



Review of the Constitutional Court's Decision Number: 82/PUU-XII/2014 on Women's Representation in Parliament in the Perspective of Legal Feminism

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Abstract

Introduction: This study analyzes the Constitutional Court Decision Number: 82/PUU-XII/2014 which is a critical basis and an important basis for resolving the problem of women's representation in legislative institutions. Despite various legal provisions ensuring women's representation, challenges in practical implementation persist.

Purposes of the Research: The research aims to examine the Constitutional Court's reasoning on the concept of women's representation and assess the consistency of equality principles through the lens of legal feminism.

Methods of the Research: This study employs a normative juridical research method with a descriptive approach, focusing on the judicial interpretation of women's representation and its impact on affirmative policies in politics.

Findings of the Research: The findings reveal that Decision Number: 82/PUU-XII/2014 reflects efforts to protect women's constitutional rights by reinforcing the phrase "prioritizing women's representation," despite its lack of explicit regulation. The study also indicates that the Constitutional Court consistently applies legal feminism principles to ensure equal opportunities in legislative institutions. However, the repeal of gender affirmative measures in Law Number: 17 of 2014 on MD3 has led to legal uncertainty, disadvantaging women.

Keywords: Women's Representation; Legal Feminism; Gender Equality.

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INTRODUCTION

A society is a collection of individuals who live together and interact with each other. In social interaction, each individual has interests that can trigger conflicts between members. This phenomenon causes disturbances in social life that are detrimental, considering that humans basically crave security, justice, and welfare.¹ In Indonesia, patriarchal culture is still strong even though modernization is beginning to erode it. More and more women are daring to express their opinions in the public sphere. Article 28I paragraph (2) of the 1945 Constitution clearly guarantees the equal right for all citizens, both men and women, to express their opinions.² The Islamic perspective as stated in the Qur'an Surah Al-Mumtahanah verse 8 explains that Allah teaches His people to always do good and act just, including to anyone who does not oppress them. This is in accordance with the spirit of feminism, where the principle of justice contained in this surah teaches the importance of

¹ Muslim, Ikhwanul, Hasanuddin Hasanuddin, and Muhammad Nurcholis Alhadi. "Analisis Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023 Tentang Batas Usia Calon Presiden Dan Calon Wakil Presiden Sebagai Landmark Decision." *Jurnal Penelitian Ilmu Sosial dan Eksakta* 4, no. 1 (2024): 88-97.

² Anifatul Kiftiyah, "Perempuan Dalam Partisipasi Politik Di Indonesia," *Jurnal Yuridis* 6, no. 2 (2019). Bunyi Pasal 281 ayat (2) UUD, yakni "Setiap orang berhak bebas dari perlakuan yang bersifat diskriminatif atas dasar apapun dan berhak mendapatkan perlindungan terhadap perlakuan yang bersifat diskriminatif".

giving equal rights without discrimination, including to women. Islam explains that women have the right to fair and equal treatment. This verse also reflects the universal meaning that justice is not an exclusive right for a particular group, but rather a fundamental right that is guaranteed to every individual. This is in line with the spirit of feminism that fights for gender equality and rejects all forms of injustice against women.

Women's representation in parliament has existed since the formation of the first parliament, although their role is often symbolic. Women's involvement in politics is very important, because it is part of human rights.³ However, the dominance of men in Indonesian politics hinders the achievement of gender equality, especially in strategic decision-making where women's rights are still politicized and mobilized in the name of democracy,⁴ In Indonesian politics, the power of Trias Politika is dominated by men. This dominance has been known since the era of the first President until now. Even during the royal period, the majority of leaders also came from men. Patriarchal culture has been firmly rooted in the mindset of Indonesian society, including in the political realm. Women are often underestimated in terms of politics because they are considered less able to compete with men.⁵ Ambiguity in the regulation of women's representation guarantees, especially regarding the minimum quota of 30%, can trigger various interpretations and are difficult to measure. This has the potential to create legal uncertainty. This abolition has the potential to hinder gender equality in political decision-making, given that women already experience discrimination in access and opportunities to occupy strategic positions in parliament.

The dominance of men in the leadership of the House of Representatives weakens women's representation and perspective in policy. The issue of "politics is not for women" has long limited the role of women, creating marginalization even in small-scale politics. Given the number of women being more than men, they should have a balanced representation. This representation is crucial to ensure policies that support women's interests, both at the regional, national, and global levels. Unfortunately, women's involvement is often limited, less independent, and has little impact in public policy.⁶

Survey projections estimate that women will only fill about 22.1% of the seats in the House of Representatives (128 out of 580 seats) after the 2024 election. This data shows that the majority of political parties participating in the 2024 election have not succeeded in achieving the target of 30% female representation in candidacy in each constituency.⁷ Then, the Constitutional Court's decision No. 82/PUU-XII/2014 was born in response to the amendment of Law Number: 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives, which omitted the phrase "paying attention to women's representation" in articles related to the leadership of the fittings of the House of Representatives. In contrast to the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives, Law Number 27

³ Venatius Hadiyono, "Memaknai Perempuan Dalam Kursi Parlemen," *Kisi Hukum* 14, no. 1 (2015).

⁴ Loura Hardjaloka, "Potret Keterwakilan Perempuan Dalam Wajah Politik Indonesia Perspektif," *Jurnal Konstitusi* 9, no. 2 (2012).

⁵ Parid Sidik, "Keterwakilan Perempuan Dalam Politik Di Indonesia Perspektif Legal Feminism," *Sustainability (Switzerland)* 11, no. 1 (2019).

⁶ Isnaini Rodiyah, "Keterwakilan Perempuan Dalam Dewan Perwakilan Rakyat Daerah," *JKMP (Jurnal Kebijakan Dan Manajemen Publik)* 1, no. 1 (2013).

⁷ Perludem, "Ketangguhan Perempuan Politik Jadi Faktor Peningkatan Keterwakilan Perempuan DPR Hasil Pemilu 2024," perludem.org, 2024, <https://perludem.org/2024/03/29/ketangguhan-perempuanpolitik-jadi-faktor-peningkatan-keterwakilan-perempuan-dpr-hasil-pemilu-2024/> diakses pada tanggal 05/10/2024 pukul 16.24 WITA

of 2009 previously guaranteed the involvement of women in every leadership structure of the House of Representatives through several articles, including Article 95 paragraph (2), Article 101 paragraph (2), Article 106 paragraph (2), Article 119 paragraph (2), Article 125 paragraph (2), Article 132 paragraph (2), and Article 138 paragraph (2). However, the elimination of the guarantee of women's representation has caused protests from various community groups, especially women's organizations that fight for gender equality in the political realm.

Women have a better understanding of their needs, such as reproductive health, child education, and discrimination. Therefore, women's participation in political decision-making is essential to prevent discrimination and produce more inclusive policies that impact women themselves,⁸ by presenting a legal feminist theory that has a framework of thought that focuses on gender equality and women's empowerment in various aspects of life,⁹ in feminist legal theory, the ideal law should be fair to all individuals, regardless of gender. Everyone has the same right to autonomy and opportunity, including in the legal and political fields. This theory emphasizes that the law must support gender equality, including through the return of guarantees for women's representation in the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives.

The loss of women's representation guarantees in the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives Number 17 of 2014 shows a setback in the protection of women's political rights. However, the Constitutional Court Decision No. 82/PUU-XII/2014 strengthens the principle of legal feminism by emphasizing the importance of women's representation according to the balance of the number of members of each faction. This is in line with efforts to create gender equality, both in quantity and quality, in the political realm. Based on the description above, it is important to examine more deeply about women's representation in politics, especially after the amendment of the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives which removed the guarantee of representation. This is relevant to assess whether the principle of gender equality in the perspective of legal feminism has been implemented consistently, so as to strengthen the role of women in the political decision-making process in Indonesia.

METHODS OF THE RESEARCH

The research approach applied in this study is normative juridical. This means that this research will examine secondary data, such as literature and laws and regulations relevant to the issue being researched.¹⁰ This type of research is descriptive-analytical. The case approach was used to analyze the decision of the Constitutional Court Number: 82/PUU-XII/2014 as a case study. This research explores the background of the decision, the legal considerations used by the Constitutional Court, and its impact on women's representation in the political realm. In addition, this study also uses a conceptual approach to analyze

⁸ Abraham Nurcahyo, "Relevansi Budaya Patriarki Dengan Partisipasi Politik Dan Keterwakilan Perempuan Di Parlemen (The Relevance of Patriarchal Culture to Women's Political Participation and Representation in Parliament)," *Agasty: Jurnal Sejarah Dan Pembelajarannya* 6, no. 01 (2016).

⁹ Helmi Yusuf, "Partisipasi Perempuan Dalam Pemilu 2024: Komparasi Perspektif Hukum Keluarga Islam Dan Feminisme," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3, no. 2 (2023).

¹⁰ Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*. (UI Press Depok)

concepts related to women's representation, gender equality, and the perspective of feminism in law. The secondary data of this study was taken from relevant documents. The secondary data of this study consists of primary legal materials, including the Constitutional Court Decision Number 82/PUU-XII/2014, the 1945 Constitution, the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives Number 27 of 2009, and the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives Number 17 of 2014. Secondary legal materials obtained from related journals are also used to deepen the understanding of primary legal materials. The data that has been obtained are then analyzed descriptively to provide an overview of the application of legal feminism theory in the context of the Indonesian legal state. Qualitative analysis was carried out to interpret the data, relate the theory of legal feminism to the legal facts found, and analyze the consistency of these rulings with the principles of equality in the perspective of legal feminism.

RESULTS AND DISCUSSION

A. *Constitutional Supremacy and Feminist Legal Theory*

The concept of constitutional supremacy emphasizes that the constitution has the highest position in the country's legal system, in a democratic legal country such as Indonesia, the 1945 Constitution of the Republic of Indonesia is the basis of state power, with laws that regulate the exercise of power to remain based on the constitution, to ensure the supremacy of the constitution, the Constitutional Court was established as the guardian of the constitution, as introduced by Hans Kelsen. The Constitutional Court has the responsibility to ensure that all legal products are in accordance with the constitution. In addition, the Constitutional Court is also authorized to resolve disputes between state institutions, decide on the dissolution of political parties, and handle disputes over the results of general elections. The existence of the Constitutional Court is the implementation of the principle of mutual control and balance of power in the constitutional system. The vision of the Constitutional Court is a guideline in exercising judicial power independently and responsibly, in accordance with the mandate of the constitution.¹¹ The Constitution itself has a role as the basic law of the state, which regulates the division of power, relations between institutions, basic rights of citizens, and limits state power. It must be concise, flexible, and relevant to the times, and have legitimacy through public participation in the process of drafting and changing.¹² This is important to ensure the quality of the constitution as the main foundation in the national legal system.

The Constitutional Court plays the role of the guardian of the constitution so that it remains relevant and becomes the foundation in the life of the nation and society. This is in accordance with the mandate of Article 24C Paragraph 1 of the 1945 Constitution and Article 10 of the Constitutional Court Law, which states that the Constitutional Court is authorized to examine and decide certain cases related to the constitution at the first and last level, with a final decision,¹³ In carrying out the judiciary, the Constitutional Court must be guided by the provisions of procedural law, as applies to other judicial bodies that also exercise judicial

¹¹ M. Fadly Hasibuan and Iza Rumesten, "Reorientasi Kewenangan Judicial Review Di Mahkamah Konstitusi Berdasarkan Prinsip Supremasi Konstitusi," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 22, no. 2 (2023): 42-55.

¹² King Faisal Sulaiman, "Teori Dan Hukum Konstitusi" (Bandung: Nusa Media, 2019).

¹³ Jimmly Asshiddiqie, *Perkembangan Dan Konsolidasi Lembaga Negara* (Jakarta: Jakarta Bumi Aksara, 2010).

power.¹⁴ Meanwhile, feminist Legal Theory is a theory that criticizes gender-based injustice in law. This theory is rooted in feminist thought that includes various schools such as liberal, radical, cultural, and postmodern feminism, based on feminism, feminist legal theory builds a proposition to affirm the fight against injustice and discrimination, especially in the field of law. Feminist Law Theory highlights masculine biases in the law that often ignore women's rights. This school reveals that the law reflects a patriarchal dominant ideology, thus hindering gender justice, with this approach, Feminist Law Theory seeks to create a legal system that is more equitable and responsive to women's needs, both through criticism and legal reform.

B. Constitutional Court Judges' Considerations on the Meaning of the Concept of Women's Representation in the A Quo Case

1. Application of the Petitioners

The Petitioners in the Constitutional Court Decision Number: 82/PUU-XII/2014 submitted a material examination of several articles in the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives Number 17 of 2014. They argue that these articles eliminate the provisions on women's representation that were previously in Law Number 27 of 2009. The articles tested are Article 97 paragraph (2), Article 104 paragraph (2), Article 109 paragraph (2), Article 115 paragraph (2), Article 121 paragraph (2), Article 152 paragraph (2), and Article 158 paragraph (2).

The Petitioners consist of individuals and organizations who are concerned about gender equality issues, including: 1) Khofifah Indar Parawansa, Petitioner I; 2) Rieke Diah Pitaloka, Applicant II; 3) Prof. Dr. Ir. Aida Vitayala Sjafri Hubeis, Applicant III; 4) Yuda Kusumaningsih, Applicant IV; 5) Lia Wulandari, Applicant V; 6) Women's Voice Empowerment Movement Foundation (GPSP), Applicant VI; 7) Association for Elections and Democracy (Perludem), Applicant VII; 8) Gender Partners Association, Petitioner VIII. The Applicant considers that the abolition of the provisions on women's representation violates Article 28D paragraph (1), Article 28H paragraph (2), and Article 28J paragraph (2) of the 1945 Constitution. This eliminates women's right to obtain convenience and special treatment in order to achieve equality and justice in the political process. According to the Petitioner, although the constitution does not explicitly regulate the quota for women's representation, the Constitutional Court has previously stated that the policy of women's representation of 30% is a form of constitutional affirmative action. This step is considered important to increase women's participation in strategic positions in the House of Representatives, Regional Representative Councils, and Regional House of Representatives. The petitioner also cited several obstacles that cause gender inequality in politics, such as: 1) Economic limitations, which make it difficult for women to compete; 2) Lack of mastery of political structures, which makes women more easily eliminated; 3) Patriarchal culture, which puts women in domestic roles; 4) Strict moral standards, which discourage women from using unethical means to compete.

In the subject matter of the application, the Petitioner stated that the abolition of the provisions on women's representation in the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives has an impact on the lack of legal protection for women's rights to

¹⁴ Siahaan Maruarar, *Hukum Acara Mahkamah Konstitusi Republik Indonesia (Edisi Kedua)* (Jakarta: Sinar Grafika, 2022).

participate in strategic positions in the House of Representatives. The petitioner requested that the guarantee of women's representation of at least 30% be explicitly included in the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the House of Regional Representatives to ensure the achievement of substantial gender equality. The Applicant also proposes that the articles tested are not considered contrary to the 1945 Constitution as long as they are interpreted to contain the obligation to fulfill women's representation according to the balance of the number of members of each faction. This rule is considered to be in line with the principle of affirmative action as a step towards gender equality and justice mandated by the 1945 Constitution.

The petitioner asserts that the abolition of women's representation violates their constitutional right to equal opportunities in government, as well as hinders the improvement of democracy and the institutional structure of the state. Although the House of Representatives claims that women's representation has been regulated in the House of Representatives Regulation No. 1 of 2014 concerning the Code of Conduct, the Petitioner argues that such arrangements should be contained in a separate law to ensure the sustainability of the policy. The President, in his statement, stated that the tested provisions do not prevent women from occupying leadership positions in state institutions, even opening up wider space for women's active participation in the process

2. Judge's Consideration

The Constitutional Court emphasizes the importance of substantive justice, especially in guaranteeing women's rights in parliament. The judge considered that the abolition of the provision for women's representation has the potential to eliminate legal certainty and violate the principle of gender equality as stipulated in the 1945 Constitution. In accordance with the Judicial Power Act, the judge's consideration is the opinion used by the judge to make a decision. The judge must consider the mitigating and aggravating factors of the perpetrator, and write these considerations in the decision.¹⁵ Although in submitting an application for testing the Law, it is required that there are constitutional losses suffered by the Applicant, in reality the Constitutional Court's decision prioritizes the public interest over personal interests.¹⁶

The judge's decision as a legal action to resolve the dispute submitted to him is a state action carried out based on the authority given by the 1945 Constitution and the.¹⁷ The Constitutional Court's decision is final and binding on all parties since it was pronounced, in this case, the Court affirmed that although the Law on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional House of Representatives does not explicitly mention women's representation, it should not be a reason to ignore women's rights in obtaining special treatment in order to achieve equal opportunities in state institutions. In addition, the Court stated that affirmation policies such as women's representation quotas are concrete steps to support gender equality, in accordance with the mandate of Article 28H paragraph (2) of the 1945 Constitution. Arrangements related to women's representation are considered in line with the values of democracy and social justice in Pancasila. However, the government and the

¹⁵ Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Prespektif Hukum Progresif* (Jakarta: Grafiti, 2011).

¹⁶ Rapita DD, "Dasar Pertimbangan Hukum Putusan Hakim Mahkamah Konstitusi Terkait Pelaksanaan Pileg Dan Pilpres Tahun 2014 Dan 2019," Brawijaya University, 2014.

¹⁷ Ikhwanul Muslim, S.H., M.H. *Kupas Tuntas Putusan Mahkamah Konstitusi Atas Pencalonan Kepala Daerah* (DEEPUBLISH, 2023).

House of Representatives argued that provisions related to women's representation had been regulated in the Regulation of the House of Representatives Number 1 of 2014 concerning the Code of Conduct, so further arrangements were considered unnecessary. The Court considered that although such arrangements exist, there needs to be a stronger legal basis in the form of legislation to ensure its sustainability.

3. Development of Women's Representation

Women's representation in politics is one of the main indicators of gender equality in state life. Indonesia has made various efforts to increase women's involvement in the political sphere, both through affirmative policies, laws, and civil society support. However, women's representation still faces major challenges, especially after the removal of rules related to women's representation in Law Number 17 of 2014. Prior to the enactment of Law Number 17 of 2014, Law Number 27 of 2009 regulated the importance of paying attention to women's representation in the fittings of the House of Representatives. This rule is the first step towards gender equality even though its implementation has not been maximized. The Constitutional Court's decision Number: 82/PUU-XII/2014 is a turning point, although it does not explicitly restore the women's representation clause, so there is still a legal gap in the protection of this right.

Although this clause is not included in the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives, the interpretation of the Constitutional Court that prioritizes women's representation provides opportunities for them to occupy strategic positions. Data shows an increase in the number of female candidates in the House of Representatives. Women's participation in elections continues to increase, as seen from the increase in the number of female candidates for members of the House of Representatives from 2,061 (37.4%) in the 2014 election to 3,200 (40%) in the 2019 election. However, this increase has not been in line with the representation of women in parliamentary seats. In the 2019 election, only 20.5% of the 575 seats in the House of Representatives were won by women.

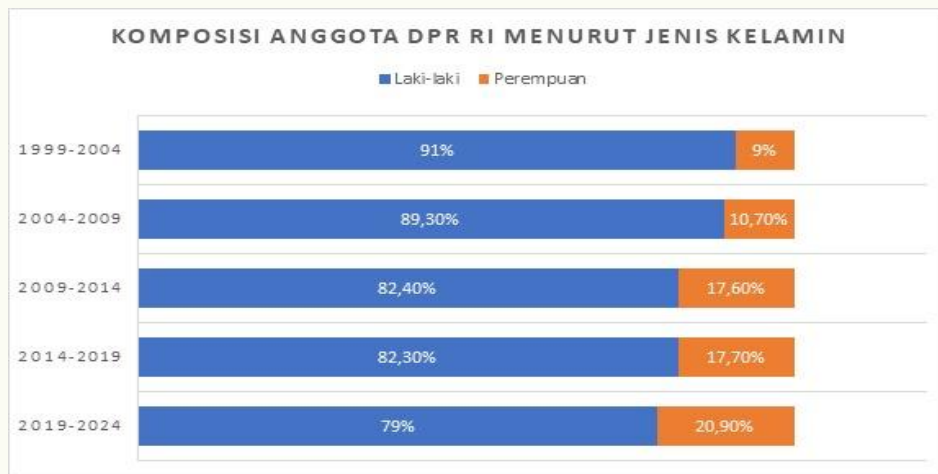
Table 1. Comparison of Women's Representation in the 2014 Elections, 2019 Elections, and 2024 Elections

No	Political Party	2014 Elections	2019 Elections	2024 Elections	Seat and Percentage Change
1	PKB	10 (21,28%)	12 (20,68%)	14 (25,00%)	Ride 2 Seats and Ride 4,32%
2	Gerindra	11 (15,07%)	13 (16,66%)	19 (22,09%)	Ride 6 Seats and Ride 5,43%
3	PDIP	21 (19,27%)	25 (19,53%)	27 (21,50%)	Ride 2 Seats and Ride 1,97%
4	Golkar	16 (17,58%)	19 (22,35%)	20 (23,53%)	Ride 1 Seats and Ride 1,18%
5	NasDem	4 (11,43%)	19 (32,20%)	20 (33,90%)	Ride 1 Seats and Ride 170%
6	PKS	1 (2,50%)	8 (16,00%)	9 (18,75%)	Ride 1 Seats and Ride 2,75%
7	PAN	9 (18,37%)	7 (15,91%)	9 (20,45%)	Ride 1 Seats and Ride 4,54%
8	Demokrat	13 (21,31%)	10 (18,52%)	9 (16,67%)	Get off 1 seat and get off 1,85%

Source: General Election Commission of the Republic of Indonesia, 2019 and Antara News, 2024

In 2021, the General Election Commission also reported on women's representation in the legislature. There are 118 women occupying seats in the House of Representatives of the Republic of Indonesia out of a total of 575 seats or equivalent to 20.52%, and 42 women from 136 seats in the House of Representatives of the Republic of Indonesia, which is equivalent to 30.88%. This data shows an increase in women's representation in strategic positions, including the election of the Speaker of the House of Representatives of the Republic of Indonesia and the first female Deputy Chairperson of the People's Consultative Assembly of the Republic of Indonesia for the 2019-2024 period. In the executive realm, the number of female ministers has increased to 5, which was previously dominated by men. In addition, there are several female Regional Heads and Deputy Regional Heads, including 1 Governor, 3 Deputy Governors, 14 Regents/Mayors, and 17 Deputy Regents/Deputy Mayors.¹⁸

According to the records of the General Election Commission, there are 10,323 prospective legislative members from 18 political parties competing in the 2024 election. The composition consisted of 3,896 women (37.7%) and 6,427 men (62.3%). This figure shows that women's representation in legislative candidacy has exceeded the minimum quota of 30%. Historically, women's representation in the Permanent Candidate List of the House of Representatives has continued to increase from 37% in the 2014 election, to reach 40% in the 2019 election.¹⁹ However, Bawaslu noted that 17 out of 18 political parties have not met this quota in all constituencies (dapil). From the 1955 election to 2019, women's representation in the House of Representatives has never reached 30%, with the highest proportion in the 2019 election at 20.5% of the total members of the House of Representatives.²⁰



Source: General Election Commission, Processed by Kompas R&D

Figure 1. Composition of Members of the House of Representatives of the Republic of Indonesia by Gender

The data shows that until now women's representation in parliament has not reached the expected 30% quota. The Constitutional Court's ruling on women's representation has accommodated some of the applications, but has not been significant enough to show

¹⁸ Marsyifa Novia Fauziah, Mochamad Faizal Rizki, and Rachmat Ramdani, "The Tantangan Keterwakilan Perempuan Dalam Politik Formal," *Jurnal Ilmu Pemerintahan Widya Praja* 49, no. 1 (2023): 12-22.

¹⁹ Andrian W. Finaka, et.al, "37,7% Calon Legislatif di Pemilu 2024 adalah Perempuan", [indonesiabaik.id](https://indonesiabaik.id/infografis/377-calon-legislatif-di-pemilu-2024-adalah-perempuan), <https://indonesiabaik.id/infografis/377-calon-legislatif-di-pemilu-2024-adalah-perempuan> diakses pada tanggal 17/12/ 2024 pukul 18.30 WITA.

²⁰ Kendar Umi Kalsum, "International Women's Day dan Keterwakilan Perempuan Indonesia dalam Parlemen", [kompas.id](https://www.kompas.id/baca/riset/2024/03/08/hari-perempuan-internasional-dan-keterwakilan-perempuan-indonesia-dalam-parlemen), 2024, <https://www.kompas.id/baca/riset/2024/03/08/hari-perempuan-internasional-dan-keterwakilan-perempuan-indonesia-dalam-parlemen> diakses pada tanggal 18/12/ 2024 pukul 16.09 WITA.

substantial progress. Other factors such as financial, social, and voter support also affect women's participation in politics. Although the female representation rate increased to 20.9% in the 2019–2024 period²¹, these results have not been optimal to achieve the expected gender equality.

C. Consistency of Equality Principles in the Perspective of Legal Feminism to the Decision of the Constitutional Court Number: 82/PUUXII/2014

Legal feminism was born as part of the feminist movement in the United States. This school highlights the importance of paying attention to women's perspectives in law, considering that the implementation of the law often does not accommodate women's needs and rights, in many cases, legal theories, legal systems, and their implementation tend to be masculine and patriarchal, so that women are placed in vulnerable and underprotected positions. As a result, the law fails to provide adequate protection for women, even reinforcing structural injustices. Moreover, the legality of the law that fails to protect women's rights can have a direct impact on their losses and worse, reinforce injustices that degrade women's position in society.²² Law as an instrument of the state has great potential to regulate the social order, but a gender-biased approach often harms women. The patriarchal character of the law creates a space where it is difficult for women to develop. This injustice not only affects women's daily lives, but also their opportunities to engage in political and social decision-making.

1. The Journey of Gender Equality in Politics

Gender equality is a fundamental principle that must be integrated in all aspects of law, including efforts to empower women in the political field. Although there have been various policies to increase women's representation, the reality is that there are still many challenges that must be faced. Women's representation in political structures has not yet reached the ideal level, where women are not only present but also play an active role.

In Indonesia, the journey of women's representation in parliament shows significant dynamics. In the 1999 election, only 9.2% of parliamentarians were women, this figure increased to 11.81% in the 2004 election, and jumped to 18% in the 2009 election. The peak occurred in the 2019-2024 period with female representation reaching 20.5%, the highest achievement in the history of the Indonesian parliament.²³ Affirmation rules regulated in Law Number 7 of 2017 concerning Elections play an important role in encouraging women's representation. The policy stipulates that each political party must nominate at least 30% women on the list of legislative candidates, and implements a "zipper" system, which requires that 1 in 3 candidates on the list be women. Female figures who fight from the bottom or have a background in women's activism are still minimal, mostly due to various reasons that make them not included in the legislative candidacy market.²⁴ However, although these rules helped increase the number of women in parliament, the results were far from ideal. Of the total 575 members of the House of Representatives of the Republic of Indonesia for the 2019-2024 period, only 20.5% are women. In addition, the majority of women elected come from political dynasties, while the number of women activists or

²¹ *Ibid.*

²² Op Cit, Nur Azizah, "Aliran Feminis Dan Teori Kesetaraan Gender Dalam Hukum," *SPECTRUM: Journal of Gender and Children Studies* 1, no. 1 (2021)

²³ Komisi Pemilihan Umum, "Lampiran Keputusan KPU No 1318/PL.01.9-Kpt/06/KPU/VIII/2019 Tentang Penetapan Calon Terpilih Anggota Dewan Perwakilan Rakyat Dalam Pemilihan Umum Tahun 2019," 2019.

²⁴ Juniar Laraswanda Umagapi, "Representasi Perempuan Di Parlemen Hasil PEMILU 2019: Tantangan Dan Peluang," Pusat Penelitian Badan Keahlian DPR RI, 2020, 21.

candidates from the grassroots remains minimal. This reflects that the existence of an affirmation system alone is not enough to overcome the structural obstacles faced by women in the world of politics.

Women's participation in elections continues to increase thanks to the rules on women's representation in the House of Representatives of the Republic of Indonesia maintained by the General Election Commission for the 2024 Elections. Election Law Number 7 of 2017 requires political parties to nominate at least 30% women in each constituency, and General Election Commission Regulation Number: 20 of 2018 regulates sanctions for those who do not meet the quota. Pramono stated that this provision effectively encourages the party to give strategic positions to women in candidacy.²⁵ Women's low political participation is an important concern. Research on 18 members of the House of Representatives/Regional Representatives of women for the 2019-2024 period and several other female politicians found that internal factors, such as education level, organizational experience, experience, and communication patterns, as well as external factors, such as patriarchal culture and lack of gender-based political education, played an important role in the low participation. Therefore, political education based on gender needs provided by political parties is crucial to increase women's participation in politics.²⁶

2. Challenges and Expectations

The General Election Commission plans to maintain the rules for women's representation in the 2024 elections, arguing that this policy has succeeded in increasing women's participation. However, this step must be accompanied by efforts to ensure that elected women can make a real contribution to pro-women policies, as well as improve the quality of women's representation in political decision-making. The achievement of 20.5% female representation in the 2019 election is a step forward that should be appreciated, but it must also be a momentum to encourage more inclusive and meritocracy-based women's involvement. Only then can the law be a truly fair and equal tool for all parties.

According to legal feminism, gender equality means providing equal rights and opportunities between men and women in aspects of life, such as education, political rights, family, social, cultural, economic, and others²⁷, related to gender equality in feminism, the law is defined as an equal situation between men and women in the fulfillment of rights and obligations that include equal access to resources, the opportunity to participate in political, economic, social, and cultural decisions, and protection from discrimination based on sex.²⁸ Meanwhile, gender justice focuses on treatment that is appropriate to the needs of each gender to ensure true justice.²⁹ In parliament, these two principles complement each other to create an inclusive and representative space for all parties, with a legal feminism approach, parliament is expected to be a forum that not only reflects the needs of all genders, but also removes barriers that prevent women from fully participating. Gender equality

²⁵ FC. Farisa, "KPU Bakal Pertahankan Aturan Soal Jumlah Keterwakilan Perempuan di DPR", https://nasional.kompas.com/read/2019/07/26/11285161/kpu-bakal-pertahankan-aturan-soal-jumlahketerwakilan-perempuan-di-dpr#google_vignette diakses pada 4/12/2024 pukul 21.09 WITA.

²⁶ Theresia Parwati and Kuspuji Istiningdiah, "Partisipasi Dan Komunikasi Politik Perempuan Di Legislatif Menurut Kacamata Politisi Perempuan Di Indonesia," *Interaksi: Jurnal Ilmu Komunikasi* 9, no. 2 (2021): 119-29.

²⁷ *Op Cit*, Rasyidin and Fidhia Aruni, *Gender Dan Politik: Keterwakilan Wanita Dalam Politik*, Unimal Press, 2016.

²⁸ Rahmat Wijayanto J, "Analisis Gender Dalam Bingkai Kewarganegaraan Dan Pembangunan Hukum Di Indonesia," *Qistie* 10, no. 2 (2017): 95-107

²⁹ Puspitawati Herien, "Pengenalan Konsep Gender, Kesetaraan Dan Keadilan Gender," Makalah Yang Disajikan Pada Rapat Koordinasi Kesetaraan Gender Se Wilayah 1, 2015

realized through regulations needs to be accompanied by systemic changes to create a fairer and more inclusive political environment.

CONCLUSION

The Constitutional Court made a ruling taking into account the importance of affirming women's representation in parliament, reflecting the recognition of the structural injustice that occurred due to the removal of the women's representation clause from the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives. The court opted for a moderate solution by using the term "prioritizing women's representation," which still opens up opportunities for women to occupy strategic positions without interfering with the principle of consensus deliberation. Although it does not explicitly set a 30% quota, the ruling emphasizes the importance of legal commitment to the protection and promotion of women's rights in the political sphere. This is in line with the principle of legal feminism, as seen from the Court's efforts to ensure equal rights and opportunities between men and women in strategic positions. The Constitutional Court's Decision Number: 82/PUU-XII/2014 also affirms that the elimination of gender affirmations in the Law on the People's Consultative Assembly, House of Representatives, Regional Representative Councils, and Regional House of Representatives creates legal uncertainty that is unfair to women. Thus, the Court has reflected the principle of gender justice as one of the main elements of legal feminism. Although not expressly stated, the representation of women in the Law on the People's Consultative Assembly, the House of Representatives, the House of Regional Representatives, and the Regional House of Representatives still reflects the values of legal feminism. Therefore, this decision shows a step forward in promoting gender equality, while at the same time emphasizing the importance of protecting women's rights in Indonesia's legal and political system.

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