

Philosophy of Gender Justice in the Indigenous Malay People in Siak Sri Indrapura Regency

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Abstract—“Adat” in the Kingdom of Siak is a tradition based on Islamic Sharia called “*adat bersendikan syarak, and syarak bersendikan Kitabullah*”. For Malay people, what is called Malay is those who have Malay customs, speaking in Malay language and Islam. So, the customs and culture of Malay is based on Islam, if someone converts to Islam then he is called a Malay. The traditional foundation of Malay in Siak Sri Indrapura goes hand in hand with gender justice, which is guided by Islamic law. There is no difference between men and women who have many acts of worship, so that is a great reward without having to look and consider their gender first. Both of them have the same potential and opportunities to become ideal servants. For this reason, this proceeding will discuss how is the gender justice philosophy in the midst of Malay indigenous peoples in the Siak Sri Indrapura Regency? The method that used is juridical normative law which is also called doctrinal law research using the criteria of legal history. This paper is descriptive in nature, which means to provide a detailed, clear and systematic description of the problem of the main problem. In drawing conclusions using the deductive thinking method. Webster's New World Dictionary states that gender is defined as the visible difference between men and women in terms of values and behavior. Hilary M. Lips defines gender as cultural expectations for women and men. This opinion is in line with the opinion of feminists, such as Lindsey who considers all the provisions of society regarding the determination of a person as male or female is included in the field of gender studies (What a given society defines as masculine or feminine is a component of gender). However, if we do a review or re philosophy, then gender justice in the Malay traditional community in Siak Sri Indrapura Regency has been realized, there is no difference between men and women, there is no discrimination and oppression, including sexual discrimination.

Keywords: *refilosophy, gender justice, Malay indigenous*

I. INTRODUCTION

People who carry out habitual behavior gradually become customary. *Adat* is the custom of the community, and the community groups who make the custom as a custom that should apply to all members of the community equipped with sanctions, so it becomes traditional law [1]. Indigenous peoples in Indonesia have cultural diversity within heterogeneous societies. The diversity of indigenous peoples in this pluralistic

state has been integrated in the Founding Fathers' State Philosophy, namely Pancasila in paragraph (3) which reads unity of the nation. In addition, the state of Indonesia has given recognition, respect and protection of indigenous peoples in article 18 B paragraph (2) of the 1945 Constitution explaining: “The State recognizes and respects the traditional law community units and their traditional rights as long as they are still alive and in accordance with the development of the community and the principles of the unitary State of the Republic of Indonesia, which are regulated in the law” [2].

Van Vollenhoven in his normative research wrote: “Indigenous peoples living in Indonesia since hundreds of years before the arrival of the Dutch have and live within their own legal system”. The legal system of these indigenous people is known as traditional law [3].

Traditional law is a law that applies and develops within the community in an area. There are several understandings of Traditional law. According to Hardjito Notopuro Traditional law is an unwritten law, traditional law with special characteristics which is a guideline of people's lives in administering justice and welfare of the community and is familial in nature. Soepomo, Traditional law is a synonym of the law not written in legislative regulations, the law that lives as a convention in state bodies (parliament, provincial council, and so on), the law that lives as a customary rule that is maintained in the association of life, both in cities and in the villages. According to Cornelis van Vollenhoven Traditional law is a set of rules on behavior for native and foreign East people on one party has sanctions (because they are legal), and on the other party is in a state not codified (because of adat) [4].

“Adat” in the Kingdom of Siak is a tradition based on Islamic Sharia called “*adat based on syarak, andsyarak is based on Kitabullah*”. For Malay people, what is called Malay is those who have Malay customs, speaking in Malay language and Islam. So, the customs and culture of Malay is based on Islam, if someone converts to Islam then he is called a Malay. The traditional foundation of Malay in Siak Sri Indrapura goes hand in hand with gender justice, which is guided by Islamic law. There is no difference between men and women who have many acts of worship, so that is a great reward without having

to look and consider their gender first. Both of them have the same potential and opportunities to become ideal servants.

In QS. Al-Hujurat: 13 that means "*O real human beings we created you from a man and a woman and made you nation and tribe so that you know each other. Surely the most noble among you in the sight of Allah is the most pious among you.*"

The meaning of the verse gives us a picture of the similarities between men and women both in terms of worship and in social activities as well as giving a complete view that states that there are differences between the two. This view of difference is explained starting from the similarities, for example in the field of worship. Who is diligent in worship, it will get more reward regardless of gender. The difference is due to the quality of the value of devotion and piety to Allah Almighty. This verse also explains the main mission of the Qur'an revealed is to liberate humans from various forms of discrimination and oppression, including sexual discrimination, skin color, ethnicity and others. However, even though theoretically the Koran contains the principle of equality between men and women, it turns out that in practice these principles are often ignored.

One of the goals of human creation is to worship God, as mentioned in QS. Al-Zariyat: 56 means: "*And I did not create jinn and men but rather they served Me.*"

In human capacity as servants, there is no difference between men and women who have many acts of worship, so that is a great reward without having to look and consider their sex first. Both have the same potential and opportunities to become ideal servants. Ideal servants in the Qur'an are usually termed pious people (*muttaqûn*), and to achieve this degree of *muttaqûn* there are no known differences in gender, ethnicity or ethnic groups.

In Webster's New World Dictionary, gender is defined as the visible difference between men and women in terms of values and behavior. In the Women's Studies Encyclopedia explained that gender is a cultural concept that seeks to make a distinction in terms of the roles, behaviors, mentality, and emotional characteristics between men and women that develop in society. While Hilary M. Lips defines gender as cultural expectations of men and women (cultural expectations for women and men). This opinion is in line with the opinion of feminists, such as Lindsey who considers all the provisions of society regarding the determination of a person as male or female are included in the field of gender studies (What a given society defines as masculine or feminine is a component of gender) [5].

But there are still some views that say that gender is gender as well as gender justice, men still have a higher position than women, and women are often only considered someone whose nature is only cooking and his position remains in the kitchen. So with the explanation above it causes the need for further discussion about this gender justice.

The presentation made the writer interested to write in a piece entitled rephilosophy of Malay indigenous peoples' gender justice in Siak Sri Indrapura Regency. Based on the description above, it can be stated the formulation of the problem that is the focus of this research is how is the gender

justice philosophy of indigenous Malay people in Siak Sri Indrapura Regency?

II. RESEARCH METHODS

The writer using normative legal research type which is also called doctrinal law research. The writer conducts research using legal historical criteria. The research that discusses the history of this law is used by the writer because of re-analyzing the philosophy of gender justice of the Malay indigenous community in Siak Sri Indrapura Regency. Meanwhile, if seen from its nature, this research is descriptive, which means the research is intended to provide a detailed, clear and systematic description of the problems of the main problem of the study. In making conclusions the writer uses deductive method, thinking that is a way of thinking that makes conclusions from a statement or general proposition into a statement or case that is specific [6].

III. RESULTS AND DISCUSSION

A. Traditional Law

The role of habit in the legal life at this time has indeed declined a lot. As noted earlier, it is no longer an important source since it was urged by legislation and since the legal system seems to be based on laws that are based on statutory laws or *jus scriptum* [7].

Habits are completely abandoned, even though a country has adopted a legal system. This is especially true if we still do not let go of our thoughts about the existence of a community beside the state. Even though the state has become a national organization, its establishment does not eliminate the community, meaning that at the same time, in one region, we encounter two kinds of "society", namely "legal society" and "social society". The legal community is organized by statutory law, while others by social norms, including habits.

For traditional law to be obeyed, there are two conditions that must be fulfilled, i.e:

- An act that is still being done by people.
- There is a belief that the act must be done because it is an obligation.

Custom or custom order is an order whose norms are very close to the reality of daily life. What is usually done by people that is what can then become the norm. Although the norms of habit are not formed from efforts made consciously by humans through statutory bodies, but the order of habits in an atmosphere of reality (*werkelijkheid*) is obeyed in society and accepted and believed to be the rule of law [8]. Moreover, in numerous countries where customary law is treated as the law [9].

According to traditional law, marriage can be a matter of relatives, family, fellowship, dignity, can be a personal matter, depending on the arrangement of the community concerned. Each action or event in the Traditional law system is assessed and considered based on the arrangement of the alliance that was in force at the time the action or event occurred and at that time the action / event could be considered unlawful, even

though there were no legal norms that were “pre-existent” [10].

Traditional law is a law that applies and develops within the community in an area. There are several understandings of Traditional law. According to Hardjito Notopuro, Traditional law is an unwritten law, traditional law with special characteristics which is a guideline of people's lives in administering justice and welfare of the community and is familial in nature. Soepomo, Traditional law is a synonym of the law not written in legislative regulations, the law that lives as a convention in state bodies (parliament, provincial council, and so on), the law that lives as a customary rule that is maintained in the association of life, both in cities and in the villages. According to Cornelis van Vollenho ven Traditional law is a set of regulations on behavior for native and foreign East people on one party has sanctions (because they are legal), and on the other party is in a state not codified (because of adat) [4].

B. The Character of Traditional Law

The rules of traditional law violations in general are traditionally religious magical, comprehensive and state that they are not pre-existence, do not equalize, are open and flexible, the occurrence of customary offenses, offenses, reactions and corrections, accountability of mistakes, place of entry into force. The character of traditional law is [11]:

1) *Magis religiosus*: Meaning that actions which should not be done and actions which disturb the balance of the community are hereditary and linked to religion. For example, up until now, children should not be angry with their parents, younger siblings should not step over older siblings, men and women should not commit adultery, and so on.

2) *Comprehensive and unifying*: Meaning that it does not separate the criminal offenses that are criminal or civil in nature, nor is the distinction between crime as legal offenses and violations as criminal offenses. Likewise, it is not distinguished whether the offense is an intentional act (opzet) or because of negligence (culpa).

3) *No prae-existente*: The meaning is not like the western criminal law as stated in Article 1 of the Criminal Code (WvS) S. 1915-732, which adheres to the Montesquieu adagium which reads "Nullum delictum, nullapoena sine praeilegepoenali" (no offense, but on the strength of criminal rules in in the Law that has existed earlier than the act).

4) *Not to equalize*: If there is a customary offense, then the main concern is the emergence of a reaction or correction and the disruption of the community's balance, and who the perpetrators of the offense are and what their background is. The perpetrators of traditional law offenses are not generalized, nor are their events and actions.

5) *Open and flexible*: Open and flexible to new elements, which change, both coming from outside or because of the changes and developments in the community's environment. Traditional law does not reject these changes as long as they do not conflict with the legal and religious awareness of the community concerned.

6) *The occurrence of customary offense*: If the local customary order is violated or due to the existence of a party feels aggrieved, resulting in reactions and corrections and the balance of the community is disturbed. For example the act of stealing fruit in Aceh if the culprit picks it from a tree that is not maintained then the thief is punished to pay the price.

7) *Criminal offense complaints*: If there is a customary offense that consequently disturbs the balance of the family, then to resolve claims or claims from the injured party there must be a complaint, there must be notification and request to be resolved to the customary head.

8) *Reaction and correction*: The purpose of the action of reaction and correction of events or acts of offense is to be able to restore the balance of the disturbed community. Concerning events or acts of offense that disturb the balance of indigenous peoples are generally carried out by customary officials, for example the events occur when traditional ceremonies take place, while those that disturb private or customary families are carried out by the head of the family or head of the related relatives.

9) *Accountability for mistakes*: If an offense event or act occurs according to western criminal law in question whether the act is proven to be guilty and can be punished and whether the perpetrator can be accounted for.

10) *Place of entry into force*: Place of enactment of adat offenses is not national but is limited to the environment of certain indigenous peoples or in the countryside.

C. Gender Justice of The Indigenous Malay People in Siak Sri Indrapura Regency

Basically, gender is different from biological sex. Biological sex is a gift, born as a man or a woman. The path that makes masculine or feminine is a combination of basic biological building blocks and biological interpretation by culture. Gender includes appearance, clothing, attitude, personality, work inside and outside the household, sexuality, family responsibilities, and so on [12]. Gender justice is a fair process for women and men, to ensure that the process is fair for women and men action needs to be taken to stop things that are socially and historically prevented women and men from playing roles and enjoying the results and the role that it plays. Gender justice leads women and men towards gender equality.

Gender equality is a condition for women and men to enjoy the same status and conditions to realize their human rights fully and equally potentially contribute to development, thus gender equality is the same assessment by the community of the equality and differences of women and men. Men in the various roles they perform [13].

Gender justice no longer restricted to questions of distribution, gender justice now encompasses issues of representation, identity, and difference. The result is a major advance over reductive economic paradigms that had difficulty conceptualizing harms rooted, not in the division of labor, but in androcentric patterns of cultural value. On the other hand, it is no longer clear that feminist struggles for recognition are serving to deepen and enrich struggles for egalitarian redistribution [14].

Islam as a religion that upholds the value of justice and equality contains the principles of equality such as men and women alike as servants (QS. Al-Zariyatayat 56), men and women alike as caliphs on earth. (QS. Al-Baqarah: 30), men and women alike accept primordial agreements (QS. Al-A'raf:172), Adam and Eve were both active in cosmic drama, not Eve, which influenced Adam to eat Haldi's fruit but were equally tempted and equally repent to God. (QS. Al-A'raf: 20 to 23), men and women have the potential to achieve optimal performance (QS. Al-Nahl: 97).

In Siak Regency which is based on Malay tradition, gender justice in the midst of indigenous peoples has been realized, there is no difference between men and women, and there is no discrimination and oppression, including sexual discrimination.

IV. CONCLUSION

The gender justice of Malay indigenous people in Siak Sri Indrapura Regency is based on Islam. Islam as a religion that upholds the value of justice and equality contains the principles of equality such as men and women alike as servants, men and women alike as caliphs on earth. The writer can conclude that gender is a concept used to identify differences between men and women in terms of socio-cultural influences. In Siak Regency which is based on Malay custom, gender justice of indigenous peoples has been realized, there is no difference between men and women.

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