



Problems with the Protection of Women in Marriage Law in Indonesia

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ABSTRACT

Although some laws in Indonesia aimed at protecting women have been made, there are still some problems faced in implementing them well. Some of the problems that have arisen so far are legislative regulations. The regulations have not provided a clear and comprehensive definition of violence against women, which potentially limits the coverage of women's protection, especially in matters of marriage. In Indonesia, women's protection still encounters many complex challenges, including gender discrimination in the law, weak law enforcement, a strong patriarchal culture, and a lack of institutions that support women. Protecting women's rights and building a fairer legal and social system requires the commitment and cooperation of various parties, including governments, civil society, and the private sector.

Keywords: Protection of Women, Marriage, Legal System.

INTRODUCTION

This research was conducted with the aim of analyzing and understanding various problems related to legal protection for victims of violence against women within the scope of marriage. The focus of this research includes the exploration of the factors that cause violence against women and the forms of legal protection provided to victims, as well as the obstacles that arise in the process of providing legal protection for victims of violence.

Marriage in Islam is carried out as a social contract between two individuals, two families involving many people, relatives and even the testimony of members of society in general.¹ In marriage, love will be fostered, which is not only limited between husband and wife, but also between them and their children, even all members of their family in particular.²

Domestic violence in Indonesia is a common problem, where the victims do not get adequate protection from the legal system. Although there has been a legal basis in Indonesia through Law No. 23 of 2004 which affirms the protection and enforcement of domestic violence cases, the reality is that legal protection for women and children from all forms of physical and non-physical violence in the family environment has not been guaranteed.

¹ H. T., & M. H. (2010). *Hukum Keluarga Dalam Syariat Islam*. Universitas Al-Azhar, 441.

² Shihab, M. Q. (2005). *Perempuan dari Cinta sampai Seks, dari Nikah Mut'ah sampai Nikah Sunnah, dari Bias Lama sampai Bias Baru*. Jakarta: Lentera Hati.

The patriarchal culture in Indonesia has systematically influenced society with a mindset that puts men (husbands) above women (wives). It cannot be separated from a series of problems that have an impact on discriminatory acts against women. The condition is even worse because of the low education and poverty that surrounds women's lives. The tidal wave is getting stronger, and religious fundamentalism and cultural absolutism today make life more difficult for women. In fact, restrictions on women's freedom of movement and expression are commonplace that bind women.³

Although there has been progress in the protection of women in Indonesia, there are still some shortcomings in the law that have the potential to hinder the protection of women's interests in the scope of marriage law. Stronger efforts are needed to strengthen regulations, improve access to justice, and increase public education and awareness about women's rights in marriage.⁴

Broadly speaking, the issue of marriage and life in the household filled with violence has become a complicated and complex problem, considered as a constantly stressful life event. According to the Assistant Deputy for the Protection of Women's Rights and Domestic Violence from Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia (in a press release with the number: B-046/Set/Rokum/MP 01/03/2, Domestic violence cases currently show an alarming trend. This is because violence within the family can appear anytime, anywhere, and under various conditions.⁵ This type of violence includes both physical and non-physical violence, including sexual and economic violence.⁶ Cases on the Rise, the Ministry of Women's Empowerment and Child Protection Urges Millennials to Prevent Domestic Violence). Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia.⁷

This research was conducted with the aim of analyzing and understanding various problems related to legal protection for victims of violence in the scope of marriage.⁸ The focus of this research includes the exploration of the factors that cause violence against women, the forms of legal protection provided to victims, and the obstacles that arise in the

³ Israpil. (2017). *Budaya Patriarki dan Kekerasan Terhadap Perempuan (Sejarah dan Perkembangannya)*. Pusaka.

⁴ Ibid.

⁵ Shihab, M. Q. (2005). *Perempuan dari Cinta sampai Seks, dari Nikah Mut'ah sampai Nikah Sunnah, dari Bias Lama sampai Bias Baru*. Jakarta: Lentera Hati.

⁶ Kasus Meningkat, Kemen Pppa Ajak Milenial Cegah KDRT. Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak Republik Indonesia. (2019). Diambil kembali dari Publikasi dan Media Kementerian Pemberdayaan Perempuan dan Perlindungan Anak: <https://kemenpppa.go.id/index.php/page/read/29/2089/kasus-meningkat>

⁷ Kertas Kebijakan Kesetaraan Gender. (2020). Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia.

⁸ L. N. (2018). *Problematisasi Hukum Perkawinan Di Indonesia*. Mizani: Wacana Hukum, Ekonomi Dan Keagamaan.

process of providing legal protection for victims of violence in the scope of marriage.⁹

METHOD

The juridical-normative method is used in this study to formulate legal arguments through the analysis of various case studies and the search for laws and regulations related to the protection of women in marriage law.

This research was conducted using two different approaches: the legislative approach, and the conceptual approach. The type of data used is secondary data, which consists of a collection of data from literature, case analysis, and analysis of laws and regulations. Primary and secondary data support this study. The authors used case studies and literature studies to collect data. Furthermore, qualitative descriptive analysis is used to examine all existing data.

RESULTS AND DISCUSSION

A. Definition of Marriage

According to Islamic law, marriage is a contract that legalizes marriage and limits rights and obligations as well as helping between a man and a woman who are not *muhrim*. “The purpose of marriage is to establish a happy and eternal family, for that husband and wife need to support and complement each other, so that each can develop his personality to help and achieve spiritual and material well-being”.

Marriage has to be based on mutual love and affection between husband and wife, always expected to run well and eternally based on the One God, as formulated in Article 1 of Law Number 1 of 1974 concerning Marriage.¹⁰ Therefore, marriage has a very close relationship with religion/spirituality, so that marriage not only has a born/physical element but also a spiritual element. This shows that marriage has a very important role.¹¹

B. Marriage Problems

Based on the provisions of Law No. 1 of 1974, marriage is the innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. Marriage is valid, if it is done according to the laws of each religion and belief, and is recorded in accordance with the applicable laws and regulations. However, today many marriages are held contrary to religious laws and applicable laws and regulations. The types of marriages that are contrary and considered to

⁹ Kasus Meningkat, Kemen Pppa Ajak Milenial Cegah KDRT. Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak Republik Indonesia. (2019). Diambil kembali dari Publikasi dan Media Kementerian Pemberdayaan Perempuan dan Perlindungan Anak www.kemenpppa.go.id/index.php/page/read/29/2089/kasus-meningkat-

¹⁰ UU No. 1 Tahun 1974. (t.thn.). Pemerintah Republik Indonesia.

¹¹ H. T., & M. H. (2010). Hukum Keluarga Dalam Syariat Islam. *Universitas Al-Azhar*, 441.

violate religious law and positive law, are interfaith marriages, sirri marriages, same-sex marriages, contract marriages.¹² In the explanation of the marriage law, it is emphasized by the formulation of Article 2 Paragraph 1 that there is no marriage outside the law of each religion and its belief, in accordance with the 1945 Constitution. In practice, some of the problems of marriage that have not been fully accommodated by the marriage law are interfaith and sirri marriages.

C. Interfaith Marriage

The Marriage Law does not explicitly regulate interfaith marriage. This raises concerns about marital status, the rights of spouses and children, and potential religious conflicts. Without clear arrangements, interfaith couples often face legal uncertainty regarding the legality of their marriage. This uncertainty can also affect the legal rights of the couple, including inheritance rights and rights to children.

In addition, the lack of clear provisions can trigger potential religious conflicts in society, considering the sensitivity of religious issues in the context of marriage in Indonesia. This shows the need for more inclusive and comprehensive policies to accommodate the diverse social realities in Indonesia.¹³

D. Sirri marriage

Sirri marriage is still rampant in Indonesia. This results in the absence of legal protection for spouses and children, as well as potential exploitation and human rights violations. Without official registration, couples in a sirri marriage do not have a clear legal status, so their rights in terms of inheritance, alimony, and other rights are not recognized by the state. Children born into marriages are also vulnerable to uncertainty of legal status, which can impact their rights such as inheritance rights and access to education. In addition, serial marriages often open up opportunities for exploitation, where one of the parties, usually a woman, can be a victim of neglect or unfair treatment. This shows the need for stricter regulation and education to prevent the practice of marriage and protect human rights for all parties involved.¹⁴

¹² Shihab, M. Q. (2005). *Perempuan dari Cinta sampai Seks, dari Nikah Mut'ah sampai Nikah Sunnah, dari Bias Lama sampai Bias Baru*. Jakarta: Lentera Hati.

¹³ N. M. (2023, 07 31). *Bolehkah Nikah Beda Agama di Indonesia? Ini Hukumnya*. Diambil kembali dari HukumOnline.com www.hukumonline.com/klinik/a/hukum-nikah-beda-agama-yang-berlaku-di-indonesia-cl290/

¹⁴ V. F., & S. F. (2010). PROBLEMATIKA NIKAH SIRI DAN AKIBAT HUKUMNYA BAGI PEREMPUAN. *Jurnal Penelitian Humaniora Vol. 15, No.1*.

E. Legal Basis for Women's Protection

The legal basis for women's protection is explicitly stated in either the 1945 Constitution or in other laws. In the 1945 Constitution, women's protection in marriage is stated in Article 27 Paragraph (1) of the 1945 Constitution and Article 28 Paragraph (1) of the 1945 Constitution

"All citizens have the same position in the law and government and are obliged to uphold the law and government without exception."

This article affirms that all citizens, including women, have the same position before the law and government. This means that women have the same rights and obligations as men in various aspects of life, including marriage. Women have the right to marry on the basis of free and full consent, free from violence and discrimination in marriage, and have equal rights in common property.¹⁵

"Everyone has the right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law."

This article guarantees the right to fair legal recognition, guarantee, protection, and certainty for everyone, including women. This means that women have the right to be protected from all forms of human rights violations, including in marriage. Women have the right to be free from domestic violence, exploitation, and discrimination in marriage.¹⁶

These two articles are the constitutional basis for the protection of women in marriage in Indonesia. The state is obliged to guarantee and protect women's rights in marriage through various laws and regulations, public policies, and women's empowerment programs. Moreover, marriage in Indonesia is also regulated in Marriage Law Number 1 of 1974. Marriage Law Number 1 of 1974 (Marriage Law) is a law and regulation in Indonesia that regulates marriage and the relationship between husband and wife. This law aims to:

1. **Protecting the rights of husband and wife and children:** The Marriage Law regulates various rights and obligations of husband and wife, including the right to marry on the basis of free and full consent, the right to alimony, the right to common property, and the right to fair treatment in marriage. This law also regulates children's

¹⁵ Pasal 27 Ayat (1) UUD 1945. (t.thn.). Negara Republik Indonesia.

¹⁶ Pasal 28 Ayat (1) UUD 1945. (t.thn.). Pemerintah Republik Indonesia.

- rights, including the right to protection, care, and education.
2. **Strengthening family unity and harmony:** The Marriage Law aims to build a family that is *sakinah, mawaddah, warahmah* (harmonious, happy, and full of affection). This law regulates various matters related to family life, such as marriage, divorce, and joint property.
 3. **Promoting gender equality:** The Marriage Law aims to realize gender equality in marriage. This law regulates various matters related to gender equality in marriage, such as the right to marry on the basis of free and full consent, the right to alimony, and the right to joint property.¹⁷

In Islam, marriage is also stated in the Compilation of Islamic Law (KHI). It is a law and regulation in Indonesia that regulates marriage law for Muslims. The KHI is compiled based on Islamic law and applicable customs in Indonesia. KHI has a close relationship with the Marriage Law Number 1 of 1974 (Marriage Law). KHI has undergone several revisions and updates to adapt to the times and the needs of the community. The last revision was carried out in 2021 through Supreme Court Regulation Number 18 of 2021 concerning Marriage Cases.¹⁸

F. Challenges in Women's Protection

There are still several laws and regulations that contain elements of discrimination against women, such as in terms of marriage, inheritance, and child custody. Women are the most disadvantaged by the gender gap in women's protection law, as they are vulnerable to violations of their rights, such as the right to fair treatment in marriage, the right to protection from violence, and the right to common property.¹⁹ Many women victims of domestic violence and other rights violations in marriage still find it difficult to access justice due to various factors, such as social stigma, trauma, and economic limitations.

Weak law enforcement against women in Indonesia is one of the crucial issues that hinders the progress of gender equality and the protection of women's rights. This weak law enforcement is often seen in the handling of cases of violence against women which are still often ignored or not followed up seriously by law enforcement officials. The reality of gender equality in Indonesia today, based on information released by the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, that the gender gap in

¹⁷ UU No. 1 Tahun 1974. (t.thn.). Pemerintah Republik Indonesia.

¹⁸ *Kompilasi Hukum Islam Indonesia*. (2018). Kementerian Agama RI.

¹⁹ *Kompilasi Hukum Islam Indonesia*. (2018). Kementerian Agama RI.

several key areas in Indonesia is experiencing a downward trend. The key areas in question include health and education, opportunities, and voices and agencies as well as legal tools needed for gender mainstreaming in development. This trend of decreasing the gender gap does not mean that gender equality in Indonesia is good, there are still many things that need to be fixed in terms of gender equality problems in Indonesia.²⁰

Therefore, comprehensive reforms in the law enforcement system are needed, including increasing the capacity of law enforcement officials and applying stricter sanctions against law violators, so that women's rights can be protected more effectively and gender equality can be truly realized in Indonesia.

The weakness of law enforcement can be seen from various aspects, such as:

1. Convoluted and time-consuming legal process
2. Lack of sensitivity of law enforcement officials
3. Lack of coordination between institutions
4. Patriarchal culture and social stigma
5. Women are increasingly vulnerable to violence and violations of their rights
6. Public trust in the law is declining
7. Hindering progress on gender equality

CONCLUSION

It is necessary to revise and draft laws and regulations that are more gender equitable and provide more comprehensive protection for women in marriage. This includes reviewing and updating existing laws to be more responsive to women's needs and rights, including stricter provisions to prevent and handle domestic violence. It is also required to develop additional policies that accommodate various aspects of women's lives in marriage, such as access to legal aid, economic protection, and psychological support. Thus, it is expected that the legal protection provided can be more comprehensive and effective in creating a safe and fair marriage environment for women.

Efforts to change the mindset of a patriarchal and discriminatory society towards women through education and socialization about gender equality and women's rights are also very urgent. Socialization campaigns involving mass media, community leaders, and influencers need to be encouraged to spread the message about the importance of gender equality and eliminate negative stereotypes against women. Training programs and workshops for various community groups, including religious organizations and local communities,

²⁰ Kertas Kebijakan Kesetaraan Gender. (2020). Jakarta: Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia.

should also be held regularly to strengthen their knowledge and awareness of gender issues. By educating and socializing gender equality as a whole, it is hoped that patriarchal and discriminatory mindsets can change, so as to create a fairer society that respects women's rights.

It is also necessary to improve the role of women in various sectors, including in policy-making and law enforcement, to ensure that women's perspectives are taken into account in women's protection efforts. This step involves empowering women through education and training, so that they have the skills and knowledge required to take on leadership roles. In addition, affirmative policies should be implemented to open up more opportunities for women in various strategic positions, both in government, the private sector, and law enforcement agencies. In policy-making, the presence of women will ensure that the resulting policies are more inclusive and responsive to women's needs. Likewise, in law enforcement, women's officers can provide a more sensitive and empathetic perspective in handling cases of violence against women. With the increase in the role of women in various sectors, it is hoped that a fairer and more supportive environment will be created for women, and the protection of their rights can be realized more effectively.

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