

Dismantling the patriarchal culture and optimizing gender equality in marriage law

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Abstract

This study aims to examine the patriarchal culture in the Marriage Law No.1 of 1974 and how gender relations and law strengthen gender equality in the context of marriage and family in Indonesia. This regulation is considered gender biased because of legal norms that are influenced by the patriarchal system. The Marriage Law states that a husband is obliged to protect his wife. Meanwhile, the wife is positioned as a companion and complement. This patriarchal concept has led women to stereotypes, subordination, marginalization, and domestic violence. The research method is a literature review to listen to women's voices and examine articles (regulations) considered gender biased from a gender perspective, namely indicators of justice (access, control, participation, and benefits) and gender injustice (subordination, discrimination, stereotypes, double/multiple burdens, and marginalization). The research results show that the patriarchal culture is implied in Law no. 1 of 1974 (Article 7 Paragraph (1) implies Subordination, Article 3 paragraph (2) implies Discrimination, Article 4 paragraph (2) letters a, b, and c implies Discrimination, Article 31 paragraph (3) implies Subordination and Double/multiple burdens, Article 34 paragraph (1) implies marginalization and subordination, and Article 34 paragraph (2) implies subordinate and double/multiple burdens). Furthermore, Articles 2, 34, and 41 are considered to contain subordination (degrading women), which state that all men can automatically become heads of families who, in terms of work, are able to support their families. Meanwhile, the gender approach believes that the head of the family is a man or woman who has the power and ability to provide for their family. The conclusion is that reformulation of the Marriage Law is needed to increase the importance of a culture of gender equality in a long-lasting and happy marriage. Therefore, it is necessary to



understand the new norms from a gender justice perspective to improve the lives of Indonesian people.

Keywords: *Patriarchal Culture, Gender Equality, Marriage Law*

Abstrak

Tulisan ini bermaksud melihat bagaimana budaya patriarki dalam Undang-Undang Perkawinan No 1 Tahun 1974 dan melihat bagaimana relasi gender dan hukum untuk memperkuat kesetaraan gender dalam konteks perkawinan dan keluarga di Indonesia. Dalam regulasi tersebut dianggap bias gender karena melekatnya norma hukum yang dipengaruhi oleh sistem patriarki. Dalam Undang-Undang Perkawinan disebutkan bahwa Suami wajib melindungi isterinya. Sementara isteri diposisikan sebagai pendamping dan pelengkap. Pemahaman patriarki ini telah menciptakan posisi perempuan berada dalam stereotip, subordinasi, marginalisasi dan kekerasan dalam rumah tangga. Metode penelitian ini adalah kajian kepustakaan untuk berusaha mendengarkan suara perempuan dan meretas pasal-pasal yang diisukan bias gender dengan perspektif gender yaitu indikator keadilan (*Akses, Kontrol, Partisipan dan Manfaat*) dan ketidakadilan gender (*subordinasi, diskriminasi, stereotype, double/multiple burdens dan marginalisasi*). Hasil kajian sebagai berikut: pertama, budaya patriarki tersirat dalam UU No. 1 Tahun 1974 (Pasal 7 Ayat (1) terkait Subordinat, Pasal 3 ayat (2) terkait Diskriminasi, Pasal 4 ayat (2) a,b,c; bias Diskriminasi, Pasal 31 ayat (3) dianggap Subordinat dan Double/multiple burdens. Pasal 34 ayat (1) melekat Marginalisasi dan subordinat, Pasal 34 ayat (2) terkait Subordinat, Double/multiple burdens. Selanjutnya pasal 2, 34, dan 41 ini termasuk dalam subordinasi (merendahkan perempuan); yang memahami bahwa semua laki-laki otomatis bisa menjadi kepala keluarga yang dari segi pekerjaan mampu menafkahi keluarganya, sedangkan pendekatan gender melihat kepala keluarga merupakan laki-laki atau wanita tersebut yang memiliki kelebihan dan kesanggupan menafkahi keluarganya. Kesimpulannya adalah reformulasi Undang-undang Perkawinan untuk meningkatkan pentingnya budaya yang kesetaraan gender dalam perkawinan yang kekal dan bahagia. Oleh karena itu, diperlukan pemahaman akan norma baru menggunakan perspektif keadilan gender, yang lebih bisa membuka masyarakat Indonesia yang lebih baik.

Kata Kunci: *Budaya Patriarki, Kesetaraan Gender, Undang – Undang Perkawinan*

INTRODUCTION

Patriarchy is a social system in which the central or most important position is held by men, while others, such as wives and children, are placed according to patriarchal interests (Nurmila, 2015). It is clear that the impact of patriarchal culture in Indonesia has been embedded in State regulations, as

stated in Indonesian Law No. 1 of 1974, which positions the husband as the leader and the wife as the one who is led.

The marriage law states that a marriage must be registered by a marriage registrar. As a result, unregistered marriages (*Siri* marriage), considered legal in *fiqh*, have caused problems. One of these problems includes discrimination by men (husbands) against women's rights. Wives often experience domestic violence due to the unregistered marriages. Worse yet, this condition has made children victims. Thus, unregistered marriage has supported the oppression of rights, especially that of the wife and her children as victims.

In marriage, the rights and obligations between husband and wife must be seen from the perspective of gender equality and justice. Rights and responsibilities continue to develop following changes in time, era, condition, and social circumstances. This also applies to legal changes motivated by differences in behavior in classical and modern times. Most discussions of classical *fiqh* are misogynistic (hating women) and patriarchal, which tends to domesticate and subordinate women. In other words, a husband is a person who is able to provide the necessities a woman needs (Al-Nawawi, 2000), (Nurmila, 2015). However, a gender perspective sees that marriage is about mutual respect for the rights and obligations of husband and wife. Thus, a marriage will provide rights for protection from violence: Everyone, including women and children, has the right to receive protection from all forms of violence, including domestic violence, sexual violence, and sexual harassment.

Moreover, the patriarchal culture is institutionalized in discriminatory regulations against women in the Marriage Law and the Compilation of Islamic Law. Therefore, it is essential to reform the Marriage Law and the Compilation of Islamic Law to create gender equality in marriage and family. In this reform, the vital role of women must be recognized and strengthened to enable them to contribute optimally to building quality families. Gender issues in marriage and family in the Marriage Law and the Compilation of Islamic Law cover various things, including inequality of rights and obligations between husband and wife. For example, there is a provision that the husband, as head of the family, has the right to determine household policies and management. At the same

time, the wife only plays the role of housekeeper or even a double burden. (Nurrahman, 2022).

Furthermore, there is a problem of gender bias regarding reproduction in marriage, namely injustice in decision-making regarding pregnancy and childbirth (Perempuan, 2022). For example, in some cultures or societies, decision-making regarding pregnancy and childbirth is taken entirely by the husband or male family without involving the voice or wishes of the wife or the prospective mother. This can lead to injustice in terms of access to reproductive health services and protection against domestic violence or sexual violence against female partners since they do not have control over themselves.

This article aims to examine the patriarchal culture in Marriage Law No. 1 of 1974 and analyze how gender relations and law strengthen gender equality in the context of marriage and family in Indonesia. Based on the description above, it is clear that gender reformulation to protect women in marital life has become a single unit that leads to family problems in Indonesia. This development is closely related to feminist demands for equal rights and the role of women. The ideal family protection structure today is a family that upholds equality and justice (Noble, 2011).

METHOD

This is descriptive-analytic literature research regarding legal protection norms for unregistered marriages using a gender approach. Legal protection uses two approaches, namely a conceptual approach that will examine and review the concept of gender in terms of seeing the benefits of recording as contextual legal protection and a preventive approach with the reformulation of regulations that apply in Indonesia. In other words, the phenomenon of legal protection is understanding and analyzing gender-based law to create a balance that prioritizes the concept of legal partnership.

To facilitate the analysis process, gender inequality indicators are used. There are at least five indicators of gender inequality, namely subordination, marginalization, violence, stereotypes, and double or even multiple burdens. (Nurmila, 2015).

RESULT AND DISCUSSION

Definition of Gender

Gender is the social and cultural characteristics that differentiate women and men in society, including the roles, behaviors, and attributes considered appropriate for each gender (Umar N., 2001). Gender means traits associated with a particular sex, which can be in the form of habits, culture, or psychological behavior, not biological differences (Hornby, 2010). The history of the emergence of gender terminology cannot be separated from the study of humanities, especially psychology, and it is also related to the transgender trend (Esplen, 2006). In English, the distinction between sex and gender was first introduced by American and British psychiatrists and medical personnel working with transgender and intersex patients in the 1960s and 1970s. Gender is a social construct determined by certain norms and roles, not an essence inherent in a person's body or sexual identity (Esplen, 2006). Since then, this concept has been widely adopted as an analytical system for gender studies and the development of the global feminist movement (Lippa, 2005).

Gender is also a term that refers to social and cultural differences between men and women. The concept of gender is not just a biological distinction between men and women but also various social and cultural norms that encourage certain societal roles. In general, the definition of gender refers to the social roles and cultural norms associated with sex. Gender can also be seen as a social structure that influences human life in various fields (Fatmariza, 2003)

Dismantling Patriarchal Culture in Marriage Laws

Patriarchal culture has been embedded in Article 34 (1), which states that husbands are obliged to protect their wives and provide all the necessities of marital life according to their capabilities. In the indicators of gender inequality, including subordination (degrading women), patriarchal culture, which regulates husbands' obligations to protect their wives, gives rise to the assumption that all men can automatically become heads of families as judged by their ability to provide for their families. This assumption has covered up

the reality that, currently, many heads of households have lower education and income than their wives or are even unable to support their families. People's assumptions in the modern era are still influenced by life in the classical era, which considers the wife's income as additional income only (Nurmila, 2015).

Furthermore, article 34, paragraph (2) states that the wife is obliged to manage household affairs as well as possible. This is considered a double or even multiple burden. Taking care of a household can be a heavy and tiring task, especially for a wife who is also a career woman. There are many household chores that must be done every day by a wife, such as washing dishes, washing clothes, ironing, cleaning the house, and cooking food. Furthermore, the responsibility to take care of children and family can also be included in household work, and wives also have a workload at work if they are also earning a living.

Taking care of household work is often considered unimportant in patriarchal culture, but this work has enormous value for the daily survival of the family and close and harmonious relationships between family members. This can be made more complicated by the fact that wives do not have the right to direct cash assistance, the target of which is the head of the family (the husbands); whereas, in the law, the head of the family is the husband. In reality, the wives or mothers are often the ones who have taken care of the household, while the irresponsible husband has left and abandoned them.

In other words, in reality, husbands often neglect their responsibility to take care of the household as protectors of the family, but they benefit from their position as heads of families who are entitled to receive direct cash assistance from the government, and what is worse, job opportunities are more available to men.

A norm of gender equality is pursued by working together to divide the roles of husband and wife in carrying out family life activities and showing transparency between both. Openness in a husband-and-wife relationship is essential in building trust and intimacy in a family. Openness can help couples understand and support each other in various aspects of life, such as finances, children's education, career, health, and so on, to achieve mutual agreement or

good governance at the family level. (Umar N., 2001). Partnership in dividing the roles of husband and wife is related to cooperation in carrying out family functions with behavioral components, including thoughts, attention, moral and material assistance, advice based on knowledge obtained by oneself and from the help of others, energy, and time (Sumiyatiningsih, 2014). This can be seen in article 34, stating that the husband provides the necessities of life to the wife, and the wife is obliged to take care of them as well as possible. Gender partnership refers to a societal agreement that can be improved through social and cultural change. In fighting for gender equality, it is important to understand that gender is a social construct and is not as basic or fixed as biological things (Puspitawati, 2014).

Furthermore, in Article 41 Point C, it is stated that the government, with the extension of the Religious Court, can oblige the ex-husband to provide living expenses and/or determine certain obligations for the ex-wife. In the gender inequality approach, this is called stereotype. Stereotypes are the assignment of certain characteristics to someone based on subjective categories just because they are from another group (Feryna Nur Rosyidah, 2017). Stereotypes, in the obligation to provide living necessities, can be related to gender roles and social biases related to a person's sex. In a patriarchal culture, the ex-husband has a stable job and provides sufficient income to meet the family's needs. The ex-wife, on the other hand, is considered the companion or caretaker of the household. This stereotype leads to the expectation that the ex-wife is incapable of taking primary responsibility. Stereotypes regarding the obligation to provide for one's needs can cause injustice and inequality in the work environment and family life. Therefore, it is important to respect the abilities and potential of each individual, regardless of gender or other gender stereotypes.

In Islam, men and women are considered equally important and are given the same rights before Allah SWT (Murniati, 2004). For example, in Islam, men and women have the same obligations in carrying out worship, such as prayer, fasting, zakat, and hajj. Men and women are also given equal opportunities to learn and gain knowledge. Moreover, the Al-Quran requires equality between

men and women even though the social context at that time did not accept this. Since we were forced to collide with the Al-Quran with a patriarchal system, the Prophet's preaching would certainly experience great difficulties (Engineer, 1994).

Optimization of Gender Equality in Marriage and Family

Patriarchal culture is still embedded in the law, so the government needs courage to optimize gender equality in the Marriage Law. The preparation of legal protection norms has not been influenced by a gender approach. This can be seen from the patriarchal construction of society in Indonesia that places men with the authority to control women. This patriarchal construction is also supported by the understanding of Islam, which considers “the husband is the leader of the wife.” Patriarchal systems and religious beliefs are often interrelated and mutually reinforcing. For example, in patriarchal systems, men often have greater control over religious institutions, so they can influence the interpretation and application of religious texts, which strengthen their position and restrain women (Arbain, 2015).

For example, the status of children in unregistered marriages must be protected and not ignored without alternative solutions. Amendments to the Constitutional Court through Decision Number 46/PUU-VIII/2010 (check) concerning the Review of Article 43 paragraph (1) of the Marriage Law open new certainty for the status of unregistered children from their parents' unregistered marriages. The ruling concluded that children born outside of legal marriage have a civil relationship not only with their mother and family but also with their biological father (Rifqi, 2020). This recognition of civil relations is understood from a gender perspective, which cannot be separated from the participation index, namely the participation of husband and wife in responsibility for their children.

Relational study of marriage laws with a gender approach will eliminate discrimination and create harmonious relationships. The spirit of eliminating discrimination can be seen if a long-term strategy is implemented to strengthen maturity in legal marriage in Indonesia, for example, by launching critical awareness outreach programs and public education to stop gender inequality

(Fakih, Pendidikan Populer, Membangun Kesadaran Kritis, 2020). This strategic effort needs to be carried out with several supporters, such as conducting a study on gender inequality in the protection of victims of unregistered marriages and its manifestations in the household, community, and state.

The influence of patriarchy in Indonesian society has led to the marginalization of women's recognition in the legal realm. As a result, many victims of marital violence have not received access to justice since the legal system, which includes substance, structure, and legal culture, is still gender-biased and patriarchal (Sofiani, 2021). According to feminists, gender in Islamic teachings is understood as a natural difference between men and women who have different roles and responsibilities. However, the principles of equality and justice are still maintained and emphasized in Islamic teachings. These demands are often accompanied by accusations that the Shari'a coming to us today is not God's will, but rather a falsification of patriarchal culture through *mufassir* and *fuqahá'* to perpetuate its hegemony.

The fact is that most religious leaders in Indonesia are not yet sensitive to gender due to their insights, understanding, and thoughts being colored by patriarchal sociocultural principles and gender-biased religious understanding (Hallen, 2001). It can be seen in the issue of marriage in positive law included in the civil domain and the lack of legal maturity so that the actor cannot be punished and sanctioned.

At least, the Marriage Law has produced a spirit of gender justice in defining the meaning of marriage, namely the existence of an inner and outer bond between a man and a woman (Siregar, 1992). Participants between husband and wife in the family are equally important and should collaborate to achieve common goals in domestic life. The involvement of husband and wife in decision-making, providing emotional support, and fair distribution of household tasks will improve the overall quality of family life. Thus, the gender perspective examines marriage registration in its application to improve balance, emphasizing the concept of legal alliance, rights, and obligations in a good relationship between men and women.

The existence of these differences does not mean that one gender is privileged over another. The proof is that Allah promises the same heaven for believers and the same hell for unbelievers without distinguishing between men and women. It can be related to functional structure theory. Based on this theory, balancing status and roles between men and women is vital to creating a fair and equitable society. This balance can be achieved through efforts to promote gender equality and eliminate gender discrimination in social, political, and economic life (Taufiq, 2009).

The Marriage Law tends to be textual, while the gender approach is more contextual. Concerning gender partnerships, legal protection can juridically be obtained by legality from the Religious Courts in the form of determining marriage *isbat* (legalization of unregistered marriages). Determination of marriage *isbat* will have implications for the emergence of inherited assets that receive legal protection due to the kinship relationship between the person who inherits and the person who inherited the inheritance due to birth (Nawawi, 2015, p. 130).

Based on ratification or determination of marriage *isbat* by the Religious Court, then --by men-- women and children can be used as the basis to register their marriage with the Marriage Registration Officer at the District Religious Affairs Office (KUA). The Marriage Registration Officer will issue a Marriage Book or Marriage Certificate Excerpt based on this determination. From the Marriage Certificate Excerpt, the applicant can arrange for their child's Birth Certificate (Nawawi, 2015).

Early marriage or underage marriage is very detrimental to children since it threatens their rights and welfare. Therefore, the law provides criminal threats for anyone who exploits children in early marriage. In the context of child marriage, exploitation can occur in various forms, such as forcing children to marry, forcing children to work that will be detrimental to their health and education, and exploiting children for economic or sexual interests (Hisbah, 2018). It should be emphasized that the aim of this criminal threat is not to criminalize marriage thoroughly but to ensure that the marriage process takes place in a legal manner and under applicable law.

Essentially, the marriage legal system reform is to improve or restructure the marriage legal system. It should improve the quality, fairness, and effectiveness of the existing marriage legal system to accommodate social and cultural changes and values developing in society. In addition, reform can also involve regulations regarding family roles and responsibilities, rights, child protection, and the development of alternative mechanisms for resolving marital disputes.

Legal reform for women is to improve women's bargaining position before the law, accompanied by women's participation in development to fight all forms of discriminatory practices against women. Still, the fundamental problem is a gap in women's involvement due to the inequality in the socio-cultural structure of society (Hidayat, 2014).

Optimizing gender equality in marriage and family from the access, control, participation, and benefits can be achieved through reform of the Marriage Law and the Islamic law compilation. This reform should include changes to regulations that have been unfair to women, such as provisions regarding marriage guardians, inheritance rights, reproductive rights, and obligations in marriage. In addition, it is also essential to educate the public about the equal rights and obligations of husbands and wives in marriage and eliminate gender stereotypes that limit the roles and responsibilities of each gender in the family. Governments, community groups, and religious institutions should be able to work together to promote gender equality in marriage and the family. This method can create a more just, inclusive, and harmonious society where human rights and gender equality are respected and protected.

CONCLUSION

The following are the results of this study. First, Law No.1 of 1974 implies patriarchal culture as follows: Article 7, Paragraph 1, regarding Subordinates; Article 3, Paragraph 2, regarding Discrimination; Article 4, Paragraph 2, items a, b, and c, regarding Discriminatory Bias; Article 31, Paragraph 3, considers Subordinate and Double/Multiple Burdens; Article 34, Paragraph 1, attaches to

Marginalization and Subordination; Article 34, Paragraph 2, regarding Subordinates and Double/Multiple Burdens; Articles 34 and 41 includes Subordination (degrading women), which understands that all men can automatically become heads of families who, in terms of job, are able to support their families. In contrast, the gender equality approach sees the head of the family as a man or woman who has the advantages and ability to provide for his family. Second, from a historical perspective, there has been a shift in the social culture of the roles of women and men in 1974 when the Marriage Law was issued compared to the current social reality in 2023. The conclusion is the importance of reformulating the Marriage Law to improve the culture of gender equality in lasting and happy marriages. Therefore, it is necessary to understand new norms using a gender justice perspective so that they can open up better insight into Indonesian society.

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