

# AFFIRMATIVE ACTION STUDY ON THE POLITICAL RIGHTS OF WOMEN IN THE INDONESIAN CONSTITUTION

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## Abstract

As the world's third largest democracy, Indonesia's governmental system should ideally function as a government of the people, by the people, for the people, to borrow the famous words of Abraham Lincoln. In reality, the House of Representatives of the Republic of Indonesia, an institution which should best represent the nation's people in carrying out its duty of drafting legislative products, still fails to do so, as it is dominated by men. Deep-rooted patriarchal beliefs cloud the nation, while inadequate and inefficient laws have also contributed to the present situation of low female representation in politics. This article therefore looks into the effectiveness various laws and regulations intended to protect women's political rights. It assesses the effect of the low participation of women on the quality and gender-sensitivity of laws passed by the House of Representatives. It also evaluates the urgency to introduce affirmative action policies through the 1945 Constitution to increase women's participation rates. The authors have used the normative-empirical method,

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consisting of a statutory, conceptual and comparative approach. Materials used for this research include interviews with prominent figures, analysis of the law and a comparative study. Through this approach, the article concludes that prevailing regulations in Indonesia require improvement, as there needs to be a shift from the present quota system to a system of reserved legislative seats in order to reap the benefits of equal participation.

**Keywords:** Affirmative Action, Political Participation, Women's Rights.

## I. INTRODUCTION

*“Lex uno ore omnes alloquitur”* – The law speaks to all through one mouth. This maxim suggests that all persons are treated equally under the law<sup>1</sup> regardless of their differences, including but not limited to gender, race, religion, ethnicity and nationality. Indonesia's state ideology, Pancasila, enshrines similar values within its five *silas* (principles), which uphold humanism and draw on the varied cultural pluralism that is the very essence of the Indonesian worldview.<sup>2</sup> Pancasila knows no ‘othering’, as it is designed to be an inclusive ideology that protects and shelters all groups from any type of injustice. The 1945 Constitution of the Republic of Indonesia (hereinafter “the 1945 Constitution”) also addresses how Indonesians are to be viewed as equal by the law. In that, the language of the 1945 Constitution and Pancasila indicates that Indonesia's founders fully intended to protect the human rights of the entire nation, as neither of these cornerstones of Indonesian law address the different genders in their stipulations, but instead provide protection to all citizens of Indonesia. Also, Indonesia places significant freedom in the hands of the people due to its status as a democratic state. By implementing such a system, the power of the government comes from the people.<sup>3</sup> The Indonesian government merely acts as a vessel to realize the aspirations of the citizens. In that, Indonesian citizens, both men and women,

<sup>1</sup> Shivani Rani, “Lex uno ore omnes alloquitur,” last modified Februari 2, 2020, <https://lawtimesjournal.in/lex-uno-ore-omnes-alloquitur/>.

<sup>2</sup> Dicky Sofjan, “Pancasila and the Dignity of Humankind,” *International Journal of Interreligious and Intercultural Studies* 1, no. 1 (October 2018): 2.

<sup>3</sup> This is affirmed by the 1945 Constitution of the Republic of Indonesia, Article 1 (2).

are rightfully entitled to equal opportunities in government.<sup>4</sup> Furthermore, the 1945 Constitution also guarantees one's right to be seen as equal before the law.<sup>5</sup>

However, much like other countries in Asia, legal protection of political rights in Indonesia is not adequately guaranteed and ensured.<sup>6</sup> This is evident as Indonesian women still fail to occupy important decision-making positions due to Indonesia's deeply embedded patriarchal culture, which poses a conspicuous threat to Indonesian democracy.<sup>7</sup> A testimony to such culture is the common term '*konco wingking*' – which is applied to Indonesian women and literally translates as 'the friend who follows behind'.<sup>8</sup> This Javanese concept suggests that women are relegated to background tasks, as their primary function is to serve as companions to men. A woman is only expected to accompany her husband on all his ventures, legitimize his decisions and obediently tend to his needs. This terminology, like many similar phrases, is tied to the concept of '*kodrat*' (nature) in referring to the character of women and their capabilities.<sup>9</sup> Such patriarchal notions put women into boxes and limit them to a predetermined set of actions. These figurative boxes are noticeable through the expectations set by society, which requires every woman to fulfill her primary responsibility of bearing children, to be a nurturing mother and wife, as well as successfully managing her household. Notions such as '*kodrat*' tend to affect motivational factors such as ambition, self-confidence, self-belief and dedication, discouraging women from taking on important public roles.<sup>10</sup> Such forms of discrimination hinder women from freely and fully contributing to society.<sup>11</sup> This situation erodes opportunities for women to exercise their political right to participate in government as protected under Article 43 of Law No. 39 of 1999 on Human

<sup>4</sup> Ibid., Article 28D (3).

<sup>5</sup> Ibid., Article 27 (1).

<sup>6</sup> Desi Hanara, "Mainstreaming Human Rights in the Asian Judiciary," *Constitutional Review* 4, no. 1 (May 2018), 79.

<sup>7</sup> Edward Aspinall, Sally White and Amalinda Savirani, "Women's Political Representation in Indonesia: Who Wins and How?" *Journal of Current Southeast Asian Affairs* 40, no. 1 (May 2021): 3.

<sup>8</sup> Moh. Faiz Maulana, *Konco Wingking dari Waktu ke Waktu, [The Friend Who Follow behind from Time to Time]* (Yogyakarta: Diva Pres, 2021), 1.

<sup>9</sup> Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender [Women's Fiqh: Kiai's Reflection on Religious and Gender Discourse]* (Yogyakarta: LKIS, 2001), 9.

<sup>10</sup> Sue Maguire, "The Obstacles to Women Entering Parliament and Local Government," (Report, University of Bath, 2018), 6.

<sup>11</sup> Samidha Pokharel, "Gender Discrimination: Women Perspectives," *Nepalese Journal of Development and Rural Studies* 5, no. 2 (January 2008): 80.

Rights (hereinafter “the Human Rights Law”). Women are often discouraged from exercising such rights due to a lack of regulations motivating such participation. Cumulatively, this hampers women from exercising their political right to stand for election.

The Indonesian government has made several attempts to increase the protection of women’s rights, including ratifying the Convention on the Political Rights of Women through Law No. 68 of 1958,<sup>12</sup> as well as the ratification of the Convention on the Elimination of All Forms of Discrimination against Women through Law No. 7 of 1984.<sup>13</sup> Indonesia has also given special attention to the protection of women’s rights in the drafting of various regulations including but not limited to the Human Rights Law, Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 12 of 2006 on Citizenship, and Law No. 21 of 2007 on the Eradication of the Criminal Act of Human Trafficking. Former Indonesian president Abdurrahman Wahid even issued Presidential Instruction No. 9 of 2000 on Gender Mainstreaming in National Development. The instruction sets out that gender mainstreaming is an inseparable part of the functional activities of all government agencies and institutions and therefore shall be done in order to improve the position, role and quality of women. This shall also be done to realize gender equality,<sup>14</sup> which is a basic human right and a catalyst for development.<sup>15</sup>

Indonesia has issued several affirmative action policies<sup>16</sup> during the country’s reformation era, including through Law No. 12 of 2003 on General Elections for the Members of the House of Representatives, Regional Representative Council and

<sup>12</sup> Law No. 68 of 1958 on the Ratification of the Convention on Women’s Political Rights.

<sup>13</sup> Law No. 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women.

<sup>14</sup> Preamble of Presidential Instruction No. 9 of 2000 on Gender Mainstreaming in National Development. By definition, gender mainstreaming refers to a set of specific strategies and approaches, both technical and institutional, which are implemented to achieve gender equality as an overarching and long-term development goal. Gender mainstreaming essentially integrates the concept of gender equality into various organizations on multiple levels with the aim of eradicating and/or limiting discriminatory social institutions, laws, norms, and practices. The aforementioned definition is a conclusion of the UN Economic and Social Council of 1997. See Division for the Advancement of Women United Nations Department for Economic and Social Affairs, “Gender Mainstreaming” (Women 2000, 1997), 1-10.

<sup>15</sup> Venantie Nyiransabimana, “Gender Equality: Key Challenges and Practical Solutions to Women Participation in Local Governance in Rwanda,” *African Journal of Public Affairs* 10, no. 3 (September 2008): 2.

<sup>16</sup> In its essence, affirmative action refers to positive discrimination toward minority and/or aggrieved groups. In this particular context, affirmative action refers to positive steps undertaken with the purpose of increasing representation of women politically, culturally, and legislatively. See Robert Fullinwider, “Affirmative Action,” *The Stanford Encyclopedia of Philosophy*, Summer 2018 Edition, February 18, 2021.

Regional People's Representative Councils, which introduced a minimum quota for female political candidates.<sup>17</sup> Affirmative action policies emphasize equality of results, which requires differential treatment in order to achieve equitable social welfare and treatment.<sup>18</sup> Equality and inclusion therefore sometimes necessitate the provision of different treatment for oppressed or disadvantaged groups.<sup>19</sup> Such policies are aimed at specific groups to correct inequalities.<sup>20</sup> The inequality to be addressed through the introduction of the quota system was the minimal participation of women in the legislative branch of the Indonesian government. The low representation of women meant that women and men were unequal in the political field. The introduction of the quota provided differential treatment, which is considered positive discrimination and justified according to the stipulations of the 1945 Constitution.<sup>21</sup> The special treatment is particularly extended to achieve a sense of equality and justice in the political field and can be considered a logical consequence of ratifying the aforementioned Convention on Political Rights of Women, and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>22</sup> In this regard, citizens are entitled to freedom and equality, not only as theoretical rights but also as practical, operative rights.<sup>23</sup>

In this context, gender quotas for electoral systems aim to advance the participation of women in politics. Under a quota system, political parties must

<sup>17</sup> The inclusion of the 30% quota is considered in line with Article 4 of the CEDAW, which has been ratified by Law No. 7 of 1984. See Ukthi Raqim, "Implementasi Ketentuan Kuota 30% Keterwakilan di DPRD Kota Salatiga" [Implementation of the Quota Provisions for 30% Representation in the Salatiga City DPRD] (Thesis, University of Semarang, 2016), 3.

<sup>18</sup> Anne Phillips, "Defending Equality of Outcome," *Journal of Political Philosophy* 12, no. 1 (March 2004): 4.

<sup>19</sup> Iris Marion Young, *Justice and the Politics of Difference* (New Jersey: Princeton University Press, 2011), 158.

<sup>20</sup> Carol Lee Bacchi, *The Politics of Affirmative Action: Women Equality and Category Politics* (London: Sage Publications, 1996), 15.

<sup>21</sup> The 1945 Constitution of the Republic of Indonesia, Article 28H (2).

<sup>22</sup> Consideration of the Indonesian Constitutional Court in the Review of Law No. 10 of 2008 on General Elections in Case No. 22-24/PUU-VI/2008. See Nalom Kurniawan, "Keterwakilan Perempuan di Dewan Perwakilan Rakyat Pasca Putusan Mahkamah Konstitusi Nomor 22-24/PUU-VI/2008" [Women's Representation in the House of Representatives after the Decision of the Constitutional Court Number 22-24/PUU-VI/2008] (Pusat Penelitian dan Pengkajian Perkara Pengelolaan Teknologi Informasi dan Komunikasi Kepaniteraan dan Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia [Center for Research and Case Study Management of Information and Communication Technology at the Registrar's Office and the Secretariat General of the Constitutional Court of the Republic of Indonesia], 2013), 274.

<sup>23</sup> Terry H. Anderson, *The Pursuit of Fairness: A History of Affirmative Action* (New York: Oxford University Press, 2004), 72.

have a certain percentage of women in their organizational structure and must nominate a certain proportion of women as legislative candidates in each electoral district. This system is increasingly being used in a number of countries to raise the political participation of women.<sup>24</sup> At its core, this system operates to ensure the recruitment of women into political positions and to warrant that they are not just a token few in the male-dominated political landscape of a country.<sup>25</sup> In Indonesia, this requirement is set out within Article 245 of Law No. 7 of 2017 on General Elections (hereinafter “the General Elections Law”) which stipulates that at least 30% of the list of nominated candidates for the legislative branch shall be women.<sup>26</sup> In addition, Article 246 of the same law sets out the ‘zipper system’ mechanism, which requires political parties to include at least one female candidate among every three nominated candidates.<sup>27</sup> Articles 245 and 246 perfectly embody Article 28H (2) of the 1945 Constitution, which encourages differential treatment to be awarded in order to make sure that each individual receives equality and justice.<sup>28</sup> The specific amount of 30% is based on a 1990 resolution by the United Nations (UN) Economic and Social Council, which recommended governments, political parties and other representative groups should increase the proportion of women in leadership positions to at least 30% by 1995, with the aim of achieving equal representation between women and men by the year 2000. In 2005, the UN Department of Economic and Social Affairs said the 30% figure is the “critical mass” necessary for women to make a visible impact on the style and content of political decision-making.<sup>29</sup>

Despite real indications that quotas are gradually increasing the numbers of female representatives in Indonesia, they have failed to make a substantial difference in ensuring the political rights of women. Political parties have

<sup>24</sup> “Electoral Quotas for Women: An International Overview,” Parliament of Australia, accessed September 29, 2021, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1314/ElectoralQuotas](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/ElectoralQuotas).

<sup>25</sup> Mona Lena Krook and Diana Z. O’Brien, “The Politics of Group Representation: Quotas for Women and Minorities Worldwide,” *Comparative Politics* 42, no. 3 (April 2010): 256.

<sup>26</sup> Law No. 7 of 2017 on General Elections, Article 245.

<sup>27</sup> *Ibid.*, Article 246 (2).

<sup>28</sup> The 1945 Constitution, Article 28H (2).

<sup>29</sup> Division for the Advancement of Women, “Equal Participation of Women and Men in Decision-Making Processes with Particular Emphasis on Political Participation and Leadership” (United Nations Department of Economic and Social Affairs), 2005.

nominated women as 30% of candidates, as per the requirement.<sup>30</sup> However, there has been no significant change to the real participation rates, as the number of women elected to government remains very low. This indicates a problem with the current system as it does not serve the very purpose of its creation, which is to increase the political participation of women. The system merely ensures that women are involved up to the nomination stage but pays no heed to the actual number of women in parliament, especially in the House of Representatives of the Republic of Indonesia (*Dewan Perwakilan Rakyat*, hereinafter “the DPR”). This issue shall be the main focus of this article, as the DPR is tasked with the important role of drawing up and passing laws.

Statistical research shows that in 2019, women filled only 118 of the DPR’s 575 seats, accounting for 20.5% of the total available seats.<sup>31</sup> In fact, ever since 1999 up to the 2019 general elections, women’s representation in the DPR has not yet reached 30%, as shown in the following table:

**Table 1.1.** Participation rates of women and men in the DPR over 74 years<sup>32</sup>

Representation of Women in DPR RI from 1950 to 2024				
Period	Women		Men	
	Total	%	Total	%
1950-1955	9	3.8	236	96.2
1955-1960	17	6.3	255	93.7
1956-1959	25	5.1	488	94.9
1971-1977	36	7.83	424	92.2
1977-1982	29	6.3	431	93.7
1982-1987	39	8.5	421	91.5

<sup>30</sup> BBC News, “Pemilu: Jumlah Caleg Perempuan terus Meningkat, Tapi Mengapa 30% Belum Pernah Tercapai?” [Election: The Number of Women Candidates Continues to Increase, However, Why Has 30% Never Been Achieved?] *BBC News Indonesia*, April 1, 2019.

<sup>31</sup> Scholastica Gerintya, “Kuota 30% Perempuan di Parlemen Belum Pernah Tercapai,” [The 30% Quota of Women in Parliament Has Never Been Reached] *Tirto.ID*, September 7, 2017.

<sup>32</sup> Khofifah Indar Parawansa, “Hambatan Terhadap Partisipasi Politik Perempuan di Indonesia,” [The Obstacles to Women’s Political Participation in Indonesia] *International IDEA*, 2002.

<b>Representation of Women in DPR RI from 1950 to 2024</b>				
<b>Period</b>	<b>Women</b>		<b>Men</b>	
	<b>Total</b>	<b>%</b>	<b>Total</b>	<b>%</b>
1987-1992	65	13.9	435	87.0
1992-1997	62	12.5	438	87.5
1997-1999	54	10.8	446	89.2
1999-2004	45	9.0	455	91.0
2004-2009	61	11.09	489	89.3
2009-2014	101	17.86	459	82.14
2019-2024	118	20.52	457	78.48

Based on the factors set out, there is an urgent need to restructure the constitutional system and reconsider what is to be stipulated in the 1945 Constitution, such that it can become the ultimate guide in conducting the state. Presently, Indonesia's attempt to increase women's representation in the DPR can be seen only through the 30% quota at the candidacy level, stipulated in the General Elections Law, which has failed to achieve equal representation. Introducing a new system that is stipulated within both the law and also the Constitution would greatly increase the chances for higher levels of women's participation and representation. The 1945 Constitution needs to be amended to provide a better legal umbrella that would ensure the political rights of women. Such an amendment is imperative, especially when viewed from the aspect of constitutional endurance.<sup>33</sup> The hierarchy of law places the 1945 Constitution at the very top, followed by Laws or Government Regulations in Lieu of Law further below. Having established such grounds, there is an urgency for a new

<sup>33</sup> With reference to this, K.C. Wheare states that "a constitution is indeed the resultant of parallelogram of forces political, economic, and social – which operate at the time of its adoption." In that, the constitution is described to be the 'soul' of a State and must be reflected in progressiveness of state practice. Sri Soemantri shares similar views and opines that the amendment of the 1945 Constitution is necessary because current regulations cannot be bound upon future generations, thus subjecting the constitution to changes. He further elucidates that in governing a state, development is inevitable, and therefore calls for an amendment of the 1945 Constitution. Sri Soemantri, *Prosedur dan Sistem Perubahan Konstitusi [Constitutional Amendment Procedure and System]* (Bandung: Alumni, 2006), 272.



system to boost the rate of women's representation in the legislative branch of the Indonesian government. Such change should be included in the Constitution, considering that it manifests supremacy of the law and is to be complied with by both the state and its citizens.

## II. METHOD

This article utilizes normative-empirical legal research to produce a qualitative study in the form of descriptive information that seeks to portray present phenomena related to this research topic. This article can be classified as normative considering that it relies on a number of legal products such as positive law, principles and legal doctrines. On the other hand, to further substantiate this article, it also uses empirical legal research in the form of discussions and interviews, which are unwritten in nature and based on behavior as a social symptom.

The data used in conducting and compiling this article includes primary and secondary data. Primary data tends to be derived directly from sources without any interference or developments made by other parties. Secondary data, on the other hand, is often derived from relevant statutory provisions.

The relevant data presented or utilized in this article is obtained through reviewing laws and regulations accessible online, interviews with politicians and women's rights activists, and a comparative study with Rwanda as a country that has successfully overcome low participation rates of women in parliament. Five women representing different fields of expertise were interviewed because of their knowledge and their firsthand experience in fighting for women's rights. The first two interviewees are female politicians, Rahayu Saraswati and Grace Natalie. Rahayu Saraswati is a former member of the DPR and an activist, who currently serves as Deputy Chairperson of the Gerindra Party. Grace Natalie is a prominent politician, being the founder and former leader of the Indonesian Solidarity Party. The next figure interviewed is Tunggal Pawestri, a women's rights activist and a gender consultant. To provide insights from an academic

perspective, Iva Kasuma was the fourth subject interviewed. A lecturer and academician of the University of Indonesia, she teaches and conducts extensive research on the subject of Women and Law. The fifth interview was conducted with Olivia Salampessy, who is Vice Chairwoman of the National Commission on Violence against Women and chairs the Maluku provincial chapter of the Indonesian Women's Political Caucus.

The collected data, as described above, will be subject to a normative-qualitative analysis. In that, the data will be organized and categorized into a comprehensible classification before further identifying the necessary factors crucial to this article. It shall be descriptive to provide practical solutions that would solve the questions raised in the formulation of issues. It also seeks to address the ability of prevailing laws to resolve current and future issues related to women's representation.<sup>34</sup> The data will be analyzed objectively and interpreted alongside other relevant, complementary documents.

### III. ANALYSIS AND DISCUSSION

#### 3.1. Analysis of Regulations on the Protection of Women's Political Rights

The ratio of male to female citizens in Indonesia in 2020 was 102 males to 100 females.<sup>35</sup> This shows the Indonesian population is made up of almost as many women as men. Taking this into account, alongside the fact that Indonesia is a democratic state, all public affairs should require genuine partnership and collaboration between men and women in order to achieve the true essence of democracy. Indonesia has seemingly made a great effort to realize this by implementing principles of anti-discrimination and gender equality as a general tone of its legislative products. This is seen first through the symbolism in the state ideology, Pancasila, which reflects the importance and cooperation of both men and women through the representation of both genders, as seen in the gold

<sup>34</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif [Qualitative Research Methodology]* (Bandung: Remaja Rosdakarya Offset, 2008), 22.

<sup>35</sup> Rr. Ariyani Yakti Widyastuti, "BPS Umumkan Sensus Penduduk 2020: Jumlah Laki-laki Lebih Banyak dari Perempuan," [BPS Announces Population Census 2020: There are More Men than Women] *Tempo.co*, January 23, 2021.

chain symbol that embodies the second *sila* (principle).<sup>36</sup> Soekarno, the father of the nation, also affirmed the symbolism portrays the equal standing and the cruciality of cooperation of the two genders.<sup>37</sup>

Both Pancasila and the 1945 Constitution are the cornerstones of all other Indonesian laws to follow, therefore they provide excellent groundwork to ensure the eradication of discrimination. However, in special circumstances whereby certain groups of individuals are at a disadvantage due to economic, social or cultural reasons, there arises the need for laws to positively discriminate against said groups to provide a level playing field. In that, through the specific provisions that positively discriminate against such groups, they will be able to receive special treatment allowing them to receive equal standing with their peers. Considering the patriarchal culture that looms over Indonesia and severely disadvantages Indonesian women, this part of the article will analyze the adequacy of prevailing laws and regulations in protecting the political rights of women to participate in the legislative branch of government, specifically in the DPR.<sup>38</sup>

Before analyzing the protection of the political rights of women in Indonesia, it is important to readdress the general definition and scope of political rights. In that, political rights refer to an individual's ability to participate in the civil and political life of society and the state without fear of discrimination or repression.<sup>39</sup> To provide further context, in Indonesia, the general political rights of its citizens are regulated and protected under several legislative products. The most underlying protection can be seen through Article 28D (3) of the 1945 Constitution,

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<sup>36</sup> In a public lecture on 22 July 1958, Soekarno said the equal rights of men and women are specifically illustrated in the second *sila*, which talks about just and civilized humanity. He said the second *sila* is represented by the symbol of a chain on the lower right corner of the heraldic shield on the Garuda Pancasila emblem. The chain is made up of interlocked square and circular links, with the squares representing men and the circles representing women. Cumulatively, they signify equality between the two genders. It also acts as a reminder that the nation's survival depends on the cooperation between its male and female citizens. Rr. Dewi Kencana Qur'ani D. et al., "Perspektif Pancasila Terhadap Kesetaraan Gender dalam Bidang Politik," [Pancasila Perspective on Gender Equality in Politics] *Lontar Merah* 1, no. 2 (2018): 86.

<sup>37</sup> *Ibid.*

<sup>38</sup> Interviews by the authors indicate there is a strong patriarchal culture that not only clouds Indonesia's political field but also the nation in general, making it the main barrier that prevents women from participating in the legislative branch. Several interviewees also shared how the hours and the mechanism of conducting legislative practices are very draining and time consuming, such that women are often discouraged from participating. In addition to the culture, funding is another significant hindrance.

<sup>39</sup> "Citizenship and Political Rights," Commission on Security and Cooperation in Europe, accessed November 20, 2021, <https://www.csce.gov/about-commission-security-and-cooperation-europe>.

which awards every citizen equal opportunity in government.<sup>40</sup> In addition to this, Article 23 of the Human Rights Law similarly protects every citizen's right to vote, be voted for and participate in government directly and/or indirectly through representatives.<sup>41</sup> Indonesia's ratification of the International Convention on Civil and Political Rights can be considered a crowning accomplishment as it solidifies this intent by formally requiring Indonesia to ensure the equal civil and political rights of men and women.

Despite these strong foundational stipulations, a discernable pattern could be detected in the formulation and tone of the legislature, whereby it lacks specific protection of the political rights of women. The legislature does protect political rights, but these stipulations are gender-blind as they fail to recognize the different roles and circumstances that are imposed upon the different genders. This results in low participation rates for women. Starting with the 1945 Constitution, Article 28H (2) states that every person has the right to receive special treatment to obtain equal opportunity and benefits in order to achieve equality and fairness.<sup>42</sup> This clause indicates the 1945 Constitution recognizes and acknowledges the existence of disadvantaged groups that may be in need of special treatment in order to be viewed as equals. Unfortunately, the 1945 Constitution does not address the specific groups that may receive special treatment and therefore can be considered insensitive to gender. This, combined with Indonesia's deep-rooted and widely practiced patriarchal culture, has a significant impact on the political participation of women, which remains very low. Thus, there is a dire need for the 1945 Constitution to acknowledge women as one of the disadvantaged groups of people who deserve a special place in parliament.

The second legislative product that shall be further scrutinized is Indonesia's Human Rights Law. This law adequately outlines the right of women to be selected and/or appointed for a job or profession in accordance with requirements and legislation. Not only does the Human Rights Law acknowledge the principle

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<sup>40</sup> The 1945 Constitution, Article 28D (3).

<sup>41</sup> Law No. 39 of 1999 on Human Rights, Article 23.

<sup>42</sup> The 1945 Constitution, Article 27 (1).

of anti-discrimination, it also provides stipulations on the particular rights of women. This law is holistic in the sense that it provides special attention and room for women and the protection of their rights. The Human Rights Law is comprehensive and successfully embodies the relevant provisions needed for adequate protection.

The third legislative product subject to the analysis is the General Elections Law. Although this law does not explicitly protect the political rights of Indonesian citizens, it does stipulate an electoral quota that is to be fulfilled by every political party when nominating candidates for the DPR. It is important to acknowledge the General Elections Law has undergone revisions, significantly improving its affirmative action clauses. As previously mentioned, the quota was first introduced through Law No. 12 of 2003 on General Elections, which mandated that political parties pay attention to women's representation by considering having women as 30% of nominated candidates. However, the law did not stipulate any concrete mechanism, verification process or sanctions for political parties that fail to comply with the quota. The 2003 version of the law was later revoked and replaced by Law No. 10 of 2008 on General Elections. This law could be seen as a major upgrade from the previous version. First, it altered the wording of the quota system, changing it from an aspirational to a mandatory provision,<sup>43</sup> accompanied by a concrete mechanism (in the form of the zipper system)<sup>44</sup> and a verification process. In that, political parties have to produce a statement on the fulfillment of the quota<sup>45</sup> to the General Elections Commission (*Komisi Pemilihan Umum*, hereinafter "the KPU") for further verification. Any political party that fails to meet the quota is given the chance to amend its list.<sup>46</sup> Following this, the KPU will announce the female representation rates of each political party through the national daily print and electronic media.<sup>47</sup> Furthermore, political parties are also required by this law to have at least 30% representation by

<sup>43</sup> Law No. 10 of 2008 on General Elections, Article 53.

<sup>44</sup> Law No. 10 of 2008, Article 55 (2).

<sup>45</sup> Law No. 10 of 2008, Article 15 (d).

<sup>46</sup> Law No. 10 of 2008, Article 58 (2).

<sup>47</sup> Law No. 10 of 2008, Article 61 (6) and Article 66 (2).

women at the central level of their management.<sup>48</sup> This law was subsequently revoked and further revised by the revolutionary Law No. 7 of 2017, which is the prevailing General Elections Law. This law, in comparison to the previous one, is more accommodating of women's participation in the legislative branch. Not only does it require women's participation in the political parties and their lists of nominated candidates, but also in the membership of all KPU levels, as well as in District Election Committees (*Panitia Pemilihan Kecamatan*), Voting Committees (*Panitia Pemungutan Suara*), Voting Organizational Committees (*Kelompok Penyelenggara Pemungutan Suara*), and in all levels of the Election Supervisory Agency (*Badan Pengawas Pemilihan Umum*).

The discussions with the interviewees, as well as a detailed reading of the 1945 Constitution and other relevant legislative products, reveals there is a strong intent to bring about equality between the two genders, especially by the founders of Indonesia. However, such intent is seemingly not enough to generate a ripple effect for more regulations and laws to level the playing field between the genders. In fact, it is like a mere formality that lacks a proper execution mechanism. The 30% quota, for instance, was formulated with the sole intent of increasing female participation; however, as previously explained, participation rates remain relatively low. This renders the intent and the quota itself redundant. In order to successfully actualize the intent and bring about a greater participation rate within the legislature, beyond just the candidacy level, substantial changes must be made to the current system.

The most logical change would be to shift the emphasis from the quota placed at the candidacy level and instead implement a system of reserved seats for women, as practiced by Rwanda. This Central African country had also struggled with low participation rates of women, who were traditionally seen as subservient to men.<sup>49</sup> However, the Rwandan government has shown great commitment to gender equality, the empowerment of women and promoting

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<sup>48</sup> Law No. 10 of 2008, Article 8.

<sup>49</sup> Claire Wallace, Christian Haerpfer and Pamela Abbott, "Women in Rwandan Politics and Society," *International Journal of Sociology* 38, no. 4 (Winter 2008-2009): 112.

women's rights.<sup>50</sup> To achieve this, the country known as 'the land of a thousand hills' implemented an affirmative action clause which recognizes the need for equality between the two genders. This was done when a new constitution was introduced, reserving for women 30% of seats in the lower house of parliament. The reservation system is outlined in Article 10 (4) of Rwanda's Constitution, which stipulates:

"The State of Rwanda commits itself to upholding the following fundamental principles and ensuring their respect ... building a State governed by the rule of law, a pluralistic democratic Government, equality of all Rwandans and between men and women which is affirmed by women occupying at least thirty percent (30%) of positions in decision-making organs."<sup>51</sup>

Upon introducing such a system through its Constitution and laws, Rwanda has reaped great benefits from increased women's participation as it led to the passing of laws that are more sensitive toward the needs of women and children. Furthermore, it has also created a ripple effect, generating a participation rate that not only meets the 30% threshold but exceeds it.

Some may argue that Rwanda's reservation of seats system is already reflected in Indonesia through the quota system. However, there are stark differences between the two, as the reservation system withholds seats for women, thereby ensuring a higher level of representation. The quota system, on the other hand, only ensures that 30% of nominees are women, without paying heed to actual representation rates in parliament. This system merely acts as a gate for political parties to participate in legislation but there is no pressure put on the parties to ensure that they pick capable women candidates who will be representing the nation. Without such a regulation, political parties shall continue to give precedence to male politicians and therefore leave little to no room for female representation in the legislative branch of government. It is also important to

<sup>50</sup> Pamela Abbott and Dixon Malunda, "The Promise and the Reality: Women's Rights in Rwanda," *African Journal of International and Comparative Law* 2, no. 4 (November 2016): 561.

<sup>51</sup> Article 10 (4): Fundamental Principles, Chapter III: Fundamental Principles and Home-Grown Solutions, Rwanda Constitution of 2003 with Amendments through 2015. More details on the mechanism of reservation of seats, specifically for the legislative branch of the Rwandan government are contained in Article 76 of the Rwanda Constitution and also in Organic Law, Article No 03 of 2010 that governs Presidential and Legislative Elections.

adopt Rwanda's reservation of seats system if Indonesia would like to achieve more than the mere 30% of women representatives, considering the reservation of seats has been successful in bringing about a larger proportion of female participation than initially expected.<sup>52</sup> Moreover, ever since the reservation system was implemented, more legislation oriented toward women has been passed, including but not limited to products that aim to prevent gender-based violence, laws that award extensive property rights to women and also legislation that protects women's rights in the workforce.<sup>53</sup> This is because it has been proven that seeing a number of women in positions of power inspires more women to aspire for the same.

In discussing the feasibility and technical aspects of implementing the reservation system, it is important to emphasize that it will not in any way hamper Indonesia's status as a democratic country. If anything, implementing this system would foster a higher degree of democratic participation by improving the representation of the voices in parliament. Reserving 30% of the legislative seats does not mean that women would be appointed to parliament; rather, it would be allowing women to receive the chance they deserve to represent the women of Indonesia. This would also not hamper the way in which the general elections are to be held as it would still fully take into account the voices of the general public in making the decision of whom to elect. Implementing the reservation of seats would not nullify the 30% quota for women set out for political parties when nominating representatives. Provisions regarding candidacy and the checking mechanism by the KPU would still prevail. The difference would be an added level of protection of women's rights in the form of reserved seats in parliament.

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<sup>52</sup> Through the implementation of a new system, Rwanda is now notable for electing a large number of women to rule alongside men in important positions. In fact, in 2013, the Rwandan Parliamentary elections reached a record-breaking 64% women candidates who won office, making Rwanda a top country for women in politics. Due to adequate regulations, the women-reserved seats were then leveraged by women who gained prominence and decided to use their platform to run for non-reserved seats, thus generating a snowball effect and surpassing the quota. Elizabeth Bennett, "Rwanda Strides Towards Gender Equality in Government," *Kennedy School Review*, August 15, 2014.

<sup>53</sup> Carey Leigh Hogg, "Women's Political Representation in Post-Conflict Rwanda: A Politics of Inclusion or Exclusion," *Journal of International Women's Studies* 11, no. 3 (September 2009): 47.



It is safe to say that although good efforts have been made to protect and encourage the participation of women in the legislative branch, better results could be achieved through the system of reserved seats. The current quota system has been in place for almost two decades and is yet to achieve substantial participation of women. Therefore, a new and more efficient system is necessary to increase women's representation.

### **3.2. Analysis of the Urgency to Enact Laws to Increase Women's Political Participation**

The five interviewees for this research were unanimous that Indonesia must increase women's participation in the DPR. There are three main underlying reasons for this stance: (i) it is the absolute, protected right of women to participate in government, (ii) to create more gender-sensitive laws, and (iii) to generate a ripple effect. The first reason, pointed out by Olivia Salampessy, is that providing a better mechanism would allow for increased women's participation in the DPR, as it is their right to be equally present in all layers and levels of both governmental and non-governmental institutions. The 1945 Constitution, she correctly points out, does not limit the right to participate in government only to men.<sup>54</sup> The law already stipulates that such a right is reserved for all Indonesian citizens, irrespective of gender, so the presence and involvement of women is of absolute necessity.

This leads to the second point, discussed by both Tunggal Pawestri and Iva Kasuma, who both feel that women's participation in the legislative branch is necessary to ensure that legislative products are produced with women's perspectives. This point is further supported by Iva Kasuma, who says that ideally both men and women must have sensitivity toward gender issues. However, the reality indicates that Indonesia is still highly patriarchal and there is a need to implement better affirmative action clauses through a more effective mechanism

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<sup>54</sup> Although earlier parts of this research pointed out how the 1945 Constitution fails to discuss the standing of women in particular, this does not mean that the rights protected within the 1945 Constitution are solely reserved for men. The point in case here is that the 1945 Constitution already provides for comprehensive protection of all its citizens but fails to show the level of sensitivity that is required specifically for groups disadvantaged by the patriarchal culture, such as Indonesian women.

to increase women's representation. In order to better address women-related issues, more women are needed in the DPR, thereby allowing them to draft laws that are sensitive toward these issues.<sup>55</sup>

A study of the gender-sensitivity of laws approved by the DPR and enacted during President Joko Widodo's first term in office over 2014-2019 shows Indonesia's current system is deficient in protecting the specific needs and interests of women. While 90 laws passed during the span of five years, only 17 included stipulations that acknowledged the standing of women.<sup>56</sup> Furthermore, of the 17 laws that were sensitive toward women, only 13 were actually in the context of protecting the specific interests and rights of women. From this, it is evident there is a dire need to increase women's participation in order to bring about laws of better quality. Even though figures such as Rahayu Saraswati caution that higher numbers do not necessarily translate into better representation of women and women's issues, it does mean that bringing more women into the DPR would increase their role in legislative discussions and in giving their two cents to the formulation and debate of bills.

The third point, as discussed by Rahayu Saraswati, Iva Kasuma and Olivia Salampey, is that Indonesia's political environment is very masculine, being dominated by men. A better mechanism is therefore needed to raise women's participation rates to shift the idea that politics is reserved for men. Furthermore, this would create a ripple effect, as according to Saraswati, reaching or exceeding 30% representation would be easier if women had an example or a predecessor who has "broken the glass ceiling". This would provide the necessary inspiration for them to also start to participate in government. Uniquely, Grace Natalie feels there is no point in discussing the urgency and/or whether it is worth pursuing,

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<sup>55</sup> Another urgency clearly detailed by the interviewees for this research is that certain specific needs and life processes apply only to women, such as giving birth, nursing, monthly periods and others. Taking this into account, men are placed in a position that makes them less able to properly represent the interest of women, considering they have not and will never be subjected to the aforementioned processes. Thus, they cannot point out specifically what are the needs of women in these times.

<sup>56</sup> The indicators that were used to assess the sensitivity of these laws are words such as "*perempuan* [women]", "*wanita* [woman]", "*kelompok rentan* [vulnerable groups]", "*rentan* [vulnerable]", "*gender*", "*jenis kelamin* [gender]", and "*keterwakilan* [representation]". The context of the laws that contain the aforementioned terminologies were then further assessed to ensure they were specifically provided to protect the interest of women in particular.

as it is simply something that needs to be done without further consideration of its potential benefits.

Not having enough women in parliament would mean that the laws released would continue to address the needs and standing of the two genders the same way, despite the dire need to address women differently.<sup>57</sup> The legislative products would continue to solely feed the patriarchal culture that surrounds the nation. Thus, Indonesia would not only suffer from serious inequality of the genders, but the country would also then fail to fully benefit from the women of the nation as they would be impaired from exercising their rights to participate in important positions of power.

Furthermore, the urgency also stems from the fact that Indonesia, unlike Sweden and other countries with a high representation of women in politics, will never be able to bring about greater female participation without enacting laws that demand for the same. Countries such as Sweden<sup>58</sup> and Germany<sup>59</sup> have successfully gained an increase in female participation solely based on the internal quota enacted by the political parties themselves.<sup>60</sup> Looking at the patriarchal culture and the low external pressure that is put on the political parties then leads to the urgency for the Indonesian government to increase female participation through implementing the aforementioned system of reserved seats. This is especially true if we take into account the potential social shift that

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<sup>57</sup> Based on the sensitivity study conducted of the 90 laws passed during President Joko Widodo's first five-year term, it is possible to conclude that the laws still lack the sensitivity and acknowledgement necessary for women. This contributes to the urgency of introducing the reservation of seats system that would allow women to have fixed and safe spots assured for them within the DPR.

<sup>58</sup> The Green Party first introduced quotas in 1981, followed by the Left Party in 1987. In addition to this, the Swedish Social Democratic Party decided on a minimum representation of 40% for either sex at all levels within the party. The internal quotas often fluctuated and differed from one party to another, but they were all enacted with the same aim of reaching equal representation of the two genders. Lenita Freidenvall, "Women's Political Representation and Gender Quotas – the Swedish Case," *Working Paper Series – The Research program on Gender Quotas*, (2003), 11.

<sup>59</sup> Even though there are no legislated quotas for representation of the two genders in Germany, a multitude of political parties often impose voluntary quotas to push for representation. Four German political parties started doing so in late 1980s and early 1990s. Even though this resulted in mixed success rates, the quotas on average have significantly increased women's representation. Louise K. Davidson-Schmich, "Implementation of political party gender quotas: Evidence from the German Länder 1990-2000," *Party Politics* 12, no. 2 (March 2016): 213.

<sup>60</sup> In the interview conducted with Grace Natalie, she said that waiting for internal quotas by political parties would not be a viable option for Indonesia, considering that there are still a number of issues that are seen as more dominating and urgent due to the prevalence of patriarchal culture. Therefore, a more systematic change needs to be brought about through the reservation of seats system.

will be brought about by enacting this system. As laws have the capability of engineering and altering social norms, the enactment of the reserved seats system will display the seriousness of the legislature to level the playing field between the two genders and potentially erode the predominant patriarchal culture.

The underlying urgency not only stems from the necessity for Indonesia to introduce better laws that can adequately regulate its citizen but also stems from the need to address and overcome the patriarchal culture that is rooted within the country. Steps taken by previous legislators to remedy the situation have not been sufficient; therefore, there is just a need to implement a better system in order to realize a more balanced representation of both genders in the Indonesian government. The benefits felt by the increase would be longstanding and cross multiple fields. It would therefore be best to implement the reserved seats system for future Indonesian legislative elections.

#### IV. CONCLUSION

Based on the authors' research through multiple interviews, detailed analysis of the law, as well a comparative study, it can be concluded that:

1. Indonesia's present regulations that seek to protect and/or encourage the political rights of women to participate in government are not yet sufficient. This is because a number of laws and regulations still fail to acknowledge the presence of women and their specific needs. Overarching protection is provided for Indonesian citizens, but the strong patriarchal culture that clouds Indonesian society hinders women from being elected to positions of power. Also, the present affirmative action clause on women's political participation is limited to candidacy and therefore fails to translate to actual representation in parliament. This erodes the very essence of implementing an affirmative action clause, considering it has been almost two decades since its introduction and participation levels remain below the 30% target.
2. It is urgent to introduce a new system that would allow an increase in the participation of women, specifically in the legislative branch of the Indonesian

government. This can be done by modifying election rules to reserve a minimum of 30% of seats in the DPR for women. This would guarantee women a greater presence in parliament. To realize this, a women-only ballot, alongside a regular ballot, can be utilized in future elections to ensure that 30% of seats are filled by women. This shall be done with the hope that there will be a ripple effect, bringing about a more balanced representation between the genders. This system is based on that of Rwanda, which has already reaped the fruit of balanced participation in the government in form of better quality legislative products.

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