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CONSTITUTIONAL ROADMAP FOR WOMEN'S RIGHTS PROTECTION IN CONSTITUTIONAL COURT DECISIONS

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Abstract: *The protection of women's rights in Constitutional Court rulings reflects an evolution in the constitutional interpretation of the principles of equality, non-discrimination, and substantive justice. However, this development has not yet been fully mapped into a framework that illustrates patterns of constitutional argumentation and the trajectory for strengthening the protection of women's rights. This study analyzes the evolution of the Constitutional Court's constitutional argumentation on the protection of women's rights and formulates a "roadmap of constitutionality" based on trends observed in relevant rulings. This normative legal study employs statutory, case-based, and conceptual approaches. The study qualitatively analyzed legal materials by examining Constitutional Court rulings. The findings indicate that the protection of women's rights appears across various dimensions—from protection within marriage to increased women's representation in political institutions. These trends are evident in Ruling Number 69/PUU-XIII/2015 on marriage agreements, Ruling Number 22/PUU-XV/2017 on the minimum age for marriage, and Ruling Number 169/PUU-XXII/2024 on women's representation within the internal bodies of the House of Representatives. Based on these developments, a "roadmap of constitutionality" has been formulated to map the relationships among constitutional argumentation, the dimensions of women's rights protection, and the direction for further strengthening them. This roadmap underscores the relevance of equality, non-discrimination, and substantive justice as a foundation for developing a more consistent, gender-responsive approach to protecting women's rights.*

Keywords: *Women's Rights; Constitutionality; Constitutional Court*

I. INTRODUCTION

The protection of women's rights is an integral component of the principles of a democratic constitutional state governed by the rule of law. In Indonesia, guarantees of equality and non discrimination are enshrined in the 1945 Constitution of the Republic of Indonesia, particularly Article 27 paragraph (1) and Article 28D

paragraph (1), which affirm equality before the law and the protection of human rights. Nevertheless, in practice, women continue to face various forms of structural injustice in the social, economic, and legal spheres, revealing a gap between constitutional norms and empirical realities.[1] Within the development of Indonesia's constitutional system, the Constitutional Court occupies a strategic role as the guardian of the Constitution, functioning not only as a guardian of constitutional norms but also as a key actor in shaping the direction of legal development through its final and binding decisions. Over the past several decades, the Constitutional Court has demonstrated a progressive role in addressing issues concerning women's rights, both through judicial review of legislation and through constitutional interpretation that is more inclusive and responsive to the principle of substantive justice.[2]

These decisions essentially reflect the dynamics of constitutional interpretation, which is not static but evolves in response to changing societal values and needs. Nevertheless, these developments have not yet been fully mapped within a systematic analytical framework. Constitutional Court decisions concerning women's rights tend to be dispersed across various case contexts, with diverse patterns of legal reasoning. This situation poses challenges to understanding comprehensively how the Constitutional Court constructs the logic of constitutionality to strengthen the protection of women's rights, as well as the extent to which the consistency and direction of these developments can be clearly identified.[3] Without systematic mapping, the Constitutional Court's potential contribution to advancing the protection of women's rights risks remaining suboptimal, both in academic discourse and in legal practice.

On the other hand, developments in modern legal theory, particularly within the framework of the living constitution and responsive law, emphasize the importance of the judiciary's role in interpreting the Constitution in a manner that is contextual and adaptive to societal needs.[4] From this perspective, the Constitutional Court does not merely serve as a passive interpreter but also acts as an agent of social change capable of promoting the transformation of values of justice, including in matters of gender equality. Therefore, an analysis of the Constitutional Court's decisions concerning women's rights is essential to assess the extent to which constitutional adjudication has optimally fulfilled this function. Furthermore, in the global context, strengthening the protection of women's rights has become a key agenda promoted through various international instruments, such as the Convention on the

[1] Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations on Indonesia*, (New York: United Nations, 2012).

[2] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: Rajawali Pers, 2016).

[3] Tim Lindsey, ed., *Indonesian Law*, (Oxford: Oxford University Press, 2018).

[4] Philippe Nonet and Philip Selznick. *Law and Society in Transition: Toward Responsive Law*. New York: Harper & Row, 1978.

Elimination of All Forms of Discrimination Against Women (CEDAW). As a State Party, Indonesia is obligated to ensure that these principles are internalized within the national legal system, including through judicial decisions.[5] In this regard, the Constitutional Court occupies a strategic position in bridging international norms and national law through progressive and gender sensitive constitutional interpretation.

Based on the foregoing discussion, there is a need for a study that not only catalogues Constitutional Court decisions concerning women's rights but also examines in depth the patterns of constitutional reasoning employed and formulates a constitutionality roadmap capable of analyzing developments in the protection of women's rights. This roadmap is expected to serve as an analytical instrument that is not merely descriptive but also normative, providing direction for strengthening the protection of women's rights in the future. This research is important not only for the development of constitutional law scholarship but also for promoting legal practices that are more responsive and gender equitable. Through a comprehensive examination of Constitutional Court decisions and the formulation of a constitutionality roadmap, this research is expected to make a strategic contribution to strengthening the role of constitutional adjudication as a guardian of substantive justice and as a driving force behind a more inclusive and equitable legal transformation.

II. RESEARCH METHODS

This study employs a normative legal research method using the statutory approach, case approach, and conceptual approach. The statutory approach is used to examine the constitutional foundations of women's rights protection, while the case approach focuses on analyzing the legal reasoning (ratio decidendi) in relevant Constitutional Court decisions. The conceptual approach is employed to examine the principles of equality, nondiscrimination, and substantive justice as an analytical framework for the protection of women's rights. Primary legal materials consist of legislation and Constitutional Court decisions, while secondary legal materials comprise scholarly literature and research findings collected through library research. The analysis is conducted using qualitative legal analysis through the identification, classification, and interpretation of developments in constitutional reasoning in Constitutional Court decisions. The findings are subsequently synthesized to formulate a constitutionality roadmap that maps the dimensions of women's rights protection, prevailing trends in constitutional reasoning, and directions for strengthening such protection.

[5] Andrew Byrnes. "The Convention on the Elimination of All Forms of Discrimination Against Women." In *Global Justice, State Duties*, edited by Malcolm Langford et al. Cambridge: Cambridge University Press, 2013.

III. ANALYSIS AND DISCUSSION

Mary Wollstonecraft first articulated the foundational ideas underlying the discourse on women's rights in A Vindication of the Rights of Woman, published in England in 1792. The work challenged the notion that women's sole purpose was to serve men and argued that women should have equal opportunities with men in education, employment, and political life. Women's rights encompass a wide range of entitlements recognized within legal systems, both under international instruments and national legislation. The major categories of women's rights include: (1) women's political rights; (2) women's rights to citizenship; (3) women's employment rights; (4) women's rights to health; (5) women's rights before the law; and (6) women's rights in marriage, among others.

The discourse on women's rights has emerged as a significant issue, as women are said to have remained under male domination for thousands of years within patriarchal societies. This situation persisted for centuries, as the so called “natural law” positioned women as a second rate social group, inferior to men and expected to submit to male authority and hegemony to ensure the continuity and stability of family life.[6] Calls for emancipation and demands for the recognition of women's rights have been voiced for a long time. Women have sought equal rights with men without discrimination. Discussions of women's rights as an embodiment of human rights have grown increasingly prominent over time. This development has been driven by the large number of women who have become victims of rights violations. In addition, women have become increasingly critical in examining issues concerning their rights. Rather than simply accepting existing conditions, they have begun to seek ways to secure their rights and even demand guarantees for the fulfillment of women's rights.[7]

As a country that recognizes and upholds human rights, Indonesia regards fundamental freedoms as inherent rights belonging to every human being. Therefore, the protection, respect, and enforcement of human rights, including women's rights, are essential to efforts to enhance human dignity.[8] In this regard, women's rights are regulated under Law Number 39 of 1999 concerning Human Rights, including the following provisions:

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[6] M. Tahir, "Perempuan Dalam Bingkai Hak Asasi Manusia Dalam Hukum Keluarga Islam", *Musãwa Jurnal Studi Gender Dan Islam* 15, no. 1 (2016): 59– 75. Sebagaimana dikutip dalam Lathifah Munawaroh, "Menelisik Hak-Hak Perempuan", *Kafa'ah Journal* 10, no. 1 (2020): 26.

[7] A. M. Agustina, "Hak-Hak Perempuan Dalam Pengarusutamaan Ratifikasi Cedaw dan *Maqāṣid Asy-Syari'ah*", *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2017): 201–210. As cited in *Ibid*.

[8] E. Hidayat, “Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia”, *ASAS: Jurnal Hukum Ekonomi Syariah* 8, no. 2 (2016). As cited in *Ibid*.

Table 1. Regulation of Women's Rights under Law Number 39 of 1999

Legal Provision	Substantive Content
Article 45	"Women's rights under this Law are human rights."
Article 46	"Electoral systems, political party systems, the election of members of legislative bodies, and appointment systems in the executive and judicial branches must ensure women's representation in accordance with the prescribed requirements."
Article 47	"A woman who marries a foreign national does not automatically acquire her husband's citizenship status but has the right to retain, change, or reacquire her citizenship status."
Article 48	"Women are entitled to education and instruction at all types, levels, and pathways of education, subject to the prescribed requirements."
Article 49	(1) Women have the right to elect and be elected, and to be appointed to employment, positions, and professions in accordance with the applicable requirements and laws and regulations. (2) Women are entitled to special protection in the performance of their work or professions against matters that may threaten their safety and or health in relation to their reproductive functions. (3) Special rights inherent in women by virtue of their reproductive functions are guaranteed and protected by law.
Article 50	"Adult women and or married women have the right to perform legal acts independently, unless otherwise provided by their religious law."
Article 51	(1) During marriage, a wife has the same rights and responsibilities as her husband in all matters relating to marital life, relations with their children, and the ownership and management of joint property. (2) Following the dissolution of a marriage, a woman has the same rights and responsibilities as her former husband in all matters concerning their children, with due regard to the best interests of the child. (3) Following the dissolution of a marriage, a woman has the same rights as her former husband in all matters concerning joint property, without prejudice to the rights of the child, in accordance with the applicable laws and regulations..

The role of women in national and state life cannot be denied. Women are no longer confined to reproductive functions but also play a significant role in resocialization, reeducation, and constitutional governance. Accordingly, Indonesian women need to learn about and understand their constitutional rights as citizens within the framework of a state governed by the rule of law. The challenge, however, is that discussions of women's constitutional rights encounter several obstacles, including the relatively low level of social acceptance of these rights. This situation is commonly referred to as gender injustice.[9] Forms of gender injustice that frequently occur include:[10]

1. Marginalization, or the exclusion and impoverishment of women.
2. Subordination.

[9] Yuli Asmara Triputra, "Penguatan Hak-Hak Perempuan (Sebagai Bagian Dari Hak Asasi Manusia) Dalam Konstitusi", *Journal Equitable* 2, no. 1 (2017): 4-5.

[10] Eko Riyadi, *To Promote: Membaca Perkembangan Wacana Hak Asasi Manusia di Indonesia*, (Yogyakarta: Penerbit Pusat Studi HAM UII, 2012), hlm. 172-175. Sebagaimana dikutip dalam *Ibid*., hlm. 5-7.

3. Labeling or stereotyping.
4. Violence.

Therefore, protecting women's rights is essential to realizing justice, equality, and respect for human dignity without discrimination. Various forms of gender injustice, including marginalization, subordination, stereotyping, and violence, demonstrate that structural and cultural inequalities continue to hinder women from fully exercising their rights.

Based on Constitutional Court Decision No. 125-01-08-29/PHPU.DPR-DPRD-XXII/2024, there are three key points in the ratio legis articulated by the nine Constitutional Court Justices, one of which states that women constitute a specific group that must be protected and is entitled to special treatment. One group whose access to special treatment continues to be promoted to ensure equal opportunities and benefits in achieving justice in the administration of the state is women. This principle is consistent with Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which underpins the regulation of affirmative action: "Every person has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice."[11] In this regard, the Constitutional Court is understood not merely as the guardian of the Constitution but also as an institution that plays an important role in ensuring the protection of human rights, including women's rights.

The Constitutional Court emerged in the wake of the Reformasi movement following the third amendment to the 1945 Constitution. From a constitutional perspective, the existence of the Constitutional Court as a specialized court is a consequence of the adoption of the principle of constitutional supremacy, which serves to maintain and ensure the conformity of lower level legal rules with higher level legal norms. Over time, the Constitutional Court has institutionally initiated efforts to establish a modern and trusted judicial system. To achieve this objective, various internal regulations, procedural rules governing judicial review of legislation, and technical procedural arrangements for proceedings before the Constitutional Court have been designed to broaden opportunities for and access to justice for the public, particularly vulnerable groups such as women.[12]

In the context of protecting the constitutional rights of vulnerable groups, examining access to justice before the Constitutional Court, as one of the institutions exercising judicial power in Indonesia, is of considerable importance. The Constitutional Court

[11] Muhammad Imam Nasef, dkk., "Pelindungan Hak Konstitusional Perempuan Dalam Pencalonan Legislatif Pemilihan Umum Tahun 2024 di Gorontalo", *Jurnal Hukum Ius Quia Iustum* 33, no. 1 (2026): 48.

[12] Pan Mohamad Faiz & Oly Viana Agustine, "Akses Terhadap Keadilanbagi Masyarakat Rentandi Mahkamah Konstitusi", *Indonesian Judicial Reform Forum (IJRF)*, (2018): 124.

is vested with constitutional powers, one of which is to review laws against the Constitution. In exercising this authority, the Constitutional Court provides broad access to anyone who considers their constitutional rights or powers to have been impaired by the enactment of a law. The Constitutional Court Law specifies the categories of applicants eligible to submit petitions in judicial review proceedings, namely: (1) individual Indonesian citizens; (2) customary law communities, provided that they remain in existence and are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia, as regulated by law; (3) public or private legal entities; or (4) state institution.[13]

Through its authority to review laws against the 1945 Constitution of the Republic of Indonesia, the Constitutional Court plays a role in ensuring that every legal norm conforms to the principles of equality, justice, and non discrimination guaranteed by the Constitution. The gender and constitutionalism approach emphasizes that constitutions are not gender neutral but rather contain gender dimensions that influence how women's rights are articulated and protected.[2] In line with this perspective, discourse on judicial activism demonstrates that courts can serve as agents of change in expanding women's rights, although judicial approaches may fluctuate between progressive and restrictive interpretations depending on the interpretive paradigm adopted.[14]

In practice, the Constitutional Court frequently encounters legal issues relating to gender inequality and the neglect of women's rights in various areas, including politics, marriage, employment, and other aspects of social life. In Indonesia, the Constitutional Court occupies a strategic position as a judicial institution whose decisions are final and binding, and which plays a role in upholding constitutional supremacy and protecting human rights.[15] Several studies indicate that the Constitutional Court has contributed to strengthening the protection of women's rights, particularly in the area of political rights, through decisions affirming the importance of women's representation and gender equality.[16] Other studies have also emphasized that the authority of judicial review serves as a primary instrument for ensuring the protection of women's rights within the constitutional framework.[17] Accordingly, Constitutional Court decisions constitute an important

[13] *Ibid*., p. 129.

[14] Abdul Wahab Junejo, dan Sahar Fatima. "Judicial Activism or Restraint? The Role of the Supreme Court in Expanding Women's Constitutional Rights." *Advance Social Science Archive Journal* 5, no. 1 (2025): 1–12.

[15] Moh. Imam Gusthomi, et al. "The Position of the Constitutional Court in the Sphere of Judicial Power." *Indonesian Journal of Pancasila and Global Constitutionalism* 4, no. 2 (2024): 77–92.

[16] Tanto Lailam, dan Nita Andrianti. "The Constitutional Interpretation of Women's Political Rights." *Diponegoro Law Review* 7, no. 2 (2022): 215–230.

[17] Dessy Artina, Geofani Saragih, dan Tanto Lailam. "The Philosophical Role of the Constitutional Court Related to Gender Equality Rights in Indonesia." *SASI* 30, no. 1 (2024): 45–56.

instrument for strengthening the position of women as legal subjects and citizens who possess equal constitutional rights.

He Constitutional Court's role in strengthening women's rights is evident in various decisions that provide progressive constitutional interpretations of legal provisions considered discriminatory toward women. Through its decisions, the Constitutional Court does not merely assess the formal compatibility of statutory provisions with the Constitution but also considers substantive justice, human rights protection, and guarantees of equality before the law. In doing so, the Constitutional Court contributes to the development of a more gender responsive legal system oriented toward protecting groups vulnerable to discrimination. In the global context, studies on the relationship between constitutional adjudication and the advancement of women's rights demonstrate that courts play a significant role in establishing and expanding rights through progressive interpretation, sometimes extending beyond the limits of formal legislation.[18] This underscores that the evolving protection of women's rights is determined not solely by written legal norms but also by the practice of constitutional interpretation.

In various cases concerning women's rights, the Constitutional Court has demonstrated a pattern of legal reasoning that places the principles of equality, justice, and non discrimination at the forefront of constitutional interpretation. This reasoning is reflected in several decisions that not only examine the conformity of statutory provisions with the 1945 Constitution of the Republic of Indonesia but also take into account the protection of women's constitutional rights across different aspects of life. This is illustrated by the following decisions.

a) Constitutional Court Decision Number 69/PUU-XIII/2015 concerning the Judicial Review of Law Number 5 of 1960 on Basic Agrarian Principles and Law Number 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia

This decision arose from issues faced by Indonesian women in mixed nationality marriages who lost or experienced restrictions on their rights to own land and property because no prenuptial agreement had been made before the marriage. In practice, these provisions placed women in a vulnerable position because their civil rights became constrained by their marital status. The Constitutional Court subsequently found that Article 29 paragraphs (1), (3), and (4) of the Marriage Law, which restricted the making of marital agreements to "at the time of or before the marriage is concluded," limited individuals' freedom to determine and protect their own legal interests.

[18] Rachel A Cichowski. "Women's Rights and Supranational Constitutionalism." *Law & Society Review* 38, no. 3 (2004): 489–512.

The restriction was considered contrary to the constitutional rights of citizens as guaranteed under Article 28E paragraph (2) of the 1945 Constitution, particularly the right to make choices and enter into agreements freely. Accordingly, the Court declared that the phrase "at the time of or before the marriage is concluded" in Article 29 paragraph (1), as well as the phrase "during the marriage" in Article 29 paragraph (4), was conditionally unconstitutional insofar as these provisions were not interpreted to include the period during which the parties remained bound by the marriage. Through this decision, the Constitutional Court enabled husbands and wives, including women, to enter into marital agreements not only before marriage but also while the marriage remained in effect. Such agreements must be made by mutual consent, in writing, and authenticated by a marriage registrar or notary. Once authenticated, the agreements also apply to relevant third parties.

The implementation of Constitutional Court Decision Number 69/PUU-XIII/2015 was supported by the issuance of Circular Letter of the Director General of Population and Civil Registration of the Ministry of Home Affairs of the Republic of Indonesia No. 472.2/5857/DUKCAPIL for individuals whose marriages are governed by religions other than Islam, and Circular Letter of the Director General of Islamic Community Guidance of the Ministry of Religious Affairs of the Republic of Indonesia No. B.2674/DJ.III/KW.00/9/2017 for Muslims. In essence, these circular letters regulate the technical procedures for registering and reporting marital agreements made before, at the time of, and during marriage. The relevant parties include notaries, civil registration offices, and offices of religious affairs. Registration is intended to protect the interests of all parties involved, including the husband, the wife, and third parties.[19]

b) Constitutional Court Decision Number 22/PUU-XV/2017 concerning the Judicial Review of Law Number 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia

In Constitutional Court Decision Number 22/PUU-XV/2017, the Constitutional Court reaffirmed its commitment to strengthening the protection of women's rights by eliminating discriminatory provisions in marriage law. The Court held that the difference in the minimum legal age for marriage between men and women, namely 19 years for men and 16 years for women, as stipulated in Article 7 paragraph (1) of the Marriage Law, constituted a form of inequality before the law that contravened constitutional principles. In its legal reasoning, the Court emphasized that setting the minimum marriage age for women at 16

[19] Herni Widanarti, "Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Hukum Perkawinan di Indonesia", *Law, Development & Justice Review* 3, no. 1 (Juni 2020): 138.

years not only resulted in discrimination but also had serious implications for the fulfillment of women's and children's rights.

Child marriage has the potential to deprive women of their rights to education, health, and development, while increasing reproductive health risks and socioeconomic vulnerability. The Court also considered that setting the minimum marriage age for women below the age of childhood as recognized under the Convention on the Rights of the Child placed women in an unequal position relative to men, thereby violating the principle of equality before the law guaranteed under Article 27 paragraph (1) of the 1945 Constitution. The Court further emphasized that the state has a constitutional obligation to protect, fulfill, and respect the rights of women and children. In this context, the Court also considered the CEDAW, which recommends that States Parties establish the same minimum marriage age for men and women. Although the Court did not rely directly on CEDAW as a basis for judicial review, it stressed the importance of harmonizing the regulation of the minimum marriage age with the Child Protection Law and the principles of women's protection guaranteed by the Constitution.

Based on these considerations, the Court declared that the phrase “16 (sixteen) years of age” in Article 7 paragraph (1) of the Marriage Law was contrary to the 1945 Constitution and had no binding legal force. The Court also instructed the legislature to amend the provision within a maximum period of three years. This decision subsequently led to the enactment of Law Number 16 of 2019, which established the same minimum marriage age of 19 years for both men and women. Accordingly, this decision marked a significant milestone in the protection of women's rights by eliminating a discriminatory legal norm that had legitimized child marriage and gender inequality within Indonesia's marriage law.

The Constitutional Court's decision not only provided a sense of justice to the applicants, who considered themselves to have experienced discriminatory treatment as citizens, but also generated broader benefits for Indonesian society by advancing equality between men and women before the law. Furthermore, the decision contributed to the well being of prospective spouses in cognitive, psychological, biological, and economic terms. It thus provided stronger guarantees that prospective spouses would attain greater maturity across these dimensions.[20]

[20] Samsul Hadi, "Putusan Mk No.22 /Puu-Xv /2017 tentang Permohonan Judicial Review Pasal 7 Ayat (1) UU No. 1 Tahun 1974 Tentang Usia Perkawinan Dalam Perspektif Maslahah", *Al-Aḥwāl* 11, no. 2 (2018): 183.

c) Constitutional Court Decision Number 169/PUU-XXII/2024 concerning the Judicial Review of Law Number 17 of 2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional People's Representative Council, and Law Number 2 of 2018 on the Second Amendment to Law Number 17 of 2014 on the People's Consultative Assembly, the House of Representatives, the Regional Representative Council, and the Regional People's Representative Council against the 1945 Constitution of the Republic of Indonesia

Constitutional Court Decision Number 169/PUU-XXII/2024 demonstrates the Constitutional Court's consistent efforts to strengthen the protection of women's political rights by enhancing women's representation in legislative institutions. The case arose from concerns regarding the inadequate participation of women in the House of Representatives' internal bodies, particularly in leadership positions, due to the absence of explicit provisions governing women's representation within the institutional structure of the House. This situation was considered likely to position women merely as supplementary figures in formal representation, without providing them with equal opportunities to participate in political decision making. In its reasoning, the Court emphasized that the constitutional issue raised in the case essentially concerned the balance and equitable distribution of women's representation in representative institutions. Accordingly, the Court referred to its previous decisions, particularly Decisions Number 82/PUU-XII/2014 and Number 22-24/PUU-VI/2008, which had recognized the 30 percent women's quota policy as a constitutionally legitimate form of affirmative action.

Affirmative action refers to policies adopted to provide equal opportunities for certain groups in the political sphere. The legal basis for affirmative action is Article 4 paragraph (1) of the 1979 CEDAW, which stipulates that states may adopt temporary special measures to ensure the achievement of gender equality. In this context, affirmative action provides women with greater opportunities to participate in legislative politics through gender quotas.[21] According to the Court, such affirmative policies constitute temporary measures necessary to encourage women's participation in the national policymaking process and create more equitable opportunities in political life.

The Court also emphasized that affirmative action for women constitutes an implementation of Article 28H paragraph (2) of the 1945 Constitution, which

[21] Audrey Shayna Rinaldi, et al., "*Affirmative Action* di Pemilihan Umum: Antara Solusi Struktural dan Kosmetik Demokrasi", https://www.researchgate.net/profile/Elisabet-Arneti/publication/398666837_AFFIRMATIVE_ACTION_DI_PEMILIHAN_UMUM_ANTARA_SOLUSI_STRUKTURAL_DAN_KOSMETIK_DEMOKRASI/links/693eaada7e61d05b530f5e8a/AFFIRMATIVE-ACTION-DI-PEMILIHAN-UMUM-ANTARA-SOLUSI-STRUKTURAL-DAN-KOSMETIK-DEMOKRASI.pdf.

guarantees special treatment to achieve equality and justice. This consideration was based on the fact that women continue to experience disadvantages in various aspects of state governance, including access to strategic positions in parliament. Accordingly, special treatment for women does not constitute discrimination but rather serves as a constitutional instrument to address structural inequalities that have historically hindered women's substantive political participation. Furthermore, the Court considered that eliminating gender mainstreaming in the appointment of leadership within the House of Representatives' internal bodies would instead create legal uncertainty that unfairly affects women. The previous provisions prioritizing women's representation were considered important for ensuring the continuity of affirmative action policies within political institutions. When such provisions are removed, women's opportunities to occupy strategic positions become increasingly limited, potentially weakening their representation in state decision making. Therefore, the Court affirmed that provisions governing women's representation must continue to be incorporated proportionately and substantively into the composition of the House of Representatives' internal bodies, including the allocation of membership and leadership positions.

The Court's reasoning demonstrates that the protection of women's rights should not be understood merely as the formal recognition of political rights, but should also encompass concrete efforts to ensure that women have equitable access to positions of power and public policymaking. The impact of this decision is expected to transform the political landscape of parliament at both structural and cultural levels. By ending the practice of concentrating women in certain committees, a gender perspective can be integrated across the entire spectrum of policymaking, from defense to finance. This change in composition may facilitate the development of more inclusive and gender responsive policies, while also challenging patriarchal culture by normalizing women's leadership in strategic fields. However, the effectiveness of this decision depends on its practical implementation and enforcement.[22]

The main challenge lies in the political will of political parties and members of the House of Representatives to fulfill this constitutional mandate, as well as the continued vigilance of civil society in ensuring that the terms “prioritize” and “proportional distribution” do not lose their meaning in the implementation of regulations and everyday political practices. Accordingly, Decision Number 169/PUU-XXII/2024 constitutes an important development in the

[22] Susi Dian Rahayu & Arifudin, "Constitutional Court Decision No. 169/PUU-XXII/2024 and Efforts to Mainstream Gender in Political Representation onParliament", *The Digest:Journal of Jurisprudence and Legisprudence* 6, no. 2 (2025): 201.

Constitutional Court's constitutional reasoning aimed at promoting a more inclusive, participatory, and gender equitable democracy.

The Constitutional Court decisions discussed above demonstrate a tendency to employ progressive constitutional reasoning to strengthen the protection of women's rights. These decisions not only recognize women as subjects entitled to legal protection but also affirm the importance of equality, non discrimination, and substantive justice in national life and governance. Through its interpretation of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court seeks to ensure that various statutory provisions do not give rise to injustice or restrictions on women's rights. Furthermore, several of these decisions illustrate how the Court develops its constitutional reasoning to protect and strengthen women's rights across various areas, ranging from marriage to political representation.

Based on the foregoing discussion, the Constitutional Court can be seen to have developed a pattern of constitutional reasoning that tends to be progressive in cases concerning the protection of women's rights. This pattern is reflected in its reliance on the principles of equality before the law, non discrimination, human rights protection, and substantive justice as the basis for assessing the constitutionality of legal provisions. In its various decisions, the Court has not focused solely on the formal compatibility of legislation with the 1945 Constitution of the Republic of Indonesia but has also considered the actual impact of legal provisions on women, including structural inequalities and the vulnerabilities they experience in social, family, and political life. Such constitutional reasoning demonstrates a shift in the Court's orientation from merely safeguarding the constitutionality of legal provisions toward actively strengthening the substantive protection and fulfillment of women's rights.

Furthermore, this series of decisions illustrates the gradual development of constitutional protection for women's rights. This development began with the elimination of provisions that restricted or adversely affected women's rights in the private sphere, such as marital rights and the protection of girls, and progressed toward strengthening women's rights in the public sphere through affirmative action policies and enhanced political representation. Accordingly, the Constitutional Court's decisions can be mapped into a constitutional roadmap that illustrates the direction of developments in the protection of women's rights in Indonesia, namely, toward broader recognition of gender equality and substantive justice as integral components of a democratic constitutional state. Therefore, consistency is required from the Constitutional Court, the legislature, and all state institutions in treating the protection of women's rights as an integral part of national legal development. In addition, the constitutional roadmap for the protection of women's rights reflected in the Court's decisions must continue to be

developed so that it can serve as a guide for formulating more gender responsive regulations and policies. In this way, the constitutional aspiration of realizing equality, justice, and respect for women's human rights can be translated into tangible outcomes.

IV. CONCLUSION

Based on the analysis and discussion that has been described, it can be concluded that: The development of Constitutional Court decisions demonstrates the strengthening of constitutional reasoning in the protection of women's rights, guided by the principles of equality, non discrimination, and substantive justice. This trend is reflected in Decision Number 69/PUU-XIII/2015 concerning the protection of rights within marriage, Decision Number 22/PUU-XV/2017 concerning equality in the minimum legal age for marriage, and Decision Number 169/PUU-XXII/2024 concerning the strengthening of women's representation in the internal bodies of the House of Representatives. Based on these three decisions, a constitutionality roadmap for the protection of women's rights can be mapped through the development of constitutional reasoning, encompassing the protection of rights within marriage and extending to the strengthening of women's participation in political institutions. This mapping demonstrates that constitutional interpretation plays an important role in identifying normative inequalities while strengthening constitutional guarantees for women's rights. Accordingly, the roadmap serves as a conceptual framework for understanding trends in Constitutional Court decisions and providing direction for the development of more consistent, inclusive, and gender responsive protection of women's rights.

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