



# Analysis of Protection of Women's Rights in Marriage According to Islamic Law and Law -in Indonesia

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## Abstract

*The protection of women's rights in marriage is a crucial element in achieving justice and gender equality within the legal system. This study aims to comparatively analyze the legal protections granted to women in marriage under Islamic law and Indonesian national legislation. Employing a normative legal research method with a juridical-comparative and conceptual approach, the study draws on primary and secondary legal materials analyzed qualitatively. The findings reveal that both Islamic law and national law recognize and regulate women's rights in marriage, including the right to dowry (mahr), financial support (nafkah), protection from domestic violence, and the right to initiate divorce. However, practical implementation still faces significant challenges due to patriarchal interpretations, limited legal literacy among women, and weak access to justice. This research highlights the urgency of reinterpreting Islamic legal texts through a gender justice perspective and reforming national legal frameworks to create a more inclusive and responsive family law system. These findings are expected to serve as a foundation for policy development and further interdisciplinary research that integrates legal, social, and religious dimensions in a comprehensive manner.*

**Keywords :** *women's rights, Islamic law, marriage law, gender justice, legal protection*

## Introduction

Marriage is a social and legal institution that plays a central role in shaping the structure of society. In the Indonesian context, marriage is not only seen as a personal bond between two individuals, but also as a legal institution that involves rights and obligations that are clearly regulated in religious norms and state law. One important

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issue that continues to be in the spotlight is how the legal system—both Islamic law and national law—provides protection for women's rights in marriage. This is crucial considering the fact that women are often in a vulnerable position socially, economically, and legally in marital relations.

Islamic law as one of the sources of law recognized in Indonesia, theoretically pays great attention to justice in husband-wife relations. In the Qur'an and Hadith, there are various verses and narrations that show the importance of treating wives fairly, providing dowries, living expenses, and protection from arbitrary treatment. For example, in Surah An-Nisa verse 19 it is stated, "And interact with them (your wives) properly." This shows the moral and ethical principles that are the basis for protecting women's rights. On the other hand, Law Number 1 of 1974 concerning Marriage, which was later amended by Law Number 16 of 2019, also provides normative provisions regarding the rights and obligations of husband and wife, including the minimum age for marriage, rights to joint property, and divorce procedures.

However, the gap between legal norms and social practices remains a major challenge. Various studies have shown that women often do not receive effective legal protection, especially in cases such as child marriage, domestic violence, and unfair divorce. According to (Maula, 2019), the implementation of legal protection for women in the context of marriage still faces structural and cultural obstacles. This is reinforced by the findings of (Hafidzi & Septiani, 2020) which show that women who are victims of forced marriage often do not have access to fair and responsive legal mechanisms.

The gap between norms and practices provides space for the importance of critical analysis of the existing legal protection system. For example, although Islamic law gives women the right to file for divorce through the *khulu'* mechanism, in practice women still experience obstacles due to the dominance of patriarchal interpretations. (Sulistianingsih et al., 2024) emphasize that legal protection for women is not only determined by legal texts, but also by how the text is interpreted and implemented in a patriarchal social context. This indicates that there needs to be an effort to reread religious texts with a hermeneutical approach that has a gender justice perspective.

(Arifin & Lukman Santoso, 2016) highlighted that one of the roots of the problem of women's legal powerlessness lies in the weak legal literacy among the community, especially women in rural areas. In addition, customary values that are often legitimized by religious figures also exacerbate the inequality of legal protection for women. In this context, national law must be able to respond to and intervene in cultural spaces that discriminate against women's rights. (Leliya & Mujahidin, 2024) added that many cases

of domestic violence or divorce that are detrimental to women are not touched by the legal process because they are considered private or domestic matters.

From the description above, it can be concluded that there is an urgent need to strengthen the synergy between Islamic law and national law in providing protection for women's rights in marriage. This study aims to normatively and comparatively analyze the forms of legal protection for women in marriage from the perspective of Islamic law and national law in Indonesia. Through this study, it is hoped that a meeting point can be found between Islamic values and the principles of national legal justice that favor women, as well as contributing to formulating a direction for family law reform that is more just, inclusive, and contextual.

Specifically, this study targets two main objectives: first, to identify the principles of women's rights protection in Islamic law and Indonesian positive law; and second, to analyze the implementation and challenges faced in integrating the two legal systems in the social reality of Indonesian society. The novelty of this study lies in the interdisciplinary approach that not only highlights the normative aspects of law, but also examines the social and cultural dimensions that influence the effectiveness of legal protection for women in marriage.

### **Methods**

This research is a normative legal research with a comparative-juridical and conceptual approach. The comparative-juridical approach is used to compare legal protection of women's rights in marriage based on Islamic law and laws and regulations in Indonesia. Meanwhile, the conceptual approach is used to examine the concept of justice and gender equality in the context of Islamic family law and how the concept is applied or has the potential to be applied in the national legal system.

The data sources in this study consist of **primary legal materials**, namely relevant laws and regulations such as Law Number 1 of 1974 concerning Marriage (as amended by Law Number 16 of 2019), Compilation of Islamic Law (KHI), and classical and contemporary fiqh books that discuss Islamic marriage law. **Secondary legal materials** include the results of previous research, scientific articles from accredited national journals and reputable international journals, as well as Islamic law, family law, and gender studies literature. **Tertiary legal materials** are used as support to strengthen the analysis, such as legal dictionaries, Islamic law encyclopedias, and transliteration guidelines.

The data analysis method used is **qualitative analysis** with a descriptive-analytical approach, namely by describing, comparing, and interpreting the provisions of Islamic law and positive law in Indonesia related to the protection of women's rights in

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marriage. The analysis is carried out systematically to identify similarities, differences, and potential harmonization between the two legal systems in order to ensure justice for women. This study also uses a gender justice perspective as an analytical tool to assess the extent to which existing laws are able to accommodate the needs and protection of women's rights in family life.

### Results and Discussion

Protection of women's rights in marriage is an important aspect in realizing gender justice and equality in the legal system. Women who have historically been placed in subordinate positions are often the most vulnerable group to injustice in the family institution. Therefore, the existence of legal norms that guarantee such protection is not only formal legal, but also contains ethical and sociological dimensions that must be internalized in society.

In Indonesian national law, especially through Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, various normative efforts have been made to strengthen the legal position of women in marriage. One significant change is the increase in the minimum age limit for women to marry to 19 years. This provision is a response to the high rate of early marriage in Indonesia which contributes to high divorce rates, poverty, and reproductive health issues. From a human rights perspective, the age of marriage that is too young limits women's ability to develop independently and free from structural pressures.

On the other hand, Islamic law also has a normative framework that supports gender justice in marriage. In the Al-Qur'an Surah An-Nisa verse 19, there is an explicit command for husbands to treat their wives well and a prohibition against treating women unjustly. Apart from that, principles such as justice (*al-'adl*), reciprocity (*musharakah*), and compassion (*mawaddah wa rahmah*) are the basic values that form the foundation of marital relations in Islam. Islamic law also gives women the right to dowry, maintenance, and the right to file for divorce (*khulu'*), as stated in various classical and contemporary fiqh books.

However, there are serious challenges in implementing these values. Many women cannot access their rights due to several structural and cultural factors. Limited legal literacy, the dominance of patriarchal interpretations, and social pressures often make women accept injustice as something "normal" or even "fate." In many cases, women's rights are just rhetoric without substantive realization.

This is as shown by (Maula, 2019), who stated that although the law has regulated protection against early marriage, its implementation still faces many obstacles,

especially in a society that makes cultural norms the main benchmark. When culture prioritizes "family honor" over the interests of individual women, formal legal instruments are often defeated by social pressure. This shows the tension between positive law and the still dominant cultural reality.

(Hafidzi & Septiani, 2020) added that women who are forced into marriage often do not have access to legal protection, either due to ignorance or because the legal system is unresponsive to the needs of victims. Law enforcement officers often do not have a gender perspective, so that instead of providing protection, the legal process becomes a form of revictimization for female victims. This situation is exacerbated by the absence of adequate social support, such as legal assistance or assistance institutions at the grassroots level.

(Sulistianingsih et al., 2024) also showed that although fiqh provides rights to women, the reality on the ground shows that there is an interpretive bias that hinders women from accessing justice. Fiqh as a product of human interpretation of religious texts cannot be separated from the social construction of its time, including the patriarchal culture that dominates the process of forming classical Islamic law. Therefore, reinterpretation or re-ijtihad with a gender justice hermeneutic approach is very important so that Islamic law remains relevant and fair for women.

The comparison between Islamic law and national law shows that there are interesting points of meeting and points of difference to analyze. Normatively, both recognize and grant certain rights to women in marriage. However, in terms of implementation, the differences become apparent. National law is more structurally binding through formal regulations and can be legally enforced, while Islamic law is more moral and ideological, highly dependent on the interpretation of scholars and the acceptance of society towards religious authority.

As explained by (Arifin & Lukman Santoso, 2016) , many cases of domestic violence are not processed legally because they are considered private matters. In fact, both Islamic law and state law should be present to protect victims and prevent human rights violations in the domestic space. When domestic violence is legalized culturally, the law loses its functional power to create justice.

In the local context, research (Leliya & Mujahidin, 2024) shows that women in rural areas often experience inequality in legal protection, due to the dominance of patriarchal values that are legitimized by traditional and religious figures. This dominance is not only seen in the relationship between husband and wife, but also in determining inheritance rights, decisions to divorce, and child custody. Local religious figures are often the main reference for the community in resolving domestic conflicts,

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and if their understanding of gender is not progressive, then women are even more disadvantaged.

This finding shows that harmonization between Islamic law and national law must be accompanied by an inclusive socio-cultural approach. It is not enough to just revise regulations or issue fatwas, but there must be efforts to build critical awareness in society, especially among religious leaders, law enforcement, and families as the smallest unit in society.

Therefore, efforts to protect women in marriage need to be directed at three main strategies: (1) Legal reform and legislation that is more gender responsive; (2) Gender-based legal education through formal and non-formal institutions; and (3) Strengthening the role of the state in ensuring access to justice for women, including providing legal assistance services, safe houses, and training for law enforcement officers. In addition, re-reading of religious texts with a gender justice hermeneutic approach is becoming increasingly relevant so that the principles of Islam as a religion of **rahmatan lil 'alamin** are truly realized in the practice of family law.

### Conclusion

Protection of women's rights in marriage, both in Islamic law and Indonesian national law, is a fundamental aspect in building a fair and gender-just legal system. This study shows that although normatively both legal systems have paid attention to the protection of women, for example by increasing the minimum age of marriage in national law and emphasizing the principles of justice, reciprocity, and good treatment in Islamic law, at the implementation level, various significant obstacles are still found.

These obstacles include the dominance of patriarchal interpretations of religious texts, unequal access to information and legal assistance, and the strong influence of socio-cultural norms that place women in a subordinate position. As a result, women's legal rights are often not optimally accessible, even when they have been formally recognized in legislation or fiqh.

The results of this study also found that efforts to harmonize Islamic law and national law are not sufficient at the normative level alone, but must be accompanied by a contextual and sociological approach that takes into account the social realities of society. Legal reform must be followed by gender-based legal education, increasing legal literacy at the grassroots level, and reinterpreting religious teachings with a gender justice hermeneutic approach so that inclusive and just Islamic principles are truly reflected in family law practices.

Thus, the conclusion of this study emphasizes the importance of synergy between the state, religious institutions, and civil society in creating an effective and gender-oriented legal protection system. This study also recommends that further studies be conducted more specifically with a case study approach in various regions, to identify best practices and local challenges in implementing the protection of women's rights in marriage, in order to support a more just and responsive legal transformation to the needs of women in Indonesia.

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