

Legal Reconstruction of Women's Empowerment Government Policies in Realizing Gender Equality

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DOI: [10.36348/sijlcj.2023.v06i03.009](https://doi.org/10.36348/sijlcj.2023.v06i03.009)

| Received: 13.02.2023 | Accepted: 24.03.2023 | Published: 27.03.2023

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Abstract

The objectives of this study are to analyze and find weaknesses in government policies in the field of women's empowerment in realizing gender equality and how to reconstruct the law to realize better Gender Equality. The method used in this study uses an empirical juridical approach supported by a normative approach with the paradigm used by the constructivism paradigm. Results of the research show that the Weaknesses in government policies in the field of women's empowerment in realizing equitable gender equality is that there is still low knowledge and skills (competence) of HR planners in OPD regarding how to prepare PPRG (GAP and GBS), due to weaknesses in regulations in Permendagri No. 67/2011, which has not regulated the obligation of PUG Pojka to organize and provide training to focal points in each SKPD. Therefore, a legal Reconstruction of government policies in the field of Women's Empowerment in realizing a just Gender Equality is needed, namely by following up on regulations that require the implementation of gender mainstreaming in regional development by reconstructing Article 10 of Permendagri No. 67/2011, namely by regulating the obligations of PUG Working Groups to organize and provide training and at the same time providing sanctions for violations of duties by PUG Working Groups.

Keywords: Legal Reconstruction, Women Empowerment, Gender Equality.

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INTRODUCTION

The Efforts to protect women's human rights and free them from human rights violations have been fought for a long time in various ways until finally, the idea of women's human rights received a response from the United Nations (UN) which was formulated in a convention called the Convention elimination of all forms of discrimination against women (Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)).

This convention is a declaration of human rights that comprehensively recognizes Women's Human Rights (HAP) and is the first universal instrument that regulates women's human rights. In fact, this convention is considered a bill of rights for women which are an international standard that specifically regulates women's human rights. The ratification of this convention is a sign of global concern (joint commitment) from all human beings in the world to give serious attention to all forms of discrimination that occur against women.

Elimination of all forms of discrimination against women in the CEDAW convention signed in 1979 contained 5 (five) main points related to women's human rights, namely: rights in the field of employment, education, health, and rights in the field of family life.

The CEDAW convention received positive appreciation from many countries that signed the convention. Indonesia as one of the countries that co-signed the convention has ratified the provisions of the CEDAW convention as outlined in Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination against Women.

CEDAW ratification was prepared according to the needs of the times and was driven by Indonesian social and cultural conditions which had changed all forms of relations between men and women. However, as a product of thought, CEDAW often receives criticism, not only at the concept level but also at its implementation (Widodo, 2019).

Rejection of CEDAW because its content was considered to be too focused on socio-cultural and political aspects in viewing the issue of discriminatory treatment of women's human rights. Apart from that, CEDAW is also seen as too broadening the application of human rights in the private sphere of women, so that public and private spheres are discussed in such a real way that both become public consumption.

The CEDAW Convention basically contains not only women's rights in the domestic area but also contains guarantees women's rights in the public area but the problem is rather how effective is CEDAW in protecting women's human rights. In Indonesia, various realities in the field show that there are still violations of women's rights and that justice for women's rights has not yet been realized.

The National Commission on Violence against Women in its 2020 final note released that there has been an increase in the number of cases of violence against women every year. In 2019, there were 406,178 cases, up from 348,446 cases in 2018. In addition, the Central Statistics Agency (BPS) survey, for example, said that 1 in 10 women aged 15-64 years experienced this violence in the last 12 months. In a period of 12 years, violence against women increased by 792% (almost 800%) meaning that violence against women in Indonesia for 12 years increased by almost 8 times. This diagram is still an iceberg phenomenon, which can be interpreted that in the actual situation, Indonesian women have not experienced a safe life.

Apart from the issue of effectiveness, the implementation of CEDAW has many other aspects that need attention, one of which is the issue of women's rights in the domestic (family) sphere. Article 5 CEDAW emphasizes eliminating all forms of discriminatory treatment in private areas, namely the family which according to CEDAW is the main vessel and means of injustice to women's basic rights. In reality, the implementation of gender equality in society has so far been faced with the problem of women's obligations in the domestic sphere, in which the roles and obligations of women in the domestic sphere are still difficult to separate.

Realization of Gender Equality (KG) in the context of the Indonesian state, especially in the province of North Sumatra which predominantly adheres to a patrilineal kinship system, the implementation of gender equality (KG) in the private sphere and the domestic sphere still faces formidable challenges, due to the implementation of customary law which is still very strong in society.

For example, in the Batak and Nias ethnic communities, it will be very difficult to apply gender equality (KG) to place women in an equal position with men. For example, in terms of inheritance rights, the

Batak and Nias indigenous peoples have a concept that overrides the right of daughters to inherit parental (family) inheritance. In fact, in the Nias ethnic community, the position of a daughter has absolutely no position or place in the family tree, so a daughter has absolutely no right to inherit her parents' inheritance (Shah, 2022).

The fact mentioned above is still ongoing in the order of indigenous peoples, especially in the regions. Under these conditions, it can be said that gender equality (KG) in the social life of society has not been realized in accordance with expectations, as stated in Article 5 of the CEDAW Convention. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Women's Empowerment Government Policies in Realizing Gender Equality*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of the Implementation of Women's Empowerment Government Policies In Realizing Gender Equality in Indonesia Currently?
2. How is the Legal Reconstruction on Women's Empowerment Government Policies in Realizing Gender Equality?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Implementation of Women's Empowerment Government Policies in Realizing Gender Equality in Indonesia Currently

In implementing the gender mainstreaming (PUG) it is based on the provisions of Presidential Instruction No. 9/2000 concerning PUG-DPN, which instructs: 1) Minister; 2) Head of Non-Departmental Government Institutions; 3) Leader of the Secretariat of the Highest/High State Institution; 4) Commander of the Indonesian National Armed Forces; 5) Chief of Police of the Republic of Indonesia; 6) Attorney General of the Republic of Indonesia; 7) Governor; 8) Regent/mayor, to (Suprobowati, 2023):

- a. Carry out gender mainstreaming in order to carry out planning, preparation, implementation, monitoring, and evaluation of national development policies and programs with a gender perspective in accordance with their respective fields of duties and functions, as well as their respective authorities.
- b. Paying serious attention to the Guidelines for Gender Mainstreaming in National Development as attached to this Presidential Instruction as a reference in implementing gender mainstreaming.

Based on Presidential Instruction No. 9/2000 on PUG-DPN, the President has also instructed the Ministry of Women's Empowerment and Child Protection (Kementerian PPPA), to provide technical assistance to government agencies and institutions at the central and regional levels in implementing PUG and to report the results of PUG implementation to the President. Then the fourth part of Presidential Instruction No. 9/2000 concerning PUG-DPN confirms that implementation within the framework of implementing PUG is in accordance with Presidential Instruction No. 9/2000 concerning PUG-DPN, carried out jointly or separately according to their respective duties, functions, and authorities, stipulates further provisions needed for the implementation of Presidential Instruction No. 9/2000 concerning PUG-DPN.

As a guideline for implementing PUG in the regions, the Ministry of Home Affairs has issued

Permendagri No. 67/2011 concerning General Guidelines for Implementation of Gender Mainstreaming in the Regions, which oblige local governments to formulate gender-responsive development policies, programs, and activities as outlined in the regional medium-term development plans RPJMD, SKPD Strategic Plans and SKPD Work Plans. The formulation of gender-responsive development policies, programs, and activities is carried out based on gender analysis (Dewi, 2022).

Implementation of gender analysis in the context of formulating gender-responsive development policies, programs, and activities is carried out using the workflow method of gender analysis (gender analysis pathway) or other methods. The analysis of SKPD work plans and budgets is carried out by each SKPD. Meanwhile, the implementation of the gender analysis of the RPJMD, SKPD RENSTRA, SKPD Work Plans, and SKPD Budget Work Plans can work together with higher education institutions or other parties who have capabilities in their fields. The results of the gender analysis are then poured into the preparation of the GBS. Where the results of the gender analysis contained in the GBS form the basis for SKPD in preparing the activity reference framework and are an integral part of the SKPD RKA/DPA document.

Furthermore, to prepare gender-responsive budgets in regional development, the Bappeda coordinates the preparation of the RPJMD, SKPD Strategic Plans, work plans, and SKPD budgets that are gender-responsive. The gender-responsive SKPD work plan and budget are then determined by governor and regent/mayor regulations.

The responsibility for implementing Gender Mainstreaming in the province is under the control of the Governor. Therefore, the governor appointed an SKPD in charge of women's empowerment as the coordinator for implementing gender mainstreaming in the province. To accelerate the institutionalization of PUG in all provisional SKPDs in the form of working groups (Pokja), in this case, the head of Bappeda was appointed as Chair of the Pokja and the head of the SKPD in charge of women's empowerment as head of the provincial PUG Pokja Secretariat, the formation of the Pokja was determined based on a governor's decision (Napatipulu, 2021).

The gender Mainstreaming Working Group which has been formed based on the governor's decision, has the following tasks:

- a. Promoting and facilitating PUG to each SKPD;
- b. Carry out PUG outreach and advocacy to district/city governments;
- c. Compile a work program every year;
- d. Encourage the realization of gender-responsive planning and budgeting;

- e. Prepare an annual PUG Working Group work plan;
- f. Responsible to the governor through the deputy governor;
- g. Formulate policy recommendations to regents/mayors;
- h. Compiling the Provincial Gender Profile;
- i. Monitor the implementation of PUG in each agency;
- j. Assign a technical team to carry out an analysis of the regional budget;
- k. Prepare Regional Action Plans (RANDA) PUG in the province; and
- l. Encourage the implementation of the selection and determination of focal points in each SKPD.

From the PUG Working Group's tasks above, it appears that there is a fundamental weakness that has resulted in not the optimal implementation of gender mainstreaming in the regions, namely the absence of an obligation from Gender Mainstreaming Working Groups to conduct Gender Mainstreaming training and education for SPKD apparatus so that each SKPD has a focal point that truly understands the implementation of PUG and PPRG in regional development (Widodo, 2018).

In accordance with the results of an evaluation carried out by the Women's Empowerment Service for the province of North Sumatra, it was found that the obstacle that caused the non-optimal implementation of Gender Mainstreaming in each region was due to the low level of Human Resources, this meant that the apparatus in each SKPD had not been able to become the focal point reliable point. So that it can accelerate the institutionalization of PUG in its OPD.

Without understanding from officials in each SKPD, especially the focal point, it will be difficult to implement PUG and PPRG in the implementation of regional development, which in the end will not achieve gender equality and justice. Therefore, the provisions of Article 10 Permendagri No. 67/2011 concerning General Guidelines for PUG Implementation needs to be reconstructed so that PUG and PPRG implementation in each SKPD in North Sumatra province can run optimally as expected.

2. Legal Reconstruction on Women's Empowerment Government Policies in Realizing Gender Equality

The legal policy on gender equality is based on the Presidential Instruction of the Republic of Indonesia Number 9 of 2000 concerning Gender Mainstreaming in National Development (Inpres No. 9/2000 concerning PUG-DPN). Furthermore, as a guideline for implementing Gender Mainstreaming in the regions, the Ministry of Home Affairs issued Permendagri Number 15 of 2008 concerning General Guidelines for Implementation of Mainstreaming in the Regions,

which was later amended by Regulation of Minister of Home Affairs Number 67 of 2011 concerning Amendments to Minister of Home Affairs Number 15 of 2008 concerning General Guidelines for Implementation of Gender Mainstreaming in the Regions (hereinafter referred to as Permendagri No. 67/2011 concerning PUP-PUG in the Regions).

If the tasks of the Gender Mainstreaming Working Group as presented by the author are examined carefully, it can be said that the regulation regarding the Gender Mainstreaming Working Group still has a very fundamental weakness, namely that there is no obligation for the Gender Mainstreaming Working Group to conduct gender mainstreaming training and education for SPKD apparatus. In addition, there is no visible sanction setting for regional PUG Pokja teams that do not conduct training on focal points, so each SKPD in the province has a focal point that truly understands the implementation of PUG and PPRG in regional development.

Arrangements regarding the PUG Working Group's duties to conduct focal point training are important so that the implementation of training on focal points can be carried out properly (Toebagus, 2022). This aims to provide an understanding related to the implementation of PUG and PPRG in each SKPD in the province of North Sumatra. This is because, without understanding the apparatus in each SKPD, especially the focal point, it will be difficult to implement PUG and PPRG in regional development implementation so the realization of gender equality and justice cannot be achieved.

Improving Human Resources, in this case, government apparatus in each SKPD in the province (especially focal points) is important, considering that the main obstacle found in the implementation of PUG and PPRG in development is the low quality of human resources. This means that the apparatus in each SKPD has not been able to become a reliable focal point, capable of accelerating the institutionalization of PUG in their OPDs. In other words, human resources (apparatus in each SKPD) have not shown the quality and capability to be able to carry out PUG and PPRG in their OPD, so the implementation of PUG and PPRG does not work as expected.

Based on the description regarding the weaknesses in the task arrangement of the regional Gender Mainstreaming Working Group mentioned above, the provisions of Article 10 of Permendagri No. 67/2011 concerning PUP-PUG, needs to be reconstructed, so that the implementation of PUG and PPRG in each SKPD in North Sumatra province can run optimally as expected. The reconstruction of Article 10 Permendagri No. 67/2011 concerning PUP-PUG is related to the implementation of gender mainstreaming in regional development by reconstructing Article 10 of

Permendagri No. 67/2011, namely by regulating the obligations of Gender Mainstreaming Working Group to conduct and provide training and at the same time provide sanctions for violations of duties by Gender Mainstreaming Working Group so that the Gender Mainstreaming Working Group which has been formed based on a Governor's decision, has the following tasks (Purwanti, 2022):

- a. Promoting and facilitating PUG to each SKPD;
- b. Carry out PUG outreach and advocacy to district/city governments;
- c. Compile a work program every year;
- d. Encourage the realization of gender-responsive planning and budgeting;
- e. Prepare an annual PUG Working Group work plan;
- f. Responsible to the governor through the deputy governor;
- g. Formulate policy recommendations to regents/mayors;
- h. Compiling the Provincial Gender Profile;
- i. Monitor the implementation of PUG in each agency;
- j. Assign a technical team to carry out an analysis of the regional budget;
- k. Prepare Regional Action Plans (RANDA) PUG in the province; and
- l. Encourage the implementation of the selection and determination of focal points in each SKPD.
- m. Carry out training on focal points in each SKPD.

In addition to the above, it is also necessary to add Article 10A, which reads:

"Pojka PUG who does not carry out their duties as stated in Article 10 letter m can be subject to administrative sanctions according to statutory provisions".

Reconstruction of Article 10 Permendagri No. 67/2011 concerning PUP-PUG can act as a way to accelerate the institutionalization of PUG in each provincial SKPD so that the implementation of PPRG in regional development activities can be carried out properly. With the institutionalization of PUG and the implementation of PPRG in every regional development activity in each provincial SKPD, it is hoped that gender equality and justice can be achieved.

However, it should be understood that the existence of Presidential Instruction No. 9/2000 concerning PUD in the regions and Permendagri No. 67/2011 concerning PUP-PUG as the implementing regulation for PUG and PPRG. Viewed from the legitimacy of the hierarchy of laws and regulations in Indonesia, they still have weaknesses, PUG and PPRG regulations have not been regulated in law, but are still in the form of Presidential Instructions and Ministerial Regulations.

The two forms of regulations mentioned above are not yet possible to serve as a strong legal basis (umbrella law) in the implementation of PUG and PPRG, both at the national and regional levels, so it is necessary to formulate and ratify a Gender Equality Law.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses in government policies in the field of women's empowerment in realizing equitable gender equality, is that there is still low knowledge and skills (competence) of HR planners in OPD regarding how to prepare PPRG (GAP and GBS), due to weaknesses in regulations in Permendagri No. 67/2011, which has not yet regulated the obligation of PUG Pojka to organize and provide training to focal points in each SKPD.
2. The Legal Reconstruction of government policies in the field of Women's Empowerment in realizing just Gender Equality proposed by the author is done by following up on regulations that require the implementation of gender mainstreaming in regional development by reconstructing Article 10 of Permendagri No. 67/2011, namely by regulating the obligations of PUG Working Groups to organize and provide training and at the same time providing sanctions for violations of duties by PUG Working Groups.

REFERENCES

- Dewi, A. (2022). Legal Assistance by Advocates in Gender Mainstreaming: A Reflection. *Sociological Jurisprudence Journal*, 5, 139-145. 10.22225/scj.5.2.2022.139-145.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Napitupulu, R., Supriatna, T., Hubeis, M., & Sulistyani, D. (2021). The Effect of Policy Implementation, Personnel Competency, and Community Participation on the Performance of the department of Women Empowerment, Child Protection and Community Empowerment, Medan, Indonesia. *International Journal of Multicultural and Multireligious Understanding*, 8, 437. 10.18415/ijmmu.v8i1.2388.
- Purwanti, A., Mahfud, M., Wibawa, K., & Natalis, A. (2022). The policy of gender mainstreaming in fishing communities for poverty reduction. *Journal of Governance and Regulation*, 11, 267-276. 10.22495/jgrv11i4siart7.
- Shah, E., Ali, S., & Katper, N. (2023). An Overview of Women Empowerment Policy with a Social Justice Lens and Frugal Innovation. *Frugal Innovation and Social Transitions in the Digital Era*, 123-132. 10.4018/978-1-6684-5417-6.ch012.

- Suprobowati, D., Sugiharto, M., & Ikmal, N. (2023). Policy Implementation the Ministry Female Empowerment and Child Protection in the Prevention Sexual Violence against Women. *KnE Social Sciences*. 10.18502/kss.v8i4.12941.
- Toebagus, G. W. P. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI:10.36348/sjhss.2020.v05i10.001
- Toebagus, G. W. P. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
- Wahyu, W., & Toebagus, G. (2019). Poverty, Evictions and Development: Efforts to Build Social Welfare through the Concept of Welfare State in Indonesia. *3rd International Conference on Globalization of Law and Local Wisdom (Icglow 2019)*, Dx.Doi.Org/10.2991/Icglow-19.2019.65.
- Wahyu, W., Sapto, B., & Toebagus, G. W. P. (2018). The Role of Law Politics on Creating Good Governance and Clean Governance for a Free-Corruption Indonesia in 2030. *The Social Sciences*, 13, 1307-1311.