



GENDER INEQUALITY IN INDONESIAN MARRIAGE LAW AND THE ISLAMIC LEGAL FRAMEWORK: NORMATIVE CHALLENGES AND DIRECTIONS FOR REFORM

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ABSTRACT

Amid global efforts to advance gender equality and human rights, marriage law in Indonesia continues to face challenges regarding power relations between husbands and wives. Indonesia's plural legal system, combining state law and Islamic law, creates normative complexities that often legitimize gender inequality in marriage. This study critically examines provisions in the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI) that may perpetuate discrimination against women, while addressing the difficulties of aligning national marriage law with international human rights standards. By applying a normative legal research method that integrates statutory and contextual analysis, this study utilizes legislation, court rulings, legal doctrines, and up-to-date scholarly literature as its primary sources. Findings show that legal norms frequently subordinate women, particularly in marital rights, divorce procedures, and family resource management, revealing a gap between formal law and substantive justice. The article argues that marriage law reform must move beyond symbolic changes to reconstruct norms grounded in gender equality, human rights, and family justice, contributing to debates on equitable legal frameworks in plural legal systems.

A. INTRODUCTION

Marriage and family constitute fundamental elements of human life, particularly in Indonesia, where most of the population practices Islam.

However, despite the importance attributed to marriage and family, many women still experience gender injustice within marriage and family life.¹ Gender inequality is deeply rooted in society,² Furthermore, Indonesia has embraced conventional patriarchal gender dynamics, whereby males are designated as family providers, while women are anticipated to manage domestic and home responsibilities.³ Patriarchy is a system that sets adult males in central or dominating roles of authority, while women and children are situated in regard to the interests of the patriarch (adult men). A prevalent misconception of women in a patriarchal society posits that they are inferior to males and are anticipated to assume the roles of housewives, attending to their husbands, doing household responsibilities, and nurturing children.⁴

Furthermore, patriarchal society has been institutionalised by legislation that discriminate against women, especially under the Indonesian Marriage Law and the Indonesian Codified Islamic Law (*Kompilasi Hukum Islam*/KHI). Consequently, amending the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI) is essential for attaining gender equality in marital and familial contexts. The reform process must acknowledge and enhance the significant role of women to ensure their optimum contribution to the establishment of high-quality families. Gender problems in marriage and family law under the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI) have several facets, including disparities in the rights and responsibilities of husbands and wives. Provisions that identify the husband as the head of the family confer upon him power over household decision-making and administration, while the woman is assigned the duty of a homemaker, often shouldering a dual burden.⁵ Injustice also arises in matters of financial support and joint marital property between husbands and wives. Although financial maintenance is the husband's obligation toward the wife, in practice inequality often occurs in the distribution of joint property, particularly in cases of divorce.⁶

¹ Nur Kholis, Jumaiyah Jumaiyah, and Wahidullah Wahidullah, "Poligami Dan Ketidakadilan Gender Dalam Undang-Undang Perkawinan Di Indonesia," *Al-Ahkam* 27, no. 2 (2017): 198.

² Fatimah Isyti Karimah, Dadan Rusmana, and Yayan Rahtikawati, "Studi Komparasi Metodologi Penafsiran Amina Wadud Dan Zaitunah Subhan Dalam Masalah Perempuan," *HERMENEUTIK* 16, no. 1 (2022): 47.

³ Nina Nurmila, Supiana, Irma Riyani, and Acep Aripudin. "The Concept of Gender Education in the Family to Help Achieve Sustainable Development Goals." *Proceedings of the 5th Asian Education Symposium 2020 (AES 2020)* 566, no. Aes 2020 (2021): 427.

⁴ Nina Nurmila, "Breaking Patriarchal Gender Stereotype. Being A Female Rector of the Institut Seni Budaya Indonesia/ISBI Bandung, West Java, Indonesia," *Kawalu: Journal of Local Culture* 5, no. 2 (2018): 89.

⁵ Panji Nurrahman, "Membangun Kesetaraan Gender Dalam Keluarga Pasangan Pekerja," *Jurnal Harkat: Media Komunikasi Gender* 18, no. 2 (2022): 43.

⁶ John Kenedi, "Penyelesaian Sengketa Harta Bersama Dengan Harta Bawaan Ketika Terjadi Perceraian," *MANHAJ Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 1 (2018): 94.

Discriminatory treatment of women also occurs in relation to inheritance rights. For example, existing provisions stipulate that women are entitled to receive only half of the inheritance share granted to men.⁷ Injustice also occurs in the divorce process. In many divorce proceedings, women often experience unfair treatment that fails to uphold their legal rights. Additionally, domestic violence is frequently suffered by women and children within the family. These concerns need to be responded to and settled through gender-equitable reforms of the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI) to achieve gender equality within marital and family life.

Furthermore, gender bias in matters of reproduction within marriage manifests in injustice in decision-making related to pregnancy and childbirth.⁸ For instance, within particular cultures or communities, determinations concerning pregnancy and childbirth are made solely by the husband or his family, excluding the perspectives and preferences of the wife or expectant mother. This situation may lead to inequities in access to reproductive health services and in safeguarding women from domestic or sexual violence, as these decisions frequently occur outside their authority or control.

Furthermore, inequality persists in the allocation of domestic responsibilities and childcare duties, with women often shouldering a disproportionate share of the burden. This condition can limit women's ability to work outside the home, make decisions about their careers and futures, and even widen the gender gap in income as well as participation in social and economic life in Indonesia.⁹ As highlighted in several studies on gender inequality by Arifah Millati Agustina,¹⁰ and Ni Made Wiasti,¹¹ the issue of gender equality within the family as discussed by Panji Nurrahman,¹² gender mainstreaming as elaborated by Djoko Siswanto Muhartono,¹³ the

⁷ Ananda Luthfiyyah Azwan, "Memaknai Pemenuhan Hak-Hak Perempuan Dalam Implementasi Cedaw Terhadap Pembagian Waris Islam," *AL-IMARRAH: Jurnal Pemerintahan Dan Politik Islam* 6, no. 1 (2021): 123.

⁸ Komisi Nasional Perempuan, *Perkosaan Sebagai Pelanggaran HAM Berat, Sistematis, Dan Meluas, Sebuah Kejahatan Dan Manifestasi Kekerasan Berbasis Gender Terhadap Perempuan Dan Anak Perempuan, Serta Pencegahannya* (Jakarta: Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2022), 114.

⁹ Siti Nurul Khaerani, "Kesetaraan Dan Ketidakadilan Gender Dalam Bidang Ekonomi Pada Masyarakat Tradisional Sasak Di Desa Bayan Kecamatan Bayan Kabupaten Lombok Utara," *Qawwam* 11, no. 1 (2017): 59.

¹⁰ Arifah Millati Agustina, "Gender Construction in The Perspective of Living Fiqh in Indonesia," *Justicia Islamica* 18, no. 2 (2021): 189.

¹¹ Ni Made Wiasti, "Mencermati Permasalahan Gender Dan Pengarusutamaan Gender (PUG)," *Journal of Anthropology* 1, no. 1 (2017): 29.

¹² Panji Nurrahman, "Membangun Kesetaraan Gender Dalam Keluarga Pasangan Pekerja," *Jurnal Harkat: Media Komunikasi Gender* 18, no. 2 (2022): 45.

¹³ Djoko Siswanto Muhartono, "Pentingnya Regulasi Pengarusutamaan Gender Dalam Pembangunan Daerah Di Kabupaten Kediri," *Jurnal Ilmu Sosial Dan Ilmu Politik* 3, no. 2 (2020): 117.

development of gender equality in development and the legal system by Ernia Duwi Saputri and Itok Dwi Kurniawan,¹⁴ as well as by Diya Ul Akmal.¹⁵ However, several of these studies have not yet offered solutions within a regulatory reform framework aimed at achieving gender equality in marriage and family life.

The concept of gender began to be widely employed by feminist scholars in the early 1970s. It was introduced to differentiate biological sex understood as a natural or divinely given condition from gender, which refers to the socially constructed notions of femininity and masculinity formed by society. Gender encompasses the roles, attributes, traits, and behavioral distinctions assigned to men and women that evolve within a social context and are considered normative for each group.¹⁶ Nina Nurmila identifies five signs of gender inequality: subordination, marginalisation, violence, stereotyping, and dual or triple obligations. The indicators of gender justice include access, control, participation, and fair rewards.¹⁷

Efforts to achieve gender equality in marriage and family life are intrinsically linked to the need for a fair and equitable redistribution of rights, obligations, and responsibilities between spouses. This equality include equitable access to education, healthcare, career prospects, and participation in familial decision-making, which have often been restricted by gender-biased legal standards. Numerous societal challenges, including domestic violence, the subjugation of women, and the inequitable distribution of home and public duties, demonstrate that gender inequity inside the family is fundamentally entrenched in normative frameworks.

This study addresses the core legal issue of enduring gender inequality in Indonesian marriage law and the Islamic legal framework, specifically as evidenced by the statutory provisions of the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI) that entrench unequal rights and responsibilities between men and women. Notwithstanding legislative improvements, such as the modifications to Law Number 1 of 1974 and Law Number 16 of 2019, some sections persist in embodying patriarchal legal frameworks that oppress women in marriage and familial contexts.

This essay investigates whether the normative framework of Indonesian marriage law and the Indonesian Codified Islamic Law (KHI) provide equal

¹⁴ Ernia Duwi Saputri and Itok Dwi Kurniawan, "Sistem Hukum Berkeadilan Gender Sebagai Arah Pembangunan Di Indonesia," *Jurnal Kewarganegaraan* 6, no. 3 (2022): 6405.

¹⁵ Diya Ul Akmal, Eka Pratiwi, and Anisa Sulistiani, "Keadilan Dalam Sistem Hukum Nasional Berdasarkan Perspektif Gender," *LEX LIBRUM: Jurnal Ilmu Hukum* 8, no. 1 (2021): 77.

¹⁶ Nina Nurmila, Supiana, Irma Riyani, and Acep Aripudin. "The Concept of Gender Education in the Family to Help Achieve Sustainable Development Goals." *Proceedings of the 5th Asian Education Symposium 2020 (AES 2020)* 566, no. Aes 2020 (2021): 428.

¹⁷ Nina Nurmila, "Pengaruh Budaya Patriarki Terhadap Pemahaman Agama Dan Pembentukan Budaya," *KARSA Jurnal Sosial Dan Budaya Keislaman* 23, no. 1 (2015): 4.

legal protection and recognition of rights to both women and men within marriage and family life. Several provisions exhibit gender bias, including the unequal distribution of authority within the household, the designation of the husband as the family head, restrictions on women's autonomy regarding marriage guardianship, inequities in inheritance rights, and the imposition of excessive domestic responsibilities on wives. These provisions create structural discrimination that affects women's access to rights, participation in decision-making, control over family matters, and enjoyment of legal benefits. Such normative inequality has practical consequences, contributing to women's vulnerability to neglect, economic dependency, and domestic violence, as reflected in reports by Komnas Perempuan. The persistence of gender-biased legal norms also reflects broader structural factors, including patriarchal social culture, gender-biased interpretations of religious texts, limited representation of women in legislative processes, and weak gender sensitivity in legal enforcement.

Accordingly, the principal legal issue examined in this study pertains to the construction and perpetuation of gender inequality within Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI), the normative deficiencies that engender such inequality, and the legal reform initiatives necessary to establish a gender-equitable legal framework that adheres to the principles of justice, human rights, and substantive gender equality. This research aims to critically examine gender-biased legal provisions, identify their structural roots, and provide normative and institutional reform measures to enhance gender equality in marriage and family law in Indonesia.

B. RESEARCH METHODS

This research constitutes a normative legal study, commonly referred to as library-based research.¹⁸ It utilises both contextual and statutory methodologies to examine the existing stipulations in the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI), aiming to assess these rules and pinpoint areas that are discriminatory against women.¹⁹ The theories employed in this study are Gender Mainstreaming Theory, Intersectionality Theory, and Critical Legal Studies Theory. Gender Mainstreaming Theory views gender as a crucial factor that must be considered in every policy and development program.²⁰ Gender mainstreaming is a strategy for achieving

¹⁸ Jefry Tarantang, "Teori Dan Aplikasi Pemikiran Kontemporer Dalam Pembaharuan Hukum Keluarga Islam," *Transformatif* 2, no. 1 (2018): 29.

¹⁹ N Nurmila, "Metodologi Studi Islam Kontekstual Dalam Menafsirkan Ayat-Ayat Al-Qur'an Tentang Kesetaraan Gender," *Ilmu Ushuluddin* 7, no. 2 (2020): 224.

²⁰ Prudence Woodford-Berger, "Gender Mainstreaming: What Is It (about) and Should We Continue Doing It?," *IDS Bulletin* 35, no. 4 (2004): 65.

gender justice through public policy.²¹ In the context of marriage and family, gender mainstreaming can be understood as an effort to ensure that marital and family policies and practices respect and fulfill the needs and rights of both women and men in a fair and balanced manner.²²

Intersectionality Theory emphasizes that individual identities and experiences are shaped by multiple interconnected factors, such as gender, race, social class, religion, and others.²³ In the context of marriage and family, this theory helps to explain how gender issues are interconnected with other factors, such as religion and culture,²⁴ and how the interaction among these factors influences the roles and positions of women within marriage and family life. Critical Legal Studies Theory emphasizes that law functions as an instrument of power used by elites,²⁵ to maintain and protect their interests.²⁶ This theory provides the conceptual foundation for critiquing the formalization of authoritative legal norms that are gender-biased and become ambiguous and illusory in practice.²⁷ This theory elucidates how law can either perpetuate or contest gender inequality in marriage and family dynamics, and how amendments to the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI) may affect the roles and status of women within these spheres.

This research is aimed at formulating recommendations for the reform of the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI) to make them more sensitive to the principles of gender equality in marital relations and family life. Through critical normative analysis, this study is expected to contribute to strengthening legal awareness of the importance of gender justice as the foundation of a harmonious and egalitarian family. The findings are also expected not only to enrich academic discourse but to support efforts toward the development of gender-just family law within the context of Indonesian.

²¹ Wiasti, "Mencermati Permasalahan Gender Dan Pengarusutamaan Gender (PUG)," 36–37.

²² Djoko Siswanto Muhartono, "Pentingnya Regulasi Pengarusutamaan Gender Dalam Pembangunan Daerah Di Kabupaten Kediri," *Jurnal Ilmu Sosial Dan Ilmu Politik* 3, no. 2 (2020): 118.

²³ Anggaunitakiranantika, "Memahami Interseksionalitas Dalam Keberagaman Indonesia: Tinjauan Dalam Sosiologi Gender," *Indonesian Journal of Sociology, Education, and Development* 4, no. 1 (2022): 49.

²⁴ Andika Hendra Mustaqim, "Ketertindasan Dan Perlawanan Perempuan: Interseksionalitas Pada Cerpen 'Pohon Api' Karya Oka Rusmini," *Paradigma, Jurnal Kajian Budaya* 8, no. 1 (2018): 76.

²⁵ Rizky Saeful Hayat, "Konsep Dasar Critical Legal Studies: Kritik Atas Formalisme Hukum," *Hermeneutika: Jurnal Ilmu Hukum* 5, no. 1 (2021): 238.

²⁶ Indra Rahmatullah, "Filsafat Hukum Aliran Studi Hukum Kritis (Critical Legal Studies); Konsep Dan Aktualisasinya Dalam Hukum Indonesia," *Adalah Buletin Hukum Dan Keadilan* 5, no. 3 (2021): 3.

²⁷ Erfina Fuadatul Khilmi, "Pemanfaatan Critical Legal Studies (CLs) Dalam Pembentukan Peraturan Daerah (Studi Perda Yang Berfungsi Sebagai Otonomi Daerah)," *Indonesian Journal of Law and Islamic Law (IJLIL)* 1, no. 1 (2019): 77.

C. DISCUSSION

1. Problems of Gender Inequality in the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI)

Gender-related concerns in marriage and family encompass issues of injustice, discrimination, and violence within the relationship between spouses. Various gender biases are also present in the provisions of the Indonesian Marriage Law, which influence gender equality in marital and family life. One instance is Article 7 paragraph (1), which sets the minimum marriage age at 19 for men and 16 for women. This provision reflects gender discrimination, as women are considered ready for marriage at a younger age than men.²⁸ Subsequent to a ruling by the Constitutional Court, the legislature was mandated to amend Law Number 1 of 1974 on Marriage within a maximum timeframe of three years, resulting in the promulgation of Law Number 16 of 2019 about Amendments to Law Number 1 of 1974 on Marriage.

In addition, Article 31 paragraph (3) of the Indonesian Marriage Law positions the husband as the head of the household, thereby granting him the authority to make decisions on behalf of the family.²⁹ Furthermore, Article 4 paragraph (2) constitutes gender discrimination against women as wives.³⁰ Furthermore, Article 31 paragraph (3) designates the husband as the head of the family, meaning that he holds authority and control within the household. Article 34 paragraph (1) states that the husband is responsible for protecting the wife, implying that the wife is incapable of independence. Paragraph (2) places the responsibility of managing the household on the wife, even though the husband is also obligated to participate in household management. In addition, there are many other gender-biased provisions that tend to disadvantage women in marriage and family life.³¹ Gender bias in The Indonesian Codified Islamic Law (KHI) can be seen in several provisions. For example, Article 20 paragraph (1) stipulates that the marriage guardian (*wali*) must be male. Article 79 paragraph (1) designates the husband as the head of the household. Article 80 paragraphs (1), (3), and (5) grant the husband superior rights while placing the wife in a subordinate position within the

²⁸ Jordy Herry Christian and Kirana Edenela, "Terampasnya Hak-Hak Perempuan Akibat Diskriminasi Batas Usia Perkawinan," *Lex Scientia Law Review* 3, no. 1 (2019): 2.

²⁹ Dede Kania, "Hak Asasi Perempuan Dalam Peraturan Perundang-Undangan Di Indonesia," *Jurnal Konstitusi* 12, no. 4 (2016): 722.

³⁰ Nur Kholis, Jumaiyah Jumaiyah, and Wahidullah Wahidullah, "Poligami Dan Ketidakadilan Gender Dalam Undang-Undang Perkawinan Di Indonesia," *Al-Ahkam* 27, no. 2 (2017): 199.

³¹ Syarafuddin, "Kesetaraan Gender Dalam Undang-Undang No 1 Tahun 1974 Dan Kompilasi Hukum Islam (Respon Hakim Pengadilan Agama Surakarta Tahun 2013)," *Suhuf* 26, no. 1 (2014): 27.

household. Furthermore, Article 80 imposes on the wife the responsibility to manage the household to the best of her ability.³²

Table 1. Gender-Biased Legal Issues in the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI)

No	Regulation	Article	Description of Gender Bias	Impact on Women
1	Marriage Law	Article 7(1)	Minimum marriage age: 19 for men, 16 for women	Subordination; implies women are ready for marriage earlier than men
2	Marriage Law	Article 3(2)	General provisions affecting wife's role	Discrimination
3	Marriage Law	Article 4(2) a,b,c	General provisions affecting wife's role	Discrimination
4	Marriage Law	Article 31(3)	Husband as head of household	Subordination; Double/Multiple Burdens
5	Marriage Law	Article 34(1)	Husband protects wife	Marginalization; Subordination
6	Marriage Law	Article 34(2)	Household management assigned to wife	Subordination; Double/Multiple Burdens
7	Compilation of Islamic Law	Article 20(1)	Marriage guardian (<i>wali</i>) must be male	Discrimination; Marginalization
8	Compilation of Islamic Law	Article 79(1)	Husband as head of household	Marginalization; Subordination
9	Compilation of Islamic Law	Article 80(1), (3), (5)	Husband has superior rights; wife is subordinated	Marginalization; Subordination
10	Compilation of Islamic Law	Article 83(1), (2)	Wife responsible for household management	Subordination; Double/Multiple Burdens

These regulations demonstrate the presence of gender bias in the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI). As a result, gender justice in marriage and family life is not achieved, making women more vulnerable to neglect, abuse, and even domestic violence. In fact, in 2022, complaints recorded by the National Commission on Violence Against Women (Komnas Perempuan) reported 963 cases of psychological

³² Syarafuddin, "Kesetaraan Gender Dalam Undang- Undang No 1 Tahun 1974 Dan Kompilasi Hukum Islam (Respon Hakim Pengadilan Agama Surakarta Tahun 2013)," *Suhuf* 26, no. 1 (2014): 28.

violence and 3,977 cases of physical violence,³³ as shown in the following table:

Table 2. Cases of Psychological and Physical Violence Reported to Komnas Perempuan

Type of Violence	Reported to Komnas Perempuan (Psychological)	Handled by Service Institutions (Physical)	Total Cases
Violence against wives	622	3.205	3.827
Violence against daughters	140	725	865
Violence by ex-husbands	90	47	137
Other domestic violence (e.g., violence against daughters-in-law, cousins, siblings-in-law, or other relatives)	111	-	111
Total	963	3.977	4.940

Therefore, amending the Indonesian Marriage Law is imperative to eliminate gender prejudice and achieve gender equality in marriage and familial contexts. Moreover, some gender-biased stipulations in The Indonesian Codified Islamic Law (KHI) affect the attainment of gender equality in marital and familial relationships within the context of Islamic law. Article 31, paragraph 1, specifies that the marital guardian (*wali*) for a woman must be her father or grandfather, but for a male, it is himself. This exemplifies gender inequality, since women are denied the privilege to serve as their own *wali*. Moreover, Article 40 governs spousal maintenance, stipulating that the husband is obligated to support his wife, although does not prescribe a set sum, so giving the husband discretion. This leads to women forfeiting their entitlement to sufficient financial assistance, resulting in disadvantages, especially in divorce circumstances.

Furthermore, Article 50 paragraph 2 states that a wife must obey her husband in all matters that do not violate Sharia. This grants greater authority to the husband in making important decisions affecting the family and limits the wife's right to make her own decisions. Article 67 stipulates that divorce can only be initiated by the husband, except in certain specific cases. This results in women losing the right to divorce their husbands if they are unhappy

³³ KOMNAS PEREMPUAN, *Catatan Tahunan Komnas Perempuan Tahun 2023 Kekerasan Terhadap Perempuan Di Ranah Publik Dan Negara: Minimnya Pelindungan Dan Pemulihan*, KOMNAS PEREMPUAN (Jakarta, 7 Maret 2023: KOMNAS PEREMPUAN, 2023).

or incompatible with them. Moreover, in inheritance matters, Article 77 states that a woman is entitled to only half of the inheritance share of a man in the same category. This demonstrates gender discrimination in inheritance rights and causes women to lose equal entitlement to their share of inheritance.

These concerns demonstrate that gender bias exists within The Indonesian Codified Islamic Law (KHI). Consequently, gender equality in marriage and family life has not been realized, thereby increasing women's susceptibility to violence and neglect. Accordingly, revising The Indonesian Codified Islamic Law (KHI) is essential to eradicate gender bias and to establish gender equality in marital and family relations. Several factors underlying gender bias in the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI) include:

- a. The strong patriarchal culture that persists in Indonesian society, including among Muslim communities,³⁴ It can influence the formulation of laws and Islamic legal provisions, which tend to grant greater power and rights to men compared to women.³⁵
- b. Patriarchal interpretations of religious texts.³⁶ Patriarchal interpretations of Islamic religious scriptures may influence the formulation of laws and Islamic legal norms, resulting in disparate treatment of men and women in marriage and familial contexts. Indonesian Muslim feminists assert that the Qur'an provides a robust foundation for gender equality; yet, it has often been interpreted through a patriarchal lens.³⁷ Therefore, in order to attain gender justice, the Qur'an needs to be reinterpreted through a gender-equitable approach.³⁸
- c. Injustice in the implementation of the law can lead to gender discrimination in practice,³⁹ Especially in cases involving divorce and spousal maintenance.

³⁴ Sarah Apriliandra and Hetty Krisnani, "Perilaku Diskriminatif Pada Perempuan Akibat Kuatnya Budaya Patriarki Di Indonesia Ditinjau Dari Perspektif Konflik," *Jurnal Kolaborasi Resolusi Konflik* 3, no. 1 (2021): 1.

³⁵ M. Syarifuddin, *Aksesibilitas Keadilan Bagi Perempuan Dan Anak Peran Mahkamah Agung Dalam Mewujudkan Keadilan Bagi Perempuan Dan Anak Berhadapan Dengan Hukum* (Depok: PT Imaji Cipta Karya, 2020), 99.

³⁶ Ayub Mursalin, "Meneguhkan Kesetaraan Gender Yang Berkeadilan Dalam Islam," *Harakat An-Nisa: Jurnal Studi Gender Dan Anak* 5, no. 2 (2021): 53–54, <https://doi.org/10.30631/harakatan-nisa.2020.52.47-58>.

³⁷ Nina Nurmila, "The Spread of Muslim Feminist Ideas in Indonesia Before and After the Digital Era," *Al-Jami'ah* 69, no. 1 (2021): 99, <https://doi.org/10.14421/ajis.2021.591.97-126>.

³⁸ Nina Nurmila, "The Influence of Global Muslim Feminism on Indonesian Muslim Feminist Discourse," *Al-Jami'ah: Journal of Islamic Studies* 49, no. 1 (2011): 60.

³⁹ Syarifuddin, *AKSESIBILITAS KEADILAN BAGI PEREMPUAN DAN ANAK Peran Mahkamah Agung Dalam Mewujudkan Keadilan Bagi Perempuan Dan Anak Berhadapan Dengan Hukum*, 123–24.

- d. The restricted involvement of women in the legislative process may lead to the insufficient representation of women's viewpoints and interests in the drafting of laws and The Indonesian Codified Islamic Law (KHI).⁴⁰
- e. The lack of gender awareness among lawmakers and the judiciary can lead to unconscious gender discrimination in the formulation of laws and the enforcement of legal provisions.⁴¹

By identifying these causes, it becomes possible to understand the factors influencing gender bias in the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI), and to advocate for changes within the legal system to achieve gender equality in marriage and family life through legal reform.⁴² The legal framework suggests that rectifying gender bias in the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI) as a fundamental legal concern will facilitate the reformation and enhancement of both the legal structure and cultural context, contributing to a gender-equitable legal system aimed at attaining gender equality in marriage and family life.

2. Strategies for Optimizing Gender Equality in Marriage and Family Through Reform of the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI)

Numerous legal challenges encountered by women regarding marriage and family, including discrimination in inheritance allocation, the allowance of polygamy without stringent regulation under The Indonesian Codified Islamic Law (KHI), and disparities in rights between spouses, particularly concerning reproductive rights and other entitlements, necessitate resolution. All of these difficulties need resolution via the promotion of gender equality in marital and familial contexts. This may be accomplished by legal and policy change, education and socialisation, and enhancing public knowledge and engagement in the protection and enforcement of women's rights inside the family.

Legal reform regarding women is to augment their bargaining power inside the legal framework while fostering their involvement in development to combat all types of prejudice against them. A fundamental issue that endures is the imbalance in women's involvement, arising from inequities ingrained in the social and cultural frameworks of society.⁴³ This must be

⁴⁰ Syarifuddin, 192.

⁴¹ Indra Kusumawardhana, "Indonesia Di Persimpangan: Urgensi 'Undang-Undang Kesetaraan Dan Keadilan Gender' Di Indonesia Pasca Deklarasi Bersama Buenos Aires Pada Tahun 2017," *Jurnal HAM* 9, no. 2 (2018): 167.

⁴² Saputri and Kurniawan, "Sistem Hukum Berkeadilan Gender Sebagai Arah Pembangunan Di Indonesia," 6410.

⁴³ Arif Hidayat, "Rekonstruksi Hukum Berkeadilan Gender Sebagai Pendekatan Dalam Pemberdayaan Buruh Perempuan Telaah Disparitas Hukum Pada Tenaga Kerja Wanita Di Kabupaten Magelang," *PALASTREN: Jurnal Studi Gender* 7, no. 1 (2014): 113.

regulated within the national legal system,⁴⁴ By amending the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI), it is anticipated that gender equality may be realized within marriage and family life. Nevertheless, such initiatives require the support of all stakeholders, including the government, the community, and religious institutions, in order to cultivate awareness of and adherence to the revised legal provisions.

This study offers solutions through the reform of the Indonesian Marriage Law and The Indonesian Codified Islamic Law (KHI) based on the following concepts:

- a. Strengthening provisions on polygamy, including prohibiting illegal polygamy with legal sanctions in certain cases, and clearly regulating the consequences regarding spousal maintenance and property ownership.⁴⁵
- b. Enhancing women's inheritance rights so that women have equal entitlement with men in the distribution of inheritance.
- c. Equalizing the rights and obligations of husbands and wives in marriage to achieve gender equality. In marriage, both spouses should have equal rights, including reproductive rights, guardianship rights, economic rights, educational rights, employment rights, and other rights constitutionally guaranteed by the state.
- d. Introducing protection mechanisms for women who are victims of domestic or marital violence.

The following notions further elaborate on these ideas: amending the Indonesian Marriage Law to recognise equal rights and obligations for husbands and wives, while safeguarding women's rights within the institution of marriage. The legislation might ensure that women had equal rights in making decisions about their children and have equitable access to inheritance. It should also safeguard the rights of women and girls regarding reproductive health and protection from domestic and sexual violence. This could include policies ensuring easy and affordable access to reproductive health services, sexual education, and psychological support services. Reforming The Indonesian Codified Islamic Law (KHI) to reflect gender equality in marital and family practices. For instance, the law could be revised to eliminate gender discrimination in inheritance distribution and child custody arrangements. It is also important to regulate equality in contraception within marriage and recognize the mother as a legitimate *wali* (guardian) in marriage matters. Providing teaching and spreading knowledge on the equal rights and duties of spouses in marriage, while emphasising the importance of gender equality

⁴⁴ Triwati Ani, "Akses Keadilan Sebagai Perlindungan Hukum Bagi Perempuan Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana," *HUMANI (Hukum Dan Masyarakat Madani)* 9, no. 1 (2019): 79.

⁴⁵ Nina Nurmila, "Polygamous Marriages In Indonesia And Their Impacts On Women's Access To Income And Property," *Al-Jami'ah* 54, no. 2 (2016): 428.

within the family. This education may be imparted via school initiatives, social campaigns, and training for religious and community leaders. Promoting cultural and behavioural transformation within society to foster an atmosphere conducive to gender equality in marriage and family life. This may be accomplished by social campaigns and community awareness initiatives on the significance of gender equality and women's rights. Establishing robust law enforcement measures to safeguard women's rights within marriage and family life is vital. This entails fortifying an autonomous and efficient judicial system and facilitating women's access to initiate legal claims when their rights are infringed. Advocating for the implementation of alternative dispute resolution methods that prioritise women's rights, including mediation facilitated by practitioners trained to promote gender equality in marital and familial conflicts.

Through the implementation of these ideas, it is anticipated that a more just and balanced environment for husbands and wives in marriage can be established, while safeguarding women's rights within the family. Key indicators that are also important to highlight include access, participation, control, and benefits, which should be enjoyed equitably as a result of gender-responsive legal provisions.⁴⁶

Furthermore, the legal system is crucial in enhancing gender equality in marriage and family life by reforming the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI). Amending the Indonesian Marriage Law may promote justice and gender equality inside marriage. Laws establishing a minimum marriage age for minors and ensuring equal rights for spouses concerning asset ownership and child custody might enhance women's status inside marriage. The Indonesian Codified Islamic Law (KHI) plays a crucial role in ensuring the recognition and protection of women's rights within the context of Islamic law. The KHI governs problems pertaining to marriage, guardianship, inheritance, and other familial affairs based on Sharia principles. Revising the KHI might enhance the safeguarding of women's rights within the domains of marriage and family life. The implementation of reforms to the Indonesian Marriage Law and the KHI requires collaboration and support from many stakeholders, including the government, financial institutions, civil society organisations, and the broader community. Such assistance may facilitate the establishment of a more fair and equitable legal system for all persons, regardless of gender, within the framework of marriage and family ties.

⁴⁶ Ida Soselo Wulan and Mudjiati Mudjiati, and Wahidudin Adams, *Parameter Kesetaraan Gender Dalam Pembentukan Peraturan Perundang-Undangan* (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2012), ii.

Reforming the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI), along with developing a more just and effective legal system, is anticipated to foster a more equitable legal environment for spouses in marriage while safeguarding women's rights within the family. This reform project seeks to enhance gender advantages, equitably applied to both women and men, while ensuring the respect, protection, and realisation of women's human rights. To achieve this goal, it is necessary to do an exhaustive examination of human rights instruments at the national and international tiers. Furthermore, integrating a gender perspective via the equitable implementation of the principles of Access, Participation, Control, and Benefits can be enhanced by gender analysis grounded in the CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) framework, which includes the principles of non-discrimination, substantive equality, and the fundamental obligations of the state. Furthermore, it is imperative to acknowledge social and cultural influences, notably the ingrained patriarchal culture, which constitutes a significant barrier, especially for women, in attaining and experiencing justice within familial, societal, and national settings.⁴⁷

Improving gender equality in marriage and family life, including access, control, participation, and rewards, may be achieved by amendments to the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI). These changes should include modifications to regulations that harm women, particularly those pertaining to marital guardianship (*wali*), inheritance rights, reproductive freedoms, and spousal responsibilities. Furthermore, it is essential to enhance public understanding about the equal rights and obligations of spouses in marriage, as well as to dismantle gender stereotypes that confine the roles and responsibilities of men and women within the family unit. The government, civil society organisations, and religious institutions may collaborate to promote gender equality in marriage and familial settings. Through these efforts, a more just, inclusive, and harmonious society can be fostered, in which human rights and gender equality are upheld and safeguarded.

D. Conclusion

This research highlights that the inadequacies in the Indonesian Marriage Law and the Indonesian Codified Islamic Law (KHI) that lack comprehensive gender equity persist as structural impediments to attaining gender equality in marital and familial contexts. Numerous legal standards

⁴⁷ Ida Soselo Wulan and Mudjiati Mudjiati, and Wahidudin Adams, *Parameter Kesetaraan Gender Dalam Pembentukan Peraturan Perundang-Undangan* (Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2012), ii.

have shown a tendency to put women in a subordinate status, especially regarding marital decision-making, the allocation of rights and responsibilities between spouses, and legal safeguards in instances of divorce and inheritance distribution. This circumstance underscores the pressing need to revise rules to ensure that family law embodies the tenets of substantive justice and upholds human rights. The research emphasises that legislative change must be supplemented by continuous education and socialisation initiatives about gender equality inside the family to eradicate entrenched gender stereotypes that have historically constrained the roles and duties of both men and women. In Indonesia, attaining gender equality in marriage requires collaboration among the state, civil society, and religious organisations to ensure that normative changes are socially and culturally embraced. By implementing relevant regulatory changes and enhancing public awareness, marriage law is anticipated to serve as a mechanism of justice that promotes equitable, harmonious, and inclusive familial relationships.

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