

Yogyakarta Special Region Policy Upon Gender Biased Leader Transition Reviewed from Law no. 13/2012 on the Special Rights of Yogyakarta Special Region

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Abstract. Yogyakarta Special Region is an area with special autonomy where it has the authority to make policy based on its local wisdoms, specifically the norms of Yogyakarta Kingdom, which gives unique characteristics for this region. However, although this area has special autonomy, Yogyakarta SR must still follow to the applied law in Indonesia and the constitution of the country. Under the policy of mandating the position of Governor and Vice Governor, it can be considered as unconstitutional and departing the constitution of the country. It is because there is a discrimination of gender in the policy. This research was a qualitative research with socio-legal approach. The used data in this research was primary data with direct interview to the interviewees and supported with literatures studies. This research aimed to prove that the policy of mandating the position of Governor and Vice Governor of Yogyakarta SR is gender biased. In reality, a policy must not be discriminative as all citizens have the same opportunities under the law.

Keyword: Policy, Gender Bias, Discriminative

1. Introduction

Indonesia is a country which upholds the concepts of the rule of law [1]. Therefore, the country should guarantee on providing justice to all citizens. Justice is the requirement to reach social welfare for all citizens of Indonesia which is also the goal of the nation. To reach this goal of social welfare, there should be law tools to control the balance and justice in all fields of life and social livelihood.

Somehow, the concept of Indonesia as the nation of law does not merely adopt the concept of rechtsstaat or the rule of law, since the background of both concepts is different from Indonesia's background. Moreover, people can understand that the terms of nation of law are raised under the influence of rechtsstaat and the rule of law. In details, the concept of Indonesia as the nation of law is included in the 1945 Constitution of Indonesia as the combination between the concepts of European Continents' concept of nation of law which is known as rechtsstaat and the tradition of law in Anglo Saxon country known as the rule of law. It is in line to the function of the state to create law by transforming the values and awareness of law among the society. This mechanism is the creation of democratic law, and it is not possible to formulate law which is not in accordance to society's law awareness. Thus, society's law awareness is raised, reflected, and transformed in the form of new national law.

Nonetheless, the implementation of law in Indonesia is related to citizen's rights which are equal under the law. Whereas, Indonesia under the perspective of sociological perspective has social structure which tends to be patriarchal in tribal or social culture. Thus, this thing will cause the redirection of women's roles as the complement of the running system. In this subordinate form, it raised a question where justice and equality is guaranteed with the concept of democracy as the better system from other government systems [2]. Likewise, the Law Number 13 Year 2012 regarding the Special Rights to Yogyakarta Special Region is considered as unconstitutional from its discrimination against women in which the requirement of Governor and Vice Governor regulated on Article 18



section (1) m states that “submitting the curriculum vitae which includes the educational history, siblings, wife, and children.” Thus, it means that the requirement to become the Governor and Vice Governor of Yogyakarta SR has to be a man. This conclusion leads to the consideration of discrimination against women.

2. Methodology

This research was done to Yogyakarta SR using qualitative method with socio-legal approach. Qualitative research is a research aims to produce scientific writing with written or oral data from people or behavior towards the status of groups of people or humans as well as cultural groups which can be observed [3].

This research focuses on the history and living norms in Yogyakarta Kingdom. Thereby, this research explores all available resources with planned steps to obtain complete data regarding the Kingdom’s history from its establishment to current condition as well as observing the cultural values underlying the transition of leader in it.

Case study is used directly to actual case from the investigated matters. Case study can be obtained not only from the related cases, but also from all parties or cases which can be collected as the data of the study from some identified sources. The last step of the case should find the way to repair or complete the matter [4]. The required data in this research were collected from some sources: interviewees, places of the study, events related to the study, and written sources. According to the goal of this research, this research used purposive sampling to choose interviewees who know and able to be trusted as the source of information. The techniques of data collection were interview, observation, and document analysis.

3. Findings

3.1. *The Formulation of Policy Regarding Transition of Leader in Yogyakarta Special Region*

Pancasila is the basic and ideology of the nation as well as the philosophical ground of the nation. It contains the regulation and law, making it should not contradict its ground. The basic norms to formulate the law and regulation are the source of law of the nation. This basis comes from 1945 Constitution of Indonesia. Indonesia is a country using the concept of the nation of law and Pancasila as the ground of the nation [5]; thus, all policies should not contradict to them. Later, the formulation of the law and regulation has to be based on the good principle of law and regulation.

Reviewing the problems related to leader transition in Yogyakarta SR regulated under Law Number 13 Year 2012 regarding the Special Rights of Yogyakarta SR, it is inseparable from the remaining law in Yogyakarta Kingdom. Whereas, there is a law in the Kingdom in choosing the leader or heir of the throne called as Paugeran.

Even if the Verdict of Constitutional Court Number 88/PUU-XIV/2016 which judged the Law Number 13 Year 2012 has decided that Article 18 section (1) m owns no legal force, referring to other article, paugeran of the kingdom also becomes the important basis to decide who can fill the position of Governor and Vice Governor.

From the points in paugeran of the kingdom, it can be said that paugeran is not absolute and rigid. Paugeran can be changed based on the condition of the kingdom, where in the previous era raising the new pattern of throne transition [6].

Exploring deeper to the transition of the kingdom to current condition, it is found that there are some patterns of throne heritage experienced by Yogyakarta Palace. Including:

3.1.1. *Normal Succession.* It is the normal pattern of succession on the right track. Since the heir was transferred from the father to the son as the future leader, the heir is left by the Sultan who has passed away to avoid conflict which made the political stability of the Kingdom changes. In the

history of Yogyakarta Kingdom, the inheritance worked well in the era of Sultan Hamengku Buwono VI, Sultan Hamengku Buwono VIII, and Sultan Hamengku Buwono IX [7].

3.1.2. Dynamic Succession. This succession referred to the character of situation and process in the transition of the throne with political dynamics. The normal condition was interfered due to foreign intervention or personal mistake causing the change in political direction. It happened in the era of Sultan Hamengku Buwono I and Sultan Hamengku Buwono VII [8].

3.1.3. Sideway Succession. It is assigned with the dissolution of Kingdom's political dynasty since the king does not have son. This biological factor that forces the transition of the throne does not work from the father to the son. It happened in the era of Sultan Hamengku Buwono V which did not have son.

3.1.4. Represented Succession. This pattern is the change of throne by the creation of representative board as the assistance of the king when they were chosen in the young age. This board has the tasks to held the kingdom's governance until the king is considered mature. Thus, this pattern can be called as abnormal succession in Javanese tradition. This pattern happened in the era of Sultan Hamengku Buwono III and Sultan Hamengku Buwono IV [9].

3.1.5. Bloodshed Succession. This succession is reflected by a barrel of water which has crack and broken; making the water poured away. In Javanese tradition, barrel is considered as the symbol of blessing, while the Kingdom as the faucet flows the blessing of God to the nation. It is classified as the succession causing chaos and bloodshed. It happened in the era of Sultan Hamengku Buwono II [10].

3.2. Gender Bias Policy Regarding Leader Transition in Yogyakarta SR

Pancasila as the ideology and ground of the nation should be the guidance of the nation to control the society. Pancasila as the ground of the nation has been accepted as final decision although there are many violations to it. One of the challenges is to prove that Pancasila is a responsive ideology to the demand of gender equality. Then, seeing Pancasila from the perspective of gender equity and equality, it should not differentiate women and men.

Democracy entrusts the equal access and roles to men and women based on the principle of equality in all sectors and fields of the society, especially to make a decision. Convention on the Elimination of All Forms of Discrimination Against Women or CEDAW recommends that all governments around the world should provide quota for women as the specific and temporary effort to place women in appointive position (on choice/transition) or elective (based on the election) in the level of local and national government [11].

Gender discrimination still happens in all sectors of life and development of the nation. It is not a negligible fact despite the vast development in gender equality has been progressed [12]. The nature and level of discrimination is varied in many nations or areas. There is not any area in the developing nation where women has got the equal position under the law, social life, and economy. This gender inequality happens in the inequality and control of the resources, economy, power, and political participation as well as decision making everywhere. Women only become the object of development instead of the subject [13]. This becomes the factor causing injustice of gender bias policies.

Indonesia is a nation of law as stated in Article 1 section (3) of 1945 Constitution of Indonesia. As the nation of law, the principle of law enforcement should be upheld for the sake of protection to Human Rights.

According to this problem, Constitutional Court has stated its opinion regarding State of Law as it includes the equality before the law and protection to Human Rights in the Verdict of Constitutional Court Case Number 88/PUU-XIV/2014, stating that Article 18 section (1) m in the Law of the Special Rights of Yogyakarta Special Region regulating the requirement of future

Governor and Vice Governor to submit their curriculum vitae with saying “wife” instead of “husband” as an objective phrase is the same to applying discriminative norms to women.

3.3. *Solution on the Policy regarding Gender Bias Leader Transition in Yogyakarta Special Region*

Exploring deeper the policy of Leader in Yogyakarta SR under the Law Number 13 Year 2012 regarding the Special Rights of Yogyakarta SR, it can be said that the Law is gender biased and contradictory to the Law of the Nation. One of the solutions for this problem is the proposal of judicial review.

The problem of the law is inseparable from the norms applied in Yogyakarta Kingdom. Wherein, there are some rules applied in the kingdom in choosing the leader or heir of the throne called as the policy of Pugeran.

Even if the Verdict of Constitutional Court Number 88/PUU-XIV/2016 which judged the Law Number 13 Year 2012 has decided that Article 18 section (1) m as owning no legal force, referring to other article, pugeran of the kingdom also becomes the important basis to decide who can fill the position of Governor and Vice Governor. In article 19 section (2), it is said that:

“Based on the notification of Yogyakarta SR House of Representative as stated in section (1), Kasultanan proposes Sultan Hamengku Buwono which is the incumbent king as the future Governor and Kadipaten proposes Adipati Paku Alam as the vice Governor in not more than 30 (thirty) days after the notification letter of Yogyakarta SR House of Representative was accepted”.

Thus, it can be said that the article affirms that Governor will be mandated to the incumbent Sultan, making the mechanism of Sultan transition regulated after pugeran becomes the influential factor.

These are the points of pugeran which is normally applied by Yogyakarta Kingdom since its establishment:

- 1) The one who can take the throne is the male biological descent of the king.
- 2) The future king is the son of the queen.
- 3) If the king does not have the queen, the eldest son of the mistresses can be chosen.
- 4) If the king does not have son, the throne can be changed to king’s eldest male siblings who was born from the queen.
- 5) If the king does not have male sibling, the throne will be given to king’s uncle born from the previous queen.
- 6) If the king has not crowned the crown prince before he died, the election of the future leader will prioritize the kings’ male descent from the queen and mistresses.
- 7) If the king was crowned in a very young age, the governance will be held by a representative board chosen by the relatives of the kingdom.

From the points of kingdom’s pugeran, it can be said that pugeran is not absolute and rigid. It means that pugeran can change based on the condition of the kingdom as what happened in the previous era when the new pattern of succession was implemented.

4. Conclusion

Based on all findings in the previous section, it can be concluded that:

Formulation of policy should be based on some steps not making it contradictory to the living values in the society and to the applied law which has specially bond them.

Policy regarding the requirement of leader in Yogyakarta SR regulated under Article 18 section (1) m, Law Number 13 Year 2013 has contradicted to the values of Pancasila and 1945 Constitution of Indonesia as it is discriminative to women.

Paugeran of Yogyakarta Kingdom should not become a rigid and absolute rule. Instead, it should change dynamically based on social and political condition in the kingdom to maintain its internal political stability. The merging of Yogyakarta Kingdom into the Republic of Indonesia consequently makes the Kingdom has to follow the rule in Indonesia.

Based on the findings, there are some suggestions to propose:

- 1) The House of Representative should involve experts from academician, professionals, or social organization in every step of discussion to understand the problem and being neutral to every policy making, especially to this kind of policy which has political elements.
- 2) Law Number 13 Year 2012 Regarding the Special Rights of Yogyakarta SR should be revised due to its contradiction to Pancasila as the ground of the nation and 1945 Constitution of Indonesia as the basic ground of the law. This law is also considered as gender biased with discriminative contents against women.
- 3) The Kingdom should transform its custom to the necessity of different era. The system of administration, institution, organization, leader recruitment, and legal system should be clear and contained in official documents. It should do firm and detail codification regarding the law and leader transition in Yogyakarta Kingdom by forming Advisory Council which can provide input and advice based on the wisdoms of the King.

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