

## **Gender Discrimination as a Legal Crisis Challenges to Protection in the Indonesian Criminal System**

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**Abstrak:** Penelitian ini bertujuan untuk menentukan dan menganalisis perlindungan hukum bagi korban diskriminasi gender dalam hukum pidana Indonesia, khususnya berdasarkan Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia. Metode penelitian yang digunakan adalah penelitian hukum normatif dengan pendekatan hukum dan konseptual. Hasil penelitian menunjukkan bahwa Undang-Undang Nomor 39 Tahun 1999 telah mengatur prinsip-prinsip kesetaraan gender dan perlindungan terhadap diskriminasi, namun implementasinya masih menghadapi berbagai tantangan. Masih terdapat kesenjangan dalam penerapan hukum, lemahnya penegakan sanksi terhadap pelaku diskriminasi gender, dan minimnya kesadaran masyarakat tentang hak-hak mereka. Selain itu, penelitian ini juga membahas hubungan dengan Konvensi tentang Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan (CEDAW), yang telah diratifikasi oleh Indonesia tetapi belum sepenuhnya diimplementasikan dalam sistem hukum nasional. Penguatan regulasi bagi pemerintah dan lembaga legislatif untuk merumuskan kebijakan hukum yang lebih responsif terhadap isu diskriminasi gender juga disarankan. Selain itu, aparat penegak hukum dan lembaga perlindungan hak asasi manusia seperti Komisi Nasional Kekerasan terhadap Perempuan dan Komisi Nasional Hak Asasi Manusia juga direkomendasikan untuk meningkatkan efektivitas penanganan kasus dan advokasi korban. Meningkatkan kesadaran hukum masyarakat melalui pendidikan hukum berbasis gender juga penting agar perlindungan hukum dapat berjalan secara optimal.

**Kata Kunci:** CEDAW, Diskriminasi Gender, Hak Asasi Manusia

*Abstrak:* This study aims to determine and analyze legal protection for victims of gender discrimination in Indonesian criminal law, especially based on Law Number 39 of 1999 concerning Human Rights. The research method used is normative legal research with a statutory and conceptual approach. The results of the study indicate that Law Number 39 of 1999 has regulated the principles of gender equality and protection against discrimination, but its implementation still faces various challenges. There are still gaps in the application of the law, weak enforcement of sanctions against perpetrators of gender discrimination, and minimal public awareness of their rights. In addition, this study also discusses the relationship with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been ratified by Indonesia but has not been fully implemented in the national legal system. strengthening regulations for the government and legislative institutions to formulate legal policies that are more responsive to gender discrimination issues. In addition, law enforcement officers and human rights protection institutions such as the National Commission on Violence Against Women and the National Human Rights Commission are also recommended to increase the effectiveness of case

*handling and victim advocacy. Increasing public legal awareness through gender-based legal education is also important so that legal protection can run optimally.*

**Keywords:** *CEDAW, Gender Discrimination, Human Rights*



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## **A. INTRODUCTION**

In most Indonesian cultures, men are legitimately superior, and this has been the case for decades. This mentality is deeply ingrained in Indonesian society, giving rise to stark social disparities. For example, there's the belief that women don't need to pursue higher education because they end up in the kitchen anyway. There's also the rule that women don't have the freedom to express their thoughts and make judgments, and there's no freedom to decide what's best for the family, while husbands have the right and are allowed to make their own decisions.[1] This often leads to gender discrimination, especially against women, who are perceived as weak and helpless, both physically and psychologically. Gender discrimination is a common and long-standing problem that requires input from all levels of society, including the government. Public awareness of gender is still relatively low, resulting in gender discrimination and injustice remaining commonplace. Gender discrimination is often considered normal and unproblematic, but in reality, many people are unaware of the negative impacts of such discriminatory acts, allowing this cycle of injustice to continue in everyday life.[2]

Gender discrimination is a form of differential treatment based on gender. Gender discrimination or gender-based injustice can be experienced by both men and women, regardless of race, religion, or culture. However, currently, women experience more injustice than men.[3] The reality is that despite progress in gender equality, challenges related to gender equality remain quite complex and encompass several areas of social life, where men are perceived as wielding power and women lacking authority. This occurs due to long-standing social processes and cultural constructions that demonstrate unequal status between men and women.[4] The assumption that women are inferior to men in various areas of life is influenced

by patriarchal thinking. As a result, women's roles are limited. Therefore, social change is needed to challenge gender stereotypes. In this regard, the state plays a crucial role in enforcing legal protections that can be used to press for broader and more equitable change for all genders.

As a nation based on the rule of law based on Pancasila values, Indonesia is obligated to provide protection and justice based on gender equality for men and women without exception. Law plays a role in regulating all aspects of social life, encompassing not only a nation's society but also global society.[5] Law serves to adapt to ongoing developments and changes. Therefore, law can be understood as a set of regulations governing the behavior of individuals as members of society.[6] This aims to create the safety, happiness, and order necessary for society to function harmoniously and effectively. In Indonesia, numerous laws and regulations address gender discrimination, which can be used as a preventative measure to protect everyone, regardless of gender, race, ethnicity, or culture.[3]

Simply put, everyone has the right to legal protection. This legal protection exists, including Article 3, Paragraph 3 of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, which states, "Everyone has the right to protection of human rights and fundamental human freedoms without discrimination." Furthermore, Article 28I, Paragraph 2 of the 1945 Constitution states, "Everyone has the right to be free from discriminatory treatment on any basis whatsoever and has the right to receive protection against such discriminatory treatment." The purpose of the law is to guarantee the protection, fulfillment, and enforcement of human rights in Indonesia. One of these is to guarantee the rights of every individual without discrimination.[7] Law No. 39 of 1999 aims to ensure that every individual, regardless of gender, race, religion, or social background, has the right to protection and respect for their human rights. In the context of gender discrimination, the purpose of Law No. 39 of 1999 is closely related to preventing all forms of discrimination experienced by anyone. This law aims to eliminate gender-based injustice and guarantee equal rights for every individual, as well as to ensure clear legal sanctions for violators.[3]

## **B. METHOD**

This research uses a normative legal research type where the research method uses a statutory and conceptual approach. Normative legal research or library research is a research that examines document studies, namely using various secondary data such as laws and regulations, legal theories. The collection of legal materials in writing normative legal research uses library study techniques, namely by collecting primary and secondary materials. The legal material collection technique used is by recording documents related to the problem being studied. In addition, the author also collects literature including books, articles, and journals that are related and can support this writing. The analysis of the legal materials collected by the author uses a qualitative legal material analysis technique, namely through the interpretation of various legal materials that have been processed as discussed in the doctrines or principles in legal science, including those contained in criminal law. [8]

## **C. Law Number 39 of 1999 concerning Human Rights in Indonesia adopts the principles contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Law No. 39 of 1999 concerning Human Rights was enacted during the administration of President B.J. Habibie and was a significant step in legal reform in Indonesia. This law affirms the state's commitment to respecting and protecting human rights, including women's rights, which are an integral part of human rights as a whole. Meanwhile, CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) is an international convention ratified by Indonesia through Law No. 7 of 1984. CEDAW aims to eliminate all forms of discrimination against women, both in the public and private spheres, and emphasizes the need for active state action to achieve gender equality.[9]

Implementation of CEDAW Principles in Law No. 39 of 1999:

### **1. Recognition of Women's Rights as Human Rights**

The implementation of the principles of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) in Law No. Law No. 39 of 1999 concerning

Human Rights (HAM) in Indonesia recognizes women's rights as part of human rights that must be protected, fulfilled, and upheld by the state. These are detailed below:

a. Understanding CEDAW and Its Relationship to Human Rights

CEDAW is an international convention adopted by the UN General Assembly in 1979. Its primary objective is to eliminate all forms of discrimination against women in various fields, including social, political, economic, cultural, and family. CEDAW recognizes that women have the right to enjoy all human rights equal to those of men. This includes the right to live free from discrimination, the right to work, the right to education, the right to participate in politics, and the right to equal legal protection.

b. Recognition of Women's Rights in Law No. 39 of 1999

Law No. 39 of 1999 concerning Human Rights is the legal basis in Indonesia that guarantees and protects the human rights of every individual without discrimination. In the context of implementing CEDAW, this law contains several principles that align with Indonesia's commitment to eliminating discrimination against women and recognizing their rights as part of human rights.

1) The relevant points in Law No. 39 of 1999 related to the implementation of CEDAW principles are as follows:

- a. Article 28D paragraph (1): "Everyone has the right to recognition, guarantees, protection, and certainty under a just law, as well as to equal treatment before the law." This article affirms that everyone, including women, has the right to equal treatment before the law without discrimination.
- b. Article 28I paragraph (2): "Everyone has the right to be free from torture or cruel, inhuman, or degrading treatment or punishment." This ensures that women, like men, are protected from all forms of violence and degrading treatment.
- c. Article 28H paragraph (1): "Everyone has the right to work and a decent living." This relates to the CEDAW principle, which recognizes women's right to work under equal conditions and free from discrimination in the workplace.

d. Article 28B paragraph (2): "Everyone has the right to establish a family and to procreate through a legal marriage." This article supports a woman's right to choose a life partner and establish a family based on mutual consent, which is part of a woman's right to personal freedom.

c. Application of CEDAW Principles in Policy and Implementation in Indonesia

The implementation of CEDAW principles in Law No. 39 of 1999 is also reflected in Indonesia's efforts to align domestic policies with its international commitments. Some important implementations include: **Anti-Discrimination Policy:** Indonesia ratified CEDAW in 1984 and has since strived to incorporate CEDAW principles into national policies and legislation, including Law No. 39 of 1999. This serves as a foundation for addressing all forms of discrimination against women, whether in law, employment, or social life. **Women's Empowerment:** The law provides space for empowering women through policies that emphasize the protection of women's rights, both in the domestic and public spheres. Various policies aim to create gender equality in access to education, health care, employment, and decision-making. **Protection against Violence Against Women:** Law No. 39 of 1999 also serves as the legal basis for combating violence against women, with stricter law enforcement against perpetrators of gender-based violence. One example of its implementation is the enactment of the Law on the Elimination of Domestic Violence (Law No. 23 of 2004), which supports women's right to live free from violence.[7]

d. Challenges in Women's Empowerment

Despite a strong legal foundation in Law No. 39 of 1999 and international commitments through the ratification of CEDAW, challenges to its implementation remain, such as: **Social and Cultural Norms:** Some social and cultural norms in Indonesia still devalue the role of women, which can hinder the effective implementation of CEDAW principles. **Remaining Gender Inequality:** Despite efforts to reduce gender inequality, many women still face discrimination in access to education, employment, health care, and political participation. **Law Enforcement:** Although Law No. 39 of 1999 guarantees women's rights, inconsistent law enforcement in some cases remains an obstacle to protecting

women's rights. The implementation of CEDAW principles in Law No. 39 of 1999 demonstrates Indonesia's commitment to recognizing and protecting women's rights as part of human rights that must be respected, guaranteed, and fulfilled by the state. While challenges to implementation remain, steps to address gender-based discrimination and violence continue to be taken through policies and regulations that increasingly support gender equality and women's empowerment.[10]

Law No. Law No. 39 of 1999 explicitly recognizes that women's human rights are part of general human rights. Its articles emphasize that everyone has the right to legal protection without discrimination, including on the basis of gender. This aligns with the principles of CEDAW, which states that discrimination against women must be eliminated in all its forms.

## 2. Law Enforcement and Anti-Discrimination Policies

The principle of anti-discrimination is at the heart of CEDAW. CEDAW requires states to eliminate all forms of discrimination against women, whether in law, employment, education, or other areas. In the Indonesian context, anti-discrimination policies are regulated by Law No. 39 of 1999, with the aim of creating justice and equality for women.

### a. Application of CEDAW Principles to Anti-Discrimination Policies in Law No. 39 of 1999:

- 1) Article 28D paragraph (1) of Law No. 39 of 1999 affirms that "Everyone has the right to recognition, guarantees, protection, and certainty of a just law, as well as equal treatment before the law." This reflects the state's efforts to ensure equal treatment for all citizens, regardless of gender. Therefore, anti-discrimination policies aim to ensure that women do not experience differential or detrimental treatment in various sectors of life, including social, political, economic, and cultural.
- 2) Article 28I paragraph (1) stipulates that the human rights inherent in every individual, including women's rights, may not be violated or revoked by anyone and must be guaranteed by the state.

3) This anti-discrimination policy includes protecting women's rights from all forms of action that could harm them, such as discrimination in employment, education, or health services.

b. Gender Equality Policy in Education and Employment:

Regarding employment, Article 28H paragraph (1) states that "Everyone has the right to work and a decent living." This is the basis for policies that ensure women have equal access to employment under fair conditions and free from discrimination based on sex. This policy also aligns with the CEDAW principle, which recognizes women's right to participate in the workforce without barriers or discrimination. For example, discrimination in wages, promotions, or employment opportunities for women must be eliminated.

Prevention of Discrimination in Public Services: States are also required to ensure that women have equal access to public services, such as health care, education, and social protection. Government policies must ensure that women are not treated worse or inferior to men in accessing basic services. Policies for the Protection of Women in the Workplace:

The government has also developed policies to protect women in the workplace from sexual harassment or labor exploitation, although challenges in implementation remain.

3. The National Commission on Human Rights (Komnas HAM) and the implementation of the principles of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) in Law No. 39 of 1999 concerning Human Rights (HAM) in Indonesia are also reflected in the role and function of the National Commission on Human Rights (Komnas HAM). Komnas HAM acts as an institution that assists the state in safeguarding and protecting human rights, including women's rights, by ensuring that state policies and practices align with agreed international principles, such as CEDAW. a. The Role of Komnas HAM in Monitoring and Protecting Women's Rights Komnas HAM is a state institution mandated by Law No. 39 of 1999 to monitor and report human rights violations and provide recommendations to the government. Komnas HAM also plays a role in promoting the fulfillment of women's rights as stipulated in CEDAW, such as the right to be free from discrimination, the right to work,

and the right to legal protection. Implementation of CEDAW by the National Human Rights Commission (Komnas HAM): Monitoring State Policies: Komnas HAM monitors the implementation of state policies to ensure gender equality and the absence of discrimination against women. One of Komnas HAM's primary duties is to assess whether government policies and national laws and regulations align with the principles of CEDAW. For example, Komnas HAM can evaluate policies related to protecting women from domestic violence, sexual harassment, or discrimination in the workplace.[11]

Reporting Violations of Women's Rights: Komnas HAM also serves as an institution that receives public complaints, including from women who experience human rights violations. Komnas HAM can investigate cases related to discrimination against women and report its findings to the government for further action. Providing Recommendations to the Government: Based on its monitoring findings and reports received, Komnas HAM has the right to make recommendations to the government on how to improve the protection of women's rights, both in legal, social, and economic aspects. This aligns with the state's obligation under CEDAW to eliminate all forms of discrimination against women.[12]

The National Commission on Human Rights (Komnas HAM) also plays a crucial role in raising public awareness, including women themselves, regarding their rights. In the context of CEDAW, the principle of women's empowerment is crucial to ensuring that women are not only protected but also given the opportunity to understand and effectively advocate for their rights. Implementation of CEDAW by Komnas HAM. Gender Equality Campaigns: Komnas HAM frequently engages in gender equality campaigns and public education on women's rights. This aims to ensure that the public, both men and women, have a better understanding of the importance of human rights and the application of CEDAW principles in everyday life.[13]

Education on CEDAW and Women's Rights: Komnas HAM also plays a role in educating law enforcement officials, including police, prosecutors, and judges, regarding the state's obligation to implement CEDAW and provide protection to women. This is crucial for reducing discrimination in legal practice, ensuring that women receive equal treatment before the law.[14]

Facilitating Social Dialogue: Komnas HAM can organize discussions and public forums to address issues related to women's rights, including gender-based violence, equality in education, and women's access to health services and employment. This type of dialogue is an important means of bringing the public closer to understanding and implementing the principles of CEDAW. Advocacy for the Protection of Women in Cases of Violence One of the main focuses of CEDAW is the eradication of all forms of violence against women, both in the domestic and public spheres. Komnas HAM plays an active role in advocacy and pushing for stronger legislation to protect women from violence.[15]

Implementation of CEDAW by Komnas HAM. Investigating Cases of Violence Against Women: Komnas HAM frequently intervenes to investigate and investigate reports of violence against women, whether domestic violence, sexual violence, or human trafficking. They play a role in ensuring that these cases are taken seriously and that victims receive justice in accordance with their rights. Advocacy for Regulations on the Protection of Women: Komnas HAM also encourages the creation or revision of legislation that prioritizes the protection of women. An example is the push for the enactment of the Law on the Elimination of Domestic Violence (UU PKDRT), which resulted from advocacy by the National Commission on Human Rights (Komnas HAM) and women's organizations to provide greater protection for women who are victims of domestic violence.

Improving Access to Justice: In the context of CEDAW, the state is obliged to provide easy and fair access for women to seek justice, particularly in cases of violence. Komnas HAM advocates for policies that facilitate women's access to legal services, protection from violence, and reparation for victims. The implementation of CEDAW principles in Law No. 39 of 1999 through the role of Komnas HAM demonstrates Indonesia's commitment to eliminating discrimination against women and protecting their rights as part of human rights. Komnas HAM plays a role in monitoring, education, and advocacy, and supports policies and regulations that prioritize the protection of women, particularly in the context of violence and equality in various areas of life.

It can be concluded that the implementation of the CEDAW principles in Law No. 39 of 1999 concerning Human Rights provides a crucial legal framework for ensuring the

protection of women's rights in Indonesia. Although significant challenges remain in its implementation, both in terms of patriarchal social norms and unequal access to education and legal protection, the efforts made to achieve gender equality are commendable.

The importance of community involvement and education in implementing the CEDAW principles cannot be overlooked. Without active community involvement, gender equality will be difficult to achieve. Education that prioritizes gender equality, human rights, and women's empowerment is a strategic step to change public perceptions and ensure women have equal opportunities in all aspects of life, including politics, economics, and social affairs.

Furthermore, the National Commission on Human Rights (Komnas HAM) plays a crucial role in overseeing government policies and providing recommendations for improving the protection of women's rights. Komnas HAM, as an independent institution, serves to address violations of women's rights and provides a space for women to participate in efforts to protect their rights. However, despite progress, it is undeniable that several structural issues still hinder the effective implementation of CEDAW, such as lack of equitable access to education and health services, and a lack of resources to implement empowerment programs. Therefore, efforts to address these barriers must continue comprehensively, by the government, civil society, and various institutions that play a role in human rights.

Thus, although there is still a long way to go, Law No. 39 of 1999 and the implementation of CEDAW principles provide a strong foundation for advancing women's rights in Indonesia. Commitment from all parties is needed to ensure that these principles are consistently applied and that women truly receive equal opportunities in all areas of life. Law No. 39 of 1999 concerning Human Rights in Indonesia adopts the principles contained in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which aims to prevent gender discrimination and achieve equality for women in Indonesia. CEDAW itself is an international instrument that regulates women's rights and states' obligations to eliminate gender-based discrimination.

The following is a case study illustrating how Law No. 39 of 1999 applies the principles of CEDAW to prevent gender discrimination:

#### Case Study: Gender Discrimination in Access to Employment

At one time, a company in Indonesia discriminated in its employee recruitment process. The company only accepted men for certain positions, while other positions were open to women. However, in terms of quality and ability, there was no significant difference between the men and women applying for the job. Implementation of CEDAW Principles: In this case, the state's implementation of CEDAW principles through Law No. 39 of 1999 can be achieved in the following ways. Prevention of Discrimination: Based on the principles of CEDAW, Indonesia is obligated to eliminate all forms of gender discrimination in all aspects of life, including the workplace. The state can follow up on such cases by issuing warnings or sanctions to companies that discriminate based on gender. Equality in Employment: Article 27 of the 1945 Constitution, as adopted in Law No. 39 of 1999, states that everyone has the right to decent work and a decent living. Therefore, the company violates women's rights to obtain the same work as men, which should be regulated equally according to the CEDAW principles accepted by Indonesia. Raising Awareness and Education: The Indonesian government, based on the principles of CEDAW, can facilitate outreach and education on gender equality for employers and the public. This can reduce ignorance and correct misperceptions about women's capabilities in the workplace. Legal Action and Oversight: If this discrimination is reported, then, in accordance with Law No. 39 of 1999, authorized institutions, such as the National Commission on Human Rights, can investigate the case. If proven, the company can be subject to administrative sanctions and required to employ women without discrimination.

The implementation of Law No. 39 of 1999 concerning Human Rights, which adopts the principles of CEDAW, is an important step in achieving gender equality in Indonesia, including in the employment sector. Cases of discrimination in the workplace can be addressed by ensuring that every individual, regardless of gender, has equal rights to employment opportunities and a decent living, in accordance with the principles of CEDAW, which Indonesia has accepted.

#### **D. Legal Protection Efforts for Victims of Gender Discrimination in Indonesia**

Gender discrimination remains a complex issue in Indonesia, despite various regulations being issued to guarantee equal rights for every individual. Gender-based injustice can occur in various aspects of life, including the workplace, education, and access to justice. Therefore, legal protection for victims of gender discrimination is an urgent need to ensure that every citizen receives their rights equally without being subjected to any disadvantageous treatment based on their sex or gender identity.

In the legal context in Indonesia, various legal instruments, both national and international, regulate the protection of victims of gender discrimination. However, in their implementation, various obstacles remain that hinder the effectiveness of this protection. Therefore, the discussion in this chapter will outline the various forms of legal protection available, the challenges in their implementation, and steps that can be taken to strengthen protection for victims of gender discrimination in Indonesia.

As a form of responsibility to protect human rights, the government has a primary role in preventing and addressing cases of gender discrimination through the development of regulations and policies based on the principle of equality. Several regulations that have been implemented in Indonesia include Law Number 39 of 1999 concerning Human Rights, which affirms that every individual has the right to receive equal treatment without discrimination, and Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which binds Indonesia to eliminate all forms of gender-based discrimination. Furthermore, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) is a concrete effort to provide legal protection for victims of gender-based violence. The government has also issued strategic policies such as the National Action Plan for Human Rights (RANHAM) and various other derivative regulations to strengthen the implementation of protection for victims of gender discrimination. However, despite the availability of regulations, challenges remain in aspects of law enforcement, policy dissemination, and changing social paradigms that are still rooted in patriarchal culture. Therefore, synergy is needed between the government, law enforcement officials, and the community to ensure the effectiveness of the regulations that have been created to create a more just and equal environment for all genders.

Normatively, the author will explain regulations regarding the Indonesian government's efforts to address and prevent cases of gender discrimination. These regulations are as follows:

- 1) The 1945 Constitution of the Republic of Indonesia. Racial and ethnic discrimination contradicts the 1945 Constitution of the Republic of Indonesia (UUD 1945), specifically Article 27 paragraphs (1) and (2), Article 28 paragraph (1), and Article 28D paragraph (1). The 1945 Constitution of the Republic of Indonesia plays a crucial role in addressing cases of gender discrimination by providing a legal basis for gender protection and equality.
- 2) Law Number 39 of 1999 concerning Human Rights. Law Number 39 of 1999 concerning Human Rights is one of the laws enacted during the early reform era under President BJ Habibie. After 44 years of independence, Indonesia only enacted a human rights law in 1999. Law Number 39 of 1999 concerning Human Rights regulates several important matters: (i) Basic Principles; (ii) Human Rights and Fundamental Freedoms; (iii) Basic Human Obligations; (iv) Government Obligations and Responsibilities; (v) Restrictions and Prohibitions; (vi) National Human Rights Commission; (vii) Community Participation; and (viii) Human Rights Court.
- 3) Law Number 26 of 2000 concerning Human Rights Court. Indonesia's human rights court was then specifically regulated in Law Number 26 of 2000 concerning Human Rights Court (the Human Rights Court Law). The Indonesian Human Rights Court has the authority to adjudicate gross human rights violations since the Human Rights Court Law came into effect. For serious human rights violations that occurred before the Human Rights Court Law was enacted, as stipulated in Article 43, an ad hoc Human Rights Court established by Presidential Decree based on a proposal from the House of Representatives (DPR) is the court. This is an exception to the principle of non-retroactivity, which states that a person cannot be tried under retroactive laws.
- 4) Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Domestic violence (DV) was not initially considered a violation of women's human rights. Its location in the domestic sphere made it a crime that often went unpunished. When domestic violence was reported to the authorities, it was usually resolved amicably. Prior to the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT),

victims lacked adequate legal protection. Prior to the enactment of the PKDRT Law, domestic violence cases were always identified as domestic matters, and therefore, discussing domestic violence within a family was considered a disgrace to the family. Consequently, law enforcement in domestic violence cases remains limited. This limited enforcement is due to several factors, including a lack of understanding of the root causes of domestic violence, from a legal, religious, and cultural perspective. Therefore, effective efforts to disseminate women's human rights are essential to reduce the number of victims of domestic violence.

In Indonesia, several state institutions are tasked with handling gender discrimination cases and ensuring the protection of victims' rights. One key institution is Komnas Perempuan (National Commission on Violence Against Women), which plays a role in advocacy, monitoring, and providing policy recommendations related to issues of gender-based violence and discrimination. Furthermore, Komnas HAM (National Human Rights Commission) also has the authority to uphold human rights, including the right to gender equality and protection for vulnerable groups. The Ministry of Women's Empowerment and Child Protection (KPPPA) plays a role in designing strategic policies to improve legal protection and empower women in various sectors. Furthermore, the Witness and Victim Protection Agency (LPSK) plays a crucial role in providing protection for victims of gender-based discrimination and violence, including legal and psychological assistance, as well as compensation for victims who have experienced severe impacts. The existence of these institutions demonstrates the state's commitment to addressing gender discrimination, although various challenges remain in policy implementation and inter-agency coordination to ensure more effective protection for victims.

In a legal system, there are three complementary components to ensure optimal functioning. Lawrence W. Friedman explains that there are three components that influence a legal system: legal culture, legal substance, and legal structure. Legal culture typically reflects social behavior in response to the law. The public's response to the law is influenced by the community's value system, norms, and paradigms. Legal substance is the written and unwritten regulations that serve as guidelines for resolving legal violations.

One of the weaknesses faced in addressing gender equality issues is legal injustice and the lack of legal protection for women. Although many countries have adopted laws protecting women's rights, their implementation is often inadequate. Some emerging issues include: first, gender-based violence. Women remain vulnerable to various forms of violence, such as domestic violence, sexual harassment, human trafficking, and rape. Despite existing laws prohibiting these acts, victims often face challenges in accessing justice and support. Second, discrimination in the legal sector. There are differences in treatment between men and women in the legal system, including in matters of divorce, inheritance, and access to justice. Women often face obstacles in obtaining fair justice and adequate protection. Third, there is a lack of employment protection. Women often face discrimination in the workplace, including unfair pay, sexual harassment, and the neglect of workers' rights. Strong legal protection is needed to safeguard women's rights in the workplace.

For the past 17 years, the National Commission on Violence Against Women (Komnas Perempuan) has been recording cases of violence against women, and the number of reports of this violence has increased year after year. Currently, the legal basis for establishing Komnas Perempuan is based on a presidential decree. However, due to this legal basis, Komnas Perempuan remains subordinate to the executive branch, rather than standing independently and on an equal footing with the executive, legislative, and judicial branches. Komnas Perempuan's subordinate position is the root of weak efforts to eliminate all forms of gender-based discrimination and violence. Therefore, strengthening Komnas Perempuan's legal basis will strengthen the commission's position in several aspects, including: greater bargaining power in legislative negotiations, guiding the development of public policies concerning women, and investigating cases of violence against women.

The position of women in the legal field currently remains very weak and discriminated against, particularly in cases of rape, adultery, sexual harassment, violence, and employment. This gender inequality in the substance of the law is also supported by problems at the legal structure level, characterized by a low level of gender sensitivity among law enforcement.

The existing legal structure in society still does not support the realization of gender harmony and justice. This situation is characterized, among other things, by the low level of gender

awareness among law enforcement. Furthermore, the number of law enforcement officers handling cases of injustice against women is still insufficient, and monitoring and evaluation mechanisms for law enforcement implementation are still weak. Meanwhile, the legal culture in society that does not support the creation of gender justice is characterized, among other things, by low public awareness of the law (rights and obligations), limited public access to legal information and resources, the suboptimal role of the mass media in socializing legal products to the public, and the weak role of community organizations in legal oversight and dissemination.

#### **D. CONCLUSION**

Penerapan Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia dan CEDAW dalam mencegah kriminalisasi diskriminasi gender di Indonesia, dapat disimpulkan bahwa kekerasan berbasis gender (KBG) masih menjadi tantangan serius meskipun telah terdapat berbagai regulasi yang mengaturnya. Data dari Komnas Perempuan menunjukkan bahwa kasus KBG, baik dalam bentuk kekerasan fisik, psikis, seksual, maupun ekonomi, masih terjadi dalam jumlah yang tinggi setiap tahunnya. Meskipun terdapat mekanisme penyelesaian hukum, banyak kasus yang tidak dilaporkan atau tidak terinformasi penyelesaiannya akibat berbagai hambatan, seperti stigma sosial, keterbatasan akses layanan, serta kendala anggaran dan sumber daya lembaga layanan.

2. Perlindungan hukum terhadap korban diskriminasi gender menurut UU No. 39 Tahun 1999 tentang Hak Asasi Manusia, telah diterbitkan berbagai regulasi untuk menjamin kesetaraan gender, namun diskriminasi masih terjadi akibat kendala dalam implementasi hukum, keterbatasan akses keadilan, dan budaya patriarki. Oleh karena itu, diperlukan sinergi antara pemerintah, lembaga terkait, dan masyarakat untuk memperkuat perlindungan hukum bagi korban diskriminasi gender di Indonesia.

#### **E. REFERENCE**

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