
Feminist Paradigm in the Study of Islamic Family Law In Indonesia

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ABSTRACT

This article examines the feminist approach in the context of Islamic family law in Indonesia, aiming to analyze how a feminist perspective can provide a critical view of the existing practice and interpretation of family law. This research was conducted through a library research method with a qualitative approach, exploring various academic literature, legal documents, and related sources, using descriptive analysis techniques. The results of the study indicate that the feminist paradigm makes a significant contribution to dismantling the patriarchal structure that has dominated the interpretation of Islamic family law. This article identifies several key areas where a feminist perspective can provide transformation, including: 1) Criticism of the concept of hierarchical family, 2) Re-reading the concept of polygamy and divorce, 3) Emphasis on equal rights and obligations of husband and wife, and 4) Deconstruction of textual interpretations that are detrimental to women. Methodologically, this study uses a feminist hermeneutic approach that considers the social, historical, and cultural contexts in re-reading religious texts. This allows for a more gender-responsive and equitable interpretation of Islamic family law.

Keywords: *Paradigm, Feminist, Islamic Family Law*

ABSTRAK

Artikel ini mengkaji pendekatan feminis dalam konteks hukum keluarga Islam di Indonesia, yang bertujuan untuk menganalisis bagaimana perspektif feminis dapat memberikan pandangan kritis terhadap praktik dan interpretasi hukum keluarga yang ada. Penelitian ini dilakukan melalui metode kajian pustaka (*library research*) dengan pendekatan kualitatif, mengeksplorasi berbagai literatur akademik, dokumen hukum, dan sumber-sumber terkait, teknik analisis menggunakan analisis diskriptif. Hasil kajian menunjukkan bahwa paradigma feminis memberikan kontribusi signifikan dalam membongkar struktur patriarki yang selama ini mendominasi penafsiran hukum keluarga Islam. Artikel ini mengidentifikasi beberapa area kunci di mana perspektif feminis dapat memberikan transformasi, antara lain: 1) Kritik terhadap konsep kepemimpinan keluarga yang bersifat hierarkis, 2) Pembacaan ulang terhadap konsep poligami dan perceraian, 3) Penekanan pada kesetaraan hak dan kewajangan suami-istri, dan 4) Dekonstruksi penafsiran textual yang merugikan perempuan. Secara metodologis, penelitian ini menggunakan pendekatan hermeneutika feminis yang mempertimbangkan konteks sosial, historis, dan kulturalitas dalam pembacaan ulang teks-teks keagamaan. Hal ini memungkinkan interpretasi hukum keluarga Islam yang lebih responsif gender dan berkeadilan.

Kata Kunci: *Paradigma, Feminis, Hukum Keluarga Islam*

1. Introduction

The discourse on feminism has recently become a fascinating topic of study and a subject of special discussion among Muslims, including in the study of family law. The influence of globalization has played a role in the influx of this discourse, as a reaction to the reality of gender inequality that has given rise to injustices against women in the form of marginalization, subordination, discrimination,

and even violence, which have also occurred within the family. This discourse is directly proportional to the need to reform various legal regulations deemed gender-biased.¹

Feminist paradigm in Islamic family law studies. The extent of academic debate among experts to realize gender justice in Islamic family law is reviewed. Existing research shows that 1) feminist figures have a view in line with the mainstreaming of feminism in Indonesia, which advocates the need for systematic and structural changes to achieve gender equality in order to build awareness of gender justice in Indonesian society; and 2) Etin Anwar's research creates the concept of ethical equality and spiritual equality and highlights the periodization of the construction of Islamic feminism in Indonesia in five eras: emancipation, association, development, integration and dissemination. Meanwhile, Siti Ruhaini Dzuhayatin prioritizes the concept of organizational modernity in gender mainstreaming that realizes equality in various aspects of life. ²This research is expected to contribute to the understanding and awareness of the issues of feminism and women in Indonesia. This study uses a *feminist legal theory approach* ³ and its relationship to gender equality, as well as the implementation of *feminist jurisprudence theory* in the study of Islamic marriage law in Indonesia.⁴

This study aims to answer the research questions by conducting a comprehensive study that positions the feminist paradigm as a tool for critical analysis. The focus of the study is directed at dismantling structures of injustice, providing a rereading of religious texts, and offering a more gender-responsive conceptual framework in the context of Islamic family law in Indonesia. The significance of the study lies in its efforts to: 1) How does the construction of patriarchy influence the practice and interpretation of Islamic family law in Indonesia? 2) To what extent can the feminist paradigm provide constructive criticism of existing Islamic family law practices? 3) What key aspects of Islamic family law require rereading from a feminist perspective? All three studies are *novelties* related to the feminist paradigm in Islamic family law in Indonesia.

The research argument is that the feminist paradigm offers a fundamental critical approach in dismantling the patriarchal structure that has dominated the interpretation of Islamic family law in Indonesia. The main argument of this research is that Islamic family law is not final and *taken for granted*, but rather a product of social construction that can and needs to be criticized from a gender justice perspective. Conceptual Hypothesis The feminist paradigm is able to present a more just framework for interpreting Islamic family law, by: 1) Dismantling patriarchal biases in the interpretation of religious texts, 2) Presenting a contextual reading that considers social dynamics, and 3) Placing the principles of equality and justice as the main foundation.

2. Research Method

Type and Approach The research uses a qualitative research method with a library research approach. The qualitative approach was chosen to allow for an in-depth analysis of the complexity of Islamic family law issues from a feminist perspective. **Data Sources** a) Primary Sources: Classical and contemporary fiqh books, religious texts (the Quran and Hadith), regulations related to family law in Indonesia, and decisions of religious courts. b) Secondary Sources: Academic books on Islamic family law, scientific journals discussing gender and Islamic law issues, works by Indonesian Muslim feminist thinkers, and research reports related to family law. **Data Collection Techniques** by means of a) Documentation study, b) Literature review, c) Text analysis, and d) Searching for printed and electronic library sources. **Data Analysis Method** This research uses several analytical methods Critical Analysis by evaluating family law practices and analyzing key concepts from a gender justice perspective.

¹Darania Anisa and Erna Ikawati, "The Position of Women in Islamic Family Law in Indonesia (Analysis of the Compilation of Islamic Law, Gender and Feminism Studies)," *Journal of Gender and Child Studies*, Vol. 5, No. 1, 2021, p. 1. DOI: [10.24952/gender.v5i1.3730](https://doi.org/10.24952/gender.v5i1.3730)

²Faridah Amiliyatul Qur'ana and Nur Afina Ulya, "Mainstreaming Feminism in Indonesia: A Study of the Thoughts of Etin Anwar and Siti Ruhaini Dzuhayatin", *YINYANG: Journal of Islamic, Gender and Child Studies*, Vol. 18 No. 2 December 2023, p. 246, DOI: [10.24090/yinyang.v18i2.9258](https://doi.org/10.24090/yinyang.v18i2.9258).

³Ni Komang Arie Suwastini, "The Development of Western Feminism from the Eighteenth Century to Postfeminism: A Theoretical Review," *Social Sciences and Humanities* , Vol. 2, No. 1, April, 2013, p. 199

⁴Heri Setiawan et al., "Gender Equality Issues in the Optics of Feminist Jurisprudence and Its Implementation in Indonesia", *Jurisprudence*, Vol. 5, No. 2, December 2018. also Indah Dwiprigitaningtias, "Women and Power Linked to Feminist Legal Theory", *Justisi Hukum*, Vol. 5, No. 1, September 2020, p. 59.

3. Result

A. Feminist Concepts in Islamic Family Law

The feminist concept, or what is usually called *feminist legal theory*, is a paradigm of thought related to gender equality in the scope of Islamic family law and its relationship to the implementation of *feminist jurisprudence theory*.

a. The Paradigm of Feminist Theory Thought

Feminist Legal Theory (FLT), or *Feminist Jurisprudence*, first emerged in the 1970s, coinciding with the development of *Critical Legal Studies* (CLS). *Feminist jurisprudence* emerged as a school of thought that sought to innovate and critique discriminatory legal practices against women. Prior to the emergence of FLT, which specifically focused on legal objects, feminism as a school of thought had already emerged in America in the late 1960s and throughout the 1970s.⁵

Feminist theory arose from the reality of the increasing number of American women choosing legal education and their critique of legal theories that failed to address women's rights. The thinking of legal feminists ultimately served as a foundation for legal scholars around the world, concerned about the legal disparity and discrimination against women.⁶ Therefore, women's legal struggles are defined as a struggle for women's freedom to access substantive justice, including challenging the *legal drafting process*, which has long been perceived as elastic, technocratic, and restrictive.⁷

In the early 1990s, the concept of *feminist legal theory* established various social functions of law within a country. A growing understanding, a critique of women, was that law often only served men's interests. Feminist adherents, who are *primarily* women, felt unprotected by the legal system in place, as changes in legal and social structures within the global community frequently occurred, or the relationship between theory and practice was elaborated on in specific cases.⁸

Feminist Legal Theory aims to challenge the unequal legal system influenced by patriarchal culture. Feminists believe that history is written from a male perspective, which fails to reflect women's roles in the manufacturing and construction of history. This male-made history has biased concepts about human existence, gender potential, and social engineering, resulting in language, logic, and legal structures that reflect the character and values of a male perspective.⁹

Sulistyowati Irianto stated that *feminist legal theory* emerged as a response to the discovery of many legal instruments that disadvantage women, specifically discriminating against them. *Feminist legal theory* also recognizes the difficulty for women in obtaining justice under the law. Sulistyowati illustrated that a woman who is a victim of sexual violence must provide evidence. This is certainly not easy for women. The struggle to provide evidence sometimes requires a lengthy legal process, but the punishment given to the perpetrator is only a few months. This certainly does not provide justice for the victim.¹⁰

Feminist Legal Theory can be used to examine articles that are used to punish women. There are two levels that are criticized by *feminist legal theory*, namely the text and practice levels. Questions in *feminist legal theory* that are used as benchmarks to see how the law is designed to harm women include (1) how the identity and imagination of women, including sexuality, capacity, roles and values about women are projected by the law, (2) whether the law reflects the reality of women's experiences, (3) what issues are regulated by the law, (4) whether the law protects and

⁵Ni Komang Arie Suwastini, "The Development of Western Feminism from the Eighteenth Century to Postfeminism: A Theoretical Review", *Social Sciences and Humanities* |, Vol. 2, No. 1, April, 2013, p. 199.

⁶Much Fakhi, "Marriage Law in Indonesia (A Study of Gender-Just Law within the Framework of Feminist Legal Theory)", *Muwazah*, Vol. 7, No. 2, December 2015, p. 159.

⁷Heri Setiawan et al., "Gender Equality Issues in the Optics of Feminist Jurisprudence and Its Implementation in Indonesia", *Jurisprudence*, Vol. 5, No. 2, December 2018. also Indah Dwiprigitanningtias, "Women and Power Linked to Feminist Legal Theory", *Justisi Hukum*, Vol. 5, No. 1, September 2020, p. 59.

⁸Aditya Yuli Sulistyawan, "Feminist Legal Theory in Paradigm Analysis Paradigm Analysis: A Mapping of Legal Philosophy", *Legal Issues*, Volume 47, No. 1, January 2018, p. 58. also Martha Albertson Fineman & Nancy Sweet Thomadsen, "Feminist Legal Theory", *Journal of Gender, Social Policy & The Law*, Vol. 13, No. 1, 2005, p. 59.

⁹Aditya Yuli Sulistyawan, "Feminist Legal Theory...", p. 58.

¹⁰Sulistyowati Irianto, "Feminist Perspective Law is Needed in Cases of Women Caught in Narcotics Trafficking", *Journal of Women for Enlightenment and Equality*, p. 2.

benefits women, (5) whether women's aspirations and perspectives are taken into account by the law.¹¹

The law should provide justice for women, but in some cases, legal instruments actually harm them. The Marriage Law and the Pornography Law, for example, are laws that are most closely aligned with women. However, they are also laws that ensnare women. There is a double standard within them. The same is true of the Pornography Law. This law is necessary to protect children from exposure to pornographic content, but it becomes problematic when women's experiences are not accommodated in the formulation of the law. What results is the objectification of women's bodies.¹²

To dismantle male hegemony in a patriarchal world, *feminist legal theory* (FLT), a subset of feminist studies, is based on the study of women's experiences. Women's experiences can be considered particular, as not all women are the same, making them subjective. The key word that can be emphasized to identify the paradigm that underpins *Feminist Legal Theory* (FLT) thinking is subjectivity, which determines the understanding of *Feminist Legal Theory* (FLT).¹³

According to Sulistyowati, feminist legal criticism goes beyond just legal texts and extends to legal practice. One area that needs to be critiqued and reconstructed is judicial decisions. This is because in Indonesia, many judges still position themselves as mouthpieces for the law. Yet, there is a need to make judicial decisions an important source of law. Sulistyowati explained that legal development is very slow, while societal development is very rapid, making it crucial for judges to make breakthroughs through their decisions.¹⁴

b. The Relationship Between Gender Equality and Feminist Legal Theory

Feminist legal theory, or *feminist jurisprudence*, is a legal philosophy based on gender equality in the political, economic, and social spheres. Feminist legal theory is based on the feminist movement's belief that throughout history, law has been an instrument for maintaining women's subordination to men.

History written by men has created bias in the concept of human nature, gender potential and capabilities, and in the social environment. Declaring masculinity as the norm, femininity is a deviation from the norm, and this constitutes hegemony in the concept of strengthening patriarchal law and power. This patriarchal culture results in what is known as gender discrimination, where a woman's position in law and society is considered equal to, or even several levels lower than, that of a man.¹⁵ However, this contrasts with what is expressed in a proverb.¹⁶ *Equality before the law* means that everyone is equal before the law. Equal before the law means that it doesn't differentiate based on gender, race, status, or anything else. Therefore, *feminist jurisprudence*, or feminist legal theory, emerged as a critique of existing legal schools of thought. Feminists challenge and dispel the belief or myth that women and men are different, allowing certain behaviors to be differentiated based on gender differences.

For feminists, gender is socially created or constructed, not biologically. Gender determines physical appearance and reproductive capacity, but not psychological, moral, or social characteristics. In other words, *feminist jurisprudence* attempts to examine law from a woman's perspective and based on *feminist theory*.¹⁷ In its development, *feminist jurisprudence* seeks to explain how law plays a role in legitimizing women's subordinate status to men. In other words, law functions as a means of maintaining the *status quo*, namely male domination over women.

Furthermore, *feminist jurisprudence* also seeks to create change/transformation to alter the status of women by changing the law, its approach, and its perspective on gender issues to be more just and balanced. This is a project for women's emancipation in the legal field, ultimately leading to... *Feminist jurisprudence* influences legal thinking in every area of law, including domestic relations such as marriage, divorce, and family law, domestic violence, employment, sexual harassment, civil

¹¹Sulistyowati Irianto, "Law from a Feminist Perspective...", p. 2.

¹²Sulistyowati Irianto, "Law from a Feminist Perspective...", p. 3.

¹³Aditya Yuli Sulistyawan, "Feminist Legal Theory in Paradigm Analysis...", p. 58.

¹⁴Sulistyowati Irianto, "Law from a Feminist Perspective...", p. 3.

¹⁵Heri Setiawan et al., "The Issue of Gender Equality in the Optics of Feminist Jurisprudence...", p. 128.

¹⁶A proverb is a humorous expression (to make fun of someone and so on), for example laws that apply to the common people.

¹⁷Heri Setiawan et al., "The Issue of Gender Equality in the Optics of Feminist Jurisprudence...", p. 128.

c. Feminist Legal Schools

Feminism has experienced rapid development with the emergence of critical schools of thought. The following section outlines various feminist developments in various dominant genres of thought, particularly within the feminist law school :

1) Liberal feminism. ¹⁹This feminist view emphasizes the importance of women's full freedom and individuality. It is rooted in the assumption that freedom and equality are based on rationality and the separation of the private and public worlds. The underlying rationale behind this group's thinking is that all humans, men and women, are created equal and harmonious, and neither should oppress the other.²⁰

This liberal feminist theory is among the most moderate among feminist theories. Its adherents desire the total integration of women in all roles, including working in the public sphere. This ensures that no gender is dominant. The inherent nature of being female, such as pregnancy, childbirth, and breastfeeding, should not be a barrier to women entering public sector roles.²¹

2) Radical feminists. ²² This radical feminist group typically prioritizes sexual relations as a fundamental issue. Radical feminists fight to eradicate the patriarchal structures ²³present in society. According to the more extreme radical feminist movement, equality is not only about rights, but also about sex, such as the ability to make sexual decisions between women (lesbians). The institutions of marriage and heterosexuality are seen as forms of oppression and enslavement of women. Men are a problem for women because they do not exploit women's reproductive rights. According to this understanding, the source of women's weakness lies in the biological system.²⁴

This theory has received sharp criticism, not only from sociologists but also from feminists themselves. Liberal feminists disagree with the theory, which completely equates men and women, arguing that the impact would be detrimental to women themselves. Men are not burdened with reproductive issues, while women cannot escape them.

3) Postmodern Feminists: This group of feminists' views are linked to anti-absolutist and anti-authoritarian ideas. They argue that the failure of modernity and the differential classification of social phenomena stems from their opposition to the universality of scientific and historical knowledge. They argue that gender has no meaningful social identity or structure.²⁵

4) Postcolonial Feminism: This perspective is rooted in the rejection of the universality of the experiences of women living in third world countries (colonies/former colonies) as distinct from

¹⁸Heri Setiawan et al., "Gender Equality Issues in the Optics of Feminist Jurisprudence...", p. 129.

¹⁹This theory assumes that there is essentially no difference between men and women, therefore women should have the same rights as men. However, liberal feminists still reject complete equality between men and women. In some respects, there are still differences (*distinctions*) between men and women. However, the function of the reproductive organs for women has logical consequences in social life. Also Ratna Megawangi, *Memambilarkan Perbedaan: Sudut Pandang Baru tentang Rela Gender*, (1st ed.; Bandung: Mizan, 1999), p. 228.

²⁰Rosemarie Putnam Tong, *Feminist Thought: The Most Comprehensive Introduction to Mainstream Feminist Thought*, (Yogyakarta: Jalasutra, 1998), p. 48 also Robin West, *Research Handbook on Feminist Jurisprudence*, (USA, Edward Elgar, 2019), p. 24.

²¹Marzuki, *Preliminary Study of Gender Theories*, (Paper on Civics and Law, FISE UNY), p. 9.

²²This school of thought emerged in the early 19th century and developed rapidly in the United States in the 1960s and 1970s. Although this theory is almost the same as the Marxist-socialist feminist theory, this theory focuses its attacks more on the existence of family institutions and patriarchal systems. By challenging all institutions that are considered detrimental to women, such as patriarchal institutions that clearly harm women, this term benefits men. Nasaruddin Umar, *Arguments for Gender Equality from the Perspective of the Qur'an*, (Jakarta: Paramadina, 1999), p. 66. Also Ratna Megawangi, *Letting Be Different: A New Perspective on Gender Relations*, (1st ed.; Bandung: Mizan, 1999), p. 226.

²³Patriarchy is a view that places men as superior to women. *Patriarchy* comes from the Greek: *patria* , meaning father, and *ache* , meaning rule. Anthropologically, it is used to describe the sociological condition in which male members of a society tend to dominate positions of power; the more powerful they are, the stronger a man's drive to hold that position. See Rifka Annisa, *Women's Crisis Center, Do We Really Love Our Wives*, pp. 5-7.

²⁴Mufidah Ch., *Gender Paradigm* , (Malang: Banyu Media, 2004), p. 43. Also M. Quraish Shihab, *Discussing Gender Issues*, (Semarang: RaLAIS, 2013), p. 19.

²⁵Agus Hermanto, " Gender Theory in Realizing Equality: Initiating New Jurisprudence", *Jurnal A h/ka>m*, Vol. 5, No. 2, November 2017. p. 216.

those of women from first world backgrounds. Third world women bear a heavier burden of oppression because in addition to experiencing gender-based oppression, they also experience oppression between nations, tribes, races, and religions. The dimension of colonialism is the main focus of postcolonial feminism, which essentially challenges colonialism, whether physical, knowledge, values, perspectives, or the mentality of society.²⁶

5) Existentialist Feminists: The discussion of existentialist feminism cannot be separated from literary figures who say that consciousness does not only depend on humans but is directed towards objects outside humans.²⁷

6) Marxist Feminists: From a Marxist feminist perspective, before the development of capitalism, the family was the unit of production. All human needs to sustain life were met by all family members, including women. With the development of capitalism, industry and the family were no longer a unit of production. Production activities and human needs shifted from the home to the factory. Women no longer participated in production activities. Then, gender-based work emerged, with men working in factories, which were productive and had economic value, while women worked in the domestic sphere, which was unproductive and had no economic value.²⁸

This theory has been criticized for its tendency to neglect domestic work. Marx and Engels failed to see the value of domestic work. Domestic work was considered marginal and unproductive. Yet, all public works with economic value rely heavily on the products produced by domestic work. For example, preparing meals, cleaning and tidying the house, and other activities that impact unproductive public work. The economic contribution women make through domestic work has been widely recognized by feminists themselves. When measured in monetary terms, women actually earn higher incomes than men in the domestic sector.²⁹

7) Social Feminists: This group of socialist feminists is known for opposing two systems simultaneously: the patriarchal social system and the exploitative economic system (capitalism). According to this group, women have been exploited by these two systems.³⁰ The socialist feminist movement focuses more on women's awareness and their oppressed position. According to them, many women are unaware that they are a group oppressed by the patriarchal system. To change society, male participation is needed, for example in childcare as a natural and fundamental part of life.

The goal of the socialist movement is to shape post-colonial feminist social relations: The experiences of women living in the third world (colonies or former colonies) are different from those of women from first world backgrounds. Third world women bear a heavier burden of oppression because in addition to experiencing gender-based oppression, they also experience oppression between nations, tribes, races, and religions. The dimension of colonialism is the main focus of post-colonial feminism which essentially challenges colonialism, whether physical, knowledge, values, perspectives, or the mentality of society.³¹

8) Nordic Feminists: Nordic feminists' analysis of the state differs significantly from the perspectives of Marxist and Radical Nordic feminists, who analyze state or political feminism from a micro perspective. These feminists believe that women should be friends with the state, as women's power, political rights, and social rights are achieved through the state, supported by its social policies.³²

Feminism has influenced the development of thought in Indonesia across various disciplines, including law. The doctrine of legal positivism generally dominates state legal policy, due to its

²⁶Siti Dana Panti Retnani, " Feminism in the Development of Schools of Thought in Law in Indonesia", *Journal of Legal Studies: ALETHEA*, 2017, p. 103.

²⁷Quraish, *Discussing Gender Issues...* , p. 19.

²⁸Mufidah, *Contemporary Gender Issues in Family Law*, (Malang: UIN Maulana Malik Ibrahim, 2010), p. 12.

²⁹Ratna Megawangi, *Allowing Difference: A New Perspective on Gender Relations*, (1st ed.; Bandung: Mizan, 1999), p. 143.

³⁰Syarif Hidayatullah, *Islamic Feminist Theology*, (Yogyakarta: Pustak Setia, 2010), p. 14.

³¹Beverly Lindsay, *Comparative Perspectives on Third World Women: The Impact of Race, Sex, and Class* , (Luxemburg: Holy Line, 2000), p. 79. Also Jamal Ma'mur, *Gender Regime in NU*, (Yogyakarta: Pustaka Pelajar, 2015), p. 1. Also Erna Surjadi, *Gender Harmony* , (Jakarta: Sinar Harapan, 2010), p. 1.

³²Siti Dana Panti Retnani, " Feminism in the Development of Schools of Thought..." , p. 103.

nature, which is related to the regulatory nature of the state as an institution with the authority to enforce, bind, and encompass everything (*all-encompassing, all-embracing*).³³

4. Discussion

A. Implementation of *Feminist Jurisprudence* in Family Law in Indonesia

Feminist jurisprudence is a school of legal philosophy based on the belief in gender-based political, economic, and social equality. A field of study within legal science, *feminist jurisprudence* has been influential in the legal field, influencing debates on sexual and domestic violence, workplace inequality, and gender-based discrimination.³⁴

Through various approaches, feminists have identified the gender components and gender implications of legal norms whose implementation is neutral, resulting in laws affecting employment, divorce, reproductive rights, rape, domestic violence, and sexual harassment all of which have disadvantaged women throughout human history and therefore must be reconstructed.³⁵

Feminists believe that legal history is written from a masculine perspective and does not reflect women's role in making history and shaping society. Such laws have presented male characteristics as the norm and female characteristics as deviations from the norm, so that the prevailing law will always reinforce and maintain patriarchal power. For feminists, the concept of gender is socially constructed, not biologically. Biological differences only create differences in physical appearance and reproductive capacity, not psychological, moral, or social constructs. These differences do not meet the requirements/qualifications for applicable law, which places biological differences as the basis for distinguishing between women and men in terms of their relationships within the state.³⁶

Feminist jurisprudence critiques laws based on masculine values, as they exhibit a number of limitations or are tied to oppressive social realities. These limitations stem from the *phallocentric nature of legal formulations* (male dominance), limitations related to the workings of legal structures that pose a problem for feminists in advocating for women's rights, and limitations related to the courts' focus on rationality and logic alone. Therefore, legal reform is the best way to achieve laws that are just for women.³⁷

Legal reform to achieve justice for women must be based on comprehensive research. The legal reform process aimed at achieving justice utilizes multidisciplinary studies, as law in society is often influenced by various other aspects, such as quantity, scope, and location. These include the dynamics of law enforcement power, causality, organizations, and institutions. Legal accountability, consensus, differences, conflicts, the history of political power, economics, regulation or limitation of economic interests, aesthetics such as harmony, language, legal relations and interactions within society, and the pluralism of legal norms and other norms, such as morality, religion, and belief.³⁸

Legal reform, according to *feminist jurisprudence*, aims to change the legal history that explicitly excludes women from public life, such that women do not have the right to vote and women in married relationships cannot own property. As Margaret Davies explains, liberal feminist-inspired legal reform begins with the premise that inequality exists in some contexts. In the early years of the liberal feminist movement, discrimination seemed to directly affect women's legitimate status, so legal reform was considered by some to be a sufficient means of achieving social equality in the legal sphere. The argument developed for equitable legal reform was that the law-making procedure was a "farce" and the legal system itself was "corrupt," so that justice would not prevail as long as there were no specific provisions for women.³⁹

³³Krisna Djaya Darumurti, "The Character of Legal Science: Functional Approach and Its Relation to Legal Education in Legal Reflection," *Journal of Legal Science*, Vol. 1, No. 2, 2017, p. 8.

³⁴A. Natalis, "Legal Reform in the Framework of Realizing Justice for Women: A *Feminist Jurisprudence Review* ", *CREPIDO* , Vol. 2, No. 1, May 2020. 11-23, May. 2020, p. 19.

³⁵A. Natalis, "Legal Reform...", p. 20.

³⁶A. Natalis, "Legal Reform...", p. 20.

³⁷A ditya Yuli Sulistyawan, *Feminist Legal Theory* in Paradigm Analysis: A Mapping of Legal Philosophy, *Journal of Legal Issues* , Volume 47, No. 1, January 2018, p. 60.

³⁸Muhammad Erwin, *Philosophy of Law, "Critical Reflection on Law"*, (Jakarta, PT. Raja Grafindo Persada, 2012), p. 57.

³⁹Savitri Niken, "A Feminist Legal Theory Study of the Regulation of Criminal Acts of Violence against Women in

Feminist jurisprudence emphasizes the use of sociological data as a tactical tool in legal reform efforts. The use of sociological data is strongly opposed by adherents of traditional legal doctrine, because it is considered "not really law." The first use of sociological data in an effort to analyze legal phenomena was not actually initiated by *feminist jurisprudence experts*, but by other schools, such as *sociological jurisprudence*, but the sociological data used is different, because *feminist jurisprudence* places more emphasis on the issue of sociological data about women. Sociological data about women is primarily a feminist methodology, which is based on the discovery, sharing, and analysis of women's concrete experiences.⁴⁰

Sociological data reveals that law in the past only aimed to establish social stability and that law would be rooted in norms of oppression. Therefore, reform is very important, because the results of legal reform can be a tool to the past for the future.⁴¹ Each of these functions has its own place, so *feminist jurisprudence* seeks to examine and formulate the ideal form of reform, in order to create a legal doctrine to overcome all forms of discrimination and domination that have been rooted and reinforced injustice in the past. Because legal reform through a *feminist jurisprudence approach* will produce a legal concept to form just human institutions in the present and the future.⁴²

Efforts to reform the legal system to achieve justice for women must be based on several considerations, including how women and men can obtain equal access to resources regulated by legislation. For example, access to health facilities, decision-making, access to information, education, and economic resources. It is important to consider whether legislation provides equal opportunities for women and men to participate in exercising their rights and obligations in all development policies and programs. Furthermore, it is necessary to analyze whether the legal norms formulated in legislation contain provisions regarding equal control over the relationship between men and women in the exercise of rights and obligations.

Furthermore, it is necessary to examine whether legal norms in legislation are capable of guaranteeing policies and programs that will produce equal benefits for men and women. Implementing such legal reforms is expected to provide substantive justice for women. Substantive justice in lawmaking obliges legal drafters, particularly those drafting legislation, to identify women's issues and make them representative issues to be included on the agenda in the legal instrument-making process. Thus, the laws created are goal-oriented and impact the well-being of women.⁴³

B. Marriage Law in Indonesia in *Feminist Legal Theory*

Marriage law in Indonesia in the context of this discussion is the Republic of Indonesia Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). Article 31 paragraph (3) of Law No. 1 of 1974 concerning Marriage states that the husband is the head of the family and the wife is the housewife. Article 34 paragraph (2) states that the wife is obliged to manage household affairs as well as possible and in Article 79 paragraph (1) of KHI which states that the husband is the head of the family and the wife is the housewife. These three articles indicate the standardization of gender roles and dichotomy between each area (husband and wife) into two different areas, namely the public area (husband as head of household) and domestic (wife as housewife). The standardization of this dichotomy is a form of gender injustice. The public-domestic dichotomy between the two sexes also creates an unequal relationship pattern between husband and wife and of course the wife is discriminated against in areas that bind their lives.⁴⁴

the Criminal Code: *Feminist Legal Theory Analysis of Indonesian Criminal Law Provisions Regarding Violence Against Women* ", Dissertation, Doctoral Program in Law, Postgraduate Program, Parahiyangan Catholic University, 2007.

⁴⁰ Heri Setiawan, " Gender Equality Issues in Optical Feminist Jurisprudence and Implementation in Indonesia", *FIAT JUSTISIA*, Vol. 12, no. 4, October-December 2018 , p. 159.

⁴¹ Siti Ruhaini Dzuhayatin, "Gender Glass Ceiling In Indonesia Manifestation, Roots and Theological Breakthrough", *Al-Jami'ah: Journal of Islamic Studies*, Vol. 58, no. 1, 2020, p. 228.

⁴² Donny Donardono, "Feminist Legal Theory; Rejecting Legal Neutrality, Celebrating Difference and Anti-Essentialism" in Sulistyowati Iranto (ed), *Women and Law: Towards Law with a Perspective of Equality and Justice*, (Jakarta: Yayasan Obar Indonesia, 2008), p. 7.

⁴³ Compare Fransiskus Saverius Nurdin, Reconstruction of the Principle of Legality in Criminal Law Based on the Principle of Justice, in Legal Reflection: *Journal of Legal Studies* , Vol. 1, No. 1, 2016, p. 28.

⁴⁴ Nur Azizah Hutagalung and Edi Gunawan, "Taklik Divorce and Its Legal Consequences in the Compilation of Islamic Law from a Feminist Theory Perspective," *Journal of Islamic Legal Thought*, Vol. 15, No. 1, 2019, p. 59.

This is further emphasized by the assumption that the face of the world is greatly influenced by how family relationships are formed. Some believe that the formation of the world begins with the construction of relationships between men and women within the family through law. Therefore, the Marriage Law and the Compilation of Islamic Law, as the foundation of family law, are constantly contested by various interest groups. For repressive and anti-women states, efforts to control women in accordance with the values and interests of their regimes involve changing family law.

For a democratic country that upholds humanitarian values, it is certain that its family law will reflect those values. The pattern of husband-wife relations that is constructed and legitimized by the state's laws, ultimately becomes a structure of interests where women are defeated by men's interests in the name of religion. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI) which aims to meet the material legal needs of Religious Courts, which consists of three parts: marriage law (Book I), inheritance law (Book II) and waqf law (Book III) as a guideline for judges in Religious Courts is also considered no longer in accordance with the values of equality, gender justice that guarantee women's rights.⁴⁵

The standardization of roles between men and women contained in the Marriage Law is not significantly different from the Compilation of Islamic Law (KHI), its derivative. Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law are generally derived from normative explanations of classical religious teachings, thus failing to consider the best interests of women. As emphasized, patriarchal cultural practices are often accompanied by religious interpretations legitimized by anti-women and *pro-status quo interpretations of religion*. Such practices influence and are influenced by the perspectives of policymakers and their implementation, even being endorsed by the public. This condition ultimately affects judges as law enforcers, potentially resulting in decisions that tend to favor husbands/men. The Compilation of Islamic Law is also considered out of step with societal developments, the values of equality and justice guaranteed by the constitution, and national regulations that guarantee women's rights. Some examples that are considered problematic are regulations on polygamy, standardization of roles between men and women, guardianship for women (for marriage), and male witnesses.⁴⁶

In fact, the KHI is considered to be in conflict with the universal values of Islam; justice (*al-'adl*), welfare (*al-mashlahat*), mercy (*ar-rahmat*), wisdom (*al-hikmah*), equality (*al-musawah*) and brotherhood (*al-ikha*) because the KHI is considered not to be fully derived from the empirical reality of Indonesia, but rather is taken more from normative explanations of interpretations of classical religious teachings, and does not take into account the welfare of women.⁴⁷

Feminist legal theory views that laws formulated by and for men and aimed to strengthen patriarchal social relations, so that the law *ignores* women's experiences, and the resulting laws are *sexist* or *male-biased*. This is regulated symbolically, laden with male rules and makes it difficult for women, these rules are expressed in masculine ways of thinking that cause repeated oppression of women. According to Gunder Frank, Antonio Gramsci and Lousi Altusser quoted by Much Fakhi, this is caused by the existence of the same values and interests between the state and men. This thinking can be understood that, with *the center of hegemony* (state, society and household) still dominated by male interests, women will be increasingly oppressed. Patriarchal ideology built by gender relations based on male interests and power is influential in perpetuating gender inequalities, *including* in the legal context.⁴⁸

Based on the above considerations, the Indonesian Marriage Law, namely Law No. 1 of 1974 in conjunction with Law No. 16 of 2019 concerning Marriage, should undergo legal reform based on the principles of justice and gender equality. Legal reform in this context is not merely a *law reform* (change to laws and regulations) but rather a *legal reform*, which must overhaul the legal system,

⁴⁵ Much Fakhi, "Marriage Law in Indonesia (A Study of Gender-Just Law within the Framework of Feminist Legal Theory)...", p.165.

⁴⁶ Aga Natalis, "Legal Reform in the Framework of Realizing Justice for Women: A Feminist Jurisprudence Study," *Journal of the Foundations of Legal Thought: Philosophy and Legal Science*, Vol. 2, No. 1, June 2020, p. 18.

⁴⁷ Much Fakhi, "Marriage Law in Indonesia (A Study of Gender-Just Law within the Framework of Feminist Legal Theory)...", p. 166.

⁴⁸ Much Fakhi, "Marriage Law in Indonesia...", p. 168.

including its structure, substance, and more importantly, the legal culture of society and also the legal culture of law enforcement and the formation of laws and regulations that pay attention to justice for women.⁴⁹

Regarding the relationship between feminism and the legal system, Sulistyowati Irinto argues that feminist theory needs to be developed based on several considerations. *First*, to analyze gender- and class-biased legal products, both in legislation and judicial decisions. This explanation aligns with data released by the National Commission on Violence Against Women, which recorded 342 regional regulations discriminatory against women as of 2013. This discriminatory situation is a habit of subordination that is still widely maintained in some regions in Indonesia. Subordination is a condition in which women are placed in a subordinate (lower) position than men, occurring in both private and public spaces. *Second*, to analyze the practice of legal enforcement. Specifically, in the criminal justice system, in rape cases where the victim is a woman, she must answer questions posed by the judge about the chronology of the rape. The victim is forced to review and re-explain the events of the moments when her dignity was humiliated, which, according to common sense, is unnatural and highly traumatic for the victim (woman). Such conditions in feminist studies are called *stereotypes*, where the assumption is that women dress up to attract the attention of the opposite sex, so that every case of violence or sexual harassment is always associated with this *stereotype*, thus giving rise to a negative assumption that the cause of women being sexually harassed is due to the woman's own fault. *Third*, encouraging a new legal paradigm that is gender equal with the aim of dismantling the circulation of crimes against women and feminism can also be used as a tool to examine court products (indictments and decisions) and laws and regulations that still contain injustices that are difficult to understand and know when using other theories.⁵⁰

C. Conclusion

Research on the Feminist Paradigm in the Study of Islamic Family Law in Indonesia has produced a number of critical findings that make a significant contribution to understanding and transforming the practice of Islamic family law. The main conclusions of this research can be outlined as follows: Patriarchal Construction and Injustice Islamic family law in Indonesia is still heavily influenced by patriarchal constructions that perpetuate gender inequality. The existing legal structure often places women in a subordinate position, both in aspects of family leadership, inheritance rights, and divorce mechanisms. Significance of the Feminist Paradigm The feminist approach has proven capable of presenting a critical reading of religious texts. Through the feminist hermeneutic method, this research shows that religious texts are not final, but rather the product of interpretations that are heavily influenced by the socio-historical context. Methodological Transformation The feminist hermeneutic method has proven its effectiveness in dismantling gender biases in legal interpretation. This approach is not merely critical, but also offers an alternative interpretative framework that is more just and contextual.

Practical Implications This research identifies several key areas requiring transformation, including: A more equal concept of family leadership, deconstruction of polygamy practices, Improvement of divorce mechanisms, and a just inheritance system. The research's transformative recommendations include: Re-reading religious texts taking into account the contemporary context, Developing gender-responsive legal interpretation methods, and strengthening feminist advocacy and movements in the context of Islamic family law. Despite the challenges ahead, this research also acknowledges the complexity of transforming Islamic family law. A comprehensive approach involving: Interdisciplinary dialogue, Active stakeholder engagement, and critical public awareness is needed.

⁴⁹Much Fakhi, "Marriage Law in Indonesia...", p. 169.

⁵⁰Ramdan Mahatma Rahantan, " Women and Law; Feminist Legal Theory as a Means of Creating a Legal System that Embraces Justice", Paper presented at Muhammadiyah University, Ahmad Dahlan University, 2019, p. 2. 10

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