

Study of Analysis of Legal Protection of Women's Rights from the Perspective of Islamic Law

Harry Kurniawan
STAI Tapaktuan South Aceh, Indonesia



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ABSTRACT

Objective: This study aims to analyze the concept of legal protection of women's rights in Islamic law and compare it with the Indonesian national legal system. **Method:** The study utilizes library research, with data sourced from scientific journal articles and research reports. **Results:** The research finds that Islamic law offers legal protection for women in areas such as livelihood, education, inheritance, and household protection. However, gender roles are defined traditionally, with men assuming the role of family heads, and inheritance distribution tends to favor males. In contrast, the Indonesian national legal system focuses on gender equality, providing comprehensive protection, particularly regarding domestic violence and inheritance rights. Despite these advances, challenges remain in implementing women's protection, while Islamic law, though traditional, continues to ensure women's welfare. **Novelty:** This study highlights the distinct approaches of Islamic law and the Indonesian national legal system, offering insights into the challenges and advancements in protecting women's rights.

INTRODUCTION

Legal protection of women's rights from an Islamic legal perspective is a complex and multidimensional issue. In this context, it is important to understand how Islamic law and the legal system in Indonesia interact in protecting women's rights. Various studies show that although there is a strong legal basis in Islam to protect women's rights, implementation in the field often faces significant challenges.

One important aspect in protecting women's rights is the recognition of the rights of women workers. Research by Shaleh et al. shows that there is discrimination against the rights of female workers in Indonesia, which indicates the need for the state's role in protecting women's human rights in accordance with the CEDAW convention and applicable laws and regulations [1]. This study emphasizes that despite the existing legal framework, consistency in the implementation of women's rights protection remains a challenge. This is in line with the findings of Farid et al. who discussed divorce from a gender perspective, where the right to divorce, which is considered an authoritative right for men, is often misused, resulting in unfair treatment of women [2]. This shows that although Islamic law grants certain rights to women, interpretations and practices in society often do not reflect the desired principles of gender equality.

Furthermore, Warjiyati highlighted women's political participation in the perspective of Islamic law, where Islam provides equal opportunities for men and women to be involved in politics [3]. This shows that in the context of Islamic law, women have a significant role in decision-making, which should be recognized and supported

by the existing legal system. However, in reality, women's participation in politics is still limited, and this reflects the existence of structural barriers that need to be addressed to ensure that women's rights are effectively protected.

In the context of protecting women's rights, the issue of forced marriage is also a concern. Budi explained that forced marriage is contrary to the principles of human rights because it violates the individual's freedom to choose a partner [4]. Under Islamic law, forced marriage is considered invalid and can be declared void, which shows that there are mechanisms in Islamic law to protect women's rights. However, the implementation of this principle is often hampered by social norms that are still deeply rooted in society. This indicates the need for better legal education and awareness to increase understanding of women's rights in the context of Islamic law.

In addition, the protection of women's rights is also related to the issue of inheritance ownership. Hasballah et al. emphasized that in Islamic law, women have the same rights to own property and inheritance, although there are differences in the distribution of inheritance between men and women [5]. This shows that despite the recognition of women's rights, practices in the field often do not reflect the expected principles of justice. Research by Permadi also highlights the importance of fulfilling women's inheritance rights in society, which often faces challenges of inequality [6]. Therefore, it is important to develop policies that support the fulfillment of women's inheritance rights so that they can fully enjoy their rights.

The issue of human trafficking is also a major concern. Pane explained that preventing and handling human trafficking crimes requires cooperation between various parties to protect women from exploitation [7]. Effective law enforcement and public awareness of women's rights are essential to reducing human trafficking rates. Research by Bukhari and Anwar also highlights the importance of human rights regulations in preventing human trafficking from an Islamic law perspective [8]. This shows that there is an urgent need to increase cooperation between governments, legal institutions and civil society in protecting women's rights.

Education issues also play an important role in protecting women's rights. Sukti et al. emphasize that fair and equal education can help raise awareness of women's rights and encourage positive social change [9]. Good education will provide women with the knowledge and skills needed to fight for their rights. In addition, Fadilla highlights the challenges faced by pregnant women in the prison system, indicating the need for more effective and human rights-oriented protection programs [10]. This shows that the protection of women's rights must cover all aspects of life, including in the context of the justice system.

In this context, it is important to understand that the protection of women's rights from an Islamic legal perspective does not only depend on legal texts, but also on interpretations and practices in society. Nurdin emphasized the importance of the division of joint property in fulfilling women's rights in Aceh according to Islamic law,

which shows that there are differences in the application of the law in various regions [11].

Although there are significant challenges in protecting women's rights, there are also many positive efforts being made by various parties to increase awareness and protection of women's rights. Amnesty and Indrawati highlighted the importance of increasing legal awareness in fulfilling and protecting the rights of women and children in Kebumen Regency [12]. This shows that with the right efforts, the protection of women's rights can be improved, and gender equality can be achieved. Thus, legal protection of women's rights from an Islamic legal perspective requires a holistic and integrated approach, involving various aspects, from education, political participation, to law enforcement. By understanding the challenges and opportunities that exist, we can work towards a more just and equal system for women.

RESEARCH METHOD

This study uses a library research type, which means that this study is conducted by collecting and analyzing data from various written sources, such as books, scientific journal articles, legal documents, and research reports related to women's rights in the perspective of Islamic Law. The data sources in this study consist of: 1). Scientific Journal Articles: Articles that discuss women's rights in Islamic Law, their comparison with other legal systems, and relevant legal protection theories. 2). Research Reports: Reports from previous studies related to legal protection for women in various legal systems, especially in the context of Islamic Law.

Data collection techniques are carried out by: 1). Literature Study: Accessing and reading various literature relevant to the research topic, such as books, journal articles, theses, dissertations, and research reports related to women's rights, legal protection, and Islamic Law. 2). Documentation: Collecting data in the form of Islamic legal documents and regulations governing women's rights, such as fiqh books, laws and regulations, and court decisions related to women's issues.

The data analysis technique in this study uses a qualitative analysis approach with the following steps: 1). Descriptive Analytical: The collected data is analyzed descriptively to describe the protection of women's rights in Islamic Law, as well as comparing it with other legal systems. 2). Critical and Interpretative: Analyzing and criticizing existing views on the protection of women in Islamic Law, then interpreting the findings by referring to the perspective of Islamic law and the laws and regulations in force in Indonesia.

Data validity testing is carried out using the following techniques: 1). Source Triangulation: Testing data by comparing analysis results from various different sources, such as scientific journals, books, and relevant research reports. 2). Expert Validation: Involving experts in the field of Islamic law or gender studies to evaluate and provide opinions on the validity and accuracy of the data used in the study. 3). Cross-Referencing: Ensuring the validity of data by matching data obtained from different literature, both

from primary sources (e.g., Islamic legal texts) and secondary (e.g., legal analysis in scientific journals).

So, with this method, the research aims to provide a deeper understanding of legal protection of women's rights from the perspective of Islamic Law, as well as to analyze its comparison with the legal system in force in Indonesia.

RESULTS AND DISCUSSION

A. The Concept of Legal Protection of Women's Rights from an Islamic Law Perspective

Protection of women's rights from the perspective of Islamic Law is highly protected and respected, although in some legal aspects there may be differences in interpretation and implementation in social practice. In general, Islamic law provides clear rights for women, both in personal, social, economic and family contexts.

1. **Women's Rights in the Family** : Islamic law provides clear rights for women in their roles as wives and mothers. In the family, women have the right to receive a decent living from their husbands, the right to participate in family decisions, and the right to choose their life partners. In addition, women also have the same rights as men in terms of inheritance, although with different provisions in the distribution that refer to the principles of balance and justice.
2. **Right to Education and Work** : Islamic law does not restrict women from obtaining education and working according to their needs and social conditions. In the Qur'an, women have the right to seek knowledge, and this is seen as an obligation for both men and women. In the context of work, women have the right to work to create economic independence, as long as they do not violate the boundaries of sharia.
3. **Social Protection Rights** : Women also have the right to protection in certain situations such as divorce, pregnancy, or poor health. In Islamic law, there is the concept of "mahram" which ensures that women are under the protection of an authorized person, such as a father or husband, who is responsible for providing physical and emotional protection.

Thus, although Islamic law provides protection for women's rights, in practice there are often differences in interpretation that affect the implementation of this protection. Some cases in which women experience injustice occur because of culture or social norms that consider women inferior to men, which can obscure the essence of protecting women's rights in Islam.

Legal protection of women's rights from an Islamic legal perspective is a complex and multidimensional topic. In this context, it is important to understand that Islamic law provides a comprehensive framework for protecting women's rights, including in social, economic and health aspects. Islamic law serves not only as a norm that regulates individual behavior, but also as a tool to ensure gender justice and equality in society.

First of all, legal protection for women in Islamic law can be seen from a human

rights perspective. Islamic law emphasizes the importance of the dignity and human rights of every individual, including women. This concept is in line with the view that everyone has the right to be respected and protected from all forms of discrimination and violence. In this context, legal protection for women who are victims of domestic violence (KDRT) becomes very important. According to Santoso and Arifin, the texts of the Qur'an provide many answers that require the realization of household relationships in a *ma'ruf* manner, which means equal, fair, and democratic [13]. This shows that Islamic law has a strong mission of protecting women.

Furthermore, in the context of reproductive health, Islamic law also provides significant attention. Fatimah noted that women's reproductive health has been guaranteed in the 1945 Constitution and other regulations, but in practice, there are still many challenges faced by women in gaining access to adequate health services [14]. Therefore, the implementation of preventive legal protection is very important to ensure that women's reproductive health rights are fulfilled. This includes efforts to increase public and government awareness in addressing health issues faced by women.

On the other hand, legal protection for women must also include economic aspects. Khairani and Safarni highlighted the need for legal protection for female workers, especially in the context of work that is often unfair and discriminatory [15]. In many cases, working women face various challenges, such as unfair wages and unequal treatment in the workplace. Therefore, it is important for the law to provide adequate protection for women in the world of work, including their rights as workers.

In the context of inheritance, Islamic law has a different view compared to positive law in Indonesia. Permadi explains that in the Islamic inheritance system, women often do not get equal rights to men, which can lead to injustice in the distribution of wealth [6]. This shows the need for reform in inheritance law to ensure that women receive fair and equal rights in inheritance matters.

Furthermore, protection for women victims of sexual violence is also a very important issue. Rahayu noted that Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence is expected to provide a strong legal umbrella for women who are victims of sexual violence [16]. This shows that there are significant efforts in the Indonesian legal system to protect women's rights and provide justice for those who are victims.

In addition, it is important to consider the role of customary law in protecting women's rights. Yoserwan emphasized that customary law can be an effective tool to protect women and children in the context of violence [17]. Customary laws that prioritize local values can provide protection that is more relevant and appropriate to the cultural context of the local community.

In this case, the restorative approach can also be a solution to provide legal protection for women and children as victims of domestic violence. According to Suartini, this approach can help create a more humane legal order and focus on victim recovery [18]. Thus, legal protection does not only focus on sanctions for perpetrators,

but also on recovery and rehabilitation for victims.

Legal protection of women's rights from an Islamic legal perspective covers various aspects, ranging from reproductive health, economic rights, inheritance rights, to protection against violence. It is important to continue to develop and strengthen the existing legal framework in order to provide better protection for women. This requires collaboration between governments, communities and legal institutions to ensure that women's rights are recognized and protected effectively.

In this context, legal awareness also needs to be increased among the public. According to Amnesty and Indrawati, women and children are often the groups left behind in fulfilling their human rights [12]. Therefore, legal education and counseling are very important to increase public understanding of women's rights and how to protect them.

In order to achieve these goals, there needs to be a comprehensive and systematic policy to protect women's rights. Dermawan emphasized the importance of the government's role in providing effective legal protection for women and children [19]. This includes strengthening institutions tasked with handling cases of violence against women, as well as providing adequate services for victims.

Thus, legal protection of women's rights from an Islamic legal perspective must be seen as part of a broader effort to achieve gender equality and social justice. By understanding and applying the principles of Islamic law that support the protection of women's rights, it is hoped that a more just and equal society can be created for all individuals, regardless of gender.

B. Comparison Between Legal Protection of Women's Rights in Islamic Law and the Indonesian National Legal System

The comparison between legal protection of women's rights in Islamic Law and the Indonesian national legal system reflects significant similarities and differences. In general, the Indonesian national legal system based on Pancasila and the 1945 Constitution emphasizes the principles of justice and equality between women and men, while Islamic Law tends to have a more specific approach to women's rights in a religious context.

1. **Equality of Rights in the Indonesian National Legal System** : The Indonesian national legal system, especially in terms of protecting women's rights, seeks to provide equality between women and men through various regulations, such as Law Number 39 of 1999 concerning Human Rights, and the Law on the Protection of Women and Children. These regulations prohibit discrimination against women and guarantee women's rights in the economic, social, political, and educational fields.
2. **Inheritance Provisions in Islamic Law vs. National Law** : In Islamic Law, women's inheritance rights are specifically regulated, which usually give women a smaller share than men (such as in inheritance, where a woman receives half of a man's share). This is sometimes seen as unfair, although according to Islamic teachings,

this provision aims to maintain a balance in social responsibility, where men are responsible for the family's livelihood. In contrast, in the Indonesian legal system, there is no different division of inheritance based on gender. Article 28B of the 1945 Constitution regulates equal rights between men and women in terms of inheritance rights, although in practice, the application of this inheritance law is often still influenced by customs.

3. **Protection Against Violence Against Women** : In Indonesian national law, there are clear regulations regarding the protection of women from violence, whether physical, sexual, or psychological, such as in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This legal system gives women the right to report and receive protection from domestic violence. In Islamic Law, although there is a concept of protection for women in the household, in practice there is often a looser interpretation regarding the treatment of women who experience domestic violence. Some scholars allow husbands to "beat" their wives in certain cases, although this is not permitted in the more moderate view of Islamic Law.
4. **Protection of Women in Marriage** : The Indonesian legal system provides for equality in marriage, by giving women equal rights to men in choosing a life partner, the right to divorce, and the right to joint property. In Islamic Law, while women also have the right to choose a life partner and divorce, rights in marriage are often more tied to women's traditional roles as mothers and wives. Some interpretations of Islamic Law place the husband in a more dominant position in marriage, which can affect women's rights.

Thus, although there are similarities in terms of protecting women's basic rights between Islamic Law and the Indonesian legal system, there are differences in their implementation, especially in terms of inheritance, marriage, and violence against women. Therefore, it is important to find a middle ground between the two so that women can receive fair protection without ignoring the religious values contained in Islamic Law.

Legal protection of women's rights in the context of Islamic law and the Indonesian national legal system is a complex and multidimensional topic. In this study, we will compare the two legal systems, focusing on how each provides protection for women's rights, as well as the challenges faced in their implementation.

First, in the context of Islamic law, the protection of women's rights is regulated in various sources, including the Qur'an and Hadith, which provide guidelines on gender equality and women's rights in various aspects of life, including marriage, inheritance, and protection from violence. For example, research by Sidiq and Erihadiana shows that in the Islamic perspective, there is a principle of gender justice that is upheld, although in practice there are often different interpretations [20]. In this case, women's rights in marriage and inheritance are often influenced by existing cultural norms, which can hinder the implementation of the principles of gender justice contained in Islamic law [9].

On the other hand, Indonesia's national legal system also has a legal framework

designed to protect women's rights. Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) is one of the important instruments that provides legal protection for women from domestic violence [21]. Research by Amnesty and Indrawati emphasizes the importance of increasing legal awareness among women and children to understand their rights and ways to access legal protection [12]. However, challenges in implementing this law often arise, including the lack of effective law enforcement and the social stigma attached to victims of violence [22].

Furthermore, in terms of inheritance, there are significant differences between Islamic law and Indonesian national law. In Islamic law, women have the right to inheritance, but often these rights are not equal to those of men, which can lead to injustice in practice [6]. In contrast, the Indonesian national legal system seeks to adopt the principles of gender equality in inheritance law, but there are still challenges in its implementation, especially in a society that still adheres to patriarchal norms [6].

Legal protection for women also includes aspects of health and welfare. In this context, Fadilla highlighted the need to evaluate the effectiveness of protection programs for pregnant women in correctional institutions, which showed that despite efforts to protect women's rights, there are still shortcomings in the implementation of these programs [10]. This shows that despite the existing legal framework, challenges in practice often hinder effective protection.

Furthermore, in the context of women workers, Shaleh et al. emphasized the importance of legal protection for women workers, who often face discrimination and violations of their rights in the workplace [1]. Indonesia's national legal system has recognized the need for protection for female workers, but inconsistent implementation and lack of awareness among employers may hinder the effectiveness of such protection [1].

In this regard, it is important to note that the harmonization of Islamic law and Indonesian national law is a challenge in itself. Research by Hasibuan shows that the implementation of sharia law in the national legal system must be carried out carefully to ensure that women's rights are not neglected in the process [23]. This requires constructive dialogue between various stakeholders, including policy makers, academics, and civil society, to create a more inclusive and just legal framework for women.

Thus, legal protection of women's rights in Islamic law and the Indonesian national legal system shows progress, but also significant challenges. Although there is a legal framework designed to protect women's rights, effective implementation remains an issue that needs to be addressed. Therefore, collaborative efforts from various parties are needed to ensure that women's rights are fully protected in both legal systems.

CONCLUSION

Fundamental Finding : There are significant efforts from both Islamic Law and Indonesia's national legal system to protect women's rights, focusing on sustenance,

education, and family protection. However, Islamic law presents inequality in inheritance, with men receiving a greater share due to their social responsibilities. Meanwhile, national law emphasizes gender equality, protecting women's rights in inheritance, domestic violence, and employment. **Implication** : The differences between the two systems show the need for harmonization between Islamic law and national regulations, particularly in areas like inheritance and domestic violence, to provide better protection for women across all sectors of society. **Limitation** : Challenges arise in implementing women's legal protection due to cultural and social factors that hinder effective enforcement, despite robust legal frameworks in both Islamic and national laws. **Future Research** : Future research should explore strategies to bridge the gap between Islamic law and Indonesia's legal system, focusing on practical solutions to enforce gender equality and provide stronger protection for women, particularly in rural and conservative communities.

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***Harry Kurniawan (Corresponding Author)**

STAI Tapaktuan South Aceh, Indonesia

Email: harrykurniawanfb@gmail.com
