

# Gender justice legislations: its implementation and challenges

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# Main principles of gender justice legislations



# Main principles

- In line with human rights principles
- Non discriminative toward women
- Uphold gender equality
- In line with higher legislations



# In line with human rights' principles

Article 1 universal declaration of human rights:

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brother/sister-hood.



# In line with human rights' principles

- Article 28 of Indonesian constitution (UUD 1945) on human rights
- Law number 39/1999 on human rights



# Non discriminative toward women

- Convention on the elimination of all forms of discrimination toward women (CEDAW)
- Law 7/1984 on ratification of CEDAW



# Non discriminative toward women

Convention on the elimination of all forms of discrimination against women (CEDAW) Article I

For the purposes of the present Convention, the term "**DISCRIMINATION AGAINST WOMEN**" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.



# Gender equality

- **Formal equality:** treating everyone the same regardless his/her different characteristics/needs.
- **Protectionist equality:** treating men and women differently which claims to "protect" women, while in fact it is not.
- **Substantive equality:** treating men and women the same and giving them similar opportunity, while accommodating their special characteristics/needs.





Legislations and gender equality:  
should be based on substantive  
equality, NOT on formal and  
protectionist equalities.



# Substantive equality

The aims and contents of a legislation should not be contradict to each other:

- No articles discriminate, limit and or hamper a woman to enjoy her (human) rights.
- No articles place a woman as an initiator of (sexual) violence, neither blaming a woman victim of violence.
- No articles criminalizes a woman victim of violence.
- No articles place (sexual) violence against woman as a morality issue.



# Substantive equality

- No articles contains and or strengthen stigma or stereotypes of a woman, including a woman victim of violence.
- No ambiguous/vague articles which invite multi interpretation of a particular issue.



# Substantive equality

## Clarity in bureaucratic arrangement:

- Contains articles on authorities/institutions which are responsible of implementation of a legislation.
- Contains articles on coordination and supervision mechanism including on how to handle public complaints.



# Substantive equality

## Advantages:

- Contains articles that guarantees the fulfillment of human rights and justice to both men and women.
- Contains articles which anticipate problems that may arise in implementation.



# In line with higher legislations

Legislations should not contradict to higher regulations.

General regulations such as:

- Constitution
- Law 23/2004 on regional governance
- Law 39/1999 on human rights

Special regulations such as:

- Law 7/1984 on ratification of CEDAW,
- Law 5/1998 on ratification of CAT
- Law 23/2004 on domestic violence
- Law 21/2007 on human trafficking



# Gender justice legislation and its challenge



# Misleading perception

- A legislation is often perceived as the wish of all people, men and women. In fact it is not always the case.
- Violation of women's human rights in a legislation is often considered as "normal".





Is it correct that a gender legislation comes from the wish of all people, men and women?



# Women's position in legislation's/policy's formulation and implementation in Indonesia

- At national and regional levels, women's percentage in parliaments is below the minimum quota of 30%.
- As a result women's needs are less/not accommodated in legislations.
- There is a tendency that women are placed more as an object than a subject in legislations' formulation and implementation.



Non discriminative principles must be implemented in all stages of policies.



# Stages in gender justice legislations

- **Formulation:** Men and women should have similar opportunity to participate in a legislation's/policy's formulation.
- **Content:** A legislation/policy should contains and accommodate substantially equal rights, equal opportunities and equal advantages for men and women. When necessary special measure for certain party can be included.
- **Impact:** A legislation/policy should support fulfillment of human rights of both sexes.



# Gender legislations and its implementation in Indonesia's regional autonomy



There is a tendency to regulate every aspects of social life and marginalizing other instruments such as:

*usage,  
folkways,  
mores,  
customs*



# Data

## Nationally

- There are 389 legislations/policies which are discriminative toward women and other marginal groups.
- There are 301 legislations/policies which are conducive/supporting women's rights.

(National Commission on Violence against Women, 2015).



# Closing

We need special efforts to push:

- Fullfillment of human rights in legislations
- Fullfillment of women's human/constitutional rights in legislations.
- Legislations do not contradict with other/higher rules.





# Thank you

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