

The Dynamics of Women's Involvement in the Formulation of Islamic Family Law in Indonesia: Analysis of Law No. 1 of 1974

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Abstract

This study aims to uncover the history of family law formation in Indonesia, the role of women's groups in the legislative process, and women's efforts to support family law reform based on equality and justice. The research method used is normative legal research or library research, which involves analyzing bibliographic sources or secondary data. The findings of this study indicate that, first, Dutch colonialism influenced marriage law in Indonesia. Second, women had no role in the process of drafting family law, making them a minority and often placing them in stereotypical positions. Third, the standardization of roles in several articles of Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law has driven women to fight for equality through family law reform.

[Penelitian ini bertujuan untuk mengungkap sejarah pembentukan hukum keluarga di Indonesia, dan peran kelompok perempuan dalam proses legislasi, serta upaya perempuan dalam mendukung reformasi hukum keluarga yang berbasis kesetaraan dan keadilan. Metode penelitian yang digunakan yaitu, penelitian hukum normatif atau penelitian hukum kepustakaan, yang dilakukan dengan cara menganalisis bahan pustaka atau data sekunder. Hasil penelitian ini menunjukkan bahwa pertama, kolonialisme Belanda berpengaruh terhadap hukum perkawinan di Indonesia. Kedua, perempuan tidak memiliki peran dalam proses penyusunan hukum keluarga, sehingga mereka menjadi minoritas dan sering ditempatkan dalam posisi stereotip. Ketiga, pembakuan peran dalam beberapa pasal UU No. 1 Tahun 1974 tentang Perkawinan dan KHI mendorong perempuan untuk memperjuangkan kesetaraan melalui reformasi hukum keluarga..]

Keywords: Woman; Reform; Family law.

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INTRODUCTION

The involvement of women in the formulation of Islamic family law in Indonesia has a very important role in creating a just and inclusive legal system. So far, women have

often been neglected subjects in the policy-making process that affects their lives (Manulang et al., 2024). Therefore, the active involvement of women in the formulation of Islamic family law can ensure that their voices and needs are accommodated, and their rights are well protected. Thus, Islamic family law reform that involves women's perspectives is expected to realize gender equality and respect women's dignity (Pradesa, 2024).

Furthermore, this dynamic reflects the importance of adapting Islamic family law to the development of the times and the challenges faced by women in modern society (Ashari, 2024). In the context of Indonesia, where society is very diverse, involving women in the process of legislating Islamic family law can enrich a more humanistic legal perspective and be responsive to developing social conditions (Fakhria, 2020). In addition, this involvement can also create a balance between religious values and human rights principles, especially in terms of protecting women's rights such as the right to education, health, and protection from violence (Saraswati & Susrama, 2020).

The involvement of women in the preparation of Islamic family law in Indonesia also provides an opportunity to promote the principle of *maqashid al-syari'ah*, which emphasizes the protection of the soul, mind, descendants, and human honor (Sunarto & Hasanah, 2025). By involving women in this process, the resulting law will be better able to protect and advance women's basic rights in accordance with the demands of Islamic law (Haryanto, 2022). Thus, the dynamics of women's involvement in the creation of Islamic family law are not only theoretically relevant, but also important for creating more just and sustainable social change for all levels of society (Erlyani et al., 2024).

However, in Indonesia, women's interests are still ignored so that it is possible that the Family Law Act is still considered discriminatory against women (Ramadhani, n.d.). Family law in Indonesia cannot be separated from the history and customs that apply in Indonesia (culture) (Muhtar et al., 2023). In addition, there is also the role of colonialism that occupied Indonesia for a very long time. At that time, marriage law still referred to Dutch law. Then formed marriage law according to certain groups (Napitupulu, 2023).

Before the enactment of family law in Indonesia, family law experienced clashes from various groups (Sepda, 2023). One of the interesting things to discuss is the group of women. Since the colonial era, the women's movement has existed and participated in voicing their rights (Suparman & Yusuf Perdana, 2022). However, at that time, precisely in the pre-independence era, women were confined due to the patriarchal system that was still thick in Indonesia. So that women's voices are very small to be considered in the legislative process (Wirahmat & Alfiyani, 2022).

After independence, the reform process continued. Even most of the literature, the roles that contributed the most to this process came from men, such as Hasbi ash-Shiddieqy, Hasan Bangil, Harun Nasution, Hazairin, Ibrahim Husen, Munawir Syadzali, Busthanul Arifin and other reformers (Ria, 2017). While from women it is very rare, because in reality women are very minimally involved and lack political capital.

However, after Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI) was passed, there were articles that were still considered to standardize roles, discriminate against women (Muhammad Rusdi, 2023), and even found inconsistencies with other articles or laws (Sulastri & Raissafitri, n.d.). So that it encourages women activists to voice reforms based on equality.

Several previous studies related to this study are studies by Wazni Anwar, et al., the results of this study indicate that the birth of Marriage Law Number 1 of 1974 was influenced by four main objectives, namely limiting child marriage, polygamy, unilateral talaq rights, and establishing equality of position between husband and wife. The process of

its formation was colored by pros and cons that emerged from normative understanding of religious teachings and social realities in society. Although this law has succeeded in achieving its objectives in general, its implementation has not been optimal, along with the development of the times and ongoing social changes. Therefore, the dynamics of family law need to be continuously updated to answer the challenges of the times (Azwar, 2022).

Furthermore, research by Dara Anisa and Erna Ikawati, the results of this study show that the feminist movement emerged as an effort to achieve gender equality, which is actually not contrary to Islamic teachings. In Islam, women are glorified and there is no discrimination between men and women, only differences in function according to their nature. Although family law in Indonesia, such as in the KHI, has accommodated gender equality, its application in society often does not reflect this, where women's rights are often ignored. Therefore, it is important to continue to increase legal awareness in society to encourage fair law enforcement and avoid discrimination in family life (Anisa & Ikawati, 2021).

As for research by Kartika Septiani, this study discusses the development of Islamic family law in Indonesia, especially the analysis of Law No. 1 of 1974 concerning Marriage. Although this law has accommodated various principles of religious law and culture of Indonesian society, there are still problems that need to be addressed, such as polygamy, interfaith marriage, and unregistered marriage. This marriage law seeks to harmonize religious values, especially Islam, with positive legal norms, but challenges remain in its implementation, especially related to social change and societal demands. The Compilation of Islamic Law (KHI) is also an important instrument in resolving these problems (Amiri, 2021).

In response to the above problems, efforts to achieve equality in the KHI have been made. Riadi (2024) discusses the relationship between local practices, interpretations of Islamic law, and the role of state institutions in shaping the dynamics of gender equality in family law. The research findings show that although there are still a number of normative obstacles that hinder the achievement of equality, efforts towards reforming Islamic family law have shown significant progressive tendencies.

In line with the research, the efforts to recontextualize family law in Indonesia, Tunisia, and Turkey reflect the adaptation of family law to the demands of the times, especially in promoting gender equality and protecting women's rights. All three have a similar vision in strengthening the position of women, but use an approach that is adapted to their respective social, cultural, and political conditions. The main focus of the reforms includes restrictions on polygamy, expanding divorce rights for women, and protection from domestic violence (Hadaiyatullah et al., 2024).

Although there have been many studies discussing women's involvement in Islamic family law in Indonesia, most of them are still focused on normative and theoretical aspects without delving deeply into the historical and socio-cultural dynamics that influence women's participation in the Islamic family law legislation process. Most previous studies have focused more on analyzing the Compilation of Islamic Law and Law No. 1 of 1974 concerning Marriage from a gender equality perspective, but have paid less attention to the active role of women in the drafting process. In addition, there are shortcomings in studies that connect women's involvement in the drafting of Islamic family law with its implementation in the diverse social and cultural practices of Indonesian society. This study intends to reveal the history and involvement of women both in the drafting process of Law No. 1 of 1974 concerning Marriage and in the Compilation of Islamic Law. Then how are women's efforts to encourage equality for men and women in the reform of family law laws in Indonesia.

METHOD

The method used in this study is normative legal research or library legal research, which is carried out by analyzing library materials or secondary data (Soekanto & Mamudji, 2020). This type of research is included in the category of normative legal research, which examines a problem through a statutory approach, where the problem is analyzed from a legal perspective by examining relevant laws and regulations. In addition, this study also uses a library study approach. The data sources in this study are primary and secondary sources. Primary sources are obtained from books or articles about women's involvement in drafting and reforming marriage law in Indonesia. While secondary data comes from books or articles related to the focus of this research. After the data is collected, it is then analyzed using qualitative methods, then the results of the study are explained in descriptive form.

RESULT AND DISCUSSION

Historical Context of Family Law

The family law system in Indonesia cannot be separated from its historical journey, which began during the Dutch colonial era until today (Alamsyah et al., 2021). Family law in Indonesia has become an interesting topic of discussion, because it involves three main interests, namely the interests of religion, state, and women (Hermanto, 2021). The concept of family is something that is commonly done by every individual, so it is the responsibility of the state to formulate regulations that govern family relationships (Lestari et al., 2023). Considering that the majority of the Indonesian population is Muslim, efforts to integrate Islamic law into the family law system in Indonesia are very important (Munti & Anisah, 2005). The history of family law in Indonesia has gone through several periods, which will be explained below:

1. Marriage Law during the Dutch Colonial Period (Pre-Independence)

In the pre-independence era, Indonesia had not yet been formed as a unitary state, but instead consisted of various kingdoms spread across islands such as Java, Sumatra, Kalimantan, and Sulawesi. Therefore, the provisions of family law at that time were greatly influenced by the political system and cultural customs that applied in each region (Sinulingga & Ananda, 2024). Each kingdom had a different family law system, according to the social and cultural characteristics of the local community. For example, in the Minangkabau area, a matrilineal kinship system applies, while in Batak a patrilineal system is adopted, and in Java a parental or bilateral kinship system is applied (Frisandia, 2024).

During the Hindu-Buddhist kingdoms, such as the Srivijaya, Singosari, and Majapahit kingdoms, family law was strongly influenced by Hindu and Buddhist teachings introduced by traders from India and China (Ali & Puspita, 2023). The legal system that developed in these kingdoms combined religious norms with customary laws that applied in each region (Anjani et al., 2023). During the Majapahit era, customary law received significant attention, especially in regulating various aspects of life, such as marriage, transfer of power, and the military (Syarif et al., 2020). Family law during this period played an important role in regulating relationships between family members, and reflected government involvement in ensuring the application and implementation of customary laws that applied in society (Efrianto, 2024).

After the collapse of the Hindu-Buddhist kingdoms, Islam began to enter the archipelago and spread across various islands in the 7th century AD, which coincided with

the 1st century Hijri (Jayana, 2021). Several opinions state that Islam only came to Indonesia in the 30th year of Hijri or around 650 AD (Uyun, 2024). In a number of these regions, Islamic kingdoms were then established which led to the acceptance of Islamic law as the law that applied in these areas (Fitri & SH, 2020).

The development of Islamic law in Indonesia has experienced quite significant dynamics, with periods of ups and downs (Hoddin, 2020). Islamic law often conflicts with customary law that has previously developed in society (Yuliana & Zafi, 2020). In fact, Snouck Hurgronje, a Dutch orientalist, attempted to eliminate the influence of Islamic law through his *receptie* theory (Sidik, 2020), which states that customary law must trump Islamic law in the Indonesian legal system. However, despite these efforts, Islamic law persists and continues to exist today (Adikara et al., 2024).

The tension between customary law and Islamic law during the Islamic kingdoms caused society to try to find a solution by adopting a syncretistic attitude, namely a combination of the two legal systems (Ningsih, 2021). For example, in the marriage procession, society refers to Islamic law in carrying out the marriage contract, but still refers to customary law in the marriage ceremony (Marwa, 2021). When the two laws conflict, one of the two will be chosen to be applied, according to the conditions and needs of the local community.

At the beginning of the Dutch colonial period, the colonial government tended to ignore the laws that applied in Indonesian society, with the aim of supporting the political interests of the VOC and gaining sympathy from the local community (Fitriani et al., 2024). As part of this strategy, the Dutch government issued *the Compendium Freijer*, a regulation governing marriage and inheritance law, which could be used as a guideline by court judges in resolving related cases (Mulyawan et al., 2021). In addition, the Dutch government also issued various legal codifications that were applied in customary areas (Winardi, 2020). One example is the Muharrar Book, which is used as a reference in the Semarang District Court. This book is a combination of Javanese customary law and Islamic law, which is a reference in handling cases in court at that time (Munti & Anisah, 2005).

Initially, the aim of Dutch colonialism through the VOC was to apply Dutch law to resolve disputes involving them (Azra et al., 2024). To strengthen their position, the Dutch tried to subdue the Indonesian people to obey their laws (Alimuddin & Harahap, 2021). However, this plan did not go smoothly, and finally the Dutch chose to let the existing laws remain in effect. For example, Islamic marriage and inheritance laws are still applied to the Muslim community (Fitri & SH, 2020; Muttaqin & Zaini, 2021).

After the end of the VOC era, Dutch colonialism began to form a legal system in Indonesia based on the classification of citizenship and religion (Martinelli et al., 2024). For Muslims, the applicable law is Islamic law that has been adjusted to local customary law (Marzuki, 2022). For those who are Christian, the applicable law is the *Huwelijk Ordonantie Christen Indonesiers* (HOCl) (Aulya, 2022). For foreign Easterners, such as Chinese and their descendants who became Indonesian citizens, the Civil Code was enforced (Bahri, 2022). Meanwhile, for other foreign Easterners and their descendants, the customary law in force in their respective regions continued to apply. Finally, for Europeans and their descendants, the Civil Code (BW) became the applicable law (Salim & Sh, 2021; Yusim, n.d.).

2. Marriage Law in the Post-Independence Era (Old Order)

After Indonesia's independence, the applicable family law system still followed the laws established by the Dutch colonial government, namely Islamic law, customary law, and civil law (BW). This condition causes disharmony and inconsistency between existing legal values, considering that each community group follows a different legal system. This

non-uniformity gives rise to various legal problems that require serious attention from the government (Fitriani et al., 2024; Andri et al., 2024).

In light of this situation, efforts have begun to emerge from the government to achieve unification of the legal system in Indonesia. One of the initial steps taken was the issuance of Law No. 22 of 1946 concerning the Registration of Marriage, Divorce, and Reconciliation, which was applied in certain regions (Asnawi, 2024). This step was followed by the issuance of Minister of Religious Affairs Instruction No. 4 of 1947 to support the implementation of the law. This effort continued with the enactment of Law No. 32 of 1954, which referred to Law No. 22 of 1946 and was then applied nationwide across Indonesia, as part of efforts to unify and adjust the family legal system in Indonesia (Sinulingga & Ananda, 2024).

The enactment of the Law was inseparable from the legal reality that existed at that time, where the majority of Indonesian people were Muslim, so the law referred more to Islamic law (Suganda & Firmansyah, 2022). However, the spirit to reform family law continued to grow. Based on various considerations that emerged from several organizations, a revision was made to the Marriage Bill, so that it could be accepted and felt fair for all groups and religions in Indonesia (Jafizham, 1977).

After the bill was passed on April 15, 1953, debate began to emerge regarding the principles used in the Marriage Bill. Several male members of parliament maintained the principle of polygamy in marriage. However, in the end, in 1961, the decision was taken to use the principle of monogamy in marriage. Thus, the 1961 Marriage Bill became an important milestone in the struggle for gender equality in Indonesia (Umar & Arfa, 2024).

After the issue regarding the principles of marriage, the spirit of Islamic marriage law legislation began to stagnate. This was due to the rejection of traditionalist Islamic groups who argued that Islamic law already covered all aspects of life, including marriage issues, so that it did not require an Islamic Family Law (Tohari & Kholish, 2020). In addition, the material planned to be continued from 1953 to 1958, especially regarding the principle of monogamy, did not receive support from members of parliament. In fact, Mrs. Sumari's proposal regarding the principle of monogamy was finally withdrawn. As a result, until now there has been no clear legal reference in the form of a law regulating the Islamic Family in Indonesia (Sinulingga & Ananda, 2024).

3. Marriage Law during the New Order Period

During this period, discussions on the Marriage Bill continued. The Minister of Justice at the time instructed the National Law Development Agency (LPHN) to draft a bill that was more national in scope and aligned with the philosophy of Pancasila. The hard work of the LPHN paid off in 1968, when the draft was successfully submitted to the People's Consultative Assembly (DPR-GR) for further discussion (Arfa et al., 2024).

In 1967, the Marriage Bill faced fierce opposition within the legislative body. The first opposition came from the United Development Party (PPP) faction, which represented the Islamic religious group and opposed the bill. In contrast, the second opposition came from the Golkar and PDI parties, which represented the nationalist group and supported the Marriage Bill. The tension between these two groups caused the Marriage Bill to experience significant obstacles (Fauzi, 2017).

The nationalist group argued that the bill was in line with the diversity of Indonesian society, while the Islamic group argued that the bill was not in accordance with Islamic law and was unacceptable to Muslims who were the majority in Indonesia. This debate reflected the tension between religious values and the desire to create laws that covered all levels of Indonesian society (Khiyaroh, 2020).

After receiving input from various communities and thorough consideration, the Marriage Bill was forwarded to the Plenary Session of the Indonesian Parliament. After three months of deliberation, the bill was passed by the Parliament. On January 2, 1974, it was enacted as Law No. 1 of 1974 on Marriage. However, despite being enacted in early 1974, the law did not come into effect until October 1, 1975, after being supplemented with implementing regulations in Government Regulation No. 9 of 1975 (Khiyaroh, 2020).

4. Compilation of Islamic Law in the Middle of the New Order Era

In the following years after the enactment of Law No. 1 of 1974 concerning Marriage, the decisions of judges in the Religious Courts experienced legal disparities. This was caused by PA judges who still referred to the products of the thoughts of scholars (*fiqh*) of the 2nd century H. Due to the absence of standard standards used in PA, judges instead made decisions based on subjectivity. From a legal theory perspective, judges' decisions in religious courts experience legal uncertainty (Munti & Anisah, 2005).

The *fiqh* books that are used as legal standards are no longer relevant to the social and cultural conditions in Indonesia (Hidayati, 2019). Therefore, Indonesian *fiqh* is needed. Based on this reason, in 1985, the Supreme Court proposed to formulate the Compilation of Indonesian Law as the standard in the Religious Court. Although it did not receive a response, the proposal began to receive attention when the Minister of Religion, Munawir Sadzali, proposed it again. This is related to political interests between the Supreme Court and the Minister of Religion through the Joint Decree initiated by the President (Sufri'y, 2006).

From the existing literature, the formation of the Compilation of Islamic Law cannot be separated from the political conditions at that time. Between the 1980s and the late 1990s was a period of state accommodation politics towards Islam. During that period, support for Islamic groups began to increase, which can be seen from the results of the 1982 election, namely the increase in the PPP Party's votes and the decrease in Golkar's votes. This phenomenon has implications for the expansion of policies in the structural, legislative, and infrastructure realms (Munti & Anisah, 2005)

Family Law and The Limitations of Women's Voices

If we look at its history, the drafting of family law, both as stated in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law, women's involvement was very minimal. As a result, the results of family law include articles on standardizing roles. As in Articles 31 and 34 of the Marriage Law, that the husband is the head of the household and the wife is the housewife. The husband's obligation is to protect his wife and provide a living according to the husband's ability, while the wife's obligation is to manage household affairs as well as possible. This is in line with Nandang Fathurrahman's research, that the husband has the responsibility to provide for the family's needs, such as clothing, food, and shelter. The wife plays an important role in managing household finances that come from the husband's income. The obligation to raise children arises voluntarily without depending on the wife's condition. After the marriage takes place, the wife no longer has full freedom, but becomes part of the husband's responsibility in the family, including in matters of livelihood (Rahman, 2022).

The formulation of family law in Indonesia has been a long journey, full of twists and turns, and quite draining the nation's energy. The tension and opposition that occurred between the dialectic of the thoughts of the scholars of the madzhab (*fiqh*) and the law that had developed in society (custom), were then formulated to provide legal certainty, women's rights, and answer the challenges of modernity (Wijayati, 2022).

The formation of Law No. 1 of 1974 concerning Marriage experienced a tug of war with several group interests. According to Katz as quoted by Muflaha, these groups are classified into three groups. First, the Muslim group who want the Marriage Law to be specifically for Muslims. Second, the non-Muslim group, who want the Marriage Law to refer to their religion. Finally, the group from the women's movement and liberal Muslims who support substantive and radical family law reform (Wijayati, 2022).

Women's voices have existed since the Dutch colonial era. Precisely in 1937, in the formation of the Marriage Law, the Dutch colonial began by distributing the Ordinance on registered marriages. The contents were to open up opportunities for native Indonesian husbands and wives to register their marriages. The principle used was the principle of monogamy, with the marriage ending if one party died or left for two years without news. In addition, registered native marriages had the same legal consequences as marriages registered in the civil registry (Munti & Anisah, 2005).

In line with the discussion above, the research results of Fitra Mulyawan et al. Explain that in July 1937, the Dutch East Indies Government distributed the Draft Registered Marriage Ordinance which included the principle of monogamy and a prohibition on issuing divorces outside the courts. This draft was rejected by Muslim groups, while only a small number of educated women supported it. Finally, this draft was canceled. Most likely, the draft was a response from the Dutch East Indies government to the demands of several women's organizations, which in 1928 held the Indonesian Women's Congress. One of the topics discussed was various problems in marriage according to Islam (conventional), such as polygamy, underage marriage, forced marriage, and arbitrary divorce. These women's organizations demanded the birth of a marriage law (Mulyawan et al., 2021).

Regarding the principles used in marriage, this has sparked debate in several groups, as explained in the previous sub-chapter. Women who are members of several organizations also participated in responding to the draft of this Ordinance. There are pros and cons. The pro opinion comes from the women's organization Poetri Boedi Sedjati and Serikat Kaoem Ibu Soematra, while the cons come from the underbow women's organization (religious organization). In fact, it can be said that almost all religious organizations reject this Ordinance so that it cannot be continued again.

The above explanation is in line with the book source compiled by Dr. Agus Hermanto, MHI, namely In the early 20th century, the Dutch colonial government tried to form a marriage law by introducing a draft Ordinance regulating marriage registration for native husbands and wives. This draft received support from several women's organizations, but was opposed by other women's groups and various Islamic groups, both traditional and modern. Due to strong rejection, the draft Ordinance was finally canceled and marriage regulations returned to their original state (Hermanto, 2021).

After Indonesia's independence, efforts to draft family law continued. Several community organizations still wanted a National Marriage Law. In fact, the initial initiative came from women's organizations, namely the Association of Indonesian Women Scholars and the Indonesian Women's Islamic Organization, in 1974 to urge the government to resubmit the bill (Wijayati, 2022).

Although the initiative for reform came from women, unfortunately in the discussion of the Marriage Bill, women's involvement was very minimal. Based on quantity, the appointed permanent working committee consisted of 10 people, but only involved one woman. In addition to the permanent working committee, the government also formed a replacement working committee consisting of 15 people, of whom 13 were men

and 2 were women. In fact, in the discussion forum, women rarely used their right to speak (Munti & Anisah, 2005).

Likewise in the compilation of the Compilation of Islamic Law, where the selected committee consisted of 16 people. From the organizing committee, there was only one woman named Mrs. Lies Sugondo, and even then she held the position of secretary, a stereotypical position that reflects the standardization of women's roles (Sadat et al., 2020).

Furthermore, according to Anwar Sadat et al. in their book, they describe the steps in compiling the Compilation of Islamic Law after the Joint Decree by the Chief Justice of the Supreme Court with the Minister of Religious Affairs on March 2, 1985 No. 07/KMA/1985 and No. 25 of 1985 concerning the Appointment of the Implementer of the Islamic Law Development Project through jurisprudence. Some of these steps include the following: 1) Data Collection, by reviewing approximately 38 yellow books. Meanwhile, the implementation is handed over to higher education institutions, State Islamic Religious Institutions and jurisprudence by collecting several decisions in religious courts. 2) Interviews, by interviewing scholars spread across Indonesia, either through individuals or through religious mass organizations. Ironically, none of the interviews involved women, while out of the 186 registered scholars interviewed, only four were female scholars. 3) Comparative Study, conducted by comparing with other Islamic countries to obtain the system/rules in that country. 4) Workshop, after conducting the three stages above, then holding a national meeting with experts which serves to perfect the results obtained.

After the project reached its final stage, various groups pushed the government to ratify the Compilation of Islamic Law. On June 10, 1991, the Compilation of Islamic Law received the President's signature through Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law, which was then followed up by the Decree of the Minister of Religious Affairs dated July 22, 1991 No. 154 concerning the Implementation of Presidential Instruction No. 1 of 1991.

It can be concluded that the opportunity for women to be involved in the process of drafting family law in Indonesia, both in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), is very limited. Although the women's movement plays a role in fighting for equality and justice, as in other Muslim countries, women in Indonesia remain a minority among the many men involved in the process of drafting family law. Women's voices are often sidelined in public affairs. This has led to a standardization of roles that can be seen in the contents of family law laws in Indonesia.

Women's Efforts in Reforming Family Law

Table 1. Women's Efforts in Reforming Family Law

| No. | Aspect | Findings |
|-----|----------------------------------|---|
| 1. | Women's Voice in Legal Formation | Women have begun to play a significant role in the formation of family law, aiming to ensure justice and protect women's rights. |
| 2. | Family Law Reform in Tunisia | Although Tunisia has undergone legal reforms, gender disparities persist, and the struggle for equality in family law continues. |
| 3. | History of Reform Struggles | The movement for family law reform dates back to the Dutch colonial era, with figures like R.A. Kartini criticizing forced marriages and polygamy. |
| 4. | Amendments to Law No. 1 of 1974 | Law No. 1 of 1974 requires revision to align with contemporary global developments, especially regarding justice and gender equality. |
| 5. | Domestic Violence Cases | Between 1996–1999, 409 domestic violence cases were recorded, revealing issues related to gender role stereotypes embedded in the Marriage Law and the Compilation of Islamic Law |
| 6. | Women's Advocacy on | Organizations such as Kalayanamitra, LBH-APIK, Mitra Perempuan, |

| | | |
|-----|--|---|
| | Domestic Violence | and Rifka Annisa advocated for legal reform, particularly on Articles 31 and 34 of the Marriage Law. |
| 7. | Amendment of Minimum Marriage Age | Article 7 of Law No. 1 of 1974, which set the minimum marriage age at 16 for females, was amended to 19 for both genders under Law No. 16 of 2019. |
| 8. | Women's Institutions in Reform Efforts | Institutions such as Kowani and the Ministry of Women's Empowerment, led by Tutty Alawiyah, also played a role in advocating for changes in the legal age of marriage. |
| 9. | KUPI Fatwa on Child Marriage | The 2017 fatwa issued by KUPI supported the rejection of child marriage, citing its harmful impacts and contradiction with the Child Protection Law. |
| 10. | Polygamy Reform | Following the enactment of the Marriage Law and KHI, stricter regulations on polygamy were introduced. Government Regulation No. 45 of 1990 amended previous provisions after advocacy by women's groups. |
| 11. | Article Revisions in the KHI | Women's activists proposed revisions to several KHI articles, including Article 6 (marriage registration) and Article 148 (khulu'), which were viewed as disadvantaging women. |
| 12. | Women Activists in Politics | Female activists have begun to unite and utilize their political capacities to engage in politics and advocate for women's issues within family law. |

Women's voices in the formulation of family law have become a crucial issue in Muslim-majority countries. The objective is not merely to ensure justice for women without discrimination, but also to protect their rights. For example, in Tunisia, a country with religious diversity and Islam as the majority religion, family law remains under scrutiny by feminist groups due to perceived ongoing discrimination against women. Although Tunisia has undertaken legal reforms to enhance women's status, disparities in family rights are still evident, and the struggle for gender equality within the family law system continues (Ramdan Wagianto & Moh. Sa'i Affan, 2022).

Family law reform in Indonesia actually began during the Dutch colonial period. Various efforts to revise and modernize family law have been undertaken, despite facing numerous challenges, particularly those stemming from the interests of specific social and political groups, as previously discussed. Among those involved in this struggle were women, notably R.A. Kartini (1879–1904), who came from Central Java and West Sumatra. Kartini voiced strong criticism against harmful marital practices such as child marriage, forced marriage, polygamy, and unilateral divorce (talaq), all of which were major societal issues at the time (Ramdan Wagianto & Moh. Sa'i Affan, 2022).

"Efforts to reform family law did not cease in the past and have continued to the present day. In light of an increasingly modern era, Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, which were once considered well-established, now require revision. Although both are grounded in the Qur'an, Hadith, Islamic jurisprudence (fiqh), and the social realities of their time, they cannot be overlooked in addressing the complex challenges of marriage law that arise in today's globalized world, particularly those related to justice and gender equality (Suprayogi, 2023).

Efforts to advocate for justice and equality have been carried out by the women's movement in Indonesia. One notable example is the issue of domestic violence that occurred between 1996 and 1999, during which 567 out of 852 family-related cases involved domestic violence. Among these, 409 cases were classified as domestic violence, including 108 cases of physical abuse, 11 cases of sexual violence, 104 cases of economic abuse, and 186 cases of psychological violence. This phenomenon was largely attributed to

the reinforcement of gender roles that are still reflected in the Marriage Law and the Compilation of Islamic Law.

In response to this alarming phenomenon, institutions such as Kalyanamitra, LBH-APIK Jakarta, Mitra Perempuan, and Rifka Annisa engaged in advocacy efforts by providing legal and psychological assistance to women who faced discrimination. These organizations also pushed for amendments to the Marriage Law, particularly Articles 31 and 34. To accelerate legal reform, legislative advocacy was pursued through the drafting of the Domestic Violence Bill, which was eventually enacted as Law No. 23 of 2004. This law also served as a revision to the Marriage Law and the Indonesian Penal Code. The legislative advocacy was carried out by networks of women's NGOs and other women's groups concerned with this issue.

In addition, concerning the minimum age of marriage, Article 7 paragraph (1) of Law No. 1 of 1974 on Marriage initially stipulated that the minimum age was 19 for males and 16 for females. However, this provision was later deemed no longer relevant and was amended to 19 years for both sexes under Law No. 16 of 2019. This change was the result of public advocacy, particularly by women's rights activists, who recognized the harmful impacts that could arise if the original provision remained in effect (Aristoni, 2021).

Efforts to revise the minimum legal age for marriage began in the early 2000s. Several institutions, such as Kowani (the Indonesian Women's Congress), which oversees a wide range of women's organizations with diverse backgrounds, along with the then-Minister of Women's Empowerment, Tutty Alawiyah, actively pushed for this change. Additionally, a fatwa issued by the Indonesian Congress of Women Ulama in 2017 supported the prohibition of child marriage. The fatwa was based on the negative consequences of child marriage and the legal inconsistencies between the minimum marriage age stipulated in the Marriage Law, the Child Protection Law, and the Compilation of Islamic Law (Syifa, 2022).

Apart from these issues, the regulation of polygamy also underwent reform. Before the enactment of the Marriage Law and the Compilation of Islamic Law, polygamy was practiced freely, with judges relying on various classical fiqh texts, resulting in inconsistent judicial decisions. Following the legalization of these two legal instruments, judicial practices surrounding polygamy became more regulated and restrictive (Rifqi et al., 2020).

However, the most prominent issue in this regard was the enactment of Government Regulation No. 45 of 1990, which amended Government Regulation No. 10 of 1983 regarding Marriage and Divorce Permits for Civil Servants. Tutty Alawiyah, the Minister of Women's Empowerment at the time, proposed the abolition of Government Regulation No. 10 of 1983 concerning polygamy for civil servants. This proposal received responses from various women's organizations, including the wives of civil servants. In fact, in Yogyakarta, women's activists organized a public debate to discuss this issue.

In addition to the Marriage Law, many proposals from women's activists have been made to revise several articles in the Compilation of Islamic Law. Among these is Article 6 concerning the registration of marriages, which states that an unregistered marriage has no legal force. This article is considered in need of revision, as it is very detrimental to children. Additionally, Article 148 on *khul'* (divorce initiated by the wife) is seen as unfair to wives who wish to file for divorce and are charged with *'iwadl'*/compensation. This article contradicts Article 124, which requires the reasons outlined in Article 116. Therefore, if the wife applies for *khul'* based on the prescribed reasons, she should not be burdened with *'iwadl'*/compensation (Munti & Anisah, 2005).

It can be seen that women activists have actually long had the intention to voice their rights in legislation, particularly the Marriage Law. However, they were very seldom

involved by the government in the legislative process. After the enactment of the Marriage Law and the Compilation of Islamic Law, women activists began to unite, utilizing their political capital and leadership skills in organizations. They used this as a means to engage in the political arena, especially to fight for women's issues that were still considered discriminatory in Family Law.

CONCLUSION

Indonesia, as a predominantly Muslim country, is still influenced by a patriarchal culture passed down since the pre-Islamic era, which positions men as superior and women as inferior. This impacts the legislative process, where women's involvement in the formation of marriage laws in Indonesia has been very limited. As a result, women feel disadvantaged by the existing regulations. This situation has driven women activists to advocate for marriage law reform, especially concerning Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, which is considered to still be gender-biased. Issues such as polygamy, the minimum age for marriage, marriage registration, and divorce have become the main focus. This study only analyzes women's efforts in family law reform in certain aspects. Therefore, the author suggests the need for further research that is broader and deeper regarding family law reform, particularly related to more contextual issues

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The Dynamics of Women's Involvement in the Formulation

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