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MIMBAR KEADILAN

Gender Justice: Implementation of Quotas for Female Representation Among Constitutional Court Judges in Indonesia

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Abstract

Since the Constitutional Court was established, male constitutional judges have always dominated the court. There have only been two female constitutional judges in Indonesia since the Constitutional Court was established. The absence of regulations regarding quotas for female representation among constitutional judges is one of the factors contributing to this situation. This certainly has the potential to cause gender inequality and prevent equal opportunities in government. Therefore, this study aims to examine and analyze the implementation of quotas for female representation among constitutional judges in Indonesia and its urgency. This research is legal research with a legislative, conceptual, case, and comparative approach. The results of this study show that practices in various countries, such as South Korea and Austria, have involved women in their constitutional courts. This is in contrast to Indonesia, which only involves one out of every nine constitutional judges. Therefore, it is necessary to regulate the representation of women in the Indonesian Constitutional Court to a minimum of 30% or one from each proposing institution. This is to: (i) create a constitutional practice in accordance with the mandate of Article 28D paragraph (3) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia; (ii) realize the objectives of the Sustainable Development Goals (SDGs); (iii) provide a women's perspective on the review of laws and regulations related to women and children; and (iv) achieve gender equality.

1. Introduction

Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) expressly states that the Constitutional Court has 9 (nine) constitutional judges. The nine constitutional judges referred to above are nominated by three state institutions, namely the President, the Supreme Court, and the House of Representatives.[1] The normative requirements to become a constitutional judge are stipulated in Article 24C paragraph (5) of the 1945 Constitution of the Republic of Indonesia, namely that they must have integrity and an impeccable character, be fair, be statesmen who are well-versed in the constitution and state administration, and not hold any other state

[1] Fatmawati, Delila Stefanya Pusparani, dan Guspita Arfina, "Questioning Indonesia's Regulations for the Selection of Constitutional Justices," in *Challenges of Law and Governance in Indonesia in the Disruptive Era II*, 2021; Pan Mohamad Faiz dan M. Lutfi Chakim, *Peradilan Konstitusi: Perbandingan Kelembagaan dan Kewenangan Konstitusional di Asia* (Depok: Rajawali Pers, 2020); Suparto Suparto, "The Problematics Implementation of Law and Regulations Testing in Indonesia," *Yuridika* 37, no. 1 (2022), https://doi.org/10.20473/ydk.v37i1.28627.

office.[2] Given these requirements, candidates for constitutional judges can be either male or female, as there are no gender restrictions in the provisions.

Since its establishment in 2003, the Constitutional Court has been dominated by male constitutional judges. In fact, male constitutional judges account for 96.875% of the total, compared to only 3.125% for female constitutional judges. Historically, there have only been two female constitutional judges since the Constitutional Court was formed, namely constitutional judge Maria Farida Indrati (2008-2013 and 2013-2018) and constitutional judge Enny Nurbaningsih (2018-2032). This practice is also somewhat unique, because when looking at each replacement, it is found that male constitutional judges are replaced by male constitutional judges and female constitutional judges are replaced by female constitutional judges.

Such practices tend to create gender inequality and do not provide opportunities for women to become constitutional judges. In fact, referring to the provisions of Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 43 of Law Number 39 of 1999 concerning Human Rights, everyone has equal opportunities in government. Government, in this case, is not only in the executive branch, but also in the judicial branch.

The issue of the lack of female representation in the composition of constitutional judges does not originate from within the Constitutional Court, but rather from the proposing institutions that do not take the involvement of women in the composition of constitutional judges. In fact, involving women in the composition of constitutional judges is an implementation of the principles of equality and justice as guaranteed in Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia.[3]

The presence of women (judicial presence) in the composition of constitutional judges will contribute ideas and perspectives in certain fields with a distinctive perspective (judicial ideas).[4] Therefore, special arrangements (affirmative action) are needed to ensure women's representation in the Constitutional Court. This is in line with the Sustainable Development Goals (SDGs), which emphasize that gender equality and empowerment are crucial targets in the global SDGs, with one of the goals being to ensure that women can participate fully and have equal opportunities for leadership at all levels of decision-making in political, economic, and public life.[5]

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[2] Junesvan Purba dan Hendri Goklas Pasaribu, "Mekanisme Pengangkatan dan Pemberhentian Hakim Konstitusi Menurut Peraturan Perundang-undangan," *Jurnal Kajian Konstitusi* 3, no. 1 (2023), https://doi.org/10.19184/j.kk.v3i1.39521.

[3] Mohammad Ibrahim, "The judicialisation of discrimination in the Indonesian constitutional court," *International Journal of Discrimination and the Law* 22, no. 2 (2022), https://doi.org/10.1177/13582291221094923.

[4] Maria da Gloria Bonelli dan Fabiana Luci de Oliveira, "Changes in gender and race composition of the Brazilian Judiciary," *Oñati Socio-Legal Series* 13, no. 4 (2023), https://doi.org/10.35295/osls.iisl/0000-0000-0000-1394; Santiago Basabe Serrano, "The representation of women in the judicial branch: Eighteen Latin American high courts in comparative perspective," *Revista de Estudios Politicos*, no. 185 (2019), https://doi.org/10.18042/cepc/rep.185.09.

[5] Walter Leal Filho et al., "Promoting gender equality across the sustainable development goals," *Environment, Development and Sustainability* 25, no. 12 (15 Desember 2023): 14177–98,

The granting of quotas for women's representation in public office has been increasingly emphasized by judicial institutions. This can be seen in several court decisions, namely Supreme Court Decision Number 24/P/HUM/2023[6] Related to the fulfillment of a minimum 30% representation of women in the list of legislative candidates and Constitutional Court Decision Number 169/PUU-XXII/2024 related to the Council's Organs must include 30% representation of women. In fact, if we look at the practices implemented in the Constitutional Courts of South Korea and Austria, female constitutional judges there have a proportional quota. This shows the seriousness of the proposing institutions regarding women's representation in the composition of constitutional judges.

In view of this, it is logical to allocate a quota for female representation among constitutional judges in Indonesia, with the aim of creating balance and providing equal opportunities for women to become constitutional judges.[7] The issue of women's representation among constitutional judges in Indonesia was once submitted for constitutional review to the Constitutional Court, but the Constitutional Court, through Decision Number 27/PUU-XXIII/2025, did not grant it because the petitioners' request was unclear or vague (obscure).

Considering the issues described above, this study aims to examine and analyze the implementation of quotas for female representation among constitutional judges in Indonesia. This study is highly original, as no research has ever been conducted on the implementation of quotas for female representation among constitutional judges in Indonesia. Research on the implementation of women's representation quotas has been conducted by previous researchers, including Parid Sidik with the title "Women's Representation in Politics in Indonesia: A Legal Feminism Perspective".[8] The study examined the practice of women's representation in politics in Indonesia, while this study specifically examined women's representation in the Indonesian constitutional court. In addition, research on women's representation in the judiciary was also conducted by Fionnuala Ní Aoláin, entitled "More Women – But Which Women? A Reply to Stéphanie Hennette Vauchez".[9] The study examined the importance of women's perspectives in the judicial world, while this study examined the regulation of women's representation for constitutional judges in Indonesia in creating gender justice. Finally, research conducted by Shane A. Gleason, et al., entitled "The Role of Gender Norms in Judicial Decision-Making at the U.S. Supreme Court: The Case of Male and Female

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https://doi.org/10.1007/s10668-022-02656-1; Viacheslav Pylypenko et al., "Social Inclusion in Driving Sustainable Growth within United Territorial Communities," *Grassroots Journal of Natural Resources* 7, no. 3 (30 Desember 2024): s420–57, https://doi.org/10.33002/nr2581.6853.0703ukr21.

[6] Ajeng Permana et al., "Theory of Power In Supreme Court Decision Nomor 23 P/Hum/2024," *Journal Customary Law* 2, no. 2 (28 April 2025): 13, https://doi.org/10.47134/jcl.v2i2.3944; Oktafiani Zendrato dan Ardilafiza, "Position Of The Supreme Court Decision Number 23 P/HUM/2024 After The Constitutional Court Decision Number 70/PUU-XXII/2024," *Supremasi Hukum : Jurnal Penelitian Hukum* 34, no. 1 (30 Juni 2025): 40–65, https://doi.org/10.33369/jsh.34.1.40-65.

[7] Aditya Perdana dan Ben Hillman, "Quotas and ballots: The impact of positive action policies on women's representation in Indonesia," Asia and the Pacific Policy Studies 7, no. 2 (2020), https://doi.org/10.1002/app5.299.

[8] Parid Sidik, "Keterwakilan Perempuan dalam Politik di Indonesia Perspektif Legal Feminism," *At-Tanwir Law Review* 2, no. 1 (8 Desember 2022): 90, https://doi.org/10.31314/atlarev.v2i1.1856.

[9] Fionnuala Ní Aoláin, "More women - but which women? A reply to stéphanie hennette vauchez," European Journal of International Law 26, no. 1 (2015), https://doi.org/10.1093/ejil/chv010.

Justices".[10] The study examined the role of gender norms in judicial decision-making, while this study specifically examined the urgency of regulating women's representation among constitutional judges in Indonesia. In view of this, this study has a high degree of originality and novelty.

2. Methods

The research method used in addressing this legal issue is a legal research method using a regulatory, conceptual, case, and comparative approach.[11] The legal materials used in this study are primary and secondary legal materials. Primary legal materials were collected using inventory and categorization methods, while secondary legal materials were obtained through literature search methods. After the primary and secondary legal materials were collected, the next step was to identify, classify, and systematically organize them based on their sources and hierarchy. Then, all legal materials were reviewed and analyzed using legal reasoning with the deductive method.

3. Results and Discussion

3.1. Regulations on Women's Representation for Constitutional Court Judges in Indonesia

Since the establishment of the Constitutional Court (MK) until its 22nd anniversary in 2025, there have been a total of two female constitutional judges. There has always been only one female judge out of a total of nine constitutional judges.[12] This situation reveals a significant gap and confirms that the current mechanism for filling positions does not fully guarantee equal opportunities for women to participate in constitutional judicial institutions. The lack of female representation among constitutional judges for more than two decades shows that there is no institutional design that provides affirmative space for women.[13]

Indonesian law does not contain any gender restrictions on the appointment of constitutional judges. Article 24C only regulates the number of judges and the mechanism for their nomination, but does not specify any gender requirements for candidates.[14] Formally, this shows that women and men have equal opportunities. However, these equal opportunities do not necessarily translate into substantive justice because the absence of affirmative norms means that the process of filling positions proceeds as usual without instruments to encourage more proportional participation by women. The absence of

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[10] Shane A. Gleason, Jennifer J. Jones, dan Jessica Rae McBean, "The Role of Gender Norms in Judicial Decision-Making at the U.S. Supreme Court: The Case of Male and Female Justices," American Politics Research 47, no. 3 (2019), https://doi.org/10.1177/1532673X18766466.

[11] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

[12] Pan Mohamad Faiz, Serviam: Pengabdian dan Pemikiran Konstitusi Maria Farida Indrati (Depok: Murai Kencana, 2021).

[13] Rahma Ning Tias et al., "Tantangan Kebijakan Affirmative Action Sebagai Upaya Penguatan Keterwakilan Perempuan di Legislatif Challenges of Affirmative Action as An Effort to Strengthen Women ' s Representation in" 14, no. 2 (2023): 169–89, https://doi.org/10.22212/jp.v14i2.4151.

[14] Baharuddin Riqiey, "Kewenangan Mahkamah Konstitusi Dalam Memutus Perselisihan Hasil Sengketa Pilkada Pasca Putusan Mahkamah Konstitusi Nomor 85/PUU-XX/2022," *JAPHTN-HAN* 2, no. 1 (31 Januari 2023), https://doi.org/10.55292/japhtnhan.v2i1.59; Baharuddin Riqiey et al., "Open Legal Policy: Testing Practices and Limitations by the Constitutional Court," *Jurnal Hukum Magnum Opus* 8, no. 2 (2025), https://doi.org/https://doi.org/10.30996/jhmo.v8i2.131863; Baharuddin Riqiey dan Miftaqul Janah, "Election Omnibus: Efforts to Realize Legal Certainty in General Elections in Indonesia," *Mimbar Keadilan* 18, no. 1 (2025), https://doi.org/https://doi.org/10.30996/mk.v18i1.11989.

affirmative norms means that the proposing institutions have no moral or legal obligation to ensure gender balance in the selection of constitutional court judges.

In the context of the Indonesian legal system, the principles of equality and equal opportunity are regulated in the constitution, namely Article 28D paragraphs (1) and (3) and Article 28H paragraph (2).[15] However, this guarantee has not been incorporated into concrete affirmative policies, in this case regarding the appointment of constitutional judges. Although a judicial review petition has been filed in Constitutional Court Decision No. 27/PUU-XXIII/2025, the Court declared the petition to be obscure *(obscuur libel*), meaning that efforts to incorporate gender-based affirmative provisions have not yet been successful.[16]

However, the author does not recommend efforts to provide quotas for female representation among constitutional judges in Indonesia through judicial review mechanisms in the Constitutional Court. This is due to the principle of *nemo judex idoneus in propria causa*, which prohibits judges from adjudicating cases related to themselves.[17] This principle is enshrined in Article 17, paragraph (5) of Law Number 48 of 2009 concerning Judicial Authority. Although there is a principle that may oppose it, namely the principle of *ius curia novit* as stipulated in Article 10 of Law No. 48 of 2009, this cannot be justified and is irrelevant if argued with the principle of *ius curia novit*.[18] This is because it remains institutionally linked to the institution itself. Therefore, efforts to provide representation quotas must go through a legislative process, commonly referred to as a political review.[19]

Regulations regarding the representation of women in the position of Constitutional Court Justice in Indonesia are still essentially based on the principle of formal equality, namely providing equal opportunities for every citizen regardless of gender, as long as they meet constitutional requirements and statutory regulations.[20] The Law on the Constitutional Court

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[15] Salomo Jitmau, Sokhib Naim, dan Muh Akhdharisa SJ, "Implementation of the Principle of Equality Before the Law in the Dynamics of Indonesian Law," *JUSTISI* 11, no. 2 (13 April 2025): 441–55, https://doi.org/10.33506/js.v11i2.4088; Moh Iqra Syabani Korompot, Sholahuddin Al-Fatih, dan David Pradhan, "The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?," *Journal of Human Rights, Culture and Legal System* 1, no. 3 (2021), https://doi.org/10.53955/jhcls.v1i3.13; I D.G. Palguna, Saldi Isra, dan Pan Mohammad Faiz, *The Constitutional Court and Human Rights Protection in Indonesia* (Depok: Rajawali Pers, 2022).

[16] Devi Harahap, "UU MK Digugat, Minta Keterwakilan Hakim Konstitusi Perempuan 30%," Media Indonesia, 2025, https://mediaindonesia.com/politik-dan-hukum/763759/uu-mk-digugat-minta-keterwakilan-hakim-konstitusi-perempuan-30.

[17] Sumali dan Echaib Samira, "Legality of the Constitutional Court as a Party and at the Same Time as a Judge in Disputes over the Authority of State Institutions," Indonesia Law Reform Journal 2, no. 2 (2022), https://doi.org/10.22219/ilrej.v2i2.22401; Basuki Teguh dan Waluyo, "Implementation of Nemo Judex Idoneus in Propria Causa Principle in Constitutional Court Decision Perspective of Separation Power Theory," International Journal of Business, Economics and Law 28, no. 1 (2022).

[18] Baharuddin Riqiey, "Prinsip Nemo Judex Idoneus in Propria Causa dalam Praktik Judicial Review di Mahkamah Konstitusi" (Universitas Airlangga, 2025).

[19] Hufron dan Syofyan Hadi, "Problematika Pembentukan Peraturan oleh Lembaga Peradilan," Proceeding APHTN-HAN 2, no. 1 (2024), https://proceedingaphtnhan.id/index.php/paphtnhan/article/view/141/137.

[20] Alex Raskolnikov, "A new view of formal equality and a case for predistribution," *Journal of Legal Analysis* 17, no. 1 (2025): 213–35, https://doi.org/10.1093/jla/laaf011; Marc De Vos, "The European Court of Justice and the march towards substantive equality in European Union anti-discrimination law," *International Journal of Discrimination and the Law* 20, no. 1 (29 Maret 2020): 62–87, https://doi.org/10.1177/1358229120927947.

emphasizes the principles of transparency, participation, objectivity, and accountability in the selection process for constitutional judges, but does not explicitly regulate quotas or affirmative mechanisms to ensure women's representation. From the perspective of substantive equality as expressed by Sandra Fredman, a formal equality approach alone is often insufficient to address the structural inequalities experienced by women in access to strategic positions in state institutions.[21] Without affirmative policy interventions, social, cultural, and institutional structures that have long been dominated by men tend to maintain patterns of unequal representation in constitutional courts.

Within the framework of transformative constitutionalism, the constitution is viewed not merely as a basic norm governing state power, but as an instrument for driving social change toward a more just and equal society.[22] Therefore, the representation of women as judges on the Constitutional Court is not merely interpreted as a symbolic issue, but as part of the institutional transformation of the state system. The presence of female judges on the Constitutional Court can broaden perspectives in constitutional interpretation, particularly in cases related to human rights, gender equality, and the protection of vulnerable groups. Therefore, strengthening the representation of female judges on the Constitutional Court can be understood as a step to ensure that the constitutional interpreting body reflects the diversity of society and can produce decisions that are more sensitive to social justice.

Meanwhile, critical feminist constitutionalism critiques the assumption that constitutional law and institutions are gender-neutral.[23] This perspective highlights that the process of establishing legal norms and the practice of constitutional interpretation are often influenced by male-dominated experiences and perspectives. In this context, the limited representation of women among Constitutional Court judges has the potential to limit the diversity of perspectives in constitutional reasoning. Therefore, female representation is important not only in terms of numbers but also as an effort to bring social experiences and gender perspectives into the process of reviewing the constitutionality of laws. By integrating the approaches of critical feminist constitutionalism, transformative constitutionalism, and substantive equality, regulations regarding the appointment of Constitutional Court judges in Indonesia can be directed to be more responsive to the principle of gender equality and strengthen the democratic legitimacy of the constitutional court.

From a comparative perspective, several countries have demonstrated a more progressive approach in terms of implementing quotas for female representation among constitutional judges, including the Constitutional Court of South Korea and the Constitutional Court of Austria. Looking at current practices, the Constitutional Court of

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[21] Sandra Fredman, "Substantive equality revisited," *International Journal of Constitutional Law* 14, no. 3 (2016): 712–38, https://doi.org/10.1093/icon/mow043.

[22] Julio César Muñoz Mendiola, "Transformative Constitutionalism or Feminist Constitutionalism? Advantages of a Transformative Constitutional Adjudication," *Mexican Law Review* 15, no. 1 (2022), https://doi.org/10.22201/iij.24485306e.2022.1.17176.

[23] Rosemary Hunter, "An Account of Feminist Judging," in *Feminist Judgments : From Theory to Practice* (Oxford: Hart Publishing, 2010), https://doi.org/10.5040/9781472565228.ch-002; Beverley Baines dan Ruth Rubio-Marin, "Introduction: Toward a Feminist Constitutional Agenda," in *The Gender of Constitutional Jurisprudence* (Cambridge University Press, 2004), 1–21, https://doi.org/10.1017/CBO9780511617393.002.

South Korea, in accordance with the mandate of Article 111 paragraph (2) of the South Korean Constitution, has nine constitutional judges.[24] Of the nine constitutional judges, three are women: Judge Jeong Jeong-mi, Judge Kim Bok-hyung, and Judge Jeong Gye-seon. This can be seen in the image below:

Figure 1. South Korean Constitutional Court Justices



Source: Official Website of the Constitutional Court of South Korea[25]

Throughout the author's research, the practice at the Constitutional Court of South Korea has no normative basis for providing quotas for female representation among constitutional judges there. Rather, it arose from the initiative and spirit of the institution proposing South Korean constitutional judges provide opportunities for women to hold such positions. This is certainly commendable and can serve as an example, namely that even though there is no normative basis for involving women in the composition of constitutional judges, the spirit of equality and equal opportunity in government can be realized through constitutional practice.

The same practice applies to the Austrian Constitutional Court. The Austrian Constitutional Court (*Verfassungsgerichtshof*) is the highest institution in the country's constitutional justice system, established to uphold the supremacy of the constitution and

[24] Iwan Satriawan et al., "An Evaluation of the Selection Mechanism of Constitutional Judges in Indonesia and South Korea," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 1 (2023), https://doi.org/10.22304/pjih.v10n1.a7; Hyeung Seob Son, "A Constitutional Study of Change on Judicial Systems for Judicial Reform," *Public Law* 48, no. 1 (2019), https://doi.org/10.38176/publiclaw.2019.10.48.1.317; Marie Seong Hak Kim, "Travails of judges: Courts and constitutional authoritarianism in South Korea," *American Journal of Comparative Law* 63, no. 3 (2015), https://doi.org/10.5131/AJCL.2015.0018.

[25] https://www.ccourt.go.kr/site/kor/06/10602010000002020100509.jsp

protect the fundamental rights of citizens.[26] The Austrian Supreme Constitutional Court (*Verfassungsgerichtshof*) is composed of 14 members appointed by the Federal President; some are proposed by the Federal Government, some by the lower chamber of the Austrian Parliament called the National Council (*Nationalrat*) and by the upper chamber of Parliament (Bundesrat) from among judges, professors, lawyers and public officials; in principle, they only work for the Supreme Constitutional Court on a part-time basis but enjoy the full judicial guarantees of being independent and irremovable. According to Article 147 paragraphs (1) and (2) of the Austrian Constitution, the Austrian Constitutional Court has 14 constitutional judges, of which 3 are women, namely Judge Sieglinde Gahleitner, Judge Ingrid Siess-Scherz, and Judge Angela Julcher. The format of the 14 constitutional judges can be seen in the image below:

Figure 2. Austrian Constitutional Court Judges



Source: Official Website of the Austrian Constitutional Court[27]

In Austria, there are no legal provisions that explicitly require female representation among the judges of the Constitutional Court. However, there is awareness and commitment to improving gender inclusion in judicial institutions. Although there are no formal quotas, the Austrian government and legal institutions strive to encourage women's participation in judicial positions as part of broader efforts to achieve gender equality in the public sector. This includes policies to ensure that judicial appointments take gender balance into account.

[26] Michael Holoubek dan Ulrich Wagrandl, "A Model for the World: The Austrian Constitutional Court Turns 100," *ICL Journal* 17, no. 3 (2023), https://doi.org/10.1515/icl-2023-0029; Christoph Hofstätter, "Transitional periods in the history of the Austrian Constitutional Court," *International and Comparative Law Review* 20, no. 1 (2020), https://doi.org/10.2478/iclr-2020-0013.
[27] https://www.vfgh.gv.at/verfassungsgerichtshof/verfassungsrichter/mitglieder.de.html

These practices offer important lessons for Indonesia, where quotas for female representation among constitutional judges should not be interpreted as discrimination but rather as a corrective measure to address the historical imbalance that has long existed in the filling of public positions. Affirmative action policies aim to level the playing field so that women have equal access to demonstrate their capacity and integrity.

In the context of implementing more concrete affirmative action measures, Indonesia can adopt a proportional quota model based on term of office as a measurable affirmative action instrument. This mechanism stipulates that in each term of office, there must be a minimum percentage of female representation of three out of nine seats (33.3%). Thus, whenever there is a change of judges, the proposing institution must pay attention to the proportion so that gender balance is maintained in each term of the Constitutional Court.

This proportional policy can be formulated through an amendment to the Constitutional Court Law by adding a new article, for example, stating: "In the composition of constitutional judges as referred to in Article 24C of the 1945 Constitution of the Republic of Indonesia, at least one-third of the number of constitutional judges must come from.... Provisions regarding the procedures for fulfilling this proportion shall be further regulated in a joint regulation of the proposing institutions".

This provision can be reinforced through implementing regulations in the form of a Joint Regulation of the Three Institutions Proposing Constitutional Court Judges (the President, the House of Representatives, and the Supreme Court). This regulation governs the rotation of quota responsibilities. For example, in the first period, the President and the Supreme Court each propose one woman, and in the following periods, the House of Representatives and the President make the proposals. This pattern ensures that each institution participates actively and does not place the burden of affirmation on one party alone.

Normatively, the application of this proportional quota is in line with the spirit of Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia and Article 3 of Law Number 7 of 1984 concerning the Ratification of CEDAW, which affirms the state's obligation to take steps to ensure the equal participation of women in state institutions. Therefore, based on these provisions, quotas for constitutional judges do not constitute a deviation from the principle of legal neutrality, but rather an enforcement of the constitutional principle of justice.

By adopting this proportional quota system, Indonesia can restructure the Constitutional Court as an institution that not only upholds the law but also affirms the values of substantive equality and social diversity. Thus, gender affirmation can be understood as a constitutional necessity that must be institutionalized in the future design of the Constitutional Court. It would be more effective if the push for female representation among constitutional judges in Indonesia were advocated by non-governmental organizations.[28]

Referring to the provisions of Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia, regarding appointment, dismissal, and procedural law, as well as other provisions further regulated in the law. Therefore, Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia grants this authority (attribution) to the legislators. In order to implement the basic principles of human rights and recognize the constitutional

[28] Ella Syafputri Prihatini dan Wahidah Zein Br Siregar, "Gender quotas in Indonesia: Re-examining the role of international NGOs," Ex Aequo, no. 40 (2019), https://doi.org/10.22355/EXAEQUO.2019.40.03.

rights enshrined in the 1945 Constitution of the Republic of Indonesia, it is necessary to regulate the quota for female representation among constitutional judges in Indonesia.

In order to realize the principle of equality, it is necessary to establish specific regulations regarding quotas for female representation among constitutional judges in Indonesia. These regulations can be incorporated into amendments to the law on the Constitutional Court. while the model and percentage of the regulation can follow common practice, namely the quota for female representation of legislative candidates and the quota for female representation in the Council's Supporting Instruments as stipulated in Constitutional Court Decision Number 169/PUU-XXII/2024, which is at least 30% of each proposing institution.

The proposing institution is required to propose at least 30% or 1 out of 3 candidates for constitutional judges who are to undergo a fit and proper test in the House of Representatives. If the proposing institution does not comply with this requirement, the House of Representatives has the right to request the proposing institution to find additional candidates until the quota is met. Therefore, based on this arrangement, we will have at least 3 female constitutional judges administering constitutional justice in Indonesia.

Determining the actual percentage of female representation is the absolute authority of the legislature (open legal policy). This is based on the provisions of Article 24C paragraph (6) of the 1945 Constitution of the Republic of Indonesia, which states that "The appointment and dismissal of constitutional judges, procedural law and other provisions relating to the Constitutional Court shall be regulated by law". Because this is the absolute authority of the legislature, in the context of advocacy, the author provides suggestions and input that the regulation of women's representation for constitutional judges in Indonesia should be set at a minimum of 30%. The author suggests the figure of 30% because it is a figure commonly used as a form of representation in the branches of government. This is similar to the legislative branch of government.

For example, Article 52 of Law Number 7 of 2017 concerning General Elections (hereinafter referred to as Law No. 7 of 2017) states that, "The composition of PPK membership shall take into account the representation of women of at least 30% (thirty percent)". Article 92 paragraph (11) of Law No. 7 of 2017 states that "The composition of the membership of Bawaslu, Provincial Bawaslu, and Regency/City Bawaslu shall take into account the representation of women of at least 30% (thirty percent)". Article 245 of Law No. 7 of 2017 states that "The list of prospective candidates as referred to in Article 243 shall include at least 30% (thirty percent) female representation." This regulation was then reinforced by Supreme Court Decision No. 24/P/HUM/2023, which stipulates that if the calculation of 30% (thirty percent) of female prospective candidates in each electoral district results in a fraction, it shall be rounded up. In addition, there is also Constitutional Court Decision Number 169/PUU-XXII/2024, which emphasizes that the Council's organs must include 30% women.

Given these regulatory provisions, the figure of 30% is ideal and the minimum possible. Therefore, referring to this calculation model, in accordance with Article 24C paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that there are nine constitutional judges, the calculation model is as follows:

$$30\% \times 9 = \frac{30}{100} \times 9 = 2{,}7$$

Since it is impossible to have 2.7 people, 30% of 9 people can be rounded up to 3 people. This is in line with the mandate of the calculation model according to Supreme Court Decision Number 24/P/HUM/2023, which mandates rounding up. With this calculation model, each proposing institution must propose at least one female constitutional judge candidate. Thus, there will be three female constitutional judges out of a total of nine constitutional judges.

3.2. The Urgency of Regulating Women's Representation for Constitutional Judges in Indonesia

The World Economic Forum (WEF) released its Global Gender Gap Report in 2024, and the results show that Indonesian women's participation in political empowerment remains very low. The WEF assessed four areas, namely political empowerment, economic participation and opportunity, educational attainment, and health and survival. Among these four areas, the WEF noted that women's participation was lowest in the area of political empowerment, with a score of 0.138 and a ranking of 107th.[29]

In light of the above findings, it is logical and urgent to regulate the representation of women among constitutional judges in Indonesia. The urgency of regulating the representation of women among constitutional judges in Indonesia is as follows:

1. Creating constitutional practices in accordance with the mandate of Article 28D paragraph (3) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia

   Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "every citizen has the right to equal opportunities in government." Because this is stated so clearly, implementation in the field must show that both men and women, as recognized genders in Indonesia, must have equal opportunities in government, whether in the executive, legislative, or judicial branches. The practice that has been occurring in the Constitutional Court is that the institutions proposing candidates for constitutional judges often ignore the representation of women, especially in this case, the House of Representatives and the Supreme Court. This is because, if we look closely, the President, who from the outset has been given the authority to propose candidates for constitutional judges, has always nominated 1 out of 3 candidates for constitutional judges who have been proposed.

   Throughout the author's research, the DPR has also made efforts to nominate female constitutional judges, as seen in 2023 when two female constitutional judge candidates were nominated, but they were deemed unfit in the fit and proper test and therefore could not become constitutional judges. Since there were no candidates who met the eligibility requirements, the DPR, as the nominating body, sought suitable candidates for constitutional judges. On this occasion, the candidate who was declared eligible was a man. This decision can be justified to some extent, meaning that the candidate's quality must still be considered. If a candidate is not eligible, then they cannot be forced to become a constitutional judge.

   However, this should be the case. Precedents such as the President as a nominating institution should also be followed by other nominating institutions, such as the House of Representatives and the Supreme Court. This means that every nominating institution must

[29] Kusum Kali Pal et al., "Global Gender Gap Report 2024" (Switzerland, 2024), https://www.weforum.org/publications/global-gender-gap-report-2024/.

have one female constitutional judge. If a candidate is deemed unfit during the fit and proper test, the nominating institution must continue to search for a truly suitable candidate. This is not merely to fulfill the quantitative representation requirement, but also to ensure quality. Thus, gender participation and equal opportunities in government are created proportionally, not merely to fulfill quantitative requirements, but to balance quality and quantity.

2. Realizing the Sustainable Development Goals (SDGs)

The Sustainable Development Goals (SDGs) are a program initiated by the United Nations (UN) in 2015 to address global challenges. This program aims to encourage change based on human rights principles and ensure equality in social, economic, and environmental development. The SDGs include 17 goals with 169 targets to be achieved by 2030. The SDGs consist of 17 goals covering various aspects of development.

One of the 17 goals is gender equality. Gender equality and empowerment are also crucial targets in the global SDGs. The emphasis on this point includes not only the elimination of gender discrimination, but also the elimination of gender-based violence, ensuring access to education and decent work, and, in particular, encouraging full participation in political, economic, and social decision-making that involves women and girls in all areas.

The urgency of regulating women's representation among constitutional judges in Indonesia is closely related to the achievement of the SDGs, particularly the goal of gender equality. Representing women in strategic positions, including as constitutional judges, not only creates fairness in representation but also ensures that women's perspectives and interests are accommodated in legal decision-making.

Women's representation in judicial institutions, including the Constitutional Court, plays a role in improving the quality of legal decisions. Research shows that the presence of women in legislative and judicial institutions can bring about positive changes in policies and decisions that are more responsive to the needs of all levels of society. By fulfilling its SDG commitments related to gender equality, Indonesia not only strengthens its legal system but also promotes the values of democracy and inclusiveness in society. As a strategic step, clear regulations regarding women's representation in these key positions will be an important foundation for achieving broader gender equality.

3. Providing a women's perspective on testing legal norms related to women and children

The United Nations states that women's leadership in parliamentary decision-making processes is highly significant in the creation of policies that support women. For example, a study of Panchayats (local governments in India) shows that the number of drinking water projects for disadvantaged areas is 62% higher in areas with female local leaders than in areas with male leaders. In Norway, there is a direct correlation between the presence of female leaders and child protection policies.[30]

By providing regulations on women's representation in the constitutional court, decisions that promote the strengthening of women's roles, protection for women, and the

[30] Raghabendra Chattopadhyay dan Esther Duflo, "Women as policy makers: Evidence from a randomized policy experiment in India," *Econometrica*, 2004, https://doi.org/10.1111/j.1468-0262.2004.00539.x.

opening of opportunities for women's participation can be consolidated from the outset. The physical representation of women in the constitutional court will encourage the prioritization of policy issues that support women from the outset of its work plan.

The representation of women among constitutional judges in Indonesia is crucial to ensure that women's perspectives and child protection are integrated into the review of legal norms. Balanced representation can provide a more diverse voice in legal decision-making, especially in the context of issues directly related to women's and children's rights. For example, many adopted laws have the potential to directly impact women and children, such as those related to domestic violence, child protection, or the right to education and health. When women are in the position of constitutional judges, they can be more sensitive to the nuances related to the experiences of women and children in facing these various challenges. Thus, the resulting decisions are not only more legally valid, but also more equitable and responsive to the needs of society.

The presence of female judges in the Constitutional Court can also trigger cultural change in the judicial system. When women are involved in law enforcement and judicial review, this not only increases the legitimacy of the institution but also has a significant influence on the perception of existing legal norms. This is crucial in creating a more inclusive legal environment, where the rights of women and children are not only recognized, but also proactively protected. Women's representation in judicial institutions can help raise awareness of the importance of gender justice and child protection in all aspects of the legal system, making legal decisions more comprehensive and in line with universal human values. Therefore, clear and firm regulations regarding women's representation in the structure of constitutional judges must be a priority to realize a legal system that is fair and favors all parties in need of protection.

4. Realizing gender equality

Gender justice is a principle that emphasizes equal rights, opportunities, and treatment for all individuals, regardless of gender. It includes efforts to eliminate discrimination and injustice often experienced by women and non-binary gender groups in various aspects of life, such as education, employment, and access to health services. Gender justice supports the understanding that gender inequality is not just a women's issue, but a social issue that affects society as a whole. In this context, gender justice seeks to build awareness of the importance of sharing responsibilities and opportunities fairly, encouraging the active participation of all parties in decision-making, and respecting and protecting individual rights. By realizing gender justice, it is hoped that a more inclusive, sustainable, and harmonious society will be created.

In addition to the urgency outlined above, the urgency of regulating women's representation in the position of Constitutional Court Justice in Indonesia can be seen from empirical evidence that shows the persistence of gender inequality in strategic decision-making institutions. Data from the WEF through its Global Gender Gap Report consistently shows that gender inequality in politics and leadership remains a challenge in various countries, including Indonesia. Despite progress in several sectors, women's participation in high-level decision-making positions remains relatively limited. This condition is also reflected in the composition of the highest-level judicial institutions, which do not fully reflect

gender balance. Therefore, without regulations that explicitly encourage women's representation, selection mechanisms that rely solely on the principle of formal equality have the potential to maintain unequal representation patterns due to long-standing structural, cultural, and institutional barriers.

In addition, there is a normative and constitutional-functional urgency that strengthens the importance of these regulations. Normatively, the principles of equality and non-discrimination have been guaranteed in the 1945 Constitution of the Republic of Indonesia, specifically Article 27 paragraph (1) and Article 28D paragraph (1), and are reinforced by Indonesia's international commitments through the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Sustainable Development Goals (SDGs) agenda, especially goal 5 regarding gender equality and women's participation in decision-making. Meanwhile, from a constitutional-functional perspective, the presence of female judges in the Constitutional Court has strategic significance in enriching the perspective of constitutional interpretation and increasing sensitivity to issues of social justice, human rights, and the protection of vulnerable groups. Thus, regulations regarding women's representation not only serve to fulfill the principle of gender equality, but also contribute to improving the quality, legitimacy, and responsiveness of Constitutional Court decisions as guardians of the constitution in a democratic state based on the rule of law.

The representation of women in judicial institutions can ensure that women's perspectives, which are often marginalized in the legislative and decision-making processes, are accommodated. With female judges, the decision-making process will be more inclusive, so that the resulting policies and legal norms can reflect women's needs and experiences, as well as address existing inequalities.

The presence of women in constitutional courts is not merely a matter of fulfilling representation requirements, but also a prerequisite for ensuring that different perspectives and life experiences influence the process of forming, interpreting, and applying constitutional law. Until now, male-dominated institutional structures have had the potential to create bias in decision-making, especially when courts are faced with issues concerning women's rights, marginalized groups, or family interests. Thus, incorporating mechanisms to ensure women's representation means strengthening the moral and social legitimacy of the Constitutional Court.

In addition, the presence of women as constitutional judges is very important to bring a more holistic gender perspective in assessing the constitutionality of a norm. Many legal issues essentially contain gender dimensions, such as protection for female workers, reproductive rights, gender-based violence, and structural discrimination. Female judges, through their different empirical experiences, can recognize gaps in injustice that male judges may not be aware of. Their presence enriches the deliberative process and reduces blind spots that arise from the dominance of a single gender perspective. Thus, the diversity of constitutional judges is not only a matter of quantity, but also concerns the quality of the decisions produced.

The regulation of women's representation is also an important instrument for promoting structural change in the national legal system. By setting a minimum percentage for women's representation, the state demonstrates its concrete commitment to the principles of equality before the law and affirmative action as recognized in various international legal instruments.

This policy can foster a culture of inclusiveness in state institutions and open up opportunities for women to access other strategic positions. Women's participation in high state institutions such as the Constitutional Court will create a symbolic and substantive effect that can encourage young women to believe that they have equal space in the fields of law and politics. This effort is part of a long-term transformation to address representation gaps.

The representation of women among constitutional judges is a strategic step toward achieving substantive gender justice. Constitutional law has the power to influence the direction of public policy, so ensuring the presence of women in the highest levels of decision-making will help produce decisions that are more just, responsive, and relevant to the needs of all citizens. Women's representation is not merely a symbol of quota fulfillment, but a guarantee that the values of equality can be internalized in every decision that affects public life. Thus, regulating women's representation in the Constitutional Court is an integral part of efforts to build a democratic, inclusive, and gender-equitable state based on the rule of law.

4. Conclusions

The lack of regulations and commitment to providing space for women to hold constitutional judge positions is a clear indicator that the principles of equality and justice guaranteed in Article 28D paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia are not being upheld. This practice is also not in line with the SDGs agreed upon by Indonesia. Therefore, special regulations are needed to provide a quota of at least 30% or 1 out of 3 female representatives for each proposing institution. These regulations need to be formulated in the form of amendments to the law on the Constitutional Court. Another policy option that can be pursued is the need for nominating institutions to be aware of the need to always nominate 1/3 female constitutional judge candidates from the quota given. There are three reasons why regulations on women's representation for constitutional judges are urgent, including: (i) to create constitutional practices in accordance with the mandate of Article 28D paragraph (3) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia; (ii) to realize the SDGs; (iii) providing a women's perspective on the review of laws related to women and children; and (iv) realizing gender justice.

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