

## Reconstructing the Concept of Gender Justice in Indonesia's Family Law System Based on Constitutional Values

Mahrus Alwi Hasan Siregar<sup>1</sup>, Navi' Vadila<sup>2\*</sup>, Abdeldzhalil<sup>3</sup>, M. Hamim<sup>4</sup>

<sup>1</sup> Universitas Diponegoro, Semarang, Indonesia

<sup>2</sup> Yarmouk University, Irbid, Jordan

<sup>3</sup> Transilvania University of Braşov, Braşov, Romania

<sup>4</sup> Universitas Pamulang, Tangerang Selatan, Indonesia

\*Corresponding author email: [2022181107@ses.yu.edu.jo](mailto:2022181107@ses.yu.edu.jo)

### Article Info

Received: 02/10/2025

Revised: 03/11/2025

Accepted: 02/01/2026

Published: 01/02/2026

### Abstract

Family law can no longer be upheld solely as a reflection of social traditions and historical morality. Still, it must be critically re-examined as a normative arena where the constitution challenges, negotiates, and reconstructs gender power relations to align with the principles of equality, human dignity, and substantive justice. The purpose of this study is to develop a conceptual framework for gender justice in family law grounded in the values of the Indonesian constitution. This study uses a normative legal research approach with a conceptual-constitutional orientation enriched with a gender perspective as a critical analytical framework. The results confirm that the problem of gender justice in the Indonesian family law system does not lie solely in the existence of norms that are considered biased, but in the structural tension between the legacy of patriarchal constructs institutionalised in family law and the demands of the constitution, which progressively affirms equality and non-discrimination as fundamental principles of the rule of law. The reconstruction of the concept of gender justice cannot be understood merely as a limited normative revision agenda. Still, it must be positioned as a legal transformation project that critically re-examines power relations within the family through the lens of the constitution. These findings propose the development of a contextual-constitutional framework of gender justice. This paradigm is not trapped in the dichotomy between tradition and modernity, but rather seeks to reconcile religious values, cultural dynamics, and constitutional principles of equality within a more reflective and inclusive framework of interpretation.

**Keywords:** *Constitutional values, Family law, Gender justice, Reconstruction, Rule of law*



© 2026 by the author(s)

Submitted for open access publication under the terms and conditions of the Creative Commons Attribution-ShareAlike 4.0 International License (CC-BY-SA)

(<https://creativecommons.org/licenses/by-sa/4.0/>)

## **INTRODUCTION**

Family law, as an important branch of the national legal system, holds a strategic position because it directly regulates personal relationships, rights, and obligations among family members, which ultimately affect society's social structure. In Indonesia, family law is not only influenced by state law as enshrined in legislation, but also by religious values, customs, and socio-cultural constructs that have developed in society (Widjajanto et al., 2025). This complexity makes family law an arena where various values and interests converge, including those related in gender relations between men and women. In practice, several norms in Indonesian family law still give rise to debate regarding the principle of gender justice, particularly when these norms are considered not to be fully in line with the principle of equality guaranteed by the constitution. This situation creates an urgent need for critical and reconstructive studies of the concept of gender justice in family law, so that the national legal system can provide fair and equal protection for all citizens.

The Constitution of the Republic of Indonesia, particularly the 1945 Constitution, affirms the principle of equality before the law and guarantees the protection of human rights without discrimination. Article 27, paragraph (1) affirms that all citizens have equal standing before the law and government. In contrast, article 28D paragraph (1) guarantees the right of every person to recognition, security, protection and certainty before the law. In addition, article 28I paragraph (2) explicitly states that every person has the right to be free from discriminatory treatment on any basis. These constitutional norms essentially provide a strong normative foundation for the development of a legal system that upholds the principle of gender equality.

In the context of family law, the implementation of these constitutional values still faces various challenges. Several provisions in laws and regulations governing the family, such as law no. 1 of 1974 on marriage and its amendments, the compilation of Islamic law, and various judicial practices, are often still influenced by patriarchal constructs that place men as the dominant party in the family structure (Karimullah et al., 2022). This situation creates tension between the applicable legal norms and the principle of gender justice guaranteed by the constitution.

In contemporary society, the issue of gender justice in family law is gaining widespread attention both nationally and internationally. This is in line with increasing public awareness of the importance of equal rights between men and women in various aspects of life, including family relationships. As a country that has ratified various international instruments related to the protection of women's rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Indonesia has an obligation to ensure that its legal system does not contain gender-based discrimination.

This ratification should encourage harmonisation between national legal norms and universally recognised principles of equality. However, in practice, this harmonisation has not been fully achieved, particularly in the field of family law, which is often considered a private domain that is heavily influenced by cultural and religious values. Therefore, efforts to reconstruct the concept of gender justice in family law are

important to ensure that the national legal system can accommodate constitutional values while respecting the socio-cultural diversity of Indonesian society (Hsb et al., 2025).

Several previous studies have discussed gender issues in Indonesian family law from various perspectives. Studies conducted by several legal researchers show that the normative structure of the marriage law still contains several provisions that are not considered to fully reflect the principle of gender equality (Bermúdez Figueroa et al., 2023; Rasyid et al., 2024). For example, provisions that place the husband as the head of the family and the wife as a housewife are often seen as representing a social construct that reinforces male dominance in the family structure. Several studies also show that regulations on polygamy, the division of roles within the family, and divorce mechanisms often have a disproportionate impact on women (Karimullah, 2024; Sugitanata et al., 2024).

Other studies focusing on religious court practices show that judges' interpretations of family law norms can influence the extent to which the principle of gender justice is applied in court decisions (Fitriyani et al., 2023). In some cases, judges tend to adopt a progressive approach that prioritises the protection of women (Kaur, 2025). However, in other cases, a more conservative textual approach to the applicable legal norms remains evident. In addition, broader academic studies also highlight the relationship between family law and patriarchal socio-cultural constructs. Studies in the field of legal sociology show that legal norms cannot be separated from the social values that exist in society.

In the Indonesian context, social structures that are still influenced by patriarchal values often affect the way the law is understood and applied (Ramadhan et al., 2025). This makes efforts to reform family law complicated, as changes to legal norms often face resistance from groups who view family law as part of tradition and cultural identity. Therefore, some researchers emphasise the importance of a multidisciplinary approach to studying family law, taking into account legal, social, cultural and political aspects simultaneously (Moradipoor, 2025; Muhajir et al., 2023).

More recent studies have begun to examine the relationship between family law and constitutional values, particularly within the framework of a democratic state governed by the rule of law. From this perspective, family law is no longer seen solely as a reflection of traditional values, but also as part of the national legal system that must comply with constitutional principles. Several studies show that the Constitutional Court, through its various rulings, has played a role in promoting family law reform in a more gender-responsive direction (Asni & Iqbal, 2025; Mohiuddin, 2024). For example, several Constitutional Court rulings on the status of children born out of wedlock and the minimum age for marriage reflect an effort to align legal norms with the principle of human rights protection. However, these studies generally still focus on the analysis of specific rulings or normative aspects of family law, so they do not yet offer a comprehensive conceptual framework for reconstructing the concept of gender justice in the Indonesian family law system as a whole, grounded in constitutional values.

Based on a review of these previous studies, several knowledge gaps remain unaddressed. First, most studies still focus on criticising normative provisions in family law that are considered discriminatory against women. Still, few offer a systematic conceptual framework for formulating the concept of gender justice in the context of Indonesian family law. Second, many studies analyse gender issues in family law from a human rights or feminist perspective, but have not yet deeply linked them to constitutional values as the main normative source in the national legal system. Third, studies that integrate normative analysis of legislation, constitutional interpretation, and the dynamics of judicial practice are still relatively limited. This condition indicates the need to develop a research approach capable of comprehensively integrating these perspectives.

Given this research gap, studies reconstructing the concept of gender justice in the Indonesian family law system grounded in constitutional values have the potential to make new contributions at both theoretical and practical levels. The novelty of this study lies in its attempt to reformulate the concept of gender justice in family law by using constitutional values as the main basis for analysis. This approach not only highlights legal provisions considered unfair from a gender perspective but also seeks to build a conceptual framework that can integrate the principles of equality, justice, and the protection of human rights as guaranteed in the constitution into the family law system in a more systematic manner.

The main objective of this study is to develop a conceptual framework for gender justice in family law grounded in the values of the Indonesian constitution. More specifically, this study aims to identify conceptual and normative issues in family law regulations related to gender issues, analyse their compatibility with constitutional principles, and formulate a model for reconstructing the concept of gender justice that can serve as a basis for developing family law that is more responsive to the principle of equality. The significance of this study lies in its ability to build a strong argumentative basis regarding the importance of integrating constitutional values in the development of gender-equitable family law.

## **METHODS**

This study uses a normative legal research approach with a conceptual-constitutional orientation enriched with a gender perspective as a critical analytical framework. This approach was chosen because the main objective of the study is to examine, interpret, and reconstruct family law norms by testing their compatibility with constitutional values that guarantee equality and non-discrimination. The study design is prescriptive-analytical, aimed not only at explaining existing normative conditions but also at formulating new conceptual constructs regarding gender justice in family law. The study focuses on three main dimensions, namely the normative structure of family law, the interpretation of constitutional values regarding equality and justice, and the conceptual construction of gender justice in family law practice.

The main instruments of the study are a normative analysis matrix and a conceptual categorisation framework developed through a synthesis of justice theory,

constitutionalism theory, and legal and gender perspectives, which are then used to identify, classify, and evaluate family law provisions that potentially contain gender bias (Fathony et al., 2024). The validity of the data is maintained through the triangulation of legal sources, consistency in doctrinal interpretation, and testing of arguments through a systematic approach to legal hermeneutics and constitutional interpretation. At the same time, the reliability of the analysis is ensured by the consistent application of the conceptual framework in assessing each analysed legal norm. The data collection procedure was carried out in stages through intensive literature reviews covering legislation, court decisions, legal doctrines, and relevant current academic literature, followed by the classification and mapping of legal issues related to gender relations in family law.

## **RESULTS AND DISCUSSION**

### **Tension Between the Principle of Constitutional Equality and Patriarchal Structures**

The tension between the principle of constitutional equality and patriarchal structures in Indonesian family law is a normative phenomenon that reflects the complexity of the relationship between the constitution, positive law, and the socio-cultural reality of society. The Indonesian Constitution explicitly places the principle of equality before the law and the protection of human rights as the main foundations of the rule of law. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that all citizens have equal standing before the law and government, while Article 28D paragraph (1) guarantees everyone's right to recognition, security, protection and certainty before the law. Furthermore, article 28I paragraph (2) states that every person has the right to be free from discriminatory treatment on any basis.

These constitutional norms form a principled framework that obliges the state to ensure that its legal system does not create or maintain discriminatory structures, including in family law. However, when these principles are confronted with the normative structure of family law that has developed throughout Indonesia's social history, tensions arise that are not easily resolved. Indonesian family law did not arise solely from the rational construction of modern law, but is the result of a compromise between various value systems, including religious law, customary law, and legal policy considerations at the time of its formation. Consequently, several norms in family law reflect gender relations that are not entirely in line with the principle of constitutional equality.

The marriage act no. 1 of 1974, which remains the main foundation of family law in Indonesia, is historically a product of a long compromise between various social and political groups (Sugitanata & Karimullah, 2023). In this context, many provisions reflect normative assumptions about the division of roles between men and women in the family. One provision that is often debated is the regulation that places the husband as the head of the family and the wife as the housewife.

This norm reflects a social construct that positions men as the primary authority in the family, while placing women in a more domestic role. From a legal perspective influenced by patriarchal traditions, this division of roles is often seen as a form of

complementarity that is considered to maintain harmony within the family (Karimullah, Sugitanata, et al., 2023). However, from a constitutional perspective that emphasises equality, this norm can be seen as reflecting an unequal power relationship between men and women. When the state normatively establishes a hierarchical division of roles, the question arises as to whether this norm is still in line with the principle of non-discrimination guaranteed by the constitution.

Analysis of this tension requires a deeper understanding of the dual nature of family law as both a social institution and a legal institution. On the one hand, family law regulates personal relationships strongly influenced by cultural and religious values within society. In the pluralistic context of Indonesia, family law is often seen as a space that must be sensitive to this diversity of values. Therefore, changes to family law norms are often considered an intervention in an established social structure.

On the other hand, as part of the national legal system, family law cannot be separated from the constitutional framework that governs the entire legal system. The constitution, as the highest legal norm, ensures that all laws and regulations do not conflict with the basic principles of the rule of law, including equality and the protection of human rights (Ibrahim et al., 2024). When family law maintains a structure that places women in a subordinate position, a tension arises between the social function of family law and the state's constitutional obligation to guarantee equality.

In legal and gender literature, this phenomenon is often explained through the concept of patriarchy as a social system that places men as the dominant group in the power structure. Patriarchy is not only present in the form of social practices, but can also be institutionalised in legal norms that govern the relationship between men and women. In the context of family law, patriarchy can be seen in various forms of regulation that give men greater authority in family decision-making, in the division of economic and domestic roles, and in mechanisms for resolving family conflicts. When these norms are legitimised by positive law, patriarchal structures are no longer merely a social phenomenon, but also gain institutional legitimacy through the legal system. This condition poses a serious challenge to efforts to achieve gender equality, because the law, which should function as an instrument of justice, has the potential to perpetuate structural inequality.

The debate regarding the position of family law within the framework of a modern constitution is usually divided into two main approaches. The first approach emphasises the importance of maintaining the special character of family law as a reflection of society's cultural and religious values. From this perspective, family law is viewed as a normative space that cannot be fully regulated by the logic of formal equality that has developed in modern human rights theory. Proponents of this approach argue that the concept of justice in the family is not always synonymous with absolute equality between men and women, but can be realised through a division of roles that is considered complementary. This concept of complementarity is often used as the basis for the argument that the patriarchal structure in family law does not always mean discrimination. Still, it is a form of division of responsibilities that is in accordance with the cultural and religious values embraced by society.

The second approach criticises this view by asserting that constitutional legitimacy places the principle of equality as a fundamental value that cannot be compromised. From this perspective, any legal norm that places women in a subordinate position must be reviewed because it contradicts the principle of non-discrimination guaranteed by the constitution. Proponents of this approach argue that the concept of complementarity often serves as a mechanism for legitimising structural inequalities that are actually detrimental to women. In practice, the division of roles considered complementary often results in an unequal distribution of power, with men having greater access to economic resources, decision-making, and public spaces, while women are more restricted to domestic roles.

The tension between these two approaches shows that the issue of gender justice in family law cannot be resolved solely through formal changes to legal norms. A broader understanding of the relationship between law, culture, and power must accompany legal changes. Within the framework of critical legal theory, law is not viewed as a neutral system, but rather as a product of existing power relations within society. Legal norms often reflect the interests of dominant groups that have greater influence in the law-making process. In the context of Indonesian family law, the patriarchal structure reflected in several legal provisions can be understood as the result of the dominance of certain social values that place men at the centre of authority within the family.

The development of jurisprudence in Indonesia shows that efforts to resolve the tension between family law and the principle of constitutional equality are beginning to receive attention in judicial practice. The Constitutional Court, as the guardian of the constitution, has an important role in interpreting legal norms that potentially conflict with the principle of equality. In several of its decisions, the Constitutional Court has shown a tendency to interpret family law more progressively by considering the protection of women's and children's rights. This approach reflects an effort to place the constitution as an interpretive framework for re-reading legal norms born of different social contexts. It is important to understand that the reconstruction of family law does not mean removing all cultural or religious values that underpin it. Instead, reconstruction should be directed towards finding common ground between traditional values and constitutional principles of equality and justice. This approach requires a more dynamic interpretation of legal norms, in which constitutional values are used as a framework for evaluating social practices that develop within society.

From the perspective of modern constitutional theory, the constitution functions not only as a legal document that regulates the structure of the state, but also as an instrument of social transformation. The principle of equality enshrined in the constitution has a normative function, encouraging change in unjust social structures. Therefore, the tension between patriarchal family law and constitutional principles of equality can be understood as part of the process of transformation towards a more inclusive legal system. This process is not always linear, as changes in legal norms often face resistance from groups who view such changes as a threat to traditional values. Nevertheless, in the long term, the integration of constitutional principles and family

law reform is an important step in ensuring that the national legal system can provide fair protection for all citizens, regardless of gender.

### **Controversy over the Interpretation of Gender Justice between Religious, Cultural, and Constitutional Perspectives**

Family law in Indonesia cannot be understood solely as a product of state legislation, but rather as the result of historical interactions among various value systems within a pluralistic society. The state, through legislation, seeks to establish a nationally applicable legal framework, while at the same time negotiating with religious authorities and cultural traditions that have strong social legitimacy. This situation means that the concept of gender justice in family law is not always interpreted uniformly but is subject to various interpretations influenced by theological, cultural, and constitutional perspectives.

When the Indonesian constitution affirms the principle of equality before the law and the protection of human rights without discrimination, a fundamental question arises about how this principle can be integrated into the family law system, which has long been influenced by religious norms and cultural practices. This interpretative tension has created intense debate regarding the legitimacy of changes to family law, especially when reform efforts are seen as potentially altering the moral order long recognised by society.

In Indonesia, with its religious and cultural diversity, family law has developed as a form of normative compromise between the state and religious authorities. The history of the formation of the marriage law shows that the legislation was not only based on modern legal considerations, but was also the result of political and social negotiations involving various community groups with different ideological backgrounds (Kurniawan et al., 2025).

In this process, the state sought to accommodate religious values as a source of moral legitimacy for family regulation, while also attempting to build a national legal system that provided certainty and uniformity. As a consequence, many provisions in Indonesian family law reflect a synthesis between state legal norms and specific religious doctrines. In practice, this synthesis often results in ambiguous norms when confronted with the principle of gender equality that has developed within the framework of the modern constitution. The concept of gender justice is then debated not only within the framework of positive law but also within the framework of theological and moral interpretations that have a major influence on society's social life.

For some groups in society, gender justice must be understood through the interpretation of religious texts, which are considered to have the highest normative authority in regulating family life. In this perspective, the relationship between men and women in the family is not solely determined by the principle of formal equality, but by a structure of roles that is believed to have a theological basis. This approach usually emphasises the concept of balance or complementarity between men and women, in which each has distinct functions and responsibilities but is considered to complement the other. Within this framework, justice is not always understood as

equality of roles or status, but rather as conformity to a moral structure that is believed to have been established by religious teachings (Suyahman et al., 2025). Therefore, changes to family law norms that are deemed to have a theological basis are often seen as reflecting religious values. This argument is usually reinforced by the view that family law is part of the private sphere, closely related to society's religious identity, so the state should not intervene excessively, using the logic of equality that originates from Western or liberal legal traditions.

Another group argues that gender justice must be grounded in universal principles of human rights and constitutional values that place the individual as the primary subject of the law (Malik et al., 2025). In this perspective, the legitimacy of state law derives not only from social or religious traditions but also from a constitutional commitment to protect the rights of every citizen without discrimination. The principle of gender equality is seen as an integral part of the protection of human rights and cannot be negotiated on cultural or religious grounds. Proponents of this perspective argue that family law, as part of the national legal system, must be subject to constitutional principles that guarantee equality and justice for all citizens (Karimullah, 2021). Therefore, legal norms that structurally place women in a subordinate position must be reconstructed to be in line with constitutional values. This approach is often based on modern constitutional theory, which views the constitution as an instrument of social transformation aimed at eliminating various forms of structural injustice that have developed in society.

The difference in starting points between these two perspectives creates complex interpretative dynamics in the discourse on family law. On the one hand, there are efforts to maintain a normative structure that is considered to reflect society's religious and cultural values. On the other hand, there are demands to align family law with the principle of equality guaranteed by the Constitution. This tension is not only theoretical but also has practical implications in various concrete issues related to gender relations within the family. One of the issues that is most often at the centre of controversy is polygamy.

Within the framework of certain religious interpretations, polygamy is seen as a practice that has theological legitimacy, albeit accompanied by various moral and legal conditions. However, from a gender equality perspective, polygamy is often seen as an institution that reflects the power imbalance between men and women because it gives unequal rights to one party in the marriage. The debate over polygamy shows how family law norms have become an arena where religious interpretations, social practices, and constitutional demands for equality meet.

Another issue that often sparks controversy is the right to divorce in the divorce system. In some religious legal traditions, the right to divorce has historically been given to men as part of the authority structure in the family. Although the modern legal system in Indonesia has introduced judicial mechanisms to regulate divorce, the debate over equality in access to divorce remains an important issue in the discourse on gender justice. For conservative groups, this structure is seen as part of a moral system with a theological basis and cannot be radically changed without disrupting social balance.

Conversely, reformist groups argue that the legal system must ensure that men and women have equal access to the legal mechanisms governing divorce, so that neither party is structurally more vulnerable.

Interpretative controversy also arises in the issue of property division in marriage. In some family legal systems influenced by patriarchal traditions, men's economic contributions are often seen as the main factor in determining ownership of family property. Meanwhile, women's contributions, such as in domestic work, often do not receive equal recognition within the legal framework. The gender equality perspective challenges this assumption by emphasising that domestic work has significant economic and social value for family sustainability (Insani, Ibrahim, et al., 2024). Therefore, the legal system must recognise these contributions in the property division mechanism so that there is no structural injustice against women. The debate on this issue shows that the concept of gender justice is not only related to formal legal norms but also to how society values work and contributions in family life (Karimullah, Nugraha, et al., 2023).

The issue of child custody rights is also an arena of controversy in the interpretation of gender justice. In some family law traditions, child care is often associated with the mother as the primary caregiver, while the father is seen as the primary breadwinner (Parhi et al., 2025). This structure often results in normative assumptions that influence legal decisions regarding child custody after divorce. The gender equality perspective seeks to challenge these assumptions by emphasising that the best interests of the child should be the primary consideration in determining custody rights, without being based on gender stereotypes regarding parental roles (Wiranti et al., 2025). This approach requires the legal system to assess each case more contextually, rather than relying solely on traditional assumptions about the roles of men and women in the family.

Conservative groups often argue that efforts to reinterpret family law in the name of gender equality have the potential to undermine the moral and religious order that has long been recognised by society. They argue that overly radical legal changes could create social tensions and disrupt the stability of the family as a fundamental institution of society. From this perspective, family law is seen as a space that must be protected from ideological interventions deemed incompatible with local cultural values. This argument usually rests on the view that Indonesian society has a different value system from Western society, so that the concept of gender equality developed in global discourse cannot be applied directly without considering the specific socio-cultural context (Insani, Sumiyati, et al., 2024; Karimullah et al., 2024).

On the other hand, reformists argue that religious interpretation itself is dynamic and always evolves in line with changes in the social context. In the tradition of religious intellectualism, various methods of interpretation allow for the reinterpretation of normative texts so that they remain relevant to contemporary society. This perspective emphasises that, in religion, justice as a primary moral value does not conflict with the principle of gender equality guaranteed by the constitution (Ibrahim et al., 2025; Sugitanata et al., 2021).

Within the framework of pluralist legal theory, the controversy over the interpretation of gender justice in family law can be understood as a consequence of the coexistence of various normative systems within society. The state, religion, and culture each have different sources of legitimacy in regulating social life. When these three normative systems interact within a single legal space, there is potential for interpretative conflict regarding the values that should form the basis of legal regulation. In the context of Indonesian family law, legal pluralism creates a situation in which constitutional norms that emphasise equality must negotiate with religious and cultural norms that have different gender relations structures (Karimullah, Ruchiat Nugraha, et al., 2023).

The role of the state in this context is very important because the state has a constitutional responsibility to ensure that the national legal system does not perpetuate discrimination against women (Al Hamid et al., 2025). At the same time, the state must also consider social sensitivities towards religious and cultural values that exist within society. The main challenge for policymakers is to formulate family law regulations that maintain a balance between respect for tradition and commitment to the principle of constitutional equality. An approach that places too much emphasis on a single aspect can lead to social resistance or even the delegitimisation of the legal system itself.

From the perspective of democratic constitutionalism, the constitution functions as a normative framework that allows society to critically reflect on the values that have developed in social traditions. The principle of gender equality enshrined in the constitution should not be understood as a threat to religious or cultural values, but rather as an opportunity to enrich their interpretation in the context of modern society. Through an inclusive dialogue process, family law can be gradually reconstructed to reflect substantive justice that not only protects women's rights but also maintains social balance within the family.

### **Conceptual Reconstruction of Gender Justice in Family Law as a Legal Transformation Project**

The legal transformation approach in reconstructing gender justice requires a paradigm shift in understanding the function of family law. Until now, family law has often been perceived as a relatively stable and conservative normative space because it is related to moral values and social traditions that are considered fundamental to society. However, within the framework of modern constitutionalism, family law cannot be separated from the dynamics of social change that demand fairer protection for all family members.

The constitution, as the highest legal norm, provides a normative basis for the state to ensure that the legal system does not perpetuate gender-based discrimination. Therefore, the reconstruction of the concept of gender justice in family law must be directed towards the formation of a new paradigm capable of integrating the values of equality, the protection of human rights, and sensitivity to the socio-cultural context of Indonesian society. This paradigm is not only oriented towards formal changes in legal norms, but also towards a transformation in the way gender relations within the family

are viewed, as relations that should be based on the principles of justice and respect for human dignity (Hibbatulloh et al., 2025).

In practice, the formal equality guaranteed by the constitution is often unable to overcome the real inequalities experienced by women in family life. Formal equality is usually understood as equal treatment before the law, regardless of the different social conditions of men and women. This approach is often insufficient to address the structural injustices that have long been embedded in the social and legal systems.

In contemporary justice theory, these conditions are often explained through the concept of substantive equality, which emphasises the importance of considering the social context and distribution of power in society. Substantive equality not only demands formal equality, but also recognises that certain groups may require protection or corrective mechanisms to address the structural inequalities they experience. In the context of family law, this approach requires the legal system not only to remove explicitly discriminatory norms but also to identify social and legal structures that implicitly perpetuate gender inequality.

The theoretical framework of substantive equality provides an important conceptual basis for the reconstruction of gender justice in family law. This perspective enables a more in-depth analysis of how legal norms shape the distribution of power and resources within the family. For example, regulations regarding economic and domestic roles in the family often reflect the social assumption that men are the primary breadwinners while women are responsible for domestic work. Although these assumptions are not always explicitly stated in legal norms, they often influence how the law is applied in practice, including in cases involving divorce, property division, and child custody. By using a substantive equality approach, the legal system can develop mechanisms that are more sensitive to these social realities, so that legal decisions not only consider formal norms but also their impact on justice for the more vulnerable parties.

The conceptual reconstruction of gender justice also requires an understanding of the relationship between law and broader social structures. From a feminist legal theory perspective, family law is often seen as one of the institutions that has historically played a role in reproducing patriarchal power relations. Patriarchy in this context is understood not only as male domination in social life, but also as an institutional system that influences the formation of legal norms, judicial practices, and public policy. Therefore, efforts to reconstruct family law cannot be limited to changing terminology or removing a few discriminatory norms, but must include a critical analysis of the social structures that influence the formation and application of law. This approach requires integrating normative legal analysis with broader social studies of the dynamics of gender relations in society.

The debate over strategies for legal change is an important aspect of the family law transformation project. One of the main questions that arises is whether change should be achieved through legislative reform or through progressive reinterpretation by judicial institutions. The first approach emphasises the importance of change through the legislative process because it provides clear legal certainty and democratic

legitimacy, resulting from decisions made by representative institutions. Legislative reform allows the state to explicitly formulate new legal norms that are more responsive to the principle of gender equality (Karimullah & Sugitanata, 2024). In addition, legislative change can provide a more consistent normative framework for law enforcement officials in applying the principle of gender justice in judicial practice. However, the legislative process often faces political and social obstacles, especially when the proposed changes are considered contrary to the cultural or religious values of some communities.

On the other hand, approaches that emphasise the role of judicial institutions argue that progressive interpretation by judges can be an alternative strategy to promote legal change when the legislative process stagnates. Within the framework of modern constitutionalism, courts play an important role as guardians of the constitution, tasked with ensuring that all legal norms are in line with the fundamental principles of the state. Through progressive constitutional interpretation, judges can read existing legal norms more inclusively to provide fairer protection for women. This approach is often seen in constitutional court practices in various countries, where courts play an important role in promoting legal reforms related to gender equality. In the Indonesian context, the Constitutional Court has the potential to play a similar role by interpreting family law norms considered contrary to the principle of equality (Al Kadumi et al., 2024).

However, both the legislative and judicial approaches have their limitations. Legislative reform requires political consensus, which is often difficult to achieve in a society with diverse views on gender issues. Meanwhile, the judicial approach is often criticised for giving judges too much power in determining the direction of legal change. Therefore, the reconstruction of gender justice in family law should be understood as a process involving interaction between various state institutions and civil society participation. This process requires ongoing dialogue between policymakers, judicial institutions, academics, civil society organisations, and religious leaders to find common ground between traditional values and constitutional principles of equality.

The theoretical implications of this show the need to develop a concept of gender justice that is constitutionally contextual. This concept combines the principle of equality guaranteed by the constitution with sensitivity to the socio-cultural conditions of Indonesian society. The constitutional contextual approach does not view gender equality as a concept that must be applied mechanically without considering social realities. Instead, this approach emphasises the importance of dialogue between constitutional and social values in society (Lombardo, 2005). Through this dialogue, the principle of equality can be interpreted in a more contextual way to produce legal solutions that are not only normatively fair but also socially acceptable. In this framework, the constitution serves as a source of values that provides direction for legal transformation. At the same time, the socio-cultural context becomes an important factor in determining the most effective implementation strategy.

The development of a constitutionally contextual concept of gender justice also has important implications for the formulation of family law policies. Policy reformulation must be directed at strengthening the principle of substantive equality in various aspects of family regulation, including the division of economic roles, protection of women in marriage, and mechanisms for resolving family disputes. Family law policy must also consider the social impact of each legal regulation to avoid creating new injustices in practice (George, 2025).

Family law transformation also requires strengthening the gender perspective in judicial practice. Judges, as important actors in the legal system, have a strategic role in translating legal norms into concrete decisions that affect people's lives. Therefore, increasing the capacity of judicial officials in understanding gender issues is an important step to ensure that court decisions do not reproduce stereotypes or patriarchal assumptions that are detrimental to women. Gender-sensitive legal education and ongoing training for law enforcement officials can help raise awareness of the importance of integrating the principle of equality into judicial practice (Karimullah, 2023; Suwarni et al., 2024).

In addition, the transformation of family law also requires the involvement of civil society in promoting broader social change. Civil society organisations, academics, and women's advocacy groups have an important role to play in developing public discourse on gender justice and promoting more inclusive legal policy reforms. Through research, advocacy, and public education, these groups can help create social awareness of the importance of gender equality in the family as part of efforts to create a more just society. Civil society involvement is also important to ensure that the legal transformation process takes place not only at the state institutional level, but also at the broader social practice level.

## **CONCLUSION**

The reconstruction of the concept of gender justice in the Indonesian family law system is a fundamental requirement within the framework of a constitutional state that places the principles of equality, non-discrimination, and the protection of human rights as its main normative foundations. An analysis of the tension between the principle of constitutional equality and the patriarchal structure in family law shows that several legal norms still reflect social constructs that place women in a position that is not fully equal. In contrast, the dynamics of interpretation between religious, cultural, and constitutional perspectives show that the concept of gender justice is always in a complex normative negotiation space. The reconstruction of family law cannot be achieved through a formal equality approach alone, but requires the development of a contextual-constitutional gender justice paradigm, namely an approach that integrates the principles of substantive equality, protection of human rights, and sensitivity to the socio-cultural realities of Indonesian society.

The novelty of this study lies in formulating this conceptual framework as a model for transforming family law that places the constitution not only as a testing norm but also as a source of values that guides the reinterpretation of gender relations in the

family in a more just and inclusive manner. Theoretically, these findings enrich family law studies by broadening the analytical perspective from mere normative criticism to a constitutional transformation approach that integrates legal, social, and gender dimensions more comprehensively. In practical terms, this study implies the need to reformulate family law policies that are more responsive to gender equality, strengthen the gender perspective in court decisions, and increase the capacity of law enforcement officials to internalise constitutional values in the resolution of family disputes. However, this study has limitations because it focuses on normative-conceptual analysis and does not fully explore the empirical dynamics of family law practices in various local social contexts. Therefore, further studies are recommended to develop a more in-depth socio-legal approach to examine the implementation of the concept of contextual-constitutional gender justice in judicial practice and community life.

### **ACKNOWLEDGEMENTS**

The authors wish to extend their profound gratitude to all individuals who contributed to the successful publication of this article, with particular acknowledgement to the editors and anonymous reviewers for their insightful feedback and unwavering support throughout the peer-review process.

### **REFERENCES**

- Al Hamid, R., Jamil, M. S., Nimah, R., & Siregar, M. A. H. (2025). Political Conflict between Islamic Law and National Law in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, 1(1), 48–62. <https://doi.org/10.65586/insani.v1i1.4>
- Al Kadumi, F., Seff, N., & Hakim, A. (2024). The Reconstruction of Islamic Family Law in Indonesia: A Normative-Comparative Analysis of Gender Justice and Legal Modernity. *ASEAN Journal of Islamic Studies and Civilization (AJISC)*, 1(1), 1–19. <https://doi.org/10.62976/ajisc.v1i1.1404>
- Asni, A., & Iqbal, M. (2025). Women Judging Women: Gender Sensitivity in the Decisions of Divorce Cases of Indonesian Religious Courts. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 20(2), 588–615. <https://doi.org/10.19105/al-lhkam.v20i2.18999>
- Bermúdez Figueroa, E., Dabetić, V., Yuste, R. P., & Saeidzadeh, Z. (2023). Gender and structural inequalities from a socio-legal perspective. In *Gender-competent legal education* (pp. 95–142). Springer. [https://doi.org/10.1007/978-3-031-14360-1\\_4](https://doi.org/10.1007/978-3-031-14360-1_4)
- Fathony, M. R., Khiyaroh, L., Karimullah, S. S., & Kustiawan, M. T. (2024). Resistance to Gender Equality: Criticism of Physical Violence from the PKDRT Law Perspective. *Indonesian Journal of Islamic Law*, 7(1), 105–124. <https://doi.org/10.35719/1xjdkk59>
- Fitriyani, F., Jahar, A. S., Subhan, Z., & Rosdiana, R. (2023). The judges' legal consideration on divorce of nushūz cases at the Kupang High Religious Court: Gender perspective. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 7(3), 1971–1989. <https://doi.org/10.22373/sjhk.v7i3.14425>
- George, R. (2025). Family Law as Social Policy: Taking Family Problems Upstream. *Current Legal Problems*, 78(1), 1–28. <https://doi.org/10.1093/clp/cuaf010>

- Hibbatulloh, I., Najhan, A. S., Dzulfikar, M. L., & Mabror, R. (2025). The Secularisation of Islamic Criminal Law and Its Implications for the Protection of Human Rights in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, 1(1), 17–31. <https://doi.org/10.65586/insani.v1i1.7>
- Hsb, P. H., Siregar, F. A., & Karimullah, S. S. (2025). Inheritance in the Mandailing Community: Value Changes from a Legal Culture Perspective. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 25(1), 83–108. <https://doi.org/10.19109/nurani.v25i1.24870>
- Ibrahim, Z. S., Karimullah, S. S., Assaad, A. I., Septiani, R., & Okur, H. (2025). Integration of Maqasid al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity. *Jurnal Hukum Islam*, 23(1), 105–144.
- Ibrahim, Z. S., Karimullah, S. S., Gönan, Y., & Okur, H. (2024). Islamic Law and Human Rights: Convergence or Conflict? *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, 24(2), 431–448. <https://doi.org/10.19109/nurani.v24i2.19595>
- Insani, N., Ibrahim, Z. S., Karimullah, S. S., Gönan, Y., & Sulastri, S. (2024). Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(1), 88–117. <https://doi.org/10.18860/j-fsh.v16i1.26159>
- Insani, N., Sumiyati, B., Karimullah, S. S., Gönan, Y., & Sulastri, S. (2024). Islamic Law and Local Wisdom: Exploring Legal Scientific Potential in Integrating Local Cultural Values. *Kanun Jurnal Ilmu Hukum*, 26(1), 101–124. <https://doi.org/10.24815/kanun.v26i1.32930>
- Karimullah, S. S. (2021). Urgensi Pendidikan Pra Nikah Dalam Membangun Keluarga Sejahtera Perspektif Khoiruddin Nasution. *Jurnal Kariman*, 9(2), 229–246.
- Karimullah, S. S. (2023). The Significance of Comprehensive Sexual Education in Preventing Adolescent Sexual Misconduct. *Equalita: Jurnal Studi Gender Dan Anak*, 5(2), 193–210. <https://doi.org/10.24235/equalita.v5i2.21289>
- Karimullah, S. S. (2024). A Feminist Critique of the Practice of Polygamy in the Context of Islamic Law and Human Rights. *Indonesian Journal of Law and Islamic Law (IJLIL)*, 6(1), 38–53.
- Karimullah, S. S., Mukhid, Ibrahim, Z. S., & Muhajir. (2024). Rethinking Gender In Islamic Law. *Musāwa Jurnal Studi Gender Dan Islam*, 23(1), 99–113. <https://doi.org/10.14421/musawa.2024.223.99-113>
- Karimullah, S. S., Nugraha, A. R., Nisa, I. S., & Andini, Y. (2023). The relevance of feminism in promoting gender reform in the context of progressive Islam. *Jurnal Anifa: Studi Gender Dan Anak*, 4(2), 1–15. <https://doi.org/10.32505/anifa.v4i2.7187>
- Karimullah, S. S., Ruchiat Nugraha, A., Andini, Y., & Shofiyatun Nisa', I. (2023). The Changing Role of Gender in Contemporary Muslim Families. *Martabat: Jurnal Perempuan Dan Anak*, 7(2), 167–188. <https://doi.org/10.21274/martabat.2023.7.2.167-188>
- Karimullah, S. S., & Sugitanata, A. (2024). Urgensi Pemahaman Gender Pada Anak dalam Membangun Kepribadian yang Berkualitas. *NOURA: Jurnal Kajian Gender Dan Anak*, 8(1), 54–70. <https://doi.org/10.32923/nou.v8i1.3340>
- Karimullah, S. S., Sugitanata, A., & Cahyani, R. A. (2022). Perkawinan Campuran di

- Indonesia: Antara Kebutuhan Atau Gaya Hidup. *SAMAWA: Jurnal Hukum Keluarga Islam*, 2(1), 14–31. <https://doi.org/10.53948/samawa.v2i1.38>
- Karimullah, S. S., Sugitanata, A., & Elmurtadho, F. (2023). Islamic Family Reform and its Relevance to the Prohibition of Sexual Deviations. *AL-AQWAL: Jurnal Kajian Hukum Islam*, 2(1), 1–14. <https://doi.org/10.53491/alaqwal.v2i01.530>
- Kaur, H. (2025). Gendering of Indian judiciary as a roadmap towards an equitable legal system and progressive gender-sensitive jurisprudence. *Frontiers in Sociology*, 10, 1475043. <https://doi.org/10.3389/fsoc.2025.1475043>
- Kurniawan, M. R., Fathony, M. R., Yasin, D. T., Jibu, S. A., & Shamat, A. (2025). Political Analysis of Islamic Law on the Regulation of Interfaith Marriage in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, 1(1), 32–47. <https://doi.org/10.65586/insani.v1i1.2>
- Lombardo, E. (2005). Integrating or setting the agenda? Gender mainstreaming in the European constitution-making process. *Social Politics: International Studies in Gender, State & Society*, 12(3), 412–432. <https://doi.org/10.1093/sp/jxi022>
- Malik, I., Karimullah, S. S., Okur, H., & Rahman, R. (2025). Gender Analysis in the Islamic Law-Based Ecofeminism Movement for Ecosystem Protection. *El-Mashlahah*, 15(1), 101–124. <https://doi.org/10.23971/el-mashlahah.v15i1.9040>
- Mohiuddin, A. (2024). Women's Rights in Malaysia: Understanding Sociocultural and Legal Dynamics. In *Human Rights Law in Egypt and Malaysia: Minorities and Gender Equality, Volume 2* (pp. 211–245). Springer. [https://doi.org/10.1007/978-3-031-63867-1\\_5](https://doi.org/10.1007/978-3-031-63867-1_5)
- Moradipoor, S. (2025). Comparative Study of Family Law Systems in East and West. *Advanced Journal of Management, Humanity and Social Science*, 1(8), 497–505. <https://doi.org/10.5281/zenodo.17387385>
- Muhajir, M., Nisa, I. S., Munawar, A., & Karimullah, S. S. (2023). Agus Moh Najib's Thoughts on the Interconnection of Islamic Law and National Law. *Jurnal Ilmiah Al-Syir'ah*, 21(1), 86–103. <https://doi.org/10.30984/jis.v21i1.2321>
- Parhi, N. Z., Hudafi, H., Pangestu, R., & Elmurtadho, F. (2025). Tension between Islamic Law and Human Rights in Child Marriage Cases in Indonesia. *Insani: Jurnal Pranata Sosial Hukum Islam*, 1(1), 96–110. <https://doi.org/10.65586/insani.v1i1.3>
- Ramadhan, R. G., Rafii'Hibatullah, M., Farichudzaki, W. K., & Aji, R. H. (2025). Patriarchal Structures in Islamic Law and Indonesian Positive Law: A Comparative Legal Analysis from a Gender Justice Perspective. *Komparatif: Jurnal Perbandingan Hukum Dan Pemikiran Islam*, 5(2), 150–173. <https://doi.org/10.15642/komparatif.v5i2.3126>
- Rasyid, A., Lubis, R. F., & Saleh, I. (2024). Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective. *Al-Ahkam*, 34(2), 419–448. <https://doi.org/10.21580/ahkam.2024.34.2.20843>
- Sugitanata, A., & Karimullah, S. S. (2023). Implementasi Hukum Keluarga Islam pada Undang-Undang Perkawinan di Indonesia Mengenai Hak Memilih Pasangan Bagi Perempuan. *SETARA: Jurnal Studi Gender Dan Anak*, 5(01), 1–14. <https://doi.org/10.32332/jsga.v5i01.6536>

- Sugitanata, A., Karimullah, S. S., & Hasan, F. (2024). Dinamika dalam Praktik Pernikahan: Tawaran untuk Mengurangi Prevalensi Poligami di Era Kontemporer. *AT-THARIQ: Jurnal Studi Islam Dan Budaya*, 4(01), 33–41. <https://doi.org/10.57210/trq.v4i01.284>
- Sugitanata, A., Karimullah, S. S., & Jamil, M. S. (2021). Produk-Produk Pembaharuan Hukum Keluarga Islam di Turki. *Familia: Jurnal Hukum Keluarga*, 2(1), 68–87. <https://doi.org/10.24239/familia.v2i1.18>
- Suwarni, S., Karimullah, S. S., Kaniah, K., Amanat, T., Safar, M., & Tjahyadi, I. (2024). Inclusive Sexual Education: Integrating Gender Approaches in Learning. *AL-ISHLAH: Jurnal Pendidikan*, 16(1), 416–427. <https://doi.org/10.35445/alishlah.v16i1.4690>
- Suyahman, S., Karimullah, S. S., & Syahril, M. A. F. (2025). Intersectionality in Social Justice: Unpacking the Complexity of Oppression. *Jambura Law Review*, 7(1), 275–308. <https://doi.org/10.33756/jlr.v7i1.27828>
- Widjajanto, A., Astawa, I. G. P., & Rulyandi, M. (2025). Decolonising restorative justice in Indonesia: a comparative study across Customary Law traditions. *Legality: Jurnal Ilmiah Hukum*, 33(2), 470–492. <https://doi.org/10.22219/ljih.v33i2.40481>
- Wiranti, B., Latif, F. A., Hibbatulloh, I., Sakinah, H., & Hidayatullah, M. W. (2025). Political Feminism and Women’s Representation in Public Policy in Indonesia. *Jurnal Pelita Raya*, 1(1), 1–16. <https://doi.org/10.65586/jpr.v1i1.11>