

## LEGAL PROTECTION OF GENDER EQUALITY AGAINST WOMEN IN EMPLOYMENT ACCESSIBILITY IN INDONESIA

ERDIN TAHIR<sup>1</sup>, IMAM BUDI SANTOSO<sup>2</sup>, MUHAMMAD RUSLI ARAFAT<sup>3</sup>, TRI SETIADY<sup>4</sup>, TAUN<sup>5</sup>

University of Singaperbangsa Karawang, Indonesia<sup>1</sup>

University of Singaperbangsa Karawang, Indonesia<sup>2</sup>

University of Singaperbangsa Karawang, Indonesia<sup>3</sup>

University of Singaperbangsa Karawang, Indonesia<sup>4</sup>

University of Singaperbangsa Karawang, Indonesia<sup>4</sup>

erdin.tahir@fh.unsika.ac.id<sup>1</sup>

imam.budi@fh.unsika.ac.id<sup>2</sup>

rusli.arafat@fh.unsika.ac.id<sup>3</sup>

tri.setiady@fh.unsika.ac.id<sup>4</sup>

[taun@fh.unsika.ac.id<sup>5</sup>](mailto:taun@fh.unsika.ac.id)

**Abstract** - This research aims to find out how the legal protection of women in the work sector in Indonesia. The right to employment in Indonesia has been guaranteed in the Indonesian Constitution and has been regulated in various laws and regulations. The results of this study found that there is still a gap between men and women in the employment sector. In 2023 male workers have a participation rate of 83% while the female labour force participation rate is only 54%, meaning that the labour force participation rate between men and women is still a gap. The Indonesian government has provided legal protection for women workers to get their rights while working through various laws and regulations, while legal protection for women to get a job has no specific rules governing it. Women should be given legal protection to access employment in the form of laws and regulations that specifically regulate the ease for women to access decent work.

**Keywords:** Employment; Equality; Legal Protection; Women;

### INTRODUCTION

Gender equality is a global issue that continues to be discussed in the public sphere. Discrimination against gender continues to occur in all aspects of life around the world, although the nature and extent of discrimination varies greatly in different countries. The importance of gender equality in the life of the nation and state so that the United Nations (UN) endorsed 17 (seventeen) agenda of sustainable development goals (Sustainable Development Goals) as a global development agreement, where gender equality is goal 5 (five) of the Sustainable Development Goals (SDGs) (Affairs & Development, n.d.-b). The UN recognises that women's potential has not been fully realised, partly due to persistent social, economic and political inequalities. Gender inequality remains entrenched in every society, with women lacking access to decent work and facing occupational segregation and a gender pay gap (Affairs & Development, n.d.-a).

In addition, the regulation of women's rights in the field of employment is also regulated in several international conventions, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) which has been ratified by Law Number 7 of 1984, ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, which has been ratified by Indonesia with Law Number 21 of 1999, ILO Convention Number 100/1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified in Indonesia with Law Number 80 of 1999, ILO Convention No. 100/1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value: 100/1951 on Equal Remuneration for Men and Women Workers for Work of Equal Value, ratified in Indonesia by Law No. 80 of 1957. The provisions of these international regulations provide a guarantee of legal protection for women in the field of labour, where men and women have the same right to work, the right to employment opportunities, and also get the same wages.

Likewise, the Indonesian Constitution also guarantees the fundamental rights of citizens in the field of employment, which are clearly regulated in the 1945 Constitution of the Republic of Indonesia, in this case there is no difference between men and women, be it the right to work, the right to work or the right to decent wages. As stated in the provisions of Article 27 paragraph (2) of the Constitution that "Every citizen has the right to work and a livelihood worthy of humanity". Also in Article 28D paragraph (2) of the Constitution that "Every person has the right to work and to receive fair and decent



remuneration and treatment in labour relations". This means that the Indonesian Constitution has provided constitutional guarantees for gender equality in terms of employment accessibility.

Around the world, women find it much more difficult to find work than men. For this reason, according to the International Labour Organization (ILO), women must be guaranteed access to employment. In this case, women are given the same opportunity as men, to access employment both before and during the recruitment process (International Labour Organization, 2007). Based on the ILO report globally, the labour force participation rate between men and women shows a very significant gap, the labour force participation rate for women is only below 47% while the male labour force participation rate is 72%, in this case there is a difference of 25%. Some countries even face a gap of more than 50% (International Labour Organization, 2022). As for Indonesia, job accessibility also shows a gap between women and men. As data from the Central Statistics Agency (BPS-Statistics Indonesia) in 2023 the male work participation rate was 83% while women were 54%.

The gap in the employment sector between men and women shows that gender equality has not yet been realised in terms of job accessibility. The large number of working-age women and the accessibility for women to enter the labour market should be facilitated, to increase women's participation in the labour force (Research and Development Agency for Law and Human Rights, Ministry of Law and Human Rights, 2016). When referring to the Indonesian government's 2022 work plan, gender equality in the labour sector is part of the strategic issue of human resource development. The Indonesian government programmes in 2022 as stipulated in Presidential Regulation Number 85 of 2021 concerning the Government Work Plan for 2022 will accelerate the improvement of gender equality and empowerment of women, especially in the economic, political and labour fields.

Meanwhile, the Ministry of Women's Empowerment and Child Protection (KPPA) stated that from the sector of achievement of strategic target indicators, in 2022 the Female Labour Force Participation Rate (TPAK) increased, but the increase was slower than the survey results in previous years due to the impact of the Covid-19 pandemic (Bureau of Law and Public Relations, 2023). The TPAK of women from 2021 to 2022 only increased by around 0.24%. In contrast to 2020, female TPAK experienced an increase of 1.53%. Although the TPAK of women continues to increase every year, there is still a gap (GAP) between the TPAK of men and women. This means that the TPAK between men and women does not yet reflect gender equality in the labour sector. As stated in the Indonesian Government's 2020-2024 National Medium-Term Programme Plan (RPJMN), gender equality can be achieved by reducing gaps between men and women in accessing and controlling resources, participating in all development and decision-making processes, and benefiting from development (Indonesia et al., 2024).

The Indonesian government currently continues to improve gender equality in the labour sector. Gender equality aims not only for the benefit of women but also to achieve the success and prosperity of the nation's economic development. Likewise, by realising gender equality in the workplace (Bureau of Law and Public Relations, 2021). The realisation of gender equality in the employment sector is of course inseparable from the role of the government to provide legal protection to women. The form of legal protection is certainly not only protection when women work, but legal protection is also given to women in accessing employment.

#### **1. Legal Protection of Women in the Indonesian Labour System**

Female workers are often considered weak by superiors who have a higher position, so female workers need to be protected for their rights (Nida & Rayhan, 2021). The Labour System in Indonesia is regulated by Law Number 13 of 2003 concerning Manpower as amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Labour Law). In Indonesia, there are several legal protections that have been regulated in various laws and regulations for women workers, namely as follows:

##### **a) The Constitution of The State of The Republic of Indonesia of The Year 1945**

The 1945 Constitution is the written Constitution of Indonesia, which serves as the basic norm or basic law of the highest nature (Asshiddiqie, 2017), which guarantees human rights, including the rights of citizens in the field of labour. As stated in Article 27 paragraph (2) of the Constitution that "Every citizen has the right to work and a livelihood worthy of humanity". In Article 28D paragraph (2) of the Constitution that "Every person has the right to work and to receive fair and decent remuneration and treatment in labour relations".

Article 27(2) of the Constitution is the economic right of every citizen, who is guaranteed the right to work and a decent living for humanity, while Article 28 D (2) of the Constitution is the right to work with

fair labour rights and decent treatment for humanity (Asshiddiqie, 2009). The Indonesian Constitution has essentially guaranteed the protection of citizens to get a job and receive a decent wage, without gender discrimination. All citizens have the right to work.

b) Law Number 13 of 2003 concerning Manpower (Law No. 13 of 2003)

The enactment of Law No. 13 of 2003 revoked several labour laws and regulations that had been in force in Indonesia, including some that were colonial products, placing workers at a disadvantage in labour placement services and industrial relations systems that accentuated differences in position and interests so that they were no longer in accordance with current needs and future demands.

The sociological foundation of Law No. 13 of 2003 is to provide protection for labour, which is intended to guarantee the basic rights of workers/labourers and ensure equal opportunities and treatment without discrimination on any basis to realise the welfare of workers/labourers and their families.

This law explicitly regulates the rights of women workers, and provides several protection arrangements for women workers, such as:

- a. Protection of working hours and rest periods;
- b. Menstrual Time Protection;
- c. Pregnancy Protection;
- d. Protection in the event of a miscarriage;
- e. Breastfeeding protection;
- f. Protection of work competency recognition;
- g. Occupational safety and health protection;
- h. Protection of morals and decency; and
- i. Treatment that is in accordance with human dignity and religious values

These types of protection are essentially the same as ILO Convention No. 183 of 2000 concerning Maternity Protection which is a complement to prevent discrimination against women workers as stated in Article 11 (f) of CEDAW (Susiana, 2017).

c) Law Number 80 of 1957 Concerning Approval of International Labour Organization Convention No. 100 Concerning Equal Pay for Male and Female Workers for Work of Equal Value.

This law is a ratified regulation of the International Labour Organisation Convention, which is considered necessary to be enforced in Indonesia. This means that Indonesia is committed to setting wages for workers without discrimination based on gender. This means that the wages of female and male workers must be the same in the same type of work of equal value.

Although Indonesia has provided wage protection guarantees for women workers, in practice, there are still wage differences between men and women in the work sector. Data from the Central Statistics Agency (BPS-Statistics Indonesia) in 2022 noted that the percentage of gender wage gap in Indonesia was 22.09% in 2022. The average wage of male workers is 22.09% higher than that of female workers. This figure increased by 1.7% points compared to the previous year of 20.39%.

d) Law Number 40 of 2004 concerning the National Social Security System (Law No. 40 of 2004)

Indonesia itself only finalised the conception of a social security system in 2004, with the enactment of Law No. 40 of 2004. The presence of this law is to reach a wider sector to overcome the social security system that has been implemented previously (Abdul Khakim, Ahmad Ansyori, 2021). Based on Article 1 number 1, it states that social security is a form of social protection to ensure that all people can fulfil their basic needs. Meanwhile, the national social security system is a way of organising social security programmes by several social security management bodies.

According to this law, the types of social security obtained by workers are:

- 1) Health Insurance;
- 2) Labour accident cover;
- 3) Pension guarantee
- 4) Old-age security
- 5) Death benefits; and
- 6) Job loss guarantee

The six social security programmes almost cover all social security programmes regulated in ILO Convention No. 102, which states that there are nine minimum standards for the implementation of social security programmes, namely: medical care, sickness benefit, unemployment injury benefit, old-age benefit, survivor's benefit, unemployment benefit, invalidity benefit, family benefit, and maternity benefit. However, the ILO provisions only require each country to implement at least three social security programmes. This means that Indonesia in the process of organising social security has provided legal protection to workers.

e) Law Number 1 of 1970 concerning Occupational Safety

This law provides occupational safety and health protection to workers. Occupational safety and health protection is a worker's right. This has also been affirmed in Law No. 13 of 2003 concerning Manpower. Occupational safety is an important element of the protection of workers from accidents and occupational diseases, which can arise from machines, work tools, materials and materials used, the work environment, physical and mental characteristics of the work, and how to do the work must be prevented as much as possible (Malau, 2013).

f) Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers

This law aims to provide legal protection to migrant workers or prospective migrant workers who work abroad, in labour relations for a certain time by receiving wages, and are entitled to legal protection starting from pre-placement, during placement, and until after placement (Agusmidah, 2022).

The regulation of the protection of women workers in Indonesia is spread across several laws and regulations. The essence of the applicable law in Indonesia is in line with internationally applicable laws in the field of worker protection. However, the problem is how the form of legal protection for women to access employment in Indonesia.

## 2. Legal Protection of Gender Equality for Women in Terms of Employment Accessibility in Indonesia

Gender equality is a state in which all people, regardless of their sex, have the same rights, freedoms, conditions and opportunities. It does not mean that people - e.g. women and men- become the same, but rather that they have the same life opportunities and are valued equally. This applies not only to equality of opportunity but also to equality of impact and benefits arising from economic, social, cultural and political development - as well as the opportunity to shape and influence those values, norms and systems (Nature, 2023).

The principle of gender equality is basically an effort to fight for women's rights and gender equality contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), namely, the principle of substantive equality, non-discrimination equality, and the principle of state obligations. The principle of substantive equality means that women have equality with men in opportunities and access, and enjoy the same benefits. The principle of non-discrimination means eliminating direct or indirect discrimination, without distinguishing between private actors or public actors. The principle of state obligations means that the state guarantees women's rights through laws, regulations, policies and guarantees the results.

Article 1 of CEDAW states that States Parties are obliged to make all appropriate efforts to eliminate discrimination against women in the field of employment in order to ensure equal rights between women and men, especially: a. The right to work as an inherent right of all human beings; the provisions of CEDAW, in Indonesia, have been regulated in the Constitution of Indonesia, which guarantees citizens the right to work and a decent living for humanity. Similarly, Article 5 of Law No. 13 of 2003 states that every worker has equal opportunity without discrimination to obtain employment. This means that the opportunity to get the same job for women in principle has been guaranteed by the constitution and has been guaranteed in the law. However, the labour force in Indonesia still has a gap between men and women.



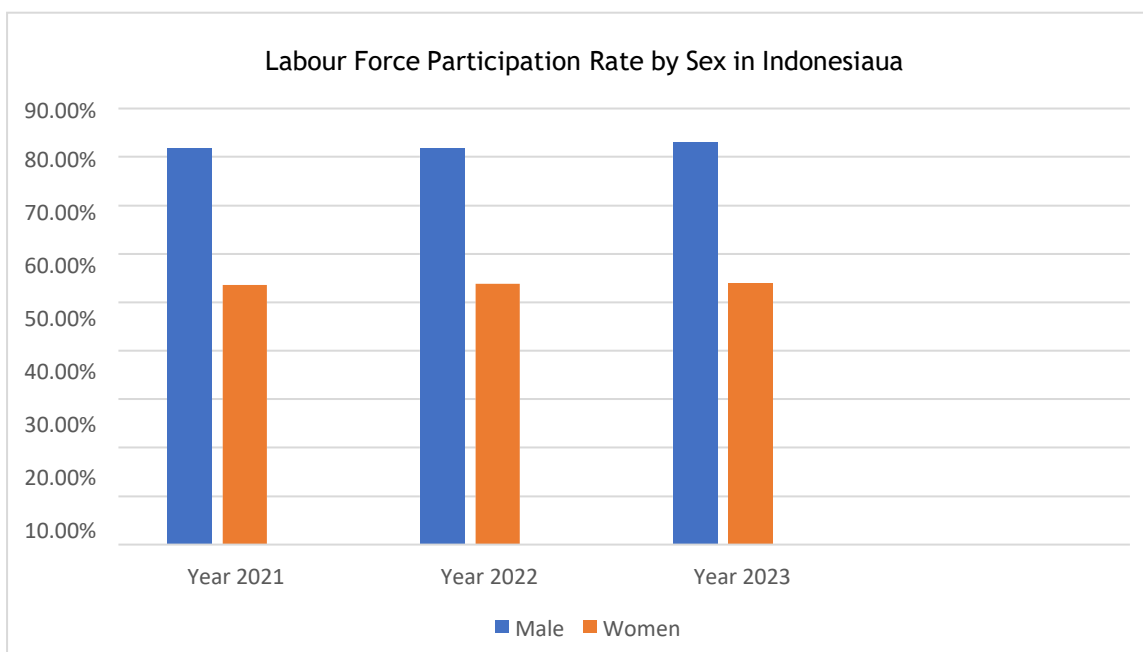
**Table.1**  
**Total Population by Sex and Activities in 2023**

Population and Type of Activity	Male	Women	Whole
Indonesian population	139.388.900	136.384.800	275.773.800
Population 15+	105.487.000	104.090.000	206.496.300
Economically Active	87.762.583	55.960.061	143.722.644
Working/Working	82.553.960	52.742.753	135.296.713
Unemployment	5.208.623	3.217.308	8.425.931
Non-economically Active	16.873.668	48.825.071	65.697.739
School	7.548.454	8.061.085	15.609.539
Housekeeping	3.621.185	37.628.780	41.249.965
Others	5.704.029	3.134.206	8.838.235

Source: BPS-Statistics Indonesia, Year 2023

Based on the population data, the total population of Indonesia is estimated at 275.773 million people. When compared by gender, there are more men than women, with a presentation of 51% of the male population, and 49% of the female population. As for the working age of 15 years old by gender, there are also more men than women, with a percentage of 51% for men, and 49% for women. The percentage of population and labour force age between men and women is not much different and can be said to be relatively balanced. However, in terms of labour force participation, male workers have a participation rate of 83,00% while the female labour force participation rate is only 54%, meaning that there is still a 29% gap between male and female labour force participation rates. This condition is not much different from the labour force participation rate in 2022, where male workers have a participation rate of 81.77% while the female labour force participation rate is only 53.79%, and in 2021, where men are 81.88% while women are 53.55%.

Source: Prepared by the author



The gap in the employment sector between men and women shows that gender equality has not yet been realised in terms of job accessibility. With the large number of working-age women, accessibility for women to enter the labour market should be facilitated, so as to increase women's participation in the labour force (Research dan Development Agency for Law and Human Rights, Ministry of Law and Human Rights, 2016). The Indonesian government's steps to guarantee women's rights in family life, society, nation and state are carried out by mainstreaming gender into the entire national development process. Gender mainstreaming in Indonesia is regulated in at least 3 (three) regulations, as the basis for national development, namely Law of the Republic of Indonesia Number 17 of 2007 concerning the National Long-



Term Development Plan for 2005-2025, Presidential Regulation Number 18 of 2020 concerning the National Medium-Term Development Plan for 2020-2024, and Presidential Instruction of the Republic of Indonesia Number 9 of 2000 concerning Gender Mainstreaming in National Development.

Gender Mainstreaming aims to realise gender equality so as to create a fairer and more equitable development for the entire population of Indonesia. Gender equality can be achieved by reducing the gap between men and women in accessing and controlling resources, participating in all development and decision-making processes, and benefiting from development.

In principle, the Indonesian government has committed to realising gender equality, which is outlined in the Government Work Plan. Although Indonesia has regulated gender equality efforts in all sectors, the labour force gap between men and women has not been resolved. This gap continues to increase every year. It is therefore important for the Indonesian government to provide legal protection to women in terms of accessing employment.

Legal protection for citizens from government actions in principle has the aim of ensuring the fulfilment of citizens' rights. preventing actions that harm citizens' rights, then to provide access for citizens to stop acts of violation, obtain compensation or remedial action for violations of their rights, and ensure the availability of compensation or remedial action against the rights of citizens who have been harmed (A'an Efendi, 2017).

Legal protection for the people is a universal concept, in the sense that it is adopted and applied by every country that puts forward itself as a state of law, but as mentioned by Paulus E. Lotulung as quoted by Ridwan HR, each country has its own ways and mechanisms on how to realise legal protection, and also to what extent legal protection is given (Ridwan HR, 2014). There are at least 3 (three) kinds of government actions in providing legal protection to the people, namely government actions in the field of making laws and regulations (*regeling*), government actions in issuing decisions (*beschikking*), and government actions in the field of civil rights (*materiele daad*). In addition to these three government actions, the government is also characterised by free authority or *freies ermessen*, which if set out in written form will take the form of policy regulations (Ridwan HR, 2014).

In the context of employment, legal protection of workers in Indonesia remains based on the protection of the dignity of workers, along with their human rights both individually and as workers (Triningsih, 2020). Moreover, workers' rights have been guaranteed in the 1945 Constitution, Article 27 paragraph (2) and Article 28 D paragraph (1). In this case, the equal rights of male workers and female workers are guaranteed in the constitution (Susiana, 2017). This constitutional guarantee of equal labour rights must of course be operationalised in the form of legal protection, namely in the form of *regeling*, *beschikking*, *materiele daad*, or *freies ermessen*.

Because Indonesia has guaranteed women's rights in the employment sector through various laws and regulations, Indonesia must also provide legal protection for women to get a job. Currently, there is no specific legal protection for women to get a job, so the Indonesian government can realise this in the form of *regeling*, *beschikking*, *materiele daad*, or *freies ermessen*, with the aim of facilitating women's access to employment.

## CONCLUSION

Legal Protection of Women in the Labour System in Indonesia has been guaranteed in the 1945 Constitution as the Indonesian constitution, and has been regulated in various laws and regulations, namely Law No. 13 of 2003 on Manpower which regulates the rights of women workers, Law No. 80 of 1957 on the Approval of the International Labour Organization Conference provides protection for equal wages between men and women, Law No. 40 of 2004 on the National Social Security System provides legal protection for occupational health and safety and job loss guarantees, Law No. 1 of 1970 on Occupational Safety provides protection for occupational safety and protection for occupational diseases, and Law No. 18 Year 2017 on the Protection of Indonesian Migrant Workers which provides protection for women working abroad.

The Indonesian labour system in principle has provided legal protection for the rights of women workers, but the gap between male and female workers in Indonesia still exists. In 2023 male workers have a participation rate of 83% while the female labour force participation rate is only 54%, meaning that the labour force participation rate between men and women is still a 29% gap. This gap continues to occur every year, this is because the Indonesian government does not yet have special rules in the field of labour to make it easier for women to access work. Currently, the Indonesian government's steps to reduce the gap between men and women in the labour sector by mainstreaming gender in various sectors of national development, but this step has not been effective. Therefore, it is important for women to

be given legal protection to access employment in the form of laws and regulations that specifically regulate the ease for women to access decent work.

## REFERENCES

- [1] A'an Efendi, F. P. (2017). *Administrative Law*. Sinar Grafika.
- [2] Abdul Khakim, Ahmad Ansyori, A. (2021). *The ins and outs of Social Security in Indonesia*. USU Press.
- [3] Affairs, D. of E. and S., & Development, S. (n.d.-a). *Gender equality and women's empowerment*. United Nations. Retrieved January 15, 2023, from <https://sdgs.un.org/topics/gender-equality-and-womens-empowerment>
- [4] Affairs, D. of E. and S., & Development, S. (n.d.-b). *THE 17 GOALS*. United Nations. Retrieved January 15, 2023, from <https://sdgs.un.org/goals>
- [5] Agusmidah, E. al. (2022). *Potpourri of Labor Law Discourse in Indonesia*. USU Press.
- [6] Asshiddiqie, J. (2009). *Commentary on the 1945 Constitution of the Republic of Indonesia* (Tarmizi (ed.)). Sinar Grafika.
- [7] Asshiddiqie, J. (2017). *Introduction to the Science of Constitutional Law* (1st ed.). Rajawali Press.
- [8] Research and Development Agency for Law and Human Rights of the Ministry of Law and Human Rights. (2016). *Gender Equality in the Work Sector Viewed from a Civil Rights Perspective* (Second). PT Gramedia.
- [9] Legal and Public Relations Bureau. (2021). *REALIZE GENDER EQUALITY IN THE WORKPLACE, SUCCEED THE NATION'S ECONOMIC DEVELOPMENT*. Ministry of Women's Empowerment and Child Protection. <https://www.kemenpppa.go.id/index.php/page/read/29/3025/wujudkan-kesetaraan-gender-di-tempat-kerja-sukseskan-pembangunan-ekonomi-bangsa>
- [10] Legal and Public Relations Bureau. (2023). *2022 ACHIEVEMENTS AND 2023 RESOLUTIONS OF THE MINISTRY OF PPPA*. Ministry of Women's Empowerment and Child Protection. <https://kemenpppa.go.id/index.php/page/read/29/4340/capaian-tahun-2022-dan-resolusi-tahun-2023-kemenpppa>
- [11] Indonesia, R., President, P., & Indonesia, R. (2024). *National medium-term development plan 2020-2024*.
- [12] International Labour Organization. (2007). *ABC of women workers' rights and gender equality* (Second). International Labour Office.
- [13] International Labour Organization. (2022). *The gender gap in employment: What's holding women back?* International Labour Organization. <https://www.ilo.org/infostories/en-GB/Stories/Employment/barriers-women#intro>
- [14] Malau, P. (2013). *Legal Protection of Workers for Occupational Safety and Health*. PT Sofmedia.
- [15] Nature, I. U. for C. of. (2023). *No Title*. IUCN. <https://www.iucn.org/our-work/topic/gender-equality>
- [16] Nida, Q., & Rayhan, A. (2021). Legal Protection Against Child Labor. *Sultan Jurisprudence: Journal of Legal Research*, 1(1), 364-369. <https://doi.org/10.51825/sjp.v1i1.11402>
- [17] Ridwan HR. (2014). *State Administration Law* (Revised). Rajawali Press.
- [18] Susiana, S. (2017). Protection of Women's Workers' Rights in a Feminist Perspective. *Aspirations: Journal of Social Problems*, 8(2), 207-222.
- [19] Triningsih, A. (2020). *Labor Law: Labor Policy and Protection in Foreign Investment*. Rajawali Press.