



IMPLEMENTATION OF THE PRINCIPLE OF GENDER JUSTICE IN ISLAMIC MARRIAGE LAW

Imam Anas Hadi

Email Correspondence: imamanas@gmail.com

Master of Islamic Religious Education Study Program, Universitas Darul Ulum Islamic Centre Sudirman, Semarang Regency

ABSTRACT

This study aims to analyze and evaluate the implementation of gender justice principles in Islamic marriage law at both the normative regulatory level and judicial practice. The research employs a socio-legal (normative-empirical) approach using a qualitative descriptive-analytical method. Data were collected through a literature review of statutory regulations and recent scholarly works from the last five years, as well as an analysis of Religious Court decisions related to divorce, marriage dispensation, and marital property distribution. The findings indicate that, at the normative level, Islamic marriage law in Indonesia has shown progressive developments, particularly through the revision of the minimum marriage age and the strengthening of women's rights to initiate divorce. However, at the level of judicial practice, a gap remains between legal norms and their practical implementation, especially in the interpretation of household leadership, divorce procedures, and the recognition of women's domestic economic contributions. The evaluation demonstrates that the implementation of gender justice principles is influenced by legal substance, judicial structure, and socio-cultural legal culture. Therefore, a maqāṣid al-sharī'ah-based reinterpretation, enhanced gender sensitivity among judicial officers, and strengthened public legal awareness are necessary to achieve substantive justice in Islamic marriage law.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis dan mengevaluasi implementasi prinsip keadilan gender dalam hukum perkawinan Islam, baik pada tataran regulasi normatif maupun praktik peradilan. Penelitian ini menggunakan pendekatan socio-legal (normatif-empiris) dengan metode kualitatif deskriptif-analitis. Data diperoleh melalui studi kepustakaan terhadap peraturan perundang-undangan dan literatur lima tahun terakhir, serta analisis putusan Pengadilan Agama yang berkaitan dengan perceraian, dispensasi nikah, dan pembagian harta bersama. Hasil penelitian menunjukkan bahwa secara normatif hukum

ARTICLE INFO

Submitted: 15 January 2025

Revised: 23 January 2025

Accepted: 12 February 2025

Keywords:

Gender Justice; Islamic Marriage Law; Socio-Legal Approach; Religious Court; Maqāṣid Al-Sharī'Ah

DOI:

[10.55080/junagara.v2i1.1882](https://doi.org/10.55080/junagara.v2i1.1882)

perkawinan Islam di Indonesia telah mengalami perkembangan progresif, terutama melalui revisi batas usia perkawinan dan penguatan hak cerai gugat bagi istri. Namun, pada tataran praktik peradilan masih ditemukan kesenjangan antara norma hukum dan implementasi konkret, terutama dalam aspek interpretasi konsep kepemimpinan rumah tangga, prosedur perceraian, dan pengakuan kontribusi ekonomi domestik perempuan. Evaluasi menunjukkan bahwa implementasi prinsip keadilan gender dipengaruhi oleh substansi hukum, struktur peradilan, dan kultur hukum masyarakat. Oleh karena itu, diperlukan reinterpretasi berbasis maqāṣid al-syarī'ah, peningkatan sensitivitas gender aparat peradilan, serta penguatan edukasi publik untuk mewujudkan keadilan substantif dalam hukum perkawinan Islam.

Kata kunci:

Keadilan Gender; Hukum Perkawinan Islam; Socio-Legal; Peradilan Agama; Maqāṣid Al-Syarī'Ah

INTRODUCTION

Islamic marriage law is an integral part of the family law system (al-ahwāl al-syakhṣiyyah) which regulates the personal relationship, rights, and obligations between husband and wife. Normatively, Islam affirms the principle of spiritual equality between men and women as beings who have equal moral responsibility and legal capacity (Q.S. al-Taubah: 71). However, in social practice and legal implementation, gender relations in marriage often show structural inequalities, both in aspects of household leadership, divorce rights, distribution of domestic roles, and access to economic resources (Rahman, 2021). These inequalities are not always rooted in normative religious texts, but rather in patriarchal socio-cultural constructions and interpretations of classical fiqh that develop in certain historical contexts (Hidayat & Nur, 2022). Therefore, it is important to distinguish between justice-oriented normative values of Islam and social practices that may be influenced by historical biases.

The development of contemporary Islamic law studies shows a paradigm shift from a textual-formal approach to a contextual and substantive approach. The maqāṣid al-syarī'ah approach is one of the methodological frameworks used to reassess family law regulations by focusing on the purpose of sharia, namely the protection of religion, soul, intellect, descendants, and property. In this perspective, gender justice is understood as part of the realization of the values of justice ('adl) and benefit (maṣlaḥah) which are the spirit of Islamic law (Mufti, 2024). Thus, the implementation of marriage law is not solely measured by textual conformity, but also by the extent to which it is able to provide protection, balance of rights and obligations, and avoid vulnerable parties from structural injustice.

In the global context, the issue of gender equality has become a major concern in the international development agenda, especially through the Sustainable Development Goals (SDGs) the fifth goal on gender equality. Countries with Muslim majority populations face challenges in harmonizing such global commitments with religious-based family law norms. A number of studies show that family law reforms in various Muslim countries, such as Morocco, Tunisia, and Indonesia, reflect efforts to integrate sharia principles and modern equality values (Anwar, 2023). However, resistance to reform often arises because it is considered contrary to the authority of the fiqh tradition or is considered a form of secularization of Islamic law.

In Indonesia, marriage law regulations have undergone significant developments, especially through changes in the marriage age limit in Law Number 16 of 2019 as a revision of Law Number 1 of 1974. This change is seen as a progressive step in protecting the rights of women and children from the practice of early marriage. In addition, the Compilation of Islamic Law (KHI) is the main guideline in the practice of religious justice. Although normatively there have been

provisions that lead to the protection of women, empirical research shows that in judicial practice, gender bias is still found, especially in cases of talaq divorce, marriage dispensation, and the distribution of joint property (Sari & Hamid, 2022; Lestari, 2024). This condition shows that there is a gap between legal norms and implementation at the practical level.

Furthermore, the debates on leadership (*qiwāmah*), the right of talaq, and the division of domestic roles show that the interpretation of classical texts is still a space for academic contestation. Some contemporary scholars emphasize the need for substantive justice-based reinterpretation by considering changes in the social context and the role of women in public spaces (Hidayat & Nur, 2022). In this framework, gender justice is not interpreted as absolute equality between men and women, but as the proportional placement of rights and obligations according to the principles of justice and benefit.

The urgency of this research lies in the need to comprehensively evaluate how the principles of gender justice are implemented in Islamic marriage law, both at the level of normative regulation and judicial practice. This study is not only academically important for enriching the discourse of Islamic family law, but also practically relevant in providing policy recommendations that are more responsive to the social dynamics of contemporary Muslim society. Thus, this research seeks to bridge the text, context, and practice of law in order to realize an Islamic marriage legal system that is fair, humanist, and oriented towards the common good.

METHODS

This research uses a socio-legal approach or also known as a normative-empirical approach. This approach combines analysis of written legal norms (*law in books*) with the reality of its application in practice (*law in action*). Conceptually, socio-legal research aims to understand law not only as a set of normative rules, but also as a social phenomenon influenced by cultural contexts, power structures, and societal dynamics (Banakar & Travers, 2020). In the context of this study, this approach is used to analyze how the principle of gender justice in Islamic marriage law is normatively regulated as well as implemented in the practice of religious justice and the social life of the community.

This type of research is qualitative with a descriptive-analytical character. Qualitative research was chosen because it allows researchers to explore the meaning, interpretation, and dynamics of the application of legal norms in depth (Creswell & Creswell, 2021). The descriptive-analytical character is used to describe the construction of Islamic marriage law related to the principle of gender justice, as well as to analyze its compatibility with practices that occur in the field. Thus, this study not only explains the content of legal norms, but also evaluates the effectiveness and social implications of their application.

The data sources in this study consist of primary data and secondary data. Primary data was obtained through a study of documents in the form of decisions of the Religious Court related to talaq divorce cases, lawsuit divorce, marriage dispensation, child custody, and distribution of joint property. In addition, primary data can also be obtained through semi-structured interviews with Religious Court judges, Islamic law academics, or practitioners who have competence in the field of Islamic family law. Meanwhile, secondary data includes primary legal materials such as Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, the Compilation of Islamic Law (KHI), and other related laws and regulations. Secondary legal materials are in the form of scientific journals of the last five years, books, and the results of previous research relevant to the issue of gender justice in Islamic family law.

Data collection techniques are carried out through library *research*, documentation studies of court decisions, and in-depth interviews. Literature studies were conducted to obtain a theoretical basis for the concept of gender justice, *maqāṣid al-syarī'ah*, and the theory of legal

implementation. The documentation study was used to examine the judge's legal considerations in deciding cases related to gender relations in marriage. Meanwhile, the interview aims to explore the perspectives of legal practitioners on the challenges and dynamics of implementing gender justice principles in the practice of religious justice.

Data analysis is carried out qualitatively with the stages of data reduction, data presentation, and conclusion drawn. Court decisions are analyzed using *content analysis techniques* to identify patterns of legal considerations that reflect or ignore the principles of gender justice. Furthermore, the data were analyzed using the maqāṣid al-syarī'ah approach and gender justice theory to assess whether the implementation of the law had reflected the value of substantive justice. Through this approach, research can identify gaps between legal norms and their implementation practices, as well as formulate recommendations for strengthening Islamic marriage laws that are more responsive to the principles of gender justice.

By using a socio-legal approach, this research is expected to be able to provide a comprehensive overview of the relationship between legal texts, the interpretation of law enforcement officials, and the social reality of society. This approach is relevant because the issue of gender justice in marriage law cannot be understood normatively alone, but must be analyzed in the social, cultural, and institutional context that surrounds it.

RESULTS AND DISCUSSION

1. Implementation of the Principle of Gender Justice in Islamic Marriage Law

The implementation of the principle of gender justice in Islamic marriage law needs to be analyzed at two levels at once, namely the normative level (substance of the rules) and the empirical level (practice of application). At the normative level, Islamic marriage law conceptually contains the values of justice ('adl), benefit (maṣlaḥah), and protection of the vulnerable. This principle is reflected in the regulation of the rights and obligations of husband and wife, the divorce mechanism, and the protection of children and joint property. A number of contemporary studies affirm that gender justice in Islamic law does not mean absolute equality between men and women, but rather the proportionate placement of rights and responsibilities based on the goals of sharia (maqāṣid al-syarī'ah) (Mufti, 2024; Hidayat & Nur, 2022). Thus, normatively Islamic marriage law has a theological and philosophical basis that supports substantive equality.

However, at the implementation level, there are dynamics that show that gender justice has not been fully realized substantially. Studies over the past five years have shown that in the practice of religious justice, there is still a bias in cases of talaq divorce, marriage dispensation, and the distribution of joint property (Sari & Hamid, 2022; Lestari, 2024). For example, the right of talaq that is in the hands of the husband in fiqh often creates an inequality of bargaining position, although modern regulations have provided a mechanism for divorce lawsuits for wives. In this context, the implementation of the law is not only influenced by written norms, but also by the interpretation of judges, legal culture, and the social construction of society.

From the perspective of legal system theory, the implementation of law is influenced by three elements: the substance of the law, the legal structure, and the culture of the law. The substance of Indonesian law through the revision of the marriage age limit and the strengthening of maintenance rights has shown progress towards women's protection. However, at the level of legal structure, there is still a disparity in the consideration of decisions between judges. Meanwhile, the legal culture of the society, which is still patriarchal, also influences the perspective on household leadership and the division of gender roles (Anwar, 2023). This shows that the problem of implementation lies not solely in the legal text, but also in the social environment that shapes its interpretation and practice.

To clarify the analysis, here is a mapping of the implementation of the principle of gender justice in some of the main aspects of Islamic marriage law:

Legal Aspects of Marriage	Normative Regulation	Implementation Practices	Gender Analysis	Justice
Rights and Obligations of Husband and Wife	Regulated in a balanced manner in the Law and KHI	Still dominant interpretation of husband's sole leadership	Need for partnership-based reinterpretation	for
Divorce (Talak & Sugat)	The wife has the right to sue for divorce	Talak is still more accessible to husbands	Procedural inequality occurs	still
Marriage Dispensation	Minimum age limit of 19 years old	Dispensation applications are quite high	Protection is not yet optimal	
Joint Property	Recognized as a right of both parties	Proving the wife's contribution is often problematic	There is a need for a substantive justice approach	

Table 1. Mapping the Implementation of Gender Justice Principles

The table shows that there has been regulatory progress towards the principle of equality, but implementation on the ground has not fully reflected substantive justice. In other words, there is a gap between *law in books* and *law in action*. In the context of maqāṣid al-shari'ah, the implementation of the law should be oriented towards the protection of dignity (ḥifẓ al-nafs), the protection of offspring (ḥifẓ al-nasl), and the protection of property (ḥifẓ al-māl) fairly for both parties (Mufti, 2024). Therefore, progressive reinterpretation and strengthening of gender perspectives in judicial practice are urgent needs.

Furthermore, the implementation of gender justice principles also requires transformation at the level of legal education and training of judicial officers. Several studies show that increasing the gender sensitivity of judges and judicial apparatus contributes to more inclusive legal considerations (Lestari, 2024). Thus, strengthening regulations needs to be accompanied by structural and cultural reforms so that the principle of gender justice does not stop at the normative level, but is manifested in the practice of Islamic marriage law.

Overall, this analysis shows that the implementation of the principle of gender justice in Islamic marriage law has made normative progress, but still faces structural and cultural challenges in practice. Therefore, an integrative approach is needed between regulatory reform, theological reinterpretation based on maqāṣid, and strengthening the capacity of the legal apparatus to realize substantive justice in the institution of marriage.

2. Evaluation of the Implementation of the Principle of Gender Justice in Islamic Marriage Law at the Level of Normative Regulation and Judicial Practice

The evaluation of the implementation of the principle of gender justice in Islamic marriage law cannot be separated from the understanding that family law is the most sensitive area to social construction and gender-based power relations. Theoretically, the principle of justice in Islam is rooted in the concepts of 'adl (justice), musāwah (equality), and maṣlaḥah (benefit), which place men and women as subjects of law who have moral responsibilities and rights protected by the Shari'a. In the perspective of maqāṣid al-syarī'ah, the protection of the soul (ḥifẓ al-nafs), offspring (ḥifẓ al-nasl), and property (ḥifẓ al-māl) must apply fairly to both parties in the institution of

marriage (Mufti, 2024). Therefore, conceptually, Islamic marriage law has a strong normative foundation to support gender justice.

However, evaluation at the normative regulatory level shows that despite progressive progress, there is still room for interpretation that has the potential to cause inequality. The change in the marriage age limit through Law Number 16 of 2019 is a significant reformist step in protecting women and children from social, health, and economic risks due to early marriage. This regulation substantially reflects the state's efforts to align Islamic law with the principles of human rights protection and the gender equality agenda (Anwar, 2023). In addition, the regulation of divorce rights for wives and the recognition of joint property in the Compilation of Islamic Law show an orientation towards the balance of rights and obligations.

However, in further normative evaluation, it was found that some classical concepts such as *qiwamah* (husband leadership) are still often understood textually and hierarchically. This interpretation has the potential to strengthen the structural dominance of men in the household if it is not contextualized with contemporary social realities. Recent studies emphasize that *qiwamah* should be interpreted as an ethical and functional responsibility, not absolute superiority (Hidayat & Nur, 2022). Thus, normative evaluation shows that the main problem lies not in the absence of the principle of justice, but in the methodology of interpretation that is not fully oriented towards substantive justice.

At the level of judicial practice, evaluation shows that there is a gap between legal norms and concrete implementation in the field. Research over the past five years indicates that in *talaq* divorce cases, the position of the husband is still relatively stronger than that of the wife, both procedurally and socially. Although the law provides a mechanism for divorce, the evidentiary process and administrative burden are often challenges for the wife (Sari & Hamid, 2022). In addition, in the case of joint property division, the wife's domestic economic contribution often lacks proportionate recognition in legal considerations, especially if it is not supported by formal evidence. This shows that the paradigm of economic contribution still tends to be materialistic and has not fully considered the value of domestic work as part of the contribution to family welfare.

Evaluation of the practice of marriage dispensation also shows similar dynamics. Although regulations have tightened the minimum age of marriage, the number of dispensation applications in a number of regions is still relatively high. This shows that legal culture factors and social pressure have a significant influence on judicial practice (Lestari, 2024). In this context, judges are often in a dilemma between considering child protection norms and the social realities of society. Therefore, the implementation of the principle of gender justice requires social sensitivity as well as interpretive courage in maintaining the value of protection for vulnerable groups.

Systemically, implementation evaluation can be analyzed through three dimensions: legal substance, legal structure, and legal culture. The substance of the law in Indonesia has shown progress towards normative equality. The legal structure, especially the religious justice apparatus, has strategic authority in translating norms into fair decisions. However, the legal culture of the society that is still patriarchal often influences the pattern of consideration and acceptance of progressive decisions (Anwar, 2023). Thus, the effectiveness of the implementation of gender justice principles is highly determined by the interaction of these three elements.

To clarify the evaluation, here is a comprehensive mapping of the implementation of gender justice principles:

Evaluation Dimensions	Indicator	Findings	Implications
Legal Substance	Revision of marriage age, divorce rights, joint property	Progressive and protective regulation	The normative basis is quite strong
Legal Structure	Judge's considerations, procedural access	Disparity in verdicts and burden of proof	Need to increase gender sensitivity
Legal Culture	Public perception of gender roles	Dominance of patriarchal values	Cultural barriers to implementation

Table 2. Comprehensive Mapping of the Implementation of Gender Justice Principles

Based on this evaluation, it can be concluded that the implementation of the principle of gender justice in Islamic marriage law shows significant progress at the regulatory level, but has not been fully consistent at the level of judicial practice. The main challenge lies in the aspects of interpretation, gender awareness of law enforcement, and social construction of society. Therefore, strengthening implementation requires a multidimensional strategy, including maqāṣid al-sharī'ah-based reinterpretation, gender sensitivity training for judges, and public education on partnership relationships in marriage.

Thus, this evaluation confirms that gender justice in Islamic marriage law is a continuous process of transformation. It does not stop at the establishment of progressive regulations, but must be followed by reforms of the legal structure and culture so that the value of substantive justice is truly realized in the practice of Muslim family life.

CONCLUSION

Based on the results of the analysis of the implementation and evaluation of the principle of gender justice in Islamic marriage law, it can be concluded that normatively the marriage law has shown progressive development towards strengthening the protection of the rights of women and children. Regulatory reforms, such as changing the age limit for marriage and the recognition of divorce rights and joint property, reflect a commitment to realize a balance of rights and obligations in the institution of marriage. Conceptually, the principle of gender justice also has a strong foundation in maqāṣid al-syarī'ah which emphasizes the value of justice ('adl), benefit (maṣlaḥah), and protection of the vulnerable.

However, at the level of judicial practice, there is still a gap between legal norms and concrete implementation in the field. Disparity in judges' considerations, the burden of proof in certain cases, and the strong influence of patriarchal culture are factors that affect the suboptimal implementation of gender justice in a substantive manner. The evaluation shows that the success of implementation is determined not only by the substance of the law, but also by the law enforcement structure and the social culture of the community.

Thus, realizing gender justice in Islamic marriage law requires a multidimensional approach that includes normative reinterpretation based on maqāṣid al-syarī'ah, increasing the capacity and gender sensitivity of judicial officials, and transforming public awareness about partnership relationships within the family. These efforts are important so that Islamic marriage law is not only textually just, but also effective and substantively fair in the realities of contemporary Muslim family life.

References

- Anwar, M. (2023). Reform of Islamic family law and gender equality in Muslim countries. *Journal of Islamic Law Studies*, 12(2), 145–162.
- Ahyani, H., Putra, H. M., Muharir, M., Sa'diyah, F., Kasih, D. K., Mutmainah, N., & Prakasa, A. (2023). Principles of gender-friendly justice (masalahah) in the distribution of Islamic inheritance law in Indonesia. *Al-Mawarid: Journal of Sharia and Law*, 5(1), 73–100.
- Banakar, R., & Travers, M. (2020). *Law and social theory* (2nd ed.). Hart Publishing.
- Creswell, J. W., & Creswell, J. D. (2021). *Research design: Qualitative, quantitative, and mixed methods approaches* (6th ed.). SAGE Publications.
- Fathonah, K. D. (2021). Khulu' and talaq: Women's divorce rights in jurisprudence and positive law in Indonesia. *Al Hakam: Indonesian Journal of Islamic Family Law*, 1(2), 115–130.
- Hidayat, A., & Nur, S. (2022). Reinterpretation of gender relations in Islamic family law: A maqāṣid approach. *Al-Ahkam: Journal of Islamic Family Law*, 32(1), 1–18.
- Karimullah, S. S. (2024). Feminist hermeneutics and reform in Islamic family law. *Musawa: Journal of Gender Studies*, 23(2), 201–220.
- Lestari, P. A. (2024). Gender equity in Islamic marriage and divorce: A contemporary review. *International Journal of Islamic Studies*, 15(1), 55–72.
- Mufti, M. (2024). Gender equality in Islamic marriage law through the maqāṣid al-sharī'ah perspective. *Sawwa: Journal of Gender and Family Studies*, 19(1), 87–104.
- Noor, W. (2025). The concept of gender equality in inheritance according to contemporary fiqh discussions. *Ijtihad: Journal of Islamic Law*, 39(1), 45–63.
- Putri, D. A. (2021). The Influence of Gender Social Construction on Child Custody in Religious Courts. *Al-Maqasid: Journal of Islamic Law Studies*, 7(2), 130–142.
- Rahman, F. (2021). Gender discourse in contemporary Islamic family law. *Journal of Muslim Societies*, 8(1), 33–49.
- Ramadhan, R. G. (2025). Patriarchal structures in Islamic law and Indonesian positive law: A comparative critique. *Comparative: Journal of Comparative Law*, 14(1), 1–20.
- Sari, D., & Hamid, A. (2022). Gender bias in religious court decisions on marriage disputes in Indonesia. *Journal of Islamic Law and Justice*, 11(2), 201–219.
- Seff, N., Hidayat, M., Nurliana, N., Elrais, T. E., & Rosyid, M. (2025). Islamic family law and women's rights in Indonesia: Between normativity, reform, and social realities. *ASEAN Journal of Islamic Studies and Civilization*, 2(2), 237–256.
- Ummah, A., Kholidah, & Ridho, M. (2025). Gender justice perspective in Religious Court decisions in Indonesia. *Jurisprudentia: Journal of Legal Sciences*, 12(1), 75–94.
- Azhari, D. (2025). Gender equality in the political reform of Islamic family law: Transnational perspectives. *Usraty: Journal of Islamic Family Law*, 4(1), 15–33.
- Awang, M. (2024). Reform trends in Muslim family law: Comparative lessons for Indonesia. *El-Hadhanah: Indonesian Journal of Family Law and Islamic Law*, 4(2), 101–118.
- Muin. (2022). The position of women in Islamic family law: Rights and obligations in marriage. *Journal of Nafaqah*, 3(1), 25–44.
- Anisa, L. N. (2025). Social gender construction and its influence on child custody decisions in Religious Courts. *Mukaddimah: Journal of Islamic Studies*, 9(1), 88–105.

- United Nations Women. (2022). *Progress on the sustainable development goals: The gender snapshot 2022*. UN Women.
- United Nations Women. (2023). *Women's rights in review 25 years after Beijing*. UN Women.
- Komnas Perempuan. (2023). *Annual record of violence against women 2023*. Komnas Perempuan.
- Mahmood, S. (2021). *Gender, law, and Islamic reform in contemporary Muslim societies*. Oxford University Press.
- Mir-Hosseini, Z., Al-Sharmani, M., & Rumminger, J. (2022). *Islam and gender justice: Reforming Muslim family laws*. Oneworld Publications.