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The Roles of Escorts for Women Who Are Having Cases Before the Law in Courts Under the Legal Jurisdiction of Palembang City

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Abstrak

Ketentuan Pasal 1 angka 1 Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 tentang Pedoman Mengadili Perkara Perempuan Berhadapan dengan Hukum menyebutkan bahwa Perempuan yang berhadapan dengan hukum meliputi perempuan yang berkonflik dengan hukum, perempuan sebagai saksi, perempuan sebagai korban atau perempuan sebagai pihak. Perempuan berhadapan dengan hukum mempunyai hak yang harus dilindungi, sesuai martabatnya sebagai perempuan untuk mendapatkan akses keadilan dalam sistem peradilan pidana serta mempunyai hak untuk diperlakukan secara adil tanpa diskriminasi dalam sistem peradilan pidana, hak untuk mendapatkan pemulihan dan ganti kerugian atas penderitaan akibat tindak pidana serta mempunyai hak untuk memperoleh perlindungan dalam proses peradilan pidana dengan kemungkinan ancaman yang diterima berkaitan dengan perkara yang melibatkannya, oleh karena hal tersebut perlu kiranya dibutuhkan Pendamping yang dapat dipercaya dalam mendampingi perempuan yang berhadapan dengan hukum (PBH) selama mengikuti proses peradilan sehingga terlaksana dan terakomodir hak-hak bagi PBH.

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Abstract

Chapter 1 article 1 of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 has clearly defined that women having cases before the law consist of women who violate the law, women who testify in court, female crime victims, and women who stands as a party in a case. They have the right to get protection, access to justice, and receive fair treatment without discrimination. In addition, they are also entitled to receive recovery and restitution from the damage caused by a crime. Protection during the judicial process must also be provided because of the potential threats they may face in cases involving them. Therefore, it is very important to provide trustworthy escorts while they are following the judicial process so that their rights can be fulfilled and properly accommodated.

INTRODUCTION

According to the Indonesian Constitution, the state accommodates the rights of everyone having cases before the law, including women. Women who are having cases before the law have the right to obtain access to justice. As a country that has ratified the International Covenant on Civil and Political Rights through Law number 12 of 2005, Indonesia guarantees equality before the law for all people and frees them from all forms of discrimination, including gender discrimination. Furthermore, as a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Indonesia recognizes that the state ensures that its female citizens have access to justice and are free from discrimination in their justice system.¹ In Indonesia, the rights of women having cases before the law are detailed in laws and regulations. The criminal justice system is one of the efforts to provide women who are having cases before the law with the protection of their rights at every stage of the trial.² The position of women in Indonesian law has been explained in the Indonesian Constitution.³

Based on the explanation above, the state is obliged to protect every citizen, as written in the preamble of the Indonesian Constitution; that is to protect all the people of Indonesia and all the independence and the land that has been struggled for, and to improve public welfare, to educate the life of the nation and to participate toward the establishment of a world order based on freedom, perpetual peace, and social justice. Here protection for women in general and women who are having cases before the law is included. As a country that has ratified the International Covenant on Civil and Political Rights through Law number 12 of 2005, Indonesia guarantees people's equality before the law without exception. Chapter 1 article 10 of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 concerning the Guidelines for Adjudicating Women's Cases Before the Law has mentioned that women having cases before the law are justified to have an escort. The regulation defines that escorts are a person or a group or

¹ Pokja Perempuan and Anak Mahkamah Agung Republik Indonesia MaPPI, "FHUI. Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum" (Jakarta: AIPJ, 2018).

² Aliani Fauziyah, Lilis Ratnaningsih, and Yuyut Prayuti, "Perlindungan Hukum Bagi Perempuan Yang Berhadapan Dengan Hukum Ditinjau Dari Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum," *Jurnal Pemuliaan Hukum* 1, no. 2 (2019).

³ Nurhilmiah, Nurhilmiah, "Perlindungan Hukum Terhadap Perempuan Berhadapan Dengan Hukum Sebelum Dan Sesudah Lahirnya Perma Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum," *De Lega Lata: Jurnal Ilmu Hukum* 4, no. 2 (2019): 211–19.

an organization that is trusted, who has the skills and knowledge to accompany women having cases before the law so that they feel safe and secure in giving statements during the judicial process. They may be paralegals, family or relatives, legal advisor, psychologists, psychiatrists, social workers, legal aid institutes, non-governmental organizations, or women's crisis centers.

Women having cases before the law, especially those who are victims of rape, must be protected by law enforcers as they might be in a complicated position like the following.

- a. They are blamed because they go out alone at night or wear outfits that attract people to harass them.
- b. They are considered to have allowed the perpetrator's actions because they did not fight back, did not scream for help, or did not run away during the incident.
- c. Their testimony is questionable especially if they previously had a romantic relationship with the perpetrator. They are considered to have contributed to and enjoyed what the perpetrator did.
- d. They were blamed because they were willing to go with the perpetrator. Women who are willing to go with men are seen as “cheap” and considered agree to be harassed by the perpetrator.
- e. They are blamed because they agreed to other forms of intimacy (e.g., kissing). Certain communities believe that kissing is consent for sexual intercourse.

M. Yahya Harahap stated that humans, either suspects or defendants, must be treated according to the dignity and honor inherent in them. Women must not be seen as merchandises that can be exploited for profit and the wealth of law enforcers. In the fight for these right for women, various policies and programs have been implemented, but the results still have to be improved. One of the forms of the policy is legislation, namely the ratification of the convention on the elimination of all forms of discrimination against women. Equality between women and men is a long process which is still being fought for. Hence, this research discusses more deeply about the role of escorts for women having cases before the law in the judicial realm, identifies obstacles found in the accompaniment of the escorts, and identifies efforts to overcome these obstacles.

METHOD

This normative research uses statute approach, conceptual approach, and case approach; the data of which was harvested from interviews.

DISCUSSION AND ANALYSIS

According to Chapter 1 of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 concerning the Guidelines for Adjudicating Woman's Cases Before the Law, women will be considered to have cases before the law if they are included into either of the following three categories.⁴

- a. Women as victims
- b. Women as witnesses
- c. Women as a party

Chapter 2 of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 concerning the Guidelines for Adjudicating Women's Cases Before the Law states the principles that must be obeyed by judges in trying cases in this context.⁵ These principles are respecting human dignity and honor, eliminating discrimination, upholding gender equality, recognizing equality before the law, upholding justice, providing expediency, and providing legal certainty.

1. Arrangement of Escort for Women Having Cases Before the Law di Palembang

In relation to the recognition, protection, and fulfillment of human rights, the legal sources that must be used are as follows.⁶

- a) The Indonesian Constitution. It contains fourteen groups of rights which are described in the forty constitutional rights of citizens. Chapter 27 article 1 of the constitution states that all people are equal before the law.
- b) Law number 8 of 1981 concerning the code of criminal procedure. The rights of suspects and defendants are regulated by the code in Chapters 50 to 68.
- c) The Law of the Republic of Indonesia number 7 of 1984 concerning the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

⁴ Nurhilmiyah. *Ibid*

⁵ *Ibid*

⁶ Kadek Wiwik Indrayanti, "Kajian Parameter Gender Dalam Substansi Peraturan Perundang-Undangan Di Indonesia," *Jurnal Cakrawala Hukum* 12, no. 2 (2021): 195–204.

- d) The Law of the Republic of Indonesia number 39 of 1999 concerning human rights
- e) The Law of the Republic of Indonesia number 11 of 2005 on the ratification of the International Convention on Economic, Social, and Cultural Rights
- f) The Law of the Republic of Indonesia number 12 of 2005 on the ratification of the International Convention on Civil and Political Rights
- g) The Law of the Republic of Indonesia number 19 of 2011 on the ratification of the Convention on the Rights of the Persons with Disabilities
- h) Presidential Decree Number 36 of 1990 concerning the ratification of the Convention on the Rights of Child
- i) The law of Protection for Witnesses and Victims
- j) The Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 on the Guidelines for Adjudicating Women's Cases Before the Law

The issuance of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 on the Guidelines for Adjudicating Women's Cases Before the Law is to ensure the elimination of all potential discrimination against women who are having cases before the law. This regulation is a step forward for the world of justice in Indonesia, and it is expected that the regulation will become a standard for judges and all judicial apparatus in handling cases involving women, either as perpetrators, witnesses, victims, or as a party.

According to the Institute for Criminal Justice Reform (ICJR), prior to the issuance of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 on the Guidelines for Adjudicating Women's Cases Before the Law, judges have different perceptions about trying cases involving women. There are several judges' decisions whose considerations distance women from access to justice. A judge is expected to refer to and apply the principles of respecting human dignity and honor, eliminating discrimination, upholding gender equality, recognizing equality before the law, upholding justice, providing expediency, and providing legal certainty. In trying women's cases before the law, judges must be able to identify unequal situations or treatments that result in discrimination against women and must be able to ensure women's rights to equal access to justice.⁷

⁷ Muammar Arafat Yusmad and Firman Muhammad Arif, "Menyoal Penerapan PERMA NO. 03 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum Di Pengadilan (Studi Di Pengadilan Negeri Palopo)," *MADDIKA: Journal of Islamic Family Law* 1, no. 2 (2020): 11–24.

MaPPI UI stated that the rights of women having cases before the law in court are the following.

- 1) The right to obtain protection for their personal security, their family, and their property from threats related to testimony that will be given, is being given, and has been given
- 2) The right to provide information without pressure
- 3) The right to be free from tricky questions
- 4) The right to obtain information regarding the development of their cases and court decisions
- 5) The right to get an escort
- 6) The right for identity confidentiality
- 7) The right to obtain legal advice
- 8) The right to get an interpreter
- 9) The right to receive restitution
- 10) The right to obtain restoration to original state

Judges must have a perspective that guarantees protection for women. Mahfud MD, as quoted by Amsori⁸, stated that the approach to restorative justice originates from Indonesian legal culture, that law is not a tool to seek victory, and that law exists as a tool to build harmony and togetherness in the society. Therefore, minor criminal cases do not have to be brought to court. There are cases that can be resolved through negotiation, mediation, and restorative justice.

2. Effectiveness of Escort Arrangement for Women Having Cases Before the Law

Legal protection, legal certainty, justice, and equality before the law are guaranteed in chapter 28 letter D article 1 of the Indonesian Constitution. Even though there are legal guarantees protecting women and emphasizes on the state's obligation to ensure that women are free from discrimination in the justice system, equality before the law and access to justice for women is in fact not an easy thing. Women often face multiple obstacles in obtaining their rights⁹ due to discrimination and negative stereotyping based on gender.

⁸ Amsori, Amsori, "Penanggulangan Tindak Pidana Perkosaan Dalam KUHP Dan Qanun Jinayat Melalui Pendekatan Keadilan Restoratif," *Jurnal Hukum Indonesia* 1, no. 1 (2022): 1–9.

⁹ Fauziah, Ratnaningsih, and Prayuti, "Perlindungan Hukum Bagi Perempuan Yang Berhadapan Dengan Hukum Ditinjau Dari Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum."

Every woman has special virtues related to human rights, and they have been recognized and guaranteed by the law. Women, who belong to a vulnerable group, get a special place in the protection of human rights.¹⁰ In the case of women being the sufferers of crimes, it is still frequently found that they were revictimized. After having suffered from physical and psychological damage¹¹, they still have to bear another burden of undergoing investigations at trials. They frequently have to face questions that corner, trap, and harass them. Sometimes they are asked to repeatedly retell what they have gone through, and this makes them tired, stressed, and depressed. They also have to pay their expenses during the investigation by themselves. After the trial is over, they are still psychologically and socially depressed, and this gets worse when the person who have harmed them goes unpunished; their trauma and fear grew larger.

Chapter 9 of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 states that accompaniment is a situation when a woman having a case before law is accompanied by an escort during a trial, especially when she is being questioned or giving testimony in a court. Her escort will sit next to her when she gives statements and for as long as she needs them. The judge, on his own initiative, may suggest an accompaniment, or, by the woman's request, allow or require the accompaniment due to the woman's physical and psychological condition.

The application of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 in courts situated in the research area is described below.

1. Religious Court Class I A of Palembang for Judicial Divorce

The definition of judicial divorce and repudiation divorce can be found in the Compilation of Islamic Law Chapter 132 article 1, in which the former is proposed by the wife or her lawyer to the Religious Court whose jurisdiction covers the place of her residence unless she leaves her shared residence without her husband's permission.

The request of the judicial divorce can be accepted if the defendant states or shows an attitude of not wanting to return to the shared residence (Chapter 132 article 2 of the Compilation of Islamic Law). Repudiation divorce is regulated in Chapter 114 of the Compilation of Islamic Law, which states that the termination of a marriage caused by divorce can occur due to talak

¹⁰ Suci Flambonita, "Perlindungan Hukum Terhadap Hak Pekerja Perempuan Di Bidang Ketenagakerjaan," *Simbur Cahaya* 24, no. 1 (2017): 4397–4424, <https://doi.org/http://dx.doi.org/10.28946/sc.v24i1%20Jan%202017.50>.

¹¹ S H SUSYLAWATI and M Musawwamah, "Penerapan Peraturan Mahkamah Agung Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum Di Peradilan Agama" (Duta Media Publishing, 2020).

or based on a divorce lawsuit. Repudiation according to Chapter 117 of the Compilation of Islamic Law is a husband's pledge before the Religious Court, from which the reasons for the divorce are based on. This is regulated in Chapter 129 of the Compilation of Islamic Law, which states that a husband who will repudiate his wife from their marriage shall submit an oral and written application to the Religious Court whose jurisdiction covers the wife's place of residence. He will be required to provide arguments for his repudiation and must request a trial for that purpose.

The following are cases registered at the Religious Court Class I A of Palembang.

Table 2
Data of Judicial Divorce Cases Based on Their Causes
In the 2020-2022 Period

No.	Cases	Year		
		2020	2021	2022
1.	Domestic Violence	37	33	8
2.	Disputes and Quarrels	1077	2091	1593
3.	Negligence	218	197	33

Source: processed secondary data

Table 1 shows that, in divorce involving women having cases before the law in an equal civil position with the husband, the most frequent causes are, first, disputes between husband and wife. What is interesting is that, in judicial divorce cases, domestic violence is also included as the main cause of divorce although the percentage is much smaller than disputes. The second most common cause is the negligence of one party. In this matter, almost 85% of the cases were caused by a husband leaving his wife for a long time, i.e., one to three years.

Domestic violence in those cases includes physical, psychological, sexual, and economic abuse. The causes of some cases related to domestic violence are not clearly stated due to various factors. The results of the interviews conducted in Religious Court Class I showed that the divorce cases above were caused by economic problems, quarrels between husbands and wives, and affairs. Those are the most causes for divorce due to domestic violence.

According to one of the judges of the Religious Court in Palembang, one form of protection for women having cases before the law is allowing them to submit judicial divorce proposals to religious courts located in their area of residence, in compliance with the Regulation of the Supreme Court of the Republic of Indonesia number 1 of 2016. This regulation makes it easier for them to file their lawsuit, guarantees their rights and the rights of their children, and

assuring them to get their *iddah*, *keswaha*, *maskan* allowance from their husband, should the divorce verdict have been ruled. Hence, according to Lekat, this protection has been given by the Religious Court in accordance with the contents of the relevant law.¹²

It is frequent that women having cases before the law have to bear a heavier burden when they are being investigated at trial as they must answer questions that make them cornered, trapped, and harassed, which in turn makes their psychological condition weakened during the trial. Issues about women having cases before the law have been addressed by the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017. The regulation stipulates the processes or stages that make women having cases before the law protected from judge's attitudes and statements that make them feel isolated and guilty in court.

At every opportunity, the heads of the courts in Palembang, either religious court, court martial, and district court, remind all judges of those courts to attend training on the guidelines for adjudicating women's cases before the law.¹³ Women who are having cases before the law, at their own disposal, can seek legal assistance from the court's legal aid office, can appoint their own lawyers, and can request accompaniment from their families. Therefore, they can choose between having an escort or not, and they can choose the escort that they want.

Takdir Rahmadi emphasized the need for training and socialization on the guidelines for adjudicating women's cases before the law for judges and mentioned that the issuance of the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 is an important breakthrough in dealing with women having cases before the law. In order to make the Supreme Court's regulation run well, the mindset of the judges must be reoriented. Appropriate training and guidance are expected to change their mindset. They must be made to think that women are not the object of repeated judgment from society and law enforcement officials, that women must be respected, that their existence as citizens must be recognized, and that their rights, especially during the trial process, must be accommodated.

¹² Extracted from the interview with Mr. Lekat, a judge at the Religious Court Class I A, on Tuesday, September 16, 2022

¹³ Extracted from the interview with Mr. Lekat, a judge at the Religious Court Class I A, on Tuesday, September 16, 2022 and Mr. Dwi Yudho, a judge at the Court Martial I 04 Palembang, on Monday, September 19, 2022

The results of the interview¹⁴ also show that the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 has been implemented according to the socialization received by the judges of the District Court of Palembang, Religious Court of Palembang, and Court Martial I 04 of Palembang. The protection given to women having cases before the law prioritizes the principle of the presumption of innocence, legal principles, and justice principle. It also provides protections from statements that are harassing or blaming them, from vulgar questions, from questions about their background that discredit them, and from anything that harms their psychological wellbeing.

2. Court Martial I 04 of Palembang

In 2022 Court Martial I 04 of Palembang handled 27 cases involving women having cases before the law, which are presented in the following table.

Table 3
Data of Women Having Cases Before the Law in the Court Martial I 04 of Palembang Until 2022

No.	Cases	Perpetrator	Victim	Witness
1.	Embezzlement	-	-	1
2.	Mistreatment	-	1	1
3.	Crimes against morality	-	2	16
4.	Domestic violence	-	1	-
5.	Family negligence	-	-	1
6.	Minor insult	-	1	-
7.	Fire arms	-	-	2
8.	Desertion	-	-	1
9.	Child protection	-	1	4
10.	Life-threatening crime	-	-	1
	Total		6	27

Source: processed secondary data 2022

The table 3 shows that in 2022 there are no women in the Court Martial of Palembang who violated the law; most of them are witnesses to crimes against morality. According to the informants, most of the women attending the military courts in 2022 are victims and witnesses of the crime committed by male military officers.

¹⁴ Extracted from the interview with Mrs. Khotimah, a registry employee of the District Religious Court Class IA, September 2, 2022

The principles used by judges in treating women having cases before the law, as either perpetrator, victim, or witness of a criminal case, are as follows.

- a. Recognition to human dignity and honor
- b. Non-discriminatory conduct
- c. Gender equality
- d. Equality before the law
- e. Justice
- f. Legal expediency and certainty

According to Dwi Yudo, one of the judges at Court Martial I 04 of Palembang, trials for women having cases before the law have been carried out in accordance with the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017. Women who attended trials at the court martial were mostly witnesses and victims of criminal acts committed by male military officers.¹⁵ During the 2021-2022 period, no women have been found conflicting with the law.

3. District Court Class I A of Palembang

According to the District Court Class I A of Palembang, from January to October 2022, fifty-three women were recorded for conflicting with the law in 53 criminal cases as listed in the following table.

Table 4
Number of Women Having Cases Before the Law as Victims from January to October 2022

No.	Cases	Perpetrator	Victim	Witness
1.	Embezzlement	9	-	-
2.	Mistreatment (351 of the Criminal Code)	4	-	-
3.	Drug abuse (114 of Law 35/09)	24	-	-
4.	Fraud (378 of the Criminal Code)	8	-	-
5.	Electronic information and transaction	1	-	-
6.	Burglary (362 of the Criminal Code)	5	-	-
7.	Gambling (303 of the Criminal Code)	1	-	-
8.	Document forgery (263 of the Criminal Code)	1	-	-

¹⁵ PN Purwakarta, Perma Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum .

	Total	53	-	-
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Source: processed secondary data 2022

Based on the table above, the most crimes committed by women was drug abuse. The data confirms the 2022 record of the Female Correctional Facility Class II A.

Table 5
The Number of Women Having Cases Before the Law in the District Court of Palembang from January to October 2022

No.	Verdict Entry Number	Perpetrator/Accused	Crime
1	1402/Pid.B/2022/PN Plg	NA	Chapter 378 of the Criminal Code
2	1321/Pid.Sus/2022/PN Plg	LI	Chapter 114 of the Drug Law
3	1245/Pid.B/2022/PN Plg	FY	Chapter 351 of the Criminal Code
4	1246/Pid.Sus/2022/PN Plg	SN	Chapter 114 of the Drug Law
5	1233/Pid.B/2022/PN Plg	RS	Chapter 351 of the Criminal Code
6	1232/Pid.B/2022/PN Plg	JM	Chapter 263 of the Criminal Code
7	1166/Pid.Sus/2022/PN Plg	SP	Chapter 114 of the Drug Law
8	1177/Pid.Sus/2022/PN Plg	SRW	Chapter 114 of the Drug Law
9	1093/Pid.B/2022/PN Plg	AP	Chapter 378 of the Criminal Code
10	1095/Pid.B/2022/PN Plg	FE	Chapter 372 of the Criminal Code
11	1025/Pid.B/2022/PN Plg	1. EI 2. OR	Chapter 378 of the Criminal Code
12	1005/Pid.Sus/2022/PN Plg	1. SK 2. MY	Chapter 114 of the Drug Law
13	1000/Pid.Sus/2022/PN Plg	IS	Chapter 114 of the Drug Law
14	957/Pid.B/2022/PN Plg	MP	Chapter 372 of the Criminal Code
15	960/Pid.B/2022/PN Plg	1. RG 2. RN	Chapter 362 of the Criminal Code
16	953/Pid.B/2022/PN Plg	RJ	Chapter 378 of the Criminal Code
17	933/Pid.B/2022/PN Plg	RG	Chapter 378 of the Criminal Code
18	929/Pid.B/2022/PN Plg	EY	Chapter 372 of the Criminal Code
19	899/Pid.B/2022/PN Plg	AB	Chapter 362 of the Criminal Code
20	881/Pid.Sus/2022/PN Plg	LM	Chapter 114 of the Drug Law
21	871/Pid.B/2022/PN Plg	ST	Chapter 351 of the Criminal Code
22	820/Pid.B/2022/PN Plg	1. MT 2. SL	Chapter 362 of the Criminal Code
23	809/Pid.B/2022/PN Plg	ACH	Chapter 378 of the Criminal Code
24	805/Pid.Sus/2022/PN Plg	KN	Chapter 114 of the Drug Law
25	791/Pid.Sus/2022/PN Plg	RA	Chapter 114 of the Drug Law
26	762/Pid.B/2022/PN Plg	FAT	Chapter 372 of the Criminal Code
27	712/Pid.Sus/2022/PN Plg	ME	Chapter 114 of the Drug Law
28	592/Pid.B/2022/PN Plg	OT	Chapter 378 of the Criminal Code
29	569/Pid.B/2022/PN Plg	1. AS 2. NH	Chapter 372 of the Criminal Code
30	576/Pid.B/2022/PN Plg	YT	Chapter 372 of the Criminal Code
31	547/Pid.Sus/2022/PN Plg	RS	Chapter 114 of the Drug Law
32	512/Pid.B/2022/PN Plg	NM	Chapter 372 of the Criminal Code
33	533/Pid.Sus/2022/PN Plg	TF	Chapter 114 of the Drug Law

34	440/Pid.Sus/2022/PN Plg	RU	Chapter 114 of the Drug Law
35	446/Pid.B/2022/PN Plg	EN	Chapter 303 of the Criminal Code
36	385/Pid.Sus/2022/PN Plg	SH	Chapter 114 of the Drug Law
37	386/Pid.B/2022/PN Plg	AS	Burglary Chapter 362
38	347/Pid.B/2022/PN Plg	IS	Chapter 372 of the Criminal Code
39	339/Pid.Sus/2022/PN Plg	HY	Chapter 114 of the Drug Law
40	324/Pid.Sus/2022/PN Plg	AN	Chapter 114 of the Drug Law
41	305/Pid.Sus/2022/PN Plg	MY	Chapter 114 of the Drug Law
42	303/Pid.Sus/2022/PN Plg	SA	Chapter 114 of the Drug Law
43	265/Pid.Sus/2022/PN Plg	SY	Chapter 114 of the Drug Law
44	235/Pid.B/2022/PN Plg	MK	Chapter 378 of the Criminal Code
45	204/Pid.B/2022/PN Plg	AN	Chapter 372 of the Criminal Code
46	183/Pid.Sus/2022/PN Plg	NH	Chapter 114 of the Drug Law
47	131/Pid.Sus/2022/PN Plg	ID	Chapter 114 of the Drug Law
48	86/Pid.B/2022/PN Plg	OFN	Chapter 362 of the Criminal Code
49	79/Pid.B/2022/PN Plg	YL	Chapter 351 of the Criminal Code
50	59/Pid.Sus/2022/PN Plg	YO	Chapter 114 of the Drug Law
51	61/Pid.Sus/2022/PN Plg	NH	Chapter 114 of the Drug Law
52	39/Pid.Sus/2022/PN Plg	MR	Chapter 114 of the Drug Law
53	17/Pid.Sus/2022/PN Plg	YI	Electronic Information and Transaction
	TOTAL	53 PEOPLE	

Source: processed secondary data 2022

The law enforcement process, in general, must be based on four principles: equality before law, legal certainty (*rechtssicherheit*), justice (*gerechtigkeid*), and legal expediency (*zweckmasigkeit*).¹⁶ According to the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 on the Guidelines for Adjudicating Women's Cases Before the Law, three principles must be added; they are recognition to human dignity and honor, non-discriminatory conduct, and gender equality. In terms of non-discriminatory conduct, judges are prohibited from discriminating, isolating, and making restrictions based on gender, especially against women having cases before the law. Chapter 4 of the regulation above states that, in investigating cases, judges must consider gender equality and must not discriminate them by identifying the facts of the trial¹⁷ concerning (a) inequality of social status between the litigants, (b) inequality in legal protection that impacts on access to justice, (c) discrimination, (d) the psychological impact on the victim, (e) the physical and psychological powerlessness of the victim, (f) power relations that result in the victim/witness being helpless,

¹⁶ Haniah Ilhami, "Kedudukan Asas Keadilan Berimbang Dalam Hukum Kewarisan Islam Dikaitkan Dengan Peraturan Mahkamah Agung Ri Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada* 32, no. 2 (2020): 243–59.

¹⁷ Silmi Mursidah, "Analisis Masalah Terhadap PERMA Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum" (UIN Sunan Ampel Surabaya, 2018).

and (g) the perpetrators violence history. Chapter 5 states that, in investigating women having cases before the law, judges may not (a) show attitudes or make statements that demean, blame, and/or intimidate them; (b) allow discrimination against women using culture, customary rules, and other traditional practices, or gender-biased interpretations of experts; (c) question and/or consider the experience or the sexual background of the victim as a basis for releasing the perpetrator or reducing the perpetrator's punishment; and (d) issue gender-stereotyping statements or views.

Chapter 6 of the regulation states that, in adjudicating woman's cases before the law, judges must (a) consider gender equality and gender stereotypes in statutory regulations and unwritten laws, (b) interpret statutory regulations and/or unwritten laws that can guarantee gender equality, (c) explore legal values, local wisdom, and justice values that exist in the society to guarantee gender equality, provide equal and non-discriminative protection, and (d) consider the application of ratified conventions and international agreements on gender equality. Chapter 7 states that, during the court investigation, judges must prevent the parties, legal advisers, public prosecutors, and/or attorneys from behaving or making statements that demean, blame, and intimidate women having cases before the law and/or exploit their sexual experience or background.

Efforts of restoring the victim's condition to its original state are contained in Chapter 8 article 1. At this point judges must ask the women as victims of crimes about their losses and the impact of the crimes on them and about anything needed for their recovery. Article 3 states that, in terms of restoring the victim's or harmed party's condition, judges must (a) be consistent with the principles and standards for human rights, (b) be free from gender-stereotyping views, and (c) consider the situation and interests of the victims from the disproportionate losses due to gender inequality.

Chapter 9 explains about the escorts for women having cases before the law. It is stated that, if the women who are having cases before the law have physical and psychological difficulties so that they need accompaniment, (a) judges can advise the women to have an escort, and (b) they should grant their request of having an escort. Chapter 10 states that a judge, on his own initiative and/or by the request of the parties, the public prosecutor, legal advisers and/or the victim, can order the court to have the statement of the women who are having cases before the law to be heard through remote audio visual communication if (a), based on the assessment

of a doctor or psychologist, the mental or psychological condition of the woman is low due to fear or trauma, (b) based on his assessment, the safety of the women is at a risk if they are out in public or in the open, or (c), based on the decision of the Witness and Victim Protection Agency, the women are declared to be under the protection program and/or, according to the assessment of the Witness and Victim Protection Agency, they cannot be presented in trials due to either security reasons or physical and psychological hindrance.¹⁸

Regarding the accompaniment of women who are having cases before the law, the judge must ask the women whether they would come to the court by themselves or accompanied by their legal advisors. According to one of the female judges, Erica Mardeleni, accompaniments are more common to be given by the Women's Empowerment and Child Protection Service where the female witnesses or victims of a crime (especially the crimes against morality, obscenity, and crimes that may threaten their children) live. For women who violate the law, the accompaniment is usually given by their legal advisors, by referring to Chapter 56 article 1 of the Code of Criminal Procedure. This chapter states that, in the event that a suspect or defendant is charged for committing a crime that might lead to death penalty or fifteen years of imprisonment or more and in the event that they are unable to appoint or have their own legal advisor, the related law enforcers at all levels of investigation in the trial process must appoint a legal advisor for him/her.

Based on the details above, when a judge is leading a court in which the perpetrator is facing a punishment of more than 15 years of imprisonment, he must appoint pro bono legal assistance for the defendant. However, if the potential punishment is shorter than 15 years, the defendant may or may not be accompanied by legal advisors, and if he/she chooses to be accompanied, he/she must find his/her legal advisor by himself or herself.

CONCLUSION

1. The arrangement of escorts for women having cases before the law in the legal jurisdiction of Palembang City has complied the Regulation of the Supreme Court of the Republic of Indonesia number 3 of 2017 on the Guidelines for Adjudicating Women's Cases Before the Law. The regulation has run well and has been implemented according to the positive law in force in Indonesia.

¹⁸ Ani Triwati, "Akses Keadilan Sebagai Perlindungan Hukum Bagi Perempuan Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *Humani (Hukum Dan Masyarakat Madani)* 9, no. 1 (2019): 72–91.

2. Regarding the effectiveness of the regulation in court, a judge must actively fulfill the rights of women who are having cases before the law as either perpetrators, victims, or witnesses of criminal acts in each trial process, from investigation to verdict. He must always recognize their dignity and the honor and eliminate gender bias in his treatment and judgment. Accompaniment in the first-level court is fully decided by the woman who is having cases before the law; they can choose whether or not they take the accompaniment of escorts throughout the trial processes. However, in most events, women who are having cases before the law refuse the accompaniment, regardless who the escorts are, neither from their families nor from the NGOs. They think that their problems are private matters, shameful, and something they do not want other people to know. The second obstacle for the application of the regulation is the absence of punishment for the ex-husbands who have not fulfilled their obligation to provide allowances for the *iddah* period. This puts losses for the wife's side, making them have other hard times due to their ex-husband's negligence who intentionally avoid giving the right of his divorced wife. The third obstacle is that most women victims of crime are reluctant in giving testimony since they are afraid of the threat posed by other parties. For example, women who are charged for drug abuse cases tend to be uncooperative, and this makes judges slow in their investigation, and the effort to cut the illegal drug selling chain becomes futile.

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