The Development of Gender Balance Policy in Indonesia: Marriage Act 1974 and Gender Mainstreaming Presidential Instruction 2000

Novia Handayani¹

¹Institute of Population and Social Research, Mahidol University, Nakhonpathom 73170, Thailand
¹Magister of Health Promotion, Diponegoro University, Semarang, Indonesia
Email: nv.is.novia@gmail.com

Abstract— Gender bias has been a great issue since couple of decades ago when so many countries with patriarchy ideology treat women as “the second sex”. After getting involved in CEDAW conference (Convention on the Elimination of All Forms of Discrimination against Women) which held in New York in 1979, Indonesia’s government ratify the declaration and start to make an action which resulted in the Act of Republic Indonesia No.7 Year 1984 about the Ratification of CEDAW. However, up to now, Indonesia still has many laws, policies, regulations that violates women rights and tend to be gender bias. Therefore, this study objective is to determine the extent of government’s action to combat gender bias in Indonesia. This study is using the literature review method by collecting data and information from any sources which relevant.

Marriage Act 1974 is one of many laws and policies in Indonesia which considered gender bias or discriminative. This Act is considered as an old law that still enforced and premised in marriage. There are at least 6 Articles which considered as discriminating women and gender bias. Two Articles are stated that polygamy is allowed. Unfortunately, it is being misused and lead to violence against women. One Article stated about the difference of minimum age for man and woman to get married. Two other Articles differentiate obviously about the role of man and woman in a family.

Gender Mainstreaming Presidential Instruction 2000 is one policy as a step to overcome gender bias in Indonesia. There are two main ideas of this Instruction: establishing gender analysis and giving IEC (information, education, communication) to governmental organization in any level. The progress of the establishment of this Instruction is getting improved year by year. In National Development Program 2000-2004, they make 19 development programs which gender responsive to 5 development sectors. Until the Annual Development Plan 2004, there are 38 programs which gender responsive in 9 development sectors. In 2006, the National Development Plan Board executed an evaluation to the implementation of Gender Mainstreaming Instruction. The result of the evaluation shows some programs and activities which improved qualitatively become gender responsive. However, this evaluation also shows that gender mainstreaming was still misunderstood among decision makers in any level. The reason behind was that the team was too focusing on the first main idea of Presidential Instruction which is gender analysis.

The gender imbalance in Indonesia which is shouted up to now is not entirely true. As a result of the hard work from some organizations both governmental and non-governmental, gender mainstreaming in Indonesia is improving. This can be seen in the effort of amendment progress of Marriage Act 1974; also the effort of Gender Mainstreaming Presidential Instruction 2000 which makes policies, programs and activities more gender responsive. However, obstacles, difficulties and imperfection that happened should be assumed as a trigger to make the progress and the implementation better. Instead of calling those policies and efforts as unsuccessful, Marriage Act 1974 amendment and Gender Mainstreaming Presidential Instruction 2000 is more like an unfinished work.

Keywords—gender balance; policy; marriage act; gender mainstreaming

I. INTRODUCTION

Gender bias has been a great issue since couple of decades ago when so many countries with patriarchy ideology treat women as “the second sex”. International organisation has made some movements to overcome the existence of gender bias and empowering women to balance the role of men and women.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which held in New York on 1979 expressly recognizes that extensive discrimination against women continues to exist, and that it violates the principles of equality of rights and respect for human dignity. The description of discrimination itself was specifically mention about any distinction, exclusion or restriction made by the basis of sex in any field such as economical, political, social, cultural and many more. Therefore, all states parties should take all suitable measures, to ensure the full development and enhancement of women, so they will be guaranteed the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men [1].

The Fourth World Conference on Women that held on Beijing in 1995 was determined “to advance the goals of equality, development and peace for all women everywhere in the interest of all humanity”. They also determined to women’s empowerment and full participation on the basis of equality in all aspects of society. Women must also participate in decision making process and access to power because those are the basic and crucial things to achieve the equality, development and peace [2].

Indonesia as a law-based country has mentioned in the Constitution 1945 Article 27 Clause 1 that all citizens shall be equal before the law and government and respect the law and
government without any exception [3]. This Article mentioned clearly the fundamentality of being equal for every citizen which means that Indonesia’s government realized the importance of being equal under the law since the independence day of Indonesia.

After getting involved in international conference of CEDAW, Indonesia’s government ratify the declaration and start to make an action which resulted in the Act of Republic Indonesia No.7 Year 1984 about the Ratification of CEDAW to fulfill the Article 3 of CEDAW itself. It is mention in the Act of Republic Indonesia No.7 Year 1984 Article 1 that Indonesia had ratified the Convention on the Eliminating of All Forms of Discrimination Against Women (CEDAW) which had been approved by the General Assembly of United Nations on December 18th 1979, with reservation on Article 29 (Act No.1 of CEDAW) about the settlement of disputes concerning the interpretation or application of CEDAW[4].

However, behind it all, Indonesia still has so many laws, policies, regulations that violates women rights and tend to be gender bias. According to Ministry of Women Empowerment and Children Protection, some laws that indicated gender bias or discriminative are KUHP (law book of criminal law); KUHAP (law book of criminal procedures law); Act No. 1 Year 1974 about Marriage; 217 local regulations which gender bias or discriminative such as regulation of dressing, night hour, prohibition of adultery or prostitution; Act No. 39 Year 2004 about Placement on Protection of Overseas Labour [5]. Another policies that indicated gender bias is the policies about Women Migrant Labour, the Governmental Regulation No. 45 Year 1990 about Changes on Governmental Regulation Number 10 Year 1983 about Permission of Marriage and Divorce of Civil Servant, Act Number 25 Year 1997 about Employment [6].

Indonesia had ratify CEDAW, even the government already make the Act of ratifying CEDAW, but there are a lot of policies which violates women’s right or gender bias and discriminating women that still exist. Therefore, this study objective is to determine the extent of government’s action to combat gender bias in Indonesia. This study is using the literature review method by collecting data and information from any sources which relevant.

II. MARRIAGE ACT 1974

There are actually considerable number of policies and laws in Indonesia which considered gender bias or discriminative. However, one policy should be enough to give clear and detail image of gender bias itself in Indonesia’s policies, which in this case is The Marriage Act Year 1974.

This Act is considered as an old law that still enforced and premised in marriage. Among 67 Articles of this Act, there are at least 6 Articles which considered as discriminating women and gender bias.

First, the Article 3 Clause 2 mentioned that the court may grant permission to a husband to have more than one wife if desired by the parties concerned [7]. This Clause clearly contradict the Clause 1 in the same Article which mentioned that in principle, in a marriage a man should only have one wife, a woman should only have one husband[7].

What hurts more is that the second Article in Marriage Act that discriminating women is at the Article 4 Clause 2. It is said that the court only gives permission for a husband who will have more than one wife if (a) wife cannot fulfil their obligations as wives; (b) wife got a disability or disease that cannot be cured; and (c) wife cannot have a baby [7]. While this Act making the rule of men’s right to have another wife because of their wife’s disability, there is not a single Article that making the rule of women’s right due to their husband’s disability.

The idea of having more than one wife or usually called as polygamy, was originally came from Islamic believe. However, the basic concept of polygamy is being misunderstood and misused in those two Articles. Although most of Indonesia’s population are Moslem, it does not mean that Islamic believe should be the law of this country because Indonesia is a law-based country not a religious-based country. What comes next is that those two articles are being misused by some people which lead to violence against women.

Third, the Article 7 which mentioned that marriage will only be allowed if men already reached 19 years old and women already reached 16 years old [7]. This Article clearly differentiate the minimum age of men and women in marriage without mentioning the reason why the government differentiate the minimum age and why the minimum age of women is 16 instead of more than 20 considering the reproductive health of women themself. According to YLBH (Legal Aid Foundation), the differentiate of the age between men and women was because men expected to be the leader and breadwinner so must be more mature than wife, as the parties that will be led [8].

Fourth, the Article 31 Clause 3 which mentioned that husband is head of the family (patriarch) and wife is a house wife[7]. This Article clearly determined that men must be more powerful than women and women are weaker. It is truly discriminating women because husband and wife should have the same role and responsibility in the domestic life so they have same position and work together to run the household balance. This Article also reinforce the subordination of women, which also contradict the Clause 1 in the same Article which said that rights and the position of wife is balanced with rights and position of husband in domestic life and social living in the society[7].

Fifth, the Article 34 Clause 1 which mentioned that husband obliged to protect his wife and give everything for domestic’s daily needs according to his abilities and Clause 2 which mentioned that wife obliged to take care of household affairs as well as possible [7]. This Article determined the role of husband as breadwinner and wife as house wife which is clearly enforcing the impoverishment of women, limited the development of women and women tend to depend to her husband economically. In many cases of violence against women in household, wives as the victims cannot go out from the household or divorce her husband because of the economical dependency. The influence of this Article in
occupation is those women workers tend to earn lower wages than men because women are assume as not the main breadwinner.

The sixth Article which discriminate women is the Article 43 Clause 1, which mentioned that children who were born outside marriage has only a civil relationships with her mother and her mother’s family [7]. This Article not only complicating women as mother but also the children themself, because without a father they will not able to make birth certificate and other documents which are important to be use to go to school or even to have job.

III. GENDER MAINSTREAMING PRESIDENTIAL INSTRUCTION 2000

In order to improve the position, role and quality of women, and efforts to achieve gender equality in family, community, nation and the state, the government of Indonesia believe that it is necessary to make a gender mainstreaming strategy to the whole process of national development. Therefore the President makes the Presidential Instruction about Gender Mainstreaming to encourage, streamline and optimize the efforts in gender mainstreaming.

Gender mainstreaming is a strategy which developed to integrated gender as one integral dimension of planning, budgeting, implementation, monitoring and evaluation of policies, programs and activities[9].

The Presidential Instruction about Gender Mainstreaming has five Articles. The first Article mentioned about the implementation of gender mainstreaming to carry out the planning, preparation, implementation, monitoring and evaluation of policies and programs of national development with gender perspective accordance with their duties and functions and each authorities.

The second Articles determined that the gender mainstreaming guideline on national development must be taking into account as reference in implementing the gender mainstreaming. While the third Article mentioned that the Ministry of Women Empowerment and Children Protection or MoWEC is the person in charge of the implementation, provide technical assistance to agencies and institutions on central and regional of government level and reporting the results of the implementation of gender mainstreaming to the President [10].

As the instruction in the Articles, the government is focusing in two main ideas. The first idea is establishing gender analysis. The aim is to identify the causes of gender imbalance and to identify the solution as well. The activities in this main idea are identifying the discrepancy between man and woman in getting the benefit of policies and development program in any aspects of life; identifying and understanding the causes of gender imbalance; constructing necessary efforts to achieve gender balance; setting gender indicators to know the achievements from those efforts. All those activities will result in the practical solution of gender imbalance which then will be integrated to the policy plan and national development process. The second main idea is giving IEC (information, education, communication) to governmental organization in any level. The objective is to enhance the ability of organization in any level related to gender.

This Presidential Instruction explains in detail about the practical implementation which particularly targeted to the Head of Governmental Organization in any level. Furthermore, it also mentions about the monitoring and evaluation, who is the person in charge and the reporting process [10].

IV. DISCUSSION

The existence of Marriage Act 1974 has raised some contradiction which especially came from the human rights activist particularly female rights activists. Some amendment plans had been submitted from organizations such as Legal Aid Foundation, Women Corps of Indonesia (Kowani), Ministry of Women Empowerment and Children Protection (MoWECP), National Women Commission (Komnas Perempuan). Kowani submitted the amendment draft plan since late of 90s. Two other amendment draft plans were submitted by MoWECP and Legal Aid Foundation in 2000. Komnas Perempuan submitted the amendment concept in 2011. Those organizations raised the fact that the existence of Marriage Act 1974 triggered violence against women cases, women trafficking and children trafficking [11]. Therefore, they insist the policy maker to amendment this Act by considering the fact, cases, and situation in Indonesia. However, in 2011, the policy maker stated that they still need society aspirations to review this Act.

Within this year, 2013, the progress so far in reinforcing the amendment draft plan is not yet finish. This Act still exists without any amendment until this paper is published. However, at least, this issue has been raised to the House of Representatives of Indonesia to be discussed in National Legislative Program (Prolegnas) 2010-2014.

The emergence of Presidential Instruction of Gender Mainstreaming 2000 is like a fresh air for human rights activists especially female rights activists. The aim of this Instruction not merely to fight for female rights but also to balance the role of male and female in Indonesia starting from governmental institution.

As it was expected, the team of Presidential Instruction of Gender Mainstreaming 2000 implementers is working soon after it is enacted. They use the Gender Analysis Pathway (GAP) as a tool to analyse the development plans and evaluation of policy, program and development activities. At first, GAP was used to analyse the implementation of Five Years Development Plan (Repelita) VI in employment sector, education, law, agricultural sector. The result of the analysis was that there was no policy, program or activity in Repelita VI which explicitly gender responsive. This result then used as a background to improve the National Development Program 2000-2004 become gender responsive.

The progress of the establishment of this Presidential Instruction is getting improved year by year. In National Development Program 2000-2004, for the first time, they make 19 development programs which gender responsive to 5
development sectors, they are law sector, economy, political, education and socio-cultural. Until the Annual Development Plan 2004, there are 38 programs which gender responsive in 9 development sector, they are employment sector, education, law, agricultural, micro-economy, social welfare, family plan, health and environmental sector [12].

In 2006, the National Development Plan Board executed an evaluation to the implementation of Gender Mainstreaming Instruction as a solution of gender bias in Indonesia. The result of the evaluation shows some programs and activities which improved qualitatively become gender responsive. However, this evaluation also shows that gender mainstreaming was still misunderstood among decision makers in any level. The reason behind was that the team was too focusing on the first main idea of Presidential Instruction which is gender analysis. Even though in the Presidential Instruction was mentioned clearly that as the follow up of the Instruction, there should be a program of giving Information, Education and Communication (IEC) to governmental organization in any level.

As explained before, Indonesia is a huge country with varies cultures, customs, traditions, habits, believes, etc. It is definitely not easy to implement Gender Mainstreaming in every single place in Indonesia. However, every region has their own authorities and responsibilities to review and carry out every policy in their own regions including Gender Mainstreaming regardless the cultures in their regions. The problem that showed up in implementing Gender Mainstreaming Instruction is the lack of understanding about Gender Mainstreaming Instruction in national development among region government. Somehow, they perceived that “gender” means “women”. This problem then lead to the next problem which influence to the political support, policies, organizational, information system and human resources.

V. CONCLUSION

The gender imbalance in Indonesia which is shouted up to now is not entirely true. As a result of the hard work from some organizations both governmental and non-governmental, gender mainstreaming in Indonesia is improving. This can be seen in the effort of amendment progress of Marriage Act 1974; also the effort of Gender Mainstreaming Presidential Instruction 2000 which makes policies, programs and activities which are gender responsive. However, obstacles, difficulties and imperfection that happened should be assumed as a trigger to make the progress and the implementation better. Instead of calling those policies and efforts as unsuccessful, Marriage Act 1974 amendment and Gender Mainstreaming Presidential Instruction 2000 is more like an unfinished work.

REFERENCES


