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### A Study on the Paradigm of Women Status in Indonesia Customary Law

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Understanding the status of each individual certainly cannot be separated from socio-cultural life. It is highly impossible that any of them can limit themselves from group life. Human is naturally pleased to socialize with other people leading to a paradigm that every human lives in a custom of a community group. Custom has become the meaning of life and is an identity of the society.

Human status with the concept of gender in customise perceived differently. There are a lot of inequalities of custom in the society which state that men and women have a different status. It is widely acknowledged that there is a complexity of understanding about the rights and obligations of women in Indonesian custom.

The existence of a customary law does not necessarily provide a solution to be able to regulate this inequality. It is because the normative rules made by the government apparently will contradict the conventional beliefs of the communities that have been undertaking their custom ever since the customary law has not been formed.

For people in Gorontalo, patriarchal cultural hegemony is still applied in this area. The predominantly Muslim people of Gorontalo make Qaf'ah and As-Sunnah as the guidelines of everyday life. Islamic teachings that place men status higher than do women are not only practically occurring in a family, yet it is obviously visible in the public life of Gorontalo people, especially in the matter of custom.

#### A. The Concept of Women and Gender

Understanding the concept of women is inseparable from the issue of gender. A woman in a gender context is defined as the inherent traits of a person to be feminine. People's understanding of women experiences a stereotype regarding her social role.

In the encyclopedia of Islam, woman is derived from the Arabic al-Mar'ah with the plural form al-Nisa as women, adult women or adult daughter as the opposite sex from man. The equivalent in English is woman (women as the plural form) as the opposite word from man, whereas in the general dictionary of Indonesian language, woman is defined as female (more polite).

The term of gender is introduced by social scientists to explain the differences between women and men who are innate as God's creation as well as a cultural formation that was learned and socialized since childhood.

The word 'gender' can be interpreted as the differences in roles, functions, status, and responsibilities of men and women as a result of socio-cultural construction embedded through the process of socialization from one generation to

the next. Thus, gender is the result of an agreement among human beings who are not natural.

Gender differences will not be a problem as long as it does not create gender inequality, yet in reality, gender differences have presented an injustice for men, but especially for women. Gender inequality is a system and structure in which men and women become the victim of the system. There are several issues developed from gender differences, including:

#### B. Gender and Marginalization

The marginalization process of women is a process of impoverishment and marginalization caused by gender differences. For example, the process of social relations results in the breaking of women's access to vital resources, ranging from household to country level. This can be from policy, religion, tradition/culture, and others.

#### C. Gender and Subordination

The socio-cultural approach finds out that women's subordination issues are rooted in socio-cultural constructions that place women under men. There is a presumption in a society that women are emotional, irrational, and unable to lead and make a decision. Therefore, they are placed in a position that is not important. For instance, the education in a family is more prioritized to boys than girls.

#### D. Gender and Stereotype

A stereotype is the labeling of certain parties that always harm to others and cause injustice. For example, women are not the main source of income in the family, so that they are merely positioned as "helping husband". Another example is the problem of "WIS localization" ("Prostitute") that has "social judgment" towards women and is rarely questioned by the visitors who are mostly men.

#### E. Gender and Violence

Violence is an attack physically, mentally, psychologically and morally against someone resulted from various sources, including gender differences. This is due to the inequalities of power and authority in society. Gender-based violence is ranging from domestic violence to country violence. For example female rape, beatings, and physical attacks that occur in the household - husband to wife, torture of sex organs such as female circumcision to control women, prostitution, and violence in the form of pornography.

Equality in gender issues turns out to be a natural concept in the civilization of human life applied in every human culture. The concept of nature and nurture theories bring human to the reality that cannot be denied. It is to see

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28

# A Study on the Paradigm of Women Status in Indonesia Customary Law

*by* Nur Mohamad Kasim

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Equality in gender issues turns out to be a natural concept in the civilization of human life applied in every human culture. The concept of nature and nurture theories bring human to the reality that cannot be denied. It is to see

the reality that occurs as a result of patriarchal power system due to the interest of majority groups, rulers, and patriarchal thinking system that is legalized.

Marxists have argued that this system can last long not because it is a natural thing, but because men are still in authority in every part of life. An actual step of equality brings a social impact in which the emergence of movements oriented towards feminism and emancipation as a step of struggle over women. Feminism and the emancipation of women are the political steps taken to open the door that has long been covered by the imposition of a system #power system.

Close discrimination requires women to build a sense of solidarity with the struggle to lift their dignity towards equality, togetherness, and equal partnership among women and men. A relevant example to be accepted and to be proud of is the struggle of Swedish women in parliament who vigorously raise their interests and rights as citizens with their rights and status in government. Similarly, Indian, Philippines, and Vietnam governments have formulated the law on women's interest that is believed as the country's issue regarding equality. These exclusive rights should be accepted, maintained and manifested in every international community's life.

In Indonesia, the discourse on women had been lifted ever since the Dutch colonialism. Some Indonesian women leaders in every generation consistently and continuously have the same mission and vision of the freedom struggle from the colonists and equality among men and women, despite their different ways and methods. The history of the struggle for gender equality has become an international issue in the form of human rights execution. The realization of women's struggle requires full awareness to realize the nature, function, and character as a woman versus a man. This awareness demands human self-concept of the raw image and the woman self-concept. This description will refer to the woman who must see herself, have a priority in choosing something, make a decision and be able to be mature both in family life and as a member of the society. The case examples of the women's section and population issues as raised above are one aspect of women's existence in society. Not to mention that the women's role is limited to the local cultural system with patriarchal spirit as well as limited education and lack of familiarity with the outside world so that they feel that their world is only in this particular scope. When women want to get out of their limits, they will be exposed to cultural barriers due to their low self-esteem, irritability, lack of self-confidence, dependence, an excessive shyness that all lead to the emotional point of women who outwardly and naturally are always in their limitations. For that reason, in opening women's insights and thoughts, it is necessary to see various dominant factors that can raise their confidence.

- Education and health; these sectors are the most essential means of women to support their integrity through education, and in a healthy soul, and then they will be physically and spiritually able to show the quality and confidence.

- An understanding of history and culture; Women are required to understand and then play a role in the history of the struggle for emancipation and equality over men. Although there will be many obstacles and challenges, when they see the dominant system of cultural application prevailing in Indonesia, their awareness of equality can be enforced.
- Code of conduct; this orientation refers to the women's identity and self-concept as a value of their essence and existence as the subject of equality.
- Self-image; Women's self-image is appropriately enforced through their experience and learning process in the globalized society. By this, women must be able to show who they are and how they play a role in every step of life locally, nationally, regionally and internationally.
- Willpower and capability to make an effort; As independent women, they need to be self-conscious with the willpower and capability to always strive continuously for their rights and interests because that is where the quality and credibility as a woman can be firmly embedded in the relationships in every level of life.

3

Therefore, it is precisely what Maxwell says that every culture of women and men is given different roles and behavioral patterns to complement each other's physical differences. The division of this role serves to complement the deficiencies of these people in order that the problems faced by the society can be solved in a better way. This recognition cannot be separated from how women are able to realize their willingness in the society and family where they live. Recognition is possible when communication is the key to a harmonious relationship within the family and the society.

#### F. Women Status in Customary Law

Status is a set of rights and obligations that are inseparable from each individual's life. People develop two kinds of status, firstly, *Ascribed Status*, the status of a person acquired ever since he was born. Secondly, *Achieved Status* is the status by which one reaches his status by a deliberate effort.

In indigenous or patriarchal cultures, the status of women is always below men. No matter what level of education women get, it cannot occupy a higher status than men.

Status and roles cannot be separated and are interdependent. Everyone has a variety of roles that come from the pattern of their social life. This means that a person's role can determine what is done for the society and what opportunities the society gives to him. On that ground, role is how a person performs his rights and obligations by his status in the society. This results in the status of women always subordinated in a patriarchal society.

The influence of a patriarchal culture that dominates society's life involves women to be subordinated from competition obtaining status and honor in custom and socially significant role, whereas status and role are the standard elements in the social system. It can be concluded



that the gender bias taking place in the society is the result of the domination of the patriarchal cultural discourse carried on by the society itself.

Realizing this reality, Berger<sup>1</sup> argues that human's activity is a subjective consciousness of human and in collectivity, so that the participation carried out by every individual in every culture relies on the social process and the continuation of cultural existence which depends on the maintenance of social rules that are formed collectively.

What Berger explains is that the status and role of men and women are the phenomena created by the society through cultural processes and then become an integral part of social life.

#### *G. Gorontalo Women's Paradigm: Between Globalization and the Custom Existence*

It is widely acknowledged that the patriarchal culture in Gorontalo Customary Law embedded in women's life has eradicated along with the development of technology and globalization. Gorontalo customary law that adopts Islamic Law with the guidance of the people is "Adat bersendikansyara", syara' bersendikan Kitabullah" is highly respected by the society in everyday life. Gorontalo is the region with the majority of Muslim different from neighboring areas such as Manado and Makassar whose cultural hedonism has been greatly developed.

Gorontalo women have always been supported by customary law. In the procession of marriage custom, for example, Gorontalo customary law puts women as the supporter of marriage custom and men as the leader in performing the procession of marriage custom. Another example of family inheritance rights is that daughters in accordance with Islamic law have fewer inheritance rights than sons. Furthermore, in the daily life, public works are dominated by men rather than women. Likewise, the heads of government in Gorontalo are always led by men rather than women. This illustrates that the patriarchal culture in Gorontalo customary law is still clearly supported.

In contrast, most of Gorontalo women, especially those who live in the city, experience a patriarchal crisis due to the factors of globalization that brings the capitalist feminist culture influencing their life. In the end, Gorontalo women choose to live in a capitalist way rather than following the culture that in fact limits their space. This becomes overlapping because no human can disown the influence of capitalist development in their life. Therefore, the role of Gorontalo women is not dominant in public life.

In addition to the factor of globalization, the status of women in Gorontalo Customary Law is regulated by gender bias. Referring to Islamic law that explains the status of men is higher than women, Gorontalo women finally experience the diffusion of culture that is to undergo two cultural elements at the same time in social life. The invasion of capitalist feminist culture influenced by globalization as well as patriarchal culture in Gorontalo Custom law make

the status of Gorontalo women has a paradigm. The capitalist feminist culture will dominate Gorontalo women patriarchal culture as they carry out social life within their circles because once they are in public area, their role is tied to the customary law that prevails during this time.

#### *H. Cultural Clash and the Solutions*

Cultural vulnerability due to the influence of globalization does not necessarily make Gorontalo women be a natural woman according to Islam. There have been many successful women in Gorontalo due to the cultural clash of the capitalist feminists. A free and independent soul without any traditional barriers creates discipline and a sense of responsibility beyond men.

There is no legal sanction in customary law, yet moral sanction as the firm sanction that will be accepted by women when their status goes beyond the community custom. For example, a wife who has been busier than her husband outside home, her life will be disturbed by people's opinion since Gorontalo is still dominated by indigenous people so that something that is contrary to the culture of custom (patriarchy) will become a moral burden to other people.

In this case, Gorontalo women who undergo the diffusion of culture only need to choose the concrete steps by becoming an influential woman for development or becoming a woman who undergoes her nature by the custom and law of Islam that are believed. This is an option because globalization cannot be dammed and local customary law cannot be eliminated and must be lived with.

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