

Reformulation of Marriage Law Based on a Gender Justice Perspective

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Abstract

When marriage law continues to perpetuate the myth of nature that places family relationships in an invisible hierarchical structure, reformulating it through the perspective of gender justice becomes not merely a project of revising norms, but an effort to overhaul the way the law understands power, the body, work, and human dignity within the institution of the family. The purpose of this study is to critically analyse the current construction of marriage law from a gender justice perspective and to formulate a model for reformulating marriage law that is more responsive to the principle of gender equality. This study uses a qualitative, normative-constructive legal research design, which is reflectively combined with conceptual analysis and a socio-legal approach. The results confirm that the main problem with modern marriage law is not merely the existence of explicitly discriminatory norms, but rather a legal structure that subtly normalises inequality through the concepts of nature, family morality, and the design of rights and obligations that ignore power and economic relations within the household. The reformulation of marriage law based on gender justice, therefore, requires more radical changes than simply revising articles requires a reconstruction of the paradigm that views marriage as a socio-economic institution that distributes authority, work, risk, and welfare among family members. Family law must move from a model of moral protection towards a model of distributive justice that places individual autonomy, protection of care work, and economic accountability as the foundations of family regulation.

Keywords: *Gender justice, Marriage law, Reformulation, Social construction, Substantive equality*



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INTRODUCTION

The issue of gender equality in marriage law has become increasingly relevant as global awareness of the importance of protecting women's rights has grown. Various international instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), affirm states' obligation to eliminate all forms of discrimination against women in various areas of life, including in the institution of family and marriage. Indonesia, as a country that has ratified the convention through Law No. 7 of 1984, is normatively committed to ensuring that the entire national legal system, including marriage law, is in line with the principle of gender equality (Saepullah et al., 2025). However, in practice, several legal provisions still reproduce gender inequality, both in their normative form and in their judicial implementation.

One example that is often highlighted is the regulation regarding the relationship between husband and wife in the family, which normatively places men as the head of the family and women as housewives (Zumrotun & Muna, 2025). This regulation not only reflects the patriarchal social construct that has long been rooted in society, but also has the potential to reinforce the subordination of women in domestic life. In addition, other issues that are often debated are related to the practice of polygamy, the division of domestic and public roles, and legal protection for women in cases of divorce and domestic violence (Analiansyah et al., 2024; Maula & Ariyanti, 2022). These various issues show that marriage law cannot be understood solely as a static normative device, but rather as a legal system that must respond to social dynamics and changes in societal values of justice in society.

In the development of contemporary legal studies, a gender justice-based approach has become an important perspective in assessing and reformulating regulations that have the potential to cause structural inequality (Fitriyati et al., 2025). This perspective emphasises that the law must not only guarantee formal equality before the law but also ensure substantive justice capable of overcoming the power imbalance between men and women. In academic literature, discussions on marriage law and gender justice have become a fairly broad subject of study (Assaad et al., 2022). Several studies show that family law regulations in various countries are still influenced by patriarchal social constructs that are deeply rooted in cultural traditions and religious interpretations (Charles et al., 2023; Kobko-Odarii et al., 2025). Studies conducted by several family law scholars show that provisions regarding the division of roles in the household often reflect normative assumptions that place women in a subordinate position (Bhaumik & Sahu, 2025; Rugina & Ahl, 2023).

In the Indonesian context, studies on the relationship between marriage law and gender justice have also been conducted by various researchers. Several studies highlight gender inequality in the regulation of the rights and obligations of husbands and wives as stipulated in the marriage law (Apriana et al., 2022; Sar'an et al., 2024). Other studies examine the practice of polygamy from a legal and gender perspective, showing that although regulations set certain conditions, this practice often causes social and economic harm to women (Janur, 2025; Karimullah, 2024). In addition, some

studies examine the legal implications of divorce on the protection of women's and children's rights, which show that women are often in a more vulnerable position in family case settlement processes.

These studies make an important contribution to revealing various forms of gender inequality in marriage law. However, most previous studies focus on the normative analysis of specific provisions in the law without offering a comprehensive conceptual framework for systematically reforming marriage law. Several studies also focus more on the implementation of the law without examining in depth the epistemological constructs underlying the formation of these norms. As a result, proposed legal reforms are often partial and fail to provide comprehensive solutions to gender inequality in marriage law.

Some studies examining gender issues in marriage law still treat gender justice as an additional variable in their analysis, rather than as the main paradigm in reformulating the structure of family law (Kobko-Odarii et al., 2025; Putra et al., 2025). Such an approach has the potential to ignore the structural dimensions of gender inequality embedded in the legal system itself. In many cases, legal reforms are limited to technical adjustments to norms deemed discriminatory, without conceptually reconstructing the basic principles underlying marriage law (Hoque, 2025; Kurniawan et al., 2025). On the other hand, developments in contemporary legal theory show a tendency to integrate a gender perspective into legal analysis in a more systematic manner (Bermúdez Figueroa et al., 2023). Feminist legal theory, for example, emphasises that law cannot be separated from the social power structures that shape it. In this context, the reformulation of marriage law from a gender justice perspective has become an urgent academic agenda requiring more in-depth study (Hunter, 2014).

This reformulation is not only about changes to certain discriminatory norms, but also about efforts to develop a legal framework that can guarantee substantive equality in family relations. In other words, the reformulation of marriage law must reconstruct the basic principles that govern the relationship between husband and wife, the rights and obligations within the family, and the legal protection mechanisms for vulnerable parties. However, to date, there are still significant gaps in knowledge in studies on the reformulation of marriage law based on gender justice. Many studies have identified various forms of gender inequality in marriage law, but have not comprehensively formulated an integrative and contextual model of legal reform that is in line with the national legal system. In addition, most studies remain limited to normative analyses of existing laws, without examining the possibility of a broader conceptual reconstruction of the family law paradigm.

This research gap underscores the need to develop a more comprehensive approach to examining the reformulation of marriage law from a gender justice perspective. Such an approach must integrate the normative analysis of existing regulations with a strong theoretical framework on the concept of gender justice in law. Within this framework, this study seeks to examine in depth how marriage law reformulation can be carried out by integrating the gender justice perspective as the main paradigm in the formation of family law norms. This approach is expected to contribute to the development of

family law theory by placing gender justice as a fundamental principle in the construction of marriage law.

The novelty of this research lies in its attempt to develop a conceptual model for reformulating marriage law that explicitly integrates the principle of gender justice into the normative structure of family law. Unlike previous studies, which tended to be descriptive or evaluative of existing regulations, this study seeks to formulate a theoretical framework that can serve as a basis for future reform of marriage law. Based on this, the main objective of this study is to critically analyse the current legal construction of marriage from a gender justice perspective and to formulate a model for reformulating marriage law that is more responsive to the principle of gender equality.

METHODS

This study uses a qualitative approach with a normative-constructive legal research design that is reflectively combined with conceptual analysis and a socio-legal approach, considering that the issue of gender inequality in marriage law is not only related to the structure of positive legal norms but also to social constructs, legal interpretations, and the institutional practices that surround them. The study focuses on the normative construction of marriage law in legislation and its interpretation in the perspective of gender justice, with the operational definition of gender justice understood as the principle of substantive equality in the relationship of rights, obligations, access, control, and benefits between men and women in the institution of marriage. The research data source population comprises all regulations related to family law in Indonesia, relevant court decisions, legal doctrines, and the latest academic literature on family law and gender justice theory, which are then selected purposively for their substantial relevance to the research focus as the subject of analysis.

The study instruments consisted of guidelines for analysing legal documents and a conceptual categorisation matrix developed through a theoretical review of the principles of gender justice and family law reform theory, which were then tested conceptually using expert judgement techniques and analytical consistency tests to ensure the reliability of data interpretation. While data validity was maintained through source triangulation, theory triangulation, and academic audits of the analysis process. Data collection was carried out in stages through a systematic literature study of legislation, court decisions, and relevant scientific works, followed by a process of normative categorisation and mapping of gender inequality issues in the construction of marriage law (Aulia et al., 2024). While data analysis was conducted using normative-critical and conceptual analysis techniques, combined with a legal hermeneutic approach, to identify gender bias in existing norms and formulate a conceptual model for reformulating marriage law that is more responsive to the principle of gender justice.

RESULTS AND DISCUSSION

Reconstruction of Power Relations in Marriage Law

In Indonesian marriage law, the construction of power relations based on these assumptions about nature can be seen explicitly in the regulations concerning the position of husbands and wives in the household. Marriage law normatively states that the husband is the head of the family and the wife is the housewife. This formulation of norms essentially reflects long-held social views in society regarding gender-based role division. Although in practice many women play an active role in economic activities and even become the family's main breadwinners, the normative structure of the law still places men as the authoritative figures in the household.

The fundamental issue in this context is not merely the existence of formal discrimination against women in legal norms, but rather how seemingly neutral norms can actually produce substantive inequality in social and legal practice. In many cases, legal provisions defining the division of roles between husbands and wives are considered to be a recognition of existing social realities. However, when these norms serve as the basis for determining rights and obligations within the family, they can reinforce pre-existing structures of inequality.

Inequality in power relations in marriage law is often seen in several issues directly related to the structure of authority within the family. One of the most prominent issues is that of family leadership and authority in strategic decision-making. In many traditional family law systems, important decisions such as family financial management, children's education, or even the family's place of residence are often considered the domain of the husband's authority. Such arrangements create a hierarchical structure within the family that places women in a subordinate position. Under certain circumstances, this structure can limit women's autonomy to make important choices related to their personal and family lives.

This power imbalance is also reflected in the provisions regarding financial support obligations in marriage law. Normatively, the obligation to provide for the family is often placed entirely on the husband (Ja'far & Hermanto, 2021). At first glance, this arrangement appears to provide economic protection for women, but in practice can have complex consequences. When men are positioned as the sole breadwinners, women's economic position in the family becomes highly dependent on their husbands. This economic dependence can reinforce unequal power relations within the household, especially in situations where women experience domestic violence or face divorce. In many divorce cases, women face a significant risk of impoverishment because their economic contributions during the marriage are often not adequately recognised in the legal system.

In addition to the issue of financial support, another issue that reflects the imbalance of power in marriage law is authority over child custody and decision-making related to reproductive health. In several family law systems, decisions related to women's bodies are often still influenced by the authority of the husband or social norms that limit women's autonomy. For example, in some legal contexts, decisions regarding contraceptive use or access to reproductive health services are still influenced by a

partner's consent or conservative social morality considerations. This situation shows that power relations in marriage law are not only related to the division of economic or domestic roles, but also concern control over women's bodies and autonomy.

This phenomenon becomes even more complex when linked to law enforcement practices and the patterns of legal reasoning used by judicial officials. In many family cases, judges often use social morality or the dominant cultural values in society as the basis for their decisions. Although this approach is intended to maintain social harmony, in practice, it can result in gender-biased decisions. For example, in divorce or child custody cases, judges sometimes assess women's behaviour based on certain moral standards that are not always applied equally to men. Such patterns of legal reasoning show that gender bias in marriage law exists not only at the level of written norms, but also in the practice of interpreting and applying the law.

The reformulation of marriage law based on gender justice requires a more comprehensive approach than simply removing explicitly discriminatory norms (Malik et al., 2025). The reformulation must be able to reconstruct the family law paradigm from assumptions of nature to the principle of substantive equality. The principle of substantive equality emphasises that justice is not only measured by formal equality between men and women, but also by the extent to which the legal system can overcome structural inequalities affecting women's social and economic position.

The experiences of several countries show that the reconstruction of marriage law towards the principle of substantive equality is a process that can be carried out through various legal policy approaches. In some Western European countries, for example, family law reforms have been carried out by removing the concept of the head of the family, which previously gave the husband dominant authority. In the modern family law systems of countries such as Sweden, Norway and the Netherlands, the relationship between spouses in marriage is understood as an equal partnership, in which family decisions are made jointly based on the principle of equal rights and responsibilities. These reforms have also been accompanied by social policies that support a more equitable division of domestic responsibilities, such as parental leave policies that apply to both spouses.

In Canada and several states in the United States, family law reforms also emphasise the importance of recognising non-economic contributions in marriage (Taylor, 2020). Under these systems, domestic and reproductive work performed by spouses, including childcare and housekeeping, is recognised as a contribution that has economic value in the division of joint property after divorce. This approach aims to reduce the risk of poverty for women after divorce and ensure that contributions that are not visible in the formal economic system are still recognised in the legal system.

The experiences of these countries show that the reformulation of marriage laws based on gender justice is not only about changes in legal norms but also about a paradigm shift in understanding family relationships (Fathony et al., 2024). In this new paradigm, the family is no longer understood as a hierarchical structure in which one party is the leader and the other subordinate, but rather as a social institution built on equal partnership between individuals who share the same rights and responsibilities.

This approach allows for the creation of more democratic family relationships that respect the autonomy of each individual in the family. However, the application of the principle of substantive equality in marriage law cannot be separated from the social and cultural context of the society in which the law applies. '

In societies that still have strong patriarchal social structures, family law reforms often face resistance from various groups who consider such changes a threat to traditional values. Therefore, the reformulation of the marriage law must be carried out through an approach that is sensitive to the social context while adhering to universal human rights and gender equality principles. In the Indonesian context, efforts to reconstruct power relations in marriage law require an in-depth study of how existing legal norms shape gender relations within the family (Sulaeman et al., 2025). Such a study must be able to identify points where the law directly or indirectly reproduces gender inequality, whether through the regulation of rights and obligations, the mechanisms of proof in family cases, or the patterns of legal reasoning in court decisions.

The reconstruction of power relations in marriage law is ultimately not only a technical matter of changing legal norms, but also relates to a transformation of the legal paradigm in understanding the family as a social space that must guarantee respect for the dignity and autonomy of each individual. By shifting the basis of legal thinking from assumptions about nature to the principle of substantive equality, marriage law can function as an instrument that not only regulates family life but also plays a role in promoting the creation of more just and egalitarian social relations. This transformation is an important step in ensuring that family law can provide effective protection to all family members, especially women, who have often been in a more vulnerable position in the power relations within the household.

Polygamy, Marriage Dispensations, and Control Over the Body

Polygamy is often positioned as one of the most controversial practices in the relationship between religion, the state, and the principle of gender equality. On the one hand, the practice of polygamy is claimed to have a normative basis in several religious and cultural traditions that have existed for centuries. A frequently cited argument is that the practice is part of religious freedom and of communities' right to maintain their traditions. On the other hand, however, various social and legal studies show that the practice of polygamy often results in unequal power relations between men and women and creates economic and psychological vulnerability for the women and children involved (Janur, 2025). In this context, the debate on polygamy cannot be reduced solely to a normative question of whether or not the practice is permissible (Sugitanata et al., 2024). Still, it must be seen as an issue related to how the law regulates power relations within the family and how the state protects vulnerable groups from potential exploitation.

In Indonesian marriage law, polygamy is not absolutely prohibited, but is regulated through several requirements intended to limit the practice (Karimullah, 2021). These regulations require permission from the court and the consent of the previous wife,

because the husband must treat all his wives fairly. Normatively, this mechanism is intended as a form of state supervision of the practice of polygamy so that it does not harm women. However, in practice, various critical questions arise regarding the effectiveness of this mechanism in guaranteeing substantive justice for women. One of the fundamental issues is how the concept of justice in polygamy is assessed and measured. Justice in legal norms is often understood in terms of economic distribution or the division of time between spouses (Suyahman et al., 2025). At the same time, the emotional, psychological, and power relations within the family are rarely primary considerations in the legal assessment process.

Another issue that often arises is the burden of proof in polygamy petitions. In many cases, women are in an unequal position in the legal process because they must prove the injustice or pressure they experience in their marriage. The consent of the wife, which is one of the requirements for polygamy, also raises questions about the extent to which such consent is truly given freely without social, economic or psychological pressure (Karimullah, 2023). In societies that still have strong patriarchal structures, women often face pressure to agree to their husbands' decisions to maintain family harmony or avoid social stigma.

The experiences of several countries show different approaches to regulating the practice of polygamy. In Tunisia, for example, polygamy has been strictly prohibited since the reform of family law in the mid-twentieth century as part of efforts to modernise the law and protect women's rights (Ertürk, 2018). The reform was based on an interpretation of Islamic law that emphasised that justice in polygamy was difficult to achieve in practice, so the prohibition of polygamy was seen as a step consistent with the principle of justice in religion. Conversely, in some countries such as Malaysia and Indonesia, polygamy is still permitted with various administrative and judicial restrictions (Abdullah et al., 2015). This approach reflects the state's efforts to balance respect for religious traditions and the protection of women's rights. However, the effectiveness of these restrictions is still debatable because, in many cases, the practice of polygamy continues outside of formal legal supervision.

In addition to polygamy, the issue of marriage dispensation is also a crucial point in the debate on the reformulation of marriage law (Sugitanata & Karimullah, 2023). Marriage dispensation is essentially a legal mechanism that allows marriage below the minimum age set by law. This mechanism is often intended as a solution in situations considered urgent, such as pregnancy outside of marriage or social pressure related to family reputation. However, in practice, marriage dispensations are often used as a loophole to legitimise child marriage, which actually contradicts the objectives of child protection and reproductive health (Daffa et al., 2025; Yazid et al., 2023).

Child marriage has broad implications for the lives of women and children. From a reproductive health perspective, marriage at too young an age increases the risk of pregnancy and childbirth complications for women (Suleman et al., 2023). From an educational and economic perspective, child marriage often causes women to lose the opportunity to continue their education and improve their economic capacity (Haerozi et al., 2023). In the long term, this condition can reinforce a cycle of structural poverty

that is difficult to break. In judicial practice, the granting of marriage dispensations is often based on the judge's assessment of the prospective spouses' maturity and the best interests of the child. However, this assessment is often influenced by considerations of social morality and community pressure.

In many cases, judges face a dilemma between rejecting dispensation requests that could encourage extramarital relationships, which are considered a violation of social norms, and granting requests that directly contradict the principle of child protection (Chaturathorn et al., 2025). As a result, the concept of the best interests of the child is often interpreted through the lens of family reputation or social stability, rather than solely based on the long-term interests of the child's development. The experiences of other countries also show variations in approaches to dealing with child marriage. In some European countries, such as Germany and the Netherlands, child marriage is strictly prohibited without exception, because the protection of children's rights must be a top priority in the family law system. Meanwhile, in many developing countries, marriage dispensations are still maintained, albeit with various restrictions, as a pragmatic solution to certain social realities. However, various studies show that the existence of dispensation mechanisms often reinforces the normalisation of child marriage because society considers it a legal option.

The third issue that is no less important in the reformulation of marriage law is control over women's bodies and sexuality. In many family law systems, regulations regarding sexual morality often have different implications for men and women. Moral norms that have developed in society often place women as guardians of family and community honour, so that women's sexual behaviour is monitored more closely than men's. In the context of marriage law, these different moral standards can influence how the law assesses individuals' actions in divorce proceedings, child custody disputes, or other family disputes.

Control over women's bodies also appears in various regulations related to reproductive health and bodily autonomy. In some legal contexts, decisions regarding contraceptive use, family planning, or access to reproductive health services are still influenced by the consent of a partner or certain social norms. These conditions show that women's bodies are often an arena in which various social authorities, including the state and religion, seek to regulate individual behaviour to uphold moral values that are considered important to society.

From a human rights perspective, control over women's bodies and sexuality must be viewed within the framework of respect for individual dignity and autonomy. This principle affirms that every individual has the right to make choices about their body and reproductive life without coercion or discrimination. However, in practice, the application of this principle often faces challenges because it conflicts with certain social norms and religious interpretations that emphasise the importance of moral supervision of sexual behaviour.

These three issues show that reformulating marriage law in light of gender justice cannot be done without understanding the complex interplay among the state, religion, and human rights (Karimullah, Ruchiat Nugraha, et al., 2023). The law must

accommodate religious freedom and respect for tradition. Still, at the same time, it must also ensure that practices that have the potential to harm women and children are not legitimised in the name of tradition or morality. Thus, the reformulation of marriage law must be directed towards developing a legal framework that balances these various interests fairly and proportionally.

Within this framework, a substantive equality approach is important because it allows the law to assess the real impact of a practice on individuals' lives, rather than merely considering its normative legitimacy. This approach requires the law to not only assess whether a practice is formally permissible, but also whether it results in fair relations that respect human dignity. By applying this perspective, marriage law can function as an instrument of protection for vulnerable groups as well as a means of promoting social transformation towards more equal gender relations.

Economic Justice in Marriage and After Marriage Breakdown

When a marriage is stable, economic inequality within the family is often not openly questioned because the structure of family solidarity masks the unequal distribution of benefits and risks. However, when a marriage ends through divorce or the death of a spouse, this structure of solidarity collapses, and the question of who is entitled to the family's resources becomes crucial to the survival of each party. In such situations, women are often in a more vulnerable position because their involvement in care work during marriage often reduces their opportunities to develop a career, earn an independent income, or build personal asset ownership.

This phenomenon is often referred to in the literature on family economics as the opportunity cost of care work, the cost individuals bear when they sacrifice economic opportunities to perform domestic roles within the family. When marriage laws do not adequately recognise these contributions, divorce can result in structural impoverishment for women who have previously invested their time, energy, and productive capacity in maintaining the household.

In family dispute practice, issues of economic justice often arise in the form of conflicts over the division of joint property, claims for post-divorce alimony, and access to economic resources previously managed by the couple (Karimullah, Efendi, et al., 2023). Such disputes are often complicated by structural factors, such as unequal access to information about the family's financial situation, difficulties in proving domestic contributions, and the practice of one party removing or hiding assets before the divorce process begins. In many cases, women who, during the marriage, did not have direct access to managing family finances face difficulties in proving the existence of their assets or their economic contributions to the family's wealth. This situation shows that economic justice in marriage depends not only on the existence of legal norms governing property, the division of property, or alimony, but also on institutional designs that enable these rights to be accessed and enforced effectively.

One of the most important debates in the reformulation of marriage law concerns how the legal system should recognise the economic value of unpaid care work (Smart, 2024). In the traditional market-based approach, only economically measurable

contributions are considered relevant in determining rights to family assets. However, in the gender justice approach, this assumption is problematic because it ignores the fact that reproductive work carried out in the household is a prerequisite for the functioning of the economic system as a whole. Therefore, several feminist theories in family law propose that care work be recognised as a full economic contribution that can give rise to compensation claims in the division of marital property and in the form of post-divorce alimony. This approach stems from the idea that the family is not only a moral or private institution, but also an economic and political institution that produces and distributes resources and social risks among its members.

The debate over the recognition of care work as an economic contribution often sparks heated controversy in the discourse on family law. Those who reject this idea usually argue that calculating the economic value of domestic work could commercialise family relationships, which should be based on solidarity and affection. In addition, there are also concerns that such recognition could create undesirable incentives, for example, by encouraging individuals to claim economic compensation for activities that were previously understood as part of moral obligations within the family.

On the other hand, proponents of this approach assert that the modern labour market has always depended on unpaid reproductive work, and that the failure of the law to recognise this contribution actually reinforces gender inequality in the distribution of wealth and economic opportunities. In other words, recognising care work is not an attempt to commercialise the family, but rather a correction to an economic system that systematically ignores women's contributions to social reproduction.

In various family law systems around the world, efforts to recognise non-monetary contributions in marriage have been made through various legal mechanisms. In some Western European countries, such as Germany and France, the division of property in divorce is based on the principle that all contributions made during marriage, whether economic or domestic, are considered part of a joint effort to build family welfare. This principle is reflected in the concept of a community of property or joint property regime, which assumes that wealth acquired during marriage is the result of the couple's collective contributions. In this system, care work need not be proven in detail as an economic contribution because the law assumes that domestic activities have the same value as formal economic activities in the context of family life.

In Canada and several states in the United States, recognition of non-monetary contributions is also reflected in the equitable distribution of marital property (Pitel, 2007). In this approach, the court not only considers formal ownership of assets but also takes into account each spouse's contributions to the family's welfare, including career sacrifices, child care, and support for the spouse's education or work. In addition, the legal systems in these countries also recognise various forms of post-divorce support, such as rehabilitative alimony, which aims to help economically weaker spouses regain financial independence through education or job training. This approach reflects the

understanding that divorce not only ends a personal relationship but also alters the distribution of economic risks previously shared within the family.

Some family legal systems that place greater emphasis on spouses' private autonomy often adopt a more contractualist approach to marital relationships. In this approach, spouses are given broad freedom to determine their own economic arrangements within the marriage through a marriage contract or separation of property. The statute plays a role in ensuring that contract procedures are carried out legally and do not violate basic legal principles. Supporters of this approach argue that individual autonomy must be respected in regulating family life, so that the state should not impose a particular model of economic distribution on married couples. However, the contractualist approach also faces criticism because, in practice, many couples make economic decisions in conditions of information asymmetry and unequal power relations, so that the resulting private choices do not always reflect a truly equal agreement.

Criticism of the contractualist approach often comes from a structural protectionist perspective that emphasises that economic relations within the family cannot be understood solely as contractual relationships between equal individuals. In many cases, women enter marriage in a weaker economic position and face social pressure to sacrifice career opportunities to perform domestic roles. Therefore, contractual freedom within the family is often illusory because broader social structures, including gender norms, the labour market, and state social policies, influence decisions made during marriage. From this perspective, the state needs to set minimum standards of protection that cannot be negotiated in marital relationships, especially in terms of property division, alimony, and protection of vulnerable parties.

Beyond property division and alimony, one of the biggest challenges in achieving economic justice in matrimonial law is enforcing court decisions. In many jurisdictions, including in various developing countries, decisions regarding child support or alimony are often difficult to enforce due to weak law enforcement mechanisms. Without an effective system for tracing income, tracking assets, or imposing sanctions on parties who do not fulfil their obligations, the economic rights decided by the court become difficult to restore in practice. This condition shows that the reformulation of marriage law should not only focus on the formulation of substantive norms, but must also include institutional designs that ensure that these decisions can be effectively enforced.

In a broader context, economic justice in marriage is also closely related to the design of a country's social protection policies. The experience of several Scandinavian countries shows that progressive family law systems usually go hand in hand with social policies that support gender equality in the labour market and family life (Karimullah & Sugitanata, 2024). Policies such as parental leave for both parents, affordable childcare services, and comprehensive social security systems help reduce economic inequality between men and women in the household. With the support of such policies, women do not have to make extreme choices between their careers and domestic roles, thereby minimising the risk of post-divorce impoverishment.

Conversely, in legal systems without adequate social policies, family law reforms often face limitations in bringing about real change. Court decisions that grant economic rights to women are not always able to prevent them from falling into poverty if the labour market remains discriminatory or public services do not support a more equitable division of childcare responsibilities. Therefore, the reformulation of marriage law based on gender justice needs to be understood as part of a broader policy agenda that includes reforming the labour system, social security, and public services to support a balance between work and family life (Karimullah et al., 2024).

From a theoretical perspective, the shift in focus from family morality to the economic and political dimensions of marriage opens up space to understand the family as an institution that produces and distributes social risks among its members. Marriage is not only a private space governed by moral and cultural norms, but also a social mechanism that determines how economic resources, life opportunities, and reproductive responsibilities are shared among individuals (Letiecq, 2024). By understanding the family within this political-economic framework, marriage laws can be designed to ensure that the distribution of benefits and risks within the family is more equitable and does not result in structural inequality for either party.

The practical implications of this approach include clearer legal guidelines for recognising care work contributions in the division of marital property, strengthened enforcement mechanisms, and increased financial transparency in marital relationships. The legal system also needs to develop instruments to prevent asset concealment before divorce and to ensure that information about the family's financial situation is readily accessible to both parties. In addition, the reformulation of the marriage law needs to be integrated with broader social protection policies so that women and children are not trapped in structural poverty after the end of the marriage.

CONCLUSION

Reformulating marriage law from a gender justice perspective requires a fundamental paradigm shift from a family law construct based on assumptions about nature and hierarchical relationships towards a framework of substantive equality that recognises the complexity of power relations, economics, the body, and the distribution of social responsibilities within the institution of marriage. Analysis of issues of power relations within the family, the practice of polygamy, marriage dispensations, control over the body and sexuality, and economic injustice in marriage shows that gender inequality does not solely stem from explicitly discriminatory norms, but also from legal designs that appear neutral but structurally reproduce inequality through the division of roles, standards of proof, enforcement mechanisms, and the neglect of unpaid care work contributions. By integrating perspectives of gender justice, family political economy, and experiences of legal reform in various countries, we can broaden our understanding of marriage law as an institution that not only regulates family morality but also as a mechanism for the distribution of social and economic risks that must be designed fairly and enforced effectively.

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