

Eradicating Gender Discrimination in Working Place in Indonesia

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ABSTRACT

Along with the globalization era, the roles and lives of women has been developing with significant changes. Indonesia with labor force (age 15 - 65 years old) of 186,100,917 of which 93,236,903 are dominated by women. Until now they are still facing a problem of women discrimination in working place. In Indonesia, Law No. 13 Year 2003 concerning Manpower (Labor Law) has regulated several protective measure for women such as: 3 months maternity leave, 1.5 months miscarriage leave, 2 days monthly leave for menstruation and so on. Further, Article 5 of Labor Law and Law No. 21 Year 1999 concerning the Ratification of ILO No. 111 have provided guarantees for gender equality in the working place. However, some of these rules are not equipped with sanctions for violating companies and it becomes even worse if the manpower office monitoring is not implemented well. The mandate of Article 5 of Labor Law to eliminate discrimination in the working place is far to be realized. As John Rawls's Theory says that social and economic inequalities are to be arranged so that the weakest group can reach a justice. On the other hand, there is capability issue of women's from treatment the real life. Due to globalization wave in Indonesia, it will be the time to discuss the gender concept and labor law. The purpose of this research is to eradicate or to reduce the discriminatory treatment against women in workplace, so that women will have equal position to reach the same wages and same carrier opportunity. It is expected that this study will provide an input to the government to amend the existing law or to create new law in order to reduce the rate of gender discrimination in the working place. This research method will use doctrinal legal research with conceptual approach to understand the concept of gender equality, and statute approach to know the legal hierarchy and the principles contained in Labor Law and Law No. 21 Year 1999. The qualitative study will apply on this research. The Law No. 13 must be revised in order that gender discrimination including power and sexual harassment against women in workplace can be reduced significantly.

Keywords: Discrimination, gender, women, working place, employment, workers

Introduction

Objective

Every April 21, Indonesia is celebrating the born of Raden Ajeng Kartini. Kartini (1879-1904) was a prominent Indonesian national heroine from Java. She was also a pioneer in the area of education for girls and women's rights for Indonesians. Her thought of resistance to gender discrimination in Javanese culture that puts women in an inferior position. Her thoughts are reflected in her letters recorded by Mr. J. H. Abendanon in "*Door Duisternist tot Licht*" (Habis Gelap Terbitlah Terang) in 1911 (Mustikawati, 2015, p.66). In her writings, Kartini criticized the role of Javanese

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women who only take part related to well (washing), kitchen (cooking), and mattress (serving the husband). At that time, women rarely have access to education, and women's freedom disappeared at the age of ten to twelve. (Sudrajat, 2017).

The situation in Kartini's time, is very contradict to the role of women today. Women's role in national development can be felt significantly. The emergence of female figures who scent the name of the nation, such as the first female president - Megawati Soekarnoputri (2001-2004); Sri Mulyani who was the first Indonesian woman to serve as Managing Director of the World Bank; as well as Susi Susanti, an athlete who managed to get the first gold medal for Indonesia in badminton championships, and there are many female figures who play an active role in national development (Ajeng, 2016).

In addition to the role and contribution of these figures, there is a fact that women role in development is still very small. Based on data from the Ministry of Manpower (2016), the number of women whose contributing in the workforce only 46,930,927 people, or only 49.94% of all working-age women (93,974,931 inhabitants) in Indonesia. Totally different than the number of working men who reached 73,716,770 people or 78.74% of the total men at work age (93,625,931 inhabitants) (pp. 9-27) (see Figure 1).

Age	Working age population		Labor force population		Working population	
	Men	Women	Men	Women	Men	Women
>65	6.388.482	7.674.988	3.572.027	2.268.104	3.490.689	2.184.730
60-64	4.169.674	4.078.163	3.254.379	2.074.592	3.180.115	2.031.992
55-59	5.667.009	5.626.587	5.068.250	3.325.177	4.974.852	3.285.096
50-54	6.998.213	7.042.303	6.686.878	4.622.725	6.513.991	4.563.432
45-49	8.286.364	8.239.781	8.124.126	5.474.355	7.974.935	5.399.138
40-44	9.297.210	9.207.215	9.114.439	5.896.614	8.952.559	5.796.361
35-39	9.919.705	9.976.881	9.672.620	6.180.753	9.409.737	6.042.842
30-34	10.197.641	10.283.555	9.902.409	5.736.008	9.560.511	5.560.430
25-29	10.495.082	10.383.024	10.009.051	5.789.255	9.139.970	5.417.309
20-24	10.885.323	10.643.777	8.968.191	5.803.095	7.493.637	4.801.760
15-19	11.321.228	10.818.429	3.765.553	2.363.268	3.025.774	1.847.837
Total	93.625.931	93.974.703	78.137.923	49.533.946	73.716.770	46.930.927

Figure 1. Population by Ages.

This data shows the proportion of the population in three categories that is, the working age population (with age 15 to 65 years), labor force population (actively in the labor market both employed and unemployed), working population by type of sex and age. *Source: the Ministry of Manpower and Transmigration of the Republic of Indonesia (2016).*

Based on the above data, it can be concluded that the capability of female labor force has not been fully reflected enough in the labor market. When viewed from the potentiality of women, there are 30,757,859 women in the working age of secondary education to college (senior high school to college) only 17,323,794 people are absorbed in the labor market. Thus, there are 13,434,065 (or 43.68%) of middle- to college-educated women who do not use their potentiality and ability in the workforce to earn a living (see Figure 2).

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Education	Working age population		Labor force population		Working population	
	Men	Women	Men	Women	Men	Women
SD	37.514.330	42.725.572	31.768.480	22.534.492	30.517.106	21.915.201
SLTP	20.477.318	20.491.272	14.677.883	8.117.207	13.789.343	7.691.932
SLTA	17.074.420	14.921.238	14.763.530	7.493.686	13.796.003	6.913.393
SLTK	10.424.094	7.039.254	9.415.511	4.270.047	8.529.850	3.808.502
D1-3	1.628.163	2.614.114	1.465.971	1.985.818	1.373.341	1.829.086
S1-3	6.507.606	6.183.253	6.046.548	5.132.696	5.711.127	4.772.813
Total	93.625.931	93.974.703	78.137.923	49.533.946	73.716770	46.930.927

Figure 2. Population by Educational Background in Indonesia

This data shows the proportion of population in three categories, namely working age population, workforce population, working population by sex and education. Source: the Ministry of Manpower and Transmigration of the Republic of Indonesia (2016).

The low absorption of female labor comparing that of male labor, is allegedly by caused by the mindset and stereotype of Indonesian people that men are superior to women. Women from university graduates cannot get a job allegedly due to the consideration of the possibility of pregnancy and the right to rest during the menstrual period 2 days per month. In addition to those allegations in the community, also there is traditional strong opinion that women are weaker than men. This will bring a negative effect on the people's life, which is due to gender bias, a person who meets the qualifications of working conditions cannot find a job. If it is so, too much protection of women under the labor law reversely gives negative reaction from employment of women.

Research Question

As the background described above, researcher will analyze the causes of gender biased rules analyzed based on the history of laws and regulations, with the focus of research are (research question):

- 1 Do the current laws still reflect gender discrimination in the workplace?
- 2 How to create gender equality in the workplace?

Theory

This research will use the Theory of Justice put forward by John Rawls as the basis for the analysis of discrimination in women in the working place from the point of justice and equality of rights. *"Equality principle is the benefit of a man to be treated according to the principles of justice, the foundation that distinguishes man from other God's creatures"* (John Rawls 1999, p.441). Similarly, Pancasila (State Ideology) and the 1945 Constitution guarantees the existence of justice and equality in the law for citizens.

Therefore, the state must regulate in such a social gap that exists in society, so that (gender) everyone will get the same right for justice with other citizens. This is in line with the theory of justice put forward by John Rawls, *"social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage ..."* (Rawls, 1999, p 53). The government of Indonesia should be able to guarantee the Primary Social Goods that everyone entitles to, which are all social values, freedoms and opportunities, income and wealth, and the social bases of self respect (Rawls, 1999, p.54), which includes the right for women also to have balancing roles and lives in the working place.

Methodology

This research used doctrinal legal research methods that include research on legal objects that are conceptualized as rules of legislation (Irianto and Shidarta, 2011, p.124-125). This study is based on a secondary data study consisting of primary legal materials and secondary legal materials. The data used in this study was conducted on secondary data, namely data obtained from the literature of legal science (Soekanto & Mamudji, 1994, p.13-14). This doctrinal legal research method also refers to research that leads to a philosophical basis to overcome the solution to the problem of gender bias in the rules of property ownership. Researcher will review object of study that is gender discrimination in work place. For that, Statute Approach and Conceptual Approach (Ibrahim, 2013, p. 302) is used to understanding gender discrimination against women in working place. The Statute Approach will be used to understand the laws and regulations regarding security and prohibition of gender discrimination in the working place. Meanwhile, researchers will use the Conceptual Approach to understand the principle of Equality, which is then used to find a way to create gender equality in the working place.

Literature Review

Gender equality, or equality between men and women, refers to equality of rights, opportunities and treatment enjoyed by men and women of all ages in all aspects of life and work. This implies that men and women are free to develop their personal abilities and make choices without the constraints imposed by stereotypes and prejudices about gender roles or the characteristics of women and men. This means that behaviors, aspirations and different needs between men and women are considered, respected and equally fulfilled. It does not mean necessary that women and men are the same or should be the same, or be treated equally at any time. This means their rights, responsibilities, social status and access to resources are independent of whether they are born as women or men, and that all persons are treated fairly and have equal opportunity in work and life (Ministry of Manpower, 2012, p. 13).

Findings

Gender Inequality in the Working Place

Gender discrimination in employment appears when men and women have unequal opportunities or treated differently. This matter appears because the mindset and stereotype that man is more superior to women, still strong in Indonesia. This is evidenced by majority of Indonesians believing that men have a higher ability than women, so men are more entitled to work and have a right more than women (World Value Survey, 2015) (see Figure 3). Currently employers prefer to recruit men workers than women. However, many entrepreneurs see gender issue based on the competitive advantages of both men and women. For example: the sales department is occupied by majority of women because women are considered more attractive, while the manager's position is occupied by men because they are considered more capable as decision makers (Ministry of Manpower, 2012, p.27)

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Subject	Indonesian Community Response (Agree)
Men should be more entitled in work than Women	55,4%
Men can become Business Executives better than women	42,1%
Men can become better leaders than women	60,9%
Universities are more important for boys than girls	19,8%

Figure 3. Male Superiority over Women in Indonesia.

This data shows a presentation of Indonesian responses on male superiority over women. *Source: Data from Indonesian Ministry of Manpower (2016).*

Such discriminatory views also affect employers in determining wages for their workers. Men are considered to work more effectively than women do, instead women are considered weaker, and there is also the need for rest during menstruation, pregnancy, and childbirth. Based on data compiled by the International Labor Organization (2013), the wages of female workers averaged 30% below men's wage (p.67). The data on Figure 4 below shows the ratio of wages between men and women base on position.

Position	Male (Rupiah)	Women (Rupiah)	Wage Percentage of Women Compared to Men
Under Supervisor	992.300	764.000	77%
Supervisor	1.353.600	1.058.100	78%
One Level above the Supervisor	1.850.600	1.024.000	55%
Two Level above the Supervisor	2.520.800	1.104.600	44%
Three Level above the Supervisor	3.430.000	2.557.000	75%
Expert	1.759.300	1.512.000	92%

Figure 4. Ratio of Wages between Men and Women in Indonesia. *Source: Data compiled by the International Labor Organization (2013).*

Other discriminatory acts often happen to women workers in the workplace are harassment, both physically (sexual and physical abuse), verbal (crude and insulting jokes), or non-verbal (excommunication) (the Ministry of Manpower and Transmigration, 2012, p. 31-32). Based on the 2011 Annual Report of the National Commission for Women, there were 5,187 cases of violence in the public domain with details of 2,937 cases of sexual violence, 1,408 cases of physical violence, and 267 cases of psychological violence. Among these cases, there were 289 cases of trafficking, 105 cases of violence experienced by migrant workers, and 43 cases of violence in the workplace (Dwiyanti, 2014, p.29-30).

Discussion

Limitations

In this research, gender discrimination will be analyzed from the equality and position of women in the working place with respect to their rights to be treat equally, in the approach of laws and regulation. In other words, the object of research will be seen from the point of public rules and its implications in gender equality. The discussion will be divided into two parts, they are:

1. The discussion about “*Legal Protection Against Gender Discrimination in the Workplace*” to answer a first research question, and

2. The discussion about “*Creating Gender Equality in the Workplace*” to answer the second research question.

Legal Protection Against Gender Discrimination in the Working Place

In the event of Protection of female worker, Indonesian government has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Law No. 7 Year 1984), ILO Convention No. 100 on Wage Equality (Law No. 80 Year 1957), and ILO Convention No. 111 on Discrimination in Employment and Occupation (Law No. 21 Year 1999). As a follow-up to the protection of female workers and to the conventions, the government passed the following Law and Regulations:

1. Ministerial Regulation No. PER/03/MEN/1989 concerning Prohibition of Employment Termination (PHK) for Women Workers due to Married, Pregnant or Childbirth, which prohibits the dismissal of married couples due to pregnancy or childbirth.
2. Presidential Instruction No. 9 Year 2000 concerning Gender Mainstreaming in National Development.
3. Article 5 of Law No. 13 Year 2003 concerning Manpower, which regulates: *"Any manpower shall have the same opportunity to get a job without discrimination."*
4. Article 6 of Law No. 13 Year 2003 concerning Manpower, which regulates: *"Every worker has the right to receive equal treatment without discrimination."*
5. Article 12 Par. (3) of Law No. 13 Year 2003 concerning Manpower, which regulates: *"Men and women have equal opportunities in get training."*
6. Article 76 of Law No. 13 Year 2003 concerning Manpower:
“ ...
(1) *Female workers less than 18 (eighteen) are prohibited from employing between 11:00 PM until 7:00 AM. It is prohibited to employ female workers/laborers aged less than 18 (eighteen) years of age between 11:00 PM until 7:00 AM.*
(2) *Entrepreneurs are prohibited to employ pregnant workers who according to the doctor's information, are dangerous for the health and safety of her or her womb if they work between 11:00 PM until 7:00 AM.*
(3) *Entrepreneurs who employ female workers to work between 11:00 PM until 7:00 AM are under an obligation:*
a) *Provide nutritious food and drinks; and*
b) *Maintain decency and security in the workplace.*
(4) *Entrepreneurs are required to provide shuttle transport for female workers who work between 11:00 PM until 5:00 AM.”*
7. Article 82 (1) of Law No. 13 Year 2003 concerning Manpower, which regulates: *"Female workers are entitled to rest for 1.5 (one and a half) month before childbirth and 1.5 (one and a half) months after delivery according to the obstetrician's or midwife's."*
8. Article 83 (1) of Law No. 13 Year 2003 concerning Manpower, which regulates: *"Employers are obligated to give proper opportunities to female workers who still breastfed their baby."*

The above regulation, it seems giving protection to the women in workplace. However, actually the state has created inequality to women. The rules actually limits legitimately of working chance for women. Such an over-protective rules only causes

companies to prefer to hire men rather than women by considering the economic benefits caused by the costs incurred in employing women. The Scientific Research does not support the idea that there is significant difference between men and women physical ability. The average physical strength of men is not so much different from women, and even some women have more strength than some men do.

Apparently, the regulations that seem to protect women are often not based on scientific research, instead based on stereotypes related to the different roles of men and women in society and the labor market. For example, in Article 76 paragraph (1) of Law No. 13 Year 2003, which stipulated "*Women worker who age less than 18 (eighteen) is prohibited to be employed between 11:00 PM to 7:00 AM.*". The ban should not only be for women, but also for men. In fact, working at night is not only unhealthy for women, but also for men because it can affect of growth disorders, fatigue, sleep disorders, and so on. This matter is due to the assumption that women are weaker than men. It supposed, both men and women who choose to work overtime/night should be given equal protection. Women no longer have to be "protected" by restricting work to certain types of work (Ministry of Manpower, 2012, p. 13).

To quote John Rawls (1999), "*Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others*" (p.53). For that reason, the state should provide protection to women without limiting their rights to obtain and do work. The protection that aims to protect women should not limit women to seeming less weak than men.

Creating Gender Equality in the Working Place

It should be realized that against the limitations for the government to regulate company policy, corporate's cooperative action is required. Therefore, it is necessary for the company to realize the importance of applying the principle of equality in the company's operations. Based on a survey conducted by the ILO (2013) as published in "*Book 2 Business Case for Equality*", it is described that applying the principle of equality can provide benefits for the company, including:

1. Attract talent and access the wider talented people.
The refusal to hire women because of their gender is a waste of talent. Utilization of talents owned by workers can provide a competitive advantage for the company.
2. Maintain talented workers and reduce the rate of migration of workers.
Applying the principle of equality maintains a skilled workforce, and also brings benefits to savings in corporate recruitment and training costs.
3. Increase productivity.
Workers who feel appreciated will be motivated to try harder for the success of the company.
4. Cultivate innovation.
Diversity in human resources, can cultivate new solutions and new perspectives.
5. Improve harmony in working place and reduce conflict.
If a company is viewed as treating workers unfairly, it will loose employee trust to the management, it causes conflict in working place.
6. Reduce litigation risk.
Law No.13 Year 2003 prohibits discrimination and contains sanctions for violations. Individuals or groups of workers who believe they have been discriminated may take the case against their employer for a settlement to the local Manpower office, then to the Industrial Relations Court.

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The application of equality principle shall doing in six aspects mandated in ILO Convention No. 111 and 100, namely: (1). Recruitment; (2) Wages; (3) Benefit; (4) Terms and Condition of Work; (5) Training Opportunities, and Promotion; (6) Termination of Employment (APINDO and International Labor Organization, 2013, p.13). The application of principle within the company means ensuring that decisions related to all aspects of recruitment and employment are taken transparently, based on fair, objective and relevant criteria, with adequate attention given to team diversity and affirmative action measures. Transparent procedures and objective criteria ensure that every worker is treated in accordance with his or her accomplishments and contributions. Today, many companies apply the principle of equality as part of corporate social responsibility (CSR) programs. This may include setting quotas to hire women or provide training opportunities. This is in line with the opinion of John Rawls (1999), which stated “*All social value-liberty and opportunity, income and wealth, and social bases of self-respect-are to distributed equality...*”(p.54).

The prohibition of discrimination is also part of the standard of corporate social responsibility to measure company performance, including SA8000 and ISO26000. (ILO, 2013, p.13-14). By implementing the principle of equality in operations, the company is also implementing the principles of the International Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and Good Corporate Governance (GCG), namely the principles of Transparency, Accountability, Fairness, and Responsibility. The implementation principle of equality is also urged by the Ministry of Manpower and Transmigration, through issuing the Circular Letter No. SE. 60/MEN/SJ-HK/II/2006 concerning Guidance for Opportunity and Equal Treatment in Work in Indonesia. Unfortunately, that Circular Letter is only an appeal and has not affected to the employer.

Recommendation

The government shall make appropriate measures to eliminate all discrimination against women in all spheres of life, economic and social in order to ensure equal rights, on the basis of equality between men and women, particularly: (a) The right to family allowances; (b) The right to bank loans, mortgages and other forms of capital credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life. This movement should be in line with the principle of the CEDAW. Furthermore, in order that eradicating the gender discrimination in workplace can run smooth without giving damage to women caused by over-protection, it will be very important to establish the proper laws and regulation in compliance to the gender discrimination convention of International Labor Organization (ILO) No. 111. The rules to be made can be by revising the Labor Law or establishing a new law. In terms of anti-discrimination or equal treatment of working place rights, the law to be issued must be able to anticipate the previous problems that occur in the past, such as lack of protection or unfavorable treatment against women workers, wage, benefit or allowance differentials or carrier development.

However, the law should not be over protected which in turn causes women to be hampered the development of her own career. Rules that preclude the progress and equality of women at work should be abolished, such as: two days of menstrual leave, a ban on work over the night at 11:00 PM and so on. It cannot be denied that if the rules on the protection of women are too heavy to the company side, employers will choose male workers instead of female workers. In this case, instead of protection to women's right, the women will lose their chance to get a job. On the other hand, the company must improve the principles of Good Corporate Governance in their

respective companies. By upgrading GCG principles, it is expected that eradication gender in workplace in Indonesia will be achieved.

Alternative Discussion on Similar Research

As far as researcher knows there is another research whose object of research is almost similar with this research, that is a research by title “*Women and Discrimination in Workplace*” wrote by Olivia Ariantje Josephine & Clara Moningka from Universitas Pembangunan Jaya, Indonesia.

There is similarity between this research and Olivia’s research. Basing on those two researches, it can conclude that discrimination against women in workplace still exist although it does not reach to the critical level. Oliva explained that “*Discrimination in the work environment can also be done in two forms, namely formal and informal discrimination. Formal discrimination refers to a bias against resource allocation, such as salary, promotion, and job responsibilities.*” (Josephine, 2017, pg. 3).

While the difference between this research with Josephine will be that this research is analyzing and researching from the point of view of Law No. 13 Year 2003 concerning Manpower (Labor Law), ILO convention and CEDAW. This study also analyses the advantages and disadvantages of Labor Law which is considered to protect women in excess, however in turn leads to the obstruction of career development for women and the closure of employment opportunities. This research also discusses the offered solution to government on how to eliminate the gender discrimination in workplace without giving damage to the both women and men.

Conclusion

As a country that has ratified ILO Convention No. 111 on Anti-discrimination in Employment, the issue of discrimination against women at working place in Indonesia is not classified as critical compare to other developing countries. Nevertheless, in the reality, discrimination against women in the working place is still prevalent. Treatment of discrimination, such as the difference in wages, benefits or work opportunities compare to male worker, it still happens especially in the remote area. Likewise with managerial position or above it, mostly controlled and are occupied by men as stipulated in the statistical data by the Ministry of Manpower and Transmigration of the Republic of Indonesia, as described above.

Such discriminatory differences should be eliminated, in order for women to have equal opportunities as men, to find employment, wages, benefits and position in workplace. Therefore, the government must issue rules with sanctions to those employers who have an indication of discriminatory treatment to women workers including sexual and power harassment. This government rules must install the institution to solve the disputes claimed by female workers.

However, at the same time, the rules that are considered to be excessive protection to the women in the Labor Law should be removed. Since over protection to women does not provide a solution but instead makes women more discriminated due to lost opportunities to get a job caused by employers feel aggrieved when hiring female workers.

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