

CHAPTER FOUR

FINDING AND ANALYSIS

A. History of Protection against Discrimination of Women

The equality of rights is one of the basic principles of the United Nations. The Preamble of the United Nations Charter was regulated as one of the organization's central goals in reaffirming fundamental human rights, human dignity and worth, in the equal rights between men and women.³² Article 1 stated that one of the objectives of the United Nations is to realize international assistance in promoting and encouraging concerns for human rights and fundamental freedom for all without restrictions, such as gender.³³ Human Rights is rights that exist and are inherent in human self or dignity, because he or she is human.³⁴

Based on the provisions of the Charter, the first international instruments show specifically for human rights and the equal rights of men and women, all members of the United Nations are legally bound to strive to the full realization of all human rights and fundamental freedoms. The status of human rights, including the goals of equality between men and women, where there is an increase in the ethical issue of the status of human rights being

³² United Nations Charter.

³³ Article 1 of United Nations Charter.

³⁴ Martinus Sardi, 2014, *Menuju Masyarakat Berwawasan Hak-Hak Asasi Manusia*, Yogyakarta, Center for Religion and Peace Studies, p.1.

appointed as contractual obligation involving all member governments and the United Nations.³⁵

The Convention on the Elimination of All Forms of Discrimination of Women (CEDAW) is a human rights treaty that affirms reproductive rights for women, social and traditional goals as substantial efforts to shape gender roles and family relations.³⁶ All members of United Nations agree to take all appropriate measures against all forms of discrimination against women and the exploitation of women.³⁷ The making of this Treaty was the first critical step in developing a standard for fundamental human rights for women. The standards address abuses on physical, sexual, economic, and political rights of women and protect women's equality of rights.³⁸

The history of the ratification and enactment of the CEDAW is very long. There are many international instruments about women before the proposed Convention on the Elimination of All Forms of Discrimination against Women. United Nations Commission on the Status of Women (CSW) is a United Nations body formed in 1947 to consider and formulate policies that will improve women's position in society.³⁹ CEDAW is an international

³⁵ Linda M. Keller, 2004, "The Convention on the Elimination of All Forms of Discrimination Against Women: Evolution and Non-Implementation Worldwide", *Thomas Jefferson Law Review*, Vol. 27, No. 1, San Diego, Thomas Jefferson School of Law, p. 36.

³⁶ United Nations, "Convention on the Elimination of All Forms of Discrimination against Women", taken from <https://www.un.org/womenwatch/daw/cedaw/> accessed on May 23rd, 2019 at 11 am.

³⁷ *Ibid.*

³⁸ FAWCO, "Convention on the Elimination of All Forms of Discrimination against Women", taken from <https://www.fawco.org/component/content/article?id=188&Itemid=0> accessed on May 23rd, 2019 at 12 am.

³⁹ Linda M. Keller, *Loc. Cit.*

effort carried out by the Commission on the Status of Women (CSW) within the United Nations Decade for Women aimed at protecting and promoting women's rights throughout the world.

During the 1960's, there was increased awareness around the world about the many ways of discrimination were the subjected women.⁴⁰ In 1963, the United Nations General Assembly (UNGA) noted the increasing number of discrimination against women and asked that the Commission on the Status of Women produced a draft on Declaration on the Elimination of Discrimination against Women. In 1966 a draft Declaration of the Elimination of All Forms of Discrimination against Women came out. As a result, in 1967, this draft was approved to become a Declaration on the Elimination of All Forms of Discrimination against Women based on Resolution 2263 (XXII).⁴¹ This declaration is an international instrument that contains standards on equal rights of men and women, but this Declaration is just an announcement of political intent, not a binding treaty.

Then in 1970, the United Nations General Assembly urged the ratification or accession of relevant international instruments that are related to the position of women. The effort was continued by the Commission on the Status of Women in 1972 with preparing a treaty intended to bind the implementation of the contents of the Declaration. Along with this, the

⁴⁰ Judith Resnik, 2012, "Comparative equalities: CEDAW the Jurisdiction of Gender and the Heterogeneity of Transnational Law Production", *International Journal of Constitutional Law*, Vol. 10, No. 2, Oxford, Oxford University Press, p. 537.

⁴¹ *Ibid*, p. 538.

Economic and Social Council appointed a working group of 15 people to begin the drafting of the Convention in 1973. The United Nations General Assembly proclaimed 1976 to 1985 as the United Nations Decade for Women. The impact of the decade on United Nations member states is that they must pay attention to women, and the emphasis will continue with the on-going conference that will be held to achieve gender equality.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly on December 18, 1979, and it took legal effect in 1981. In its resolution, the General Assembly hoped that the Convention could be implemented immediately. Then, the United Nations Secretary-General was requested to form the manuscript of the Convention at the World Conference in the mid-decade of women which took place in Copenhagen. The approval of CEDAW is the culmination of international efforts aimed at protecting and promoting the rights of women throughout the world. Besides the long history of the establishment of CEDAW until enacted, below are the background thoughts of the birth of CEDAW:⁴²

1. Noting that the Universal Declaration of Human Rights affirms the principle of non-acceptance of discrimination and all human beings are born equal and free in dignity and rights, and every person has the right to

⁴² United Nations Women, "Convention on the Elimination of All Forms of Discrimination against Women", taken from <https://www.un.org/womenwatch/daw/cedaw/history.htm> accessed on July 4th, 2019 at 12 pm.

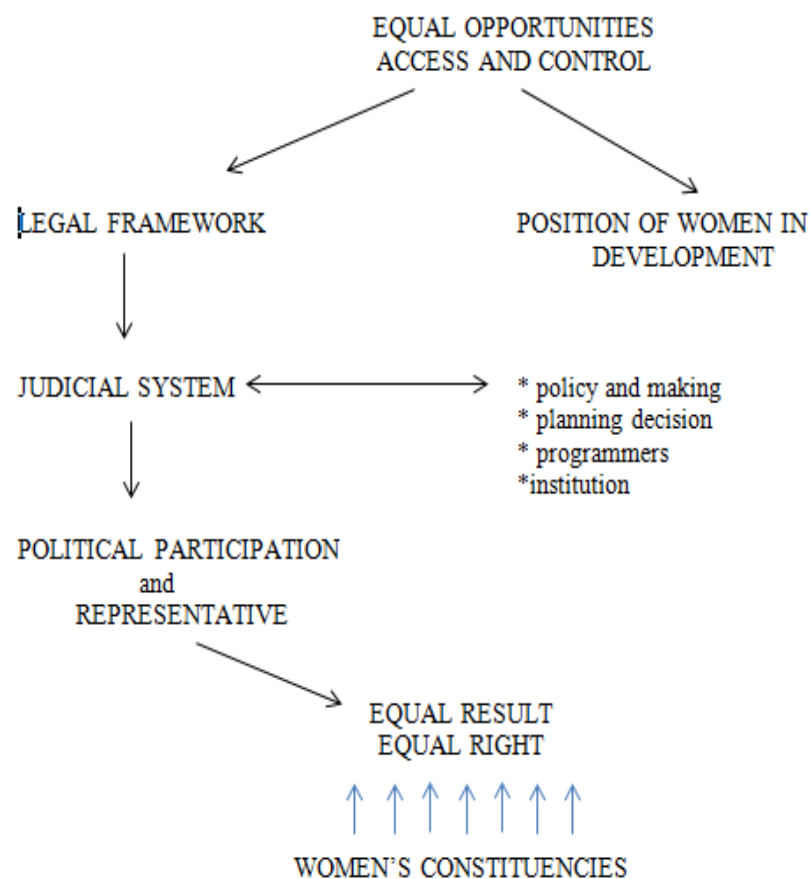
all rights and freedoms without any differences including gender differences.

2. Consider international Conventions under the United Nations and specialized agencies that advocate equality between men and women.
3. Pay attention to resolutions, declarations, and recommendations approved by the United Nations and particularly agencies that advocate equality between men and women, but even though the documents already exist, discrimination against women still occurs.
4. Discrimination against women is the principle of equal rights for human dignity, which is a difficulty to women's participation based on equality with men such as in political, social, economic, and cultural life. This can hamper the development of people's prosperity and increase the difficulty of the development of women's potential in their service to the state and humanity.
5. Recognize the need to change the traditional roles of men and women in family and society to accomplish full equality between men and women.
6. Women are contributions to family welfare and community development that have not been fully recognized so far.
7. Determined to carry out the principles stated in the Declaration of the Elimination of Discrimination against Women, and for that, it is necessary to make regulations to eliminate discrimination in all forms and manifestations.

Based on the thought of CEDAW, this Convention clearly regulated the protection of women from discrimination. It means that the nature of CEDAW is to remove the gap between men and women. Moreover, CEDAW ensures the empowerment of women, which is a form of the protection of CEDAW. The protections of CEDAW are for women, not only on the purpose or the thought of CEDAW but also on the content of CEDAW.

Figure 2. The Framework of the Convention⁴³

FRAMEWORK OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN¹



⁴³ International Women's Rights Action Watch Asia Pacific, 2001, "Building Capacity for Change: Training Manual on the Convention on the Elimination of All Forms of Discrimination against Women", *IWRAW Asia Pacific*, Kuala Lumpur, p.6.

To protect the equal rights of women, CEDAW has the framework to eliminate discrimination. To do it, CEDAW begins with the concept of development on the rights of women, because as we know the position of women in society is different to men. After that, from the concept, CEDAW begins to create a legal framework. This legal framework is used to suggest the states to create regulation or judicial system with regards to women rights. The judicial system must make sure that women have a proportional position in development, such as policy making, planning decision, programmers, and institutions. Moreover, the states ensure the participation of women in politics and representative of the government, to participation in making law. If all the concepts of this framework are already fulfilled by states, the result is the equality of women rights. This increases the Constitutions of women on that state.

B. Protection of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The objective of CEDAW is to acknowledge and accomplish the *de jure* and *de facto* of the equality of gender, which to be accomplished by a policy of elimination of discrimination against women incorporating all appropriate legislative and programmatic procedures.⁴⁴ CEDAW has three main principles. The first is the principle of equality, which is the effort to

⁴⁴ Dubravka Šimonović, 2007, “Convention on the Elimination of All Forms of Discrimination against Women”, taken from <http://legal.un.org/avl/ha/cedaw/cedaw.html> accessed on May 10th, 2019 at 11 pm.

uphold substantive equality of men and women.⁴⁵ Second, non-discrimination principle is the equal treatment between men and women, such as: the fulfillment of fundamental freedoms, and human rights.⁴⁶ Third, the principle of state obligations, in this case, the state is responsible for the realization of the equality of the rights of men and women in enjoying all economic, social, cultural, civil and political rights.⁴⁷

CEDAW was divided into six parts and 30 articles in total. The content of this Convention is divided into several parts, there are:⁴⁸

1. Introduction

This part explain of content, significance, and preamble of the Convention.

The preamble of this Convention contains the rationale for the importance of the Convention on the Elimination of All Forms of Discrimination against Women. In its consideration, the Convention recalls the recognition of fundamental rights contained in:

- a. United Nations Charter
- b. General Declaration on Human Rights
- c. International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights
- d. Other Conventions made by various bodies under the United Nations.

⁴⁵ Arifah Millati Agustina, 2016, "Hak-Hak Perempuan dalam Ratifikasi CEDAW dan Maqasid Asy-Syari'ah", *Al-Ahwal: Jurnal Hukum Keluarga Islam*, Vol. 9, No. 2, Yogyakarta, Universitas Sunan Kalijaga Yogyakarta, p. 204.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ UNICEF, 2011, Convention on the Elimination of All Forms of Discrimination against Women, *United Nations*, New York, United Nations, p. 9.

2. Part I

This part consist of 6 articles, there are:

- a. Article 1 about discrimination. Discrimination against women is an action of treating women directly or indirectly differently from men in a way which avoids them from enjoying their freedom;
- b. Article 2 on policy measures. Policy measure means in the country, there must be laws and policies to protect women from all discrimination, and all domestic laws and policies necessity is based on equality between women and men;
- c. Article 3 about the guarantee of human rights and fundamental freedoms. Governments should take actions in all aspects such as: economic, cultural, political, and social to ensure women will enjoy human rights and fundamentals freedoms;
- d. Article 4 about special measures. The special measure is the favour that women are not a subject of discrimination from men. They are meant to increase equality among them. These special measures should last until equality between women and men is achieved;
- e. Article 5 about sex role stereotypes and prejudice. Governments should put an effort to change gender stereotypes, mainly if these roles are based on the consideration of treatment or capacity that men is better than women, and;
- f. Article 6 about prostitution. Governments should take action, including making new regulation to stop prostitution of women.

3. Part II

This part consist of several articles, there are:

- a. Article 7 about political and Public life. Women have the right to voting and are elected to government positions like men. Women also have the right to make the decisions in the government and the way it carry out;
- b. Article 8 about representation. Women have the right to participate in the name of their country at the international level and to be a representative in international organizations, and;
- c. Article 9 about nationality. Women reserve the option to have a nationality, and to change it if they want.

4. Part III

This part is divided into five articles, there are:

- a. Article 10 about education. Women have a right to have an education, just like men;
- b. Article 11 about employment. Women must have similar opportunities to work, have equal payment, promotions, training, and access to healthy and safe working conditions as like men.
- c. Article 12 about health. Governments ensure that women should not be discriminated in health care;
- d. Article 13 about economic and social benefit. Women have equal rights to men in all aspects of social life on economic such as getting family benefits, getting bank loans, and taking part in sports and cultural life;

- e. Article 14 about rural women. Governments should fix the problems of women in rural areas and help women to look after and also contribute to their families and communities;

5. Part IV

In this part consist of 2 articles, there are:

- a. Article 15 about Law. The position of women and men is equal before the law, and they have similar legal capacity, and;
- b. Article 16 about marriage and family life. Women have similar opportunities as men to choose who they want to marry and the number of children they want.

6. Part V

This part consist of 6 articles, there are:

- a. Article 17 about the Committee on the Elimination of Discrimination against Women;
- b. Article 18 about national reports;
- c. Article 19 about rules of procedure;
- d. Article 20 about committee meetings;
- e. Article 21 about committee reports;
- f. Article 22 about the role of specialized agencies;

7. Part VI

In this part consist of several articles, there are:

- a. Article 23 about the effect on other treaties;
- b. Articles 24 about the commitment of states parties;

c. Article 25-30 about the administration of the Convention;

The structure of this Convention is very clear to protect the human right of women from all forms of discrimination. These articles clarify what women's rights are and what governments ought to do to end discrimination against women.⁴⁹ The purposes of this Convention are presented in Article 1, stating the term on discrimination against women.⁵⁰ The definition of discrimination on this article includes gender-based violence, which means violence directed against women due to reasons of gender or the issue influencing women disproportionately. It incorporates acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and hardships of freedom.⁵¹ This Article is one of the principles of non-discrimination on CEDAW.

Most of the articles of CEDAW consist of protection encouraging the equality and quality of women. Some parts of the protection on this Convention are about protection from gender-based violence or sexual harassment. Article 2 of CEDAW is one of the forms of protection of women from sexual harassment. It is stated that the State Party agree to pursue every single aspect, such as the procedure of eliminating discrimination against

⁴⁹ *Ibid.*

⁵⁰ Article 1 of Convention on the Elimination of All Forms of Discrimination against Women.

⁵¹ Article 6 of General Recommendation No. 19 on Violence against Women.

women, undertaking to find a way to eliminate discriminatory laws, approaches, and practices in the national legal framework.⁵²

This Article stated that the State Party should condemn all forms of discrimination against women, including sexual harassment. Aspects which are regulated in this Article to protect women from sexual harassment include:

- a. To embody the principle of equality in the national constitution between men and women means that states party should encourage the position of women through law and other appropriate to keep women from sexual harassment matter;⁵³
- b. To adopt the appropriate legislation, including sanctions for prohibiting all discrimination against women. On this part, the State Party shall provide sanctions for the perpetrators especially on the case of sexual harassment which needs special attention to be handled;⁵⁴
- c. To establish lawful insurance on the privileges of women on an equal with men. Moreover, to guarantee through competent national tribunals the effective protection of women against any discrimination, including sexual harassment. This part requires the state to build up national tribunals to handle cases of discrimination against women;⁵⁵

⁵² Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁵³ Article 2 (a) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁵⁴ Article 2 (b) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁵⁵ Article 2 (c) of the Convention on the Elimination of All Forms of Discrimination against Women.

- d. To refrain from participation in any action or practice of discrimination against women and to ensure that public authorities will act in congruity with this obligation. State Party shall protect women who are sexually harassed and ensure that there is a strict action to protect women from sexual harassment by the public authority;⁵⁶
- e. To take every single suitable measure to eliminate sexual harassment matters by person, organization, or enterprise. Based on this, the State Party should protect women from any possibility of sexual harassment in any fields;⁵⁷
- f. To taking all appropriate measures, including enactment, to adjust or annul present laws, regulations, customs, and applies which constitute as discrimination against women. CEDAW requests that State Party change laws and customs in their nation to guarantee women from sexual harassment matters;⁵⁸
- g. To cancel all national correctional arrangements which establish sexual harassment;⁵⁹

In this Article, many aspects that should be done by the State Party to protect women from all forms of discrimination start from the regulation and the individuals. This includes all forms of protection in CEDAW for women's

⁵⁶ Article 2 (d) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁵⁷ Article 2 (e) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁵⁸ Article 2 (f) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁵⁹ Article 2 (g) of the Convention on the Elimination of All Forms of Discrimination against Women.

lives, including sexual harassment cases. Besides that, Article 3 of CEDAW also regulated the protection of equality between men and women. The Article stated that States Parties would take in all fields including legislation to make sure of the full development and advancement of women, in the aim to promise them the implementation and enjoyment of human rights and fundamental freedoms based on equality with men.⁶⁰

Furthermore, Article 3 of the Convention requires the State Party to actively protect women's full improvement and advancement, with the goal that they enjoy human rights and fundamental freedoms on the same level as men.⁶¹ This is a form of the protection of CEDAW to improve the position of women similar to men in society, as well as to abolish case of sexual harassment. CEDAW expects State Party give guarantee for women in all fields such as culture, political, social, economic, and all appropriate measures as well as abolish sexual harassment, which often occurs among women.⁶² The forms of CEDAW on protecting women from sexual harassment are to ensure gender equality of women that should be fulfilled by the State Party.

Moreover, Article 4 discusses the protection on the rights of women which States Parties should take of temporary special measures leading the acceleration of *de facto* equality of women. The scope and meaning of Article 4 must be determined in the context of the purpose of this Convention, which is

⁶⁰ Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁶¹ Australian Human Rights Commission, "Women on the World: a Guide to the Rights in CEDAW", taken from <https://www.humanrights.gov.au/our-work/woman-world-guide-rights-cedaw> accessed on May 15th, 2019 at 10 pm.

⁶² Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women.

to eliminate all forms of discrimination against women including gender-based violence or sexual harassment with an understanding to achieve *de jure* and *de facto* equality of women in the enjoyment of the human rights and fundamental freedoms.⁶³

Besides Article 4, State parties are required by Article 6 to take measures to suppress all forms of women trafficking and exploitation of the prostitution of women, which is a form of the protection and the rights of women.⁶⁴ Women are generally trafficked for sexual and economic exploitation, especially prostitution and pornography, forced labor, including for work in commercial agriculture and arranged marriages or to be sold as brides, enrolment for participation in hostilities and such related purposes as sexual services, postage and private functions in conflict situations.⁶⁵ Around the world, women are trafficked and exploited continuously for low-paid work or sex.⁶⁶ Trafficking of women is one of the gender-based violence or sexual harassment. Trafficking of women can be classified as a modern form of human slavery.⁶⁷ In this Article, the protection of women is the State Party ensures to end the exploitation, trafficking, and prostitution in women, taking all appropriate measures to suppress the cases.

⁶³ Pooja Khanna & Zachary Kimmel, 2016, "Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) for Youth", *United Nations Women*, New York, p. 7.

⁶⁴ Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁶⁵ Amy M. Russell, 2014, "Victims of Trafficking: The Feminisation of Poverty and Migration in the Gendered Narratives of Human Trafficking", *Societies*, Basel, MPDI Journal, p. 533.

⁶⁶ *Ibid*, p. 534.

⁶⁷ Marinus Sardi, 2018, *Solidaritas dan Perlindungan HAM terhadap Perdagangan Manusia*, Yogyakarta, LP3M, p. 8.

Article 14 Paragraph 2 Point (c), (f), and (h) are forms of protection of CEDAW on women from the case of sexual harassment. This article stated that State parties should take every single suitable measure to eliminate discrimination of women in rural areas to guarantee the equality of men and women, in which women should participate in and get benefit from rural development, thus guaranteeing women's right.⁶⁸

1. To profit legitimately from social security programs⁶⁹
2. To take an interest in all community activities⁷⁰
3. To enjoy adequate living conditions, especially about housing, sanitation, electricity and water supply, transport, and communications.⁷¹

State Party should fix the problems of women in rural areas and help women to look after and also contribute to their families and communities. All of the purposes mentioned in the Convention should be applied to women in rural area, and the State Party ensure that they get benefit from rural development as equal as men. The particular needs of women in rural communities must be met on the access of services, training, employment opportunities, social equity schemes, and state party need to eliminate the

⁶⁸ Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁶⁹ Article 14 (c) of Convention on the Elimination of All Forms of Discrimination against Women.

⁷⁰ Article 14 (f) of Convention on the Elimination of All Forms of Discrimination against Women.

⁷¹ Article 14 (h) of Convention on the Elimination of All Forms of Discrimination against Women.

discriminatory barriers against rural women.⁷² This is an important provision dedicated to rural women in an international treaty.

The entire Article in CEDAW above is related to the regulation on the protection of women from sexual harassment cases. The protections of CEDAW have a purpose to eliminate the discrimination of gender between men and women. The protection of this Article is to the empowerment of women. Moreover, the State Party should also ensure the stability and equality of women in society that are already regulated in this Convention.

C. General Recommendation No. 35 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 17 of Convention in the Elimination of All Forms of Discrimination against Women stated that for the implementation of the Convention, there should be an established Committee on the Elimination of All Forms of Discrimination against Women, which from now on will be referred to as the Committee.⁷³ The Committee on the Elimination of Discrimination against Women (CEDAW) involves the independent experts that keep track of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.⁷⁴

⁷² Caroline Dookie, Yianna Lambrou and Hajnalka Petrics, 2013, “A Tool for Gender-Sensitive Agriculture and Rural Development Policy and Programme Formulation”, *Food and Agriculture Organization of the United Nations*, New York, United Nations, p. 6.

⁷³ Article 17 (1) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁷⁴ The Office of the High Commissioner for Human Rights, “Committee on the Elimination of All Forms of Discrimination against Women”, taken from

The Committee of CEDAW is structured of 23 experts on the issues of women from around the world. The experts will be elected by State Parties from among their nationals and shall serve in their capacity, being given to equitable geographical distribution and the representation of the various types of the dissimilar forms of civilization and the principal legal systems. The member of the Committee shall be elected from a list of a nominated person given by the State Party.⁷⁵ Moreover, the State Party may suggest one person from their country.

The Elections for choosing the Members of the Committee will be held at the States Parties' meeting that will be met by the Secretary-General at the United Nations Headquarters. The elected persons to the Committee shall be those nominees who obtain the most significant number of votes and an absolute majority from the votes of the representatives of States Parties.⁷⁶ The members of the committee will be elected for four years.⁷⁷

Moreover, Article 21 of the Convention required that Committee of CEDAW shall make a suggestion and General Recommendations based on the inspection of reports and material received from the States Parties.⁷⁸ The comments from States parties are also included in the session reports of the

<https://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx> accessed on May 19th, 2019 at 11 pm.

⁷⁵ Article 17 (2) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁷⁶ Article 17 (4) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁷⁷ Article 17 (5) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁷⁸ Article 21 of the Convention on the Elimination of All Forms of Discrimination against Women.

Committee. Recommendations are usually aimed at United Nations entities, while General Recommendations are addressed to State parties and usually elaborate on the Committee's perspective on the obligations assumed under the Convention. On the other hand, the task of this Committee is to consider periodic reports submitted from the State parties regarding legislative, judicial, and administrative actions by the Convention rules.

Recently, on July 14th, 2017 Committee has issued General Recommendation No. 35 on Gender-based Violence against Women, updating General Recommendation No. 19 which acknowledged cyber harassment. General Recommendation No. 35 is the awareness of the Committee of Convention on the Elimination of All Forms of Discrimination against Women of crime on the cyber space. The milestone of General Recommendation No. 35 can be classified as:⁷⁹

1. It is the recognition of the prohibition gender-based violence will be a norm of international customary law;
2. It is the expanding of the understanding violence to including violations of sexual and reproductive health rights;
3. It is the expanding of the understanding violence to including violations of sexual and reproductive health rights;

⁷⁹ The Office of the High Commissioner for Human Rights, "Launch of CEDAW General Recommendation No. 35 on Gender-based Violence against Women", taken from <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GR35.aspx> accessed on May 15th, 2019 at 9 pm.

4. It clearly defines dissimilar levels of liability of the State for actions and omissions committed by state agents or those acting under its authority for failing to act with due diligence to prevent violence of women at the hands of private individuals and companies, and ensure access to remedies for survivors;
5. It unequivocally calls for the revoke of all laws and policies that directly and indirectly facilitate violence;
6. It emphasizes the need to protect women with approaches autonomy and decision-making in all spheres of women's life;

Article 20 of General Recommendation No. 35 stated that sexual harassment against women happens in all aspect and spheres of human interaction, in public or private cases.⁸⁰ Those include the public spaces, educational settings, health services, workplace, politics, leisure, sport and technology-mediated environments, such as contemporary forms of cyber harassment occurring in the Internet and cyber spaces. On the other word, General Recommendation No. 35 extends the definition of gender-based violence against women by adding that sexual harassment may occur on the internet and digital spaces.

Moreover, to prevent the cases concerning sexual harassment, CEDAW recognized the direct obligation of the state party, which state party shall take appropriate measure. Further, explained in the article 26 of General

⁸⁰ Article 20 of General Recommendation No. 35 of Convention on the Elimination of All Forms of Discrimination against Women.

Recommendation 35 that the obligation of state party encompasses all aspects of women life, including the area of state actors such as legislative, executive, and judicial branches, at the federal nation, local and decentralized level as well as the private sphere.⁸¹ The obligation to prevent sexual harassment is for all people, both state actors, and non-state actors. The adoption and implementation of the appropriate measures are to eradicate prejudices, stereotypes, and practice that a root of sexual harassment against women.

According to this article, the State Party must make a rule regarding cyber harassment, because as the international treaty, CEDAW does not have a legal banding to punish the perpetrators of the crimes. The appropriate measures of the State Party are provided at the legislative level, executive level, and judicial level to make a penalty unit. The Committee also recommends that the State Party take measures on prevention, protection, prosecution, punishment, and redress to accelerate the elimination of cyber harassment. The purpose of this obligation is to protect women from cyber harassment.

Besides making rules regarding cyber harassment, Article 29 of General Recommendation also regulate that State party should ensure the rules are working correctly. The discrimination of women on all spheres, including cyber space, is criminalized and introduced without interruption and gives legal

⁸¹ Article 26 of General Recommendation No. 35 Convention on the Elimination of All Forms of Discrimination against Women.

punishments commensurate.⁸² As well as for the victim and survivors of cyber harassment, all of the legal systems should ensure their protection.

Article 40 of General Recommendation no 35 is one of the forms of protection for women. In this Article, women are protected and assisted in their complainants and witnesses of cyber harassment before, during, and after legal proceedings, including:⁸³

1. Protecting the privacy and safety

The General Recommendation No. 35 stated that the State party ensure that the victims, survivors, and witnesses of cyber harassment should be protected from their privacy and safety. The protection is included through gender-sensitive court procedures and measures.⁸⁴

2. Providing appropriate protection to prevent further or potential violence

This General recommendation stated that the State party ensures the accessible protection of appliances to prevent potential violence for the victim of cyber harassment. This includes immediate protection involving effective measure where appropriate, such as monitoring of eviction, protection of victims, restraining or emergency of victims, barring orders

⁸² Article 29 of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

⁸³ Article 40 of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

⁸⁴ Article 40 (a) of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

in contradiction of alleged perpetrators, including adequate punishments for non-compliance.⁸⁵

3. Providing low-cost, high-quality legal aid

The state party ensures access for the victim to get high-quality legal aid with low-cost. This is to make it easy for the victim to report their case concerning cyber harassment. As we know, the problem of the case concerning cyber harassment is the lack of reporting. Based on this General Recommendation, the state party should provide the best legal system to provide a low-cost to the legal proceedings of the cyber harassment cases.⁸⁶

4. Establishing appropriate multi-sectorial referral mechanisms

The state party should implement appropriate multi-sectorial recommendation mechanisms to make sure sufficient access of women survivors to comprehensive services. This is also ensuring contribution with non-governmental women's organization to make it easier for women to report their cases.⁸⁷

Those are all the protection of women in this Article that should be ensured by the State party. The obligations of the state party of CEDAW are not only to ensure the law of protected women working correctly, but also

⁸⁵ Article 40 (b) of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

⁸⁶ Article 40 (c) of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

⁸⁷ Article 40 (e) of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

ensure that women can get protection before, during and after legal proceedings of cyber harassment cases.

Article 44 of General Recommendation No. 35 of CEDAW also regulates the protection of women, in which State party ensures sufficient access of victims to bring their cases to the courts and tribunals.⁸⁸ This is also to ensure powers that be adequately respond to cyber harassment cases, including applying criminal law and domestic law by the State party. Moreover, bring the alleged suspects to trial in a fair, efficient, expedition's manner, impartial, and imposing adequate punishments.

General recommendation No. 35 represents the awareness of the Committee of CEDAW on cases relating to gender based-violence which happen on the cyber space. This is also the harmful impact of the development of technology. The protection of CEDAW are also contained in the General Recommendation No. 35.

In other words, General Recommendation No. 35 gives the obligation to the State party to make regulation regarding gender based-violence, including cyber harassment cases. This regulation is under the authority of domestic law of State party itself, because as an International Treaty, CEDAW cannot give punishment to the perpetrators. The purpose of this regulation is to decrease the number of cases concerning cyber harassment against women.

⁸⁸ Article 44 of General Recommendation No.35 of Convention on the Elimination of All Forms of Discrimination against Women.

All of the provisions of the protection in General Recommendation No. 35 are proof that it regulates cyber harassment cases. Although there is no specific statement in CEDAW that refers to cyber harassment, it is already included in General Recommendation No. 35 on Gender-based Violence against Women, which updated the General Recommendation No. 19. From the discussion above, it can be concluded that CEDAW may be used to handle the case regarding cyber harassment.

D. Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Indonesia toward Cyber Harassment

Cyber harassment is one of the negative forms of internet usage. The harassment conducted by email, text (or online) messages or internet. It can take many forms such as unwanted sexually explicit emails or online messages, inappropriate or offensive advances on social networking websites or internet chat rooms, threats of physical and sexual violence by email, and hate speech.⁸⁹

Moreover, to find out more about cyber harassment, it must be known that cyber harassment is a part of sexual harassment. Sexual harassment can be a category of sexual invitation, involving unaccepted, and unexpected invitations such as comments, jokes, and touching.⁹⁰ There are several differences between sexual harassment and cyber harassment, one of them is

⁸⁹ European Institute for Gender Equality, "Glossary & Thesaurus", taken from <https://eige.europa.eu/thesaurus/terms/1486> accessed on July 3rd, 2019 at 9 pm.

⁹⁰ Hanafi Arief, *Loc. Cit.*

that cyber harassment is done using electronic media in cyberspace. The impact of cyber harassment itself is not a result of directly disturbing the physical aspect, but also involves psychological and mental disorders.

Based on the previous discussion, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Article 6 is regulated on the protection of women from sexual harassment that should be fulfilled by State party. The protection of the State party will be realized to take all appropriate measure, including legislation to suppress the case regarding cyber harassment.⁹¹ The General Recommendation No. 35 in Article 40 (e) already stated the obligation of state party to establish and implement appropriate multi-sectorial referral mechanisms to ensure effective access of women to report cases regarding discrimination.

Currently, to protect women in Indonesia from discrimination against women, there is the National Commission on Violence against Women. This Commission is an independent state institution which was formed as a national mechanism to eliminate violence against women. The purpose of the Commission is to:⁹²

1. Develop a conducive condition to the elimination of all forms of violence against women and the enforcement of women's rights in Indonesia.

⁹¹ Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women.

⁹² Laurensius Arliman, 2017, "Komnas Perempuan Sebagai State Auxialiary Bodies di Dalam Penegakan Hak Asasi Manusia Perempuan di Indonesia", *Justicia Islamica*, Vol. 14, No. 2, Ponorogo, IAIN Ponorogo, p. 133.

2. Increasing the efforts to prevent and protect women's human rights against discrimination.

Besides, the purpose of the National Commission on Violence against Women, the obligation and authority of the Commission are:⁹³

1. Disseminate understanding of all forms of discrimination against women and the efforts to prevent, control and eliminate it.
2. Carry out research on applicable various regulations as well as International Instrument that are relevant for the protection of women's human rights.
3. Carry out monitoring, including finding facts and documenting violence against women as well as disseminating the results of monitoring to the public and taking steps that encourage accountability and handling.
4. Give advice and consideration to the government to encourage the formulation and ratification of the legal framework that prevents all forms of violence against women.
5. Develop regional and international cooperation to improve efforts to prevent all forms of violence against Indonesian women.

Those are the function of the National Commission on Violence against Women to protect women in Indonesia. However, the Commission does not regulate the punishment for suspects of the case regarding discrimination

⁹³ Rommy Patra, 2012, "Efektifitas Kelembagaan KOMNAS Perempuan dalam Perlindungan HAM Perempuan di Indonesia", *Jurnal Masalah-Masalah Hukum*, Vol. 41, No. 4, Semarang, Universitas Diponegoro, p. 601.

against women. The General Recommendation No. 35 in Article 44 regulated on the protection of women from cyber harassment. This Article regulated that State parties ensure the prosecution and punishment for the perpetrator by applying criminal law and appropriate prosecution to fair trial.⁹⁴

Furthermore, to protect women in Indonesia from sexual harassment, there are several Articles in the Indonesian Penal Code relating to the case. The Penal Code does not use the term sexual harassment, but the activities related to sexual harassment, in which one of them is decency. Article 281 of Indonesia Penal Code stated that:

1. any person who with deliberate intent publicly offends against decency;
2. the people who with deliberate intent offend against decency whereby another person is present in spite of himself.

Decency is any action that is done intentionally and aimed at other people through physical contact. In other words, decency is the intentional action and being done by physical contact. The nature of decency from this Article is the impolite actions involving physical contact to the victim in the public or private area intentionally. The other Articles in the Penal Code related to sexual harassment is about obscene acts in Article 289 of the Code.

This Code stated that:

Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of a factual assault of the chastity, be punished by a maximum imprisonment of nine years.

⁹⁴ Article 44 of General Recommendation No. 35 of the Convention on the Elimination of All Forms of Discrimination against Women.

The obscene acts in this Article are the actions that threaten or force someone to be harassed. This fulfills the requirements for sexual harassment. The nature of this crime is the actions of threat and force someone for everything that violates modesty or vile actions, all of which are sexual lust, kisses, groping for genitals, breasts, and so on. Additionally, there is Article 315 of Indonesia Penal Code about hate speech, as elaborated below:

A defamation committed with deliberate intent which does not bear the character of slander or libel, against a person either in public orally or in writing, or in his presence orally or by battery, or by a writing delivered or handed over, shall use simple defamation, be punished by a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiahs.

Thus, it can be concluded that hate speech is an insult that is done intentionally to defame someone sexually or non-sexually. Moreover, Article 336 (1) of the Indonesian Penal Code is about violence. This Article stated that:

Threat with open violence with united forces against persons or property, with a crime whereby the general security of persons or property is endangered, with rape, with actual assault of the chastity, with a crime against life, with grievous ill-treatment or with arson, shall be punished by a maximum imprisonment of two years.

Violence in this Article relates to the threat of the victim, which may occur physically or non-physically (threat of violence). All of the Articles of the Indonesian Penal Code are related to the case of sexual harassment toward women. Actually, Indonesia do not know of the term cyber harassment, because there is no Indonesian Law that specifically regulates on cyber harassment matters.

Recently, cyber harassment is a new form of sexual harassment, but not all of the regulation of sexual harassment can be used to cyber harassment. In the Indonesian Penal Code, some Articles relate to the case of cyber harassment, such as decency, violence, and hate speech. Unfortunately, their things cannot be reached by the Penal Code to punish cyber harassment cases. This is for the reason that the Penal Code is a regulation can be used to punish actions committed in the real world while cyber harassment is an act committed in cyberspace. Therefore, the Penal Code cannot be used to punish cyber harassment cases.

In addition to the Indonesian Penal Code, there is Law No. 11 of 2008 about Electronic Information and Transactions act. The objective of the Law is to provide legal certainty for the people who conduct transactions electronically, encourage economic growth, prevent the occurrence of information and communication technology-based crimes and protect service users who utilize information and communication technology.⁹⁵ Related to CEDAW, this Law is fulfilling the protection stated in the Convention. Article 27 (1) of Law No. 11 of 2008 stated that:

Any person who knowingly and without authority distributes and transmits and/or causes to be accessible Electronic Information and/or Electronic Documents with contents against propriety.

⁹⁵ Friskilla Clara, 2016, "Kebijakan Hukum Pidana dalam Upaya Penanggulangan Cyberbullying dalam Upaya Pembaharuan Hukum Pidana", *Diponegoro Law Journal*, Vol. 5, No. 3, Semarang, Universitas Diponegoro, p. 9.

This Article regulates cyber harassment matters on the case of decency. Moreover, this Article is one of the examples of the protection of women from cyber harassment cases. Article 27 (3) of Law no 11 of 2008 stated that:

Any Person who knowingly and without authority distributes and transmits and causes to be accessible Electronic Information and Electronic Documents with contents of affronts and/or defamation.⁹⁶

Article 27 (3) can be used to punish cyber harassment actors, especially if the cyber harassment conducts hate speech, insult or defamation on the basis of gender. These actions must be done in the public sphere and in cyber space so that everyone can access them. Thus, cyber policies can be snared by this article. Article 27 (4) of Law no 11 of 2008 stated that:

Any Person who knowingly and without authority distributes and transmits and causes to be accessible Electronic Information and Electronic Documents with contents of extortion and/or threats.⁹⁷

Article 27 (4) can be used to punish suspects of cyber harassment, especially those who commit crimes that have elements of extortion. For example, if someone finds someone else's cellphone, then the cellphone has personal photos from the owner of the cellphone. Then the photo is used to threaten the photo owner to do something in accordance with the wishes of the perpetrator. The threat was made by threatening to spread the photo on social media. The existence of this Article can be used as protection for women, so that their dignity and secrets can be maintained. Thus, cyber harassment actors

who contain elements of threats in their actions are liable to be charged with this article.

Thus, Articles of Law No. 11 of 2008 on Electronic Information and Transactions Act relates to cyber harassment. This Law can be used to handle the cases regarding cyber harassment, because this law regulates crimes of cyber space in Indonesia. In addition, based on the perspective of CEDAW, it is acknowledged that cyber harassment is a part of violence against women.

The protection of women in Indonesia cannot directly protected by using CEDAW, because as an international Treaty, CEDAW is defined as a soft-law. Soft-law is a law which does not have any punishment provision in it. In order to protect the right of women, CEDAW needs other Laws. In Indonesia, there is Law No. 11 of 2008 on Electronic Information and Transactions can be used to prosecute the offender of cyber harassment.