



Research Article

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Gender Specificity in Democratic Elections: International Implementability as an Exemplary for Indonesian Political Landscape

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Abstract

Women's participation in the electoral field is very important to be guaranteed by the state. In practice, there is often an imbalance in the number of female and male members. There needs to be a special policy to accommodate women's rights in these elections. This paper aims to examine how the legal construction in the electoral field is responsive to the right of women to participate. The method of approach used in this study is the socio-legal approach. The results found that the legal construction of gender justice-based elections to the electoral system is by increasing women's representation through the zipper system or alternating position between men and women in elections. In addition, this mechanism should be mutually agreed upon in various technical arrangements to implement this mechanism design.

Keywords: democratic election, gender justice, legal construction, zipper mechanism, women rights

1. Introduction

The United Nations Declaration on Human Rights in 1948 emphasized the individual right of equality, freedom and dignity. This affirmation is a symbol of community life with a vision of the need to respect the humanity of everyone regardless of race, religious and political beliefs, language and gender (Eapen & Kodoth, 2003). The women's protection clause, which is a constitutional provision specifically protecting women's rights, is one of the most important contributions. In implementing the protection of women's status and rights, various world bodies and national agencies in many countries have adopted clauses to guarantee women's rights in the domestic and public sphere. However, due to differences in societal character and national culture faced in each country, these various clauses need to be chosen with more attention to cultural challenges. This clause should not be relied on as an exclusive mechanism to promote the protection of women's law. Some forms of support needed to implement women's protection include the legalization of women's rights and status, networking and advocacy to strengthen the role of women as well as the social support. Supporting aspects also cover the constitutional and judicial sphere which is democratic and gender oriented (Lucas, 2009).

Women's participation in politics, in this case the election competition, is something that is very important to be guaranteed by the state. This is in line with Nelson and Chowdhury's (1994) statement that the active participation of women in the election competition is an indication of the rapid growth of democracy in every country today (Rai, 2017). Democracy requires the participation

and inclusion of women and gender equality policies, especially in the public sphere (Schönsteiner et al., 2011). However, in practice there has been an imbalance in the number of female and male members in the Indonesian parliament. This has happened since Indonesia held its first General Election, from 1955 to the 2014 Election, which has been regulated in several laws and regulations related to the General Elections, such as the Political Party Law and the Election Law, concerning quotas that must be met by political parties participating in the General Election.

Special policies need to be considered to enable women the opportunity to gain positions on the social and political stage, bearing in mind that the basic principle of democratic state of life is that every citizen has the right to take an active part in the political process. One of the basic requirements for the implementation of democratic governance under the rule of law is constitutional protection, in the sense that the constitution aside from guaranteeing individual rights, must also determine procedural ways to obtain protection for guaranteed rights. Justice demands the importance of fair distribution of all opportunities, roles, positions, and social rights or values contained in society (Artina, 2016).

This paper aims to find out the factors that influence women's representation in the election. It is expected to provide the reasonable urgency of increasing women's political representation in the election. In addition, by knowing the factors that influence women's representation in elections, it is necessary to think of a legal construction that takes into account the fulfillment of gender-based political rights. This paper was structured to five parts. First part was introduction, followed by second part discussing the approach. Third part discussed the reality of women's political representation in Indonesia's legislative elections, mainly highlighting the number of women's representation in elections that have not met the quota as required by legislation. Fourth part discussed the factors which influence the representation of women in elections, followed by fifth section discussing the construction of laws on the fulfillment of gender equality political rights. This section offers a form of legal construction in the field of elections based on gender equity and national values.

2. Research Methods

This work was conducted with a socio-legal approach by using the constructivism paradigm. A review of Law No. 10 of 2008 concerning Elections as a joint Indonesian consensus regarding the current electoral system was used as a basis of study. Constitutional review along with various related legal instruments are also utilized in this study. These legal instruments were deemed as consensual agreement, which demands the commitment to comply with. The analysis was conducted with descriptive and qualitative analysis to more highlight the socio-legal conditions regarding women's status and right in national election and political bodies.

3. Women's Political Representatives in General Elections

The issuance of several laws and regulations meant that women's participation in the legislative nominations was expected to increase women's representative proportion. However, in reality, there were imbalances in the number of male and female members in the elected parliament since Indonesia first held elections in 1955 to 2014.

According to the data from General Election Commission's statistics publication in 2015, in 1950-1955, there were only 16 women who were members of the Indonesian parliament, or only 5.8 percent of the 272 parliament members. This greatly affects the social conditions of women in society, where their aspirations are not heard up to the parliamentary seats, such as the national and local budget which is not having a gender perspective. In other words, it is not paying attention to the basic needs of women, where the budget mainly posted for women's needs was not in specificity, such as gender-friendly public spaces, women's education, women's capacity building, employment, women's economic and social empowerment, and women's health, which are still very minimal. By

seeing this reality, there needs to be affirmative action which constitutes positive discrimination or special measures taken to accelerate the achievement of justice and equality (Noon, 2010; Schöpp-Schilling, 2004). One of the most important means of implementing it is the law. This is because the guarantee of its implementation must be in the constitution and the law.

Indonesian election law stipulates that political parties that can participate in elections in the national parliament, provincial parliament and regency/city parliament are those who have fulfilled the requirements as regulated in Article 173 paragraph (2) letter e that include at least 30 percent representation of women in the management of central political parties. This shows that this percentage has been used to guarantee women's political participation in the election in all levels of parliament bodies. However, the quota has not been fulfilled in practice (Siregar, 2005; Purwanti, 2015). The granting of 30 percent quota to women in legislative elections is not only enforced in Indonesia, but also in many countries, such as Angola, Argentina, Brazil, Uzbekistan (Krook & O'Brien, 2010; Htun, 2005). However, there are also some countries that impose a quota of 50 percent, such as Belgium, France and Italy (Krook, 2008).

4. Socio-Political Factors in Women Representations in Elections

There are some factors that influence the political representation of women in politics and elections, ranging from socio-cultural factors, religious reasons, an economic factor. First, in terms of socio-cultural factor, some argue that multiculturalism has long been seen as opposed to gender equality (Bond, 2007). Patriarchal culture is still very strong in Indonesia, so that it can influence the selection patterns between men and women as legislative members (Nimrah and Sakaria, 2015). Patriarchal culture in particular assumes the weakness of women to carry out functions in the public and political sphere, and limits the role of women only in the private and family space. As a result, there are obstacles faced by women in the public sphere is the lack of support from the community and family in this cultural context, which adheres to a rigid view of female sexuality and strictly forbids women from appearing and participating in the public sphere. This lead to marginalization which often occurs in the economic field. Moreover, the subordination, stereotypes, domestic violence, psychological attacks, and excessive workload limit the women's access to economic resources and social and political domain. This has become an assumption that women are unable to take part in politics which causes women's marginal position.

In the public domain, traditionally, it has become a domain for male, stating that in mainly characterized patriarchal cultures, politics and public space are seen as a legitimate domain for male (Mulyadi, 2019). At the international level, there is an increase in consensus in modern era about the state's obligation to actively encourage women's involvement in policy making and public participation. In some countries, there is a progress to advance the equality of women in this domain.

However, many countries still have not agreed on how far women are allowed to participate in the public sphere and political domain. With restrictions that strictly adopt local cultures and discriminatory practices remain in place to limit the role of women in the public sphere (Reynolds, 1999). These restrictions in turn affect not only the rights of women to visit public facilities, but also on women's access to social resources such as education, health, bureaucracy, judicial institutions and access to employment (Morrisson & Jütting, 2005). Furthermore, the most obvious limitation is the prohibition of women from participating in elections, political activities and public policy making. These political restrictions will in turn limit all women's access to needed social resources. Although the discourse on strengthening the rights and status of women has been legalized as one of the human rights clauses at the international level, its adoption at the national level in several regions has shown different results (Baxter & Kane, 1995). Women's discrimination continues, with local customs and culture also being the main inhibiting factors.

Here, the state is urgently needed to guarantee women's constitutional rights and women's freedom to participate in public policy, politics and elections at the local level. Recent developments show that countries with strong restrictions on the role and status of women, such as in the Middle

East and North Africa, have encouraged the legalization of women's rights and roles. This not only includes women's rights in the private and domestic sphere, but also prohibits forms of discrimination at the local level, and encourages the role of women in the public domain, as well as policy making and political participation (Ghofur & Sulistiyono, 2014; Sadiqi & Ennaji, 2006).

Provisions on gender equality in the constitution are important for the social, economic and political status of women and marginalized groups, mainly through democratic and non-discriminatory electoral systems (Diamantina & Lita Tyesta, 2019; Utami et al., 2019; Herawati, & Sukma, 2019). Provisions on constitutional gender equality can increase the legitimacy of rights claims and can also provide a legal basis for women rights activists to challenge decisions in court that violate women's rights. Research on the US Equality Act shows that equal rights provisions increase the likelihood of favorable judicial decisions related to asserting women's rights and increase the likelihood of courts applying higher legal standards (Baldez et al., 2006).

Second important factor was religious factor which is often deemed to hamper women's political participation, especially for Islamic countries. By taking example of Jordan, the participation of Jordanian women in political life faces social barriers related to religion or the economy (Nahar & Humaidan, 2013). Though Islam itself actually encourages women to participate in public and political life, religious scholars interpret certain understandings in a way that supports their perceptions and ideologies and is used as a weapon to limit women's participation. However, some clerics have a supportive view of gender equality (Mayer, 2008).

In terms of economic factor, it is deemed to have positive and negative effects on women's participation in elections. The high cost of campaigns and dowries can affect women's participation. Men dominate income in the family compared to women. In addition, male legislator candidates often obtain greater capital from campaign financial donors compared to female candidates. This makes unbalanced social capital and financial support with men due to lack of trust from the community (Indarja and Pinilih, 2020).

5. Gender Justice of Legislative Election Based on National Insights

There is an urgency regarding the legal construction of fulfilling women's political rights in the general election. Specifically, in Indonesia, this leads to carry out a renewal of the electoral legal system. This is necessary considering that the current electoral legal system is still weak in guaranteeing the fulfillment of women's political representation rights in elections, where this is not in line with human rights protection efforts and humanitarian values. The development of the electoral legal system must be understood in advance about what is called the renewal of the national legal system (Arief, 2012). From a theoretical and conceptual point of view about the legal system, the national legal system can be said to be a unity of various sub-systems of national law that are legal substance, legal structure, and legal culture. This will include the development of legal substance, the construction of the legal structure, and the development of a legal culture, in relation to the issue of women's political representation as the final part of the series of election implementation systems in Indonesia (Arief, 2015). For the Indonesian people, this renewal appears in the formulation of norms that reflect or are based on living values of Pancasila as state philosophy in Indonesian society, characterizing religious, humane, nationalist, democratic and social justice. In addition, it is important to understand that the renewal of national law is a permanent effort that is carried out continuously. Regarding this, in the context of criminal law, Jerome Hall (2005) called it a permanent on-going enterprise. The renewal of the election legal system in Indonesia must be carried out continuously and include the development of legal substance, legal structure, and legal culture that is in line with Pancasila values. The study's standpoint in this case is the issue of fulfilling the rights of women's political representation in Indonesia which has been fulfilled normatively. This is not in line with the values of Pancasila as the value system of the Indonesia which stipulates justice for all gender and encourages women to take active participation in national development (Suteki, 2011; Sidharta, 2012; Hidayat, 2012). As state fundamental norm, the position of Pancasila must always be

used as a reference in the development of law, including how to build a legal construction that pays attention to gender justice in the administration of elections.

In the context of legal construction for increasing women's political representation in the general elections towards an electoral system, the government in this case should conduct an in-depth study through a dialogue mechanism with relevant stakeholders. The hope is that the mechanism that will be offered is a joint agreement that is produced through in-depth studies that seek to understand the problem well. First of all, it needs to be understood, that the laws and regulations in the electoral field have guaranteed guarantees for women to participate as legislative candidates, namely at least 30 percent representation of women. Nonetheless, it has not been explicitly determined regarding the regulation of gender composition from the candidate list.

In this context, the legal construction as an effort to fulfill women's rights to participate in elections to the electoral legal system is through a zipper system mechanism (see, Delgado-Márquez et al., 2014; Moon et al., 2008; Freidenvall, 2005). This zipper system has been widely used by countries, with examples of Sweden and Germany (Moon et al., 2008; Freidenvall, 2005; Moon et al., 2008). Zipper system is an alternate system between men and women that is used by political parties to capture female legislative candidates. In every three legislative candidates there is one female candidate. This zipper system can provide opportunities for prospective female members to get a small number. It is hoped that by combining the quota-zipper more women can sit in parliament.

The legal construction concerning the fulfillment of women's political rights in parliament through the zipper system should be implemented with technical and supporting mechanism of legal and procedural arrangements. Adequate arrangements regarding the technical implementation of the zipper system must be formulated, by prioritizing the gender-sensitive values in its legalization. In addition to the legal substance component through the zipper system mechanism along with the renewal of the gender-based legal election system also include an adequate legal structure and culture. In this case, the legal structure of political parties must be endeavored to create the implementation of the zipper system, along with efforts to improve the legal culture by involving women in policy making. Hence, women who want to participate in elections should also improve their skills and potential so that they can balance in participating in the election nomination (Harjanto & Rainadhan, 2019).

6. Concluding Remarks

Democracy requires the participation and inclusion of women and gender equality policies, especially in the public sphere. However, in practice there has been an imbalance in the number of female and male members in the Indonesian parliament. The study's standpoint in this case is the issue of fulfilling the rights of women's political representation in Indonesia which has been fulfilled normatively. This is not in line with the values of Pancasila as the value system of the Indonesia which stipulates justice for all gender and encourages women to take active participation in national development.

The issuance of several laws and regulations governing the quota system for women means that women's participation in legislative nominations increases. The construction of an election law in Indonesia based on gender justice towards an election system based on Pancasila is to increase women's representation through the zipper system or alternating between men and women in politics. However, this mechanism must be mutually agreed in various technical arrangements to reduce the potential for abuse that might occur. In addition, the construction of the zipper system should be accompanied by efforts to create a legal structure through adequate law enforcement officials, and improvement of the legal culture as well. Adequate arrangements regarding the technical implementation of the zipper system must be formulated, by prioritizing the gender-sensitive values in its legalization.

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