



SLEEI
Strengthening Legal Education
in Eastern Indonesia



Working Paper 4

Integrating gender in legal education

July 2020

Lieselotte Heederik, Rikardo Simarmata & Sri Wiyanti Eddyono



KIT Royal
Tropical
Institute



Ministerie van Buitenlandse Zaken



nuffic
meet the world

 **Van Vollenhoven Institute**
for Law, Governance & Society



**Universiteit
Leiden**

Colophon

This paper is part of a series of 5 original working papers of the project “Strengthening Legal Education in Eastern Indonesia” written as key reference material for training law lecturers in Eastern Indonesia. Each paper discusses one of the core themes of the SLEEI project and explains the issues that come up when enhancing law courses on content regarding the themes. The papers also contain practical suggestions on how to integrate the enhancements in existing courses. These five papers compose the core of what will become the SLEEI manual for strengthening legal education. They are co-authored by Indonesian and Dutch experts who cooperate in SLEEI. All the papers as well as more information on the project, events and updates can be found on the SLEEI websites in [Bahasa](#)¹ and [English](#)².

Funding and coordination

The SLEEI project is funded by [NUFFIC’s Orange Knowledge Programme - ‘Security and Rule of Law in Indonesia’](#)³. SLEEI is coordinated by the Van Vollenhoven Institute of Leiden Law School, Leiden University.

Publisher

Van Vollenhoven Institute for Law, Governance and Society, Leiden University

Authors

Lieselotte Heederik (Expert on gender and curriculum development), Rikardo Simarmata (Lecturer at the Faculty of Law of the University of Gadjah Mada) & Sri Wiyanti Eddyono (Expert on gender and law, and a lecturer at the Faculty of Law of the University of Gadjah Mada)

Language and copy editing

Dorien Conway

Cover photograph

Leaves of Eastern Indonesia’s iconic lontar palm. Photo: J. Vel

© 2020 VVI/Authors.

All rights reserved. Without limiting the rights under copyright reserved above, no part of this report may be reproduced, stored in or introduced into a retrieval system, or transmitted, in any form or by any means (electronic, mechanical, photocopying, recording or otherwise) without the written permission of both the copyright owner and the author(s) of the report.

¹ <https://sleei.law.ugm.ac.id/>

² <https://www.universiteitleiden.nl/en/research/research-projects/law/strengthening-legal-education-in-eastern-indonesia>

³ <https://www.nuffic.nl/en/subjects/institutional-collaboration-projects/>

Integrating gender in legal education

1. Why is integration of gender important for legal education?

Gender refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women. While *sex* refers to the biological and physiological characteristics which define men and women.

There are multiple different *gender roles* which vary according to different cultural, historical and economic circumstances. Gender roles to some degree determine the rights and obligations of women and men within a given society, as well as the power relations between them. As these roles are learned through socialization, they can also be changed and change over time.

Gender studies analyze why the roles between men and women in society are different, what boundaries men and women experience when they want to confront these roles and how these boundaries can be reduced. Gender studies are conducted to explain differences between different opportunities for men and women in society. Within gender studies it is important to realize:

1. Society, culture and religion have different views of the roles of men and women
2. These views are presented to us when we are still very young and they affect our own behavior and perspectives but also how we see and interpret the behavior of others
3. The views also lead to biases (conscious and subconscious), these biases can effect personal decisions. Everyone, everywhere has perceptions on different roles of men and women. Besides, most people are also biased about people with different backgrounds, be it educational, religious, ethnical or national.

Whether we are aware or not, these biases influence our day-to day decision making and our perceptions of “the other”. When a majority group shares similar perceptions on a minority group, this can affect the equal opportunities for the minority group. These equal opportunities can be divided into having *access* to decision making processes, being able to *participate* in decision making process, having *control* over the outcome of decision making, and finally, *benefitting* from the decision.

To conduct a gender analysis these ingredients are important:

- a. *sex-disaggregated data-analysis* to assess the differences of opportunities between men and women. If we do not have sex-disaggregated data, we cannot assess whether a gender discrepancy exists, for instance, whether the number of male and female judges is balanced.
- b. Analysis of how men and women have *access to and control of* different resources and processes. To asses *access* we can look for instance at the number of women using legal aid versus men, number of female judges, number of male nurses, number of land certificates owned by women, number of fathers that get custody over their children in case of divorce, etc. To assess *control*, we can look at the extent to which women are actively involved in influencing certain process and decision outcomes. For instance, if

women are invited to village meetings, are they allowed to speak up? Can they influence the outcome of the meeting? How many women are involved in drafting laws that affect their livelihoods?

- c. Analysis of different *biases* and how they affect different opportunities for men and women in society

Gender Mainstreaming is a globally accepted strategy for promoting gender equality. Applied in universities, it is a process rather than a goal of creating knowledge and awareness of and responsibility for gender equality among all education professionals engaged in tertiary education. It is not an end in itself, but a strategy, an approach, a means to achieve the goal of gender equality in higher education institutions. Gender Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities – education policy, curriculum, research, advocacy, resource allocation, facilities and planning, implementation and monitoring of tertiary education programs.⁴

Regulatory framework

Indonesia is making positive steps forward in guaranteeing equal representation and participation of women in democratic governance processes. The aim for gender equality in the Indonesian society is guided through a variety of legislation, regulations and policies which will be used as guiding principles in the SLEEI project. The main regulations are Law No. 7/1984 on the Elimination of all forms of Discrimination Against Women (CEDAW), Presidential Instruction (INPRES) No. 9/2000 on Gender Mainstreaming in National Development Planning and Programming, the regulation on 30% representation of women in elections, the law on human trafficking and the law on domestic violence.

INPRES 9/2000 requires all government agencies at the national and sub-national levels to integrate gender perspectives into the planning, implementing, budgeting, monitoring and evaluation of policies/programs/projects and activities of the ministries/non-departmental government agencies, governors, and mayors. The law states explicitly that gender mainstreaming is necessary in order to: “(...) achieve gender equality and equity (...), in the planning, implementation, monitoring and evaluation of all policies (...)”

Not only the donor of this project, Nuffic, but also the United Nations have set targets for the achievement of Gender Equality which are formulated under the United Nations Sustainable Development Goal (SDG) 5 on Gender Equality. The Government of Indonesia has endorsed the SDGs and monitors its progress.

Although the above section shows that Indonesia has a significant number of gender sensitive regulations, there are also many regulations that are less gender sensitive or even considered discriminatory.

In 2010 the Ministry of Law and Human Rights reviewed 20 laws and regulations that were considered discriminatory against women⁵.

Report on discriminative laws and regulations was also conducted by Komnas Perempuan in 2009. The following were found to be particularly discriminatory toward women: the Criminal Code (1/1946), the Marriage Law (1/1974), and the Labor Law (13/2003). Controversy remains regarding the Law on Pornography (44/2008) and the Law on Health (36/2009) as

⁴ UN OSAIG, 2009, WHO, 2009 and UNESCO 2007

⁵ <https://www.kemenpppa.go.id/lib/uploads/list/eec77-buku-policy-brief-gender-equality.pdf>

well. Both laws contain articles that potentially impair women’s right to make choices regarding their health and expression. There is a current debate regarding a proposed Law on Gender Equality to further strengthen the legal foundation for promoting gender equality⁶. The newly proposed criminal code also contains articles that are considered discriminatory against women, the LGBT community and minorities⁷. For instance, one of the proposed articles includes a four-year jail term for unauthorized abortions. Another proposed article criminalizes sex before marriage as well as extra-marital sex. Annex 10 gives an Overview of gender inequalities in Indonesia and how they relate to different law-courses.

Regulations at local level

The Law No. 6/2014 on participatory village governance recognizes the village as a unique entity with a specific history, traditional rights, local institutions, and culture. Due to this law existing discriminatory practices and the exclusion of women in local decision making processes were perpetuated. In 2016 this was recognized by the Ministry of Villages, Development of Disadvantaged Regions, and Transmigration and the Regulation No. 22/2016 was issued, encouraging village governments to organize special meetings for women. However, the implementation of these meetings is not being monitored and if they are being organized the decisions are non-binding or neglected.

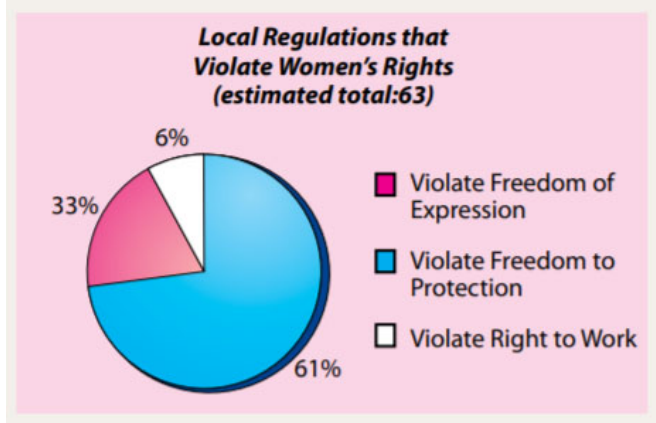
According to the National Commission on Violence Against Women (Komnas Perempuan), until 2017 there were 421 regulations at the regional level that were classified by them as discriminating against women (Komnas Perempuan, 2018)⁸.

Data analysis

Although Indonesia has ratified and issued many regulations that promote the equal advancement of men and women, data suggest that in practice the positions of men and women in Indonesia are not the same. There is a big difference between how men and women can access, control and benefit from resources and policies. Comparing data from the Human Development Index between Indonesia, Malaysia and the Netherlands (See Annex 6), it can be noted that Indonesia has a high rate of adolescent births, which is related to the high number of child marriages. Indonesian women earn around 50% of what men earn, and just over 50% of the female population owns a bank-account. The recent National Women’s Life Experiences Survey, conducted by the Indonesian government statistics body Indonesia (BPS) found that one in three women had been subject to physical, emotional or sexual violence at the hands of their partner or somebody else during their life, with educated and urban-dwelling women at greater risk⁹.

For women who had completed high school education or greater, 39.4 percent had experienced violence, compared to 35.1 percent of women without jobs.

Figure 1: Discriminatory Local Regulations (Konmas Perempuan, 2010)



⁶ <https://www.kemenpppa.go.id/lib/uploads/list/eec77-buku-policy-brief-gender-equality.pdf>

⁷ <https://www.theguardian.com/world/2019/sep/26/indonesias-criminal-code-what-is-it-why-does-it-matter-and-will-it-be-passed>

⁸ https://www.smeru.or.id/sites/default/files/publication/wp_neoliberal_developmental_gender_2019-9-6.pdf

⁹ <https://asiancorrespondent.com/2017/04/educated-urban-indonesian-women-higher-risk-violence-study/#jaxqxT5SLkhUqKwj.97>

2. Integrating Gender equality in legal education

Curriculum development

Generally speaking there are two strategies for integrating gender in legal education; 1) to establish an independent course on gender and law or 2) to incorporate gender equality materials in a course subject. The different considerations are explained in the table below:

| | Advantage | Disadvantage | Other considerations |
|--|---|--|--|
| Independent course on gender and Law | <ul style="list-style-type: none"> - All gender related content can be integrated in one course - Can be given by a specialist on gender and law | <ul style="list-style-type: none"> - Time & Resources needed to develop the course - As gender issues are manifested in different law fields, this can result in a narrow view of gender - If this course is not compulsory its effect on a more gender equal society will be limited - Dependence on one "gender & Law" specialist. | <ul style="list-style-type: none"> - Only effective if compulsory |
| Integration of gender issues in different courses | <ul style="list-style-type: none"> - Gender issues are highlighted in different fields of law - Students get a better understanding how each course affects gender equality | <ul style="list-style-type: none"> - Need to ensure all lecturers feel comfortable with the content; either through extra training or appointing extra lectures with gender expertise to each course - Lack of local reference studies or local data which present the gender gap & gender issues - Lack of local sources like court-decisions that could be analyzed and discussed - Limited studies on gender equality and law | <ul style="list-style-type: none"> - Through a student centered approach the lack of data can be resolved by the students themselves so they obtain the skills to analyze court decisions through a gender perspective. |

Whilst developing a curriculum on law and gender it is important to consider the following:

1. Qualification of lecturers

The curriculum should be developed by lecturers that have worked on gender related and/or human rights issues in the past. It is a big asset if the lecturer has some sense of gender sensitivity, but even more important is his/her passion to developing the gender subjects as part of his /her own expertise.

2. Development of a research program

To further continue building the expertise on gender and law the teaching process should be followed with the development of gender related research programs for students and lecturers on law and gender. Ideally the lectures have the capacity to supervise students to do research on law and gender.

3. Connection with practitioners

The objective of teaching Gender and law is not limited to establishing knowledge of law in texts, but should also generate a deep understanding on how laws operate and in which situations the law can protect or discriminate women. Direct engagements with practitioners that work on gender issues, such as Women Crisis Center, One stop crisis center unit in government, Women and Children Unit in Police, Women NGOs working in different fields could contribute to an increased understanding of how the law can affect men and women differently.

4. Variety of learning methodologies

Teaching gender awareness and sensitivity should be done through various methodologies such as lecturing, group discussion, case studies or court decision analyses, field visits, role-play, paper writing and presentation, movie discussion etc.

5. Use of data and resources

Gender segregated data and references are particularly important. Also data based on cases, court decisions (Supreme Court and Constitutional Court) and reports by human rights and gender specific institutions (LPSK, Komnas Perempuan, ICJR, ELSAM, Komnas HAM etc) should be utilized.

Teaching practices

Working to advance gender issues in legal education requires a thorough understanding of local contexts and a strong capacity to facilitate positive gender dynamics. Creating awareness about gender issues in society and how it relates to law demands a *participatory approach* that *generates* and *internalizes knowledge based on students' reflections*, rather than transferring a fixed body of knowledge.

Teaching about gender issues must take the gendered experiences of both men and women into account. Teaching gender issues is best implemented by lecturers that have a broad understanding of society and have experience in dealing with sensitive norms and values.

A good starting point for teaching about gender perspectives and gender equality in law courses is:

1. Creating awareness about the concepts of sex & gender, and how these concepts affect our personal perception on male and female roles in society (See Annex 2)
2. Explore how these roles are manifested in media, movies, newspapers as well as regulations
3. Discussing the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) which has been ratified in Indonesia since 1984 (Law No. 7/1984).
4. Discuss topics such as human trafficking, abortion, sextortion, migrant labor, adat, ethics
5. Invite quest-speakers from LGBT & women's rights groups
6. Analyze court decisions
7. Analyze PERDA which could be considered discriminative
8. Analyze case-studies & local cases

End terms for university lecturers

To integrate gender awareness and gender sensitivity into law courses trainers and lecturers require a basic understanding of the following:

1. *Gender* refers to the *socially constructed roles*, behaviors, activities, and attributes that a given society considers appropriate for men and women. These roles can change over time. These roles are affected by *biases* within society about the "other". These biases affect opportunities for different groups in society;
2. These equal opportunities can be divided into having *access* to decision making processes, being able to *participate* in decision making process, having *control* over the outcome of decision making, and finally, *benefitting* from the decision;

3. Indonesia has a comprehensive legal framework that promote equal opportunities between men and women, however many discriminative legislations (PERDA) exist together with poor implementation;
4. Gender issues are manifested in all law fields;
5. Gender is an important topic for legal education for the following reasons:
 - a. Gender is related to the issue of justice and equality and the foundation of ideas of law
 - b. To ensure equality before the law and implementation of the law
 - c. To ensure quality of new laws that are not discriminative
 - d. To prevent court decisions that are discriminative;
6. Main concepts: gender, sex, roles, gender equality, gender equity, gender mainstreaming, gender needs, bias, data, access, control & influence, revenge porn, victim blaming, sexual harassment and sextortion

Furthermore, lecturers should be able:

1. to identify gender issues in legal cases and regulations;
2. to identify for each subject of law (criminal law, family law, property law, constitutional law etc) (and legal education) what specific gender related legal problems are most prominent (see table above);
3. to understand where adat and state law conflict on gender matters;
4. to understand how gender is related to ethics, religion, adat and constitutional/government law;
5. to analyze how the making and implementation of laws and regulations are influenced by factors such as culture, adat, religion and politics;
6. to comprehend how the making and implementation of laws and regulations are influenced by the context and the people that are involved;
7. to use gender related case-studies;
8. facilitate interactive discussions amongst students about the concepts mentioned above.

3. List of annexes and supporting materials

(Available on SURFDrive/content/gender/materials)

Annex 1 Integrating Gender perspective in law courses

Annex 2 Powerpoint for training gender-awareness

Annex 3 List of abbreviations and Indonesian Terms

Annex4 Terminology

Annex 5 Overview of Regulatory Framework

Annex 6 Human Development Index Indonesia

Annex 7 Additional teaching materials

Annex 8 Case-studies & other resources

Annex 9 Best practices of integrating gender in Indonesian Law Faculties

Annex 10 Overview of gender inequalities in Indonesia