

JURNAL CITA HUKUM

Indonesian Law Journal



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Peyman Rostamian, Mohammad Hossein Hajjarian, & Hassan Ali Moazzanzadegan. (United Arab Emirates (UAE))
- **Legislative Construction of the Post Amendment In Restoring Indonesian Democracy**
Asep Syarifuddin Hidayat. (Jakarta, Indonesia)
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Abbas Sofwan Matlail Fajar & Mara Sutan Rambe. (Islamic Republic of Pakistan)
- **Legalizing Unofficial Marriage for Indonesian Migrant Workers In Malaysia**
Afwan Faizin, Alfitra & Ali Mansur. (Jakarta, Indonesia)
- **Emancipation and Legal Justice; Portrait of Women's Legal Protection In Indonesia**
Mentari Berliana Kemala Dewi & Ridwan Arifin. (Semarang, Indonesia)
- **The Role of Law on the Implementation of Green Banking in Indonesia**
Ria Safitri, Hartwiningsih & Hari Purwadi. (Surakarta, Indonesia)
- **Роль спецслужб в ликвидации неповиновения (мятежных действий) в Индонезии и Филиппинах (Role of Secret Agent Institutions in Eradication of Rebels In Indonesia and Philippines)**
Sekar Hapsari & Saddam Aljihad. (Kazan, Federasi Russia)

Volume 7 Number 1 (2019)

Jurnal

CITA HUKUM

VOLUME 7 NUMBER 1 (2019)

JURNAL CITA HUKUM is Indonesian Law Journal published by Faculty of Sharia and Law, State Islamic University Syarif Hidayatullah Jakarta in Associate with Center for Study of Indonesian Constitution and Legislation (POSKO-LEGNAS) UIN Jakarta.

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Link: <http://journal.uinjkt.ac.id/index.php/citahukum>

Jurnal

CITA HUKUM

INDONESIAN LAW JOURNAL

Welcoming contributions from scientists, scholars, professionals, and researchers in the legal disciplines to be published and disseminated after going through script selection mechanisms, reviewing sustainable partners, and rigorous editing processes.

TABLE OF CONTENTS

Analysis of the Nature of the Fulfillment of the Obligation in Iran and in France Civil Codes

Zahra Babajani, Saeid Kheradmandy, Mohamad Javad Jafari1-16

Case Study of The Supreme Court Ruling Number: 3002 K/Pdt/2015 On the Validity of Provision of Income Agreement Which Was Made Before Divorce Based on Civil Code

Hazar Kusmayanti, Tri Utami Warapsari, Linda Rachmainy.....17-36

Malice in Crimes in Iran and The English Criminal Law

Peyman Rostamian, Mohammad Hossein Hajjarian, Hassan Ali Moazzanzadegan.....37-50

Legislative Construction of the Post Amendment in Restoring Indonesian Democracy

Asep Syarifuddin Hidayat.....51-66

The Implementation of Supreme Court Regulation Number 2 of 2012 concerning Limitation Adjustment of Mild Criminal Offenses and Amount of Fines in the Criminal Code Towards Handling of Minor Crime Cases

Abbas Sofwan Matlail Fajar, Mara Sutan Rambe.....67-84

Legalizing Unofficial Marriage for Indonesian Migrant Workers in Malaysia

Afwan Faizin, Alfitra, Ali Mansur.....85-100

Emancipation and Legal Justice; Portrait of Women's Legal Protection in Indonesia

Mentari Berliana Kemala Dewi, Ridwan Arifin.....101-114

The Role of Law on the Implementation of Green Banking in Indonesia

Ria Safitri, Hartiwiningsih, Hari Purwadi.....115-138

Роль Спецслужб В устранении Неповиновения или Мятежных Действий В Индонезии И Филиппинах (Role of Secret Agent Institutions in Eradication of Rebels In Indonesia and Philippines)

Sekar Hapsari, Respiratori Saddam Aljihad.....139-156

Emancipation and Legal Justice; Portrait of Women's Legal Protection In Indonesia*

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 [10.15408/jch.v7i1.10261](https://doi.org/10.15408/jch.v7i1.10261)

Abstract.

International human rights declarations urge the development of feminism in the world. Feminism whose essence is fighting for women's rights has so far been neglected by the community, so that a new spirit is sought so that women can again feel. This study aims to review unfairness actions that have been scattered in society between men and women. Justice is expressed in daily life in order to eradicate acts of gender discrimination. Indonesia as a legal state that always obeys the law and upholds the principles of justice and certainty is a reflection of an existing feminist movement. The role of women must be considered important by the progress of a nation, however in Indonesia there are still many issues of gender equality that occur, such as the absence of women's own beliefs in matters of occupying good power. The problem of sexual crimes that have been wiping out in all public relations has led to increasingly ineffective emancipation of women in Indonesia. This emancipation is a form or manifestation of the feminist movement that can benefit both men and women. The feminism movement can encourage relations in a harmonious society to maintain a stable condition.

Keywords: Emancipation, Trust, Justice, Women, Crime

How to cite (turabian):

Dewi, Mentari Berliana Kemala; and Arifin, Ridwan. "Emancipation and Legal Justice; Portrait of Women's Legal Protection In Indonesia," Jurnal Cita Hukum [Online], Volume 7 Number 1 (20 March 2019).

* Received: Dec 17, 2018, revised: January 15, 2019, Accepted: February 12, 2019, Published: March 20, 2019.

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Emansipasi dan Keadilan Hukum: Potret Perlindungan Hukum Perempuan Di Indonesia

Abstrak.

Deklarasi HAM internasional mendesak perkembangan feminisme di dunia. Feminisme yang hakikatnya memperjuangkan hak-hak perempuan sejauh ini telah diabaikan oleh masyarakat, karenanya semangat baru dicari sehingga perempuan dapat kembali merasakan kebebasan. Penelitian ini bertujuan untuk mengkaji tindakan tidak adil yang telah tersebar di masyarakat antara pria dan wanita. Keadilan diekspresikan dalam kehidupan sehari-hari untuk menghapus tindakan diskriminasi gender. Indonesia sebagai negara hukum yang selalu mematuhi hukum dan menjunjung tinggi prinsip keadilan dan kepastian adalah cerminan dari gerakan feminis yang ada. Peran perempuan harus dianggap penting oleh kemajuan suatu bangsa, namun di Indonesia masih banyak masalah kesetaraan gender yang terjadi, seperti tidak adanya keyakinan perempuan sendiri dalam hal menduduki kekuasaan yang baik. Masalah kejahatan seksual yang telah memusnahkan di semua hubungan masyarakat telah menyebabkan emansipasi perempuan yang semakin tidak efektif di Indonesia. Emansipasi ini adalah bentuk atau manifestasi dari gerakan feminis yang dapat bermanfaat baik bagi pria maupun wanita. Gerakan feminisme dapat mendorong hubungan dalam masyarakat yang harmonis untuk mempertahankan kondisi yang stabil.

Kata Kunci: Emansipasi, Kepercayaan, Keadilan, Perempuan, Kejahatan

Эмансипация и правовое правосудие; Портрет правовой защиты женщин в Индонезии

Аннотация.

Международные декларации прав человека призывают к развитию феминизма в мире. Феминизм, суть которого заключается в борьбе за права женщин, до сих пор игнорировался сообществом, так что ищется новый дух, чтобы женщины снова могли чувствовать. Это исследование направлено на рассмотрение действий несправедливости, которые были разбросаны в обществе между мужчинами и женщинами. Справедливость выражается в повседневной жизни с целью искоренения актов гендерной дискриминации. Индонезия как правовое государство, которое всегда подчиняется закону и придерживается принципов справедливости и определенности, является отражением существующего феминистского движения. Роль женщин должна рассматриваться как важная для прогресса нации, однако в Индонезии по-прежнему существует много проблем гендерного равенства, таких как отсутствие собственных убеждений женщин в вопросах занятия хорошей властью. Проблема сексуальных преступлений, которая исчезла во всех общественных отношениях, привела к все более неэффективной эмансипации женщин в Индонезии. Эта эмансипация является формой или проявлением феминистского движения, которое может принести пользу как мужчинам, так и женщинам. Движение феминизма может поощрять отношения в гармоничном обществе для поддержания стабильного состояния.

Ключевые слова: эмансипация, доверие, справедливость, женщины, преступность

Introduction

In a place where there is a group of people who have a mutual goal or rather called a community, there is also a civilization society which describes the general conditions on it. In this culture, there must have been a conflict between communities. The conflict requires a good solution, so that community members can be assured of precious harmony. In this case, the law is something needed by members of the community where it can regulate the procedures of association besides also can resolve conflicts. Law as an essence has proposed a collective solution to a dispute in society. Therefore an ideal law is necessary to overcome the problem. The ideal verdict is very difficult to implement, but the existence of positive law in a country can bring justice to society, justice is strongly required for dispute resolution (Santoso, 2012: 8).

The distance between law and justice is not far away. If the legal notion is connected with justice, then humans no longer view the law from a negative perspective. The community will take in a different perspective, the community will view law in the realm of life's ideals. People in society will have a new spirit of spirit in the presence of moral principles and recognition of the right of each person to live humanely. Thus the community will participate in building a legal state by promoting justice. In the Indonesian state, judicial control is based on Article 24 Paragraph (1) of the Indonesian's Constitutional of 1945, the judiciary is the power that refers to independent power to achieve law and justice. Justice really must be upheld in the administration of a country's government system. It is difficult to express the meaning of understanding of justice and injustice itself, especially with feelings in the human soul (Swantoro, 2017: 7).

Countries that determine which criminal acts and sanctions should not be arbitrary and must prioritize the principle of equality before the law as a mirror of justice, as stated in the 5th point of Pancasila and the opening of Indonesian's Constitutional of 1945 on the 4th paragraph. Regarding the principle of equality in the view of law as a mirror of justice is more emphasized in the Articles of Indonesian's Constitutional of 1945. One of them is Article 27 paragraph (1) which reads "all citizens in the same position in law and government are obliged to uphold the law and government without exception. "

Furthermore, it is more explained in Article 28 D paragraph (2) on Indonesian's Constitutional of 1945 which reads "every person has the right to easily receive facilities and special treatment to obtain same opportunities and benefits in order to achieve equality and justice." In the explanation after legislation has been explained that the state has guaranteed justice for every

element in society between members or groups of people must respect and create a system of justice for the welfare of nation (Dahlan, 2017: 16).

A debate has occurred in the science regarding justice which reaps a lot of thought from experts. Neither justice is something concrete or abstract, nor something imaginative reality and also not a reality, but justice in everything that can be felt by humans, and it is an element of value that is always embedded in the soul of the individual.

Petrazyscki says:

“The doctrine here in developed concerning law, in general, had intuitive law, in particular, comprises all the premises needed to solve the problem of the justice: actually, justice is nothing but intuitive law in our sense. As a real phenomenon justice is a psychic phenomenon, knowledge of which can be acquired through self-observation and the joint method.”

The doctrine built by paying attention to intuitive law and law remains our thinking, as is the fact that justice is a phenomenon that must be seen, known and can be demanded by self-observation and joining methods. The measure of justice can give everyone their rights. One of the law purposes is to realize justice. This is also related to three legal objectives, those are legal certainty, the benefits of law and legal justice (Azizah, 2016: 23).

Gender problems have actually existed in humans since humans appeared on this earth. However, at the beginning when science and technology began to exist, but technology has not advanced as it is today, gender issues have not received attention and have not been disputed by society in general or feminists. This is due to the growing cultural values related to the role or division of labor, responsibility and the standard image of men and women at that time considered as something natural. Through the times that are often followed by the advancement of information technology, public attention, especially for feminists on social phenomena related to gender issues, has begun to be the focus of attention. This concern about gender issues began to emerge around the 40s initiated by feminists in the West. The birth of attention to gender and women's issues begins with the public awareness that women have a different fate than their opponents, particularly for men who have a better destiny than women. Mary Wollstonecraft and John Stuart Mill are feminist figures who pioneered the movement to improve women's fate.

In its development followed by other feminist figures who took care of gender justice by fighting for the fate of women who were considered to be oppressed, subordinated, marginalized and discriminated. Lead-off by Western

countries such as Britain, France, America to develop or champion gender equality for women. Then three big waves were born, namely feminism one, feminism two, and feminism three (Arjani, 2012: 116).

The French Revolution in 1789 has initiated the first wave of feminism, at which time some feminists developed (liberal feminists, radical feminism and socialist Marxist feminism). Each of these feminisms has a different view on understanding women's oppression. Liberal feminism says that the oppression of women is due to the traditions and habits of people who then make women as subordinate, not because of their natural conditions. In contrast to the views of radical feminism, they view the oppression of women due to sexuality and gender systems which eventually lead to a patriarchal system, whereas Marxist feminism views the oppression of women due to social, economic and political structures that are closely related to the capitalist system.

Feminism in the second wave was introduced by Simone de Beauvoir whose movement was known as existentialist feminism. This idea when concerning the problem of oppression of women begins with the reproductive burden in the female body. According to Simon, the load borne by women and the responsibility of raising children makes women have a weak bargaining position towards men. Meanwhile, the third wave of feminism has many views, namely postmodern feminism, multicultural feminism, and ecofeminism. Firstly, all of these understandings of feminism had a purpose to see the basic backwardness of women who then wanted to improve or find a solution, so that the fate of women became more empowered.

Similar to those in Indonesia, the struggle to improve the fate of women has emerged since the Dutch colonial era pioneered by RA Kartini which movement was known as "emancipation." Kartini's emancipation movement in principle was also a movement to fight for the destiny of Indonesian women who in at that time its existence was very much attached to patriarchal culture, so women did not gain access to education and employment. At that time, R.A Kartini had a driving spirit in change for better Indonesian women. Besides R.A Kartini, the hero of the fighters for gender equality in Indonesia is Cut Nyak Dien who contributed to the equality of women's rights in Aceh. His struggle really outweighs men (Vandestra, 2018: 11).

Although the movement to improve the fate of women "emancipation" has been going on for a long time and has produced many sacrifices, but until now the movement is still felt lacking in women's empowerment. Gender inequality still exists in various aspects of people's lives, which is a development that is less effective for women. As in the aspects of economic,

educational, social and cultural life. Women are still often overlooked and are considered not in need of it. For this reason, it is necessary to design a way to change gender differences in the community with high commitment and accompanied by serious handling by the government.

Politics and Women

Equality is one form of democracy that is interesting to be studied deeply, particularly inequality between men and women. The concept of equality just emerges when democracy had been going on for a long time, while the concept of equality between men and women began to appear around the 1700s. This concept is social criticism of the subordination of women by men. At that time, women did not have the right to live freely in public space, women were considered to only fill the back, only to work in the domestic or household sector.

According to research conducted by Harris, Kristian, and Olle in the book *Politicizing Democracy: The New Local Politics of Democratisation* in 2004 has proven that women's movement gave birth to a good influence towards Indonesian society. This women's movement coincided with the momentum of political decentralization at the time, which was called good government. Good government is a concept that explains that the state in its governance system is not only run by the government but together with the community, as well as the concept of gender equality (Fraser, 2007: 30).

To realize a gender justice, a conception is needed to accommodate traditional concerns as the theory of distributive justice, specifically with regard to poverty, exploitation, inequality, and class differences, furthermore to other systems it must also include attention that has recently been highlighted in recognition philosophy, especially disrespect, cultural imperialism, and status hierarchy (Fraser, 2007: 30).

Feminists have to focus on how transitional justice debates help or hinder broader projects from securing material acquisition for women through transition, rather than trying to adjust feminist ideas about justice within the framework of transitional justice (Bell, 2007: 25).

Indonesia as a country that adheres to a modern democratic system, applies the concept of feminism in life. The equality of rights between men and women can be seen in social and educational arrangements, even women can participate in the political field.

Women's participation in the political field in Indonesia is increasingly advanced, not only has the right to vote but also women can enter politics. Evidently, during the general election, Megawati was elected as vice-president of the Republic of Indonesia, which then replaced Abdurrahman Wahid. This is clear evidence that Indonesian women have been given the same rights as those of men. This is also a manifestation of the development of feminism in Indonesia. Gender agreement or feminism movement lies in the soul of the community, if the community wants it, then gender equality will be realized well (Brod, 1993: 236).

The development of equality in Indonesia as seen in the political sphere seems to be more concerned with the justice side for women. In addition to positions in government such as ministers and others, there are always better improvements. During the New Order period to the United, Indonesia cabinet experienced an interesting thing. During the new order period, which is the one development cabinet until the five development cabinet, only one woman became minister. The position given to women in new order era would never be strategic, only a few served as social ministers or public works ministers. During the sixth development cabinet and seven women who served as ministers increased to two. After reforms in 1998, there were four presidents and five cabinets. The first cabinet was the Development Reform Cabinet in the Habibie government, which only had two female ministers, then during the National Unity cabinet led by Abdurrahman Wahid, also had two female ministers. The third is the Gotong Royong cabinet under Megawati's administration, which is included in the process of equality of rights, also has two female ministers. Furthermore, the cabinet of the United of Indonesia I and II by President Susilo Bambang Yudhoyono, each of them has five female ministers. The number of women who entered increased into the executive body which certainly had a positive impact on the legislature. Women at that time were able to enter the legislature as political people. The difference with the executive, the legislature is supported by existing regulations or laws, related to the provision of rights for women who enter the realm of public politics (Silaban, 2015: 77).

The laws of political parties and elections take part in requiring each party to nominate women legislative candidates at least thirty percent. When the 2009 General Election, Law Number 10 of 2008 concerning the Election of the DPR, DPD and DPRD members was loaded with a 30 percent quota for women in article 53, plus article 55 paragraph 2 which contained the zipper system. Article 8 paragraph (1) point d has been mentioned about the participation of at least 30 percent of women's representation in the

management of political parties at the central level as one of the requirements of political parties to become participants of Election (Adhanta, 2007: 117-123).

The existence of the Law on Political Party and Election has a positive impact on elevating the number of women in the legislature. Recorded the period 1999-2004 the number of women who became members of the DPR RI are about 53 people, entering the period 2004-2009 increased to 64 people and subsequently became 99 people in the period 2009-2014.

The women's movement in the reform era reaped success marked by the strengthening of political patterns by leaders or groups who were concerned about the issue of justice and gender equality and had an impact with the birth of responsive laws. Law Number 23 of 2004 is a form of elimination of domestic violence then Law Number 12 of 2006 concerning Citizenship and Law Number 21 of 2007 concerning Eradication of Crime in Trafficking in Persons. Women's organizations born in the community were also active in advocating for substantial changes that could potentially harm women in the Draft Law Number 44 of 2008 concerning Pornography and Pornoaction, Law Number 8 of 2012 concerning Elections of DPR-DPRD Members. In addition, the women's movement also actively advocated a 30 percent quota for candidates for DPR-DPD members in the 2008 and 2003 Election Laws (Aripurnami, 2013: 13).

In global developments, the role of mass media in women's campaign movements is currently taking part. Mass media can be an effective material that affects women's feminism in the political world. Many of the fictions tell the role of women in the world of government where they can develop their country and nation well. From these stories, it might affect the community that not only men can occupy the power seat, but women are also considered to be smarter and clever in handling government cases. The success of women's movement in introducing women's rights is inseparable from conditions supporting the development of feminist ideology. This support has various forms of publications by the media and direct campaigns. This process greatly supports the continuity and success of feminist movements in various countries (Dewi, 2009: 233).

Political parties are one vehicle to the Senayan building often unable to accommodate aspirations fairly for women. At present, there are no women who can occupy the number 1 seat in the legislative candidates. Women are placed in position number 3 and that is the highest position, then number 6. In Law Number 10 of 2008, it is subject to an obligation of 30 percent representation of advanced women representing their parties. The community has not placed much trust in women's leadership during elections. The purpose

of politics in women is not to distinguish or compare between women and men, but this has a positive side to do. If women cannot believe in their own people it will have an impact on men's beliefs. Therefore, a special review is needed (Silaban, 2015: 80).

A Violence in Women and Its Impact

In Law Number 23 of 2004 about the Elimination of Violence Against Households which can provide space for women to obtain their rights as human beings according to law. In the implementation of the Law, it actually criminalized women in a lot of violence and deprivation of their rights. According to KBBI, the word violence is "the actions of a person or group of people which causes physical or other people's damage." In English, the word violence is often called "violence" which means attack or invasion of the physical as well as the integration of psychology (Erniati, 2015: 209). Violence occurs in society and is very common. Crime is often accompanied by acts of violence committed by a person, as stipulated in the legislation in the Criminal Code (KUHP). The violence that befell women is mostly done in the realm of the household. In the household the violence tends to be kept secret by victims and perpetrators, they assume that negative things are not good to be discussed with others. In reality, it is very difficult to weigh how much violence happens to women because they themselves are reluctant to speak in public. Initial violence was regulated in the Criminal Code regarding crime against decency, then developed because the form of violence in women continued to develop especially in cases of domestic violence (Helmi, 2014: 318).

The Indonesian's Constitutional of 1945 in Article 28B Paragraph (1) contains: "Every person has the right to form a family and continue the descent through legal marriage." Furthermore, in Article 1 of Law Number 1 the Year 1974 concerning marriage, it is stated that: "Marriage is a birth bond the mind between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Oneness God." In this article, it is clear that the state guarantees its citizens to conduct marriages. Marriage is based on awareness of affection between the two parties to keep the household in harmony. Based on data from the World Health Organization (WHO) that one in four women worldwide are victims of domestic violence, with the largest number in people in Asia and the Middle East. The Asia and the Middle East region is an area with many countries that are still developing. Including Indonesia, the Ministry of Women's Empowerment and Child Protection (KPPPA) provides national statistics that violence against women in Indonesia

also needs to be considered because in 2009 there were 143,586 cases which decreased to 105,103 cases in 2010, but then increased in 2011 to 119,107 case (Wedaningtyas, 2017: 333).

In 1979 an international convention was held by the general assembly in the international sphere. This convention is about eliminating discrimination against women where women are considered very weak. In 1984 through Law No. 7 of 1984 Indonesia ratified the United Nations convention, Indonesia ratified the Convention on all forms of discrimination against women. CEDAW is the name of the United Nations (UN) convention on women's discrimination, CENDAW has an important meaning because it is the first international legal instrument that establishes or discusses the meaning of discrimination against women. Indonesia is one of the UN member states that approves, signs and ratifies the CENDAW convention, the government is obliged to implement the points of the convention. The state has a high commitment to the implementation that is very important so that the convention is not just hallucinations or wishful thinking. Therefore, in 1992 CENDAW gave birth to General Recommendation Number 19 concerning the obligation of the state to ratify the Convention on the elimination of discrimination against women to ensure the issue of violence against women in its report. In this recommendation, it was explained that there was an assertion that gender-based violence was very severe discrimination and was a serious case that could prevent women from achieving freedom and rights in all spheres, both private and public. For instance, there is a discrimination of women in employment. Women are more excluded to get facilities, improper salaries, and excessive duties. Even in the environment of the house, unconsciously often done by parents to their children, such as the treatment of different girls and boys. Most adults do not understand this, but in fact, it is a form of discrimination against women (Helmi, 2014: 321).

The problem of feminism is frequently taken place in the sociality of relations in the community, because the issue of feminism has an impact on the community environment, including what is in society (Davys, 2009: 69).

Violence against children often occurs within the community, either by their own parents or by other people. Many girls experience cases of abuse and violence so that this will bring bad consequences to her. When children experience cases of sexual violence by gaining wages, pressure, or pain, negative emotion arises in the child's soul. Emotional effects will continue, such as avoiding sex, sex phobia, even intimacy that interferes with their relationship with their partner, both physically and mentally (Watts, 2002: 1223).

The Indonesian state has established legislation on child protection. Children as the next generation in the family become the relay to ensure the continuity of the existence of the nation, as well as in Law Number 23 the Year 2002 point c concerning Child Protection. The future of the child is budding, potential, and the younger generation is the successor of the ideals of the nation's struggle, has a strategic role and has special characteristics and characteristics that guarantee the continuity of the existence of the nation and state. Children also become the shoots of the nation that must be protected by their lives and livelihoods and become the responsibility of parents, families, communities and the state. As the next generation, children must be individuals who can be prepared carefully for the future, but as times change, and social change has a tremendous impact on the changes that occur. Child problems in the form of neglect, exploitation, child trafficking, discrimination, violence against children, both physical, psychological and sexual. The need for child protection is needed so that the condition of children can survive in an increasingly hard world (Tursilani, 2017: 78).

Hunter (Gosita, 2013) states that there are 80% of sexual abuse victims whose perpetrators are male and 90% of sexual experiences involve victims who are still immature. There is a complexity involved in research on sexual problems experienced by children, then for victims with adult age there is not much attachment compared to cases of child abuse (Harjo, 2017: 15).

Child sexual violence can be in the form of indecent treatment from other parties to children, activities that lead to pornography, parental pornography and acts of child sexual abuse, child abuse and sexual intercourse by children. others with no responsibility. In addition to actions to encourage or force children to engage in sexual activities that violate the law, such as in prostitution by children. Activities like this are considered inappropriate for children. Ironically the impact on children when they are adults, will grow to be very apathetic. So that there are negative impacts on victims, such as sexual disorders, suicide attempts, acute depression, and it is very possible for them to grow into people who will commit sexual violence in other children as they have experienced. Therefore, child violence is commonly done in early childhood, so sexual education is needed for children so that children understand and take care of themselves. Education provided such as giving information about sex function in women and men, and certain organs must always be closed and guarded against the view of others (Justicia, 2016: 222).

Article 1 Paragraph 2 of Law Number 23 of 2002 concerning Child Protection states that "Child protection is all activities to guarantee and protect

children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity and dignity, and get protection from violence and discrimination. "Self, society, government and state must guarantee child protection as stated in the article above. When there is someone who is interested in someone who has a different age that is unnaturally different, then the condition is considered as a form of social deviation, for example, a teenager is interested in a person who is older or younger, then the teenager is considered abnormal. This behavior in society has been deemed deviant and the perpetrators themselves are also aware that this is not appropriate. When a situation like this experiences two possibilities, namely changing his personality by holding his sexual appetite or satisfying his lust silently (Noviana, 2015: 21).

Conclusion

The controversy concerning the feminist movement and women's rights is still becoming the main agenda in various countries in the world, mainly since it was revealed and propaganda on the issue of human rights. Indonesia is still experiencing issues regarding women's emancipation or feminism, and equality of women's rights. In addition to the problem of women's participation in manifold aspects of social life, ergo, it is a long and difficult process to resolve. It can also be said that feminism in Indonesia is not running perfectly because women in practice are still distinguished from men. Generally speaking, the aim of gender equality movement is to create a condition where women and men can contribute in each other's conditions in society and play a role in it, so as not to cause discrimination between the two parties. A feminism movement is a form of emancipation in the international field that must be proud of. Indonesia itself appreciates the feminism movement which in fact began to develop in society lives.

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JURNAL CITA HUKUM is a peer-reviewed journal on Indonesian Law Studies published bi-annual (June & December) by Faculty of Sharia and Law Universitas Islam Negeri Syarif Hidayatullah Jakarta in cooperation with Center for the Study of Constitution and National Legislation (POSKO-LEGNAS). JURNAL CITA HUKUM aims primarily to facilitate scholarly and professional discussions over current developments on legal issues in Indonesia as well as to publish innovative legal researches concerning Indonesian laws.

