



WOMEN'S REPRESENTATION IN THE NOMINATION OF LEGISLATIVE MEMBERS ACCORDING TO LAW NUMBER 7 OF 2017 ON ELECTIONS

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ABSTRACT

This scientific work focuses on the discussion of Women's Representation of at least 30% in the nomination of legislative members according to Law No. 7 of 2017 concerning Elections. In this work the author raised 2 (two) major discussions, the first related to the basis of consideration of women's representation of at least 30% in the legislative nomination and the second related to the legal implications of the rule. To answer these two discussions, the writer uses a normative juridical legal approach through the study of legal materials and sources of literature related to the theme that the writer adopts. From the results of this study the authors found several urgent issues that underlie the regulation of women's representation at least 30% in legislative nominations. The legal implications for election participants who do not obey these rules are disqualified from the electoral process in the electoral district concerned, these rules also serve as a legal umbrella against women who have not been accommodated in the political process. Although the rules related to women's representation have a positive impact on the life of politics in Indonesia, these rules need to be evaluated and refined to ensure women's representation.

Keywords: *Women's Representation, Rationale for Women's Representation, Legal Implications.*

1. INTRODUCTION

Legal science is closely tied to society (Satjipto Raharjo, 2009). It is therefore justified to say that law is always embedded in a "peculiar form of social life" and "socially specific" (Soerjono Soekanto, 2007). Law has a direct or indirect influence in driving social change (Soerjono Soekanto, 2007). In various aspects, law has a direct influence on institutions, meaning there is a direct relationship between law and social changes (Soerjono Soekanto, 2007). The focus and depth of legal science are achieved when the discipline consciously considers the various implications it has for action and institutional planning (Philippe Nonet & Philip Selznick, 2018). Based on the above, it can be understood that the law can also be used as a means to enhance political participation. Political participation refers to the legal activities of citizens that directly or indirectly influence the selection of state officials or the actions taken by them. Every member of society participates in the political process through elections, driven by the belief that through elections, their interests will be accommodated within existing political institutions or at least be taken into account. (*Democracy through Partnership between Men and Women in Politics*, 1996).

According to Miriam Budiardjo, political participation is the active involvement of a person or group of people in political life, including activities such as voting in elections, attending public meetings, joining political parties or interest groups, making contact or lobbying with the government. officials or members of parliament, become members of political parties or social movements by direct action, and so on. These activities aim to directly or indirectly influence government policy (public policy). This concept is closely related to the principle of popular sovereignty. The basic idea of popular sovereignty is simple: the people must be the ultimate source of power in a state, and they must have independent control over their own affairs. (Hendra Nurtjahjo, 2006).

Therefore, it is crucial to examine the history of the people's sovereignty process in the political reality of Indonesia. Tracing the history of the political reality in Indonesia up to the present shows that there has always been a succession, shift, or tug-of-war between configurations of democracy and configurations of authoritarianism. (Moh. Mahfud MD, 2017) The right of the people to choose their government through periodic free and fair elections is recognized as the most fundamental democratic right. The protection of these rights requires recognition of the right to vote and the need for an inclusive electoral system that truly represents the will of all Indonesian people. These rights only hold meaning if there is a guarantee that elections are conducted freely and fairly, and their outcomes are accepted by all, even by those who lose in the elections. Voters should be able to choose among political parties that offer the people a range of policy options. The implementation of the right to choose a government requires political parties to be conscious of their role as instruments of representation and participatory democracy. The composition of elected representatives should be proportional to the voting results. Possible electoral systems that can be adopted include proportional representation and regional representation, within a framework of laws that allow campaigning, provide access to information, and prevent financial manipulation..

As part of the democracy movement, the struggle for women to increase their representation in parliament should be carried out through democratic means, namely through fair and honest elections. This is where the need for a movement to increase women's representation lies in choosing an electoral system that provides more open opportunities for female candidates to enter parliament. In terms of electoral systems, the constitution actually favors women (Ramlan Subakti & dkk, 2011). The right of women to engage in politics is explicitly guaranteed in the Convention on the Elimination of All Forms of Discrimination against Women. (*Convention on the Elimination of All Forms of Discrimination against Women/CEDAW*). This convention has been ratified by the Indonesian government through Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women's Convention, on July 24, 1984 (Dessy Artina, 2016). Political participation, especially of women, indeed needs to be strongly encouraged in order to achieve an appropriate representation in politics, particularly in the People's Representative Council (DPR). In historical records, it is noted that information is documented and disseminated to spread political views and remain free from interference

The percentage of women's representation in the Indonesian Parliament (DPR) has been relatively low historically. Here are the figures, In the 1971 election, women's representation was 7.8%. In the 1977 election, it was 6.3%. In the 1982 election, it was 8.5%. In the 1987 election, it was 13%. In the 1992 election, it was 12.5%. In the 1997 election, it was 10.8%. In the 1999 election, it was 9%. In the 2004 election, it was 11.45%. In the 2009 election, it was 17.68% (Mizbah Zulfa Elizabeth, 2018) , In the 2014 election, it was 17%. Whereas in the 2019 election, it was 20.5%. The policy of affirmative action through the implementation of a 30% quota for women's representation is one of the efforts to increase women's representation quantitatively (Novira Maharani Sukma, 2018). Indeed, it is necessary to encourage women's representation in parliament. However, despite the provision in Article 245 of Law Number 7 of 2017 on elections, which sets a requirement for a 30% quota for women's representation in every legislative election process for each party, there is no specific provision stating that 30% of the legislative seats at the national level (DPR RI) must be occupied by women.

Quotas are one of the strategies adopted by the women's movement to include women in democracy and representation. This policy aims to bring about a balance in access between women and men in political decision-making. The use of quota strategies has proven effective in increasing women's representation to 56.3% in Rwanda (2008), 45% in Sweden (2010), 44.5% in South Africa (2009), and 38.5% in Argentina (2008). This success has inspired other countries, leading to more than 100 countries adopting similar strategies. However, this policy remains highly controversial (Nur Azizah, 2014b). Considering the existing reality, the provision in the Election Law that requires a minimum of 30% of women candidates in each party's legislative candidate list



is deemed arbitrary. If the goal is to increase the quota of women in parliament, apart from setting a minimum requirement for women candidates, there should also be a minimum restriction on the quota of women occupying parliamentary seats.

Based on the background description above, the research problem addressed in this study is as follows:

1. What is the basis for considering women's representation in the nomination of legislative members in Law Number 7 of 2017 concerning Elections?
2. What are the legal implications for the regulations of Women's nomination of at least 30% in the election of legislative candidates?

2. IMPLEMENTATION METHOD

Based on the aforementioned problem, a holistic and comprehensive examination will be conducted using a normative juridical research approach. This type of legal research involves studying legal materials and supporting literature to address the issues being discussed.

3. RESULT AND DISCUSSION

3.1. The Basis for Considering the Minimum Representation of Women at 30% in the Nomination of Legislative Members in Law Number 7 of 2017 on Elections.

Democracy, as a system embraced by the Indonesian state, has several consequences for various aspects of governance, including within the representative institution (DPR). Indonesia, as a democratic country, has an ethical obligation to fulfill women's rights as a manifestation of consistency with the democratic system. The DPR, as an institution where the representation of its members is chosen through democratic mechanisms, must also accommodate various elements within the republic, including women. If we examine the journey of democracy in the context of electing DPR members, we can see that the representation of women has been minimal, leading to imbalances and underrepresentation. Women have never reached the 30% mark in terms of representation. In reality, although the legislation stipulates that women's representation in the legislative candidacy stage should reach 30%, the representation of women in the DPR has never touched that number. Speaking about the regulation of women's quotas in the legislative candidacy process, we need to draw an integral line from the inception of such rules, which historically began in 2002 (Nur Azizah, 2014a).

As a consequence of representative democracy, the representation of women, who make up more than half of Indonesia's population, should be accommodated proportionally within the representative institution. Therefore, the electoral system needs to be designed to ensure a minimum of 30% representation for women. This viewpoint clearly indicates that in a democratic regime, it is crucial to accommodate various groups, including women who constitute more than 50% of the population. As a manifestation of forming a representative democratic pattern, a special policy called affirmative action is proposed to promote women's representation in parliament (DPR). The affirmative action policy implemented to increase women's representation in parliament is a logical legal consequence of efforts to fulfill the human rights of citizens as regulated in Article 27 paragraph (1) and Article 28 H paragraph (2) of the 1945 Constitution (Nalom Kurniawan, 2014). It should not be disregarded that women's rights in politics need to be accommodated, as it is an important aspect in the context of national life and a form of the state's fulfillment of democratic principles.

The regulation regarding the quota for women in legislative candidacy cannot be separated from the Recommendations of the People's Consultative Assembly (MPR) VI/MPR/2002, point 10 letter b, which states that the participation and representation of women in decision-making bodies, including the executive, legislative, and judicial branches, are still very low. However, the basic policy to increase women's representation has been established in Article 28 h paragraph (2) of the 1945 Constitution, Article 4 paragraph (1) of Law Number 7 Year 1984 concerning the Ratification of the UN Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW) in 1979, as well as the Beijing Declaration and Platform for Action in 1995. The recommendation made to the president, as stated in point 4, is to create special policies, regulations, and programs to increase women's representation in decision-making bodies with a minimum quota of 30%. keputusan dengan jumlah minimum 30% (*Tentang Rekomendasi Atas Laporan Pelaksanaan Putusan Majelis Permusyawaratan Rakyat Republik Indonesia Oleh Presiden, DPA, DPR, BPK, MA Pada Sidang Tahunan Majelis Permusyawaratan Rakyat Republik Indonesia*, 2002). The recommendation from the MPR's decision is highly progressive as it considers the representation of women in various institutions to prevent the dominance of a single gender. The purpose of the recommendation is to ensure that the DPR (legislative institution) is not dominated by only one gender, thus maintaining its role as a representative body.

Marwah Daud Ibrahim argues that descriptive representation of women is necessary to accommodate the aspirations and interests of women that are often marginalized or overlooked, so that they can be better fulfilled (Nur Azizah, 2002). From the viewpoint of one member of the Parliament, it is evident that women's representation is an urgent matter in a democratic regime. This recognition is a form of acknowledgment of women's rights and the national interest that must be accommodated in a representative manner. Iris Indira Murti stated in the Pansus RUU Pemilu meeting that the representation of women in Parliament/DPR is one of the indicators of whether a country is democratic or not (Nur Azizah, 2002) This statement can be affirmed because the DPR, as the representative institution of the people, is expected to represent various interests and elements. Therefore, if the representation of women is significantly low, the level of democracy in a country can be considered low, as it fails to encompass the interests of a significant group

During the Pansus Pemilu meeting, Titi Sumbung also emphasized the requirement for a minimum of 30% representation of women in decision-making institutions, whether in the executive, legislative, or judicial branches. There is an international consensus stating that no gender should exceed 70% in institutions that concern the welfare of the people (*Tentang Pemilihan Umum Presiden Dan Wakil Presiden*, n.d.). The DPR, as the representative institution of the people, holds various powers, including the authority to enact laws and budgets. It should not be dominated by only one gender because, considering the context of Indonesia, where the population of women is larger, such dominance would be against the principles of fairness and inclusivity Excluding men would clearly be unfair if the representative institution is solely occupied by one gender.

In the introduction of the Golkar Faction's deliberation, represented by Hardisoesilo, it is stated that the space for women's political participation is a program aimed at systematically and intentionally fostering women's participation. This means that the regulation is solely intended to create as wide a space as possible for women's political participation and serves as an affirmative action for a specific period to achieve greater women's representation (*Rancangan Undang-Undang Tentang Pemilihan Umum Anggota DPR, DPD Dan DPRD; Dan Rancangan Undang-Undang Tentang Pemilihan Presiden Dan Wakil*, 2007). Clearly, the opinion expressed by the Golkar Faction representative demonstrates their concern for democracy. Furthermore, upon deeper examination, the stance of the Golkar Party is a form of respect and affirmation of the democratic state, as explained by Franz Magnis Suseno, wherein one of the characteristics of a democratic state is the recognition of the principle of majority. It is also a tangible effort to establish a representative institution that is truly representative, considering the minimal representation of women at that time, which necessitated the implementation of a policy to increase the number of women in the representative institution

The existence of regulations regarding women's quotas is a form of democratic progress that is deemed necessary. While regulations related to women's quotas in political processes may be seen as discriminatory policies, they aim to promote and elevate the status of women and encourage their active participation in strategic decision-making within the state.



Based on the views of members of the Council and expert teams as documented in meeting minutes and session reports during the formation of the Election Law, it can be concluded that the basis for regulating a minimum 30% quota for women in legislative candidacy is as follows:

1. To achieve representative democracy.
2. To fulfill the rights of citizens (women) and prevent discrimination.
3. Recommendation from the People's Consultative Assembly (Tap MPR) No. VI/MPR/2002.
4. To serve as a benchmark for a democratic country.
5. To provide a platform for the aspirations of women who have been marginalized.
6. International agreement that decision-making bodies in the state should not be dominated by one gender exceeding 70%
7. To create space for women's participation in politics.

The rationale presented above is not something fabricated, but rather aligns with the concept/theory that the author has outlined earlier. In a democratic system like Indonesia, where every citizen elects representatives to occupy positions, it holds significance that a government by the people, for the people, or the sovereignty of the people, has consequences. It implies that the institutions where the people choose their representatives should be a reflection of the people as a whole, not just a certain group. This is because the outputs of these institutions, whose members are chosen by the people, will govern various aspects of the people's lives as a whole.

The rationale presented by a member of the DPR in the Pansus Pemilu (Special Committee on Election) regarding the involvement of women by at least 30% is highly relevant when connected to the theory of a democratic state, as explained by Professor Jimly. One of the indicators of a democratic state is the guarantee of equality and parity in communal life. From this perspective, it is clear that the provision of a minimum 30% quota for women's candidacy in the legislative process aims to promote equality and parity between women and men through affirmative action. Additionally, Professor Franz Magnis-Suseno argues that one characteristic of a democratic state is the principle of majority, which in this case relates to numbers. Considering the population, it is evident that women outnumber men. Therefore, it becomes necessary to accommodate women in representative institutions as a way to affirm the democratic principles of the state.

From the perspective of representative system theory, it is highly rational to advocate for the representation of women in the DPR (People's Consultative Assembly) based on the reasons mentioned above. In representative system theory, as we know, there is a relationship between the representative and the represented. How can we say that the interests of the represented are adequately represented if those who are representing them lack power within the institution? It is impossible to claim that the institution is representative when the presence of women within it is minimal and tends to be marginalized. In this case, women, who make up more than 50% of the Indonesian population, are not proportionately represented in the DPR. In a comprehensive analysis of the Indonesian state system, which divides representation into electoral districts (dapil), it becomes one of the supporting factors for the provision of a 30% affirmative action. With the use of the electoral district representation system, it will facilitate the increase in women's representation because the competition among candidates in each district will be narrower.

The People's Representative Council (Dewan Perwakilan Rakyat), which is essentially a bridge between the people and the authorities, serves as a platform for representing and accommodating the aspirations of the people. It is imperative to regulate the representation of women in this institution. Therefore, it is highly relevant to establish the background for women's representation in the DPR by aligning it with the concept of the People's Representative Council. Furthermore, the existence of regulations regarding the minimum quota of 30% for women is an indication that the Indonesian parliament is not a patriarchal institution and demonstrates progress in the field of constitutional law.

If the argument arises that men already represent women's interests in the DPR, it is merely a subjective statement because it is highly unlikely that men fully understand the various needs of women

Top of Form

3.2. Legal Implications of the Nomination of Women at a Minimum of 30% in Legislative Candidate Elections

A democratic system based on freedom and majority power needs to be regulated so that it does not slip and compromise human principles. This is where law comes into play, providing a framework for democratic processes to ensure they do not serve their own purposes (Janedri M. Gaffar, 2013). Therefore, the rules regarding the minimum 30% representation of women in legislative nominations must be affirmed as one of the steps towards upholding democracy, which has implications for ensuring the majority voice. It is undeniable that the rule regarding the minimum 30% nomination of women in legislative positions brings positive impacts for the fulfillment of women's rights in the political sphere. The implications of this rule include:

Encouraging political parties to fulfill the 30% quota for women legislative candidates. The provision of a 30% quota in the legislative nomination stage obligates political parties to comply with it, which also means that it is their duty to train and develop capable women cadres. Breaking the mindset that politics is only for men. One important aspect of the introduction of regulations regarding women's quotas is to challenge the traditional belief in society that politics is a domain exclusive to men. By setting the 30% quota, it aims to break this perception and promote gender equality in politics. That the DPR (legislative institution) as a representative body is not an institution that discriminates, because the DPR is a representative institution, so it is a logical consequence to regulate it. Translation: The legislative institution, as a representative body, does not engage in discrimination. Since the DPR is a representative institution, it is a logical consequence to regulate it.

The regulation regarding the minimum quota for women's representation in legislative nominations is stipulated in the Republic of Indonesia Law Number 7 of 2017 concerning Elections, Article 249 Paragraph 2. It states that if the list of prospective candidates does not include a minimum of 30% representation of women, the General Election Commission (KPU), Provincial Election Commission (KPU Provinsi), and District/City Election Commission (KPU Kabupaten/Kota) provide an opportunity for political parties to rectify the list of prospective candidates (About Elections State Gazette of the Republic of Indonesia, 2017). Furthermore, the Regulation of the General Election Commission of the Republic of Indonesia Number 20 of 2018, Article 6 Paragraph 3 states that if a political party fails to meet the submission of 30% women candidates in each electoral district (Dapil) and the placement of the candidate list as referred to in Article 1 Paragraph c and Paragraph d, the submission of candidates for the Regional Representative Council (DPR), Provincial Legislative Council (DPRD Provinsi), and District/City Legislative Council (DPRD Kabupaten/Kota) in the respective electoral district cannot be accepted. (*Berita Negara Republik Indonesia*, 2018).

The aforementioned rule contains a significant meaning, as it makes it mandatory for political parties to fulfill the requirements mentioned above. It challenges the notion that politics is exclusively for men and those who do not meet the criteria. Equally important is to demonstrate that if a political party fails to meet the requirements, it cannot participate in the legislative candidate election contest in that electoral district. This, of course, greatly disadvantages the political party and prevents them from obtaining seats in the electoral district that imposes sanctions for not meeting the minimum 30% women's representation.

Furthermore, the existence of such a rule is also useful for legal certainty in protecting and fulfilling women's rights in politics. This rule encourages women to be more active and increases their awareness to participate in the political arena. Speaking of legal certainty in ensuring a minimum 30% representation of women, it is inherently aligned with the perspective of



democracy, considering that women constitute more than 50% of the total population in Indonesia. It is imperative to increase women's representation in the parliament (DPR) as one of the efforts to achieve a representative democracy. The low representation of women in the DPR (parliament) is one of the implications of a half-hearted affirmative action rule. Upon closer examination, although women participate in the legislative nomination process, they are merely lending their names to be included on the candidate list. This indicates the need for attention from political parties and women activists to continuously educate the public, especially women, to actively participate in the political process.

Another aspect that needs to be highlighted is that even if the 30% quota requirement is fulfilled, it seems to be merely administrative in nature. Upon closer examination, it becomes apparent, among other things, that one of the indicators is the vote acquisition of female candidates, especially those ranked beyond number 3. This should be given more attention to ensure that the regulations related to women's quotas can truly enhance women's representation. If we look specifically, it becomes clear that female candidates who are ranked below number 3 tend to be supplementary. From the rule regarding the minimum quota of 30% women's representation in the legislative nomination stage, it actually implies that the DPR desires women representatives to occupy at least 30% of the seats in the DPR. However, it is regrettable that there is no legal provision regarding the minimum limit of female members in the DPR. This means that the determination of women's representation is only half-hearted.

The half-hearted provision regarding women's representation also has implications for the slow progress in increasing the number of female members in the DPR. Additionally, the provisions regarding women's representation do not have any legal implications whatsoever for the actual representation of women occupying seats in the DPR. Therefore, in the future, there should be a new regulation to establish a minimum limit for women's representation in the DPR, ensuring that the DPR is more representative and better guarantees women's representation. The guarantees regarding women's representation in several countries can be seen in the following rules: The rules concerning women's representation in parliaments/DPRs in several countries, as mentioned above, indicate a seriousness in increasing women's involvement in representative institutions as a tangible manifestation of guaranteeing women's rights and the implementation of a democratic system. In a democratic system, one aspect is the principle of majority, and the countries mentioned above fully recognize that women, as the majority of voters, should have their aspirations accommodated. High representation of women in parliaments/DPRs signifies a high democracy index in a country. Additionally, the countries mentioned above recognize that women's representation in representative institutions is one of the benchmarks of the democracy index.

Indonesia, as one of the countries that uses a democratic system, seems to need to learn from the rules of the aforementioned countries to achieve a real increase in women's representation in the DPR. If we delve deeper, the affirmative action system applied by Indonesia is very similar to that applied in Timor-Leste, but the similarity does not correspond to the representation of women in the parliaments of both countries. Clearly, the representation of women in Timor-Leste is much higher than the representation of women in the parliament/DPR. It seems that we need to learn from Timor-Leste in terms of increasing women's representation in the DPR because in Timor-Leste, with the same rules as Indonesia, they have significantly increased women's representation beyond 30%. Indonesia should even evaluate the affirmative action that has been implemented while comparing it with other countries and adopt these rules into positive law to better guarantee women's representation in the DPR.

4. CONCLUSION AND SUGGESTIONS

4.1. CONCLUSION

1. The basis for considering a minimum 30% representation of women in the Election Law is a long-standing continuum of struggles that deserve appreciation. The reasons for the emergence of such rules are as follows:
 - a. *Affirmative action*
 - b. As a fulfillment of the rights of citizens (women) to not be discriminated against.
 - c. Recommendation from the People's Consultative Assembly (MPR) Decree No. VI/MPR/2002.
 - d. As one of the indicators of a democratic state.
 - e. As a platform for the aspirations of women who have often been marginalized.
 - f. The result of international agreements that decision-making bodies should not be dominated by one gender exceeding 70%.
 - g. As a space for women's participation in politics.
2. The fundamental reasons mentioned above represent progress for democracy and a breath of fresh air for the Indonesian DPR, as caring for women in the DPR will continuously enhance the democracy index and make the DPR more representative..The legal implications of the minimum 30% representation of women in the legislative candidacy stage are as follows:
 - a. Political parties are subjected to disqualification sanctions in the respective electoral districts if they fail to comply with the rule.
 - b. Additionally, the regulations regarding the minimum 30% representation of women in legislative candidacy serve as a legal framework for ensuring women's representation.
 - c. It cannot be overlooked that the existence of these regulations significantly increases representation in the legislative candidacy stage, as evidenced by the increased number of legislative candidates following the implementation of the rule.

4.2. SUGGESTIONS

1. There is a need for a detailed evaluation of the regulations regarding the representation of women in the legislative candidacy stage. The purpose of this evaluation is to examine the existing rules more closely. In this regard, the author suggests the formulation of new regulations to enhance and increase women's representation in the future.
2. The government and political parties should establish strict regulations regarding female legislative candidates to ensure that they are not merely considered as complements to the functioning of democracy.



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