



## Gender Equality Implementation in Women's Legal Cases in Religious Courts

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### Abstract

This article analyses the implementation of the Supreme Court Regulation Number 3 of 2017 concerning Guidelines for Trial of Cases Involving Women Facing Legal Challenges (which is then written as SC Reg. 3/2017) in Religious Affairs Courts. This regulation provides a guideline and serves as a reference point for judges which helps them to better understand and implement the principles of gender equality and non-discrimination in hearing and trying a case involving women. This study employs juridical-empirical approach method and purposive sampling as the data collection technique in interviewing several judges at multiple religious affairs courts in Java Island, as well as in literature review. The result of this study shows that judges at religious affairs courts have adopted Supreme Court Regulation Number 3 of 2017 (hereinafter, SC Reg. 3/2017), although in their practices, even after four years since the enactment, there still isn't any consensus or shared views amongst judges in implementing matters such as post-divorce women's rights, especially regarding *verstek* (in absentia) judgment. However, several religious affairs court judges have shown a good understanding of equality between men and women, indicated by judgments that favours women. Religious court judges in their *ex officio* capacity may grant rights to divorced wives, even if they are not requested.

**Keywords:** women's rights, legal rights, women facing legal challenges

## I. Introduction

Women's rights fulfilment requires law enforcement's great attention and concern. This is to avoid any gender bias in law enforcement, which of course is not in line with the principles of justice upheld by the law. Law is defined by justice, and vice versa that justice is the law itself. In the sense of justice (*justitia/ius/recht*), law is materialized as a fair regulation that is aspired to in the people's lives. In the sense of law as in legislation (*lex/wet*), law is a means to enforce fair rules and regulations.<sup>1</sup> Moreover, the law is depicted in the figure of Themis or Lady Justice, who carries a sword and a balance, as an illustration that the law must be stable, strong, and impartial,

<sup>1</sup> Theo Huijbers, *Filsafat Hukum* (Bandung: Kanisius, 1995), 49.

even though the nature of relationship between law and justice is not always causal.<sup>2</sup> Normatively, the law in the hands of an unjust, tyrannical ruler may perpetuate injustice, contrary to its intended purpose. The law must be formulated in a way that keeps gender equality in mind, to meet the demands for justice, as well as to eliminate discrimination based on various identity aspects, including gender identity. Men and women cannot be legally defined as unequal, not only with respect to gender identity, but also social definition.<sup>3</sup>

Indonesia has ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), an act that materializes Indonesia's aspiration to have a 'gender-friendly' legal system.<sup>4</sup> Multiple laws and regulations have been enacted to advance this aspiration further, such as the Supreme Court Regulation Number 3 of 2017 Concerning Guidelines for Trial of Cases Involving Women Facing Legal Challenges, which aims at providing judges a guideline to help them better understand and implement gender equality in hearing and trying a case that involves women. This Supreme Court regulation encourages progressive court rulings that ensure the protection of the rights of women facing legal challenges. Furthermore, SC Reg. 3/2017 is expected to prevent interpretation of articles in various laws and regulations that may put women facing legal challenges at disadvantage.<sup>5</sup>

The implementation of gender equality in Indonesian Religious Courts has been widely studied. Wahyudi<sup>6</sup> highlights structural challenges in religious courts, such as biased legal interpretations and judges' limited understanding of gender equality principles. Additionally, Ramadhita<sup>7</sup> identifies gender bias in Indonesia's divorce procedural law, pointing out that a wife can only file for divorce at her domicile if she has not left the marital residence without her husband's permission. This restriction reflects a legal bias influenced by political favoring men.

Furthermore, Nur et al.<sup>8</sup> explain that legal provisions mandating husbands to provide financial support post-divorce have led to a significant rise in contested divorces. This increase is mainly due to financial disputes, domestic violence, and the economic burden placed on men. The study suggests that a more balanced *mubadalah* (reciprocal) perspective in marriage could mitigate these issues. From a broader perspective, Wulandari<sup>9</sup> argues that gender equality initiatives in Indonesia often face resistance due to cultural and religious norms. The study suggests that integrating local Islamic values into gender equality efforts could strengthen legal protections for women. Similarly, Maula & Ariyanti<sup>10</sup> reveal that many women seek justice in religious courts due to domestic violence; however, judges often cite "irreconcilable differences" instead of explicitly recognizing domestic violence as a legitimate ground for divorce.

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<sup>2</sup> Wendy Sutherland-Smith, "Justice Unmasked: A Semiotic Analysis of Justitia" 2011, no. 185 (June 1, 2011): 213-222, <https://www.degruyter.com/document/doi/10.1515/semi.2011.039/html>.

<sup>3</sup> Ihromi T.O. and Dkk, *Penghapusan Diskriminasi Terhadap Wanita* (Bandung: Alumni, 2000), 85.

<sup>4</sup> Rr Kunti Dewi Adriane Kusumawardono, "Elimination of Discrimination Against Women & CEDAW: To What Extent Is It Jus Cogens?," *Yuridika* 38, no. 1 (January 1, 2023): 191-202, <https://ejournal.unair.ac.id/YDK/article/view/41663>.

<sup>5</sup> Elfia Farida, "Implementasi Prinsip Pokok Convention the Elimination of All Form Discrimination Againts Women (CEDAW) Di Indonesia," *Masalah-Masalah Hukum* 40, no. 4 (October 18, 2011): 443-453, <https://ejournal.undip.ac.id/index.php/mmh/article/view/13088>.

<sup>6</sup> Muhammad Isna Wahyudi, "Women Dealing with The Law in Religious Courts," *AHKAM: Jurnal Ilmu Syariah* 18, no. 2 (July 12, 2018), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/7491>.

<sup>7</sup> Ramadhita Ramadhita, "Bias Gender dalam Hukum Acara Perceraian di Indonesia: Latar Belakang, Dampak, dan Solusinya," *De Jure: Jurnal Hukum dan Syar'iah* 14, no. 1 (June 29, 2022): 1-20, <https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/15966>.

<sup>8</sup> Efa Rodiah Nur, Fathul Mu'in, and Hamsidar Hamsidar, "The Reconstruction of The Livelihood Concept from A Mubadalah Perspective in Lampung Province," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 3 (November 30, 2023): 1897-1920, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/17613>.

<sup>9</sup> Wahyuni Retno Wulandari, "Why Is Indonesian Islam Important in The Entrenchment of Women's Rights?," *JOURNAL OF INDONESIAN ISLAM* 17, no. 1 (June 1, 2023): 169-188, <https://jiis.uinsby.ac.id/index.php/JIIs/article/view/8324>.

<sup>10</sup> Bani Syarif Maula and Vivi Ariyanti, "Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts," *Jurnal Hukum Islam* 20, no. 1 (June 24, 2022): 155-180, [https://ejournal.uingusdur.ac.id/jhi/article/view/jhi\\_v20i1\\_07](https://ejournal.uingusdur.ac.id/jhi/article/view/jhi_v20i1_07).

The existence of laws and regulations that protect women's rights is intended to eliminate various forms of discrimination that are often experienced by women, especially those facing legal challenges.<sup>11</sup> Gender bias in judicial practice takes the form of a social construction that places men as 'breadwinners' of the household, thus putting them in a privileged position.<sup>12</sup> This privilege includes using the 'breadwinner' social construct to consider the provision of lighter sanctions for men who have committed crimes. On the other hand, women who are facing legal challenges, especially those who are victims of crime, are vulnerable to criminalization and revictimization. In some cases, women who are victims have been revictimized by law enforcement officers and experiencing harassment during the law enforcement process. For example, in one obscenity case with Case No. 1391/Pid.B/PA/2007/PN, the judges presiding the case gave irrelevant considerations by describing the victim's actions to have violated the norms of decency. On the other hand, the development of laws concerning women's rights and equality also requires advancement.

Cases of women facing legal challenges are increasing, including divorce cases in religious affairs courts. This increase can be seen in several religious affairs courts across Java Island. For example, the Semarang Religious Affairs Court had 3,205 cases in 2018, and 1,173 in 2019. The same can also be seen in Bandung Religious Affairs Court, where there were 6,569 cases in 2018, including 5,905 divorce lawsuits as well as 664 divorce applications. There were 7,054 cases in 2019, which includes 6,303 lawsuits and 754 applications, and 7,057 cases in 2020, which includes 6,277 lawsuits and 963 applications. Divorce lawsuits have also dominated the Surabaya Religious Affairs Court in the past three years, compared to *talaq* divorce cases. There were 4,214 divorce lawsuits and 1,939 *talaq* cases in 2018, 4,403 lawsuits and 1,941 *talaq* in 2019, and 4,256 lawsuits and 1,965 *talaq* in 2020. A similar trend can also be seen in the Malang Religious Affairs Court, where there have been significantly more divorce lawsuits than *talaq* divorce cases in the past three years. There were 1,725 lawsuits and 747 *talaq* in 2018, 1,804 lawsuits and 761 *talaq* in 2019, and 1,746 lawsuits and 704 *talaq* in 2020. This data reveals a common trend of overwhelming dominance of divorce lawsuits cases over *talaq* divorce cases. The data also shows the increasing number of women who file divorce lawsuits. As more women face legal challenges, judges in these religious affairs courts demand their sensitivity towards gender equality.

This study contributes to the literature by examining the practical implementation of SC Reg. 3/2017 in Indonesian Religious Courts, focusing on judges' decision-making processes regarding gender equality. Unlike previous studies, which primarily analyze the legal and regulatory aspects of gender equality, this research provides an empirical perspective by assessing how judges across multiple religious courts in Java interpret and apply gender-sensitive legal provisions. By identifying the challenges, inconsistencies, and gaps in the enforcement of SC Reg. 3/2017, this study offers a more comprehensive understanding of its effectiveness in protecting women's rights in legal proceedings.

## II. Research Problems

The article examines the implementation of SC Reg. 3/2017 concerning protecting women's rights within law enforcement and judicial processes in religious affairs courts. Specifically, the research seeks to answer two critical questions: how has the implementation of SC Reg. 3/2017 addressed the protection of women's rights in these courts, and what form of legal protection in the judiciary should be established to align with the principles of justice and gender equality.

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<sup>11</sup> Riris Ardhanariswari, Tenang Haryanto, and Supriyanto Supriyanto, "Gender Equality in Politics (Study on The Indonesian Constitutional Court's Decisions on Judicial Review Related to Women's Political Participation)," *Jurnal Dinamika Hukum* 21, no. 3 (2021): 420-431, <https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/2844>.

<sup>12</sup> Heri Setiawan, Steven Ouddy, and Mutiara Girindra Pratiwi, "Gender Equality Issues in Optical Feminist Jurisprudence and Implementation in Indonesian," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 12, no. 4 (December 31, 2018): 355, <https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/1386>.

### III. Research Methods

This study employed an empirical-legal approach to examine the implementation of gender equality principles in religious courts. The authors also employ other approaches, such as normative, philosophical, comparative, case, as well as historical approach.<sup>13</sup> Primary data were collected through semi-structured interviews with judges from religious courts in Java: Semarang, South Jakarta Bandung, Surakarta, Malang, and Yogyakarta. These judges were selected using purposive sampling, targeting those who had adjudicated cases involving women facing legal challenges within the last five years. Secondary data were obtained from legal documents, court rulings, and relevant literature.

Data analysis was conducted qualitatively by identifying patterns in the application of gender equality principles in judicial rulings and contextualizing these patterns with relevant legal theories. The research aimed to bridge the gap between normative legal frameworks and their practical implementation in courts.

### IV. Result And Discussion

#### 1. Women and Law in Indonesia

As a *rechtstaat* country that observes the supremacy of rule of law, it is imperative for Indonesia to respect, protect, and uphold the human rights of its people. The concept of the rule of law requires the fulfilment of human rights as an essential element.<sup>14</sup> Human rights are intended to protect one's honor and dignity. Every citizen, regardless of gender, has the same freedom and rights. If the principles of freedom and equality are linked to the principles of democracy, then men and women are seen as equal and have equal standing in the eyes of the state. Such a principle, seen from the gender perspective, is known as the principle of gender equality and gender justice.<sup>15</sup>

Gender equality is the state of equal footing and equal opportunities for men and women in every aspect of life.<sup>16</sup> The concept of gender identity differs from the concept of sex identity which is a biological classification of humans into male and female.<sup>17</sup> Gender is an inherent trait of a certain sex based on social and cultural construction. Women are seen as (and expected to be) gentle, emotional, and motherly, while men should be strong, rational, and manly.<sup>18</sup> Gender equality is a state where there is balance in the social portion and social cycle between men and women. Gender equality is intended to prove that men and women, as human beings, have equal footing because they are inherently equal. Gender-friendly laws and regulations are crucial for women, because so far, the status quo in the society has contributed to injustices towards women due to the lack of understanding of the concept of gender identity.<sup>19</sup>

Gender differences are not a problem, if these differences do not lead to gender inequality. When gender differences lead to injustices for women, such as violence, marginalization, subordination, negative stereotypes, more workloads, and socialization of gender role ideology, these injustices constitute inequality and must be fixed immediately. Elimination of all forms of discrimination and inequality against women, especially those who are facing legal challenges, is

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<sup>13</sup> Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *Fiat Justitia Jurnal Ilmu Hukum* 8, no. 1 (2014): 15-36.

<sup>14</sup> A.V. Dicey, *An Introduction to The Study of The Law of The Constitution* (London: Macmillan and Co, Limited St. Marthin's Street, 1959).

<sup>15</sup> Liliya Kublickienė, "Gender Equality in the World, the European Union and Lithuania," *Information & Media* 80 (July 4, 2018): 10-30, <https://www.journals.vu.lt/IM/article/view/11711>.

<sup>16</sup> Andi Sukmawati Assaad et al., "Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 2 (December 31, 2022): 458-479, <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/6761>.

<sup>17</sup> Sonny Dewi Judiasih, "Implementasi Kesetaraan Gender Dalam Beberapa Aspek Kehidupan Bermasyarakat Di Indonesia," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 5, no. 2 (June 30, 2022): 284-302, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/904>.

<sup>18</sup> Mansour Fakih, *Analisis Gender & Transformasi Sosial* (Pustaka Pelajar, 2004), 7-9.

<sup>19</sup> Dede Kania, "Hak Asasi Perempuan Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Konstitusi* 12, no. 4 (2015): 716-734, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/1243>.

a must, and the effort to accomplish it shall become a shared commitment by all, so that the protection of human rights for women can be materialized.<sup>20</sup>

The government is responsible for providing protection, respecting, and enforcing laws and regulations that protect women. Women are entitled to equal opportunities, considering their rights as human beings to be able to play a role and participate in all aspects of life. Organizations that act for the cause of gender equality play a role in voicing women's rights, as they strongly echo the urgency of gender equality and gender justice. Law enforcement and the law itself must remain neutral while carrying out its objectives, and treat everyone equally regardless of social status, gender identity, etc.<sup>21</sup> According to feminist legal theory, when dealing with women, the criminal justice system needs to consider the fulfilment and protection of human rights, whether they are victims, witnesses, or even perpetrators.<sup>22</sup> Legal protection for women, especially those facing legal challenges, is based on vulnerability, and requires a special form of protection. The existence of SC Reg. 3/2017 is an example of special protection for women in the field of law.

## 2. Implementation of Supreme Court Regulation Number 3 of 2017 in relation to Protection of Women's Rights in Law Enforcement Process in Religious Affairs Courts

The increasing trend of divorce lawsuits filed in several religious affairs courts across Java Island shows that more and more women are facing legal challenges, and the protection and fulfilment of their legal rights must be guaranteed. Judges must implement the principles of gender equality, as mandated by the SC Reg. 3/2017. However, there are still rulings that are not based on the principle of equality. Some even go as far as outright blaming women without considering their privilege or lack thereof.<sup>23</sup>

Prior to the enactment of SC Reg. 3/2017, women who were facing legal challenges, especially in divorce cases, did not have proper access to justice. Furthermore, several court rulings have disparities and inconsistencies, especially regarding the burden of post-divorce living expenses. The court practices favored men, such as deciding the *talaq* pledge's trial date and the parties' summoning (husband, wife, and their legal counsel). In divorce cases, especially *talaq*, the rights of the divorced wife are often left ignored. As a result, many divorced women are living an uncertain post-divorce life, economically speaking. Therefore, the rulings of religious affairs courts, especially on divorce cases, have been regarded as not accommodating the rights of women facing legal challenges. A woman whose husband has divorced has the right to receive alimony or living expenses. Alimony payment obligations contained in the verdict can be forced through an execution. The SC Reg. 3/2017 serves as a legal basis for judges to oblige the divorcing husband to pay alimony to the divorced wife, and this cannot be done before the hearing of the pledge of *talaq*. A normative view of a judge argues that payment before the reading of the pledge is itself a form of settlement of the case.

A strictly formal approach to gender equality (*formal equality*) often proves insufficient in addressing the realities of women's legal struggles. Feminist legal theory underscores the importance of *substantive equality*, advocating that laws must consider biological, social, and

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<sup>20</sup> Junita Fanny Nainggolan, Ramlan Ramlan, and Rahayu Repindowaty Harahap, "Pemaksaan Perkawinan Berkedok Tradisi Budaya: Bagaimana Implementasi CEDAW terhadap Hukum Nasional dalam Melindungi Hak-Hak Perempuan dalam Perkawinan?," *Utī Possidetis: Journal of International Law* 3, no. 1 (February 18, 2022): 55-82, <https://online-journal.unja.ac.id/Utīpossidetis/article/view/15452>.

<sup>21</sup> Jacinta M. Gau and Eugene A. Paoline, "Equal under the Law: Officers' Perceptions of Equitable Treatment and Justice in Policing," *American Journal of Criminal Justice* 45, no. 3 (June 2020): 474-492, <http://link.springer.com/10.1007/s12103-020-09525-5>; Ksenija Grigor'eva, "Racial Discrimination in Policing: Dysfunction in the Law Enforcement System or a Social Institution?" *The Journal of Social Policy Studies* 18, no. 2 (June 28, 2020): 299-312, <https://jsps.hse.ru/article/view/11012>.

<sup>22</sup> Niken Savitri, *HAM Perempuan Kritik Teori Hukum Feminis Terhadap KUHP* (Jakarta: Refika Aditama, 2008), 93.

<sup>23</sup> Wazirotus Sa'adah, "Implementasi asas kesetaraan Gender pada pasal 2 Perma no. 3 Tahun 2017 tentang pedoman Mengadili Perkara Perempuan berhadapan dengan Hukum Terhadap Perceraian: Studi Pandangan Hakim di Pengadilan Agama Kabupaten Malang" (Undergraduate Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2018), <http://etheses.uin-malang.ac.id/12190/>.

economic differences between men and women to achieve true justice.<sup>24</sup> A notable example is *verstek* rulings, where women frequently fail to appear in court due to economic constraints or social pressures, ultimately losing their legal claims. Thus, the implementation of SC Reg. 3/2017 must be reinforced to ensure that women's legal rights are protected even in their absence. Furthermore, the principle of *ex officio* authority should be consistently applied to ensure women's post-divorce financial rights, including *iddah* and *mut'ah* provisions, irrespective of whether they are explicitly requested.

Under the principle of gender equality, judges must avoid condescending, blaming, or even issuing statements that perpetuate gender stereotypes when examining and deciding on a case.<sup>25</sup> They must not allow discrimination against women to happen, such as discrimination based on cultural and customary interpretations of gender roles and identity. The law can be enforced, and justice can be obtained if all court proceedings in the trial process are carried out with accuracy and thoroughness.

Feminist jurisprudence critiques the legal system for often being shaped by patriarchal perspectives that fail to be gender-neutral.<sup>26</sup> This perspective highlights how law is not an objective entity but rather a social construct that can either reinforce or challenge gender inequality.<sup>27</sup> In SC Reg. 3/2017 has provided a framework for protecting women's rights, the inconsistency in judicial interpretations demonstrates the structural barriers that persist in eradicating gender bias within religious courts. The reform of religious courts should thus consider the implementation of *gender-sensitive judging* to ensure women's access to justice.

Information regarding the implementation of SC Reg. 3/2017 has been disseminated by the Directorate General of the Religious Affairs Judiciary of the Supreme Court, as well as by women's rights watchdog organizations to judges at religious affairs courts. Although not all judges participated in the dissemination seminars, there was common understanding and uniformity among present judges, and all judges were aware of the enactment of SC Reg. 3/2017. According to a judge at Bandung Religious Affairs Court, women's rights had been protected even prior to the enactment of the regulation, such as by conducting the divorce lawsuit trial at the court which has jurisdiction over the plaintiff's (the wife's) permanent residence, and for cases regarding joint assets and common property between the spouse, the judges had given more consideration to the wife.<sup>28</sup>

A judge at South Jakarta Religious Affairs Courts explained that SC Reg. 3/2017 is a response by the Supreme Court to address the issue of women's rights protection, especially women who are facing legal challenges. This regulation was enacted to achieve uniformity and consensus in resolving cases concerning women, especially civil cases in religious affairs courts. Multiple court rulings by the South Jakarta Religious Affairs Court have utilized SC Reg. 3/2017 as the legal basis. Usage of SC Reg. 3/2017 as a legal basis in court rulings has positively encouraged the protection of women's rights, as seen in the verdict of those rulings. However, the execution of these rulings is not without its obstacles, such as those related to child support and alimony payment to the divorced wife (*iddah*), especially when there are economic limitations on the divorcing husband.<sup>29</sup>

According to a Serang Religious Affairs Court judge, normatively, SC Reg. 3/2017 is essential to ensure the fulfilment of women's rights, especially those facing legal challenges. The

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<sup>24</sup> C.A. Littleton, "Reconstructing Sexual Equality," in *Feminist Social Thought: A Reader* (Taylor and Francis, 2014), 715-734.

<sup>25</sup> Ana Páez-Mérida, "The state of art of the research about the influence of gender in judicial decision-making," *Revista Española de Investigación Criminológica* 19, no. 1 (July 22, 2021): 1-25, accessed January 9, 2025, <https://reic.criminologia.net/index.php/journal/article/view/483>.

<sup>26</sup> Katherine Bartlett, *Feminist Legal Theory: Readings in Law and Gender* (New York: Routledge, 2018).

<sup>27</sup> Genevieve R. Painter, "Feminist Legal Theory," in *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)*, ed. James D. Wright (Oxford: Elsevier, 2015), 918-925, <https://www.sciencedirect.com/science/article/pii/B9780080970868860328>.

<sup>28</sup> Muh. Rusydi Thahir, Judge of Bandung Religious Affairs Court, Interview, 2021.

<sup>29</sup> Ahmad Nur, Judge of South Jakarta Religious Affairs Court, Interview, 2021.

enactment of SC Reg. 3/2017 has shown that normatively, legal protection for women is adequate. However, culturally, there are still hindrances, notably those related to the unequal perceived stance and the role of men and women in society. By enacting SC Reg. 3/2017, the Supreme Court guarantees the fulfilment of the rights of women and children. The Supreme Court has even issued the Directorate General of Religious Affairs Judiciary Circular Letter, dated May 24<sup>th</sup>, 2021, which emphasizes the role of judges in ensuring the fulfilment of the rights of women and children in divorce cases. The Supreme Court itself supervises the effectiveness of SC Reg. 3/2017 implementation.<sup>30</sup>

The challenges in implementing SC Reg. 3/2017 is the structural bias inherent in Indonesia's Islamic civil law system, which remains influenced by patriarchal social norms. Feminist jurisprudence critiques the *public-private dichotomy* in law, where family matters are often relegated to the private sphere, thereby evading necessary legal interventions.<sup>31</sup> This explains why many court rulings concerning women's post-divorce rights continue to rely on subjective judicial interpretations. In light of this, it is imperative to transition towards a framework that prioritizes *substantive justice*, ensuring that gender biases do not undermine legal protections for women.

A judge at Surakarta Religious Affairs Courts pointed out that in general, SC Reg. 3/2017 has been implemented by all judges in deciding on cases, specifically those related to *iddah* and *mut'ah* obligations. Judges grant these rights to women, in their *ex-officio* capacity.<sup>32</sup> SC Reg. 3/2017 has also been implemented by the judges at Semarang Religious Affairs Courts, where court proceedings respect human dignity, the principles of non-discrimination, gender equality, and most importantly, the principle of equality before the law. SC Reg. 3/2017 is also said to have provided justice and legal certainty and brought benefits to disputing parties. Article 8 paragraph (2) of SC Reg. 3/2017 states that judges may provide knowledge and information to victims regarding their rights to merge cases following applicable procedural law. This practice is done by judges at Semarang Religious Affairs Court in civil case (divorce) proceedings.<sup>33</sup>

Yogyakarta Religious Affairs Court has also implemented the SC Reg. 3/2017 and utilized it as a guide for judges in examining cases to provide protection to women as legal subjects who must be treated equally and fairly before the law. The existence of SC Reg. 3/2017 caters to justice for women in court proceedings at the religious court. Judges at this court always inform the parties on their legal rights during the court proceeding. Since the enactment of SC Reg. 3/2017, the court's rulings have fulfilled the basic rights of women, one example of which is the inclusion of alimony payment obligation provision in the verdict, before the divorcing husband reads the *talaq* pledge before the court. SC Reg. 3/2017 affects court rulings related to post-divorce obligations and consequences such as obliging the payment of *ddah*, *mut'ah*, and *madliyah* alimony to the divorcing husband. There has not been any significant obstacle in the implementation of SC Reg. 3/2017 at the Yogyakarta Religious Affairs Court.<sup>34</sup>

At the international level, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has underscored the necessity of legal reform to achieve substantive gender equality.<sup>35</sup> Although Indonesia has ratified CEDAW, the practical implementation of gender equality principles in religious courts continues to face challenges due to judges' varying levels of understanding. Therefore, measures such as mandatory training in *gender-sensitive judging* should be implemented to mitigate judicial biases and standardize the application of SC Reg. 3/2017 across different jurisdictions. Additionally, the *feminist relational*

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<sup>30</sup> Najamudin, Judge of Surakarta Religious Affairs Court, Interview, 2021.

<sup>31</sup> Seema Mohapatra and Lindsay F. Wiley, "Feminist Perspectives in Health Law," *Journal of Law, Medicine & Ethics* 47, no. S4 (2019): 103–115, <http://doi.org/10.1177/1073110519898047>.

<sup>32</sup> Waluyo, Judge of Surakarta Religious Affairs Court, Interview, 2021.

<sup>33</sup> Anis Fuadz, Judge of Semarang Religious Affairs Court, Interview, 2021.

<sup>34</sup> Muhammad Jauhari, Judge of Yogyakarta Religious Affairs Court, Interview, 2021.

<sup>35</sup> Anne Thies, "The EU's Law and Policy Framework for the Promotion of Gender Equality in the World," in *The European Union as Protector and Promoter of Equality*, ed. Thomas Giegerich (Cham: Springer International Publishing, 2020), 429–454, [https://doi.org/10.1007/978-3-030-43764-0\\_22](https://doi.org/10.1007/978-3-030-43764-0_22).

*approach* to law should be integrated into judicial reasoning, emphasizing the interconnectedness of social, economic, and familial structures in legal decision-making.

A judge at Malang Religious Affairs Court pointed out that SC Reg. 3/2017 dictates how courts must try cases that involve women so that there is no discrimination against them. Women must be treated just how men would be treated, because in the eyes of the law, there is no difference between them. Men and women are equal before the law. SC Reg. 3/2017 did not significantly impact the practices of the judges at Malang Religious Affairs Court, because prior to the enactment of that regulation, these judges have treated disputing parties equally, regardless of gender. The principle of *audi et alteram partem* applies in civil procedural law. According to this principle, a judge must listen to the facts and arguments presented by both parties, before coming to a conclusion and reaching a decision, so that the judiciary can run impartially. The enactment of SC Reg. 3/2017 merely reinforced what the judges at Malang Religious Affairs Court had been practicing. SC Reg. 3/2017 gave a significant impact only after the issuance of Circular Letter of the Supreme Court No. 1 of 2017 (paragraph 1), Circular Letter of the Supreme Court No. 2 of 2019 Concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chambers as a Guide to the Implementation of the Duties of the Court, specifically the Chamber of Religious Affairs (section C, paragraph 1a and b). The existence of SC Reg. 3/2017 has greatly affected rulings regarding post-divorce rights of the wives and children. The implementation of SC Reg. 3/2017 is also not without its obstacles at Malang Religious Affairs Courts, such as rulings on reconventional demands regarding the rights of the wife and the children after the divorce, which becomes invalid if the applicant does not declare a *talaq* pledge until a set deadline is passed after the case is decided. When this ruling becomes invalid, the would-be-divorced wife would be left in legal limbo by her husband.<sup>36</sup>

The Surabaya Religious Affairs Court has also implemented SC Reg. 3/2017, which has effectively provided convenience for the judges in granting rights to women facing legal challenges. This regulation has impacted the court rulings in several ways, such as the inclusion of divorced wives' rights to *mut'ah* and *iddah* alimony, past income, as well as child support payments. The implementation of this regulation still faces hurdles, but they rarely occur. Monitoring of the implementation is based on the Circular Letter of the Directorate General of the Religious Affairs Judiciary of the Supreme Court No. 1960/DJA/HK.00/6/2021 dated June 18<sup>th</sup>, 2021.<sup>37</sup>

A critical aspect of feminist jurisprudence is its emphasis on dismantling structural barriers that hinder women's access to justice. The concept of *intersectionality* further highlights how legal decisions should account for multiple dimensions of identity, such as class, education, and economic status, that collectively shape women's experiences in the legal system.<sup>38</sup> In religious courts, judges must avoid restrictive interpretations of SC Reg. 3/2017 that perpetuate gender hierarchies. Instead, they should adopt a more dynamic approach to legal interpretation, drawing from *comparative law perspectives* that have successfully integrated gender-responsive jurisprudence in other jurisdictions.

### 3. The Urgency of Women's Rights Protection in the Perspective of Supreme Court Regulation Number 3 of 2017

The Constitution mandates the fulfilment of women's rights. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states. This article emphasizes the recognition of an equal footing before the law, in terms of legal protection and access to justice. Furthermore, Article 27 paragraph (1) of the constitution stipulates that every person is equal before the law,

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<sup>36</sup> Misbah, Judge of Malang Religious Affairs Court, Interview, 2021.

<sup>37</sup> Nurhasan, Judge of Semarang Religious Affairs Court, Interview, 2021.

<sup>38</sup> Míriam Arenas Conejo, "At the Intersection of Feminist and Disability Rights Movements. From Equality in Difference to Human Diversity Claims," in *Disability and Intersecting Statuses*, vol. 7 (Emerald Group Publishing Limited, 2013), 23–45, [https://www.emerald.com/insight/content/doi/10.1108/s1479-3547\(2013\)0000007004/full/html](https://www.emerald.com/insight/content/doi/10.1108/s1479-3547(2013)0000007004/full/html).

thus has the right to be treated without discrimination, free from bias, regardless of any background, including gender.

Based on the theory of legal certainty, or the *gelijkheid van ieder voor de wet*, and the theory of equality before the law, guarantees for legal protection and legal certainty are absolute and imperative for every human being, so that they can live a safe, peaceful, and comfortable life.<sup>39</sup> Indonesia has ratified CEDAW by enacting Law No. 7 of 1984 Concerning Ratification of Convention on The Elimination of All Forms of Discrimination Against Women. This convention serves as a legal basis to protect women's rights from discriminatory acts and behaviours and to guarantee women an equal treatment.

Although there are many laws and regulations that protect women in place, discrimination against women still occurs in many instances, as the data obtained in this study shows. Women are indeed vulnerable to discriminatory behaviour. The phenomenon of discrimination and injustice against women is still worrying. Cases of gender inequality in various fields are still very high, as reported by the National Commission on Violence Against Women that there were 2,134 cases of gender-based violence in 2020 alone. This worryingly high number of cases of gender-based violence are caused by the legal norms such as laws, regulations, and other legislations, as well as the cultural norms that are not in favour of women.

The most challenging obstacle to overcome is the cultural perspective. From a cultural perspective, these constraints are caused by an understanding of power relations that is heavily influenced by patriarchal culture. Power relations can occur in various spheres of life which includes but is not limited to household affairs, work environment, and education. The powerlessness of women when facing legal challenges is caused by the existence of power relations that are structural and unbalanced, giving one party unequally great power over another. Biological advantages possessed by men should not limit women from being able to obtain maximum legal protection and freedom. Thus, it is expected that all laws and regulations, or other legislative products must be conceived by fulfilling the criteria of equal access, equal opportunity, and equality in results, for the sake of enacting and enforcing a law that is just for women.

Women experience discriminatory acts and behavior's not only in the society, but also when dealing with the law. As it turns out, it is not easy for women to seek justice, as law enforcement officers often show discriminatory behaviours that are based on gender stereotypes.<sup>40</sup> The obstacles faced by women when dealing with the law always involve law enforcement officers who do not yet have a gender perspective and sensitivity. Law enforcement officers are the spearhead for the fulfilment of the sense of justice for victims, witnesses, and perpetrators in a legal process. The success of a legal process is largely determined by the quality of understanding and the responsibility of law enforcement officers.<sup>41</sup>

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<sup>39</sup> Isabel Lifante-Vidal, "Is Legal Certainty a Formal Value?," *Jurisprudence* 11, no. 3 (July 2, 2020): 456-467, <https://www.tandfonline.com/doi/full/10.1080/20403313.2020.1778289>; Mark Fenwick and Stefan Wrba, "The Shifting Meaning of Legal Certainty," in *Legal Certainty in a Contemporary Context*, ed. Mark Fenwick and Stefan Wrba (Singapore: Springer Singapore, 2016), 1-6, [http://link.springer.com/10.1007/978-981-10-0114-7\\_1](http://link.springer.com/10.1007/978-981-10-0114-7_1); Oksana Shcherbanyuk, Vitalii Gordieiev, and Laura Bzova, "Legal Nature of the Principle of Legal Certainty as a Component Element of the Rule of Law," *Juridical Tribune* 13, no. 1 (March 31, 2023), <https://tribunajuridica.eu/arhiva/An13v1/2.%20Shcherbanyuk,%20Gordieiev,%20Bzova.pdf>.

<sup>40</sup> Rika Saraswati, "Gender Bias in Indonesian Courts: Is Perma No. 3 of 2017 the Solution for Gender-Based Violence Cases?," *Laws* 10, no. 1 (March 2021): 2, <https://www.mdpi.com/2075-471X/10/1/2>.

<sup>41</sup> Dina Afrianty, "Agents for Change: Local Women's Organizations and Domestic Violence in Indonesia," *Bijdragen tot de taal-, land- en volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 174, no. 1 (January 1, 2018): 24-46, [https://brill.com/abstract/journals/bki/174/1/article-p24\\_2.xml](https://brill.com/abstract/journals/bki/174/1/article-p24_2.xml); Rima Vien Permata Hartanto, Siany Indria Liestyasari, and Atik Catur Budiati, "Paralegals and Women Access to Justice : Making Access to Justice of Women Victims of Violence Effective," *The Journal of Social Sciences Research* (2018): 807-813:2, <https://ideas.repec.org//a/arp/tjssrr/2018p807-813.html>; Gisela Violin and Yvonne Kezia Nafi, "Protection of Online Gender-Based Violence Victims: A Feminist Legal Analysis," *The Indonesian Journal of Socio-Legal Studies* 1, no. 2 (March 2022), <https://scholarhub.ui.ac.id/ijsls/vol1/iss2/6/>; S.E. Wahyuningsih et al., "Legal Protection of Women as Victims of Domestic Violence in East Luwu District Indonesia," *Man in India* 97, no. 24 (2017): 85-96.

The existence of Supreme Court Regulation Number 3 of 2017 is a way of the state protecting its citizens, especially women, from various forms of discrimination. Article 2 of Supreme Court Regulation Number 3 of 2017 requires judges to settle cases based on the following principles:

“a. respect for human dignity; b. non-discrimination; c. gender equality; d. equality before the law; e. justice; f. legal expediency (benefit); and g. legal certainty”.

With the implementation of the regulation, judges need to uphold the values of justice and the fulfillment of women’s rights. According to Article 4 of Supreme Court Regulation Number 3 of 2017, women are granted legal protection because they are classified as a vulnerable group, therefore, women must be guaranteed respect, protection, and fulfillment of their basic rights. Essentially, the law will always be needed to accommodate judges’ commitment to provide welfare for women, especially those facing legal challenges. Women as victims are often seen as ‘coming on to the perpetrator’, ‘letting’ the perpetrators do what they did, letting themselves fall victim to the perpetrator’s actions, just because they did not fight back or defend themselves.

Discriminatory treatment from law enforcement officers experienced by women, especially those who are facing legal challenges or victims of a crime has negatively impacted their physical and psychological aspects. The burden endured by the victim will only increase when undergoing cross-examination in court, where they will face a series of questions that often corner, trap, and harass them. This is a clear violation of human rights towards the fulfillment of women's rights to equality before the law. It should be noted that women's human rights are inherent rights that must be respected and protected regardless of gender identity, and they must be free from gender-biased treatment.

Supreme Court Regulation Number 3 of 2017 provides a basis for judges to guarantee gender equality, women's rights to have access to justice, and identify treatments that result in gender-based discrimination. Judges’ discretion is required to determine what is productive and what is counterproductive if carried out in the court proceedings.<sup>42</sup> Victim’s identity is still publicized and made known to the public through mass media coverage or in verdicts and court rulings. Many women are not accompanied by their legal counsel in court and often are not given the right to legal assistance when they are the perpetrators of a crime. These are just a few examples of the reality for women when facing the law. Judges must maintain their behaviour or attitude towards women in court. With all the provisions stipulated in the supreme court regulation, it is hoped that judges will take extra caution in asking questions on the women's side of the litigants so that they do not discriminate. Article 6 of SC Supreme Court Regulation Number 3 of 2017 states that in trying cases that involve women, a judge is required to consider gender equality and gender stereotypes in unwritten laws and regulations.

To avoid gender-based discrimination, women need special attention from those who have the power to decide on legal cases, such as judges. Judges need to review the boundaries in asking questions and giving statements, by considering the circumstances and impacts that might be perceived by the woman in the case, both physically and psychologically. It is true that discriminatory treatment stems from a perspective and a mindset that always assumes that the position of women is unbalanced, unequal, and is lower than men both before the law as well as in the society.

Article 5 of Supreme Court Regulation Number 3 of 2017 prohibits judges from doing following things during a cross-examination:

“(1) Showing attitudes or issuing statements that demean, blame, and/or intimidate women in conflict with the law; (2). Justify the occurrence of discrimination against women by using culture, customary rules, and other traditional practices, as well as

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<sup>42</sup> Lilik Andar Yuni and Murjani Murjani, “Gender Sensitivity at Judge’s Verdicts in Samarinda and Magelang Religious Courts; The Implementation of PERMA Number 03 of 2017,” *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 2 (December 29, 2020): 251–279, accessed January 30, 2025, <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/2714>.

using gender biased expert interpretations; (3). Questioning and/or considering the experience or background of the victim's sexuality as the basis for releasing the perpetrator or reducing the sentence of the perpetrator; and (4). Issuing statements or views that contain gender stereotypes.”

Judges need to consider the unique experiences of women by understanding women's perspectives. In dealing with social lives which are dynamic and ever changing in nature, the law must be applied in a non-stagnated and flexible manner following the current developments, in order to regulate, create, and implement results fairly and justly. Of course, some still exclude and deny the existence of women from legal and social spheres, and it will result in legal proceedings that do not fulfil the elements of protection and equality for women that are seeking justice.

Considering all the relevant circumstances, law enforcement officers are expected to be able to protect and assist those who have been excluded and neglected in demanding their rights. Moreover, a judge must not differentiate treatment between men and women in legal proceedings, favouring one over another, and formulate an unequal footing that may lead to discrimination. It is ironic that many think that discrimination against women is a common occurrence. Such assumption causes women to feel that they are not entitled to justice and equality, let alone to receive legal protection.

Therefore, differences in views and responses regarding the position and social status of women must be eliminated, because if this act continues, discriminatory actions towards women will ultimately deny them their inherent rights. It should be recognized that substantive equality has acknowledged the differences in the social status of men and women and the role they play in society.<sup>43</sup> Then from hierarchical arrangement, gender, social status, and the consequences that affect power relations that causes inequality between men and women, resulting in men enjoying a stronger and higher 'stance'.

In religious affairs courts, Supreme Court Regulation Number 3 of 2017 reinforces the implementation of the principles of justice and equality that have already existed in previous legislations.<sup>44</sup> Obstacles that have arisen in the implementation efforts of the regulation and protection of women's rights in the rulings of religious affairs courts are as follows: (1) in relation to the demands of women who file for divorce lawsuits, usually women only demand the termination of their marriage as the main claim, which is often not accompanied by demands related to *iddah* alimony payment, or even payment related to the rights of their children such as child support payment. Judges, in their *ex-officio* capacity may decide on cases relating to the post-divorce rights of the wife and children, although this authority is limited by the principle of *ultra-petita* (beyond that which is sought); (2) in the case of divorce, often the wife is not present at the trial, so a *verstek* (in absentia) ruling is decided in her absence, as she is considered to have accepted the verdict by default for not appearing before the court; (3) the husband's limited economic capacity causes the payment of *iddah* alimony and child support to be delayed; (4) in some cases, the submission of additional claims is submitted late due to the wife's disregard for the procedural law; (5) the use of the word 'may' in the Circular Letter of the Supreme Court No. 1 of 2017 letter C (1), shows that the payment of divorced women's rights before the reading of the divorce pledge is not a prerequisite, but it is left to the parties to be agreed upon; (6) the lack of consensus among judges, as shown by the interview results.<sup>45</sup> There are differences in views

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<sup>43</sup> Widya Tuslian, "Elimination of Culture Based Discrimination Against Women in Indonesia: An Assessment of the Implementation of State Parties' Obligation Under Article 5 (A) of the Women's Convention," *Indonesia Law Review* 9, no. 1 (April 30, 2019), <https://scholarhub.ui.ac.id/ilrev/vol9/iss1/1>.

<sup>44</sup> Muslim Zainuddin, Mansari Mansari, and Nadhilah Filzah, "Divorce Problems and Community Social Capital in Realizing Family Resilience in Aceh," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (December 31, 2022): 914, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/15080>.

<sup>45</sup> Lilik Andar Yuni, "The Use of Ex Officio to Fulfill Women's Post-Divorce Rights at the Samarinda Religious Court," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, no. 2 (December 29, 2021): 135-154, <https://ijtihad.iainsalatiga.ac.id/index.php/ijtihad/article/view/6226>.

and perspectives among judges in deciding on cases that involve women, as well as lack of knowledge of the latest laws and regulations in place.<sup>46</sup>

Equality and justice are crucially needed by women as a vulnerable group, especially when facing legal challenges, and judges must take this fact into consideration when dealing with cases that involve women. If the fulfilment of the rights to equality and justice has been executed properly and correctly, it can be said that a judge has succeeded in carrying out his obligations and responsibilities as evidenced by the fulfilment of women's rights. Women's rights must be upheld and protected, such as recovery, restoration of their rights when they fall victims to a crime. They must be returned to their original state before the crime has been committed against them, especially if it is related to the psychological state of the victim. The process of cross-examining female victims should be separate from those of the perpetrators. Examination can be done with the help of long-distance audio-visual communication technology, providing necessary testimony by using electronic means, and during the trial proceedings women are entitled to legal assistance by authorized officials.<sup>47</sup>

Legal assistance in court guarantees the fulfillment and protection of women's rights. It is hoped that judges can implement legal principles as well as possible, considering the magnitude of the loss suffered by the victim. Fundamentally, the discrimination faced by women is usually the result of biological, racial, gender differences, as well as in terms of social hierarchical order. The provisions in the articles of Supreme Court Regulation Number 3 of 2017 can be used as a legal basis by judges when deciding on cases involving women. The judge as the authorized person who decides on the case must explore the facts during the cross-examination process at the trial based on the principle of prudence, especially in cases of unlawful acts against women. Actions committed by the perpetrators surely cause physical, mental, sexual, and economic suffering on the victims. In order to tackle the root of the problem, it is of utmost importance for judges to find out exactly why the crime happened, because violence against women is not a rare occurrence, but sadly, it is rather endemic to the society. Therefore, a judge must not rely solely on the written report of the case in considering his/her decision.

Women as human beings have equal rights to men, especially when facing legal challenges, as reaffirmed by Supreme Court Regulation Number 3 of 2017 which states that women have the right to sue anyone that has caused them losses and sufferings, whether it is a criminal or a civil case. Therefore, in accordance with one of the development goals of Indonesia and the philosophy of the Indonesian state which is to achieve justice and prosperity so that everyone, especially women as a vulnerable group, have their rights fulfilled and feel that the law is fair and just.

Law enforcement officers must be accountable in carrying out their roles and functions, and not act arbitrarily, as mandated by the Constitution of the Republic of Indonesia. Indonesia observes rule of law, and every person is equal before the law. When a law enforcement officer does not carry out his/her duty the way they are supposed to, they must be given the appropriate repercussions for their actions. This is to maintain the balance between rights and obligations for the sake of creating justice for everyone.

## V. Conclusion

Implementing Supreme Court Regulation Number 3 of 2017 in religious courts has significantly contributed to protecting women's rights in legal proceedings, particularly in divorce cases. Judges have generally demonstrated awareness of the regulation and have used it as a legal foundation to uphold gender equality and fairness in their rulings. The study finds that judges, in their ex-officio capacity, often ensure the fulfilment of women's post-divorce rights,

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<sup>46</sup> Siti Musawwamah, "The Implementation of PERMA Number 3 of 2017 Concerning The Guidelines For Dealing With Women's Cases on Laws As an Effort of Women Empowerment In The Judiciary in Madura," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 27, 2020): 67-92, <https://ejournal.iainmadura.ac.id/index.php/alihkam/article/view/2883>.

<sup>47</sup> Saraswati, "Gender Bias in Indonesian Courts"; Hartanto, Liestyasari, and Budiati, "Paralegals and Women Access to Justice."

such as alimony and child support, even when the litigants do not explicitly request such claims. However, inconsistencies persist in the interpretation and application of the regulation, with some rulings still reflecting gender bias or neglecting women's rights due to economic constraints or procedural limitations. These disparities highlight the need for continued judicial training and standardized implementation practices to achieve justice for women facing legal challenges.

To align judicial practices with the principles of justice and gender equality, a more robust application of SC Reg. 3/2017 is required. The regulation has proven essential in addressing structural inequalities, but cultural and systemic barriers, such as patriarchal norms and differing judicial interpretations, hinder its effectiveness. Strengthening judicial accountability and providing clear, practical guidelines for consistently applying gender equality principles are critical to overcoming these obstacles. By addressing these challenges, Indonesia can ensure that its legal system protects and empowers women, fostering a judiciary that is more equitable and reflective of constitutional and international commitments to human rights.

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