

Gender Equality and Justice in the Indonesian Law on Village

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Abstract: Since the enactment of the Indonesian Law on Village in 2014, the village can actively participate as a subject in national development. To achieve the stated development objectives, there is a need of legal guarantee for all citizens to participate in the development. The concept of gender equality needs to be present in the norms contained in the legislation and regulation on the village. Thus, this paper seeks to analyze whether there is a guarantee of gender equality and justice in the legislation and regulation on the village relating to the women's participation. This study proposes the principle of gender equality and its importance for women in rural areas. Furthermore, this study examines the principle of gender equality and justice in the Indonesian Law on Village. It also discusses the indication of the legal form of gender equality and justice in Indonesia. This article concludes that the Indonesian Law on Village has weak provisions concerning gender equality and justice.

1 INTRODUCTION

Public attention was directed to the village in 2014. The new rule, Law No. 6 of 2014 on Village, promulgated on January 15, 2014. This was followed by the enactment of the implementing regulations of the Village Law in the same year through Government Regulation No. 43 of 2014. The attention is much levied because according to the new legislation, villages will have funding from the state budget to support the activities of village administration and village development. Many political figures use this issue to attract sympathy. The academics do not miss to do the study, analysis and criticism of the Village Law. Similarly, civil society competes to prepare themselves to further improve the affairs of the village. Also included in this group are feminists who attempt to analyze the Village Law from a women's perspective in order to enable women to have a greater participation in the village.

Gender equality is important for rural women, as Rasmusson claims that 70 per cent poor people live in rural areas and 43 per cent of whom are women. Further, she argued that poor people would have better life if women had equal access to several things such as education, credit markets, and participation (Rasmusson, 2013). This paper challenges the Indonesian Law on Village from the gender

perspective. The objective is to comprehend the adequacy of the Village Law for rural women to be able to enjoy access that is essential to their lives equitably and fairly.

Many women scholar started to use 'feminist methods' to analyze social problems since the 1960s. Basically, this 'feminist methods' include "(1) the unmasking of patriarchy, (2) contextual reasoning, and (3) consciousness-raising" (Levit and Verchick, 2016). This research uses the first method, namely the unmasking of patriarchy. In this case, the technique used is to propose "some women's questions" to open up gender bias arising from laws that seems neutral. This can be started by analyzing the legal consequences of a legal norm application for men and women. The aim is to find out whether or not the law fails in considering gender-based experiences and values (Levit and Verchick, 2016). In addition, Indonesia has a legal rule regarding gender mainstreaming, namely Presidential Instruction No. 9 of 2000 on Gender Mainstreaming Guidelines in National Development.

The Annex of Presidential Instruction on Gender Mainstreaming states that gender-based analysis is a method which identify and understand the existence and causes of gender inequality, including the resolution of the problem. It is argued that gender equality must be present in the access and control to the resources, participation in the development

process, and equal benefits enjoyed. Moreover, the application of gender based analysis has to consider other factors such as social class, race, and nation.

This research is conducted in order to review gender equality in the Indonesian regulation on village. Analysis of the Indonesian Law on Village is carried out by looking at whether the principles of gender equality regulated in CEDAW have been implemented by Indonesia as a state party. Further, this study analyzes specifically the articles in the Village Law which require certain educational standards to fill positions within the village government structure. The norm formulation in these terms is neutral. However, it seems that the legislators have failed to consider the experience of rural women who generally do not have sufficient levels of education to fulfill the requirements of the Village Law. This certainly can have an impact on access to women's participation in village governance.

Based on the issue and methods that have been framed above, then there will be three sections that will be discussed as followed.

2 GENDER EQUALITY AND ITS SIGNIFICANCE FOR RURAL WOMEN

Gender equality is a term that we may encounter very often but lacks the appropriate understanding. Some people still see and relate gender to women's affairs. Therefore, in any seminars, discussions or other meetings related to or discussing about gender mostly women who attend, either as resource persons or participants in the events. This proves a lack of understanding of gender and gender equality that is expected to be achieved in all areas. In fact, the essence of gender equality can be achieved by the good cooperation of both men and women.

Nowadays, many feminists have formulated what is meant by gender and gender equality. The development of the subject is also broad enough that gender includes not only men and women (Oakley, 1972) (Williams, 2009), but also including transvestites and people who are genderless (Butler, 1999). However, for the purpose of this paper, the concept of gender is limited to what has been formulated in the Indonesian positive law. This does not mean to limit science, but solely to facilitate the understanding of such concepts.

In the Indonesian legislation, the definition of gender is formulated in the Annex of Presidential Instruction No. 9 of 2000. It is stated in the point 2 of

its General Section that 'gender is a concept that refers to the roles and responsibilities of men and women resulting from and may be altered by the social and cultural circumstances of society'. It can be examined from the definition that gender is not solely a woman's business. Gender is more concerned with the roles and responsibilities of men and women. In addition, gender is also a result of social and cultural practices of the community (Nugroho, 2008).

Furthermore, the Annex of Presidential Instruction No. 9 of 2000 also formulates the concept of gender equality expected in the national development process. It states that 'gender equality is the equality of conditions for men and women to obtain opportunities and rights as human beings, in order to be able to participate in political, economic, social, cultural, defence, and national security activities and equality in enjoying the development result' (point 3 of General Section). One step ahead, the Annex also sets forth a definition of gender justice formulated as a process to be fair to men and women (point 4 of General Section).

By looking at the formulation of gender concepts, gender equality and justice, it can be argued that governments have sought to make gender equality and justice not merely a dream. National development programs require good cooperation between all parties, including both men and women.

At the international level, the UN Committee on the Elimination of Discrimination against Women has specifically issued a General Statement on Rural Women. This General Statement was adopted on 19 October 2011 in the 50th CEDAW Committee Session. The General Statement was made in conjunction with the Millennium Development Goals Realization effectively and thoroughly. Article 14 (1) of CEDAW states that the State party shall pay attention to the special problems faced by women in rural areas and the role that rural women play in the family's economic survival, including work on economic sectors that are not considered as a money-making work. The State party also shall take appropriate measures to ensure the implementation of the CEDAW for women in rural areas. Article 14 of CEDAW provides the obligation for States Parties to ensure rural women receive equal treatment, position and access. This guarantee is necessary for women to also enjoy equal facilities and benefits in rural development.

Based on Article 14 of CEDAW, the General Statement was stipulated. In this General Statement, the Committee recognizes that rural women are vulnerable to discriminatory action. Some things related to the areas to watch for are empowerment;

education and literacy; health; access to resources and opportunities; agriculture, hunger, and poverty; conflict situation; violence, trafficking in persons, sexual exploitation and forced labour; and participatory development (CEDAW Committee, 2011).

In summary, the CEDAW Committee is aware of unfavourable circumstances for women as a result of the social and cultural conditions of the countryside. Whereas gender equality is necessary to achieve a conducive atmosphere for development. In this case, the empowerment for women is very necessary because rural women still face discrimination in all areas, regardless of the active women empowerment program that has been done. By looking at it, the empowerment of rural women still needs to be done continuously. Another concern is the issue of education and literacy for rural women. The UN noted that two-thirds of the world's illiterate population is female. This is due to the lack of rural service programs aimed at women. Other obstacles that women face related to this access to education are distance to school, fear of experiencing sexual violence on the way or at school, early pregnancy, as well as responsibilities imposed on girls to do household chores (CEDAW Committee, 2011). Health problems are also often faced by rural women, mainly pregnant women and childbirth. In 2011, maternal mortality rates at birth are more prevalent in rural areas than in cities. Of the 100,000 live births there are 640 maternal deaths in rural areas. While the number of maternal deaths amounted to 447 in urban areas (CEDAW Committee, 2011). The high maternal mortality rate in rural areas is due to the lack of access to health services, the lack of trained midwives and medical personnel, malnutrition, early pregnancy, and difficult working conditions. Health access for girls is also claimed to be difficult due to the strong patriarchal culture in many traditional villages which still prioritize boys. The next thing that also concerns the CEDAW Committee is the difficulty for women to gain access to resources and opportunities. This problem is faced by rural women because there are still many women who are illiterate. It is worsen by discriminatory practices for women related to the right to land and building ownership. It is also found that there is inadequate access for rural women to get decent jobs and income generating opportunities. In general, employment opportunities are limited. It is only the types of jobs that needed less skills which leads to the less income (CEDAW Committee, 2011).

The problems faced by rural women are also related to agriculture, hunger and poverty. It has been

widely acknowledged that women play a major role in tackling food insecurity and poverty, as well as the importance of women's access to sustainable energy, water, sanitation, education, nutrition and health. However, funding distributed to support the program turned out not to suit the needs. The CEDAW Committee noted that only about 5.6 percent agricultural aid between 2002 and 2008 made gender as a focus. In addition, there is little development of agricultural technology that can facilitate women in their work (CEDAW Committee, 2011).

Another thing that is often overlooked about women in rural areas is the support of women in conflict situations. Lots of women bear the burden in times of conflict and post-conflict situations, but these conditions are repeatedly ignored. It is also noteworthy that violence, trafficking, sexual exploitation and forced labour are frequently experienced by rural women. These are claimed mostly caused by the poverty conditions experienced by rural women. Lack of adequate employment opportunities to earn sufficient income also contributes to high levels of violence, human trafficking, sexual exploitation and forced labour.

The CEDAW Committee recognizes that women's participation is essential to sustainable development. The role of women as agents of development is absolutely necessary for the success of development. The CEDAW Committee also emphasizes that rural women and women's rural organizations have the right to participate in decision-making processes that affect their lives. Therefore, the CEDAW Committee deems it necessary to provide some recommendations for States Parties to contribute to the achievement of gender equality in rural areas (CEDAW Committee, 2011). It is said that coordination and partnership with civil society is needed to improve empowerment of rural women as a whole. A more significant recommendation is to include a gender-sensitive perspective on the design and implementation of rural development policy and program strategies.

The importance of gender equality for rural women makes the state obliged to make gender-sensitive laws on village. They also must integrate gender equality as a goal of rural development. Initially, it should be known the legal form of gender equality guarantee that has been enacted in Indonesia.

3 LEGAL FORM OF GENDER EQUALITY IN INDONESIA

Indonesia is a State that concerns about the importance of equality for every citizen since its inception. This can be seen in the Indonesian constitution as a supreme law. Historically, even before the Universal Declaration of Human Rights 1948, the 1945 Indonesian Constitution guaranteed human rights. Human rights principles contained in the 1945 Indonesian Constitution are among others the principle of equality and non-discrimination. This can be seen in the formulation of Article 27 (1) of the 1945 Indonesian Constitution which states that 'All citizens shall be equal before the law and in government and shall uphold the law and government without exception.' Furthermore, post-amendment of the 1945 Indonesian Constitution, the principle of non-discrimination is clearly set forth in Article 28I (2) of the 1945 Indonesian Constitution which guarantees that 'Every person is entitled to be free from discriminative treatment on whatsoever basis and is entitled to acquire protection against such discriminative treatment.' Thus, it can be said that regardless of gender and gender differences, men and women have equal rights and opportunities in every aspect of their lives. This includes the right to participate in the development process.

At the international level, the UN General Assembly adopted CEDAW in 1979 which was drafted by the UN Commission on the Status of Women. Article 1 CEDAW agrees that discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of reducing or eliminating the recognition, enjoyment or use of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field by women, irrespective of their marital status, on the basis of equality between men and women. It is further stipulated in CEDAW that each State party has to undertake efforts to eliminate discrimination against women in all fields by including, among other things, the principle of equality of men and women in the national constitution and other laws (Article 2 (1) of CEDAW). Another obligation is to make laws and regulations in all areas that can ensure women's empowerment and development. This aims to ensure that women can exercise and enjoy human rights and fundamental freedoms on an equal basis with men. (Article 3 of CEDAW).

Indonesia has ratified CEDAW through Law No. 7 of 1984. This makes Indonesia legally bound as a State Party to the Convention. One of legal

consequences and responsibilities that must be implemented by Indonesia is to harmonize the existing legislations in line with CEDAW's principles in order to ensure equality.

As a result, Presidential Instruction No. 9 of 2000 on Gender Mainstreaming in National Development has been issued. The President of Indonesia at the time, Abdurrahman Wahid, was very aware of the need for a gender mainstreaming strategy into the whole process of national development. Gender mainstreaming is a strategy to integrate gender into an integral dimension of planning, compilation, implementation, monitoring and evaluation of national development policies and programs. In the Presidential Instruction, the President instructed the whole range below him from the Minister; Head of Non Departmental Government Institution; Head of Secretariat of the Highest/High State Organs; Military Commander; Chief of Police; Attorney General of the Republic of Indonesia; up to the Governor and Regent/ Mayor. The first instruction is to carry out gender mainstreaming for the implementation of planning, compilation, implementation, monitoring and evaluation of policies and programs of national development with gender perspective in accordance with the field of duties and functions, and their respective authorities. The second instruction is to pay serious attention to the Guidelines for Gender Mainstreaming in National Development.

Normatively, it can be said that Indonesia has sought to ensure gender equality in all fields. However, this principle of gender equality is not clearly seen in some legislation. For example, the Indonesian Law on Marriage. It regulates the age limit for marriage. Article 7 paragraph 1 of the Marriage Law stipulates different age limits for men, namely 19 years old, and women, 16 years old. The age limit of 16 years old for women is certainly not in accordance with the definition of the child specified in the Convention on the Rights of the Child. The Convention stipulates in Article 1 that '[F]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. Indonesia has ratified the Convention in 1990 and this made Indonesia legally bound by the rules of this Convention. In addition, Indonesia also has a Law on Child Protection that is in line with the Convention regarding the age limit of a child. It can be said that the rules in the Marriage Law as a legalization of the practice of child marriage. Child marriage, results in failure to complete the 12-year compulsory education and

contributes to the high rates of Maternal and Child Mortality. The Bill on Amendments to Marriage Law has been proposed for changes since 2002, especially to stop the practice of child marriage (Koalisi Perempuan Indonesia, 2017). However, up until now still there is no amendment to the Marriage Law from Parliament. What was quite a relief that finally in December 2018, the Indonesian Constitutional Court ruled in the constitutional review of the Marriage Law that the age limit provision for women were in constitutional. Further the Constitutional Court instructs the Parliament to amend the provision within three years (Constitutional Court Decision No. 22/PUU-XV/2017).

4 GENDER EQUALITY IN THE INDONESIAN LAW ON VILLAGE

As discussed above, the enactment of the Village Law emphasizes on the village management improvement program. Previously, gender rarely becomes a focus in almost all development program. Thus, this part reviews the gender perspectives in the Village Law. It is argued that the Village Law should contain elements of gender perspectives. It also should place gender equality as one of the village development goals. It is acknowledged that women play an important role in sustainable development. However, policies are often not gender-responsive (UN Committee, 2016).

The Village Law does not explicitly state the need for gender equality in village governance. Article 3 states village governance principles that include democratic, participation, equity and empowerment which may be interpreted as a way to incorporate gender perspectives in every village program. Furthermore, as explained in the Elucidation of the Village Law, it is described that democracy is 'the system of organizing the village community in a system of government carried out by the villagers or with the consent of the village community and the respect of human dignity as the creature of God Almighty is recognized, arranged and guaranteed'. The principle of participation is expressed as actively participating in an activity. And the principle of equality is defined as equality in position and role. Meanwhile, the principle of empowerment is an effort to improve the living standards and welfare of the village community through the establishment of policies, programs and activities in accordance with the essence of the problems and priorities of the needs

of the village community. The definition contained in the Elucidation of the Village Law still cannot be explicitly read about gender equality. However, it can be seen that these principles apply to all villagers. In this case, the villagers in question are not differentiated on any grounds including gender.

Hence, it is necessary to see the articles in the Village Law to get better understanding whether the gender perspective has enshrined in the Village Law. One of the articles that can be seen is Article 56 (1) stating that 'the members of the Village Consultative Body are representative of the villagers based on the representation of the area whose appointment is done democratically'. It is said that representation only based on territory. However, Article 58 (1) stipulates that 'the total number of the Village Consultative Body members shall be determined at a maximum of 5 (five) persons and at most 9 (nine) persons, taking into account the territory, women, population and financial capacity of the Village'. Normatively, Article 58 (1) can strengthen support for women representation in the Village Consultative Body. However, Article 57d of the Village Law requires that a prospective member of the Village Consultative Body must have secondary school (or equivalent) as the lowest education completed. As has been reviewed by the CEDAW Committee in its General Statement, rural women are usually the ones who lack access to education. Thus, the minimum requirement of this education is unfavorable for women in their effort to fill positions in the Village Consultative Body.

A similar article that can also be criticized is Article 33d of the Village Law which requires a village head candidate to graduate from junior high school (or equivalent). Likewise, Article 50 (1) requires village apparatus graduate from high school (or equivalent). Through such requirements, it is almost certain that rural women, especially in traditional villages, do not have access to become Village Heads, Village Apparatuses or become members of the Village Consultative Body. This support the argument that rural women are often marginalized in decision-making and leadership positions almost in all countries (FAO, 2012). Yet women's representation and participation in village development is desirable to achieve a strong, advanced, independent and democratic village.

More broadly, it can be seen in other regulation concerning village. In this case Government Regulation No. 43 of 2014 on the Implementation of Law No. 6 of 2014 on the Village. Article 72 (1) states that the appointment of the Village Consultative Body membership is carried out democratically through the

process of direct election or deliberation of representatives by ensuring the representation of women. Article 80 (3) regulates that village meetings are attended by the Village Government, the Village Consultative Body and community elements (including representatives of community groups). Lastly, Article 127d stipulates that community empowerment is done by preparing planning and budgeting in favor of the poor, disabled person, women, children and marginal groups.

The Government Regulation No. 43 of 2014 definitely needs support from other parties to maintain gender equality as one of the main focuses in village development. This can be achieved by taking into account Article 72 (4) Government Regulation No. 43 of 2014 which states that the establishment of the Village Consultative Body appointment mechanism shall be carried out in accordance with the Regency/City Regulations. Furthermore, Article 80 (3) stipulates that the rules and mechanisms of decision-making in the village meetings are regulated by Ministerial Regulation. Hence, the Regent/Mayor, also the relevant Minister, are expected to integrate gender perspectives and ensure the existence of gender equality in all regulations.

Rural women face obstacles which come from tradition, practices, and assumption that deny women's participation in economics, social and politics (Romli, 2015). It is argued that biased and unfair practices and traditions is accepted disproportionately by rural women (Rasmusson, 2013). Thus, law must certainly regulate gender equality and justice to overcome the strong patriarchal culture and traditions in rural areas.

5 CONCLUSIONS

Gender equality is an equal condition for men and women to obtain their rights as human beings, in order to be able to participate in political, economic, social, and cultural activities. This also means the equality in the enjoyment of the development. In the meantime, gender justice is defined as a process to be fair to men and women. In every process of governance, gender equality is needed to ensure the success of a program, including village development program. Gender equality is indispensable in ensuring rural development which is advanced, independent, and democratic.

Gender equality is important for women in rural areas to make women's situation better. This can be marked by the existence or easy access for rural

women to things that matter in life. The CEDAW Committee has formulated in the General Statement the support for rural women to achieve gender equality and justice.

The legality of gender equality has been regulated in various Indonesian Laws. Some of them are Law No. 7 of 1984 on the Ratification of CEDAW, and Presidential Instruction No. 9 of 2000 on gender mainstreaming. Both Laws can be regarded as the umbrella law in ensuring gender equality in the administration of government, including village government.

Considering gender equality, the Village Law does not explicitly regulate it. The Village Law contains some principles that can be used as a basis for the principle of gender equality in village government. These principles include democratic, participation, equality, and empowerment. However, further provisions in the Village Law implies that the principle is underestimated when gender is used as a focal point.

The further rule of the village is The Government Regulation No. 43 of 2014. It has more explicitly set about gender equality. Of course, the regulation solely is not sufficient to ensure gender equality in the practice of village governance. It needs support from other parties such as Regent/Mayor, and related Ministers to make laws that further strengthen this gender equality.

Law on villages, whether in the form of Law or Government Regulation, is still lacking in gender equality. Therefore in-depth studies are needed to further support for gender equality in the practice of village governance and village development programs.

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