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IMPLEMENTATION OF THE CEDAW IN FRANCE AND INDONESIA: CHALLENGES AND PROGRESS REGARDING WOMEN’S RIGHTS

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Abstract

Almost fifty years after the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and 189 ratifications, it is interesting to analyze the progress and challenges remaining regarding a unified approach to women’s rights. This paper will focus on Indonesia and France, two countries with different cultural backgrounds and approaches regarding human rights. The research methods are mostly based on lectures of legal journal articles, papers, and recent periodic reports of the Committee that ensure the implementation of the CEDAW. After recalling the historical context of women’s rights in both countries to highlight the challenges that are already present before CEDAW and analyzing the last period’s reports considering articles of the CEDAW to identify progress and challenges remaining, we can conclude that women’s rights through the implementation of CEDAW are still falling short on men’s rights. A worldwide problem seems to be persistent: patriarchal values. A unified approach of the CEDAW is essential to ensure women’s rights worldwide, considering that women’s rights are universal and not just based on Western standards.

Keywords: CEDAW, France, human rights, Indonesia, women’s rights.

I. INTRODUCTION

In 1979, the United Nations (UN) adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which is recognized as the most comprehensive global instrument for safeguarding women’s rights. With 189 ratifications, the CEDAW is the second most widely ratified UN Human Rights Treaty. Countries are obliged to enact both legal and societal changes to ensure gender equality and eliminate discrimination against women. This includes addressing national laws, their impact, and actions on individual and organizational levels. The CEDAW also emphasizes
the role of the family, both public and private. States must take measures to ensure the end of all discrimination in this respect, even regarding customs, practices, and religion.

The main part of this study emphasizes the implementation of CEDAW. It would be complicated to describe and analyze the implementation of CEDAW in full. This article focuses on “the core provisions of the Convention”\(^3\) according to the CEDAW Committee, as follows:

Article 2 of CEDAW:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
g) To repeal all national penal provisions which constitute discrimination against women.”

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Article 16 of CEDAW:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

a) The same right to enter into marriage;
b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
c) The same rights and responsibilities during marriage and at its dissolution;
d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property, whether free of charge or for a valuable consideration.

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

In light of these two articles, this paper will focus on the implementation and revision of laws, regulations, temporary special measures, customs, and practices to promote gender equality and end discrimination against women, especially in the field of marriage and family relations.

This article examines the implementation of Human Rights (HR) articles in Indonesia and France with the aim of highlighting the differences in their approaches due to distinct cultural backgrounds. France, a Western, secular, and democratic nation, promotes universal HR values, while Indonesia, despite also being a democracy, places a strong emphasis on cultural relativism, which is particularly influenced by Customary Law. The clash between Western-based HR and cultural values challenges the universality
of HR, raising questions about unified approaches to international treaties, such as CEDAW. By comparing these countries, we can analyze how an HR treaty is implemented in culturally universal (France) and culturally relativist (Indonesia) contexts. These countries serve as examples, and their selection is based on the author’s familiarity with both, facilitating the discussion of gender discrimination as outlined in CEDAW. It also covers the status of women’s rights before the implementation of CEDAW and the challenges faced by each country. Indonesia and France ratified the CEDAW in 1984 and 1983, respectively.

To oversee CEDAW’s implementation, the Committee on the Elimination of Discrimination against Women, referred to as “the Committee”, is established. The Committee can address complaints and initiate inquiries into grave violations of women’s rights if the concerned State accepts them.\(^4\) Regarding the Optional Protocol, France accepted individual complaints and inquiry procedures on the 9 June 2000.\(^5\) However, Indonesia did not accept either of these procedures.\(^6\) Moreover, to ensure respect for women’s rights, the Convention requires state parties to submit a periodic report to the Committee detailing the measures taken to implement the Convention, the progress made, and the ongoing challenges in eliminating discrimination against women. The Committee may request additional information from the state upon examination of the report, which is then heard by the Committee. Following the hearing, the Committee publishes its observations and recommendations. This paper discusses the challenges and progress in the implementation of CEDAW based on recent reports from both France (2021) and Indonesia (2019).

This study examines the need for a universal approach to international treaties, particularly in the context of CEDAW. It advocates the universal recognition of women’s rights across legal and social spheres, acknowledging differing cultural perspectives. Achieving this universal approach relies on international law principles, yet it must also accommodate national standards, allowing countries flexibility in implementation. This study aims to foster discussion, assess challenges, and propose potential improvements in the pursuit of gender equality.

II. METHODOLOGY AND RESEARCH FRAMEWORK

To assess the progress and challenges related to a unified approach to women’s rights, this study employs various research methods, including normative legal research, statutory analysis, and conceptual exploration. Statutory analysis included all relevant laws and regulations pertinent to the article’s legal topics. The conceptual approach involves exploring human rights perspectives, analyzing discrimination against women, considering feminist theories by scholars, and examining legal theories related to the study’s theme.

Comparing the implementation of CEDAW’s core articles in both countries relies on primary legal materials such as international treaties and national laws, along with secondary legal sources such as textbooks, law review articles, and governmental periodic reviews. Tertiary sources, including non-legally based reviews and journal articles, were also used.

Before delving into CEDAW’s implementation challenges and progress, this article provides the historical context for women’s rights in Indonesia and France to underscore their universality. The final part of the paper synthesizes the research on CEDAW history and implementation, analyzing the importance and constraints of a unified approach to CEDAW.

III. DEVELOPMENT OF WOMEN’S RIGHTS IN INDONESIA AND FRANCE

To gain a better understanding of the progress and challenges toward a unified approach to women’s rights through the implementation of CEDAW, it is necessary to analyze the development of women’s rights both in Indonesia and France before the CEDAW and at the reception of the Convention.

This section serves the dual purpose of substantiating the assertion that women’s rights possess a universal dimension and highlights the proactive role that women have played in asserting their rights, independently of the formal introduction of CEDAW.
A. THE DEVELOPMENT OF WOMEN’S RIGHTS IN INDONESIA
1. WOMEN’S RIGHTS IN INDONESIA BEFORE THE RECESSION OF THE CEDAW

Because of limited space, this historical analysis must remain condensed and simplified. This section of the paper is based on the work of Katharine, “Indonesian Women, the Women’s International Democratic Federation, and the Struggle for ‘Women’s Rights’, 1946-1965” and further research.

In 1946, when Indonesia was resisting re-colonization by the Dutch, several women’s organizations formed Kongres Wanita Indonesia (Kowani), or the Indonesian Women’s Congress. At the time, Kowani became a member of the Women’s International Democratic Federation (WIDF). In 1949, they left the WIDF because of objections from the Muslim Women’s Organization in Kowani. According to Sumpampouw-Lapian’s report, women had no legal protection, despite the Constitution of 1945 guaranteeing women equal rights. Inequalities in the marriage and economic field were still strongly present due to the “Round Table Agreement” signed in 1949 between Indonesia and the Netherlands. The Gerakan Wanita Indonesia (Gerwani), or Indonesian Women’s Movement, focused on problems related to marriage, divorce, and polygamy (which is explained by the author as a “particular problem in this Muslim society”). However, there were economic issues and a lack of political representation. In the following years, Gerwani started to develop seriously, but encountered some resistance from other women’s organizations and the general public, due to moral values and traditions. According to Sulami, the combination of feudalism and colonialism had a negative impact on women and was the main reason why they had “no rights, freedom, right to property, and happiness”.

In the 1960s, Gerwani women faced increasing pressure from the Indonesian President and the Communist Party to focus on the country’s anti-imperialist struggles, instead of advocating for women’s rights. As part of a larger communist family, they were targeted during violent attacks by the army and were eventually banned from Kowani by late 1965. These events highlighted the challenges and obstacles faced in the development of women’s rights in Indonesia, which were mostly related to colonialism, religion, and politics.

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During the New Order Period (1966-1998), Gerwani faced ostracism, largely due to military propaganda, as noted by McGregor and Hearman.\(^\text{10}\) Multiple factors contributed to this, including Gerwani’s left-leaning orientation with a substantial number of communist members, its advocacy of women’s rights and political participation, and its opposition to certain Islamic practices, such as polygamy. Despite this, the New Order era brought about national contributions, as exemplified by the 1974 Marriage Law. However, details about women’s rights activities during this period remain limited because of the suppression of organizations such as Kowani. It is worth noting that Suharto officially assumed the presidency in 1968, and under his leadership, Indonesia ratified CEDAW in 1984.\(^\text{11}\)

2. RECEIPTION OF THE CEDAW IN INDONESIA: THE QUESTION OF RESERVATIONS

One interesting point to note is that even though women’s rights were not facing a favorable period, as mentioned before, the Indonesian government did not emit any reservations regarding the implementation of CEDAW. The Convention permits ratification subject to reservation according to Article 28, which is as follows:

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

There is a lack of data on why Indonesia ratified the CEDAW without emitting reservations against Article 2 or 16. Countries with a strong sense of culturalism and religion, especially Muslim countries, tend to claim that CEDAW is incompatible with shari’ah and Muslim laws, such as laws related to the family sphere.\(^\text{12}\) There is an important debate on this question, which is related to the question of cultural relativism versus universalism. Religion and tradition should not be obstacles to women’s rights. Musawah, a global


\(^\text{11}\) \textit{Ibid.}

movement for equality and justice led by Islamic feminists, stated that the implementation of the CEDAW should not be a problem in Muslim contexts, as Islamic values and women’s rights, such as equality, fairness, and justice, are compatible. Therefore, laws and practices can evolve to reflect these values, and improvements in this way have always been part of the Muslim legal tradition.\(^{13}\)

Indonesia’s case is complex, as there is a strong legal pluralism based on colonial history. The Indonesian state legal system is based on colonial, international, customary, and religious laws. Religious law is often Islamic, as Indonesia has the world’s largest Muslim population, with approximately 229 million Muslims in 2023.\(^{14}\) Customary Law also reflects the values of the *Pancasila*, which in turn reflects religious values. The *Pancasila* expresses Indonesia’s philosophy through five principles, which are: belief in God Almighty, a just and civilized humanity, the unity of Indonesia, a democracy led by the wisdom of the representatives of the people, and social justice for all Indonesian people. These principles are considered a legal basis for the State, but also a guideline in living daily basis for the citizens.\(^{15}\) Some scholars have stated that strong legal pluralism could be a reason why the government did not emit reservations. The Indonesian legal system is based on Islam and promotes unity and diversity. Moreover, Indonesia is not theoretically a religious state. In fact, the constitution is secular and does not promote Muslim traditions or culture.\(^{16}\) However, when we look at women’s rights history in Indonesia and the challenges faced today that will be elaborated further in the next section, religion and customary practices seem to be an issue in the implementation of CEDAW.

Furthermore, to avoid reservations, the government did not mention anything related to this choice. Reservations are allowed in international law to ‘attract’ states to ratify human rights treaties. However, in this case, they were useless, and Indonesia ratified CEDAW showing a willingness to improve women’s health. Ultimately, what is most important is how Indonesia respects its commitment to CEDAW, rather than whether it has made reservations.

\(^{13}\) *Ibid.*

\(^{14}\) “Share of Muslim Population SEA 2023, by country,” Statista Research Department, accessed 27 April 2023, https://www.statista.com/statistics/1113906/southeast-asia-muslim-population-forecasted-share-by-country/#:~:text=In%202023%2C%20it%20was%20estimated,an%20estimated%20229%20million%20Muslims


Before discussing the actions taken to implement CEDAW at the national level, let us examine the development of women’s rights in France and the reception of CEDAW.

B. THE DEVELOPMENT OF WOMEN’S RIGHTS IN FRANCE
1. WOMEN’S RIGHTS IN FRANCE BEFORE THE RECESSION OF THE CEDAW

According to *L’histoire du féminisme*, an online article written by the non-governmental organization (NGO) *Celles Qui Osent*\(^{17}\), feminist history in France is often presented in four parts. The author will focus on the first three parts as the last part coincides with a more recent period and occurs after the implementation of CEDAW.

The first milestone signified the granting of women’s civic rights. In 1944, France granted women the right to vote, although societal norms remained patriarchal. The country also adopted *La Déclaration Universelle des droits de l’Homme*, or the Universal Declaration of Human Rights (UDHR). This term reflects the patriarchal values. A similar issue existed in 1789 with the *Déclaration des droits de l’Homme et du citoyen*, which translates to Declaration of Men and Citizen’ Rights in France. In 1791, Olympe de Gouges penned the Declaration of Women’s and Citizen’ Rights, which emphasized gender equality, although it lacked legal authority. This act demonstrated early engagement with the Women’s Rights Movement.\(^{18}\)

The second part focuses on accession to the fight against abortion and contraception. In the 1960s, women and the *Mouvement Français pour le Planning Familial* (The French Movement for Planned Parenthood) were fighting for sexual rights, especially regarding the right to birth control and abortion, which could be associated with the right to freely decide whether to have children, based on Article 16 of the CEDAW. At the time, the law prohibited information regarding birth control due to the nationalist politics of the government, who wanted to rebuild the nation after the war. It was only in 1975 that the famous Loi Veil, named after Simon Veil, was voted for and authorized legal abortion. Other rights such as the right to work without the authorization of a husband were granted during the same period.

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The third section, which began in the beginning of the 1980s, focused on intersectional feminism. The cause was more open and included fighting racism, homophobia, and advocating for disabled people’s rights. This part focuses on economic issues faced by women, such as le plafond de verre, or the glass ceiling. Women were already fighting for equality in the labor and political spheres. The last part was marked by the ratification of the CEDAW in 1983.

During these three periods, the political history evolved significantly. The Fifth Democratic Republic was established in 1958, along with the Constitution of 1958. The Constitution recognized equality between men and women in its preamble, especially in the Declaration of Humans’ and Citizen’ Rights of 1789. Article 1 of the 1958 Constitution also recognized that all citizens were equal before the law. In France, the Constitution is technically the most powerful legal norm, according to Kelsen’s pyramid. However, this is not because the Constitution states that men and women are equal that they are.

France and Indonesia have different cultural backgrounds but face the same challenges when it comes to women’s rights. However, women’s rights in France are not strongly opposed by religious communities. There are, of course, some conservative communities, but as the Constitution and the Nation are secular in general and France does not face strong legal pluralism, these conservative communities do not have power in the legal sphere, and the law remains neutral.

In France, the main challenges were the persistent traditional values of the family, which are based on patriarchy, and the fact that the nation has preoccupations other than equality. Based on these patriarchal values, women are excluded from the political sphere and face economic inequalities.

When the CEDAW was signed by France in 1980 and before its ratification, Yvette Roudy, the Minister of Women’s Rights, declared during a speech in the National Assembly that France needed to begin promoting women’s rights and that, in terms of equality between women and men, “we are all underdeveloped countries.”

2. RECEPTION OF THE CEDAW IN FRANCE

CEDAW’s implementation of CEDAW provided France with the opportunity to showcase its dedication to advancing human rights, particularly women’s rights. However, as noted previously, the Convention

allows for reservations. Nevertheless, it is crucial to acknowledge that these reservations were constrained by both the Vienna Convention on the Law of Treaties (VCLT) and Article 28 of CEDAW. Article 28 specifically prohibits reservations that contravene the core CEDAW principles, notably Articles 2 and 16. Such reservations diminish CEDAW’s efficacy of the CEDAW and convey the state’s stance on human rights and international treaties. In 1998, the Committee declared that a state-making reservation indicated its unwillingness to recognize women’s rights and violated its promise to ratify the Convention, therefore betraying its citizens. Moreover, the state implies that it opposes the realization of women’s rights and considers them inferior to men, which can have negative consequences for individual and societal development. The Committee proposed several ways to deal with potential reservations, including maintaining reservations after examination in good faith by controlling organs, lifting reservations, and replacing illicit reservations with licit ones to “regularize” the situation.

France had initially planned to make reservations about the CEDAW, but a member of the parliament criticized the reservations as too numerous and advocated for France to lead by not making any reservations. France emitted declarations upon signing the CEDAW regarding Article 9, and upon ratification regarding Article 5(b). They also emitted reservations regarding Articles 14 and 16(1)g, especially regarding the right to choose a family name, and Article 29. Some reservations were also made regarding Articles 7, 15(2) and (3), and 16(1)(c) and (h).

France lifted most of its reservations regarding CEDAW, but retained one regarding the right to choose a family name (Article 16(1) of CEDAW). The Committee criticized this reservation for allowing fathers to oppose the transmission of the mother’s family name in certain cases. This case demonstrates that even wealthy Western countries may not ensure optimal protection of human rights. Although the reservation in Article 16(1) was eventually lifted in 2013, it underscored the complexity of the reception of CEDAW in France, despite its secular and universalist stance on human rights.

After reviewing the historical context, it is evident that implementing a unified approach to women’s rights under the CEDAW faces significant challenges. Politics, culture, and social values have emerged as major

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20 Ibid.
obstacles. However, Indonesia has shown that culture and religion may not always be insurmountable barriers to the reception of CEDAWs. In contrast, France unexpectedly encountered difficulties, despite its advocacy for universal human rights, secular status, and economic stability. The primary challenge at the time was thus social, rooted in the persistence of a patriarchal mindset—a global issue.

IV. CURRENT IMPLEMENTATION OF THE CEDAW: FRANCE AND INDONESIA

As mentioned in the Introduction, this section will focus on the core articles of the CEDAW, Articles 2 and 16, including the implementation and revisions of laws, regulations, temporary special measures, customs, and practices to promote gender equality and end discrimination against women, especially in the field of marriage and family relations.

A. CURRENT IMPLEMENTATION OF CEDAW IN INDONESIA

1. IMPLEMENTATION OF THE CEDAW IN INDONESIA: PROGRESSES MADE TO IMPLEMENT THE CEDAW

Since 1984, Indonesia has made several legal signs of progress regarding the implementation of CEDAW by implementing laws and regulations that concern women’s rights and human rights in general. Some examples of progress have been made in accordance with the last report of the Committee.

In the legal sphere, Indonesia has implemented laws and regulations, such as Law No. 23 of 2014 on Local Government that promotes the empowerment of women on various issues such as their quality of life, protection, and regarding the data system; Law No. 3 of 2014 to amend Law No. 13 of 2006 on Victims and Witness Protection that promotes the protection of women during and prior to the trial; Law No. 12 of 2017 to ratify the ASEAN Convention against human trafficking, especially regarding women and children; and Law No. 18 of 2017 to amend Law No. 39 of 2004 on the protection of Migrant Workers. Finally, Indonesia amended Law No.1 of 1974 on marriage with Law No.16 of 2019, particularly regarding the legal age for marriage, raising it to 19 years for both men and women.

The government has also implemented several regulations regarding the rights of women to reproductive health and the protection and empowerment of women and children in social conflicts. Another important regulation

implemented is the Regulation of the Supreme Court of the Republic of Indonesia, Number 3 of 2017, concerning guidelines for adjudicating women’s cases with law. Thus, it is one way to promote social justice and implement the first part of the Convention, which focuses on the elimination of discrimination against women, especially in the judicial system. The Ministry of Women Empowerment and Child Protection (MoWECP) has also issued several regulations regarding gender-responsive and children-friendly working facilities, women’s representation in the parliament, the participation of the social community in the development of women’s empowerment and child protection, and more.24

Women’s protection is ensured at the national level through different institutions, such as the Commission for the Protection of Violence Against Women (Komnas Perempuan) and the Indonesian Child Protection Commission, which focuses on the promotion of children as well as women’s rights. Finally, there was the Human Rights Commission. The protection of women was ensured at the local level. Indonesia is a country that experiences strong legal pluralism, mostly because of its colonial history. An important part of the legal system is the principle of the Customary Law, which refers to unwritten norms that are made and enforced by communities. Thus, it is based on customs and practices that have existed in communities for a long time. Customary Law is very powerful in Indonesia, especially at the local level, where communities tend to apply it instead of State Law. To avoid having a negative impact on women’s rights, some regencies and provinces have implemented regulations, such as Maluku Provincial Regulation Number 12 of 2012, which establishes in the province a protection agency that offers assistance to women and children who are victims of discrimination.25 The Kebumen Regency and Yogyakarta City have implemented similar regulations.

In the private and public spheres, Indonesia has implemented the Rencana Pembangunan Jangka Menengah Nasional (RPJMN), or the National Medium-Term Development Plan. Although this development plan is based on the laws and regulations mentioned above, it is also a way to promote women’s empowerment on a more global scale with respect to the CEDAW objectives according to Article 2. The 2015-2019 RPJMN focuses on three main points; the role of women in development, the protection of women against violence, and the institutional capacity for gender mainstreaming and the protection of women. Indonesia’s commitment to women’s empowerment is also reflected

24 Ibid.
in President Jokowi’s Nawa Cita, the national development agenda, which outlines nine government priorities for 2015-2019. Among these priorities is a commitment to promoting the role and representation of women in politics and developing and protecting women, children, and other marginalized groups.\textsuperscript{26}

Indonesia has made progress in implementing the CEDAW and improving gender equality. The 2019 report showed that the country’s Gender Development Index (GDI) increased from 90.07 to 90.99 in 2018, and the Gender Empowerment Index (GEI) rose from 70.07 in 2012 to 72.10 in 2018.\textsuperscript{27} However, there are still challenges that need to be addressed to protect women’s rights under CEDAW.

2. IMPLEMENTATION OF ARTICLES 2 AND 16 OF THE CEDAW IN INDONESIA

Although Indonesia has made significant progress regarding the implementation of CEDAW, 421 regional laws and policies still discriminate against women.\textsuperscript{28} According to Article 2 of the CEDAW, the Committee urges Indonesia to establish a timeframe for the adoption of a draft law on gender equality and justice that should define and prohibit all forms of discrimination against women. The Committee also recommends that discriminatory bylaws and regulations be amended or repealed, as there are numerous examples of such laws. Furthermore, the Committee advises Indonesia to ensure that the draft criminal code does not discriminate against women and limit their sexual rights. It is worth noting that the Criminal Code was implemented in December 2022 and there are concerns about Article 413, which appears to violate women’s rights, particularly sexual rights.

The Committee also acknowledged that patriarchal attitudes and stereotypes persist in Indonesia, particularly regarding women’s roles and responsibilities. State parties to the CEDAW should take appropriate measures to eliminate social and cultural practices that discriminate against women.

The Committee expressed concern about discrimination against LGBTQIA+ individuals in Indonesia, including discriminatory legislation, such as the KUHP and the Islamic Criminal Code in Aceh, as well as social exclusion, hate speech, and arbitrary detention by the police.

Regarding Article 16, the Committee expressed its concern regarding the exclusion of Muslim women from civil marriage, which is a significant issue.


\textsuperscript{28} Ibid.
pertaining to the limitations and barriers faced by Muslim women in Indonesia when it comes to participating in civil marriage and divorce processes. This exclusionary practice restricts rights and access to legal recognition and protection within the civil legal system. Certain provisions in civil law specifically exclude or restrict the participation of Muslim women. One example is the persistence of child marriages in rural areas and discriminatory provisions in Law No.16 of 2019. Before the amendment of Law No.1 of 1974, Article 7 (1) stated that the legal age to marry in Indonesia was 16 years for women and 19 years for men. Moreover, according to paragraph 2 of Article 7, both religious and civil courts can authorize underage marriages by granting dispensation, even though the spouse is under the official minimum age for marriage. This law violates women’s and children’s rights by promoting child marriage. According to Mies Grinjs and Hoko Horii, this mostly happens at the village level because of several factors, such as the fear of zinah (illicit sexual relations), but can also be used as a defense against pernicious slander to secure the honor of the family and the honor of the girl.²⁹ Moreover, some techniques can be employed to make child marriages legal, such as the local version of isbath nikah, a retroactive recognition of marriage by the court, or nikah siri, a secret religious marriage that remains unregistered.³⁰ Unregistered marriages are also a concern for the Committee, as they leave women and girls without legal protection. Finally, since Law No.16/2019, the legal age for marriage in Indonesia has been 19 years for both men and women. This amendment of Article 7 was made to prevent child marriage. In practice, the rate of early marriage in Indonesia remains very high. For example, in the Subang Regency, early marriages still occur because of social influences and cultural stereotypes.³¹

Moreover, the Committee expressed concerns regarding the limited inheritance rights for women in certain communities. For example, in certain unilateral relationship systems such as the Toba-Batak, the daughter always withdraws from her father’s family at marriage, meaning that she does not have a claim on intestate succession. The same applies to daughters’ rights in Balinese communities.³² The window position is also complicated. Although it is becoming more common for women to use litigation to secure their

³⁰ Ibid.
³² Barend Ter Haar, Adat Law in Indonesia (Jakarta: Bhratara, 1962), 214.
inheritance rights in such cases, it is rarely used in practice.\(^{33}\)

A comprehensive understanding of Indonesia’s achievements and hurdles in CEDAW implementation is essential for the development of a harmonized approach towards the potential universal implementation of CEDAW worldwide. The subsequent section offers analogous insights, albeit with a focus on France, aimed at facilitating a comparative analysis of the imperative and constraints surrounding a unified implementation.

B. CURRENT SITUATION OF THE IMPLEMENTATION OF THE CEDAW IN FRANCE

1. IMPLEMENTATION OF THE CEDAW IN FRANCE

As of 1 December 2020, France has shown several signs of progress, which are presented in the Ninth Period Report on the implementation of the CEDAW.\(^{34}\)

The first main progress stated in the French Report of 2016, and in accordance with Article 2 of the CEDAW, which implies taking legal and political actions, Emanuel Macron affirms that gender equality would be the great cause of his mandate. To achieve gender equality, Macron proposed several measures to fight Violence Against Women (VAW) even before being elected. However, the genuineness of Macron can be questioned according to various personalities and organizations.\(^{35}\)

The government has also implemented an inter-ministerial action plan that sets up a network of senior officials responsible for gender equality issues who report directly to ministers. These officials conduct impact assessments by taking the gender dimension into account in draft laws and regulations and establishing the shared responsibility of local authorities in the area of equality.

Specific measures have been taken to combat VAW in public, professional, educational, and private spheres, such as the 2015 Action Plan on Public Transportation, to eradicate gender-based harassment and sexual violence. A national strategy to combat domestic violence was adopted regarding domestic violence.

\(^{33}\) Ibid.


violence after roundtables were held in autumn 2019.

Based on Article 16 of the CEDAW, France has made progress in improving work-life balance by standardizing maternity leave and extending paternity leave from 14 to 28 days. Additionally, they implemented a national parenting support strategy to promote a balance in family responsibilities and a system of direct payment for child support to address the precarity of single-parent families that are mostly headed by women.

Since 2017, France has pursued a feminist foreign policy, promoting women’s rights in all international negotiations, which was reaffirmed by the President of the Republic in a United Nations speech in 2018 calling for gender equality to become a “great global cause.”

France has made some progress, but as stated by the European Institute for Gender Equality (EIGE), in the Gender Equality Index (which differs from the one mentioned above for Indonesia), it has slightly decreased by 0.4% since 2019 and is now 75.1%. Therefore, several challenges remain unresolved. 36

2. IMPLEMENTATION OF ARTICLES 2 AND 16 OF THE CEDAW IN FRANCE: CHALLENGES REMAINING

One of the first challenges to the implementation of the CEDAW is that France is often late in submitting the period report to the Committee. This period report is a way for the Committee to control how the implementation of the CEDAW is going, as well as proposed recommendations to improve women’s rights in the concerned country. For example, the last report mentioned above was due in 2020, but was received by the Committee in April 2021. Thus, the Committee examined the report late, and as of June, the report on the observations and recommendations of CEDAW was not available.

The Committee emphasized the need for France to provide more information on its efforts to combat discrimination against women and promote gender equality under Article 2. In particular, the Committee expressed concerns about the national machinery for the advancement of women; the role of the Prime Minister; the inter-ministerial committee on women’s rights and equality between women and men; and their available human, technical, and financial resources. The Committee also sought additional information on the implementation of laws, such as Act No. 2014-873, as well as the establishment and strategies of the High Council for Equality between Women and Men.

France’s lack of feedback and evaluation systems for implemented measures hinders the protection of women’s rights. This deficiency prevents the Committee from offering guidance and evaluating France’s commitment to the implementation of CEDAW and restricts citizens’ access to information.

Moreover, regarding Article 16, the Committee expressed its concern regarding the lack of information on discriminatory provisions in non-metropolitan territories regarding marriage and family relations, especially marriage contracts, divorce, child custody, and inheritance, with the aim of aligning them with CEDAW. According to France’s replies to the list of issues and questions in its ninth periodic report, child marriage is also observed in customary, traditional, and/or religious marriages. Forced marriages are more prevalent among immigrant women than second-generation couples (daughters of immigrants born in France). Among the women surveyed between 26-50 years old, 4% of immigrants reported being in a forced marriage, whereas only 2% of the second generation reported the same. Among immigrants aged 51–60 years, 9% reported being married against their will. In two-thirds of these cases, marriage occurred upon migration to France. A key characteristic of forced marriage is that it often involves child marriage. One of every three women surveyed reported being married before the age of 18 years, which is the legal age for marriage according to the civil code in France. This early marriage frequently results in limited educational opportunities and financial dependence, and in some instances, contributes to higher rates of domestic violence. Domestic violence and discrimination against women are also issues in France. According to the French Interior Minister, 122 women were killed by their (ex) partners in 2021. Additionally, one-third of women reported to the police that they had already experienced violence. In 2021, the police registered 204,000 victims of domestic violence, 87% of whom were women. Despite France ratifying the CEDAW and acknowledging General Recommendation No. 35 on VAW, only 100,000 potential violence perpetrators have been brought to trial. Of these, only 36,000 faced legal action and 18,000 benefited from dismissal without further action through an alternative procedure to prosecution.


39 Ministère Chargé de l’Égalité entre les Femmes et les Hommes, de la Diversité et de l’Égalité
Another important challenge is that even though France presented state measures to provide legal training programs supporting gender equality and promoting the use of the CEDAW, French legislators lack reference to the CEDAW.\textsuperscript{40} The author found that CEDAW was not taught in the law curriculum and their colleagues also did not know about it.

In conclusion, France benefits from a solid legal framework for implementing CEDAW. Most of the challenges remain concerned with a lack of data regarding the implementation of these legal norms, and thus, allow us to question the implication of France in the insurance of women’s rights. Moreover, stereotypes play a significant role and remain a source of worsening problems such as violence against women.

3. CONCLUSION ON THE CURRENT IMPLEMENTATION OF THE CEDAW IN INDONESIA AND FRANCE

Although the analysis of the progress and challenges regarding the implementation of CEDAW in Indonesia and France cannot be exhaustive here, it requires more time and data. This study focuses on Articles 2 and 16. Both countries have made significant progress in their legal frameworks. Although both countries still face a lack of data regarding the implementation of those norms, the fact that those norms exist is a good start.

As mentioned previously, CEDAW is very clear and states that this is not sufficient. Countries must implement CEDAW both at the legal level and in terms of social values and the eradication of discrimination in private and public spheres. This is where most challenges remain. The fact that stereotypes that discriminate against women are still prevalent in both societies has severe consequences for women’s rights. Whether because of cultural values based on religion in Indonesia or simply because patriarchy is the norm in France, women pay the price. Consequences have been observed in several fields, such as the family, political, economic, and educational spheres. Moreover, new challenges are emerging with globalization and Internet development. Discrimination against women is still ongoing and we must ensure women’s rights.

As an International Human Treaty and to ensure women’s rights, it is essential to recognize the universality of women’s rights in order to achieve a unified approach.

C. INTERNATIONAL HR TREATY: THE GOAL OF A UNIFIED APPROACH

From a regime theory perspective, as defined by Krasner, a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue area of international relations,41 HR treaties create binding obligations that countries aspire to honor. These compliance obligations are based Article 26 of the VCLT states that “every treaty in force is binding upon the parties to it and must be performed in good faith”.42 on the international law principles codified in the VCLT. The fact that the treaty was ratified reflects the concerned country’s consent to implement it. If the country does not want to implement the treaty, they will not ratify it. Complex factors must be considered when ratifying an international treaty, particularly if the treaty promotes human rights. Finally, if a country wants to be recognized as a potential ally in the international sphere, it must comply with international standards. Human rights are one of these standards.

Moreover, most international treaties on human rights are made by the UN and they play an important role in maintaining international peace and protecting human rights. According to the UN’s founding charter, the promotion and protection of human rights is a key purpose and guiding principle of an organization. The 1948 Universal Declaration of Human Rights (UDHR) sets out “fundamental human rights to be universally protected”.43 The UDHR has been translated into over 500 languages, and its first article states that “all human beings are born free and equal in terms of dignity and rights”.

It is explicitly mentioned that HR are universal according to the UN. However, cultural freedom should be protected; thus, it is not feasible for human rights to be universal. Nevertheless, it is important to recognize that in today’s globalized world, global human rights treaties establish the minimum standards that should be upheld by all. These treaties serve as a second layer of protection, ensuring that the minimum standards are met.

43 Universal Declaration of Human Rights, (1948).
However, HR should not be approached only as a Western standard defined by the UN but also recognize that women’s rights are universal as a natural statement. Lauren Bock Mullins makes an interesting point by stating that culture is also a way of implementing rights. She stated that Western people should not believe that their way of thinking about women’s rights is superior, and she added that “it is still possible that women, regardless of age, class, race, religion, or geography, share one thing in common: subordination to men.”

It appears that discrimination against women is a global problem that does not have to do with culture, as seen in the comparative study above. Of course, culturalism changes the approach to women’s rights if we base our standards on Western HR. However, ultimately, the results are the same. Patriarchal values are still strongly present in modern societies defending the superiority of men over women in the private and the public scene.

Finally, according to Neumayer, it is difficult to prove that human rights treaties improve respect for HR. The article does not aim to debate whether CEDAW will increase appreciation for women’s rights, although this has been proven to have a positive impact. Rather, it is to recognize that the goal of such a treaty is not only to end discrimination against women and protect their rights in the legal sphere and in social and political aspects, but also to promote equality. Equality does not have to be understood strictly, as women and men are biologically different. However, this means having equal consideration for women’s and men’s issues, equal social recognition, and equal access to legal protection. Moreover, if a country ratifies the CEDAW, it is obligated to enforce women’s rights. This is especially important, given the aforementioned information.

However, it is important to support women’s rights for several reasons. First, women’s rights are human rights and fighting for them is beneficial to both women and men. Anyone can be a victim of patriarchal values (even though the consequences for women are more severe). We cannot be free or equal if women are not free and equal to men. Second, protecting women’s rights is one way to make the world a better place. According to the UN, gender equality is the key to sustainable development, economic growth, peace, and security. Research has shown that society improves when women’s rights are

ensured. According to statistics from the UN Department of Economic and Social Affairs, as of 2020, there were around 3.8 billion women and 3.9 billion men in the world. Half of the population was represented. It is safe to say that everyone has important women in their lives, and it seems natural to want them to be equal to men. Nothing can justify in 2023, or at any time in history, again, that women are inferior to men. However, equality has still not been achieved, as there are some limitations to a unified approach, especially when it comes to CEDAW.

D. ACTUAL LIMITS TO A UNIFIED APPROACH OF THE CEDAW

There are operational issues with the Committee. As previously mentioned, the Committee is composed of 23 members elected for a 4-year term. The Committee has several functions to analyze the state’s periodic reports and make recommendations after consulting other UN bodies and agencies that are aligned with their area of expertise. The problem is that the recommendations made do not have any binding aspect for the concerned states, even though the countries are still bound by the ratification of the CEDAW itself and must act in good faith regarding the *pacta sunt servanda* principle. Moreover, the Cold War affected the work of the Committee by delaying the establishment of its rules and procedures. It took more than ten years to establish a final decision on how to judge state compliance. Originally, the Committee met for only two weeks annually. Since, 1993 the UN has authorized three weeks to deal with an increasing number of periodic reports. The CEDAW Committee plays a crucial role in ensuring that the Convention is enforced, relying on self-monitoring by state parties, who must submit their reports periodically. However, a major issue is that most countries fall behind in their reporting, as seen in the case of France and other countries.

Another issue hindering a unified approach is whether states have accepted the Optional Protocol established by General Assembly Resolution 54/5 of October 1994, which was opened for approval in 1999. This Protocol provides two procedures that allow individuals and groups to file complaints regarding state-party violations of the Convention. The complaint procedure enables women to receive reparations, including financial reparations, from their governments and serves as both a mechanism for reviewing laws and a means of adopting measures to prevent future violations of the Convention. Although individual complaint procedures combined with domestic procedures may take several years, they provide women with an alternative to domestic justice.

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as their ultimate authority. The Protocol includes an inquiry procedure that enables the Committee to investigate violations of women’s human rights within states and help women who cannot file individual complaints due to social pressure. Independent experts dedicated to the convention’s goals managed the procedure. However, the Protocol is optional, and some countries, such as Indonesia, have not accepted it. Consequently, the Committee was unable to monitor and help with CEDAW violations. This is exacerbated by the fact that unlike Europe, Asia does not have a human rights Court that provides an additional layer of protection for human rights.

Moreover, although reservations are permitted by the VCLT and CEDAW, they hinder the unified approach to CEDAW. Although they are allowed to help gain State parties, they weaken the convention’s overall scope. Furthermore, it is difficult to determine whether a reservation is against the purpose of the Convention because the line is often blurred. Although CEDAW has faced numerous reservations, the legality of many is questionable. Article 28(2) lacks strong sanctions against illegal reservations, as it states that “abusive reservations are not discouraged by any mechanism of the Convention.”

Another issue that could limit the possibility of a unified approach to women’s rights is interpretation. Although the CEDAW have ratified by 189 countries, its official text has only been translated into six languages: Arabic, Chinese, English, French, Russian, and Spanish. This means that many people worldwide are unable to read the text of the treaty in their native language, which could lead to misunderstandings and misinterpretations of the legal norms contained within it. This is why the lack of translation of the CEDAW is particularly concerning, given its status as the second most ratified international treaty. In comparison, the UDHR has been translated into over 500 languages, allowing people worldwide to understand and embrace its principles. To promote a truly unified approach to women’s rights, the United Nations should consider translating the CEDAW into more languages. For example, the text was not translated into Indonesian. Translating CEDAW into other languages would ensure that the text is accessible to people worldwide and that there is a shared understanding of its legal norms and principles. By doing so, we can take significant steps toward achieving gender equality and protecting the rights of women and girls.

50 Ibid.
51 Ibid.
V. CONCLUSION

Finally, as both cases have been studied in this paper, France and Indonesia both lack sufficient protection for women’s rights. This is a widely recognized and concerning issue that has been brought to the forefront of global attention. Nevertheless, this paper also emphasizes that France and Indonesia, even though they have a cultural universal and cultural relativism conception of HR, are both implementing legal and temporary measures according to Article 2 of the CEDAW. However, as expressed by the CEDAW, the problem goes beyond just being a legal issue, as women’s rights are still not fully upheld, even though both countries have implemented legal measures and made significant improvements. Women’s rights still fall short of those of men, indicating a systemic problem that must be addressed. This article not only highlights the factors that could explain why women’s rights are still diminished, such as political, economic, and cultural reasons, but also suggests potential solutions to address these issues. For instance, education could play a crucial role in changing patriarchal values and stereotypes regarding women, leading to a more equitable society.

However, it is important to note that the problem is much more widespread than this study reveals, as it focuses only on Article 2 of the CEDAW regarding the implementation of legal measures and temporary plans to eradicate discrimination against women, especially with regard to discrimination in marriage and family relations, according to Article 16. As mentioned in the first part, most of the challenges already existed before the implementation of CEDAW. More importantly, all countries, even the wealthiest and most democratic ones, are concerned because gender inequality affects every society. They all face the same problem: the omnipresence of patriarchal values and stereotypes of women. The role of women in the family and marriage is deeply ingrained in patriarchal societies; at present, these societies are still promoting traditional values and practices that are harmful to women, such as child marriage in France and Indonesia, lack of education for young married women, and domestic violence. Therefore, it is crucial that we continue to raise awareness about this issue and work towards creating a more just and equal society for all genders.

First, one solution could be to raise financial and human resources for justice, which could provide better legal training and protection for women. This could involve increasing the budget for training programs on women’s rights and hiring more professionals to help victims of discrimination and violence. Additionally, improving the working conditions of those who work

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52 Simone de Beauvoir, Le deuxième sexe [The second sex] (Gallimard, 1949).
in justice-related fields could help provide better assistance to women. For example, providing better equipment and facilities to law enforcement and court officials can help them perform their duties more effectively.

Second, reinforcing legal oversight is crucial, both at the national level by monitoring CEDAW use in judicial cases and establishing independent bodies to assess CEDAW implementation. This can occur internationally or regionally—for example, by creating dedicated entities to safeguard women’s rights in Europe and Asia. It is vital to ensure that women have access to legal support.

Additionally, it is necessary to increase awareness about the impact of gender stereotypes and discrimination on all aspects of life. This involves educational programs on gender equality and initiatives to boost women’s involvement in underrepresented fields, such as politics and business.

These are only a few solutions that can be envisaged for improving the implementation of CEDAW. However, if we consider that the main problem today is the persistence of patriarchal values, then time will tell if all this effort will pay off. It is important to keep in mind that fighting for women’s rights concerns both men and women. Currently, it is not possible to claim that CEDAW is uniformly applied worldwide. Nevertheless, progress is being made daily, as demonstrated by France and Indonesia.
BIBLIOGRAPHY

Journal Articles and Periodicals


Books and Book Chapters

Implementation of CEDAW in France and Indonesia

**Legal Documents**


**Web Sources**


introduction-committee.

Others
Andrea Bescond, further information on Instagram: @andrea_bescond.
Sumampouw-Lapian. World Congress of Women: reports, speeches (extracts), documents (Berlin: Women’s International Democratic Federation, 1953).