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WOMEN IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA: STUDI OF GENDER DISCRIMINATION IN THE CRIMINAL PROCEDURE CODE

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Abstract:

This article is based on the idea that Indonesia as a legal state must accommodate everyone's rights, including the rights of women without exception. Every woman who encounters the law, especially criminal law, has the right to obtain access to justice in the criminal justice system as a form of protection for women as a vulnerable group. The criminal procedural law that is currently being developed is not accountable because of the high values of patriarchy and masculinity that are still rooted in people's lives, including in the formation of laws. Women often experience discriminatory actions both in the pre-adjudication stage and at the adjudication stage. The issue of gender justice is significant to discuss to create a society that is just and not gender biased. This research aims to analyze the current state of gender inequality for women in the criminal justice system in Indonesia and highlight the potential for improvement. By taking stock of the treatment conditions for women in the criminal justice system, the study also aims to provide valuable insight into women's challenges and highlight best practices for improving gender justice. It is hoped that the findings of this research will analyze the substantial gaps in gender justice issues in the Indonesian criminal justice system, including bias in the legal framework and gender stereotypes that influence the decision-making process. This research will also identify and analyze best practices from other countries, where gender justice has been successfully integrated into the criminal justice system, offering potential solutions for improvement in Indonesia. By highlighting existing gaps and exploring best practices from other countries, this research aims to provide recommendations to policymakers, legal experts, and organizations to improve gender equity for women

Keywords: *Gender of justice, discrimination, criminal justice system, criminal procedure code*

I. Introduction

The Criminal Procedure Code (KUHAP), which has been in effect since 1981, has become the main reference for the operationalization of the criminal justice system in Indonesia. During this period until the present, the practice of

criminal procedural law has rapidly developed, and gradually revealed the imperfections in the fundamental

structure and design of the criminal justice system within KUHAP¹.

Equality of rights for women is fundamentally a universal principle within human rights provisions. The issue of equal rights can strengthen confidence in the rights related to a person's dignity. Equality and non-discrimination towards women in any circumstance serve as pillars for a democratic society aiming to achieve social justice and protection of women's human rights.

The facts indicate a societal condition where women are consistently targeted by inequality in both legal matters and everyday life, including women who encounter the legal system. The belief that every woman is equal can also be seen through the principles of equality and non-discrimination in human rights law.

The principle of equality implies that every person should be treated equally and fairly. Meanwhile, the principle of non-discrimination arises as a consequence of the principle of equality. This means that every woman should be treated the same, regardless of differences in status, position, and so on.

Laws that govern the diversity of human life must ensure that the formation of values and social constructs in society can protect gender equality in legal implementation and judicial

processes. The trend indicates an increasing number of women as suspects, defendants, and inmates, but in reality, women as victims cannot be separated from the criminal justice system given women's human rights, they have the right to access justice within the criminal justice system where protection is provided from the beginning to the end of the criminal justice chain. Therefore, the protection of women's rights requires a review of prison infrastructure and a legal framework that reflects women's rights and needs.²

Constitutional rights applicable to every Indonesian citizen include human rights and the rights of citizens guaranteed in the 1945 Constitution of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia even affirms that Every person has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment.

If some provisions or actions discriminate against certain citizens, it violates the human rights and constitutional rights of citizens and is also contrary to the 1945 Constitution of the Republic of Indonesia. Every Indonesian female citizen has the same constitutional rights as Indonesian male citizens. Women also have the right not

¹ Audit Kuhap, "Ringkasan Eksekutif," 2020, 1–8, <https://doi.org/10.1787/a26f6edb-id>.

² Komnas Perempuan, *Na s Kah Akademi k Hak Perempuan Berhadapan Dengan Hukum Dalam*

Rancangan Undang-Undang Hukum Acara Pidana, Komnas Perempuan, vol. 4, 2557.

to be treated in a discriminatory manner based on their status as women, or based on other differences.³

The 1945 Constitution of the Republic of Indonesia guarantees special treatment as a right to obtain equal opportunities and benefits Article 28H, paragraph (2) states that every person has the right to receive ease and special treatment to achieve equality and justice. Equality here is not only related to equal access to human rights for women, but also equality in benefits or outcomes (equality of access, equality of opportunity, and equality of result). Therefore, forms of affirmative action or specific policies for women should not be interpreted as discrimination against others, but rather as necessary measures to ensure equal benefits and outcomes given different situations or contexts that must be considered.⁴

Protection of citizens from all forms of discrimination is an implementation of constitutional rights as stipulated in the 1945 Constitution of the Republic of Indonesia One group of citizens who require special treatment due to their circumstances are women facing legal issues.

Women who are facing the law according to Article 1 number 1 of the

Supreme Court Regulation Number 3 of 2017 regarding Guidelines for Adjudicating Cases Involving Women Facing the Law are women in conflict with the law, women as victims, or women as witnesses or parties.⁵

Women are often associated with the criminal justice system as victims of crime However, recent trends show that more women are facing the law as suspects, defendants, and inmates. From the perspective of human rights, women have the right to access justice as a fundamental right, whether as a suspect, defendant, or convict, including during arrest, detention, or imprisonment The protection of these rights is provided from the beginning to the end of the criminal justice process. Therefore, the protection of women's rights requires a review of prison infrastructure and a legal framework that reflects women's rights and needs. Regulations can be discriminatory, and at the same time, punitive policies may fail to consider the specific needs of women, such as those related to maternity rights – a fundamental human right inherent to women due to their reproductive functions, such as menstruation, pregnancy, childbirth, and

³ Jimly Assididqie, "Hak Konstitusional Perempuan Dan Tantangan Penegakannya," in *Www.Jimly.Com* (Jakarta: Disampaikan pada acara Dialog Publik dan Konsultasi Nasional Komnas Perempuan "Perempuan dan Konstitusi di Era Otonomi Daerah: Tantangan dan Penyikapan Bersama". Jakarta, 27 Nopember 2007., 2007).

⁴ Tim Pengkajian Hukum, "LAPORAN PENGKAJIAN HUKUM TENTANG OPTIONAL PROTOCOL CEDAW

TERHADAP HUKUM NASIONAL YANG BERDAMPAK PADA PEMBERDAYAAN PEREMPUAN" (Jakarta: BADAN PEMBINAAN HUKUM NASIONAL DEPARTEMEN HUKUM DAN HAM, 2007).

⁵ "Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Mengadili Perempuan Yang Berhadapan Dengan Hukum" (2017).

breastfeeding, or as primary caregivers for children.⁶

Research on gender issues has been emerging lately in analyzing women's rights. However, research on gender issues specifically focusing on women facing legal matters remains an important issue related to protecting women's rights as a vulnerable group potentially subjected to discriminatory treatment, especially when women are involved in legal processes as perpetrators/parties, victims, or witnesses. Although research related to matters related to access to women's rights vis-à-vis the law has not been carried out by academics or researchers, the following studies can at least be used as a comparison with the focus of studies in this study.

Ani Triwati, in her article titled *Access to Justice as Legal Protection for Women Facing Legal Proceedings in the Criminal Justice System*, focuses on justice access for women dealing with the legal system in Indonesia, specifically during the trial phase, and only analyzing how judges should consider the facts presented in the trial, explore the laws that exist in society, as well as regulations related to gender equality, to

ensure that their decision promotes gender equality and provides equal and non-discriminatory protection.⁷

Reski Eka Putri and Muhammad Amiruddin, with an article entitled "Legal Protection for Women Before the Law", discuss the actions related to the implementation of PERMA Number 3 of 2017 Regarding Guidelines for Adjudicating Cases Involving Women Facing the Law, but focusing on the processes applied in the Religious Court⁸.

Dwi Florence's research is titled *Reconstruction of Legal Protection Regulation for Women Facing the Law as Perpetrators of Infant Homicide Based on Justice Values*, focusing his research on legal protection for women as perpetrators of infanticide, examining various weaknesses in the legal provisions that have not yet provided justice for women as offenders⁹.

From several previous studies, it can be seen that the research focus has been more on how the law protects victims and perpetrators but does not consider how access to justice should be given to women facing legal matters without discrimination, including within the criminal justice system.

⁶ Komnas Perempuan, *Na s Kah Akademi k Hak Perempuan Berhadapan Dengan Hukum Dalam Rancangan Undang-Undang Hukum Acara Pidana*.

⁷ Ani Triwati et al., "HUMANI (Hukum Dan Masyarakat Madani) AKSES KEADILAN SEBAGAI PERLINDUNGAN HUKUM BAGI PEREMPUAN BERHADAPAN DENGAN HUKUM DALAM SISTEM PERADILAN PIDANA JUSTICE ACCESS AS LEGAL PROTECTION FOR WOMEN WITH A LAW IN THE CRIMINAL JUSTICE SYSTEM," n.d.

⁸ Reski Eka Putri and Muhammad Amiruddin, "Perlindungan Hukum Bagi Perempuan Di Hadapan

Hukum," *Alauddin Law Development Journal* 2, no. 3 (2020): 413–20, <https://doi.org/10.24252/aldev.v2i3.14082>.

⁹ Dwi Florence, *Rekonstruksi Regulasi Perlindungan Hukum terhadap Perempuan Berhadapan dengan Hukum Sebagai pelaku Tindak Pidana Pembunuhan terhadap Bayi Berbasis Nilai Keadilan*, Disertasi Pada Program Doktor Ilmu Hukum, Universitas Islam Sultan Agung (UNISSULA) Semarang, 2023.

The Indonesian government's commitment to addressing gender inequality and achieving gender equality is one of the agendas in achieving the Sustainable Development Goals (SDGs). The term SDGs is also commonly known as Sustainable Development Goals. This goal is also included in the RPJM policy for the years 2020-2024, which aims to enhance gender equality and empower women. The policy direction and strategies for improving gender equality and women's empowerment encompass various aspects, including strengthening regulations and policies, as well as accelerating the implementation of Gender Mainstreaming (PUG) in Indonesia.¹⁰

Discussing women in the criminal justice system with a comprehensive study to reform the gender-biased criminal justice system should also be an important agenda in achieving Indonesia's Golden 2045 Sustainable Development. The Criminal Procedure Code (KUHAP), which has accompanied the criminal justice system for over 40 years, should be seriously considered for inclusive reforms concerning women facing legal issues. In this article, the author will examine matters related to how Indonesia's criminal justice system accommodates women's rights and the urgency of updating the KUHAP to

better fulfill women's rights within the criminal justice system in Indonesia.

II. Legal Materials and Methods

The research method used is normative legal research, which is an effort to discover concrete legal principles that are applicable to resolve a specific legal case.¹¹ In this study, law is conceptualized as what is written in legislation (law in the book) or law that is conceived as norms or standards that guide society's behavior towards what is deemed appropriate.¹²

Using the statutory approach and the case approach, this paper aims to discuss and analyze the current existence of the Criminal Procedure Code (KUHAP) in terms of accommodating protection for women's rights within the criminal justice system to ensure accountability and non-discriminatory gender practices.

III. Result and Discussion

Women's Rights in The Criminal Justice System in Indonesia

The criminal justice system is essentially synonymous with the criminal law enforcement system (CLE). The law enforcement system fundamentally represents the authority or power to enforce the law. This authority or power to enforce the law can also be referred to as judicial power.

The Criminal Justice System, which essentially represents the system of

¹⁰ Larashati, "Ketimpangan Dan Peningkatan Kesetaraan Gender Dalam Sdgs (Sustainable Development Goals)," *Jurnal Sains Edukatika Indonesia* 4, no. 2 (2022): 55–61.

¹¹ Suratman dan Philips Dillah, *Metode Penelitian Hukum*, Cet. Ke-2 (Bandung: Alfabeta, 2014).

¹² Jonaedi Efendi dan Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Depok: Prenada Media, 2016).

enforcing criminal law or the system of judicial power in the field of criminal law, is realized or implemented through four subsystems:

- 1) Investigative authority by investigative bodies or agencies
- 2) Prosecutorial authority by public prosecutors' offices
- 3) Judicial authority to adjudicate and impose sentences by judicial bodies
- 4) Execution authority for implementing sentences or penalties by enforcement bodies or officials.¹³

The reality in society shows that the laws in Indonesia have not yet provided optimal protection for women's rights, both as human beings and as global citizens. Some existing laws even create opportunities for violations of women's rights and are based on gender injustice. Various forms of discrimination and violence against women that have occurred have worsened women's living conditions and hindered women's equal rights.¹⁴

The equation before the law, as a manifestation of justice, is emphasized in Article 28D of the 1945 Indonesian Constitution, which states: Everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. According to this provision, every

person is entitled to a fair and impartial trial. The right to a fair and impartial trial is a fundamental right of every human being. This right is universal, applicable everywhere, at any time, and to anyone without discrimination. Fulfilling this right is the duty and obligation of the State.¹⁵

The principle of equality before the law is a manifestation of the rule of law (*rechtstaat*), and its application requires equal treatment for every person before the law (*gelijkheid van ieder voor de wet*). The elements inherent in the principle of equality before the law mean equal protection before the law and equal justice under the law.¹⁶ Regarding equality before the law, although it is the right of every person, it is particularly important to prioritize women without discrimination, especially in criminal justice processes.

The phenomenon of discrimination against women that has always been discussed pertains to women as victims, especially victims of violence and sexual harassment. However, there is an interesting fact related to the implementation of the Criminal Procedure Code, particularly regarding forced measures during the investigation process, such as the detention of women.

¹³ Zahrul Baizah, "Perempuan Berhadapan Dengan Hukum," *Ilmu Hukum Banda Acaeh*, n.d., 74–82.

¹⁴ Baizah.

¹⁵ Rudolf Siregar, Gomgom T.P., Silaban, "Hak-Hak Korban Dalam Penegakan Hukum Pidana," *Book*, 2020, 1–189.

¹⁶ Lilik Mulyadi, *Seraut Wajah Putusan Hakim Dalam Hukum Acara Pidana Indonesia* (Bandung: Alumni, 2010).

The recent facts that have caught the attention of the public are related to the injustice in the detention of female suspects facing legal issues involving maternity rights. For example, there are allegations of special treatment for PC, who is one of the suspects in the premeditated murder case of Brigadier J, with a potential prison sentence of over five years. The suspect PC was not detained by the police due to the reason that she still has a 1.5-year-old child.¹⁷

However, a different situation occurred for the other female suspect, who had to be detained immediately upon being named a suspect, even though she also had a toddler. Moreover, if we look at the severity of the crime and the potential punishment, it is much lighter. For example, the suspect Mery Anastasi, also known as MA (30), who is a doctor, was arrested and detained after setting fire to a workshop in Cibodas, Tangerang City. During the arrest and detention, MA was seven weeks pregnant as a result of the fire, three people were killed. MA is charged under Article 340 of the Criminal Code regarding premeditated murder.¹⁸

Another suspect, with the initials NSB (31), was arrested for being involved in the unauthorized sale of

weight loss pills. Even their 2-year-old child had to be brought along because they were still breastfeeding. Additionally, a female suspect named Isma (33) has been designated as a suspect in an Information and Electronic Transactions Law case, and she had to bring her 6-month-old baby to the Lhoksukon North Aceh Detention Center.¹⁹

This injustice will set a bad precedent in criminal law enforcement, especially during the pre-trial stage, especially when it occurs against women who are facing the same maternal rights issues. The police's delay in arresting the suspect PC seems to indicate special treatment in front of the public and has sparked negative sentiments and discriminatory treatment within the community. Even some cases that happen to women facing the law are forced to bring their children when detained by investigators.

Another issue is that when women facing legal matters are detained, they are often placed in prisons far from their homes and families due to the limited number of women's prisons.²⁰ Female prisoners should be placed in prisons close to their homes or social rehabilitation centers, taking into

¹⁷ "Tak Tahan Putri Candrawathi, Polri Dinilai Tidak Terapkan 'Equality Before the Law,'" 2022, <https://nasional.kompas.com/read/2022/09/01/13390381/tak-tahan-putri-candrawathi-polri-dinilai-tidak-terapkan-equality-before-the>.

¹⁸ "Sedang Hamil Muda, Dokter Yang Bakar Bengkel Hingga Tewaskan Pacar Dapat Penanganan Khusus Artikel Ini Telah Tayang Di Kompas.Com Dengan Judul 'Sedang Hamil Muda, Dokter Yang Bakar Bengkel

Hingga Tewaskan Pacar Dapat Penanganan Khusus,'" 2021.

¹⁹ "Kisah-Kisah Para Ibu Yang Dipenjara Bersama Balitanya," 2022.

²⁰ Astried Permata dan Naila Rizqi Zakiyah Arinta Dea, "YANG TERBAIKAN: POTRET SITUASI PEREMPUAN YANG DIPENJARA AKIBAT TINDAK PIDANA NARKOTIKA" (Jakarta: Lembaga Bantuan Hukum Masyarakat, 2019).

account their caregiving responsibilities, individual preferences, and the availability of appropriate programs and services.

As a legal state, the Judiciary is necessary because, through the judiciary, various legal issues can be accommodated and implemented in concrete form. The administration of criminal justice is a policy aimed at protecting society (social defense policy). Several models have developed both in Continental countries and in Anglo-Saxon countries. These models cannot be seen as something absolute or a part of the reality of life that must be chosen, but rather should be viewed as a value system that can be distinguished and alternately prioritized in the implementation of criminal justice processes.²¹

The law enforcement that has been preserved in Indonesia is an application of rigid procedural concepts to achieve victory in the judiciary. Indonesia is still heavily proceduralized in its legal processes, prioritizing procedures above all else, which often overlooks substance handling. In this matter, the judiciary is reluctant to deviate or attempt to find new methods from established or normalized procedures as a result, courts

with such characteristics often experience trials without truth. Indonesian law is faced with two sides of currency in creating justice, namely, courts that emphasize procedure and substance.²²

Proposing the progressive legal stream essentially represents a breakthrough for swiftly effecting fundamental changes in legal theory and practice.²³ Progressive law is also used in making various breakthroughs that cannot be achieved by interpreting the law solely in a formalistic manner. The breakthrough in interpreting articles that hinder the creation of substantive justice is closely related to efforts to achieve national goals. This is closely linked to preventing legal inequality, which only benefits the powerful.²⁴ The intended breakthrough includes advocating for gender equality to eliminate discrimination in the criminal justice system.

Talking about the criminal justice system in Indonesia, there are principles born by countries in the world related to aspects of gender specificity in the judicial process such as the Nelson Mandela Rules and Bangkok Rules.

According to the basic principles of Nelson Mandela's rules, a country

²¹ Muammar and Nurul Mahmudah, "Perlindungan Hukum Terhadap Perempuan Dalam Sistem Peradilan Pidana," *SETARA: Jurnal Studi Gender Dan Anak* 02, no. 01 (2020): 31–46, <https://doi.org/https://doi.org/10.32332/jsga.v2i01.1895>.

²² Anindya Yustika, "Diskursus Pemolisian Berbasis Ham Sebagai Alternative Access To Justice Dalam Hukum Yang Bias Gender," *Crepido* 5, no. 2 (2023):

133–45, <https://doi.org/10.14710/crepido.5.2.133-145>.

²³ I Subandi, *Penegakan Hukum Progresif Untuk Mengatasi Ketidakadilan Gender* (Depok: Pustaka Milenia, 2020).

²⁴ S Suharman, *Kekerasan Terhadap Perempuan, Refleksi Sebuah Ketimpangan Kekuasaan Rejim Kehidupan Kelaki-Lakian* (Yogyakarta: Perkumpulan Keluarga Berencana Indonesia, 1997).

must protect the rights of individuals who have been deprived of their freedom from the process of detention to sentencing. There is an obligation to apply rules impartially. Discrimination based on race, skin color, gender, language, religion, political views, or differences in opinion, nationality, social status, property rights, ancestry, or other status is not allowed. All prisoners must be treated with respect as an integral part of dignity and human values.²⁵ The fact is that in this case, law enforcement agencies have not fully provided protection, especially protection for women whose maternal rights are violated in terms of detention decisions.

Furthermore, if we refer to the Bangkok Rules, it states that countries must use an approach that considers gender specificity. The consequence is the need to prioritize implementing non-custodial measures for women who have been involved in criminal justice. This is done considering their background and family responsibilities, as women are generally the primary caregivers for children and even elderly parents. If detention must be continued, it will harm the children and their families.²⁶

Injustice and discrimination against women facing the law are primarily caused by several factors, including:

First, normatively, taking an example in terms of detention, especially related to the formulation of norms regarding pre-trial detention is not mandatory. If referring to the Criminal Procedure Code Article 1 number 21, it states that Detention is the placement of a suspect or defendant in a specific location by an investigator, public prosecutor, or judge with their determination, following the provisions of this law. The authority to detain is only granted to investigators or assistant investigators upon the order of the investigator, public prosecutor, and judge (Article 20 of the Criminal Procedure Code).

In the Criminal Procedure Code, the reasons for detention can be subjective or objective. The subjective reasons for detention are: (Article 21 paragraph (1) of the Criminal Procedure Code)

- a) Investigation is conducted against a suspect or defendant who is strongly suspected of committing a criminal act based on sufficient evidence,
- b) If there are circumstances causing concern that the suspect or defendant will flee,
- c) Destroying or removing evidence and/or repeating a criminal act.

The objective reasons for detention as regulated in Article 21 paragraph (4)

²⁵ "The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)," 2015.

²⁶ United Nations Rules, "United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)" (2011).

of the Criminal Procedure Code, The detention can only be applied to suspects or defendants who commit criminal acts and/or attempt or provide assistance in such criminal acts, in cases where the criminal offense is punishable by imprisonment of five years or more, or in cases where detention is possible for the perpetrator.

It can be understood that detention carried out during the pre-trial stage must meet both subjective and objective criteria, meaning not all suspects during the pre-trial stage are required to be detained. The consequence is that in practice, it tends to create discriminatory and human rights violations because it is not done with substantial consideration, casuistic reasoning, and based on factual evidence.

Substantial consideration can be interpreted as providing special treatment through various legal regulations as an effort to eliminate discrimination against women, especially women who are facing legal issues. That special treatment must be realized through a set of legal rules and policies that must be adhered to and implemented.

In addition to substantial considerations, casuistic considerations where legal proceedings against women facing the law will require specific conditions to provide testimony freely without pressure. The legal process,

from pre-trial to trial, needs to take into account the specific conditions experienced by women.

Legal processes that require special consideration in pre-trial detention decisions, for example, women facing legal issues have maternity rights issues, and their detention should be a last resort. Meanwhile, consideration based on factual evidence here, whether the subjective criteria for detention have been met, unfortunately, depends on the personal judgment of law enforcement officers.

Secondly, based on facts, if we refer to the Criminal Procedure Code, there is no control and no mechanism of control related to the authority of investigators, prosecutors, and judges regarding detention. However, the issue of maternity rights should serve as a reference and standard for law enforcement agencies, especially the police, in determining the detention status of female suspects who are facing legal proceedings, whether these cases involving women have gone viral in the mass media or not. Detention measures should ideally be a last resort, as recommended by the ICCPR.²⁷

Justice and non-discriminatory treatment can be implemented if the administration related to the detention process is carried out by law enforcement officials considering the individual needs of the suspect

²⁷ "International Covenant on Civil and Political Rights" (1976).

Especially for vulnerable categories, such measures are necessary to protect and prioritize the rights of detainees with special needs, and must not be done discriminatively.²⁸ If law enforcement officials decide to carry out detention against a suspect, they must also ensure that the suspects wait for the judicial process within a reasonable time and upholds the principle of presumption of innocence. It should also be understood that detention is not part of punishment, so it should not be prolonged excessively.²⁹

The above description only represents a portion of how the Criminal Procedure Code accommodates women's rights within the criminal justice system, particularly concerning offenders who often face discriminatory procedures, in addition to protecting women as victims to access justice. In principle, women's rights within the criminal justice system should be aligned with the dignity and interests of women, as they are a vulnerable group susceptible to discriminatory treatment.

The Urgency of Reforming the Criminal Procedure Code in the Framework of Fulfilling Women's Rights Concerning Sustainable Legal Development

Speaking in the context of protecting citizens' rights, the Criminal Procedure Code as a formal criminal law provision is considered to still not comprehensively contain guarantees of fair trial rights for suspects, nor rights that guarantee that victims have a significant role in criminal procedural law, especially rights related to women. In the current Criminal Procedure Code framework, the victim is only considered a witness whose duty is to assist the public prosecutor in proving the charges. The victim's losses are almost entirely forgotten or overlooked by institutional social control, such as law enforcement, police, prosecutors, judges, and correctional facilities. The victim is merely placed as evidence, while the state does not prioritize compensation for their losses.³⁰

The State has a responsibility to carry out its role in fulfilling the rights and general needs of the public in the context of serving the community. The Constitution of the Republic of Indonesia Year 1945 has observed in the state the duty to manage the State related to public service, namely creating citizen

²⁸ "The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)."

²⁹ Arinta Dea, Astried Permata, and Naila Rizqi Zakiyah, "Yang Terabaikan: Potret Situasi Perempuan

Yang Dipenjara Akibat Tindak Pidana Narkotika," *Lembaga Bantuan Hukum Masyarakat*, 2019.

³⁰ Komnas Perempuan, *Na s Kah Akademi k Hak Perempuan Berhadapan Dengan Hukum Dalam Rancangan Undang-Undang Hukum Acara Pidana*.

confidence that must be commensurate with the aims and objectives of citizens as an element of state obligations. The national expansion aims to manifest the fair and prosperous lives of citizens based on Pancasila within the independent, united, and sovereign Republic of Indonesia, in a peaceful, harmonious, cultured, and spirited societal context, as well as in global interactions that are free, friendly, cultured, and harmonious³¹

Revisiting the substance of the Criminal Procedure Code (KUHP) regarding women's rights in criminal law is crucial, given its connection to gender equality issues, which are a significant agenda in sustainable development.

In 2015, the United Nations also established a program called Sustainable Development Goals (SDGs), with the fifth goal of achieving gender equality and empowerment of women and girls. Indonesia also participated in signing the program and later issued Presidential Regulation Number 59 of 2017 Regarding the Implementation of Sustainable Development Goals, which contains national targets based on the goals and targets outlined in the SDGs.³²

The target mentioned above, in terms of achieving gender equality, can generally be realized through the establishment of good laws and systems by implementing principles of human rights that are fair and sustainable, including the elimination of discrimination both in social life and within the system. Natural characteristics of laws that compel and regulate can be used as a tool to accelerate the advancement of legal social life to lead Indonesia towards becoming an advanced country.³³ This includes achieving gender equality in the criminal justice system, which must be accompanied by the reform of substantive formal criminal law norms, namely the Criminal Procedure Code (KUHP).

Gender equality has long been recognized as a human right and a primary goal of development. The United Nations (UN) has also held conventions as a form of advocacy for gender equality, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, which 189 countries, including Indonesia, have ratified. Indonesia ratified the convention through Law Number 7 of 1984

³¹ David Cristian and Vivian Wijaya, "Pembangunan Hukum Indonesia Menuju Indonesia Emas 2045," *Jurnal Magister Hukum Argumentum* 9, no. 2 (2023): 210–21.

³² Sonny Dewi Judiasih, "Implementasi Kesetaraan Gender Dalam Beberapa Aspek Kehidupan Bermasyarakat Di Indonesia," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 5, no. 2

(2022): 284–302, <https://doi.org/10.23920/acta.v5i2.904>.

³³ Tiara Costiawati Gusman & Edmond Febrinicko Armay Jurisdito Hutomo Hardi, *Indonesia Emas Berkelanjutan 2045: Kumpulan Pemikiran Pelajar Indonesia Sedunia Seri 4 Hukum, HAM, Dan Pemerintahan* (Jakarta: LIPI Press, 2021).

concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

Long before the advent of the CEDAW Convention, The Universal Declaration of Human Rights (UDHR) states that all individuals are equal before the law and entitled to equal legal protection without any discrimination.³⁴ The Universal Declaration of Human Rights affirms the principle of non-discrimination and states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms listed therein, without any distinction of any kind, including gender-based discrimination.

The emergence of legal instruments to obtain non-discriminatory access to justice as legal protection related to handling cases involving women facing the law has been accommodated in several guidelines issued by the prosecutor's office and the Supreme Court, including Guideline Number 1 of 2021 on Access to Justice for Women and Children in Criminal Case Handling. The preparation of these guidelines aims to ensure and provide protection for women and children facing legal proceedings, especially by the Indonesian Attorney General's Office, as a state institution responsible for overseeing important cases, to ensure

access to justice for women and children in the prosecution process.

In addition, the Regulation of the Supreme Court of the Republic of Indonesia (PERMA) Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law. The existence of this Supreme Court regulation is in response to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which recognizes the state's obligation to ensure that women have access to justice and are free from discrimination in the judicial system. However, despite the existence of these rules, the Criminal Procedure Code (KUHAP) as a formal criminal law provision that will serve as the main reference in the criminal justice system is not yet sufficient to protect women's rights, as it is more focused on general handling of criminal offenders and does not fully accommodate inclusive regulations.

By Indonesia's participation in ratifying the CEDAW Convention, indirectly, the principles and substantive provisions of the convention can be incorporated into formal law and become part of national law. Thus, this Convention can serve as a guide in conducting assessments related to legal culture, legal structures, and legal substance for the protection and enforcement of women's rights, as well

³⁴ "Universal Declaration of Human Rights (UDHR)" (2015).

as eliminating all forms of discrimination against women.³⁵

Based on the mandate of the CEDAW Convention, the participating countries are required to prohibit discrimination against women in all its forms, and to promptly implement policies that eliminate discrimination against women. To achieve this goal, the participating countries strive to:³⁶

- a) To incorporate the principle of equality between men and women into their constitution or other relevant legislation if it has not already been included, and to ensure practical implementation of this principle through appropriate laws and means;
- b) Creating appropriate legislation and other necessary efforts regarding sanctions that prohibit all discrimination against women;
- c) To establish legal protection for women based on equality with men, and to ensure protection for women who actively oppose any discriminatory behavior, through competent national courts and other government bodies;
- d) Refrain from engaging in any discriminatory actions or practices against women, and ensure that officials and public institutions act by this obligation;

- e) Taking all necessary steps to eliminate discriminatory treatment towards women by individuals, organizations, or institutions;
- f) Taking appropriate steps, including legislative efforts, to amend and abolish existing laws, regulations, policies, and practices that discriminate against women;
- g) Repealing all national criminal provisions that discriminate against women.

Seeing the phenomenon in Indonesia, women face significant challenges within the criminal justice system. They often become victims of domestic violence and struggle to access legal protection and the police. This system has also been criticized for being unresponsive to human rights, especially for vulnerable groups such as children and women. The judiciary, police, prosecution, and correctional institutions lack funding, negatively impacting operational and managerial competence.

Women in Indonesia face significant challenges in the criminal justice system. Some of these challenges include:

- a) The Indonesian criminal justice system has been criticized for being unresponsive to human rights, especially for vulnerable groups such

³⁵ Achie Sudiarti Luhulima, *Bahan Ajar Tentang Hak Perempuan* (Jakarta: Yayasan Pustaka Obor Indonesia, 2007).

³⁶ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Perempuan Dalam Himpitan Pandemi:

Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak Dan Keterbatasan Penanganan Di Tengah COVID-19" (Jakarta, 2021).

as children and women Prison overcrowding is a major issue, leading to difficulties in prison conditions, reintegration, and rehabilitation programs.

- b) The gender bias in the court system and cultural attitudes, where there is a lack of gender sensitivity in the judicial institutions, can lead to gender bias in court decisions This is evident in how women are often portrayed as victims of violence, but also as perpetrators of crimes, reinforcing harmful stereotypes. Furthermore, the criminal justice system in Indonesia is influenced by local laws, culture, and legal principles
- c) Violence against women, where women often become victims of domestic violence and struggle to access legal protection and police assistance This system also lacks sanctions and non-detention measures, which could be more effective in addressing criminal behavior while protecting human rights.
- d) Limited access to justice Women may face barriers in accessing justice due to unequal law enforcement, violence, substandard prison conditions, corruption, and discrimination This can lead to a lack of trust in the system, causing victims of violence to be increasingly reluctant to report it.
- e) Limited support for victims and perpetrators the system often fails to

provide adequate support for crime victims, especially women who have experienced sexual violence This can include a lack of psychological and medical assistance, which can exacerbate the harm caused by the crime Additionally, anyone found guilty is always seen as evil, resulting in minimal support for perpetrators as well.

These challenges highlight the need for a more responsive and human rights-based approach to criminal justice in Indonesia, especially in meeting the needs of women and other vulnerable groups.

In addition, the issue of overcrowding in prisons also poses a challenge to the fulfillment of women's rights within the criminal justice system, leading to difficulties in prison conditions, reintegration, and rehabilitation programs This system also lacks non-custodial sanctions and measures, which could be more effective in addressing criminal behavior while protecting human rights, especially for women.

To address these challenges, there is a growing interest in restorative justice approaches in Indonesia This approach focuses on repairing the harm caused by crime rather than solely punishing the offender It involves the participation of victims, offenders, and their communities in conflict resolution processes to find fair solutions for all parties

Although restorative justice has been implemented in various forms, including diversion programs and community-based sanctions, normatively, the Criminal Procedure Code (KUHAP) as a general provision of formal criminal law has not explicitly provided responsive protection for gender justice. The emergence of unilateral regulations in recent legal provisions is still considered insufficient to accommodate all the protection needs for every woman facing the law.

However, despite these efforts, the criminal justice system in Indonesia still faces significant challenges in protecting women's rights and ensuring their access to justice. This system needs further strengthening to effectively meet the needs of vulnerable groups and provide a more responsive and human rights-based approach in criminal justice, especially in achieving Sustainable Development Goals.

In achieving the desired goal of a non-discriminatory criminal justice system, it is also necessary to refer to the Siracusa principles regarding provisions on the limitation and reduction of human rights in the International Covenant on Civil and Political Rights, within the framework of general principles related to justification for

restrictions. It is explained that no arbitrary restrictions are applied and no discriminatory restrictions exist.³⁷ Article 2, paragraph 2 of the International Covenant on Civil and Political Rights states that there shall be no discrimination based on race, skin color, gender, language, religion, political or other opinions, national or social origin, property, birth, or any other status.³⁸

In the context of human rights law, if legislators intend to intervene in the rights and freedoms of citizens, the enacted law must contain clear and precise legal norms.³⁹ In other words, when a country imposes restrictions, it is necessary and permissible to take actions that align with the intended goals. Differential treatment based on specific reasons is not considered discriminatory if it has rational and objective justification.⁴⁰

The need to establish responsive laws in achieving sustainable development goals should at least be aligned with general objectives that can create justice, legal certainty, and benefits.

Justice according to Radbruch is the central point in law. While certainty and utility are not standalone units, they must be placed within the framework of justice itself.⁴¹ Justice is the goal of

³⁷ Asep Mulyana, "Prinsip-Prinsip Siracusa Mengenai Ketentuan Pembatasan Dan Pengurangan Hak Asasi Manusia (HAM) Dalam Kovenan Internasional Tentang Hak Sipil Dan Politik," 1984.

³⁸ "KOVENAN INTERNASIONAL HAK-HAK SIPIL DAN POLITIK" (1966).

³⁹ Dan Meagher, "The Principle of Legality as Clear Statement Rule: Significance and Problems," *Deakin*

Law School Legal Studies Research Paper No. 16-04 (n.d.).

⁴⁰ Mahrus Ali, "Proporsionalitas Dalam Kebijakan Formulasi Sanksi Pidana," *Jurnal Hukum IUS QUIA IUSTUM* NO. 1 VOL. (2018).

⁴¹ Bernard L. Tanya, *Politik Hukum Agenda Kepentingan Bersama* (Yogyakarta: Genta Publishing, 2011).

society, including women facing legal issues. Therefore, throughout the criminal justice process, from pre-trial to trial, the state is obligated to provide access to justice for women in legal matters, as part of its efforts to protect its citizens.⁴²

In line with the above, according to Lon L Fuller in his book *The Morality of Law*, the principle of legality is used to interpret the general principles of law, which he even refers to as the inner morality of law. Fuller mentions eight principles of legality, summarized into eight statements, one of which is that laws must be general.⁴³

In other words, there must be rules or norms as guidelines in decision-making, hence the need for general criteria. These rules or norms serve as guidance for authorities so that authoritative decisions are not made on an ad hoc basis or based on arbitrary policies, but rather on commonly accepted rules.⁴⁴

⁴² Widodo Dwi Putro dan RR.Cahyowati Rodliyah, "PERLINDUNGAN HUKUM BAGI PEREMPUAN DALAM SISTEM PERADILAN PIDANA DI INDONESIA," *Prosiding SAINTEK LPPM Universitas Mataram* Volume 3, (2021).

⁴³ Lon L. Fuller, *The Morality of Law. Principle of Legality* (New Haven And London, Yale University Press, 1963).

⁴⁴ Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan* (Jakarta: Sinar Grafika, 2018).

IV Conclusion and Suggestion

Conclusion

From the previous discussion, the following conclusions can be drawn:

1. The phenomenon of discrimination against women facing the law, whether as perpetrators or as victim-witnesses, which has been actively discussed, reflects that the existing criminal justice system in Indonesia is still gender biased. The Criminal Procedure Code (KUHAP) as a general provision in criminal procedure law, despite considering the rights of every individual, including perpetrators, victims, and witnesses, along with the development of various existing regulations, still leaves a bad precedent if deviations from women's rights as a vulnerable group continue to occur. Interesting facts related to the enforcement of the Criminal Procedure Code (KUHAP) mainly concern matters related to coercive measures during the investigation process, such as the detention of women. Although Indonesia has ratified the CEDAW Convention, it is not automatically followed by its implementation in handling women facing legal issues in Indonesia.
2. It is necessary to immediately carry out reforms related to the criminal justice system, considering the phenomenon of the implementation of the Criminal Procedure Code (KUHAP) in Indonesia for over 40

years. This is because the State has a responsibility to fulfill its role in ensuring the rights and general needs of the public are met transparently. The urgency to update provisions in the Criminal Procedure Code, especially those related to gender perspectives, needs to be addressed promptly. This is in line with the goal of Sustainable Development, where Indonesia has also signed a program called Sustainable Development Goals (SDGs), with the fifth goal of achieving Gender Equality and Empowerment of Women and Girls, as proclaimed by the United Nations. The target mentioned above, in terms of achieving gender equality, can generally be realized through the establishment of good laws and systems by implementing principles of human rights that are fair and sustainable, including the elimination of discrimination both in social life and within the system. The natural characteristics of laws that compel and regulate can be used as a tool to accelerate the improvement of social and legal life to lead Indonesia towards becoming an advanced country in this regard, achieving gender equality in the criminal justice system must be accompanied by the renewal of substantive criminal law norms, namely the Criminal Procedure Code (KUHAP).

Suggestion

Some recommendations related to the discussion above are:

1. The Criminal Procedure Code (KUHP) must be updated promptly in the spirit of sustainable development, especially in achieving gender justice.
2. Several things need to be considered in improving the gender-neutral criminal justice system for women's rights, namely: First, by improving the legal system components related to the existing subsystems in criminal justice, consider various international conventions related to the protection of women that have been ratified, to serve as guidelines in handling women facing the law; Secondly, it is necessary to promptly carry out the development of an integrated criminal justice system that ensures access to justice and a judiciary free from discrimination; Thirdly, there is a need for effective supervision specifically for women who are dealing with the law, especially women as perpetrators, to monitor all actions taken against them (such as any actions during forced efforts and legal processes), including women as victims and witnesses, to be protected by the state.

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