

Examining Affirmative Action in Perspective of Law and Globalization In Indonesia

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Abstract : Globalization is a global process which is unavoidable by everyone who wants to interact with the international world because those who avoid it will be isolated from the advance and even from the international association. Globalization as a must gives big impacts to the human life including the political, economical, social-culture, and legal impacts. Law is never sterile from the aspects outside law, because law is always dynamic and will follow the society's development. When the Globalization era emerges, law also follows the rhythm of the latest era. The interesting thing is that law and globalization is related to the emergence of the movement of awareness on the gender equality in all over the world. The movement which was pioneered by the feminist movement in all over the world wanted Human Rights equal Woman Rights. The existence of CEDAW Convention which was later ratified by the Indonesian government.

Gender equality is a hard-struggle of women in reaching the global commitment on the respect of Human Rights. Gender inequality is very apprehensive especially in the developing countries in the world. Inequalities in politics, law, economy, and social cause the low level of participation of women community and relatively have not raised their function as the balanced competitor compared to the men community and the social construction that has a significant influence on the gender inequality. Gender equality is a global movement as a reflection on the inequality against women. There is a stereotype or a negative labelling that views women are lower (subordinate) than men. Even, many myths and beliefs that cause women are often viewed from merely sex aspect, not from their ability, opportunity, and human aspects universally, that is as human being who has intelligence, logic, feeling, and equality before the law.

In the political field, the determination of representative target (quota) is as much as 30% for women in the candidacy of Members of The House of Representative in central and regional that aims at knowing the correlation between the woman representation in the parliament and the process of public strategic decision making. It means to see whether the affirmative policy functions effectively and is not only formality. Therefore, it caused an obstacle in struggling the strategic issues in the parliament, although the participation of every member of the house of representative is open democratically in every strategic decision making.

Keywords: Globalization, Affirmative Policy, Gender Equality.

A. INTRODUCTION

The development of society which is more and more intensive alongside the development of technology, information, and communication has caused the emergence of a shift in the imposed values in society. As a result of the development of knowledge and technology, an era named Globalization Era was emerged. Globalization is a global process which is unavoidable by everyone who want to interact in an international world, because those who avoid it will be isolated from the advance and even from the international association. Globalization as a must gives big impacts to the human life including the political, economical, social-culture, and legal impacts.

Law is never sterile from the aspects outside law, because law is always dynamic and will follow the society's development. When the Globalization era emerges, law also follows the rhythm of the latest era. Law exists and works in society, therefore, the society is inseparable from law. Law will always follow the society's development.

By understanding the dynamics of globalization along with its overall dimensions, it can be understood that globalization will give influence on law. Globalization is a historical must which is unavoidable by everyone, by every country, and everywhere. Globalization has resulted in very big impacts on various fields of human life. The interesting thing from law and globalization which is related to what the writers wrote is the emergence of an awareness movement in a gender equality in all over the world. The movement was pioneered by the feminist movement in all over the world

which wanted Human Rights to be equal to Woman Rights yang dipelopori oleh movement feminis di seluruh dunia yang menginginkan *Human Rights equal Woman Rights*.

B. DISCUSSION

Gender Mainstreaming

Gender mainstreaming is a strategy of implementation of gender protection by integrating the gender rights into the legislation rule, policy, program, activity, and budget, started from the stage of planning, arrangement, implementation, monitoring, and evaluation with a principle of the best interest for the gender equality. Till now, gender-based discrimination is still perceived in all over the world, including in a country in which democracy has been reached, such as the independence of Indonesia which assures the democratization process as contained within the 1945 Constitution which contains the equality in rights for all Indonesian people, either men or women. Nevertheless, this gender-based right equality is often hindered by many interests in which women subordination gives benefits both politically and culturally. In this context, women are the most potential people to get a discriminative treatment, although there is possibility that men also face it. Gender is a social construction on the difference between gender of male and gender of female which results in attribute, position, role, and certain social category. The social construction is needed as a part of survival

mechanism of a society. Therefore, the gender construction is contextual and relatively appropriate to certain space and time. For example, that the low representative rate of women in the legislative institution is a violation against the women's fundamental democratic rights, that means the violation against their basic rights. The political rights also included the individual participation in making public opinion. Accordingly, the political rights include the right to give opinion, the right to be candidate of representative institution (house of representative), and the right to be candidate of presidents and other rights containing association and giving opinion related to politics. Besides the underlying factor and the decision of The Constitutional Court, another factor is recruitment conducted by political parties which put the candidates into difficulty. At least, it was reflected in the result of general election 2004-2009 as conveyed by Anik Amikawati.¹

Affirmative Policy

The struggle of female activists in persuading the government to implement the appeal of CEDAW of the United Nations to the countries which signed the Convention, including Indonesia, has just got a serious attention from

the Parliament of the Republic of Indonesia in the reform era. One of the appeals of the UN's CEDAW to eliminate all kinds of discriminations on women is by conducting affirmative actions. The *affirmative actions* are special actions of correction and compensation from the country on the gender injustice against women recently.² Article 4 of the UN's CEDAW contains "*affirmative actions are special temporary steps which are taken to reach the equality in opportunity and treatment between men and women*". The early meaning is that law and policy impose requirements imposed to a certain group. The compensation is given in the form of peculiarity in certain cases in order to reach a proportional representation in various institutions and occupations. This affirmative action is also a positive discrimination. One of affirmative actions is by determining the quota system at least 30% in the insitutions which make the state policies.

The above phenomenon, viewed from the global political perspective, reveals a similar trend in all parts of the world. Women, in all over the world in the social political field, feel that they are less represented in the legislative instituon and far from involvement in taking decision. Meanwhile, the political game arena in every country has a certain spesific

¹ Anik Amikawati, 2008, *Analisis Gender Pada Kinerja DPRD Provinsi Jawa Tengah Periode 2004 – 2009 (Studi Kasus Pelaksanaan Program DPRD Provinsi Jawa Tengah pada Bidang Sosial Khususnya Pemberdayaan Perempuan)*, Post Graduate Thesis, Diponegoro University, Study Program of Master of Administration Science, Concentration of Master of Public Administration.

² Rosidawati, 2007, *Potret Keterwakilan Perempuan di DPRD Jawa Tengah*, accessed on 16 May 2010 from <http://rosidah.wordpress.com/2007/02/14/potret-keterwakilan-perempuan-di-dprd-jateng/>

character, but there is a general fixed description for it, that is, there is imbalance and not conducive situation on the woman participation. A woman who wants to enter the political realm find a reality that the political, public, cultural, and social environments are often unfriendly or even adverse against her. Even, at a glance, the recent composition of taking political decision in many regions gives an evidence that women still face several hindrances in articulating and determining their interests.³

In the political history in Indonesia and in the developing countries in general, women are viewed as being late in their involvement in the political realm. Stigmas that woman is always in the domestic position is considered as one of factors which causes the woman is late in beginning to engage in the political realm.⁴

Such cultural stigma brings excess on the deterioration of women's political rights in taking a strategic decision which orients on the women's interest itself especially and on the public interest generally. Besides the reality of such labelled cultural stigma, the factual domination reality of men in the legislative institution also participates in influencing the deterioration of women's role in the process of taking the public decision.

³ Nadezhda Shvedova, *Perempuan di Parlemen: Bukan Sekedar Jumlah, Bukan Sekedar Hiasan*, Yayasan Jurnal Perempuan, Jakarta, 1999, p. 17.

⁴ Budi Shanti, *Kuota Perempuan Parlemen : Jalan Menuju Kesetaraan Politik*, dalam Jurnal Perempuan: Untuk Pencerahan dan Equality, (19th edition), YJP, Jakarta, 2001.

Therefore, it is reasonable that when the decision which are taken are very masculine and less gender-representative. Women are less involved in taking decision. Women are not more than the users of decision, whereas, the decisions which are resulted are often gender bias, do not consider the women's interest, do not make the women more developed. As a result, more women engage themselves in not strategic sectors. In long term, it causes the women's position is always in the marginal position.

The Principle of Equality in the Perspective HUMAN RIGHTS

One of basic meanings of the implementation of the Human Rights is the emergence of gender equality among human kind. The introduction and the basic understanding on what meant by gender and why gender becomes the problem of development is the most important element in taking the meaning of equality. In the 1945 Constitution as the state constitution, gender equality is very proper to be implemented. Therefore, the strategy which can be realized in integrating gender in all policies and programs of many organizations and educational institutions and in establishing advocacy agents in order to protect the women's rights (gender injustice) either in the state level or in the society environment. The Convention on the Elimination of all forms of Discrimination Against Woman or CEDAW, 1979 in which Indonesia had ratified the convention through Act No. 7 of 1984 meant that the countries which participated the convention condemn discrimination against

woman and all forms (Article 2). To implement the elimination of discrimination against women, a country should make many efforts as asserted in this convention on Article 2, among them are:

1. To enforce the law protection on the women rights on a similar base to men and to assure it through a competent national court and other government agencies as well as an effective protection of women against any form of discrimination.
2. No to do any discrimination practice against women and assure that the government officials and state agencies will act according to the obligation.
3. To withdraw all national criminal stipulations which are discriminative against women.

The principle of equality before the law, law protection on women, equality between men and women and being assured in the national court. To eliminate discriminative practices on women, a law renewal is needed in order to reach a gender-approach law which is unavoidable. Gender and law socialization to the law enforcers are needed toward a change in mindset from androsentris values (viewing something from male's perspective) toward a gender-based approach, therefore, it has a gender sensitivity and empathy on the victims in the implementation of the tasks during the process of court in order to reach the equality and gender justice.

C. CONCLUSION AND SUGGESTION

Law is never sterile, so is it when Globalization happens, the law will be dynamic following the development of the latest era. Law and Globalization is a must when there is no change. The respect on the Human Rights then placing Human Rights equal Woman Rights was a result of the feminists's struggle in all parts of the world to reach the gender equality. People's awareness on the human rights was derived from the awareness on the self-esteem, dignity, and status of their humanity, because, actually, the human rights had existed since human being was determined by their destiny to come to the world. The existence of women in the Parliament is a prerequisite for the realization of a society that has a gender equality which is a principle of the Human Rights. The needs to increase the political representation of Indonesia women emerged from an awareness that all political priorities and agenda must be reformed and all of those are impossible to be reached through a gender-biased legal and political systems.

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