



Article

**IMPLEMENTATION OF CONVENTION RESULTS  
INTERNATIONAL CEDAW AGAINST WOMEN THAT DEALS  
WITH THE LAW**

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**Abstract**

Discrimination against women is a widespread phenomenon, both in public spaces and in the household sphere, especially in the form of violence. This phenomenon resulted in the United Nations producing a convention that was used as an international instrument in 1979 regarding the elimination of all forms of discrimination against women, which was named the International Convention CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women). Indonesia is one of the countries that ratified the International Convention on CEDAW into Law of the Republic of Indonesia Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (The Convention on the Elimination of All Forms of Discrimination against Women). Indonesia ratified the CEDAW Convention on July 24, 1984, and agreed to prevent all acts of discrimination and implement policies to eliminate discrimination against women. After the existence of CEDAW, Indonesia has made efforts to improve existing laws and regulations, whether directly related to women or not. The issuance of the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Women in Conflict with the Law is one form of implementation of the results of the International Convention on CEDAW, which is devoted to the legal domain. Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 is a manifestation of the state's obligation to ensure that women have access to justice and are free from discrimination in the justice system in Indonesia

**Keywords:** *Implementation, International Conventions, CEDAW, Women, in Conflict with the Law*

## Introduction

Discrimination against women is a widespread phenomenon, both in public spaces and in the household sphere, especially in the form of violence. The existence of various discriminations against women is a form of violation of Human Rights (HAM). According to the observations of women defenders, this gap is caused by several factors. Namely the influence of socio cultural values that still adhere to patriarchal understanding, namely excessive partiality to men over women, the existence of legal and regulatory products that do not yet gender-responsive, and the understanding of religious teachings that place men in a higher position than women.<sup>1</sup>

People often rely on their country's government to solve these problems. However, it is unfortunate that the governments in various countries are less sensitive and less responsive in

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<sup>1</sup> Halili, "Implementasi Konvensi Anti Diskriminasi Perempuan dalam Politik Hukum Indonesia", *Jurnal Penelitian Humaniora*, Vol. 17, No. 2, Oktober 2012, h. 65.

dealing with the issue of gender equality. There is dissatisfaction from the community, especially women, due to the attitude and response of the government of their own country. Realizing that their voices were not responded to properly led to the emergence of many movements or organizations that were considered one way to solve this problem. Organizations formed by this community are generally international in nature because their members come from various countries, as well as the regulations are made from ideas and mutual agreements of the members.<sup>2</sup>

One of the organizations formed by countries in the world is the United Nations, abbreviated as the United Nations. The United Nations is an international organization that was founded in 1945 and had 193 members. In the 21st century, the United Nations is very focused on various kinds of world problems. One of the focuses is gender equality, where the United Nations realizes that every year millions of women experience discrimination in the form of physical and psychological violence. This phenomenon resulted in the United Nations producing a convention that was used as an international instrument in 1979 regarding the elimination of all forms of discrimination against women, which was named the International Convention CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women). This convention came into force on December 3, 1981, and as many as ninety percent of the member states of the United Nations are parties to the convention.<sup>3</sup>

Seeing the background of discrimination that occurs and the urgency of national law for the fulfillment of women's rights to be free from various forms of discrimination after the existence of the International Convention on CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women), it is necessary to conduct a study on the implementation of the results of the International Convention. CEDAW is against women who conflict with the law in Indonesia.

## **The Research Question**

The formulation of the problem in this scientific paper is: How is the implementation of the results of the International Convention on CEDAW for women who conflict with the law in Indonesia?

## **Literature Review**

- a. Sejarah Lahirnya The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The formulation of The Convention on the Elimination of All Forms of Discrimination against Women, abbreviated as CEDAW, originated from the Bill of Rights of Women or the Permanent Declaration of Women's Rights as Human Rights in the United Nations General Assembly Session on 18 December 1979. This formulation begins with the United Nations General Assembly's special attention to a draft convention on the elimination of all forms of discrimination against women.<sup>4</sup>

CEDAW is one of the main international conventions that defend women's rights, as stated in General Court resolution no. 34/180 dated 18 December 1979, drawn up for adoption and ratification by the member states of the United Nations. CEDAW contains 30

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<sup>2</sup> Angelia Maria Valentina dan Elisabeth A. Satya Dewi, "Implementasi CEDAW tentang Penghapusan Diskriminasi Perempuan: Studi Kasus Pemilu di Indonesia Tahun 2009 dan 2014", h. 2. Lihat <https://media.neliti.com/media/publications/97593-ID-implementasi-cedaw-tentang-penghapusan-d.pdf> (online 6 Oktober 2022).

<sup>3</sup> Ibid.

<sup>4</sup> Ade Yuliany Siahaan dan Fitriani, "Kebijakan Pemerintah terhadap Implementasi *Convention on The Elimination of All Forms Discrimination Against Women (CEDAW)* Atas Hak Perempuan di Indonesia", *Jurnal Darma Agung*, Vol. 29, No. 2, Agustus 2021, h. 195.

articles and was formally and legally declared an international document (entry into force) on September 3, 1981.<sup>5</sup>

b. Hasil dari The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW (The Convention on the Elimination of All Forms of Discrimination against Women) was born from the experience of discrimination against women in various parts of the world and the long struggle to build a global commitment that women's human rights are human rights. This convention outlines the principles of women's human rights, norms and standards of obligations, and the responsibility of the state to eliminate all forms of discrimination against women.<sup>6</sup>

CEDAW contains 3 (three) main principles: The principle of Substantive Equality. This principle is also known as the corrective approach, which does not focus on equal treatment before the law but also includes equality in the de jure sense of the actual or real impact of the law. His main concern is to ensure that the law corrects existing inequalities and influences the outcome by ensuring substantive equality of opportunity, access, and benefit for women. Second, the principle of non-discrimination, the definition of discrimination in this convention is any distinction, exclusion, or restriction made based on sex, which has the effect or purpose of reducing or eliminating the recognition, enjoyment, or exercise of human rights and fundamental freedoms in the field of political, economic, social, cultural, civil or otherwise by women irrespective of their marital status, based on equality of men and women. And based on UN recommendations, violence against women was added. Third, the Principle of State Obligations includes the following:

- a. Guaranteeing women's rights through laws and policies and guaranteeing results;
- b. Ensuring practical implementation and rights through action steps or special temporary rules, creating conditions conducive to increasing women's opportunities and access to existing opportunities and enjoying equal/fair benefits from the results of using those opportunities;
- c. The state not only guarantees but also realizes women's rights;
- d. It guarantees not only de-jure but also de facto;
- e. The state must not only be responsible and regulate it in the public sector but also implement it against the actions of people and institutions in the private sector (family) and the private sector.<sup>7</sup>

the human rights system has no rights and only bears the obligation or responsibility to fulfill the rights guaranteed in human rights instruments. In this context, there are 3 (three) obligations of the state, namely: to respect (obligation to respect), to protect (obligation to protect), and to fulfill (obligation to fulfill).<sup>8</sup>

The critical point of this convention is that in addition to defining discrimination, it also contains non-discriminatory actions, which are a breakthrough in improving the condition of women (corrective actions) in the form of temporary special measures, also known as affirmative actions, to accelerate de facto equality. To obtain substantive equality and protection of women's reproductive health/functions. This particular temporary measure is defined as discrimination permitted under CEDAW.<sup>9</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup><https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-34-tahun-ratifikasi-konvensi-cedaw-di-indonesia> (online 6 Oktober 2022).

<sup>7</sup> Rini Maryam, "Menerjemahkan Konvensi Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan (CEDAW) ke dalam Peraturan Perundang-Undangan", *Jurnal Legislasi Indonesia*, Vol. 9, No. 1, April 2012, h. 100-101. Lihat <https://e-jurnal.peraturan.go.id/index.php/jli/article/download/379/260> (online 6 Oktober 2022).

<sup>8</sup> *Ibid.*, h. 101.

<sup>9</sup> *Ibid.*, h. 101-102.

## Method

In accordance with the problems that the author examines, this type of research is categorized as a type of library research, namely research carried out by collecting data and information with the help of various books and scientific works related to the problem that the author examines to be discussed. In this research.

## Results and Discussion

Indonesia is one of the countries that ratified the International Convention on CEDAW into Law of the Republic of Indonesia Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women). Indonesia ratified the CEDAW Convention on July 24, 1984, and agreed to prevent all acts of discrimination and implement policies related to the elimination of discrimination against women.<sup>10</sup>

Indonesia holds a promise to commit to this international instrument, as can be seen from Indonesia's participation in signing the Optional Protocol to the CEDAW Convention in February 2000. Unfortunately, until now, Indonesia has not ratified the Optional Protocol. The Optional Protocol is the authority given to the CEDAW Committee to participate in efforts to resolve problems that exist within the country if it is proven that there has been a violation of rights by the government of the country concerned.<sup>11</sup>

The implementation carried out by Indonesia is directly supervised by the United Nations through the Indonesian Ministry of Women's Empowerment and Child Protection and the CEDAW Working Initiative (CWGI) as a non-governmental organization (NGO) in Indonesia regarding the implementation of the CEDAW Convention. CWGI itself is a combination of ten non-governmental organizations that regularly compile reports on monitoring results regarding the implementation of the CEDAW Convention.<sup>12</sup>

Until now, there are still laws and regulations that still gender biased (which prioritizes one gender over the other), gender neutral (which does not favor one gender), or there are no laws and regulations. The invitation accommodates the interests of women.

Specifically, CEDAW provides an obligation to the state to make changes to laws and regulations in the form of Until now, there are still laws and regulations that still gender biased (which prioritizes one gender over the other), gender neutral (which does not favor one gender), or there are no laws and regulations. The invitation accommodates the interests of women.

Specifically, CEDAW provides an obligation to the state to make changes to laws and regulations in the form of:

1. To include the principle of equality between men and women in each constitution of each participant;
2. Making appropriate laws and regulations and other laws and regulations, including sanctions where necessary, prohibiting discrimination;
3. Enforcing legal protection through competent national courts;

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<sup>10</sup> Angelia Maria Valentina dan Elisabeth A. Satya Dewi, "Implementasi CEDAW tentang...", h. 3.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*,h. 4.

4. Ensure that government officials and state institutions will act in accordance with their obligations;
5. Make appropriate laws and regulations to eliminate discriminatory treatment by any person, organization, or company;
6. Make appropriate regulations, including legislation, to amend and abolish discriminatory laws, regulations, customs, and practices;
7. Repeal all discriminatory national criminal provisions.<sup>13</sup>

After the ratification of CEDAW, efforts have been made to improve the existing laws and regulations, whether directly related to women. Some of these laws and regulations include:

1. Law Number 39 of 1999 concerning Human Rights;
2. Law Number 23 of 2004 concerning the Elimination of Domestic Violence;
3. Law Number 12 of 2006 concerning Citizenship;
4. Law Number 13 of 2006 concerning the Protection of Sanctions and Victims;
5. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons;
6. Law Number 10 of 2008 concerning General Elections;
7. Law Number 44 of 2008 concerning Pornography;
8. Law Number 11 of 2009 concerning Social Welfare;
9. Law Number 36 the Year 2009 concerning Health;
10. Law Number 16 of 2011 concerning Legal Aid;
11. Government Regulation Number 4 of 2006 concerning Implementation and Cooperation in Recovery of Victims of Domestic Violence;
12. Government Regulation Number 9 of 2008 concerning Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons;
13. Presidential Instruction Number 9 of 2000 concerning the Obligation to Implement Gender Mainstreaming (PUG) in all Development Sectors at the National and Regional Levels.<sup>14</sup>

Government policies in revising or making new laws and regulations must also be reported in the form of a periodic CEDAW report which must be made every 7 (seven) years. In this case, based on the order, the Government of Indonesia 2019 has made 8 reports since the convention ratification. In the first 7 years, there were 4 periodic reports (1984-1991), then the 5th report (1998), the 6th report (in 2005), the 7th report (in 2012), and the 8th report (in 2019).<sup>15</sup>

The government works closely with national human rights institutions, including the Commission for the Protection against Violence against Women (Komnas Perempuan) and the

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<sup>13</sup> Rini Maryam, "Menerjemahkan Konvensi Penghapusan...", h. 104-105.

<sup>14</sup> *Ibid.*, h. 105.

<sup>15</sup> Ade Yuliany Siahaan dan Fitriani, "Kebijakan Pemerintah terhadap...", h. 197-198.

Indonesian Child Protection Commission (KPAI), which are specifically mandated to promote the rights of women and children, as well as build an environment that allows the elimination of all forms of violence. Against women and children in Indonesia. The government also cooperates with the Human Rights Commission (Komnas HAM), the Ombudsman, and the Witness and Victim Protection Agency (LPSK) on various issues related to the promotion and protection of women's rights.<sup>16</sup>

Local governments are also slowly participating in making policies with the issuance of Regional Regulations that take care of women's rights. Some of them are Maluku Provincial Regulation No. 12/2012 Concerning the Implementation of the Protection of Women and Children Victims of Violence, which mandates the establishment of a provincial-level Women and Child Protection Agency that offers assistance to victims in the form of medical, psychosocial, and legal assistance. Similar regulations are also applied by the regional governments of Semarang, Batubara Regency, and Yogyakarta.<sup>17</sup>

The government's efforts through policies made, of course, will not run well if it is not in line with the awareness of the people themselves. Although several things are contrary to CEDAW related to beliefs and customs, at least through the convention's ratification, the Government of Indonesia has a new benchmark in creating justice which has been felt to be lacking due to discrimination against women. And based on the periodic reports, the public should be able to assess the extent to which the government is serious about implementing the convention in Indonesia. On the other hand, there is the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases with the Law.<sup>18</sup>

Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law is one form of implementation of the results of the CEDAW International Convention which is specifically in the legal realm. Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 is a manifestation of the state's obligation to ensure that women have access to justice and are free from discrimination in the justice system in Indonesia.

Women in Conflict with the Law, according to the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017, are women in conflict with the law, women as victims, women as witnesses, or women as parties.<sup>19</sup> Meanwhile, the purpose of the Supreme Court Regulation of the Republic of Indonesia Number 3 of 2017 is for judges to understand and apply the principles of respect for human dignity, non-discrimination, gender equality, equality before the law, justice, benefit, and legal certainty. Another objective is for judges to identify situations of unequal treatment that result in discrimination against women and to ensure women's rights to equal access to justice.<sup>20</sup>

The Institute for Criminal Justice Reform (ICJR) stated that the formation of this regulation was a breakthrough and greatly appreciated the formation of this regulation. The materials regulated in this regulation have never been accommodated in existing laws and regulations, especially the Criminal Procedure Code (KUHAP). Although this regulation more broadly regulates the guidelines for judges in adjudicating cases, both criminal and civil

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<sup>16</sup> *Ibid.*, h. 198-199.

<sup>17</sup> *Ibid.*, h. 200.

<sup>18</sup> *Ibid.*

<sup>19</sup> Pasal 1 angka 1 Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum.

<sup>20</sup> Pasal 3 Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum.

involving women, its existence is very necessary, especially in religious courts and women who are in conflict with the law.<sup>21</sup>

Barriers to law enforcement in implementing Supreme Court Regulation Number 3 of 2017. There are inconsistencies in judges' perceptions regarding the judicial process involving women, namely involving considerations that actually keep women from getting access to justice and the lack of strict supervision and evaluation because, after all, the handling of cases by judges who are not gendered sensitive is also one of the real obstacles to the practice of implementing Supreme Court Regulation Number 3 of 2017.<sup>22</sup>

Efforts that can be made in overcoming obstacles from the implementation of Supreme Court Regulation Number 3 of 2017 require comprehensive and sustainable socialization regarding the implementation of this Perma accompanied by monitoring and evaluation because, after all, the handling of cases by judges who are not gender sensitive is often the case. Do not let this Perma be just a sweet guide without implementation because the more women experience discrimination, and negative stereotypes, the more limited women's access to justice will be.<sup>23</sup>

## Conclusion

Based on the discussion that has been described, the following conclusions can be drawn:

Since Indonesia ratified the International Convention on the CEDAW into Law of the Republic of Indonesia Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women on July 24, 1984, and has signed the Optional Protocol to CEDAW Convention in February 2000. Indonesia has made efforts to improve existing laws and regulations both directly and indirectly related to women. Regarding the implementation of the CEDAW Convention, the government is also working with the Commission for the Protection against Violence against Women (Komnas Perempuan), the Indonesian Child Protection Commission (KPAI), the Human Rights Commission (Komnas HAM), the Ombudsman, and the Witness and Victim Protection Agency (LPSK).

Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases in Conflict with the Law is one form of implementation of the results of the International Convention on CEDAW, which is devoted to the legal domain, which is a form of state obligation to ensure that women have access to justice and are free from discrimination in the justice system in Indonesia. However, in its implementation, some obstacles must be attempted to be overcome through comprehensive and sustainable socialization.

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<sup>22</sup> Aliani Fauziah, Lilis Ratnaningsih, Yuyut Prayuti, "Perlindungan Hukum Bagi Perempuan Yang Berhadapan Dengan Hukum Ditinjau Dari Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum", *Pemuliaan Hukum*, Vol. 2, No. 1, April 2019, h. 30.

<sup>23</sup> *Ibid.*, h. 30-31.

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