

**ANALYSIS OF OPPORTUNITIES AND CHALLENGES OF 30%
WOMEN REPRESENTATION IN LEGISLATURE:
A PERSPECTIVE FROM JOHN RAWLS' THEORY OF JUSTICE**

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Abstract

This research aims to explore the possibilities of achieving a 30% representation of women in the legislature through the lens of John Rawls' theory of justice. Additionally, it examines the challenges faced in implementing this representation. The research adopts a normative legal research approach. In essence, Citizens share the same basic rights, one of which is the right to elect and vote. The Election Law regulates the 30% women's representation in the legislature, and efforts are being made to promote and protect women's rights in this regard. These efforts align with Rawls' concept of maximum freedom, which emphasizes that individual rights should not be compromised for the sake of society or the state. However, obstacles persist in achieving the 30% women's representation in the legislature, primarily due to the prevailing patriarchal culture in society. Rawls suggests that non-violent political means can be employed to challenge and overcome such injustices. Implementing affirmative policies is one effective approach to combat the patriarchal culture and promote gender equality.

Keywords: Challenges, Justice, Opportunities, Women

1. INTRODUCTION

Indonesia is a country where women face limitations in their ability to work and pursue their goals. Society often perceives women as weak and delicate, while men are seen as strong and superior, particularly in terms of physical strength. This mindset is deeply rooted in the social and cultural fabric of Indonesia. The concept of gender refers to the comparison of differences between men and women based on their biological sex and societal positions.

In response to these disparities, a movement has emerged to promote gender equality - the feminist movement. One area where the differences in gender roles are evident is within the family structure. Feminists argue that the existence of distinct roles within the family lacks fairness and justice. Consequently, women are often viewed as highly dependent on men. Moreover, boys are often given priority in accessing higher education compared to girls. This unequal treatment leads to the marginalization of women, resulting in disparities in roles and wages within the workforce due to the perception of women as weaker.

Discrimination against women workers is still a prevalent phenomenon, despite the state's guarantee of equal rights for both men and women in the 1945 Constitution. Article 28D paragraph (2) specifically ensures that workers are treated equally in terms of job type, position, and wages (Susiana, 2019). However, despite these regulations, discrimination against women in the workforce remains common, often due to differences in physical strength. It is not just in the realm of work that women's involvement is crucial; their participation in politics is also significant. The 1945 Constitution, along with the Human Rights Law (Law No. 39 of 1999), grants Indonesian citizens certain human rights, including the right to participate in government.

Article 43 paragraphs (1) and (2) of the Human Rights Law specifically address the right to vote and be elected, without any mention of gender restrictions. This aligns with the principles outlined in Law No. 68 of 1958, which ratifies the Convention on the Political Rights of Women in Indonesia. Therefore, women possess the same rights as men in the political sphere. The concept of democracy in Indonesia, as reflected in Article 43 of the Human Rights Law, emphasizes the people's sovereignty and the shared power between the state and its citizens (Tridewiyanti, 2012).

As a democratic country, Indonesia has a responsibility to ensure that its elections are of high quality. By conducting elections that meet the standards of quality, the country can achieve favorable outcomes that uphold the sovereignty of its citizens in selecting their representatives at various levels of government, including the Regency/City DPRD, Provincial DPRD, and the central level DPR RI. As the voice of the people, it is crucial that the members of the DPR, regardless of their position, possess the ability to effectively convey the aspirations of the people they represent. (Tridewiyanti, 2012). Given the inherent differences between men and women, it is important to acknowledge that their interests and needs may vary. Therefore, it is imperative to have adequate representation of women in the DPR. This will not only ensure that the concerns and protections required by women are addressed, but also address the issue of oppression that women often face, which is a matter of vulnerability.

More than half of Indonesia's population is comprised of women, yet their representation in the legislature is significantly lower compared to men. The reasons for advocating for women's representation in politics can be categorized into four arguments, namely (Phillips, 2018): 1) The role model argument suggests that men cannot adequately represent the interests and perspectives of women due to their differing roles in society; 2) The justice argument opposes discrimination against women and argues that their exclusion from political representation perpetuates injustice; 3) The argument of differences in interests highlights the unique needs and concerns of women that may not be addressed without their representation in politics; and 4) The argument for revitalizing democracy suggests that the inclusion of women in politics can lead to a more inclusive and participatory public sphere, ultimately strengthening democracy.

The first two arguments emphasize the importance of fair distribution of social resources, including political influence, which should be accessible to all individuals regardless of gender (Phillips, 2018).

Following the amendments made to the 1945 Constitution and the enactment of Law No. 12 of 2003 on Elections of DPR, DPD, and DPRD, affirmative action policies were implemented to address the underrepresentation of certain groups in important positions due to discrimination. In the political field, the affirmative action policy towards women is regulated in Article 65 paragraph (1) of the 2003 Election Law, which requires political parties to ensure at least 30% representation of women in nominating candidates for members of the DPR, DPD, and DPRD. This policy was further emphasized in Law No. 7 of 2017 concerning Elections.

John Rawls, an American philosopher and political scientist from the 19th century, developed a theory of justice that was inspired by his personal experiences of witnessing the subordination of blacks by whites in America. Rawls' theory departs from other theories of justice, such as utilitarianism, social contract, liberalism, and intuitionism. Rawls' theory criticized Mill's utilitarianism theory, which prioritizes benefits and views justice as an agreement of large parts. Instead, Rawls believes that justice is a right that

should be fulfilled for all levels of society, from the lowest to the highest. In this context, the author will analyze the opportunities and challenges of 30% women's representation in the legislature in Indonesia based on Rawls' theory of justice.

The problem at hand is to examine the possibilities of achieving 30% women's representation in the legislature, taking into account John Rawls' theory of justice. This involves understanding the extent to which Rawls' principles can support and promote gender equality in political decision-making. Additionally, the challenges associated with implementing this level of women's representation in the legislature need to be identified and addressed. Previous research has explored similar topics, such as the legal analysis of the minimum 30% quota for female legislative candidates proposed by political parties in legislative elections (Irfandi & Muhdar, 2022). However, this current study differs in its focus. Instead of solely examining legal rules and implications, this research aims to investigate the opportunities and challenges of women's representation within the context of the 30% rule, using John Rawls' theory of justice as a lens. The primary objective of this study is to identify the opportunities for achieving 30% women's representation in the legislature, as well as to understand the challenges that may arise during the implementation process.

2. RESEARCH METHODS

Research methods refer to the techniques employed to gather data pertaining to the subject of study with the aim of resolving a problem. In the composition of this article, the author has employed normative research methods. The normative research method encompasses a series of procedures aimed at identifying legal rules, principles, and doctrines that can be utilized to address the legal issues at hand. The two approaches utilized in the composition of this article are the statute approach and the fact approach. The statute approach involves examining statutory regulations that are relevant to the legal matters under discussion (Marzuki, 2017). The laws and regulations utilized include Law No. 7 of 2017 concerning General Elections, as well as other laws that bear relevance to the research topic.

3. RESULTS AND DISCUSSION

3.1. Opportunities for 30% Women's Representation in the Legislature when Viewed in Light of John Rawls' Theory of Justice

The presence of women as representatives constitutes a manifestation of standing for someone and concurrently signifies a mode of acting for someone. The constraint of access represents a formidable challenge for women, as the complete accommodation of women's interests within the political domain remains elusive (Kiftiyah, 2019). The equitable representation of women's interests and needs by women themselves is posited as a more just paradigm. Realizing such representation necessitates policy initiatives, notably through affirmative action, as an affirmative response to overcome discriminatory impediments. The political sphere is construed as an avenue wherein women can effectuate positive change consonant with societal expectations.

Politics assumes a pivotal role in the realization of fundamental rights. The non-fulfillment of women's rights within the political sphere, therefore, poses a considerable obstacle to the attainment of other rights such as employment, health, and education. Thus, the strategic reinforcement of affirmative action policies emerges as imperative

during such junctures. The inherent objective of law is to refine notions of justice and to serve as a legal characteristic. Legal politics delineates a policy trajectory involving the enactment of new legislation or the revision of extant laws to align with national objectives. Legal politics concurrently represents a mechanism to actualize justice, ensure legal certainty, and confer societal benefits. Typically, legal politics engages with extant law (*ius constitutum*) and aspirational law (*ius constituendum*). Standardized regulations provide a firm basis for the unequivocal application of each legal principle (Sopiani & Mubaraq, 2020). The concerted efforts through legal politics exemplify a strategic endeavor to meet societal needs.

Affirmative action, grounded in a resolve to transcend discriminatory circumstances, has prompted observations characterizing its execution as indicative of indirect discrimination, thus denoted as reserve discrimination. Subsequently, a recurring inquiry emerges as to whether affirmative action embodies a form of discrimination. Addressing this query necessitates contextualization within extant Human Rights Law. Article 1, clause (3), of the Human Rights Law explicates discrimination as any form of differentiation, exclusion, affront, or restriction rooted in human distinctions across various contexts. Drawing upon the substance of this article, it may be deduced that affirmative action does not, in essence, embody a discriminatory policy, given its lack of impact in fostering distinctions, exclusions, or affronts against any individual.

Gender equality, introduced to Indonesia as an import from the West, revolves around the imperative for equilibrium in gender roles. The discourse on gender in Indonesia gained prominence in the 1980s. Collaborative initiatives between national and international Non-Governmental Organizations (NGOs) have engendered heightened awareness concerning gender relations within the Indonesian populace. NGO-led programs, including training sessions on the imperative of gender mainstreaming, have been instrumental in fostering societal consciousness, particularly within the Indonesian context.

The discourse on equality encompasses two principal concepts: competitive equality and equality of results. The former is designed to eradicate formal impediments, exemplified by affording women a platform for expression and subsequently reinstating women's agency over their rights. The latter, equality of results, is conceived to not only eliminate hindrances but also to institute positive mechanisms, as exemplified by the quota system, to engender equitable outcomes. The application of affirmative action policies, incorporating a quota system, seeks to realize the conceptual framework of equality of results.

The landscape of Indonesian politics continues to exhibit a pronounced male dominance. In querying the extent of female participation within the political sphere, an inherent challenge materializes in effectuating gender equality. Nevertheless, recent trends suggest progress in women's access to politics, marked by a discernible rise in practical political involvement. This upsurge is not confined solely to legislative roles but also extends to women assuming positions as regents/mayors, governors, within bureaucratic echelons, and other spheres (Gusmansyah, 2019). For the purposes of this discussion, the focus remains on legislative positions. Presented herewith are post-affirmative action election results in Indonesia, detailed in the ensuing table:

Table 1. Women's Representation in the Indonesian Legislature

Period	Female	Male
2004-2009	65 people/(11%)	485 people/(89%)
2009-2014	101 people/(18,10%)	459 people/(82,00%)
2014-2019	97 people/(17%)	463 people/(83%)
2019-2024	120 people/(21%)	455 people/(79%)

As delineated by the presented table, the affirmative action initiative targeting a 30% representation of women in the Indonesian legislature in 2004 yielded 65 seats out of a total of 550 DPR seats, equivalent to 11%. Subsequently, in the 2009 general elections, the representation of women experienced a substantial and drastic augmentation to 101 seats out of the total 560 seats, corresponding to 18%. Conversely, in the subsequent general elections of 2014, the representation of women in the legislature saw a decline to 97 seats out of the total 560 seats, constituting 17%. In the subsequent general elections of 2019, women's representation rebounded, reaching 120 seats out of the total 575 seats, equivalent to 21%.

Initiatives aimed at fostering an increment in the number of seats for women in the legislature are discernible. These initiatives include the imposition of a minimum 30% candidacy requirement in regional electoral districts (*dapil*), coupled with punitive measures for non-compliance with the stipulated 30% female legislative candidate threshold. This constitutes a constructive intervention seeking to enhance the electability of women as representatives in the legislative arena. However, the observed decline in the number of women representatives in the legislature in 2014 underscores persisting vulnerabilities within the affirmative action policies.

John Rawls' theory of justice emerges as a discerning lens for scrutinizing potential lacunae within legal policies, particularly in the conceptualization of justice for women (Fadli, 2017). The prevailing application of gender justice theory by state authorities, emphasizing parity between men and women without due consideration for gender-specific nuances, has engendered systemic injustice across various developmental spheres. In the context of gender justice, Rawls' difference principle assumes relevance. The crux of the difference principle posits that social and economic differentials should be regulated to accrue the maximum benefit to the least privileged. Rawls contends that disparate elements necessitate specific rules tailored to advantage the most vulnerable segments of society.

Rawls propounds three conceptions of justice (Mochtar & Hiariej, 2021), encompassing:

- a. Maximization of liberty: Acknowledging fundamental rights such as freedom of speech, electoral participation, public office occupancy, personal property ownership, etc., without compromise for societal or state interests.
- b. Equality for all: Confining social freedom to the exception that permissible inequality serves to maximize benefits for the least prosperous members of society.
- c. Equality of opportunity and eradication of opportunity-based inequalities derived from wealth and birth.

Of these three concepts, the first holds particular relevance to the discourse on achieving 30% female representation in the legislature. Rawls' notion of maximal liberty ensures that the right to vote and stand for election is universally applicable, transcending

gender disparities. Thus, Rawls' conceptual framework proves instrumental in discerning and addressing the challenges and opportunities pertinent to women's engagement in the legislative sphere.

3.2. Challenges in the Implementation of 30% Women's Representation in the Legislature

In essence, women possess equal Human Resources (HR) capabilities as men. The presence of an Election Law that incorporates an affirmative action policy presents a significant opportunity for women to secure positions within the legislative sphere. However, it is important to acknowledge that the path is not without its obstacles. Women face numerous challenges when it comes to political participation. The implementation of a 30% women's representation in the legislature encounters various types of hurdles. These obstacles encompass cultural barriers, normative challenges, and institutional limitations. Let us first delve into the cultural challenges. These hindrances stem from the Indonesian society itself, where women are often deemed unfit for such positions and are instead expected to confine themselves to domestic roles. The prevailing stereotype that women are unsuited for political involvement exerts a significant influence on the political system in Indonesia (Sulastri, 2020).

To enter the political domain, women must alter societal stigmas perceiving them as delicate figures. The attributes attributed to both women and men are social constructs. Obstacles for women entering politics emanate from the family environment, necessitating permission from family members before venturing into political contests. Within families, opinions on women's political participation vary, influenced by the social contract mentioned earlier. Family structures strongly uphold the division between domestic and public roles.

Reflecting on history, women's involvement predates independence, evidenced by the presence of female independence fighters such as Cut Nyak Dien, R.A Kartini, Tri Bhuana Tungga Dewi, demonstrating that women's spirit and capabilities parallel those of men. Additionally, even before the affirmative action policy, some women held seats in the DPR, albeit in minimal numbers.

In the contemporary era, the increased openness of politics and the proliferation of political parties signify greater societal willingness to participate in politics. Women should capitalize on this opportunity by securing 30% representation in the legislature to enhance the quality of democracy. The assessment of democracy quality hinges on the attainment of specific political values and the functioning of political life. While progress has been swift for women in areas such as education, technology access, and employment, political advancement has not kept pace.

The deeply ingrained cultural division of roles between women and men in Indonesia, particularly in rural areas, results in terms such as "second sex" for women. For instance, the Javanese term "*tiyang wingking*" denotes someone in the rear, symbolizing a woman's place in the kitchen. This exemplifies a hindrance to women's representation in the legislature, reinforcing the patriarchal culture that confines women's roles to domestic spheres, excluding political activities.

Further challenges in the implementation of 30% women's representation lie in normative aspects, conflicting with several laws and regulations in Indonesia. This contradiction weakens the effectiveness of affirmative action. Conflicting regulations

stem from legislative and executive branches of the government, as well as judicial decisions. Examples include:

- a. Law No. 39 of 1999 on Human Rights (Human Rights Law): This law outlines that justice and gender equality can be achieved when women's representation is guaranteed, yet the explanation in Article 46 emphasizes providing opportunities and equal positions for women, framing it as unnatural bestowal rather than an inherent right.
- b. Constitutional Court Decision No. 22-24/PUU-VI/2008 on the enforcement of affirmative action: This decision annulled provisions in Law No. 10 of 2008 on Elections for the DPR, DPD, and DPRD, changing candidate determination from numerical order to popular votes (Sayuti, 2013). Supporters of affirmative action rejected this decision, deeming it far from the principles of justice, arguing that revoking affirmative action equates to discriminatory actions against women, hampering women's representation in parliament. This policy clash could be seen as conflicting with the positivist legal theory, which adheres strictly to enacted laws without considering sociological conditions.

The third obstacle arises from the institutional side, focusing on political parties. Political parties, integral elements of democratic nations, contribute to the political system's functionality. However, the implementation of cadre development by political parties often falls short of ideal standards. The role of political parties is influential in national dynamics, serving as vehicles to represent interests and mobilize the masses. Proper cadre development within political parties would, at the very least, provide women with adequate education in political realms (Kumar, 2017). Political education, akin to political socialization, is crucial for preparing and refining soft skills within political work, understanding their constituents, garnering aspirations, managing community bases, and more. Determining the level of women's representation in the legislature is a responsibility of political parties (Wijayanti & Iswandi, 2021).

Examining the justice theory proposed by John Rawls, his concepts exhibit strong support for recognizing human rights and obligations, especially in the political domain. Rawls advocates for equal participation rights in society's decision-making processes. Envisioning that this concept ensures the safeguarding of everyone's interests within the social structure, Rawls acknowledges the existence of a realm where laws applied lack justice, permitting citizens to engage in nonviolent political actions to oppose and alter injustices (Hasanuddin, 2018).

The most influential hindrance in implementing 30% women's representation in the legislature lies in the cultural or societal realm. The cultural aspect referred to here is the patriarchal culture, causing subordination of women. This subordination impacts the political sector, creating barriers to women's representation in the legislature. In this context, Rawls's perspective becomes relevant, advocating for political action to oppose and transform such injustices through nonviolent means. In this regard, citizens, especially women, can utilize affirmative action to challenge patriarchal culture.

Affirmative action should be situated within Rawls's framework of thinking, particularly the difference principle. Although affirmative action may not equate women with men, its presence should be accepted and respected, as it safeguards marginalized parties, namely women. The condition of oppressed women primarily stems from the patriarchal culture they encounter. This situation necessitates the application of the difference principle, where justice must be experienced by the least advantaged, namely

women. In legal policies, affirmative action should be employed as a means to honor human rights (Lingga & Jebaru, 2023). Women's participation in politics aims to build and advance societal well-being. The honor extended to women for participating in fair politics aligns with Rawls's belief that every citizen possesses something irremovable, and justice, based on the well-being of society as a whole, cannot displace it (Rawls, 2020).

4. CONCLUSION

The representation of women in the legislature plays a crucial role in ensuring that their rights are fulfilled. If women's political rights are not protected, it becomes difficult to secure other rights such as employment, health, and education. To address this issue, the Election Law mandates a 30% representation of women in the legislature through affirmative action policies. According to Rawls, every citizen has the right to vote and be elected, and this right should not be compromised for the benefit of society or the state. Women have the opportunity to represent their communities in the legislature and other public positions.

Despite the affirmative action policies, there are still obstacles to achieving the 30% representation of women in the legislature. These obstacles stem from cultural, normative, and institutional factors. The patriarchal culture in society is a significant cultural obstacle that perpetuates the subordination of women. Conflicting laws and regulations, as well as Constitutional Court decisions, create normative barriers to women's representation. Finally, the lack of regeneration of women in political party institutions is an institutional obstacle. Rawls suggests that non-violent political action can be taken to address injustice, and affirmative action is one such action that can challenge patriarchal culture.

REFERENCES

- Fadli, Y. (2017). Islam, Perempuan dan Politik: Argumentasi Keterlibatan Perempuan dalam Politik di Indonesia Pasca Reformasi. *Journal of Government and Civil Society*, 1(1), 41–63.
- Gusmansyah, W. (2019). Dinamika kesetaraan gender dalam kehidupan politik di Indonesia. *Jurnal Hawa: Studi Pengarus Utamaan Gender Dan Anak*, 1(1).
- Hasanuddin, I. (2018). Keadilan sosial: Telaah atas filsafat politik John Rawls. *Refleksi*, 17(2), 193–204.
- Irfandi, I., & Muhdar, M. Z. (2022). Tinjauan Hukum Terhadap Batas Minimal 30% Calon Anggota Legislatif Perempuan Yang Diajukan oleh Partai Politik Pada Pemilu Legislatif. *Qawanin Jurnal Ilmu Hukum*, 3(1).
- Kiftiyah, A. (2019). Perempuan dalam partisipasi politik di Indonesia. *Yinyang: Jurnal Studi Islam Gender Dan Anak*, 14(1), 1–13.
- Kumar, K. A. (2017). Role and Functions of Political Parties in Democracy. *Issue 1 South-Asian Journal of Multidisciplinary Studies (SAJMS)*, 4(1), 2349–7858.
- Lingga, L. S., & Jebaru, M. A. (2023). Konsep Keadilan John Rawls terhadap Peran Wanita dalam Dunia Politik di Indonesia. *Jurnal Analisis Sosial Politik*, 7(1), 48–56.
- Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.

- Mochtar, Z. A., & Hiariej, E. O. S. (2021). *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas dan Filsafat Hukum*. Red & White Publishing, Indonesia.
- Phillips, A. (2018). *Engendering Democracy*. John Wiley & Sons.
- Rawls, J. (2020). *A theory of justice: Revised edition*. Harvard university press.
- Sayuti, H. (2013). Hakikat Affirmative Action dalam Hukum Indonesia (Ikhtiar Pemberdayaan yang Terpinggirkan). *Menara Riau*, 12(1), 41–47.
- Sopiani, S., & Mubaraq, Z. (2020). Politik Hukum Pembentukan Peraturan Perundang-Undangan Pasca Perubahan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Jurnal Legislasi Indonesia*, 17(2), 146–153.
- Sulastri, R. (2020). Hambatan dan Tantangan Perempuan Anggota Legislatif Pasca Affirmative Action. *Jurnal Khasanah Multidisiplin*, 8(1).
- Susiana, S. (2019). Pelindungan hak pekerja perempuan dalam perspektif feminisme. *Aspirasi: Jurnal Masalah-Masalah Sosial*, 8(2), 207–221.
- Tridewiyanti, K. (2012). Kesetaraan dan Keadilan Gender di Bidang Politik “Pentingnya Partisipasi dan Keterwakilan Perempuan di Legislatif”(Gender Equality and Justice in Field of Politics “The Importance of Participation and Representation of Women in Legislative”). *Jurnal Legislasi Indonesia*, 9(1), 73–90.
- Wijayanti, S. N., & Iswandi, K. (2021). Peran Organisasi Sayap Partai Politik dalam Kaderisasi Partai Politik di Indonesia. *SASI*, 27(4), 475–491.

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