

# Women and Public Policy

## Editorial

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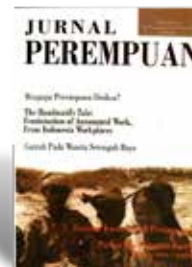
Gender Perspective as a Mere Gesture: Feminist Policy Analysis of RPJMN 2015-2019 and KPPPA's Strategic Plan 2015-2019  
*Anita Dhewy*

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*Anita Dhewy*

## Women and Public Policy

The fall of the New Order Regime and the reform period that followed opened the door for women's involvement within a wider reach, particularly in politics and in policy-making, after a period when women were stigmatized, domesticized, and co-opted in the New Order era. The process of transitioning to democracy that occurred and is still taking place has enabled women to claim some space for gender equality and justice in newly emerging or reformed institutions. Efforts to improve women's representation and involvement in public policy-making institutions are seen as important and as a priority for women's movements—especially considering public policy impacts men, women, and the third gender differently. Moreover, public policy has the capacity to both to perpetuate and to eliminate gender-based discrimination and gender inequality. This is way, by including the feminist perspective as a primary consideration in the drafting and implementation of public policies, we can hope for the fulfillment of parity and gender equality. So far, steps taken to include and involve women have shown some results: in the House of Representatives (DPR) the number of women elected saw an increase; women made up 12% of the DPR in 2004, 18% in 2009 (two election periods), and the number decreased by 17.63% in 2014. At the regional level (DPRD), women's representation is not as significant; several regions do not yet have women in their Regional Representative Council. In executive institutions, the number of women occupying echelon I positions and women with strategic positions and roles as policy-makers have also risen: 9.17% of these positions were occupied by women in 2011, 16.41% in 2012, 20.09% in 2013, and 20.65% in 2014 (Indonesia's Statistics Publication 2015). But available data show a steep imbalance between the men-women ratio of civil servants occupying structural positions and those occupying functional positions.

Apart from the quota for recruiting women in political parties, legislative bodies, government or private agencies to ensure the presence and involvement of women, other efforts are supported by feminists to make public sectors more gender-sensitive. For example, by introducing gender-equality issues in work-dynamic evaluations, applying gender-sensitive budgeting, and a reform of legal frameworks and justice systems to improve women's access to justice. Regional autonomy, along with reform, is hoped to also open access as well as improve women's participation and access to various

public policies at the local level, so that women can also reap benefits and become subjects of policies. The important question to ask, which has to do with the presence and involvement of women in the political arena and public policy-making, is: are women who occupy public positions truly promoting women's interests in the making of public policies? Are the policies they produce automatically gender-fair? In what situations can women and their male colleagues produce gender-sensitive public policies? According to Joyce Gelb, we can measure feminist influence on national politics by analyzing issues concerning public policy (1989). Doing so involves exploring: 1) agenda-planning, the roles of women groups in initiating and designing public policies; 2) the influence of feminist groups in decision making both in legislative and executive bodies; 3) the implementation of policies in effect. The important objective of this analysis to evaluate the roles assumed by feminist groups in one or all of these important steps, including in the process of policy-making.

We can already note a number of women-friendly policies produced by the DPR post-reform, such as Law No. 23/2004 on the Eradication of Domestic Violence, Law No. 12/2006 on Citizenship, Law No. 21/2007 on the Eradication of Human Trafficking Crimes, Law No. 21/2007 on Health, Law No. 52/2009 on Demographic Developments and Family Building, Law No. 15/2011 on Election Organizer, Law No. 10/2007 on Elections, and Law No. 7/2012 on Social Conflict Mitigation. At the regional level, there are a number of regional regulations (Perda) that serve women's interests, such as the Perda on the Protection of Woman and Child Victims of Violence, Perda on Free Birth Certificates, Perda on Women's Empowerment, and Perda on Child Marriage Prevention. Additionally, the government also issued Presidential Instruction No. 9/2000 on Gender Mainstreaming in Development. On the other hand, there are draft policies that are still in the deliberation process and are yet to be made into laws, for example the draft bill on the protection of domestic workers, the draft bill on gender justice and equality, and the draft bill on the eradication of sex crimes.

Writings in JP92 discuss several key questions that concern women and public policy, seen from various angles. How does the implementation of policies—both policies specifically aimed at women and those that aren't—affect women's lives? What lessons can be learned

from women's efforts to promote pro-feminist public policies? How do we develop the foundation for women's political philosophy? These questions are narrated in the Topik Empu column, which discusses the implementation of social security policies manifested in the Healthy Indonesia Card; policies on the protection of women's rights in detention centers, specifically concerning the fulfillment of female inmates' unique needs; and policy on land rights by highlighting Indonesian women's

access to land rights in a mixed marriage. Topik Empu also narrates Hannah Arendt's idea of the politics of women and the experiences of grass-roots women in promoting pro-feminist public policy at the regional level. Additionally, a discussion on the extent in which policies drafted and implemented by Joko Widodo's administration have accommodated women's interests is published under the Research column. Enjoy!

**(Anita Dhewy)**

# Jurnal Perempuan, Vol. 22 No. 1, February 2017

## Abstracts Sheet

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Yulianti Muthmainnah. Universitas Muhammadiyah Prof. DR. Hamka (UHAMKA), Jakarta, Indonesia.

### **Discrepancies in the Implementation of the Indonesian Health Card (KIS)-Contribution Assistance Recipients (PBI): Studies in Jakarta, Bogor, and Depok**

DDC: 305

Jurnal Perempuan, Vol. 22 No. 1, February 2017, pp. 1-8, 21 ref.

This paper does not only provide an illustration of the National Social Security Healthcare System, but also narrates findings based on a direct field study of the registration process for the Indonesian Health Card (KIS)-Contribution Assistance Recipients (PBI) for underprivileged women, minorities, and other vulnerable groups in Jakarta, Bogor, and Depok's poor areas. This study was performed by semester-5 students at UHAMKA's Department of Primary School Teacher Education, in October-December 2016, to fulfill a 'social service' assignment in a course on *Kemuhammadiyah* (Aspects of Muhammadiyah).

Keywords: National Social Security System (SJSN), the Healthcare and Social Security Agency (BPJS Kesehatan), National Health Insurance (JKN), Indonesian Health Card (KIS), Contribution Assistance Recipients (PBI), minority groups, vulnerable groups.

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Lilis Lisnawati, Nadia Utami L & Gatot Goei. Center for Detention Studies, Jakarta, Indonesia.

### **Meeting the Special Needs of Women Prisoners and Detainees: A Study in 12 Women's Correctional Facilities**

DDC: 305

Jurnal Perempuan, Vol. 22 No. 1, February 2017, pp. 9-17, 1 table, 20 ref.

Just like free women, women inmates and detainees also have special needs, which having to do with women's biological and psychological conditions, as well as women's vulnerabilities. In Indonesia, the government's commitment to fulfill these special needs began with the signing of a number of national and international regulations. The commitment's realization is mandated to the Ministry of Law and Human Rights, in this case the Directorate General of Corrections who responsible for crime affairs practices in Indonesia. To gauge government's resolve in executing this commitment, Center for Detention Studies performed survey of correctional quality service at 12 women correctional centers, involving 385 women inmates and 35 women detainees throughout 4 (four) different periods in 2013-2015. Study results show that the commitment to fulfill the special needs of women inmates and detainees has not been executed well. Strong patriarchal paradigm that women aren't meant to commit crime has caused many elements in women correctional center lack of gender sensitivity. From the correctional building's construction to the treatment guidance, it shows that women are not expected to be in correctional center. As a result, women who live in correctional center experience various form of neglect, particularly the neglect of women's special rights.

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Rinawati Prihatiningsih. Gender Studies Program, Universitas Indonesia, Jakarta, Indonesia.

### **Access to Equal Right to Property: A Study of the Struggles of Indonesian Women in a Transnational Marriage**

DDC: 305

Jurnal Perempuan, Vol. 22 No. 1, February 2017, pp. 19-28, 1 table, 16 ref.

This paper examines the personal experiences of Indonesian women citizens (women WNI) married to foreign nationals in gaining access to their right to property and in challenging certain restrictions imposed by the state. This paper also explores strategies for the restoration of these women's rights, to be executed by the state, which has so far treated its citizens unfairly. These women's marital status has caused them to be discriminated against in the absence of a prenuptial agreement. This study uses a feminist-perspective qualitative methodology, reinforced by three theories, namely multicultural feminism, feminist legal theory, and access to justice theory. The study arrived at three findings. First, a prenuptial agreement places women WNI in the dilemmatic position of having to choose between accesses to right to property or merging assets. Second, certain efforts by these women to access their right to property are viewed by some as legal maneuvering and by others as legal breakthroughs. Third, a strong sense of kinship is needed so that we can be united in fighting for changes in discriminative policies, by getting involved and being open to invitations for voicing the ideas and experiences of women so that equal rights before the law may be restored—to unite in the struggle for change against discriminative policies, by involving and being involved in voicing women's experiences in order to restore equal rights before the law.

Keywords: Agrarian Law, access to justice, land rights, transnational marriage

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Iva Hasanah. Women's Groups and Source of Livelihoods (KPS2K), Sidoarjo, Jawa Timur, Indonesia.

### **Encouraging Pro-Feminist Public Policy through the Gender Watch Movement: Studies in Gresik Regency**

DDC: 305

Jurnal Perempuan, Vol. 22 No. 1, February 2017, pp. 29-35, 1 picture, 1 table, 9 ref.

Gender Watch is a strategy for advocating for policies that are based on pro-women data. Gender Watch was developed to improve poor and marginal women's access to government social protection programs as well as women's participation in such programs. With the establishment of the Schools for Women in Gresik, efforts made in the regency to improve women's access to social protection began with capacity building for poor women and organizing people at the grassroots level. In these schools, women collect data, work with many stakeholders, submit collected data to policy-makers, and oversee the Regional Development Planning Forum (*musrenbang*) in the village and

regency level. The work and contribution of the Schools for Women in development have compelled Gresik's regional government to commit to allocating budget for the schools and to replicate the Schools for Women model in several villages. The regional government's commitment is included in the Medium-Term Regional Development Plan (RPJMD), the City Work Plan (RKPD), and regent's regulation. This paper outlines organizational structuring and experiences at the grassroots level, as well as data-based advocacy efforts, which allowed the strategy for advocating for policies that emphasize the organizational structuring of grassroots women through Schools for Women to compel the regency government's to allocate budget at the village to regency level.

Keywords: Gender Watch, School for Women, grass-roots women, data-based advocacy.

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Hastanti Widy Nugroho, Mukhtasar Syamsuddin & Ali Mudhofir.  
Department of Western Philosophy, Philosophy Faculty, Gadjah  
Mada University, Yogyakarta, Indonesia.

### **Hannah Arendt's Politics of Women in the Perspective of Philosophy**

DDC: 305

Jurnal Perempuan, Vol. 22 No. 1, February 2017, pp. 37-46, 20 ref.

This article, titled "Hannah Arendt's Politics of Women in the Perspective of Philosophy," is the result of our philosophy research. Our goal is particularly to explore the philosophical concept of Hannah Arendt's politics of women and reveal the forms in which it's implemented, in the context of open access, participation, and political control involving women. Hannah Arendt's idea of politics is adopted for application as a political strategy to fight for women's political equality in Indonesia. Concepts, forms of implementation, and women's political strategy are analyzed through library research using the typical elements of philosophical research: interpretation, deduction and induction,

historical continuity, idealization, heuristics, and inclusive language. Using these methodological elements, it is found that women's political thought originates from Hannah Arendt's idea of labor. The idea lies in a private area which is regarded as the political basis of reproductive and the strength of birthrate. In addition, Hannah Arendt introduced the politics of women as a feminine ethics which is conceptually defined as the ability to forgive and to love. The politics of women at the praxis level, according to Hannah Arendt should emphasize the principle of equality in the public sphere and apply the typical feminine power.

Keywords: politics of women, political philosophy

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Anita Dhewy. Jurnal Perempuan, Jakarta, Indonesia.

### **Gender Perspective as a Mere Gesture: Feminist Policy Analysis of RPJMN 2015-2019 and KPPPA's Strategic Plan 2015-2019**

DDC: 305

Jurnal Perempuan, Vol. 22 No. 1, February 2017, pp. 47-55, 22 ref.

Although RPJMN 2015-2019 states that policies will also go in the direction of gender mainstreaming, gender perspective has not actually become an integral part of the RPJM. In fact, some RPJMN 2015-2019 policies are still gender-neutral. The author uses the feminist policy analysis framework to uncover the limitations of RPJMN 2015-2019 and KPPPA's Strategic Plan 2015-2019 in using, translating, and implementing the gender perspective. Feminist analysis also found that sexual and reproductive health and rights (SRHR) have not been recognized in RPJMN 2015-2019 and KPPPA's Strategic Plan 2015-2019. Moreover, women's issues and the concerns of other marginalized groups are potentially eliminated from development agendas due to policies that lean toward a new developmentalism model.

Keywords: feminist policy analysis, RPJMN 2015-2019, renstra KPPPA 2015-2019, gender perspective

## Access to Equal Right to Property: A Study of the Struggles of Indonesian Women in a Transnational Marriage

**Rinawati Prihatiningsih**

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### Abstract

This paper examines the personal experiences of Indonesian women citizens (women WNI) married to foreign nationals in gaining access to their right to property and in challenging certain restrictions imposed by the state. This paper also explores strategies for the restoration of these women's rights, to be executed by the state, which has so far treated its citizens unfairly. These women's marital status has caused them to be discriminated against in the absence of a prenuptial agreement. This study uses a feminist-perspective qualitative methodology, reinforced by three theories, namely multicultural feminism, feminist legal theory, and access to justice theory. The study arrived at three findings. First, a prenuptial agreement places women WNI in the dilemmatic position of having to choose between accesses to right to property or merging assets. Second, certain efforts by these women to access their right to property are viewed by some as legal maneuvering and by others as legal breakthroughs. Third, a strong sense of kinship is needed so that we can be united in fighting for changes in discriminative policies, by getting involved and being open to invitations for voicing the ideas and experiences of women so that equal rights before the law may be restored—to unite in the struggle for change against discriminative policies, by involving and being involved in voicing women's experiences in order to restore equal rights before the law.

Keywords: Agrarian Law, access to justice, land rights, transnational marriage

### Introduction

"Why is that Indonesian citizens, to have right [to property], which is so basic, require additional legal instruments just because they're married to foreign nationals?" (Nuning Hallet 2016, interview 22 April)

The term "the personal is political," as far as I understand it, from a feminist perspective, is the political nature of personal issues. The personal experiences of women can be expressed in protests and political movements for transformations that are gender equal. The quote is a question, a protest, a cry, and an appeal from one of this study's main subjects, Ibu Nuning Hallet, whom we will refer to as Ibu Nuning from now on, a woman WNI with no other citizenship, married to a foreign national. Ibu Nuning, who is in a transnational marriage, questions the extra-legal instrument requirement, in the form of a separate-property prenuptial agreement to last for the duration of marriage, as a requirement for her right to property. The document is required because she is married to a foreign national. Ibu Nuning, as an Indonesian citizen, has responsibilities equal to other citizens and, like other citizens, would be sanctioned if these responsibilities are violated. On the other hand,

when it comes to right to property, she is set apart, or to be precise, marginalized by the state's legal provisions because she is not in possession of a prenu. Not all couples in a transnational marriage know about this requirement. Several of our study's subjects did not wish to have a prenu upon entering marriage, citing religious, cultural, and economic backgrounds as their reason.

This study exposes the personal experiences of Indonesia's women citizens in a transnational marriage regarding access to right to property, lays out these women's struggles in facing hurdles, and discusses strategies for the restoration of their rights by the state, which has so far treated its citizens unfairly and unequally. These women's marital status has caused them to be treated differently—regarding access to right to property—from other Indonesian citizens who are unmarried, married to another Indonesian citizen, and owns a prenu for their marriage to a foreign citizen. A prenu as a condition for access to right to property cannot be applied to all women. Women's identities are diverse, not only due to the functions and roles of their gender, but also due to a range of social backgrounds, such as class, religion, culture, ethnicity, education, profession, a foreign spouse, etc. Various strategies are

implemented by women WNI to obtain access to right to property, from actions that can potentially be in violation of laws, through legal breakthroughs, and through networking, both as an individual and as a collective effort. The goal is not yet achieved and the work toward this goal is still in progress as of today. I chose this topic because I was restless when observing how the state has not been fully protecting and guaranteeing the rights of its citizens, particularly its women citizens who are married to foreign nationals. Laws do not take into account the experiences and realities of women such as myself and other female friends who are members of a group of women WNI who are legally married to foreign nationals, among others the Keluarga Perkawinan Campuran Melalui Tangan Ibu (Mixed Marriage Families through the Mother's Hand, from now on referred to as KPC Melati).

Transnational marriage in Indonesia is defined by Law No. 1/1974 on Marriage (from now on referred to as the Marriage Law) chapter 57 as: "... the marriage between two individuals in Indonesia who abide by different laws due to different citizenships, with one spouse as an Indonesian citizen." As a researcher, I am also a woman, an Indonesian citizen, and a spouse in a transnational marriage, and until today I have been given the trust to chair KPC Melati. I have a prenup and access to right to property. Even so, I grow restless when my friends wail and worry over the prenup requirement for access to right to property. The marginalization and different treatment of Indonesian women in a transnational marriage caused by this legal requirement is partly due to history. Discrimination against citizens are part of the legal framework and institutions that are meant to guarantee and protect citizens from discriminative acts (Kusuma & Effendy 2002, p. 13). In its implementation, the law does not provide justice and equality to women WNI in a transnational marriage. Situations and conditions experienced by women in a transnational marriage, in regard to right to property, according to Irianto's thought based on legal feminist theory shows that, "the law has failed to consider women's experiences and realities."

The right to property of women WNI in a transnational marriage is not taken into account in the country's laws and policies. The state considers the position of women in transnational marriages as unequal as citizens, compared to male Indonesian citizens in a transnational marriage when it comes to the right to property. This is due to the patriarchal system constructed and applied in society, which places men as superior creatures with a complete set of rights and responsibilities,

compared to women. Women are viewed based on their reproductive functions, not as creatures that are whole; they are considered as less valuable than men, who are seen as the ideal creature. Women's position in a patriarchal system dominated by men renders women unequal to men (Bates et al. 2014, pp. 20-21). Legal provisions from the colonial period still influence today's law enforcement and have placed women WNI in a transnational marriage at a disadvantage. On the other hand, the state demands equal responsibility from citizens in a transnational marriage in terms of taxes and in defending the country, and they are required to abide by the country's regulations. Indonesian citizens married to foreign nationals are required to execute these responsibilities and are penalized when they violate their responsibilities, but the state limits their access to right to property as citizens.

Various strategies are executed by women WNI in a transnational marriage so that their right to property as citizens are acknowledged. These strategies include legal maneuvers, legal breakthroughs, and efforts by individuals or networks to affect policy changes through judicative, legislative, and executive means, so that non-discriminative policies can be created. Based on this explanation, the key questions asked in this paper are: How do women WNI in a transnational marriage fight for legal access to their right to property? How are women WNI in a transnational marriage positioned in Indonesia's laws and policies having to do with their right to property? How do women WNI in a transnational marriage overcome hurdles, challenges, and take opportunities to obtain legal access to their right to property? What are the strategies of women WNI in a transnational marriage, both individual and collective strategies, for transforming discriminative policies so that new policies can emerge that take into account the experiences and interests of women?

This study places women as study subjects, so in order to analyze three concepts discussed in the paper, on transnational marriage, legal access, and right to property in Indonesia, the following theories will be employed: multicultural feminist theory, legal feminist theory, and legal access theory. These theories are used to serve as analytical scalpels in exploring the problems discussed in this paper. Researchers employ the multicultural feminist perspective to appeal to the Indonesian government, who views women in transnational marriages as homogeneous subjects and assumes that prenups are the solution for accessing the right to property. But prenups can potentially close

access to shared assets, which can disadvantage women who not financially independent. Legal access theory is used to analyze groups that experience injustices because of their marginalized rights as well as the efforts performed to obtain access to justice and to achieve gender-fair transformations in existing laws. This study also employs the perspective of legal feminist theory by asking women's questions concerning laws and policies on women WNI in a transnational marriage, particularly on their legal access to the right to property as Indonesian citizens.

This study is a social study, which uses a qualitative approach with a feminist perspective as a tool to help understand the phenomenon experienced by women WNI in transnational marriages in obtaining access to justice in their right to property. The study subjects are six women WNI in transnational marriages without prenups: ibu Yuyun, ibu Yessi, ibu Nuning, ibu Inge, ibu Dias, ibu Ike, and two supporting subjects: ibu Mery and ibu Ratna. In the interview process with main subjects of this study, several questions were unrecorded as requested by the subjects, but several subjects agreed to have their identities included, for example ibu Nuning Hallet, ibu Ike Farida, as well as two supporting subjects. I considered ethical concerns in choosing to not divulge the identities of other subjects by not using their real names. Their identities are diverse due to different backgrounds and different social constructions experienced. They also come from diverse social positions, ethnicities, with husbands from different countries with varying education levels and professions. Two types of data used are primary data from in-depth interviews, according to interview guidelines as an instrument for the study, and secondary data gathered in library research.

I used 4 (four) methods for collecting data. First, in-depth interviews with questions that relate to the study's primary question as well as derivative questions developed extensively to serve as field questions. Second, an active observation-participation method, from my experience as a KPC Melati member since 2005, and as the group's chair since 2013. Also from notes that I gathered through email or media social communication, on the problems experienced by women in transnational marriages. Third, group discussions with transnational family communities, held once a week to coincide with *arisan* (lottery) and gathering events. From these group discussions, I gathered all kinds of recent information on problems faced by transnational families. Fourth is library research to study documents and analyses of legal texts, which helped me tremendously in dissecting

and studying laws (laws and regulations) that are discriminative in regard to right to property issues and the predicaments faced by women WNI in a transnational marriage. The study was performed in Jakarta because transnational marriage communities and institutions that create policies (legislative, judicative, and executive) are centered in Jakarta. Ethical concerns are important in this study, so in order to keep subjects from harm, the real names of several subjects are not mentioned. Subjects of this study are experts in their own lives, so recording was conducted with the permission of study subjects who were willing to share their experiences with researchers.

### **Women's Question: "Am I not also an Indonesian citizen?"**

Women's question, "Am I not also a WNI?" in this study can be understood through the question "Ain't I a woman?" asked by Sojourner Truth (1797—1883), a black abolitionist feminist in her address to the Women's Rights Convention in 1851 in Akron, Ohio. Truth made her case on behalf of black women, not the middle-class, and not as an intellectual because she could not read nor write, though her message was clear. Her female traits did not prevent her to perform men's work, even though she had given birth to 13 children (Collins 2000, p. 14). "Am I not also an Indonesian citizen?" is a question asked by women WNI in a transnational marriage, who also question and challenge their unfair position as citizens, to claim their unfulfilled right to property in the absence of a prenup.

### **Women's Position Before the Marriage Law**

Women WNI a transnational marriage did not have a unique legal position prior to Law No. 1/1974 on Marriage (from now on referred to as the Marriage Law). They were positioned as non-independent citizens, attached to their husbands' positions under public and civil laws because of the legal union principle of marriage. Transnational Marriage Law S. 1898 No. 158 Chapter 2 states that "A wife in a transnational marriage will be aligned with her husband's position in public and civil laws." The position of women in a transnational marriage renders women as invisible citizens or an "other" because her identity disappears and blends into the identity of her husband. This disadvantages women because the legal union of the family principle adheres to the patriarchal system, causing women who are married to foreign nationals to lose her Indonesian citizenship. Women in a transnational marriage and their offspring follow all decisions made by their husbands as heads of the family.

Discrimination against women, not men, WNI in a transnational marriage is amplified by the circular letter from the Directorate of Land Registration's head, issued on November 2, 1965, No. 7850:

If a woman WNI marries a foreign national, assets are merged, so that UUPA 5/1960 Chapter 21 article (3) applies, or the requirement to release their rights to an Indonesian citizen within one year, because the property will be treated as owned by a foreign citizen so that there is no distinction between which belongs to a WNI and which belongs to a foreign citizen, unless it can be proven that: a) she has not abandoned her citizenship, b) she did not merge her property [with her husband's], as documented in an authentic certificate (notarized certificate) on said marriage requirements. (Circular Letter Number 7850, November 2, 1965)

The circular letter was meant to protect Indonesian land from foreign control as a manifestation of the nationality principle as outlined in Law No. 5 Year 1960 on Basic Rules on Agrarian Principles, from now on called the Basic Agrarian Law (Aprilliyani 2007, p. 58). Indonesian women experience layered discrimination because their marriage to foreign nationals causes them to lose their citizenship and rights as citizens, including right to property/land. Their citizenship status is lost, so responsibilities as citizens are not attached to women WNI in a transnational marriage prior to the Law on Marriage and Law No. 12 Year 2006 on Indonesian Citizenship.

### **Women's Position After the Marriage Law and Amendments to the Citizenship Law**

The legal position of women WNI in a transnational marriage was transformed after the Marriage Law was implemented in 1975. According to the provisions of Chapter 66, provisions in the civil code and (*burgerlijk Wetboek*), Marriage Ordinance for Indonesian Christians (*Huwelijk Ordonantie Christien Indonesia 1933 No. 73*), Transnational Marriage Law (*Regeling of gemeng de Huwelijken S.1898 No. 158*), and other regulations no longer apply, though these provisions are addressed in the 1975 law. The Marriage Law was followed by several changes that serve as the basis for the Basic Agrarian Law or Law No. 62 Year 1958 on Indonesian Citizenship, which was replaced by Law No. 12 Year 2006 on Indonesian Citizenship and the 1945 Constitution, which has also been amended four times since 1999.

These changes and amendments regulate women WNI's rights and position so that they are meant to act according to laws, both as an individual, as a WNI, and as a wife, to prevent their legal rights from disappearing or from blending into their foreign husbands' legal

position. These changes are in line with developments in the concept of citizenship and the acknowledgment of human rights as guaranteed in the UN agreement known as the Universal Declaration of Human Rights and The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which demands equal rights for women, "irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." ([www.unwomen-asiapacific.org](http://www.unwomen-asiapacific.org)). CEDAW's convention was ratified with the implementation of Law No. 7 Year 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

Changes and the guaranteeing of citizens' rights in Law No. 12 Year 2006 on Citizenship, Chapter 26, allows women in a transnational marriage to not lose their citizenship, and based on the Law on Marriage, chapter 31 article (1), the position and rights of an Indonesian woman are equal to her husband's. Chapter 31 article (2) states that married women WNI are entitled to perform legal actions. Provisions in the Law on Marriage, chapter 31, are changes for the better because the law ensures that women in a transnational marriage still have rights and a legal position. This is very different from the Regulation on Transnational Marriage S1898 No. 158 (GHR) Chapter 2, which causes women in a transnational marriage to lose their rights and legal position both in civil and public laws, because they were required to go by their foreign husbands' rights and legal position. Based on the two law and regulations on marriage and citizenship, the Basic Agrarian Law, chapter 9 article (2), states: "Every WNI, both men and women have the same opportunity to obtain the right to property and to receive a property's benefits and products, both for themselves and for their families." The provisions in chapter 9 emphasizes the guarantee of right to property for WNI, including women as wives in a transnational marriage, who are still Indonesian citizens legally bound to the country.

### **Challenges and Hurdles for Access to Land Rights**

Guaranteed right to property, both for men and women WNI, according to provisions in UUPA chapter 9, are also constitutionally guaranteed by the Republic of Indonesia. This guarantee was also experienced by ibu lke, one of the study's main subjects. As an Indonesian citizen, although she is married to a foreign national, ibu lke has bought and sold land several times without issues in the transaction process. Her rights and responsibilities were no different from other Indonesian citizens. She

only began having trouble in the process of owning an apartment unit in 2012. The developer did not wish to move forward to the buy-and-sell certificate and to officially change hands, although ibu Ike had already completed her payment for the apartment unit. The developer argued that ibu Ike, who was/is married to a foreign national, did not have a separate-assets prenup on their marriage certificate. As a result, ibu Ike could not have a right-to-use over the apartment, a right that should be awarded to the owner. Ibu Ike's experience of failing to buy the apartment due to the absence of a prenup was also experienced by other subjects of this study. The principle of equality before the law in chapter 9 of the Basic Agrarian Law was questioned by Irianto: "Does the principle of equality before the law give an opportunity for women to assume an equal and fair position?" (2013, p. 49).

Ibu Ike experienced two contrasting realities in regard to the right to property. First, ibu Ike was able to execute her right to property as a citizen after changes in the law on transnational marriage and citizenship provided a better guarantee of equal law. Ibu Ike was able to buy and sell property and houses under her name. Several years later, ibu Ike could not exercise her right to property as a citizen because she was married to a foreign national and because she did not have a prenup, according to the developer's notary, who had a different interpretation of

the law. The developer's action was reported by ibu Ike to the police. According to a report of police performance from 2006 to 2007 by the National Strategy for Access to Justice, corrupt practices were common in the police environment though some indicators suggested some improvements in police performance. Ibu Ike did not stop though her case was dismissed by the police. She went forward to the East Jakarta Court to issue a Court Request for the Separation of Commingled Property, and ibu Ike's husband had already relinquished all rights over all material items obtained after and during their marriage, so that all things bought by ibu Ike were completely her possession. Nevertheless, her court request to the East Jakarta Court also met a dead end. Her request was not granted based on Decision No. 379/Pdt.P/2014, East Jakarta.

Other study subjects performed different types of actions to exercise their right to property. Ibu Yuyun used her sibling's name in creating a nominee agreement. Ibu Yessi used a statement confirming her citizenship at the National Land Agency when her property changed hands. Ibu Nuning does not want to own property because she feels her rights as a citizen are not protected by the state. Ibu Inge did not have trouble buying property under her name outside the country. Ibu Dias uses an identity card that says "unmarried." Ibu Ike, who is an attorney, opted for the legal route to receive justice.

**A Table of Efforts Made for Access to the Right to Property**

No.	Study Subject	Name	Stance on Prenup	Efforts
1.	Women/ Main Study Subjects	Ibu Yuyun	Was previously unaware, did not want a prenup, which is considered disadvantageous in the French system	Uses her sibling's name, nominee agreement
		Ibu Yessi	Was previous unaware, did not want a prenup, housewife	Uses a statement confirming her status as a WNI without a second citizenship
		Ibu Nuning	Was previously unaware, did not want a prenup, considers prenups disadvantageous	Does not wish to own property, too expensive and lacks protection
		Ibu Inge	Was previously unaware. Does not mind having a prenup although she is a housewife	Buys property outside Indonesia: Germany, Singapore, Bangkok, both under her own name and under both her and her husband's names
		Ibu Dias	Was previously unaware, does not approve of prenups, not a Japanese nor a Javanese custom	Recorded as single on her ID
		Ibu Ike	Unaware, is not adverse to prenups	Can own SHM (freehold title) for property, had issues buying an apartment unit
2.	Women/ Study's Supporting Subjects	Ibu Mery	Aware, has a prenup	Owns property
		Ibu Ratna	No need because her partner was an Indonesian citizen	Owns partner

Source: interviews

As a WNI, Ibu Ike feels she has been treated unfairly. Ibu Ike sent a request to the Constitutional Court, a state institution that has the authority to perform justice as the guardian of the constitution and has the authority to execute hearings at the first and final levels, to issue final decisions. One of the authorities of the Republic of Indonesia's Constitutional Court is regulated in the 1945 Constitution, chapter 24, article (c), which is to test laws against the 1945 Constitution of the Republic of Indonesia. On the more complete explanation of the standing, authority, and responsibilities of the Constitutional Court, one can learn more at [www.mahkamahkonstitusi.go.id](http://www.mahkamahkonstitusi.go.id)

Ibu Ike's request to the Constitutional Court for a review was the last resort for achieving justice as a citizen, after many of her other efforts was met with a dead end. The Constitutional Court is a way into the legal system to receive fair treatment. The justice fought for by Ibu Ike is a very basic type of justice for Indonesians, the right to property. Indonesia has ratified the international legal instrument for the fulfillment of legal guarantee over human rights and principles of nondiscrimination. In the context of Indonesia, Irianto says the guarantee of equality and justice for citizens, both men and women, is already included in various laws and regulations. Juridically, the protection of human rights for equality and justice for citizens is reflected in the introduction and main body of the 1945 Constitution. Ibu Ike filed for a review at the Constitutional Court to receive legal access to her right to property, as a citizen. In line with the concept of access in the National Strategy for Access for Justice (5) is that the state, in this case Indonesia, guarantees the fulfillment of basic rights based on the 1945 Constitution and principles of universal human rights, so that citizens' right to property must be restored.

Ibu Ike, as an individual WNI plaintiff with some legal capacity, ties, and interests, filed a request for a review of Law No. 5 Year 1960 on Basic Agrarian Law and Law No. 1 Year 1974 on Marriage, against the Republic of Indonesia's 1945 Constitution. Ibu Ike's request contains three important aspects. First, that chapters in the two laws contain vague criteria for WNI so that the openness to interpretation puts women WNI in

transnational marriage at a disadvantage. Some legal experts, government institutions/officials, notaries or land-certificate-issuing institutions define WNI, in regard to the right to property, as WNI who are unmarried, who are married to another WNI, and WNI married to WNA with a prenup for a separation of assets. WNI who are married to foreign nationals are not considered citizens

with the right to property and are treated like foreign nationals. Ibu Ike argued that, "there is not one law that states that a WNI's status as being married to a foreign national causes her to have different rights compared to WNI married to other WNI."

Second, it should be made possible to create a separate-assets agreement both before and during a marriage, instead of only before the marriage is made official. Ibu Ike argued that a prenup is like any other agreement, according to the principles of an agreement, which is the freedom to engage in a contract, in line with chapter 1338 article (1) of the civil code, which is to: create or not create an agreement; to create an agreement with anyone; to determine the content of an agreement, its execution and requirements, to determine whether the agreement should be verbal or put in writing. The third aspect has to do with the criteria for shared assets, which should not be interpreted as property shared with a foreign national couple. Ibu Ike gave the argument that the Law on Marriage does not provide an unequivocal definition of shared property in a transnational marriage. Chapter 57-67 of the Law on Marriage also does not regulate shared property in transnational marriages. Chapter 35 in the Law on Marriage has to do with shared property, while chapter 21, article (1), and chapter 36, article (1) in the Basic Agrarian Law are on the requirements for the right to own and right to use property only for WNI. The implementation of chapter 35 in the Law on Marriage, which prevents access to the right to property for WNI in a transnational marriage, is a form of discrimination against WNI in a transnational marriage.

Ibu Ike has participated in six hearings, the first of which occurred on June 11, 2015; the second on June 24, 2015; third on July 29, 2015; fourth on August 11, 2015; fifth on August 27, 2015; and the sixth and last hearing on September 7, 2015. On October 27, 2016, the Indonesian Constitutional Court's panel of judges gave their verdict on case No. 69/PUU-XIII/2015 on the review of Basic Agrarian Law on property and building ownership for WNI in a transnational marriage with no prenup and on the Law on Marriage, particularly on prenups and shared property filed by Ibu Ike. The Constitutional Court's panel of judges decided to grant some of Ibu Ike's requests and certain articles in chapter 29 of the Marriage Law, which states "On or before the marriage is made official" (article 1); "Said agreement is in effect since the beginning of the marriage" (article 3); and "Said agreement must not be altered during the marriage" (article 4), were declared unconstitutional.

With the verdict, WNI in a transnational marriage without a prenup can create a postnuptial agreement after the marriage is made official to regulate the separation of assets with their spouses, according to the agreement between husband and wife. Prior, a nuptial agreement could only be “created on or before the marriage is made official.” More on the verdict can be seen at: [http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/69\\_PUU-XIII\\_2015.pdf](http://www.mahkamahkonstitusi.go.id/public/content/persidangan/putusan/69_PUU-XIII_2015.pdf). Ibu Ike’s struggle as well as the struggles of other women in a transnational marriage have at least produced results, although not all their requests were granted. This verdict still does not guarantee the women’s full rights as citizens, as nuptial agreements are still a requirement for legal access to the right to property.

### Policy that Ignores Women

The nuptial agreement requirement regulated in chapter 29 of the Marriage Law juncto the decision of the Constitutional Court Number 69/PUU-XIII/2015 is in line with the government’s decision to issue The Government of the Republic of Indonesia’s Decision Number 103 Year 2015, on December 22, 2015, on House or Residential Unit Ownership by Foreign Nationals in Indonesia. In the provisions of the government regulation, there is a regulation meant for WNI married to foreign nationals, in chapter 3, which states that a WNI married to a foreign national can own property as long as they can provide proof of “an agreement on the separation of assets between husband and wife, created with a notarized certificate.” The state seems to turn a blind eye to women WNI in a transnational marriage. Blinders are meant for horses, so that a horse can only see what is in front of it, not what is to its left or right. The state, in this case, is wearing blinders making them focused only on foreign nationals and not the Indonesian citizens in transnational marriages. In the meantime, WNI married to foreign nationals still perform their responsibilities as Indonesian citizens.

Women WNI in a transnational marriage are even more hurt by the government regulation meant for foreign nationals, which unfortunately also regulates WNI, further underscoring the state’s discrimination against its citizens. The additional instrument of notarized separate assets agreement between husband and wife, meant specifically for WNI in a transnational marriage according to provisions in PP No. 103/2014, has sparked questions and protest from those in transnational marriages, “Am I not a WNI?” Provisions on nuptial agreements are regulated by the Law on Marriage, chapter 29, which states:

1. When or before the marriage is made official, both parties, based on a mutual agreement, can create a written agreement legalized by the official documenting the marriage, after which the agreement applies to third parties, as far as third parties are mentioned
2. Said agreement goes into effect at the start of the marriage
3. During the marriage, the agreement must not be altered, unless there is an agreement from both parties to make changes and the changes do not put third parties at a disadvantage

Marriage Law chapter 29 does not define nuptial agreement. The definition of a nuptial agreement is also not found in Government Regulation No. 9 Year 1975 on the Implementation of Law No. 1 Year 1974 on Marriage. Nuptial agreements are made based on a consensus between partners to be married. The agreement must be made in writing but a notarized certificate is not mentioned. A nuptial agreement is legalized by a marriage registry official from the Religious Affairs Office for those who are Muslim and from the Civil Registry Office for non-Muslims.

According to Amir Syarifuddin (2006, p. 1) in *Hukum Perkawinan Islam in Indonesia* (Islamic Marital Law in Indonesia), Muslims should refer to Law No. 7 Year 1989 on Religious Court and the Anthology of Islamic Laws in Indonesia, which was made official and disseminated through Presidential Instruction No. 1 Year 1991 on the Anthology of Islamic Laws on nuptial agreement in reference to chapter 45 to 52 in the Anthology of Islamic Laws. Nuptial agreements are not a must for marriage, but if created by couple-to-be before the wedding, the agreement cannot be canceled. A nuptial agreement made by prospective husband-and-wife is on assets in marriage and legal consequences, made in writing and legalized by the official registering the marriage. The agreement covers commingled personal assets and the separation of income assets as well as individual authority to “create hypothec ties between personal assets and shared assets.” Although there is separation of assets, the husband is still responsible over the needs of the household. For non-Muslim WNIs, provisions for nuptial agreements not regulated under the Law on Marriage are regulated in the Civil Code, from chapter 139 to 198. A nuptial agreement, according to the Civil Code, is a diversion from legal provisions on shared assets. Although a nuptial agreement exists, the husband still abides by “the authority over rights as a husband,

and as a father, and as the head of household." According to the Civil Code, a *prenuptial* agreement should have a notarized certificate and be performed before the marriage ceremony takes place. A *prenuptial* agreement cannot be altered once the marriage is in effect.

There is a rather important difference in the criteria for marital assets between the Law on Marriage and the Civil Code. Marital assets according to the Civil Code are commingled assets. But marital assets, according to the Law on Marriage, chapter 35, are not commingled assets because there are, "individual assets belonging to the husband and the wife, and items obtained by each as presents or inheritance, which fall under each party's authority as long as both parties do not specify otherwise" (Marriage Law, chapter 35). A *nuptial* agreement according to the Marriage Law, Compilation of Islamic Laws and the Civil Code, is performed before or when the marriage ceremony takes place. A *nuptial* agreement created once the marriage is official is not regulated nor acknowledged in the Law on Marriage, the Anthology of Islamic Laws, and the Civil Code.

A *nuptial* agreement, in my opinion, allows predicaments to happen to Indonesian women in a transnational marriage. On the one hand, it allows access to the right to property, but on the other hand, it omits women's right to shared assets during the marriage. According to Kartini Muljadi and Gunawan Widjaja (2004, pp. 139-140) on the substitution of ownership right to property to right to use is meant for foreign nationals, not for WNI, as stated in the provisions of Basic Agrarian Law, chapter 21 article (3) and chapter 26 article (2) because the right to own, according to provisions in chapter 21 article (1) the right to own is for WNI so that foreign nationals' right to property is canceled and substituted with the right to use because of chapter 21 article (3) and chapter 26 article (2). Provisions in PP No. 103/2015 and the *prenuptial* agreement requirement for land ownership by a WNI in a transnational marriage contradicts Basic Agrarian Law chapter 9 article (2) on equal rights to property for WNI. Moreover, WNI's rights are reasserted in chapter 21 article (1) on the right to own, chapter 30 article (1) on the right to use for business, and chapter 36 on the right to use. WNI has the right for equality and justice, as stated in the introduction and main content of the 1945 Constitution, the Universal Declaration of Human Rights, and CEDAW. This is why, WNI, including women married to foreign citizens should be able to maintain their rights as Indonesian citizens because they are still WNI without a second citizenship. In practice, the law does not work the way it should. According to Chamallas (2003, p. 4), to deconstruct an unequal law

without a gender perspective, what must be done is to first listen to women's experiences to insert values adhered by women, so that facts in legal predicaments can be identified and a legal principle to solve these issues can be created. Second, women should be involved in decision making. Third, to raise legal awareness.

### **Women's Strategy: Smuggling, Legal Breakthroughs, and Organization.**

The requirement of a *nuptial* agreement or separate assets for women WNI in a transnational marriage is discriminative and does not guarantee the fulfillment of the basic human rights and equal rights of citizens. The state only takes foreign nationals into consideration, and not WNI, which is why there is a requirement for a *nuptial* agreement and a separation of assets, which must be created before or during the marriage ceremony, so that the WNI can access her right to property. But a *nuptial* agreement places women in a transnational marriage in a difficult position and both options put women WNI in a transnational marriage at a disadvantage. Besides, not all actors of transnational marriages are aware of this regulation.

This disadvantageous situation for WNI in a transnational marriage who do not have a *prenup*, plus the diverse identities (ethnicity, class, gender, and the spouse's origins) result in different attitudes and efforts in facing the various challenges and hurdles to gain legal access to the right to property. The efforts these women performed prior to the Constitutional Court's decision that a *nuptial* agreement can be made before, during, and after the marriage ceremony, were to: opt for a nominee agreement, draft a statement letter confirming their WNI status, refuse to own property or land in Indonesia, to buy land abroad, use an ID card that says they are unmarried, seek a court decision for a *nuptial* agreement between husband and wife, and even seek a legal route, from district court to the Constitutional Court. Court decision for a separate-assets agreement between husband and wife by women WNI performed during marriage is considered legal maneuvering by some, while several law experts call it a legal breakthrough because this method was not regulated by the law. This action, if widely performed across regions can be granted as a juridical foundation.

In the efforts to fulfill the legal right to property, women WNI in a transnational marriage have strategized, both as individuals and as a collective, by organizing efforts. Women WNI in a transnational marriage try to unite, find, and restore the right to property for women

WNI married to foreign nationals, women who have been marginalized by legal provisions implemented by the government, notaries, developers, and banks. Efforts made for positive and non-discriminative developments in regard to the right to property have been initiated by transnational marriage organizations, both formally and informally, though as of today these efforts have not yet proved successful. Individual efforts include Ibu Ike's attempts in all avenues, from reporting to the police, court, and the last route, making an appeal to the state's legal system through the Constitutional Court. In the process, Perca Indonesia, a transnational marriage organization, has invited other organizations such as KPC Melati with the similar goal of supporting Ibu Ike. The struggle for the legal access to right to property by WNI in a transnational marriage is nowhere near the end. Actions must be taken to build awareness among members of their rights as citizens, by nurturing a solid sense of kinship to unite in fighting for the organization's political aim to eradicate legal provisions that are discriminative against women WNI in a transnational marriage. Additionally, organization members must be involved and must continue to get involved in voicing the voices and experiences of women so that women can be "equal before the law."

Referencing multicultural feminism, the oppression suffered by women WNI in a transnational marriage is not only due to their sex, race, and class, as expressed by multicultural feminists, including bell hooks (1952–) in the United States, who also criticized Betty Friedan (1921–2006), a liberal feminist who produced *The Feminine Mystique* (1963). This study demonstrates that oppression can happen to women in a transnational marriage regardless of religion, ethnicity, educational background, class, profession, and economic background, because of vague laws regulating the rights of citizens in a transnational marriage. Returning to bell hooks's theory, oppression becomes layered and dangerous if a woman WNI married to a foreign national is poor and uneducated.

It's extremely important for a study with a feminist perspective to deconstruct the patriarchal legal system and institutions, which are based on the experience and voice of men, so that they have produced unfair laws resulting in the marginalization of women. A feminist perspective of the law necessitates involving the experiences and voices of women in formulating laws, to produce legal products and practices that are gender-equal. According to the legal access theory, legal systems must be open to access by everyone, including women WNI in a transnational marriage. In the efforts to fulfill

legal access to the right to property, women WNI in a transnational marriage strategize both as individuals and collectively to transform discriminative policies so that the experiences and interests of women are taken into account.

## Conclusion

The question asked by women WNI in a transnational marriage on their access to the right to property, "Aren't we citizens?" is both a cry and an appeal. This study recommends a number of actions. First, the state should not treat its citizens differently. Second, the state should omit the separate-assets requirement between husband and wife for access to the right to property for women WNI in a transnational marriage, as this requirement has the potential to disadvantage women who are not financially independent in accessing shared assets in marriage. Nuptial agreements contradict an agreement's main principle, which is the freedom to engage in a contract, as stated in chapter 1338 article (1) in the Civil Code to create or not create an agreement; to enter into an agreement with anyone; to determine the substance, execution, and requirements of an agreement; to determine the form of an agreement. Third, to involve/invite the voices and experiences of women WNI in a transnational marriage in creating policies and legal provisions so that the implementation of policies created can guarantee gender equality and fairness, departing from an understanding that women's identities are non-singular. Fourth, there must be clear regulations that do not put women WNI in a transnational marriage at an economic disadvantage in the event of a legal incident, for example the death of a spouse or a divorce. Fifth, there must be education on legal provisions to build citizens' awareness, to lift them from ignorance, so that their rights are protected.

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