

**REGULATION OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA
NUMBER 3/2017
REGARDING
GUIDE TO TRYING CASES OF WOMEN BEFORE THE LAW**

BY THE GRACE OF GOD ALMIGHTY

THE CHAIRPERSON OF THE SUPREME COURT OF THE REPUBLIC OF
INDONESIA,

Considering:

- a. that the protection of citizens against all acts of discrimination constitutes the implementation of constitutional rights as set out in 1945 Constitution of the Republic of Indonesia;
- b. that Indonesia has ratified the International Covenant on Civil and Political Right (ICCPR) with Law No. 12/2005 on the Ratification of the International Covenant on Civil and Political Rights which states that all people are the same before the law and legislation prohibits discrimination and guarantees equal protection for all persons against discrimination based on any reason, including sex or gender;
- c. that Indonesia as a State-party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognises the obligations of the State to ensure that women have access to justice and must be free from discrimination in the justice system;
- d. that based on the considerations mentioned in a, b and c, it is necessary to establish a Regulation of the Supreme Court on a Guide to trying Cases of Women before the Law.

Recalling:

1. Law No. 7/1984 on the Ratification of the Convention on The Elimination of All Forms of Discrimination Against Women) (State Gazette of the Republic of Indonesia No. 29/1984, Supplement to the State Gazette of the Republic of Indonesia No. 3277);
2. Law No. 14/1985 on the Supreme Court (State Gazette of the Republic of Indonesia No. 73/1985, Supplement to the State Gazette of the Republic of Indonesia No. 3316) as amended several times, most recently with Law No. 3/2009 on the Second Amendment to Law No. 14/1985 on the Supreme Court (State Gazette of the Republic of Indonesia No. 3/2009, Supplement to the State Gazette of the Republic of Indonesia No. 4958);
3. Law No. 12/2005 on the Ratification of the International Covenant on Civil and Political Rights (State Gazette of the Republic of Indonesia No. 119/2005, Supplement to the State Gazette of the Republic of Indonesia No. 4558);
4. Law No. 13/2006 on Witness and Victim Protection (State Gazette of the Republic Of Indonesia No. 64/2006, Supplement to the State Gazette of the Republic of Indonesia No. 4635) as amended by Law No. 31/2014 amending Law No. 13/2006 on Witness and Victim Protection (State Gazette of the Republic of Indonesia No. 293/2014, Supplement to the State

Gazette of the Republic of Indonesia No. 5602);

5. Law No. 48/2009 on Judicial Authority (Official Gazette of the Republic of Indonesia No. 157/2009, Supplement to the Official Gazette of the Republic of Indonesia No. 5076);

HEREBY DECIDES:

TO STIPULATE:

REGULATION OF THE SUPREME COURT ON A GUIDE TO TRYING CASES OF
WOMEN BEFORE THE LAW

CHAPTER I

GENERAL PROVISIONS

Article 1

In this Regulation of the Supreme Court what is meant by:

1. Women Before the Law is women who are in conflict with the law, female victims, female witnesses or female parties.
2. Sex is the physical, physiological and biological status of a man and a woman.
3. Gender is the concept that refers to the role, function and responsibilities of men and women that exist as the consequence of and can be altered by the social and cultural circumstances in society.
4. Gender equality is the sameness and equality of conditions between men and women to obtain opportunities and their rights as human beings so they are capable of performing roles and participating in a range of fields.
5. Gender Analysis is the process that has been systematically developed to identify and understand the division of labour or the role of men and women, access and control of development resources, participation in the development process and benefits that they enjoy, patterns of relationships between men and women that are unequal, that in their implementation consider other factors such as social class, race and ethnicity.
6. Gender Justice is a process to ensure fairness for men and women.
7. Gender Stereotypes are general views or impressions about the attributes or characteristics that should be possessed and performed by women or men.
8. Discrimination Against Women includes any differentiation, ostracism or limitation on the basis of sex that has an impact or goal of reducing or removing the recognition, enjoyment or exercise of human rights and core freedoms of women in the fields of law, politics, economics, social matters, culture, civil matters or other fields, independent of their marital status on the basis of equality between men and women.

9. Power Relations are relations that are characterised as hierarchical, unequal and/or dependent on social status, culture, knowledge/education and/or economics that give rise to one party having power over another party in the context of gender relations to disadvantage one party that has a lower position.

10. A support person is a person or group or organisation that is trusted and/or has skills and knowledge to support Women Facing the Law with the aim of making women feel safe and comfortable in testifying during the trial process.

Chapter II

PRINCIPLE AND AIM

Article 2

Judges try cases of Women Before the Law based on the principles of:

- a. respect for human nobility and dignity;
- b. non-discrimination;
- c. Gender Equality;
- d. equality before the law;
- e. justice;
- f. advantageousness; and
- g. legal certainty.

Article 3

The guide to trying cases of Women Before the Law aims for judges to:

- a. understand and apply the principles as mentioned in Article 2;
- b. identify situations of unequal treatment that cause Discrimination Against Women; and
- c. guarantee the rights of women to equal access in obtaining justice.

CHAPTER III

EXAMINING CASES

Article 4

In the examination of cases, judges should consider Gender Equality and non-discrimination, by identifying the facts in a trial:

- a. unequal social status between the parties involved in a case;

- b. unequal legal protection that impacts on access to justice;
- b. discrimination;
- d. the psychological impact experienced by the victim;
- e. the physical and psychological powerlessness of the victim;
- f. Power Relations that cause the victim/witness to be powerless; and
- g. the history of violence by the perpetrator against the victim/witness.

Article 5

When examining Women Before the Law, judges must not:

- a. display an attitude or issue statements that belittle, blame and/or intimidate Women Before the Law;
- b. justify the occurrence of Discrimination Against Women by using culture, customary regulations, and other traditional practices as well as using expert interpretation that is gender biased;
- c. question and/or consider the sexual experience or background of the victim as a basis to acquit the perpetrator or mitigate the punishment against the perpetrator; and
- d. issue statements or views that contain Gender Stereotypes.

Article 6

Judges when trying cases of Women Before the Law should:

- a. consider Gender Equality and Gender Stereotypes in the legislation and unwritten law;
- b. interpret legislation and/or unwritten law that can guarantee Gender Equality;
- c. draw on legal values, local wisdom and the sense of justice that exists in the community in order to guarantee Gender Equality, equal protection and non-discrimination; and
- d. consider the application of international conventions and treaties linked to Gender Equality that have been ratified.

Article 7

When conducting examinations during trials, judges should prevent and/or admonish the parties, legal advisors, public prosecutors and/or legal representatives for attitudes or making statements that belittle, blame, intimidate and/or use the sexual experience or background of Women Before the Law.

Article 8

(1) Judges should ask female victims about losses, the impact of the case and the need for redress.

(2) Judges should inform victims about their right to combine cases in accordance with Article 98 of the Criminal Procedure Code and/or ordinary claims or requests for restitution as set out in the provisions of legislation.

(3) In terms of redressing the victim or injured party, judges should:

- a. be consistent with human rights principles and standards;
- b. not convey Gender Stereotypes; and
- c. consider the circumstances and interests of the victim from disproportional damages resulting from Gender inequality.

Article 9

When Women Before the Law experience physical and psychological obstacles and therefore require support then:

- a. Judges can suggest for Women Before the Law to summon a Support Person; and
- b. Judges can grant a request made by Women Before the Law to summon a Support Person.

Article 10

Judges at their own initiative and/or at the request of the parties, public prosecutor, legal advisor and/or victim can order Women Before the Law to have their testimony examined by the means of remote audio visual communication in the local court or other location, when:

- a. the mental condition/mental health of Women Before the Law is not in a good state due to fear/psychological trauma based on the evaluation of a doctor or psychologist;
- b. based on the assessment of the judge, the safety of Women Before the Law cannot be guaranteed when they are in a public and open place; or
- c. based on a decision from the Witness and Victim Protection Agency (LPSK), Women Before the Law are in a witness and/or victim protection program and according to the assessment of the LPSK they cannot be present in court to testify both for reasons of safety as well as physical or psychological obstacles.

CHAPTER IV

JUDICIAL REVIEW

Article 11

When the Supreme Court conducts a judicial review linked to Women Before the Law, it should consider:

- a. human rights principles;
- b. the best interests and redress of Women Before the Law;

- d. international conventions and/or treaties linked to Gender Equality that have been ratified;
- d. Power Relations as well as every Gender Stereotype that exists in legislation; and
- e. Comprehensive Gender Analysis.

CHAPTER V

CONCLUDING PROVISIONS

Article 12

This Regulation of the Supreme Court will enter into force on the date of its enactment.

To ensure that all people are aware of this regulation, the promulgation of this Regulation of the Supreme Court is ordered, by placing it in the Official Gazette of the Republic of Indonesia.

Stipulated in Jakarta,

On 11 July 2017

CHAIRPERSON OF THE SUPREME COURT OF THE REPUBLIC OF INDONESIA,

[Signed]

MUHAMMAD HATTA ALI

Promulgated in Jakarta,

On 4 August 2017

DIRECTOR GENERAL OF LEGISLATION OF THE MINISTRY OF LAW AND HUMAN
RIGHTS OF THE REPUBLIC OF INDONESIA,

[Signed]

WIDODO EKATJAHJANA

OFFICIAL GAZETTE OF THE REPUBLIC OF INDONESIA No. 1084/2017