaration of Human Rights I: From the League of Nations to the United Nations," *Neşehir Hacı Bektaş Veli University Journal of Science* 7, no. 2 (2017): 50–81.

²³ Mustafa Burak Şener, "A Review of the Meaning and Importance of the Universal Declaration of Human Rights," *International Journal of Political Studies* 7, no. 3 (December 28, 2021): 15–25, <https://doi.org/10.25272/icps.962292>.

²⁴ Wade M. Cole, "Government Respect for Gendered Rights: The Effect of the Convention on the Elimination of Discrimination against Women on Women's Rights Outcomes, 1981-2004," *Government Respect for Gendered Rights*, *International Studies Quarterly* 57, no. 2 (June 2013): 233–49, <https://doi.org/10.1111/isqu.12000>.

CEDAW established international standards for the protection of women's rights in various areas of life. The Convention reinforces the global commitment to gender equality, provides a legal basis for States to combat discrimination and ensures the protection of women's rights as an integral part of human rights.²⁵

In Indonesia, the highest foundation in upholding human rights and citizens' rights is affirmed in the 1945 Constitution. If it is compared to the 1945 Constitution before the amendment, basically, the regulation of human rights has been comprehensively regulated in the 1945 Constitution. In the 1945 Constitution after the amendment, Human Rights is comprehensively regulated in a separate chapter, namely in Chapter XA which consists of 10 articles (Article 28A to Article 28J). If we look at each article, it is clear that gender equality has been applied in the recognition and enforcement of human rights in Indonesia. This can be seen from the use of the diction "Everyone" in the affirmation of rights affirmed in the 1945 Constitution. Jimly Asshiddiqie believes that the core material in a Constitution is material on Human Rights.²⁶ It can be said that the attention of the Indonesian state both de facto and de jure to Human Rights has existed since the beginning of the drafting of the 1945 Constitution, until the preparation of GBHN in 1993. Other legislative actions to strengthen attention and support for the upholding of human rights are the issuance of MPR Tap No. XVII / MPR / 1998 concerning Human Rights, the establishment of Komnasham through Presidential Decree Number 50 of 1993 and continued with the issuance of Law Number 39 of 1999 concerning Human Rights.²⁷ Thus, in Indonesia there is a law that regulates and affirms specifically regarding to Human Rights, namely Law Number 39 of 2009 about Human Rights.²⁸ If it examined in the law, there will be no explicit regulation and specific affirmation of women's rights.

In Indonesia, there are several laws and regulations that specifically regulate women's rights (either in the sense of the whole law or in part of the article) which are as follows:

1. The Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

This is one of the important moments in the world of Indonesian legislation in an effort to position women's rights equal to men. This law ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which was adopted by the United Nations General Assembly on 18 December 1979. However, if we look closely, there are inhibiting factors from the implementation of CEDAW through this law. As written in the explanation of Law Number 7 of 1984, the application of the convention must be adapted to the life of the community which includes cultural values, customs and religious norms that are still valid and widely followed by the people of Indonesia. This clearly emphasizes that there will be friction in the implementation of CEDAW against the patriarchal paradigm that is still inherent in the culture and customs in Indonesia.²⁹

²⁵ Emma Stone Mackinnon, "Declaration as Disavowal: The Politics of Race and Empire in the Universal Declaration of Human Rights," *Political Theory* 47, no. 1 (February 2019): 57-81, <https://doi.org/10.1177/0090591718780697>.

²⁶ Jimly Asshiddiqie, *Pokok-Pokok Hukum Tata Negara Indonesia Pasca Reformasi* (Jakarta: PT Bhuana Ilmu Komputer, 2007).

²⁷ Lukman Hakim and Nalom Kurniawan, "Building a Paradigm of Indonesian Human Rights Law Based on Human Obligations," *Journal of the Constitution* 18, no. 4 (February 17, 2022): 869, <https://doi.org/10.31078/jk1847>.

²⁸ Then Law Number 26 of 2000 concerning Human Rights Courts was also formed, as well as Ad Hoc Human Rights Courts to resolve certain cases, this Law is part of the mandate of Law Number 39 of 1999 concerning Human Rights.

²⁹ On some accounts, religion also influences this.

2. The Law Number 13 of 2003 concerning Employment³⁰

The outline contained in Law Number 13 of 2003 concerning Employment is the government's effort to provide opportunities for women workers not to carry out work in certain conditions, places, and times.³¹ This restriction is regarding to the condition of women who are naturally different from men. Basically, women are not prohibited from doing work, but are limited based on the consideration that the woman is weak physically and to maintain her health and decency. In this law, specific arrangements regarding women's rights are strictly regulated in Articles 81 to 83. The existence of this law is considered very important, because in its practice, women workers are vulnerable to sexual harassment and violence in the workplace. This happens due to the existence of a patriarchal paradigm that places women as sexual objects.³²

3. The Law Number 23 of 2004 concerning the Elimination of Household Violence

The phenomenon of violence that occurs in the household has become a separate discourse in the daily life of Indonesian people. In general, it can be said that in the kinship structure in Indonesia, men are placed in a dominant position (patriarchy), namely as the head of the family. This reality results in the ego attitude of men, because other family members become very dependent on men. Such superior males position often causes them to become very powerful in the midst of the family environment.³³ Even when men commit various violent deviations against other family members where women and children are the main victims no one can prevent it, this often happens in the household. The establishment of the Household Violence Law, which contains the criminalization of violence acts against women and children, is an effort that has been pioneered for a long time to create a comfortable and peaceful social environment free from violence.³⁴

4. The Law Number 12 of 2006 concerning Citizenship

A group of citizens who are considered to require special treatment is women. Women, often considered as second-class human beings who are below men, often get discriminative treatment.³⁵ The important point contained in this law in terms of efforts in protecting and enforcing women's rights is the principle of non-discrimination. In the explanation of Law Number 12 of 2006 concerning Citizenship, it is stated that the principle of non-discrimination is a principle that does not distinguish treatment in all matters related to citizens on the basis of ethnicity, race, religion, class, sex and gender. The important emphasis in this regard is the absence of distinction in the treatment of all matters related to sex and gender.

³⁰ It has been repealed through the Job Creation Law which in its development was changed to Government Regulation in Lieu of Law (Perpu) Number 2 of 2022 concerning Job Creation.

³¹ Mulyani Djakaria, "LEGAL PROTECTION FOR WOMEN WORKERS TO OBTAIN WORKERS' RIGHTS IS RELATED TO REPRODUCTIVE HEALTH," *Journal of Bina Mulia Hukum* 3, no. 1 (September 24, 2018): 1–14, <https://doi.org/10.23920/jbmh.v3n1.2>.

³² Desia Rakhma Banjarani and Ricco Andreas, "Protection and Access to the Rights of Women Workers in Indonesia: A Review of Law Number 13 of 2003 concerning Manpower Under ILO Conventions," *Journal of Human Rights* 10, no. 1 (July 19, 2019): 115, <https://doi.org/10.30641/ham.2019.10.115-126>.

³³ Elias Zadrach Leasa, "Legal Aspects of the Spirit of Law No. 23 of 2004 on the Elimination of Domestic Violence," *SASI* 24, no. 2 (February 28, 2019): 168, <https://doi.org/10.47268/sasi.v24i2.131>.

³⁴ Sabungan Sibarani, "PROSPECTS FOR LAW ENFORCEMENT OF THE LAW ON THE ELIMINATION OF DOMESTIC VIOLENCE (PKDRT LAW)," *Journal of Human Rights* 7, no. 1 (2016).

³⁵ Eko Triadi da Praku Purba, Lita Tyesta, and Amiek Soemarmi, "PROTECTION OF WOMEN AND CHILDREN'S RIGHTS TO CITIZEN STATUS IN MARRIAGE BETWEEN INDONESIAN CITIZENS AND FOREIGN NATIONALS IN SINGKAWANG," *DIPONEGORO LAW JOURNAL* 5, no. 4 (n.d.).

5. The Law No. 21/2007 on the Eradication of Trafficking³⁶

Trafficking is one of the worst treatments of the violations of human dignity and worth, most commonly trafficking committed against women and children. This phenomenon has been widespread in the form of both organized and unorganized crime networks.³⁷ The phenomenon of trafficking in women and children has long developed in various countries, such as Saudi Arabia, Japan, Malaysia, Hong Kong, Taiwan, Singapore and including Indonesia.³⁸ It can be said that women and children are the most victims of human trafficking. Generally, they are traded for sexual purposes. Other forms of exploitation include forced labor and slavery. It is an inescapable heartbreaking reality that among many trafficking cases, women have always been easy targets. This is increasingly happening along with the strong paradigm that says that the figure of a woman who is often identified with a gentle nature, is helpless. This makes it a stigma and motivation for human sellers.³⁹ Thus, this law has a very important role in protecting women, especially from trafficking.

6. The Law Number 2 of 2011 concerning The Amendments to The Law Number 2 of 2008 concerning Political Parties

In this law, women's rights that are emphasized are rights related to politics. Especially in the Indonesian political system so far, women are positioned only as *second persons* in politics. This has an impact on the low participation of women in political institutions, which ultimately results in various women's interests being less accommodated in a number of political decisions. This is because a number of political decisions made tend to be masculine and less gender-perspective, while most political decisions made always involve women as targets.⁴⁰ In Law Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties, there are several articles that affirm women's rights in politics. In Article 2 paragraph (2) it is affirmed that in the establishment and formation of a political party must include 30% (thirty hundredths) of women's representation. Then in Article 2 paragraph (5) it is affirmed that the management of political parties at the central level is prepared by including at least 30% (thirty hundredths) of women's representation. This confirms that women are given a special right in the political system in Indonesia, especially in this case regarding their representation.

7. The Government Regulation in Lieu of Law (Perpu) Number 1 of 2022 concerning The Amendments to the Law Number 7 of 2017 concerning General Elections

This law also provides the main regulation regarding women's rights in the political field. In Article 173 paragraph (2) point e it is affirmed that at least 30% (thirty percent) of women's representation must be included in the management of political parties at the central level. This affirmation is in line with what has been affirmed in Article 2 paragraph (5) of The Law Number 2 of 2011 concerning The Amendments to Law Number 2 of 2008 concerning Political Parties.

³⁶ Several articles in this law have been repealed through Law Number 1 of 2023 concerning the Criminal Code.

³⁷ Dadang Abdullah, "LEGAL PROTECTION OF VICTIMS OF CHILD AND WOMEN TRAFFICKING," *Al-Adl : Journal of Law* 9, no. 2 (November 8, 2017): 231, <https://doi.org/10.31602/al-adl.v9i2.945>.

³⁸ Abdullah.

³⁹ Yenny Chandrawaty, "LAW ENFORCEMENT AND STATE RESPONSIBILITY TOWARDS WOMEN VICTIMS OF HUMAN TRAFFICKING AS A FORM OF HUMAN RIGHTS PROTECTION," *Journal of Indonesian Legislation* 17, no. 4 (December 30, 2020): 459, <https://doi.org/10.54629/jli.v17i4.755>.

⁴⁰ Very Wahyudi, "The Role of Women's Politics in Gender Perspective," *Politea : Journal of Islamic Politics* 1, no. 1 (April 10, 2019): 63–83, <https://doi.org/10.20414/politea.v1i1.813>.

Apart from the above laws and regulations, there are also several other efforts made by the government in an effort to improve gender equality in this case to position women as well as possible through related regulations. In fact, currently, the existence of women's rights is not fully in accordance with what has been guaranteed in the law. The main factor that influences this is the patriarchal culture that grows and develops in the midst of Indonesian society. Thus, it comes to a conclusion in this sub-chapter that women's rights in Indonesian laws and regulations have basically been regulated and affirmed, but at the implementation level, it still faces a problem, therefore legislative efforts in strengthening women's rights are considered still less than optimal.

B. The Role of the Constitutional Court in Gender Equality in Indonesia

The Constitutional Court is one of the state institutions that has an important role in the Indonesian constitution. This can be seen especially in the position of the Constitutional Court as a *negative legislature* against laws that contradict the 1945 Constitution. The authority related to this matter is *judicial review*, which examines the 1945 Constitution and Pancasila abstractly. Through this authority, the Constitutional Court is also positioned as *the guardian of human rights*. Mahfud MD views that the nature of legal products is largely determined by the political configuration that gave birth to them.⁴¹ As we know that most of the leadership in Indonesia is filled by men. So, if it is drawn with what was conveyed by Mahfud MD, the content contained in a law will lead to patriarchal culture. In the previous sub-chapter, it has been studied in several existing laws and regulations in Indonesia, that there have been efforts through legislation in strengthening women's rights. But in fact, there are still circumstances where women are still positioned as "second parties" in certain circumstances. The Constitutional Court as a negative legislature *has an important role in efforts to make corrections to legislation products made by positive legislature*.

Pancasila and the 1945 Constitution become the reference used by the Constitutional Court in examining an article, part or all of a law. As discussed earlier, the 1945 Constitution has expressly regulated human rights. So, it can be said that indirectly the Constitutional Court also examines a law whether it contradicts with human rights or not. The role of the Constitutional Court as a protector of human rights can be seen from the interpretations contained in its rulings. Jimly Asshiddiqe views that the implementation of a constitutional rule on legislation can be effectively guaranteed if there is an organ that is outside the legislature. The organ is given the task of examining the product that has been formed by the legislator, whether a legal product is constitutional or not, and does not enforce it if it is unconstitutional. For this reason, special organs such as special courts called the Constitutional Court can be held.⁴² I Dewa Gede Palguna on an occasion once said that the Constitutional Court's decision was basically parallel to the law. No wonder in its development, the Constitutional Court leads to *judicial activism* because it often positions as a *positive legislature*, which is ordering the framer of the law to make a change in accordance with what the Constitutional Court decides in its ruling. The directive conveyed by the Constitutional Court by Fajar Laksono Suroso was called a *constitutional mandate*.⁴³

⁴¹ Moh. Mahfud MD, *Legal Politics in Indonesia* (Jakarta: Raja Grafindo Persada, 2014).

⁴² Queensly Siska Seroy, Flora P. Kalalo, and Maarthen Y. Tampanguma, "COMPETENCE OF THE CONSTITUTIONAL COURT IN UPHOLDING HUMAN RIGHTS," *Lex Administratum* IX, no. 6 (2021).

⁴³ Fajar Laksono Suroso, *Portrait of the Constitutional Court-Legislator Relationship (Confrontational or Cooperative)* (Yogyakarta: Genta Publishing, 2018).

In terms of fighting for women's rights, the Constitutional Court has a passive role. It is said to have a passive role because the Constitutional Court will only test a law against the 1945 Constitution if someone wants to test it. The existence of the Constitutional Court was motivated by the thought of the need for a constitutional court to be formed to maintain the principle of constitutional supremacy. In accordance with the substance contained in the constitution, one of the functions possessed by the Constitutional Court is to protect human rights. This function is carried out through the authority possessed, especially the authority to examine laws that have been carried out by the Constitutional Court.⁴⁴ Basically, the legal recourse available to citizens whose constitutional rights are violated, especially women's rights, or neglected by public or government officials can only maintain and obtain constitutional protection through the constitutional judicial process in the Constitutional Court through the mechanism of legal review of the Basic Law as stated in the provisions of Article 24C of the 1945 Constitution.⁴⁵ Philosophically, the existence of *judicial* review authority possessed by the Constitutional Court aims to provide justice and legal certainty for applicants for legal review.⁴⁶ The Constitutional Court as a law enforcer, has a role in conducting an examination of all forms of injustice to women's rights. Therefore, if it is considered that there is an article, part or all of the law, has resulted in injustice to women's rights, it can be tested to the Constitutional Court.

The Constitutional Court of Indonesia (MK) plays a strategic role in ensuring gender equality in the country, and the perspective of Liberal Feminism theory can guide the understanding of its involvement. As the highest legal enforcement institution, the MK has the responsibility to uphold principles of gender equality through the fair interpretation and application of the law. Aligned with the doctrine of Liberal Feminism, the MK can play a key role in ensuring that laws and government policies do not discriminate based on gender and can provide a strong legal foundation to protect women's rights. The application of this theory can be observed in MK decisions supporting women's reproductive rights and health, combating discrimination in public and private spheres, and providing legal protection against gender-based violence. Additionally, the MK can support women's political participation by assessing laws related to women's political rights and endorsing measures that strengthen women's roles in the political structure. Thus, guided by the principles of Liberal Feminism, the MK can serve as a catalyst for change towards a more just and equal society for all genders in Indonesia.

In its development, there are several decisions of the Constitutional Court regarding women's rights in Indonesia, namely as follows:

1. The Constitutional Court Decision Number 22-24/PUU-VI/2008

There are two important points in this ruling. First, basically the decision of the Constitutional Court Number 22-24 / PUU-VI / 2008 has had positive implications for affirmative action policies for women's representation in the Provincial and Regency / City Parliaments throughout the Special Region of Yogyakarta. This is because every legislative candidate has the same opportunity to fight for the most votes in the 2009 Legislative Election. Second, when the Law No. 10 of 2008 still uses the list of sequence numbers, the position of women in the list of candidates, majority in the lowest sequence number, as a

⁴⁴ M. Gaffar, "The Role of Constitutional Court Decisions in the Protection of Human Rights Related to the Conduct of Elections."

⁴⁵ Febri Handayani and Lysa Angrayni, "Implementation of Protection of Constitutional Rights of Citizens by the Constitutional Court According to the Constitutional System in Indonesia," *Riau Law Journal* 3, no. 1 (May 30, 2019): 44, <https://doi.org/10.30652/rj.v3i1.6252>.

⁴⁶ Backy Krisnayuda, *Pancasila and Law (Relations and Transformation of Both in the Indonesian Constitutional System)* (Jakarta, 2021).

result, female candidates are difficult to get seats because if the votes do not reach the automatic divisor number the votes will be given to the sequence number above them, but with the most votes model, the chances of female candidates are greater to be elected. Third, women's representation in the DIY Provincial DPRD increased when compared to the results of the 2004 election, from 9 seats in the 2009 election to 12 seats. Thus, this Constitutional Court ruling has encouraged women to work harder in order to get seats in the DPR and DPRD.

2. The Constitutional Court Decision Number 22-24/PUU-VI/2008

As for the legal impact of the Constitutional Court Decision Number 22-24 / PUU-VI / 2008 on affirmative action efforts in the Law Number 10 of 2008, the meaninglessness of the provisions of Article 53 and Article 55 paragraph (2) of the Law No. 10 of 2008 which regulates affirmative action efforts through a quota of 30% female representation and a zipper system (intermittently, in 3 candidates there is at least 1 female candidate).

3. The Constitutional Court Decision Number 20/PUU-XI/2013

Basically, this decision examines the constitutionality of Article 215 letter (b) and the Explanation to Article 56 paragraph (2) of the Law Number 8 of 2012 concerning the Election of Members of the DPR, DPD and DPRD. Through the Constitutional Court ruling, it has provided legal certainty for temporary special measures for women to increase representation in parliament.⁴⁷

4. The Constitutional Court Decision Number 82/PUU-XII/2014

In this ruling, the Constitutional Court upheld the electability of women to occupy the leadership seats of DPR fittings, namely the Commission, the Legislation Body, the Budget Agency, the Inter-Parliamentary Cooperation Agency (BKSAP), the Honorary Court of the Council, the Household Affairs Agency (BURT), and the Special Committee. In ruling consideration, the panels argued that based on the Court's decisions related to women's political rights and various provisions of the Law, affirmative action political policies towards women have become the political policy of state law as an effort to provide equal opportunities to certain groups of people.

5. The Constitutional Court Decision Number 22/PUU-XV/2017

One of the important points contained in this Constitutional Court decision is the examination of Article 7 paragraph (1) of the Marriage Law which has caused discrimination on sex or gender which has an impact on the non-fulfillment of girls' rights as part of the human rights guaranteed in the 1945 Constitution. The Constitutional Court Judge, Eddy Nurbaningsih, said that The Constitutional Court Decision Number 22/PUU-XV/2017 basically also ordered the framer of the law to make changes to the norm in order to provide legal certainty and eliminate discrimination caused by the provisions of the norm. In this decision, Article 7 paragraph (1) along with the phrase "age of 16 (sixteen) years" of The Law Number 1 of 1974 concerning Marriage is contrary to the Constitution of the Republic of Indonesia Year 1945 and has no binding legal force, and orders the framer of the law to within a maximum period of 3 (three) years make changes to the Law Number 1 of 1974 concerning Marriage, especially with regard to the minimum age of marriage for women.

⁴⁷ Ani Purwanti, "Implementation of Constitutional Court Decision Number 20/PUU-XI/2013 on the Determination of Women Legislative Candidates in Central Java Province" 14, no. 4 (2017).

Before it is amended, the provisions of Article 7 paragraph (1) of the Law Number 1 of 1974 concerning Marriage still apply.⁴⁸

The Constitutional Court Decision Number 22-24/PUU-VI/2008 had significant positive implications for women's representation in parliament elections in the Special Region of Yogyakarta. The decision replaced the list sequence numbers with a model based on the most votes, ensuring equal opportunities for every legislative candidate. Moreover, it rendered the provisions of Article 53 and Article 55 paragraph (2) of Law No. 10 of 2008 regarding affirmative action meaningless, signaling a shift away from the quota and zipper system aimed at achieving 30% female representation. In a similar vein, the Constitutional Court Decision Number 20/PUU-XI/2013 provided legal certainty for temporary special measures to increase women's representation in parliament. This decision supported efforts to address gender disparities in political representation and emphasized the importance of such measures. The Constitutional Court Decision Number 82/PUU-XII/2014 upheld the electability of women in leadership seats within the DPR fittings. Recognizing affirmative action political policies as essential for providing equal opportunities to specific groups, including women, the decision highlighted the role of such policies in achieving gender equality in political spheres. Furthermore, the Constitutional Court Decision Number 22/PUU-XV/2017 addressed discrimination in the Marriage Law's Article 7 paragraph (1) related to the minimum age of marriage for girls. The decision emphasized the need for legal changes to eliminate gender-based discrimination and ensure equal rights for girls as part of human rights. Collectively, these Constitutional Court decisions underscore Indonesia's commitment to promoting gender equality. They reflect efforts to eliminate discriminatory practices, create a legal framework ensuring equal opportunities for women in political participation, representation, and protection of their rights, aligning with constitutional principles and international conventions. However, continued efforts are necessary to address existing challenges and further advance gender equality in Indonesian society.

CONCLUSION

In Indonesia, existing cultural and customs norms are still closely aligned with patriarchal values, affecting the realization of human rights, especially those relating to women. In response to this reality, the government has enacted several laws that fully or partially address and recognize women's rights, with the aim of ensuring legal certainty and justice for women. This issue has attracted international attention, as evidenced by various international conventions dedicated to protecting women's rights, such as the CEDAW convention that has been ratified. Despite legislative efforts, the effectiveness of these measures is considered questionable, especially given the male dominance in key government roles, which affects the nature of the legal framework. The Constitutional Court therefore plays an important role as an authority capable of correcting legal products deemed inconsistent with human rights, including women's rights. Philosophically, the Constitutional Court, as the guardian of the law, has the responsibility to protect human rights, fundamental aspects enshrined in the 1945 Constitution and enforced in judicial review cases. While the government has enacted laws that recognize women's rights, the Liberal Feminism theory emphasizes the importance of legislative and institutional reforms

⁴⁸ Moch. Muhibbin, "Legal Implications of Constitutional Court Decisions on the Protection of Women and Children's Rights," *YUDISIA : Journal of Islamic Legal and Legal Thought* 13, no. 2 (December 31, 2022): 199, <https://doi.org/10.21043/yudisia.v13i2.15754>.

to gender equality. MK, as the highest law enforcement agency, uses the judicial review test authority to ensure the legal compatibility with gender principles. MK's investigations reflect efforts to balance and protect the rights of women, in accordance with the principles of Liberal feminism. The MK, by enforcing these principles, can help create a more inclusive and equitable legal framework, as well as overcome gender inequalities in the Indonesian legal system, contributing to a shift towards a more equitable society for all genders. The involvement of the Constitutional Court in promoting gender equality, in particular women's rights, is reflected in various decisions, such as Constitutional Tribunal Decision No. 22-24/Law-VI/2008, Constitution Court Decision Number 22-24-Law - VI/2008, Decision Constitutional court No. 20/Low-XI/2013, Decision of Constitutional Courts No. 82/LOW-XII/2014, and Decision constitutional Court Number 22/Lowy-XV/2017.

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