



Role and Position of the Minister of Women's Empowerment and Child Protection's Regulation on Gender-Responsive and Child-Friendly Work Facilities

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Abstract— Indonesia has demonstrated a commitment to gender equality and women's empowerment, but challenges in implementation persist. This study investigates the critical role of gender-responsive and Child Friendly work facilities in advancing human rights and equitable development. Additionally, it analyzes the legal standing of Minister of Women's Empowerment and Child Protection (Kemenppa) Regulation Number 5 of 2015 concerning the Provision of Gender-Responsive and Child Friendly Work Facilities. Employing a normative legal research methodology, this study examines relevant laws and regulations through a comprehensive literature review of primary and secondary data sources. Findings indicate that such work facilities are instrumental in safeguarding fundamental rights, fostering inclusivity in the workplace, promoting women's economic participation, and mitigating social disparities. While not explicitly stipulated, Ministerial regulations hold considerable legal authority as implementing regulations. To enhance legal certainty, this research proposes clarifying the position of Ministerial Regulations within the hierarchy of laws and regulations.

Keywords— Gender Responsive; Gender Equality; Women Rights; Child-Friendly; Ministerial Regulation.

I. INTRODUCTION

Promoting women's rights and achieving gender equality are increasingly recognized as key objectives in both national and international development agendas, particularly within Indonesia. Significant efforts are being undertaken by government bodies and civil society to enhance female participation across diverse sectors. Gender equality is a core component of the Sustainable Development Goals (SDGs), representing a shared commitment at both global and national levels towards fostering inclusive prosperity.[1]

In the final draft of the 2025-2045 RPJPN, the Gender Inequality Index (GII) is targeted at 0.15 with the Female Labor Force Participation Rate (TPAK) targeted to be 70% by 2045.[2] According to the Central Bureau of Statistics shows that in 2023 the female TPAK was still at 54.52% and the GII was 0.447. The lower GII shows improvement in gender equality.[3] Nevertheless, Indonesia must persist in its endeavors to reduce gender disparities and foster women's movement and labor force participation in alignment with established objectives. The pursuit of national welfare in Indonesia can be strategically addressed through four key areas: infrastructure enhancement, developmental initiatives, decentralization policies, and economic deregulation. These interconnected approaches aim to comprehensively improve welfare outcomes, including advancements in human development, the promotion of inclusive growth, and a decline in poverty levels.[4]

Development basically has the aim of prospering people's lives, including in human development. The involvement of both men and women as subjects of development is needed to achieve gender perspective justice. Women themselves are human resources who must be involved and placed as subjects in a development, not just as objects of development.[5] Despite progress, gender inequality persists in Indonesia's development landscape.

The influence of patriarchal norms remains evident in various sectors, including economic, educational, political, and legal domains. This patriarchal mindset is deeply ingrained in Javanese culture, where women are often labeled as "konco wingking". This term implies that a woman's place is in the home, caring for the family and supporting her husband, rather than pursuing her ambitions or holding positions of authority.[6] Such circumstances may give rise to a variety of societal challenges that limit women's access to essential resources and prospects, possibly leading to the violation of their basic human rights.

While Indonesia has established a legal framework to address gender equality, the issue persists due to several factors. Existing laws often lack the necessary strength and comprehensiveness to effectively combat discrimination, and enforcement remains weak. This is further compounded by a prevailing societal perception that views women's issues as private matters, rather than concerns that warrant broader public attention and intervention. This deeply ingrained perspective perpetuates gender discrimination and hinders progress towards a more equitable society in Indonesia.[7] The prevailing legal framework has demonstrated limitations in its capacity to effectively address the multifaceted issue of gender equality. The prevailing societal viewpoint, which tends to relegate women's concerns to the private domain, has led to a lackluster implementation of existing laws and allowed gender-based discrimination to persist.[8]

In a concerted effort to address gender disparities in Indonesia, the national government has embedded a gender mainstreaming (PUG) strategy into its core developmental frameworks. This strategic initiative is designed to uplift the status, roles, and quality of life for women across diverse sectors. The legal foundation for this approach is firmly established in Presidential Instruction Number 9 of 2000, further solidified by the implementation of Ministerial Regulation Number 5 of 2015, reflecting the government's steadfast commitment to fostering gender equality and equity. This regulation, established by the Kemenppa, focuses on creating gender-responsive and child-friendly work environments to enhance female workforce productivity and ensure the protection of women's rights, thereby contributing to comprehensive national development.

Governmental bodies and businesses in Indonesia are mandated to provide work facilities that enhance women's productivity while upholding gender equality and prioritizing children's well-being. Despite this, the proportion of ministries/institutions (15.38%) and regional governments (62.9%) recognized with the Parahita Ekapraya Award for their progress in gender mainstreaming, women's empowerment, and child protection remains notably low. This discrepancy suggests a significant gap between policy mandates and practical implementation, highlighting the need for intensified efforts to promote gender-equitable workplaces across Indonesia.[11]

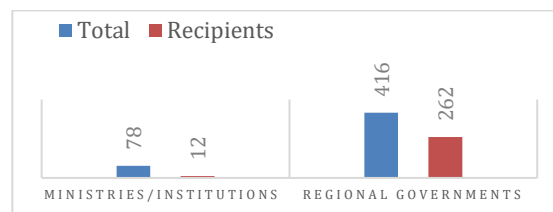


Fig. 1. Data of all Ministries/Institutions and Regional Governments with Award Recipients

Through this study, the researcher aims to investigate the impact and examine the legal standing of the Minister Regulation Number 5 of 2015. The findings of this research are expected to inform recommendations for enhancing or strengthening relevant policies and their implementation.

II. LITERATURE REVIEW

A. Human Rights and Gender Roles

John Locke posited that individuals possess inherent natural rights from birth, encompassing life, liberty, and property. These rights are intrinsic to human nature and exist independently of any governmental or societal structures. Locke argued that these rights are inalienable and cannot be rescinded by any authority without the explicit consent of the individual. Similarly, Mariam Budiardjo defines human rights as inherent entitlements possessed by individuals by virtue of their birth and participation in society. Budiardjo emphasizes the foundational principle that all individuals should be afforded the opportunity to cultivate their abilities and aspirations.[12]

Gender Role Theory posits that societal norms and expectations influence gendered behaviors and roles. Traditional gender roles, which often assign caregiving primarily to women, can restrict their workforce participation. The "Double Burden" concept highlights the dual responsibilities shouldered by working women: professional obligations and domestic duties, including childcare. This phenomenon can adversely affect women's health, well-being, and career advancement.[13]

B. Institutional Theory

Ostrom conceptualizes institutions as societal rules that govern a specific arena, dictating the decision-making authority, permissible and prohibited actions, prevalent norms, mandatory procedures, information accessibility, and the distribution of benefits based on individual actions.[14] In short, institutions are the rules that apply in the community as something that must be followed and obeyed (has the power of sanctions) with the aim of creating order and certainty in the interactions of fellow community members. The interactions in question are related to economic, political and social activities.[15]

North's institutional framework classifies institutions as either formal or informal, based on the presence or absence of written codification. Informal institutions encompass unwritten societal norms, including customs, traditions, taboos, and conventions, while formal institutions comprise codified regulations such as laws, contracts, and economic, political, and business regulations at various jurisdictional levels.[16]

Institutional capacity strengthening, on the other hand, is a development approach in which all people (parties) have equal rights to resources, and become development planners themselves. According to Eade, institutional capacity building focuses on four main issues[17]:

1. Institutional capacity strengthening is often used simply to make an institution more effective in implementing development projects. Institutions are instruments to achieve certain goals.
2. Institutional capacity strengthening can also refer to efforts that support organizations to become catalysts for dialogue and or contribute to achieving development alternatives. This view emphasizes the role of democratizing government organizations and community-based organizations in civil society. If institutional capacity strengthening is a means to an end, then the intended goals of the participating institutions must be explicitly stated in order to compare options or evaluate progress.
3. When institutional capacity strengthening is the ultimate goal (e.g. strengthening the quality of decision-making), the choice requires clear objectives and a contextual analysis of the institutional elements. The focus is on a balanced organizational mission.
4. Linkages with the external environment, its structure and activities. The criterion of effectiveness will relate to external factors where the mission is perceived to be appropriate, reasonable and fulfilled.

C. Hierarchy of Legislation

The Indonesian legal framework, as established in Law No. 12 of 2011 (revised by Law No. 13 of 2022), defines "Laws and Regulations" as formal written instruments embodying legally binding norms. These norms are formulated or enacted by authorized state entities or officials through procedures prescribed in the applicable legislation.[18]

Drawing from the provided definition, legislation exhibits four key characteristics: 1) formal documentation in written form, 2) inclusion of broadly applicable legal norms, 3) creation or enactment by authorized state bodies or officials, and 4) adherence to established legal procedures. The hierarchical structure of laws and regulations, as per the aforementioned law (*lex a quo*), is detailed subsequently[18]:

- 1) *The Constitution of the Republic of Indonesia of 1945: The foundational legal document of the Indonesian state, establishing its fundamental principles and structure.*
- 2) *Decrees of the People's Consultative Assembly (MPR): Binding decisions made by the highest legislative body in Indonesia, often pertaining to constitutional amendments or major policy directions.*
- 3) *Laws and Government Regulations in Lieu of Law (Perppu): Primary legislation passed by the Indonesian parliament or issued by the President in emergency situations, respectively.*
- 4) *Government Regulations (PP): Executive regulations enacted by the President to elaborate on and implement existing laws.*
- 5) *Presidential Regulations (Perpres): Regulations issued by the President to regulate specific matters within their executive authority.*
- 6) *Provincial Regional Regulations (Perda Provinsi): Legislation enacted by provincial legislatures to address local issues within their jurisdiction.*
- 7) *Regency/City Regional Regulations (Perda Kabupaten/Kota): Legislation passed by regency or city councils to govern local affairs within their respective areas.*

The Indonesian legal hierarchy prior to the enactment of Law No. 12/2011 was established through several key regulations, including MPRS Decree. Notably, only MPRS Decree No. XX/MPRS/1966, concerning the DPR-GR Memorandum on the Source of Legal Order and the Order of Laws and Regulations of the Republic of Indonesia, explicitly addressed the position of Ministerial Regulations within this hierarchy.[19]

III. METHOD

This study employs a normative legal research methodology, analyzing relevant regulations, laws, ethical principles, and social norms pertaining to the research subject. These norms are derived from various sources, including legislation, international agreements, policies, ethical guidelines, and societal values. Data collection is conducted through a comprehensive literature review, encompassing both primary data sources such as laws,

policies, and guidelines related to the Kemenppa's policy on gender-responsive work facilities and childcare, as well as secondary data sources such as literature, articles, journals, and other relevant publications.

IV. RESULT AND DISCUSSION

A. Gender Responsive and Child Friendly Work Facilities as Human Rights Fulfillment and Equitable Development

As mentioned in the fourth paragraph of the Preamble of the UUD NRI 1945, namely "The state protects the entire Indonesian nation and the entire Indonesian blood sphere and to promote general welfare, educate the nation's life and participate in implementing world order based on eternal peace and social justice". In line with the foundation of the state in the fifth principle, namely "social justice for all Indonesian people", building public welfare is the essence of justice.[20] Therefore, it is clear that Indonesia based on Pancasila and UUD NRI 1945 adheres to the concept of a welfare state.

Gender parity, a cornerstone of human rights, significantly influences social integration, economic advancement, and sustainable progress. To realize this objective, diverse targets and metrics have been formulated to combat the complex issue of gender disparities. These targets include eradicating all forms of prejudice and aggression against women and girls, guaranteeing their access to education, healthcare, and economic prospects, while also encouraging women's leadership and involvement in decision-making sphere.[21]

Ministerial Regulation No. 5 of 2015, issued by the Kemenppa, outlines provisions for gender-responsive and child-friendly workplaces. It defines key terms as follows:

- 1) *Gender-responsive: A condition characterized by consistent and systematic consideration of gender differences in society, reflected in attitudes and actions aimed at addressing inequalities arising from these differences.*
- 2) *Facilities: Tools, spaces, or any essential resources that government and private agencies must provide to enhance work productivity.*
- 3) *Workplace: Any enclosed or open space, whether mobile or stationary, where individuals work or frequently enter for business purposes.*

This regulation underscores the Indonesian government's commitment to promoting gender equality and child welfare in the workplace by mandating the provision of supportive infrastructure and resources.

Article 1 paragraph 2 states that the work facilities referred to include: "breastfeeding rooms; daycare centers; health care facilities; and other supporting work materials". In line with this, Data on Female Labor Force Participation in Indonesia shows that one of the factors affecting women's work participation is the ownership of children aged 0-2 years, therefore the presence of daycare in the office can contribute to the female Labor Force Participation Rate (TPAK).[23]

Within the national and state context, all individuals possess equal rights and responsibilities. Governmental and private entities are obligated to ensure equitable opportunities for both women and men in fulfilling their duties, functions, rights, and responsibilities within the legal framework. Equal opportunities, as stipulated, extend to women who are married and of reproductive age, those who are breastfeeding, and mothers with children under five years of age.

Gender-responsive and child-friendly work environments are essential for achieving human rights and equitable development. From a human rights perspective, these environments promote the right to equality by eradicating gender discrimination and ensuring equal opportunities for all employees, regardless of gender. They advocate for well-being by providing lactation rooms, childcare, and family-friendly policies like parental leave and flexible hours. Furthermore, these workplaces protect children from exploitation and abuse while ensuring their access to education, healthcare, and safety.

Fair workplaces that cater to both women and children are crucial for a balanced society. They boost women's participation in the workforce, their economic input, and bridge gender gaps. Such inclusive spaces also lead to happier, more productive employees, which builds a skilled workforce and fuels lasting growth. As more women join the workforce, the government should actively support their progress with suitable initiatives.[24]

Creating workplaces that cater to the needs of all genders and children requires a joint effort from both government and private sectors. The government's role is to create supportive laws and policies, while ministries, local authorities, and companies are responsible for putting these policies into practice. Obstacles such as lack of knowledge, limited resources, and the need for cultural change can be overcome through a variety of strategies. These may include educational programs, incentives, penalties when needed, and collaborations among involved parties. Ultimately, building workplaces that are inclusive and supportive of families is not just a legal requirement but also a smart way to invest in a fairer and more thriving society.

B. The Position of the Kemenppa Regulation No. 5/2015

The government has issued a new regulation aimed at making workplaces more welcoming to women and children. This is part of the government's ongoing efforts to empower women and protect children's rights.

However, it's unclear how strictly this regulation will be enforced as it's not explicitly stated where it stands within the legal framework.

The Indonesian legal system is characterized by a hierarchical framework of laws and regulations, as established in Law No. 12/2011, with subsequent amendments made in Law No. 13/2022 (Article 7(1)). This hierarchy determines the order of priority among different legal instruments, with the constitution holding the supreme position. However, it is important to note that certain regulations, such as Ministerial Regulations, are excluded from this hierarchical structure, as stipulated in Article 8(1) of the same law.[19]

A detailed analysis reveals a regulatory gap concerning regulations not incorporated within the established hierarchy, notably Ministerial Regulations. Article 8, paragraph (2), while acknowledging the existence and legal validity of Ministerial Regulations, fails to explicitly define their hierarchical placement. This ambiguity raises concerns regarding the precise legal standing of Ministerial Regulations, thus complicating the determination of their hierarchical position relative to other regulations.[25]

Previous research (Pratama, et al., 2022) has established the existence and binding nature of Ministerial Regulations, yet their precise position within the legal hierarchy remains ambiguous. In practice, these regulations play a crucial role as implementing instruments for higher-level central legislation. Hence, within the context of a unitary state, Ministerial Regulations can be considered integral components of the central legislative framework.[19]

Ministerial regulations, often focusing on specific technical details, contrast with the broader policy framework established within the Law a quo. Despite the absence of a hierarchical ranking within the Law a quo itself, these regulations hold a distinct place within the broader hierarchy of central legislation. This positioning is supported by multiple factors.[19]:

- 1) *Presidential Government System: In this system, the Minister has an important role in implementing the constitution, so Ministerial Regulations are considered part of the hierarchy of laws and regulations.*
- 2) *Constitution: The Indonesian Constitution states that the President is assisted by Ministers of State. Therefore, Ministers are considered as assistants to the President, who is a representation of the Central Government.*
- 3) *Unitary State Theory: In this theory, the Central Government has the highest authority in issuing regulations. Therefore, regulations issued by the Minister, as part of the Central Government, have a position at the central level.*

If the Ministerial Regulation is arranged in a hierarchy, it can be placed just below the Presidential Regulation. This is certainly not without reason, as explained earlier, the President is the holder of the strongest and greatest power. The President in carrying out his duties is assisted by the Minister, so the Minister is under the President. On that basis, when the Minister issues a regulation, it is certain that the regulation is under the regulation issued by the President, namely the Presidential Regulation.

Another research (Huda, 2022) argues that the legal status of ministerial regulations within the Indonesian legislative framework is ambiguous. Although not classified as statutory regulations under the Law on the Formation of Legislation, ministers can issue these regulations when authorized by higher laws. However, the presidential government system dictates that ministers are accountable to the President, not the parliament, thus implying that the President should ideally be the one enacting regulations through Government or Presidential Regulations. Huda further suggests that to mitigate the overproduction of Ministerial Regulations, the President should utilize Government or Presidential Regulations for government affairs, limiting the delegation of regulatory powers to ministers. Ministerial decisions should primarily be administrative, rather than legislative, in nature.[26]

V. CONCLUSION

Gender-responsive and Child friendly work tools are crucial instruments to foster gender equality, uphold human rights, and achieve equitable development. These tools safeguard fundamental rights, such as equality, health, family, and child protection, while fostering an inclusive and supportive workplace. Furthermore, they empower women to participate in the economy, enhancing their contributions and diminishing social disparities.

Although not explicitly ranked within the Indonesian legal hierarchy, Kemenppa Regulations, serve a crucial function in operationalizing broader legal principles. This regulation, focused on gender-responsive and child-friendly work facilities, holds legal validity as an implementing provision for higher-level legislation. To enhance legal certainty, it is advisable to formalize the status of Ministerial Regulations within the legal framework. This could be achieved through legislative amendments or by incorporating their content into superior regulations with greater binding authority.

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