

THE CHALLENGES OF THE INDONESIAN GOVERNMENT IN ELIMINATING GENDER BIAS PRACTICES: THE PERSPECTIVE OF KINSHIP SYSTEMS IN INDIGENOUS PEOPLES AND REGULATIONS

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ABSTRACT

Gender bias is a condition that indicates the existence of a preference for one of the socially and culturally constructed traits inherent in men and women. Gender differences in treatment harm certain genders. The losses mentioned are related to family and social status contexts. This paper is a normative study using a normative-legal approach, focusing on legal discrimination and observing gender practices in regulation through indigenous kinship systems and literature research. This paper aims to examine gender bias practices, and government efforts to prevent and overcome gender bias practices in Indonesia. Sexist practices are found in Indigenous peoples' lives, regulations, and government policies. Government efforts to prevent and control include ratification of international regulations and ratification in the form of legal instruments. However, other measures are needed from a prevention perspective such as: Political involvement of governments in socialization in the form of an improved understanding of indigenous peoples, the revision of rules that may lead to gender-biased practices, and the formulation of better regulations to address gender bias practices.

Keywords: Gender; Policy; Regulation;

INTRODUCTION

Background

Gender in the scientific sense is seen as a social and cultural construction related to the inherent traits of men and women.¹ According to the WHO (World Health Organization),

there are gender restrictions, relating to a set of roles, behaviors, activities, and attributes that are considered appropriate between men and women.

The concept of gender is synonymous with feminist me when in reality it is not the case. Gender sees a cultural construct that is male and female as of social relationship. Gender looks more at sociological and cultural aspects,² not at the biological aspect

1 Azzahra Nawangwulan, "Analisis: Bias Gender Pada Masyarakat Indonesia," Program Studi Pendidikan Sosiologi, Fakultas Ilmu Sosial, Universitas Negeri Yogyakarta, last modified 2019, <http://pendidikan-sosiologi.fis.uny.ac.id/id/berita/analisis-bias-gender-pada-masyarakat-indonesia.html>.

2 Abdul Jalil and St. Aminah, "Gender Dalam Perspektif Budaya Dan Bahasa," *AI-MAIYYAH* :

where there is a difference in nature between the two.

To understand the difference between sex and gender aspects, it can be seen in the following table:³

Table 1 Differences between sex and gender

Sex	Gender
Focus on the difference of male and female biological organs in particular the reproductive part	Differences in roles, functions and responsibilities between men and women as a result of social constructions
Created by God	Man made
Natural	Not natural
Irreversible	More flexible/reversible
Cannot be changed	Can be changed
Valid anytime and anywhere	Influenced by culture in the certain area

Source: HAM Violations and Gender Discrimination Problems, (2019)

In that sense, it can be interpreted that the understanding of gender division is distinguished against two exchanges, the first is related to God's will which is not possible to be exchanged between men and women in terms of sexual division. Meanwhile, gender is a division of roles, traits, dispositions, and responsibilities that can be exchanged between men and women. Based on this understanding, an understanding of gender differences finally emerged.⁴

Gender-biased views that consider one gender is more inferior to other genders lead to differences in treatment in the context of

family and community positions, and limit the ability and opportunity to take advantage of existing opportunities. The opportunities referred to, for example, optimal growth and development, thoroughly and integrated opportunities, opportunities in all fields, and the level of opportunity to enjoy the same benefits from the results of development to develop potential to the maximum.

A gender-related identity is a person's whole identity which is the interrelationship of ideas between the perception of gender in the past and the expectations concerning gender. Gender is a cultural problem, classifying men and women into masculine and feminine attitudes. Each culture has a different way of providing attributions, traits, and roles to men and women. These sex differences are constructed socio-culturally to give birth to gender, resulting in emphasizing differences in responsibilities, behavior patterns, roles, certain qualities, and other things that are masculine and feminine.⁵

With social constructs formed by the culture of society, men's positions are in productive and public roles while women's positions are in roles of a reproductive and domestic nature.⁶ It can be seen that patterns of treatment of areas that have strong gender connotations, for example, production and public spaces are attached to men while reproduction or consumption are attached to women. Attachment to women is considered to have no economic value because it is in the domestic (private) realm in contrast to the attachment to men, namely both production and public space which has a relative impact on the environment.⁷ The differences between

Media Transformasi Gender dalam Paradigma Sosial Keagamaan 11, no. 2 (2018): 283.

3 MH Triantono, SH., "PELANGGARAN HAM DAN PROBLEM DISKRIMINASI GENDER," Kementerian Perempuan Dan Perlindungan Anak Republik Indonesia, 19, last modified 2019, https://e-learningtpo.kemenpppa.go.id/pluginfile.php/295/mod_resource/content/1/TPPO%2CPELANGGARANHAMDANDISKRIMINASIGENDER_Triantono.pdf.

4 Sri Nurohim, "Identitas Dan Peran Gender Pada Masyarakat Suku Bugis," *Sosietas* 8, no. 1 (2018): 460.

5 Ibid., 458.

6 Ni Made Wiasti, "Mencermati Permasalahan Gender Dan Pengarusutamaan Gender (PUG)," *Journal of Anthropology* 1, no. 1 (2017): 29.

7 Adzkar Ahsinin et al., *PERSPEKTIF GENDER DAN HAK ANAK Kuasa Korporasi Di Indonesia*, ed. Kania Mezariani Guzaimi, Wahyu Wagiman, and Vita Rachim Yudhani, Cetakan Pe. (Jakarta Selatan: Lembaga Studi dan Advokasi Masyarakat

the basic social constructions in question, that is gender differences, in fact, bring gender injustice that largely afflicts women.⁸

Gender equality means achieving equal conditions for both men and women in obtaining opportunities and rights as human beings to have a role and participate in the fields of state development, politics, economy, social, culture, education, defense, and security and both can enjoy the results of such development.⁹ Gender equality can be realized if men and women are aware of their respective roles and responsibilities. However, in reality men often dominate all aspects of life due to the assumption that women have limitations meanwhile men are considered more capable in overcome all existing problems.¹⁰

Gender bias is an interesting issue to see because this practice occurs widely in various aspects of people's lives in Indonesia. Gender bias in practice has occurred from ancient times to this time, in the family, indigenous peoples, and existing laws and regulations.

First, gender bias presents in customary law, life in the family, and arrangements in regulations created to regulate social and state life. Customary law is a recognized source of law and it lives in society. Good laws are those rules that are considered fair and correct so that the law can lead its society to enjoy justice as Roscoe Pound states: "*....law is more than a set of abstract norms or legal order, it is also a process of balancing conflicting interest and securing the*

satisfaction of the maximum of wants with the minimum of fiction..."¹¹

Prevention of gender bias practices is necessary as an attempt to encourage modern legal ideals that is not the same as traditional law. Unger argues that modern law has several characteristics such as:¹²

1. Retaining a public nature
2. A positive rule
3. Generally applicable for all groups
4. Has a substantial, institutional, methodological, and occupational nature.

The law also develops from the availability of existing sources in society. Socrates stated that the essence of law is justice. Law has a function to meet the need for justice in a society. Law designates a rule as the ideal of living together, namely justice.¹³ Basically, the existence of the law and its ability are measured by how far justice can be realized. The moral of justice is the basic matter to legitimize the presence and the running and working of the law.¹⁴ The relationship between Human Rights and culture and religion is a dilemmatic issue that is perpetually debatable.¹⁵

Gender-based violence according to the General Recommendations of the Committee of the *Convention on the Elimination of All Forms Discrimination Against Women* (CEDAW) Number 19 of 1979 on violence against women is a form of discriminatory action, which hinders women's access to

(ELSAM), 2020), 48.

8 Wiasti, "Mencermati Permasalahan Gender Dan Pengarusutamaan Gender (PUG)," 29.

9 Yuni Sulistyowati, "Kesetaraan Gender Dalam Lingkup Pendidikan Dan Tata Sosial," *IJouGS: Indonesian Journal of Gender Studies* 1, no. 2 (2021): 4.

10 Z Ismail et al., "Kesetaraan Gender Ditinjau Dari Sudut Pandang Normatif Dan Sosiologis," *Sasi* 26, no. 28 (2020): 159, <https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/224/pdf%0Ahttps://fhukum.unpatti.ac.id/jurnal/sasi/article/view/224>.

11 Satya Arinanto and Ninuk Triyanti, *Memahami Hukum Dari Konstruksi Sampai Implementasi*, ed. Satya Arinanto and Ninuk Triyanti (Jakarta: PT.Raja Grafindo Persada, 2009), 76.

12 Satjipto Rahardjo, *Sosiologi Hukum*, ed. Khudzalifah Dimiyati, Cetakan II. (Yogyakarta: Genta Publishing, 2002), 48.

13 Arinanto and Triyanti, *Memahami Hukum Dari Konstruksi Sampai Implementasi*, 10.

14 Satjipto Rahardjo, *Sosiologi Hukum*, 67.

15 Yulita Dwi Pratiwi, "Transplantasi Pengaturan Larangan Praktik Female Genital Mutilation Melalui Studi Perbandingan Indonesia Dengan Mesir," *Ham* 13 Nomor 1 (2022): 46.

enjoy certain rights and freedoms based on equal work between men and women. The notion of gender has changed in its meaning that it is no longer focused on women as its object in contrast to that contained in the General Recommendations of the CEDAW Committee Number 19 but undergoes an expansion of meaning. Therefore, the practice of gender bias in indigenous peoples tends to occur with an understanding of the principle of patriarchy which is understood and documented. Patriarchy is initially born from a certain cultural system where aspects of life are governed by a "fatherly" system, which refers to the arrangement of indigenous peoples according to the Father's line.¹⁶

Another issue is that the growing social environment in patriarchal culture also stimulates men to cultivate a "hegemony of masculinity" in various forms including:¹⁷

1. Constructing a mindset in which men should be superior, dominant, and aggressive
2. Encouraging men to have narrow and perfect social roles
3. Disregarding emotional needs as well as spirituality
4. Constructing of allowing to use force
5. Using the construction as means to preserve hierarchical culture and domination.

However, in the patrilineal kinship system, the opposite values apply especially for women where women have a very low position, have no heirs, do not act as successors to descendants, do not play a role as successors to surnames where women follow their husbands and do not become members of indigenous peoples.¹⁸

This culture is accustomed by Batak indigenous people in the province of North Sumatra. This often causes conflicts for example, in inheritance dividing between men and women as the heirs. In Batak indigenous peoples, the heirs are always men, and women can request their share only after conducting traditional ceremonies.¹⁹ This condition is exacerbated by the fact that many Batak Toba women succumb to the implementation of customary law and may still face the complicated position of exclusion of rights by relatives of their deceased husbands.²⁰

The gender-biased patriarchal practices can not only be found in the patrilineal kinship system but also in the matrilineal system as in the Minangkabau indigenous people known as a fairly old kinship system in Indonesia. The Minangkabau community in West Sumatra Province adheres to the matrilineal kinship system, a family system that draws the lineage from women (mothers). However, the power remaining with men, namely in custom referred to as "mamak" as the head of the heir held by the eldest son.²¹

Kinship relations in the parental system can be seen in the people of Java, Madura, South Sumatra, and others who put the position between men and women on an equal basis in terms of inheritance. Both male and female parties have equal or equal position as being heirs. However, if examined further, notably in dividing inheritance, it turns out that there is subordination and discrimination against women. This is reflected in the size of the different parts; sons get a $\frac{2}{1}$ share of the women known as *sepikul segendong*. Another context can also be seen in decision-making both in the family and in society which tends to be in the hands of men that the ideology of patriarchy remains visible in

16 Agus Afandi, "Bentuk-Bentuk Perilaku Bias Gender," LENTERA: Journal of Gender Children Studies 1, no. 1 (2019): 6.
17 Triantono, Sh., "Pelanggaran Ham Dan Problem Diskriminasi Gender," 24.
18 Ni Nyoman Sukerti, "Gender Dalam Hukum Adat," Jurnal Studi Jender SRIKANDI (2012): 1–14.

19 Sulistyowati Irianto, Perempuan Diantara Berbagai Pilihan Hukum, Edisi Kedu. (Jakarta: Yayasan Obor Indonesia, 2005), 120.
20 Ibid., xxi.
21 Sukerti, "Gender Dalam Hukum Adat," 6.

a parental society. Thus, in a parental society the practice of gender bias remains.²²

Second, in addition to indigenous peoples, gender bias is found in laws and regulations such as in article 31 paragraph 1 of Law Number 1 of 1974 concerning Marriage which states that "the husband is the head of the family and the wife is the housewife." From this provision, it can be perceived that from the beginning women must be able to manage the internal affairs of the house such as doing the house chores, and taking care of children, which are considered as females' duties by nature.²³

Gender bias can also be found in the provisions in Law Number 1 of 1974, in the provisions of Article 34 paragraph (1) "the husband is obliged to protect his wife and provide all the necessities of domestic life according to his ability. (2) the wife shall take care of the household affairs as good as possible". From the formulation of article 34 paragraph (1) it can be defined that the words "according to his ability" can be interpreted that the wife is obliged to accept everything that comes from the husband's ability while when referring to paragraph (2) it is interpreted the opposite, namely the existence of a necessity for the wife to take care of her household as good as possible".²⁴

As a nation of law, Indonesia certainly has a set of legal rules in providing protection for human rights, especially the human rights of every citizen.²⁵ If we look at Article 3 of the Human Rights Law, there is a point that the formulation of the original provision aims to ensure the equality of human rights between people in the life of society, nation,

and state.²⁶ In this case, equality does not mean equal, equal in number, equal in parts, or equal in degree but proportionally. There is also a sense of justice that refers to "equality" which has proportional characteristics rather than just the same for everything. In short, proportionally equal refers to equality based on their respective portions. However, there is still a gender bias from the examples of laws and regulations mentioned above and also found in other laws and regulations.

Several writings from previous researches explain various things about gender, including Agus Afandi (2019) entitled "Forms of gender biased behavior" published by Lentera-Journal of *Gendera Children Studies* 1, Rusdi J.Abbas, Indra Kusumawardhana (2018) entitled "Indonesia at the Crossroads: The Urgency of the Gender Equality and Justice Law in Indonesia After the Buenos Aires Joint Declaration" In 2017 the publication of the Journal of Human Rights, Khaerani (2017) entitled "Gender Equality and Injustice in the Economic Sector in Sasak Traditional Communities in Bayan Village, Bayan District, North Lombok Regency" published by the UIN Mataram Journal, Ni Made Wiasti (2017) entitled "Observing Gender Issues and Gender Mainstreaming" published in the *Journal of Anthropology*". Some of these researches have provided additional reference sources to answer the problems raised in this research.

Based on the explanation above and the reasons that have been put forward and there is no review in previous writings on how the government's challenge in eliminating the practice of gender bias from the perspective of the kinship system in indigenous peoples and regulations in Indonesia, the author is interested in raising the title for this research,

22 Ibid., 9.

23 Zairin Harahap, "Menggugat Hukum Yang Bias Gender," Jurnal Hukum IUS QUIA IUSTUM 10, no. 22 (2003): 96.

24 Ibid., 97.

25 Winsherry Tan and Dyah Putri Ramadhani, "Pemenuhan Hak Bekerja Bagi Penyandang Disabilitas Fisik Di Kota Batam," Jurnal HAM 11, no. 1 (2020): 27.

26 Rifa' Rosyaadah and Rahayu Rahayu, "Perlindungan Hak Asasi Manusia Perempuan Terhadap Kasus Kekerasan Dalam Rumah Tangga Di Indonesia Dalam Perspektif Hukum Internasional," Jurnal HAM 12, no. 2 (2021): 262.

namely “ The Indonesian Government’s Challenge in Eliminating Gender Bias Practices: A Kinship System Perspective on Indigenous Peoples and Regulations”.

Research Question

From the background explanation that has been described, the formulation of the problem in this paper is: how is the practice of gender bias in the perspectives of indigenous peoples and the regulation and also the attempts made by the government related to the practice of gender bias in Indonesia?

Objectives

This paper aims to find out gender practices from the perspective of indigenous peoples and the regulation of government attempts in dealing with gender biased practices.

Research Methods

This research is a normative juridical research, a research conducted based on the main legal material by examining the concepts, legal principles and laws and regulations related to this research.

1. Research Approach

This study used a comparative causal approach, by understanding first the possible relationship between cause and effect by looking at the existing consequences to further find the cause by comparing the data obtained/ studied.²⁷

2. Sampling Techniques

The focus of attention is directed to the use of normative methods with the discussion done analytically so that it is referred to as normative analytical.²⁸ This research is also used literature approach on books, articles, laws and regulations and other documents related to the

research.

3. Data Analysis Techniques

This study applied literature studies. Literature study itself is a data collection technique using a study of books, literature, notes, and reports that have to do with the problem under study,²⁹ by using efforts to collect secondary data obtained from primary legal materials such as laws and regulations, books, journal articles, mass media related to the object being written.

DISCUSSION

A. Gender Bias Practices in the Lives of Indigenous Peoples in Indonesia

Before looking at how the practice of gender bias in society, it is important to know the forms of gender bias: ³⁰

- a. Marginalization is an act of setting aside individuals due to sex differences based on poverty;
- b. Subordination is a presumption or understanding that one sex is considered inferior to another sex. Social and cultural values in society have sorted out the roles of men and women.
- c. *Negative stereotypes/labels* are giving a standard image/ label/stamp to a person or group of people based on a false or misguided assumption;
- d. Violence is an act of violence, in physical or non-physical form committed by one of the sexes or institutions of the family, society or state against another gender. A mistaken understanding of gender where men and women are different. The assumptions of feminine women and masculine men are seen from psychological traits such as being seen manifested in the stigma

27 Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2011), 36.

28 Ibid., 68.

29 M. Nazir, *Metode Penelitian* (Jakarta: Ghalia Indonesia, 2011).

30 Afandi, “Bentuk-Bentuk Perilaku Bias Gender.”

of men is considered dashing, strong, and courageous and so on. Likewise, women are considered soft, weak, obedient, and so on. With such an understanding of gender, it is interpreted as a reason for being treated arbitrarily, in the form of violent acts. These acts of violence include domestic violence, rape, genital mutilation, sexual abuse, prostitution and forms of sex exploitation.

- e. *Double burden* is the free work received by one sex more than the other sex. The reproductive role of women is considered a static and permanent role. This can be seen in the fact that the increasing number of women working in the public sector is not accompanied by a decrease in their burden in household/domestic areas.

In Indonesia, there are generally three family or kinship systems:

1. Patrilineal kinship system, namely the kinship system by drawing the male lineage, namely the father, this system is adopted in the indigenous people of Tapanuli, Lampung, Bali, and so on.
2. The matrilineal kinship system is a kinship system by drawing the female lineage, namely the mother, this system is adopted in the people of West Sumatra (remote areas).
3. The parental kinship system is a kinship system by drawing lineages from men (fathers) and women (mothers), this system is adopted in the people of Java, Madura, South Sumatra and other regions.³¹

The phenomenon faced with regard to gender bias can be seen in relation to the following elements:

a. Patriarchy

Patriarchy is based on a cultural system where the living system of the people is regulated by a "fatherly" system. Patriarchy or "Patriarchate" refers to the structure of society by sticking to the line of Father.

b. Polygamy

Polygamy comes from the Greek word, a fragment of the word *Pili* or *Polus*. It means many and the word *gamein* or *gamos* which can be interpreted as marriage or marriage. With the combination of the two words, polygamous marriage means marriage with an unlimited number or an unlimited number of marriages.³²

In a society that adheres to a patrilineal kinship system, the position of women is very low, not as heirs, not as hereditary successors, and not as a successor to the family name because in honest marriages (in general) women follow their husbands and also do not become members of indigenous peoples.³³

The practice of gender bias in the form of patrilineal kinship can be found for example in Batak indigenous peoples which often causes conflicts for example in terms of the division of heirs between male and female heirs, where in Batak indigenous peoples the heirs are sons and if the woman can ask for her share through traditional ceremonies.³⁴ This condition is exacerbated by the fact that many Batak Toba women succumb to the customary law implementation and in some cases are still faced with the complicated condition of exclusion of rights by relatives of their deceased husbands. The practice of

31 Ibid., 5.

32 Ibid., 6–7.

33 Sukerti, "Gender Dalam Hukum Adat."

34 Irianto, *Perempuan Diantara Berbagai Pilihan Hukum*, 120.

gender bias in the patrilineal kinship system can also be observed in Bayan Village, North Lombok Regency, where the access given in the economic field is still dominated by men, so the participation or involvement of men is more than that of women.³⁵

In addition, the data found that the Human Development Index by Province and gender in Indonesia in 2018 showed that men were 75.43% and women 68.63%.³⁶ In this sense, women's involvement, especially in the economic sphere carried out by the government, has a smaller share than men, and men are considered more dominant. There are several reasons that cause men to be more dominant including those related to the purpose of developing the business they do, being considered to have the ability to process and realize the programs implemented, being considered to be able to provide results from greater agriculture, the perception that men are more involved to meet the needs of life and responsibilities as a husband and or the view that can provide greater agricultural output. In addition, there is a stigma that men are more involved in order to be able to meet the needs of life and their responsibilities as a husband and provide for their wives and children. The barrier for women to participate is constrained related to managing the household, the view that the access provided by the village government is still relative to women being involved. There is even a view that women's physique is weaker so that it becomes a barrier for women to participate.³⁷

Another example, in distribution of inheritance, the Balinese indigenous peoples

also adhere to the patrilineal system. The family system of the lineage is called "*purusa*" which is not specific only for men. If the deceased does not have any sons, than women can be the heirs, but if the deceased has both sons and daughters, only the sons become the heirs. Herein lies the real gender bias.

The law of inheritance in the Balinese indigenous people can be classified into 3 kinds of heirs:³⁸

1. *Pratisentana purusa* i.e. son;
2. *Entana Rajeg* is a woman who has the status of a man;
3. *Sentana peperasan* i.e. adopted children.

In inheritance law, these practices are often sued as a gender-biased rule. The practice of gender-biased can not only be found in the patrilineal kinship system but also in the matrilineal system as in the Minangkabau indigenous people which is known as a fairly old kinship system in Indonesia. The Minangkabau community in West Sumatra Province adheres to the matrilineal kinship system, which is a family system that draws the lineage from women (mothers) but this is not the case with the power remaining with men, traditionally referred to as "mamak" as the head of the heir held by the eldest son.³⁹

Kinship in the parental system as embraced by the peoples of Java, Madura, South Sumatera and others in principle puts men and women in the same position in terms of inheritance. All children, both men and women, have the same position, as heirs. Further at the division of inheritance, there is actually subordination and discrimination against women. This can be seen from the large share received by men compared to ^{2/1} of girls and which in traditional terms is

35 Ibid., xxi.

36 Nawangwulan, "Analisis: Bias Gender Pada Masyarakat Indonesia."

37 S N Khaerani, "Kesetaraan Dan Ketidakadilan Gender Dalam Bidang Ekonomi Pada Masyarakat Tradisional Sasak Di Desa Bayan Kecamatan Bayan Kabupaten Lombok Utara," *Qawwam* 11, no. 1 (2017): 66, <https://journal.uinmataram.ac.id/index.php/qawwam/article/view/723>.

38 Sri Utari, "Mengikis Ketidakadilan Gender Dalam Adat Bali," *Jurnal Studi Jender SRIKANDI* 7, no. 1 (2008): 2-3, <http://ojs.unud.ac.id/index.php/srikandi/article/download/2893/2062>.

39 Sukerti, "Gender Dalam Hukum Adat," 6.

known as "*sepikul segendong*". If decision-making in the family and society turns out to be in the hands of men, therefore patriarchal ideology remains visible in a parental society. Therefore, in a parental society gender-biased remains.⁴⁰

In everyday life, especially in early childhood parenting, gender-biased parenting is also found. The conservative childcare process, educating boys and girls in the same way and without being distinguished, can trigger gender bias towards child growth and development including (a) jealousy that results in children comparing themselves to their siblings; (b) lack of confidence or not confident; (c) envy; (d) emotional disorder (*bad mood*); (e) being an unruly child; (f) behavioral disorder (aggressive, hyperactive). The effect of gender bias in parenting will affect children in their adolescence. They tends to get involve in promiscuity, and juvenile delinquency due to the result of imbalances in growth and development for those who has masculine and feminine traits. In addition, during the children's developmental process, they become vulnerable to gender violence. Authoritarian parenting tends to cause children to be less initiative, have low self-confidence, and hesitate in action to interfere with the children's cognitive, emotional, and social development.⁴¹ Parents who adopt authoritarian parenting style are more likely to be gender biased than those who implement permissive and democratic parenting.

B. Gender Bias in Regulatory Legislation

Based on the results of research conducted by Affandi (2019), the practice of gender bias can still be found in the Indonesian regulatory system. Some laws and regulations considered discriminatory against women are for example in Law No. 1 of 1974 concerning Marriage. The provisions

in this law are considered to contain many weaknesses because they are discriminatory and gender-biased toward women.

According to Affandi, the related articles include: ⁴²

1. Provisions in Article 3 (2), Article 4, Article 5, on Polygamy.
2. Provisions in Article 7 (1) regarding the provision of 16 years of age for women as the minimum age of marriage and 19 years for men.
3. The provisions in Article 11 regarding the waiting time for women, 120 days for widowed and 90 days for divorced.
4. The provisions in Article 34 (1,2) are the regulation of provisions that position the wife very weakly and subordinated.
5. The provisions in Article 41 (b.c) namely the regulation regarding wives/women are positioned weakly and subordinated.
6. Provisions in Article 44 (1) regarding child denial provisions.

In addition, article 31 paragraph 1 of Law No. 1 of 1974 concerning Marriage states that "the husband is the head of the family and the wife is the housewife." From this provision it can be perceived that from the beginning women are attached to manage domestic affairs such as cleaning the house, taking care of children, cooking and the like which are considered the duties of the female nature.⁴³

Looking at the provisions of the articles above, it becomes clear that there is a practice of gender bias towards women because women are always positioned in a weak position so there is discrimination against women.

40 Ibid., 9.

41 Afandi, "Bentuk-Bentuk Perilaku Bias Gender," 5-7.

42 Ibid.

43 Harahap, "Menggugat Hukum Yang Bias Gender," 96.

In Law Number 10 of 2008 concerning the General Election of Members of the House of Representatives, Regional Representative Council, and Regional People's Representative Council and Law Number 2 of 2008 concerning Political Parties which provides a 30% quota to women as an affirmation policy the government is still considered not to reflect justice when referring to statistical calculations based on the number of residents.⁴⁴ The government has amended Law Number 10 of 2008 with Law Number 7 of 2017 concerning the General Election of Members of the House of Representatives, Regional Representative Council, and House of Representatives. Law Number 2 of 2008 was amended by Law Number 2 of 2011 concerning Political Parties, however, the government's affirmative policy towards women is still at the same 30%.

According to data from the Central Statistics Agency, the total population of Indonesia in 2020 was 270,203,917 people, with the distribution of the population according to gender is 136,661,899 for the male population and 133,542,018 for the female population.⁴⁵ The number of distributions by sex illustrates that the number of female populations is close to the male population.

In addition, one of the most highlighted so far is related to the limited place for women's involvement in politics, be it from the party structure, the representation of women in parliament or as organizers of elections.⁴⁶

44 Wery Gusmansyah, "Dinamika Kesetaraan Gender Dalam Kehidupan Politik Di Indonesia," *Hawa* 1, no. 1(2019), <https://doi.org/10.29300/hawapsga.v1i1.2233>.

45 Badan Pusat Statistik, "Jumlah Dan Distribusi Penduduk," *Sensus Penduduk 2020*, last modified 2020, accessed November 14, 2022, <https://sensus.bps.go.id/main/index/sp2020>.

46 Ricky Santoso Muharam and Danang Prasetyo, "PEMENUHAN HAK POLITIK PEREMPUAN SEBAGAI PENGAWAS PEMILIHAN KEPALA DAERAH SERENTAK TAHUN 2020 (Womens Political Rights Fulfilment to Become Supervisor The 2020 Simultaneous Regional Heads Election),"

Principally, there is room provided by the government as a stepping stone in gender equality attempts. However, there is still an assumption that the policy does not fully accommodate gender equality.

The Constitution has mandated that in the provisions governing equality and justice, every Indonesian citizen has an equal position in law and government.⁴⁷ Other provisions are contained in Article 28 H (2) stating that everyone gets convenience and special treatment to obtain equal opportunities and benefits to achieve equality and justice and in Article 28 D (3) which states that every citizen has the right to equal opportunities in government.⁴⁸ Thus, the Constitution emphasizes two concepts, justice and equality.

Gender bias in these laws and regulations has the potential to implement the preparation of regional regulations. This condition should receive attention from many parties, so efforts need to be made as follows:⁴⁹

1. *Judicial Review*, which can be carried out by the Supreme Court or the Constitutional Court;
2. Government Supervision (*Executive Review*) both preventive and repressive supervision as stipulated in Law Number 32 of 2004 concerning Regional Government; or
3. *Legislative Review*, which is carried out by the DPR in the formation of more appropriate laws, and by the DPRD for the establishment of Regional

HAM 12 (2021): 274.

47 Republik Indonesia, *The 1945 Constitution of Republik Indonesia* (Republik Indonesia, 1945), I. Article 37.

48 Republik Indonesia, *The 1945 Constitution of Republik Indonesia*, 1945, I. Article 28H and 28D.

49 Ministry of Women Empowerment and Child Protection "Summary of Gender Equality Paramater on Law- Making."

Regulations, for example, considering the principles and/or provisions as referred to in Law Number 7 of 1984 concerning ratification of the CEDAW Convention.

C. Government Policy and the Attempts to Eliminate Gender Bias Practices

Gender injustice must be prevented to realize gender equality and justice. This can be realized by minimizing the difference in treatment between women and men. Related to this difference in treatment is reflected in the reach, level of participation, and ability to exert influence in the development and the fulfillment of the equal and equitable benefits of such development. Having a reach or participation means that there is access to the use of facilities and infrastructure as well as authority in making decisions both in the use and results of the available facilities and infrastructure.

In the current development context, it can be seen that development policies increase the difference in productivity levels between men and women, which also tends to trigger income inequality and ultimately further erode the economic status of women, especially in domestic life. One of them can be seen in the agricultural sector. In this case, the wage gap between genders varies between sectors of work. The wage gap between genders is wider in the agricultural sector. The wage gap between genders in the agricultural sector dropped sharply from 44.98 percent in 2013 to 33.98 percent in 2014. However, the gap between genders increased significantly in 2015, reaching 43.51 percent. In contrast to the inter-gender wage gap in the non-agricultural sector which continued to decline to 12.74 percent in 2015.⁵⁰

Government policies implemented in the form of its main programs in order to reduce poverty are often devoted to men, for example in agriculture where access is dominated by men. Women should also have equal opportunities and access to agricultural land, for example in terms of using agricultural land for cultivation. In addition, a number of studies have also shown that current development increases women's workload, but at the same time reduces their access to control or reduces their power to manage household resources. This condition results in women and people who depend on women financially or economically being the most vulnerable groups in developing countries.⁵¹

Gender inequality in the field of development can be seen in the low opportunities for women in terms of opportunities or opportunities to work or try, low opportunities for economic resources, information technology, access to markets, working capital assistance, or credit. The stigma in society sees that although women contribute for their family's economy, they are still considered as additional breadwinners for the family. Another example of gender bias is seen in the Family Planning (KB) program where in the program more female body parts are used in their objects compared to male body parts.⁵²

The importance of equality is interpreted as an effort to improve the country's ability to develop, reduce poverty levels, and run a more effective government. Improving gender equality is an important effort of a development strategy that seeks to empower men and women to escape poverty and improve their standard of living.

The 1948 Universal Declaration of

50 KPPA, Statistik Gender Tematik - Potret Ketimpangan Gender Dalam Ekonomi (Jakarta: CV. Lintas Khatulistiwa, 2016).

51 Khaerani, "Kesetaraan Dan Ketidakadilan Gender Dalam Bidang Ekonomi Pada Masyarakat Tradisional Sasak Di Desa Bayan Kecamatan Bayan Kabupaten Lombok Utara," 64. Ibid., 73–75.

52 Sukerti, "Gender Dalam Hukum Adat," 10–11.

Human Rights stated that “Everyone is born with the freedom that has equal dignity and rights. Human beings are desirables to know each other, to associate with each other in the spirit of brotherhood because they have been given reason and conscience”. Unfortunately, this is not in line with the fact, that in this case the rights of women are often distinguished from the rights of men where the work of women is often distinguished from that of men.⁵³

From the results of the discussion above, there are several things that need to be done as an effort to achieve gender equality:⁵⁴

1. Reforming traditions that tend to be discriminatory by establishing equal rights, chances, and equal opportunities for women and men can be done by mutual agreement between religious leaders, community leaders, village officials, and community members in order to provide equal opportunities between men and women to get the same opportunities, participation, and access and benefits. This is important to do because, in reality, many traditions favor one particular sex;
2. Seeking to get the government to involve more people in economic development. Employment opportunities are provided without discrimination between men and women, there are no barriers due to different gender roles in the context of productive partisanship;
3. Play an active role in overcoming the problem of inequality. Actions that can be done include:

- a. Increase equality of opportunities in productive facilities and infrastructure as well as sources of income;
- b. Reducing the burden on women's parties caused by their domestic roles;

The real thing that needs to be done is to increase public understanding and awareness of the importance of gender equality. That every citizen has equal rights in all aspects of development including in the economic sphere. After all, gender equality and justice are part of the enforcement of human rights that have been in particular discussion in international forums since the 1980s. The world's growing attention to gender equality is an important part of achieving prosperity and successful development. Women are most likely to receive discriminatory treatment, although men also do not rule out the possibility of receiving equal treatment. However, patrilineal culture causes women more likely to become victims. If we look at the actual programs and activities in the village can provide equal opportunities to all residents, both men and women. Conversely, cultural and traditional constraints in the village often put women as subordinates, women are numbered, especially when they have entered the domestic realm, then all things that are close to domestic or household problems are the responsibility of women.⁵⁵

The government itself has established gender mainstreaming in all areas of development. One of the mainstreaming principles in medium-term and annual planning. With the establishment of gender mainstreaming in all fields of development and structured policies from the central and regional levels, the government's policy must have a gender perspective.⁵⁶

53 Frischa Mentari Safrin, “Pemenuhan Hak Asasi Manusia Dalam Program Pembinaan Kemandirian Narapidana Perempuan Di Era Normal Baru,” *Jurnal HAM* 12, no. 2 (2021): 291.

54 Khaerani, “Kesetaraan Dan Ketidakadilan Gender Dalam Bidang Ekonomi Pada Masyarakat Tradisional Sasak Di Desa Bayan Kecamatan Bayan Kabupaten Lombok Utara,” 73–75.

55 Ibid., 67–68.

56 Rusdi J. Abbas Indra Kusumawardhana, “Indonesia Di Persimpangan: Urgensi ‘Undang-Undang Kesetaraan Dan Keadilan Gender’ Di

The attempts made by the Government in terms of preventing gender bias include:

1. Ratifying the Convention on the Elimination of All Forms of Discrimination Against Women or the CEDAW Convention into Law Number 7 of 1984
2. Amendments to the 1945 Constitution which have contained human rights which are also the principle of equality regardless of gender differences
3. Law Number 39 of 1999 concerning Human Rights containing provisions in the Universal Declaration of Human Rights (DUHAM)
4. Law Number 23 of 2004 concerning the elimination of Domestic Violence
5. Law of the Republic of Indonesia Number 11 of 2005 concerning ratification of the Covenant on Economic, Social and Cultural Rights
6. Law of the Republic of Indonesia Number 12 of 2005 concerning ratification of the International Covenant on Civil and Political Rights
7. Law of the Republic of Indonesia Number 7 of 2017 concerning General Elections
8. Law of the Republic of Indonesia Number 2 of 2011 concerning Amendments to Law Number 2 of 2008 concerning Political Parties.

CLOSING

Conclusion

Gender bias can still be found in Indonesia, notably in indigenous peoples and regulations in Indonesia. One of the factors that influence gender bias is that there are cultural diversity and customs. Each of these customs has certain set of habits that lead to the perception and actions of a gender. The government as an organization that has full authority has made efforts to minimize gender

bias through international ratification, one of which is the Convention on the Elimination of All Forms of Discrimination Against Women or the CEDAW Convention into Law Number 7 of 1984.

However, there are still regulations that tend to have a gender bias perspective such as Law No.1 of 1974 concerning Marriage, Law Number 7 of 2017 concerning the General Election of Members of the House of Representatives, Regional Representative Council, and House of Representatives, Law Number 2 of 2011 concerning Political Parties, where it is still reflected that the government's affirmative policy towards women is only 30% compared to male involvement as well as in other laws and regulations.

Suggestion

The author sees that there are several suggestions that can be put forward; first, the government can provide opportunities for women in their roles in government institutions hence women are involved in strategic policymaking. Furthermore, the Government opens suggestions and inputs on every existing policy and regulation in order to minimize gender bias in existing policies and regulations. In addition, the need for socialization in the form of increasing understanding of indigenous peoples, especially indigenous peoples who still conduct gender bias practices. The other important thing is to revise the laws and policies in implementing the program, particularly a) Law No.1 of 1974 concerning Marriage, Article 3 (2),4,5 of the challenge of Polygamy, Article 7 (1) regarding age provisions, Article 11 regarding waiting times for women, Article 31 paragraph 1, Article 34 (1,2) on arrangements regarding provisions that position wives as very weak and subordinated; b) ~~Law Number 7 of 2017~~ Law Number 7 of 2017 concerning General Elections of Members of the House of Representatives, Regional Representative

Indonesia Pasca Deklarasi Bersama Buenos Aires Pada Tahun 2017," Jurnal Ham 9, No. 2 (2018): 153–174.

Council, and House of Representatives and Law Number 2 of 2011 concerning Political Parties, provisions on quotas for women's participation in elections; c) evaluation of the implementation of the Family Planning Program in which the program broadly focuses on regulating female body part. Lastly, the establishment of *government political will* is needed both in order to minimize the practice of gender bias and in the formation of regulations.

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