

THE IMPLEMENTATION OF CEDAW PRINCIPLES ON REDUCING GENDER-BASED VIOLENCE DURING THE COVID-19 PANDEMIC

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Abstract

This study aims to identify the principles of CEDAW and analyze them to determine the effectiveness of these principles in reducing gender-based violence during the outbreak. The study was carried out using normative legal research methods that included a conceptual and statutory approach. A literature research will be used to acquire legal materials, and the legal materials will be assessed using CEDAW principles. The study's findings reveal that there are three foundational principles of the CEDAW these are non-discrimination, substantive equality, and state obligation. The principles are effective on plummeting gender-based violence in pandemic outbreak. The full application of the CEDAW principles remains a significant challenge.

Keywords: *CEDAW Principles, Gender-based Violence, Pandemic*

A. Background

The Convention on the Elimination of All Forms of Discrimination against Women hereinafter referred to as CEDAW was born from the experience of discrimination against women in various parts of the world and the long struggle to build a global commitment that women's rights are human rights. This convention sets out the principles of women's human rights, norms and standards of obligations, and the responsibility of the state in eliminating all forms of discrimination against women. Indonesia has ratified it through Law No. 7/1984. The consequence of ratifying the CEDAW convention is to make a report on its implementation to the CEDAW Committee at the United Nations.¹ The Convention's provisions must be implemented by states that have ratified or acceded to it. They have also agreed to provide national reports on the steps they have taken to comply with their treaty responsibilities at least every four years.

States party to the CEDAW have an obligation to guarantee that measures implemented to combat the COVID-19 epidemic do not discriminate against women and girls, either directly or indirectly. States parties must also safeguard women from gender-based violence and hold perpetrators accountable, as well as promote women's socioeconomic

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¹ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "34 Tahun Ratifikasi Konvensi CEDAW Di Indonesia: Kurang Optimalnya Implementasi CEDAW Dalam Penghapusan Kekerasan Terhadap Perempuan," Komisi Nasional Perempuan, 2018, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-34-tahun-ratifikasi-konvensi-cedaw-di-indonesia>.

empowerment and ensure their involvement in policy and decision-making in all crisis response and recovery operations.

The Committee on the Elimination of Discrimination against Women (*the Committee*) conveys grave concern over the present COVID-19 situation, which has exacerbated disparities and increased the danger of gender-based violence and discrimination for women, and calls on States to protect women's and girls' rights. States deem limits on freedom of movement and physical distance important to prevent disease transmission, but such regulations may limit women's access to health care, safe shelters, education, work, and economic opportunities. In times of conflict, the repercussions are exacerbated for women. During 2020 alone, types of domestic violence cases records from Komnas Perempuan, the Indonesian National Commission on Violence against Women, as shown below.

Tabel 1 Types of Domestic Violence Cases Received by Komnas Perempuan in 2020 (Percentage of the Total Number of Reported Cases)²

No	Domestic Violence	Percentage
1	Violence against a wife	33.8%
2	Violence against a former girlfriend	29.3%
3	Violence against a current girlfriend	18.8%
4	Violence against a female child	8.9%
5	Violence by a former husband	3.5%
6	Other form of domestic violence	5.6%
7	Violence against a domestic helper	0.1%
Total		100%

The Indonesian government has issued several policies in responding to the emergency related to COVID-19, which has also been declared a global pandemic. One is the social and physical distancing policy, including encouraging the Work from Home (WFH) policy. In March 2020, the government issued a policy to carry out all activities from home, including work and worship, to prevent the spread of Corona. This Work from Home policy presents a unique impact on women in the context of women's position in the family and as women workers. Lockdown, or what we know as quarantine, is an essential policy in tackling covid outbreak. There has been a global increase in gender-based violence since the implementation of “stay-at-home restrictions,” as an increased number of women and girls are trapped in abusive situations with abusers.

Data from LBH APIK (an Indonesian legal aid NGO for women) suggested that between 16 March - 20 June 2020, or within three months since the social restriction policy was enforced, as many as 110 cases of

² Komisi Nasional Anti Kekerasan Terhadap Perempuan, “Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak, Dan Keterbatasan Penanganan Di Tengah Covid-19,” Komisi Nasional Perempuan, 2021, <https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lembar-fakta-dan-poin-kunci-5-maret-2021>.

domestic violence were reported.³ The pandemic has the potential to cause delays in handling cases of violence for the victims, loss of access to health services due to territorial quarantine, and reduced number of facilities for grievances.⁴

Another impact of the lockdown policy is the closure of schools and the implementation of study from home policy. Referring to ESCAP statistics, the number of women aged 20-24 years who married before the age of 15 years ranged from 0 to 22.4 percent in the Asia Pacific.⁵ With schools either transitioning to remote learning or closing altogether to avoid community spread of the covid, girls may be at greater risk for marriage. Girls married before age 18 are more likely to experience domestic violence.⁶ Women are frequently discriminated against in normal circumstances, and in pandemic situations, the likelihood of gender-based violence is also enhanced.⁷

B. Identified Problems

As a result of the foregoing context, the writers have limited the issues that will be covered in this study to (1) What are the CEDAW principles used in reducing gender-based violence and (2) Does the implementation of the CEDAW principles effective in reducing gender-based violence during the pandemic? This research aims to identified the CEDAW principles and analyse the effectivity in reducing gender-based violence during the covid-19 pandemic.

C. Research Methods

This study will explain how the application of CEDAW principles in reducing gender-based violence during a pandemic. This research was conducted in a normative manner, namely research based on studying existing norms in the legal system. The law principles are reviewed and translated from the relevant laws and regulations.⁸ Norms related to discrimination are juxtaposed with the principles and doctrines of equality. This research approach uses a statute approach, a social approach, and a

³ Ayesha Nadya Muna, Diva Tasya Belinda Rauf, and Ika Krismantari, "Angka KDRT Di Indonesia Meningkatkan Sejak Pandemi COVID-19: Penyebab Dan Cara Mengatasinya," *The Conversation*, 2020, <https://theconversation.com/angka-kdrt-di-indonesia-meningkat-sejak-pandemi-covid-19-penyebab-dan-cara-mengatasinya-144001>.

⁴ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Fulfillment of the Constitutional Rights of Women Victims of Domestic Violence in the COVID-19 Pandemic and the New Normal" (Jakarta, 2021).

⁵ United Nations Economic and Social Commission for Asia and the Pacific, *The Covid-19 Pandemic and Violence Against Women in Asia and the Pacific* (Jenewa: United Nations Economic and Social Commission for Asia and the Pacific, 2020).

⁶ United Nations International Children's Emergency Fund, "Child Marriage Around the World," *unicef*, 2020, <https://www.unicef.org/stories/child-marriage-around-world>.

⁷ United Nations Women Asia and the Pacific, "CEDAW & Women's Human Rights," *UN Women*, 2020, <https://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights>.

⁸ Mukti Fajar Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Third Ed (Yogyakarta: Pustaka Pelajar, 2010).

basic approach. The analysis and discussion are presented in a descriptive-explanatory manner, namely by describing the findings of principles, doctrines, and theories with events and providing detailed explanations.⁹

D. Research Finding and Discussion

1. The Implementation of CEDAW in Reducing Gender-Based Violence During the Pandemic

Women's rights are rights owned by a woman because she is human and as a woman who has human dignity. Women's rights are part of human rights. As part of human rights, women's rights are also provided in the 1945 Constitution of the Republic of Indonesia. In particular, women's rights are regulated in CEDAW, which the government has ratified through Law Number 7 of 1984 concerning the ratification of the Convention on the Elimination of All Forms of Discrimination against Women. Regulation on Women's Rights assigns responsibilities and requires the state to respect, protect and fulfil women's rights.

This form of discrimination against women is the culmination of decades of international efforts for women devoted to protecting and promoting women's rights worldwide.¹⁰ This is the result of an initiative taken by UN Commission on the Status of Women, a body that created in 1947 by the UN to consider and formulate policies that would improve the position of women. From 1949 to 1959, the Commission on the Status of Women prepared various international agreements, including the Convention on Women's Political Rights and the Convention on the Citizenship of Married Women. In 1963, the United Nations General Assembly noted that discrimination against women continued and asked for a draft Declaration on the Elimination of Discrimination against Women.

CEDAW establishes the principles of equal rights between men and women universally. The Convention establishes equal rights for women, regardless of their marital status, in all political, economic, social, cultural, and civil fields. The Convention encourages the adoption of national legislation prohibiting discrimination and the adoption of special temporary measures to promote *de facto* equality between men and women, including changing cultural and customary practices based on the inferiority and superiority of either sex or role. stereotypes for girls and boys.¹¹

In general, CEDAW consists of 30 articles that contain the elimination of discrimination against women in law, religion,

⁹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2012).

¹⁰ United Nations Division for the Advancement of Women, "Assessing the Status of Women : A Guide to Reporting Under the Convention on the Elimination of All Forms of Discrimination against Women" (New York: United Nations Division for the Advancement of Women, 2000).

¹¹ Pusat Kajian Wanita dan Gender Universitas Indonesia, *Hak Azasi Perempuan: Instrumen Hukum Untuk Mewujudkan Keadilan Gender*, Fourth Ed (Jakarta: Yayasan Obor Indonesia, 2004).

economy, socio-culture, education, health, employment, women's participation in international forums, politics and the elimination of trafficking in women.

There are three foundational principles of the CEDAW Convention. These are non-discrimination, substantive equality, and state obligation. These are considered to be the three pillars on which the core implementation of CEDAW. Non-discrimination principles is integral to the concept of equality. The Convention aims to end discrimination against women in all sectors and realms, and holds both state and non-state actors accountable when rights are violated.

Substantive equality principles recognize negative female stereotypes as a source of discrimination at the individual, institutional, and systemic levels, and seek to remove prejudice through corrective and positive measures such as enabling conditions and affirmative actions. It aims to remedy the imbalance by creating "equality of outcomes" for women through ensuring equal opportunities, access, and benefits.

The elements of state obligation are respect, protection, promotion, and fulfillment of human rights. It also promotes the principle of due diligence, which requires that private acts of prejudice be prevented, investigated, and sanctioned. All state commitments are the responsibility of the legislature, executive, and judiciary branches of government.

Violence against women is also known as gender-based violence, as stated in General Recommendation No. 19 of the Committee on the Elimination of All Forms of Discrimination against Women and the General Declaration of the United Nations Assembly no. 48/104 of 1993 concerning the Elimination of Violence against Women, refers to: *"Any act based on gender differences that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."*

Meanwhile, Domestic violence is physical (broken bones, bruises, skin cuts) and emotional/psychological abuse perpetrated by a husband against his wife or vice versa (anxiety, depression and feelings of inferiority). Domestic violence can also be described as any act perpetrated by an individual or a group of individuals against a woman or other subjugated parties inside the family that results in physical, sexual, economic, or psychological harm, including arbitrary lack of liberty.

CEDAW does not provide a clear definition of domestic violence. However, the UN defines domestic violence as a gender frame as violence committed within the household with women as the primary target due to their role in that sphere or violence intended to have a direct and negative impact on women within the scope

household. Which of these definitions was later adopted in General Recommendation No. 19 concerning Violence against Women, so that Indonesia stipulates the definition of domestic violence as: *“Every act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household scope”*.

It should be noted that domestic violence does not only occur between husbands and wives but also occurs between parents and children or between employers and their assistants and parties who are subordinated to the household or family. In dealing with domestic violence, CEDAW influences the formation of national law in Indonesia.

The analysis toward effectivity of reducing gender-based violence through implementing CEDAW principles in this section will focus on the three principles mainly non-discrimination, substantive equality, and state obligation toward the rise of domestic violence during pandemic. During the covid outbreak the implementation of non-discrimination principles means that state party have an obligation to ensure that measures taken to address the COVID-19 pandemic do not directly or indirectly discriminate against women and girls. In addition to substantive equality principles, ensuring protection from gender-based violence can be reflected. Domestic, sexual, economic, psychological, and other forms of gender-based abuse by abusive spouses, family members, and care providers, as well as in rural communities, are more likely to occur during confinement.

The state obligation principle holds that states parties have a responsibility to prevent and protect women from gender-based violence, as well as hold abusers accountable. They should make sure that women and girls who have been victims or are at danger of gender-based violence, including those in institutions, have adequate access to justice, including protection orders, medical and psychosocial support, shelters, and rehabilitation programs. Furthermore, states parties should adopt guidelines for the treatment of women who are unable to access such services owing to COVID-19 exposure.

The Indonesian government has enacted legislation to ensure that women's rights are protected and promoted. Paragraphs 25-28 of Indonesia's fourth and fifth periodic reports on CEDAW underscore this. This strategy is carried out by introducing new laws or revising existing ones in order to ensure that nondiscrimination and equality ideals are applied in the political, economic, legal, social, cultural, educational, and other sectors of life. Among of these laws are the Law on Anti-Trafficking of 2007, the Victim Protection Law of 2006 and the Law on Domestic Violence of 2004, the Law No. 39 of 1999 on human rights and the amendments to the 1945 Indonesian

Constitution. This is in addition to the adoption of CEDAW ratification into Indonesian Law No. 7/1984.¹²

In case of Indonesia between 16 March - 20 June 2020, or within three months since the social restriction policy was enforced, as many as 110 cases of domestic violence occurred. Based on the data, the domestic violence occurred, and the trend toward domestic violence is swelling. However, the tendency to report the preparator is no longer taboo thing due to the enforcement of so-called Law No. 23 of 2004 on the Elimination of Domestic Violence (Law on Domestic Violence). Public now recognize that domestic violence that occurred specially toward family member is no longer in private domain.¹³

Article 1 paragraph (2) of Law on Domestic Violence states that the state guarantees that domestic violence will be prevented, that perpetrators of domestic violence will be prosecuted, and that victims of domestic violence will be protected. On the basis of this definition, the Law on Domestic Violence can be inferred to have three dimensions: prevention, prosecution, and protection.¹⁴

Existing laws on domestic abuse, sexual harassment and rape, and anti-trafficking have been updated or new laws have been enacted to reflect this progress. National legislation to improve women's participation in decision-making, particularly in electoral and political processes. The government is also dedicated to mainstreaming gender equality ideas in national economic and social planning, requiring gender equality measures in national development plans, and committing resources to build anti-discrimination and women's empowerment national action plans.

Despite these gains, challenges remain, and full implementation of CEDAW remains a significant problem. In most ASEAN countries, the standing of the Convention at the national level is uncertain, particularly in terms of treaty law vs. national law. Greater clarity and understanding of CEDAW's function and place in state institutions and civil society, particularly in policy-making and resource allocation, as well as in establishing national laws, court decisions, programs, and procedures aimed at attaining gender equality, are needed.

¹² Angel Damayanti, "A Comparison of the Enforcement of CEDAW and CRC in Malaysia and Indonesia," *Sociae Polites* 15, no. 1 (2014): 23–36, <https://doi.org/https://doi.org/10.33541/sp.v15i1>.

¹³ Siciliya Mardian Yoel, "Assessing the Protection of Women's Rights in the Perspective of Feminism During the Covid-19 Pandemic," *Jurnal Legalitas* 14, no. 2 (2021): 128–49, <https://doi.org/10.33756/jelta.v14i2.10342>.

¹⁴ Dika Pratama, "Efektivitas Penegakan Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga Nomor 23 Tahun 2004 Di Yogyakarta," *Jurnal Lex Renaissance* 4, no. 2 (2019): 367–85, <https://doi.org/10.20885/JLR.vol4.iss2.art10>.



E. Conclusions

The results of the study show that there are three foundational principles of the CEDAW these are non-discrimination, substantive equality, and state obligation. When a country joins CEDAW, it commits to taking all necessary steps to eliminate discrimination against women and advance gender equality. Not only does the state have a responsibility to not discriminate through its acts, but it also has a responsibility to prevent and remove discrimination perpetrated by private individuals and groups. In pandemic outbreaks, the concepts are successful in reducing gender-based violence. However, full implementation of CEDAW principles is still a serious challenge.

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