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The Affirmative Action For Women In Legislative Elections As An Effort To Embody Inclusive Regulations

Abstract

This study aims to examine the concept of guaranteeing women's political rights and the importance of women's representation in the formation of inclusive regulations. Based on normative legal research, this article attempts to present doctrinal and fundamental arguments using literature review techniques. The results show that, first, women's political rights in filling legislative positions have been guaranteed in the election law in the form of a quota system for legislative candidate representation of at least 30 percent; second, women's representation in parliament can encourage the formation of inclusive regulations because the quantity of women might influence decision-making in parliament.

Keywords: affirmative action, inclusive regulations, legislative elections

Abstrak

Tulisan ini bertujuan untuk meneliti konsep penjaminan hak politik perempuan dan pentingnya representasi perempuan dalam pembentukan regulasi yang inklusif. Berdasar pada penelitian hukum normatif, artikel ini mencoba untuk menggambarkan argumentasi fundamental dan doktrinal dengan menggunakan metode studi kepustakaan. Hasil penelitian ini menunjukkan bahwa, pertama, hak politik perempuan dalam mengisi posisi legislatif telah dijamin dalam undang-undang pemilu dalam bentuk sistem kuota calon anggota Dewan Perwakilan Rakyat sebanyak minimal 30 persen; kedua, representasi perempuan di parlemen dapat mendorong pembentukan regulasi hukum yang inklusif, karena kuantitas perempuan dapat mendorong pengambilan keputusan di parlemen.

Kata Kunci: kebijakan afirmatif, regulasi yang inklusif, pemilihan legislatif.

INTRODUCTION

In a democratic country, people's sovereignty plays an important role in the running of a country. Every state process must be based on the will of the people and not for personal or group interests (L. Lismanto & Yos Johan Utama, 2020). This is in line with Abraham Lincoln's postulate regarding democracy, namely, government of the people, by the people, and for the people (Muhammad Abrori, 2024). The Republic of Indonesia, as a democratic country as mandated in Article 1 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, adheres to a representative democracy system. In a representative democracy system, the sovereignty of the people is manifested through their representatives in a representative institution elected through legislative elections. This means that there is a social contract between the people who elect their representatives and those who are elected, who represent the interests of the people. Where the people in this case have handed over their sovereignty to their representatives through general elections, to be implemented in order to realize the sovereignty of the people through the formation of regulations in parliament (M. Alpi Syahrin & Imelda Sapitri, 2020).

From a conceptual legal perspective, in the legislative elections in Indonesia, there is affirmative action, which requires a minimum of 30 percent representation of women as candidates for members of the House of Representatives (DPR), both at the national and local levels (Indra Kertati, 2019). These provisions are regulated in Law Number 7 of 2017 concerning General Elections, specifically in Article 245. These provisions are intended to create meaningful participation in the legislative member election process, so that women obtain an inclusive space in politics, with the hope of creating equal representation. This means that these affirmative provisions must be seen as a long process, not only intended as a formal procedure in the election of members of the DPR and DPRD, but also as a goal to provide equality in the DPR institution (Malika Rajan Vasandani et al., 2022). Hence, ensuring that there is a minimum of 30 percent representation of female DPR candidate members in the legislative election is not enough; there needs to be a minimum of 30 percent female representation among elected legislative members.

But in fact, the minimum representation of women of 30 percent in the DPR institution has not been met. In the last few legislative elections, the percentage of women's electability in the 2024 election showed an upward trend and was also the highest in the history of Indonesian elections, which was 22.1 percent. This figure even exceeded the previous highest percentage, namely in the 2019 legislative election, with a percentage of 20.5 percent, which is 1.6 percent higher. Although there is an increasing trend, this does not cover up the fact that women's representation in the DPR of at least 30 percent is still a dream. Women's representation in the DPR is very important not only to create inclusivity for women but also as an effort to ensure the representation and interests of women and marginalized groups in terms of gender-responsive legislation (Antik Bintari, 2021). As it is known, the DPR has the authority to form laws as mandated by Article 20 of the 1945 Constitution of the Republic of Indonesia. If there were more women in parliament, this would facilitate the process of legislation segmented on women's issues and certain marginalized groups that tend to be sidelined, such as the Draft Law on the Protection of Domestic Workers and the Draft Law on Indigenous Peoples, which have not been ratified for more than two decades.

Based on this basis, the discourse on affirmative action through women's representation in legislative elections is important to continue to be studied, in order to find the right formula to achieve a minimum of 30 percent women's representation in parliament. In addition, the discourse is a means of education for the wider community regarding the importance of women's representation in politics to create a more inclusive political space. Nowadays, studies on affirmative action for women's representation in legislative elections are not new; there have been various studies discussing this issue from time to time. However, the scope of discussion that will be discussed in this paper is quite fresh by raising a point of view that connects women's representation and its implications for the formation of more inclusive regulations, accompanied by several relevant case examples. Based on this, this paper will focus on two major issues. First, what is the conceptual legal basis related to the guarantee of women's political rights? Second, what is the relevance of women's representation in the DPR institution to the formation of more inclusive and representative regulations?

RESEARCH METHODS

This research is normative legal research with doctrinal and fundamental research characteristics, which seeks to describe the relationship between related rules and seeks to provide fundamental knowledge in the research field (Bethel Uzoma Ihugba, 2020). Hence, This paper uses a statutory approach by examining related laws such as the Human Rights Law which provides guarantees regarding women's political rights, and the General Election Law which regulates the quota system for women's representation; a conceptual approach by examining expert views and theories relevant to the principle of gender justice; and a comparative approach by comparing several quota systems for women's representation in several countries. The data collection technique used in this paper is a literature review with primary legal sources in the form of related legal regulations and secondary legal materials such as law books and law journals.

RESULTS AND DISCUSSION

The Guarantee of Women's Political Rights

Political rights are absolute rights for citizens. Where political rights include and are not limited to (1) the right to elect and be elected; (2) the right to participate in government activities; (3) the right to express opinions; (4) the right to be appointed to government office; (5) the right to establish a political party; (6) the right to assemble, associate; and (7) the right to express views or thoughts about politics (Adrianus Bawamenewi, 2019). Guaranteeing rights, including political rights, is crucial in a state of law. Without guaranteeing rights, the principle of the rule of law is nothing more than a state of rules. Given the essence of law is to achieve human welfare, one of which is through guaranteeing their basic rights. This is in line with the view of Frederick Julius Stahl, who stated that a state of law must fulfill four main elements, namely (1) protection of human rights; (2)

division of power; (3) government based on law; (4) and an independent and impartial judiciary (Fikri Hadi, 2022).

In the construction of the constitution, guaranteeing women's political rights is a necessity in building a system of equality in a state of law that upholds the principle of equality before the law (Daron Acemoglu & Alexander Wolitzky, 2021). This principle plays an important role in creating a just and equal legal system. This is in line with the constitutional mandate in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which states that *"Setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama di hadapan hukum"*. The provisions above show that the Indonesian state recognizes the principle of equality regardless of ethnicity, race, religion, or gender. This means that in constitutional juridical terms, efforts to fight for women's political rights are a form of effort to uphold the Constitution. Where, in guaranteeing political rights, the Constitution does not differentiate between men and women. Hence, the state in this case must facilitate and provide space for the creation of a political nuance of equality for women (Rizki Priandi & Kholis Roisah, 2019). This is in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, Article 28I paragraph (4) which states that *"Perlindungan, pemajuan, penegakkan, dan pemenuhan hak asasi manusia adalah tanggung jawab negara, terutama pemerintah"*. Where to enforce and protect these human rights, it is necessary to regulate them in laws and regulations (Article 28I paragraph 5).

In the status quo mechanism, guarantees of women's political rights have been guaranteed in several laws and regulations. In Law Number 39 of 1999 concerning Human Rights, for example, provisions regarding women are even specifically regulated in the ninth section concerning women's rights. Where in Article 46 of the a quo Law, it is stated that *"Sistem pemilihan umum, kepartaian, pemilihan anggota badan legislatif, dan sistem pengangkatan di bidang eksekutif, yudikatif harus menjamin keterwakilan wanita sesuai persyaratan yang ditentukan"*. In the construction of the article, it can be seen that guaranteeing the representation of women, including in terms of filling political positions in parliament, is a human right that must be guaranteed and protected by the state.

The guarantee of women's rights in politics is basically also legitimized not only from a national perspective but also internationally. In the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention), precisely in Article 7 (a) it is emphasized that every member state must eradicate discrimination against women in politics, including ensuring equality between men and women to vote in all forms of elections and to be eligible to be elected to all public institutions.

From the legal foundations that provide guarantees for women's political rights, the legislators then formulated their embodiment through Law Number 7 of 2017 concerning General Elections as a form of legitimacy of the guarantee of representation of female legislative candidates of at least 30 percent. This provision is regulated in Article 245 of the quo Law, which provides regulations on the existence of a minimum threshold of 30 percent female representation that must be implemented by political parties when determining the list of prospective DPR members, both at the national and local levels.

Apart from that, in guaranteeing the representation of women's rights as legislative members, it is also maximized by using the zipper system regulated in Article 246 of the quo

Law. This system requires political parties supporting legislative candidates to place one prospective female legislative candidate for every three names of prospective candidates from the party concerned (Juniar Laraswanda Umagapi, 2020). As an illustration, party A has a quota of 9 prospective candidates in the electoral district of West Java 1. Based on this illustration, party A must not only meet a minimum of 30 percent of female candidates (3 out of 9 prospective candidates) but must also provide a sequence number arrangement that places 1 woman in every 3 names. This means that from sequence numbers 1-3, 4-6, and 7-9, there must be at least one woman in each. This system can increase the chances of being elected by female legislative candidates, considering that the system can help voters better find out about the female legislative candidates concerned because it does not immediately place female candidates at the end. It is hoped that this mechanism can increase women's representation in parliament (Adinda Rabiki Mardia & Septi Wijayanti, 2023).

However, the question is why women in this case seem to be special from the existence of these affirmative provisions. This is certainly inseparable from the spiritual conditions of the Indonesian nation, whose patriarchal culture is still very strong. Women still tend to be looked down upon in the public sphere. The main tasks of women are considered to be only housewives who take care of children and husbands, and they are considered unworthy if they have to work in the public sphere or be involved in politics (Syaifudin Suhri Kasim, 2022). This view is definitely wrong because it does not guarantee the principle of equality between women and men. This is what drives the special guarantee of women's political rights, so that they get an equal place with men in politics.

The above conditions are in accordance with the principles of justice based on equality, which John Rawls calls justice as fairness. In his theory, Rawls explains that the concept of justice must adhere to two basic principles. First, the existence of equal rights to basic freedoms such as political rights. Second, the existence of inclusiveness that is given to the less advantaged when there are conditions of social inequality. The first principle is known as the "equal liberty principle", just as political freedom requires equality of basic rights and obligations. While the second principle is known as the "difference principle", which comes from the condition of social inequality, so that in realizing justice, unequal treatment can be justified with the provision that the greatest benefit must be placed on the weaker or marginalized party (M. Yasir Said & Yati Nurhayati, 2021).

Rawls's concept is almost similar to the concept of commutative and distributive justice by Aristotle. Commutative justice is a concept of justice that does not consider services and is given equally. While distributive justice is a concept of justice that is based on services, which in this case looks at the differences to provide equality. Both the concepts of commutative and distributive justice aim to achieve the principle of equality and equity. The difference lies in how the principle of equality is achieved; the concept of commutative justice uses a numerical equality approach, while the concept of distributive justice uses a proportional equality approach (Zakki Adlhiyati & Achmad, 2019).

If it is drawn in an affirmative policy related to the inclusiveness of representation of at least 30 percent of female legislative candidates in the legislative election, then it is certainly in order to realize the principle of justice as in the theory of John Rawls or Aristotle. Given that women in the social construction of the Indonesian nation are parties that are often marginalized in various aspects, including the political aspect, because they are influenced

by a very strong patriarchal culture. Thereby, the affirmative policy is to provide justice by placing women as the weak party to feel greater benefits so that the principle of equality in politics between women and men is created.

The Importance of Women's Representation in the Formation of Inclusive Regulations

The existence of women's representation in politics, especially in filling positions in legislative institutions, is not only a concern for Indonesia, but also for all countries in the world. This is in order to realize equality between men and women in holding positions in legislative institutions. Where this is related to gender equality, which is one of the points in the Sustainable Development Goals (SDGs), one of the targets of which is to ensure that women have full participation in leadership and decision-making, with an indicator of equality for women in politics (Walter Leal Filho et al., 2022). Therefore, countries in the world are also paying attention to this issue.

If we look further, the regulation related to guaranteeing women's political rights in filling legislative positions began with the experience of Argentina in 1991. Where Argentina can be said to be the first Latin American country and the first in the world to initiate a quota system for women in filling legislative positions by guaranteeing the right to equal opportunities between women and men which is guaranteed in the Constitution of the Argentine Nation, precisely in Section 37 which explicitly states "*Actual equality of opportunities for men and women to elective and political party positions shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system*". The construction of this guarantee was then manifested in the form of a guarantee of a quota for women's representation in legislative positions as regulated in Ley De Cupo 24012 De 1991 (Quota Law), which provides for affirmative action for women's representation of at least 30 percent of the number of candidates to be elected, and in proportion to the possibility of being elected (Tiffany D. Barnes & Mark P. Jones, 2018). This rule makes Argentina a reference for other countries in providing affirmative action for women's representation in politics. In 2005, women's representation in Argentina, who occupied the National Congress for the first time, reached its highest point with a total percentage of 33.7 percent (86 of 255 elected members of Congress), which made Argentina enter the top 15 countries in the world in the context of women's representation in national legislative positions (Julie Ballington & Azza Karam, 2005).

The success of women's representation in filling political positions can also be seen in the practice in Rwanda. Rwanda is one of the countries that has succeeded in realizing women's representation in politics. Rwanda first guaranteed a quota system for women in filling government positions and legislative functions in 2003 with the enactment of a new constitution resulting from a referendum that requires at least 30 percent of positions in all decision-making institutions in government, including in filling their legislative positions (The Lower House of Parliament and The Chamber of Deputies) (Victoria Melkisedeck Lihiru, 2022). The first national elections under the new constitution resulted in the election of 39 female MPs out of a total of 80 seats (48.8%). As the system was implemented, women's representation continued to show a positive trend. In the 2008 elections, Rwanda became the first country in the world with a female majority in the legislature when it won 45 out of 80 seats (56.3%). The trend continued to increase in the next general election in

2013, when women's representation reached 63.7 percent (51 out of 80 seats) (Indrajit Goswami et al., 2023).

In Indonesia itself, as previously explained, the guarantee related to the women's quota system in legislative elections is regulated at the level of the Law which has undergone many changes until finally the most recent is regulated in Law Number 7 of 2017 concerning General Elections, precisely in Article 245 which provides affirmative regulation of at least 30 percent of women's representation in legislative elections. Where the 30 percent quota is combined with the zipper system regulated in Article 246 of the quo Law (Jumanah et al., 2023). Since direct elections were held in 2004, women's representation in the Indonesian House of Representatives has continued to show a positive trend. At the beginning of direct elections, the number of women elected as legislative members was only 61 (11.1%). In the next general election period (2009), the number of women elected to the Indonesian House of Representatives increased by 101 people (18%). Although in the 2014 general election, there was a slight decrease in the number of women elected to 17.3 percent (97 people), in the 2019 general election, it increased again to 20.5 percent (118 people) (Rahma Ning Tias et al., 2023a). Afterwards, women's representation reached its peak in the 2024 general election with a representation of 128 out of 580 elected members of the Indonesian House of Representatives (22.1%). Although so far the number of women's representation in parliament has continued to progress, this does not cover up the fact that the number of representation as planned through affirmative action of 30 percent of female legislative candidates has not yet been met. In fact, the existence of equal representation between women and men in parliament can lead to the formation of inclusive and representative regulations that are fair to marginalized groups. This is in line with what Ann Phillips stated that the proportional presence of women in parliament can realize justice, equality, and women's interests, as well as provide access to resources for the holistic prosperity of society (Rahma Ning Tias et al., 2023b).

The underlying reason for this is that women basically have different perspectives and interests than men. They bring their own issues that can only be understood well by women themselves. As stated by Bari, based on instrumental arguments that there is a social distinction between women and men, which distinction also tends to bring different views on politics (Mudiyati Rahmatunnisa, 2016). Therefore, women's representation in parliament will clearly be able to increase the DPR's attention to women's issues, which will lead to increased regulations that favor women and marginalized groups. As women, they feel the spiritual atmosphere of the social problems faced by women, so they feel the need to mitigate through the formation of inclusive regulations. However, if there are limitations to women's representation in parliament, this will certainly make it difficult to make decisions on the formation of inclusive regulations.

In the national political constellation, until now, the representation of women in parliament is still very far when compared to the percentage of men. As a result, many important regulations related to women's issues have been hampered in their processes. An example can be seen from the Draft Law on Domestic Workers, which until now has not been ratified since it was first included in the national legislation program in 2004. For almost two decades, the bill has not received any clarity. In fact, substantially, the bill comes into play in the protection of domestic workers who tend to be women. The bill is

considered to provide a feminist perspective because it aims to protect the rights of domestic workers, including the right to be free from discriminatory treatment and sexual violence that female domestic workers often experience (Fithriatus Shalihah & Retno Damarina, 2023).

Another case can be seen from the Draft Law on Indigenous Peoples, although it is of paramount importance in providing guarantees for legal recognition and protection for indigenous groups, including indigenous women, it has not yet been ratified. On the other hand, conflicts between the state and indigenous groups in managing land that has a social function continue to occur. This has implications for indigenous peoples who may lose their homes and experience other material and immaterial losses. On the other hand, if the bill is passed, the protection of the rights of indigenous peoples and indigenous women will be increasingly guaranteed, considering that there is a guarantee of customary rights of indigenous peoples to the customary land they occupy (Ade Bagus Saswoyo & Margo Hadi Pura, 2023).

If there is a balanced representation between women and men in parliament, of course, the problems as above can be overcome or at least minimized. Female members of the DPR will be able to play a greater role in encouraging the ratification of regulations that can accommodate the rights of women and marginalized groups. Given that the final process in decision-making in the DPR is based on a voting mechanism, when there is no meeting point in the consensus mechanism. With this basis, the possibility of ratifying regulations that are inclusive of women and marginalized groups will be greater if female members of the DPR have a quantity that is balanced with men.

In addition, another reason underlying the importance of women's representation in parliament is that sociologically, the number of women in Indonesia is almost half the population of Indonesia. Based on the 2021 population census of Badan Pusat Statistik, the population of Indonesia is around 271.58 million people, with the number of male residents around 136.34 million and female residents around 135.24 million. In terms of ratio, for every 101 male residents, there are 100 female residents (Gaib Hakiki & Ahmad Budi Prastyo Samudro, 2021). Based on the data, it means that there is almost an equal percentage of the population between women and men. Hence, the logical consequence is that women's representation in parliament must reflect gender equality in order to represent half of the population of Indonesian society through inclusive and representative policies for their interests that can only be understood well by women themselves. This is in line with Ballington's statement regarding democracy, that "*Democracy cannot afford to be gender-blind. It must strive towards equality and representation of women and men in decision-making processes and in the opportunities to achieve both these goals.*" (Mudiyati Rahmatunnisa, 2016).

However, until now, women still continued to face various challenges in participating in politics. These challenges are very diverse, ranging from political, socio-economic, and psychological factors. From a political perspective, women are always faced with a masculine political model where the political space is dominated by men. Where political life is regulated based on male values and norms, even in some cases, based on male lifestyles. From a socio-economic perspective, women are often marginalized from competing in the political realm because they are influenced by literacy factors and limited access to education and professional choices. Not to mention, women tend to bear a double

burden between domestic affairs and professional responsibilities (Diana Syahra et al., 2024). Meanwhile, from a psychological perspective, women tend to experience a lack of confidence in competing with men in the political arena due to male dominance. This is partly influenced by media depictions that tend to focus on controversial political issues involving men but pay less attention to substantial aspects related to women's interests in politics. This condition forms in women with the perception that politics is dirty, so they are reluctant to be involved in the political arena (Ariella Alberthina Yoteni et al., 2023).

Based on these factors, it is necessary for all parties, both the state and society, to actively participate in instilling political education in all parties that women play an important role in politics. The involvement of women in filling legislative positions can encourage the formation of laws that are representative and inclusive of women and vulnerable groups. Political education can have an effect on the nomination and election process. In terms of nomination, political education can aim to educate political parties as participants in the legislative election to focus on more substantial aspects so that they can pay attention to female legislative candidates, starting from providing opportunities and guaranteed access to nominate themselves, to maximum cadre development mechanisms so that existing female legislative candidates are not only based on gender but also quality and competence. With the hope that this can increase women's participation in politics and increase their potential for being elected (Siti Hajar, 2022). In terms of elections, political education can aim to educate the wider community about the importance of women's roles in politics and can make voters aware of the importance of their role in determining political outcomes that will ultimately affect their social lives (Efriza & Definitif Endrina Kartini Mendrofa, 2024). It is hoped that this awareness can become a social engineering for society to elect female legislative candidates who are still based on quality and track record.

CONCLUSION

The guarantee of women's political rights is an inevitability in a democratic rule of law. It is one of the constitutional rights that is guaranteed in the 1945 Constitution of the Republic of Indonesia. The guarantee is embodied in the laws below it, such as Law Number 39 of 1999 concerning Human Rights, which provides the guarantee of women's rights in politics, as well as Law Number 7 of 2017 concerning General Elections, which regulates about 30 percent of the quota of women's representation in the legislative election that is amplified with a zipper system. Women's representation in parliament is extremely crucial in order to create a gender equality system. This is because men and women have basically different interests and the interests tend to be opposite; hence, men tend not to be able to represent women's interests. Those can be seen in the Draft Law on Domestic Workers and the Draft Law on Indigenous Peoples, which have not yet been passed. Therefore, it is important that the percentage of women's representation in parliament in the next election can increase and reach the minimum target of 30 percent because women's representation in parliament plays an important role in the formation of regulations that are inclusive and representative of the interests of women and marginalized groups.

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