# Family Law Reform Initiatives in Muslim World (Morocco, Indonesia and India)

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## Abstract

#### **Keywords:**

Reforms, Muslim Family Law, Gender Equality

The demand for reform of family law laws in an effort to realize the values of justice and equality is still an important issue in various countries in the Muslim world. The reason is the dynamics of society that continue to develop so that it needs to be balanced with legal changes. This study focuses on discussing the background of the importance of family law reform in the Muslim world, how the form of family law reform in several Muslim worlds (Morocco, Indonesia and India). This research was conducted by examining primary and secondary data with a qualitative normative approach. The findings are that the urgency of family law reform is due to the fact that family law in the Muslim world is still dominated by gender-biased thinking and lags behind the dynamics of the development of its society, in addition to the existence of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which requires countries to ratify these provisions. Therefore, most Muslim countries are fighting for the value of justice in the household, which needs attention from the authorities. Morocco has imposed sanctions on husbands who cause their wives to be neglected due to polygamy, Indonesia has also rejected human rights demands as a pretext to legalize interfaith marriage, while India has imposed a three-year prison sentence on husbands who illegally divorce their wives. The initiative to reform family law in the Muslim world came from the people, supported by women activists in all parts of the Muslim world.

## INTRODUCTION

Efforts to realize the values of justice and equality regardless of gender, race and social class as the mission of the Qur'an was revealed seem to still need to be fought for at the level of implementation. This is because most family law laws in the Muslim world are still dominated by gender-biased thinking and lag behind the development of today's society<sup>1</sup>. The study of family law contained in classical *Fiqh* books and laws and regulations is no longer considered capable of answering the dynamics and increasing status of women today<sup>2</sup>. Therefore, it is necessary to reinterpret the original sources of Islamic law. Even the family law laws of individual countries are no longer relevant to today's society and need to be reformed.

Morocco as a Muslim country has advocated for the abolition of child marriage, as well as fairer custody laws. In addition, women's rights organizations have also advocated for the prohibition of polygamy and women's right to equal inheritance, although these goals still seem unachievable. Although the codification of family law was a leap forward for family law in Morocco, it is currently inadequate. This fact points to certain obstacles to the perfection of the reform and the achievement of its intended goals. On the other hand, family law laws in Indonesia also continue to make changes such as the

<sup>&</sup>lt;sup>1</sup>Ghofur & Sulistiyono, 2015

<sup>&</sup>lt;sup>2</sup>Nur Khalidah Muin Fathul, "Pembaruan Hukum Keluarga Islam Di Indonesia Dalam Peningkatan Status Perempuan," *Saintifi Islamica* 3, no. 1 (2016): 63–82.

fulfillment of the rights of wives and children after divorce, child marriage and marriage dispensation, marriage age limits, rolling demands for interfaith marriages and so on. All of these demands are efforts towards humane justice for married couples. Meanwhile, in India, BMMA welcomes the draft law on the prohibition of triple divorce, supports the prohibition of *mut'ah* marriage, muhalil marriage and polygamy.

Some studies that discuss family law reform include studies that discuss the background of the demands for family law reform in the Muslim world. Islamic family law reform is needed, considering that classical fiqh books and current legislation are less relevant to the times. There is discrimination between the rights of women and men in domestic life. The dynamics of the struggle to reform Islamic family law in the realm of improving the status of women is currently impossible to stop following the development trend of feminism in the western world on the one hand and by sticking to the theological and socio-cultural traditions of Easternness as its geographical representation on the other.<sup>3</sup>

In Morocco, the transformation of society in the form of fundamental changes takes place on a continuous, ongoing basis. Legal reform requires a legal system that is rational and more compatible with people's lives. The reasons for family law reform in Morocco include the fact that the existing family law does not accommodate the interests of women. There is still gender inequality, especially women's rights in the household, for example because it still allows polygamy<sup>4</sup>. However, Morocco's polygamy provisions are one step ahead of Indonesia's. A woman can include a prohibition for her future husband to be polygamous in the ta'liq thalaq. If this is violated, then the future wife can file a divorce suit with the Court. The court can even dissolve the second marriage if the marriage causes injury to the first wife<sup>5</sup>. In Indonesia, efforts to improve family law are still ongoing. Various demands from the community regarding the judicial review of the marriage law on the grounds that the marriage law contains human rights violations<sup>6</sup>. In addition, there are demands for the fulfillment of the rights of wives and children after divorce, child marriage and dispensation of marriage age limits, rolling demands for interfaith marriage and so on. In India, this legal reform is marked by a change in thinking about the importance of gender equality in family law, changes in group norms, legal mobilization and the views of policymakers in India have influenced changes in family law in India<sup>7</sup>.

This article seeks to explore the background of the importance of family law reform in the Muslim world, how family law reform in some Muslim worlds, especially Morocco, Indonesia and India. Family Law Reform is still an important agenda in the Muslim world today, along with the development of society in line with the flow of information and globalization, the influence of the ratification of countries on the protection of human rights, the demand for respect for the rights of every person, the demand for gender equality so that it is necessary to adapt between the development of society and the applicable family law.

Renewal of Islamic family law in the Muslim world is needed because the classical *fiqh* books that are used as references still tend to contain discrimination and favor men. Furthermore, the current

<sup>&</sup>lt;sup>3</sup>Muin Fathul.

<sup>&</sup>lt;sup>4</sup>Daud; Fathonah K dan Nurrohman Syarif, "Right To Divorce for Women in Islamic Family Law of Morocco," *Al-Aḥwāl* Vol. 14, N (2021): 170–71.

<sup>&</sup>lt;sup>5</sup>Atho Muzhar Khoiruddin NAsution, *Hukum Keluarga Di Dunia Islam Modern* (Jakarta: Ciputat Press, 2011).

<sup>&</sup>lt;sup>6</sup>Islamiyati, "Analisis Putusan Mahkamah Konstitusi," 2017, 92–104, file:///C:/Users/ASUS/Downloads/1572-5445-2-PB.pdf.

<sup>&</sup>lt;sup>7</sup>M Tech Student et al., "No 主観的健康感を中心とした在宅高齢者における健康関連指標に関する共分散構造分析Title," *Frontiers in Neuroscience* 14, no. 1 (2021): 1–13.

legislation is less relevant to the dynamics of Muslim life which is increasingly complex. The development trend of feminism in the western world has influenced the mindset and attitudes of society in general, thus demanding the protection of human rights, demands for equality and protection for women. In addition, the existence of women in the public sphere is increasingly recognized. The development of society demands changes in the law in accordance with the needs of society.

This article is a qualitative research with the aim of exploring data to answer research questions about the urgency of family law reform in Muslim countries, aspects of legal reform in several Muslim countries that are the object of study. The unit of analysis that becomes the focus of this study is the family law of the Muslim countries of Morocco, Indonesia and India. This country is the focus of the study because it wants to compare between Morocco as an Islamic State, Indonesia as a country with a majority Muslim population, then wants to compare with India as a Muslim Minority country. Data is collected through reseach of primary data in the form of interviews, as well as secondary data through a study of manuscripts or survey results issued by the international organization Musawwa, as a global movement for equality and justice for Muslim families.

Applying Ibn Qayyim al-Jawziyah's theory of legal change, that the occurrence of legal changes is due to changes in the fatwa, while changes in the fatwa are due to changes in the issues surrounding the law. According to al-Jauziyah's view that the principle of legal change refers to the essence of Islamic law which aims to achieve human benefit. Therefore, a law that does not fulfill justice is certainly contrary to Islamic shari'a. The normative-sociological approach takes into account the social changes that occur in society both due to internal and external factors of society. Then the data is analyzed qualitatively by referring to the theories that have been presented in the literature review.

## **RESULTS AND DISCUSSION**

## The Urgency of Family Law Reform in the Muslim World

Family law occupies a very important position compared to other laws in the field of *mu'amalah*, because the family as the smallest social unit, has a role in the formation of religious and state life. The family is the place where the future generation of the nation grows, so that a sakinah family life becomes a necessity to be realized<sup>9</sup>. The issue of spousal equality in Muslim marriages has gained prominence over the last fifty years. This is in line with the ratification of the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 and the first femi- activism - international, regional and national/local - around the notion of gender equality and the associated implications for human rights discourse<sup>10</sup>.

Family law reform in the Muslim world is an important issue in all Muslim countries today. This is because the existing family law is qualified with gender-biased thinking so that criticism emerges that gives birth to demands for justice, equality and elimination of discrimination for men and women. another reason is that the applicable family law has lagged behind the development of society today. This lag is due to the increasing work of women and their strategic role in the public sphere, so it is necessary to change the view of their position which demands equality with men. Even the discourse of human rights also demands the protection of the human rights of each individual that must be protected. Based on these facts, family law reform is a must in the midst of globalization and information.

<sup>&</sup>lt;sup>8</sup>Ibnu Qayyim al Jauziyyah, *I'lam Al-Muwaqqi'in 'an Rab Al-'Alamin*, 3rd ed. (Beirut: Dar al-Fikr, n.d.).

<sup>&</sup>lt;sup>9</sup>Said Aqil Siraj, *Tasawuf Sebagai Kritik Sosial: Mengedepankan Islam Sebagai Inspirasi, Bukan Aspirasi*, 1st ed. (Bandung: Mizan, 2006).

<sup>10</sup>Zahia Jouirou dan Marwa Sharafeldin Lynn Welchman, "Hukum Keluarga Muslim Lintasan Reformasi," 2022.

Table 1

From the review of secondary data on several countries, the following data can be obtained:

# 1. Gender-biased thinking in family law law and implementation<sup>11</sup>

No	Country	Gender Biased Thinking	Impact
1	Morocco.	<ol> <li>Polygamy is permitted without the need for a license from an authorized institution</li> <li>Division of inheritance rights</li> <li>Abolition of childcare rights for a wife who has remarried a second husband 4.</li> </ol>	<ol> <li>Injustice in child support and lack of affection towards the child.</li> <li>Injustice in inheritance distribution practices</li> <li>Wife loses custody of children after second marriage</li> </ol>
2	Indonesia,	<ol> <li>There is no right to maintenance for the wife after a contested divorce, because contested divorce is seen as a form of nusyuz by the wife, even though the claim for contested divorce is due to the husband's negligence and fault.</li> <li>The difference in age of marriage between men and women</li> </ol>	<ol> <li>The wife's right to iddah alimony is neglected.</li> <li>The age of marriage for men and women becomes the same at 19 years.</li> </ol>
3	India	<ol> <li>Polygamy is permitted for Muslims</li> <li>The fall of three divorces is recognized</li> </ol>	<ol> <li>The impact of polygamy, survey results found that 50% of women experienced mental trauma such as depression, self-defeatism, and suicidal thoughts.</li> <li>Husbands are prevented from reconciling and wives must first marry another man, after divorce can only be married by the first husband</li> </ol>

This data shows that in Morocco, polygamy is permitted, and the impact is very bad for the lives of wives and children. Equality of inheritance rights is also a demand of Moroccan society, including that the wife will lose the right to care for children if she remarries another man. In Indonesia, the issue of a wife's rights in a divorce case is still a problem that often harms the wife. Although there are normative regulations that provide protection for women, the implementation is still not realized. Whereas in India the impact of polygamy is fatal, many wives are depressed and even want to commit suicide due to not being able to live a polygamous life. In addition, the recognition of the third divorce leads to the neglect of the wife's rights after the husband's divorce decision. As a result of this third divorce, the husband cannot reconcile because the wife must remarry another man, if she is divorced, the first husband can marry his ex-wife.

- 2. Muswawah survey results <sup>12</sup>, some reasons for the importance of family law reform:
  - a. There is discrimination in Muslim family law to the detriment of women in particular, which affects family and community life. Some family law provisions in the Muslim world treat women as secondary beings. They do not have the right to explore their abilities such as the right to education, the opportunity to be involved in the public sphere, the right to get a job, the right to inheritance, not getting the right to joint property when divorced, Women always have to be under the authority of male guardianship in carrying out legal actions.
  - b. Current Muslim family law does not reflect the reality of family life today. Where most women have developed and are involved in the public sphere, have education, and work. Of course, this

<sup>&</sup>lt;sup>11</sup> (Hasil survey Musawwa (sebuah gerakan global untuk kesetaraan dan keadilan keluarga Muslim), dipresentasikan dalam Raden Intan Mubadalah International Confrence of Famil, 26-28 Okt 2023, Lampung Indonesia)

<sup>&</sup>lt;sup>12</sup>Musawah, "Marriage as a Partnership of Equals" (Malaysia, 2021).

- change in conditions requires changes in the law, as the rule of figh that changes in the law are influenced by circumstances, places and situations.
- c. Muslim family law is dominated by classical fiqh concepts that support gender bias. This is because the Qur'an was revealed in a patrilinial society dominated by the thought that men are superior beings, while women are not taken into account.
- d. Various ijtihad methods of Islamic law support egalitarian law and allow for reform, either through ijtihad, ikhtilaf, istihsan, maslahah, darurah.
- e. Family law reforms are taking place around the world as Muslim countries engage in ratification efforts on the protection of women and children and human rights.
- f. Family law reform is important to achieve gender equality: the results of a global survey on gender equality (WEF, Global Gender Gap Index 2020) revealed that in 21 out of 25 Muslim-majority countries, family law and family practices are related to all aspects of women's lives. There are no opportunities for women to make decisions related to education, employment without full autonomy in marriage and equal rights to divorce, inheritance and guardianship.

# Family Law Reform in Muslim Countries Morocco, Indonesia and India

Table 2 Some of the proposals for changes to family law and the government's response include:

No	Country	Old Law	Reform results	
1	Morocco.	<ol> <li>Polygamy is permitted without the need for permission from an authorized institution.</li> <li>Sharing of inheritance rights</li> <li>Marriage age of 15 years</li> <li>Elimination of childcare rights for a wife who has remarried a second husband 4.</li> </ol>	<ol> <li>Polygamy must be licensed by the competent authority, and if the polygamy is unfair and hurts the second wife, the court can dissolve the second marriage.</li> <li>There has been no legal reform on the division of inheritance</li> <li>Change of marriage age to 18 years old</li> <li>Women are still entitled to childcare, even if they remarry<sup>13</sup>.</li> </ol>	
2	Indonesia,	<ol> <li>There is no right to maintenance for the wife after a contested divorce, because contested divorce is seen as a form of nusyuz by the wife, even though the claim for contested divorce is due to the husband's negligence and fault.</li> <li>Demands for marriage age equality between men and women.</li> <li>Demands for interfaith marriage</li> </ol>	<ol> <li>The issuance of Perma 1 of 2017 concerning guidelines for trying women who have problems with the law, but many are ignored by judges, so that the rights of wives due to contested divorce have not been fully realized.</li> <li>Changes in the age of marriage to 19 years for men and women</li> <li>Rejected by the government through Constitutional Court Decision No. 24/PUU-UU/2022 in rejecting the judicial review of Law No. 1/1974 related to interfaith marriage.</li> </ol>	
3	India	<ol> <li>Polygamy is permitted for Muslims</li> <li>Unilateral triple divorce recognized</li> <li>Demands for revised age of marriage, divorce, polygamy, maintenance, and hadanah of children,</li> <li>Mut'ah and muhalil marriages are allowed.</li> </ol>	<ol> <li>Polygamy is permitted for Muslims and prohibited for non-Muslims.</li> <li>Unilateral triple divorce is prohibited, with the husband receiving a 3-year prison sentence.</li> <li>Demands to revise the age of marriage, divorce, polygamy, child maintenance, and hadanah have not yet received a government response.</li> </ol>	

<sup>&</sup>lt;sup>13</sup>Musawah.

		The demand for a ban on mut'ah and muhalil
		marriages has not yet received a government response <sup>14</sup> .

This data illustrates that the demand for justice and equality in the Muslim family is a crucial issue. Some demands have received a positive response, while others have not received attention.

Referring to the growing social facts, the importance of family law reform in the Muslim world is due to the discrimination against women contained in the normative tex of Islamic law and family law regulations in Muslim countries. The issue gave birth to the dynamics of new demands to make changes to the law. There are various explorations of reform strategies through legal mobilization in family law in the Muslim world. Most Muslim countries have also ratified the CEDAW confession for the protection of human rights, so that countries that have rules that do not respond to the justice program launched by the UN in the CEDAW confession become something that is left behind and needs attention.

Gender inequality is the most widespread form of injustice today. Such inequality not only discriminates against women, but also adversely affects men, as research shows how men also suffer from the ills of patriarchy. Patriarchal discourse and gender ideologies reverberate among the private spaces of homes and societal systems around the world at large. And the legal systems that exist in many Muslim communities today tend to enforce laws that reinforce male dominance<sup>15</sup>. For example, it gives men the unilateral right to divorce, has no right to joint property for post-divorce, and does not recognize mothers as legal guardians of their children. The gap between the ethical concept of iḥsand in the Qur'ān and the ugliness of the reality lived in Muslim families today<sup>16</sup>. too broad to comprehend. Therefore, changing Muslim family law in a way that ensures gender justice is an important step towards reclaiming the ethic of iḥsan, just as the reclamation of iḥsan can help facilitate the process of legal reform.

Reforming the regulation and codification of family law in the Muslim world is urgent. This is due to the importance of each country adjusting to the accelerated development of Muslim societies, the increasing awareness of human rights, the right to freedom, justice, the guarantee of children's rights<sup>17</sup>. Substantive and pluralistic legal mobilization is needed by Muslims in the modern era. It is necessary to reinterpret family law texts and reform laws that have long been implemented and lag behind the development of today's society. Although there is a debate between those who support modernity and those who cling to traditional teachings that adhere to literal doctrines, there is also a debate between those who support modernity and those who cling to traditional teachings that adhere to literal doctrines<sup>18</sup>, However, efforts to protect the rights of every human being have received special attention in the international world that cannot be denied.

Islamic law is dynamic, responsive and adaptive to changes in society. Ibn Qayyim in his thinking about the law is very supportive of changes in society. He gives the widest possible space to the door of ijtihad in addressing change as an unavoidable reality. The paradigm of legal change is inseparable from the factors of time, place, situation, intention and customs. Ibn Qayyim al-Jawziyah's theory of legal

<sup>&</sup>lt;sup>14</sup>Noorr Jehan Shavia Niaz, "No" (2023).

<sup>&</sup>lt;sup>15</sup>Untuk perincian hukum keluarga Muslim dari empat puluh tujuh negara, lihat kompilasi Musawah tentang laporan masing-masing negara di www.musawah.org/mapping-muslim-family-laws dan Mir Hosseini et al. (2013).

<sup>&</sup>lt;sup>16</sup>Amira Abou-Taleb, "Thsan: A Mandate for Baeuty and Goodness in Family Relations," in *Justice and Beauty in Muslim MAriage* (London: Oneworld Academic in 2022, 2022), 85.

<sup>&</sup>lt;sup>17</sup>Anzaikhan Nasir, Muhammad, Aulia Rizki, "No Title," Taqnin: Jurnal Syariah Dan Hukum 4, No. 02 (2022).

<sup>&</sup>lt;sup>18</sup>Ghofur and Sulistiyono, "Eklektisisme Dalam Taqnın Hukum Keluarga Di Dunia Islam."

change is a concept of renewal of Islamic legal thought. The implications of this theory for society are useful in achieving the benefit of society as the purpose of the law itself. <sup>19</sup>.

The study of the development of family law in the Muslim world according to many circles is something that is very important to get attention. Morocco is among the countries that have successfully made legal changes. Through Moudawana in 2004, Morocco made innovations, especially to improve women's equality<sup>20</sup>. The reason was that the changes had the support not only of the government (above) but also took into account the dynamics and needs of the wider community. This was supported by a women's association called *Akhawat al-Safa* that demanded their rights as women and rejected polygyny. This group put universal terms of reference such as the declaration of human rights and the international convention on the elimination of all forms of discrimination against women (CEDAW) in the reform of Family Law. They are part of an alliance of modernist movements, women's organizations, human rights, and left-wing political parties that are highly skeptical of the ability of Islamist groups to keep up with the development of society in Morocco, and aspire to modernization in all fields, especially to ensure justice between men and women.

In Indonesia, demands for reform in family law include the age of marriage, interfaith marriage, protection of women after a contested divorce. The decision of the Constitutional Court Number 24/PUU-UU/2022 in rejecting the judicial review of Law Number 1/1974 related to interfaith marriage is to provide legal certainty to become a legal reference for the implementation of marriage in Indonesia not to legalize final and binding interfaith marriages and to avoid the public from the legal consequences of interfaith marriages<sup>21</sup>. This effort is the result of the government's ijtihad to end the polemics and the many problems of interfaith marriage that continue to exist in Indonesia.

In India, according to a survey, 84% of women felt that polygamy should be made illegal, and 73% of women felt that polygamous husbands should be punished. The survey revealed that 50% of women suffer mental trauma such as depression, self-blame, and suicidal tendencies as a result of being in a polygamous relationship. This proposal has already been accommodated by the Indian government, with a 3-year jail term for husbands who cause suffering to polygamous wives. However, rules on divorce, childcare and other proposals have yet to receive a positive response.

## **CONCLUSIONS**

The importance of family law reform in the Muslim world is because family law laws in the Muslim world are still dominated by gender-biased thinking and lag behind the dynamics of community development. The dynamics of Muslim society continue to develop so that it needs to be balanced with legal changes. The efforts of Muslim countries in fighting for the value of justice in the household that needs attention from the authorities. Morocco has implemented sanctions for husbands who cause their wives to be neglected due to polygamy, Indonesia has made the age of marriage between men and women and also rejected human rights demands as an excuse to legalize interfaith marriage, while India applies a 3-year prison sentence for husbands who impose divorce illegally. Family law reform initiatives in the Muslim world have emerged from the community, supported by women activists in all parts of the Muslim world. This study is limited to three Muslim countries. Therefore, further research is needed that

<sup>&</sup>lt;sup>19</sup>Sitti Rahmawati, "PARADIGMA PERUBAHAN HUKUM ISLAM (Eksplorasi Pemikiran Ibnu Qayyim Al-Jauziyah)," *Al-Bayyinah* 1, no. 2 (2017): 17–28, https://doi.org/10.35673/al-bayyinah.v1i2.14.

<sup>&</sup>lt;sup>20</sup>Syarif, "Right To Divorce for Women in Islamic Family Law of Morocco."

<sup>&</sup>lt;sup>21</sup>Islamiyati, "Analisis Putusan Mahkamah Konstitusi."

can take a more comprehensive look at the development of family law in other Muslim countries.

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