

The Politics of Family Law Legislation in Advancing Gender Justice

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Abstract

The legislative politics of family law in Indonesia has evolved within a complex arena shaped by the interplay among constitutionalism, legal pluralism, religious values, human rights, and shifting socio-political realities. This study examines how legislative politics has influenced the trajectory of family law reform in advancing gender justice and evaluates the extent to which legislative changes have produced substantive rather than merely formal equality. Employing a normative legal methodology, the research integrates qualitative content analysis with legal-political analysis to examine the constitutional, ideological, and institutional dynamics underpinning family law reform. The findings demonstrate that family law reform in Indonesia represents a product of constitutional compromise, emerging from the negotiation of state interests, religious norms, international human rights principles, and the foundational values of Pancasila within a plural legal order. Although successive legislative reforms have marked significant progress towards normative equality, their practical impact remains largely confined to formal equality, as the realisation of substantive gender justice continues to be constrained by entrenched patriarchal norms, divergent judicial interpretations, and the incomplete harmonisation of legal substance, institutional structures, and legal culture. The Indonesian experience illustrates a distinctive model of family law reform that diverges from both secularisation and the formalisation of religious law. Instead, it demonstrates a deliberative, constitutionally grounded, and socially adaptive legislative process capable of reconciling religious identity, constitutional values, and gender equality within a pluralist legal system. These findings contribute to comparative scholarship on family law reform by offering an alternative model of legislative constitutionalism that advances substantive gender justice while preserving legal pluralism and cultural legitimacy.

Keywords: *Constitutionalism, Family law, Gender justice, Legal pluralism, Legislative policy*



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INTRODUCTION

In the development of modern states, the issue of gender justice has evolved into one of the key parameters for assessing the quality of a legal system. Gender justice is no longer understood merely as the granting of equal rights to men and women, but rather as an effort to ensure that every individual receives opportunities, protection, access to resources, and legal benefits proportionately without experiencing discrimination stemming from social constructs regarding gender (Hayatullah et al., 2026). This perspective has gained increasingly strong legitimacy through the development of international human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Sustainable Development Goals (SDGs), specifically Goal 5 on Gender Equality and various recommendations from international organisations that identify legal reform as a key prerequisite for achieving inclusive development.

Indonesia faces complex challenges in integrating the principles of gender justice into family law policy. This complexity arises from the pluralistic nature of the Indonesian legal system, characterised by the interaction between state law, customary law and Islamic law, each of which has a distinct social and philosophical basis of legitimacy. This situation means that the process of formulating family law is often caught in a tug-of-war between universal values of gender equality and deeply rooted religious and cultural values within society (Fathony et al., 2024). Consequently, the resulting legislative policies do not always succeed in striking a balance between respect for the diversity of values and the fulfilment of the principle of non-discrimination, as guaranteed by the constitution and the human rights instruments ratified by Indonesia (Siregar et al., 2026).

These dynamics can be observed in the legislative history of family law since the enactment of Law No. 1 of 1974 on Marriage, which was subsequently amended by Law No. 16 of 2019. Although these amendments successfully raised the minimum marriage age to nineteen years for both men and women, as a means of strengthening child protection and reducing the practice of child marriage, various substantive issues concerning gender relations remain a subject of debate. Provisions regarding the husband's position as head of the household and the wife's as a housewife, regulations on polygamy, divorce mechanisms, the division of domestic roles, and the practice of marriage dispensations still reveal a tension between formal norms and the demands of contemporary gender justice (Karimullah, 2021; Karimullah, Ruchiat Nugraha, et al., 2023). Indeed, in practice, these provisions often result in differing legal consequences for men and women due to interpretations influenced by patriarchal culture and religious conservatism (Sakinah et al., 2026).

This issue is all the more relevant given that various social indicators show that women still face high levels of vulnerability within the family sphere (Sugitanata & Karimullah, 2023). High rates of child marriage, rising cases of domestic violence, unequal access to economic rights following divorce, disparities in child-rearing, and the continued lack of protection for women in various family legal proceedings

demonstrate that the existence of legal norms has not yet fully succeeded in delivering substantive justice (Karimullah, Nugraha, et al., 2023).

This phenomenon demonstrates that the politics of family law legislation cannot be analysed solely from a dogmatic legal perspective focused on positive norms. A more comprehensive analysis requires a political-legal approach capable of explaining how power configurations, legislative processes, political actors, civil society organisations, religious institutions, academics, and women's movements interact to shape the direction of family law policy (Al Hamid et al., 2025). The political-legislative perspective enables the identification of the reasons why a legal norm is retained, revised or even rejected, despite strong demands for change from society.

Developments in the international literature indicate that family law reform has become a key theme in socio-legal studies, feminist legal theory, comparative constitutionalism, and law and development. Various studies suggest that the success of family law reform is determined not only by changes to legal norms, but also by the state's ability to manage legal pluralism, build social legitimacy, and ensure effective implementation (Busriyanti et al., 2025; Shiddieqy et al., 2025). Studies in various Muslim countries reveal a variety of strategies for family law reform, influenced by domestic political configurations, the nature of religious institutions, the strength of women's movements, and the relationship between state and religion (Karimullah & Aliyah, 2023; Kurniawan et al., 2025). Reforms in Morocco through the *Mudawwanah*, in Tunisia through a secularisation approach to family law, and in several Southeast Asian countries demonstrate that legislative transformation requires a balance between normative legitimacy and social acceptance.

In the Indonesian context, research on family law has developed significantly over the past few decades. The majority of studies focus on normative analyses of the provisions of the Marriage Act, the Compilation of Islamic Law, the protection of women's rights, marriage dispensations, polygamy, divorce, children's rights, and the implementation of Constitutional Court rulings relating to family law (Al Kadumi et al., 2024; Maimun et al., 2024). Other studies highlight the development of progressive Islamic law, the reinterpretation of family *fiqh*, and the harmonisation of national law with human rights principles. Several studies have also evaluated the effectiveness of changes to the minimum age for marriage and their impact on reducing the practice of child marriage (Parhi et al., 2025; Syuroya & Husnayain, 2025). These studies make an important contribution to demonstrating the evolution of the family law paradigm towards the protection of women's and children's rights.

On the other hand, there has also been a growing body of research employing a legal feminist perspective to critique various provisions of family law that are deemed to still contain gender bias (Sianipar et al., 2025; Wiranti et al., 2025). These studies demonstrate that several legal norms continue to reproduce traditional role divisions between men and women, thereby resulting in inequality in practice. Studies on the implementation of women's economic rights following divorce, the protection of victims of domestic violence, and women's access to justice show that discrimination arises not only in the wording of legal norms but also in the process of legal

interpretation and application by law enforcement officials (Insani et al., 2024). These findings reinforce the argument that shifts do not necessarily follow legislative changes in legal paradigms or legal culture that support gender equality.

As the socio-legal approach has evolved, several studies have begun to link family law with political dynamics, democracy and the influence of non-state actors in the legislative process (Pirie, 2023). These studies reveal that religious organisations, political parties, state institutions and civil society groups exert varying degrees of influence on the direction of family law reform. The studies also show that the legislative process often unfolds through lengthy negotiations involving political compromise, so the resulting legal substance reflects a balance among competing interests. Nevertheless, the majority of these studies still treat politics as a contextual variable rather than making it the primary focus in explaining the direction of family law legislation.

The emerging literature also points to a tendency to separate studies of legal politics from those of gender justice. Studies of legal politics generally focus on analysing the direction of legislative policy, the process of law-making, and the configuration of power within the constitutional system, without examining in depth their implications for gender relations. Conversely, studies on gender justice tend to focus more on the analysis of normative discrimination or the implementation of women's rights, without systematically elucidating how the legislative process shapes the emergence of these norms. Consequently, the causal relationship between the political configuration of legislation and the quality of gender justice protection remains inadequately explained.

Most previous studies have continued to adopt a sectoral approach, examining a single regulation or a specific issue, such as polygamy, marriage dispensations, inheritance rights, or divorce, without establishing a conceptual framework capable of explaining the overall political evolution of family law legislation within the context of national legal development (Ayu et al., 2026; Lenggono, 2025; Rifa'i et al., 2026). This approach yields a fragmented understanding and thus fails to explain how various regulatory changes are interrelated within the state's legal policy design to advance gender justice. A comprehensive understanding is essential, given that the development of family law is an ongoing process involving multiple regulatory regimes that influence one another.

The research gap in this study lies in the absence of a study that integrally analyses the politics of family law legislation as a process of norm formation influenced simultaneously by the configuration of legal politics, legal pluralism, the dynamics of institutional actors, developments in human rights, and demands for gender justice. Previous studies have tended to examine only one of these dimensions in isolation and therefore have not produced an analytical model capable of explaining the relationship among the legislative process, the substance of regulations, the implementation of the law, and the achievement of gender justice within a single, coherent conceptual framework. Furthermore, recent regulatory developments and changes in Indonesia's post-reform legal-political landscape have not yet been systematically analysed as factors influencing the direction of contemporary family law legislation.

In light of these gaps, this study aims to develop a more comprehensive perspective on the politics of family law legislation by positioning gender justice not merely as a normative goal, but also as an evaluative indicator of the quality of national legal politics. This study seeks to integrate perspectives from legal politics, legislative theory, legal pluralism, gender justice theory, and socio-legal approaches to explain how interactions between actors, power configurations, constitutional values, and social dynamics shape the direction of family law legislation in Indonesia. It is hoped that this approach will yield a more comprehensive understanding of the relationship between the law-making process and the effectiveness of the protection of women's rights within family life.

This study aims to analyse the politics of family law legislation in Indonesia from a gender justice perspective, identify the factors influencing the direction of regulatory development, evaluate the extent to which the political configuration of legislation has supported the realisation of gender justice, and formulate a conceptual framework that can strengthen the direction of national family law reform. The significance of this study lies in its contribution to the development of legal political science, family law, and gender studies through the formulation of an integrative analytical framework grounded in contemporary regulatory developments and social dynamics.

METHODS

This study employs a normative legal approach with a doctrinal research design, enriched by conceptual, statutory, historical, comparative, and case-based approaches, to comprehensively analyse the politics of family law legislation in pursuit of gender justice in Indonesia. The choice of this design is based on the nature of the study, which is oriented towards examining the political construction of the law underlying the formulation of family law regulations, evaluating the consistency of legal norms with the principle of gender justice, and formulating directions for legislative reform within the framework of a pluralistic rule of law. The focus of the study encompasses the politics of family law legislation as the main variable, operationalised through the dimensions of legislative policy direction, the political configuration of lawmakers, the harmonisation of legal norms, and the dynamics of the relationship between state law, religious law and customary law, whilst gender justice is positioned as an evaluative framework operationalised based on indicators of equality of rights, non-discrimination, legal protection, access to justice, and recognition of women's rights within family law regulations (Karimullah, Mukhid, et al., 2024).

The data sources consist of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 as amended by Law No. 16 of 2019, the Compilation of Islamic Law, relevant rulings of the Constitutional Court and the Supreme Court, and various international human rights instruments, whilst secondary legal sources include internationally recognised academic articles, books, research findings and policy documents, as well as tertiary legal sources such as legal dictionaries and encyclopaedias. Data collection was carried out through a systematic literature review using search techniques in reputable academic databases and the

examination of official legal documents, followed by the selection of sources based on relevance, authority, and recency of publication.

The validity of the data is ensured through triangulation of legal sources, evaluation of document credibility, consistency of interpretation across regulations, and peer debriefing regarding the construction of legal arguments. Subsequently, the data were analysed using qualitative analysis techniques through grammatical, systematic, historical, teleological and comparative legal interpretation, combined with content analysis and legal-political analysis to identify legislative patterns, uncover the policy configurations shaping family law, and evaluate the extent to which it aligns with the principles of gender justice, thereby producing a conceptual synthesis capable of explaining the relationship between legislative politics and the reform of family law that is responsive to constitutional values, human rights, and gender equality in Indonesia.

RESULTS AND DISCUSSION

The Politics of Family Law Reform in Indonesia

The politics of family law reform in Indonesia is a legislative process that has never followed a linear path but has instead been shaped by complex interactions among the interests of the state, religious values, human rights principles, the ideology of Pancasila, and evolving social dynamics (Daffa et al., 2025; Ulum et al., 2025). From a legal-political perspective, family law cannot be understood merely as a set of norms governing private relationships between family members, but rather as a strategic arena in which the state defines the relationship between citizens and the most fundamental social institutions. Consequently, any change to family law regulations always reflects a specific political configuration that demonstrates how the state balances the demands of legal modernisation, respect for legal pluralism, the protection of human rights, and the legitimacy of religious values.

These characteristics set family law reform in Indonesia apart from both countries that adhere to a secular legal system and those that formally apply religious law, as Indonesia has built its national legal system on the Pancasila state paradigm, which accommodates religious diversity whilst upholding the constitutional principle of equality before the law (Al Azkiya et al., 2025; Rifa'i et al., 2025). Family law reform is thus the result of an ongoing process of political negotiation among various state and non-state actors that determines the direction of national legal development.

Historically, the formation of national family law illustrates how shifts invariably influence legislative politics in the configuration of power. The enactment of Law No. 1 of 1974 on Marriage was a political compromise that reconciled the interests of the government, religious organisations, nationalist groups, academics and civil society (Kholid et al., 2025). The state did not fully adopt either religious law or Western civil law. Instead, it established a unified legal system that still left room for pluralism by recognizing the religious laws of each faith's adherents.

This choice demonstrates that Indonesian legislative policy, from the outset, was directed not towards the complete secularisation or Islamisation of the law, but rather

towards forging a synthesis between the state's interest in creating legal certainty and society's need to maintain the legitimacy of religious norms. This legislative model has resulted in a hybrid character for Indonesian family law, integrating religious doctrine, the interests of state administration, customary values and modern legal principles into a single national regulatory framework.

The dynamics of family law reform have become increasingly complex following the 1998 Reform era, which expanded the scope of democracy and public participation in the formulation of legislation. Democratisation has opened up greater opportunities for women's organisations, human rights institutions, academics, religious organisations and civil society groups to influence the legislative process (Karimullah & Aliyah, 2023). However, democracy has also strengthened the voice of conservative groups seeking to uphold traditional interpretations of family law. Consequently, the legislative process is no longer dominated by the state as the sole actor. Still, it unfolds through the competition among various ideological interests, all equally legitimised within the democratic sphere.

This phenomenon explains why family law reform in Indonesia often proceeds gradually and incrementally, rather than through radical change, as every change must secure both political legitimacy and sufficient social acceptance. In this context, human rights have become one of the normative forces driving changes in family law legislation. The ratification of various international instruments, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), has encouraged the state to harmonise national regulations with the principles of non-discrimination, equality of rights, and protection for vulnerable groups (Orta, 2025).

This influence is clearly evident in the change to the minimum age for marriage introduced by Law No. 16 of 2019, in response to a Constitutional Court ruling which found that the previous provisions constituted discriminatory treatment of women. This reform demonstrates that Indonesian legislative policy is beginning to integrate a rights-based approach into the development of family law (Yazid et al., 2023). However, this harmonisation has not been without resistance, as some groups view international human rights standards as potentially undermining the authority of religious norms in regulating family life. Consequently, the legislative process is invariably characterised by debates regarding the extent to which universal human rights principles can be accommodated without eroding the religious identity of Indonesian society.

Religion remains a dominant factor in family law policy, as the bulk of family law is directly linked to the religious teachings practised within society. In legislative practice, religious arguments are frequently used to legitimise various policies concerning marriage, divorce, polygamy, inheritance and child custody (Suleman et al., 2023). Nevertheless, Indonesia's legislative policy does not show a tendency towards the absolute formalisation of religious law. Instead, the state engages in the selection, reinterpretation, and institutionalisation of various religious norms so that they can be integrated into the national legal system. The Compilation of Islamic Law is a concrete example of how the state codifies Islamic law whilst incorporating elements of the

state's administrative interests, the needs of national legal development, and societal developments.

In addition to religion, the ideology of Pancasila plays a central role as a normative framework that maintains a balance between freedom of religion, respect for human rights, national unity, democracy and social justice. The legislative policy on family law is, in essence, an implementation of the values of Pancasila, which rejects the dichotomy between a religious state and a secular state. The principle of Belief in One Supreme God provides scope for religious values to serve as a source of inspiration for law-making, whilst the principles of Just and Civilised Humanity and Social Justice require the state to ensure that no regulation results in discrimination on the grounds of gender or social status. Consequently, the process of family law reform is always directed towards finding a common ground between religious legitimacy and the protection of citizens' constitutional rights. Legislative policy in this context is best understood as the process of constitutionalising religious values through democratic mechanisms that remain subject to the rule of law.

The interests of the state are also a key determinant in the direction of family law reform. The state has an interest not only in maintaining order in the administration of marriage and legal certainty, but also in utilising family law as an instrument of national development. Regulations concerning the registration of marriages, the minimum age for marriage, child protection, the recognition of women's rights following divorce, and the strengthening of population administration demonstrate that family law reform has a dimension of good governance. The state utilises legislation to enhance the effectiveness of public services, strengthen social protection, reduce the practice of child marriage, and support the achievement of sustainable development goals (Haerozi et al., 2023; Nisa et al., 2022).

The tension between human rights, religion, ideology and the interests of the state has resulted in a character of family law reform that is both adaptive and compromising. Every legislative change is the result of negotiations among various interests, which do not always yield an absolute victory for any one group. The change in the minimum age for marriage, for example, represents a compromise between the protection of children's rights, demands for gender equality, religious legitimacy, and the state's need to reduce the incidence of early marriage (Insani et al., 2023). Similarly, various rulings by the Constitutional Court on family law demonstrate that the judiciary functions as a constitutional arena for balancing human rights principles with religious values through a progressive interpretation of the constitution, whilst remaining mindful of the pluralistic nature of Indonesian society. This indicates that family law reform has largely occurred through judicial constitutionalism and legislative accommodation rather than through revolutionary change.

A political perspective on legislation also reveals that family law reform is influenced not only by formal actors such as the government and parliament, but also by networks of transnational actors, international organisations, academics, the media, women's organisations, religious organisations, and civil society. The interaction between these various actors shapes an increasingly complex policy advocacy process,

meaning that legislation is no longer viewed as the sole preserve of the state. The influence of women's organisations in promoting the protection of women's rights, the contribution of academics in providing scientific arguments, and the involvement of religious organisations in maintaining social legitimacy demonstrate that the formulation of family law is the result of both collaboration and contestation between various interests. This complexity reinforces the deliberative nature of the legislative process, which is a hallmark of a constitutional democracy.

From the perspective of legal political theory, this situation indicates that family law reform in Indonesia is more appropriately understood as a process of legal balancing rather than legal replacement (Shiddieqy et al., 2025). The state does not replace religious norms with human rights norms, or vice versa, but rather strikes a balance between various sources of legal legitimacy through the mechanisms of legislation and constitutional interpretation. This approach enables family law to retain a high degree of social legitimacy without neglecting the demands of legal modernisation and the protection of human rights. However, this model of compromise also has the consequence of a slow reform process, as every change must go through lengthy political negotiations and often results in moderate norms.

The politics of family law reform in Indonesia demonstrates that the direction of legislation is shaped by the dynamic interaction among human rights, religion, the ideology of Pancasila, and state interests within a framework of legal pluralism. Reform cannot be explained solely through either a normative or a sociological approach in isolation. Rather, it must be understood as a political-legal process involving power configurations, ideological struggles, the development of human rights, social change, and national development needs, all occurring simultaneously. This character makes Indonesian family law a product of constitutional compromise that continues to evolve in line with societal dynamics. Consequently, the success of future family law reform will be largely determined by the political capacity of the legislature to establish a sustainable balance between the protection of human rights, respect for religious values, consistency with the ideology of Pancasila, and the interests of the state in realising a family law system that is adaptive, inclusive, and possesses strong social legitimacy.

Legislative Effectiveness for Gender Justice in Indonesia

The effectiveness of family law legislation must be analysed through a legal-political perspective that views legislation as part of the process of constitutional transformation. The Indonesian Constitution guarantees equality before the law for all citizens, the protection of human rights, the right to form a family, the protection of children, and the recognition of human dignity (Putra & Acela, 2023). On the other hand, the Indonesian legal system also recognises legal pluralism, which allows religious norms and customary law to be recognised as sources of national law.

Consequently, the effectiveness of legislation depends not only on the quality of legal norms but also on the ability of such regulations to foster harmony between constitutional principles regarding equal rights and the religious values embedded in society. Therefore, legislative changes often result in compromises that expand formal

legal protections but have not yet fully transformed social constructs regarding the relationship between men and women within the family. This situation demonstrates that the success of legislation must be assessed not merely through a legalistic lens but also in terms of social and institutional effectiveness.

The amendment of Act No. 1 of 1974 by Act No. 16 of 2019 is an important example of how the state seeks to strengthen protection for women and children through legislative reform (Karimullah, 2023). The harmonisation of the minimum age of marriage to nineteen years for both men and women represents significant progress, as it eliminates the previously discriminatory difference in the minimum age limits. This amendment also reflects the harmonisation of national law with the principles of non-discrimination mandated by CEDAW and the rulings of the Constitutional Court. From the perspective of formal equality, this change demonstrates that the state has eliminated sex-based differences in treatment in the provisions governing the age of marriage. However, from the perspective of substantive equality, this change has not yet fully resolved the issue, as the practice of granting marriage dispensations still leaves room for child marriage to occur through judicial mechanisms (Halim, 2025).

A similar phenomenon is evident in the regulations governing spousal relations under Indonesian family law. Although various developments in case law and public policy indicate a trend towards a more egalitarian division of roles, some legal provisions still perpetuate traditional constructions regarding the division of domestic functions between men as heads of households and women as housewives. Normatively, these provisions are often understood as a complementary division of roles. However, in social practice, this construct is frequently used to legitimise an unequal distribution of power within the family, thereby affecting women's access to economic decision-making, employment, education and ownership of resources (Karimullah, Basuki, et al., 2024).

This situation demonstrates that legislation that appears neutral on its face does not necessarily yield substantively neutral outcomes, as a patriarchal social structure shapes its implementation. Any assessment of the effectiveness of legislation must also take into account the protection of women following the dissolution of a marriage. Normatively, Indonesian family law has established women's rights regarding maintenance, *mut'ah*, custody, the division of joint property, and various other forms of protection. However, the implementation of these rights still faces various obstacles, including low compliance with court rulings, women's unequal bargaining power, limited access to legal aid, and disparities in interpretation within the judicial system. Consequently, women often obtain formal recognition of their rights but face difficulties in effectively realising them.

The gap between legislation and implementation is also evident in the protection of victims of domestic violence. Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 12 of 2022 on Sexual Violence Offences demonstrate the state's commitment to strengthening the protection of women through a rights-based approach. However, the effectiveness of these two pieces of legislation still faces various obstacles, including inconsistent interpretation by law enforcement officials, limited

inter-agency coordination, weak evidentiary mechanisms, a lack of recovery services for victims, and the persistence of a culture of informal dispute resolution that often disadvantages women. These conditions indicate that the success of legislation cannot be measured solely by the existence of progressive legal frameworks, but must be assessed by the institutional capacity to implement these norms consistently.

From the perspective of legal effectiveness theory, these conditions can be explained through Lawrence M. Friedman's framework regarding the three elements of a legal system: legal structure, legal substance and legal culture. Legislative reform in Indonesia demonstrates that the legal substance has undergone significant development to strengthen the protection of women's rights. However, changes in legal substance have not yet been fully accompanied by a transformation of legal structure or legal culture.

Law enforcement officials still demonstrate varying levels of understanding of gender perspectives, whilst the social culture in various regions continues to perpetuate patterns of family relations that place women in a subordinate position. Therefore, the effectiveness of legislation cannot be separated from the state's ability to build institutional capacity, improve public legal literacy, and develop gender-responsive legal education. Without a transformation of legal structures and culture, legislative changes risk producing only formal equality without a shift in power relations in everyday life.

An analysis of the effectiveness of legislation also highlights the importance of distinguishing between 'equality before the law' and 'equality through law'. Equality before the law emphasises that every citizen receives equal treatment within the legal system, whilst equality through law requires the law to serve as an active instrument for correcting the historical inequalities experienced by certain groups. In the context of Indonesian family law, the majority of legislative reforms have successfully addressed the first dimension by repealing provisions that explicitly distinguished between men and women (Fattah et al., 2025). However, the second dimension still faces challenges because the law has not yet fully addressed the social factors causing women to suffer structural disadvantages, such as the burden of unpaid domestic work, economic dependence, gender stereotypes, and limited access to productive resources.

From a legislative policy perspective, these limitations in effectiveness are also influenced by the compromising nature of the process of shaping family law in Indonesia. Family law legislation is the result of negotiations between the interests of the state, religious organisations, women's movements, political parties, academics and civil society. These compromises have enabled the creation of regulations that enjoy relatively high political and social legitimacy, but often result in moderate norms that have yet to substantively address all demands for gender justice. In other words, the effectiveness of legislation is constrained by the need to balance legal pluralism with the protection of human rights. In the context of a pluralistic state such as Indonesia, this situation can be understood as a consequence of the deliberative democratic process. It simultaneously demonstrates that the reform of family law requires strategies that go beyond mere legislative change.

A feminist legal approach offers a more critical perspective on the effectiveness of legislation by emphasising that the law is never truly neutral within power relations. Legal norms that appear universal may have different impacts on men and women because they occupy unequal social positions. Therefore, an evaluation of the effectiveness of legislation must take into account the concrete experiences of women as a group that has historically faced greater barriers to accessing justice. This approach rejects measures of success based solely on normative changes, emphasising instead the need to analyse how the law operates in practice, who benefits, who remains disadvantaged, and how legal institutions reproduce or reduce gender inequality.

An evaluation of the effectiveness of legislation also shows that the success of family law reform requires harmonisation between legislation, public policy and judicial practice. Progressive legislation must be supported by clear implementing regulations, adequate capacity among law enforcement officials, an easily accessible legal aid system, mechanisms for monitoring implementation, and public legal education focused on gender equality. Furthermore, the development of outcome-based evaluation indicators is essential so that the effectiveness of legislation is measured not only by the number of regulations issued, but also by a reduction in discriminatory practices, improved access to justice for women, compliance with court rulings, the protection of women's economic rights, and a reduction in gender-based violence. An outcome-oriented legislative evaluation approach is more consistent with the paradigms of good governance and evidence-based policymaking, as it enables the state to objectively assess the real impact of family law reforms.

Conceptually, the effectiveness of legislation in realising gender justice in Indonesia remains in a transitional phase, moving from the paradigm of formal equality towards substantive gender justice. Legislative reform has yielded several significant advances through the harmonisation of regulations with human rights principles, the strengthening of protections for women and children, and the state's growing sensitivity to gender equality issues. However, these successes have not yet been fully accompanied by a transformation of institutional structures, legal culture and social practices, which are key prerequisites for the realisation of substantive justice.

The effectiveness of legislation cannot be interpreted merely as the achievement of normative change, but rather as the ability of the legal system as a whole to transform the social relations that have hitherto produced gender inequality. Within this framework, family law reform in Indonesia must be directed towards a model of transformative legislation that simultaneously integrates constitutional principles, human rights, legal pluralism and a gender perspective, so that the law not only guarantees formal equality of rights, but is also capable of creating social conditions that enable women and men to enjoy equal rights, opportunities, protection and dignity in practice within family life and society.

Indonesia in the Global Family Law Debate

The global debate on family law reform over the past two decades has undergone a significant transformation, in line with the development of the modern

constitutionalism paradigm, the strengthening of the international human rights regime, growing awareness of gender equality, and the emergence of new approaches to legal pluralism in multicultural societies. Whilst at the end of the 20th century the discourse on family law reform was largely framed as a conflict between the secularisation of the law and the application of religious law, recent developments indicate that this dichotomy is increasingly losing its relevance.

Family law reform is no longer understood as a process of transplanting international norms into national legal systems, but rather as a process of constitutionalising universal values through domestic political mechanisms that take into account each country's history, culture, religion and institutional configuration. In this context, Indonesia's experience stands as a particularly interesting case within the global discourse, as it illustrates how the country with the world's largest Muslim population is striving to establish a family law system that is neither entirely secular nor one that adopts religious law in an absolute sense, but rather one that develops a legislative model characterised by pluralism, deliberation and constitutionalism.

By comparison, Indonesia's experience exhibits characteristics distinct from those of the various models of family law reform in the Middle East and Western countries. Tunisia, for example, since the 1956 Code of Personal Status, has chosen a reform path focused on strengthening the state's role in modernising family law through the restriction, or even abolition, of several classical family law institutions, including the prohibition of polygamy and the extension of legal equality between men and women. Morocco, through the 2004 reform of the *Mudawwanah*, developed a different approach by reinterpreting Sharia principles through *maqāṣid al-sharī'ah*, thereby producing a more egalitarian reform without undermining religious legitimacy.

Turkey adopted a strong model of secularisation by replacing Islamic family law with the Swiss Civil Code, whilst Malaysia has retained a dual legal system that grants broad authority to Sharia courts in regulating family matters for Muslims. These differences demonstrate that there is no single universal model for family law reform. Each country designs its legislation in accordance with its constitutional framework, political structure, social composition, and the relationship between state and religion.

Indonesia occupies a unique position amongst these various models. The Indonesian legal system is built on a foundation of legal pluralism that recognises the coexistence of state, customary, and religious law. Unlike Tunisia, which places greater emphasis on state centralisation, or Turkey, which prioritises secularisation, Indonesia has opted for an approach of harmonisation through legislative policy that integrates constitutional values, religious teachings and social needs into a single national legal framework. The 1974 Marriage Act, together with its subsequent amendments, is a manifestation of this compromise.

The state does not eliminate the role of religion in determining the validity of marriage, but at the same time introduces the principles of state administration, the protection of women and children, and legal certainty as part of the national legal system (Karimullah & Sugitanata, 2024). This choice reflects a paradigm of legal pluralism which does not view the diversity of legal systems as an obstacle to

modernisation, but rather as a source of legitimacy that enables legal reform to gain broader social acceptance.

In global discourse, one of the most dominant debates concerns the relationship between the universalism of human rights and cultural relativism. The universalist approach argues that the principles of gender equality, non-discrimination and the protection of women's rights must be applied consistently, without being influenced by cultural or religious contexts (Malik et al., 2025; Suwarni et al., 2024). Conversely, the relativist approach asserts that the implementation of human rights must take into account local values embedded in society to avoid losing social legitimacy.

Experience in Indonesia shows that these two approaches need not always be presented as dichotomous. Indonesian legislative policy, in fact, demonstrates efforts to integrate international human rights standards with religious values through constitutional democratic mechanisms. Changes to the minimum age of marriage, the strengthening of protections for women and children, and the emergence of progressive interpretations in Constitutional Court rulings demonstrate that universal principles can be adopted through constitutional reinterpretation without negating society's religious identity.

These developments also demonstrate that Indonesia is increasingly moving towards a paradigm of constitutional pluralism, namely a model that positions the constitution as a space for dialogue among the various sources of norms within society. Within this paradigm, the constitution is not understood as an instrument for eliminating legal diversity, but rather as an integration mechanism that ensures every norm, whether derived from religion, customary law, or international law, aligns with constitutional principles of justice, equality, and the protection of human rights. The Constitutional Court plays a vital role in this process through various rulings that broaden the meaning of equality before the law and promote family law reform without severing ties with religious values. This phenomenon demonstrates that Indonesia is developing constitutional dialogue as a mechanism for resolving conflicts between religious norms and human rights norms, rather than through an approach based on the superiority of one legal system over another.

Indonesia's experience also offers an important lesson regarding the limitations of the 'legal transplant' approach in family law reform. Classical literature on legal transplant posits that successful reform can be achieved by adopting legal norms from countries deemed more advanced. However, practice shows that the success of a reform is heavily influenced by the social, cultural, political and institutional context in which those norms are applied. Family law reform in Indonesia demonstrates that the adoption of international principles on gender equality is not achieved through the direct copying of legal norms, but rather through a process of constitutional adaptation that takes into account *maqāṣid al-sharī'ah*, the values of Pancasila, legal pluralism, and the character of Indonesian society (Ibrahim et al., 2025).

A comparative study of Morocco reinforces this argument. The 2004 reform of the Mudawwanah is often regarded as a successful example of the reinterpretation of Islamic law in a manner responsive to gender equality. However, this reform was not

achieved through secularisation but rather through the reinterpretation of *maqāṣid al-sharī'ah* and *ijtihad*, supported by the monarchy's political legitimacy. Indonesia has taken a different path (Bukido et al., 2025; Karimullah & Mahesti, 2021). Reforms have taken place through democratic mechanisms, the legislative process, judicial review, and broader participation by civil society. This difference demonstrates that whilst both countries have sought to integrate Islam and human rights, the institutional frameworks employed differ. Indonesia places greater emphasis on democratic deliberation, whilst Morocco relies more heavily on the monarchy's institutional leadership. Nevertheless, both countries share a common trend: treating religion as a source of legitimacy for reform, rather than as an obstacle to legal modernisation.

At the global level, a new trend is also emerging that positions family law reform as part of the Sustainable Development Goals (SDGs) agenda, particularly Goal Five on gender equality, Goal Ten on reducing inequalities, and Goal Sixteen on effective, accountable and inclusive institutions. In this context, family law reform is no longer evaluated solely based on compliance with constitutional norms or religious law, but also on its contribution to human development, poverty reduction, child protection, women's empowerment, and family welfare.

Indonesia has demonstrated fairly progressive developments by making family law reform part of its national development policy through raising the minimum marriage age, strengthening protections for victims of domestic violence, developing the marriage administration system, and integrating women's protection into public policy (Busriyanti et al., 2025). Although their implementation still faces various challenges, the direction of these reforms demonstrates a shift from a formal legal paradigm towards governance-oriented family law, positioning family law as an instrument of sustainable development. Nevertheless, Indonesia's experience also shows that family law reform cannot rely solely on legislative changes.

The success of countries such as Morocco and Tunisia is determined not solely by changes in legal norms but also by institutional transformation, legal education, capacity-building for judges, and changes in the legal culture of society. Indonesia faces similar challenges due to legal pluralism, which is both a strength and a source of complexity (Hariri & Babussalam, 2024). Inequalities in implementation, disparities in court rulings, resistance from patriarchal culture, and variations in the interpretation of religious norms indicate that legislative reform must be accompanied by institutional reform and social change to achieve substantive gender justice.

Based on this comparative analysis, the study proposes a new conceptual framework, termed Hybrid Gender-Responsive Family Law Legislation (HGRFLL), as a theoretical contribution to the global debate on family law reform. This model stems from a critique of two dominant paradigms. The first paradigm is universal legal convergence, which assumes that all states must adopt uniform human rights standards without taking local contexts into account. The second paradigm is 'cultural exceptionalism', which regards religious and cultural values as entirely beyond the scope of human rights evaluation. Both approaches have limitations, as they fail to

explain how pluralistic states such as Indonesia establish mechanisms to integrate universal norms and local values through the political process of legislation.

The Hybrid Gender-Responsive Family Law Legislation Model posits that sustainable family law reform must be built upon four key, mutually integrated pillars. The first pillar is constitutionalism, which establishes the constitution as the supreme source of legitimacy, guaranteeing equality before the law, the protection of human rights, democracy and the rule of law. The second pillar is religious legitimacy, namely the recognition that religious values constitute living law, possessing social legitimacy and therefore requiring contextual reinterpretation through the approach of *maqāṣid al-sharī'ah*, justice, public interest, and respect for human dignity (Aminah et al., 2024; Suyahman et al., 2025).

The third pillar is human rights integration, namely the harmonisation of universal principles regarding gender equality, non-discrimination, and the protection of vulnerable groups into the substance of national legislation without undermining the constitutional character of the state. The fourth pillar is contextual legislative governance, namely a participatory political mechanism for legislation that is evidence-based, responsive to social developments, and involves ongoing dialogue between the state, religious institutions, academics, civil society organisations, and women's groups.

These four pillars do not operate in isolation but rather form a dynamic legislative system. In this model, the constitution serves as the normative framework, religion provides a source of ethical and moral legitimacy, human rights provide universal standards of protection, whilst legislative politics provides the democratic mechanisms to integrate all these values into legal policy.

The concept of Hybrid Gender-Responsive Family Law Legislation offers a theoretical contribution to the international literature by broadening the discourse on family law reform from a mere debate between secularisation and religiosity towards a gender-responsive paradigm of constitutional legal pluralism. Unlike reform models that position religion and human rights as two opposing poles, this concept demonstrates that both can be positioned as complementary sources of legitimacy when mediated by the constitution and a democratic legislative process.

In the Indonesian context, this model explains why family law reform has proceeded gradually whilst still maintaining a high level of social legitimacy. At the global level, this model offers a conceptual alternative for pluralistic states facing similar dilemmas in integrating constitutionalism, religious values and human rights principles into their family law systems. Thus, Indonesia's experience not only enriches the literature on family law reform in Muslim countries but also provides a new theoretical framework that can serve as a reference for the development of more inclusive, adaptive, contextual, and gender-oriented family legislation policies that are oriented towards the realisation of substantive gender justice in a multicultural society.

CONCLUSION

The politics of family law in Indonesia is, in essence, a constitutional process shaped by dynamic negotiations between human rights principles, religious values, the

ideology of Pancasila, legal pluralism and the interests of the state. Consequently, the effectiveness of family law reform cannot be measured solely by changes in legal norms that result in formal equality, but rather by its ability to realise substantive gender justice through the simultaneous transformation of institutions, legal culture, and social practices. The study's findings indicate that legislative reform in Indonesia has exhibited a progressive trajectory towards the protection of women's rights; however, its implementation still faces limitations due to entrenched patriarchal structures, disparities in legal interpretation, and a lack of optimal harmonisation among legal substance, legal structure, and legal culture.

Theoretically, this study expands the literature on legal politics and family law by integrating perspectives on legislative politics, constitutionalism, legal pluralism, and gender justice theory into a single, more comprehensive analytical framework, whilst offering the concept of hybrid gender-responsive family law legislation as a model of legislative politics that combines constitutional legitimacy, religious values, and human rights principles contextually within a pluralistic society. These contributions have practical implications for legislators, judicial institutions, and policymakers in developing family law legislation that is more participatory, evidence-based, gender-responsive, and adaptive to social dynamics, whilst reinforcing the theoretical implications regarding the need for a multidimensional approach to evaluating the effectiveness of family law reform. This study nevertheless has limitations as it focuses on a normative and political analysis of legislation without empirically testing the implementation of regulations across various social and cultural contexts in Indonesia. Therefore, future research should develop socio-legal approaches, cross-national comparative studies, and empirically based evaluations of the impact of legislation on women's real-life experiences within the family law system.

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