

Influence of Judge's Culture Towards Access on Gender Equity In Indonesia Judicial Environment

Dewi Astutty Mochtar, Kadek Wiwik Indrayanti dan Ali Imron
Lectures in Law School at University of Merdeka Malang, East Java- Indonesia

Abstract

The aim of this paper is trying to identify and analysing the gender equity in judicial institution and the obstacles that judges faced. The type of empirical legal research is used in this study because it tries to describe and analyze policies, gender mainstreaming programs, and gender indicators in the judicial environment. The results show that regulation on gender mainstreaming and gender equality policies and programs and legal culture in both the central and regional courts are not widely known by judges. There are several obstacles faced by judges on duty who come not from the institution, but rather to stay separated from the family, and the issue of customary obligations specifically for judges from Bali who adhere to the patrilineal kinship system. Whereas the development of legal culture theory related to the concept of gender equity requires an increase in knowledge and understanding of the concept of gender, psychological aspects, human rights, and culture, as well as methods that can be used among judges especially women judges, hence obstacles that come from themselves can be reduced.

Key word: Gender equity, Judicial environment and obstacles

A. INTRODUCTION

The principle of the position of every citizen before the law is equal and the provision is stipulated in the provisions of Article 27 of the 1945 Constitution of the Republic of Indonesia. However, in reality, the principle of equality is still not fully enjoyed because of the patriarchal tradition which resulted in the role and position of men and women not only unequally but sometimes not the same. The portrait of gender equality and gender justice is one issue in Indonesia, and this condition is followed by the phenomenon of the low involvement of women in the process of the making, taking, implementing, and evaluating programs. The low access of women in accessing various resources and the benefits of development enjoyed by this phenomenon also occurs in judicial environment. A study conducted by Ealine Matin (1991: 50-51) shows the occurrence of gender bias, among others, factors of experiences in male judges and women are not equal in giving decisions in the cases they handle.

How fundamental the implementation of gender mainstreaming in all aspects of life is based on the laws and regulations, namely Law No. 25 Year 2000 concerning the National Development Program - PROPERNAS 2000-2004, and Presidential Instruction No. 9 Year 2000 concerning gender mainstreaming.

Likewise, the facts in Indonesian law enforcement institutions are not working well because the problems are in the aspect of legal culture. The study conducted by Setiyono and Enny (2014) illustrates that the values adopted by judges come from the kinship value system which adopted and influence the decisions, whether the priority is on the aspects of legal certainty, fairness, or usefulness. In his study, the indicators used by Setiyono for the decision of judges on domestic violence cases were only kinship systems. Besides examining differences and similarities to the basis of the decision of the judge against the background of the kinship system. While the internal and external legal culture factors of judges and aspects of legal psychology have not been studied in-depth and comprehensively.

Meanwhile, studies / research on legal culture are still not widely carried out among the people. Dorothy (1986) reveals that the role of judges as individuals also has attitudes and values that are believed, but when the judge serves as a law enforcement officer, his role demands to carry out legal play. Therefore, the culture from himself and his institutional environment will influence his judgement in deciding a case.

While the study from Dewi and Indrayanti (2017) on the impact of kinship system which part of the legal culture does not significantly affect access to participation and opportunities for female judges to express themselves, especially in occupying higher positions. In fact, there is one aspect that needs to be studied deeper about legal culture, especially the internal factors of actors that can affect the ability of actors to access, control, and improve themselves. Indeed, not only factors from outside the actors that give influence, but internal factors of the actors also need attention. Therefore, the development of the concept of legal culture to improve gender mainstreaming in judicial environment needs to be studied more and deeply, so as to obtain a holistic picture of what needs are required by judges in carrying out their duties as one of the law enforcement officers. The novelty of this study compared to the others is the existence to develop a judicial legal culture to improve gender mainstreaming conditions within judicial institutions.

This paper aims to examine policies on gender equality policies and programs in judicial environment, to analyze the causes of judges' internal cultural constraints, and the formulation of the development of judicial legal culture theory on gender equality.

Concept Study: Gender Equality (gender equity) and Legal Culture

Gender equality

Gender equality (gender equity) is a process which taken so that men and women in accessing, participating, controlling, and receiving the benefits of life activities both in the family and the community become equal.

Concept of Legal Culture

Legal culture relates to parts of general culture, namely values, beliefs, habits, and perceptions that make and represent ways of acting and ways of thinking of a person and community groups, especially those related to law. For example, what is the opinion of the public towards the court (Achmad Ali, 227).

Theoretical review

Theory of Gender needs

One approach used to achieve equality and justice of both genders is to fulfill what is needed by each. This need can be seen in two forms, namely practical and strategic needs. : a) Practical needs are usually used directly and real and are developed based on the needs of women's gender roles. For example: access to water, oil, sanitation facilities, transportation, credit, and so on; and b) Strategic needs are a need that still has to be fought for in a relatively long time. For example, the equality of rights to wealth, salary, and equal treatment for women and men. This research will try to achieve practical needs.

Theory of Legal Culture

Lawrence M Friedman first included elements of legal culture as an element of the legal system. According to him, "The term legal culture has been used to describe characteristics and behavior patterns toward the legal system" (Achmad Ali, 2009: 227).

Research methods

The type of empirical legal research is used in this study because it tries to describe and analyze policies, gender mainstreaming programs, and gender indicators in the judicial environment. The location of the study was carried out in the environments of East Java and Bali Regional High Court. Samples in this study are judges. The primary data collection method is carried out in two steps. Step (1) used interview techniques using questionnaires with closed and open-ended queries. The second step (2) was by conducting focus group discussion (FGD). Data analysis was carried out using gender analysis methods and legal culture indicators.

B. DISCUSSION

Table 1. Training on Gender

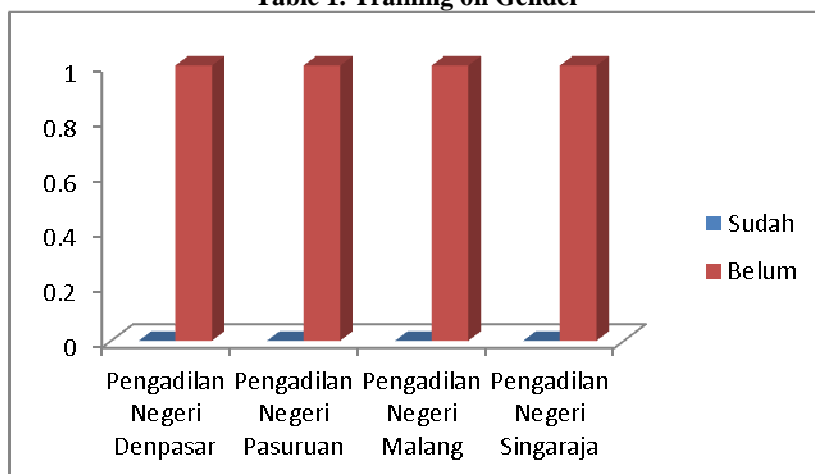
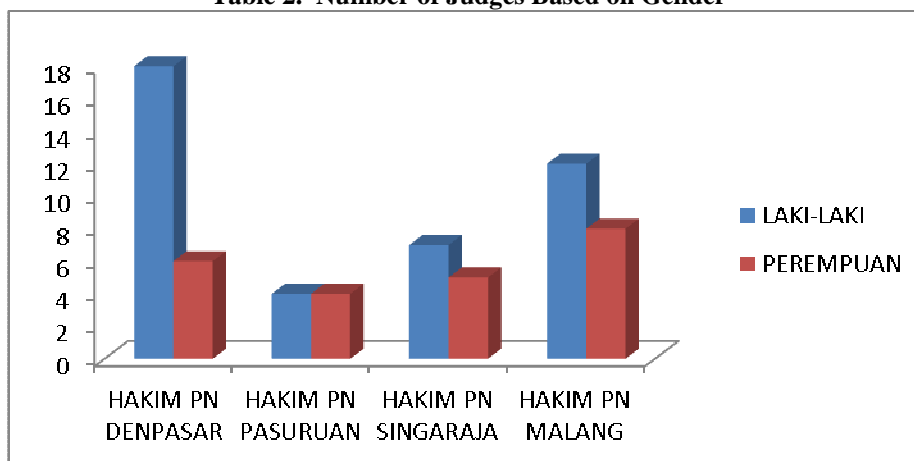


Table 2. Number of Judges Based on Gender



Access and opportunities have been given equally between male and female judges in developing their careers by judicial institutions. However, information about gender have never been given or accepted by judges either on duty or while undergoing education for prospective judges. Therefore, knowledge and understanding about gender is not optimal, hence it will have an impact on the verdict and the way the judge conducts the trial of cases where the perpetrators and victims are women.

Furthermore, the constraints felt by female judges generally come from the woman herself. For example, in terms of assigning assignments to judges; issue that often becomes consideration is women judges' family, for instance the school of their children, and the workplace of their husbands. The pull of custom or tradition is an obstacle for some judges, especially female judges, because of the dual role she carried out, namely as a professional officer, a mother, and community member in carrying out their obligations. Constraints faced by female judges are related to customary/community obligations that make it difficult to carry out their duties because they have to attend customary obligations intensively.

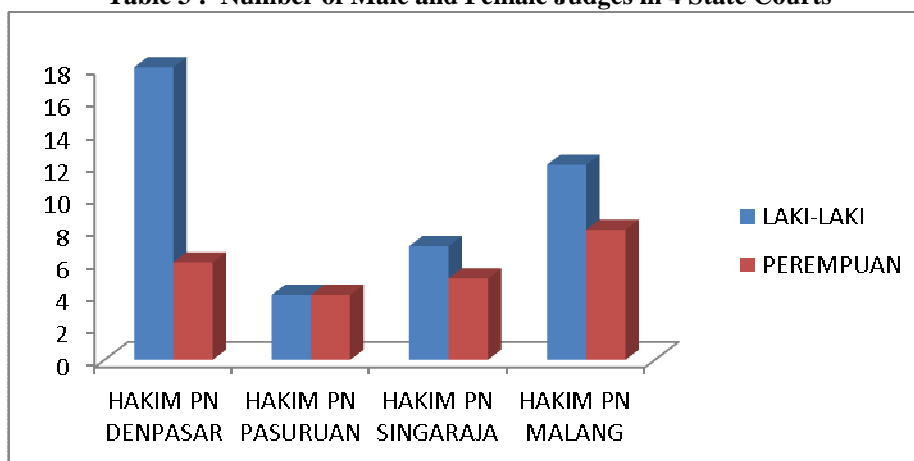
As a judge, there are differences between male and female judges in giving consideration in considering decisions. Female judges emphasized the aspect of legal certainty, which according to them the value of justice could be involved in the verification.

Associated with the existence of the Supreme Court Regulation (PERMA) No. 3 Year 2017 concerning Guidelines for Judging the Case of Women Against the Law, there are several obligations that should be known and carried out by judges, namely: 1). Hold on the principles of: respect to humanity and human dignity; Non-discrimination, gender equity; equality before the law; justice; benefit; and legal certainty; 2) Judges are prohibited from acting: degrading; blaming; intimidating women who are solving case before the law; justifying discrimination against women using culture, customary rules, or expert interpretations of gender bias; issuing views / statements that contain gender stereotypes; etc. 3) Judges must consider gender equality and gender stereotypes in unwritten rules and laws; must interpret unwritten rules or laws that guarantee gender equality; must explore legal values, local wisdom, and the sense of justice to ensure gender equality; must ensure equal and non-discriminant protection; 4) During the trial, judge must prevent the parties who attempts to demeaning, blaming, intimidating, and abusing the background of women's sexuality in issuing a case before the law; and 5) When women experience physical and psychological disturbances, they are allowed to present with a companion.

The basis of the issuance of PERMA was because there were some judges' behavior in the trial, especially in handling cases whose victims were women, asking informations that made the victim discomfort. Judges were aware of the appeal, but had never been discussed internally among judges. The implementation of PERMA was handed over to each judge, so that the trial was expected to improve the personal capacity of each judge in communicating with more attention to ethics. According to the judges, the capacity that must be increased to the judge as a professional, to be able to carry out the PERMA, is the way to communicate with the victim; victims' psychological condition; and aspects of respect to victims. It is because of the questions that raised by male judges against female victims often intensified trauma, since they were asked in detail about the chronology of the events the suffered. However, the questions posed by judges as much as possible sometime may be needed to get clarity, in the case when the perpetrator and the witness corner the victim. Sometimes there are judges who speak at a rather loud / high-pitched hearing and offend the defendant, especially if it is a woman. Such behavior showed by Judge may caused by personal problem, and usually the judge's task is heavy hence sometimes his way of speech is uncontrolled and emotional. A judge in carrying out his duties, other than having knowledge of the law, also should master the art of trying case in the court.

The constraints felt by most male judges usually came from internal condition such as families, because he could not invite his wife and children to live together. This is because his wife works and his children are still small. Besides that, when moved to a new place, the judge must learn about the local language, culture, and character of the community. For example, in the area of Madura and Gresik, the cases of gamble and blasphemy are very common. Therefore, in deciding the case, judge must decide which aspects that take precedence; whether the legal certainty, the fairness, or the benefit, depends on the case. However, for the case of women, the one that prioritized is justice. Related to the existence of PERMA No. 3 Year 2017, it stated that judges in the future need to have knowledge in the field of victim psychology. Another obstacle felt by these gentlemen is that there is pressure from the community (groups, mass organizations, etc.): have ever made guilty sentence by request of the defendant to be convicted as safe and respectful to the victim.

Table 3 : Number of Male and Female Judges in 4 State Courts



Source: Prosesed Secondary Data, May 2018

The results of study on the impact of judicial legal culture and the perspective of judges in realizing gender equality indicate that almost all judges in general (men and women) said that access and opportunities for judges in a career were given equally by the judicial institution. In general, the constraints that are felt by judges who come from insignificant institutions are only external constraints such as the existence of pressure in carrying out their duties. Most judges said that they had experienced equal obstacles from internal condition of themselves such as families who lived separately, and the dual role felt by female judges from Bali who had multiple roles such as customary duties (community) along with her duties as a judge. Customary obligations are a necessity for people in Bali to actively participate, while there is a conflict of time experienced by female judges.

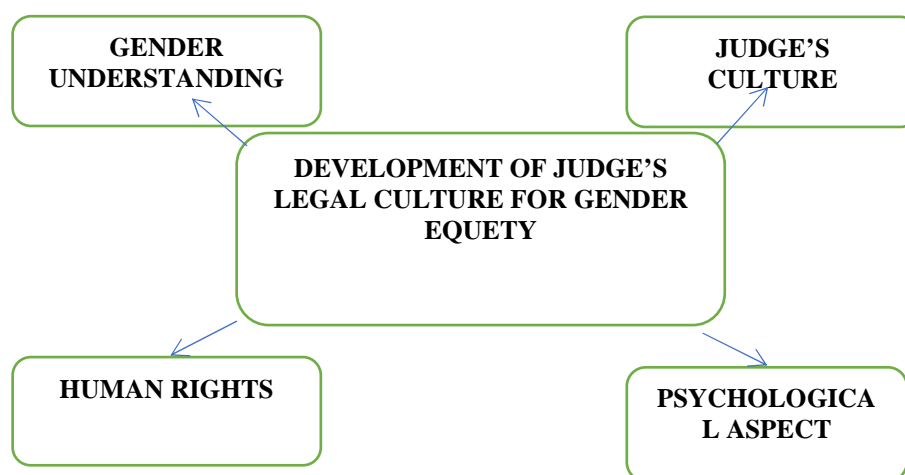
Furthermore, related to the existence of PERMA No. 3 Year 2017 concerning Guidelines for Judging Cases of Women Solving Cases Before the Law on July 11, 2017, most judges said that to fix patterns of behavior of judges in handling cases in trials, the judges need to have knowledge and understanding of gender, violence, psychological condition of victim, and cultural impacts. On that basis, some material needs to be given to judges to increase the gender equity in the judicial environment.

Observing the condition of gender mainstreaming in the judicial environment in general, it has been going well in a sense even though information related to the concept of gender and related matters is not directly given to each personal judge. This can be proven that the position of Head of the court is held by a female judge. It also shows that access, opportunity, and control have been given equally to both sexes, and women are able to do so.

When referring to cultural concepts, there are internal and external culture. In general, the influence of external culture has supported to provide equal opportunities between male and female judges in their career. What is needed in the future to maximize the picture of gender equality in judicial environment is the internal culture of the judge. Because the biggest obstacle comes from the internal judge itself, therefore the access and opportunity are ignored in the sense that they are not a priority. This is illustrated by the constraints experienced by most judges on duty, namely the problem of placement of work environment and families. There was once a female judge from Java who was given the opportunity to hold a higher position by following a number of requirements including following a psycho test. The female judge said that she knew and understood the answer to the problem, but because of weighing consideration to the family, she gave wrong answers to the test. It is one example of how the role of nurture is still present in a woman regardless of her position in the society. while some accept the positions even though they have to be separated from the family, especially children.

Looking at these conditions, it becomes important for woman before deciding to work in the public domain, especially as a judge. Constraints or obstacles appear to arise from families (for example husbands who do not give permission, to be separated from family, and children who are in school age). It is a big step for women in general, especially women from the patrilineal kinship system, to be able to make decisions on themselves. Knowledge for woman to make a decision for herself cannot be separated from her external influence.

Create changes in the roles of men and women in society in order to create gender equality requires the efforts of all parties, as the first; giving concept knowledge about gender, gender differences, and how they can achieve common goals both in public and domestic spheres. Understanding gender equality and justice is not only for women but for both sexes. Furthermore, cultural and psychological aspects need to be given. Later; it is time to change the mindset of the society, especially women.



C. CONCLUSION

There are several issues that can be concluded from this study, as follows: Regulations on gender mainstreaming and gender equality policies and programs and legal culture in both the central and regional courts are not widely known by judges. There are several obstacles faced by judges on duty who come not from the institution, but rather to stay separated from the family, and the issue of customary obligations specifically for judges from Bali who adhere to the patrilineal kinship system. Whereas the development of legal culture theory related to the concept of gender equity requires an increase in knowledge and understanding of the concept of gender, psychological aspects, human rights, and culture, as well as methods that can be used among judges especially women judges, hence obstacles that come from themselves can be reduced.

DAFTAR PUSTAKA

Achmad Ali, **Menguak Teori Hukum (Legal Theory dan) dan Teori Peradilan (Judicialprudence) termasuk Interpretasi Undang-Undang**. Jakarta : Kencana Prenada Media Group, 2009.

Chinkin, C. **Gender Mainstreaming in Legal and Constitutional Affairs, 2001 United Kingdom: Commonwealth Secretariat**

Indrayanti .W. Kadek. **Penyusunan kebijakan pengarusutamaan Gender (PUG) Di Lingkungan Pemkot .** Kerjasama dengan Bappeda Kota Malang, 2009. Hasil Penelitian.s

Elaine Martin, 1991. **Yudicial Gender danYudicial Choices** Dalam *Gender And Policy Making Studies of Women in Office* . New Jersey: Rutgers.

Hoesen, S.S. Dkk, **Kesetaraan dan Keadilan Gender**, .Edisi Kedua. Jakarta: Kemeterian Pemberdayaan Perempuan, 2001.

Lawrence M. Friedman, Legal Culture and Welfare State, New York: Walter de Gruyter, 1986

....., **Sistem Hukum Perspektif Ilmu Sosial**, Bandung: Nusa Media, 2009.

Setiyono dan Enny. R, **Kajian pengaruh Sistem Kekerabatan Pada Persepsi Hakim dalam Menangani Kasus kekerasan terhadap Perempuan**, 2014. Hasil Penelitian DIKTI

PERATURAN PERUNDANG –UNDANGAN

Undang-Undang Dasar 1945 khususnya Pasal 4 ayat (1), Pasal 27 ayat (2) dan pasal 33.

Keputusan Presiden RI Nomor 88 Tahun 2002 tentang Rencana Aksi Nasional (RAN) Penghapusan Perdagangan (trafficking) Perempuan dan Anak.

Instruksi Presiden No. 9 tahun 2000 tentang Pengarusutamaan Gender dalam Pembangunan Nasional.

Perpres No. 5 tahun 2010 tentang RPJMN 2010-2014.

Permendagri No. 15 tahun 2008 tentang Pedoman Implementasi PUG di Daerah.

Surat Keputusan Menteri Negara Pemberdayaan Perempuan Nomor 23/SK/MENEG.PP/VI/2001 tentang Pedoman Penetapan Stándar Pelayanan Minimal (SPM) Pemberdayaan Perempuan di Provinsi, Kabupaten/Kota sebagai Daerah Otonom.

Keputusan Menteri Dalam Negeri (Kepmendagri) Nomor 132 Tahun 2003 tentang Pedoman Umum Pelaksanaan PUG dalam Pembangunan di Daerah yang menginstruksikan setiap institusi pemerintah melaksanakan PUG.

KONVENSI INTERNASIONAL

The Convention for the Elimination of All Discrimination Against Women (CEDAW) pada artikel 14 (2)

Konferensi ICPD di Kairo 1994 (*International Conference on Population Development*)

Konferensi Hak Asasi Manusia di Wina (1993)