

A GENDER RESPONSIVE PARLIAMENT:

A HANDBOOK ON GENDER MAINSTREAMING IN THE LEGISLATURE



Secretariat General the Indonesian House of Representative
in collaboration with
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FOREWORD

The Indonesian House of Representatives has undergone many changes in its functions and roles. In 1998, the House of Representatives underwent dramatic transformation from what it had been under the Soeharto regime, also known as the “New Order” regime. Members of Parliament gained unprecedented powers in passing legislation and carrying out over-sight of the Executive arm of government. As a generator of legislation the House of Representatives had gained near equal authority with the President in its law making capacity. Meanwhile, in its function of preparing budgets, the House is a superior body. Even though budget formulation originates at the Executive level, the House of Representatives plays an important role in directing and prioritizing budget allocations. In carrying out over-sight of government, the House keeps a check on government policies.

Since 2004, policies relating to the political system have changed with emphasize the House of Representatives performs a representative role being put on improving the capacity of Parliamentary members. Members of the different Houses of Parliament are now directly elected by electors. Statutes have strengthened the role of the Parliament as a representative institution.

In facing the new demands and expectations on the members of Parliament, the Secretariat-General of the House of Representatives also has an important role in supporting each representative. To meet the demands of the general public that the Parliament delivers on its promises in passing legislation, budgeting, and performing oversight, the Secretariat-General needs to work harder to support the members with technical and administrative support. In order to provide maximum support to the House, the Secretariat-General has collaborated with the United Nations Development Programme (UNDP). The collaboration with UNDP has resulted in the publication of several handbooks on Representation; Reporting Systems for Parliaments; Gender Mainstreaming in the Legislature; and Guidelines for the Ethics Council. Through these handbooks, it is expected that the members of the House of Representatives can improve their capacity to carry out their parliamentary duties.

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PREFACE

Democracy means power for people. Government is a manifestation of power in which supreme power is vested in people. Power can be exercised by the people directly or through their elected representatives or institutions. Abraham Lincoln described democracy as government “of the people, by the people, and for the people”. Democracy is not the same as freedom, but is a manifestation of freedom which has been institutionalized through practices or procedures molded over a long time.

Indonesia has witnessed a dynamic evolution of its government systems. The year 1998 was a turning point in Indonesian history, particularly for the role of the House of Representatives. The election of 1999 was remarkable because of the public trust and acknowledgement shown towards the government and its institutions. The House of Representatives (*DPR*) was no longer a rubber stamp as it had been under the Soeharto regime, but had become a key institution in developing legislation and budgets. However as a reformed institution with new roles, the *DPR* has still struggled to cope with its new functions. Many parliamentarians lack experience in carrying out their duties and roles as people’s representatives.

Since 2000, Secretariat-General of the House of Representatives in collaboration with the United Nations Development Programme (UNDP) has supported the House through providing technical assistance for parliamentarians, ancillary bodies, and the Secretariat-General itself. This assistance is directed at maximizing the legislative, budgetary and oversight functions. Through this assistance, many handbooks have been produced in order to support parliamentarians and their staff at the House. The handbook aims at *improving* the capacity of the House of Representatives as an institution.

One concerning issue is in accommodating a gender perspective in the process of legislation and budgeting. This handbook of “A Gender Responsive Parliament: Gender Mainstreaming in the Legislature” is aimed at parliamentarians and bill drafters to enhance their understanding of what a gender perspective is. Legal drafters or bill discussion teams often do not have experts on gender, therefore a simple yet complete reference is required to assist them in implementing the perspective and strategies of gender mainstreaming in drafting bills

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THE HANDBOOK'S OBJECTIVE AND STRUCTURE

Objective of the Handbook

This book was prepared to provide a brief and simple reference on 'Gender Mainstreaming' in the legislative function. In particular, the guide focuses on two of the three principal functions of the House of Representative (*DPR*), namely producing legislation and budgets. These terms have been widely used in various discussions on planning, policy formulation and the evaluation of development. However it is difficult so far to find a brief and simple reference on gender mainstreaming in the process of legislation and budgeting formulation in the parliament.

The government have championed gender mainstreaming as a nationwide strategy, and reinforced it formally through Presidential Decree (*Inpres*) No. 9/2000. Based on the *Inpres*, various technical regulations in gender mainstreaming have been developed at many departments and state ministries. However, its implementation has not been simple. An assessment of civil society indicates that there has often been deterioration in the quality of legislation in terms of its ability to accommodate gender issues. This poor quality is mainly influenced by two factors: the Parliament's internal provisions and House Standing Orders; and the level of knowledge of the Members of Parliament regarding gender mainstreaming and the technical procedures involved in creating a culture of gender awareness in the law. These factors have resulted in an often poor quality of law which fails to accommodate gender mainstreaming (PSHK; 2007).

One indicator of the social accountability of a law is the use of a gender perspective during a bill or a policy's drafting. In practice, however, various policies or laws have in fact reflected discrimination by justifying gender- based discriminatory practices that create gender disparity.

Users of this Handbook

This book is directed at parliamentarians and legal drafters who require understanding of gender issues. Legal drafters or bill discussion teams often do not have gender expertise, therefore a simple yet complete reference is required to assist them in implementing the perspective and strategy of gender mainstreaming in drafting bills

The Handbook's Structure

This book was prepared with a special view to the needs and functions

of parliamentarians in the process of formulating laws and budgets. Chapter I is the introduction, containing basic information on gender, and gender mainstreaming, beginning with definitions, methodologies, and a brief application guide. Chapter II describes the significance of mainstreaming and the parliament's role in implementation of the mainstreaming. Chapter III describes gender mainstreaming in the legislative function. Chapter IV is the final chapter, and describes applications of the strategy in the budgeting function, to ensure that the budget formulation will be gender responsive

How to use this Handbook

This book may be used as a short reference. The reader can directly identify topics and needs and focus special attention on the topics concerned

However, this book on the whole can provide *comprehensive* information on what *comprises* the mainstreaming strategy and how to position it in the running of the parliament.

CHAPTER 1

INTRODUCTION

Gender refers to the DIFFERENCES between women and men in the aspects of function, role and responsibility resulting from social cultural CONSTRUCTIONS. Gender differs from sex which is a natural and biological phenomenon.

1.1. Basic Concepts

The terms gender and gender mainstreaming have been widely used, both in the academic and non-academic lexicon as it relates to the *law making process*. However, the terms are not always accurately used, and sometimes even reflect a lack of clarity in the meaning of the gender concept itself. In the policy making process, such a lack of clarity can result in the drafting of new policies that do not meet targets and do not achieve the expected objective.

Gender

In simple terms, Gender refers to the DIFFERENCES between women and men in the aspects of function, role and responsibility resulting from social cultural CONSTRUCTIONS. Gender differs from sex which is a natural and biological phenomenon. Therefore, the understanding of gender is not *universal*, but depends on the socio-cultural context surrounding it.

Several mistaken expressions of 'gender'

- ✓ Gender is identical to women
- ✓ Gender refers to women's issues

Sex	Gender
<u>By Nature</u> Physiological	<u>By Nurture</u> Formed socially (community traditions, norms etc)
Universal	Local, differing from one community to the next
Permanent and unchanging (except through medical intervention) ✓ When men are born as men, they will remain so ✓ Women will remain women	Changing ✓ Many men work as hairstylists (a profession usually associated with women) ✓ Being a professional chef is, on the contrary, mostly a male role (although the work of cooking in the home is often identified with domestic work (read: women)

Gender Mainstreaming

The concept of gender mainstreaming was initially introduced through the Beijing Declaration and Action Platform of 1995. The Declaration was among the official documents of the fourth world conference on women in Beijing, China. The document, among others contained the mutual commitment of representative countries to a series of measures as an absolute endeavor to reduce and ultimately abolish various forms of gender injustices suffered by women such as

discrimination, feminization of poverty, loss of access to full participation in politics and government.

The definitions of Gender Mainstreaming include the following:

“...a process to evaluate the implication of each measure planned for women and men, including regulations, policies, or programs, in every field and at all levels.” (*Agreed conclusion 1997/2, in Report of the Economic Social Council 1997, A/52/3/Rev.1*)

“... a strategy developed to integrate gender into an integral dimension of planning, formulation, implementation, monitoring, and evaluation of national development policies and programs.” (*Presidential Instruction Republic of Indonesia No. 9 / 2000*)

Therefore, as stipulated in the document, gender mainstreaming is a **strategy** rather than an objective. Its main objective is to realize gender justice. This strategy was formulated in order to realize the design, implementation, monitoring and evaluation of policies and programs throughout the political, economic, social, and cultural spheres.

“Therefore, the idea of mainstreaming of women is basically about justice. This is as much about power as it is about project, as much about policy as it is about program.”

(Mary Anderson, Focusing on Women: UNIFEM’s Experience in Mainstreaming (UNIFEM, 1993 page 5 in UNDP, *Gender Mainstreaming: Learning and Information Pack, draft 2000*)

Gender injustice is an issue of multidimensional nature. The issue not only involves the individual aspect, or relationship between individuals but also the social structure that exists and is present in the community. Therefore, efforts to realize gender justice require a change of *paradigm*, both individually and collectively.

Mainstream, itself, refers to an understanding of a belief or practice most often adhered to by people or the community. Meanwhile the suffix (*ing*) refers to the process or verb characteristic attached to it. In simple terms this is understood as a work/process to make gender a concept in mainstream thinking that is followed and practiced in the community.

To put gender into the mainstream, two basic matters require attention: *Firstly*, gender injustice is of a multidimensional nature, and possesses structural and cultural dimensions. *Secondly*, since the problem of gender injustice is a complex one, mainstreaming implementation requires mapping several important priority areas. The priority areas may be referenced in the 1995 Beijing declaration and action plan.

12 FOCUSES OF CONCERN IN THE BEIJING DECLARATION AND ACTION PLAN:

1. *The increasing burden of poverty for women*
2. *Injustice, inadequacy, as well as inequality of women's access to education and training.*
3. *Injustice, inadequacy, and inequality of women's access to health care and other related services*
4. *Violence against women*
5. *Impact of conflict on women and women living in occupied areas*
6. *Injustice in the economic structure, in all forms of productive activities, and in access to resources*
7. *Injustice between men and women in distribution of power and decision making at all levels*
8. *Inadequate mechanism at all levels to promote women's advancement*
9. *Lack of respect for and inadequate promotion and protection of women's rights*
10. *Stereotyping of women and inequality of women's access and participation in the entire communication system particularly in the media*
11. *Gender injustice in resource management and in environmental protection*
12. *Continued discrimination and violation of women's and child rights.*

1.2. Main Issues Related to Gender

Gender based stereotyping and gender based discrimination

According to this concept, women are the parties most often discriminated against in many aspects of life since they are often considered only suitable for domestic roles such as performing household tasks and caring for children. This is contrasted with men who more commonly have roles in the public domain, as family head, as the '*breadwinner*' or economic backbone of the family, and who often represent the family in community social relations.

Gender based discrimination also occurs when a woman is considered and treated differently based on the above mentioned social roles assigned to her. Discrimination is evident with the exception of certain occupations frequently filled by women. For example, women are often considered more diligent and thorough, thus various functions such as secretarial matters, as treasurer and secretary are often automatically assigned to women.

Gender inequality

Role perceptions attached to both men and women in the community also often lead to the understanding that men are more *superior* to women. Such inequality justifies sexual work divisions between men and women. This work division often associates women with tasks deemed to be without economic value, such as household work and childcare. Further, due to gender inequality, women often lack access to education, paid employment and health.

1.3. Principles and Elements of Gender Mainstreaming

The commitment of nation states to gender mainstreaming, as set out in the Beijing action document, has made this a global strategy to realize gender justice. As a global strategy, each country has aimed to implement this in consideration of the context and characteristic of its respective government administration. Therefore implementation was different in character and emphasis from one country to another. Such differences were also followed by variations in formulating strategy implementation principles. One of the implementation principles was initiated by the Ecosoc committee in its 1997 report. Some basic principles or elements were subsequently developed by international bodies such as the World Health Organization (WHO) and UNESCO.

These principles are:

- 1. Avoid the application of GENDER NEUTRAL assumption*
- 2. Problem Formulation that enables Gender diagnosis*
- 3. Responsibility for mainstreaming in practice involves the entire system that ends up at the highest level.*
- 4. Mainstreaming requires making every effort to expand women's participation at each decision- making level*
- 5. Mainstreaming must be institutionalized in measures, mechanisms and in concrete process*
- 6. Mainstreaming does **not** replace special policies aimed at women, or positive law, it is also not a replacement for gender unit*
- 7. Political will or if required human and financial resource allocation*

1.4. Gender Mainstreaming Instruments

The concept of 'instrument' refers to a gender mainstreaming strategy formulated and implemented by gender analysis through popular and frequently used approaches. Gender analysis is aimed at discussing and understanding gender relations and the impact of gender differences and social relations surrounding it and identifying gender injustice arising as a consequence of the construction.

Gender analyses that have frequently been used are (NCAW Vietnam: 2004: 108-115): *Harvard Analytical Framework*, *Mosser's Framework*, *Gender Analysis Matrix*, *LongWe Women's Empowerment Framework*, and the *Social Relation Approach Framework*. In addition, the Indonesian National Development Planning Board (*Bappenas*) also has developed the *Gender Analysis Pathway* in the context of gender mainstreaming in Indonesia. In addition ***Problem based Analysis (ProBa)*** was developed through cooperation between the Indonesian Ministry for Women's Empowerment, BKKBN, and UNFPA. These analyses have been widely used not only by government agencies but also by non-government organizations. These approaches are also directed to policy or program planners in order to identify disparity and gender issues and therefore the planning can address issues of gender disparity.

Gender mainstreaming instruments were constructed as part of the development policy in general. The available instruments were basically developed for application in inspecting and planning development policy. Hence the existing instruments generally follow the cycle of preparation and implementation of development, from planning, implementation, and finally to monitoring.

Harvard Analytical Framework

This framework was initially fashioned in 1985. It was developed through collaboration between the Harvard Institute for International Development and the USAID Women in Development Office. The objectives of this approach are (ILO: 1998):

- a. To demonstrate the economic ratio in resource allocation for both women and men
- b. Assist planners in designing more efficient programs that will *improve* overall productivity
- c. Emphasize the importance of information as the basis of achieving efficiency
- d. Provide an illustration of work performed by men and women in the community and identify key differences between the two.

This approach is oriented more at investigating data at micro or community level. Therefore, it is greatly beneficial in policy or program design in rural as well as local communities. This instrument can also be used to portray sex based work divisions occurring in the community, between productive and reproductive works of social nature.

Mosser's Framework

Mosser's framework was developed in the United Kingdom in 1980, based on the concept of Women in Development. This approach basically aimed to criticize the perception of planning as mere technical work without observing the political dimension.

In this approach, six instruments may be used to formulate a program plan, consisting of: (1) gender role identification; (2) gender needs evaluation that assumes women are a group with special needs due to their roles and positions; (3) selection of control over decision making in the family; (4) role balance that attempts to see the extent of implications of the plan toward increased work load of women; (5) policy matrix to identify various approaches taken in discussion of women's roles and gender needs; (6) assurance of women's representation and participation in the planning process.

Gender Analysis Matrix

The objective of the gender analysis matrix is to describe development intervention impacts that are different for women and men. This instrument is a community based analysis instrument. Community members are expected to independently begin the process of analyzing and criticizing assumptions of the gender role. The analysis process is carried out at four different levels, among women, men, families, and community. The four focuses of analysis include work, time, resources, and socio-cultural factors.

LongWe Women's Empowerment Framework

Framework analysis focuses on women's equality and empowerment. According to this approach, there are five levels of equality consisting of welfare, access, awareness, participation, and control. Analysis is performed to measure the institution's level of commitment to women's equality. On the whole, the analysis process is performed with two instruments, to measure level of equality and identify women's problems.

Social Relations Approach Framework

The analysis instrument was developed by Naila Kabeer, a widely known expert in the discussion of gender and development. This approach is aimed at identifying injustice in distribution of resources and responsibility, and formulating a program enabling women to act as agents in their own development. The main components in this approach include human welfare as the development objective, the social relations concept, and institutional analysis.

This approach may be used in planning for programs or policies at local, national or international levels. This approach will provide a general multifaceted picture of poverty and injustice, such as gender and class. Therefore, this analysis can be used to connect micro and macro aspects in discussing the issues.

Gender Analysis Pathway (GAP)

This approach consists of eight steps, encompassed in three main phases namely, (1) gender responsive policy analysis, (2) gender responsive policy formulation and (3) gender responsive action plans.

Phases in implementing Gender Analysis Pathway*:

PHASE	STEPS	Leading questions
I: GENDER RESPONSIVE POLICY ANALYSIS	<ol style="list-style-type: none"> 1. Identification of targets and objectives 2. Presentation of sorted data both quantitative and qualitative 3. Analysis of issues and factors that cause gender disparity 4. Identification of gender problems 	<ul style="list-style-type: none"> ✓ Does the program have the objective of realizing gender equality? Is there any program / policy directed at gender equality? How can gender equality be integrated into the program? ✓ Can the program's impact be identified based on sex aggregated data? What are the perceptions and problems according to gender? ✓ Can the needs of program target groups be identified based on sex aggregated data ✓ If gender problems are identified in development programs or policy, can the following be explained: to what extent do women have access and control over development resources, what is the level of women's participation, and how far can this group enjoy the benefits of the program compared with men or other groups?
II: GENDER RESPONSIVE POLICY FORMULATION	<ol style="list-style-type: none"> 1. Re-formulation of gender responsive policy/program 2. Identification of gender indicators 	<ul style="list-style-type: none"> ✓ What measures can be taken to overcome gender disparity? ✓ How can we ensure women's participation in development programs and that they can get benefit from the program? ✓ How should the objectives be formulated to ensure gender justice? ✓ What indicators can be developed

		to describe disparity and to measure gender disparity and equality?
III : ACTION PLAN PREPARATION	<ol style="list-style-type: none"> 1. Action Plan Preparation 2. Identification of Targets 	

*summarized from "RPUK & BV: A review of gender equality in agriculture, irrigated farming and fisheries in Aceh Province 2007,

Problem Based Analysis (ProBA)

This analysis was designed to assist gender analysis in development policy, which could also be used for gender analysis in the budgeting process. This method consists of four phases, namely (1) gender problem analysis, (2) policy examination, (3) policy formulation and (4) preparation of action plans and of required intervention activities.

1. *Gender problem analysis*

In this phase, the three main activities *comprise* of: a) identification of sex aggregated data in the area regulated by the policy. In this phase, ability to study sex aggregated data and access or availability of sex aggregated data are the main requirements; b) identifying gender problems; and c) identifying the causes of gender disparity or gender injustice.

2. *Policy examination*

Policy assessment is prepared to observe the relevant policy characteristics. There are three existing policy categories, namely, gender neutral policy, gender bias policy and gender responsive policy. This process will become a base for determining strategic policy.

3. *Policy formulation*

This phase involves two strategic steps, which are: a) formulating new policy, objectives as well as targets based on the existing policy analysis; b) selecting gender responsive programs and policies.

4. *Preparation of action plan and intervention activities*

In this phase an action plan is formulated as a form of intervention activity.

5. *Monitoring and Evaluation*

This is the final phase of the ProBA method. However the activities in this phase play a significant role, since the result of evaluation and recommendations will be used as feedback or lessons learned for the next gender analysis and development policy planning.

1.5. Policy and institutional framework for women's empowerment in Indonesia

Gender mainstreaming is not merely a strategy for women's advancement and empowerment in the framework of achieving gender equality. It should also be viewed as an integral part of the national level institutional framework to achieve equality for all.

Women's empowerment is included in development policy, i.e. through National Consultative Assembly (*MPR*) [An assembly comprised of the both the *DPR* and the *DPD* assemblies] Resolution No. IV/TAP/*MPR*/1978 regulating women's increased role in development; strengthening the legal protections for women through ratification of the CEDAW convention in 1984 through Law No. 7 / 1984. Through the ratification, the government underscores its commitment to eliminate all forms of discrimination against women.

Four targets for enhancing the quality and role of women

1. Assurance of gender justice in various legislations, development programs and public policies
2. Reducing disparity in development achievements between women and men , measured by GDI and GEM figures
3. Reducing violence against women and children
4. Increased child welfare and protection

Annex to Perpres No. 7 / 2005, concerning medium term development plan 2004-2009

The institutional framework for women's empowerment was increasingly strengthened with the inclusion of the national development agenda in *MPR* Resolution no IV/*MPR*/1999 regarding GBHN. As a derivative of this resolution, a national development program plan was drawn up, regulated through *propenas* Law No. 25 / 2000. In the medium term development program plan for 2004-2009, the institutional framework for women's empowerment was divided into two special chapters namely, eliminating discrimination and enhancing women's quality of life and roles. The medium term development plan sets out four priorities of women's and children's empowerment, three among them specifically directed at women's empowerment.

In the RPJMN, efforts at Eliminating Discrimination in Various Forms are aimed at:

1. the implementation of legislation that is free of discriminatory treatment against every citizen, government institution / agency, as well as private company / sector in transparent and consistent manners;
2. Coordination and harmonization of legislative regulations without prioritizing certain interests to reduce discriminative treatment against citizens;
3. Development of the public service apparatus and system that is fair and acceptable to every citizen.

While at policy level, efforts are directed at developing law enforcement and legal certainty that are consistent, fair, and non-discriminative as follows:

1. Enhancing efforts to eliminate all forms of discrimination including gender injustice so that every citizen without exception has an equal position before the law;
2. Establishing the law fairly, through improvements to the legal system that are professional, clean, and dignified.

The section on efforts to Enhance Women's Quality of Life and Women's Roles and Child Welfare and Protection also provides some important explanations with regard to the commitment to advance women's rights.

Development targets in the framework of enhancing the Quality of Women's Lives and Child Welfare consist of:

1. Assurance of gender justice in various legislations, development programs and public policies;
2. Reducing disparity in development achievements between women and men, measured by GDI and GEM figures;
3. Decreasing acts of violence against women and children; and
4. Enhanced child welfare and protection.

The priorities and directions of development policies are as follows:

1. Increasing women's involvement in the political process and public positions;
2. Enhancing education levels and health care and other development fields, to raise the quality of life and resources of women;
3. Increasing anti violence campaigns against women and children ;
4. Improving criminal law instruments to protect each individual from various acts of violence, exploitation, and discrimination including domestic violence ;
5. Increasing child welfare and protection; and
6. Strengthening institutions, coordination and networks of gender and child mainstreaming in the planning, execution, monitoring, and evaluation of various policies, programs, and development activities in all fields, including fulfilling international commitments, and to provide gender statistics and data, and increasing community participation.

Aside from that, other policies are also important to refer to, i.e. as elaborated in the National Action Plan for the Enhancement of Women's Quality of Life (*RAN PKHP*). *RAN PKHP* is a Strategic Plan overseen by the Ministry for Women's Empowerment. The policy remains significant as a conceptual framework and commitment to *PKHP*.

In addition to the institutional framework, a normative framework is also in place as the foundation of human rights protection and manifestation of a justice and gender- equal life and protection of child rights and welfare.

The normative foundation of gender mainstreaming in all areas of development is shown in the following table. The table also functions as an initial checklist in the process of formulating laws, showing various legal provisions concerning the material of law to be formulated. Specifically the list of legal provisions will give additional information for consideration in preparation of law.

Normative Framework of women's empowerment:

1. The 1945 Constitution, amendment II, on human rights;
2. Law No. 68 of 1958 on the Political Rights of Women;
3. Law No. 7 of 1984 on the Ratification of the Convention on Elimination of All Forms of Discrimination against Women (*CEDAW*);
4. Law No 25 of 2000 on National Development Program; Perpres No 7/2005 on Medium Term Development Plan 2004-2009;
5. Law No. 5 of 1998 on the Ratification of "The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment";
6. Law No. 19 of 1999 on the Ratification of " The ILO Convention Number 105 concerning the Abolition of Forced Labour";
7. Law No. 20 of 1999 on the Ratification of "The ILO Convention Number 138 concerning The Minimum Age for Admission to Employment";
8. Law No. 21 of 1999 on The Ratification of "The ILO Convention Number 111 concerning Discrimination in Respect of Employment and Occupation";
9. Law No 29 of 1999 on The Ratification of The International Convention on the Elimination of all forms of Racial Discrimination;
10. Law No 39 of 1999 on Human Rights;
11. Law No 24 of 2000 on International Agreements;
12. Law No 26 of 2000 on The Human Rights Court;
13. Law No.31 of 2002 on Political Parties;
14. Law No 23 of 2002 on Child Protection;
15. Law No. 20 of 2003 on The National Education System [*Sisdiknas*];
16. Law No 23 of 2004 on Abolishing Domestic Violence;
17. Law No. 32 of 2004 on Regional Government;
18. Law No. 33 of 2004 on Financial Equitability between The Central and Regional Governments;
19. Law No 2 of 2008 on political parties;
20. Law No 10 of 2008 on the general election of The People's Representative Council [*DPR*], The Regional Representatives Council [*DPD*] and The Regional People's Representative Council [*DPRD*] members;
21. Government Regulation No. 25 of 2000 on government authority and the authority of the provinces as autonomous regions ;
22. Presidential Decree (*KEPPRES*) No. 36 of 1990 on The Ratification of The Convention on the Rights of the Child ;
23. Presidential Decree No. 83 of 1998 on ratification of the ILO Convention No. 87 on The Freedom of Association;
24. Presidential Decree No. 129 of 1998 on The National Action Plan on Human Rights;
25. Presidential Decree No. 87 of 2002 on The National Action Plan (RAN) for The Elimination of the Commercial Sexual Exploitation of Children;
26. Presidential Decree No. 88 of 2002 on The National Action Plan for The Elimination of Women and Child Trafficking;

CHAPTER II

GENDER MAINSTREAMING AND THE HOUSE OF REPRESENTATIVES

DPR is an important institution in ensuring and controlling the implementation of national development. Development benefits and objectives should be directed at all community members both men and women.

2.1. WHY THE HOUSE OF REPRESENTATIVES (DPR)?

Gender mainstreaming should be implemented throughout all state institutions. The House Representatives (*DPR*) is among the most important of institutions in realizing gender justice and implementing gender mainstreaming. The *DPR* has a fundamental role in the Indonesian manpower system that will determine the progress or the retreat of gender mainstreaming. Several important roles described below indicate this fact

a. The DPR as a law forming institution

Political reform in 1998 also brought fundamental change to the governance landscape. Strengthening the role and position of the *DPR* before other branches of power was one of the main elements, besides higher demand for legal supremacy.

This condition increasingly placed the *DPR* as an important institution determining direction and public policy at national level. 'Executive heavy' practices during the previous Soeharto regime, also known as the "New Order" prevented the *DPR* from functioning properly as a lawmaking body. The process of deliberation in the *DPR* was more a mere procedural process. Therefore, debates and in-depth discussion of laws to be formulated very rarely occurred during that period.

Parliament is a symbol of democracy; therefore it should not disregard, limit or conduct discrimination against men and women

Source: Gender Mainstreaming in the Parliament: International best practices

Among the important changes related to policy-making authority was the way laws were made. Amendment to article 5 (1) of the 1945 Constitution awarded *DPR* equal authority with the President in law making capacity. With this regulation, *DPR* was able to maximize its right of initiate or propose a bill. Strengthening the Legislature was reinforced by provisions of the *DPR* code regulating the drafting of Law. Based on *DPR* Regulatory Code article 123, every bill mutually approved by the President and *DPR*, is required to be enacted. Where mutually approved bills are not legalized by the President within 30 work days, the bill will legally become law and should be enacted. This provision provides certainty that each bill that is passed by the *DPR* will be put in to effect.

Although relatively small, there has been an annual increase in the number of Bills proposed through *DPR* initiatives as shown in the table below:

1992 – 1997	Of 91 Laws, all were proposed by the Executive
1997 – 1998	3 of 44 Laws discussed were upon <i>DPR</i> initiative
1998 – 2004	
2004 – 2009 (current period)	17 of a total 77 Bills ratified by 17 July 2007 were upon <i>DPR</i> initiatives

Although the level of initiative taking in proposing law has been relatively small, the *DPR* still holds an important role in drafting laws proposed by the government. The direction and scope of regulations to be formulated into law will be greatly determined by the discussion process, for although a law may be government-proposed, the discussion process at commission, special committee (*pansus*), or joint commission level will enable significant changes to be made.

b. The *DPR* as a reflection of political quality and democracy

It is often said that the culture of a community is reflected in the quality of its politics. If a community culture respects and strives for gender justice, the same thing should also be reflected in its representative institutions as they are the main political infrastructures.

Moreover, since 2004 several changes have been made in the policy of the political system with the objective of increasing the quality of representation. For instance, voters can directly choose which party representative is elected to sit in the *DPR*. This regulation is aimed at realizing the *DPR* as an institution of representation, in which the existing members are members directly elected by constituents. Thus, since a commitment to gender advancement and achievement of gender justice are actual political commitments of the state, the same commitments should be adopted within the *DPR*.

c. The *DPR* as the main institution in the implementation of development

The *DPR* is also an important institution in ensuring and controlling the implementation of national development. Development benefits and objectives should be directed at all community members. Both men and women should gain equal benefit from development. The *DPR* plays an important role in oversight realization of development objectives.

General principles of good governance

There are several variations in interpreting the principles of good governance. These are not always the same; some formulate the good governance principles as five important pillars, while another institution formulates them in larger number. For instance, Bappenas developed 14 principles of good governance.

As an auxiliary instrument, the development policy has accommodated the principles of *good governance*. As a main principle applied in development policy, the concept of good governance has integrated the gender perspective as an inherent element. In discussions of good governance, *gender equality* has been recognized as an inherent element in democracy and *good governance*. Development benefits should be enjoyed fairly by both men and women. The principles of good governance have been widely applied in nearly all aspects of development policy, from policy changes, judicial institution reform and justice administration, bureaucracy reorganization to bring about more efficiency and public accountability. Therefore, not even one development policy sphere is free from the role of the DPR, whether in developing relevant policies in this case, statutes and budgets, or in the oversight of government performance.

2.2. Urgency of Gender Mainstreaming

Gender mainstreaming, as described in the previous chapter is indeed a political commitment of the state. However, the urgency of gender mainstreaming is also not merely to fulfill political duties. Urgency of implementing this strategy may also be seen from the continued presence of gender disparity and injustice.

Surveys made by LBH APIK Jakarta throughout 2000-2001 in the Jakarta region indicated that women of lower socio-economic class have to shoulder an excessive work load due to existing gender-based discrimination. Such discrimination was sourced from a standardized division of roles between men and women established through Marriage Law No 1/1974. The survey also disclosed the adverse reality of women's work conditions in the formal sector and the absence of protection and recognition for women's contribution in the informal sector (Henny Wiludjeng, dkk; 2005).

It is true that gender injustice is not a problem confined to Indonesia. This condition is a global problem, occurring in nearly all countries. However, in Indonesia the problem tends to getting worse. As a simple indicator, in the report on global gender disparity, published by the World Economic Forum in 2007, Indonesia's rating slid sharply from the previous year from position 67 to 87 out of 128 countries taking part in the global survey (WEF; 2007).

- 70% of 1.3 billion people living below the line of extreme poverty are female
- Over ½ million women die post childbirth, 99 % of them in developing countries
- 75% of 876 illiterate population are women
- Two thirds of children who fail to receive access to education are female

Source: Oxfam
<http://www.oxfam.org.uk/resources/issues/issues/gender/introduction.html>

These data increasingly underscore the importance of implementing the gender mainstreaming strategy, in all state institutions possessing policy-making authority.

This disparity becomes more evident when data relating to the proportion of women at decision making levels in the Executives is displayed (Darsono A, 2006). Of 33 ministers in the current cabinet, referred to as the *United Indonesia Development Cabinet*, only 4 are women, while at the provincial level, from a total of 32 governors, all are men. At district level, of a total of 360 regencies there were only 5 women regents, equating to about 1.4% of the total. A similar percentage was also shown in the personnel structure of the civil service and the Indonesian Defense Forces (*TNI*).

CHAPTER III

GENDER MAINSTREAMING IN THE LEGISLATURE

Gender justice as an ideal condition is impossible to be achieved without the support of gender responsive policies

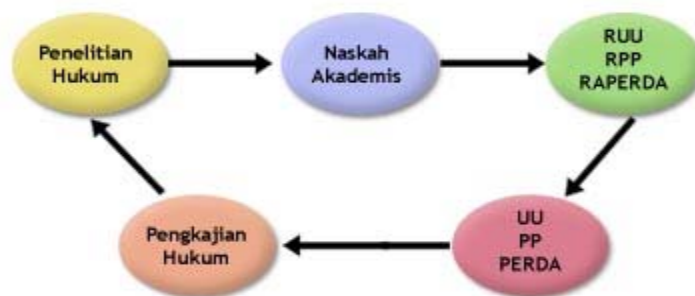
3.1. Drafting Bill Process

One of the functions of the House of Representatives (*DPR*) is as 'law maker', with the President. In modern states, law plays a highly significant role in regulating and determining the relationship between society and government. As a political product, laws have binding power for all citizens without exception. Laws establish what is legal and illegal, what are the functions and powers of state bodies, uphold protection and ensure protection of citizens' rights.

Therefore, it is important to ensure that laws address and are responsive toward community needs. Responsive laws are those facilitating public interests and building a spirit of self-correction in the governance process (Nonet & Selznick; 2003; 92)

The law making process is important as contest and interest negotiations occur between the parties involved. The general cycle of law drafting actually resembles the cycle of policy / development program development. What possibly distinguishes them are the activity details, as shown by the following chart:

Figure1. Legislation cycle



Source: BPHN, <http://www.bphn.go.id/puslitbang/>

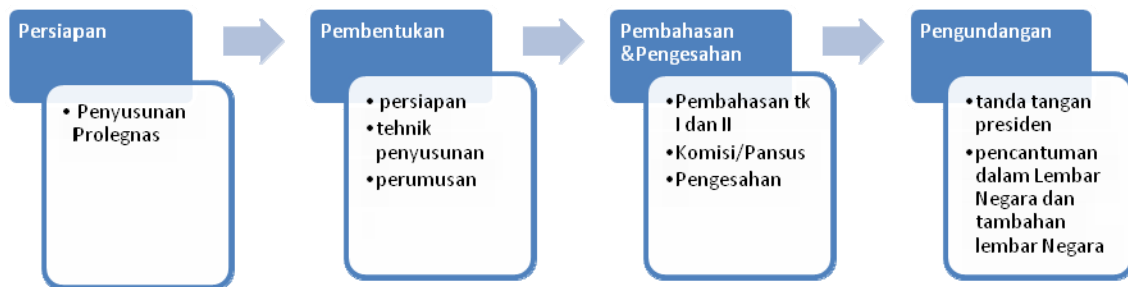
For the Layout Person

Law Research	Academic Paper	Bill Draft of Government Regulation Draft of District Regulation
Law studies		Law Government Regulation District Regulation

After the reformation at 1998, some important changes occurred in the process and the flow of drafting bills. There were at least two important changes, firstly in terms of the parties entitled to propose a bill, and secondly there was a new actor namely the Regional Representatives Council,

(DPD) [somewhat akind to a House of Senators], separate from the president and the DPR. Other than that, the process of making legislative regulations was also more detailed and directed, with the birth of a law on the procedure for forming legislative regulations (TCP3) through Law No. 10/2004. This Law became the main reference that has regulated in great detail the procedural as well as drafting aspects of legislative provisions, including laws.

Bill Drafting Flow



For the layout people

Preparation	Formulation	Discussion and Approval	Enactment
Legal Drafting Program	<ul style="list-style-type: none"> - Preparation - Technical formulation - Formulation 	<ul style="list-style-type: none"> - Discussion at first and second level - Commission_____/Special Committee - Approval 	<ul style="list-style-type: none"> - Proclamation by the President - Publication and supplementary publication in the state gazette

The process of making legislation consists of the phases of planning, preparation, drafting, formulation, discussion, approval, enactment, and dissemination (Article 1, Item 1, Law No. 10/2004);

- The planning phase is conducted by preparing a National Legislation Program (*Prolegnas*).
- The preparatory phase until discussion phase is a unity known as the formulation phase of a statute.
- The discussion phase refers to the discussion process at the DPR, and are referred to as level I and II discussions.
- The final phase is known as the enactment and dissemination phase.

Based on who proposes a bill, the process of drafting a law is somewhat different. The processes vary for;

1. Bills originating from the President
2. Bills originating from the *DPR*
3. Bills originating from the *DPD*

Although the bill sponsor may differ, the entire bill's journey follows the procedure set in the *DPR* regulation code, i.e. discussion at two levels. At the first level, discussion is held at joint commission meetings, Legislative Body (*Baleg*) meetings, budget committee meetings and *Pansus* meetings [article 137 (1)]. The second level comprises decision-making at plenary meetings. This phase involves reporting of the level I discussion results and the final opinions of factions and the President or through his or her delegate.

3.2. Gender Responsive Policy

Gender justice as an ideal condition is impossible to be achieved without the support of gender responsive policies. In discussion of gender and policy, according to Naila Kabeer there are two distinct policies (WHO; 2001; 166-167)

a. *Gender-blind policy*

A policy is referred to as gender blind when the policy although seemingly *neutral* actually reflects 'male bias' or is based on male needs and interests.

b. *Gender sensitive policy*

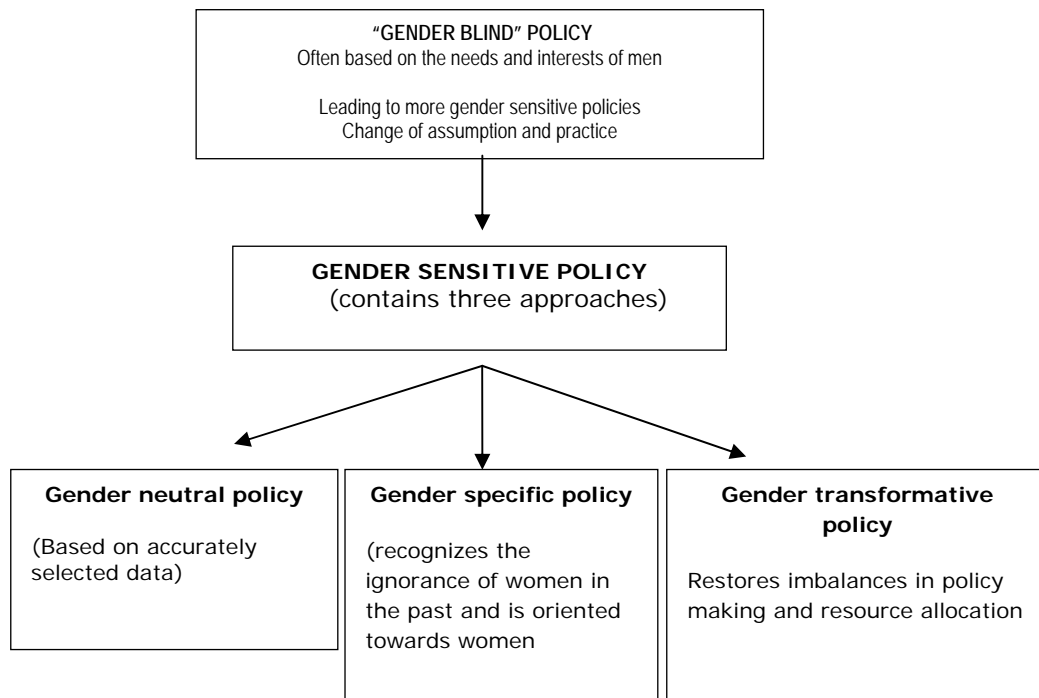
A policy is called gender sensitive when the policy has sensitivity toward gender impacts and differences, particularly towards gender injustice which exists in community. This type of policy reflects sensitivity in perceiving differences of experience and needs, between men and women in addressing an issue. In this group, three approaches are used, i.e.:

1). Gender neutral policy

Refers to policies focused on attainment of objectives based on accurate information of gender based resource allocation and responsibility. This type of policy is generally oriented at particular target groups and is not specifically aimed at revising gender injustice.

2). Gender specific policy

Refers to policies that hold that gender injustice was experienced by women in the past. Thus, this type of policy is oriented more at benefiting women's groups and in particular supports programs and activities that benefit women.



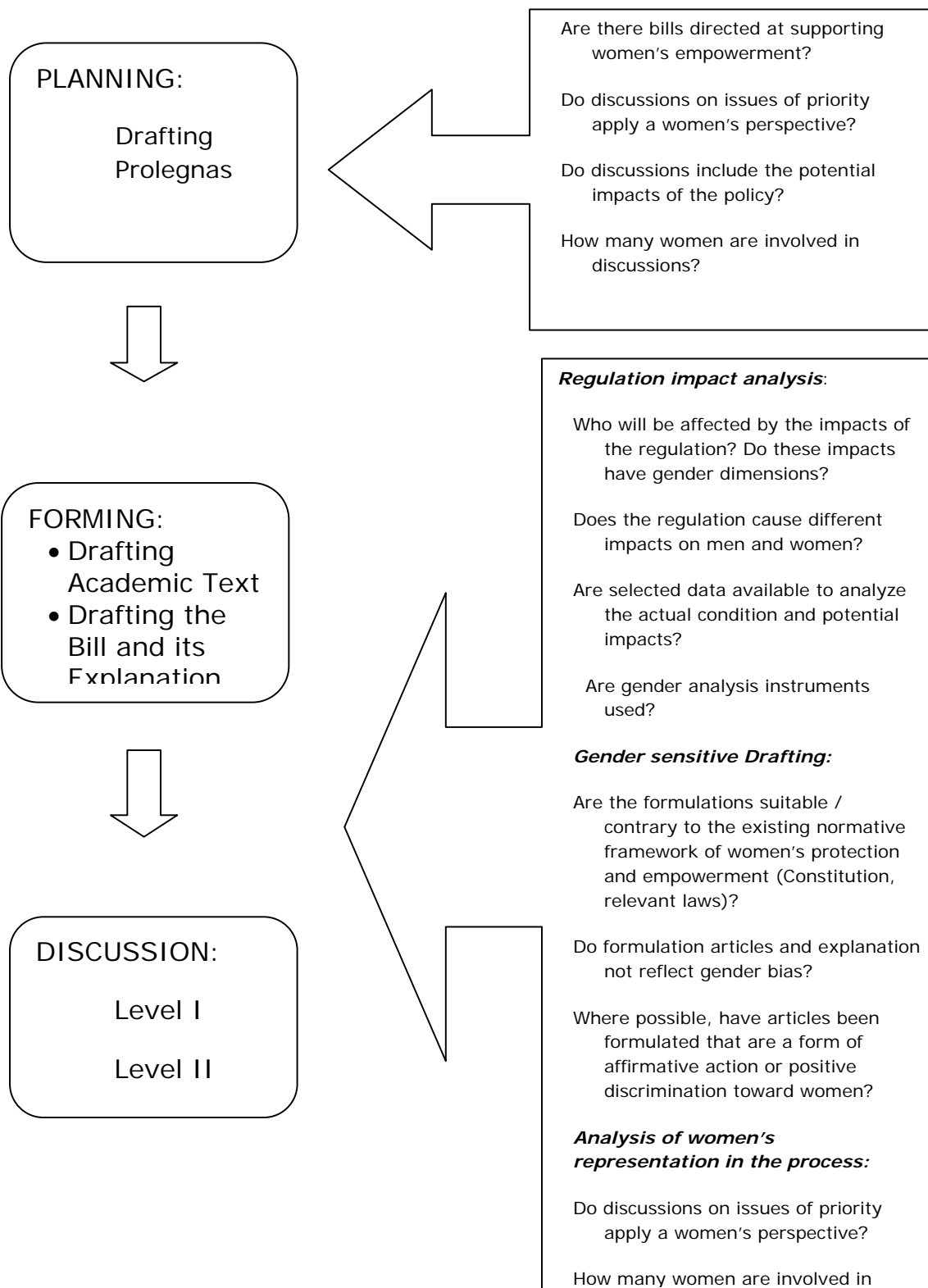
Source: *Women and Tobacco Epidemic: Challenges for 21st Century*; WHO, 2001

3). Gender transformative policy

Policies in this group are those drafted on the basis of awareness that women are often the disadvantaged group in terms of access to resources, including financial resources and the policy-making process. For this reason, policies in this group are oriented at recovery toward gender injustice practices experienced by women. Two elements that are the main focus of this type of policy are (1) financial resource allocation for gender injustice recovery and (2) discussing of women's representation and participation in the *policy-making process*

3.3. Gender Mainstreaming at Bill Drafting Process

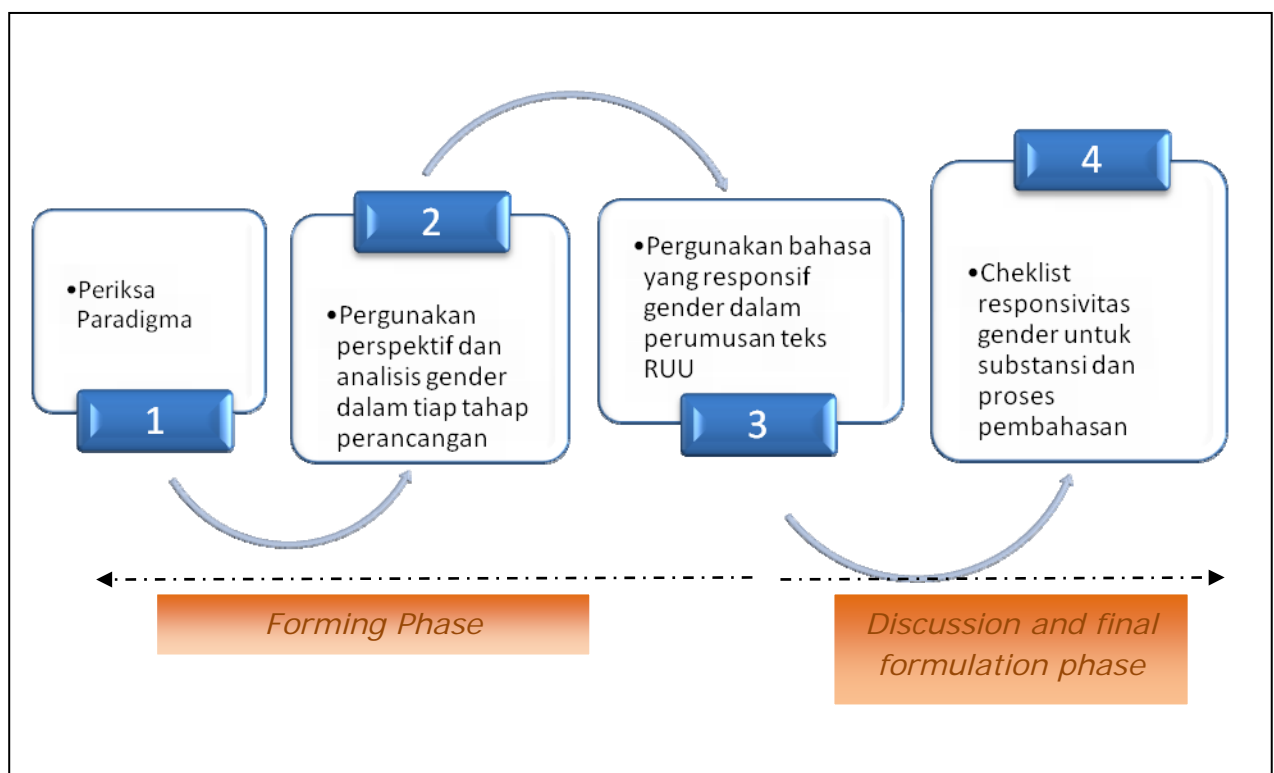
The flow chart below can be used to check gender mainstreaming at the bill drafting process



4. Four Steps in Mainstreaming in the Legislature

There is no standard formulation on how mainstreaming should be implemented in the legislature. Although the *DPR* may resemble parliaments in other countries, the Indonesian model has unique characteristics in process and procedure. The following steps were drawn up based on the process and procedure of making laws regulated in Law No 10/2004 according to drafting legislation regulations and the *DPR* regulatory code.

Five steps can be taken to ensure gender responsive laws, as follows:



For the layout person:

Inspect the paradigm	Adopt a gender perspective and gender analysis at each step in the formulation	Use gender responsive language in formulating the text in the draft Bill	Make a checklist on the gender responsiveness in the content and discussion process
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STEP 1:

FOUNDATION: Inspecting the paradigm

As a strategy, gender mainstreaming requires a strong foundation in order to be applicable from the start of the bill drafting process until the law's proclamation. The strong foundation should consist of the paradigm of gender equality and of gender justice in order to become a foundation in shaping culture, behavior and formal rules that are equal in gender.

Before the bill drafting phase, several pointers in the following checklist can be used as a starting point:

INSPECTION POINT	EXPRESSIONS THAT ARE NOT GENDER SENSITIVE
<p>1. Gender injustice is not due to women being weak and helpless</p>	<p>"... actually the opportunity exists, it's only that no woman has the ability yet..." or "... women themselves are unwilling ..."</p> <p>"...it's true that women are not ready ..."</p>
<p>2. Mainstreaming is a shared responsibility</p>	<p>"... sometimes women themselves don't want to fight for it..."</p> <p>"...for gender justice, we invite women to express their ideas..."</p>
<p>3. No laws are gender neutral</p>	<p>"... This law has no relation to the gender issue..."</p> <p>"... Issues directly related to gender are health and education laws."</p> <p>"Physical infrastructure has no connection to gender..."</p> <p>"The gender issue is only discussed in laws related to women..."</p>

STEP II:

Gender perspective and analysis in the bill drafting phase.

Despite there being three different types of sponsors of bills, there is a certain degree of uniformity in the preparation phase. The implementing work units involved differ, depending on type of initiator.

- For bills sponsored by the President, the preparation phase is executed by the relevant department or ministry.
- For bills sponsored by DPR initiative, some of the relevant parties in the preparation phase include factions, commissions, joint commissions and legislative bodies.

- At the implementation phase, it is common for community groups as well as other NGOs to take part. For instance, the idea and preparation of Law No 24/2007 on disaster management was initially proposed by the Indonesian Disaster Management Community (*MPBI*). That organization drafted the bill which was adopted by Commission VIII and was sponsored as a *DPR* initiated bill.
- For bills initiated by the *DPD*, the initial draft could be proposed by an individual or a committee which would then will be submitted to the *DPR* (Erni Setyowati, et.al, 2007; 19-23).

Activities at this phase are:

1. Preparing academic papers
2. Preparing the Bill and required explanations and notes

The preparatory phase is among the most important in the law making process. This phase will provide important inputs on substance, scope, regulation model, and the significance of the law in addressing community problems.

There are two important elements of gender mainstreaming that should be observed;

Firstly, ensure the availability of sex aggregated data and gender analysis instruments¹ which are used in the supporting research or initial dissemination of the recommendation on the need for a certain law. This activity is an initial step which should be followed by the drafting of an academic paper. Sex aggregated data will enable the academic paper drafting team to analyze the issues from a gender perspective. The availability of sex aggregated data will enable the team to observe policy impacts in detail. Additionally, the data will assist in identifying groups whose aspirations will be accommodated during the dissemination.

The initial assessment plays an important role in ensuring the quality of statute. As expressed by Prof. Maria Farida, an adequate assessment should be done at least on (www.legalitas.org;2007):

1. The urgency and objective of the statute
2. The target to be aimed for
3. The basic idea, scope or object to be regulated
4. The coverage and direction of the regulation

Secondly, ensure gender analysis is used in drafting the academic paper and research study. So far, there is no standard provision on the format and substance of the

“An Academic paper refers to a scientifically accountable paper on concepts containing background, draft objectives, targets to be realized and scope, coverage, object, or direction of regulation of a Bill.”

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¹ For explanation on various gender analysis instruments, refer to the description in chapter II p. 11-16

academic paper. An academic paper will at least contain the philosophical, judicial, sociological basis, and the subject and scope to be regulated (Art. 5 (3) Presidential Decree (*Perpres*) No. 68/2005).

Gender analysis in the supporting research of law and regulations requires examination of assumptions and ideas behind the academic paper including norms which exist in the community that perpetuate gender injustice. This also includes reexamining premises and thinking that exists behind the ideas to be formulated in the legislative provision.

This preparatory phase often receives less attention compared to that put on the legal drafting process. Therefore, the implementation of gender mainstreaming is often not carried out in this phase mostly due to a lack of understanding of a gender perspective.

STEP III:

Selecting gender responsive language in formulating the text of Bills

Legal drafting is frequently perceived as technical and professional work because the drafter is usually an individual possessing special expertise. Technically, legal drafting tends to be perceived as a gender neutral activity, particularly since the drafting procedure is regulated in a standard manner. For instance, the format and style has been standardized according to Law No. 10/2004 on Drafting Statutes. Its articles are bound by general principles of good and proper Indonesian language. For this reason, a gender perspective often fails to be applied.

At this phase, there are two main points which need to be focused on to ensure that the draft bill is gender sensitive, which are:

1. Language may cause or confirm gender stereotyping

Observing and being alert to the need to choose particular language becomes very important, particularly in the legal drafting process. This caution should not just be directed at grammatical correctness according to proper language principles, but to having a critical view of the text in a wider social context.

Article 4 Law No 1 of 1974 on Marriage.

- (2). The Court stated in paragraph (1) this article only grants permission to a husband intending to have more than one wife when:
- a. a wife cannot perform her wifely duties;
 - b. a wife suffers physical disability or incurable disease;
 - c. a wife cannot give birth to children

This provision often becomes an excuse for men to enter polygamous marriage that will only add to the wife's suffering. A wife that already suffers various disadvantages is in fact abandoned by the husband who marries again. On the contrary, when a husband is seriously ill, the wife is suggested to be patient.

Law is formally written. Therefore, the elements of language are an important part of any legal text. It should be kept in mind that what is formulated in the article will bind and direct community awareness. As an example, in the 1974 marriage act, one article states that “The husband is the head of the family and the wife is the housewife” (Art. 31 (3) Law No 1 / 1974 on Marriage). Such language has contributed to creating gender injustice or has continued social mores that disadvantage women.

Generally, there are common rules on use of language in bill drafting. These are the prevailing rules in general principles of good and proper Indonesian language.

2. Need to harmonize with the commitment to protect and advance women’s rights

The Indonesian state is so far tied to various commitments to protect and advance women’s rights. One of the important elements in all these commitments is to ensure that discrimination does not occur.

Law No 20 of 2003 on the National Education System

Article 4

- (1) Education is conducted democratically with justice and non-discriminatively by upholding human rights, religious values, cultural values, and national diversity.

As a public policy, this Law can be categorized as a gender neutral policy. But looking at education in Indonesia, we find that gender disparity still occurs. For instance, BPS data of 2004 mentions that of a total education participation rate for 16-18 year olds, the ratio of males is 1.51 % higher than for females. Conducting non-discriminatory education should be able to eliminate this disparity. This Law can become the basis of conducting non-discriminatory education by encouraging and giving the widest opportunity for women to obtain equal rights in education.

At this phase, using a checklist of the commitments to protect and advance women’s rights is important. This checklist is important mainly for the formulation not to contradict the commitment to advance and protect women’s rights.

For example, in Statute No 23 / 1999 on Health, gender sensitive policy, particularly aimed at women, can be devised without waiting for statute that specifically regulates women’s issues.

Law No 23 of 1999 on Health

Article 10

Improvement of the wife's health, mainly maternal health comprising of improved health during pre pregnancy, pregnancy, pre childbirth, childbirth, post childbirth, and the period outside pregnancy and childbirth. "

*As a public policy, this Law may be categorized as a **gender neutral** policy. But, in the provisions of the Law it may be seen that policy makers by considering the reality of low levels of women's health, and high maternal mortality and child mortality rates **could formulate provisions specifically targeted at women**. The high maternal mortality rate and child mortality rates are undeniably related to women to health and education. This is a reflection of continued gender based disparity.*

*Therefore, gender sensitive policies that are particularly targeted at women to improve their condition may be formulated, **without needing to pass a statute specifically regulating to women's issues***

This regulation is also in line with state commitment to women's protection, as already reflected in several legislative provisions, such as the statute to ratify, Law No. 39 /1999, on CEDAW and so forth.

Before formulating regulatory articles, firstly it needs to be examined whether there are problems with regard to the points in the checklist below. Additionally, it is important to ensure that the drafting does not conflict with pre-existing law in relation to women's rights as mentioned below:

Checklist: Protection and regulation points in laws

Issues	Law	Article
✓ Prohibit discrimination	Law No. 7/1984	<p>Art (2) : Obligation to include the principle of equality in law between men and women</p> <p>Art 10 : Equal opportunity in the field of education (obtain scholarship, reduce the female school drop out rate, information on family planning, participation in sports and physical education)</p> <p>Art 11 : Eradicate discrimination against women in the employment field</p> <p>Art 11(2) : Eradicate discrimination based on marriage or pregnancy</p> <p>Art 12: Eradicate discrimination in health care, and provide free ante-natal and maternal health care as required.</p> <p>Art 13 : Ensure equal access to family support allowances, bank loans, and recreation, sports and all cultural life</p> <p>Art 14 : Eradicate discrimination in rural areas including ensuring the right to participate in development planning, to obtain adequate health care facilities, direct benefits of social security program, training and education both formal and non formal, to form self-help groups including cooperatives, to participate in all community activities, to obtain credit and farm loans and marketing facilities , to apply technology, and equal treatment in</p>