

REPORT

POLICY REVIEW

GENDER POLITICS IN ACEH: GENDER AND MASCULINITY IDEOLOGY IN THE MAKINGS OF LOCAL REGULATIONS

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In a Collaboration with UN WOMEN and Partner for Prevention (P4P)

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Remarks

UN Women

UN Women is really happy to participate in this research project conducted as a collaborative work between UN Women, Partners for Prevention (P4P) and Center of Women's Studies at the State Islamic University of Ar-Raniry, Banda Aceh. UN Women would like to thank all individuals and organizations that have given their supports to the successful implementation of this research project.

Gender based violence including violence against women is among the most serious problems of human rights violation. Many efforts have been taken to reduce the prevalence of the violence, but the number remains high. This research on masculinities is meant to contribute to strategizing some actions already done to end gender based violence and violence against women, particularly these focusing on the prevention level before the violence is perpetrated. It is understood that gender based violence is strongly influenced by patriarchal social construction that positions genders that are not considered 'masculine and men' in a subordinate power relation. Under such a circumstance, it oftentimes happens that an action considered a form of violence is not really viewed as violence; instead this is interpreted as a way of education that is 'clean' from violence. For instance, this research found, many husbands thought that it was acceptable or even an obligation of a husband to beat their wives who disobeyed their requests or instructions because husbands were heads of family and leaders over their wives. Even members of the society would think the same as these husbands and close their eyes from providing assistance for women encountering such a problem. Considering such a social-cultural phenomenon, it is very important to understand deeper social-cultural roots of gender based violence and violence against women in a specific context, so we can make a more contextual and comprehensive strategy to end the violence. By addressing masculinities as a framework it is expected that this research would really contribute to deepening our understanding on social-cultural construction within the Aceh society that influences to abusive and violent perspectives and behaviors.

We really hope that the findings of this research will inspire many individuals and organizations to provide greater contributions to ending gender based violence and violence against women. The context of Aceh as the focus of this research is expected to be an example for similar initiatives in other contexts.

Banda Aceh, 26 December 2011

Remarks
Head of Center of Women's Studies
State Islamic University (IAIN) of Ar-Raniry Banda Aceh

Center of Women's Studies (PSW) of IAIN Ar-Raniry would like to express sincere thanks and appreciation to UN Women and Partners for Prevention (P4P) for the productive collaboration in doing this Policy Research on "Gender Politics in Aceh: Gender and Masculinity Ideology in the Makings of Local Regulations." This research is conducted by a team consisting of six researchers of PSW IAIN Ar-Raniry and Provincial Education Body of Aceh.

This policy research is a combination of regulation or policy review and observation as well as analysis of contexts and backgrounds in the makings and implementation of regulation and policy. This needs a hard work as the Aceh society is popular with its heterogeneous social, cultural, political and even historical contexts that influence each others.

Six aspects that become the research subjects include regulation or policy on *adat* (customary law), Islamic sharia implementation, budgeting, women's empowerment and children's protection, and education. These subjects are chosen based on the earlier PSW's research on masculinities and its impact to violence against women.

This research report is not a comprehensive document that answers all questions and queries on policy and regulation related to gender and women's issues. Nevertheless, this report is expected to a significantly initial source in optimizing policies for strengthening the efforts of building caring, sharing, collaborative and responsible values of masculinity in Aceh. PSW IAIN Ar-Raniry sincerely thanks all parties for their contributions to this research. In particular, we send our special thanks to the respondents of the research for providing key information related to the research subjects. We thank our colleagues in UN Women Aceh for any helps and assistance related to administrative and managerial issues during the implementation of this research project.

In this opportunity, we would like to express our appreciation to the Rector of the State Islamic University of Ar-Raniry and the Rector Deputy of Administration and Finance for their direction and assistance for this research implementation. We also thank the translator team for translating the research report to English. We greatly appreciate all

meaningful inputs and thoughts from Farid Muttaqin, Ita Fatia Nadia and Emma Fulu. Our very special thanks are dedicated to the researchers: Mustabsyirah Husein, Analiansyah, Rasyidah, Khairani, Anita T Iskandariata, and Nurul Hidayah for their great contribution to this research project. We hope we can develop lesson-learned from this experience especially to improve our social sensitivity. Finally, we would like to thank, once again, UN Women and Partner for Prevention (P4P) for providing various assistances to this research project. May Allah SWT bless all our efforts. Amen.

Banda Aceh, 20 November 2011

Rasyidah, S.Ag, M.Ag

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The Protocol of Policy Research
“Gender Politics in Aceh: Gender and Masculinity Ideology in the Makings of Local Regulations”

Center of Women’s Studies at the State Islamic University of Ar-Raniry
In a Collaboration with UN WOMEN

Title

Policy Research on “Gender Politics in Aceh: Gender and Masculinity Ideology in the Makings of Local Regulations.”

Institutions

Institutions involved in this qualitative research project are Partners for Prevention, UN Women and Center of Women’s Studies (PSW) of Ar-Raniry State Islamic University (IAIN).

Partners for Prevention (P4P) is a UNDP, UNFPA, UN Women and UNV regional programme for Asia and the Pacific that began in September 2008. Partners for Prevention focuses on primary prevention—stopping violence before it starts—especially among boys and men. The essential partnerships behind P4P are among those dedicated to women’s empowerment and ending violence, government, UN staff and civil society practitioners from local to regional levels.

The long-term goal of this programme is to prevent gender-based violence in the region through behaviour and attitudinal change among boys and men, increased institutional capacity to involve boys and men in GBV prevention and through facilitating programmatic and policy enhancements based on evidence. To work towards this long-term objective, the programme has the following three interlinked outputs:

- Public awareness campaigns mobilising boys and men for GBV prevention implemented at the regional, national and local levels
- Selected government, civil society and UN advocates in the region are equipped with enhanced capacities to implement initiatives working with boys and men for GBV prevention
- Government, civil society and UN advocates gain access to regional knowledge resources and evidence-based policy tools on working with boys and men for gender-based violence prevention.

UN Women (United Nations Entity for Gender Equality and the Empowerment of Women) is the women's fund at the United Nations, dedicated to advancing women's rights and achieving gender equality. It provides financial and technical assistance to innovative programmes and strategies that foster women's empowerment. UNIFEM works on the premise that it is the fundamental right of every woman to live a life free from discrimination and violence, and that gender equality is essential to achieving development and to building just societies.

Established in 1976, UN Women has touched the lives of women and girls around the world. UN Women maintains strong ties to both women's organizations and governments, linking them with the UN system to join national and international political action, and to create momentum for change. UN Women focuses its activities on one overarching goal: to support the implementation at the national level of existing international commitments to advance gender equality. In support of this goal, UN Women works in the following thematic areas:

- enhancing women's economic security and rights,
- ending violence against women,
- reducing the prevalence of HIV and AIDS among women and girls, and
- advancing gender justice in democratic governance in stable and fragile states.

Active in all regions and at different levels, UN Women works with countries to formulate and implement laws and policies to eliminate discrimination and promote gender equality in such areas as land and inheritance rights, decent work for women, and ending violence against women. UN Women also aims to transform institutions to make them more accountable to gender equality and women's rights, to strengthen the capacity and voice of women's rights advocates, and to change harmful and discriminatory practices in society.

Center of Women's Studies (PSW) of IAIN Ar-Raniry in Banda Aceh formed in 1989 was university based research and advocacy institute that aims to advance gender equality and equity through an attempt of strengthening opportunity, participation, benefit distribution and control in development process as a way against gender based discrimination. PSW is now working on gender mainstreaming program in the academic institutions, in the Islamic university in particular by, among others, strengthening capacity of resources through seminar, training, workshop and

research programs. In doing so, PSW opens a wide collaboration with local, national and international organization.

PSW's vision is to enhance understanding and perspectives on gender equality to support academic environments and communities with strong gender perspectives. This vision is expected to be achieved through its several missions including improving capacity of academics and researchers in the area of Islamic studies that bring gender equality perspectives. PSW also works on supporting community development in gaining gender equality under Islamic contexts.

Researcher Team

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6	Analiansyah	Researcher	Center of Women's Studies of IAIN Ar-Raniry
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8	Nurul Hidayah	Researcher	Education Body of Aceh Province

Background of the Integrated Research Project

The qualitative research in Aceh fits within the broader context of the three research components being conducted as part of a regional research project.

Background to the Regional Project

Gender-based violence (GBV) remains one of the most pervasive yet least recognized human-rights abuses in the world. The Asia-Pacific region has some of the highest reported levels of gender-based violence in the world: Oxfam reports that one in every two women in South Asia faces violence in her home¹; the WHO Multi-country Study reported that over a third of the women interviewed in countries such as Bangladesh, Thailand and Samoa have faced some form of violence in their lives²; and recent nationally representative data from the Solomon Islands and Kiribati has revealed prevalence rates of physical and/or sexual partner violence of 64% and 68% respectively, among ever-partnered women aged 15-49³.

Despite decades of work to end violence and some significant advances in terms of public awareness, laws and policies there is no indication that aggregate levels of violence have decreased in the region. Thus, GBV continues unabated and often quietly condoned, impairing families, communities and societies in general. Most responses to GBV focus on women's rights and empowerment, legal reform, protection and service provision. Whilst these interventions continue to be key priorities, addressing root causes of GBV through primary prevention is vital if we are to create societies where gender-based violence is unacceptable to all.

The majority of research and interventions on GBV have focused on women, however understanding prevailing social structures and norms, men's attitudes and behaviours – and how they perpetuate violence – is vital because GBV is rooted in power relations among women, men, girls and boys. Men are overwhelmingly involved in all types of violence. They are the primary perpetrators of GBV, and often experience violence themselves. GBV is linked to dominant notions of “what it means to be a man”.

As such, “**Partners for Prevention: Working with Boys and Men to Prevent Gender-based Violence**” (P4P) a UN interagency regional programme has initiated the “Gender-based Violence and Masculinities Project” in the Asia-Pacific region. This is an action-oriented research project designed to produce a holistic, evidence-based set of policy and programmatic recommendations for more effective GBV prevention, specifically engaging men and boys.

Along with national counterparts, P4P will coordinate a study with three components of research in a number of countries in the Asia-Pacific region (illustrated below in Figure 1):

¹ Oxfam International, *Towards Ending Violence Against Women in South Asia: Briefing Paper #66*. August 2004.

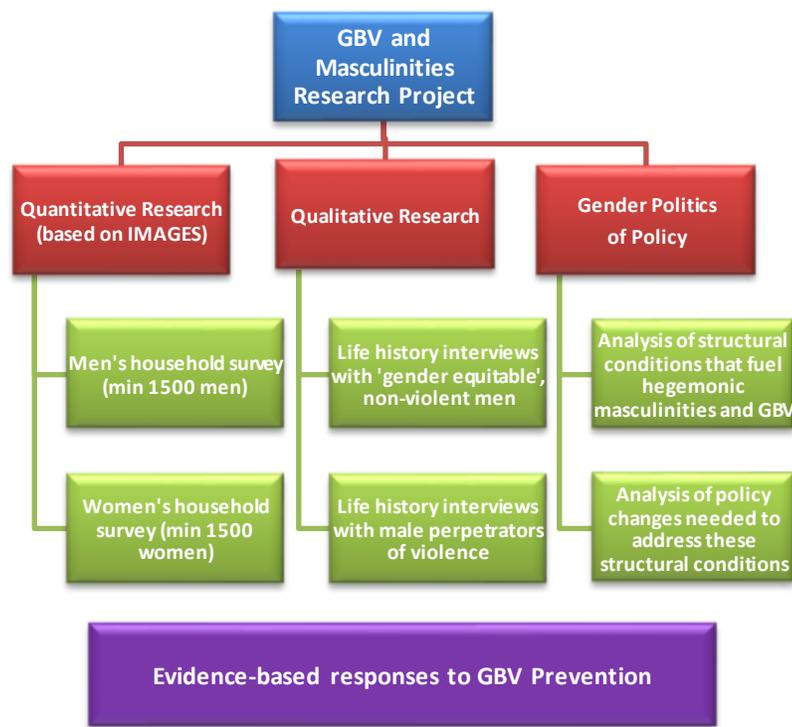
² WHO, *WHO Multi-country Study of Women's Health and Domestic Violence*. 2005, World Health Organization: Geneva, Switzerland.

³ SPC, *Solomon Islands Family Health and Safety Study Report*. 2009, Ministry of Women, Youth and Children Affairs and SPC: & *Kiribati Family Health and Support Study Report*. 2010 (forthcoming), Ministry of Internal and Social Affairs and Secretariat of the Pacific Community: New Caledonia.

1. Quantitative research – Cross-sectional household survey with men and women (based on IMAGES)
2. Qualitative research – In-depth, life history interviews with male perpetrators and ‘gender-equitable’ with alternative non-violent understandings of ‘manhood’/ ‘masculinities’
3. Gender politics of policy- Ethnographic and sociological methodologies

The provisional list of participating countries includes: Cambodia; China; Bangladesh; Indonesia (Aceh); Nepal (possible); and PNG (Bougainville).

Figure 1:
Research components of the Gender-based Violence and Masculinities Project



Background of Policy Research in Aceh

Aceh, the westernmost province of Indonesia, is located on the northern tip of the island of [Sumatra](#). The province has the city has a total area of 56.501 km² and the population of 4.486.570

which 2.243.578 of them are men and 2.242.992 are women --based on the 2010 demographic census.

In terms of governance, Aceh gets a specialty as a province in Indonesia with a special autonomy. Moreover, Aceh is a post-conflict area; a 30-year military conflict between Gerakan Aceh Merdeka (GAM) or the Free Aceh Movement demanding the independence of Aceh and the central government of Indonesia. The conflict ended by the signing of a Memorandum of Understanding between the two parties in Helsinki, Finland, 15 August 2005 that marked the beginning of peace period in Aceh.

Aceh was seriously destroyed by the devastating tsunami in 26 December 2004. As a post-conflict and post-tsunami area, Aceh appears to be like a new province of Indonesia with a lot of development programs in various fields. The policy of special autonomy and the formulation of the Law on the Government of Aceh (LoGA) No. 6/2006 allow the local government of Aceh to gain greater authority to implement several post-conflict and post-tsunami reconstruction, rehabilitation and development programs.

Following the LoGA, many regulations both at provincial and district levels in Aceh are needed to be made. Hence, it is not wrong if this period is said as the era of the Aceh's regulation. Moreover, this period is marked by the emergence of public participation in the makings of local regulations. They gain a more spacious room to voicing and integrating their interests in a policy being made. A number of civil society movements to monitor the process of policy formulations significantly increases.

Gender and women's rights activists in Aceh can now work more intensely in policy advocacy to integrate gender perspectives into a policy. As a result, the substantive materials of some policies implicitly include gender equality and women's rights. Moreover, a specific provincial regulation (Qanun) No. 6/2006 on Women's Empowerment and Children's Protection was formulated. Nevertheless, the presence of gender issues in the policies, including in the specific women's empowerment qanun has not given much influences to strategizing the efforts of achieving gender equality in the region. Many aspects and issues need a further analysis to make the situation more effective. In fact it seems that such a tendency of working on the formalistic level to develop gender equality is an internationally discussed issue.

It is important to look at three key aspects in designing the solution for the above situation to improve the quality of policy as a legal and political foundation in working toward gender equality which include (1) gender perspectives of policy makers involved in the policy formulation, (2) gender politics existing and driving the makings of the policies, and (3) political will within

development agencies to implementing the policies. There has been hypothesis emerging about the situation that the appearance of gender issues in a regulation does not really reflect a strong understanding of the policy makers on gender issues; hence, they do not put into account the important aspect of the policy implementation as they just think only at a formal level of including gender issues in a regulation. Moreover, it has been viewed that the integration of gender issues in a regulation in Aceh is only for the sake of vested political interest of the policy makers to improve their political supporters; therefore, in this regard, elaborating the gender politics in the makings of regulations and policies in Aceh is very important to prove these hypotheses. Accurate and valid data and information will be important source to improve strategies in achieving gender equality there.

This policy research appears to be an important project by considering the increasing number of cases of gender based discrimination and violence as a consequence of the existing patriarchal construction within the society. In fact, the local government of Aceh in the name of the State is the most responsible party to eliminate the discrimination and violence including patriarchal culture as the Government of Indonesia has ratified CEDAW.

The government's initiatives in dealing with the issues of gender based violence that pause only at the step of producing a policy become an important subject of this research. With this exploration and analysis it is expected that some recommendations and inputs based on the research findings will be developed as part of a strategy of improving the efforts of ending gender based violence in Aceh.

B. Goal

To provide information and analysis of policies in Aceh related to gender and masculinities that can be utilized by policy makers and development implementers in achieving gender equality and preventing gender based violence (GBV) in the area.

C. Objective

1. Identify and analyze policies related to gender and masculinities in Aceh to develop a more strategic effort to prevent GBV.
2. Formulate recommendation and inputs for policy makers based on the research findings to be utilized as a source in making a more comprehensive strategy to prevent GBV in Aceh.

D. Research Question

This research tries to answer a question: What gender masculinity ideologies applied in the makings of local regulation in Aceh? This question is derived into more detail queries as followed:

1. How do policies made in the post-conflict and post-tsunami period contribute to the development of new gender and masculinity construction within the Aceh society?
2. What policies related to gender and masculinity made and implemented in Aceh?
3. What gender aspects described in local regulations and policies in Aceh?
4. What sources of inspiration leading the policy makers in Aceh to formulate policies and regulations related to gender?
5. How do the dominant male policy makers play an influential role in integrating certain gender constructions and norms into policies and regulations they make?

D. Research Design

1. Research Type

This is a qualitative descriptive research with primary and secondary data. Secondary data is collected from news papers, magazine, journal, and other mass media that publish information related to the research subject. This secondary data will be important comparative information to elaborating social and political contexts in Aceh by the time a policy is being made. Meanwhile, primary data in this research includes documents of policies and regulations related to the research subject, interview with key respondents, and field observation of the implementation of a policy or a regulation.

Policy and regulation documents reviewed and analyzed are these related to the research subject on gender and masculinities including:

1. Policy on the implementation of Islamic sharia law
2. Policy on *adat* (local custom and tradition)
3. Policy on health and budgeting
4. Policy on women's empowerment and children's protection
5. Policy on education
6. Policy on women's political representation and participation

In this research, policy refers to Robert R Mayer's point of view that a decision for action that is made in the name of a social group (here refers to a government) that has a complex implication and a specific purpose to influence the members of the group with the application of a sanction (Mayer, 1984:5).

2. Data Collection and Analysis

1. The first step of the research is identification and observation of the existing policies and regulations related to the research subject.
2. The next step is a study of juridical, historical, and sociological considerations in the makings of the policies to explore some issues related to gender and masculinities.
3. Later, the research will conduct a deeper study and analysis to the issues on gender and masculinities observed from the policy documents by doing an interview with key respondents of policy makers, community leaders, women's rights activists and other members of the society involved in the makings of the policies.
4. Furthermore, secondary data study and analysis will be conducted to get deeper insights of the social and political contexts when a policy is being made.
5. Both primary and secondary data will be processed and analyzed based on the below matrix:

No	Regulation	Review	Interview	Analysis
1	Juridical consideration			
2	Philosophical consideration			
3	Sociological consideration			
4	Substantive materials			

6. Finally, the data and findings will be analyzed in a descriptive form. It is important to mention that this research is not to evaluate a policy; instead this is to describe information existing in a policy or regulation. CEDAW indicators will be used as the framework in analyzing the data and findings of the research.

3. Site and Schedule

As part of the integrated research project on masculinities that takes Bireun and Aceh Besar district as the research sites, this policy research also takes the same district as the research site. Moreover, to get deeper insights about the policy situation, this research also considers policies and regulations at provincial level.

This research limits to elaborate policies and regulation made in the post-conflict and post-tsunami period, after the issuance of the LoGA in 2006. The reference to the formulation of LoGA is based on a view that this period is an important moment for making a lot of changes in Aceh to which the making of many regulations and policies refer.

E. Time Line

No	Step	2011 Month of:											
		March			April				May				
		2	3	4	1	2	3	4	1	2	3	4	
1	Finalization of research protocol												
2	Observing the existing regulations												
3	Research synthesis: discussing foundations of policies												
4	Interview and review of regulation												
5	Secondary data analysis												
7	Data classification												
8	Data analysis												
9	Drafting research report												
10	Seminar of research findings												
11	Finalization of research report												
12	Dissemination of research findings through 1:3:25 model												
13	Reporting												

F. Out Come

The output of this research is the availability of data and its analysis of policies and regulations in Aceh province that are related to gender and masculinity constructions and key recommendations for improving the works on gender equality at policy levels; and, the its outcome is that the function of policies and regulations to strengthen the efforts in achieving gender equality is optimized.

G. Ethical consideration

Ethics in this research is established based on the principle of transparency in collecting, saving, and applying the data. This principle is manifested by developing a mutual understanding among parties involved in the research's objectives, goals, and implementation. Therefore, since the beginning, all parties would gain information related to this research.

To achieve the goal of the principle of transparency, this research provides a written document of agreement and concern form describing ethical considerations of the research. The form would be signed by both researcher and respondent.

The ethics of transparency is also applied in the collaborative mechanism among the members of researcher team. This is applied since the beginning of their involvement through a written agreement describing their role, job description, and right and obligation. The agreement is signed by a researcher and project coordinator.

F. Budget

This research used budgets of the Qualitative Research of Masculinities in Post-Conflict Aceh, a collaborative work between Center of Women's Studies of IAIN Ar-Raniry and UN Women in 2010-2011.

Banda Aceh, 17 March 2011

Head of the Center of Women's Studies
State Islamic University of Ar-Raniry

Rasyidah

The Vision of Equality in the Aceh Qanun on Adat: An Approach from the Lens of Shari'a

By Dra. Mustabsyirah. M. Husein, M.Ag

A. Introduction

Women's roles have been acknowledged as an important variable in the history of Aceh society. Aceh women's identities as well as their positions within the society have gained a significant attention as a research subject on Aceh society and culture. Some in the society have viewed that in the history, women's participation has importantly contributed to the development of equal and peaceful Aceh society. Since Aceh society has declared religion (Islam) as the foundation of its local culture (*adat*), many people in the area view that there is no space for discrimination against women; women have an equal position to contribute toward a better condition of Aceh society.

Islam has been viewed as religion voicing the principles of justice and equality; Islam has been assigned as the most important pillar in the lives of Aceh society. The history of Aceh and Indonesia has placed Aceh –also popular as the Veranda of Mecca-- in a unique position by giving Aceh society an 'authority' to apply and follow Islamic teachings in their lives. Islamic identities therefore become an essential element, source of norms, within Aceh society; Islamic teachings have been constructed as the standard of social-cultural order in the area, even in its daily life. Interestingly, in such historical context of Aceh, generally, there has never been heard a situation where people in the area showed their rejection to women's roles in public spaces. It can be concluded, from the historical lens, Aceh society has provided important fact about the glory of women's roles and participations in public domains.

The leadership of four *sultanat* (queens) in the history of Aceh and its close connection to the context of Islam appeared to be a rare historical case both in Indonesian and global context; yet, such female leaderships were found in Aceh. Looking at the situation, it is very important to elaborate how Islamic teachings and traditions that have been lively followed by Aceh society really influence people in the area in viewing women's roles and participations in political, social and cultural (*adat*) contexts.

Adat –can be translated as local culture, tradition, or customs-- is another fundamental foundation for social and cultural lives of Aceh people. In Aceh, people are used to showing personal and social characteristics, attitudes, and proverbs that are based on the *adat* construction. *Adat* 'rules' unite diverse social-cultural elements alive within the Aceh society and facilitate members of the society in achieving its vision of civilization. *Adat* is developed and exists along with the society's living their lives. *Adat* 'rules' are maintained and sustained as long as they provide values of justice, wealth, and security for the people there. Nevertheless, as a product of cultural and social processes, it is possible that *adat* 'rules' would also be positioned in a peripheral 'location' within the society as a result of 'modernization' or other influential factors, from both within and outside Aceh society.

In a more contemporary context, the glory of women's roles and participations in public domains in the history of Aceh has been seen as a 'doubtful' realm. It is evident that in the formulation of policies related to *adat*, such a historical glory of women's leaderships is not considered significant and 'real.' In this situation, policy makers prefer to describe *adat* within Aceh society as something that restricts women's participation in public spheres, including in development processes. In fact, this point of view is a result of misunderstanding in the way people approach the *adat* 'values.'

Based on the above hypothetical assumption, it is very important to elaborate and study some policies, particularly at provincial level of Aceh and how these position women in the society. While it is understood that women's roles and participation play an important role in developing a civilization in a society that acknowledges and believes gender equality and equity, in the reality, actions and efforts to enforce gender equality in Aceh based on the *adat* values through some policy formulations are still rarely conducted. Some policy makers assume that based on the *adat*, public spheres, including political arenas, are not a space provided for women in Aceh. They view that men must be prioritized in a leadership position in public spaces and it is enough for men to represent women's voices. Women's roles are limited in domestic domains; when they need to express their opinion in public areas, they can give their authority to men, their husbands, their fathers in the family. This point of view is mentioned to be based on cultural roots alive within Aceh society that give legitimacy and justification to male policy makers to transform them into the policies they made. Therefore, it can be concluded that these policies have contributed to subordinating women's roles in various development processes in public spheres in Aceh.

Aceh now consists of 23 districts; each district appears to showing and performing its unique *adat* and tradition, even though the major population is predominantly Aceh ethnic group. The Provincial Government of Aceh has seriously worked on reawakening the spirit to integrate the *adat* 'rules' into governance system in Aceh province. The formulation of Law of Government of Aceh (LoGA) or Undang-Undang Pemerintahan Aceh (UUPA) is an entry point toward the vision and it has been followed by several provincial regulations including Qanun No. 9/2008 on Organizing and Managing Adat Life and Adat Practices and Qanun No. 10/ 2008 on the *Adat* Institutions. It is ruled in both the LoGa and the provincial regulations that district governments in Aceh have to give their support and the effort of reawakening the *adat* 'rules' and adat institutions and have to issue a district regulation on sub-district (*mukim*) *adat* and village (*gampong*) *adat* in their areas.

In the context of gender equality, this study uncovered, from juridical aspect, both provincial and district regulations related to *adat* do not put into their consideration Presidential Instruction No. 9/2000 on Gender Mainstreaming in Development Programs and National Law No. 7/1984 on the Ratification of CEDAW.

The provincial and district regulations also use neutral terms with no emphasis on the importance of women's participation. This can be found, for instance, in the use of terms such as community leaders, scholars, ulama, etc, even though we can

understand these terms also include both male and female. In this context, these regulations therefore do not have strong gender perspective to support female leaderships within the society. In addition, these regulations do not include principle of equality and egalitarianism as an important foundation in integrating gender equality perspective in their implementation. ⁴ Furthermore, it is clear in these regulations on *adat* that women are not placed in the position of decision makers in the *adat* structures. ⁵

Based on the above observation, it can be seen that some regulations on *adat* both at provincial and district level reflect the policy makers' perspective that does not support women's participation in public and social processes and this is a form of manifestation of patriarchal hegemonic masculinity in the formulation of the regulations on *adat* in Aceh. Looking at these facts and indicators described from various aspects of the regulations including juridical, philosophical and sociological as well as technical issues in the use of terms, it is very important to further study the regulations on *adat* based on gender equality lens.

Gender equality needs to reflect in a regulation. For example, Declaration of Human Rights consists of general principles of equality in many aspects of life. There are also some specific regulations that speak about specific issues on gender equality and women's rights. The celebration of International Women's Day as well as Mother's Day and the Day of RA Kartini –to commemorate the pioneer of Indonesian women's liberation-- in the context of Indonesia should reflect gender equality vision in the formulation of law and regulation.

The development of human civilization has strategically influenced to changing many aspects of human lives. Many progressive achievements of a society have significantly contributed to transforming ways of life and ways of thinking of its members; this situation reflects in the society's written laws and regulations as well as its unwritten conventions which provide strong rules to control its members' behaviors. As part of human civilization, Aceh society has been demonstrating the same situation on how members of society produced both verbal and non-verbal 'rules' and 'convention' to manage its social order. *Hadih maja* and *narit maja*⁶ that mean compilation of wisdoms are examples of verbal 'convention' which all members of society must follow.

Some quotations in *hadih maja* and *narit maja* are oftentimes used as important consideration in making a decisions or policies. As part of local wisdoms, these become

⁴ Aceh Qanun No. 9/2008 on the Organization of the Adat Life and Practices, Bab III "Principles and Objectives"

⁵ See: Technical Directions of the Sub-District Governance, p. 21, 35.

⁶ Within the adat system in Aceh, local wisdoms popularly called *hadih maja* and *narit maja* influentially exist. This consists of sentences or phrases with deep and valuable meanings. Some of them are even in a very 'complicated' language with high philosophical notion difficult to understand. These philosophical sentences become important cultural identity of the Aceh society; they apply in various adat events and ceremonies, such as wedding. With this philosophical order, it happens sometimes that sentences and phrases in *hadih maja* cannot be understood literally; rather, it needs interpretation. For more information, see <http://www.acehforum.or.id/showthread.php/13061-Hadiah-Maja-atawa-Naritet-Maja>.

vital and popular reference for members of society in searching for problem solutions. Therefore *hadih maja* and *narit maja* have gained significant position in Aceh society. In the context of egalitarianism and equality, *narit maja* contains important values that indicate the principles of equality, such as “*Adat bak Poe Temeureuhoom, Hukom bak Syiah Kuala, Qanun bak Putroe Phang, Reusam bak Lakseumana*” that becomes key philosophical foundation in the lives of Aceh society. In a more systematical form, such *narit maja* popularly manifests in the so-called *adat* alive in daily lives of the Aceh society.⁷

In this study, we will begin the elaboration of the *adat*, including regulation on *adat* in Aceh, by describing local cultural and social situation of Aceh society to build deeper understanding about the area, including how the *adat* ‘rules’ and Islamic teachings are placed at the same level as essential social, cultural, and political elements within the society.

B. Local Wisdoms, the Richness of Aceh Adat

First of all, it is very important to build insight about the term *adat*⁸ and *adat* based legal system to avoid misunderstanding that will lead to misinterpretation of the *adat* and the *adat* law. In Aceh, even human behaviors, attitudes and practices in daily lives are oftentimes viewed as important values that must be maintained in the society, as manifestation of the *adat*. Such practices if all members of the society agree they will become the *adat* ‘rules’ which all of them need to follow the order. Some people assume that traditional ceremonies like *paesijuk* (can be translated as thanksgiving), wedding ceremony, and *kenduri treun u blang* (in farming) as part of the *adat* ‘rules.’ In fact, if we refer to Teuku Juned’s opinion quoted by T. Muttaqin Mansur, “The *adat* ‘rules’ differ from the *adat* itself. *Adat* is tradition, customs, convention that have been maintained from, and voluntarily practiced by, generations to generations in the society, while the *adat* ‘rules’ are legal system derived from the *adat* practices and customs that consist of certain sanctions and punishments to those who are against them.”⁹

In its application, the *adat* ‘rules’ (or can also be translated as the *adat* law or customary law) in Aceh do not address sanction and punishment both criminal and civil cases; indeed, it focuses more on prevention. Even the rule on sanction is meant as prevention, for instance, it is forbidden for a member of society who breaks the *adat*/customary law to stay in the village or community. This is a form of local wisdom

⁷ Badruzzaman Ismail, *Panduan Adat dalam Masyarakat Aceh*, Banda Aceh: Majelis Adat Aceh, 2009, p.5.

⁸ Adat is a manifestation and reflection of identity of a nation transformed from generations to generations. Each nation has its own adat customs that differ from one another. These differences indeed lead adat customs to being unique identity of a nation. The dynamic modern development cannot really subordinate or even abrogate adat customs within a society or a nation; these even appear in that contemporary life. For more insight, see <http://www.scribd.com/doc/33895585/HUKUM-ADAT>.

⁹ “Hukum Adat di Persimpangan,” *Serambi Indonesia*, Sunday, 5 June 2011, p.18.

agreed, practiced, and followed by all members of society to prevent someone from the society break the *adat*/customary law.¹⁰

Meanwhile, as mentioned above, the development of civilization in a society always works in a linear way following the existing political system and social life of the society. In the history of Aceh, *adat* 'laws' were positioned only as tradition and convention among members of the society; now, along with political changes, there an effort to transform the *adat* and customary law into formal legal regulation. In Aceh, this process produced the so-called *Qanun Adat* (the Local Law on *Adat*). The *Qanun* does not include regulation to 'control' social life under the *adat* 'laws;' instead, the *Qanun* focuses on the *adat* institutions and structures.

Looking at its focuses, conclusion can be withdrawn that the *Qanun Adat* cannot be viewed as the *adat*/customary law for the Aceh society. It is clear that the *Qanun* does not consist of sanction and punishment for any action against the law. The *Qanun* displays regulation on the governance of *adat*, how the *adat* structures can be assigned to govern society and to apply the *adat* rules. Therefore, from its scope of regulation, with this *Qanun Adat*, the Aceh society still does not have any 'formal' *adat* or customary law as the existing *Qanun Adat* does not address any regulation about sanction and punishment. It is important to underline that this situation may reflect an understanding that such *qanun on adat* cannot regulate sanction and punishment as each area in Aceh has different *adat* 'rule,' so general sanction and punishment in one *qanun* cannot be formulated and implemented for all members of the society. This is the uniqueness of local *adat* in Aceh as the nature of *adat* is usually unwritten conventions and practices and it is difficult to transform into a written legal document.¹¹ "*Hukum adat hana meutuleh tapi meunan na pelanggaran pasti na hukum (The customary law is unwritten but any time transgression happened, surely there is punishment)*"¹² The existing social order, security, and wealth of the society are a reflection and manifestation of how the *adat* and customary are applied justly. The value of justice, equality, prosperity, and safety in a society will manifest in its social order and harmony among the members of society.

¹⁰ Within this extensive context, the *adat* (customary) law is developed and maintained as a foundation to manage social-cultural order within the society. Members of the society believe that *adat* customs can protect and prevent them from any possible disasters and harms. For further information, see (<http://www.scribd.com/doc/33895585/HUKUM-ADAT>). *Adat* law is also defined as Indonesia's original legal system that is derived from unwritten conventions and is maintained from generations to generations based on their legal awareness. As unwritten conventions, the *adat* law easily adapts and adjusts in any contexts and situations. The *adat* community – sometimes it refers to indigenous people—is community group united under a specific *adat* law based on, for example, a geographical origin, kinship, etc. See http://id.wikipedia.org/wiki/Hukum_adat for more information.

¹¹ Within the society, the *adat* law reflects in three dimensions. First and the biggest part is unwritten convention or rule (*jus non scriptum*). Second and the smaller part is written rule (*jus scriptum*), for instance, rules made by a king in the history. Third is written description of 'unwritten' rule usually based on a research. The *adat* law is popular and applied not only in Indonesia, but other Asian countries including Japan, India, and China. See for further information <http://www.scribd.com/doc/33895585/HUKUM-ADAT>.

¹² Interview with Badruzzaman Ismail, Head of the Aceh Adat Council, 15 June 2011.

The philosophical foundation of way of life of people in Aceh is that “happiness in recent life and hereafter.” This fundamental principle becomes a pattern and way of life to deal with the dynamics of social lives. As the adat in Aceh society appears to be ‘in line’ with the principles of Islamic teachings, the philosophical foundation in the formulation of the Qanun Adat is originated from the Qur’an, Chapter al-Qashash [28]: 77. Both men and women have equal opportunity in social life. Human beings have two forms of life, their recent life and the afterward; all their behaviors in the recent life have to facilitate their achieving happiness in their afterward. In Aceh, it is popularly stated, “*Adat ngon hukom lagei zat ngon sifeut*,” meaning that the application of the *adat* and customary practices and laws have to be based on the principles of Sharia. *Ta’aruf* and *ta’awun* (simply translated as interaction and collaboration), two words derived from the Qur’an, happen to be key element in the application of the *adat* rules in Aceh. The *Adat Qanun* is implied to maintain the *adat* and traditional values alive within the society based on the principle that each member of society does not live individually; they are social beings who need to build *ta’aruf* and *ta’awun*, interaction and collaboration among them, and to hand in hand work on maintaining the social harmony. This principle from the Qur’an is viewed as having the ultimate position within the *adat* system in Aceh, and only those who really have adequate knowledge on the local *adat* will have understanding about this principle.¹³

Narit maja in Aceh society states that “*Adat ngon hukom lagei zat ngon sifeut. han jeut crei- brei. Geu pageu lampoeh ngon kawat, geu pageu nanggroe ngon adat. Ureung majeulih hantom kanjai, ureung tawakal hantom binasa. Taduk ta muproe ta mupakat, pat-pat nyang silap tawoe bak punca.*” This *narit maja* indicates that the *adat* system in Aceh always refers to Islamic teachings and traditions. *Narit maja* is a symbol that reflects the belief within Aceh society that to manage social order, Aceh society has to integrate fundamental Islamic teachings, foundational reference in making decisions democratically within the society. Islam unites any differences in the society; when disputes occur, the society has to return to Islamic teachings.

With its influential values, *hadih maja* and *narit maja* play important role in the development of social life in Aceh. *Hadih maja* is constructed as a source of inspiration, criticism, and control for all members of the society in Aceh. For instance, *hadih maja* reminds us not to speak irresponsibly, “*Leupah langkah jeut tariwang, nariet koh reupang rugoe lagoina*” meaning that the newly built house does need pillars, the right words are undeniable. Another example is “*Leupah langkah jeut tariwang, nariet koh reupang rugoe lagoina:*” Unclear statements with no logics are useless. In other word, “*Su nyang ka tamariet, tapeuguda han meutumei le:*” any statements expressed cannot be withdrawn, and “*Nariet sikrak sikatoe, dua lhei krak jeut bloe nanggroe,*” signifying one or two good words have more meanings and values.¹⁴ *Adat* itself is convention or

¹³ Interview with Badruzzaman Ismail, Head of the Aceh Adat Council, 15 June 2011. Similar opinion is mentioned by an Aceh *adat* leader, Abdur Rahman Kaoy, interview, 16 June 2011.

¹⁴ *Hadih maja* is oftentimes used as a medium to deliver messages of love. For instance, “*Meunyoe na chen keu rakan sahat, reudok keu tungkat kilat keu sua*” talks about love and friendship. Another example is “*Meumet on kayei lon tupeu cicem, teuseunyom teukhem lon tupeu*

practice that is performed repeatedly and is agreed as being 'tradition' and 'custom.' The word *adat* is originated from an Arabic term '*adad*' that means repetition. *Adat* is also meant as norms and principles that have legal values. In this context, *adat* can also be positioned as the *adat*/customary law that regulates social life to which members of society have to follow and obey.

Harmony, peace and prosperity for all members of the society are the highest objective and the ultimate goal of the *adat* rules and the customary law. Sanction and punishment are applied to those who break the *adat* law. The *adat* leader will lead the application of sanction and punishment after an intensive discussion and consultation with other members of the *adat* council. Harmony and peace seen as foundation of social justice are again put in a priority consideration in making the decision. For instance, disputes on land and other asset or in a criminal case like murder or physical violence must be processed under the *adat* legal mechanisms by considering social harmony and peace. The *adat* courts exist in both *gampong* (village) and *mukim* (sub-district) levels.

In the *adat* system, peace is the main principle to be considered in finding a solution for any dispute. Peace is viewed as a very important aspect to the preserved social balance and equilibrium within the society. *Narit maja* in the *adat* of Aceh states, "*Luka ta sipat darah ta sukat,*" "*Kiwing ateung beuneung peuteupat, kiwing ureung adat peuteupat,*" and "*Kiwing ureung peudeung peutepat.*" *Pedeung* is a symbol of power. The sentence means that any conflict related to power needs to be approach based on the peaceful *adat* mechanism. As a justice system, *adat* is assigned as a informal mechanism in searching for win-win solution for any dispute and conflict within the society; the *adat* structure and institution plays a role as a informal court, including in deciding a sanction for the parties involved. The informal *adat* court has some characteristics, including 'fast, cheap, and simple.' With these characteristics, the *adat* system becomes the pillar of social-cultural lives of the society in Aceh that symbolizes in the belief of "*Peukong Pageu Gampong.*"

There are four classifications of *adat* in the Aceh society:

1. *Adatullah*, that all of the *adat* rules and customary laws are based on the Divine's Law (the Qur'an and the Prophet Muhammad's traditions called *hadith*).

bahsa" about the importance of understanding the roots of an emerging problem, so, smile and laugh have a lot of meanings. In farming, to remember season of cultivation, it is mentioned in *hadih maja*, "*Keunoeng siblah tabu jareung, keunoeng sikureung rata-rata, keunoeng tujoeh jeut chiet mantoeng, keunoeng limoeng ulat seuba*" meaning that within the Aceh society it is believed that to get 'successful' result in farming, cultivation must be done in special time considering lunar months. It is also mention in *hadih maja*, "*Kubeu pok Keunambam, leumoe pok taloe*" (causality is natural so there is always result for any cause and action) and "*Ban laku geupeh geundarng meunan tanari*" (dance following the rhythm and instrument, that one needs to adjust with his/her environment). These examples indicate that *hadih majah* is a reflection and manifestation of way of life of the Aceh society. It contains meaningful values related to religion, dignity, friendship, harmony, security, awareness, ect. In this regard, observing *hadih maja* plays an important role in understanding social order of Aceh society. Nevertheless, unfortunately, it is not easy to find documented *hadih maja* in the recent time, particularly in the form of a book. For more discussion about *hadih maja*, see <http://www.acehforum.or.id/showthread.php/13061-Hadiah-Maja-atawa-Narief-Maja>.

2. *Adat Tunnah*, adat and traditional practices are manifestation of Qanun and *Reusam* that administer social life of the society.
3. *Adat Muhakamah*, the *adat* rules that reflect in the principle of democracy and consensus.
4. *Adat Jahiliyah*, the *adat* practices popular within the society that appears to be contrary against Islamic teachings.¹⁵

The *adat* system within Aceh society has some important and unique fundamental principles placed in the highest position in the legal structure of the society. It can be stated that the *adat* legal system in Aceh acknowledges some principles 'acceptable' by other legal systems. There are at least 12 principles recognized in the *adat* justice system in Aceh that include:

1. Truth: the *adat* justice system is a truthful legal system within the Aceh society
2. Accountability: accountability and responsibility in the application of the *adat* justice mechanism in solving a dispute or conflict is not only to members of the society but also to God.
3. Equality before the law (non discrimination): the principle of non discrimination based on sex, social status, age, etc must be applied in implementation of the *adat* justice system and the *adat* court; each member of society has equal position before the *adat* law.
4. Accessibility: all services in the *adat* legal system must be accessible to all members of the society, including cost, procedure, and information. The process must consider fast, cheap and simple.
5. Voluntarism: The *adat* legal institution has to work on the basis of voluntarism; it cannot insist and force members of the society to follow the *adat* legal system.
6. Peaceful resolution: The main goal of the *adat* legal system is to build harmony and peace. In a *narit maja*, it is stated, "*Uleu beu matee ranteng bek patah.*"
7. Consensus: any decision made in the *adat* court must be based on democratic consensus among the members of the *adat* council.
8. Transparency: all process and procedure in the *adat* justice system (except to some very specific cases), whether at the level of reporting, witness, court and decision must be open for public monitoring.
9. Authority: the authority of the *adat* legal system is limited only to cases that occur in the area of village (*gampong*) and sub-district (*mukim*).
10. Pluralism and diversity: the *adat* legal system acknowledges and respects heterogeneity within the *adat* system and recognizes that certain *adat* rules only apply in specific area.
11. Principle of innocence: It is strongly forbidden in the *adat* justice system to apply popular violence.
12. Equal and just: Any decision made in the *adat* court must be based on equality, fairness and justice and must consider economic situation of parties involved.¹⁶

¹⁵ Badruzzaman Ismail, *Panduan Adat dalam Masyarakat Aceh*, Majelis Adat Aceh (MAA), 2009, p. 5-8.

Below are some of the legal foundations that regulate the *adat* application in Aceh:

1. National Law No. 44/1999 on The Implementation of the Governance of Aceh, chapter 6 and 7 that state, "Local government has authority to apply its *adat* that is in compliant with Islamic sharia."
2. National Law No. 11/2006 on the Government of Aceh, Chapter XIII about the Adat Institution, that states, "The *adat* institution functions and plays a role as a medium for public participation in the provincial governance of Aceh and the district governance in the aspect of social security, harmony, and order (chapter 98 article1). Resolution for any social disputes within the society is processed under the *adat* mechanism (verse 2).
3. Provincial Law No. 7/2000 on the Implementation of the Adat Life that states, "The *adat* institution functions to control social security, harmony, and order within the society. The Law was amended with the Provincial Law No. 9/2008 on the Organization of the *Adat* Life, Chapter V on "The Implementation of the Organization and the Development of the Adat Life" (article 1) that states, "The organization of the *adat* life is led by provincial government, district government and all members of the society."

C. Women in the Dynamics of the Aceh History

It is popular within the history of Aceh that Aceh women have shown heroic and 'strong' personalities. They sacrificed their life and assets; they left their family to join the battle. Their characteristics can be example for other members of the society in seeing women's roles.

Women's participation in political arenas in the history of Aceh could not be separated from their involvement in the struggle to enhance sovereignty and independence and the battle against colonialism in the history to enforce justice. This was also a strategy for the women to gain their rights to have equal bargaining position in their relation with men and in the society. The history of Aceh recorded that Aceh women have played a very impressive role in politics; they led many battles and gun contacts. It is mentioned that their bravery and fighting spirit were very unique and it was not easy to find such women in other historical contexts. Some of them were even authorized as statesperson, diplomat, and queen (*sulthanat*).

The history noted some *sulthanat* in Aceh including Ratu Ilah Nur, Ratu Nahrasyiah Chadiyn, Sulthanah Shafiatuddin Syah, Ratu Inayat Zakiatuddin Syah, Sulthanah Nurul Alam Naqiatuddin Syah, and Kemal Sjah. Meanwhile, Laksamana Malahayati, Cut Nyak Dien, Cut Meutia, Pocut Baren and Pocut Meurah Intan were noted as Aceh women joining in the wars and battles. Furthermore, the history also showed Aceh women who played as statesperson (*ulebalang*) in local governance such as Cut Nyak Asiah, Pocut Meuligo, Cut Nyak Keureuto and Cutma Fatimah.

¹⁶ See *Pedoman Peradilan Adat di Aceh untuk Peradilan Adat yang Adil dan Akuntabel*, Majelis Adat Aceh, 2008, page 7.

The female *sulthanats* have governed in Aceh in almost 60 years. ¹⁷ The administration of Ratu Shafiatuddin (1641-1675) governed the Kingdom of Aceh Darussalam in 34 years after his husband passed away. She was popular as Paduka Sri Sultan Tajul 'Alam Shafiatuddin Sjah Berdaulat Zillullahi Fil Alam Binti Sultan Raja Iskandar Muda Djohan Berdaulat. She led the kingdom in the most difficult periods when VOC of the Netherlands and Portuguese were involved in the battle for Malaka, an area under her governance. She gained respects not only from her people, but also from the Dutch, Portuguese, English, Indian and Arab. She passed away in 23 October 1675.

After the death of Ratu Shafiatuddin, her youngest daughter, Ratu Nurul 'Alam Naqiatuddin ruled the kingdom for more than two years from 1675-1678. She was popular as Sultanah Nurul Alam Naqiyatuddin Sjah. She passed away in 23 January 1678. During her leadership, Naqiatuddin has made a fundamental effort when she initiated the reform of Constitution of the Aceh Kingdom and the Meukuta Alam Adat. Aceh was divided into three federal 'regions' called The Three Sagi (*lhee sagoe*) led by the Sagi Leader (*Panglima Sagi*). This decision was made to reform bureaucracy within the kingdom toward a more decentralized system by giving authority to each Sagi to have its own governance. In the recent time, in Indonesian political system, such policy is called regional autonomy (*otonomi daerah*).

The daughter of Naqiatuddin, Inayatsyah led the Kingdom of Aceh Darussalam from 1678-1688. She was also called Putroe Raja Seutia or Sulthan Inayat Zakiatuddin Sjah, and passed away on 3 October 1688. She got political support from the great ulama, Syaikh Abdul Rauf. After the death of Inayatsyah, there was a political conflict between two parties: the first party was from the government officials who voiced that women could not lead the kingdom and the second party from, from The Three Sagi, who wanted to keep female leadership. Finally, The Three Sagi got greater support, and as a result, Princess Kamalat Sjah was decided to govern the kingdom. As told by an English traveler, she was 40 years old at the time she was assigned as the queen of the Aceh Kingdom. She was portrayed as a physically strong woman with very loud voice. When British colony planned to build a battlement, the Queen rejected this idea by saying that it was allowed to British colony to have trading activities but not to build a battlement.

Queen Kamalatsyah administrated the kingdom from 1688-1699. During her leadership, the oppositional group against female leadership emerged. At that time, the debate involved religious groups. As some religious arguments to defend female leadership from Aceh religious groups were viewed as not 'sufficient' Qadhi (Jurist) Malikul Adil went to Mecca to seek for advice from and consult ulama there. Later, the Qadi sent mail from Mecca saying that it was not allowed from women to be a leader (*sulthanat*). This inspired a movement against the leadership of Kamalatsyah until she faded away from the position.¹⁸ At the same time, Syekh Abdur Rauf, the Grand Jurist of

¹⁷More information can be accessed in <http://www.kabarinews.com/article.cfm?articleID=31184>

¹⁸ Muhammad Said, *Aceh Sepanjang Abad*, 1st edition, published by author, 1961, page 191-215

the Kingdom Aceh passed away. Previously, such a political conflict caused by the debate on female leadership happened when Sultan Iskandar Tsani passed away, and the kingdom needed to find his successor.

Ratu Shafiatuddin has played a role as a queen who was committed to enhance women's position in the society. The history noted that she was among Aceh women who showed strong commitment to women's rights in the history of Aceh, including in marital relationship. Her effort was really important to guarantee women's economic condition, especially when their husbands died.

The efforts toward equality between women and men in the history of Aceh were begun during the period of Sultan Iskandar Muda (1607-1636) when he issued a regulation on family assets that recognized women's rights. In a case of divorce, under the regulation, husbands entitled for house and wives entitled for land. Unfortunately, as the regulation was unwritten statement, that could not be well implemented. In reality, women were always subordinated and under male dominance. This situation also happened to 'rules' issued by Putroe Phang, wife of Sulthán Iskandar Muda.

Considering the situation during Sultan Iskandar Muda, Ratu Shafiatuddin made a reform by integrating the issues into the Constitution. The Meukuta Alam Law included regulations that appeared to support women's rights, including the protection of women's economic rights after divorce. In the Law, it was stated, "A father who wanted to marry off his daughter had to provide house and land for her." A man who wanted to marry a woman must provide a farm land (*umong peuneuwo*) for the woman. Both husband and wife had the same rights over any family assets gained during their marital relationship. In a divorce case, *umong peuneuwo* from husband and the house from father must be given to wife. Husband must leave the house and a half of family assets for his ex-wife.

Within this situation, women in Aceh had experienced to having equal bargaining position with men. Access and control to family assets (home and land) given to women were viewed as a very important way to maintain women's power in family. Home and land were foundation for life. Under such a circumstance, a husband who intended to divorce his wife needed to discuss his interests with his wife.

The history of Aceh had provided important fact about women's roles in the battle and war. During the period of Sulthan Alaudin Ri'ayat Syah IV (1589-1604), women's military squad called Inong Balee was developed; they were widows of male soldiers died in the battle. Laksamana Malahayati, described earlier, was stated as the military commander who succeeded to attack Duct Navy led by Cournoles dan Frederich de Houtman in the Aceh War in 1599.

Women in the history of Aceh played very active role in a battle or war. Aceh women had shown their fighting spirit against (male) colonials without fears.¹⁹ The history noted female figures who played vital roles in politics and wars, including Pocut Dirambong was popular as a great warrior, Pocut Baren was famous as a great commander with a lot of soldiers who always obeyed her commands. Both heroine

¹⁹ Aceh, H.C. Zentgraaff, Pn. Beuna, Jakarta, 1983, p. 78

inherited the fighting spirit from their ancestors, the queens of the Kingdom of Aceh such as Tajul Alam Shafiatuddin 1641-1675, Nurul 'Alam Naqiatuddin (1675-1678), Inayatsyah (1678-1688), and Kamalatsyah (1688-1699).²⁰

During the leadership of Sultan Saidil Mukammil Alaidin Riayat Syah, a woman, Laksamana Malahayati (1585-1604) was assigned as Head of Security Guard, Commander of Intelligent Agency, and Head of Sulthan's Office. In the previous period of Laksamana Malahayati, during the Kingdom of Pase, there was a female king named Ratu Nahrasyiah (1400-1428) led the kingdom. After the development of the Kingdom of Aceh, women gained equal opportunity to participate in politics and in government and military institutions.²¹ Interestingly, Islamic teachings became important reference to develop this situation in history of Aceh.

The Kingdom of Aceh referred to Islam as source of its Constitution. Under this condition, it was possible women had equal position with men in both social and political life. Meukata Alam Law issued regulation that allowed women to have positions in government institutions including in parliament body. Therefore, in the history of Aceh, we could see many women who held vital position in various government bodies.²² It was noted that in the legislative body, out of 73 members, 26 were female. They had equal position with male members to formulate many legislation, monitor policy implementations, and observe the *adat* 'rules' that could be transformed as policy to bring justice in the society. Their names are mentioned and documented in chapter *Kanun al-Asyi Darussalam* (Governance) in various books on Aceh saved at Dayah Tgk Tanoh Abe.²³

The history also recognized some heroines who struggled to defend the country, religion and people. Cut Nyak Din, the daughter of an Acehnese Landlord Seutia Raja Uleebalang 6 Mukim. As the beloved daughter, Cut Nyak Dien always attached with his father; she had a chance to directly learn from him; almost every day she heard from her father various conversations about politics, governance, war and other related issues. Her bravery and firmness indicated her heroic characteristic; with her husband, she led the battle against the Dutch colonials in the name of religion and motherland. She fired the female battalions to defend the independence; she strongly kept her commitment to fight against her enemy even though the Dutch tried to bribe her and her husband, Teuku Umar. She even became more heroic and committed when her husband died in the battle. She continued as a brave guerilla, led her squads in dangerous jungles. She died in the isolation in Sumedang, West Java.

Cut Meutia was born in 1870, the daughter of Teuku Daud Uleebalang and the wife of Teuku Cut Muhammad. She spent about 20 years in the battle. With her husband, she led the guerillas to fight against the colonials. She was a commander not only for female squads but also males; among her friends included Teuku Chik Paya Bakong, Teuku Di Mata Ie, Teuku di Barat, Teuku M. Saleh, Teuku di Berah, Pang Latif, and Pang

²⁰ Aceh, H.C. Zentgraaff, Pn. Beuna, Jakarta, 1983, p. 139-141

²¹ Ismail Suny, *Bunga Rampai tentang Aceh*, Pn. Bhatara Karya Aksara, Jakarta, 1980, p.285.

²² Ibid, p.287.

²³ Ibid, pp.288-290.

Johan many others. She continued to struggle against the Dutch for independence with her second husband, after the first died.²⁴

These female figures in the history were important examples about women's roles and participations in politics and public arenas within Aceh society. This should be undeniable fact' instead this is a clear historical reference when we talk about the importance of women's role in public and political domains in the area.

D. Legal Foundations about the Application of Adat and Customary 'Laws' in Aceh

The national law No. 44/1999 on the Application of the Aceh Special Authority article 1 states that Aceh is Special Region (*Daerah Istimewa*) that has special authority to apply religious and *adat* 'rule' and include them in educations and to work with ulama. Islamic sharia is an obligation to implement Islamic teachings in all aspects of life. *Adat* is both 'rule' and practice that has a basis in Islamic sharia and must be obeyed and respected as the way of life. Article 3 mentions that the application of this policy of special region includes religious aspect, adat life, education and the roles of ulama in the makings of local policies. Article 6 related to the application of the adat 'rule' states the local government formulates policies to empower, maintain, and develop adat and the adat institutions based on Islamic teachings.

National Law No. 11/ 2006 of Government of Aceh (LoGA) article 1 states that Provincial Regulation (Qanun) of Aceh is regulations that are equal to *peraturan daerah provinsi* (provincial local regulation) that administer the application of the governance and social life of the Aceh society. In article 5, it is mentioned as part of the implementation of self-autonomy policy that the Government of Aceh also has authority on governing religious issues to implement Islamic sharia law for its believers and to govern the *adat* life based on Islamic teachings. Article 20 mentions the Aceh governance at provincial and district levels is applied based on basic principles of Islam, legal certainty, public interest, manageable governance, transparency, proportionality, professionalism, accountability, efficiency, and equality. In article 14, it is mentioned that among the responsibilities of a vice governor (of Aceh) include women's and youth's empowerment as well as *adat* empowerment.

Below are some of regional regulations (*qanun*) of Aceh Province as the legal foundation of the implementation of the policies on *adat*:

1. Provincial Qanun No. 4/2003 on The Governance of Sub-District (*Mukim* – governance level consisting of a number of villages) in Aceh Province
2. Provincial Qanun No. 5/2003 on the Governance of Village (Gampong) in Aceh Province
3. Provincial Qanun No. 3/2004 on the Establishment, Organizational Structure and Job Description of the Adat Council of Aceh

²⁴ See Tgk Hj. Ainal Mardhiah Aly, "Pergerakan Wanita di Aceh Masa Lampau Sampai Kini," in Ismail Sunny, *Bunga Rampai tentang Aceh*, Pn. Bhratara Karya Aksara, Jakarta, 1980, page 282.

4. Provincial Qanun No. 9/2008 on the Organization and Management of the Adat and Customary Life
5. Provincial Qanun No. 10/2008 on the Adat Institutions
6. Provincial Qanun No. 3/2009 on Mechanisms of the Election and Disqualification of Sub-District Leader (*Imam Mukim*) in Aceh.
7. Qanun Aceh Nomor 4 Tahun 2009 tentang Tata Cara Pemilihan dan Pemberhentian Keuchik di Aceh. Provincial Qanun No. 4/2009 on the Mechanism of the Election and Disqualification of Village Leader (*Keuchik*) in Aceh

E. Manifestation of Equality Principle in the Qanun of Aceh Adat

In social life, all human beings have equal position with different functions and roles. The division of labors is to construct a social balance when all of us can share and exchange. Nevertheless, this division of labor can also create gap and inequality when a person view him/herself as more valuable than others and claim to have authority to dominate others. Such a perspective will lead to causing certain harmful behaviors against those positioned in an inferior and subordinate place. Furthermore, this point of view will also be basis for discrimination and violence. Indeed, such perspective is alive within our society particularly in constructing the relationship between men and women that leads to discrimination and inequality. This situation is among our agendas of transformation and development to bring gender equality in the reality within Aceh society to create equality in diversity.

This study will elaborate women's social roles and women's position within Aceh society by examining the local policies on *adat*. This will observe how gender equality within Aceh society appears in the context of the *adat* construction, a social aspect that is very popular within the society.

Aceh is an agricultural area with some unique constructions of the relationship between men and women. In general, the existing construction can be described as below:

1. Men and women are "different but equal." In this construction, men and women have different roles by which each of them can complete and share toward "common interests." this also views that sex based segregation of roles is meant as complementary purpose so men and women can hand-in-hand achieve common goal of the society which is social and family welfare. This point of view is commonly 'belived' by social scientists, majority of the society, is applied as a fundamental theory in development implementation and is articulated in social norms. Nevertheless, in the reality of the development programs, even though it is said that the development programs are meant to give benefits for both men and women, in the reality these benefit only for one group.

2. Men and women are "different and unequal." This view acknowledges that "women have real but hidden power" and "women's subordination is real but hidden."

Gender equality and equity is a condition in which women and men are in the circle of equality, harmony, and balance. This situation can only be achieved with equal treatment for men and men. In equality and equality, women and men can have equal opportunities for participation in decision making processes, for instance, participation in the formulation of policies and regulations on developments and participation in various government institutions.

The principle of equality within Aceh society is strongly found in a narit maja popular within the society, "*Adat bak Poe Temeureuhoom, Hukom bak Syiah Kuala, Qanun bak Putroe Phang, Reusam bak Lakseumana.*"²⁵ This is the foundation for the realization of gender equality based on the *adat* construction within the Aceh society.

Qanun consists of rules based on social-cultural construction within the society and a social consensus to which all members of the society are committed to obey and follow as foundations to building equal, prosperous, harmonious and peaceful society. This needs a collaborative action among all social elements within the society. In a *narit maja*, it is mentioned, "*Toi ngon rhok bak ureung nanggroe. Rukon bajoe bak ureung tuha; Tameih binteih bak uleebalang, Beuneung arang bak ulama.*" "*Salah bak hukom raya akibat, salah bak adat malee bak donya.*" "*Ta peuturot nafsu, malee pih tanlee, peuturot hatee nyawong teuhila.*"

Based on this social principle, the Aceh society constructs social values of gender equality as a basis to accomplish social welfare. In a more academic and theoretical analysis, E.B Taylor (1871) describes, "*Culture or Civilization is that complex whole which includes knowledge, belief, art, morals, law, customs and any other capabilities, acquired by man as a member of society.*"²⁶

Culture and *adat* are essential part of social life within the society and play a role to unite its members. This is a social consensus and becomes a 'law' that must be followed and obeyed by all members of the society as mentioned in a principle of Islamic jurisprudence, *al-'adatu muhakkamah*. It is interesting to find the fact in Aceh each area has its own and unique *adat*.

Within Aceh society, gender equality seems to be a popular concept with less controversy. The problem rests in the aspect of how the idea of gender equality is being applied in the real life. Abdurrahman Kaoy explains that equality concept voiced by women's groups is not a debatable topic; in this regard, it is more important to empower women as member of society who have equal values and dignity that must get respect from other members. He continues, "Women's identities are not the most

²⁵ *Adat*=customary law, *bak*= on responsibility, *Poe Temeureuhoom*=eldery community leader, *Hukom*=syariah law, *Syiah Kuala*=the name of popular ulama in Aceh, *Qanun*=policy, *Putroe Phang*=the name of Sultan Aceh's wife, *Reusam*= some strategy, *laksamana*=leader in military

²⁶ Masinambau, 2000, page 1.

important issue in gender discussion; it is more crucial to empower women so they can be vital partners who can 'proportionally' play many roles within their society.²⁷ The application of gender equality concept within Aceh society, Koey mentions, needs to consider religious, cultural and social values. Women's groups have to refer to these values as foundation in making decisions on strategic policies when they are involved in the process.²⁸ In a *hadih maja*, it is stated, "*Udeep beusaree, maté beusaban, saboeh kafan dalam keurenda*" meaning that the philosophy of equality and balance among all members of society is a basis in making a decision and policy.

As mentioned above, cultural construction –including that reflect in practical forms of *adat*-- within Aceh society strongly refers to Islamic values. In a *hadih maja*, it is mentioned, "*Hukom (agama) ngon adat, lagei zat ngon sifeut, han jeut crei- brei;*" "*Geu pageu lampoeh ngon kawat, geu pageu nanggroe ngon adat;*" "*Ureung majeulih hantom kanjai, ureung tawakal hantom binasa;*" "*Taduk ta muproe ta mupakat, pat-pat nyang silap tawoe bak punca.*" The conclusion can be taken that based on the saying in the *narit maja*, the development of equality within Aceh culture must refers to a comprehensive integration of government policies, religious teachings, legislation, and *adat* values. The provincial government of Aceh has issued 7 provincial regulations (*qanun*) on *adat* as mentioned earlier.

The formulation of these *qanun* is a way to explore and elaborate the living *adat* values within the society in order to awaken, maintain and expand cultural values in Aceh. It is clear that the Aceh *qanun* on *adat* in our contemporary time are different with the ones in historical period. In history, the *qanun* was a product of individual intellectual process (*ijtihad*) by a jurist (*qadhi*) as legal foundation of governing kingdom.

In the past period, the *qanun* was made based on the existing governance system at that time; the process referred a lot to classical Islamic books on governance, including *al-Ahkam al-Sulthaniyah* and *Ghiyas al-Umam fi Taiyas fi al-Dhalam* by al-Juwaini. The books introduce that a governance system must accommodate two essential aspects: *harasat al-din* (constitution and sharia) and *siyasat al-dunya* (social-political harmony). In the history, kings used decrees of ulama and judges as basis to managing their government.

In the recent political system, *qanun* is also called local regulation or *peraturan daerah (perda)*. *Qanun* is legislation similar to local regulation (*perda*) that regulates the application of governance and social lives in Aceh. *Qanun* is composed of *Qanun Aceh* (Provincial *Qanun*) and *Qanun Kabupaten/Kota* (District *Qanun*). *Qanun Aceh* includes regulation that covers in all areas in Aceh province. *Qanun Aceh* is signed by Governor of Aceh after gaining agreement from Aceh Legislative Body. *Qanun Kabupaten/Kota* is applied in district levels, is signed by district leader (mayor) after getting agreement from district legislative body.²⁹

²⁷ Interview with Abdurrahman Kaoy, 16 June 2011.

²⁸ Ibid.

²⁹ <http://id.wikipedia.org/wiki/Qanun>.

This study has found some indicators to elaborate gender equality values in the *qanun*. The main structure of regulation consists of consideration (preamble), contents, and decision. Women's participation in all steps of the *qanun* formulation would guarantee its accommodation of their interests. Nevertheless, in the reality, the makings of the *qanun* rarely engaged women's participation. It was assumed that lack participation of women was due to weak capacity and knowledge on *adat* issues in Aceh. Indeed, in fact, women's lives cannot be segregated from *adat*, even it was said that responsibility to maintain *adat* is in the hands of women.³⁰

Based on this review, it is found that none of the *qanuns* on *adat* that include Presidential Decree No. 9/2000 on Gender Mainstreaming or National Law No, 7/1984 on the Ratification of CEDAW as their legal consideration. Head of the Aceh Adat Council states that it is not an obligation to refer to both the Presidential Decree and the National Law in the makings of the *adat qanuns*. "Indeed, I don't mind if they are included," he says. Similar response was mentioned by a key member of the Aceh Adat Community Network.³¹

Policy makers from both executive and legislative bodies in Aceh do not hesitate to accommodate these above regulations as juridical foundation in the formulation of the *adat qanuns*. Nevertheless, in their minds, Law of the Government of Aceh (LoGA) must be prioritized as legal consideration in formulating all *qanun* in Aceh. In addition, they agree that to eliminate discrimination against women in development programs, the formulation of *qanuns* need to refer to the Presidential Law and the National Law. As philosophical reason of the formulation of the *qanuns* on *adat* is to create equal and just society that strongly considers the Aceh *adat* responsive to all needs of the society members.³²

Members of the society appear to be enthusiastic in responding to the existing *qanuns* on *adat*. In their minds, it is better to have the *qanun* so the *adat* of Aceh will be maintained and can be inherited to younger generations. A women's rights activist, Khairani Arifin asserts that in general people positively respond to the formulation of the *qanun* as long as this process does not maintain *adat* that disadvantages certain groups, especially women. She explains that women's groups were not actively involved in the process; while policy makers did not give enough space for women's participation, women's groups were not really well-informed as well.³³

This review also found lack of attention of policy makers to involved women's groups in the *adat* development in Aceh. Some indicators prove this situation. In the first *adat qanun* issued by the Provincial Government of Aceh, the Aceh Qanun No. 4/2003 on the Governance of Mukim in Aceh Province, in its technical direction of the implementation of the governance of mukim, the word women is only mentioned in the Additional Document of the Government of Aceh No. 20, the Aceh Qanun on the Governance of Village (*Gampong*) in Aceh, article 28 on the *gampong* government

³⁰ Interview with Khairani Arifin, 17 June 2011.

³¹ Interview with Budi Arianto S.Pd, MA of Jaringan Komunitas Masyarakat Adat.

³² Interview with Khairani Arifin, 17 June 2011.

³³ Ibid

structure. Head of Women's Affairs is included in the structure; in the qanun, it is stated a secretary of gampong government has some assistants including head of women's empowerment. The 3rd chapter of technical direction of the qanun also mentions that in the *mukim* structure, Position, Assignment, and Function of women's empowerment division are:

1. Empowering women's organizations in *mukim* area.
2. Empowering love, peace and compassion (*sakinah, mawaddah, warahmah*) family within *mukim* area.
3. Coordinating potential villages in the program of enhancing women's participation toward family welfare (P2WKSS).
4. Empowering female sex workers.

It is important to highlight that women's position as head of women's empowerment affairs means that women are included in the structure of the *gampong* government. In the contrary, if the position does not exist, women are positioned as member of society who need special attention and empowerment. Unlike men who are always viewed as capable groups, women are valued as group who always need empowerment programs and have not been seen as partners in development programs. Such point of view seems to follow the so-called Women in Development (WID) that was already left behind and changed with a more recent Gender and Development (GAD) concept and gender mainstreaming as its strategy. It was found that WID did not really help women's independence; with WID, development programs did not provide equal opportunity to women, even though their participation was unlimited. Khairani Arifin says that many policy makers in the makings of the qanun on *adat* viewed that there are no women in Aceh who have capacity as a leader of the society; *adat* leaders are always described as men and male dominance.

Chapter 31 article 1 of the Aceh Qanun No. 5/2003 on the Governance of Gampong in Aceh Province states that the elements of *Tuha Peut* (Village Legislative Body) include ulama, informal leaders from youth, women, *adat* leader, and scholar. The qanun explicitly mentions that women must be included as key element in the structure of the *gampong* governance.

In fact, such an explicit statement about women's role in the structure is really needed to avoid women's marginalization and subordination. Literally, it is not a problem that such legal document does not specifically mention women's role. Nevertheless, based on gender perspective, the absence of women in the document oftentimes use as a 'polite' way to marginalize and subordinate against women. Therefore, as affirmative action, women must be clearly stated in the legal documents like the Aceh qanun on *adat*, as in the reality, women are not in equal and fair position within the existing *adat* system.³⁴ This is evident that women are oftentimes excluded from steering committee, *adat* council, *tuha peut*, mediator committee, etc.

In the implementation level, this formal guarantee of women's involvement in the qanun does not always apply in the real life to certify equal access, role,

³⁴ Interview with Khairani Arifin, 17 June 2011.

participation, and control in the adat developments. Based on this study, it was found different situations of the implementation of the qanun within different village contexts. A number of villages applied this regulation by pointing out a woman as a member of *tuha peut*. Other villages did not follow the regulation based on some reasons: lack of knowledge, incapable women, or indifferent women. Differences were also discovered in villages that authorize a woman as a member of *tuha peut*. Some female members of *tuha peut* are actively implicated in all *adat* activities, including meeting and *adat* court. Yet, this situation rarely exists. Some are involved in all *adat* activities yet do not play key roles. A female member of *tuha peut* from a village was taken a part in the *adat* court in the area of providing food and beverage with the wife of *gampong* leader. Later, she came out to be marginalized in the *adat* activities, including *adat* courts. It was also detected that some female members of *tuha peut* from a village have not been involved in the *adat* activities since the beginning. They did not really understand their roles. Some activities conducted at evening and night were also a problem that hampers their active engagement. Some of them thought that they were not capable to play their roles as a member of *tuha peut*. Based on this observation, it was uncovered that there was a social-cultural space that needs a serious attention in the makings of local regulation related to qanun. In the reality, as illustrated above, the implementation of the qanun on *adat* has not really open opportunities for women's participation. The affirmative action in the qanun seems to be a camouflage. Therefore, it is necessary to formulate qanuns on *adat* that do not only regulate quota for women, but also highlights the importance of opening *adat* system for women's participation. For instance, it is necessity to provide clear elucidation on the point about "women's representation;" the e explication must incorporate logical framework on the importance of women's representation, obstacles and challenges related to social-cultural contexts and strategies to reeducate the problems.

Aceh Qanun No. 3/2004 on the Formulation, Organizational Structure and Job Description of the Aceh Adat Council (MAA) states that the Aceh Adat Council is council working on the area of *adat*. In the section of job description, the qanun mentions that the Aceh Adat Council has special division on women's empowerment called "Putroe Phang," respectful, wise, and influential women in the history of Aceh. Unlike in other qanun, the words are used to reflect cultural symbol that states "*Adat bak Poe Temeureuhoom, Hukom bak Syiah Kuala, Qanun bak Putroe Phang, Reusam bak Lakseumana.*" Nevertheless, as it is not easy to interpret these words to support women's role, position, and function in the recent *adat* system, the regulation is viewed only as a way to appreciate and respect historical inheritance on women's important role in legislation in the past period of Aceh.

In the Aceh Qanun No. 9/2008 on the Organization of the Adat Life and Adat Practice,³⁵ in BAB III chapter 3 it is mentioned that organization and development of

³⁵ Adat is a rule of law which includes customs and practices within the Aceh society made as a guidance of social interactions among its members. The *adat* (customary) law is unwritten rules and provisions alive within the Aceh society that administers a moral sanction for its violators. Adat customs and practices (*adat istiadat*) are 'eternal' rules guiding social behaviors of members of

adat life and adat practice is based on 13 principles, (a) Islam, (b) equality, (c) truth, (d) humanity, (e) harmony, (f) security, (g) welfare, (h) kinship and family (i) benefit, (j) collaboration, (k) peace, (l), consensus, and (m) public safety.

Compared to the LoGA that includes principle of equity, the absence of this principle in the Qanun No. 9/2008 needs a specific elaboration to understand the reason. Some involved in the making of the regulation point out that the principle of equity is included in other principles appearing in the qanun. In fact, there is no clear explanation of these principles to avoid misinterpretations. Therefore, as Khairani suggested, the principle of equity must be explicitly revealed in the qanun.

Furthermore, the part IV chapter 10 article 1 letter g states the Qanun No. 9/2008 that as a result of the absence of capable women who can contribute in the development of adat, the regulation highlights the need for providing capacity building programs for women and youths on the issues of adat. The qanun indicates that the capacity building programs is an obligation as an objective of the formulation of the adat. Khairani mentions that the fact that some policy makers viewed that there was no proficient women as adat leader reflecting patriarchal masculinity perspectives in the making of the qanun.

BAB V chapter 9 article 1 of the qanun mentions the implementation of adat life and adat practices organization and development is conducted by provincial and district government and all elements of the society. In the article 2 it is mentioned that organization and development of adat life and adat practices is conducted through family, education, community, workplace and mass organizations.

In the book entitled *The Guidance of the Adat Life in the Aceh Society* it is described that adat life is developed based on the pillar of the culture of Aceh that has religious, economic, environmental, legal, competitive, and identity benefits and values. Chapter 10 article 1 states that application and development of the adat life and adat practices can be performed in 7 ways including, as stated in the letter g, capacity building of adat figures both from youths and women's groups.

Part VI "Dispute/Conflict Resolution" chapter 14 article 2 states that dispute/conflict resolution is mediated by adat figures consisting of village leader (*keuchik*), religious leaders, *tuha peut*, secretary of village government, ulama, scholar, and other adat leaders at village. This mechanism also applies in the level of *mukim* (sub-district).

Based on the observation toward chapter 9 article 1 and 2 as well as chapter 14 article 2, it is found that responsibility to organize and empower the adat life and practices is not only in hand of government, but also all elements of the society without exception. In other words, both men and women have equal position to get involved in

society transferred and passed down from generations to generations as cultural inheritance derived from Islamic traditions. Custom is a repetitive attitude and action, alive within and practiced by the society. Adat bearer (*pemangku adat*) is a person authorized to lead a position in the adat structures and institutions. Reusam is instruction and direction based on adat customs existing within the society. Adat ceremony is a serial event conducted under the adat norms and rules within the society.

this process. This 'rule' also applies in mediating any adat disputes and conflicts within the community.

It seems undeniable that many neutral gender statements in a legal document are oftentimes interpreted that it is not really necessary to specifically pay attention to women's needs. In this situation, it is possible in the reality men dominate the existing processes. This further affects to subordination of female appearance in the government structure even though their inclusion is guaranteed in the Aceh Qanun No. 5/2003 on the Governance of Gampong in Aceh Province chapter 31 article 1 that mentions *tuha peut* at gampong level includes ulama, community leaders from both youth and women's groups, adat leaders, and scholar. It possibly occurs in the implementation that women are marginalized from the structure under patriarchal public view that this governmental space is male's public domain. As a result, it is not easy for women to actively engage in the adat matters, including in mediating a community dispute.

Many cases within the society such as family dispute involve both men and women. Examples of disputes as mentioned in part VI chapter 13 include family dispute, *khalwat* (non marital intimate activities), theft in a family, asset dispute, many others. Men cannot exactly understand women's psychological experience; therefore, as a result, it oftentimes happens that many decisions made by men without women's participation, exclude women's needs and interests.

F. Closing

The Aceh society in fact has historical background to prove its support to women's participations in public spheres. It can also be in the history how women in the society freely expressed their identities, had equal position in the adat system and in political arenas. The intention to develop more equal Aceh society has started since its first historical development when women's participation was acknowledged. The philosophy of the Aceh society is that religion is the basis of adat and culture, so, in this principle, equality and justice must be presented as the highest standard in the makings of public policies.

The adat life and practices within Aceh society is a reflection and manifestation of public internalization of Islamic teachings and traditions. Islam is 'authorized' as the fundamental pillar of social-cultural structure in Aceh. Hence, almost all social-cultural aspects within the Aceh society have strong reference to Islamic teachings. Qanun as legal foundation of development implementation, social life, and adat practices needs to be signified as a way to attain justice and equality.

In reviewing principles of gender justice and equality in these qanun, it is important to explore at least two important aspects. First is, on the one hand, the explicit and textual statements on the principle of gender equality in the qanun and the second is, on the other hand, the fact that there has been less serious attention from the implementer of the qanun to apply this principle in the real life by providing equal space for women's participations in various development programs. This situation is

indicated by certain dimensions including juridical aspect, principle of the qanun and the ignorance toward social and cultural context in the makings of the qanun.

Looking at the juridical aspect, it is found that the qanuns made at both pre and post LoGA No. 11/2006 do not explicitly include Presidential Decree No. 9/2000 on Gender Mainstreaming and National Law No. 7/1984 on the Ratification of CEDAW as two fundamental consideration toward gender perspective policies and regulations, including on adat in Aceh.

From the aspect of text, the word women is found explicitly twice in the regulation on the adat structures as head of women's empowerment and a member of *tuha peut* at village level. Neutral gender terms that are assumed to include both men and women in the qanuns are not an effective way to bring gender equality. In the reality, at the implementation level, men are prioritized to hold a public position, for instance, as a member of community council, the adat council, *tuha peut*, mediator team of a community dispute, scholar, ulama, etc. It is undeniable that such 'general term' is oftentimes interpreted that women should not be involved in these public positions.

In the aspect of legal principles, generally, the Aceh qanuns on adat do not always include principles of equality except Qanun No. 9/2009 on the Adat Life and Practices mentioning organization and development of the adat life and practices must be implemented based on 13 principles. Nevertheless, the Qanun does not integrate the principle of equality; therefore, it seems that this principle is abandoned in the qanun formulation. If LoGA is really referred as the legal consideration in the making of the qanun on adat, the principle of equality must always be included as it is also included in LoGA. Indeed, the qanun excludes the principle of equality under the reason that this principle is inclusive in other principles in the qanun. Unfortunately, such explanation is not found either in the qanun. Even though this seems to be a normative issue, the explicit integration of the principle of equality is important to maintain public awareness about this principle in the implementation of the qanun on adat. Therefore, it is strongly suggested that the principle of equality and equity is explicitly included in the qanun.

To some extent, it can be concluded that the Aceh qanuns on adat have opened an opportunity for strengthening partnership between women and women in public domains. Nevertheless, there have been a lot of cultural obstacles and challenges in their implementation. It is more evident that in the real life within Aceh society, it is not easy to find a factual partnership as meant by the qanuns.

Misinterpretation of the qanuns has led to controlling women's movements to get engaged in public roles. This factors the failure in achieving the universal vision of Islamic teachings as the main reference of the adat life within Aceh society. Different opinions on women's spaces and capacity in public services are still found within the society. This occurs as a result of misinterpretation of Islamic texts that is mainly based on textual and partial approaches.

Understanding women's position in the contextual dialectics between religion and culture needs a process of interpretation of religious texts. On the one hand, the

dialectics will possibly produce cultural construction colored by universal humanitarian values of religion; on the other hand, it can also be uncovered that the process marginalizing universal religious principles; as a consequence, 'human' interpretation becomes more dominant and influential reference within the society than the sacred religious texts.

Adat is a fundamental aspect within Aceh society. Leaving the fundamental aspect will lose social identity and character of a society or a nation. Adat is viewed as foundation for nation building. Efforts are needed to reconstruct and awaken the adat life that seems to be subordinated within our contemporary development processes. The reconstruction will be expected to transforming patriarchal masculinity within the existing adat systems in Aceh. Within patriarchal cultural system, it is impossible for women in the society to be a leading adat figure even though they are qualified for being so.

Gender Perspective Of *Qanun Hukum Jinayah* And *Qanun Hukum Acara Jinayah*

By Analiansyah

A. Introduction

This paper studies the draft of the *Qanun Jinayah* (Islamic Criminal Law) and *Qanun Hukum Acara Jinayah* (Procedural Islamic Criminal Law) popularly called *Qanun Jinayah* or the Compilation of *Qanun Jinayah* passed by the Aceh Legislative Body (DPRA) in 2009. However, the qanuns have not been executed and implemented since the Governor of Aceh, Irwandi Yusuf, has not signed or even refused to sign it. The *Qanun* gets a greater attention from wider members of the society, including non-government organizations (NGO) actively involved in gender equality campaigns. The content of the *Qanun* viewed as notion brought about various forms of violence has not fully created equality between women and men. At least, the *Qanun* cannot guarantee protection of the rights of women either as a perpetrator or as a victim of *jinayah* (Islamic crime).

In a glance, gender gap in the *Qanun* seems to be invisible. Nevertheless, gender inequality is obvious when we look at both *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*.³⁶ Gender equality in a policy cannot only be viewed from the aspect of how certain regulations include some laws on gender equality in their preamble, such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the national Law No. 23/2004 on the Elimination of Domestic Violence. Furthermore, it is also important to observe how these regulations are used as juridical foundation of the *Qanun* that is meant as legal product to protect women from discrimination.

This research is meant as an initiative to monitor *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah* as a possible way to reduce the use of the qanuns for legal reference of violence and discrimination against women. This study will pay greater attentions to some issues in the qanuns including *khalwat* (translated

³⁶ For further discussion on this subject, see Sulistyowati Irianto and Lidwina Inge Nurtjahyo, *Women in Court: Women's Perspective Monitoring of Legal System*, Jakarta: Yayasan Obor Indonesia, 2006. See also Niken Savitri and Rika Saraswati, *Gender Perspective in Judicial System: Some Cases*, Kelompok Kerja Convention Watch Universitas Indonesia and NZAID, 2006.

as a woman and a man having no marital relationship stay in closed room), homosexuality, lesbian relationship, rape and sexual harassment. As these cases directly involve women, they become vulnerable group to gender based discrimination and violence. Furthermore, this review focuses on the following aspects:

1. Elaboration of the historical background of *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*.
2. Exploration of regulations in the qanuns comprising gender inequality
3. Observation of the discussions in the making of *Qanun Hukum Jinayah* and *Qanun Acara Jinayah*.

This research aims to provide knowledge and information that can be employed to understand basic considerations and reasons of policy makers in making regulations on Islamic sharia, especially in the making of *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*.³⁷

In reviewing *Qanun Hukum Jinayah* and *Qanun Acara Jinayah*, this study draws on the principles of CEDAW as the conceptual framework. CEDAW displays the principles of equality and equity that women and men have equal rights, opportunities, and access to all dimensions of life. CEDAW admits:

1. Biological differences between women and men
2. Gender based discrimination that disadvantages women. These disadvantages include subordination in society and family, marginalization of their capacity to benefit from existing opportunities as to grow optimally, holistically, and comprehensively, to participate in all aspects and levels of development programs, to enjoy the benefits of development results, and to empower their potentials.
3. Different conditions between women and men; women are placed in a subordinate position because they experience discrimination or bear the

³⁷ Discussion on the objectives of a policy analysis, see, for instance, William N. Dunn, *Public Policy Analysis*, (translated by Muhajir Darwin), Yogyakarta: PT Hanindita Graha Widia, 2002, p. 1.

consequences of discrimination in the past. In addition, women do not get significant supports from family and community for being more independent.³⁸

By addressing such situation and condition, CEDAW assigns some principles and provisions to eliminate gap, subordination and disadvantageous acts of women's rights and women's position in law, family and society. Those principles are:

- a. The Principle of Substantive Equality which includes equality of rights, opportunity, and access and also enjoyment of benefits. Among those principles are (1) Strides to actualize women's rights aimed to overcome discrimination, disparity/gap or any harmful conditions and (2) Equal position before the law and equal treatment before the law.
- b. The Principle of Non-Discrimination. It is important to underline here that discrimination is defined as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields by women, irrespective of their marital status, on the basis of equality of men and women. Meanwhile, in this context, non-discrimination include: (1) temporary special measures, as in chapter 4 article (1) of CEDAW, steps taken to achieve equality of opportunity and treatment for women and men, and accelerate *de facto* equality between men and women. It was known as affirmative action, but now it is called as *temporary special measures*, by women, irrespective of their marital status, on the basis of equality of men and women, (2) maternity protection in article 2 (2), and maternity as a social function in article 5 (2) of CEDAW.
- c. The Principle of State's Obligation. According to CEDAW, in this case, there are some principles, including (1) granting women's rights through law and regulations and guaranteeing its results, (2) the State does not only guarantee, but also fulfills women's rights. Article 2 of CEDAW condemns discrimination, prohibits all forms of discrimination against women through regulation and

³⁸ Achie Sudiarti Luhulima, "Women's Rights in Indonesian Constitution," in Sulistyowati Irianto and Lidwina Inge Nurtjahyo, *Women in Court: Women's Perspective Monitoring of Legal System*, Jakarta: Yayasan Obor Indonesia, 2006, p. 86.

policy and their implementation. This article obligates the State to uphold protection for women's rights through a competent national tribunal and other government institutions, and effective protection of women from all forms of discrimination.³⁹

In addition, the issue of the involvement of men and women in policy making is incorporated in CEDAW, as stated in article 7 (b), It is a State's obligation to ensure the rights for women, based on the principle of equality between women and men, to participate in formulating government policies and their implementation at all levels.

This study uses analytical-descriptive methodology to elaborate the data from both field interviews and library research. The field data was compiled from depth interviews with a number of informants coming from four groups. First, it's the former members of legislation commission at the provincial legislative body who were engaged in the makings of *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*; second is Provincial Islamic Sharia Body who first initiated the idea of formulating the qanuns and was responsible for the revision of the drafts as a representative of government institution; third is academicians who were actively involved in drafting the qanuns on Islamic sharia in Aceh since the very beginning in 2001, and fourth is women's rights activists who were assigned expert team and have actively taken a part by giving suggestion and inputs on gender related regulations and were involved in monitoring the process of the Qanun formulation.

The primary data of the research refers to the drafts of *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah* passed by the Aceh Legislative Body (DPRA). Some research reports as well as other references related to the issues discussed in this paper are also used as important sources of information in this study. The existed data has been classified in accordance with scope of issue. The next step is the data has been analyzed by employing gender perspective and history approach, specifically on certain part, by using concept framework as explained before.

³⁹ Achie Sudiarti Luhulima, "Women's Rights in Indonesian Constitution," pp. 87-89.

B. Discussion

B.1. Historical Background Behind the Makings of the Qanun on Islamic Sharia in Aceh

This section will elaborate the historical background in the makings of qanun related to Islamic sharia in Aceh which were some qanuns drafted before the *Qanun Hukum Jinayah* and the *Qanun Hukum Acara Jinayah* that will be explicated later. This elaboration is very important because these earlier qanuns turned into a 'prototype' of recent *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*. From the exploration of the historical background, we will get deeper insights on the sociological, juridical and philosophical considerations in the makings of the qanuns connected with Islamic sharia. Moreover, this historical overview will also help us in knowing some forms of discrimination against women in the qanuns and their reasoning factors.

In Indonesia, generally, regulations made by provincial and district government are popularly called local regulation or *Peraturan Daerah* (Perda); in Aceh, this local regulation is named qanun. The use of this specific terminology is meant as an emphasis of its special function –as Aceh is a region with special autonomy-- within Indonesian legal system. In the Aceh context, qanun is a regulation that is similar to provincial regulation (*peraturan daerah provinsi*) that regulates the implementation of governance and social life in Aceh. Based on this definition, it is understood that qanun in Aceh consists of two categories; first is qanun regulating the implementation of governance and second is qanun regulating subjects related to the implementation of social life within Aceh society. Qanun related to Islamic sharia is part of qanuns that administer the implementation of social life within Aceh society.⁴⁰

The making of qanuns regarding to Islamic sharia in Aceh, is possible based some legal foundations including:

⁴⁰ Syahrizal Abbas, "Islamic Sharia in Aceh in National Legal System Framework," in *Law Thought Dimension in Islamic Syariah Implementation in Aceh*, Banda Aceh: Dinas Syariat Islam Prov. Nangroe Aceh Darussalam, 2007, p. 11.

1. National Law No. 44/1999 on the Implementation of Special Autonomy of Aceh Province which addresses religious aspects as well as education, ethnicity and the role of *ulama* in the makings of local policies.
2. National Law No. 18/2001 on the Special Autonomy for Aceh Province as Nanggroe Aceh Darussalam Province that was amended by National Law No. 11/2006 on the Government of Aceh (LoGA).
3. Provincial Regulation of Aceh Province No. 5/2000 on the Application of Islamic Sharia.

Based on these legal foundations, the Government of Aceh has drafted several local regulations popularly called qanun related to Islamic sharia in order to implement the above regulations.⁴¹ Until 2004, a number of qanun related to the implementation of Islamic sharia were passed, including:

1. Qanun No. 10/2002 on Islamic Court.
2. Qanun No. 11/2002 on the Application of Islamic Sharia in the Aspects of Theology, Ritual/Worship, and Religious Practice.
3. Qanun No. 12/2003 on *Khamar* (Consumption of Alcohol) and Other Intoxicate Drinks.
4. Qanun No. 13/2003 on *Maisir* (Gambling).
5. Qanun on No. 14/2003 on *Khalwat* (Non-Marital Sexual Relationship)
6. Qanun No. 7/ 2004 on *Pengelolaan Zakat* (Tithe Management and Distribution).
7. Qanun No. 11/2004 on Functional Duties of Nanggroe Aceh Darussalam Police Department.⁴²

From the qanuns listed above, those regulating social behaviors are Qanun No. 11, 12, 13 and 14. It is important to research why these aspects must be regulated in a specific qanun --indicating that these aspects now become public legal issues. Based on the interviews with respondents, some groups within Aceh society were worried that many social problems would occur in the middle of their 'religious' lives. Among the social problems the society was concerned included the

⁴¹ Al-Yasa Abubakar, *Compilation of Implementation of Islamic Sharia law (Supporters of Islamic Sharia Law Implementation)*, Banda Aceh: Islamic Sharia Body of Nanggroe Aceh Darussalam Province, 2005, p. 2.

⁴² *Compilation of Regulations (Himpunan Undang-undang), Presidential Decree, (Keputusan Presiden), Local Regulation (Peraturan Daeah/Qanun), President Instruction, Governor Instruction and Governor Letter"*, Banda Aceh: Dinas Syari'at Islam Prov. Nanggroe Aceh Darussalam, 2004.

increasing phenomena of alcohol consumption (*khamar*), gambling and *khalwat* or *mesum* (simply defined as non marital sexual relationship).⁴³

Before the implementation of Islamic sharia in Aceh, people within the society expected that the National Criminal Law (KUHP) would be an effective regulation to control these social problems. In the KUHP, actions like adultery (*zina*), gambling, alcohol consumption are categorized as light crimes which its punishment is less than five years in jail, except rape with maximum 12 years in jail. In the reality, the punishment for sexual adultery, gambling and consuming alcohol is maximum 2 years in jail. These kinds of actions are categorized as violation of public morality; it means that the perpetrators commit an action against morality (*kesusilaan*).⁴⁴

The society evaluates that KUHP has failed in preventing and anticipating these problems. Both social leaders and government figures can only persuade people not to do these actions as they contradict with Islamic teachings. The same view applied in *khalwat* case categorized as an action against Islamic rule; therefore, particular regulation needs to be made to control this action. In the name of enforcing the customary (*adat*) law, some groups in the society tackle *khalwat* cases happening in the society. Public initiative to apply the customary law in dealing with cases regulated in KUHP was an expression of their disappointment toward the national law. Public opinions in Aceh viewed these actions as an offence against not only religious teachings but also traditional value alive within the society.⁴⁵ Considering such social circumstance, public pressure and insistence to regulate actions viewed as against religious and adat 'rules' in a more formal regulation of qanun.⁴⁶ In 2002, the Governor of Aceh, Abdullah Puteh, responded to the public interests by issuing an instruction to formulate some qanuns as legal foundation for the enforcement of Islamic sharia in Aceh.⁴⁷

⁴³ Interview with YS, Banda Aceh, 24 May 2011; interview with HS, Banda Aceh, 27 May 2010; interview with ZA, Banda Aceh, 25 May 2011; interview with RF, Banda Aceh, 25 May 2011.

⁴⁴ Adami Chazawi, *Crime on Ethics*, Jakarta: PT Raja Grafindo Persadan, 2007.

⁴⁵ Interview with YS, Banda Aceh, 24 May 2011.

⁴⁶ Interview with HS, Banda Aceh, 27 May 2011.

⁴⁷ Interview with YS, Banda Aceh, 24 May 2011.

“The national laws have been viewed fail in anticipating alcohol consumption, gambling and pergaulan bebas (usually referring to ‘free sex’). It happened here at that time that people got drunk and played gambling near Krueng Aceh river, a public space. They perpetrated these actions very openly.”⁴⁸

In the implementation of these three qanuns, legal apparatuses face a variety of obstacles as a consequence of insufficient rules, such as the absence of provision on containment at various levels of investigator by Police Department, prosecutor, and judiciary.⁴⁹ Based on an interview with a respondent, this issue has become a topic of discussion since the beginning of the qanun formulation. Nevertheless, since the members of the drafter team were predominantly from traditional Islamic boarding schools (*dayah/pesantren*) with dominant textual perspective of Islamic jurisprudence (*fiqh*) and with weak understanding and knowledge about a more modern legal system, including in Indonesian context, they rejected the ideas to put rule on detention for those presumed as being involved in the actions regulated into the qanun as this detention was not found in any classic *fiqh* thoughts.⁵⁰

In *Research of Public Policy Analysis*, it is explained that execution is applied based on a permanent legal decision. In the reality, execution is oftentimes implemented based on the defendants’ compliance in accepting the punishment. Meanwhile, those who are not willing to be punished will run away.⁵¹ This is awkwardness in the enforcement of the qanun. The respondent admitted this weakness that inspired for the qanun revision.⁵² Furthermore, there was emerging ideas to compile these separated qanun in an integrated qanun called *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*. These three qanuns above were finally compiled with additions of other issues, including *khamar*, *maisir*, *khalwat*,

⁴⁸ Interview with HS, Banda Aceh, 27 May 2011.

⁴⁹ Interview with YS, Banda Aceh, 24 Mei 2011; interview with HS, Banda Aceh, 27 May 2011; interview with ZA, Banda Aceh, 25 May 2011; interview with RF, Banda Aceh, 25 May 2011.

⁵⁰ Interview with HS, Banda Aceh, 27 May 2011.

⁵¹ Khairani, et al., *Public Policy Research*, Banda Aceh: PUSHAM Unsyiah, 2009, pp. 120-124.

⁵² Interview with HS, Banda Aceh, 27 May 2010; interview with YS, Banda Aceh, 24 May 2011; interview with ZA, Banda Aceh, 25 May 2011; interview with RF, Banda Aceh, 25 May 2011.

ikhtilath (sexual mingle),⁵³ sexual intimacy,⁵⁴ adultery, sexual harassment, *liwath* (anal sex),⁵⁵ *musahaqah* (lesbianism),⁵⁶ rape, and *qadzaf* (accusing others committed adultery).⁵⁷

Based on the conceptual framework above, a form of discrimination against women was that women were not implicated in the makings of development policies. In fact, the Qanun No. 11, 12, 13 and 14 do not refer to CEDAW and human rights frameworks in their legal consideration. Therefore, in this regard, another form of discrimination against women in the formulation of the qanun is that the drafter team did not include various regulations on gender equality as legal consideration. As a result, it is clear that the qanun they made does not accommodate women's rights protection.

A respondent explained, among the constraints in the makings of the qanun were the fact that the majority of the drafters had lack of knowledge on legislation process. It seemed that at that time the drafters thought that the most prioritized agenda was to adopt Islamic sharia in the qanun without taking into account the existing legal system at national level. There was an emerging public euphoria to apply Islamic sharia and assign fiqh as legal resources, on the one hand, and to leave the existing (secular) legal system, on the other hand.

The respond continued, gender issues have not appeared at all at that time as gender mainstreaming 'discourse' has just commenced in Aceh after the tsunami hit the area in 26 December 2004.⁵⁸ Many non-government organizations focusing on gender equality were founded after the profound disaster. Hence, in the previous period of the makings of Qanun No. 11, 12, 13 and 14, gender issues were

⁵³ *Ikhtilath* is an action of being together between a woman and a man having no blood tie in a sexual intimacy, either in open or closed place.

⁵⁴ *Bermesraan* is literally flirting, such as touching, hugging, holding hands and kissing.

⁵⁵ *Liwath* is sexual intercourse between man and man did both under willingness and consent.

⁵⁶ *Musahawah* is sexual intercourse between woman and woman did both under willingness and consent.

⁵⁷ Interview with RF, Banda Aceh, 25 May 2011.

⁵⁸ Various humanitarian and development programs in Aceh have been tremendously emerged in post-tsunami disaster. See for instance, P. Cahanar (ed), *Earthquake and Tsunami Disaster in Nanggroe Aceh Darussalam and North Sumatera*, Jakarta: Kompas, 2005.

not addressed. As a result, CEDAW and human rights were not used as the legal consideration of these qanuns.⁵⁹

B.2 *Qanun Hukum Jinayah and Qanun Hukum Acara Jinayah*

This section elaborates contents of *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah* assumed of consisting of discrimination against women. Before exploring more detail various forms of discrimination in the qanuns, it is important to acknowledge that the qanuns include some legal products supporting the liberation of children and women from any forms of discrimination as well as respects to human rights as mentioned below:

1. National Law No. 7/1984 on the Ratification of Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
2. National Law No.7/1997 on Child's Tribunal.
3. National Law No. 5/1998 on the Ratification of Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
4. National Law No. 39/1999 on Human Rights.
5. National Law No. 23/2004 on the Elimination of Domestic Violence.
6. Qanun No. 11/2008 on Children and Women Protection.

Preamble in any acts constitutes a fundamental basis and reference in formulating them. It means that the contents of the acts are not contradictory against the preamble. The integration of some "pro-women" regulations in the qanuns needs to be greatly appreciated because this situation did not happen in the previous qanun related to Islamic sharia which are Qanun No. 11, 12, 13 and 14.

Based on interview with respondent, the integration of certain 'pro-women' regulations has created a positive impact which is the availability of chapters legislating rape, sexual harassment and protection of pregnant women. The chapters fully constitute women's protection from violence.

As previously mentioned in the conceptual framework that based on the Principle of State's Obligation, the State has an obligation to guarantee women's

⁵⁹ Interview with YS, Banda Aceh, 24 May 2011.

rights in law and regulation and ensure the results. To put some regulations as preamble is an important way to apply this principle. However, it is crucial to critically review how the preamble is transformed into the chapters in the qanuns, particularly chapters on procedural law of *jinayah*.

1. Qanun Hukum Jinayah

Let us now focus on the chapters in *Qanun Hukum Jinayah*. This qanun comprises of 10 parts and 50 chapters. Part I is General Introduction; Part II is Scope of Discussion, Part III is Legal Justification (*Alasan Pembena*) and Legal Excuse (*Alasan Pemaaf*); Part IV is *Jarimah* (Islamic Crime) and *Uqubat* (Sanction/Punishment), Part V is Combination of *Jarimah*; Part VI is *Jarimah* dan *Uqubah* for Children; Part VII is Retribution and Rehabilitation; Part VIII is Other Provisions; Part IX is Transitional Provisions; and Part X is Closing.⁶⁰

It is also very important to specifically elaborate Part II and Part IV. Part II explains the scope of the qanun which administers *jarimah* (crimes) and *uqubat* (sanction) of *khamar*, *maisir*, *khalwat*, *ikhtilath*, *zina*, sexual harassment, rape, *qadzaf*, *liwath*, and *musahaqah* as stated in article 2. Part IV discusses *jarimah* and its sanction as mentioned in article 6 comprising of *hudud* and *ta'zir*.⁶¹ *Uqubat ta'zir* takes forms of whipping, fine, jail, seizure of other materials, deprivation of license/concession, deprivation of rights and compensation.

From a number of *jarimah* and *uqubah*, *jarimah* that increases public attentions and is assumed to creating many forms of violence and discrimination against women is the settlement of *jarimah* by community, whipping and its intervention by legal apparatuses that disadvantages women. In addition,

⁶⁰ "Draft Aceh Qanun on Criminal law", Archive of Aceh Parliament Secretariat.

⁶¹ *Jarimah hudud*: *jarimah* has been threatened by *had* sanction, which is punishment determined both the type and the quantity and constitutes God's right. *Jarimah ta'zir* is actions threatened by *ta'zir* punishment in which the type and variety of punishments are not stipulated by sharia. It means the determination of punishment has been ceded to government. Therefore *jarimah ta'zir* punishment does not have a certain limit. See for instance *Asas-asas Hukum Pidana Islam* (Legal Principles of Islamic Law), Jakarta: Bulan Bintang, 1967, pp. 7-8.

criticisms have come out against the 'unclear' formulation of *khalwat* dan *ikhtilath* that possibly opens misinterpretations.⁶²

The qanun defines *khalwat* as an action of being in a closed or hidden place between 2 (two) people different sexes who do not have the blood tie (*mahram*) and without marital relationship. Such a formula has been considered incomplete, and, consequently, it requires additional explanation for 'closed and hidden place.'

Another critique focuses on whipping (*rajam*) as a form of sanction. Whipping is applied to perpetrators of *zina muhshan*, *zina* committed by married persons. This sanction is included in *hudud* regulated in the Qur'an. A respondent asserted that the idea of including whipping as a form of sanction came in the final day of the discussion in the Aceh Legislative Body. In the previous discussion, there was no proposal to include whipping in article on sanctions as it has created public debates and many groups within the society did not agree with. From the interview, it was found that whipping sanction was voiced by small number of the parliament members.⁶³ As whipping was being proposed in the last discussion day, this did not get sufficient elaboration during the discussion. It was assumed that bringing the issue of whipping as a form of punishment in the last day appeared to be a political way of the proposing group to be viewed as the advocate of comprehensive implementation of Islamic sharia in Aceh. This situation indicates a sort of political arrogance of the group. Under such a circumstance, women's groups even could not monitor the discussions in the last minutes. This proves the existing shortcoming of the qanun legislation in Aceh.

Many groups in the society evaluates that if this provision stays preserved, it will trigger much troubles in its application. Firstly, while the *fiqh* thought mentions that a perpetrator of *zina* is encouraged to be atoned (*taubat*), the qanun does not include the clause of atonement. Secondly, judge is suggested to close the case of *zina* if the perpetrator admits his/her, except the confession is opened in front of public. Thirdly, verification is relatively difficult to conduct because a case of *zina* requires four witnesses seeing the case altogether. They all have to declare that they have seen directly the case with their eyes. The drafter of the qanun

⁶² See as for example, Khairani, et al., *Public Policy Analysis*, pp. 120-124.

⁶³ Interview with HS, Banda Aceh, 27 May 2011.

assumed that it is impossible to prove a case of *zina*, so the regulation in the qanun is meant as a threat (for those who want to commit *zina*).⁶⁴ The drafter should not include provisions in the qanun that are unable to be implemented. Fourthly, there is no concrete rule about accuser (*pelapor*) and witness in the qanun. It is not clear enough whether witnesses will be punished if the number of witnesses is less than four as required or only accuser will be punished if they cannot present four witnesses while witness cannot be punished. In fact, in Indonesian legal system, it is administered that charge or indictment is propounded by prosecutor who works on gathering evidence. In this context, witness is different from prosecutor (*pendakwa*). Therefore, witness cannot be punished when the number of witnesses is less than four.

Unlike in the Indonesian legal system that assigns prosecutor for accusation, in classical *fiqh* thoughts, accuser comes from those who witness case of *zina* and he/she comes with three other witnesses, so they can be sanctioned as doing *qadzaf* when the number of witnesses is only three, including him/her. When one of them withdraws or retracts his/her witness, so the number of witnesses will be less than four, the rest three witnesses can be punished as doing *qadzaf*. The qanun does not sufficiently explain this mechanism, and as a consequence, the clause of *zina* remains with complicated problems. Indeed, the goal of making qanun is to solve legal problems and it can be implemented and enforced by legal apparatuses.

Based on the Principle of Substantive Equality which includes equality of rights, opportunity, access and enjoyment of benefits as explicated in the conceptual framework, gender biases are uncovered in the formulation of sanction for perpetrator of *khalwat*, *ikhtilath*, *zina*, *qadzaf*, *liwath* and *musahaqah*. Even though, in this provision, there is no disparity, difference, and gap that disadvantage women (formal/symbolic equality), in the implementation, there is a hole for discrimination as a result of unclear provisions. This is a form of indirect discrimination when the State cannot ensure that discrimination against women as a consequence of a policy they made will not happen. Negative consequences for

⁶⁴ Interview with YS, Banda Aceh, 24 May 2011.

women are clearly uncovered in the field --this focus will be explored in the next discussion on *Hukum Acara Jinayah*.

Discrimination, disparity or disadvantages against women evoke in article 44 and 45 of *Qanun Hukum Jinayah*. Article 44 of the Qanun mentions:

- (1) Every dispute evoked by *jarimah* as mentioned in the Qanun can be handled through the *adat* (customary) mechanism.
- (2) If the dispute resolution as stated in article (1) does not succeed, the settlement will be made based on formal regulation.

Meanwhile, article 45 states that dispute settlement as defined in article 44 does not disqualify legal process of *jarimah* committed.

The clause in this article is considered as triggering serious gender bias. In the reality within society, perpetrator of *khalwat* frequently gets inhuman and undervalued treatment, such as being “marched” around the village even though he/she has not been decided to be guilty. It seems that sanction has already been executed before verdict is made. In the *adat* legal mechanism, sanction is made by the *adat* leaders. It is strongly unacceptable if the society does a popular punishment. If that happens, women become the most vulnerable groups of being victimized and discriminated.⁶⁵ Such a condition is certainly against the CEDAW principles. To respond to this situation, many have suggested that violation of the Qanun is fully tackled by formal legal apparatuses. If village apparatuses are permitted to handle the cases, it is strongly suggested to making ‘clear provision’ about legal procedure at village level that will prevent discriminatory treatment, particularly against women.⁶⁶

Social-cultural contexts must be addressed as important consideration for policy makers in making any regulation. This will importantly avoid victimization of the ‘powerless’ and marginalized groups within the society. In the case of *khalwat* and *zina*, women oftentimes receive greater social sanctions as the society demands higher moral standard from women but not vice versa, from men.

⁶⁵ Interview with RF, Banda Aceh, 25 May 2011.

⁶⁶ Interview with ZA, Banda Aceh, 25 May 2011; interview with HS, Banda Aceh, 27 May 2011.

If perpetrators of *khalwat* or *zina* are men, the society appears to be blind and deaf of the case. They easily forget the case and openly accept the men to remain within the society. Women face a contrast situation with men. They will get a long life public stigma. In fact, many accusations addressed against women are only based on assumption that will definitely bring harmful effects to their life and their family of being failure in educating their daughters.

As stated above, *fiqh* thoughts tend to persuade atonement and holding the principle of preserving disgrace. Therefore, is the existing popular punishment in the society considered the right manifestation of Islamic sharia? In addition, considering different social-cultural contexts within the society in their impacts in leading to applying different forms of punishment for female and male perpetrator, it is very crucial to address the issue of legal protection for women. Therefore, formulating a regulation that addresses the need for women's legal protection is required.

Article 45 mentions that dispute settlement through *adat* mechanism does not abrogate formal legal process against *jarimah* executed. This provision underlines that perpetrator of *jarimah* will get two kinds of punishments: customary based punishment and the formal Qanun based punishment. In such a double-punishment 'system,' women have been in a riskier situation from discriminatory treatments.

A report published by UNDP about "Access to Justice in Post-Conflict and Post-Tsunami Aceh," mentioned that a serious problem discovered in this issue is violence against women, particularly in domestic domain.⁶⁷ The *adat* justice mechanism is the priority medium used in solving the problem within community. However, in some researches having similar report, customary solution does not give justice for those who are in trouble, especially women.⁶⁸ Nevertheless, as mentioned in some reports including this UNDP report, customary mechanisms do

⁶⁷ Based on Bedner (2004), "Towards Meaningful Rule of Law Research: An Elementary Approach," MS Unpublished, VVI, Leiden; UNDP (n.d.), 'Access to Justice Practitioner Guide, p. 35.

⁶⁸ Ibid, p. 114

not guarantee the fulfillment of justice for women experiencing a legal case.⁶⁹ This *adat* system does not provide sufficient rooms for women's involvement in an informal legal process. Furthermore, the informal *adat* system emphasizes more 'harmony' and 'peace' as the priority of problem solution than women's individual rights.

The Qanun should integrate a provision ensuring that women will not experience discrimination. If such provision is not available, it could be concluded that the Qanun does not meet the principle of equality to protect women from any forms of violence and discrimination.

2. Qanun Hukum Acara Jinayah

Reading the draft of *Qanun Hukum Acara Jinayah*, it seems that formally the Qanun does not contain gender biases or gender based discrimination. Nevertheless, if we really refer to CEDAW, it is obvious that women have not obtained sufficient legal protection. It is found that women's protection in the Qanun implementation has been fully ceded to personal awareness of legal apparatuses. In fact, CEDAW regulates that discrimination against women can take a form of the effect of the absence of regulations that prevent the impact.

It is important to explain that legal apparatuses in the Qanun Hukum Acara Jinayah is the same as stated in KUHAP (National Procedural Criminal Law), which include police, public prosecutor and judge plus sharia police –popularly called *Polisi Wilayatul Hisbah* (Pol-WH) getting a certificate as Civil Servant Investigator or *Penyidik Pegawai Negeri Sipil* (PPNS). In the meantime, offenders of the Qanun are investigated by police department since none of the sharia police officers obtain certificate as PPNS.

In applying their duties, legal apparatuses uphold the existing rules. As mentioned above, *Qanun Hukum Acara Jinayah* does not contain the rule protecting women's rights, both as a perpetrator and as a victim of violence and

⁶⁹ Matt Stephens (et all), *Finding Equilibrium: Considering Non-State Justice in Indonesia*, 2009, p. 42.

discrimination. In many cases, women are truly susceptible to discriminative treatments from legal officers.⁷⁰

Based on an interview with a respondent, women oftentimes encounter discriminatory treatments or violence in the process of investigation, as either a perpetrator or a victim. In this regard, additional provision is needed to ensure women's protection from violence and discrimination. For instance, investigation of women must be done by female police officer. It is ideally expected that there will be a special mechanism to prevent women from sexual harassment and other forms of violence by either male or female officers. The Qanun should address a chapter underlining this special mechanism for a case involving women, like in politics that obliges affirmative action of women's representation. With the existing recent condition in our legal system, with the absence of a rule for special action, it is difficult to end violence and discrimination against women as our social patriarchal perspective strongly alive within the society, still view women as powerless group and the object of subordination.⁷¹

The provision of special treatment for women must be available since investigation level to the implementation of execution. An informant said:

*"As long as investigator, like sharia police, civil police, and general attorney have no perspective of equality in treating men and women, a specific provision to protect women's rights is required."*⁷²

If use CEDAW as legal framework in reviewing *Qanun Hukum Acara Jinayah*, it could be concluded that the Qanun is gender-biased as proved by the fact that the *Qanun Hukum Acara Jinayah* does not integrate provisions to protect women from the vulnerable situation of being victim of violence and discrimination resulting from the existing regulation or rule.

B.3. The Discussion Process of the Qanun Formulation

⁷⁰ Various cases on violence and discriminatory treatment from law enforcement apparatus can be viewed, for instance in, Sulistyowati Irianto and Lidwina Inge Nurtjahyo, *Women in Court: Women's Perspective Monitoring of Legal System*, Jakarta: Yayasan Obor Indonesia, 2006.

⁷¹ Interview with HS, Banda Aceh, 27 May 2011; interview with RF interviewed, Banda Aceh, 25 May 2011.

⁷² Interview with HS, Banda Aceh, 27 May 2011; interview with RF interviewed, Banda Aceh, 25 May 2011.

It is necessary to explain that what we mean with the discussion process of the Qanun is an elaboration of how the Qanun were discussed, since the beginning of how some ideas of making the Qanun were brought on table for discussion until the Qanun was formalized as *Qanun Hukum Jinayah* and *Qanun Hukum Acara Jinayah*. This exploration is crucial because at the very beginning, the formulation of the Qanun was signified to revise the three previous qanuns related to Islamic sharia, which are Qanun No. 12/2003 on Consuming Alcohol (*Khamr*), Qanun No. 13/2003 on Gambling (*Maisir*) and Qanun No.14/2003 on *Khalwat*.

Furthermore, additional material object regulated in the revised Qanun was given to Qanun on *Khalwat* addressing various aspects related to sexual and moral 'deviation.' The 'revised' Qanun addresses some additional 'objects' including *ikhtilath*, sexual intimacy, adultery, sexual harassment, *liwath*, *musahaqah*, rape and *qadzaf*. Based on an interview, these additions were proposed by some NGO activists, such as *Mitra Sejati Perempuan (MISPI)*, (Indonesia Real Partners of Indonesian Women) through *Rapat Dengar Pendapat Umum (RDPU)*, a public hearing forum at the provincial parliament.

A respondent expressed an opinion that regulations and qanun should be made by drafter team with strong expertise, even though they can also obtain important thoughts from public debates. In fact, many members of the society generally have weak understanding about system and mechanism of the legal institutions, such as police department, prosecutor, and judge. For example, the existing Qanun does not incorporate provision of detention because some ulama in Aceh refused it based on their understanding that there is no reference for this provision in both the Quran and *hadith* (translated as the Prophet Muhammad's sayings and traditions). When finally the Qanun is applied, it is found that many provisions needed for the Qanun implementation are missing and unavailable.⁷³

Some groups within the society questioned the government who did not take into account the importance of formulation qanun on corruption and other similar crimes. It seems that it is not easy to make a qanun on corruption. It requires a lot of researches. An intensive study about necessary objects that will be

⁷³ Interview with HS, Banda Aceh, 27 May 2011.

addressed in a qanun is also a necessity. Furthermore, if the existing qanuns can be 'well' implemented and applied, it is possible to formulate more qanuns in Aceh.⁷⁴

Looking at the history of the compilation of the three qanuns, the emergence of these extensive problems related to the qanun implementation described above is not predicted in the beginnings. As previously mentioned, the revising team wanted to round off the three separated qanuns: Qanun No. 12, 13 and 14 on consumption of alcohol, gambling and *khalwat*. They also wanted to add several clauses that still had shortcomings in their application. Nevertheless, the scope of objects administered in the qanun was expanded after many discussions and public hearing were made. A respondent explained, the revision of Qanun No. 12,13 and 14 was started in 2005. At that period, some efforts were initiated to round off the draft through seminars and other public forum engaging various elements in the society, including Provincial Police Department, Prosecutor Institution, Provincial Court, Sharia Court, informal leaders, and academicians.⁷⁵

In later development processes, some suggestions were voiced to accommodate the issues of *zina*, *liwath*, rape, etc. The discussions also implicate various groups from both government and non government institutions, including Women's Network for Policy Advocacy or Jaringan Perempuan untuk Kebijakan (JPUK), Insan Cita Madani Foundation (YICM) and the Real Partners of Indonesian Women or Mitra Sejati Perempuan Indonesia (MISPI). A respondent said that suggestion to include regulation on rape and sexual harassment in the qanun was made by women's groups in Aceh.⁷⁶ In fact, at the moment, members of Aceh legislative body (DPRA) did not pay attention to women's needs and interests; they just authorized to the expert team to discuss them.⁷⁷ In this regard, it is very important to campaign for women's involvement in formulating public policies. It has been told that some female legislators in the parliament did not have strong perspective on women's rights. Considering this situation, some have voiced the idea that female legislators must improve their capacity and knowledge so they could fight for women's rights.

⁷⁴ Interview with RF, Banda Aceh, 25 May 2011.

⁷⁵ Interview with YS, Banda Aceh, 24 May 2011.

⁷⁶ Interview with RF, Banda Aceh, 25 May 2011.

⁷⁷ Interview with ZA, Banda Aceh, 25 May 2011.

Male members of DPRA pointed out that there was no evidence to value that the courts have discriminated against women. Therefore, in their minds, it was not important for them to discuss about protection of women's needs and integrate this issue into the qanun; they then were more interested to authorize the discussion about this subject to the drafter team which included experts from external DPRA.⁷⁸

With this 'authorization,' the expert team determined the direction of the policy. Unfortunately, the expert team from women's groups withdrew from their participation; as a result, they had no opportunity to monitor and control the final draft. Therefore it can be concluded that the makings of qanun still did not address gender perspective.

This withdrawal of women's groups could not be separated from the existing 'hegemony' and domination of DPRA members with their powerful authority to pass any regulations relevant to their own political interests regardless awkwardness evoked, such as the decision to integrate whipping (*rajam*) in the Qanun that was made in the last discussion day in DPRA. One day before, whipping was not included in the Qanun.⁷⁹ Therefore, it is clear that the integration of whipping as a form of sanction into the Qanun was not based on an intensive discussion.

There was an interesting phenomenon regarding women's involvement in the discussion sessions of *Qanun Hukum Jinayah* draft. Some women's rights activists in the expert team disengaged of their involvement because they thought their voices were not heard by DPRA.

*"I came to the meeting several times and then withdrew from my participation. The same decision was made by my friend, KH, because in my opinion, the meeting was not democratic and did not accommodate our inputs.... As long as I knew, after we disengaged from the process, there was no more women's representation monitoring the process."*⁸⁰

⁷⁸ Interview with ZA, Banda Aceh, 25 May 2011.

⁷⁹ Interview with HS, Banda Aceh, 27 May 2011.

⁸⁰ Interview with RF, Banda Aceh, 25 May 2011.

Looking at the phenomenon, it could be said that there was an unfortunate circumstance confronted by women's groups in their struggle to eliminate potential violence and discrimination against women in the makings of the qanuns. This also indicated that movements for gender equality and elimination of all forms of violence and discrimination against women in Aceh, especially within DPRA still face difficult situation and require sustainable efforts.

Based on the elaboration above, conclusion could be withdrawn that that member of DPRA did not have deeper understanding about gender equality concepts. Gender equality issues were assumed as women's only problems. In their minds, the most important thing was the government has to open a sufficient chance for women's participation in public spaces. They did not take the principles of antidiscrimination against women in CEDAW into account as a foundation in the makings of qanuns.⁸¹ Male members of DPRA thought that it was a responsibility of women's groups (including female members of DPRA) to voice gender equality. These male legislators also claimed that female legislative members did not really fight for women's rights.⁸² Therefore, under such a circumstance, it was not surprising if legal products they made did not address the principles of CEDAW, even though they had put CEDAW into the preamble.

C. Closing

C.1. Conclusion

The initiative of integrating some regulations on gender equality in the preamble of Qanun Jinayah was a positive stride that calls for our appreciation. However, it is important to continue watching and monitoring the Qanun as we have found potential spaces in the implementation of the Qanun for indirect discrimination against women. The following are some conclusions from this review of the Qanun:

1. Based on the Principle of Substantive Equality which includes equality of rights, opportunity, access and enjoyment of benefits as elaborated in the

⁸¹ Interview with RF, Banda Aceh, 25 May 2011.

⁸² Interview with ZA, Banda Aceh, 25 May 2011.

conceptual framework of this review, provisions of sanction for perpetrator of *khalwat*, *ikhtilath*, *zina*, *qadzaf*, *liwath* and *musahaqah* are still gender biased. Even though the Qanun does not consist of provisions of sanction with discrimination, disparity or disadvantaging women based on gender differences (formal-symbolic equality), its implementation tends to be gender biased as a result of unclear clauses that possibly lead to indirect discrimination. For instance, the phrase "closed and hidden place" in *khalwat* definition opens for misinterpretations by some groups in the society as there is no clear criteria of what it means with "closed and hidden place."

2. Social-cultural contexts were ignored in the formulation of the Qanun; as a consequence, the Qanun inflicts indirect discrimination against women, particularly in the case of *khalwat*, *zina* and rape.
3. The provision in the Qanun mentioning that every dispute emerged because of *jarimah*, can be resolved by customary law. It could create serious gender biases because there has been no clear regulation on the legal procedures based on the customary law in handling the case at the village level.
4. The essence of Islamic wisdom in *fiqh* (Islamic jurisprudence) in dealing with perpetrators of *zina* in terms of principles of atonement, case closure by judge, and witness did not reflect in this Qanun. Therefore, in general, conclusion can be taken that Islamic law on *uqubat zina* in the Qanun appears to be an expression of legal 'anger' that adopts from social anger against *zina* and to ignore the essence of Islamic wisdoms.
5. There has been an unfortunate circumstance for women's groups in Aceh to fight for the elimination of discrimination against women through policy and regulation.
 - a. Male legislators at DPRA viewed that provisions on women's rights protection in the Qanun were not an issue that needed special attention. They 'authorized' the discussion about this subject to the drafter team involving experts from outer DPRA.
 - b. In the mind of male legislators at DPRA, gender issues were women's only 'business;' hence, they claimed that female legislators had greater responsibility to talk about the issues.

C.2. Recommendation

1. Amending some chapters in *Qanun Hukum Jinayah* that open a chance for indirect discrimination against women; this includes provisions of *khalwat*, *zina*, whipping sanction, and dispute settlement by the *adat* justice system.
2. Adding provisions to protect women from violence and discrimination in law enforcements, especially in the implementation of *Qanun Hukum Acara Jinayah*. It is expected that special procedures in handling for women involved in a legal process to prevent them from sexual harassment and other forms of violence, both by men and women. Therefore, the Qanun should address some provisions on the specific treatment for women that must be applied since the investigation process to execution process.
3. Making regulations that can ensure women's access, role, control and enjoyment of benefits, and participation in the makings of qanun since the drafting to final decision.
4. Strengthening and improving capacity and knowledge of legislators about gender issues, national and international regulations related to gender equality.
5. Strengthening gender awareness of legislators as an endeavor of strengthening their commitment to gender equality movements as part of a commitment to struggling for public aspiration.

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“Policy of Equality or Equality in Policy” (An Analysis of Policy on Women in Political Domain in Aceh)

By Rasyidah

A. Introduction

Women’s appearance in the Aceh political arena is not a new issue. The history of Aceh has noted various women’s roles in public areas and female political figures since the kingdom period. Nevertheless, the political domains recently become a narrow and dark path for women in Aceh. The small number of women who involve in politics indicates the recent situation of the Aceh political context. For instance, if we look at the leadership in decision making position, it is clear that only a few women or even none of them can be found there.

Politics is considered dirt, manipulative, men’s world and it should be dissociated from women. Many members of the society even view that politics is destined to be a men’s nature; men are believed to be the leaders and, on the contrary, women are the obeyed followers. An Islamic interpretation that men are leaders over women is oftentimes referred to justify this dominant point of view. Under such circumstance, it is very easy for many groups in the society to produce a religious decree (*fatwa*) that “women are not allowed or are forbidden to be a president,” or it is also prohibited for women to be a regent, mayor or a leader of a sub-district government. Is that correct that Islam inhibits women to be such public leaders as president, regent or mayor? This issue will be the normative outlook to open the elaboration of the research subject.

The weak women’s participation in decision making processes and the existing stereotype on politics that hamper women’s participation in public spaces implicate to the stiffness of building justice and equality in Aceh. Strengthening women’s participation in politics should not be viewed as merely a strategy of building equity of political opportunity; instead, this is an important way toward the formulation of policies supporting gender

equality in developments and to prevent the possible emergence of the direct and indirect discriminative policies. With women's greater political participation, it is expected that more policies voicing equal women-men relationship that being a woman is not supposed to be inferior and being a man does not have to be superior and following dominant hegemonic masculinity. Therefore, in this regard, the analysis of policies on politics is conducted to understand the implication and effect of the policies to the efforts of enforcing gender equality.

This exploration in this study will be divided into several parts. The first part is the philosophical ground related to women's role in politics based on Islamic interpretation. The second part will elaborate numerous policies in Aceh 'talking' about equality in politics and the situational background inspiring its formulation. The third part will study the social condition in Aceh that appears to have a linkage with the effort of building equality in politics. Finally, in the last part, this research will propose some recommendations.

B. Islam, Women and Politics

Describing women's political roles, particularly women's leadership in an Islamic perspective is a crucial foundation to start this writing. It is very common within our society to restrict and reject women's leadership by using an argumentation and justification derived from Islamic interpretation.

The Quran chapter an-Nisa' verse 34⁸³ and the Prophet Muhammad's *hadith* telling the destruction of a nation led by a female leader are two



Islamic resources referred the most to reject women’s political leadership.⁸⁴ Therefore, the discussion on the Islamic context will depart by studying both propositions.

The Qur’an Chapter An-Nisa’ verse 34:

Classical books of Islamic interpretation (*kitab tafsir*) generally interpret that *ar-rijal* in the Quranic verse refers to biological construction of men as stated that men dominate women (see *Tafsir Thabari*, *Tafsir Majma’ Bayan*, *Tafsir al-Kasysyaf*, and *Tafsir ar-Razi*). Some *tafsirs* also disclose *asbab an-nuzul* (the historical factor of the revelation) of the verse; it is described that the verse is revealed to response to the story of a woman beaten by her husband and the woman came to the Prophet Muhammad to complain about her husband’s manner. The Prophet said, "I desire something but God does not."

However, within these classical *tafsirs*, a different *tafsir* opinion on the word *ar-rijal* was found. *Tafsir Bahrul Muhith* does not refer *ar-rijal* to biological construction of men; instead it means more on social function and role in a household. The following is the explanation on the related words described in *Tafsir Bahrul Muhith*:

- ◆ **Rajul**: Human beings who have physical strength, not only indicated by having beard. *Rajul* can be *qawwam* (translated as leader) if they are really *rajul* as mentioned in the book, "*Ar-rijalu qawwamuna ‘ala al-nisa’ in kanu rijalan.*"
- ◆ **Illah** (legal reason): Men dominate women because of the virtue given by God to those (specific) men. For instance, continuous livelihood is one of the reasons. **Jumhur** (*dominant opinion*) mentioned that if they (men)



34. "Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them. But if they obey you [once more], seek no means against them. Indeed, Allah is ever Exalted and Grand."

⁸⁴ Sahih al-Bukhari, Book II, Chapter V, p.136. *Kitab al-Maghazi*, Chapter "Kitab al-Nabi ila Kisra wa Qaisar." Hadis No. 4037

do not afford earning living, they do not have a power anymore. Women could request a *faskh* (annul a marriage).

- ◆ **Nature of the Virtue:** power and authority is attained by a virtue, not by strength or a ‘competition.’
- ◆ In a condition of **nusyuz** (a wife is viewed to disobey her husband): the treatments are giving an advice, sleeping in separate beds, and beaten lightly. These are applied hierarchically.

Differences of Quranic interpretation are acceptable especially when we consider some contemporary *tafsirs* addressing a today phenomenon where earning a living for family and breadwinning is born together by both husband and wife. Therefore, it is important to scrutinize further whether the message in the Qur’an is normative or contextual. Yet, it is clear that the verse discusses a domestic relationship. M. Quraish Shihab in his *tafsir* states that the word *qawwam* is derived from *qaama* meaning “uphold or undertake” as its usage in the command to ‘uphold’ *shalat* (prayers). The word *qaama* requires series of obligation to fill out all *rukun* (mandatory tasks) and *sunnah* (preferable tasks). If all the tasks are executed well, perfectly and continuously, this would be called *qawwaam*. According to Shihab, the interpretation of *qawwam* as leader does not fully described the genuine meaning of the word, even though it is said that leadership is part of the efforts to gain *qawwam*.⁸⁵

In the reality the popular interpretation of *qawwam* as leader is oftentimes understood as ‘dominating’ and based on such an understanding it is believed that husband is a master and wife is a servant. In fact, this verse does not signify a rigid formal leadership in a household. Islam emphasizes the principle of *mu’asyarah bil ma’ruf* (mutual collaboration) demonstrating an equal role of husband and wife to manage their household. The ‘discussion’ of *nasyuz* included in this verse is related more on regulating husband’s attitude not to be ‘over controlling’ when a *nusyuz*

⁸⁵ Quraish Shihab, *Tafsir Al-Mishbah*, Volume 2, Jakarta, Lentera hati, 2001, p. 424

come about. Moreover, the Qur'an arranges a husband's *nusyuz* in Chapter an-Nisa': 128.

To build a deeper insight to the verse's including beating in dealing with a wife's *nusyuz*, we can refer to the Prophet's *hadith* told by Iyas bin Abdillah bin Abi Dzubab (RA); "The Prophet Muhammad (SAAS) said, "Do not beat women!" (His companion) Umar (RA) came to the Prophet and said, "Wives would bravely (oppose) their husbands; give us a permission to keep beating them!" Later enormous women called on the Prophet's family; they complained about their husband's attitude. The Prophet responded, "Many women have visited Muhammad's family to complain their husband's manner. They (husbands beating their wives) are not good people."⁸⁶

In addition, the Qur'an presents the principles of marital relationship illustrating that a woman as a wife is husband's partner; she is not a domestic worker or a sexual slave. Marital relationship in the Qur'an is indicated as, for example, a 'soul mate,' a united couple (*zawâj*), one is the equal pair (*zawj*) to another (*zawj* as well). The one is a cloth for the other, husband to his wife vice versa as stated in the Qur'an chapter al-Baqarah: 187, "*Hunna libâsun lakum, wa antum libâsun lahunn*. The spouse tie is declared in the Qur'an as a strong agreement (*mîtsâqan ghalîzhan*) (chapter an-Nisa': 21); it is founded based on the sincere consent (*tarâdlin*) in a marriage contract (chapter al-Baqarah: 232-233), to develop a peaceful life (*as-sakînah*) with full of love and affection (*al-mawaddah wa ar-rahmah*) (chapter ar-Rum: 21), the basic principle of good treatment (*mu'âsyarah bil ma'rûf*) (chapter an-Nisa: 19), and settlement of dispute through a consensus (*musyâwarah*) (chapter al-Baqarah: 233).

Therefore, based on the exploration above, it can be concluded that *qawwam* in domestic context does not mean (husband's) belongings to or domination over wife. This does not imply that leadership is men's 'destiny.' This verse therefore cannot be used to justify the prohibition of women's

⁸⁶ Hadith transmitted by Abu Dawud, see: Ibn al-Atsir, Book VII, p. 330, hadith number 4719

leadership in public sectors since this verse does not speak about public leadership but about household relationship.

The Prophet’s Hadith of the Ruin of a Nation Ruled by a Woman

This work describes an analysis by Nizar Ali to the Prophet Muhammad’s *hadith*.⁸⁷ The *hadith* was transmitted by al-Bukhori and Ahmad bin Hambal. From this analysis, it can be concluded that based on its connected transmitters (*ittishal*) the *hadith* is a valid *hadith (shahih)*, and the *hadith* transmitters from both lines –al-Bukhori and Ahmad bin Hambal—had a high qualification.

Based on the above analysis of the *hadith*, some ulama such as al-Khattabi, asy-Syaukani, Ibn Hazm, al-Gahazali, and Kamal ibn Syarif point out that it is not valid for women to be a successor (*khalifah*) and president or leader of a country. By referring to this *hadith*, Sayyid Sabiq even states that being men is a requirement for being a head of country, similar to the condition for being a jurist (*qadhi*).⁸⁸

It is necessary to present a critical query concerning with this *hadith*. The query is not meant to compel the Qur’an to be fit with the progressive eras. The Qur’an tells the story about a successful woman ruling a kingdom sampled by the Qur’an as a prosperous kingdom. She was Queen Bilqis from the Sabaiyah Kingdom (the Qur’an chapter an-Naml: 23).⁸⁹ Many historical facts illustrate successful women’s leaders in a number of countries, including the story of some queens from Aceh.

Considering to these historical examples of successful women’s leadership, it is important to conduct further studies of the above *hadith* to get a deeper understanding whether this is a law *hadith* or (only) a news

⁸⁷ Nizar Ali, “Women’s Leadership in Political World”, in Hamim Ilyas, et al., *Suppressed Women*, Jogjakarta, eLSAQ Press, 2005, pp. 271-288.

⁸⁸ Sayyid Sabiq, *Fiqh al-Sunnah*, Semarang, Thoha Putra, ny, III, p. 315

⁸⁹

23. I have really met a woman governing the country; she was bestowed with everything and had a great kingdom.

hadith. The background of this *hadith* revelation is that the Prophet Muhammad received news that the Kingdom of Persia was governed by a woman. But, the Prophet's remark did not come without an inspiring historical context. Therefore, disclosing a series of preceding occurrences behind his saying is crucial to comprehend the meaning of the *hadith*.

This was started when the Prophet delegated 'Abdullah ibn Hudafah as-Sami' to deliver a letter to the elites of Bahrain. They then gave the letter to Kisra Persia who after reading it torn that letter. Based on a *hadith* transmitted by Ibnu Musayyab, when the Prophet heard the case he responded to it by saying, "Whoever torn my letter, the person and his/her kingdom would be torn as well."⁹⁰ The kingdom experienced a political upheaval and intrigue of the battle for power that led to an assassination. Eventually, in the 9th century Hijrah, Buwaran binti Syairawaih bin Kisra, a grandchild of Kisra was inaugurated as Queen of Persia. She served as a queen because her father and her brother were killed in the political conflict. When this situation was conveyed to the Prophet, he revealed the *hadith*.

From the exploration above, two conclusions can be developed. Firstly, the *hadith* might reflect the Prophet's expectation to the failure of the Persia leaders, because Persia was a kingdom that humiliated against Islam. Secondly, the *hadith* might present the Prophet's prediction that in the social setting of Persia that disrespected to women, the kingdom would possibly be ruined.

This *hadith* unveils the social condition when it was revealed and applied for the case of Persia only. Hence, it is mistaken to employ this news *hadith* about a kingdom that hostile Islam as a law *hadith* on leadership in Islam. In fact, it is clear that there is no *hadith* that explicitly states that being men is the prerequisite of being a leader; the Qur'an displays a story of the glorious kingdom governed by Queen Bulqis; and there are many

⁹⁰ Al-'Asqalani, *Fath al-Bari*, pp. 127-128.

historical facts regarding the successful women's leadership in diverse areas.

By studying the two arguments oftentimes used as a proposition to proscribe women's public leadership, it is apparent that a social setting where an interpreter lives plays a significant role in influencing the way the interpreter produces an opinion. The Islamic concepts do not live in a social setting, but it is precisely inherent in the existing messages of the Qur'an and the Prophet's *hadith*. Comparing these messages with today contexts does not challenge the messages, but this is a way to build a valid understanding of these messages. Chapter an-Nisa': 34 and the Prophet *hadith* on the destruction of a nation when it is led by a woman do not talk about the law restricting women for being a leader. The dominant reality shows the use of the above two arguments to refuse women's leadership. A simple question we can propound is by restricting women to be a leader, what kind of answer could they provide to deny the God's information in the Qur'an about the successful leadership of Queen Bulqis?

C. Policy and Equality in Politics Realm in Aceh

As a country that has ratified CEDAW, the Government of Indonesian has an obligation to bring justice and equality and eliminate all forms of discrimination including in politics. Policy is an official groundwork for the government's action in realizing the obligation. Policy is also a turning point to design and implement development programs. If the policy does not sustain equality, it is hard to ensure the embodiment of the equal development. It is true that the availability of policy does not always guarantee that equal development will be created, but at least there is a regulation binding implementer and there is a legal reference for monitoring and evaluation of the development programs.

The policy of politics either at national or provincial level generally relates to the regulation of election and political party. With this political dynamic that shows the fact of political party as a hierarchical and

nationally-structured organization, the policy on this matter appears to be hierarchical as well. But, for the Aceh context, there is a uniqueness with the existence of local party (*parlok*).⁹¹

In spite of the small quantity of women in the legislative, from the policy aspect, there is an interesting dynamic that needs a further study. The policy of 30% quota for female legislative candidates initially emphasized through the Decree of National Commission of Election (KPU) became a shocking political stimulation. As a result, women appeared in the list of legislative candidates nominated by political parties in the 2004 election, despite the fact of their placing on big number of 20s or 30s in the list.

This stimulation expanded; with the energy and spirit fired by women's movements more policies to enhance the idea have been formulated. If we analyze the substantial shifting in the policy of politics, it is obvious that this policy indeed has an intention to improve women's participations in politics. If the policy shows the good intention, why there is no significant alteration regarding this matter? A hypothesis that we can build is that the inclination of the good intention is still in the symbolic level, not in substantive implementation. To verify this hypothesis, we can present the following questions: what condition and situation that inspire the formulation of policy strengthening women's participation in politics; was the policy really made based on a good intention or just a lip service?

Below are some policies in Aceh related to the needs of building equality in politics:

NAME OF QANUN	RELATED CHAPTER	ANALYSIS
The Qanun of Local Head Election (<i>Pilkada</i>) of Aceh Province No.7/2006	Chapter 6 on KIP membership (1) Members of Provincial KIP are 7 (seven) persons and District KIP are 5 (five) persons from society elements. (2) Members of KIP are at least 2 (two) persons of women's groups. (3) Work duration of KIP is 5 (five) years since the inauguration date.	This Qanun constitutes the second change of the Qanun No. 2/2004 on Governor and Vice Governor Election, Regent/Vice Regent and Mayor/Vice Mayor in NAD province. If compared with the Qanun No. 2, there is a shifting in terms of district/city KIP membership. There is a clause

⁹¹ Definition of local party according to the Qanun

		<p>mentioning women's element is no longer existing. In fact, this was administered previously and has given an access for women's involvements in district/city KIP in the 2004 election. In addition, the 2004 qanun showed an advanced stride of openness of policy formulation in Aceh to gender equality in politics. At the national level, this issue does not appear. However, this clause disappeared.</p>
<p>The Aceh Qanun No. 7/2007 on Implementation of Election in Aceh</p>	<p>Chapter 5 article 4 on KIP on membership: "Membership of Aceh and district/city KIP by taking women's representation into account at least 30 (thirty) percent."</p> <p>In chapter 10 article (2) on ad hoc independent team: "Independent team as mentioned in article (1) has 7 (seven) persons of academician, social leader and Non Government Organization elements by paying attention to women's representation at least 30 (thirty) percent."</p>	<p>In the Qanun No.7/2006 there is clause on women's elements in district/city KIP and in this Qanun, this matter is reaffirmed. However, the Qanun No.7/2006 was still made as a reference for excluding women's elements in some districts where protest of women's element occurred.</p> <p>The appearance of the clause cannot be separated from the solid and strong advocacy of women's groups. Monitoring of several qanuns, including this qanun becomes a social pressure to incorporate equality issue in the qanuns.</p>
<p>The Aceh Qanun No. 03/2008 on Local Political Party</p>	<p>Chapter 4: "Organizational structure of a local political party by paying attention to women's representation at least 30 % (thirty percent)s;"</p> <p>Chapter 6d on Requirement of Election Participant Registration: "Letter of recommendation from a local party executive board at Aceh level on the participation of women's representation at least 30% (thirty percent) in accordance with regulation;"</p> <p>Chapter 16 on Mechanism of Proposing the Prospective Candidate of DPRA/DPRK: "List of future candidate as defined in chapter 15 fit in at least 30% (thirty percent) of women's representation".</p> <p>Chapter 18 article (2): "In the list of prospective candidates as meant in article (1), in every 3 (three) persons of prospective candidates, there is at least 1 (one) female prospective candidate."</p> <p>Article 21: on Verification of Prospective Candidates:</p>	<p>This Qanun appears to be participatory in its formulation. The active women's involvement as both internal team and external advocacy group, and the openness of the drafters have given a tremendous space for enhancing women's political rooms through this qanun. There are some visions made as a foundation of thinking for women's groups' inputs to this qanun:</p> <ol style="list-style-type: none"> 1. There is a need to include women's political cadre who joined and was actively involved in a political party for long time since the establishment of the party. Therefore, it is required to oversee a regulation that facilitates women's engagement since the establishment of the party. 2. Being involved in political party is a learning experience for all party cadre including women, therefore women must exist in the organizational structure. 3. It is expected from the strategy above that a political party can

	<p>(1) Aceh KIP verifies the complete documents and validity of administration requirement documents of DPRK prospective candidates for the fulfillment of at least 30% (thirty percent) women's representation.</p> <p>(2) District KIP verifies the complete documents and validity of administration requirement document of DPRK members and verification of the fulfillment of at least 30% (thirty percent) women's representation.</p> <p>Chapter 22 in if party does not meet 30% women's representation.</p>	<p>strengthen its function of upgrading capacity of cadre so the party will not encounter difficulties in seeking a female cadre for running in an election and will not apply a strategy seeking a 'ready' cadre by asking a women's activist or academician who already have a political capacity for being a candidate in an election.</p> <p>4. During that political moment, women's groups are often demanded to provide capable and ready women. There is an inclination of blaming the situation by underlining a statement that the space (for political participation) has been given for women, but women have no intention and capability to get involved in it.</p>
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D. An Analysis of the Influence of Women's Movements Monitoring the Makings of LoGA

The solid advocacy of women's groups is an influential stride in the appearance of women's clauses in some policies in Aceh. This achievement cannot be separated from the success story of women's movements' active involvement in monitoring the makings of the Law of Government of Aceh (LoGA) popularly called UUPA in 2006. That was the turning point for greater women's engagements in the formulation of the following policies there.

The experience provides an important lesson-learned on how to build an effective policy advocacy and monitoring in the formulation of a regulation, including by women's groups in Aceh. Below are some notes women's rights movements can consider from their own experience in monitoring the law formulation:

1. Women's involvements in monitoring the makings of LoGA have given a wide implication in strengthening their bargaining position in the process of formulating the more recent policies. This is proved by the fact that women's groups have been included in the process of making a

number of qanuns and other policies. Even though sometimes a negative statement is still being heard, such as, “(If we do not include women, we are afraid that) we will be considered leaving women....” Despite the stereotypical comment, this opportunity indeed has provided an important and strategic space for women’s movements, mainly in struggling for gender responsive policies. Furthermore, as the progress has opened a wide access for public participation, this has become an opportunity for strengthening community based developments toward a more transparent policy planning.

2. In addition the above point, the experience in LoGA has inspired women’s groups in Aceh to strengthening their ‘target’ movements toward policy advocacy. At the beginning of women’s involvement in the law formulation, it was observed that only very few women’s groups taking part in the struggle for women’s empowerment rights through policy advocacy. After the legalization of LoGA, policy advocacy has invited a greater attention from more women’s rights elements in Aceh. In fact, there has been an increasing demand for developing many qanuns as the follow-up of the legalization of LoGA.

E. Women and Politics in Aceh in the Post-2004 Election

The term of legislative and politics have different significances when both are linked to the term women. Cultural perspective alive in society creates an oppositional meaning for the terms women and politics; on the one hand, politics is associated with difficult subjects and full of intrigues and, on the other hand, women are identical to being gentle that is not concordant with politics. This cultural view turns into a value influencing the relationship between women and men in political domain.

Some members of the society tend to assume that politics is not deserved or is unsuitable for women. Meanwhile, within the women’s circles, a tendency to following such a public perspective also affects to weakening women’s interest in and motivation to taking a part in this field.

In fact, an analysis has emerged that the limited number of women in the legislative and executive has led to the emergence of policies that did not address women's conditions while there has been an increasing voice that women's empowerment needed to be a crucial agenda in development programs.

The phrases '**female legislative**' (*legislative perempuan*), 'women in political party' (*perempuan di partai politik*) and '**female executive**' (*perempuan eksekutif*) seem to be more neutral compared to the phrase '**women's politician**'. Though female legislative, women in political party or female executive from the linguistic perspective include women's politician, the use of these phrases differently and separately, in fact, gives an impression that could diminish the negative impact to women's participation in the political lines. This issue cannot be separated from the existing stereotypes given to the term politics in corresponding with women.

If we refer to the *trias politica* concept on the three dimensions of governance, the quantity of women in these realms in Aceh is still small. Data compiled by Aceh Gender Working Group in 2007 displays that in the provincial legislative out of 69 members, only 3 are females, from 646 members of the district legislative all over Aceh, only 41 are females, from 13 members of the national legislators from Aceh, only 1 is female, and out of 5 senators from Aceh, only 1 is female. In the executive level, a number of women at decision making level are also small. Out of 74 officers of echelon II, only 2 are women. The condition in judicative institution is not very much different; out of 9 judges in the provincial court, only 4 are females; out of 10 judges at Sharia Supreme Court, none of them is woman; from 138 judges of Sharia Court, 15 are females, and out of 31 prosecutors, 6 are females.

The data proves the small number of women at the level of decision makers in Aceh. The number of women at the level of staff and subordinates is higher than the number of men or equal. Some might appraise that the condition is a consequence of women's weak capacity as the competition to

enter the position is equally open for both women and men without any rule prohibiting women to be at decision maker levels.

With a deeper analysis, we found that the biggest factor causing the weak women's participation is discrimination against women based on a cultural construction. For instance, women's multiple burdens hamper their interests in being engaged in public sectors; there is also a social stereotype that women are inferior and men are superior and leader and women are less significant groups in politics. In addition, as a result of the long history of discrimination, it is found even among women's groups that women are indeed not supposed to be a leader and it is better for women to be 'ordinary.'

Within an unequal cultural environment against women that blocks women from being able to having a fair 'competition,' a policy cannot be a single indicator to determine the equality or fairness in the political 'competition.' In the reality, there are some cultural norms and other obstacles in the policy implementation that cause the limited number of women at decision making level in public institutions. Furthermore, the political system that does not tolerate women's limitation as a consequence of such a cultural construction plays an important role in making the weak existence of women in decision making positions.

The existing problems hampering women's participation in politics and public institution that has given a negative impact in creating development programs that ignored women's needs has led to the development of the policy of affirmative action by giving 30 % quota for female legislative candidates, membership in local political party, Commission of Election (KPU) and Independent Committee of Election (KIPP) as well as representation in the Aceh Ulama Council (MPU).

It is important to elaborate how this policy has triggered a public controversy; there have been pro and contra groups with their various arguments about this policy of affirmative action. However, as mentioned earlier, the policy of affirmative action for women's participation in

developments is still being applied as part of the general steps in improving a social welfare. By giving a special opportunity through the affirmative action policy also means providing an equal responsibility for women in development programs along with men. Moreover, with this opening window of women's participation –that must be followed by providing capacity building programs--, development programs would involve more human resources that would expand the chance of bring prosperity in the reality.

The policy of affirmative action has significantly influenced to improving women's interests in politics. The establishment of local political parties in Aceh has also played a significant role in reducing a cultural stereotype about women in politics. Women (and men) now have a greater access to any discussions and conversations on politics. (Previously, in Aceh, only men could be involved in political conversations and even political 'gossips' in coffee shops, a tradition living in Aceh). The women's participation in political turmoil is a result of the regulation applied to political parties to give quota to women in the party's board of founders and in executive board. Based on the regulation, efforts of recruiting women to get involved in political parties have been thrived.

As a new dynamic and phenomenon from the previous situations, various circumstances appear as part of problems that need a solution, despites the evoking controversy. At the earlier stage, the problem rested when political parties recruited women; many women presumed to having a qualified capacity have refused to join in political arenas. The circumstance was made as a justification to argue that the policy of quota was compelled. A significant change occurred when political parties decided to apply a policy of providing capacity building programs for women's political activists instead of just searching and recruiting 'popular' women's activists. In fact, a phenomenon within women's groups to enter political parties at that time significantly emerged.

Under such a progress, many groups have built a prediction about the augmentation of the number of women in the legislative and executive bodies. Nonetheless, the important issue was how this increasing this quantity would give an advantage in making qualitative policies and development implementation that addresses women's needs is very much determined by various factors, including capacity and capability of women involved in politics.

Capacity improvement undoubtedly is not only a necessary agenda applied to women in the legislative and executive; this is a joint agenda to build professionalism of the legislative and executive. It is crucial to highlight the last point of capacity building as an agenda of reforming the legislative and executive in general because it oftentimes happens, if there is a female legislative or executive assumed incapable, her incapability would be associated with her sex and would be greatly exposed and used as argument, "Look! Women are not capable." Meanwhile, in the same case when a male executive and legislative is found incompetent, many people usually do not care about it.

F. Women and Politics in Aceh in the Post-2009 Election

The major perspective within the society views that politics is simply an election to vote for either head of the country/local government or a legislator. Politics is also stereotyped as the sibling of power and the neighbor of manipulation and violence. The over simplification and stereotype against politics lead some groups to staying away from political worlds.

In fact, such a misunderstanding of politics is not only merely because of lack of knowledge about politics, but also some bad politicians' behavior and work performance. Politics should be understood as part of the dynamic systems of human's life orders. Good politics would be a positive power that would give a positive impact for the society progresses. On the contrary, bad politics would be a negative power that would affect social setback and even

social destruction. Therefore, instead of avoiding and evading politics, it is important to influence it with positive powers.

Aristotle's classic theory mentions, politics is an effort made by citizens to achieve joint kindness. Hence, in the context of nation-state building, all citizens both women and men are demanded to dedicate their sense of politics to develop the State's joint goodness. In an informal politics, every individual is engaged in politics when she/he deals with their ideas and decisions.

In many contexts, such a misunderstanding of politics and stereotype of women now grows to be a significant challenge for women's involvements' in political stages. We face dilemmatic situation that call for way-outs for both situations. On the one hand, women's representation in the legislative that is needed to integrate gender perspectives in making policy is still limited and, as a result, women are left behind in several realms that illustrate unequal developments. On the other hand, women's occasions and spaces to involve in politics are still very narrow.

Many members of the society said, "Opportunity has opened equally, now it depends on women's intention and capacity." This query needs a comprehensive answer that is not based on competition of sexes. Moreover, it is found that the 2009 legislative election in Aceh illustrates the number of women's representation is smaller than the previous *pemilu*; even there are some districts that do not have female legislative member. Does it mean that Aceh women are lack of capacity and capability (to enter into politics)? How do we analysis this situation to building a vision and strategy?

Many historical contexts demonstrate that women's rights of political participations are not achieved without a strong endeavor; they are obtained through a struggling movement indeed. New Zealand is the first country giving a right to vote for women in 1893, but women themselves gain the right to be voted for being a parliament member in 1919. Finland gave suffrage for women or the rights to vote and to be voted for in 1906.

Until 1921, all Scandinavian countries like Norway, Swedish, Ireland and Denmark have given suffrage for women (votes for women).

In Indonesia, in the 3rd Indonesian Women's Congress (*Kongres Perempuan Indonesia/KPI*) in 1938, the voice to give Indonesian women political rights was echoed; the event also confirmed 22 December as Indonesian Mother's Day. Women in the country kept struggling for political rights by campaigning women's representation, and fighting for Maria Ulfa for being a Volksraad member, though she failed. The equal political rights between women and men at least are guaranteed legally in chapter 27 of the State's Constitution 1945. Maria Ulfa later on was chosen as Minister of Social Affairs in the Syahrir II Cabinet (1946) and S.K. Trimurti served as Minister of Labor Force in the Cabinet of Amir Sjarifuddin (1947-1948). In the 1955 election, Indonesian women's movements succeeded in placing women as a parliament member. Nevertheless, the progress initiated through women's political representation was given a negative image by the New Order political approach that made women's political movements in the country were stagnant. Hitherto, the average of women's representation in parliament is 8-10 percent.

Moving on from the common awareness about the significance of women's representation in the legislative and about the multi-difficulties has been existing since long time ago of finding spaces for women to enter into political institutions, the government has developed the policy of political quota for women to provide a wider access for women to break through the political nets. While the policy of quota is an important strategy toward fair and equal development results, this study observes, the actualization of the quota policy does not show a real and serious commitment from the government.

A political scientist and observer of University of Indonesia, Rocky Gerung mentioned that the 30 % minimum quota is a debt payment of the human civilization for women. It is evident that since the long period of the human history, our social and cultural construction underlines that politics

is unsuitable for women; even other public roles are not women's work area because women are destined to taking care of household. Such a cultural perception as well as the weak policy implementation have caused to creating the minimum number of women's representation in political arena for so long. When the policy and the development programs could not give any equal impacts for women and men, and the State realized its female citizens are lagged behind, it was realized that women's representation in politics and development is indispensable.

The policy of 30% minimum of political quota for women in the legislative began to appear based on the National Law No. 12/2003 chapter 65 article 1 mentioning that 30% quota of women's representation in the legislative candidates must be nominated by a political party. The 2004 election noted the fact of a lot of women in the list of the legislative candidates proposed by contesting political parties; nevertheless, because these female legislative candidates were listed in an 'insignificant' consecutive number, this quota policy has not given an enormous influence for women's representation in the legislative.

The policy of 30% quota is enforced by the National Law No. 2/2008 on Political Party that requires minimum 30% quota for women in founder board and executive board in a political party. The National Law No. 10/2008 on Election stipulates this 30% minimum quota with the formulation of a new chapter regulating that out of three registered candidates of the legislative members proposed by a political party, one of them must be a woman. This chapter was issued as an evaluation of the implementation of the quota policy in the 2004 election that showed a political phenomenon of placing women in the list of unnoticed candidates of the legislative members. With this chapter, women are expected to get into the top numbers of list in their political party's proposal. Yet, this expectation was not applied because there was a new decision giving a chance for a political party to choose the registered and eligible candidates (*caleg jadi*) based on the consecutive number or the majority vote (*suara*

terbanyak). Therefore, the government policy settles on the registered candidates of a political party was determined according to the majority votes. This means that, even though women attain a significant position in the consecutive number, it does not signify their chance as the most important aspect of being elected is the quantity of voters. Again, the policy of 30% quota did not give a significant access for increasing women's representation in the legislative.

This study observes that the efforts of women's groups in Aceh to fight for women's representation in the legislative in the 2009 election have been getting more systematic. A number of women's rights components involved in the struggle are female candidates, political party activists, women's rights activists and voters. This systematic synergy is apparent from the increasing attempts in empowering female candidates through political education, the establishment of women's political caucus, and multi-party female candidate networking, and policy advocacy and mobilization of political supports for female candidates.

However, the challenges faced by female candidates were quite serious. The government's decision to determine the political parties' registered candidates with the majority votes has settled a female candidate in a hard position; it means that there was no affirmative action and female candidates have had to compete in political arena under a social stereotype that politics does not fit women. As a simple analogy, it can be described that there is a room with a spider called *tuha family* with its nets connecting all sides and, in this situation, a new spider coming to see an opportunity to enter the room will absolutely get difficulties to find the exact space there even to build its nest. Though, all spiders of *tuha family* yell to welcome to the new spider build a house, the new spider encounters a trouble, except the spider of *tuha family* is willing to move, manage, and provide a space for the new spider as affirmative action so the new spider can engage. This has to be done by *tuha family* for the kindness and balance of all spiders.

Other challenge confronted by female candidates and other candidates in the last 2009 election was the complicated election system that has created an unclear situation and a possibility of a voter's mistakenly chose a candidate she/he supports. When a voter is willing to vote for a qualified woman, where she/he obtains information about the candidates? In fact, there was confusion among voters as a result of the number of candidates with their campaign strategies through banner, billboard, sticker, etc mixed between one candidate with another of district, provincial and national legislative members.

Female candidates have encountered frauds both in internal political party and inter-political parties. A lot of female candidates registered complain on the votes their political parties resulted as a basis of determining elected candidate based on the highest votes a candidate could get was a clear evident of the political foul that needed a serious attention in the next election. A lot of voters decided to vote for a party, not a candidate; the votes would go to a candidate placed in the top number of the registered list of candidates.

Limited number of critical political voters was also a challenge for female candidates in the last 2009 election. Indeed, it is not easy to educate political supporters as there was a tendency among them to vote a candidate not based on an object reason, such as capacity of the candidate. Strengthening critical perspective of political supporters must be an integrated agenda in the efforts of increasing women's political representation.

The so-called "political tsunami"⁹² or political disaster has been a challenge in building a democratic politics in post-conflict Aceh in general. It is not easy to 'control' the dynamic changes in the recent times the Aceh politics and color them with substantive ideas of gender equality, for

⁹² Political tsunami is told by a respondent to describe vast changes in the Aceh politics which involved political systems and dominant power holders driving the policy direction and flow.

instance, because of the dominant power determining the political direction in Aceh.

G. Closing

In a conclusion, the less represented women in the legislative are an issue that must be addressed in the future agenda that needs a serious thought and attempt from all social elements in Aceh. The effort to augment women's representation cannot be considered an individual interest; this is a joint interest for the sake of the virtue of the nation-state. Below are some concluding points:

1. Even though the policy on gender equality in politics in Aceh appears to be very progressive, it is found that serious efforts to implement the policy are still rarely done.
2. The situation is a result of numerous conflicts of different political interests, positions and power. A group with greater power tended to dominate the discussions in the formulation of policies in political fields; if there a women's clause is found in the policy, it is used only as a serial effort of a political group to get political support or due to a strong pressure of women's groups; it is not because of a strong awareness about women's political rights.
3. Social-cultural stereotypes to female politicians from both members of the society and politicians are found as a challenge for women's political representation. From the society, it is said that it is not appropriate for women to be in politics and from politicians, women are considered incapable to be in politics.
4. The Qur'an Chapter an-Nisa': 34 and the Prophet Muhammad's *hadith* of the ruin of a Persia Kingdom are not a religious legitimacy to ban women's leaderships, but in fact many groups in Aceh employ them as political bullet in competing against their political rivals.
5. The awareness of women's groups about policy advocacies is still found unstable in the sense that they are involved in this effort based on an

incidental circumstance. This is a consequence of the limited established organizations focusing on policy monitoring, lack of capacity and skill of policy monitoring, and the endeavor of policy monitoring is not really based on strong awareness about women's political rights.

6. The "political tsunami" is a vulnerable political situation with a gigantic hindrance for coloring the political dynamics in Aceh with a range of policies integrating gender equality.
7. Therefore, in such a situation, a join stable, extensive and sustainable strategy involving various social and political elements in the area needs to be undertaken in monitoring the policy implementation.

THE POLICY OF WOMEN'S AND CHILDREN'S EMPOWERMENT IN ACEH
(An Analysis of the Aceh Qanun on Women's Empowerment
and Children's Protection)

By Anita T Iskandariata

A. Introduction

The policy of women's empowerments and children's protections in Aceh has experienced a progressive improvement since the giant tsunami hit the area in 26 December 2004 claiming about 250.000 lives.⁹³ Only a few months after the disaster, the violent conflict in the area involving Gerakan Aceh Merdeka (GAM) or the Free Aceh Movement and the central Government of Indonesia ended. In 15 August 2005, the two parties signed the peace agreement –popularly Memorandum of Understanding (MoU) of Helsinki-- to stop the 30-years vertical conflict. The peace agreement has brought a blessing for Aceh people as it was agreed in the MoU that the process would be followed by the formulation of an act regulating the Special Autonomy (*Otonomi Khusus*) for Aceh.

Both the tsunami and the conflict have inflicted a serious suffering and backwardness for people in the area in a wide range of dimensions, including loosing lives and properties. Therefore the moment of after the tsunami and the conflict has provided a big opportunity for the Aceh society to create two crucial agendas focusing on the post-tsunami and post-conflict situations. Two leading government based institutions were found to respond to the needs: *Badan Rehabilitasi dan Rekonstruksi* (BRR) Aceh-Nias or Reconstruction and Rehabilitation Body of Aceh-Nias for dealing with the post-tsunami issues and *Badan Reintegrasi Aceh* (BRA) the Aceh Reintegration Body for handling the post-conflict situations.

The post-tsunami and post-conflict rehabilitation and reconstruction process has opened an extensive space for democracy and public participation where civil society organizations and women's rights movements in the area could gain wider freedom to express their voices including in the formulation of a law

⁹³ *Serambi Indonesia* in 2005

that latter is called *Undang-undang Pemerintah Aceh* (UUPA) or the Law of the Government of Aceh (LoGA). Women's groups in Aceh with a number of stakeholders were actively involved in the process of the policy formulation. Many women's rights activists have known some members of the Aceh Legislative Body (DPRA) who have been involved in civil society and women's rights movements; their friendship has transformed into a more formal communication through the organization. These legislative members considered women's groups as their key partners in political processes and gave a space to discuss women's agendas. It can be said that the situation proved the existing 'unwritten' acknowledgement of women's rights and important women's role at that time in Aceh. Women's groups always received an invitation from DPRA to attend a public hearing; DPRA oftentimes entrusted a women's organization, Mitra Sehati Perempuan Indonesia (MISPI), to distribute the invitation letter to other women's organizations.⁹⁴

Women's struggle through policy advocacy is an emerging strategy among women's movements in post-conflict and post-tsunami Aceh. Policy advocacy has been viewed as a strategic entrance to create an equal development for women and men. Aceh women as other women in Indonesia have not been able to participate maximally in developments. Women's access in education, economy, politics, social, culture and law is still limited. Maternal mortality rate is still one of the highest in Asia; illiteracy rate among women is higher than man; women are the majority of poor Indonesians; even case of violence against women increase every year. The real condition of Indonesian women reflects women's condition in Aceh.⁹⁵

1. Maternal mortality rate in Indonesia is the highest in Southeast Asia, which is 307/100.000 live births (Indonesian Health and Demographic Survey or SDKI) 2002/2003).
2. Out of entire illiterate population above 10 years old, 67.9% is women (Republika online, 2006).
 - a. 48.8 % Indonesian population is poor where most of them are women (Sinar Harapan, 2005)

⁹⁴ Interview with S R, a woman's rights activist, Banda Aceh, 15 May 2011.

⁹⁵ Paper delivered in Seminar of *Raqan Bidang PPP* Formulation, Biro PP Setda Prov.NAD, 17 December 2005, Gedung PKK of NAD Province.

3. Domestic violence rate increases every year (Annual Report of National Commission on Violence Against Women (Komnas Perempuan), 2005)

In general, women in Aceh obtain formal education from primary education to college level. Even though there is a percentage difference between boys' and girls' participation in education, academic achievement of girls is higher than boys. In economic field, women are only involved in small entrepreneurs. Women's access to law is weak; when women initiate a divorce application (*gugat cerai*), they are blamed as being intoxicated by gender issues. Similar situation applies in politics; women encounter limited access to political resources because they are less capable to build and provide political arguments and less skilled in public communication. Women do not have sufficient access and control to their asset and property.

Looking at the existing women's conditions as described above, the Women's Empowerment Bureau (Biro PP) --now Women's Empowerment and Children's Protection Body or Badan Pemberdayaan Perempuan dan Perlindungan Anak (BP3A)-- of Aceh viewed the importance of initiating a regulation ensuring women's rights and children's protection. As an initial step, BP3A submitted Draft of Women's Empowerment and Protection Qanun or Qanun Pemberdayaan dan Perlindungan Perempuan (QPPP) and Draft of Child Protection Qanun or Qanun Perlindungan Anak (QPA).⁹⁶ Women's real conditions in Aceh since the establishment of the bureau to the tsunami disaster in 2004 have inspired the bureau to formulate the qanuns. Both before and after the tsunami, women and children in the area have been in a subordinate position in which they have not got their rights of justice and equality. A policy on gender that has inspired the formulation of QPPP is the President's Instruction (Inpres) No. 9/2000 on Gender Mainstreaming or *Pengarusutamaan Gender* (PUG).⁹⁷

The recent status of QPPP can be illustrated in the phrase of "*berat di ongkos*" (too costly). After several years since the qanun was passed, it has not been implemented as a regulation for empowering and protecting women's rights. The making of the qanun has met a participatory legislation process, but until now,

⁹⁶ Biro PP of Aceh Province was set up in 26 January 2000.

⁹⁷ Interview with Lailisma, Head of Biro PP leading the QPP draft formulation, Banda Aceh, 18 May 2011

it has not been assigned as a legal reference for SKPA to apply their responsibility in women's empowerment. The implementation of the qanun should be carried out under a coordinative mechanism within all government institutions and community organizations related to women's empowerment and women's rights protection.⁹⁸ The similar situation occurs in the QPA; its implementation still faces a lot of challenges and obstacles.

The condition illustrated above is the background of conducting this research and review to the policy on women's empowerments and children's protection in Aceh. It was found that on the one hand, the qanun contains of important materials, but, on the other hand, its implementation is still far from our expectation. This review will elaborate why such a situation occurs.

B. Discussion

1. Pre-Women's Empowerment and Protection Qanun

The formulation of QPPP draft initiated by the executive through Biro PP was finished at the end of 2005 and was submitted to the Law Bureau (Biro Hukum) at the Aceh Governor's Office. Nevertheless, this draft remained 'untouchable' for a long time in the bureau.⁹⁹ Women's groups 'reawakened' the process of the qanun formulation; MISPI, JPUK and UNIFEM (now UN Women) have worked together for the finalization of the draft. Unfortunately, the qanun discussion in the legislative body has run very slowly as a result of different perspectives of the legislative members toward the qanun. After a membership change of commission in the legislative body, QPPP was brought into the table for discussion again.¹⁰⁰ The bill of qanun (*raqan*) was submitted by civil society and women's rights movements in Aceh. UN Women as a UN agency having a mandate on women's engaged in the struggle of women's rights in Aceh, including in the makings of the qanun has suggested including gender experts to assist the

⁹⁸ Qanun No. 6/2009 on Women's Empowerment and Protection, chapter 4

⁹⁹ Interview with Lalisma, Banda Aceh, 18 May 2011.

¹⁰⁰ Interview with IS, a member of a commission tackling QPP in the Aceh Parliament (DPRA), Banda Aceh, 18 June 2011.

formulation of the qanun.¹⁰¹ This was among the progressive movements and advanced steps of women's rights movements in the post-tsunami Aceh. Less than a year after the initial step, Aceh women have gained an importantly wider opportunity to get more active engagement in the development of the 'new Aceh.'

The uncertain situation of the post-disaster Aceh that invited global attentions and aids was a golden opportunity for civil society and women's rights movements in the area to get stronger supports both moral and material assistances to re-mobilize and re-consolidate women's participations and roles in development. Propulsion to be risen has been strong enough. Under a strong encouragement from both international and local organizations, stakeholders of women's empowerment agendas were strongly motivated to 'straighten up.' With the active support and available aids, women's and children's empowerment programs could gain greater public attention.

Biro PP had also experienced the impacts of the severe disaster; some of its staff became a survivor of the tsunami and some of them even died. In such a critical condition, Biro PP was still demanded to actively lead the coordination in working on overcoming women's and children's problems. Some international NGO as well as United Nations (UN) especially having a focus on women's and children's issues, such as UN Women, UNDP, UNFPA, and UNICEF, among others have shown their intensive involvement in various women's empowerment and children's protection programs in the area; they have played a crucial role in building a good communication and a mutual relation with the government of Aceh to invite its support and political will to women's and children's issues.

Eventually, responding to the situation emerging in the post-tsunami, women's rights activists in Aceh agreed to found Gender Working Group (GWG), a network to facilitate sharing and exchanging any ideas and initiatives in integrating gender issues into post-tsunami reconstruction and rehabilitation programs.¹⁰² This important progress could not be separated from the intensive communication and discussion among all women's rights elements in the area. A number of UN

¹⁰¹ Interview with I S, Banda Aceh, 18 June 2011 and interview with S R, a woman's rights activist actively involved in the policy advocacy.

¹⁰² Strengthened by Decree No. 470/009/2005 on 28 February 2005

agencies, such as UN Women, ILO, UNDP, and UNICEF as well as international, local NGOs, and government institutions including Biro PP, Bureau of Statistics (BPS), and several other institutions joined in GWG.

The establishment of GWG has eased the government, civil society and women's movements, UN and International and local NGOs in conducting women's and children' empowerment programs under a good communication and coordination. A weekly meeting and discussion was carried out in Biro PP office as a mechanism of strengthening the networking and coordination. This intensive periodical discussion in GWG has facilitated the development of an important initiative to draft a gender responsive qanun that was expected to be a legal reference in settling on gender based policies.¹⁰³

At that moment, Biro PP, with its status as a bureau only, had a mandate to making a regulation, but it did not have authority in the implementation. In fact, having a regulation without implementation did not have a meaning for women's empowerment efforts. In the field, while many women's problems needed a direct intervention of Biro PP, the existing regulation hampered its function to get deeper engaged in facilitating and implementing various real actions to overcome various women's problems within the society. There was an emerging awareness among women's rights elements about the authority and mandate of Biro PP. The groups voiced the upgrading of the structural position of Biro PP within the provincial Aceh governance from a bureau (Biro) to a governmental body (Badan) within greater political and legal authority and mandate so this government machinery could work on both the making and the implementation of a policy on women's empowerment.¹⁰⁴

When there was a policy of structural downsizing within the provincial Aceh government in 2008 by reducing governmental body (*badan*) and office (*dinas*), women's rights activists took a different step by voicing the need for upgrading Biro PP from a bureau level to a government office (*dinas*) or at least to a government body (*badan*). Advocacy and lobby was actively conducted by women's

¹⁰³ Interview with Lalisma, Banda Aceh, 18 May 2011

¹⁰⁴ Interview with Lalisma, Banda Aceh, 18 May 2011 and I S, Banda Aceh, 18 June 2011

rights groups to the Aceh Parliament (DPRA).¹⁰⁵ Finally, after an intensive discussion and debate, the groups successfully convinced the government to upgrade Women's Empowerment Bureau (Biro PP) Women's Empowerment Body (Badan PP).

2. Historical and Sociological Background of the Qanun Formulation

Below are the situational reasons Biro PP referred in proposing the qanun:

The first situation: there was an increase need to the qanun formulation as a manifestation of a joint willingness between the government and women's rights activists to integrate women's empowerment programs into both sectoral programs and in government institutions including at local level pertained to their function and authority. Each government institution and local government could create various initiatives to implement the mandate of the *Inpres* No. 9/2000 on Gender Mainstreaming (PUG). The policy is empowered by the National Law No. 25/2000 on the National Development Program or *Program Pembangunan Nasional* (Propernas) that regulates gender responsive development. Empowerment is signified as an effort of strengthening women's position and role for the sake of gender equality and equity. Gender Mainstreaming (PUG) is an important strategy of women's empowerment.¹⁰⁶ Empowerment is meant as an approach to enlarge access and control of women's groups to economic resources, politics (decision making), and culture (formulation of cultural value, symbol and ideology). Women's empowerment can be applied through several ways, such as organizing and mobilizing local resources which encompasses financial resources, energy, knowledge, intellectuality, trust and respect, and solidarity.¹⁰⁷

¹⁰⁵ Interview with IS , Banda Aceh,18 June 2011and interview with Lailisma, Banda Aceh,18 May 2011

¹⁰⁶ WEMC Indonesia Team, *Women's Empowerment Initiatives in the Middle of Islamic Politization, Patriarchal System and Democratization*, Yogyakarta: Semarak Cerlang Nusa, 2008, pp. 30-31

¹⁰⁷Titik Hartini, *Creating Women's Social Welfare (toward Empowerment)*, in One Day Seminar of Islam, Aceh and Women, Depok, 12 December 2007, p.2.

The second situation inspiring the formulation of the qanun is the fact that in the period of post-tsunami rehabilitation and reconstruction, development aids did not strongly address women's needs; the principle of good governance, gender responsive development, and gender sensitive budgeting were almost left behind at that time. Weak public participation including women in the reconstruction and rehabilitation program was a clear evidence to prove the existing situation. In fact, under such a circumstance, there was even a voice to remove Biro PP from governmental structure. The response of women's groups to the idea has prevented Biro PP from being eliminated; if this happened, the problems faced by women and children in the area would not get serious attention and could not be handled institutionally and systematically. In fact, in the reality, the problem got bigger and more serious.

The third situation is the prevalence of violence against women in Aceh has shown a significant increase every year.¹⁰⁸ This situation has led to the growing public empathy in the society that has inspired the legislative members to show their political will and give their support to this qanun. Women experienced domestic violence, abuse, torture, trafficking, exploitation, and discrimination. A women's organization, LBH Apik in its 2007 Annual Report reported that the number of violence against women cases has risen about 17% per year, particularly domestic violence and sexual violence against children.

In 2007, the Special Rapporteur for Aceh (from Women National Commission) reported that 81 cases of violence occurred in the Aceh refugee camp since 2005 to 2006, 75 % of the case was sexual violence. From a monitoring conducted in 2000-2007, various forms of discrimination and violence against women were found in Aceh contexts of the armed conflict, after the peace agreement, and within the implementation of Islamic sharia law.¹⁰⁹

In addition, women in the refugee camp of the tsunami survivors have confronted several constraints, such as the building of barracks that ignored

¹⁰⁸ Admitted by Lailisma and IS in their interview

¹⁰⁹ Khairani, et al., *Analytical Research of Public Policies*, Banda Aceh: Pusham Unsyiah, 2009, p. 36-37

special women's needs and the limited access to public domain. Some problems faced by women in the refugee camp included:

1. Insufficient facilities
2. The absence of legal protection for women and children
3. Weak involvement of women in decision making
4. Insensitive gender custom (*adat*) and culture
5. The absence of information center of Islamic law and sharia.

The fourth situation was the emerging public empathy to women's experiences after the tsunami as a single parent who served as the head of household and made money to support their family incomes by performing moonlight jobs.¹¹⁰ After the tsunami, the number of women playing a role as the head of household after their husband's death or other factors significantly increased. Women live in a powerless and marginalized condition in various fields of economy, education, and law, among others. The majority of women in Aceh, as in other parts of Indonesia, do not obtain protections, including in law and economy as a result of some policies marginalizing women.¹¹¹ The real women's condition has inspired the decision makers in Aceh to bolster up the establishment of the qanun.

The fifth situation is related to the historical awareness of the Aceh society that has led them to glorifying its historical 'achievements,' including the presence of heroic heroines. Women in the history of Aceh played an important role in all public sectors, such as politics, economy, law, social, culture, and even religion. The historical proofs depicted that Aceh women had the same capacity and opportunity with men in the social struggles within Aceh society.¹¹² Women's participation in public spheres in the history was assigned as a central reason for decision makers to bring women's existence in the entire aspects of life.

The recognition of women's existence in the Aceh history could not be separated from the fact that Aceh was a region applying Islamic sharia placing

¹¹⁰ Interview with I S, Banda Aceh, 18 June 2011; also interview with Lailisma, Banda Aceh, 18 May 2011 in Banda Aceh

¹¹¹ Discussion in the meeting of Justice for The Poor in European Union, Ketapang Banda Aceh, 2006

¹¹² Qanun Explanation No.6/200

women in the glorious position as stated in the Qur'an that human's glory lies in their *taqwa* (piety, God fearing), not in their sex or ethnicity.¹¹³ The understanding of the Qur'an and the Prophet Muhammad's tradition (*hadith*) as the highest Islamic law has motivated the Aceh society under the endorsement of ulama as the main pillar of the society to admit women's existence and capacity. Women's participation in the public spheres was a self-actualization that manifests religious and spiritual value equal to men's full works and participations in creating the social benefits.¹¹⁴

In *the Story of the Sabil War of Aceh*, it was mentioned that women attained a social recognition. The book told that obligation of *jihad fi sabilillah* (a struggle in the name of God) was applied equally to women and men. The book was written by ulama, such as Tgk. Chik Pante Kulu and Tgk.Chik Di Tiro.¹¹⁵ Islam, the history of Aceh and the book of *Perang Sabil* (the War of Sabil) have been an intertwined symbol in molding the belief and the character of Aceh people.

3. Notes to the Substantive Materials of the Qanun

1. Islam shows its respect to women and lifts them to the lofty position through its teachings disseminated by the Prophet Muhammad –this was admitted by the policy makers involved in the makings of QPPP. Nevertheless, on the other side, we oftentimes uncover a discourse to weakening women's position in the society through various forms of interpretation of the Qur'an and hadith. As a consequence, in Islamic context, discourse on women is similar to other religious displaying different opinions based on different schools of Islamic jurisprudence (*mazhab fiqh*); a debate on an issue in *fiqh* that men's touching a woman's skin can disqualify his *wudhu* (condition of being 'pure' before praying) can also be applied in women's being a leader or women's participation in public domains.

There was an extraordinary occasion in Aceh when Kali Malikul Adil Syiah Kuala who served as a jurist (*mufti*) of the Kingdom of Aceh Darussalam agreed

¹¹³ The Holy Quran, surah Al-Hujarat verse 13

¹¹⁴ Interview with I S, Banda Aceh, 18 June 2011

¹¹⁵ Look at the manuscript of *Hikayat Perang Sabil Tgk.Putroe dan Nasha-i-hul Gazhat*

that the kingdom was ruled by a woman. Hence, almost 60 years the kingdom was governed by queens (*sulthanah*). After the jurist passed away, a political group thirsty of power built a conspiracy with an ulama from Mecca to restrict female leadership from the kingdom by employing a verse in the Qur'an stating that Islam forbids women's leadership.¹¹⁶ This marked the end of women's leadership in the history of Aceh. Some persisted to embrace the last opinion to reject female leadership in contemporary Aceh through the pretence of the Qur'an and hadith.

2. The Qanun that voices gender equality and equity, in fact, does not employ gender terminology in its chapters, except once in part II on Principle and Objective, article 2 f that mentions "Gender equality and equity." A respondent who was involved in the formulation of the qanun said, "The exclusion of the word 'gender' from the qanun was meant to reduce public resistance against the qanun; the drafters preferred using the word 'woman.' In the draft, there were many words 'gender,' but our friend suggested erasing the word to avoid public allergy."¹¹⁷

In Aceh society, gender is still considered a foreign terminology; discussion on gender issues oftentimes invites public confrontation. Such a misunderstanding about gender issues within the society are based on several reasons: gender is assumed as containing Western's mission to destroy Muslim society. This point of view influences to creating insensitivity of both women and men to gender inequalities against themselves or others around them. The weak public understanding and awareness about gender issues hampers women's ability to voicing gender inequalities they encounter.¹¹⁸

3. If we look out some chapters regulating women's rights in education, politics, law, labor force, and social security, and even religion with regard to women's rights, QPPP clearly refers to legal foundations that administer the fields.

¹¹⁶ See Rusdi Sufi, et al., *The First Rate Women of Archipelago in Flash of History (Wanita Utama Nusantara Dalam Lintasan Sejarah)*. Jakarta: 1994, Menteri Negara Urusan Peranan Wanita

¹¹⁷ Interview with IS, Banda Aceh, 21 June 2011

¹¹⁸ Umi Sumbulah, M.Ag, et al., *Gender Spectrum: An Analysis of Gender Integration in University*, Jakarta: UIN-Malang Press, 2008, pp.4-5

However, for health aspect as stated in chapter 7 article 5 saying that “Women are entitled to attain access of qualified and optimal health information and service” has not incorporated explicitly the related legal foundation. Women’s reproductive health is a very essential issue in CEDAW as mentioned in chapter 12.

4. The policy makers realized the QPPP and QPA as a law accommodating various women’s issues still have a weakness. They admitted that there was tendency among decision makers to issue a legal umbrella as basic policy for women’s empowerment in Aceh. If there was no such a policy, there would no legal foundation legally binding to support women’s empowerments in a variety of fields including strengthening their participation in public spheres. If a weakness is found in the future, the policy could be revised.¹¹⁹

4. QPPP Doesn’t Go Anywhere?

If we see from the formulation process, including discussions developed through it, it is no different fundamental debates about its contents. Nevertheless, there was a point of view emerging during the discussion that the qanun has no significance to be implemented in Aceh. This view did not really influence to the qanun legalization, but it affected to the time spent to building public trust to the significance of the qanun. Now, the qanun struggled for long time has to deal with the difficult implementation.

After the legislative body passed QPPPA and QPA, the executive is now responsible for the implementation. A situation that influences to the stagnancy of the qanun is the leadership change in BPPPA that occurred no longer after the qanun was passed by the legislative body. As a result, the qanun has not been disseminated to the public.¹²⁰ According to IS, a former member of Aceh legislative body who served as a resource person in a QPP discussion, the qanun was socialized several times in Sigli district, but unfortunately it did not touch all related elements in the area; women even did not know the qanun clearly.¹²¹

¹¹⁹ Interview with IS, Banda Aceh, on 18 June 2011

¹²⁰ Interview with RP, a female decision maker, , Banda Aceh

¹²¹ Interview with IS, Banda Aceh, 18 June 2011

There was an irony in which some heads of Women's Empowerment Body at district level did know the QPPP; they did refer to the qanun in formulating a workplan. If they did so, they just formally mentioned the qanun in the preamble. The qanun has not been discussed for a more strategic planning, for instance to help the district government design its vision of women rights movement. Therefore, it was found that many Women's Empowerment Body at district level has not had a clear vision and mission. It seems that the body developed their vision and workplan without a consideration to the qanun.¹²²

QPPP constitutes a regulation that can lead to strengthening the governmental women's empowerment bodies. It is ideally expected that qanun can be a legal reference for the bodies both at provincial and district levels in Aceh in designing their women's empowerment agendas and would be derived into the Governor and Regent regulation (Pergub and Perbup). With Pergub and Perbup, women's empowerment programs can be integrated in development plans and gain significant budgets. BPPA must play its key role in advocating the formulation of Pergub.¹²³

Based on chapter 3 of CEDAW on the State's obligation and responsibility for empowering women and for submitting public accountability on their duties, it can be concluded that the fact that the qanun has not been implemented is an indicator that the government has not fulfill its responsibility.

Recently, the qanun is not widely used as a legal reference in making a decision about women's empowerments and women's rights protection. It is found that, since the passing of the qanun, women's participation and representation at both the executive and legislative bodies does not show an improvement. There is no significant policy promotion on women's empowerment. BP3A formed to coordinate the implementation of policies on women's empowerment and children's rights protection seems to be to 'exclusive' for making a solid

¹²²Interview with S R, a woman's rights activist who actively led the monitoring of qanun by women's groups.

¹²³ Interview with I S, , Banda Aceh, 18 June 2011, and interview with SR , Banda Aceh, 18 May 2011

power in the executive and legislative body. Within this situation, it seems that the qanun implementation has not been a priority.

Some changes were clearly identified in this period as mentioned by a women's rights activist; the good synergy that was built among the executive, legislative, civil society and women's movements in the period of the formulation of LoGA and some subsequent qanuns changed. The close relationship between women's organizations and the other civil society elements was broken after the post-2009 election.¹²⁷ It can be said that it is harder for women's groups to advocate a policy within such a political fragmentation in the new era of Aceh compared to the situation prior to the 2009 election.

Now, the building synergy has to be started from the scratch. The new legislative members needed two years to develop gender perspectives. In addition, there was an internal problem in the legislative body; they were involved in a 'hot' debate to decide the leadership composition of the parliament. After two years, the legislative members could only build a consensus on three from four chairs required. The debate also appeared on the Qanun Jinayah (Islamic Criminal Law) which involved the Governor and the legislative body. In addition, the fact that the Aceh provincial legislation program (*prolega*) conducted without public participation has broken the Qanun No. 3/2007 on the Procedures of Qanun Formulation. Unlike in the formulation of LoGA, civil society elements were not involved in the *prolega*. At present, the problem is getting difficult with the polemics on the Aceh election that would challenge the peace in Aceh. Under such situation, it is not easy for the legislative body to focus on the legislation.

Some people in Aceh have found an 'abnormality' in the regulation formulation, but on behalf of maintaining "post-conflict situation" they decided to keep "silent." Their being "silent" does not mean that they do not see the problem or they agree with the situation. Instead, this is a prudent expression as they are aware about the newly-built peaceful situation that needs to be maintained.

The situation illustrated above has led women's movements to getting rid from policy advocacy and monitoring and shifting their attention to more open

¹²⁷ Interview with S R, Banda Aceh, May 2011

domains of development implementation. In an interview, a woman's rights activist, SR who oftentimes led policy advocacies expressed her disappointment to this situation. Nevertheless, in her opinion, this is an undeniable situation that women's rights organizations in Aceh have to solve. Women's groups now have to work on the new strategy which is moving their central target of advocacy from the legislative to the executive to encourage for the implementation of the qanun.¹²⁸

Nevertheless, women's groups encounter the similar situation in the executive that hampers the advocacy for the qanun implementation. As 'a new government body,' BPPPA has experienced three times of leadership change. The situation is even worse if we look at the fact that workplan, institutional system and coordination mechanism of the body has not been made. This has affected the institutional consolidation that is required for designing a comprehensive program development.

There is an opportunity in the recent situation related to the body. The newly appointed head is Raihan Putry, the first head of the body; therefore, institutional consolidation should not be an issue and her previous experience of leading the body is an important foundation for her second leadership phase to lead the body accomplishes better achievements.

From the explanation above, it is known that the political situation, security stability and internal condition of BP3A that experienced leadership changes have prominently impinged the implementation of women's empowerment qanun; therefore, until now, it can be said that "the qanun does not go anywhere."

3. The Qanun of Children's Protection

In 6 September 2006, Biro PP in collaboration with UNICEF held the first meeting to discuss the establishment of a Child Protection Working Group. This meeting also discussed programs to enhance children's rights protection. Furthermore, the meeting was meant to elaborate the idea of drafting a qanun on children's protection. UNICEF provided financial assistance for the founding of the

¹²⁸ Interview with S R, Banda Aceh, May 2011

Working Group, under Biro PP, to work on advocating policy on children in Aceh. At that time, BRR was also willing to make the qanun on children's protection as it was found in Aceh many children's issues, such as street children, children with different ability (differently-abled or diffable), children guardianship, and violence against children, among others.¹²⁹

Some efforts to enhance children's rights protection in Aceh have already been performed by both government and civil society organizations, such as mass and community organization, foundation working on child welfare, international and national NGOs. Among the important endeavors included:

1. The establishment of a coalition working on children's protection.
2. Program formulation and strengthening coordination of child protection program between national and local governments as well as NGO.
3. The foundation of Provincial Commission of Children's Protection (KPAID).
4. Providing and disseminating information on domestic violence.
5. Initiating policy advocacy on domestic violence.
6. Conducting education and training programs of gender issues and domestic violence.

The post-tsunami Aceh deals with various problems faced by children's survivors of the tsunami. Some of them lose their parents and lived in a refugee camp with their safe family and others with all physical and psychological difficulties, including fear and food and clothe shortage. In the emergency situation, every child needed a protection and support. Some children moved to areas outside Aceh brought by people they might not know. In addition, street children, children with different ability (diffable), and violence are among the main problems related to children in the post-tsunami Aceh.

Children's survivors of the tsunami did not only lose their parent's affection; they also faced a guardianship problem. With a motivation of gaining the children's inheritance, many guardians or relatives, especially from the father's side, demanded child custody. Many relatives from the mother's side, like

¹²⁹ Welcoming remarks by Head of Biro PP, Lailisma in the meeting of the establishment of Child Protection Group (CPG) on 6 September 2006 in Serba Guna Building, Governor Office

grandmother or others taking care of the children did not obtain inheritance for nurturing the children. This is the sociological background of the qanun formulation.

Unlike to the QPPP, the legislative body appeared to show a faster response to the Qanun on Children's Protection. The draft was put forward in 2007 and passed in 2008.¹³⁰ Like QPPP, after its legalization, QPA has the same problem in its implementation.

Part III of the qanun on Children's Religion, chapter 4 article 4 mentions that education and application of religious teaching for children, parents/guardians and teachers could introduce and teach the existing values in a religion embraced by the children. The religious education for children by parent/guardian must not have an effect to children's physical and psychological illness.¹³¹ This chapter is responded by many teachers who feel confused in applying treatments for 'disobey' students. They view that the Qanun is 'too Western,' as seen in its rigid definition of violence against children. Many teachers of religious education in Aceh give a sanction to their students with a light beating by using rattan as part of their learning methods and it cannot be accused as committing violence against children since it is applied for educating and disciplining the children.¹³²

C. Closing

1. Conclusion

Women's empowerment and women's rights protection agendas in Aceh get a strategic momentum during the post-tsunami rehabilitation and reconstruction. Various groups involved in rebuilding Aceh have paid a huge attention to women's and children's rights. Many programs were delivered for the purpose of women's empowerment and children's rights protection at that period. The glorious momentum proceeded through the open opportunity for public participation, particularly women's movement, in the formulation of LoGA.

¹³⁰ Interview with Lalisma, Banda Aceh, on 18 May 2011

¹³¹ Qanun on Child Protection No.11/2008

¹³² Interview with R P, Banda Aceh, May 2011

It is believed that the efforts to achieve gender equality and equity in Aceh will be accelerated if QPPP and QPA are implemented with strong support from all social elements in the area. The successful implementation of QPPP and QPA depends on the capacity of BPPPA as the governmental leading sector having a mandate on women's empowerment and children's rights protection.

Gender issues in development programs appear only in the level of government policy and are not viewed as a social and public need. Gender issues in a government policy are oftentimes for political interest only, for instance, to gain political supporters in local election (*Pilkada*). In addition, project-oriented vision among development implementers is stronger than program-oriented in the implementation of women's empowerment agendas.

Women's movements are still 'stereotyped' as women only agenda; the efforts to enhance gender equality and equity at the legislative and executive body still count on individual awareness of government apparatuses. It means gender sensitivity has not been built at institutional level. Even in many forums attended by a man understanding gender issues, he would only whisper to his female colleagues to incorporate them in a policy.¹³³ He is reluctant to get involved in this agenda directly.

An intensive and active advocacy to the legislative and executive body plays an influential role in determining the success of working through policy for empowering women and protecting children's rights. In fact, the networking of multi stake holders within women's movements has gained a significant achievement in making gender responsive policy in Aceh.

QPPP reflects the principles of gender equality and equity and shows the spirit of CEDAW. The next agenda is the policy implementation as an embodiment of the responsibility and accountability of the government in empowering and protecting women's and children's rights. BP3A as the governmental leading sector having a mandate on women's empowerment and children's rights protection has not been proactive in working on the implementation of the qanun.

¹³³ Interview with NH, Banda Aceh, 18 May 2011

2. Suggestions

- a. It is crucial to develop a synergy among the legislative, executive and civil society movements in conveying women's empowerment and children's rights protection agendas.
- b. It is also important for women's rights movements in Aceh to actively build advocacy to the executive toward the implementation of QPPP and QPA.
- c. It is also necessary for women's rights movements to strengthen and consolidate the network and coalition in fighting for women's and children's rights in Aceh.

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The Aceh Qanun No. 6/2009 on Women's Empowerment and Protection

The Aceh Qanun No. 11/2008 on Children's Protection

Budgeting Policy In Aceh **(An Analysis of the Aceh Qanun on Budgeting** **and Its Correlation to Gender Responsive Budgeting)**

By Khairani

A. Introduction

In a country, budget is required for state's management. Indonesia is constructed as a welfare state in which government is considered to responsible for ensuring minimum standard of public prosperity for the entire citizens. Capital accumulation to fund state's governance is carried out by picking up public taxes and retribution. After people meet their obligation, they receive basic rights containing the state's obligation.

The fulfillment of the fundamental rights is done by resource expenses collected from the people. Money d from people must be returned to them. Incomes and expenses are two integrated sides in budgeting that constitutes a medium for public welfare. Budgeting at national level is called *Anggaran Pendapatan dan Belanja Negara* (APBN) or State's Expenditure and Income Budgeting) and at local (provincial and district) levels, it is named *Anggaran Pendapatan dan Belanja Daerah* (APBD) or Local Expenditure and Income Budgeting. The function of budgeting as a medium for enhancing public welfare is emphasized in the National Law No. 17/2003 chapter 3 article 4 that APBN/APBD has six budgeting functions: authorization, planning, monitoring, allocation, distribution, and stabilization. It is important to have a proper budget management to ensure the achievement of these six functions. At local levels, this provision is adopted into the 10 general principles of local financial managements administered more detail in the Minister of Home Affair Regulation (*Permendagri*) No. 13/2006 article 4.

The effort to building public prosperity is started by assessing contextual problems within society. To overcoming the problems, development policies and programs supported by sufficient budget are made. Nevertheless, it oftentimes comes about that the existing problems are much bigger than the available budget. Therefore, making a priority in budgeting is absolutely required. In determining a priority, the government needs to pay a serious attention to the existing gap within society.

Several gaps can be found including economic status (poor-rich), gender (men-women), age (baby-adult-elder), location (rural-urban) and territory (Java-external Java). If the State deals with budget limitation, budget allocation must be prioritized to empower groups with greater needs. In this regard, in formulating a budget, policy makers need to be aware of diverse needs of different groups based on age, sex, territory, and physical ability.

In the context of Indonesia, some terminologies are used to accommodate different needs based on sex, such as *anggaran berperspektif gender* (gender perspective budgeting), *anggaran adil gender* (gender equal budgeting), *anggaran tanggap gender* (gender receptive budgeting), *gender anggaran peka gender* (gender sensitive budgeting), and *anggaran responsive gender* (ARG) or *gender responsive budgeting* (GRB). GRB is developed to eliminate gender gap and inequality and it is not separated from the general budgeting. It is expected that GRB will address different needs and interests between women and men in a budget formulation. This research aims to observe whether GRB is integrated into local policies, particularly in Aceh and how these policies are implemented. This research will review the Provincial Aceh Qanun on Local Budgeting –popularly called *Anggaran Pendapatan dan Belanja Aceh (APBA)*-- and will undermine the implementation of GRB among the government agencies in the province.

B. Gender Responsive Planning and Budgeting System

The national planning and budgeting system is regulated in the National Law No. 25/2004 on Development Planning System that is applied at both national and local government levels.

Based on the National Law No. 17/ 2003 on the State's Finance by referring to RKP (government's working plane) as a guideline for making Master Plan of the State's Expenditure and Income Budgeting Plan (RAPBN), APBN is made.

Meanwhile, RKA KL that will be resulted in detail into APBN is formulated based on RKP (chapter 2 article 1 PP No. 21/2004 on the Formulation of RKA KL). Planning and budgeting circle or fiscal year in Indonesia, according to article 4 of the National Law No. 17/2003 is from January to 31 December in the same year.

The Workplan of Ministries/Departments (Renja KL) must be finished at least in April (every year) by referring to the Strategic Planning of Ministries (Renstra KL) and the indicative patterns (*pagu indikatif*). In the coming month, after all Renja KL were gathered by Bappenas and its entire budgets were discussed together with the national legislative body (DPR), RKP containing temporary patterns would be settled on. The next step is the RKP is used as groundwork in formulating RKA KL, and the accumulation of all RKA KL would be made as the enclosure of RAPBN. After RAPBN is discussed and legalized to be APBN, definitive patterns would be arranged and RKA KL would become the List of Budgeting Implementation Content or Daftar Isian Pelaksanaan Anggaran (DIPA) of Ministries/Departments.

In its progress, there was a reform on planning and budgeting based on the following legal foundations:

1. National Law No. 17/2003 on the State's Finance that determines performance based budgeting approach.
2. National Law No. 25/2004 on National Development Planning System that assigns priority based multiple annual planning systems and guarantees connection between budgeting, implementation and monitoring.
3. Government Regulation (Peraturan Pemerintah/PP) No. 20/2004 on Government Working Plan (*Rencana Kerja Pemerintah/RKP*)
4. Government Regulation (Peraturan Pemerintah/PP) No. 39/2006 on Evaluation and Controlling Mechanisms of Development Planning Implementation.
5. Government Regulation/PP Number 40/2006 on Mechanism of National Development Formulation stressing on Performance based Budgeting, Medium Term Expenditure Framework and Unified Budgeting.
6. PMK 119/2009 and PMK 104/20010 on the Guidelines of Formulation of Workplan and Budgeting Examination of Ministries/Departments Financial Year 2011.

The existing Law No. 17/2003 on the State's Finance that stipulates performance based budgeting approach gives an opportunity for gender integration into national planning and budgeting system.

Gender responsive planning and budgeting is an instrument to reduce gaps of access, participation, control and benefit in development implementation between women and men as a consequence of social and cultural construction for the purpose of embodying more equal budgeting. Gender responsive planning and budgeting is not a separated process from the existing system. It is also not planning formulation and specific budgeting for women that is divided from men. Gender responsive planning and budgeting is not the final goal; this is a framework or analytical tool to bring justice in development beneficiary into reality.

Gender responsive planning and budgeting is two intertwined and integrated processes. First, gender responsive planning is a decision making process to make program or activity that will be implemented to respond gender issues and problems in the respective sectors; second, gender responsive budgeting is a planning carried out by addressing differences of experiences, aspirations, needs and problems of women and men in its formulation; third, gender responsive budgeting: (a) in the formulation of gender responsive budgeting at all government scopes, participation and involvement of women and men are indispensable, and they set priority of development program and activity together; (b) the operation of gender responsive budgeting is directed to fund development program and activity that gives equal benefits for women and men in various development fields; and (c) gender responsive budgeting is allocated to fund practical gender needs and strategic gender needs that could be accessed by both women and men.

Gender Responsive Budgeting (GRB) is classified into three categories:

1. Specific gender targeted budgeting is budget allocation made to fulfill particular basic needs of women or men based on gender analysis;
2. Gender gaps budgeting is budget allocation to overcome gender gaps based on gender analysis by which we can acknowledge and aware the real gaps in access, participation, benefit and control to resources between women and men;
3. Gender equality institutionalization budgeting is budget allocation for strengthening the institutionalization of gender mainstreaming both in data mapping and capacity building.

Based on the description above, it is understood that, the integration of gender issues in budgeting is started from planning to budgeting phase that will result in gender responsive budgeting.

Gender responsive planning and budgeting is formulated through *gender budget statement* (GBS) based on some following reasons:

1. To encourage the acceleration of target achievements of the National Medium-Term Development Planning (RPJMN) 2010-2014. Up to 2009, all indicators in the aspects of education, health, agriculture and infrastructure have not reached, both at national and local levels. Gender responsive planning and budgeting will create a more effective and efficient program implementation as it is initiated with context analysis/gender analysis. At the same time, the application of gender responsive planning and budgeting plays an important role to show government's awareness about the existing contextual gaps between women and men. In addition, this indicates the government's commitment to implementing certain international conventions already ratified, such as the National Law No. 7/1984 on The Ratification of CEDAW and International Agreement like Beijing Platform for Action/BPFA. Based on President Instruction (*Inpres*) No. 9/2000 on Gender Mainstreaming in National Development, gender analysis is required activity in development planning in all ministries/departments (KL), including Local Government Working Unit (SKPD).
2. In implementing the mandates of the national policy above, since 2010 financial year, pilot projects to mainstreaming gender in development planning and budgeting have been carried out through the formulation of gender responsive planning and budgeting formally called Gender Budget Statement (GBS) as mentioned in the regulation of Minister of Finance (*Permenkeu*) No. 119/PMK. 02/2009 applied in seven ministries /departments: Ministry of Finance, National Development Planning (Bappenas), Ministry of Women's Empowerments; Ministry of Education, Ministry of Public Works, Ministry of Health, and Ministry of Agriculture. In 2011, according to the Decree of Minister of Finance No. 104/PMK.02/2010 on 12 May 2010, the policy has been applied to ministries/departments having mandates on politics, social affairs and law resulting activity out puts in terms of:

- a. Assigning priorities of national development;
- b. Public service delivery; and/or
- c. Institutionalization of gender mainstreaming, including capacity building, gender based advocacy, gender disaggregated study and data collection.

Gender mainstreaming approach through Gender Based Statement (GBS) or *Pernyataan Anggaran Responsif Gender* that has been preceded by a need assessment and gender analysis will give benefits to creating equal accomplishment of women and men's needs, including the following:

1. More effective and efficient.

In a gender analysis, women and men's roles, conditions, needs and problems are addressed and mapped. Therefore, gender responsive planning and budgeting will answer real problems in the fulfillment of women and men's needs with a more contextual programs budgeting, including the decision to determine a necessary affirmative action to tackle gender gap, the most relevant target groups, and timing and strategy of implementation.

2. Reducing the gap

Gender analysis in planning and budgeting will minimize gender gaps in development beneficiaries. Through gender analysis, we can identify different problems and needs between women and men and assist both planners and implementers to find the most relevant solutions to respond to diverse problems and needs.

3. Showing the government's commitment

The application of gender responsive planning and budgeting plays a significant role in showing the government's commitment to implementing ratified international conventions. Moreover, this is also an essential instrument to actualize the ratified international consensus and agreements.

In addition to unified budget approach (*Penganggaran Terpadu*), gender responsive planning and budgeting are also applied through Performance Based Budgeting (*Penganggaran Berbasis Kinerja*) and Medium Term Expenditure Framework (*Kerangka Pengeluaran Jangka Menengah*) mandated in the National Law No. 17/2003 on the State's Finance and in the introduction of the Minister of Finance's Regulation (*Permenkeu*) on technical guideline of gender mainstreaming strategy through gender analysis based on sex disaggregated data and information

in designing programs and activities at all development levels. In introduction of the Minister of Finance Regulation, it is mentioned explicitly that since 2010 to the following years, gender analysis will be employed in planning and budgeting system to make gender responsive budgeting.

The formulation of gender responsive planning and budgeting or *Penyusunan Perencanaan dan Penganggaran Responsif Gender* (PPRG) is a policy analysis approach, a program activity to understand different conditions, problems, aspirations and needs between women and men. RPPG is initiated by integrating gender issues in planning and budgeting formulation and both constitutes as undivided unity. Gender analysis must be carried out at every level of strategic formulation and operational policy. Strategic policy documents comprise of the long term development planning (RPJP), the national medium term development planning (RPJMN), Strategic Planning of Ministries (Renstra KL), RKP, Workplan of Ministries (Renja KL) the and indicative pattern (DIPA). Strategic policy documents become a base of formulating gender responsive programs and activities. The integration of gender issues in planning and budgeting is executed through formulating workplan document of ministries.

Gender/context analysis comprises of the following aspects:

1. Picture of access, participation, control and benefit gaps between women and men at all development levels;
2. Depiction of availability obstacles in internal government organizations or external social organizations;
3. Outcome indicator that could be connected to program or sub-program objectives;
4. Input or output indicator that could be related to program/sub-program implementation.

A gender analysis tool that is implemented in Indonesia based on the President Instruction No. 9/2000 on Gender Mainstreaming Implementation in National Development is Gender Analysis Pathway (GAP). Thereof, the stages of formulating gender responsive planning and budgeting are below:

First:

Gender responsive planning and budgeting (PPRG) in ministries (KL) follows national planning and budgeting cycle. The cycle is begun by formulating

workplan of ministries of Echelon II by a person in charge of main activity in respective Echelon II in January-April, proceeded by receiving indicative pattern (DIPA), and ended after DIPA from the Ministry of Finance in August-December in the same year.

Second:

In formulation of RKA-KL for certain activities, such as Gender Responsive Budgeting (GRB), K/L creates RKA-KL containing efforts of gender equality realization by preparing the following products:

1. Gender Budget Statement (GBS), a document describing an activity output whether it is responsive to existing gender issues and/or a cost is allocated to activity output to solve a gender gap. The formulation of GBS document is conducted through gender analysis by employing instrument, such as Gender Analysis Pathway (GAP). For gender responsive activity output, GBS is a part of the term of reference (TOR). The formulation of GBS at output level is conducted through gender analysis by using gender analysis tool such as GAP.
2. Term of Reference (TOR). For activity having GBS, the TOR of activity output must initially explain relevant connection between input components and resulted output. In the next phase, only input components that directly bolster up the endeavors of realizing gender equality needs elaboration as mentioned in the action plan of GBS document.

TOR and GBS are a planning document that has to describe whether an activity responsive to gender issues and whether fund allocated to handle the gender problems. Situation analysis to assess gender issues must be reflected in sub-activity in the attachment III in *Peraturan Menteri Keuangan (Permenkeu) No. 104/ PMK. 02/2010 on the Guideline of Formulating and Evaluating Workplan and Budget of Ministries (RKA-KL) of the 2011 Financial Year, Part I on Procedure of Formulating RKA KL with GBS Format.*

In addition to GBS and TOR, there are several aspects that need a serious attention in formulating RKA-KL pertained to gender responsive budgeting:

1. The implementation of GRB in 2011 budgeting period is put in output. Input component must have clear relevance with resulted output.

2. Activity and output criteria as GRB focus. In 2011, ARG will be applied to K/L producing activity outputs:
 - a. Assigning national development priority;
 - b. Public service delivery; and/or
 - c. Institutionalization of gender mainstreaming (including capacity building, gender advocacy, study, socialization, dissemination and or selected data collection).
3. GRB is a budgeting formulation to answer equal needs of all citizens, both women and men (gender equality and equity).
4. GRB does not focus on providing certain budgets for gender mainstreaming; instead, it is about how overall budgets could benefit equally for women and men. This principle has below meanings:
 - a. GRB is not separated budgeting for women and men;
 - b. GRB is as budgeting pattern that will bridge gaps of status, role and responsibility between women and men;
 - c. GRB is not a “valid” ground to request additional budget allocation;
 - d. The availability of GRB does not mean to provide additional fund specified for women’s programs;
 - e. It does not mean that allocation of GRB is only for specific women’s empowerment programs;
 - f. It does not mean that GRB provides fund allocation of 50% for men and 50% for women in every activity;
 - g. Not all programs and activities need to be gender responsive; some can be gender neutral.

At operational level, in the planning, we put gender perspective into several parts of TOR, as mentioned below:

1. In formulating TOR, we refer to usual method (5W+1H) plus additional gender analysis, for instance:
 - a. **What** do women and men do (children, adult, and elder); **where and when** are these activities conducted?
 - b. **Who** has **access** and control to resources, services and decision making?

- c. **How** do structural factors such as demography, economy, law, and institution as well as culture, religion and behavior shape the patterns of activity, access and control?
 - d. **Why** do planning, designing, implementation, monitoring and post-evaluation need to be gender sensitive?
2. To formulate a gender perspective TOR, planning should include gender issues in the following parts:
- a. Legal Basis of Policy: this part noticeably explains outputs of an activity and its foundational policy in the form of assigning national development priority. The next stage elaborates context analysis of the existing gender issues for the purpose of producing defined activity outputs.
 - b. Background that explicates problems faced by target groups, both women and men by viewing gender issues in access, participation, control and benefit to resources (this part could be taken from situation/gender analysis in Gender Based Statement/GBS).
 - c. Objective that provides distinct information about benefits received by target groups, both women and men.
 - d. Activity implementation (including time table): this part explains input components directly supporting the improvement toward gender equality. In other word, input components supporting the attainment of gender based outputs must provide explanation efforts to solve the existing problems confronted by target groups, both women and men. Activity implementation also illustrates the needs for involving or consulting with target groups, both women and men.

C. The Aceh Qanun on the Aceh Expenditure and Income Budgeting (APBA) and the Integration of GRB

After examining Qanun No. 4/008 on the Aceh Expenditure and Income Budgeting of 2008 Financial Year and Qanun No. 1/2009 on the Aceh Expenditure and Income Budgeting of 2009 Financial Year, it was found that the mechanism of the qanuns formulation do not consider the existing rules. It could be seen in juridical and philosophical grounds of the qanuns on APBA that do not incorporate:

1. President Instruction (*Inpres*) No. 9/2000 on Gender Mainstreaming in National Development is not used as a reference in planning, implementation, monitoring, and evaluation of program and of policy on budgeting. In fact, the President Instruction (*Inpres*) No. 9/2000 requires gender analysis in development planning at all KL, including SKPD.
2. Government Regulation No. 8/2006 on Financial Report and the Performance of Government Institution that describes step, procedure of formulation, control, and evaluation of local development planning implementations (chapter 33 article 3 and its explanation). Local development planning is designed through study framework and analytical instruments of such specific analysis as cost and benefit analysis, poverty analysis, and gender analysis.
3. *Permendagri* No. 15/2008 on General Guidelines of Gender Mainstreaming Implementation in Local Government is not used as a reference. The *Permendagri* **chapter 4 article (1)** mentions that local governments have an obligation to formulate gender based development policy, program, and activity adopted into District Medium Term Development Planning or *Rencana Pembangunan Jangka Menengah Daerah* (RPJMD) and Strategic Plan of SKPD (*Rencana Strategis SKPD*). **Chapter 4 article (2)** states that the formulation of gender based development policy, program, and activity as defined in article (1) is carried out through gender analysis. **Chapter 5 article (1)** points out that gender analysis as mentioned in chapter 4 article (2) could be conducted by Gender Analysis Pathway or other analytical methods. **Chapter 6 article (1)** states that *Bappeda* (Provincial/District Development Planning Body) coordinates the formulation of of gender based RPJMD, Renstra SKPD, and SKPD workplan; article (2) mentions that Gender based SKPD workplan as stated in chapter (1) is stipulated by regulation of Governor, Regent and Mayor.
4. PMK 119/2009 and PMK No. 104/2010 on the Guidelines of the Formulation and Examination of Ministries' Budgeting of 2011 Fiscal Year is not included as legal reference as it is issued after the formulation of the qanuns on budgeting. However, as a need assessment of legal reference in the future budgeting formulation, this study underlines this regulation.
5. Government Regulation No. 38/2007 on the Division of Governance Affairs between Provincial and District Government.

6. Government Regulation No. 41/2007 on Organizational Structure of Local Apparatus.

Why have ARG policies not been addressed in this provincial regulation? This research uncovered a weak understanding of Bapeda, SKPA and legislative members about ARG as a causing factor. A legislative member said that many legislative members the Aceh Legislative Body do not understand GRB; they just heard the word. GRB is still assumed as additional budgeting for women's activities, and, therefore, it is not considered part of development priorities.

In addition, budgeting advocacy encounters a constraint that rests in the fact that it is not easy for public to access APBA documents. In fact, looking at the aspect of regulation, National Law No. 14/2008 on Openness in Obtaining Public Information guarantees all citizens to access public documents, including APBD. Therefore, if Local Government does not give requested documents, public could bring the case to the Information Commission formed at national and provincial level. A combination between formal and informal strategies of advocacy is an alternative necessity to really get document of APBD.

The Aceh qanuns of APBA from 2006 to 2010 have the same content but different numbering. For instance, it is mentioned in chapter 3 article (1) and (2) e in the Qanun No. 4/2008:

- (1) Aceh expenditure as mentioned in chapter 1 consists of:
 - a. Direct Expenditure is IDR 2.004.123.098.705,-
 - b. Indirect Expenditure is IDR 6.514.617.497.063,-
- (2) Indirect Expenditure as defined in article (1) letter a comprises of types of spending/expenditures:
 - a. Spending of employee is IDR 493.799.270.320,-
 - b. Spending of interest is IDR 0,-
 - c. Spending of subsidy is IDR 0,-
 - d. Spending of donation is IDR 224.579.435.000,-
 - e. Spending of social donation is IDR 552.073.731.149,-
 - f. Spending of benefit sharing is IDR 695.670.662,236,-
 - g. Spending of financial aid is IDR 28.000.000.000,-
 - h. Unexpected spending is IDR 10.000,000.000,-

(3) Direct Expenditure as stated in article (1) letter b includes the following spending:

- a. Spending of employee is IDR 238.617.477.302,-
- b. Spending of goods and services is IDR 2.079.898.261.995,-
- c. Spending of capital is IDR 4.196.101.757.766,-

Analysis of APBD focuses on analyzing hidden numbers in APBD document. Such analysis will help us comprehend how far the APBD operates its main functions of allocation, distribution and stabilization. If the analysis finds that the APBD does not implement these functions, it can be concluded, there is a gap between the 'written' functions with the real application. Analysis of APBD is based on substantial principle of budgeting that budgets are accumulated from public money must be used for the most of the public prosperity. Therefore, in this regard, there are two basic concepts used in conducting the analysis: Public Expenditure Management and Performance Based Management.

Public Expenditure Management is a new approach of responsive, economic, efficient and effective public resources allocation. Some aspects that need a serious attention in Public Expenditure Management are:

1. **Allocation Efficiency** is an essential element of Public Expenditure Management in which (a) expenditure has to be based on priority and success of program, (b) budgeting system has to encourage fund reallocation from the less prioritized to more prioritized programs, and from less successful to more successful programs.
2. **Operational Efficiency.** Organization unit needs to produce goods and services at cost level leading to the efficiency and at cost level competitive with market. Reviewing the APBA of 2006-2011, it is revealed that such a cost level is not executed by the Aceh Legislative Body. It appears that the APBA since 2006 to 2011 is not really different in terms of budget allocation. The development priority in Aceh is not evidently portrayed both in the planning and the TOR.

Meanwhile, from Performance Based Budgeting, the Aceh APBA has experienced a decline as obviously seen in APBA 2008 that is only 67 percent (IDR 5,8 trillion) out of more than IDR 8,5 trillion. Governor Irwandi Yusuf said, "The low absorption of APBA 2008 was not only caused by the weak performance of the

executive, but also the legislative is too slow in passing the budgeting (*Serambi Indonesia*, 15 May 2009). The Governor replied to the Aceh parliament's claim viewing the weak performance of Aceh Government Working Unit (SKPA); as a result, the absorption of APBA 2008 was only 67 percent, smaller than APBA 2007 (77,53 percent or IDR 3,1 trillion from IDR 4,1 trillion) and 2006 (98 percent or IDR 2,5 trillion from IDR 2,7 trillion).

The Governor pointed out, in the percentage the APBA decreased indeed, but in the value, it increased significantly. "We cannot see only the percentage, but the value which showed a significant increase from time to time. In the percentage, the absorption of APBA 2008 declined compared to APBD last year, but the nominal increased from IDR 3,1 trillion to IDR 5,8 trillion," he said.

This means that heads of SKPA assigned based on a fit and proper test were viewed to have a good work performance as in four months they could spend IDR 5,8 trillion. "I think in only four months, whoever the Governor with strongest capacity and capability, it is impossible for her/him to spend more than IDR 9 trillion of APBA. Even we just donated the money to all Aceh people, four months were still not enough," the Governor added.

A budgeting system is viewed to already refer to Performance Based Budgeting if the budgeting is based on a performance planning. It contains program and activity that will be conducted as well as performance indicator that needs to be achieved. Performance Based Budgeting focuses on service delivery. While a traditional budgeting reports only amount of allocated and expended funds, a Performance Based Budgeting reports what was done with the available funds.

From the absorption that did not reach 100 percent, APBA accomplished unsuccessful achievement. In fact, the success of APBA should not be viewed only from the absorption. It is very important to look at into performance indicators accomplished. Therefore, performance indicator is the main element of budgeting that needs a serious attention.

An analysis is needed in determining APBA. At least two issues need to be addressed in budgeting analysis: pro poor and gender responsive budgeting. APBA qanuns do not appear to using an apparent analysis to be able to integrate gender

perspective in the planned program and activity. In fact, this is an attempt to tackling gender gaps and achieving gender justice and equality.

The APBA qanuns do not clearly apply gender analysis and pro-poor analysis. The two issues are a cross cutting issue meaning both must be actualized in all analyses. For instance, a general analysis has to integrate pro-poor and gender responsive budgeting analysis. The same is applied to program/activity analysis and local loan analysis. Both analyses have to be done to see the impacts of district loan to poor and vulnerable groups, both women and men. Both analyses could be combined as pro-poor and gender responsive budgeting analysis because there is a big linkage between both with regard to the feminization of poverty.

It is important to conduct an analysis that refers to basic concepts and regulations addressed to:

- a. know the relevant connection between KUA and PPAS in budgeting documents with RKPD in planning documents.
- b. know the relevant connection between RAPBD, KUA and PPAS.
- c. know appropriateness of budgeting allocation.

The objectives of the first and the second analysis are related to allocation efficiency, while the third analysis objectives are connected to operational efficiency.

From a report by GeRAK, it is mentioned that there is a decline in education budgeting, seen from the table below:

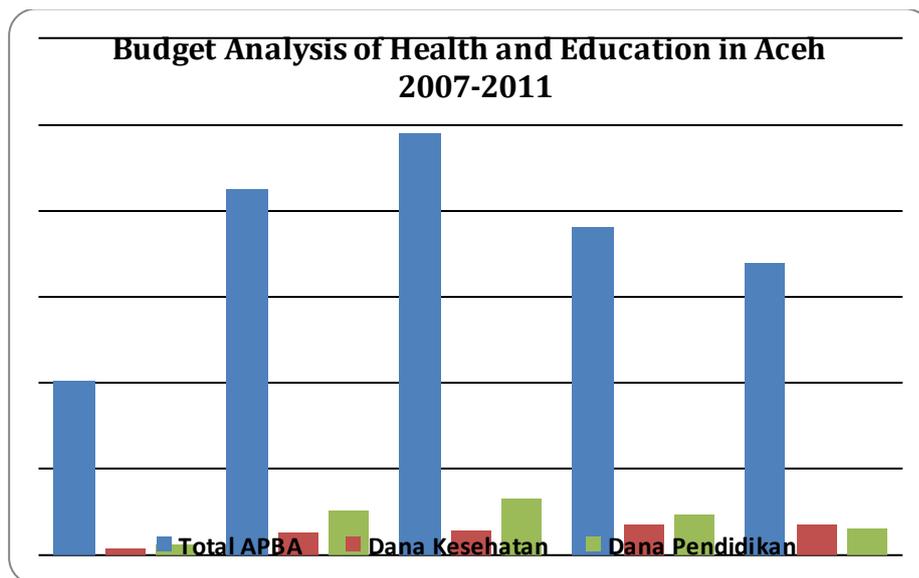
Table of APBA from 2007 to 2011

No	Year Budgeting	Pattern Total Budgeting	Total Amount Health	Total Amount Education	Percentage
1	APBA 2007	4.047.191.176.763	176.698.083.953	254.113.129.843	Health Cost 4,36% from total APBA Education Cost 6,27% from total APBA
2	APBA 2008	8.518.740.595.768	508.335.558.730	1.045.057.162.141	Health Cost 5,96% from total APBA Education Cost 12,2% from total

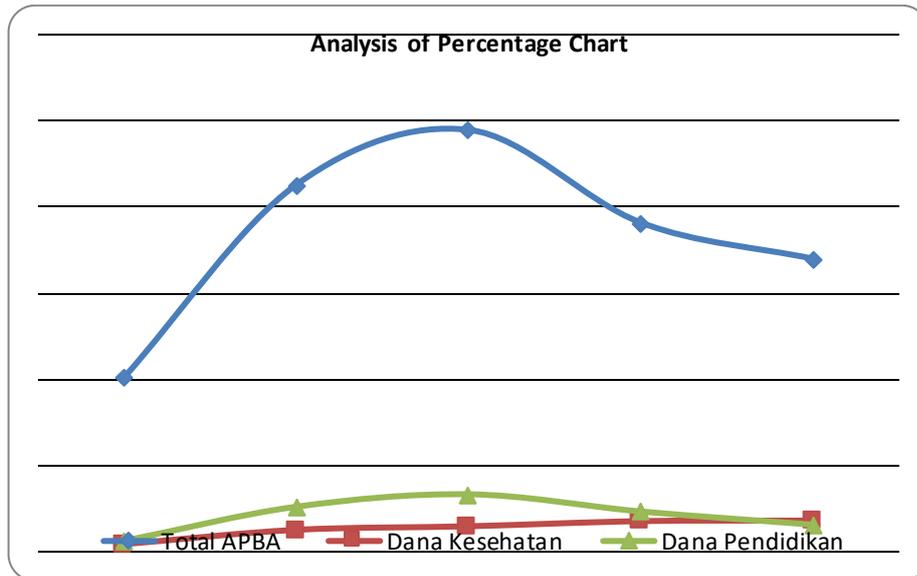
					APBA
3	APBA 2009	9.791.344.121.604	591.294.548.591	1.334.054.87.511	Health Cost 6,03% from total APBA Education Cost 13,6% from total APBA
4	APBA 2010	7.638.450.904.777	710.432.785.269	934.426.741.161	Health Cost 9,3% from total APBA Education Cost 12,2% from total APBA
5	APBA 2011	6.800.000.000.000	723.600.639.785	627.518.346.075	Analysis Material based on RAPBA 2011document Health Cost 10,6% from total APBA Education Cost 9,22% from total APBA

Source: GeRAKAceh, 2011

The data will be described in a below graph:



Analysis of APBA



Who is the target of APBA? What is its main priority? Both the target and the priority do not appear in the budgeting document. On other hand, the government of Aceh encounters a dependency on the national budgeting (APBN) in making its local budgeting (APBA). The APBA of 2007-2010 depends upon financial aids from the national government distributed through budget allocation of balancing fund (*alokasi anggaran dana perimbangan*) such as DAU, DAK and other budget allocation from local income/special autonomy (*otsus*) fund. A report published by GeRAK Aceh found a serious problem in terms of the dependency of the APBA of 2008-2010 on the national budgeting. The original income (*pendapatan asli daerah*) of Aceh does not increase. It can be said that Government of Aceh failed in mobilizing fund for sustaining developments in the area (See the Table below)

	2007	2008	2009	2010
Original Local Income	Rp563.106.082.173	Rp795.709.401.264	Rp795.872.000.000	Rp795.487.000.000
Balancing Fund	Rp1.952.237.600.000	Rp2.251.913.117.000	Rp2.208.058.000.000	Rp1.274.381.058.760
Legitimate Local Income / <i>Otsus</i> Fund	Rp650.000.000.000	Rp3.597.142.898.000	Rp3.728.282.000.000	Rp3.828.282.000.000

Total of Income	Rp3.165.343.682.173	Rp6.644.765.416.264	Rp6.732.212.000.000	Rp5,898,150,058,760
Original Local Income	18%	12%	12%	14%
Balancing Fund	62%	34%	33%	22%
Legitimate Income Local/ <i>Otsus</i> Fund	21%	54%	55%	64%

COMPARISON OF LOCAL INCOME 2007-2010

Source: *GeRAKAceh, 2010*

Article 5 of APBA Qanun 2008 mentions:

1. In terms of Qanun on APBA of 2008 Fiscal Year, a change does not happen; the Government of Aceh could make a shifting in inter-expenditure objects of expenditure type.
2. Budget shifting as mentioned in article (1) is done by changing:

The Governor Regulation on the Explanation of APBA of 2008 Fiscal Year reformulated in the Document of the Implementation of Budgeting Changes (*Dokumen Pelaksanaan Perubahan Anggaran/DPPA*) of SKPA is the base of its implementation. The budget shifting as defined in article (1) and article (2) is accommodated and delivered in the calculation report of APBA 2008 Financial Year.

This review of APBA qanuns from 2006 to 2010 found that there has almost no change in the budget allocation in the qanuns. In fact, there are a lot of alternatives in distributing the budget. It is possible by referring to *Permendagri* No. 59/2007, a revision of *Permendagri* No. 13/2006 regarding the classification of expenditure based on government's affairs consisting of two forms of expenditure: compulsory affairs and optional affairs. Obligatory affairs are composed of:

- a. education;
- b. health;
- c. public works;
- d. public housing;
- e. land use (layout);
- f. development planning;
- g. transportation;

- h. environment;
- i. land;
- j. population and civil registration;
- k. family planning and prosperous family;
- l. social affairs;
- m. manpower;
- n. cooperatives and small and medium enterprises;
- o. capital investment;
- p. culture;
- q. youth and sport;
- r. nation unity and domestic politics;
- s. local autonomy, public governance, local finance administration, local apparatus, employment and coding;
- t. food security;
- u. social and rural empowerment;
- v. statistics;
- w. archive;
- x. communication and information; and
- y. library

Meanwhile, optional affairs include:

- a. farming/agriculture;
- b. forestry;
- c. energy and mineral resources;
- d. tourism;
- e. maritime and fishery;
- f. trade;
- g. industry; and
- h. transmigration

Permendagri No.59/2007 adds two compulsory affairs which are food security and library. Women's empowerment and children's protection are included in the compulsory affairs, but it seems that this subject has not been a priority in APBA.

In addition, in terms of audit, it is not clear that an audit and evaluation about economic, efficient, and effective implementation of APBA is implemented. In fact, such an audit is mandated by Government Regulation No. 24/2005 on the Standards of Aceh Government Accountability.

According to Askhalani, coordinator of GeRAK, in terms data availability there was a decline in the document of APBA 2010 compared to APBA 2007-2008 and 2009. This could be seen from:

1. Budget resources for respective programs attained by SKPA are not integrated, whether it comes from *otsus* fund, PAD, or balancing fund (DAU, DBH, and DAK).
2. Budgeted programs are not followed with detailed explanation about cost and unit cost including price of disposable goods for apparatus expenditures, so it is hard to calculate proper and rationality of all allocated funds. This way of describing data opens an opportunity of misusing budgets by implementer.
3. Very short time allocation for APBA discussion causes (i) DPRA does not have enough time to correct and evaluate APBA draft in a detailed way and give suggestion for the executive; (ii) closing an opportunity for public participation to correct and give suggestions. In fact, discussion and decision of APBA is a policy that requires public accountability; (iii) opening a chance for collusion between the executive and certain people in the legislative body to do a budget manipulation. In the period of RAPBA 2010, an indication of such a budget manipulation is found.
4. APBA has not applied transparency. This could be seen from:
 - a. The provincial government does not publish RAPBA and signed APBA.
 - b. Public consultation as a medium public examination and input on priority programs is carried out. This violates the Minister of Home Affairs Decree (*Kepmendagri*) No. 59/2007 (Revision of *Permendagri* No. 13/2006 on the Guidelines of Managing Local Finance) that requires public consultation before the legalization of APBA.
 - c. The difficulty for public to access APBA documents both in Bappeda and in the legislative body is a consequence of the perspective alive within the executive and legislative body to view the document as confidential. In fact, structurally, APBA document should be a public document and has to be

given and conveyed candidly since transparency and accountability of APBA are the basis of the Aceh government's vision and mission.

Therefore, as a consequence, according to Askhalani, GeRAK gives some recommendations and important notice for APBA:

1. Both the executive and the legislative have to conduct a periodical evaluation of APBA 2010 document, particularly on budgeting that potentially indicates violation against the existing financial rules. If the governor and the parliament do not conduct the evaluation, both are to legalize abuse of power in local financial management, specifically for the funds of IDR 68 billion allocated for the governor and vice governor operational expenditures. And also review and ask responsibility and audit of the budgeting. It is necessary to announce publicly the budget expenditures by the governor and the vice governor.
2. Public pressure to the governor and the Aceh Parliament to follow and implement the principles of participation, transparency, accountability, and effectiveness and to take a side of public interests in formulating and settling APBA as mandated by the National Law No. 14/2008 on the Openness of Public Information and the LoGA, especially to open all documents of APBA and Draft of Budget Activity (Rancangan Kegiatan Anggaran/RKA) managed by SKPA.
3. Mobilization of all social elements in Aceh to continuously monitor the APBA implementation as a manifestation of public sovereignty and rights to the budgeting. Public involvement in budgeting monitoring plays a key role in bringing the better condition of Aceh.

The weak transparency in the budgeting system described above affects to weakening advocacies for gender mainstreaming; limited access to information causes difficulties for stakeholders to identify gender budgeting in the document. As a result, there has been only very few organizations working on gender budgeting advocacies. Therefore, besides the limited scope of advocacy due to limited information, there is also small number of advocates voicing gender responsive budgeting.

D. The Realization of Gender Responsive Budgeting (GRB) within SKPA

In general, gender responsive budgeting (GRB) has not been integrated within SKPA. The lack of understanding and weak awareness of the executive and the legislative in formulating Aceh Development Planning Budgeting (Anggaran Perencanaan Pembangunan Aceh/APBA) about gender perspective noticeably proves the situation. GRB is a key chain that cannot be segregated from the whole budgeting process in both SKPA and the legislative which Bappeda is the bridging institution. Bappeda, therefore, plays a crucial role in realizing GRB in development budgeting. In fact, *Permendagri* mandates Bappeda to play a role as a leading institution for the implementation of gender mainstreaming.

SKPA has not formulated RKA based on the framework of gender perspective development. Furthermore, Bappeda, as the local development coordination body, has paid a lesser attention to GRB in determining a development program. Weak understanding on gender mainstreaming in policymaking process within Bappeda and SKPA significantly contributes creating such a circumstance; it oftentimes comes about that gender related issues and programs are handed over to female staff and are viewed as less important issues. There is a misunderstanding among government officers that “gender is women.” In this regard, it is important to raise a critical question about the available gender training conducted for government officers during the post-tsunami reconstruction period. Based on an observation toward the existing gender training in Aceh attended by government officials, it could be concluded that *first*, participants from SKPA and Bappeda are always women who are not in the decision making position; therefore the capacity building program they achieve does not give a big impacts to policy making process. *Second*, there is a tendency among decision makers assuming that in their position, knowledge about gender issues is not a necessity in working on their tasks and responsibilities; they do not participate seriously or even they never participate at all in any gender training. *Third*, even though there is an opportunity for decision makers to improve their understanding and knowledge on gender issues, they still have weak awareness about the importance of gender mainstreaming in developments. Their involvement in gender training is only for the sake of fulfilling their intellectual curiosity without any sense of responsibility to implement it. *Fourth*, there are a small number of decision makers with stronger gender sensitivity but they still have limited ability to translate their gender

knowledge and sensitivity into more practical development indicators. *Fifth*, Some decision makers have gained stronger knowledge and awareness on gender mainstreaming in development, but, unfortunately, the existing dominant system becomes a serious challenge to apply their knowledge. Sometimes, they even withdrew their involvement in advocating gender issues since they are “shy and worried to be assumed as gender activist.”

Some efforts initiated by Women’s Empowerment and Children Protection Body of Aceh (BPPPA) encounter a constraint resting in the lack of political will of decision makers from SKPA to attend the meetings on gender mainstreaming. Below is a statement of the Secretary General of BPPPA responding to the weak participation of decision makers from SKPA in the meeting on GRB:

“The GRB advocacy facilitated by BPPPA did not include only Bappeda but also other heads of SKPA. Even though, the invitation was made by the Governor and signed by the Vice Governor, the effort had no impact. We never used gender in or called the meeting as gender socialization because if we used gender, the heads of SKPA would reject to attend the forum. We named the meeting as socialization on Millennium Development Goals (MDGs) in Aceh. They, one by one, left the meeting after listening to the opening session and instructed their staff to replace them in attending the meeting. Only two heads of SKPA remained there. It was difficult to disseminate information on gender and gender responsive budgeting in Aceh.”

Furthermore, the Secretary General added that gender responsive budgeting in Aceh is not implemented because of the limitation in terms of experts and resource persons who can draft gender responsive budgeting and conduct gender analysis, particularly in Bappeda as the leading development body. Only resource persons capable in general development planning are available in Bappeda; there is no resource person who can work on gender analysis and gender responsive budgeting. It also could be said that they do not have a serious attention to *Permendagri* and the Minister of Finance Regulation (*Permenkeu*) of 2010 that necessitates GBS.

Permendagri No. 15/2008 mandates Bappeda to establish a Gender Working Group of Gender Mainstreaming (Pokja PUG). Despite of Bappeda’s issuing a letter of authorization on the foundation of the Pokja PUG, they were just

formally established. The letter displays some authorized persons as a member of Pokja PUG, but it does not clearly describe the function and the mechanism of the working group. In an interview, an officer from Bappeda explained that the common constraint within the internal Bappeda is lack of gender sensitivity and weak understanding on gender analysis and gender responsive budgeting of decision makers.

Recently, at the national level, there are 10 ministries assigned as a pilot project in GRB implementation. Gender Budget Statement (GBS) will be applied to analyze and review programs and activities these ministries submit. Through this review, programs and activities that are not fitted with GBS will be disqualified. This regulation was just issued this year, so it has not been implemented. The Secretary General of BPPPA pointed out that the regulation is now being implemented at national level as informed in a meeting attended by the National Development Planning Body (Bappenas) and the Ministry of Home Affairs.

Since Bappeda as the coordinator of gender mainstreaming has not integrated GBS, there is no SKPA or other government bodies doing so. Nevertheless, in some specific activities targeting women's groups, an initiative of incorporating gender mainstreaming can be found. For instances, the Office of Maritime and Fishery initiates an economic empowerment program provided for female sailors; the Office of Agriculture facilitates a program for female farmers; and, the Office of Health develops an initiative to improve health degree of mothers and children. It seems that these programs applied gender mainstreaming by targeting women as the development subject. In fact, the programs were not developed and implemented based on gender analysis and GBS. Gender analysis is rarely employed in SKPA's program planning and implementation. The absence of updated sex disaggregated data in all development aspects and weak political will of decisions makers to place gender as important development issues play a significant role in creating this problem. It is oftentimes found an assumption among development planners and implementers of infrastructure projects that all constructions must be benefited women and men without a further research about different ability and capacity of both women and men to access the development results.

The Secretary General of BPPPA further explained, “If Bappeda plays its central role by developing advanced initiatives in gender mainstreaming, it will inspire other SKPA to follow the movement.” In the local government structure, Bappeda has the most strategic position as the last door of the executive body in processing a local budgeting before it is submitted to the legislative body. As an illustration, SKPA proposes the first budgeting document in the form of RKA that will be discussed in Bappeda before it is sent to the legislative body. If Bappeda applies gender analysis in reviewing and discussing the proposed budgeting document, it could ensure that quality of the budgeting with stronger gender perspective.

Furthermore, according to the Secretary General of BPPPA, the situation described above gives a negative impact to the decreasing budget allocated for women’s empowerment programs managed by BPPPA this year. With local leaders having weak gender perspective, it is not easy to integrate GRB in development documents. For instance, if the governor has a strong political will in gender issues and gives an instruction to SKPA for the implementation of GRB, it will be possible to have GRB in Aceh development planning, the Secretary General added. Nevertheless, the Office of Health has also experienced the same budget reduction (see the above table and chart).

Askhalani of GeRAK Aceh underlined a similar opinion. He pointed out that the budget reduction of BPPPA is a tangible example of the weak initiative of development planners in Aceh in implementing GBV. As the main government institution having a specific mandate on women’s empowerment and children’s protection, BPPPA’s encountering fund reduction obviously reflects the existing weak political will of decision makers in applying GRB. Within this situation, it is not hard to find the absence of initiative in incorporating GRB in other government bodies with no specific mandate on women’s empowerment.

Below description explains in more detail about the budget reduction in BPPPA:

1. BPPPA manages IDR 12,981,636,000 billion or 0,13% out of the total APBA 2009 of IDR 9,791,344,121,604 trillion.

2. In 2010, BPPPA, based on the analysis of expenditures in RAPBA, from the total allocated budget of IDR 6,548,150,061,760 trillion has managed IDR 9,972,942,463 billion or approximately 0,2%.

The priority programs of BPPPA in 2009 include:

1. Strengthening institutionalization of gender and children's rights mainstreaming
2. Strengthening of Indonesian Children Protection Commission of Aceh (KPAID)
3. Strengthening capacity of anti trafficking working group
4. Improving women's life quality and women's protection from violence
5. Capacity building of female preachers (*muballighah*)
6. Increasing public participation in integrating gender equality in development programs
7. Management training for women doing a business

Based on PPAS document, the priority programs include:

1. Life quality improvement and women's empowerment program
2. Increasing public participation in integrating gender equality in development program
3. Strengthening the institutionalization of gender and child's rights mainstreaming

The Secretary General said, the budgets distributed to BPPPA are sufficed only to fund indirect expenditures like employee salary. Within this circumstance, it is difficult for BPPPA to accelerate the achievement of its vision and mission. BPPPA even could not make any programs to disseminate information about provincial qanun on women's empowerment issued in 2009. In fact, as mentioned above, in 2009 indirect budget allocation was deducted which was only 27% (see the below table).

COMPARISON OF APBA DIRECT AND INDIRECT EXPENDITURE

Expenditure/APBA	2007	2008	2009	2010
Local Expenditure	Rp4.047.191.176.763	Rp8.518.740.595.768	Rp9.791.344.121.604	Rp6.548.150.058.760

Indirect Expenditure	Rp1.978.905.619.352	Rp2.004.123.098.705	Rp2.620.032.938.913	Rp1.430.479.347.633
Direct Expenditure	Rp2.068.285.557.411	Rp6.514.617.497.063	Rp7.171.311.182.691	Rp5.117.670.711.127
Indirect Expenditure	49%	24%	27%	22%
Direct Expenditure	51%	76%	73%	78%

Source: GeRAK Aceh, 2010

The fact that the budgets of BPPPA were decreased has invited a serious attention of women's groups in Aceh. From some discussion forums among women's rights activists, it was concluded that weak commitment to gender responsive budgeting among decision makers was a serious factor engendering the problem. Previously, BPPPA got bigger budget allocation as a result of active advocacy and lobby of this institution; it did not come from a strong awareness about GRB. There were some technical issues made as a reason to justify the budget reduction which included, first and it has been frequently mentioned, BPPPA was not able to absorb and expend the allocated budgets in the previous year, second, the program developed by BPPPA did not answer the contextual needs of women, and, third, weak advocacy and lobby of BPPPA.

In reality, we have realized that women's empowerment and children's protection programs are still considered supplementary program in development mainstreams, and their benefits are often complained as unnecessary. Therefore, as a result, such a budget reduction oftentimes occurs.

E. Closing

This study concludes that there has not been a serious endeavor from Bappeda, SKPA and Aceh Legislative Body (*DPRA*) to implement gender mainstreaming policy in development budgeting systems in Aceh. This is an accumulation of political will, technical skill and unresponsive gender policy. Under such situation, the institutionalization of gender focal point, gender mainstreaming and working group in mainstreaming gender in development system, particularly through GRB does not occur. Based on the analytical study of the policy linked to gender in Aceh, it was found that:

1. The mechanism of the formulation of qanun does not consider the existing regulations. It could be seen from the juridical and philosophical grounds of the APBA qanuns that do not include the President Instruction (*Inpres*) No. 9/2000 on Gender Mainstreaming (PUG), *Permendagri* No. 15/2008 on General Guidelines of Gender Mainstreaming in Aceh, *Peraturan Pemerintah (PP)* No. 38/2007 on the Division of Governance Affairs between Government, Provincial Government and District/City Government.
2. The 41 regulations employed as the juridical foundation of the qanun includes the Government Regulation (PP) No. 8/2006 on Steps, Formulation Procedure, Controlling and Evaluation of the Implementation of Local Development Planning. Chapter 33 article 3 and its explanation, mentions that local development planning is made by a study framework and an analytical instrument of specific analyses, such as cost analysis and benefit analysis, poverty analysis, and gender analysis. Nevertheless, this important element is not integrated in the substance of qanun in more applicative way.
3. The policy issued latter that needs to be incorporated in the preamble is PMK 119/2009 and PMK No. 104/2010 on the Guidelines of the Formulation and Examination of Workplan and Budgeting of the State's Ministries Fiscal Year 2011.
4. The substantive materials of the qanun on budgeting from year to year since 2006 to 2010 do not change and are less adaptable to new policies, especially on gender in development.
5. The exclusion of policies on gender budgeting is rooted in the weak understanding of Bappeda, SKPA, and legislative members on gender responsive budgeting. GRB is still considered additional budget for women and, as a consequence, it is excluded from the development priority. Gender as analytical tool of budgeting as mandated in the regulation regulated remains to being ignored by decision makers under an implicit perception that "there is no benefit (of applying gender in budgeting)."
6. On other hand, social control of civil society organizations through budgeting advocacy is still rarely done. The weak transparency in the budgeting system affects to weakening gender mainstreaming endeavors. The limited access to information on the budgeting documents inflicts a difficulty for stakeholders to observe gender budgeting to development budgets. Besides, this situation gives

an obstacle in gender budgeting advocacy; as a result, only a few organizations are engaged in this effort. Therefore, besides the limited scope of advocacy due to limited access to information, gender budgeting advocacy involves only a small number of organizations.

7. It was found that SKPA has not formulated RKA based on gender perspective development framework. Bappeda, as a local development coordination body, has paid a little attention to GRB in its development planning. In fact, Bappeda constitutes a leading sector for gender mainstreaming and the first filter in development budgeting.
8. A number of capacity building programs on gender available for Bappeda and SKPA do not give an influential impact because, *first*, participants representing Bappeda and SKPA are women who are not in a decision making position. *Second*, there is a tendency among decision makers to consider that in their position, knowledge about gender issues is not necessary to support their working on the tasks and responsibilities; they never participated or they never seriously participated in any capacity building programs. *Third*, the improved understanding of decision makers on gender issues does not significantly contribute to strengthening their awareness about the importance of gender mainstreaming in development; their participation in capacity building programs is only for the sake of intellectual curiosity without responsibility for the application. *Fourth*, a few decision makers with better capacity to draft gender responsive development budgeting encounter a constraint of their weak ability to interpret their knowledge into a more practical development indicators. *Fifth*, there are some decision makers with strong awareness about and commitment to gender mainstreaming in developments; however, weak supporting system within Bappeda and SKPA challenges their willingness to realize their commitment. They even discontinued their involvement in gender issues as they are ashamed and worried of being boxed as “gender activist.”
9. The efforts initiated by BPPPA to strengthening understanding and awareness of SKPA on GRB oftentimes encounter an arduousness in convincing and inviting heads of SKPA to get involved and participate in the available programs to campaign for gender mainstreaming in development; In fact, it is rarely

found, heads of SKPA fully attend and participate in the meetings for enforcing gender mainstreaming.

10. Limited number of experts and resource persons with strong capacity in gender analysis and gender responsive budgeting is another basic problem within Aceh government in applying GRB in development planning. Some new regulations mandate that development planning is designed through a clear gender analysis reflected in Gender Budget Statement (GBS) and gender responsive TOR as the enclosures of proposed budgeting document.
11. Meanwhile, it is also found that only a few academic researches on gender mainstreaming in all development fields were conducted. The situation manifests the fact that the mutual synergy between development programs and academic researches has not been well established and there have been only a small number of researchers who have strong capacity in gender analysis.
12. This study also concludes that the increase of budget for BPPPA or for women's empowerment or gender programs in other institutions did not really reflect gender awareness of decision makers. It was merely because of a strong pressure and active advocacy of certain groups. Without strong pressure, the budget could be decreased or even erased from budgeting document. Women and gender programs are still considered supplementary in development planning.
13. Structural instrument to support gender mainstreaming such as Gender Mainstreaming Working Group (Pokja PUG) is set up based on formal and symbolical purpose. It does not display distinct description of functions, roles and work mechanisms; therefore, the team still works on seeking for strategic space to move forward.
14. In a more systematical order, challenges in gender mainstreaming implementation could be classified into 5 issues. *First* is weak conceptual understanding and skill on gender, gender mainstreaming and gender analysis of government officials SKPA, Bappeda and the legislative body. *Second* is existing mindset toward gender equality issues as a result of cultural and social construction assuming gender as irrelevant concept to local values. *Third* is staff mutation system in Bappeda, SKPA and the legislative body without clear handing-over mechanism to transfer information and progress on gender mainstreaming. *Fourth* is the absence of monitoring and evaluation mechanism

and system of gender mainstreaming implementation in gender responsive planning and budgeting within SKPA. *Fifth* is the absence of sex disaggregated data to analyze development results.

Gender Equality in the Policy on Education in Aceh

By : Nurul Hidayah

A. Introduction

The discussion on education cannot be separated from the discussion on the quality of human resources in all of its aspects. Sub-standard women's human resources oftentimes become a reason to conduct a study on gender inequality. Therefore, it is crucial to look at how policies made by the government address various problems in equally fulfilling the interests of women and men in education. The State's Constitution firmly mandates that every citizen entitles to get sufficient and decent education. The same statement is mentioned in chapter 26 of the Declaration of Human Rights (DUHAM) that everyone entitles for education. This mandate has an implication that every citizen has a right to education regardless their social conditions, including the poor, vulnerable and women. The effort to meet the right to education is made in a slogan *Education for All* (EFA).

The Government of Indonesia has ratified and has agreed to implement EFA as a stride to realize the nine-years of compulsory schooling (*wajib belajar*). EFA has a wider implication in carrying out the nine-years of compulsory schooling for all in 2015 that includes gender equality and reduces gender gap in education. Gender based equal participation strategy in education does not focus only at the school level about equal access and participation, but also at various professional educational services level that fit to the needs and interest of women and men in vocational world.

If we closely observe our education condition and the government's endeavor to improve its quality, gender inequality has never been viewed as a serious issue that needs a policy approach. An intensive effort is required to ensure the elimination of gender gap in education. It is important to conduct a study toward school management, curriculum, and learning materials as well as responsive gender infrastructures and facilities of education.

Gender mainstreaming in education is directed to open wider access and participation for women in decision making processes in education. This strategy can be started by reducing the gender gap in being a headmaster as a beginning of women's advanced carrier and in being a decision maker in a position of authority in educational institutions. In the Qanun No. 5/2008 it is mentioned that the implementation of education in Aceh is based on the principles of justice, non-discrimination, balance and equality for all Aceh people in obtaining the qualified and Islamic education. It implies that all children in the area with their conditions and differences, including girls and boys have the same right in attaining a good educational service.

Furthermore, the Strategic Planning of Education in Aceh 2009-2012 (*Renstra Pendidikan*) in the Long Term Development Planning/Medium Term Development Planning (RPJP/RPJM) stipulates a policy on building wider access to acquire high quality and achievable education service particularly at high school and to complete the basic universal education (nine-years of compulsory schooling). The *Renstra Pendidikan* is made to mobilize development opportunities in the post-tsunami context to assist the provincial government in fulfilling its responsibility for building the equal participation in education. The Aceh Governor Regulation No. 11/2006 underlines the government's duty to promote and build equal access and qualified service for all. The key policies and strategies in *Renstra Pendidikan* display a real depiction about the reallocation of resources to realize the provincial government's commitment to achieving the Millennium Development Goals (MDGs).

Therefore, in this regard, it is apparent that the local government has an obligation to formulate gender based education policy, program and activity as stated in the Provincial Medium Term Development Planning (RPJMD), Strategic Planning of SKPD, and Workpkan of SKPD. However, the policies made both in the form of provincial regulation (*qanun*) and governor regulation do not explicitly regulate the integration of gender perspectives in planning, implementation, monitoring and evaluation of education in Aceh.

This research is meant to observe understanding of stakeholders in education about gender mainstreaming in program planning, activity, monitoring and

evaluation in education. This research also questions whether the policy on education accommodating gender issues is based on the needs, demands or merely as a political commodity.

The objective of this research is to provide information and analysis related to policy and development implementation in education sector based on gender equality perspective. Even though as a result of the absence of a reporting mechanism, the prevalence and the causes of gender based violence in education in Aceh are not clearly mapped, based on news published by several mass media, some forms of violence and gender inequality are found in this education field in this area.

B. Discussion

Chapter 31 of the amendment of the 1945 Constitution states that all citizens are entitled for education. Therefore, Indonesia shows its commitment to taking part in complying the global agreement on *Education For All*; it is expected that all boys and girls obtain nine-years of basic education, all adults have writing and reading ability and gender disparity in primary and tertiary education is eliminated to achieve gender equality in education by engaging all stakeholders in education sector. The Aceh Qanun No. 5/ 2008 on the Implementation of Education was made to facilitate the provincial government's effort in integrating the specific cultural and Islamic contexts in Aceh in the implementation of educational services and in undertaking the mandate of the National Education System as regulated in the National Law No. 20/2003. The formulation of the provincial qanun is a consequence of the Law on the Government of Aceh (LoGA) No. 11/2006 stated in chapter 216 article (1) and (2) on the target of *Education For All* that is affirmed in chapter 5 of the Qanun No. 5/2008. Now the question is how far does the provincial accommodate the strategy to reduce gender gaps in education sector in Aceh?

Gender gaps and inequalities in education sector in Aceh can be found either from the aspect of access to and distribution of education or from the quality and the relevance of education services as well as management of education.¹³⁴

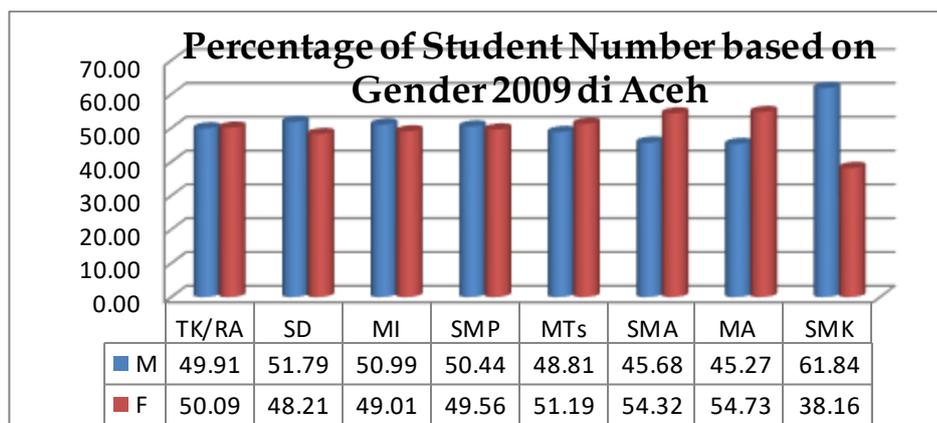
1. Education Access

An important strategic planning of education in Aceh is building the equal opportunity between girls and boys to participate in education services. The status of participation in education can be seen from the Net Enrollment Rate (NER) or *Rasio Angka Partisipasi Murni* (RAPM) of both girls and boys, either at primary or senior high school education level. The net enrollment rate at primary school (public and Islamic school) in Aceh reaches 97,15% with 98,08% boys and 96,16% girls. Meanwhile, at junior high school and senior high school, we still encounter difficulties in getting the data due to inaccurate population estimation as a baseline in calculating of Net Enrollment Rate (NER) and Gross Enrollment Rate (GER) from various regents/cities.¹³⁵

In general, based on the data revealed by Aceh Education Body in 2009, the number of girls at primary school was smaller than that of boys. At the higher level, the number of female students was bigger than that of male students either in junior high school or senior high school. This indicates that at higher education level, boys have a greater chance to drop out the school. However, even though the number of female students at junior and senior high schools were higher than the number of boys, it was found that at the senior vocational school (SMK), the number of girls is smaller which showed only 38,16%. The complete data can be seen in the table below:

¹³⁴ Anonym, *Development of PUG Institutional Capacity in Education Realm*, the Ministry of Education (*Depdiknas*) 2004, p. 2

¹³⁵ Anonym, *Report of Aceh Education Progress, Aceh Education Development Coordinator Team*, 2009



Source: *PadatiWeb-2009 (excluding data from Gayo Lues district) quoted from the unpublished draft of gender equality strategy of Aceh education sector.*

The above chart describes the percentage of female students compared to male students in different education levels from kindergarten, primary school to senior high school. It is appeared in the chart that at Islamic junior high school (MTs), public senior high school (SMA) and Islamic senior high school (MA) the number of female students is a slight higher than that of the male students. Nevertheless in senior high vocational school (SMK), there is a sharp difference between the number of girls (38,16%) and boys (61,84%).

Based on the data on the participation in formal education described above, even though it shows the successful achievement of 97,15 % in education participation as mandated in the Strategic Planning that targets to reach 96% in the end of 2012, there is an insignificant aggregate between the rate participation of girls and boys. Therefore, in this regard, a continuous study and effort to improve the status is still needed.

As a crucial aspect of development, education has to contribute to developing better changes. Therefore, even though in a less significant number, the elimination of gender inequality in all education levels plays an influential role in improving the status and capacity of women. A respondent, As'ari, mentioned:

".....from the explanation of the Qanun No. 5/2008 in its implementation level that has not touched gender equality is, for instance, in the opportunity portion; there is no clear format instrument of 2/3 men and 1/3 women and it has to be part of education implementation. We have already discussed this issue that in primary school, gender (meaning female headmaster) in the sense of the quantity has a sharp increase. In junior

*high level, the number is equal between women and men, 50:50, but at the decision making level as well as in headmaster in senior high school the number of women is still low. In addition, if we see the status in bureaucracy, the existing structure has not met the mandated quota”.*¹³⁶

The situation described above shows the existing gap of access to opportunity at decision making level in education sector between women and men.

In non-formal education, from diverse levels at primary (SD/MI) to senior high school (SMA/MA/SMK), based on the data issued by Aceh Education Body, for SD/MI level, there are 2,85% students at age primary level who still study in non-formal education and traditional Islamic boarding school (*dayah*); for SMP/MTs level, 10.296 students study in non-formal education and for SMA/MA, 2.913 students or 1 % out of 71,3% are at non-formal education. Nevertheless, as the data is not gender segregated, the comparison between girls and boys is unclear.

Based on the National Social-Economic Survey (SUSENAS) 2003-2006 and SPAN 2005 processed by HIS, the population percentage of 7-24 years old who are still in schools based sexes and ages does not show a significant difference in education participation between girls and boys as a result of the increasing number of schools observed earlier. Girls will go to school not far from their houses. It is interesting to see the fact that the older age group the bigger the difference of education participation in which *Angka Partisipasi Sekolah* (APS) or School Participation Rate of girls is higher than that of boys.¹³⁷

2. *Quality and Relevance*

The change of curriculum does not always give an obvious change in improving education quality. The application of Education Unit Level Curriculum (*Kurikulum Tingkat Satuan Pendidikan/KTSP*) expected to open

¹³⁶ Interview with Head of Pre-School and Continuation Education Field, Aceh Education Body, As ‘Ari, Spd,M.Pd, Banda Aceh, 26 May 2011.

¹³⁷ Evelyn Suleeman, *Inong Aceh di Tanah Nusantara (Inong Aceh in the Archipelago)*, PT. Insan Hitawatana Sejahtera, 2009, p. 35

an opportunity for teachers to create innovations in developing learning materials/modules is beyond the expectation when teachers do not work on improving their competencies. In formal education, curriculum plays a central and strategic role in achieving the goals of education. Though curriculum applied in a learning process, we can facilitate transformation of education and strengthen students' mindset by introducing several concepts and ideas.

Misunderstanding on gender issues among teachers will affect the development of gender biases in learning processes. In an interview a respondent, Cut Triana, mentioned: *"I see gender equality in education, particularly in curriculum that contains gender biases."*¹³⁸

In addition, it is difficult for teachers to train and educate their students with gender equality concepts as a transformative idea while there are still many teachers who do not have basic understanding on the differences between women and men in the context of gender mainstreaming. A respondent Anas Adam said:

*"I think changing people's mindset must be through education. Educators and teachers must be trained (with gender understanding) and so decision makers and widyaiswara (government officers with the main function of giving training) who play a key role in strengthening capacity of teachers. I think, capacity and awareness building for public cannot be conducted through a formal education, but informal education by ulama for instance."*¹³⁹

It is oftentimes found that teachers deliver learning materials and examples consisting of stereotypical views about women's and men's roles. As a result, this process contributes to creating and perpetuating stereotypical mindsets that there are gender differences between boys and girls and both indeed have to be treated differently. When a girl performs an act associated with boy's attitude, though she can do it, she would be considered to doing an uncommon behavior and vice versa. It is important that since the beginning, children are taught and introduced with a gender concept that women and men are biologically different, but this is not a reason to differentiate their gender roles.

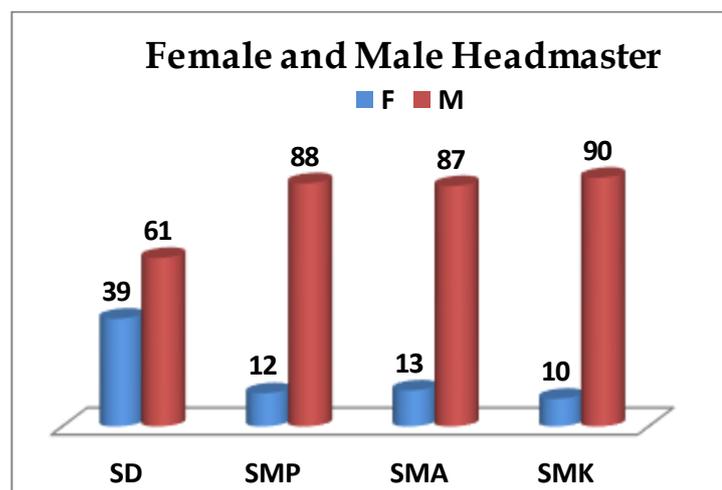
¹³⁸ Interview with staff of Bappeda Aceh, Cut Triana, Banda Aceh, 13 June 2011

¹³⁹ Interview with Aceh Education Council (*Majelis Pendidikan Daerah/MPD*), former Head of Aceh Education Body, Banda Aceh, 27 May 2011

3. Education Management

We still find a gap in the composition of decision makers in education who are predominantly men from the level of decision makers in the executive bodies until education units. The lack of women's representation in decision making level has a big impact in causing the limited policy made to support women's rights. For example, in the leadership position in school, even though the number of female teachers is higher than that of males and their capacity is not lower than that of males, the number of female school headmasters is very low.

Even though 70% teachers in all areas in Aceh are women, only 39% serve as a headmaster at primary school (SD), 12% at junior high school (SMP), 13% in senior high school (SMA) and only 10% at senior vocational high school (SMK). In religious schools, the proportion of female headmasters is even lower (see the chart below).



Source: Padatiweb 2009

The composition difference surpassing the comparison of 60:40 on the number of male and female headmasters proves the existing significant gender gap. This is a serious problem in education management that requires gender responsiveness. A respondent Anas M. Adam stated:

"I think, it is unacceptable that the number of male headmasters is higher than the number of female headmasters. If not higher, ideally the number of female headmasters is balance with the number of male headmasters. In

the primary school, 70 or 80 percent headmasters are indeed women. There are two important issues here; the first is the mindset of our government officials that needs to change because they always assume that women are incapable. The second is the mindset of women themselves. I once asked some female friends from several places; in general they are not willing to be a school master due to the far distance (of the school from their homes). They think that if they become a school master, they will come late to their homes while there is another responsibility. Therefore, in this regard, both mindsets have to be changed.”¹⁴⁰

Some researchers conclude that the situation told by the respondent above is triggered by women's multiple burdens, so they do not have enough time to improve their capacity and capability that is required to accomplish a manager position like being a headmaster. Moreover, there is another challenge in which the structural promotion mechanism is applied based on gender neutral view, by opening free competition widely and openly. In fact in any aspects women experience a burden of multi-tasks and responsibilities in domestic domain that is shared proportionally in family). As a result, unlike men who are not burdened with domestic roles, women have only limited spare time to develop their professional capacity and career.

Based on a cultural construction, women are traditionally placed as a responsibility holder of household chores and reproductive roles, even though they are already involved in other public and productive activities.

The three subjects explored above are not the focus of this research, but they will be an initial baseline in elaborating policies on education that do not really regulate a mechanism and strategy to build an equal opportunity between women and men in education. A variety of regulations on education have to consider the needs for gender responsive education services. In fact, as a result of our insufficient understanding and awareness, there are a lot of ignored issues that give an impact on the learning process at education unit and on the effort of improving education quality, such as weak sense of justice, violence at school among others.

¹⁴⁰ Interview with Aceh Education Council (*Majelis Pendidikan Daerah/MPD*), former Head of Aceh Education Body, Banda Aceh, 27 May 2011

The Law on the Government of Aceh (LoGA) No. 11/2006 chapter 216 article (1) and (2) mentions the target of *Education for All* along with the President Instruction (*Inpres*) No. 9/2000 on Gender Mainstreaming have to be a reference of operational rule in a program planning, implementation, monitoring and policy evaluation in education field. Nevertheless, the application of these juridical bases into a policy will encounter a difficulty when the understanding of SKPA in gender mainstreaming into strategic planning of education is still weak.

Chapter 5 of the Provincial Qanun No. 5/2008 on Education underlining the principle of Education for All regardless ethnicity, religion, race and clan has not answered gender gap in accessing education services between women and men from kindergarten to higher education.

C. Approach

Long time before the conflict and tsunami in Aceh, the history notes a range of ups-and-downs in education development in the area. Before the reform era in 1998, the policy of special autonomy for Aceh did not get a serious attention from the national government of Indonesia. The New Order's policy that tended to create uniformity in governance did not provide any authority for the local government to implement its special cultural identity in education. The reform movement in 1998 has contributed to the development of the local autonomy policy that has given a wide authority for local government in formulating its policy on education. This was begun with the issuance of the National Law No. 44 /1999 on the Implementation of Three Specialties of Aceh one of them is education and was followed by the National Law No. 18/2001 on the Special Autonomy for Aceh Province. However, in the implementation stage, the regulations have not given a significant impact in solving various education problems in Aceh and have not contributed to developing a learning atmosphere relevant to the essence of Aceh's specialty in education.

The application of autonomy in education is a consequence of the National Law on Local Governance and the National Law No. 25/1999 on Financial Balance between National and Local Government. Finally, through an intensive discussion in the parliament, a local regulation (*Perda*) No. 6/2000 on Education

Implementation was made and accomplished by the Qanun No. 23/2002 emphasizes that education system applied in Aceh is Islamic education system. This system applies the national curriculum plus because it also integrate the national education system. Later on, as the qanun on education was viewed not to accommodate public aspiration, the new Qanun No. 5/2008 was issued. Based on an interview, it is known that this Qanun needs a specific revision in terms of equal access to education for women and men. This also needs to consider inclusive education for children who need special treatments. Weak engagement of women in policy formulation is a factor causing the unheard voices in struggling for women's rights in education sector.

In addition, about the role of parents, in chapter 10 article (1) of the qanun, it is stated that "*Parents are entitled to taking part in choosing education unit and in obtaining information regarding their children's education.*" This provision should be groundwork in building a collaborative relationship between parents and teachers in the learning process. However, this chapter is sometimes misunderstood by parents to interfere with their children's education; therefore, we still find a lot of children who feel uncomfortable with school and department/major/study program selected by their parents' some parents also restrict their son or daughter from choosing a preferable department/major by considering their sex. For instance, female students are rarely found in a vocational school dominated by boys, though they really want to go there, vice versa.

To build a gender responsive policy, we expect that in the future the government of Aceh in formulating its policies will refer to the national policy as mandated in the Minister of Home Affair Regulation (*Permendagri*) No. 15/2008 on Gender Mainstreaming at Local Level that underlines the government's obligation to formulating gender based development planning, policy, and program as stated in RPJMD, Renstra SKPD and RENJA SKPD. The most recent status of gender mainstreaming in Aceh is, on May 2011, Working Group on Gender Mainstreaming (POKJA PUG) in the Local Development Planning Body (*Bappeda*) of Aceh was established and is expected to be an entry point in gender mainstreaming for all SKPA programs.

In addition, specifically in education sector, the National Education Standard based on the National Law on National Education System (*Sisdiknas*) No. 20/2003 refers to Minister of National Education Regulation (*Permendiknas*) No. 84/2008 on the Guidelines of Gender Mainstreaming Implementation in Education Field highlights gender mainstreaming in education must address gender sensitive education unit, gender equality based family, capacity improvement of education stakeholders in planning, designing and monitoring gender responsive budgeting, formulation of gender sensitive learning materials, development of data and information system that supports training programs on gender issues. The implementation of all these aspects in all programs will contribute to the realization of gender equality in access, quality improvement and education management.

Finally, we hope that the provincial and district government will have greater political will to incorporate Gender Responsive Budgeting (GRB) in education planning as stated in the Minister of Finance Regulation (*Permenkeu*) No.119/PMK.02/2009 on Gender Responsive Budgeting that considers budgeting planning and facilitates women and men, as well as marginalized groups to gain access and control to development resources.

D. Closing

1. Conclusion

The Provincial Qanun No. 5/2008 on Education Implementation in Aceh still needs substantive changes. One of them is related to *Education for All* that is still understood in symbolic way. The fact that the Governor Regulation (*Pergub*) as an operational base and one of considerations is not formulated contributes to developing such an understanding. Specifically, in fulfilling the mandate of the President Instruction (*Inpres*) on gender mainstreaming, chapter 5 of the Qanun can also be a reference in the implementation of *Education for All* that brings gender perspectives and consider the needs and interests of both women and men. It has been said that the efforts of building non-discrimination and gender equality in Aceh, including in education sector are a rhetoric only endeavor with a tendency to a political interest. As a consequence of the weak understanding of stakeholders

in education on the concept and strategy of gender mainstreaming, the efforts in a policy to enhance gender equality do not reflect a strong understanding on the contextual need and a commitment to implement them; instead, political reasons are more evident. Nevertheless, as an initial phase, the political effort is an important entry point toward the development of the right understanding to the qanun.

2. Recommendation

The key factors of successful integration of gender mainstreaming in education are the government's commitment and the presence of supporting data and information as well as sufficient understanding of stakeholders and public supports. Therefore, to gain the achievement, it is a necessity to make a more substantial policy showing the local government's commitment in endorsing gender mainstreaming mandated the President Instruction of 2009.

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RECOMMENDATION

In describing each policy, this research already provides specific recommendations. This chapter describes the list of general recommendation consisting of nine points expected to get a serious attention from government institutions such as the Governor of Aceh, Women's Empowerment and Children's Protection Body, Legislative Body, Development Planning Agency (Bappeda), the Adat Council (MAA), Islamic Sharia Law Office, Education Body, the Education Council, the Ulama Council, Social Welfare Office, Religious Affairs Office, political parties, and Law Bureau at the Governor Office, as well as civil society organizations focusing the rights of women and children, budgeting, *adat* and Islamic sharia law. Below is the list of recommendation based on the findings of the policy research on women's empowerment and children's protection, budgeting, education, political participation, Islamic sharia law implementation, and *adat*:

1. In the juridical context, it is necessary to explicitly include regulations and or policies on gender mainstreaming in development in the list of legal consideration as part of policy advocacy to end discrimination against women in development projects. In addition, it is crucial to mention all principles of equality as already stated in the LoGA.
2. Explicit words of 'women' (and gender) need to be mentioned in the regulation and policy documents especially these talking about women's participation and representation. The research found that 'neutral' words (such as society, *ulama*, *adat* figure) in a regulation were oftentimes understood to emphasize male participation and appearance in which women should not get involved as they were represented by men.

It is necessary to make policies to ensure women's access, role, control, and result in the policy formulation since the early step to the final decision. The research observed that weak women's participation in the

policy formulation gave an impact to leading to the tendencies toward hegemonic masculinity in the policy formulation and implementation in which women were positioned as the 'object' of the policy. As a result of women's marginalization, many development projects had sub-standard quality of results as more than half of the Aceh citizens did not participate in and contribute to the projects. As a further consequence, the situation also hampers the achievements of equal developments and MDG goals in Aceh.

3. Any efforts to press the Governor of Aceh and regents or mayors in the area to increase their political will in building and improving gender awareness and sensitivity of government officials and decision makers under their authority. The research found that there was a tendency among government officers to think that they already contributed to gender equality if they made a policy or regulation without considering and paying more attention to the real situation and contextual needs within the Aceh society. They had no strong political will to implement the policies they made to bring gender equality into reality. In addition some government officers appear to be reluctant in providing enough space for integrating and mainstreaming gender in the development planning and implementation as seen in the weak coordination among government agencies in Aceh.
4. It is also very important to build and improve capacity and knowledge of members of the legislative body on gender issues and national and international regulation talking about gender equality. In addition, strengthening their gender awareness is needed to enhance their commitment to voicing gender equality as part of voicing public interests in Aceh.
5. Islamic studies and researches that bring local contexts need to be expanded especially related to issues on women's access and participation in public spaces as it is found that many groups in the

society often refer to certain religious interpretations as justification to reject women's leadership, control women's movements in public domain, and enhance social stereotype of domesticating women.

6. Considering the 'mutation tradition' of officers within the government institutions especially the legislative body while it is found that gender sensitivity and awareness of legislative members plays a crucial role in the makings of regulation, it is very important to design capacity and awareness building of politicians that will run for the legislative members in the next election.
7. To strengthen the government's commitment to gender responsive budgeting, it is crucial to integrate the provision on gender budgeting in the policies on budgeting by referring to the existing national policies and regulations on gender responsive budgeting. Furthermore, it is necessary to make any efforts to enhance gender awareness and gender sensitivity and knowledge of gender responsive budgeting of policy makers and development implementers.
8. In the context of recent political situation that is different with the situation of the post-2009 election, organizations focusing on gender, women, and children need to build a networking mechanism that is more contextual to the contemporary situation.

