

ASSESSING THE COMPLIANCE OF INDONESIAN MARRIAGE LAWS WITH CEDAW PRINCIPLES



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Abstract

This study aims to assess the extent to which marriage law in Indonesia accommodates the principles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW, which Indonesia ratified in 1984, sets out various principles to ensure gender equality in all aspects of life, including marriage and family. However, the implementation of these principles in Indonesian marriage law still faces various challenges. Using a normative legal analysis approach, this study evaluates existing marriage regulations in Indonesia, including Law Number 1 of 1974 concerning Marriage. It examines whether these regulations comply with the provisions of CEDAW. This study also analyzes the gap between the principles of CEDAW and legal practices applied in Indonesia, taking into account cultural, social, and political factors that influence the implementation of these principles. The results of the study indicate that although there has been some progress in the equality of marriage rights, there are still inconsistencies in several aspects, such as restrictions on the age of marriage and women's rights in family decisions. Therefore, this study recommends a revision of several legal provisions in Indonesia to be more in line with the principles of CEDAW, to improve the protection of women's rights in the context of marriage.

Keywords: Marriage Law, CEDAW, Gender Equality, Polygamy, Women's Rights, Legal Reform, Women's Protection

INTRODUCTION

Marriage is a social institution that plays an important role in forming the foundation of community life. In the Indonesian context, marriage is not only a personal bond between two individuals but also involves legal, cultural, and religious aspects that regulate the relationship. As a highly respected institution, marriage is expected to reflect the values of justice, equality, and protection of human rights, especially for women. In Indonesia, marriage is regulated by Law Number 1 of 1974 concerning Marriage, which was later updated by Law Number 16 of 2019. Although this legal regulation is designed to create justice and protect the rights of married couples, there are still various challenges related to its implementation, especially in ensuring gender equality and respect for human rights.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international instrument adopted by the United Nations (UN) General Assembly on 18 December 1979. This convention aims to eliminate all forms of discrimination against women in various aspects of life, including politics, economics, society, culture, and family, and to ensure the protection of women's human rights in general (Nurjannah Abdullah, et al, 2023). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has been ratified by Indonesia through Law Number 7 of 1984, provides important principles that must be adopted in national law, including in terms of marriage. These principles include equality in rights and obligations, freedom to choose a partner, and the elimination of discriminatory practices such as child marriage and polygamy that are not in line with the principles of gender justice.

The three main principles contained in CEDAW are equality, non-discrimination, and the responsibility of states to ensure equal rights between men and women. International agreements that have been agreed upon are expected to be implemented, in accordance with the concept of international law known as *pacta sunt servanda*. All countries must comply with this responsibility and comply with the provisions of international law. If a country's laws hinder the implementation of an international agreement, then the law must be revised (Junita Fanny Nainggolan, et al, 2022).

However, in practice, there are still various problems that indicate a discrepancy between national legal regulations and the principles of CEDAW. One real example is the

practice of child marriage which is still rampant in various regions in Indonesia, even though the minimum age for marriage has been raised to 19 years through Law Number 16 of 2019. Cultural, and economic factors and lack of law enforcement are often the main reasons for this practice to continue, which contradicts the principle of non-discrimination and children's rights in CEDAW.

In addition, the regulation on polygamy in Law Number 1 of 1974 concerning Marriage is also often seen as inconsistent with the principle of gender equality mandated by CEDAW. Although this law stipulates certain conditions for the practice of polygamy—such as the consent of the first wife, the husband's ability to act fairly, and permission from the religious court—the regulation is still considered to provide legitimacy to practices that have the potential to create injustice for women, both in social, emotional, and economic aspects. In terms of social aspects, polygamy often reinforces stereotypes that place women in a subordinate position compared to men, thus harming women in terms of status and recognition in society. From an emotional perspective, many women feel pressured by polygamy, especially due to the lack of fairness in the attention and affection they receive from their husbands. Meanwhile, in terms of economic aspects, not all husbands who practice polygamy can meet the financial needs fairly for all their wives and children, thus creating disparities and instability in the family.

The inequality of rights and obligations between husband and wife is still evident in several legal provisions in Indonesia, especially in Law Number 1 of 1974 concerning Marriage. One example is Article 31 paragraph (3) which states that the husband is the head of the family and the wife is the housewife, and Article 34 which stipulates that the husband is obliged to protect his wife and provide all household necessities according to his ability, while the wife is obliged to take care of the household as well as possible. These provisions reflect an unbalanced division of gender-based roles, where men are positioned as leaders and primary breadwinners, while women are expected to play domestic roles. In practice, these rules can limit women from fully participating in public life, such as pursuing higher education, professional careers, or involvement in politics. This inequality is contrary to the CEDAW Convention, which states that women and men must have the same rights and

responsibilities in all aspects of married and family life, including decision-making, sharing responsibilities, and access to family resources.

Pacta Sunt Servanda is a fundamental principle in international law that means "treaties must be kept." This principle requires states that have ratified an international treaty to fulfill the legal commitments contained therein in good faith. In the context of international law, *pacta sunt servanda* ensures that international treaties are binding and must be implemented by state parties within their national legal systems.

When Indonesia ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through Law Number 7 of 1984, the country was legally bound to comply with the principles and obligations set out in the convention. *Pacta sunt servanda* requires the Indonesian government to (Ade Yuliany Siahaan, et al, 2021):

1. Adopting CEDAW Principles into National Law

Indonesia is obliged to harmonize national laws and regulations with the principles of CEDAW. This includes revising or eliminating laws that discriminate against women, as well as enacting new policies that support gender equality.

2. Executing the Agreement in Good Faith

Indonesia is not only required to implement the contents of the agreement formally, but also to implement it with full responsibility to achieve the goals of the convention, namely eliminating discrimination against women in all forms.

3. Providing Implementation Reports

As a state party, Indonesia is obliged to report periodically to the CEDAW Committee on the steps it has taken to fulfill its obligations under the convention and the challenges it faces.

This principle also means that Indonesia cannot use domestic legal excuses, such as conflicting regulations, to avoid its obligations under CEDAW. Instead, national laws must be adjusted to ensure compliance with the international agreement. In other words, through the principle of *pacta sunt servanda*, CEDAW becomes an integral part of Indonesia's legal obligations. Consistent implementation of this principle not only reflects respect for international law but also strengthens the protection of human rights, especially women's rights, at the national level.

So then, based on the explanation above, it can be concluded that Indonesia, as a country that has ratified CEDAW through Law Number 7 of 1984, has a legal obligation to comply with and implement the provisions contained in the convention. The principle of *pacta sunt servanda* emphasizes that ratified international agreements, such as CEDAW, are not only symbolic but have legal force that binds the state to ensure that all national regulations and policies support gender equality and the protection of women's rights.

Thus, Indonesia must continue to strive to align its laws and regulations with the principles of CEDAW, eliminate laws or policies that discriminate against women, and ensure that the implementation of the principle of gender equality is reflected in all aspects of community life, including family, education, work, and political life. Failure to fulfill these obligations can impact the country's image in the eyes of the international community and potentially hinder the achievement of sustainable development goals, especially in terms of women's empowerment and gender equality. Therefore, the Indonesian government needs to conduct ongoing evaluation and legal reform, so that the principles of CEDAW can be fully and effectively implemented at the national level.

Based on the background that has been explained, here are two problem formulations that can be used:

1. To what extent has marriage law in Indonesia, particularly that regulated in Law Number 1 of 1974, accommodated the principles of CEDAW in an effort to eliminate discrimination against women?
2. What are the obstacles faced by Indonesia in implementing the principle of gender equality in marriage law, and what efforts need to be made to align national laws with the obligations contained in CEDAW?

Then, the objectives of this research are:

1. To analyze the extent to which marriage law in Indonesia, particularly that regulated in Law Number 1 of 1974, has accommodated the principles of CEDAW to eliminate discrimination against women.
2. To identify the obstacles faced by Indonesia in implementing the principle of gender equality in marriage law and provide policy recommendations to align national laws with the obligations contained in CEDAW.

REVIEW OF LITERATURE

Marriage

Marriage is an inner bond between husband and wife that aims to form a happy and eternal family (household) based on God Almighty (Kutbuddin Aibak, 2009). Many different perspectives see marriage as a complex social institution. Marriage in Indonesia is defined as an inner bond between a man and a woman who is called husband and wife in the legal and religious perspectives. This marriage is carried out with the hope of forming a happy and eternal family or household, based on the values of God Almighty (Hilman Hadikusuma, 1990). In exploring a deeper understanding, various views from certain experts can provide a richer dimension related to marriage. Duvall & Miller, for example, view marriage as a legal relationship between a man and a woman that involves sexual aspects. In this perspective, sexual relations are considered as complementary elements, allowing both to understand and carry out their respective duties.

Compilation of Islamic Law (KHI) Article 2 emphasizes the worshipful nature of marriage, describing it as a strong contract and as a form of obeying God's commands. In this framework, marriage is not just a bond between two individuals, but also a form of worship carried out to carry out religious commands. Soemiyati provides a more general perspective by viewing marriage as an agreement between a man and a woman. In this view, marriage is seen as a form of agreement or contract between two individuals (Manan, Abdul, 2005).

Perfecting the understanding, Abdul Rahman Gozali emphasized the sharia side of marriage, stating that marriage is a contract stipulated by sharia (Islamic law) to allow pleasure between men and women and to make it permissible (Mahmud Junus, 1964). These views show the complexity and diversity of conceptions of marriage. The importance of understanding these various perspectives is so that legislation related to marriage, including the Marriage Law in Indonesia, can reflect the diversity of values and beliefs of society and provide balanced protection for all parties involved in the institution of marriage. Therefore, an evaluation of the Marriage Law needs to consider these various perspectives to ensure conformity with the values that develop in Indonesian society.

Marriage Law in Indonesia

Marriage in Indonesia has a strong constitutional basis. This is reflected in Article 1 paragraph (3) and Article 29 paragraph (1) of the 1945 Constitution, which stipulates that Indonesia is a state of law based on the One Almighty God. This concept provides a philosophical and normative foundation for all aspects of Indonesian life, including marriage. The 1945 Constitution provides a basis for more specific laws, one of which is the Marriage Law. Article 2 paragraph (1) of the Marriage Law is the main pillar that confirms that a marriage is recognized as valid if it is carried out in accordance with the religious law and beliefs of each individual. This reflects the principle of a state of law that recognizes the diversity of religions and beliefs in Indonesia.

However, it is important to remember that the Marriage Law also recognizes the differences in sharia for each religion. Article 2 paragraph (1) emphasizes the obligation to implement Islamic Sharia for Muslims, Christian Sharia for Christians, and Hindu Sharia for Hindus. This principle reflects respect for the diversity of religions and beliefs in Indonesia.

The Marriage Law prohibits marriages based on religious differences, especially for Muslims. Provisions governing interfaith marriages are regulated in Article 2 paragraph (1), which is linked to Article 8 letter f, Article 40 letter c, and Article 44 of the KHI. This reflects the efforts of lawmakers to maintain justice and balance while respecting religious principles in marriage. In addition, the marriage law stipulates a minimum age for marriage. Marriage may only be conducted if the man is 19 years old and the woman is 16 years old, according to Article 7 Paragraph (1). This provision reflects considerations regarding the physical and mental maturity of the people getting married.

Thus, the Marriage Law does not only reflect the legal aspect, but also illustrates the efforts of the Indonesian state in respecting, protecting, and facilitating the implementation of marriage in accordance with religious values and beliefs, while maintaining justice and human rights. Maintaining and improving the Marriage Law is an important step in ensuring harmony between religious norms, constitutional values, and individual rights in the realm of marriage in Indonesia (Mahmud Junus, 1964).

CEDAW Principles

An international convention created by the United Nations (UN) known as the (Convention on The Elimination of All Forms of Discrimination Against Women) CEDAW, or Convention on the Elimination of All Forms of Discrimination against Women, aims to end discrimination against women in all its forms. The convention was created by the UN Commission on the Status of Women in 1946 and was approved by the UN General Assembly in 1979.

Indonesia ratified the Convention on the Elimination of All Forms of Discrimination against Women itself through Law No. Decree Number 7 of 1984 on 24 July 1984. Unfortunately, Indonesia still follows Article 29(1) of the Convention, which means that the country does not recognize the arbitration or conciliation mechanisms of the International Court of Justice if problems arise with other countries regarding the interpretation of the contents of the Convention.

CEDAW has three main principles. The first principle is to achieve substantive equality, which means upholding the same rights between men and women. The second principle, non-discrimination, focuses on the realization of fundamental freedoms and human rights, especially to address discrimination based on sex. The third principle is state obligations, where participating states have the main role and responsibility to ensure that economic, social, cultural, civil, and political rights are equally accessible to both sexes.

The Convention on the Elimination of All Forms of Discrimination against Women requires governments to implement policies that follow the following principles: (a) Provide equal opportunities for men and women; (b) Ensure equal access to benefits and opportunities for men and women, to create equal and equitable benefits; (c) Maintain equal legal rights between men and women in terms of citizenship, marriage, custody and family relationships; (d) Ensure equal legal status and equal treatment of women in the eyes of the law (Kusumawardhani, Amalinda Savira, 2020).

RESEARCH METHOD

The research method used in this study is a normative approach, which focuses on the study of legal norms, both written and unwritten, as well as laws and regulations relevant

to the research topic (Peter Mahmud Marzuki, 2011). This study will analyze Law Number 1 of 1974 concerning Marriage and other laws and regulations relating to marriage issues and women's rights, including laws relating to gender equality, the protection of women, and children. In addition, a study will be conducted on the CEDAW Convention to see Indonesia's legal obligations after ratifying this convention, as well as the principles contained in CEDAW relating to gender equality in marriage. Other relevant documents, such as court decisions and related government regulations, will also be analyzed to see the application of CEDAW principles in national law.

In the normative approach, this study will conduct a legal comparison between international legal norms (in this case CEDAW) and Indonesian national law. This study aims to see whether there is a gap between existing regulations in Indonesia and the principles contained in CEDAW, especially in terms of gender equality, women's rights in marriage, and prevention of discrimination. With this approach, researchers will identify parts of national law that may not be in accordance with Indonesia's commitment to CEDAW and provide recommendations for improving or changing the law.

This study will also conduct a legal analysis of the articles in the Marriage Law and other regulations to assess whether the existing arrangements meet the gender equality standards required by CEDAW. With this approach, researchers will examine whether there is any hidden discrimination or inequality in the distribution of rights and obligations between husband and wife, and whether the law reflects balanced protection for women in marriage.

This research will include a literature review from various sources, including books, journal articles, and theses that discuss the issue of gender equality in marriage law, the implementation of CEDAW in Indonesia, and international law related to women's rights. This study aims to enrich the understanding of the legal context and principles that apply at the international and national levels. In addition, literature from other countries that have implemented the CEDAW principles well will be used to provide a broader comparative perspective on how these countries address the issue of gender equality in marriage.

This research will also look at the historical development of marriage law in Indonesia and how the implementation of CEDAW principles has been applied over time. This is

important to understand whether there have been changes in the law that support gender equality or whether there are obstacles to its implementation.

RESULTS AND DISCUSSION

Law Number 1 of 1974 concerning Marriage is the legal basis that regulates all matters related to marriage in Indonesia. This law covers various aspects of family life, from the requirements for a valid marriage to the rights and obligations of husband and wife to divorce. However, in its implementation, several provisions in the Marriage Law are often not fully in line with the principles contained in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by Indonesia in 1984. CEDAW is an international instrument that requires its member states to eliminate discrimination against women and ensure gender equality in all aspects of life, including in marriage and family relationships.

Article 1 of the Marriage Law stipulates that marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on the Almighty God. This goal should reflect marriage equality, but in practice, this goal is not always achieved (Budiarto, D., 2020). CEDAW demands that women be given equal opportunities in all matters, including in making decisions in marriage. However, in the Indonesian Marriage Law, the traditional roles of women as housewives and men as primary breadwinners often lead to inequalities that worsen women's position in the household.

One important aspect of the Marriage Law that creates inequality is Article 31, which states that the husband is the head of the family and the wife is the housewife. This provision leads to a gender-based division of roles that positions men as the head of the family and women as the managers of the household. This division of roles, although reflecting certain cultural and religious values, is contrary to the principle of Article 16 of CEDAW, which demands equality of rights and obligations between husband and wife in the household. According to CEDAW, this traditional division of roles must be changed to give women greater freedom in choosing their roles, both inside and outside the home (Setiawan, F., 2021).

In addition, the issue of polygamy is also an issue that is often in conflict with the principles of CEDAW. Article 3 of the Marriage Law stipulates that polygamy can only be carried out with the consent of the first wife and a legitimate reason in the eyes of the law. Although polygamy in Indonesia is still permitted in certain religious contexts, this creates inequality between women and men in marriage. CEDAW, in Article 16, emphasizes that the state must eliminate all forms of discrimination against women in marriage, including the practice of polygamy which often harms women socially, economically, and emotionally. Polygamy can worsen injustice and create inequality in husband-wife relationships, which is contrary to Indonesia's commitment to achieving gender equality.

The application of CEDAW in the context of the Marriage Law is also related to women's rights to access justice and protection in the household. Article 39 of the Marriage Law stipulates that divorce can only be carried out for legitimate reasons, such as incompatibility or domestic violence (KDRT). Even so, women who want to divorce often face social and legal barriers. CEDAW emphasizes that women must have equal rights to file for divorce and receive legal protection. In reality, women who file for divorce in Indonesia are often hampered by social stigma, limited access to justice, and economic dependence on their husbands.

The latest changes in Law No. 16 of 2019, which revised the 1974 Marriage Law, indicate an effort to bring national law closer to the principles of CEDAW. One significant change is the increase in the minimum age of marriage for women from 16 to 19 years. This change aims to protect women from early marriage that is detrimental to them physically, socially, and economically. This step reflects Indonesia's commitment to implementing the principles of CEDAW which require protection for children and women in terms of marriage and family (Hendrawan, A., 2022)

However, despite some reforms, there are still many provisions in the Marriage Law that do not fully support the implementation of CEDAW principles. For example, Article 7, which regulates the previous minimum age of marriage (16 years for women), shows inequality because it allows women to marry at a very young age, without considering the psychological, social, and economic impacts faced by women who marry at an early age.

Raising the marriage age to 19 years is a step forward, but there are still major challenges in eliminating child marriage in Indonesia.

In addition, Article 16 of CEDAW requires that states ensure that women and men have equal rights in all matters relating to marriage and the family, including in choosing a life partner and in making decisions regarding education and employment. In practice, despite progress in recognizing women's rights, the position of women in Indonesian marriages is still heavily dependent on the traditional roles attached to them (Salim, M., 2020). This hinders them from achieving economic, social, and political freedoms equal to those of men.

It is important to note that although Indonesia has ratified CEDAW, the implementation of CEDAW principles in the Marriage Law and marriage practices in the field still faces many challenges. The state has a legal obligation to ensure that women receive fair and equal protection in marriage. Therefore, ongoing legal reform efforts are needed to achieve greater gender equality in marriage in Indonesia, both through updating the law and implementing policies that support women's rights.

CONCLUSION

Law No. 1 of 1974 concerning Marriage is the legal basis that regulates various aspects of family life in Indonesia, starting from the requirements for a valid marriage, the rights and obligations of husband and wife, to divorce. Although this law aims to create a harmonious family, the provisions contained in this law are not fully in line with the principles of gender equality contained in CEDAW. Several provisions in the Marriage Law, such as the division of traditional roles of the husband as head of the family and the wife as a housewife, as well as the permission of polygamy with certain conditions, still create inequality in marriage that is contrary to the spirit of CEDAW.

The recent changes to the Marriage Law, namely increasing the minimum age for marriage for women to 19 years, reflect Indonesia's commitment to bring national law closer to the principles of CEDAW. However, despite the improvements, there are still major challenges in ensuring that all provisions in the Marriage Law support true gender equality, given the many social and cultural norms that still influence marriage practices on the ground.

Indonesia, as a country that has ratified CEDAW, has an obligation to ensure that its national laws, including the Marriage Law, are in line with these principles. Therefore, ongoing legal reform efforts are needed to achieve greater gender equality in marriage, both through further changes to the Marriage Law and the implementation of policies that support women's rights fairly and equally.

REFERENCES

- Ade Yuliany Siahaan dan Fitriani. (2021). “Kebijakan Pemerintah Terhadap Implementasi Convention on The Elimination of All Forms Discrimination Against Women (CEDAW) Atas Hak Perempuan di Indonesia”. *Jurnal Darma Agung*. Vol. 29, No. 2. 193–203.
- Budiarto, D. (2020). “Kebijakan Hukum Perkawinan di Indonesia dan Implikasinya terhadap Kesetaraan Gender”. *Jurnal Hukum dan Keadilan*, 12(1), 45-60.
- Hendrawan, A. (2022). “Perlindungan Hak Perempuan dalam Konteks Perkawinan di Indonesia: Perspektif CEDAW dan Hukum Nasional”. *Jurnal Pembangunan Hukum*, 10(2), 78-91.
- Hilman Hadikusuma. (1990). *Hukum Perkawinan Indonesia Menurut Perundang - Undangan, Hukum Adat, Hukum Agama*. Mandar Maju: Bandung.
- Junita Fanny Nainggolan; Ramlan; Rahayu R. Harahap. (2022). “Pemaksaan Perkawinan Berkedok Tradisi Budaya: Bagaimana Implementasi CEDAW terhadap Hukum Nasional dalam Melindungi Hak-Hak Perempuan dalam Perkawinan?”. *Uti Possidetis: Journal of International Law*. Vol. 3 No.1. 55-82.
- Kusumawardhani, Amalinda Savira. (2020). “Analisis Implementasi Konvensi Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan (CEDAW) di Indonesia”. *Jurnal Hukum dan Pembangunan*. Vol. 50, No. 1. 1-16.
- Kutbuddin Aibak. (2009). *Kajian Fiqh Kontemporer*. Teras: Yogyakarta.
- Mahmud Junus. (1964). *Perkawinan Dalam Islam*. Penerbit Bulan Bintang: Jakarta.
- Manan, Abdul (2005). *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*. Prenada Media: Jakarta.
- Nurjannah Abdullah, Muhammad Fajhriyadi Hastira. (2023). “Perbandingan Implementasi The Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) dalam Pemenuhan Hak Politik dan Ekonomi Perempuan di Arab Saudi dan India”. *Hasanuddin Journal of International Affairs*. Vol. 3, No 1.
- Peter Mahmud Marzuki. (2011). *Penelitian Hukum*. Jakarta: Kencana.
- Salim, M. (2020). *Perubahan Undang-Undang Perkawinan dan Pengaruhnya terhadap Perlindungan Hak Perempuan*. Yogyakarta: Graha Ilmu.
- Setiawan, F. (2021). *Implementasi CEDAW dalam Hukum Perkawinan Indonesia: Tinjauan Yuridis terhadap Perubahan UU Perkawinan*. Jakarta: Penerbit Buku Hukum.