

Building the Basics of Gender Mainstreaming in Strengthening the Legal System in Indonesia

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Abstract. The World Conference on Women held in Nairobi in 1985 has greatly changed the gender paradigm throughout the world. It was at this conference that the term gender mainstreaming was first introduced. Gender issues are problems that always have pros and cons in a social system in society, which then has an impact on the legal system in a country. A country becomes strong if it is supported by a strong legal system. Therefore, building the foundations for gender mainstreaming in strengthening the legal system will be a strategic step to create a legal system that is inclusive and fair for all parties, especially marginalized parties. The research method used to examine problems related to how to build the foundations of gender mainstreaming in the legal system is the normative juridical method. Gender mainstreaming in the legal system includes the integration of gender perspectives in every process of creating, implementing, and evaluating legal policies. In order to strengthen the legal system, gender mainstreaming also involves drafting more gender-sensitive regulations with effective monitoring mechanisms to avoid discriminatory acts.

Keywords: legal system; gender mainstreaming; social justice

INTRODUCTION

Indonesia is one of the countries with strong patriarchal cultural characteristics. Although in general in Indonesia there are three kinship systems adopted by the community that joins the customary law community unit. The three forms of the system are patrilineal, matrilineal, and parental. The three kinship systems then influence various other systems in the order of community life, starting from the inheritance system, death, and marriage to the political system in society. Patriarchal culture is reflected in the patrilineal system adopted by most of the customary communities in Indonesia. Patriarchy is identical to gender imbalance, where men are in a more dominant position than women. The result of gender imbalance is the emergence of gender-based social problems. Gender problems are not limited to the problem of male dominance over women but spread to other social problems, including political issues. Therefore, thoughts on gender mainstreaming become an issue that continues to develop in society as a form of struggle to achieve equality known as gender mainstreaming.

Gender mainstreaming is a strategy that aims to ensure that the perspective of gender differences or gender inequality is integrated into all policies, programs, and activities in various sectors of life, both at the government, organizational, and community levels (Tazkia, 2022). The main objective of gender mainstreaming is to achieve gender equality, which is carried out by identifying and addressing gender inequalities that exist between women and men in various aspects of life, including social, economic, and political aspects, including education. Gender mainstreaming in strengthening the legal system is an important step towards creating a more just and equal society, where the rights and obligations of every individual are recognized and treated fairly regardless of gender. Although the role of women and marginalized groups in society is getting more attention, gender inequality is still a major problem in

many countries, including Indonesia. Gender inequality is not just a social problem but can be a complex problem that can disrupt the national legal system. A legal system that is not sensitive to gender equality can lead to injustice and discrimination, especially against women and other vulnerable groups.

The concept of gender mainstreaming was first introduced at the World Conference on Women in Nairobi in 1985 (Rivie, 2022). Since then, many countries have begun to integrate gender perspectives into various public policies, including the legal system. However, its implementation still faces various challenges, both in terms of regulation and implementation in daily legal practice. Therefore, it is important to build the foundations for gender mainstreaming in the legal system so that every policy, regulation, and its implementation can pay attention to the different gender needs and conditions of men and women. The development of the basics of gender mainstreaming in the legal system includes the integration of gender perspectives in every process of making, implementing, and evaluating legal policies. This aims to reduce existing inequalities and ensure that the legal system can provide equal protection for all parties, without discrimination. Therefore, gender mainstreaming in law is not just a policy, but also a necessity in order to realize an inclusive and just legal system.

METHOD

The writing method used in this study is the normative legal research method. Normative legal research is research that uses a literature or library approach. Normative legal research is legal research that places law as a building of a norm system. The norms in question are regarding the principles, norms, rules of laws and regulations, agreements, and doctrines (Hariadi, 2019). The normative legal research method is used in this study because it is in accordance with the object of the study, namely how the basics of gender mainstreaming are used to strengthen the legal system in Indonesia. As a normative-based study, the sources of legal materials used in this study come from primary, secondary, and tertiary legal materials. Primary legal materials sourced from laws and regulations related to the problems in this study are collected and identified systematically. Then, the secondary legal materials used come from books, journals, and other relevant legal sources to support the legal theories and concepts to be built in this study. The last source of legal materials is the tertiary legal material source. Where the tertiary legal material source functions to provide explanations and complements to the primary and secondary legal material sources. The tertiary legal material source comes from the Legal Dictionary and the Indonesian Language Dictionary.

RESULT AND DISCUSSION

Gender Mainstreaming as a Medium for Human Rights Development

When discussing gender, it cannot be separated from the development of human rights. Gender and human rights can be said to be an inseparable unity. Indonesia, as a country of law, recognizes human rights as stated in Article 28A to Article 28J of the 1945 Constitution of the Republic of Indonesia (UUD 1945). In these articles, the government has provided regulations regarding how Indonesian people receive protection for their basic rights and human rights as whole human beings.

The rights are as follows: (1) Article 28A regulates the right of every person to maintain his/her life; (2) Article 28B provides freedom of rights to every person to have a family and continue the lineage; (3) Article 28C provides the right to every Indonesian citizen to develop themselves to improve the quality of life in order to achieve prosperity. (4) Article 28D, the Indonesian nation guarantees the right of every citizen to receive recognition, guarantees, protection, and legal certainty that is equal and equal treatment before the law; (5) Article 28E, the state provides guarantees of basic rights to every citizen to embrace a religion and worship according to their religion, choose education and teaching, choose a job, choose citizenship, choose a place to live in the country's territory and leave it, and has the right to return, and every person is given the right to freedom of belief and attitude, in accordance with their conscience, and has the right to freedom of association, assembly, and expression of opinion; (6) Article 28F, the state guarantees freedom to every person to communicate and obtain information to develop their personality and social environment and has the right to seek, obtain, possess, store, process, and

convey various types of information as long as these things do not conflict with applicable laws and regulations; (7) Article 28G contains the meaning that every person has the right to personal protection, including their personal data, family, honor, dignity, and property. Also, every person has the right to receive a sense of security and protection from the threat of fear in accordance with human rights; (8) Article 28H, the state is responsible for providing a sense of security and comfort and is obliged to provide an environment and health services that are appropriate for humanity; (9) Article 28I, that Indonesia provides recognition and protection for human rights inherent in every person, which rights cannot be reduced or taken away by others; (10) Article 28J, that in the life of the nation and state every person is obliged to respect the human rights of others.

In the provisions of the Articles in the 1945 Constitution, it has provided a reflection of how the Indonesian nation recognizes and upholds human rights. And reaffirms the protection of human rights in Law Number 39 of 1999 concerning Human Rights (UU HAM). However, it does not mean that human rights problems in Indonesia have disappeared. There are still many human rights problems found in society, especially those oriented towards gender inequality. The complexity of gender inequality problems in Indonesia can be seen from the smallest environment in society called indigenous communities. The complexity of customs and systems in society leaves feudal thoughts that lead to patriarchy. Patriarchal culture is one of the stumbling blocks in efforts to mainstream gender in Indonesia. In some groups of society, such as in the customary law society in Bali, which adheres to a patrilineal kinship system. Patrilineal culture can be said to be a reflection of patriarchy in society (Gultom, 2018). In some cases in Bali, especially divorce cases. Patriarchy is seen from the dominance of Balinese men in obtaining child custody rights. In a Supreme Court Jurisprudence Decision Number 102K / Sip / 1973 dated April 24, 1975, it was decided that in divorce, custody rights are prioritized to the biological mother, especially for children who are still minors. Children, as referred to in Article 1, number 1, of Law Number 23 of 2002 concerning Child Protection (Child Protection Law), are someone who is not yet 18 years old, including children who are still in the womb.

However, in practice, patrilineal culture seems to place a child as only part of the father's family; this is based on the child's obligation as the successor to the father's family. This culture often triggers arguments between husband and wife in the divorce process, which more dominantly places the mother or woman in a losing position and does not get custody of the child. Back to how these phenomena then become obstacles in equalizing rights according to gender. This is what then becomes a big task for the government to strengthen gender mainstreaming as a medium for developing human rights. Changing a pattern, especially culture and customs, is not an easy thing to do. It becomes a long dilemma between maintaining the culture of local wisdom that is a characteristic of the Indonesian nation with the modernization of the development of human rights development.

Gender mainstreaming in the concept of human rights is related to how all individuals, both men and women, get the same rights based on humanity to enjoy their rights equally. There are several dimensions that are built into the concept of gender mainstreaming in the context of human rights, including:

Identifying gender inequality

Human rights enforcement based on gender mainstreaming seeks to identify and address gender inequality issues involving analysis of social, cultural, economic, and political factors.

Integrating a gender perspective into policies and laws

Integrating a gender perspective into policies and laws can be interpreted as meaning that regulations and policies made must consider their impact on minority and non-binary groups with the aim of reducing gender-based disparities and discrimination.

Respecting and fulfilling human rights fairly

Within the framework of gender mainstreaming, it is important to ensure that everyone's rights are recognized as mandated by the 1945 Constitution.

Preventing gender-based violence

Misogyny, misandry, and femicide are some forms of violence that are oriented towards a particular gender. Like misogyny, where misogyny is an ideology that embraces hatred towards women, so that women tend to be the object of violence by both men and other women (Nashihin, 2019). This group is often associated with patriarchal culture. Misandry is the opposite of misogyny, whereby the misandry group men are the object of hatred and not violence (Hopkins-Doyle, 2024). Meanwhile, femicide is a term for gender-based crime that is widely identified as the international murder of women because they are women (Salamor, 2024). With gender mainstreaming, the three forms of gender-based violence can be suppressed, and we can begin to build public awareness about the importance of upholding human rights.

Participation and empowerment

One important element in gender mainstreaming efforts as a form of human rights enforcement is how empowerment is carried out for gender-marginalized groups in decision-making.

Conducting monitoring and evaluation

Gender mainstreaming in human rights enforcement is not a program that can be completed in a certain period but requires continuous monitoring and evaluation efforts to ensure that the policies and programs implemented are effective in addressing gender inequality and creating a more inclusive and equitable environment. With gender mainstreaming, enforcement of human rights is expected to not only focus on issues that directly impact one gender separately but rather in a balanced manner based on the roles and needs of all parties in a broader social context. With the implementation of gender mainstreaming based on human rights, it is hoped that the noble ideals of the Indonesian nation can be achieved as mandated by Pancasila and the 1945 Constitution.

Building the Foundations of Gender Mainstreaming in Strengthening the Legal System in Indonesia

The issue of building the foundations of gender mainstreaming in strengthening the legal system in Indonesia is one of the main issues of the government in order to realize the mandate of Pancasila and the 1945 Constitution. Efforts made by the Indonesian government to build the foundations of gender mainstreaming in strengthening the legal system include various steps, including policies, legal reforms, and social and cultural changes that have been influenced by the development of globalization.

Here are some steps that can be taken by the Indonesian government to ensure that gender mainstreaming is used as the foundation for strengthening the legal system in Indonesia, as follows:

Adopting gender-sensitive policies

In the international world, conferences related to strengthening gender mainstreaming have long been echoed and adopted by countries around the world. The existence of these conferences plays an important role in spreading awareness of gender mainstreaming to be used in formulating policies to achieve gender equality throughout the world. The conferences include:

The United Nations Commission on the Status of Women (CSW) Conference is a conference held annually in March by the United Nations Commission on the Status of Women (United Nations Economic and Social Council / ECOSOC). Some of the themes discussed in the CSW are as follows (Barasa, 2019):

CSW 2024 (68th session) – The theme to be discussed is "Accelerating the realization of gender equality and the empowerment of all women and girls.".

CSW 2023 (67th session) – The main theme is "Innovation and technological change, and education in the digital age for achieving gender equality and the empowerment of all women and girls.".

CSW 2022 (66th session) – The main theme is "Achieving gender equality and the empowerment of rural women and girls.".

CSW 2021 (65th session) – The main theme is "Women's full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls.".

CSW 2020 (64th session) – The main theme is "Women's empowerment and the link to sustainable development".

The World Conference on Women is the fourth world conference on women with the theme "Action for Equal Development and Peace" (Chen, 1995). This conference was organized by the UN on 4-15 September 1995 in Beijing, China.

The Global Conference Women Deliver is one of the world conferences that discusses issues of health, human rights, and the welfare of children and women held in Copenhagen, Denmark, in 2016 (Asresie, 2019).

The International Feminist Forum (IFF) is a conference that unites feminist ideologies that discuss gender equality issues (Williams, 2015).

Gender Gender-Based Legal Reform

Legal reform based on gender mainstreaming aims to eliminate gender discrimination and disparities in the legal system and public policy. Some forms of regulations and public policies based on gender mainstreaming are Law Number 13 of 2003 concerning wages, the Domestic Violence Law (KDRT), and the Omnibus Law on Employment.

Gender-sensitive legal training and education

In order for legal reform based on gender mainstreaming to be successful, it is important to increase awareness and understanding of gender equality in various circles and the complexity of society.

Strengthening an accessible and gender-responsive justice system

is an effort made with the aim of creating a non-discriminatory justice system.

To build the foundations of gender mainstreaming in strengthening the legal system in Indonesia, the government needs to increase sensitivity to gender sensitivity. With this sensitivity, efforts or steps that include policy updates, updates to laws and regulations, and things that can support gender mainstreaming as a benchmark for implementing policies and regulations. Thus, the legal framework that is built will be more inclusive, responsive to the needs of women, and can create justice and equality for all Indonesian citizens without exception.

CONCLUSION

In order to build the foundations of gender mainstreaming as a strengthening of the legal system in Indonesia, the government is deemed necessary to form gender-equal policies. Gender issues are global problems that touch all systems in government. The efforts that can be made by the government in order to build the foundations of gender mainstreaming as a strengthening of the legal system in Indonesia are to adopt gender-sensitive policies, legal reform based on gender mainstreaming, gender-sensitive legal training and education, and strengthening an accessible and gender-responsive justice system.

REFERENCES

Asresie, M. B. (2019). Effect of attending pregnant women's conference on institutional delivery, Northwest Ethiopia: comparative cross-sectional study. *BMC pregnancy and childbirth*, 19, 1-10.

Barasa, E. (2019). Peran United Nations Entity For Gender Equality and The Empowerment of Woman (UN) Dalam Upaya Mencegah Terjadinya Kekerasan Terhadap Perempuan di Afganistan Periode Periode 2011-2016. *Fakultas Sosial dan ilmu Politik Universitas Pembangunan Nasional Jakarta*.

Chen, M. A. (1995). Engendering world conferences: the international women's movement and the United Nations. *Third World Quarterly*, 16(3), 477-494.

Gultom, S. D. (2018). Resistensi Janda Batak Terhadap Dominasi Sistem Patriarki Budaya Batak Di Surabaya. *Doctoral dissertation, UNIVERSITAS AIRLANGGA*.

Hopkins-Doyle, A. P. (2024). The misandry myth: An inaccurate stereotype about feminists' attitudes toward men. *Psychology of women quarterly*, 48(1), 8-37.

Nashihin, H. &. (2019). Menepis Tuduhan Islam Misoginis Melalui Pengkajian Pendidikan Islam Perspektif Gender. *At Turots: Jurnal Pendidikan Islam*.

Salamor, Y. B. (2024). Pengaturan tentang Femisida dalam Hukum Pidana Indonesia (Kajian Perbandingan Uu Ham Dan Uu Tpks). *Litigasi*, 25(1), 95-109.

Williams, M. (2015). Feminist Transnational Organizing on Gender and Trade. *The Oxford Handbook of Transnational Feminist Movements*, 446.