

IS THERE ANY DOUBT REGARDING WOMEN'S LEADERSHIP IN INDONESIA ?



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Abstract :

Women's leadership in Indonesia is still problematic. The problem relates to internal aspect which comes from women themselves, and external aspects, such as political, legal, economy, social, cultural and others. From the aspect of legal in abstracto, there is no different treatment between women and men in Indonesia in using their civil and political rights, but this is not so from the aspect of legal in concreto. Therefore, it needs to give attention to practical needs (legal problems) and strategic needs of women (politics) to solve the problems of women leadership. The synergy of these two must be balanced by establishing civil society, good governance and affirmative action on the 30% quota of women representation on the Board of Representatives.

I. Introduction

This paper discusses issues related to women's leadership in Indonesia. These issues is intentionally selected because of this is the "current issues" in Indonesia due to several reasons. The first factor comes from women themselves (internal factors), and the second one comes from outside these women (external factors), which covers political, social, cultural, economic, legal aspects and others. In this paper, these external factors will be focused on the legal aspects.

A good law is supposed to give something more than a mere formality of a rule. Besides competent and fair, law should also be able to recognize public's intention and is committed to the achievement of substantial justice¹. Substantial justice can only be achieved through a responsive law, because responsive law is a model that is sociological jurisprudence, which is the philosophical approach of law that emphasizes the design efforts of socially relevant law².

¹ Yoan Nursari Simanjuntak, *Hukum Responsif Interrelasi Hukum Dan Dunia Sosial, Jurnal Yustika*, Vol 8, No. 1, 2005, hlm. 39.

² Rafael Don Bosco, *Hukum Responsif Pilihan di Masa Transisi*, Humas, Jakarta, 2003, hlm. 59

Some literatures often state that the sociological jurisprudence is science that uses the approach of sociology of law. This means that social impact is a major concern, and social change is needed to achieve justice and public emancipation. This statement is in line with the opinions of Nonet Selznick, who states that responsive law is a responsive program of sociological jurisprudence. However, laws today are made on top-down mechanism so they do not reflect the desires and expectations of society, including women.

Speaking of women, especially in Indonesia has always been interesting, especially in the adjacent to the General Election (Election), both Presidential and Regional Election. Basically, election is indeed one of the means to enforce a democratic political order. The current election system in Indonesia has a consequence that accountability towards implementation of state policy is to the people³.

As good as any if state officials are not given the foundation a better political system and the rule of strict and firm, power has a strong potential to corrupt⁴. In this situation the position of men and women are equals, because they both have the freedom to determine their voting rights, and control the execution of the duties of those who are chosen.

When viewed in the course of history, it appears that the movement and the struggle for Indonesian women actually born precipitated together with the national spirit of the leaders and heroes of Indonesia. One of them is R.A. Kartini. Still fresh in minds of every Indonesian, how at a very difficult time and with all limitations, Kartini rejected differential treatment to women, such as the notion that women do not need high education, because their tasks are only to take care of their family and accompany their husbands (*konco wingking*).

Kartini done this refusal by writing letters to her friend in another country (the Netherlands), and the actual content of these letters revealed how Kartini envied women abroad who obtained equality with men in many ways. Kartini's struggle apparently has paid off, because today there are many women have important positions, as well as same opportunities as men. Career women are considered "normal" in the community as long as women can share their time between career and family. This means that in the pursuit of career women who opt for family life also must be able to perform its role as a mother in order to achieve balance.

³Soetanto Soepiadhny, *Kekuasaan Eksekutif Setelah Perubahan UUD 1945 Dalam Prospek Pemerintahan Demokratis*, *Jurnal Yustika*, Vol 12, No. 1, 2009, hlm. 29.

⁴ Moh., Mahfud M.D., *Hukum Dan Pilar-Pilar Demokrasi*, Gama Media, Yogyakarta, 1999, hlm.

Changes in social and economic fields experienced by Indonesia in recent decades have resulted in the ever-expanding role of women in society. Women have many strategic positions in various fields, and consequently there are many crimes committed by women with these expanding dimensions. Stage where Indonesian women could play is wide open, and now it is up to women to make the most of the space is open or otherwise. This is called internal factors.

External factors, in relation to Indonesia, which has declared itself a state of law, is whether the law can be used as a means to fight for the rights of women (site for struggle). A major question that must be solved given the problems of women in essence is the problem of the nation as a whole.

Various issues are examined in this paper with respect to the practical needs and strategic needs. Practical needs means that the law is necessary to fight for the rights of women. However, in reality the law was defeated by a variety of interests in politics, economy, social, cultural and others. These things last so-called strategic needs. So in this context will be sought in accordance with the approach to women's concerns, whether an alternative approach, meaning that selected one of the strategic needs and practical needs, or the cumulative approach, which means that both requirements must be run simultaneously in order to address women's issues.

II. Women, Equality and Justice

Gender became a very influential aspect in discussing the equality of women with men. In addition, gender is also dominant aspect in politics and class relations. Politics of gender relations can be observed from the family between husband and wife arrive at a broader societal level, for example at the level of practical politics. One example is the effort in Indonesia affirmative action to promote women's representation in politics, especially in the legislative branches by 30%.

Affirmative action efforts as mentioned above continue to be fought in order to be realized soon. Law no. 10 of 2008 on the General Election Members of the House of Representatives, Regional Representatives Council and the Regional Representatives Council has set a quota of 30% women. The same intent mandated in Law. 2 of 2008 on Political Parties as amended by Act 2 of 2011. Political Parties Act also mandates the kepeda Parties to meet the 30% quota for women in politics, particularly at the House of Representatives.

From the above description of the legal aspects especially true positive law in Indonesia (*Ius Constitutum*) has opened space for women's equality Indonesia to take part in politics to be able to compete with men. The problem now of course very dependent on the women themselves, if he is able to take the chance or otherwise. Definition able to take the opportunity here means women have empowerment (empowerment), which is an effort to increase women's ability to develop the capacity and skills to be able to gain access and control over the following case, decision-making, resources, and structures or the supporting.

Based on the description above, from the legal aspects, especially Indonesian positive law (*Ius Constitutum*) has opened space for women's equality Indonesia to take part in politics to be able to compete with men. The problem now depends on the women themselves, whether they are able to take the chance or otherwise. The definition of taking the opportunity here means women should be empowered, which is an effort to increase women's ability to develop capacity and skills to gain access and control over the following matters: decision-making, resources, and structures or that support⁵.

The process of empowerment towards women can be done through awareness (*conscientation*). With this kind of awareness, women are expected to critically analyze situation so people can understand/know that discriminatory practices, which are social constructs, and distinguish between natural and gender role. That is why in the process of building this awareness, women should be supplied with information, education, training and motivation in order to identify self-esteem and more self-confident and able to take the necessary decisions.

One important thing that should be stressed is that women should dare to assert themselves as leaders, and can move other women to empower themselves. Thus the changing process on equality between women and men are no longer seen from the concept of partnership, because the concept of partnership can only be understood and applied based on the concept of administration/management. The position of women and men today is determined by the concept of link and match in terms of resources of men that determines their existence⁶.

⁵Chandra Arilonang, *Pendidikan Hukum Bagi Wanita Sebagai Upaya Pemberdayaan Wanita Dalam Perwujudan Hak Asasi Manusia*, Alumni, Bandung, 2000, hlm. 143

⁶*Ibid.*, hlm. 145

In connection with the elimination of discrimination against women, the instruments of international law, namely the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) has been ratified by the Government of Indonesia in Law No. 7, 1984. This step of ratification shows that discrimination against women is a violation of the principles of equality of rights and respect for human dignity.

In addition, discrimination is also seen as an obstacle to women's participation, which is based on equality with men both in politics, social, economy and culture of a country. Discrimination can also inhibit the achievement of public prosperity and even complicates the development of women's potential in the service of the community. For this purpose there should be changes in the awareness of women and men both in the family and society.

Talking about discrimination and women's leadership, there is an interesting record when Indonesian Women Scholar Association (ISWI) visiting Chosun University, some time ago. Chosun University is a highly developed private university in Korea with many outstanding faculties organized and very complete. Travel to this Chosun takes 4 hour bus ride from Seoul. On different angles of this University there are writings of Pride Chosun with large letters, ranging from buses in the campus area and in many other places. Something that inspires the spirit to be proud of what they have.

During a visit to EWha Woman's University, another fairly old private university in Korea, and makes conscience says that there is no doubt for women to become leaders. In this university, everyone is a woman, from students, faculty, and other employees (except the driver and security). Even if there are male teachers and male students, they are just guest lecturers, or students who are undergoing exchange program. As a fellow female what we see in EWha certainly makes us proud.

In recognition of the achievements of women in particular and the University in Korea in general is extraordinary. There is a sense of confusion when compared with women in Indonesia. By law (the law in abstracto) is not a problem, because there is no discrimination between women and men in Indonesia. Moreover, laws and regulations in Indonesia have banned discrimination against women. It is based on the argument that women's rights are human rights as stipulated in Article 45 of Law No. 39 Year 1999 on Human Rights.

From the empirical cases (legal in concreto), it indicates that women often experience discrimination in many ways. Therefore, justice will be achieved when the application of the law in accordance with what has been formulated needs to be analyzed critically. This analysis will show that the relationship between law and justice are not so causal nature. This

can be understood by the fact that law cannot be separated from the political process. Thus, efforts to provide justice to women can still be made through the law but must always pay attention to changing social and legal culture that developed in the community

From the description above it can be seen that the all along growing view that says law is a neutral institutions and can be used as a mean to obtain justice needs to be re-questioned, because recognized or not, practical and strategic needs are coloring every decision. These should always be reflected to avoid disappointment because apparently law is not able to answer all wishes out there.

The implementation of normative rules is often not transparent and objective in many cases against women. It also cannot be denied that paradigm of women themselves is also an obstacle. Lately some Indonesian women politicians who are involved in strategic positions tend to do or forced to do something that is not justified by the existing legal order, one of which is a criminal act of corruption. It may be noted the names Waode Nurhayati (PAN faction) alleged involvement in the development of regional infrastructure; Angelina Sondakh (Democratic Party) allegedly involved in the case of development the House of SEA Games Athletes. Case House of Athletes who dragged Angelina Sondakh as suspects also dragged two women who play an important role, namely Rosalina Yulianis Manulang and the defendant and a witness.

There are various views on why women politicians are prone entangled in corruption cases. One is that women still new and immature in politics when compared with men, because women's involvement in politics is still new in past 10 years. As such, the rise of women who are involved in corruption should be a reflection especially for women politicians themselves.

Indeed, from the substance of legal aspects of existing rules, there is already clear and unambiguous set about corruption as regulated in Law No. 31 year 1999 and Act No. 20 of 2001 and the existing Law No. 28 Year 1999 on State Officials Clean and Free from Corruption, Collusion and Nepotism. With the rampant cases of corruption involving public officials, including many women in it shows how ineffective Law No. 28 of 1999 is. It also indicates the declining values of society.

A primary issue that causes the disorder is due to the law of social disorder. Thus, the legal issues will be related to social life in the community, because there is a pattern of interdependence between these two. The law should be able to finish the life of the

community, and vice versa events in the community should be used as a feedback in drafting a rule or law.

Now the problem is what to do deal with the case of the Indonesian women as mentioned above? The answer is women should rise up, and be able to develop the strength of her own self to be away from dependence, exploitation and sub-ordinated, so that is not prone to any issues including corruption. Women should be able to contribute to maintaining a balance between social order and the rule of law in order to create a prosperous society's demands for reform.

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III. Civil Society, Good Governance

Civil society (civil society) are capable of filling the public space so that it can be a supervisor of state power (checks and balances). Civil society is also a process in order to reform. Attempts to control this is necessary in order to establish the democratic life of the country. Later in the life of a democratic state, the right of people to determine their own course of state organizations can be guaranteed. Therefore, almost all the sense given to the term democracy has always given an important position for the people (civil society), albeit operational implications in different countries are not always the same⁷.

In a culture of democracy, every citizen has the right in determining public policy, for instance, set a budget, and a variety of other activities in furtherance of the administration. However, since it is practically impossible to involve all citizens in decision-making, then the procedure of election is used, which means that the citizens elect their representatives in government. The deputy is entrusted with the mandate to manage the future of the nation.

There is still debate about the notion arose civil society. Basically society is a form of community that has lived in a life of regularity of independent, socially just, and prosperous without any pressure other interests. Thus civil society reflects a high level of ability to be

⁷ Moh.Mahfud MD, *op.cit.*, him..7

critical in dealing with social problems. Besides, civil society is made up of small groups outside the state and other institutions of power-oriented.

Regardless the debatable notion of civil society, one thing for sure is that women are very involved in the efforts to realize the establishment of civil society to facilitate the establishment of good governance both at central and local levels.

Speaking about role, it can be defined as "a set of expected role owned by the resident in the community". This refers to the understanding of a person/people to play if they have the ability to do something. In relation to civil society, the role of which is expected within the framework of governance. That is how the implementation of the role of the community, both in the planning, implementation, and oversight of government that have been described in the previous section.

The formation of civil society who has the ability to control the implementation of the rule as mentioned above will be correlated with the formation of good governance. The maintenance of good governance is the foundation of policy making and implementation of a democratic country. Thus the phenomenon of strengthening of democratic control of society characterized by the maintenance rule, while the phenomenon of globalization marked by international interdependence, especially in the management of economic resources and activities of business entities (business)

UNDP provides some characteristics of good governance, namely:

- Participation, namely community involvement in decision-making, either directly or indirectly through representative institutions that can channel their aspirations. Participation is built on freedom of association and talk constructively.
- Rule of law, where fairness and legal framework are implemented indiscriminately
- Transparency, which was built on the freedom basis to obtain information related to public interest
- Responsiveness, where public institutions must be quick and responsive in serving stakeholders
- Consensus orientation, which oriented to public interest
- Equity, where every community has the same opportunity to gain justice and prosperity
- Efficiency and effectiveness, where the management of public resources is done effectively and efficiently
- Accountability, namely accountability to the public for any activities undertaken
- Strategic vision, namely governance and society has a vision far a head.

Thus when the definition of civil society is associated with the characteristics of good governance from UNDP, it can be drawn as conclusion that civil society is a democratic society, that is marked by the members' awareness of their rights and their obligations. This awareness can be seen in the framework of their expressed interests and expectations.

On the other hand, the government can also provide the widest opportunities for citizens to be creative with their ideas for the implementation of development programs in their areas. One important thing to remember is that civil society was not formed at once, but gradually, requiring a long process, sustained in the course of a nation. In other words, quoting Von Savigny, civil society formation process is in line with the spirit of the nation (*volksgeist*).

By being a part of civil society, then there should be no more doubts about the leadership of women in Indonesia. Recognition must also be demonstrated by the women themselves to act / be a quality leader and virtuous so as to minimize problems.

The relationship between civil society and democracy are two sides of the same coin, as both are a pattern of coexistence and interdependence relations. This means that in a democracy, a strong civil society can be enforced, and only in a democratic atmosphere, civil society can develop naturally. Besides the agenda of civil society cannot be separated from a discussion of the state. Conversation about the state of civil society in the context of empowerment is important, because the state is an institution that has enormous power in serving and distributing various interests in society.

The state can impose his will on the people or groups in the community. Even if necessary, the country can impose its authority to use physical violence in society compel obedience to orders from him. This great power is obtained because a state is a constitution of public interest.⁸

From what is stated above it can be concluded that a state is essentially an organization of power. Therefore, the main problem of power, especially in the current state administration is always to be food for thought and debate. In order to limit state power not to act arbitrarily towards its citizens, it needs a series of required rules in the rule of law set forth

⁸ Arief Budiman, **Teori Negara, Negara, Kekuasaan dan Ideologi**, Gramedia Pustaka Utama, Jakarta, 1996, hal.3

in the life of the state constitution. Thus, state and constitution are two institutions that cannot be separated from one another.⁹

There are several important factors related to civil society and the democratic process. First, it is a political, economy, cultural and moral discourse to oversee and maintain the balance of state officials. Second, pluralism in civil society, when organized could be an important foundation for democratic competition. Third is to enhance political participation and civic awareness. Fourth is to further preserve country's stability. Fifth, is to galvanize political leaders (including women).

Civil society, as a social system is a forum for its members to fulfill their needs. In this society, human will make contact with others in an ongoing interaction process. The relationship between them is in order to meet what their needs are. In the context of changing Indonesian society, the traffic of needs of its citizens has become increasingly diverse and complex.¹⁰

Enforce the rule of law demands that it contains the role of civil society more focusing on the rule of law, not state power. This is something that should be enforced by basing on the principles of the constitution. 1945 Constitution explicitly states that the explanation of the Indonesian state based on law (*Rechtstaat*), not based on power alone (*Machtstaat*).

There is a demand for upholding the rule of law contained therein role of civil society to focus more on the rule of law, not state power. This is something that should be enforced by basing on the principles of the constitution. 1945 Constitution explicitly mentions in his explanation that Indonesia is a country based on law (*Rechtstaat*) and not based on power alone (*Machtstaat*).

In relation to women's leadership, then it cannot be denied that the development of the law should be viewed as a whole through a holistic approach. Gijssel and Hocke stated that it was time to use the law of development of a comprehensive community approach.¹¹ This is caused by a condition that law is not a mere formality or normative issues alone, but also cultural elements that need more attention than the elements of structure and substance. Thus,

⁹ Sri Soemantri, **Prosedur dan Sistem Perubahan Konstitusi**, Alumni, Bandung, 1987, hal.1-2

¹⁰Esmi Warassih, *Pemberdayaan Masyarakat Dalam Mewujudkan Tujuan Hukum*, Universitas Diponegoro, Semarang, 2001, hal.7

¹¹Gijssels, Jan and Hocke, Mark Van, *What is rechtsteorie*, Antwerpen: Kluwer Rechtswetenschappen, 1982, 99.

quoting Bruggink, if law pays attention to the above elements, of the above, then law will have validity.¹²

Furthermore, Bruggink stated that the enforceability of the other elements of the law are :

- a. Factual (empirical), meaning that it can be obeyed and enforced;
- b. Formal (normative), which fits the hierarchical legal system;
- c. Evaluative (philosophical), which is acceptable and right (meaningful), and because it requires properties.

This enforcement is made so law could function properly, because if law applies only formally, then law will die; if law applies only empirically, then law will be coercive; and if law applies only philosophically then law will only be a dream. If the condition is so, then the establishment of civil society will far from reality, and there will always be doubts about the leadership of women.

It cannot be denied that development carried out during this time, including the development of the law, in some ways create helplessness especially for women, either individually or collectively in all areas of social life (social, economic and political disempowerment). Powerlessness, in turn may complicates the creation of justice, fraud easier, eliminating the bargaining position so that the participation of women in development is becoming increasingly weak.

The empowerment process should emphasize the process of giving or divert some strength, power or ability for women to be more empowered and encouraged or motivated individual that has the ability or the empowerment to determine what the choice of her life through a process of dialogue.¹³

In the context of recognition of women's leadership, the question of participation is very important. Participation is divided into three levels, namely non-participative, tokenism, and citizen participative.¹⁴

The first level includes the manipulation and therapy, meaning not for the purpose of participation does not provide the ability to society (women) to make decisions, but to educate

¹²Bruggink, J.J.H., Alih Bahasa: Arief Sidharta, Refleksi Tentang Hukum, Citra Aditya Bhakti, Bandung, 1996, hal.85.

¹³ Esmi Warassih, op.cit., hal. 28.

¹⁴ Ibid., hal.29

and treat the participants in the process of participation. The second level includes informing, consultation and placation which is a mere formality, because aspirations, views or opinions of participants (women) are only used as a material to be heard that is not necessarily a matter of decision-making. While the third level consists of a partnership, delegated power and citizen control.

In this third level, people (women) can negotiate and even has the power to participate in decision-making. This stage has a real or actual participation that need to be played by women as part of civil society. Participation process in order to achieve the expected results should dipikirkan purpose and benefits of participation, determination of participants and setting about ways and mechanisms for public participation. As such empowerment will be generated that can be a tool for the achievement of objectives such as creating democracy and justice.

In addition, law enforcement agencies and bureaucrats should make changes to the meaning, status, and power functions. They not only enforce the rules, but also have to build a culture of law and help the formation of civil society who are aware of their rights and obligations. Furthermore, law enforcement officers and bureaucrats should also be aware that the people of Indonesia, which is expected to be a civil society is a pluralistic society. Realization of a pluralistic society is important because the laws are formulated and universally applicable so expect law enforcement officers and bureaucrats can understand local cultures that characterize each community.

Thus, the issue of women's leadership can be overcome by finding the right blend of institutional and formalizing the relationship between the state, civil society and women. Unification or harmonization is necessary in order to achieve a balance of freedom as one of the hallmarks of democracy and the role of government through the enforcement of laws and law enforcement officials. In this situation women will be able to realize that they are engaged in a joint effort (common enterprise) to establish and consolidate the creation of good governance.

IV. Recommendation

1. Efforts of affirmative action to promote women's representation in politics in Indonesia should be continued in order to fulfill the 30% quota as mandated by the Law, 2 years 2008 jo Act No. 2 in 2011.

2. Women need to empower themselves and convince their ability to lead by eliminating internal and external obstacles. Political education for women is one of the solutions. in addition to monitor the practical and strategic needs of women.
3. The establishment of civil society should be a policy priority in addressing the issue of women's leadership. Within the civil society, the control function of the government to do the maximum, could finally realize the establishment of good governance and democratic governance.

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