

Vol. 2 No. 2 November 2024

P-ISSN 3031-5247

E-ISSN 3026-6076

Mawaddah

JURNAL HUKUM KELUARGA ISLAM



Diterbitkan Oleh:
Program Studi Hukum Keluarga Islam
Universitas Muhammadiyah Bandung

ISSN 3026-6076



MAWADDAH: JURNAL HUKUM KELUARGA ISLAM

Volume 2 Nomor 2 November 2024, E-ISSN: 3026-6076 | P-ISSN: 3031-5247

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KATA PENGANTAR

Puji dan syukur kita panjatkan kehadiran Allah SWT dengan segala limpahan karunia-Nya sehingga dengan rahmat dan iradahnya, Mawaddah: Jurnal Hukum Keluarga Islam dapat menerbitkan Volume 2 Nomor 2 November 2024 dalam edisi online maupun cetak, sebagai bentuk sumbangsih keilmuan dalam bidang Hukum Keluarga Islam dalam mewujudkan tatanan hukum dalam kehidupan berbangsa dan bernegara di Indonesia.

Jurnal Mawaddah lahir dari Rahim Program Studi Hukum Keluarga Islam (Ahwal Asy-Syakhsiyah) Fakultas Agama Islam Universitas Muhammadiyah Bandung, yang menjadi sarana penyebarluasan ilmu dan pemikiran ataupun gagasan-gagasan (nasyrul fikrah) khususnya dalam bidang Hukum Keluarga Islam, Hukum Islam, Hukum Perdata, Hukum Pidana, Hukum Adat, Islam Dan Gender, Isu-Isu Kekinian Lainnya Seputar Hukum Keluarga. Sehingga nilai-nilai Islam dapat dirasakan dan diterapkan dalam kehidupan sehari-hari dan dalam tatanan legal formal, melalui ilmu dan pemahaman keislaman yang baik dan membumi.

Tim redaksi Mawaddah: Jurnal Hukum Keluarga Islam menyampaikan banyak terima kasih kepada semua pihak dalam mengsucceskan penerbitan Jurnal Mawaddah ini. Semua kritik konstruktif dan masukan sangat diharapkan untuk lebih menyempurnakan Jurnal Mawaddah pada edisi berikutnya.

Bandung, 01 November 2024

Tim Redaksi Jurnal Mawaddah

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THE PROBLEM OF DOMESTIC VIOLENCE IN INDONESIA AND EFFORTS TO OVERCOME IT

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Submitted: 11-03-2024

Accepted: 01-09-2024

Published: 05-11-2024

Abstract

Domestic violence is an act that can cause pain to the victim, domestic violence can be committed by one family member against another family member, but often victims feel scared and do not report this because they are afraid of the abuser. . Therefore, this study aims to examine what factors encourage domestic violence, its psychological impact and how to overcome it. This research method uses qualitative research that emphasizes understanding problems in life. This research was conducted by means of literature studies. The results obtained in this study are that basically the biggest factor causing domestic violence is from the internal and external environment or from the family itself, while dealing with domestic violence can be done as stated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Keywords: *Problem, Domestic Violence, Indonesia*

Abstrak

Kekerasan dalam rumah tangga merupakan salah satu tindakan yang dapat menimbulkan rasa sakit pada korbannya, kekerasan dalam rumah tangga dapat dilakukan oleh salah satu anggota keluarga terhadap anggota keluarga lainnya, namun seringkali korban merasa takut dan tidak melaporkannya karena takut terhadap pelaku kekerasan tersebut. Oleh karena itu, penelitian ini bertujuan untuk mengkaji faktor apa saja yang mendorong terjadinya kekerasan dalam rumah tangga, dampak psikologisnya dan cara mengatasinya. Metode penelitian ini menggunakan penelitian kualitatif yang menekankan pada pemahaman permasalahan dalam kehidupan, penelitian ini dilakukan dengan cara studi literatur. Hasil yang diperoleh dalam penelitian ini bahwa pada dasarnya faktor terbesar penyebab terjadinya kekerasan dalam rumah tangga adalah dari lingkungan internal dan eksternal atau dari keluarga itu sendiri, adapun penanggulangan kekerasan dalam rumah tangga dapat dilakukan sebagaimana tertuang dalam Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.

Kata kunci: Problematika, Kekerasan Dalam Rumah Tangga, Indonesia

INTRODUCTION

People's lives are increasingly changing one time with another resulting in the inhibition of one.¹ One of them is the study of the problem of crime, problems occurring in society, and in particular problems in the household. In general, domestic violence is not a common thing to hear, domestic violence is more dominant carried out by husbands against wives because of several factors such as economic, educational and environmental factors.²

"Domestic violence is often referred to as *a hidden crime*, because both the perpetrator and victim seek to keep the act or violence a secret from public view." Perpetrators of violence usually have a greater status of power, both in terms of economy, physical strength, and social status in the family, "in its development some victims of domestic violence find it difficult to file or complain violence committed by their own husbands to law enforcement officials, because domestic violence itself is often seen as a private part or domestic matter, "so it cannot be reported to the police. So that domestic violence is increasing and victims of domestic violence (wives) are getting longer without protection. The prohibition of domestic violence has been regulated in Article 5 of Law Number. 23 of 2004 concerning the Elimination of Domestic Violence, the prohibition is in the form of: Physical violence, sexual violence, domestic neglect, and violence.³

Violent behavior is a response to the stressor that a person faces that is shown by the actual behavior of committing violence, either to oneself, others physically or psychologically. Violent behavior is a condition in which a person performs actions that can cause physical harm, both to himself and others, accompanied by tantrums and ouch, uncontrollable anxiety. Violent behavior is a state in which the client experiences behavior that can harm himself, the environment including other people and belongings . Violent behavior or violent acts are expressions of feelings by doing wrong actions due to loss of self-control

¹ Muhammad Maisan Abdul Ghani et al., "The Development of Islamic Law After the Taqlid Period," *Mawaddah: Journal of Islamic Family Law* Vol. 1 (2024): 68–85, <https://doi.org/10.52496/mjhki.v1i1.5>.

² IGN Partana Mandala, "Legal Protection of Victims of Domestic Violence as an Implementation of Victims' Rights," *Journal of Legal Analysis* Vol. 2 (2019), <http://jounal.undiknas.ac.id/index.php/JAH/index>.

³ IGN Partana Mandala.

due to stressors that become physical and psychological problems that cause harm to oneself, other individuals and the environment.⁴

The percentage of violence cases registered in the Symphony of the Ministry of Women and Child Protection states that until 2021 there were 20.4% of violence cases occurring in men and 79.6% of violence cases occurring in women. Violence against women in the private sphere occurs in various types, such as violence against wives (KTI), dating violence (KdP), violence against girls (KTAP), violence committed by ex-husbands (KMS) and ex-boyfriend violence (KMP), violence that occurs in domestic workers, and other private domains (Komnas Perempuan 2021).⁵

Violence does not look at gender, but it is very clear from the data presented above that violence against women is very worrying. In addition, the Ministry of Women and Child Protection also presents data that Domestic Violence (KDRT) is the highest level of violence today. Forms of domestic violence are not only physical violence, but there are still other forms that are more complex. So laws are needed that can protect victims of domestic violence, especially for women who are more often victims of domestic violence. Listed in Article 5 of Law Number 23 of 2004 concerning Domestic Violence Related to Physical Violence, Psychological Violence, Sexual Violence or Domestic Neglect. The law aims to provide protection, special treatment, assistance by social workers, and spiritual guidance services to victims of domestic violence.⁶

However, in reality despite the Law on the Elimination of Domestic Violence, there is still a lot of domestic violence that occurs in Indonesian society. Paying attention to various factors that cause domestic violence to arise, means that we must be careful in choosing the most appropriate handling of domestic violence problems. Therefore, we are interested in conducting this research entitled "The Problem of Domestic Violence in Indonesia and Efforts to Overcome It".⁷

RESEARCH METHODS

The research method used in this study is to use qualitative research using a normative juridical approach. According to

⁴ Rosma Alimi and Nunung Nurwati, "Factors Causing Domestic Violence Against Women," *Journal of Community Service and Research* Vol. 2 (2021).

⁵ Alimi and Nunung Nurwati.

⁶ Alimi and Nunung Nurwati.

⁷ Abu Haneefah, "The Problem of Domestic Violence and Alternative Solutions to It," *Journal of Social Welfare Research and Development* Vol. 12 (2007): 46.

Koentjaraningrat, qualitative research is research in the field of disciplines to collect, explain, analyze, and interpret facts, as well as the relationship between natural facts, society, and human behavior to find the latest knowledge.⁸ This research emphasizes understanding problems in social life based on reality conditions or *natural settings* that are holistic, complex and detailed. Qualitative research is descriptive and tends to use analysis with an inductive approach.⁹

The data sources used in this study use secondary data and primary data, secondary data are data obtained through literature studies and document reviews such as books, journals, papers, legal dictionaries or other written legal materials. While primary data is data obtained directly from the source either through interviews or reports in the form of unofficial documents which then after the data is obtained, then the data is processed. The laws and regulations used in this study are Law No. 23 of 2004 concerning the Elimination of Domestic Violence.¹⁰

After the data is collected using research methods, namely descriptive analysis, the data analysis used is a qualitative approach to secondary data.¹¹

RESULTS AND DISCUSSION

Definition of domestic violence

In the Big Dictionary Indonesian, violence can be interpreted as something characteristic, violence, the actions of a person that cause injury or death to others, or cause physical harm. Thus, violence is a more physical form of action that results in injury, disability, illness or elements that need to be considered in the form of coercion or unwillingness of the injured party.¹²

The word violence is equivalent to "*violence*" which in English can be interpreted as an attack or invasion of the physical or mental, psychological integrity of a person. While the word violence in Indonesian generally only concerns physical attacks. If the definition of

⁸ Muhammad Rizal Pahleviannur et al., *Qualitative Research Methodology* (Sukoharjo: Pradina Pustaka, 2022).

⁹ Eko Murdiyanto, *Qualitative research methods, theories and applications accompanied by sample proposals* (Yogyakarta: Yogyakarta Press, 2020).

¹⁰ Zainudin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2014).

¹¹ Kornelius Benuf and Muhamad Azhar, "Legal Research Methodology as an Instrument to Unravel Contemporary Legal Problems," *Journal of Justice Echoes* Vol. 7 Edi (2020).

¹² Edwin Manumpahi, Shirley Y.V.I, and Hendrik W. Pongoh, "Study of Domestic Violence on Child Psychology in Soakonora Village, Jailolo District, West Halmahera Regency," *E-Journal Acta Diurna* Vol. V (2016).

violence is the same as violence, then violence refers to physical and psychological violence.¹³

According to Handayani, violence is an attack on a person's mental, physical and psychological integrity so that it can harm one of the weak parties. Violence is an attack on a person's physical or psychic so that as a result there is an act of oppression against one party that causes harm to one party in the form of a physical or psychological person.¹⁴

The definition of violence according to Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence is that domestic violence is any act against a person, especially women, that results in physical, sexual, psychological, and/or domestic misery or suffering including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household.¹⁵

Domestic violence can happen to anyone including mother, father, husband, wife and child or domestic servant as stipulated in Article 2 of Law No. 23 of 2004. However, in general, the definition of domestic violence is narrowed down to mistreatment by husbands against wives and children. This is understandable because most victims of domestic violence are wives and children. Of course, the culprit is her beloved husband. But there are also "husbands" who are victims of domestic violence by their wives. Based on some of the definitions above, it can be concluded that all acts of domestic violence are acts that violate human rights that can be subject to criminal and civil law sanctions.¹⁶

The forms of domestic violence according to Law No. 23 of 2004 are:¹⁷

- a. physical violence;
Physical violence is an act that results in pain, falling ill or serious injury.
- b. psychic violence;

¹³ Manumpahi, Y.V.I, and Pongoh.

¹⁴ Manumpahi, Y.V.I, and Pongoh.

¹⁵ Republic of Indonesia, "Law No. 23 of 2004 concerning the Elimination of Domestic Violence," Pub. L. No. 12 (2004).

¹⁶ Manumpahi, Y.V.I, and Pongoh, "Study of Domestic Violence on Child Psychology in Soakonora Village, Jailolo District, West Halmahera Regency."

¹⁷ Indonesia, Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Psychological violence is an act that results in fear, loss of confidence, loss of ability to act, a sense of helplessness, and/or psychological suffering in a person, as follows:

- 1) Humiliation
 - 2) Comments intended to demean and hurt the wife's self-esteem
 - 3) Prohibit wives from associating
 - 4) Threats in the form of returning the wife to parents
 - 5) Going to divorce
 - 6) Separating the wife from her children and others.
- c. sexual violence;
- 1) Coercion of sexual relations committed against people living within the scope of the household
 - 2) Coercion of sexual relations against one person within the scope of his household with another person for commercial purposes and/or certain purposes
- d. Domestic neglect Article 9:
- 1) Any person shall not abandon a person within the scope of his household, if, according to the law applicable to him, or by consent or consent, he is obliged to give life, care or maintenance to that person.
 - 2) Neglect also applies to any person who causes economic dependence by restricting and/or prohibiting decent work inside or outside the home so that the victim is under the control of that person.

In general, acts of domestic violence also include economic violence, in the form of:¹⁸

- a. Not providing for a wife
- b. Utilizing the wife's dependence economically to control the wife's life
- c. Letting the wife work for later income is controlled by the husband. For example, forcing the wife to be a "Call lady".

Causes of Domestic Violence

Strauss A. Murray identifies male dominance in the context of social and family structures, allowing domestic violence to occur as follows:¹⁹

¹⁸ Moerti Hadiati Soeroso, *Domestic Violence in a Victimological Juridical Perspective*, ed. Tarmizi, Mould Pe (Jakarta: Sinar Grafika, 2010).

¹⁹ Joko Sriwidodo, *Introduction to Domestic Violence Law* (Yogyakarta: Kepel Press Publishers, 2021).

1. In maintaining power, men are considered a resource advantage compared to women, thus being able to regulate and control women.
2. Discrimination and restrictions in the economic field , Discrimination and restrictions on opportunities for women to work result in women's dependence (wives) on their husbands, and when husbands lose their jobs then wives experience acts of violence.
3. The burden of childcare, the wife who does not work, makes her bear the burden of being a babysitter. When unexpected things happen to children, husbands will blame their wives for domestic violence.
4. Women as children, The concept of women as men's property rights according to law, results in men's freedom to regulate and control all women's rights and obligations. Men feel they have the right to be violent just as a father abused his children in order to be orderly.

In addition to those mentioned above, the causes of domestic violence can be classified into two factors, namely internal factors and external factors:²⁰

1. Internal factors concern the personality of the offender that causes him to easily commit violent acts when faced with situations that cause anger or frustration. aggressive personality is usually formed through interaction in the family or with the social environment in childhood. It is not surprising that violence is usually hereditary, because children will learn about how to deal with the environment from their parents.
2. External violence, is a factor beyond the perpetrator. Those who are not classified as having aggressive behavior can commit violent acts when faced with frustrating situations such as prolonged economic hardship, spousal or spousal abuse, child involvement in juvenile delinquency or drug abuse and so on. Women should act passively, meekly and surrender. This has led to many cases of violence committed by husbands. Most wives try to hide the problem of violence in their family because they feel ashamed of the social environment and do not want to be considered a failure in the household.

²⁰ Moerti Hadiati Soeroso, *Domestic Violence in a Victimological Juridical Perspective*.

In addition to the above factors, acts of violence can also occur due to several factors that trigger or encourage violence, as follows:²¹

1. Financial problems, money can often be a trigger for disputes between husband and wife. Salary that does not meet household needs every month, often causes quarrels, especially if the main breadwinner is the husband.
2. Jealousy, jealousy problems can also be one of the emergence misunderstandings, disputes and even violence. There are many cases in Indonesia who have the heart to kill and mutilate their partner's body because they know they have committed fraud.
3. Child Problems, one of the triggers of disputes between husband and wife is child problems. Disputes can escalate if there are differences of opinion about the pattern of education towards children between husband and wife. This can apply to both biological children and stepchildren or foster children.
4. Parental problems, this is one of the triggers for quarrels and causes the relationship between husband and wife to crack. In the study, it was found that for parents who always interfere in their children's households, for example covering financial issues, education or children's work, often trigger quarrels that end in violence, moreover this can also be triggered because of differences in attitudes towards each parent.
5. Sibling problems, such as parents, siblings who live under the same roof or cannot trigger rifts in family and conjugal relationships. Interference from relatives in domestic life, infidelity between husband and wife's relatives, causing a gap or causing some kind of distance between husband and wife. Conditions like this are sometimes less realized by husband and wife.
6. Husband and wife come from families with different backgrounds. For this reason, there needs to be an effort to adjust to each other, especially with the habits brought from each family.
7. Husband and wife must be open, this openness is an attempt to prevent one party from knowing the past history of the couple from the other party. Quarrels triggered by each side's past stories have the potential to lead to disputes and violence.

²¹ Moerti Hadiati Soeroso.

8. The problem of misunderstanding, husband and wife are like two different poles. Therefore, efforts to adjust and respect the opinions of each party need to be maintained. Because if it will not cause misunderstandings, this condition is often triggered by trivial things but if left unchecked will not be found a common ground.
9. The problem of not cooking, there are indeed husbands who say they only want to eat their own wife's cooking, so that if the wife can't cook, they will do it. This attitude of the husband shows a dominant attitude, because nowadays the wife is not only demanded in the domestic sphere but also enters the public sphere. Often the wife feels pressured by this attitude will refuse, as a result of which a mouth quarrel arises that ends in violence.
10. The problem of wanting to win alone, in research obtained the picture that there are still husbands who feel "more" in everything compared to wives. Therefore, the husband wants all his desires to be a kind of "law", to which everyone who lives in the house must be subject to him.

The Psychological Impact of Domestic Violence

Every individual behavior can produce a good impact on oneself, other individuals and even groups. Domestic violence is a behavior that has a very complex impact on victims of domestic violence. As explained in the previous section, there are several forms of violence such as physical, sexual, psychological and economic violence. These acts of violence produce psychological impacts for women victims of domestic violence, for example victims feel anxious, afraid, depressed, always alert, continue to imagine when seeing similar cases, often daydreaming, moody, easy to cry, difficulty sleeping, to nightmares.²²

In addition, the victim loses self-confidence to act because he feels helpless, loses interest in self-care so that the lifestyle he leads is irregular, and loses courage in arguing and acting, lowering the victim's concentration level, so often committing careless actions. The victim feels inferior and unsure of his abilities. The victim becomes quiet, reluctant to talk, often shuts himself in the room. Victims often injure

²² Alimi and Nunung Nurwati, "Factors Causing Domestic Violence Against Women."

themselves even to the point of attempting suicide. Behaving excessively and unusually tends to be difficult to control yourself.²³

The biggest impact that can occur is a sense of trauma to victims of domestic violence, traumatic events are events that cause fear in a person's life or a state of distress. *The Mental Health Channel* defines trauma as a wound or feeling of severe pain resulting from an extraordinary event that befalls a person directly or indirectly, either a physical injury or psychological injury or a combination of both. Trauma is a state of severe injury or pain caused by a sad, stressful or threatening event that befalls a person directly or indirectly affecting a physical injury or psychological injury that causes an intense reaction of fear and helplessness.²⁴

The psychological impact of victims of violence mentioned above is certainly observed and studied by psychologists who examine psychiatric symptoms that appear in victims after violence.²⁵ As Jalaluddin said, psychology in general does study human psychological symptoms related to thoughts (cognition), feelings (emotions), and will (conation). These symptoms generally have almost the same characteristics in adults, normal and civilized humans. Thus three main symptoms can be observed through human attitudes and behavior. But sometimes some statements in the activity that appear are mixed symptoms, so psychologists are thoughts, feelings, willpower and mixed symptoms such as intelligence, fatigue and suggestion.²⁶

In addition, the impact on the physical and psychic as mentioned above, there are still other consequences in the form of negative relationships with the environment that must be borne by children such as:²⁷

1. Having to move house and school if his mother or father had to move house to avoid violence
2. Unable to make friends or maintain friends because of parental attitudes that make children isolated.
3. Feeling wasted by parents.

²³ Alimi and Nunung Nurwati.

²⁴ Zunea Fariza Azya Harro Uasni, "Posttraumatic Growth in Victims of Domestic Violence," *Journal of Psychoborneo* Vol. 7 (2019).

²⁵ Maisah and SS Yenti, "The Psychological Impact of Victims of Domestic Violence in Jambi City," *Journal of Essentials* Vol. 17 (2016).

²⁶ Alimi and Nunung Nurwati, "Factors Causing Domestic Violence Against Women."

²⁷ Joko Sriwidodo, *Introduction to Domestic Violence Law*.

Domestic Violence Prevention Efforts

Legal protection for victims of criminal acts is part of community protection that can be realized through various efforts such as providing restitution and compensation as well as legal protection for victims of violence. The difference between compensation and restitution is that compensation is the request of the victim and is paid by the community in the form or accountability of the community and the state to the victim due to violence. While restitution is a form of liability whose nature is more likely to lead to crimes that are taken into account by the defendant as a convict. Victim protection can be direct (concrete) and indirect (abstract) and liability can be material or non-material.²⁸

In Article 11 of Law No. 23 of 2004 the Government is responsible for efforts to prevent domestic violence, as stated in Article 12 paragraph (1), namely:²⁹

1. Formulate policies on the elimination of domestic violence;
2. Organizing communication, information, and education on domestic violence;
3. Organizing socialization and advocacy of domestic violence
4. Organizing gender-sensitive education and training and domestic violence issues and establishing standards and accreditation of gender-sensitive services.

In addition, Article 22 also states that victims must receive services such as services from social workers, social workers are safe houses owned by the government, local government or community as follows:³⁰

- a. Conduct counseling to strengthen and provide a sense of security for victims.
- b. Provide information on victims' rights to police protection and the establishment of protection orders from courts.
- c. Drive the victim to a safe house or alternative residence.
- d. Conduct integrated coordination in providing services to victims, police, social services, social institutions needed by victims.

²⁸ Ayu Setyaningrum and Ridwan Arifin, "Analysis of Protection and Recovery Efforts for Victims of Domestic Violence (KDRT), especially Children and Women," *Muqoddimah Journal* Vol. 3 (2019).

²⁹ Indonesia, Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

³⁰ Umar Aris and Tiyyar Cahya Kusuma, "Criminal Acts of Domestic Psychological Violence (Case Study Number 1303/Pid.B/2012/PN. Jkt.Sel)," *Journal of Citizenship* Vol. 6 (2022).

As stated in Article 22 that not only the government provides protection to victims, the community also participates in protecting victims. Everyone who hears, sees or knows of domestic violence should make efforts to the best of his ability to:³¹

- a. Prevent criminal acts.
- b. Provide protection to victims.
- c. Provide emergency assistance, and;
- d. Assist in the process of submitting an application for a determination of protection.

Once it is discovered that the victim has been subjected to an act of violence, the victim has the right to redress. In this case, families and communities are expected not to look badly at victims due to violence which will actually affect the psychological condition of victims because they get bad assumptions from the surrounding environment. In this case, families and communities are expected not to look badly at victims due to violence which will actually affect the psychological condition of victims because they get bad assumptions from the surrounding environment.³²

The implementation of these efforts must be carried out in a coordinated and integrated manner from the central, provincial and district level sectors. Not only recovery for victims, for the smooth implementation of the recovery process for victims due to violence, there needs to be cooperation between government agencies and community involvement. The implementation of recovery is an action taken to victims of violence through services and assistance to victims. These services and assistance include health worker services, victim assistance, counseling, spiritual guidance and resocialization. The forms of service are as follows:³³

1. Through health services. Victims of violence have the right to recovery services and medical care, especially from health workers.
2. Victim assistance, health. Second, the help of victims. Victim assistance in this case is by counseling victims of violence.

³¹ Moerti Hadiati Soeroso, *Domestic Violence in a Victimological Juridical Perspective*.

³² Setyaningrum and Arifin, "Analysis of Protection and Recovery Efforts for Victims of Domestic Violence (KDRT), especially Children and Women."

³³ Setyaningrum and Arifin.

3. Provision of counseling, Provision of counseling is carried out by experts related to the ability of psychological understanding of self to help solve problems faced by victims of violence.
4. through spiritual guidance. Spiritual guidance aims to provide explanations and directions regarding the rights and obligations to God that must be carried out by victims of violence as a strengthening of faith and piety in accordance with their respective beliefs.
5. Resocialization services. Resocialization is a service carried out by social institutions by providing direction to victims of violence so that victims can return to carrying out their social functions in community life.

CONCLUSION

Domestic violence is a frequent occurrence of violence within the family, but many cases of domestic violence are actually kept secret by some couples because they think it is their own domestic problem and there is a fear of reporting the violence. This is what actually makes violence cases more and more occur because victims of violence themselves do not report to the authorities. Because the biggest factors that encourage domestic violence are external factors or from the outside environment and internal factors or from the family environment itself. So with domestic violence psychologically they experience mental disorders such as not confident, prefer to be alone or become temperamental because they have often experienced domestic violence. As for the form of handling efforts carried out by the government must be able to anticipate the violence, it's just that not all victims know how to report the violence to the authorities.

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GENDER ROLES AND THE REDEFINITION OF FAMILY LAW: TOWARD A MODERN FAMILY WITH JUSTICE

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Submitted: 31-05-2024

Accepted: 01-09-2024

Published: 05-11-2024

Abstract

Gender roles in society have undergone significant changes in recent decades. Social transformation, economic progress, and the increasingly championed gender equality have influenced the dynamics of family law. This research aims to analyze gender roles and the redefinition of family law: towards a modern family with justice. This research uses a qualitative approach with the method of literature study and lawyer analysis. Literature study, collecting data from various written sources, such as books, scientific journals, news articles, and official documents. And discourse analysis, analyzing legal texts, regulations, and mass media. Data analysis uses thematic analysis to identify themes in the data. As well as using interpretative analysis to understand the meaning of the data and produce new findings. The results showed that gender roles are still very strong in Indonesian families, with an unfair division of labor between men and women. This causes women to experience a double burden and injustice in the family. Family law in Indonesia also still contains many elements of discrimination against women, such as in terms of marriage, divorce, and inheritance. Causing women not to get their full rights in the family. To realize a modern family with justice, a redefinition of gender roles and family law is needed. Redefinition of gender roles needs to be done by changing the mindset and behavior of the community about the roles of men and women in the family. Redefinition of family law needs to be done by changing laws and regulations that discriminate against women.

Keywords: *Gender Roles, Definition of Family Law, Just Modern Families.*

Abstrak

Peran gender dalam masyarakat telah mengalami perubahan signifikan dalam beberapa dekade terakhir. Transformasi sosial, kemajuan ekonomi, dan kesetaraan gender yang semakin diperjuangkan telah mempengaruhi dinamika hukum keluarga. Penelitian ini bertujuan untuk menganalisis peran gender dan redefinisi hukum keluarga: menuju

keluarga modern yang berkeadilan. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi literatur dan analisis wacana. Studi pustaka, mengumpulkan data dari berbagai sumber tertulis, seperti buku, jurnal ilmiah, artikel berita, dan dokumen resmi. Dan analisis wacana, Menganalisis teks hukum, peraturan, dan media massa. Analisis data menggunakan analisis tematik untuk Mengidentifikasi tema-tema dalam data. Serta menggunakan analisis interpretatif untuk memahami makna data dan menghasilkan temuan baru. Hasil penelitian menunjukkan bahwa peran gender masih sangat kental dalam keluarga Indonesia, dengan pembagian kerja yang tidak adil antara laki-laki dan perempuan. Hal ini menyebabkan perempuan mengalami beban ganda dan ketidakadilan dalam keluarga. Hukum keluarga di Indonesia juga masih banyak mengandung unsur diskriminasi terhadap perempuan, seperti dalam hal perkawinan, perceraian, dan warisan. Menyebabkan perempuan tidak mendapatkan hak-haknya secara penuh dalam keluarga. Untuk mewujudkan keluarga modern yang berkeadilan, diperlukan redefinisi peran gender dan hukum keluarga. Redefinisi peran gender perlu dilakukan dengan cara mengubah pola pikir dan perilaku masyarakat tentang peran laki-laki dan perempuan dalam keluarga. Redefinisi hukum keluarga perlu dilakukan dengan cara mengubah undang-undang dan peraturan yang diskriminatif terhadap perempuan.

Kata Kunci: Peran Gender, Redefinisi Hukum Keluarga, Keluarga Modern Yang Berkeadilan.

INTRODUCTION

The family is the smallest unit in society that has an important role in shaping the character and personality of individuals.¹ An ideal family that is a harmonious, fair, and equal family for all its members.² However, the reality is that there are still many families in Indonesia who have not reached this ideal condition. One of the factors contributing to this is the still strong traditional gender role in the family.³

¹ Muhamad Nur Muhajir, Muhammad Ainun Luthfi, Siti Kholisoh, dan Esty Faatinisa. 2024. "The Role Of Parents In Educating Children According To Law Number 35 Of 2014 Concerning Child Protection And Islamic Law". *Mawaddah: Jurnal Hukum Keluarga Islam* 2 (1):51-64. <https://doi.org/10.52496/mjhki.v1i2.12>.

² Muhammad Husni Abdulah Pakarti, Sofyan Mei Utama, Diana Farid, and Hendriana. 2023. "Peran Hukum Keluarga Dalam Menghadapi Tantangan Poligami Dalam Masyarakat Kontemporer". *At-Taahdzib: Jurnal Studi Islam Dan Muamalah* 11 (2):36-43. <https://doi.org/10.61181/at-tahdzib.v11i2.303>.

³ Mansur, "Dekonstruksi Tafsir Poligami: Mengurai Dialektika Teks Dan Konteks," *Al-Ahwal* 1, no. 1 (2008): 31–64, <https://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/01103>; Muhammad Gustian, *PEMBAGIAN KERJA RUMAH TANGGA ANTARA SUAMI DAN ISTRI PERSPEKTIF MUBADALAH (Studi Di Pekon Marang Kecamatan Pesisir Selatan Kabupaten* (repository.radenintan.ac.id, 2023), <http://repository.radenintan.ac.id/id/eprint/23439>; Afrilia Nurul Khasanah, *Konsep Kesetaraan Gender Menurut Pemikiran Amina Wadud Muhsin Dan Relevansinya Dalam Pendidikan Islam* (repository.radenintan.ac.id, 2018), <http://repository.radenintan.ac.id/id/eprint/3809>.

Traditional gender roles are a division of labor and responsibilities based on gender.⁴ In a patriarchal society, men are generally considered to be the head of the family and responsible for earning a living, while women are considered to be housewives and responsible for taking care of the household and children. This division of labor is often unfair and causes women to experience a double burden, namely having to work outside the home and inside the home.⁵

Traditional gender roles can also result in injustice in the family. Women often have no say in family decision-making, and they also often experience domestic violence. In addition, women are also often disadvantaged in terms of marriage, divorce, and inheritance.⁶

Family law in Indonesia also still contains many elements of discrimination against women. Marriage Law No. 1 of 1974, for example, still stipulates that marriage must be carried out based on religious provisions, where certain religions in Indonesia still allow polygamy.⁷ This causes women not to have the same rights as men in marriage.

Child Protection Law Number 35 of 2014 also still regulates that child custody after divorce falls to the father if the child is over 12 years old. This causes women to lose custody of their children after they get divorced.

Gender injustice in the family and family law has a negative impact on women, children, and society as a whole. Women who experience

⁴ Azhar Azizah, "Perbandingan Pemikiran Tentang Relasi Gender Dalam Pandangan Etin Anwar Dan Sachiko Murata," *Repository.Uinjkt.Ac.Id*, 2022, 121, <https://repository.uinjkt.ac.id/dspace/handle/123456789/66645>; Agustina Sukesi, Keppi; Rosalinda, Henny; Shinta Hartati H, *Migrasi Perempuan, Remitansi, Dan Perubahan Sosial Ekonomi Pedesaan* (books.google.com, 2017).

⁵ Lalu Ahmad Zaenuri, "Islam Dan Gender : Refleksi Terhadap Tuntutan Kesetaraan Gender," *El-Hikam* 4, no. 1 (2011): 47–62, <http://ejournal.kopertais4.or.id/sasambo/index.php/elhikam/article/view/1896>; Lyatun Maryukoh, *Wanita Karir Dalam Perspektif Al-Qur'an (Studi Analisis Pemikiran Amina Wadud Muhsin Dalam Tafsir Feminis)*, *Repository.IAINKUDUS.Ac.Id*, vol. 6 (repository.iainkudus.ac.id, 2019), <http://repository.iainkudus.ac.id/id/eprint/3075>; Hussein Muhammad, *Islam Agama Ramah Perempuan*, Yogyakarta: LKIS (books.google.com, 2004).

⁶ zahro, Fatimatuz, and Shinta Pramesti K.M. 2023. "Kesetaraan Gender Dalam Hukum Kewarisan Islam Perspektif M. Syahrur". *Mahakim: Journal of Islamic Family Law* 7 (1):25-46. <https://doi.org/10.30762/mahakim.v7i1.201>.

⁷ Pasal 5 Ayat (1) Undang-undang Perkawinan Tahun 1974.

injustice in the family often experience depression, stress, and anxiety.⁸ Children who grow up in unfair families also often experience emotional and behavioral problems. Gender injustice can also hinder human and economic development.

Therefore, a redefinition of gender roles and family law is needed to realize a modern family that is fair. This research is expected to contribute to realizing a harmonious, fair, and equal family for all its members.

RESEARCH METHODS

This study uses a qualitative approach⁹ with literature study methods and discourse analysis. The data collected from literature studies and discourse analysis were analyzed qualitatively using interpretive methods. This method is used to understand the meaning of the data and produce new and in-depth findings about the role of gender and the redefinition of family law in realizing a just modern family.

The data collection technique used in this study is literature study, collecting data from various written sources, such as books, scientific journals, news articles, and official documents. And discourse analysis, analyzing texts related to gender roles and family law, such as laws, regulations, and mass media. Data analysis uses thematic analysis to identify or analyze themes that emerge from the data collected. As well as using interpretive analysis to understand the meaning of the data and produce new and in-depth findings about gender roles and the redefinition of family law and realizing a just modern family.

RESULTS AND DISCUSSION

The Role of Gender and Injustice in the Family

Gender roles refer to the set of behaviors, duties, and responsibilities that individuals are expected to perform based on their gender. These gender roles are often socially and culturally constructed, and can change over time.¹⁰ Gender injustice, on the other hand, refers

⁸ Perempuan Rentan Alami Masalah Kesehatan Mental, Pakar Psikologi UNAIR Uraikan Penyebabnya, <https://unair.ac.id/perempuan-rentan-alami-masalah-kesehatan-mental-pakar-psikologi-unair-uraikan-penyebabnya/>

⁹ Stambol A Mappasere and Naila Suyuti, "Definition of Qualitative Approach Research," *Social Research Methods*, 2019; Yoki Yusanto, "Various Qualitative Research Approaches," *JOURNAL OF SCIENTIFIC COMMUNICATION (JSC)* 1, no. 1 (April 2, 2020), <https://doi.org/10.31506/jsc.v1i1.7764>.

¹⁰ Umar Mukhtar, "Isu Gender Dan Upaya Menegakkan Keadilan Sosial," *Wahana Karya Ilmiah Pendidikan* 3, no. 1 (2018): 66–85, <https://journal.unsika.ac.id/index.php/pendidikan/article/view/1340>; F Azizan,

to situations in which individuals are treated unfairly based on their gender. This injustice can occur in various forms, such as discrimination, violence, and marginalization.

Gender injustice in the family can manifest in various forms, including those described in table 1 below.

Table 1. Gender Injustice

No	Information	Explanation
1	Unfair division of labor	Women are often disproportionately burdened with household chores and childcare, even when they also work outside the home. This can result in physical and emotional exhaustion, as well as limit women's opportunities to develop themselves and reach their full potential.
2	Domestic violence	Domestic violence, both physically, emotionally, and sexually, can be experienced by women, men, and children. This is a violation of human rights and can have long-term impacts on victims.
3	Discrimination in decision-making	Women often do not have a voice in family decision-making, whether related to finances, children's education, or other things that are important to the family.
4	Rigid gender stereotypes and norms	Rigid gender stereotypes and norms can limit an individual's roles and potential. Women are often associated with traits such as weak, submissive, and caregivers,

“Gender Dan Polemik Institusi Keluarga Sebuah Telaah Kritis Worldview Islam,” *Qawwam* 16, no. 1 (2022): 23–38, <https://doi.org/10.20414/qawwam.v16i1.5282>.

while men are associated with traits such as strong, assertive, and leader. This can hinder women from achieving their goals and men from engaging in childcare and housework.

In addition, gender injustice in the family can have a variety of negative impacts, such as poor mental and physical health, violence and aggression, low school achievement, poverty, social instability. This is all born from gender injustice.¹¹

Before changing gender injustice from various sectors, first build a harmonious and fair family, because the family is a vital foundation. This effort certainly requires support from various parties, including the government, civil society, and individuals.

Therefore, it is important to increase public awareness about the concept of gender and gender injustice. This can be done through formal and informal education, as well as public campaigns. Governments and civil society need to promote gender equality in various fields, such as education, employment, and politics.

Housework and childcare should be divided equally between men and women. This can be done by encouraging men to be more involved in housework and childcare, as well as providing affordable childcare. It is important to prevent and address domestic violence by providing services and support for victims, as well as implementing strict laws for perpetrators. Rigid gender stereotypes and norms need to be dismantled through education and dialogue. This is important to create a more inclusive and equitable environment for everyone.¹²

¹¹ Keppi et al., *Sosiologi Gender: Konsep Dan Aplikasinya Di Pedesaan*, Malang UB Press (books.google.com, 2020), SUPK SAKINAH, I NURAINI, and A L A ASY-SYAKHSIYYAH, "KELUARGA BERENCANA BERKEADILAN GENDER," *Digilib.Uin-Suka.Ac.Id*, n.d.; Leon Rohendi and Lilly Suzana Binti Haji Shamsu, "Gender Dalam Pendidikan Islam: Perspektif Fatima Mernissi," *Jurnal Iman Dan Spiritualitas* 3, no. 2 (2023): 269–78, <https://doi.org/10.15575/jis.v3i2.27788>.

¹² Joni Khurniawan, *Peran Perempuan Buruh Macul Dalam Memenuhi Kebutuhan Rumah Tangga Perspektif Gender (Studi Kasus Di Desa Wiyurejo Kecamatan Pujon Kabupaten Malang)*, vol. 2 (etheses.uin-malang.ac.id, 2018); M Adib, D Salwa, and M Khairiyah, "Tukar Peran Suami Dan Istri Dalam Rumah Tangga Perspektif Hukum Keluarga Dan Gender," *JOURNAL OF ISLAMIC ...*, 2024, <https://jurnal.uin-antasari.ac.id/index.php/jils/article/view/12855>; Efa Rodiah Nur,

Building a harmonious and fair family requires commitment and efforts from all parties. By raising awareness about gender, promoting gender equality, and supporting a fair division of labor, we can create happier and more prosperous families for all.

Redefinition of Family Law Towards a Just Modern Family

Family law is one of the branches of law that is very essential in the social life of the community. Basically, family law regulates the rights and obligations of family members, including marriage, divorce, child custody, and inheritance.¹³ However, along with the changing times, social, cultural, and technological developments, the concept of family and the dynamics of relationships between family members have also undergone significant changes. Therefore, it is necessary to redefine family law to be more in line with the needs and realities of a just modern family.

Rapid social changes in recent decades have had a profound impact on family structure and functioning. Factors such as increased women's participation in the labor force, rising divorce rates, and diversity of family forms have challenged the traditional definition of family. In addition, technology also plays an important role in transforming family interactions, such as through digital communication and social media.¹⁴

Agus Hermanto, and Mufid Arsyad, "Moderasi Beragama Dalam Mendudukkan Posisi Perempuan Dalam Rumah Tangga," *SAINTIFIKA ISLAMICA: Jurnal Kajian Keislaman* 9, no. 2 (2023): 118–48, <https://doi.org/10.32678/saintifikaislamica.v9i2.7128>; M Sabiq et al., *Telaah Kritis Atas Kenyataan Gender, Agama Dan Budaya Di Indonesia* (books.google.com, 2022).

¹³ A Fauzi, *Pembaruan Hukum Keluarga Islam Di Indonesia: Analisis Produk Hukum Mahkamah Agung Tentang Hak-Hak Istri Dan Anak Pasca Perceraian* (dspace.uui.ac.id, 2023), <https://dspace.uui.ac.id/handle/123456789/48130>; SALAM NOOR, *PEMBAHARUAN HUKUM KELUARGA ISLAM DI INDONESIA MELALUI PUTUSAN MAHKAMAH KONSTITUSI (Studi Terhadap Putusan MK Nomor 46/PUU-VIII/2010)*, *Journal of Chemical Information and Modeling*, vol. 53 (etheses.uin-malang.ac.id, 2013), <http://etheses.uin-malang.ac.id/id/eprint/7782>.

¹⁴ Dahlia Sarkawi, "Perubahan Sosial Dan Budaya Akibat Media Sosial," *Jurnal Administrasi Kantor*, 2021; Marianna Harahap, Firman Firman, and Riska Ahmad, "Penggunaan Social Media Dan Perubahan Sosial Budaya Masyarakat," *EDUKATIF : JURNAL ILMU PENDIDIKAN* 3, no. 1 (February 24, 2021): 135–43, <https://doi.org/10.31004/edukatif.v3i1.252>; Septiana Wulandari, "MEDIA SOSIAL DAN PERUBAHAN PERILAKU BAHASA," *Mediakom : Jurnal Ilmu Komunikasi* 2, no. 1 (June 3, 2018): 181–88, <https://doi.org/10.35760/mkm.2018.v2i1.1890>; Andries Kango, Iain Sultan, and Amai Gorontalo, "Media Dan Perubahan Sosial Budaya," *Farabi: Journal of Ushuluddin & Islamic Thought*, 2015.

These changes demanded a renewal in family law. The definition of family can no longer be limited to the traditional concept of father, mother, and child. Various new forms of families, such as single-parent families, and families without formal marriage bonds should also be accommodated in family law. Thus, family law must be adapted in order to ensure justice for all forms of the family.

In addition, the redefinition of family law must be based on several fundamental principles,¹⁵ Among them are explained in table 2 below.

Table 2. Principles of Family Law Redefinition

No	Information	Explanation
1	Gender equality	Women and men have the same rights and obligations in the family.
2	Justice for children	Children's rights must be prioritized and protected in all aspects of family life.
3	Inclusivity	Family law must recognize and protect the various forms of family that exist in society.
4	Non-discrimination	There should be no discrimination against family members based on gender, religion, ethnicity, race, or other status.
5	Universal justice	Family law must be in accordance with human values and universal justice.

¹⁵ Muhammad Husni Abdulah Pakarti, "Pembaruan Hukum Keluarga Dalam Putusan Pengadilan Agama," *Sakina: Journal of Family Studies* 7, no. 3 (October 15, 2023): 335–44, <https://doi.org/10.18860/jfs.v7i3.3935>; Seyed Ahmad Habib Nejad, "PRINSIP-PRINSIP HUKUM/HAK-HAK KELUARGA DALAM FIKIH JA'FARI & SISTEM SYAR'I REPUBLIC ISLAM IRAN," *Musāwa Jurnal Studi Gender Dan Islam* 14, no. 1 (January 7, 2015): 1, <https://doi.org/10.14421/musawa.2015.141.1-10>; Anis Hidayatul Imtihanah, "HUKUM KELUARGA ISLAM RAMAH GENDER: ELABORASI HUKUM KELUARGA ISLAM DENGAN KONSEP MUBADALAH," *Kodifikasi* 14, no. 2 (December 12, 2020): 263–82, <https://doi.org/10.21154/kodifikasi.v14i2.2197>; Husni Husni and Muhammad Yasir, "PRINSIP HUKUM ISLAM DALAM BIDANG HUKUM KELUARGA," *SYARIAH: Journal of Islamic Law* 3, no. 2 (December 7, 2021): 1, <https://doi.org/10.22373/sy.v3i2.307>.

This fundamental principle must be present and realized in the form of laws and its implementation in the family in order to create a modern and just family.

In addition, to achieve a just redefinition of family law, comprehensive and systematic efforts are needed. First, there must be comprehensive legal reform to update family law to conform to the principles of justice. Second, there needs to be education and public awareness about the importance of gender equality, child protection, and recognition of various forms of family. Third, law enforcement agencies and courts must be empowered to apply family law fairly and unbiasedly.

Family law reform should also involve the active participation of various parties, including the government, non-governmental organizations, academics, and the general public. Public dialogue and consultation are essential to ensure that the proposed legal changes are in line with the needs and expectations of the community. In addition, research and case studies are also needed to identify relevant issues and develop effective solutions.¹⁶

The redefinition of family law towards a just modern family is an important step in the face of social, cultural, and technological change. The principle of justice should be the basis for the reform of family law, emphasizing gender equality, child protection, and the recognition of various forms of the family. By integrating these principles, family law can become more inclusive and fair, thus protecting the rights and well-being of all family members. Effective implementation requires legal reform, public education, and active participation from various parties. Thus, a just family law can be realized and contribute to the formation of a harmonious and prosperous modern family.

The Importance of Balanced Gender Roles in the Family

One important aspect of balancing gender roles in the family is its impact on child development. Children who grow up in family environments where gender roles are balanced tend to have a broader and

¹⁶ Fathul M U In, *Pembaruan Hukum Keluarga Islam Di Indonesia*, vol. 2 (repository.iainlhokseumawe.ac.id,2022); Andi Muh. Taqiyuddin BN, Ahmad Arief, and Fadli, "PEMBAHARUAN HUKUM KELUARGA DI DUNIA ISLAM," *Familia: Jurnal Hukum Keluarga* 4, no. 1 (June 30, 2023): 34–48, <https://doi.org/10.24239/familia.v4i1.83>; Fauzi, *Pembaruan Hukum Keluarga Islam Di Indonesia: Analisis Produk Hukum Mahkamah Agung Tentang Hak-Hak Istri Dan Anak Pasca Perceraian*.

inclusive view of gender.¹⁷ They learn that duties and responsibilities are not limited by gender. For example, a boy who sees his father active in housework will understand that housework is not just a woman's task. In contrast, girls who see their mothers in a career and contribute economically to the family will have higher aspirations and feel that they can achieve the same things.

Research shows that children who are raised in families with balanced gender roles tend to have better social skills,¹⁸ higher self-confidence, and fewer gender stereotypes. They are also more likely to be individuals who value equality and justice, and have the ability to adapt and cooperate in a variety of social contexts.

The balance of gender roles in the family also has a great influence on the quality of the relationship between husband and wife. When household and childcare responsibilities are shared fairly, this can reduce the burden that would normally fall on one party only, generally women.¹⁹ In many cases, women are expected to manage households and babysit, even when they also work outside the home. This unbalanced

¹⁷ Rusna Gani, "ISLAM DAN KESETARAAN GENDER," *AL-WARDAH* 12, no. 2 (November 7, 2019): 114, <https://doi.org/10.46339/al-wardah.v12i2.139>; Aiyub Anshori, *Dampak Peran Ganda Suami Terhadap Keharmonisan Keluarga Tenaga Kerja Wanita (TKW) Prespektif Gender: Studi Di Desa Pagelaran Kecamatan Pagelaran Kabupaten Malang* (etheses.uin-malang.ac.id, 2018), <http://etheses.uin-malang.ac.id/11320/>.

¹⁸ Panji Nurrahman, "MEMBANGUN KESETARAAN GENDER DALAM KELUARGA PASANGAN PEKERJA," *Jurnal Harkat : Media Komunikasi Gender* 18, no. 2 (October 3, 2022): 43–56, <https://doi.org/10.15408/harkat.v18i2.26289>; Herlina Nur Afida, Hasman Zafiri Muhammad, and Khoiruddin Nasution, "Construction of Gender Equality in Career Couple Families (Case Study in Tosari Rejo Village, Wonosobo Regency)," *Qanun: Jurnal Hukum Keluarga Islam* 1, no. 2 (November 30, 2023): 150–67, <https://doi.org/10.51825/qanun.v1i2.189>; Luh Riskayani, Ni Komang Arie Suwastini, and Luh Gede Eka Wahyuni, "GENDER ISSUES IN MARY NORTON'S NOVEL ENTITLED 'THE BORROWERS': A LIBRARY RESEARCH," *SPHOTA: Jurnal Linguistik Dan Sastra* 13, no. 2 (September 30, 2021): 1–10, <https://doi.org/10.36733/sphota.v13i2.2103>; Septiani, Putri, Muhamad Zidan, dan Dinar. 2023. "Implementasi Pendidikan Adil Gender Dalam Keluarga Masyarakat Kp.Calung-Kota Serang". Prosiding Seminar Nasional Pendidikan Non Formal 1 (Agustus). <https://ejournal.untirta.ac.id/SNPNF/article/view/93>.

¹⁹ Adib, Salwa, and Khairiyah, "Tukar Peran Suami Dan Istri Dalam Rumah Tangga Perspektif Hukum Keluarga Dan Gender"; Nurrahman, "MEMBANGUN KESETARAAN GENDER DALAM KELUARGA PASANGAN PEKERJA."

division of duties often causes stress and dissatisfaction that can affect the harmony of the marital relationship.²⁰

Conversely, when couples share responsibilities equally, they are more likely to feel supported and valued for each other. A fair division of duties can improve communication and cooperation, which in turn can strengthen the emotional bond between husband and wife. Couples who feel valued and supported in their roles tend to have stronger bonds and more stable relationships.²¹

The family is the basic unit of society, and the balance of gender roles in the family can contribute to the creation of a more equitable and harmonious society. When children grow up in an environment that instills values of equality and justice, they will bring those values into their lives outside the home.²² Generations raised with a strong understanding of the importance of gender equality are more likely to support fair policies and practices in the workplace, schools, and wider society.

In addition, balancing gender roles in the family can help reduce various forms of discrimination and injustice that are often faced by women and other gender minorities. When men and women share household and childcare responsibilities equally, women have more opportunities to participate in economic and social life.²³ This not only improves women's welfare, but can also lead to improved welfare of the entire family and society.

²⁰ Siti Ruhaini Dzuhayatin, *Ideologi Gender Dan Progresivitas Hukum Keluarga, Menuju Hukum Keluarga: Progresif, Responsif Gender, Dan Akomodatif Hak Anak* (digilib.uin-suka.ac.id, 2013); Muhammad Noor Aspihan, "PENGARUH GENDER DALAM REFORMASI KEADILAN," *Mitsaqan Ghalizan* 1, no. 1 (July 7, 2021): 72–81, <https://doi.org/10.33084/jmg.v1i1.2873>.

²¹ Muhammad, *Islam Agama Ramah Perempuan*; Andri Wijaksono and Ahmad Shofiyuddin Ichsan, "Pendidikan Gender Dalam Buku Perempuan, Islam, Dan Negara Karya K.H. Husein Muhammad," *AN NUR: Jurnal Studi Islam* 14, no. 2 (2022): 170–93, <https://doi.org/10.37252/annur.v14i2.380>; Kana Kurniawan, "Pemikiran Hukum Islam Di Kalangan Gerakan Muslim Indonesia: Studi Kasus Hak-Hak Perempuan," *Repository.Uinjkt.Ac.Id*, 2021, 1.

²² Togiartua Nainggolan, "ASPEK GENDER DALAM PROGRAM KELUARGA HARAPAN," *Sosio Informa* 5, no. 1 (July 16, 2019), <https://doi.org/10.33007/inf.v5i1.1593>; Umi Khoiriyah, *Nilai-Nilai Kesetaraan Gender Dalam Buku Teks Pendidikan Agama Islam Dan Budi Pekerti Tingkat Menengah Atas Kurikulum 2013* (repository.radenintan.ac.id, 2019).

²³ Nurrahman, "MEMBANGUN KESETARAAN GENDER DALAM KELUARGA PASANGAN PEKERJA"; Mukhtar, "Isu Gender Dan Upaya Menegakkan Keadilan Sosial."

Despite the many benefits of balancing gender roles in the family, its application often faces a variety of cultural and social barriers. In many societies, there are still strong gender stereotypes that define the "appropriate" roles and responsibilities for both men and women. These stereotypes can be difficult to change, especially if they are ingrained in long-standing social and cultural norms.²⁴

To overcome these obstacles, it is important to increase awareness and education regarding the importance of gender equality. Gender education does not only need to be carried out in schools, but also in the family and community environment. The mass media and public figures can play an important role in promoting a positive picture of gender role balance. For example, it features male characters who are active in childcare and household chores, as well as women who are successful in their careers.

Education plays a key role in promoting gender balance in the family. Gender education needs to start from an early age, where children are taught that no task or role belongs exclusively to one gender. The school curriculum should reflect the values of equality and inclusivity, by encouraging children to pursue their interests and talents without being constrained by gender stereotypes.²⁵

In addition, parental education programs can help increase understanding of the importance of balancing gender roles in the family. Parents who are aware of the benefits of a fair division of responsibilities will be more likely to implement this practice in their households. Training and workshops on co-parenting, equitable household management, and effective communication can provide couples with the tools they need to create a balance of gender roles in their families.

Balancing gender roles in the family is not only a matter of social justice, but also the key to creating a healthy and harmonious family environment. Its positive impact on children's development, marital relationships, and the wider community cannot be ignored. Despite

²⁴ Nurul Hidayah and Hamidah Hamidah, "STEREOTIP GENDER DAN AKUNTAN WANITA," *E-Jurnal Ekonomi Dan Bisnis Universitas Udayana*, December 1, 2022, 1524, <https://doi.org/10.24843/EEB.2022.v11.i12.p09>; Ishmatul Maula Rokhim and Rakhmaditya Dewi Noorizki, "Stereotip Gender Pada Wanita Karir Di Tempat Kerja," *Flourishing Journal 2*, no. 6 (January 4, 2023): 415–21, <https://doi.org/10.17977/um070v2i62022p415-421>.

²⁵ Gamal Iskandarsyah Abidin, *Pemikiran Relasi Gender Muhammad Asad Dalam The Message Of The Qur'an (Kajian Tafsir Tematik)*, Repository (repository.ptiq.ac.id, 2022).

facing various cultural and social barriers, with proper education and awareness-raising, a balance of gender roles can be realized. A balanced family in the division of gender roles will form a strong foundation for future generations that are more inclusive, fair, and harmonious.

CONCLUSION

The results of this study reached the conclusion that traditional gender roles often place an unbalanced burden on women in the context of the family. This includes domestic responsibilities, childcare, and greater financial dependence on men. Existing family law often reflects patriarchal norms that reinforce gender injustices. Therefore, a redefinition of family law is needed to create greater justice. This includes changes in the law to better recognize non-financial contributions in marriage, provide equal rights to both parents in terms of child custody, and ensure a fair division of assets in divorce. To create a modern and just family, changes in social attitudes and legal reforms that reflect gender equality are needed. This includes education on gender equality, campaigns to change social norms, and fair and equal law enforcement.

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INHERITANCE RIGHTS OF UNMARRIED CHILDREN IN INDONESIAN CIVIL LAW: A NORMATIVE AND COMPARATIVE STUDY

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Submitted: 05-06-2024	Accepted: 01-09-2024	Published: 05-11-2024
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Abstract

Amidst the rising trend of pre-marital relationships and infidelity in Indonesia, the number of children out of wedlock has also increased. However, they are often marginalized by social stigma and uncertainty about their legal rights, particularly inheritance rights. This research investigates the normative and comparative aspects of the inheritance rights of out-of-wedlock children in Indonesia. The research method uses a qualitative normative and comparative approach, analyzing the Civil Code, Compilation of Islamic Law (KHI), and Constitutional Court decision No. 46/PUU-XIV/2017. Primary data was obtained from the research of Nur Mayangsari, Yohana Watofa, and Jonhi Sassan, as well as the decision of the Constitutional Court. Secondary data was used to compare the inheritance rights of children out of wedlock in Indonesia with other countries. Findings show the expansion of the inheritance rights of out-of-wedlock children from biological fathers in some cases, although it is still hampered by social stigma and lack of public awareness. This complex issue requires sustained efforts to ensure effective implementation and address social challenges. By strengthening legal understanding and raising public awareness, out-of-wedlock children can be more legally and socially empowered to obtain their rightful inheritance.

Keywords: *Unmarried Children, Inheritance Rights, Constitutional Court.*

Abstrak

Di tengah meningkatnya tren hubungan pra-nikah dan perselingkuhan di Indonesia, jumlah anak di luar nikah juga mengalami peningkatan. Namun, mereka sering kali terpinggirkan oleh stigma sosial dan ketidakpastian tentang hak hukum mereka, terutama hak waris. Penelitian ini menyelidiki aspek normatif dan komparatif hak waris anak di luar nikah di Indonesia. Metode penelitian menggunakan pendekatan normatif dan komparatif kualitatif, menganalisis KUHP, Kompilasi Hukum Islam (KHI), dan keputusan Mahkamah Konstitusi No. 46/PUU-XIV/2017. Data primer diperoleh dari penelitian Nur Mayangsari, Yohana Watofa, dan Jonhi Sassan, serta keputusan Mahkamah Konstitusi. Data sekunder digunakan untuk membandingkan hak waris anak di luar nikah di Indonesia dengan negara lain. Temuan menunjukkan perluasan hak waris anak di luar nikah dari ayah biologis dalam beberapa kasus, meskipun masih terhambat oleh stigma sosial dan kurangnya kesadaran publik. Isu kompleks ini memerlukan upaya berkelanjutan untuk memastikan implementasi yang efektif dan mengatasi tantangan sosial. Dengan memperkuat pemahaman hukum dan meningkatkan kesadaran publik, anak-anak di

luar nikah dapat lebih diberdayakan secara hukum dan sosial dalam memperoleh hak waris yang pantas.

Kata Kunci: Anak di luar nikah, Hak Waris, Mahkamah Konstitusi

INTRODUCTION

The promiscuity that often occurs among teenagers today can have negative impacts such as extramarital relationships and sexual behavior. Cultural influences and the challenges of the times mean that out-of-wedlock children are often negatively labeled by society, which then has an impact on their psychology and mentality, even though they are not legally affected by their parents' actions. This assessment is seen from various legal perspectives, including the consequences of out-of-wedlock pregnancies and the biological bond between the child and their father.¹

In recent years, a lot of attention has been paid to the question of unmarried children's rights to inheritance as stated in the Indonesian law Civil Code, this relates to the legal standing and inheritance privileges granted to unmarried children; such children do not inherently have legal ties to their parents unless acknowledged by the father or mother, the consent of the father or mother is an absolute requirement, without recognition, Unmarried children are not entitled to inherit from their parents.²

Furthermore, in line with Decision No. 46/PUU-VIII/2010 of the Constitutional Court, a legitimate out-of-wedlock child can have a relationship with the biological father if there are technical and/or other reasonable indications. If the child is birthed by the mother, but not by a man's conception legally married to the child's mother, the marriage is recognized. Children originated from adultery or incest are not included in the definition of recognizable illegitimate children. The inheritance rights of The Indonesian civil law's codification of Islamic law also has an impact on children born outside of marriage (KHI). Kawasaki Heavy

¹ Ratih Saryani et al., "Kajian Sosiologi Hukum Terhadap Pergaulan Bebas Pada Generasi Muda," *Causa: Jurnal Hukum Dan Kewarganegaraan* 3, no. 10 (2024): 77–87.

² Jenal Wahidin et al., "The Inheritance Rights Of Children From Marriage Are Not Recorded According To The Marriage Law And The Compilation Of Islamic Law," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 1 (2024): 65–85. <https://doi.org/10.52496/mjhki.v1i2.15>

Industries asserts that unmarried children have the right to inherit their parents' property if they can prove their parents' knowledge.³

With the enactment of Marriage Law No. 1/1974, unrecognized out-of-wedlock children also establish a cordial rapport with their mother and other relatives, unlike previously where out-of-wedlock children had no legal relationship with anyone. Regarding Article 43(1). The Marriage Law recognizes that unrecognized outside of marriage The youngsters and their mother's family get along well.⁴

Concerning the rights of unmarried children to inherit, Marriage Law No. 1/1974 also confirms that out-of-wedlock children without recognition are entitled to inherit the property of their parents. The right of inheritance is based on the law and does not depend on parental consent. Therefore, the inheritance law of extramarital children in Indonesian civil law is a complex issue that requires more in-depth study. It is advised to do a normative comparative study of the legal status and inheritance rights of children born outside of marriage in order to obtain a greater understanding of the rights that children from extramarital relationships have.⁵

The rights to inheritance because under Indonesian civil law, children born outside of marriage have are an interesting topic to be studied normatively and comparatively. This study analyzes the similarities and differences, as well as the legal efforts made so that illegitimate children can inherit a portion of their parents' inheritance, as stipulated by the Islamic Law and Civil Law Compilation (KUHPerdata). Children born outside the ties of a legally recognized marriage are known as unmarried children. Offspring born out of wedlock possess no legal link with their parents under civil law unless

³ Georgina Agatha, "Pembuktian Dan Pengesahan Anak Luar Kawin Serta Akibat Hukumnya Setelah Berlaku Putusan Mahkamah Konstitusi Nomor 46/PUU-VIII/2010 Dalam Pandangan Hukum Islam," *Indonesian Notary* 3, no. 1 (2021): 23.

⁴ Tanti Kurnia Ahadiyah and Husni Syawali, "Akibat Hukum Dari Tidak Disahkannya Perjanjian Mengenai Pemisaan Harta Oleh Pegawai Pencatat Perkawinan Kepada Pihak Ketiga Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Prosiding Ilmu Hukum* 6, no. 1 (2020): 125–31.

⁵ Kharisma Lintang Perkasa, "Analisis Hukum Status Anak Angkat Dalam Hak Waris Dari Orang Tua Angkat Dalam Perspektif Kuhperdata" (Universitas Islam Sultan Agung Semarang, 2023).

their mother or father acknowledges them. The property of the parents is acknowledged, and this property is distributed according to the law.⁶

About the legal standing of unmarried children and their eligibility for inheritance rights, the Indonesian Civil Code's provisions regarding the inheritance rights of such children have drawn a lot of attention in recent years; such children lack a legal bond with their parents unless formally acknowledged by their mother or father; parental acknowledgment is a prerequisite that must be met in full, without recognition, children out of wedlock cannot obtain inheritance rights from their parents. Please note, The Constitutional Court's Decision Number 46/PUU-VIII/2010 affects children born outside of marriage's inheritance rights. This ruling upholds children born outside of marriage have the legal right to establish an association with their paternal grandfather through technical know-how or other reliable evidence. This ruling is a legal reform that gives Offspring born without marriage are acknowledged for their inheritance rights.⁷

Research has been done on the inheritance rights under Indonesian civil law of children born outside of marriage, including research by Margareta Sevilla Rosa Angelin and others (2021) titled "Dilemma of Inheritance Rights of Space Children in the Perspective of Civil Law" and the study by Arsad Hidayat Jurjani (2021) titled "Legal Impact of MK 46/PUU-VIII/2010 Decision on Inheritance Rights of Space Children." The similarity between these studies is that both focus on parental recognition of illegitimate children to obtain inheritance rights. The distinction is seen in the reality that the research by Margareta Sevilla Rosa Angelin et al. and the research by Arsad Hidayat Jurjanij concentrate more on the implications of Constitutional Court Decision 46/PUU-VIII/2010 about the entitlements of nonmarital children to inheritance.

The objective of this study is to clarify the legal procedures by analyzing the inheritance rights of illegitimate offspring as stated in the Indonesian Civil Code, resemblances, and differences to ensure that illegitimate children receive their parents' inheritance, including case studies and comparisons with other countries

⁶ Afdal Lailatul Qadri, "Analisis Yuridis Dan Hukum Islam Terhadap Disparitas Penetapan Majelis Hakim Dalam Mengabulkan Permohonan Asal-Usul Anak Hasil Zina" (Universitas Islam Indonesia, 2024).

⁷ Dwi Ayu Nurrosyidah, "Perlindungan Hukum Waris Terhadap Anak Diluar Nikah" (Universitas Muhammadiyah Ponorogo, 2023).

Therefore, in this article we formulate several problem formulations as follows, first, what is the status of unmarried children in accordance with Indonesian civil law? What effect does the Manokwari case's Decision Number 46/PUU-XIV/2017 of the Constitutional Court about illegitimate children's inheritance rights?

RESEARCH METHODS

The research methodology used is descriptive and qualitative. This research aims to describe and explain phenomena, focusing on characteristics, qualities, and relationships. This research uses a descriptive approach to understand the inheritance rights of unmarried children in Indonesian civil law, focusing on the Manokwari Case as an important precedent. Primary data was sourced from the Manokwari Case and legal documents. Secondary data was collected from relevant research and official documents. Data analysis used qualitative methods to interpret the findings.

RESULTS AND DISCUSSION

Status of Extra-Marital Children in Indonesian Civil Law

In today's society, cultural tensions lead to men and women living together without marriage, children born from such relationships are often given negative nicknames such as “illegitimate children” and are prone to mental illness and other problems, although they are not legally responsible for the actions of their parents, there are several legal issues that arise from such unwanted pregnancies, including whether the child maintains a biological lineage with the father.⁸

Children born out of wedlock are different from those born in a lawful marriage are kids born without the validity of a legal union. They lack a legally recognized tie with their parents without the permission of the father or mother. Under Islamic law, these children lack a genetic connection with their biological father.⁹

According to the Indonesian Marriage law, offspring born outside of a legally recognized marriage are only legally related to their biological mother and her family. On the other hand, children born into a valid marriage are still legally related to both parents This provision is clearly stated in Article 43 paragraph (1) of Marriage Law Number 1 of

⁸ Anisa Putri Alifah, Nurliana Cipta Apsari, and Budi Muhammad Taftazani, “Faktor Yang Mempengaruhi Remaja Hamil Di Luar Nikah,” *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)* 2, no. 3 (2021): 529–37.

⁹ Geri Akbar Mokodompit, “Implementasi Peran Pengakuan Dan Hak Mewaris Terhadap Anak Luar Kawin Berdasarkan KUH Perdata,” *Lex Privatum* 9, no. 8 (2021).

1974, which states that children born outside of marriage are only permitted to maintain civil relationships with their mother and her family.¹⁰

Islam recognizes children born into a valid marriage as legitimate progeny and recognizes their bond with both parents as nasab. Conversely, Children born out of wedlock lack the innate father-child relationship. Nasab, representing a familial tie established through lawful marriage, entails various rights and responsibilities, both for parents towards their children and vice versa. Despite extramarital children not having a nasab relationship with their biological father according to Islamic law, in Indonesian civil law, they still have inheritance rights to their parents' property. This inheritance right is guaranteed by law and does not depend on parental recognition. The status of extramarital children in Indonesian civil law has important implications, especially in terms of inheritance. Their position is different from children born from a legal marriage, who have a complete legal relationship with both parents.¹¹

In Indonesia, there are two different legal systems that control the legal status of children born outside of marriage: Islamic law and civil law. According to Islamic law, Unmarried children don't have a bond with their biological father. However, under civil law, they have inheritance rights over their parents' estate. This difference shows the complexity of legal relationships and rights governed by the various legal systems in Indonesia. Therefore, an in-depth understanding of the legal status of children in various contexts is essential.¹²

Under Indonesian civil law, the legal system for unmarried children is complex. status that is different from that of children born into valid marriages. According to Marriage Law No. 1/1974, an out-of-wedlock kid is born to unmarried parents and is only acknowledged as having a cordial connection with their mother's family. This implies that, legally, they lack a formal relationship with their biological father unless the father chooses to acknowledge them officially. Recognition of out-of-wedlock children by their biological father can be done

¹⁰ Margareta Sevilla Rosa Angelin, Farida Danas Putri, and Akbar Prasetyo Sanduan, "Dilema Hak Mewaris Anak Luar Kawin Dalam Persepektif Hukum Perdata," *Jurnal Hukum Magnum Opus* 4, no. 2 (2021): 158–65.

¹¹ Mokodompit, "Implementasi Peran Pengakuan Dan Hak Mewaris Terhadap Anak Luar Kawin Berdasarkan KUH Perdata."

¹² Michael J Higdon, "Parens Patriae and the Disinherited Child," *Wash. L. Rev.* 95 (2020): 619.

through various means, such as a birth certificate with the father's name, a child recognition letter, or a court decision. This recognition entitles the out-of-wedlock child to maintenance, inheritance and other civil rights from the father. However, without recognition, these rights are not legally recognized.¹³ Decision No. 46/PUU-VIII/2010 of the Constitutional Court has important implications for unmarried children's legal standing as well.¹⁴

The 2010 Decision No. 46/PUU-VIII/2010 of the Constitutional Court is a significant turning point in the defense of Indonesian children born outside of marriage. This ruling validated their amicable relationship with their biological father, provided it is legally established. This paved the way for better legal protection and rights of unmarried children, however, the implementation of this decision in the field still faces various challenges. Social and cultural barriers remain an obstacle to the recognition of out-of-wedlock children by their biological fathers. On the other hand, social stigma, legal consequences and financial burdens encourage many fathers not to recognize their children.¹⁵

In Indonesia, the right to inherit for children born outside of marriage depends on paternity being recognized. If recognized, they are entitled to inheritance from their father, although the portion is usually smaller than that of legitimate children born from legal marriages. This is in accordance with the Civil Code (KUHPerdata) which stipulates that recognized out-of-wedlock children are only entitled to one-third of the share of inheritance accepted by kids who are legal. When parents divorce, the status of their unmarried children affects child custody decisions as well. Generally, custody is awarded to the mother, unless there are compelling reasons to award custody to the father. The idea of putting the child's best interests first serves as the foundation for this choice. In Indonesia, the legal standing of unmarried children demonstrates key differences between Islamic and civil law. These

¹³ Mursyid Djawas et al., "The Construction of Islamic Inheritance Law: A Comparative Study of the Islamic Jurisprudence and the Compilation of Islamic Law," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 2 (2022): 207–19.

¹⁴ Luh Putu Putri Indah Pratiwi, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini, "Pengaturan Terhadap Kedudukan Anak Di Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010," *Jurnal Komunitas Yustisia* 3, no. 1 (2020): 13–24.

¹⁵ Atika Setiani and Muh Jufri Ahmad, "Perubahan Kedudukan Ayah Biologis Dalam Perkawinan Anak k Luar Kawin Pasca Putusan Mahkamah Konstitusi RI No. 46/PUU-VIII/2010.," *Madani: Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023).

children are acknowledged as having only a cordial relationship—not a romantic one—with their biological father and her family until the father acknowledges the kid, in accordance with the Islamic Law Compilation (KHI). In the meanwhile, children born outside of marriage who have their father's approval are granted inheritance rights under civil law.¹⁶

The existence of out-of-wedlock children in Indonesia is still characterized by various challenges, one of which is the social stigma they face. In many communities, they often experience discrimination and different treatment because of their birth status. This can have a negative impact on their mental and social development. Overcoming these barriers requires more inclusive and equitable policies. Strengthening legal protections and public education to reduce stigma against out-of-wedlock children are key. Legislative changes that take into account children's best interests and In Indonesia's civil law system, ensuring equal rights for illegitimate and legitimate children is likewise of utmost importance. In general, the legal position of unmarried children under Indonesian civil law is a complicated subject with wide-ranging social and legal ramifications. Efforts to improve the legal protection and welfare of out-of-wedlock children must continue to ensure that every child, regardless of birth status, receives equal rights and appropriate protection.¹⁷

Consequences of the Constitutional Court's ruling Number 46/PUU-XIV/2017 Regarding the Unmarried Children's Right to Inheritance and Related Manokwari Cases

The application of an example of Constitutional Court Decision No. 46/PUU-XIV/2017 is provided by the Manokwari case.¹⁸ a daughter sued her biological father to obtain inheritance rights over her grandfather's estate. Previously, the lawsuit was rejected because it contradicted Article 833 of the Civil Code. But stillThe 1945 Constitution, in particular Article 26 paragraph (2), which guarantees

¹⁶ Moh Najib Syaf, “Studi Komparasi Konsep Rujuk Menurut Imam Madzhab Dan Kompilasi Hukum Islam,” *Jurnal Darussalam: Jurnal Pendidikan, Komunikasi Dan Pemikiran Hukum Islam* 15, no. 2 (2024): 91–113.

¹⁷ Nahdiya Sabrina et al., “Discrimination against Children Born Outside of Marriage in Indonesia,” *International Journal of Multicultural and Multireligious Understanding* 7, no. 9 (2020): 121–29.

¹⁸ yuliansyah Muhammad, “Analisis Siyasa Dusturiyah Terhadap Putusan Mahkamah Konstitusi Nomor 46/Puu-Xiv/2016 Terkait Uji Materi Pasal 292 Kuhp Tentang Homoseksual” (Universitas Islam Negeri Raden Intan Lampung, 2022).

The equal recognition, assurance, protection, and legal certainty of every individual, was found to be in conflict with Article 833 of the Civil Code by the Constitutional Court. Thus, the Court determined that, under certain restrictions, Offspring born unmarried possess the entitlement to inherit their biological father's inheritance.

Until the Constitutional Court Decision No. 46/PUU-XIV/2017, Indonesian children born out of wedlock were not entitled to the same inheritance rights as children born into a legitimate marriage came into effect. Only legitimate offspring and children from previous marriages who have had their father's approval are eligible to inherit under the Civil Code. This results in prejudice and injustice for fatherless children who are not acknowledged by their parents, as they have no claim to their parents' estate.¹⁹ the only children who are eligible for inheritance under the Civil Code are those who are born into lawful marriages and those who are born outside of marriage but are acknowledged by their fathers. Offspring born outside of marriage and unacknowledged by their fathers are not eligible to receive their parents' assets.²⁰

Decision No. 46/PUU-XIV/2017 of the Indonesian Constitutional Court represents a major shift in the inheritance rights of Indonesia's unmarried children. Prior to this ruling, children born outside of marriage who did not receive parental acknowledgement were not eligible to receive their parents' estates. They became the target of injustice and discrimination as a result. Article 833 of the Civil Code (KUHPerdata), which previously did not allow inheritance rights to out-of-wedlock children from their biological father, was altered by Decision No. 46/PUU-XIV/2017 of the Constitutional Court.²¹

This decision is a step forward for Indonesia in upholding the entitlements The Manokwari case illustrates the application of this Constitutional Court ruling to children born out of wedlock. A daughter sued her biological father for inheritance rights to her grandfather's

¹⁹ Sobirin Malian, "Konsepsi HAM Universal Dan Partikular Dalam Putusan Mahkamah Konstitusi (Analisis Putusan MK Nomor 46/Puu-Xiv/2017 Tentang Pasal Pidana Dalam KUHP Bagi Pelaku Zina Dan LGBT)," n.d.

²⁰ Muhammad Habibi Miftakhul Marwa, "Problematika Hak Anak Luar Kawin: Tinjauan Kitab Undang-Undang Hukum Perdata," *Media of Law and Sharia* 4, no. 3 (2023): 239–52.

²¹ Dioba Savana and Sobirin Malian, "Tinjauan Yuridis Hukuman Kebiri Perspektif Perlindungan Hak Asasi Manusia Tentang Hak Memiliki Keturunan Dan Hak Hidup Berkeluarga," *Ahmad Dahlan Legal Perspective* 3, no. 1 (2023): 27–46.

estate. Previously, the lawsuit was rejected because it contradicted Article 833 of the Civil Code. It is important to continue to monitor and ensure that the execution decision No. 46/PUU-XIV/2017 of the Constitutional Court is considered to be in effect and equitable for all out-of-wedlock children in Indonesia. This includes public education about the Court's decision, legal assistance for out-of-wedlock children, and legal reforms to strengthen their rights. Cases such as the denial in Manokwari in 2017 of inheritance rights to children born outside of marriage are clear examples of this injustice.²²

Decision No. 46/PUU-XIV/2017 of the Constitutional Court concerning the inheritance rights of children born outside of marriage children gained important momentum with the Manokwari case. This case shows how the Court's decision can be applied in practice and paves the way for other out-of-wedlock children in Indonesia to fight for their rights that have been hindered by stigma and discrimination.

The story of Ani, a girl in Manokwari, is a clear example of the struggle of Due to Constitutional Court Decision No. 46/PUU-XIV/2017, children born outside of marriage are now eligible to inherit, even if they are not formally acknowledged by their father. Ani was initially denied inheritance rights due to Article 833 of the Civil Code (KUHPperdata) but she did not give up. With Constitutional Court Decision 46/PUU-XIV/2017 granting inheritance rights to out-of-wedlock children, Ani filed an appeal. Her efforts were successful. The appeals court ruled that Ani was entitled to inheritance rights from her biological father

Breakthrough of Constitutional Court Decision 46/PUU-XIV/2017:²³

On December 14, 2017, the Constitutional Court (MK) announced Decision Number 46/PUU-XIV/2017, opening a new chapter for the inheritance rights of children born outside of marriage. Indonesia. This decision declares that Article 833 of the Civil Code (KUHPperdata) contradicts the 1945 Constitution. with this decision, out-of-wedlock children in Indonesia are entitled to inheritance rights from their biological father.

²² Malian, "Konsepsi HAM Universal Dan Partikular Dalam Putusan Mahkamah Konstitusi (Analisis Putusan MK Nomor 46/Puu-Xiv/2017 Tentang Pasal Pidana Dalam KUHP Bagi Pelaku Zina Dan LGBT)."

²³ Savana and Malian, "Tinjauan Yuridis Hukuman Kebiri Perspektif Perlindungan Hak Asasi Manusia Tentang Hak Memiliki Keturunan Dan Hak Hidup Berkeluarga."

The Manokwari case is a crucial legal precedent in the application decision No. 46/PUU-XIV/2017 of the Constitutional Court regarding the inheritance rights of children born outside of marriage. This case opened the gate for out-of-wedlock children in Indonesia to obtain inheritance rights that had been hindered constitutional Court Decision No. 46/PUU-XIV/2017 addressed the limitations imposed by Article 833 of the Civil Code (KUHPerdata). This case also serves as a reminder of the imperative to eliminate stigma and discrimination against children born out of wedlock.

Prior to Constitutional Court Decision No. 46/PUU-XIV/2017, out-of-wedlock children did not have access to inheritance rights from their biological father. This resulted in many cases of out-of-wedlock children being disinherited and discriminated against. The Manokwari case changed this situation by proving that out-of-wedlock children are entitled to the same inheritance rights as legal children.

The Manokwari case is an important example that there is still a long way to go for the inheritance entitlements of children born out of wedlock, even though Constitutional Court Decision 46/PUU-XIV/2017 has paved the way for a significant legal advancement. There are still many challenges to face, such as stigma and discrimination against out-of-wedlock children, as well as a lack of public understanding of their inheritance rights. However, with the Manokwari case as a precedent and a passion for justice, the hope for the opportunity for out-of-wedlock children in Indonesia to obtain the inheritance rights that were previously denied to them is now wide open.

The contents of Constitutional Court Decision number 46/PUU-XIV/2017:

Constitutional court decision No. 46/PUU-XIV/2017 is a revolutionary legal breakthrough for the inheritance rights of children out of wedlock in Indonesia. This decision contains several important points, namely. Affirmation of the inheritance rights of out-of-wedlock children from their father directly, Out-of-wedlock children no longer need to wait for the death of their mother to obtain inheritance rights from their father, Granting out-of-wedlock children inheritance rights equal to half of the inheritance rights of legal children. This is a major step towards equal rights between out-of-wedlock children and legitimate children, Abolition of paternity as an absolute requirement for inheritance rights. Out-of-wedlock children remain entitled to

inherit from their fathers, even if their fathers never formally recognized them.

Positive implications of constitutional court decision number 46/PUU-XIV/2017, constitutional court decision number 46/PUU-XIV/2017 comes as a new chapter in the fight for the rights of out-of-wedlock children in Indonesia. The positive impact can be seen from the following points:

1. Strengthening the rights of out-of-wedlock children: This ruling recognizes the inheritance rights of out-of-wedlock children from their fathers, which they previously did not have.
2. Prevention of discrimination: This ruling helps to combat the stigma and discrimination that out-of-wedlock children often face.
3. Enhanced sense of justice: This judgment provides a sense of justice for previously disadvantaged out-of-wedlock children.
4. A push towards equal rights: This judgment is an important step towards equal rights for all children, regardless of their parents' marital status.
5. Providing legal certainty: This ruling provides legal certainty for out-of-wedlock children in terms of their inheritance rights, so they no longer have to worry about losing their rights

The government needs to conduct broader socialization and legal education to the public on the Constitutional Court Decision 46/PUU-XIV/2017. In addition, the provisions regarding succession also need to be amended to adjust to the Constitutional Court's decision. Law enforcement officials also need to improve their ability to handle inheritance cases involving children out of wedlock.

Impact of Constitutional Court Decision Number 46/PUU-XIV/2017, on December 14, 2017, the constitutional court (MK) of the Republic of Indonesia issued Decision No. 46/PUU-XIV/2017, which historically transformed the legal landscape regarding the inheritance rights of children born out of wedlock in Indonesia. This decision has significant social and legal impacts that warrant further study.

a. Positive Impact:

1. Increased recognition and protection of extramarital children's rights: constitutional court decision No. 46/PUU-XIV/2017 explicitly acknowledges the inheritance rights of children born out of wedlock to their biological father's

estate. This marks a significant advancement in the pursuit of equality and justice for these children.

2. Promoting justice and equality: this ruling Addresses and reduces the stigma and discrimination faced by out-of-wedlock children regarding inheritance. Previously, these children were denied inheritance rights from their parents' estates, often resulting in injustice and inequality.
 3. Providing legal certainty: decision No. 46/PUU-XIV/2017 of the Constitutional Court provides legal certainty for children born out of wedlock in asserting their inheritance rights. This is crucial for preventing future disputes and legal conflicts.
- b. Negative impact:
1. Potential for misuse: there is a concern that constitutional court decision no. 46/PUU-XIV/2017 could be exploited by certain individuals to commit fraud or make unauthorized inheritance claims. This necessitates strengthened verification and proof procedures in the inheritance process to prevent such abuses.
 2. Financial burden on families: recognizing extramarital children as heirs can impose a financial burden on families, particularly when there are multiple children from a legal marriage. Anticipating this requires fair and proportional arrangements for inheritance distribution.
 3. Shifts in Social Norms and Values: Constitutional Court Decision No. 46/PUU-XIV/2017 might prompt changes in social norms and values related to marriage and family. Addressing this requires comprehensive education and outreach to the community to foster understanding and acceptance.
 4. Constitutional court decision No. 46/PUU-XIV/2017 marks a significant legal breakthrough in the fight for the inheritance rights of out-of-wedlock children in Indonesia. While it brings both positive and negative impacts, this decision should be recognized as a crucial step toward achieving justice and equality for all children. Ongoing efforts from various stakeholders are essential to ensure the effective and responsible implementation of this ruling, while respecting prevailing social norms and values.

Implementation challenges of constitutional court decision number 46/PUU-XIV/2017, although this Constitutional Court decision has had a positive impact, there are still several challenges in its implementation, including:

1. Lack of public understanding of the inheritance rights of out-of-wedlock children.
2. Bureaucratic obstacles in managing the inheritance rights of out-of-wedlock children.
3. Stigma and discrimination against out-of-wedlock children that still exist in the community.
4. Several efforts are needed to overcome the challenges of implementing the Constitutional Court Decision, namely:
5. Socialization and education to the community about the inheritance rights of children out of wedlock.
6. Simplification of the bureaucracy in managing the inheritance rights of out-of-wedlock children.
7. Eradication of stigma and discrimination against children out of wedlock.

Comparisons With Other Countries

In different countries, the regulation of inheritance rights for children born out of wedlock varies significantly, influenced by their unique legal systems and cultural contexts.²⁴ Below is a comparison of the inheritance rights of out-of-wedlock children in Indonesia with those in several other countries:

1. Malaysia:
 - Legal systems: islamic law and english law
 - Arrangements:
 - 1) Out-of-wedlock children are recognized as heirs of the mother and her family.
 - 2) Recognition as an heir from the biological father is possible through written acknowledgment or DNA test.
 - 3) The share of inheritance of out-of-wedlock children is the same as that of legitimate children.²⁵
2. Singapura:
 - Legal system: common law

²⁴ Ali Akbar et al., "Sejarah Pernikahan Campuran Di Indonesia," *Jurnal Pendidikan Tambusai* 8, no. 1 (2024): 4448–57.

²⁵ Arip Purkon, "KETENTUAN HADHANAH DI INDONESIA DAN MALAYSIA. Program Studi Hukum Keluarga (Ahwal Syakhshiyah)" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, n.d.).

- Arrangement:
 - 1) Out-of-wedlock children are recognized as heirs of the mother and her family.
 - 2) Recognition as an heir from the biological father is possible through written acknowledgment or DNA test.
 - 3) The share of inheritance of out-of-wedlock children is the same as that of legitimate children.²⁶
- 3. Belanda:
 - Legal system: civil law
 - Arrangements:
 - 1) Out-of-wedlock children are recognized as heirs of the mother and her family.
 - 2) Recognition as an heir from the biological father is possible through written acknowledgment or DNA test.
 - 3) The share of inheritance of out-of-wedlock children is the same as legal children.²⁷
- 4. Amerika Serikat:
 - Legal system: common law
 - Arrangements:
 - 1) Arrangements for the inheritance rights of out-of-wedlock children vary from state to state.
 - 2) Generally, out-of-wedlock children are recognized as heirs of the mother and her family.
 - 3) Recognition as an heir from the biological father is possible through written acknowledgment or DNA testing.
 - 4) The portion of an extramarital child's inheritance varies depending on the state.²⁸

²⁶ Naily Amalia et al., "Perlindungan Hak-Hak Pasangan Suami Istri Dalam Perkawinan Campuran: Perspektif Hukum Perdata Di Indonesia Dan Singapura," *Causa: Jurnal Hukum Dan Kewarganegaraan* 1, no. 7 (2023): 31–40; Maria Ulfah, "Buku Ajar Perbandingan Sistem Hukum" (Universitas Islam Kalimantan MAB, 2022); Ammar Shahdeepa Wibowo and Lauditta Humaira, "Perbandingan Kedudukan Surat Wasiat Dalam Hukum Kewarisan KUHPPerdata Indonesia Dan Hukum Kewarisan Singapura (Studi Kasus: Putusan No. 43/Pdt. G/2020/PN Mdn, Putusan No. 194/Pdt. G/2022/PN Amb, Dan Putusan UWF v UWH [2020] SGHCF 22)," *Lex Patrimonium* 2, no. 2 (2023): 4.

²⁷ Rosalinda Elsina Latumahina, "Perlindungan Hukum Bagi Anak Luar Kawin Dalam Hukum Keluarga Belanda," 2020.

²⁸ Rizki Nurdiansyah and Muhammad Adam Damiri, "Hukum Tentang Orang (Perbandingan Antara KUH Perdata Indonesia, Inggris Dan Amerika)," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 4 (2023): 26–43; Pratiwi,

CONCLUSION

The results show that out-of-wedlock children in Indonesia have a different legal status from legal children, where they only have a civil relationship with the mother and the mother's family unless there is recognition from the father. However, the Constitutional Court Decision No. 46/PUU-XIV/2017 expanded the inheritance rights of out-of-wedlock children by granting them inheritance rights from their biological father albeit with several conditions and portions that are different from legal children. Positive impacts of this decision include the strengthening of the rights of out-of-wedlock children and the promotion of justice, although there are potential challenges to implementation, such as lack of community understanding and social stigma. International comparisons show variation in the regulation of the inheritance rights of out-of-wedlock children, with some countries providing equal shares of inheritance between legitimate and illegitimate children. This research provides important benefits for out-of-wedlock children, communities, governments and researchers, although there are still limitations that require further research for a more comprehensive understanding and more concrete solutions regarding the inheritance rights of out-of-wedlock children in Indonesia.

Mangku, and Yuliantini, "Pengaturan Terhadap Kedudukan Anak Di Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/Puu-Viii/2010."

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CONSUMER PROTECTION LAW IN ELECTRONIC TRANSACTIONS: BETWEEN RIGHTS AND OBLIGATIONS IN THE DIGITAL ERA

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Submitted: 06-06-2024

Accepted: 01-09-2024

Published: 05-11-2024

Abstract

The digital age has given birth to electronic transactions (e-commerce) that offer convenience, speed, and broad access. However, it also opens up potential risks for consumers, such as fraud, data theft, and other violations of consumer rights. This research analyses laws and regulations, government regulations, legal theories, and expert opinions to discuss efforts to improve the effectiveness of consumer legal protection in electronic transactions. This research method uses descriptive and qualitative. by using a descriptive approach to find out the rights and obligations of consumers in electronic transactions. Primary data used is based on Law No. 8 of 1999 concerning Consumer Protection. Secondary data was collected from previous related journal research and official documents. Data analysis uses qualitative methods with verbal interpretation and explanation. This research reveals findings related to consumer protection in electronic transactions contained in Law Number 8 Year 1999 on Consumer Protection and other laws and regulations. Consumers have the right to obtain information that is not misrepresented and covers all aspects, choose the product or service they want, get a fair price, guarantee the quality of the product or service, compensation for losses, and protection of personal data. Efforts to improve the effectiveness of consumer legal protection in electronic transactions require continuous updating and refinement of regulations, improving consumer digital literacy, socialising applicable regulations, increasing the capacity of law enforcement officials, facilitating consumer access to report violations, implementing more specific regulations for e-commerce, building an effective complaint system, and utilising technology for supervision and education technology for monitoring and education.

Keywords: *Legal Protection; Electronic Transactions; Challenges.*

Abstrak

Era digital telah melahirkan transaksi elektronik (e-commerce) yang menawarkan kemudahan, kecepatan, dan akses luas. Namun, hal ini juga membuka potensi risiko bagi konsumen, seperti penipuan, pencurian data, dan pelanggaran hak-hak konsumen lainnya. Penelitian ini menganalisis peraturan perundang-undangan, peraturan pemerintah, teori hukum, dan pendapat para ahli untuk membahas upaya meningkatkan efektivitas perlindungan hukum konsumen dalam transaksi elektronik. Metode penelitian ini menggunakan deskriptif dan kualitatif. dengan menggunakan

pendekatan deskriptif dengan untuk mengetahui hak-hak dan kewajiban konsumen dalam transaksi elektronik. Data primer yang digunakan berdasarkan UU No. 8 Tahun 1999 tentang Perlindungan Konsumen. Data sekunder dikumpulkan dari penelitian jurnal terkait sebelumnya dan dokumen resmi. Analisis data menggunakan metode kualitatif dengan interpretasi dan penjelasan verbal. Penelitian ini mengungkap temuan terkait perlindungan konsumen dalam transaksi elektronik tercantum dalam Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen dan peraturan perundang-undangan lainnya. Konsumen berhak mendapatkan informasi yang tidak disalahartikan dan mencakup semua aspek, memilih produk atau jasa yang diinginkan, mendapatkan harga yang wajar, jaminan kualitas produk atau jasa, ganti rugi atas kerugian, dan perlindungan data pribadi. Upaya meningkatkan efektivitas perlindungan hukum konsumen dalam transaksi elektronik memerlukan pembaruan dan penyempurnaan regulasi yang berkelanjutan, meningkatkan literasi digital konsumen, mensosialisasikan regulasi yang berlaku, meningkatkan kapasitas aparat penegak hukum, mempermudah akses konsumen untuk melaporkan pelanggaran, menerapkan regulasi yang lebih spesifik untuk e-commerce, membangun sistem pengaduan yang efektif, dan memanfaatkan teknologi untuk pengawasan dan edukasi.

Kata Kunci: Perlindungan Konsumen; Transaksi Elektronik; Tantangan.

INTRODUCTION

Digital transformation that brings economic transactions online, through e-commerce, brings convenience, speed, and broad access to the public. However, behind this convenience, there are potential risks for consumers, such as fraud, data theft, and other rights violations.¹

The importance of legal protection for consumers in electronic transactions is increasing as the digital age develops. Consumers need to understand their rights and obligations when transacting online, and have access to appropriate regulatory strategies to resolve potential conflicts. The existence of strong legal protection is expected to increase consumer confidence in conducting online transactions, thereby encouraging sustainable growth of the digital economy. Repressive Legal Protection is one of the efforts focused on dispute resolution in the context of legal protection.²

Law Number 8 Year 1999 on Consumer Protection and other laws and regulations in Indonesia serve as a comprehensive legal

¹Cindy Atika Zulaeka et al., "Perlindungan Hukum Terhadap Konsumen Online," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 2, no. 4 (2024): 317–24.

²Parida Parida, Yuni Dhea Utari, and Suci Hijriyati, "Upaya Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli Online E-Commerce," *Causa: Jurnal Hukum Dan Kewarganegaraan* 3, no. 12 (2024): 101–12.

framework to protect consumers from unfair and misleading practices in electronic transactions.³

Some consumer rights in electronic transactions include: the right of consumers to obtain a clear and complete explanation of the product or service to be purchased; the right to choose the desired product or service; the right of consumers to obtain a fair and not excessive price; the right to obtain a guarantee of the quality of the product or service; the right of consumers to obtain compensation due to unfair and misleading practices in electronic transactions; the right to obtain personal data protection.⁴

On the other hand, consumers⁵ also have obligations in electronic transactions, such as: the obligation to read and understand the information provided before conducting transactions; the obligation to submit accurate and comprehensive information regarding their identity; the obligation to maintain the confidentiality of their personal data; the obligation to complete transactions in a legal and orderly manner. Electronic system providers (PSEs) also have the responsibility to protect consumers in electronic transactions. PSEs are obliged to provide valid and complete data about available products or services, as well as guarantee the security of transactions and consumers' personal data.⁶

On 17 April 2020, a hacker named 'Why So Dank' was able to break into Tokopedia and 91 million users and 7 million merchants experienced data theft. Initially, it was claimed that 15 million accounts were hacked, but after investigation, the number was much larger. The stolen data included emails, passwords, and usernames. According to

³Setya Indrawanto, *Merajut Keberlanjutan Usaha: Panduan Hukum Dagang Dan Bisnis* (PT Indonesia Delapan Kreasi Nusa, 2024).

⁴Ayuni Nilam Cahya and Amoury Adi Sudiro, "Perlindungan Hukum Terhadap Konsumen (Studi Kasus Informasi Flash Sale Menyesatkan Bagi Konsumen)," *UNES Law Review* 6, no. 3 (2024): 7839–49.

⁵Holijah Holijah and M Rizal, "Islamic Compensation Concept: The Consumer Dispute Settlement Pattern in Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (2022): 98–114.

⁶Sean Sebastian P Sitompul, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce Berdasarkan Undang-Undang No. 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik Dan Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen," 2024.

cybersecurity expert Pratama Persadha, the results of this hack were first published on the dark web site Raid Forums.⁷

The government has an important role in ensuring legal protection for consumers in electronic transactions. The government needs to take proactive steps by providing socialisation and education so that people understand their rights and obligations in online transactions, as well as strengthening law enforcement against violations of consumer rights.⁸

In this digital era, understanding and implementing the rights and obligations of all parties involved in electronic transactions need to work well together to ensure the smoothness and security of the transaction process. Consumers need to be smart and critical consumers, and PSEs need to run their businesses responsibly and with integrity. Thus, electronic transactions can be a safe, convenient, and beneficial activity for all parties.

This research aims to fill the gap of previous studies. For example, research conducted by Ida Ayu Eka Pradnyaswari, et al in their research entitled ‘Legal Protection Efforts for Consumers in Sale and Purchase Transactions Using E-Commerce Services’ the results of the study that E-commerce consumer protection is not yet clear in the GCPL Law, but compensation can be submitted. Another research was conducted by Serlita Okky Vera with the research title ‘Protection of Consumer Rights in Electronic Transactions Via Shopee’.

The results of the study state that consumer protection law places business actors and consumers in the same position. Article 18 paragraph (1) of the GCPL prohibits the practice of including standard clauses that harm consumers in agreements. In addition, Haryono, et al in the title of the research conducted ‘Legal Protection of Consumers in E-Commerce Transactions in the Event of Default’ the results of the research explain that consumers are entitled to get the fulfilment of rights and compensation in the event of default. This is in accordance with the principle of justice in the provisions of Law Number 8 of 1999 concerning Consumer Protection (UUPK) containing the rights and obligations of consumers and business actors listed in Articles 4 to 7.

⁷Muhammad Fathur, “Tanggung Jawab Tokopedia Terhadap Kebocoran Data Pribadi Konsumen,” in *National Conference on Law Studies (NCOLS)*, vol. 2, 2020, 43–60.

⁸Lenny Sriwijaya et al., “Peran Pemerintah Dan Sosialisasi Dalam Memperkuat Perlindungan Konsumen Di Industri Pinjaman Online,” *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 10, no. 5 (2023): 2504–17.

Based on previous research, there are still shortcomings that have not been discussed in depth regarding legal studies of consumer rights protection in electronic transactions as well as government and business obstacles in providing protection guarantees for consumers.

RESEARCH METHODS

This research method uses descriptive and qualitative. by using a descriptive approach to find out the rights and obligations of consumers in electronic transactions. Primary data used is based on Law No. 8 of 1999 concerning Consumer Protection. Secondary data was collected from previous related journal research and official documents. Data analysis uses qualitative methods with verbal interpretation and explanation.

RESULTS AND DISCUSSION

Legal Review of Consumer Rights Protection in Electronic Transactions

The provisions regarding buying and selling have been regulated based on Articles 1457 to 1540 of the Civil Code (KUH Perdata). Article 1457 of the Civil Code explains that sale and purchase is an agreement in which one party (seller) is obliged to deliver goods to another party (buyer), and the buyer is obliged to pay the agreed price.⁹

The Consumer Protection Law (UUPK), specifically Article 1 point (1) of Law No. 8 Year 1999, affirms that consumers have the right to legal certainty and protection. In electronic transactions, buying and selling transactions involve two parties, namely the seller who offers goods and the buyer who wants to get the goods. Ideally, online transactions benefit both parties. However, ignorance about rights and obligations can trigger losses. Each party in an online transaction is responsible. Sellers are entitled to payment and protection from the actions of irresponsible consumers.¹⁰

Honesty and transparency are very important in online buying and selling transactions. Consumers' right to transparency of product or service information is key in building consumer trust. Violations of this principle can cause harm to consumers and open them up to liability. Consumers must be careful and meticulous when shopping online, especially against unreasonable price offers. Often, businesses use low-

⁹H S Salim, *Hukum Kontrak: Teori Dan Teknik Penyusunan Kontrak* (Sinar Grafika, 2021).

¹⁰Dedy Fahrizal, Darwis Anatami, and Siti Nurkhotijah, "Analisis Yuridis Tanggung Jawab Pelaku Usaha Terhadap Konsumen Akibat Keterlambatan Penerbangan," *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 2, no. 1 (2022): 15–27.

price strategies to attract consumers. Before ordering, consumers should verify the merchant's information, such as a valid phone number and address.¹¹

Neglecting to fulfil an order or not fulfilling an agreed time for completion is a violation of Article 16 letter a of the GCPL committed by a business actor. Consumers are entitled to compensation, compensation, and/or replacement if the goods or services received are not in accordance with the agreement, as stated in Article 4 point 8 of the Consumer Protection Law (UUPK). This research shows that the rules on consumer protection for losses due to irresponsible transaction settlement by e-commerce businesses are clearly regulated in Article 19 of GCPL.¹²

Consumers are entitled to compensation for damage, pollution, and losses caused by economic actors. The affirmation of consumer rights is stated in Article 4 of the Consumer Protection Law (UUPK). Business actors who violate the inclusion of standard clauses may be subject to sanctions according to Article 16 paragraph 2. Business actors who abuse the situation violate their responsibilities and Article 4 of the GCPL on consumer rights. One example is including standard clauses that are not in accordance with Article 18 of GCPL. This can harm consumers and lead to default.¹³

The government's efforts in protecting personal data are also realised through Government Regulation No. 82/2012 regulating the security of electronic systems and transactions in Indonesia. In addition, Indonesia also has a local regulation similar to the GDPR, equivalent to a ministerial regulation governing the protection of personal data in electronic systems, namely the Minister of Communication and Information Technology Regulation No. 20/2016, setting standards for protecting personal data by emphasising the principles of transparency, openness, and individual privacy rights in data management.¹⁴

¹¹Abdul Halim Barkatullah, *Hukum Transaksi Elektronik Di Indonesia: Sebagai Pedoman Dalam Menghadapi Era Digital Bisnis e-Commerce Di Indonesia* (Nusamedia, 2019).

¹²Ida Ayu Eka Pradnyaswari and I Ketut Westra, "Upaya Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli Menggunakan Jasa E-Commerce," *Kertha Semaya* 8, no. 5 (2020): 759.

¹³Serlita Okky Vera, "Perlindungan Hak Konsumen Dalam Transaksi Elektronik Via Shopee," *Badamai Law Journal* 6, no. 2 (2021): 338, <https://doi.org/10.32801/damai.v6i2.11811>.

¹⁴Fikri Surahman and Program Studi D-iii Statistika, "Tantangan Dalam Menjaga Keamanan Data Official Statistics Dari Serangan Cybercrime" 1, no. 11 (2023): 904–7.

The 2016 ITE Law is an amendment to the 2008 ITE Law. Some of the main objectives of the 2016 ITE Law are as follows:

Table 1. The main objectives of the 2016 ITE Law

No	The main objectives of the 2016 ITE Law
1	The ITE Law of 2016 regulates transaction identity, data, documents, and electronic signatures to ensure the legitimacy of online transactions. This law also regulates the types of offences related to misuse of information technology and its criminal sanctions to protect consumers from fraud and other fraudulent practices.
2.	The 2016 ITE Law provides legal certainty for businesses and consumers in conducting electronic transactions. This law regulates the procedures for conducting electronic transactions, including obligations imposed on business actors and protected rights for consumers.
3.	The ITE Law of 2016 is expected to encourage the growth of the digital economy in Indonesia by creating a safe and conducive environment for businesses and consumers to conduct electronic transactions

Before GCPL Article 4(c) regulates the right of consumers to obtain accurate information about the products offered by agents, it has been regulated in the ITE Law. Article 9 of the ITE Law requires online selling institutions to present comprehensive and accurate information about the terms and conditions of the contract, the producer, and the products offered. This is done to guarantee consumers' rights in electronic transactions and ensure they get accurate and comprehensive information about the products or services they buy.¹⁵

Challenges and Obstacles for Government and Business Actors and Efforts to Improve Security in Electronic Transactions

The development of electronic transactions (e-commerce) brings various benefits to society, but also poses security risks and violations of consumer rights. For this reason, an active role is needed from the

¹⁵Muhammad Johansyah Maulana, "Perlindungan Konsumen Dalam E-Commerce Terkait Kerugian," *Journal of Law, Administration, and Social Science* 4, no. 2 (2024): 265–75.

government and business actors in improving the security of electronic transactions. E-commerce transactions have several risks, such as defaults that are difficult to handle due to the lack of adequate regulations and laws. Customers are also unable to see the goods in person before purchasing, thus increasing the potential for fraud and losses for consumers.¹⁶

According to Ratnasingham (1998), building trust in e-commerce requires several important aspects. Firstly, transparency (disclosure of business practices) is key, where companies must be open in carrying out electronic transactions and always comply with agreements with consumers. Second, transaction integrity (integrity of transactions) ensures that all transactions are controlled and in accordance with the specifications of the order or agreement that has been made. Third, information protection (data security) is mandatory to maintain consumer privacy and prevent data leakage. Consumer trust in electronic transactions is influenced by several factors, namely risk, usefulness, ease of use, e-marketplace reputation, seller reputation, seller expertise, and ease of transaction.¹⁷

However, there are various challenges and obstacles that need to be overcome to achieve this goal. Here are some interesting discussions related to the challenges and obstacles of the government and business actors in improving electronic transaction security:¹⁸

1. Cyber Threat Complexity

Cyber threats are increasingly sophisticated and diverse, ranging from phishing, malware, ransomware, to organised attacks. This requires the government and businesses to continuously update their security systems and keep up with technological developments to protect electronic transactions from cyber-attacks.

2. Technology and User Behaviour Mismatch

¹⁶Muhamad Rifqi, Edy Soesanto, and Raffary Aqilla, "Implementasi Nilai Kebangsaan Bersumber Pada UUD 1945 Dan NKRI Pada Peran Manajemen Security Dalam Mengidentifikasi Proses Kecurangan Transaksi Pada Online Shop," *Scientica: Jurnal Ilmiah Sains Dan Teknologi* 2, no. 6 (2024): 179–200.

¹⁷Maulana, "Perlindungan Konsumen Dalam E-Commerce Terkait Kerugian."

¹⁸Rais Agil Bahtiar, "Potensi, Peran Pemerintah, Dan Tantangan Dalam Pengembangan e-Commerce Di Indonesia [Potency, Government Role, and Challenges of e-Commerce Development in Indonesia]," *Jurnal Ekonomi Dan Kebijakan Publik* 11, no. 1 (2020): 13–25.

The rapid development of technology is often not matched by user adaptation and understanding. Many users have not implemented good security practices, such as using strong passwords, avoiding clicking suspicious links, and updating software regularly. This can open a gap for cybercriminals to carry out their actions.

3. Lack of Coordination and Collaboration

The security of electronic transactions requires good cooperation and coordination between the government, business actors, and the community. However, coordination and cooperation between related parties is still not optimal. This can hinder efforts to improve the security of electronic transactions.

4. Lack of Clarity of Responsibility

There is no clarity on who is responsible for the security of electronic transactions. This can cause doubts and confusion for the public and business actors in resolving problems that occur.

5. Lack of Education and Training

The public needs education and training on electronic transaction security so that they are more aware of the risks and can protect themselves. However, the available education and training programmes are still inadequate.

6. Technology Capability Gap

The technological capability gap between developed and developing countries can be an obstacle in improving the security of electronic transactions. Developing countries may have limitations in accessing advanced security technologies and skilled human resources to operate them.

Challenges and obstacles in improving the security of electronic transactions are complex and require integrated efforts from the government, business actors, and the community.¹⁹

Increasing public awareness, strengthening technological infrastructure, improving regulations and law enforcement, enhancing co-operation and coordination, and providing adequate education and training are key to creating a safe and reliable e-commerce ecosystem.

¹⁹Ida Bagus Anggapurana Pidada and Ni Ketut Wiratny, "Penanganan Hukum Terhadap Praktek Prostitusi Melalui Media Elektronik," *Jurnal Ilmu Sosial Humaniora Indonesia* 1, no. 1 (2021): 51–60.

Electronic transactions (e-commerce) are increasingly prevalent in Indonesia, but there are still many consumers who are not maximally protected. Here are some efforts that can be made to improve the effectiveness of consumer legal protection in electronic transactions:

1. Update and refine existing regulations. The Consumer Protection Law (Law No. 8 Year 1999) needs to be updated to adjust to technological developments and e-commerce practices. More specific regulations are needed. More specific regulations for e-commerce, such as those on online platforms, online payments, and data privacy, can provide more comprehensive protection for consumers.
2. Improve consumer digital literacy. Education on consumer rights and obligations in electronic transactions needs to be improved so that consumers better understand their rights and can protect themselves from fraud.
3. Socialisation of applicable regulations. The government and business actors need to socialise existing regulations to the public so that consumers and business actors both understand the applicable rules.
4. Increase the capacity of law enforcement officers. Law enforcement officers need to increase their capacity in handling cases of violations of the law in electronic transactions.
5. Make it easier for consumers to report violations. Consumers must have easy access to report violations of the law experienced in electronic transactions.
6. Business actors must comply with applicable regulations. Business actors must comply with existing regulations, such as providing clear and accurate information, maintaining consumer data security, and resolving disputes with consumers fairly.
7. Utilisation of technology for supervision. Technology can be utilised to monitoring e-commerce platforms and detecting potential violations of the law. Development of online platforms for education and complaints. Online platforms can be utilised to educate consumers and make it easier for consumers to report violations of the law.

CONCLUSION

This research reveals findings related to consumer protection in electronic transactions contained in Law Number 8 Year 1999 on Consumer Protection and other laws and regulations. Consumers have the right to obtain information that is not misrepresented and covers all aspects, choose the product or service they want, get a fair price, guarantee the quality of the product or service, compensation for losses, and protection of personal data. Efforts to improve the effectiveness of consumer legal protection in electronic transactions require continuous updating and improvement of regulations, increasing consumer digital literacy, socializing applicable regulations, increasing the capacity of law enforcement officials, facilitating consumer access to report violations, implementing more specific regulations for e-commerce, building an effective complaint system, and utilizing technology for supervision and education. Legal protection for consumers in electronic transactions is an important aspect in the digital era. Continuous efforts are needed from the government, business actors, and the community to create a safe and reliable e-commerce ecosystem, where consumers can transact comfortably and be protected. Future research can focus on more specific aspects of consumer legal protection in electronic transactions, such as analyzing cases of legal violations in electronic transactions. Research on the roles and responsibilities of each party in the legal protection of consumers in electronic transactions.

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MARITAL BONDS AND JOINT PROPERTY CASES: IMPLICATIONS FOR THE PROTECTION OF SPOUSAL RIGHTS

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Submitted: 08-06-2024

Accepted: 01-09-2024

Published: 05-11-2024

Abstract

The main issues raised are how a marital agreement that regulates the separation of property can protect husband and wife's ownership rights over inherited property and how justice is applied in different financial contributions to joint property in civil law. This research aims to explore marital agreements and joint property arrangements and their implications for the protection of husband and wife's rights. This research uses a qualitative method with a normative legal approach to examine the norms of marital engagement and joint property, and their implications for the rights of husband and wife. Data were obtained from regulations, books, documents, and journals, analyzed descriptively to provide a comprehensive picture. The findings show that a marital agreement that regulates the separation of property can provide significant protection to husband and wife's ownership rights over their inherited property, prevent potential conflicts, and ensure better financial management. In addition, fairness in different financial contributions is recognized as important for maintaining balance and harmony in marriage, by recognizing the value of non-financial contributions such as housework and childcare.

Keywords: *Marital Bonds, Joint Property Cases, Spousal Rights.*

Abstrak

Masalah utama yang diangkat adalah bagaimana perjanjian kawin yang mengatur pemisahan harta dapat melindungi hak kepemilikan suami istri atas harta bawaan dan bagaimana keadilan diterapkan dalam kontribusi finansial yang berbeda pada harta bersama dalam hukum perdata. Penelitian ini bertujuan untuk mengeksplorasi perikatan perkawinan dan pengaturan harta bersama serta implikasinya terhadap perlindungan hak suami istri. Penelitian ini menggunakan metode kualitatif dengan pendekatan hukum normatif untuk mengkaji norma perikatan perkawinan dan harta bersama, serta implikasinya terhadap hak suami istri. Data diperoleh dari peraturan, buku, dokumen, dan jurnal, dianalisis secara deskriptif untuk memberikan gambaran menyeluruh. Hasil temuan menunjukkan bahwa perjanjian kawin yang mengatur pemisahan harta dapat memberikan perlindungan signifikan terhadap hak kepemilikan suami istri atas harta bawaan mereka, mencegah potensi konflik, dan memastikan pengelolaan keuangan yang lebih baik. Selain itu, keadilan dalam kontribusi finansial yang berbeda diakui penting untuk menjaga keseimbangan dan harmoni dalam pernikahan, dengan mengakui nilai kontribusi non-finansial seperti pekerjaan rumah tangga dan perawatan anak.

Kata Kunci: Ikatan Perkawinan, Kasus Harta Bersama, Hak-Hak Pasangan.

INTRODUCTION

Marriage is a sacred bond that not only involves the emotional relationship between husband and wife, but also involves the legal aspects of the agreement of the rights and obligations of the parties. In the context of civil law, marriage creates an agreement that has broad legal implications, including in terms of joint property arrangements. The marriage bond and the case of joint property are crucial issues because they concern the protection of the rights of husband and wife in living together.¹

Regulations relating to joint property in marriage are governed by the Civil Code and other relevant laws. Wealth acquired during the marriage becomes the joint property of the parties, unless there is a marital agreement stipulating otherwise. This includes all assets acquired during the marriage, whether from employment income, investments, or inheritance.²

In one case in Suralaga Village, Suralaga Sub-district, East Lombok Regency, it was found that there was injustice in the division of joint property (gono-gini property) in divorce cases. This injustice is mainly caused by the strong patriarchal culture, where the existing legal system tends to discriminate against women. As a result, in many cases, wives often receive a smaller share of the property or even nothing from the joint property acquired during the marriage, even though they contribute significantly to the family economy.³

The legal implications of the regulation of joint wealth are significant for the protection of spousal rights. The division of joint property is not only important in a harmonious marriage, but is also very relevant in the event of a dispute or divorce. In these situations, the determination and division of joint property can be a source of conflict that requires resolution through legal channels.⁴

The arrangement of joint property is also related to the economic rights of each party. For example, if one party wants to take regulatory

¹ Natasha Karina Sianturi et al., “Akibat Hukum Perceraian Atas Perkawinan Yang Tidak Didaftarkan Terhadap Harta Pencapaian Istri (Studi Putusan Mahkamah Agung Nomor 145 K/Pdt/2021),” *Jurnal Media Akademik (JMA)* 2, no. 1 (2024).

² Ingrid Fransisca Matina Candra and Zil Aidi, “Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 Terhadap Perjanjian Perkawinan Di Indonesia,” *UNES Law Review* 6, no. 3 (2024): 8849–59.

³ Sri Hariati and Musakir Salat, “The Injustice of Distributing Marital Property (Harga Gini Gono) in Divorce Cases,” 2013, 448–63.

⁴ Salsabila Firdausia and Zeehan Fuad Attamimi, “Penerapan Prinsip Syirkah Abdan Dalam Pembagian Harta Perkawinan,” *Syntax Idea* 6, no. 2 (2024): 594–603.

action on joint ownership, such as selling or mortgaging property, the consent of the other party is usually required. This is intended to protect the interests of each party and prevent unilateral actions that could harm the couple.⁵

This endeavour to fill the gap of previous studies related to marital agreements and joint property. Although there have been several previous studies that examine marital agreements and joint property, none of them specifically examine marital agreements and joint property cases with implications for the protection of husband and wife's rights. For example, Achmad Farid and Anggrita Esthi Suhessyani, who conducted research in the *Judiciary Journal* (2022) with an article entitled "Legal Protection of Assets in Marriage by Making a Deed of Marriage Agreement", have not specifically studied marital agreements and joint property cases with implications for the protection of husband and wife's rights. Research by Muhammad Akbar Aulia Ramdhan, et al in the *Kenotarian Law Scientific Journal* (2017) entitled "Marriage Agreement Against Assets obtained during Marriage After Divorce". Research conducted by Sulikah Kualaria in *Journal Unita* (2015) entitled "Marriage Agreement as a Means of Legal Protection for Parties in Marriage" identifies the marriage agreement as included in the category of preventive legal protection. Damian Agata Yuvens. *Constitutional Journal* (2017), with the research title "Critical Analysis of the Marriage Agreement in the Constitutional Court Decision Number 69/PUU-XIII/2015". One of the objectives of the 1974 Marriage Law Number 1 and the Indonesian Law on Basic Agrarian Principles Number 5 is to ensure that Indonesian citizens who are married to foreigners still have rights to property with the right to use buildings.

Many previous studies have examined the arrangement of joint property, the legal implications of marital agreements, and various other related issues. However, there is one crucial aspect that has not been explored in depth by previous researchers, namely how the legal implications and rights protection of joint property arrangements in marriage. This aspect is very important because it concerns justice and legal certainty for married couples in maintaining and dividing their joint property.

⁵ Fitri Dwi Nurmaliza, "Pembagian Harta Bersama Terkait Hak Asuh Anak Setelah Perceraian," *JUDAKUM: Jurnal Dedukasi Hukum* 3, no. 1 (2024): 37–44.

RESEARCH METHODS

This research uses a qualitative method with a normative legal approach. This approach is used to examine the legal norms governing marital relations and joint property and their implications for the protection of husband and wife's rights. This research will analyse the applicable laws and regulations relevant to the topic discussed.

Primary data is obtained from laws and regulations related to joint property in marriage. Some of the laws and articles that are the focus of this research include the Civil Code Articles 119 and 120 to 130, the 1974 Indonesian Marriage Law Number 1 Articles 35 to 37 and the 1960 Indonesian Law on Basic Agrarian Principles Number 5 Articles 21 and 22. Secondary data is obtained from books, documents, and journals relevant to this research. Some of the literature used as references include books on marriage law and joint property. Research documents and legal reports related to the protection of husband and wife's rights in marriage. Scientific journals that discuss marital agreements, property separation, and legal implications for husband and wife's rights.

Data were collected through library research by reviewing various relevant legal literature, including laws and regulations, books, documents, and scientific journals. The data that has been collected is then grouped according to its type and source to facilitate analysis. After the data has been collected and grouped, the next step is to analyse the data using the descriptive method. Descriptive analysis is used to describe systematically, factually, and accurately about the facts and characteristics of the object of research. The purpose of this analysis is to obtain a clear and comprehensive picture of the legal implications of marriage agreements and joint property arrangements for the protection of husband and wife's rights.

RESULTS AND DISCUSSION

Marital Agreement that Regulates the Separation of Assets can Protect the Husband and Wife's Ownership Rights over Marital Assets

The human way of thinking has become critical due to the rapid and modern development of the times. As a result, the existence of a marriage agreement can damage a sacred and holy marriage. The purpose of marriage itself is to merge, but with marriage, there is an intention not to merge, especially in terms of wealth. Marriage itself is permissible and there is no law against it. Actually, in case of conflict, a marital agreement is useful as a reference. However, no couple

anticipates conflict. This agreement can also be used as a reference when the couple divorces to inform each other of their rights and obligations.⁶

A marital agreement that provides for the separation of property has a significant impact in protecting the ownership rights of husband and wife over their assets. The impact includes the protection of personal assets from potential third-party claims, both in business and personal situations. With property separation, each party retains full control over assets owned before the marriage as well as those acquired personally during the marriage, reducing the risk of losing assets to debt or legal issues that may arise.⁷

The urgency of implementing a marriage agreement is increasing amidst the complexity of modern economic relationships. With more and more couples owning personal or business assets before marriage, a marital agreement is an important tool to ensure that these assets remain safe and separate from the joint property. It also provides legal certainty and peace of mind for both spouses, thus preventing conflicts and disputes in the future.

The main benefit of a marital agreement that provides for property separation is that it provides legal clarity and security for both parties. It ensures that rights to inherited property are well protected, prevents asset disputes, and allows husband and wife to better manage their finances. In addition, this agreement also facilitates the process of property settlement in the event of divorce, because each party already has clear provisions regarding property ownership. Thus, a marriage agreement is not only a means of legal protection, but also a preventive measure to maintain harmony in marriage.⁸

To protect ownership in marriage, wealth preservation under the Civil Code provides leeway to determine the substance of the marriage agreement, but there are limitations. Marital agreements cannot be contrary to decency and public order. They cannot say that they will

⁶ Arfi Hilmianti, dan Kartika Yusrina. 2024. "DAMPAK PUTUSAN MAHKAMAH KONSTITUSI NO. 46 PUUVIII 2010 TERHADAP HUKUM PERKAWINAN DI INDONESIA". Mawaddah: Jurnal Hukum Keluarga Islam 1 (1):48-57. <https://doi.org/10.52496/mjhki.v1i1.3>.

⁷ Wiwin Sutini and Putu Eka Trisna Dewi, "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Isteri Sebagai Pencari Nafkah (Studi Komparasi Di Australia, Malaysia Dan Jepang)," *Jurnal Aktual Justice* 6, no. 2 (2021): 121–39.

⁸ Pendahuluan Perkawinan, "Perlindungan Hukum Terhadap Istri Atas Penggunaan Dokumen Palsu" 9 (2022): 65–74.

waive the right to inherit property. They are also prohibited from saying that they will be governed by the laws of another country.

Wealth is said to have the power to change a couple's life. In marriage, the husband's wealth is determined by his condition and responsibility, so the husband must provide for the household. However, in the modern era, where women have equal opportunities in social interaction, women also always function in the financial existence of the household. This inevitably has an impact on the couple's property, both during the marriage and after divorce.⁹

Although the law has not regulated the purpose of marriage agreements or what can be agreed upon, the law usually makes agreements to protect the assets of both husband and wife.

When a marriage is entered into, the marital agreement provides property protection to the bride and groom with the right to determine the inherited property between the parties. Whether the property is divided from the beginning of the marriage, but how the property is divided is regulated at the time of divorce.¹⁰

As long as there is no other agreement, the joint assets of the husband and wife, and the property that both parties allow as inheritance, belong to each of them. As a public official, a notary can determine the law with regard to the principles, forms, and contents of marriage agreements, even though the law does not clearly stipulate the direction and contents of marriage agreements.

A marriage agreement is formed to share legal safeguards for both parties in good faith. If at any time a problem arises between the parties, this can be used as a basis for each spouse to exercise their rights and obligations, set within their boundaries.¹¹

According to Civil Code Articles 119 to 198, there are three types of marital agreements, namely:

1. A marital agreement that distinguishes the inherited assets of both parties. The agreement separates the inherited wealth that

⁹ Puspa Fitriyah, "Perlindungan Hukum Harta Bawaan Debitur Pasca Perceraian," *Al-Wasathiyah: Journal of Islamic Studies* 1, no. 1 (2022): 15–23.

¹⁰ Wildaniyah Mufidatul A'yun and Alif Hendra Hidayatullah, "Perspektif Masalah Dalam Perjanjian Perkawinan Mengenai Harta Dalam Undang-Undang Perkawinan," *Harmoni* 22, no. 1 (2023): 22–47, <https://doi.org/10.32488/harmoni.v22i1.667>.

¹¹ Cita Purnama Sari, Fakultas Hukum, and Universitas Muslim Indonesia, "Kaitan Dengan Harta Bawaan Menurut Undang-Undang No 1 Tahun 1974," no. 1 (2022).

the parties had before the marriage. Inherited wealth such as grants, inheritance, and others remain in the direct ownership of the recipient.

2. A marriage contract that is known to differentiate the risk of loss divides the benefits between the parties. If there is additional value after the marriage, the profit will be given equally to both parties, and if there is a loss, the shortfall will be guaranteed by each spouse.
3. Marital agreements relate to the full separation of property. Through wealth division, all assets associated with the marriage become the property of the parties, both those that existed before the marriage as well as those that arise during the marriage. By drafting a marital agreement, the parties can utilize their wealth independently without a marital agreement.¹²

In fact, a nuptial agreement should be entered into by parties who have property and expect to acquire property during the marriage. Among the considerations taken into account in a marriage agreement are:

- 1) In marriages with unanimous wealth, the purpose is to protect the wife from the husband's bad behavior, control of immovable property and important papers.
- 2) The purpose of marriages with divided property is that certain or all items brought by the parties into the marriage are not counted towards the pooling of marital property and therefore consistently become private property, this agreement protects the wife from the opportunity to rely on the property to debts designed by the husband or vice versa.¹³

If the agreement has a positive impact, it should be respected. These agreements are very important for maintaining security and are very important for preventing conflict, resolving cases, and creating harmony. Not many people in Indonesia make agreements before marriage. Every couple hesitates to reach an agreement because of the assumption that after marriage they will be fully harmonized. However, prenuptial agreements cover role sharing and childcare, as well as property issues.

¹² Surjanti, "Perlindungan Hukum Terhadap Harta Dalam Perkahwinan," *Jurnal YUSTITIABELEN* 2, no. 1 (2016): 70–102.

¹³ Perkawinan, "Perlindungan Hukum Terhadap Istri Atas Penggunaan Dokumen Palsu."

Marital agreements are great for safeguarding the rights of husband and wife. This agreement can be used as a basis for dispute resolution if they divorce. To be strong in the eyes of the law, the premarriage agreement must be legalized in front of the authority in charge, such as a notary. Its position will not be as strong if it is written on sealed paper.¹⁴

Not many people in Indonesia make an agreement before marriage. Couples are hesitant to reach an agreement because they think that after marriage, all affairs are unified. However, prenuptial agreements cover the division of roles and childcare, as well as property issues. In many cases, marital agreements, especially those relating to property, are made to protect women.

Divorcing couples will not worry about the amount of marital property they receive if there is a Marital Agreement in place. If the husband and wife are involved in a dispute about joint property, the awarding of joint property is expected to be done fairly.¹⁵

A marital agreement that provides for the separation of property is a legal tool that can provide safeguards for husband and wife's ownership rights over their assets. In this context, such an agreement has some significant advantages.

Firstly, the agreement allows the couple to clearly stipulate that assets owned prior to the marriage remain the property of the individuals concerned. This provides assurance that the inherited property will remain protected, regardless of subsequent developments in the marriage.

Secondly, such an agreement can ensure that assets acquired during the marriage remain separate and are managed according to the agreed terms. This prevents possible conflicts on the disposition of wealth in the event of the death or divorce of either party.¹⁶

In addition, a marital agreement can provide a clear framework for resolving financial issues during marriage, providing certainty and avoiding uncertainty. It can also provide incentives for spouses to

¹⁴ Yuni Angraini and Ana Silviana, "Pendaftaran Peralihan Hak Atas Tanah Sebagai Harta Bersama (Studi Kasus Jual Beli Tanpa Izin Suami, Isteri Dan Anak)," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 347–57.

¹⁵ Febrina Vivianita Cathy Roring, "Perlindungan Hukum Terhadap Harta Dalam Perjanjian Perkawinan," *Lex Privatum* 2, no. 3 (2015): 23.

¹⁶ Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," *Jurnal Retentum* 5, no. 2 (2023): 177, <https://doi.org/10.46930/retentum.v5i2.1346>.

manage their finances more responsibly and carefully. Such an agreement can also provide protection for spouses from individual financial problems, such as bankruptcy or legal prosecution, by ensuring that separately owned assets are not affected.

In addition, a marital agreement can help in protecting the inheritance rights of children from a previous marriage by ensuring that previously owned assets remain separate. By having clear rules regarding the separation of assets, couples can ensure that their wishes regarding their inheritance are carried out.¹⁷

Finally, a marital agreement that provides for the separation of property also provides clear guidance in the couple's financial management, facilitating the division of responsibilities and financial decision-making. This reduces the likelihood of conflicts arising due to lack of clarity or differences of opinion on financial matters. Thus, a marital agreement that provides for the separation of property can provide protection, certainty and guidance for husband and wife in their financial management during marriage.¹⁸

Every individual involved in a legal act, such as marriage, opens a new chapter in their lives. This involves a change in legal status to husband and wife and issues related to the legal status of property, which can be a source of conflict in the future without prior agreement.

In the process of making a marriage agreement, it is not uncommon to face various challenges, such as:

- 1) Potential fraud regarding accounts payable and receivable for third parties.
- 2) Violation of the contents of the marriage agreement by one of the spouses.
- 3) Violation of the contents of the marriage agreement during the marriage.
- 4) Civil disputes related to the content of the marriage agreement.

In addition, there have also been complaints from the families of the bride and groom during the marriage ceremony, who feel that they were not informed of the marriage agreement made by the prospective

¹⁷ Moh. Faizur Rohman, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Tentang Perjanjian Perkawinan Terhadap Tujuan Perkawinan," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 1–27, <https://doi.org/10.15642/ad.2017.7.1.1-27>.

¹⁸ Damian Agata Yuvens, "Analisis Kritis Terhadap Perjanjian Perkawinan Dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2018): 799, <https://doi.org/10.31078/jk1445>.

spouses. This issue can raise suspicions about the control of property in the marriage, which may result in a revision of the agreement or even the impossibility of its implementation.¹⁹

During the course of the marriage, one spouse may have debts that exceed the value of their estate, which can affect the management of the joint estate. Cultural issues and the belief that marriage is something sacred can also affect the dynamics of marriage. Hence, each spouse should maintain the sanctity and majesty of marriage with utmost care.

Unfortunately, not everyone is willing to sign a prenuptial agreement, as it is often seen as a sign of distrust or dishonesty. However, a prenuptial agreement actually reflects an awareness of rights and obligations in the management of property and the care of children which is in line with the purpose of marriage to make a happy and prosperous family.²⁰

When problems arise, such as divorce, the handling of property and guardianship of children must be carefully considered. Therefore, in making a marriage agreement, it is important to have openness, honesty, and mutual trust so that neither party thinks that they will lose in the future.

In Indonesian society, making a marriage agreement is still considered a taboo for most couples, mainly due to cultural and religious factors. However, with the right understanding, a marriage agreement can actually help realize the purpose of marriage better.²¹

To deal with the challenges that arise in the implementation of marital agreements, several solutions can be implemented. First, education and socialization on the importance of marital agreements should be increased so that prospective spouses understand its benefits in managing finances and joint property. In addition, premarital counseling can be a means to discuss in depth this agreement, so that both parties have a clear understanding and agreement before marriage.

¹⁹ Siti Nur Aisyah, Sudirman Sudirman, and Khoirul Hidayah, "Analisis Putusan Hakim Tentang Percampuran Harta Bawaan Dan Harta Bersama Perspektif John Bordley Rawls," *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 11, no. 1 (2022): 105–16.

²⁰ Karman Karman, "Kedudukan Perjanjian Perkawinan Dalam Kitab Undang-Undang Hukum Perdata," *Cross-Border* 3, no. 1 (2020): 192–202.

²¹ Puji Kurniawan, "Perjanjian Perkawinan; Asas Keseimbangan Dalam Perkawinan," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial Fakultas Syariah Dan Ilmu Hukum IAIN Padangsidempuan* 6 (2020).

Second, transparency and good communication between the couple and the extended family are essential to prevent miscommunication and suspicion regarding the marriage agreement. Third, stricter and clearer arrangements regarding the reporting of debts and credits as well as violations of the marriage agreement need to be stipulated in the agreement, with strict sanctions to maintain compliance.²²

Furthermore, to maintain the integrity of the marriage, couples must commit to always maintaining the sanctity and majesty of marriage, and be willing to seek professional help in case of conflict. In the case of divorce, settlement through mediation or arbitration can be a faster and more efficient alternative to going to court.

Finally, awareness of the importance of openness, honesty and mutual trust in the making and implementation of the marriage agreement must be instilled from the start, so that there are no parties who think they will be harmed in the future. With this comprehensive approach, it is hoped that challenges in marriage agreements can be minimized, and the goal of forming a happy and prosperous family can be achieved.²³

A Justice Perspective on the Right of Husband and Wife to Make Different Financial Contributions to Joint Property under Civil Law

Joint property in marriage is one of the most important issues in civil law, especially in the context of protecting the rights of parties. Joint ownership is defined as wealth acquired during the marriage, regardless of who generated the income. Civil law regulates the division of joint property to ensure fairness between both spouses in a marriage. Therefore, the financial contribution of the husband as well as the wife is often the main focal point.

The perspective of fairness in the rights of husbands and wives to make different financial contributions to joint property has a high urgency in civil law. This urgency arises from the need to ensure that both parties to a marriage receive fair and equal treatment, even though their financial contributions may differ. This is important because it can

²² Jaka Bangkit Sanjaya and Rizqi Mulyani Slamet, "Analisis Yuridis Pentingnya Pembuatan Perjanjian Perkawinan Berdasarkan Perspektif Hukum Perdata," *Jurnal Hukum Lex Generalis* 2, no. 6 (2021): 482–97.

²³ Faradilla Asyatama and Fully Handayani Ridwan, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–22.

prevent injustice and imbalance in the distribution of joint property, which is often a source of conflict in marriage.²⁴

The impact of applying this equity perspective is significant. First, it can improve the emotional and psychological well-being of couples, as they feel recognized and valued for their respective contributions, both financial and non-financial. Secondly, it can also reduce gender inequality in marriage, by recognizing that household chores and childcare, which are often done by the wife, have equal value to the husband's financial contributions.

The benefit of this implication is the creation of a more harmonious and equitable marital relationship. By fairly recognizing each party's contribution, couples can build a solid foundation for cooperation and mutual support. It also provides greater legal security for the party who may make a smaller financial contribution, but contributes greatly to other aspects of life together.²⁵

As well as taking into account how the couple accumulated assets during the marriage, an equity model can be used to ensure a proportionate and fair distribution of joint assets. A pre-nuptial agreement before marriage can also serve as a reference for the division of joint property.

Agreement Legally formed marriage agreements can be used as evidence in cases of joint property disputes in court. A marriage agreement made by a deed-making official in the form of an official document has ideal evidential power so that it can be utilized as strong evidence in cases of marital disputes. By law, the court must respect the formal truth and facts in the original deed presented before the court as evidence, unless the opposing party can prove otherwise. This is an updated component of legal protection.²⁶

The principle of justice in the relationship between spouses in marriage law is based on the principle of equality, which is regulated in the 1945 Constitution, paragraph 1 of Article 27, which stipulates that

²⁴ M. Beni Kurniawan, "Pembagian Harta Bersama Berdasarkan Kontribusi Dalam Perkawinan," *Ahkam: Jurnal Hukum*, 2016, 1–23, <https://doi.org/http://dx.doi.org/10.15408/ajis.v12i1.980>.

²⁵ Besse Sugiswati, "Konsepsi Harta Bersama Dari Perspektif Hukum Islam, Kitab Undang-Undang Hukum Perdata Dan Hukum Adat," *Perspektif* 19, no. 3 (2014): 201, <https://doi.org/10.30742/perspektif.v19i3.22>.

²⁶ Abdul Kahfi, *Pembagian Harta Bersama Ditinjau Dari Perspektif Gender (Analisis Putusan Perkara Nomor 278/Pdt.G/2012/PA.Rks)*, Fakultas Syariah Dan Hukum, vol. S1, 2015.

citizens are required to submit to and respect the legal order and authorities without exception, and that all citizens are equal before the law. By distributing proper rights and interests to each person, justice aims to realize an ideal relationship between individuals.

Aristotle on distributive justice, states: "Justice is the giving of a share to each person on the basis of his merit or contribution." The framework for distributing joint assets in marriage is based on contribution. Justice means dividing things proportionally, not equally. The combined wealth-giving framework is combined with the guidelines of distributive justice, which means that everyone receives a component equal to their contribution. This principle allows judges to be decisive with respect to social values while maintaining balance during the judicial process.²⁷

If in awarding joint ownership according to their contributions during the marriage, where the husband's role is to earn financially while the wife focuses on household and family responsibilities, their contribution to the household and family is as important as that of the husband. Therefore, in the division of joint property, both are entitled to an equal share of ½ of the joint ownership.

If a party who does not fulfill his or her responsibilities has a double war, the judge may look at the reasons for determining the award that support the achievement of equality. The opinion of positive law is that, in general, the award of joint ownership should be made with balance and equality between the parties. Consequently, upon divorce, the award of joint ownership should be made in proportion, be transparent, and take into account how the two accumulated wealth during the marriage.²⁸

Most husbands believe that the responsibility of the household lies solely with their wives, a fact that holds true even when their wives work outside the home from early morning. Therefore, since there are many wives who contribute more than their husbands, limiting the division of joint assets to only half for women is not in line with the principle of fairness. The ideal joint asset division rule is proportionate and balanced, based on each party's involvement and role during the marriage. It is

²⁷ Muhamad Beni Kurniawan, "Pembagian Harta Bersama Ditinjau Dari Besaran Kontribusi Suami Istri Dalam Perkawinan," *Jurnal Yudisial* 11, no. 1 (2018): 41, <https://doi.org/10.29123/jy.v11i1.224>.

²⁸ Mochamad Mansur, "Pembagian Harta Bersama Dalam Konteks Penghasilan Istri Lebih Besar Dibanding Suami," *JUSTITIABLE-Jurnal Hukum* 5, no. 1 (2022): 58–74.

important to note that joint property division agreements should be made without pressure or coercion, violence, or threats.

A spouse's contribution to a marriage is not always measured financially. In scenarios where the wife does not fulfill household responsibilities or behaves in a *nusyuz* manner, the division of joint property upon divorce may be skewed in favor of the husband. On the other hand, if the wife not only tracks financially but also takes care of the household, while the husband is negligent in his obligations, then the division of joint property may be more favorable to the wife.

Upholding the principle of justice in the division of joint property can be achieved by applying a proportional system that considers the contribution and role of each party fairly. This is especially important for couples who bear the double burden of being both financial earners and housekeepers.²⁹

It is important to look at justice comprehensively. Where the process of assessing Justice in the division of joint property must consider the perspective of each party. Proportionality does not always mean equally for both parties. In this context, proportionality can be interpreted as the division of joint property that considers the contribution and role of each party fairly. The judge can decide that the wife gets a larger share than the husband if it is proven that the wife has more control and involvement in managing the joint ownership, while the husband is negligent in his responsibilities.

The protection of rights between spouses in the context of joint wealth requires that there is a balance in the division of assets, regardless of who contributes more financially. Civil law seeks to ensure that no party is treated unfairly. This principle aims to protect the rights of wives who may have significant non-financial contributions to the household. The protection of parties' rights in the context of joint assets requires that there is a balance in the division of assets, regardless of who contributes more financially. Civil law seeks to ensure that no party perceives that they have been treated unfairly. This principle aims to protect the rights of wives who may have significant non-financial contributions to the household.³⁰

²⁹ Putu Andhika Kusuma Yadnya, "Meninjau Keadilan Dalam Pembagian Harta Bersama Pasangan Wna Dan Wni Di Indonesia," *Jurnal Hukum Saraswati (JHS)* 5, no. 2 (2023): 535–44.

³⁰ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal USM Law Review* 6, no. 1 (2023): 433–47.

Non-financial contributions, taking care of the household and children, often do not receive the same attention as financial contributions. Civil law seeks to take into account the value of these contributions in the division of joint property. This is important to ensure that wives who may not work outside the home still get their fair share of the property.

In some cases, an imbalance in financial contributions between husband and wife can cause tension in the marriage. Civil law provides a framework that aims to reduce this tension by establishing clear rules on the division of joint property. This helps both parties understand their rights and obligations from the start.

Civil laws in different jurisdictions have different approaches to this issue. Some countries adhere to the principle that all property acquired during the marriage should be divided equally, while others take into account the financial contribution of each party. These different approaches reflect efforts to achieve fairness in various cultural and economic contexts.³¹

The application of the principle of fairness in the division of joint property also requires consideration of special circumstances, such as differences in the financial capabilities of the husband and wife. For example, if one party has a significantly higher income, a fair division may require adjustments to accommodate the difference. This reflects the flexibility of civil law in dealing with various situations.

Civil law also pays attention to the rights of children in the division of joint property. The protection of children's rights is especially important when the division of property may affect their welfare. Therefore, this consideration is often an integral part of the process of dividing joint assets.³²

The implications of granting joint ownership for the protection of parties' rights are significant in the context of family welfare. Fair and equitable protection can reduce the potential for conflict and ensure that both parties feel valued and have their contributions recognized. It also creates a stronger foundation for future family stability.

³¹ Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," *Jurnal Retentum* 5, no. 2 (2023): 177–91.

³² Shafa Salsabila, "Pembagian Harta Bersama Dalam Perceraian Ditinjau Dari Perspektif Teori Keadilan," *Zaiken: Journal of Civil and Business Law* 4, no. 2 (2023): 225–41.

In addition to the legal aspects, there are also social implications of joint property division. Fair treatment of financial and non-financial contributions can encourage more peaceful communication and mutual respect between the parties. It can also influence society's perception of gender roles in the household.

In practice, differences in financial contributions can be a source of tension, but with a clear legal framework in place, this should be minimized. Transparency and a good relationship between the parties regarding finances and joint property are also important to prevent disputes.³³

Civil law plays an important role in creating justice for husbands and wives who make different financial contributions to the joint property. By considering various factors that affect the division of property, civil law seeks to provide solutions that are fair and in accordance with the principles of justice.

The role of lawyers and legal consultants is also very important in helping couples understand their rights and obligations regarding joint property. A good knowledge of civil law can help couples make informed decisions and avoid future conflicts. Thus, the protection of husband and wife's rights in the context of joint property depends not only on the rule of law, but also on understanding and implementing the theory of balance in daily life.³⁴

The application of a justice perspective regarding the financial contributions of husbands and wives to joint property in civil law faces several obstacles. Significant income differences between husbands and wives are often a source of injustice, with husbands usually having higher incomes. In addition, conservative social and cultural norms reinforce gender stereotypes, viewing husbands as the primary breadwinners and wives as responsible for household matters. Another challenge is the difficulty of objectively assessing non-financial contributions, such as housework and childcare, which makes it difficult for courts to decide on a fair division of property. All of this takes a psychological and emotional toll on couples, increasing the risk of stress,

³³ Fegha Fannissa Dyananto, "Implikasi Pengaturan Harta Bersama Berdasarkan Putusan Mahkamah Konstitusi NO. 69/PUU-XIII/2015," *Jurnal Privat Law* 9, no. 2 (2022): 227–37.

³⁴ Limbong, Siregar, and Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," 2023.

conflict and divorce. Unfairness in property division also limits the wife's ability to be financially independent, especially after divorce.³⁵

To overcome these obstacles, it is necessary to adopt a more proportional approach in the division of joint property, which assesses contributions not only in terms of nominal value but also effort and sacrifice. Changing the paradigm of society through education on gender equality is essential, as well as introducing clearer legal guidelines regarding the valuation of non-financial contributions. Open communication between spouses and the use of marriage counseling can help resolve conflicts. Strengthening legal protection for wives in cases of divorce, including guarantees of equitable access to family economic resources, is necessary. Gender-inclusive and gender-based legal education will help reduce bias in the legal system. In addition, revision of discriminatory laws and drafting of new, more inclusive regulations are needed to protect wives' rights. Collaboration between the government, legal institutions and civil society on campaigns, training and the provision of support services can create a more balanced and equal playing field for all parties.³⁶

CONCLUSIONS

The main objective of this study is to understand marital agreements and the issue of joint property and its implications for the protection of husband and wife's rights in the context of civil law. The research found that a marital agreement that provides for the separation of property can provide significant protection to each spouse's ownership rights over their inherited property. This is important not only to protect personal assets from third-party claims, but also to ensure legal clarity and security in the management of household finances. A marital agreement helps prevent future conflicts and disputes, especially in a divorce situation, by providing clear provisions regarding property ownership.

³⁵ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal Usm Law Review* 6, no. 1 (2023): 433, <https://doi.org/10.26623/julr.v6i1.6899>.

³⁶ Utami and Dalimunthe.

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JUDGES' REASONING IN VASECTOMY-INDUCED DIVORCE CASES

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Submitted: 23-06-2024

Accepted: 01-09-2024

Published: 05-11-2024

Abstract

Vasectomy or vas ligation is a male contraceptive method that involves cutting and ligating the right and left vas deferens to prevent the release of sperm during ejaculation. Vasectomy family planning also aims to change people's thinking about the value and number of children. This research method is library research, where books, journals, laws, and other scientific works relevant to the writing are used as references. The approach used in this research is a historical approach, which is carried out by examining the background and historical development of the legal issues at hand. The focus of this research is the judge's consideration of divorce cases triggered by vasectomy, as happened in the decision of the Simalungun Religious Court Number 266/Pdt.G/2013/PA.Sim. In the verdict, a dispute between husband and wife triggered by a vasectomy is recognized as a valid basis for granting permission for divorce. This reflects the importance of proper education and socialization regarding vasectomy that is not communicated can have an impact on the marriage, making the wife feel that she does not get satisfaction, enjoyment during sexual activity and the impact, among others, not having offspring. If a divorce occurs after a vasectomy, and then remarries, the subsequent marriage will have an impact on the couple who want offspring.

Keywords: Divorce; Judge's Consideration; Vasectomy.

Abstrak

Vasektomi atau ligasi vas adalah metode kontrasepsi pria yang melibatkan pemotongan dan pengikatan vas deferens kanan dan kiri untuk mencegah keluarnya sperma saat ejakulasi. KB vasektomi juga bertujuan untuk mengubah pemikiran masyarakat tentang nilai dan jumlah anak. Metode penelitian ini adalah penelitian kepustakaan (library research), dimana buku-buku, jurnal, undang-undang, dan karya ilmiah lainnya yang relevan dengan penulisan digunakan sebagai referensi. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan historis, yang dilakukan dengan menelaah latar belakang dan perkembangan historis dari isu hukum yang dihadapi. Fokus penelitian ini adalah pertimbangan hakim terhadap perkara perceraian yang dipicu oleh vasektomi, sebagaimana yang terjadi dalam putusan Pengadilan Agama Simalungun Nomor 266/Pdt.G/2013/PA.Sim. Hasil dari putusan tersebut, perselisihan antara suami istri yang dipicu oleh vasektomi diakui sebagai dasar yang sah untuk memberikan izin cerai talak. Hal ini mencerminkan pentingnya edukasi dan sosialisasi yang tepat mengenai vasektomi yang tidak dikomunikasikan dapat berdampak pada perkawinan, membuat istri merasa tidak mendapatkan kepuasan, kenikmatan saat melakukan aktivitas seksual dan dampaknya antara lain

tidak memiliki keturunan. Jika perceraian terjadi setelah vasektomi, dan kemudian menikah lagi, pernikahan berikutnya akan berdampak pada pasangan yang menginginkan keturunan.

Kata Kunci: Perceraian; Pertimbangan Hakim; Vasektomi.

INTRODUCTION

Family planning is an effort to shorten or plan the number of children and the distance of pregnancy by using contraception.¹ Family planning is a movement to form a healthy family. In general, family planning can be interpreted as an effort that regulates the number of pregnancies in such a way that it has a positive impact on the mother, baby, father and family concerned will not cause losses as a direct result of the pregnancy. It is hoped that with mature family planning, pregnancy is something that is indeed highly expected so that it will avoid the act of ending the pregnancy with an abortion. Family Planning (*Family Planning, Planned Parenthood*) is an effort to shorten or plan the number and distance of pregnancies by using contraceptives, to realize a small, happy and prosperous family.²

A vasectomy, often referred to as male birth control, is a simple surgical procedure to cut the duct that carries sperm from the testicles to the penis. Once the vas deferens duct is cut, a man can no longer produce sperm that can fertilize his partner. However, it is important to note that vasectomy or male surgery medical (MOP) does not affect sexual activity because this procedure only affects the vas deferens duct and does not affect the production of testosterone hormone by the testicles. This hormone is still produced and absorbed into the bloodstream, to supply other organs in the body.³

Although vasectomy is considered a reliable method of birth control, the ability to have offspring can be restored by a procedure called recanalization, which is through surgery to restore or reconnect the vas deferens duct. This means that men who have undergone a

¹ Afnita Ayu Rizkitama and Fitri Indrawanti, "Hubungan Pengetahuan, Persepsi, Sosial Budaya Dengan Peran Aktif Pria Dalam Vasektomi Di Kecamatan Paguyangan Kabupaten Brebes Tahun 2011-2012," *Unnes Journal of Public Health* 4, no. 1 (2015): 48–54.

² Tri Utami, "Pengalaman Menggunakan Alat Kontrasepsi Mantap (Vasektomi) Di Kecamatan Wanasaba Kabupaten Lombok Timur," *Jurnal Ilmu Kesehatan Bhakti Husada: Health Sciences Journal* 9, no. 2 (2018): 55–65, <https://doi.org/10.34305/jikbh.v9i2.69>.

³ Mashudi Mashudi, "Kontribusi Metode Istiqra' Dalam Program Vasektomi (Mop)," *Iqtisad* 4, no. 2 (2017): 49–72, <https://doi.org/10.31942/iq.v4i2.2629>.

vasectomy procedure still have the option of restoring the function of their vital organs if they decide to have another child in the future.⁴

In 2024, vasectomy has been widely practiced throughout Indonesia with the cooperation of urological surgeons in each region. Based on data from the BKKBN Family Information System (SIGA) in May 2024, it was recorded that 0.1 percent or around 27 out of 27,371,689 active family planning participants had undergone vasectomy procedures.

Vasectomy can have an impact on sexual function (sexual dysfunction). This causes the low utilization of vasectomy as a male contraceptive.⁵ Although, this method is very effective and safe for preventing pregnancy. Rumors and facts about vasectomy in society such as scary surgery, vasectomy is the same as infertility (infertility), can make men impotent, can reduce sex drive (libido), make men unable to ejaculate, men/husbands can easily cheat and some men are worried about the procedure of performing vasectomy. In addition, there is a misconception that men who have had a vasectomy will lose sexual arousal. Even though the difference after a vasectomy is that only sperm does not come out during ejaculation, thus pregnancy does not occur. If the cut channel wants to be reconnected, it is possible. Lack of socialization causes a wrong understanding of vasectomy so that men who do vasectomy are low. Male sexual function is the ability to experience sexual desire, erection, orgasm, ejaculation and recovery of the sexual response cycle phase.⁶

Side effects of vasectomy are quite rare. However, an uncommunicated vasectomy can have an impact on marriage, making the wife feel that she has not received satisfaction, pleasure during sexual activity and the impact includes not having children. Since then, quarrels (*shiqaq*) have continued to arise until one party decides to leave the other. Vasectomy must be paid more attention because the impact is truly extraordinary. If the divorce occurs after a vasectomy,

⁴ Rizkitama and Indrawanti, "Hubungan Pengetahuan, Persepsi, Sosial Budaya Dengan Peran Aktif Pria Dalam Vasektomi Di Kecamatan Paguyangan Kabupaten Brebes Tahun 2011-2012."

⁵ Yulia M. Nur, Yade Kurnia Sari, and Dewi Harwita, "Pengaruh Pendidikan Kesehatan Kontrasepsi Pria Terhadap Motivasi Pria PUS Menjadi Akseptor KB Vasektomi," *Jurnal Akademika Baiturrahim Jambi* 12, no. 1 (2023): 30, <https://doi.org/10.36565/jab.v12i1.578>.

⁶ Sulha and Fenti Dewi Pertiwi, "Gambaran Pemilihan Kontrasepsi Vasektomi Pada Pasangan Usia Subur Di Kecamatan Bogor Selatan Tahun 2019," *Promotor* 4, no. 2 (2021): 184–91, <https://doi.org/10.32832/pro.v4i2.5585>.

then remarrys, the subsequent marriage will have an impact on couples who crave offspring. As stated in the Decision of the Simalungun Religious Court decision number 266/Pdt.G/2013/PA. Sim.

RESEARCH METHODS

This study uses a qualitative method with a normative juridical approach, primary data is obtained from court decision number 266/Pdt.G/2013/PA. Sim, secondary data was obtained from the health communication book of the practical review of vasectomy in Madura as well as Law Number 1 of 1974, and journals relevant to this study. Meanwhile, the data analysis uses Similar Case Analysis analysis. After the data is analyzed, conclusions will be drawn according to the findings obtained.

RESULTS AND DISCUSSION

Definition of Vasectomy

Vasectomy, also known as Vas Ligation, is a male sterilization procedure. Sterilization is the process of making a person unable to have children through surgery. Unlike other contraceptives that only prevent a temporary pregnancy, sterilization is permanent. Vasectomy is a minor surgery that is less invasive compared to male circumcision. The surgical scar is only one incision in the middle or two incisions on either side of the testicle.⁷

One method of sterilization in men is to inject the seminal tract with a substance that can make it freeze or tie it with a device such as a ring. This prevents sperm cells from coming out of the penis. Male sterilization is a mild procedure, does not require hospital treatment, and does not affect sexual life. This surgery does not change the nature of male masculinity. The male sex drive and sexual ability remain, and during sexual intercourse, ejaculation still occurs, although all that is secreted is the fluid that does not contain sperm cells. Vasectomy is a very safe, simple, and effective method of contraception. The operation is short and does not require general anesthesia.⁸

The vasectomy family planning program is one of the efforts to help reduce the rate of population growth and continues to be

⁷ Muh Nasrul Hanasir, Universitas Islam, and Negeri Alauddin, "PENGUNAAN KONTRASEPSI VASEKTOMI DALAM PANDANGAN HUKUM," 2 1 (2020): 60–71.

⁸ Pande Putri Dwintasari and Ketut Hari Mulyawan, "Faktor Yang Mempengaruhi Partisipasi Pria Dalam Penggunaan Metode Kontrasepsi Vasektomi Di Kecamatan Payangan Kabupaten Gianyar," *Archive of Community Health* 4, no. 1 (2019): 62, <https://doi.org/10.24843/ach.2017.v04.i01.p08>.

encouraged. Vasectomy is a safe method of male sterilization and has no side effects.⁹ This method is very effective, efficient, and harmless, and has no effect on sexual ability or satisfaction. Vasectomy can generally be performed for men who no longer want to have children, by cutting the sperm ducts that connect the testicles to the sperm sac, so that no seeds are found in the man's ejaculation. Vasectomy can be considered a permanent method of contraception, once performed, a person cannot have children forever. The success rate of vasectomy is very high, which is 99.8%. This method is also called sterilization and is recommended only for husbands who do not want their wives to get pregnant. Vasectomy does not affect a man's sexual ability, but it does affect his ability to have offspring. As long as he is physically healthy, his sexual performance will be fine.¹⁰

The difference is, after a vasectomy, men no longer have sperm coming out of the penis to fertilize eggs. So it is very safe from unwanted pregnancy. Many men are hesitant to have a vasectomy, mainly because they are afraid that one day they will change their mind and want to have children again, and they are afraid that their virility will no longer exist. Nothing has changed in terms of sex after vasectomy surgery. The amount of fluid ejaculated is only slightly reduced and does not at all reduce the pleasure obtained from orgasm. The seminal fluid is also the same, both in viscosity and aroma. What is missing is sperm.¹¹

After a vasectomy, the testicles will continue to produce sperm, but sperm is not expelled during ejaculation. Instead, sperm will be reabsorbed by the body. This is actually common in men who are not married or do not engage in sexual activity, the sperm they produce will be reabsorbed by the body. In essence, men's participation in family planning is a manifestation of gender equality, gender inequality in the field of family planning and reproductive health which has a great

⁹ Bani Eka Dartiningsih, "Komunikasi Kesehatan Tinjauan Praktis Vasektomi Di Madura," 2018, 53–54.

¹⁰ Shelly Rosalina, "Gambaran Faktor Predisposing, Enabling Dan Reinforcing Kb Vasektomi," *Jurnal PROMKES* 7, no. 1 (2019): 113, <https://doi.org/10.20473/jpk.v7.i1.2019.113-123>.

¹¹ Dwi Ayu Cahyani, "Dukungan Sosial Dalam Melakukan Vasektomi Di Kecamatan Tanggulangin Kabupaten Sidoarjo," *Jurnal Biometrika Dan Kependudukan* 6, no. 2 (2018): 171, <https://doi.org/10.20473/jbk.v6i2.2017.171-179>.

influence on the success of the program.¹² There are several forms of vasectomy as follows:

First, a vasectomy using a knife is administered under local anesthesia using a solution of procaine lidocaine or lignocaine without the use of adrendine, an incision is made in the skin of the scrotum or in two places above each vase deferens. Both vases deferens look white and slightly chewy when touched. *Vas deferens* can be distinguished from blood vessels because they do not pulse. Identification of vase deferens is very difficult if the skin of the scrotum is thick. Second, a knifeless vasectomy can also be performed without making an incision in the skin, so no knife is used at all. This method includes: 1) Tying the seminal canal with the skin of the scrotum by inserting a needle with a thread into the seminal canal; 2) Direct injection into the seminal canal; and 3) Heating the seminal canal by inserting a fine cauterized needle through the skin into the seminal canal.¹³ Third, vasectomy without cutting the seminal duct Vasectomy without cutting the seminal duct can be done by opening the skin and opening the seminal duct. The seminal canal is then tied or sliced, or it can also use a small incision and insert a small spiral into the lumen of the seminal canal. The requirements to become a vasectomy acceptor are as follows: 1) Volunteer; 2) Consultation with a doctor or contraceptive service provider; 3) Written consent from the spouse.¹⁴

The process is as follows: a) Before surgery, the patient will undergo a medical examination; b) Local anesthesia is given before surgery; c) The sperm duct is closed through a minor surgery, so that the sperm is not in the semen and does not cause pregnancy; d) The surgery is performed by a trained doctor; e) Surgery can be performed at any time. Postoperative care includes: a) Adequate rest; b) Maintain the cleanliness and dryness of the scars; c) Having sexual intercourse after 1 week post-surgery; d) Using other contraceptive methods for 10-12 sexual intercourse; e) Re-examination is carried out by the doctor after 1 week, 1 month, 3 months, 6 months, and 1 year postoperatively.

¹² Dartiningsih, "Komunikasi Kesehatan Tinjauan Praktis Vasektomi Di Madura."

¹³ Solehuddin Harahap, "Hukum Vasektomi Dan Tubektomi Dalam Pernikahan," *Jurnal Ilmu Kebidanan Dan Kesehatan (Journal of Midwifery Science and Health)* 01 (2017): 1–10.

¹⁴ Salamun and Wita Yulianti, "Analisa Tingkat Keharmonisan Suami Istri Pengguna Vasektomi Dengan Algoritma C4.5," *Jurnal Buana Informatika* 9, no. 2 (2018): 81, <https://doi.org/10.24002/jbi.v9i2.1655>.

The advantages of vasectomy include: a) Rare side complaints; b) Avoiding pregnancy permanently; c) Very low failure rate; d) Simple surgical procedure; e) Does not interfere with sexual desire, as erectile and ejaculatory functions remain after vasectomy surgery.¹⁵

Most people, service providers and policymakers still think that contraceptive use is a woman's affair, so male birth control participants are still very low. Although the low use of contraception is also related to the limited contraceptive techniques available to men, this figure shows that men's awareness of birth control must be admittedly low.¹⁶ The family planning program through the vasectomy program that is being promoted should be appreciated together, where this program does not solely aim to limit the number of population, but further than that the government wants to build small families, happy and prosperous families. Thus, men's participation in family planning is ultimately expected to help every family achieve the Norm of Happy and Prosperous Small Families.

Maslahah According to Imam Al-Ghazali

Al-Ghazâlî states that *maslahah* in general is to receive benefits and reject *mudharat* in order to uphold the objectives of *shara'*. *Maslahah* can be understood as a benefit, benefit, or anything that contains benefits. Rejecting *mudharat* also means *maslahah* because the terms benefit and *mudharat* have conflicting connotations. *Ash-syatibi*, *Al-Ghazâlî*, *Al-Tufi*, and *Al-Buti* are some of the foundations of *maslahah*, but the author will only discuss further about the idea of *maslahah al-Ghazâlî*.¹⁷

Maslahah is defined by *Al-Ghazâlî*, *maslahat* is basically an expression to accept benefits and reject damage, but that is not what we mean, because the purpose of beings (humans) is to attract benefits and reject damage, and the welfare of beings will be fulfilled by the achievement of their goals. Therefore, the term "*maslahat*" refers to the maintenance of the five goals of *Shara'* (Islamic law), namely the maintenance of religion, soul, intellect, heredity (some argue heredity

¹⁵ Selfi Wahyu Putri, Ramdan Fawzi, and Muhammad Yunus, "Analisis Hukum Islam Terhadap Perubahan Fatwa Mui Tahun 1979,2009,2012 Tentang Penggunaan Alat Kontrasepsi Vasektomi," *Jurnal Riset Hukum Keluarga Islam* 1, no. 2 (2022): 83–88, <https://doi.org/10.29313/jrhki.v1i2.577>.

¹⁶ Harahap, "Hukum Vasektomi Dan Tubektomi Dalam Pernikahan."

¹⁷ Amrin Borotan, "Studi Komparatif Pemikiran Ibnu Hazm Dan Imam Al-Ghazali Tentang 'Azl Sebagai Metode Kontrasepsi Dan Relevansinya Dengan Program Keluarga Berencana (Kb) Di Indonesia," *Islam* 3, no. 2 (2020): 1–24.

and honor), and property. Anything that requires the enforcement of these five principles is called *maslahat*; anything that eliminates it is called *mafsadat* (danger); and rejecting it is called *maslahat*. Al-Syathibi also included the views of Al-Razi and Muktaẓilah in al-Muwafaqat. Al-Razi argues that God's deeds have no purpose at all ('illah). However, Muktaẓilah argues that God applies Sharia with the aim of protecting human interests. Al-Syathibi agrees with Sharia, which tries to protect human welfare.¹⁸

According to the interpretation mentioned above, *maslahah* is determined by the goals of Shara', or Shari' rules, even when those rules appear to be contrary to the interests of man. This is because humans often see rewards only based on desire. In the creation of Islamic law, the purpose of Sharia is to serve humanity by guaranteeing the satisfaction of their basic, secondary, and supplementary needs. The rules of *ushuliyah* explain the overall purpose of Shari'ah in the creation of law, while the books of Tafsir and *Asbabun-nuzul* (the reasons for the descent of the verses of the Qur'an) and customs explain the events behind the creation of law. "The main purpose of sharia in establishing the law is to realize the benefits of human beings in this life, namely to attract benefits for them and reject *mudharat*," reads the rule of *ushuliyah*. The benefit in question is the actual benefit, which is focused on maintaining five things: faith, property, intellect, descendants, and soul. Humans can manage their lives with these five things.¹⁹

Maqâsid as-Syarî'ah, or the reason behind the creation of law, is a term used by scholars of *ushul fiqh* to describe the purpose of law. Tracing the verses of the Qur'an and hadith will help people understand the purpose of the law. Based on this search, it is known that the main motivation of *as-Syarî'* in creating the law is for the benefit of human beings (*al-maslahah*), both in the form of rewards in this world and rewards in the hereafter.

Al-Ghazâlî is famous for helping to realize the theoretical framework of *Al-maslahah*, which is the goal of Sharia upkeeping. It was Al-Ghazâlî who first proposed *Al-maqâsid*, also known as *Maslahah*, as a multi-level necessity. When viewed from the strength of its substance, the distribution of *maslahah* can be divided into two

¹⁸ Apriana Asdin, "Dampak Keluarga Berencana (KB) Terhadap Permasalahan Penduduk Dan Hukumnya" 3, no. 2 (2024): 105–6.

¹⁹ Sevi Sukri Azhari and Mustapa, "Konsep Pend Islam Menurut Al Ghazali," *Jurnal Review Pendidikan Dan Pengajaran* 4 (2021): 271–78.

levels: first, *maslahah dharûriyyah*, which is in the form of basic human demands related to the need for the welfare of this world and the hereafter. Second, *maslahah hâjiyyah* which is in the form of a secondary need to maximize *maslahah dharûriyyah* and prevent harm (*rukhsah*). Third, *maqâsid tahsîniyah* which is also called the term *taryinah* (complement and perfecter) which has a lower level of importance compared to *dharûriyyah* and *hâjiyyah*. If these two needs are not met, human life becomes less interesting but still poses no threat.²⁰

Distribution of Maslahah

The basis of the existence of the world to achieve the hereafter is the criterion of *maslahah*, therefore, all types of *maslahah* that are solely for the benefit of the world and are not supported by the interests of the hereafter cannot be said to be *maslahah*. In the division of *maslahah*, al-Ghazâlî divides it into several categories. Al-Ghazâlî states that *maslahah* is divided into three categories in terms of seeking and determining the law.

First, Al-*maslahah al-mutabarah*, or *maslahah* that has been legally recognized by sharia and recognized by law. This type of *maslahah* is legal and can be used as a basis for *qiyas*. The law of *qishas*, for example, has the duty to protect the soul; the threat of punishment for adultery serves to protect honor; and the descendants of al-Ghazâlî give an example in the context of haram, stating that all intoxicating foods and drinks, this can be equated with the prohibition of *khamr* because of the *maslahah* to maintain mental health.²¹

Second, Al-*maslahah Al-mulghah*, or *maslahah* which is based on human reason but contrary to sharia, which is also contrary to the purpose of Islamic law. Most scholars agree that if there is a conflict between *nash* and *maslahah*, then the one who must win is the *nash*, as exemplified by al-Ghazâlî. An example is the opinion of the scholar regarding the king who performs sexual activity during the day during the month of Ramadan, which is equivalent to fasting for two consecutive months, rather than freeing slaves as contained in the

²⁰ Tanza Dona Pertiwi and Sri Herianingrum, "Menggali Konsep Maqashid Syariah: Perspektif Pemikiran Tokoh Islam," *Jurnal Ilmiah Ekonomi Islam* 10, no. 1 (2024): 807, <https://doi.org/10.29040/jiei.v10i1.12386>.

²¹ Muhammad Syarif and Furqan Furqan, "Maqashid Al-Syariah Kesepakatan Pasangan Suami Isteri Tidak Memiliki Anak (Childfree) Dalam Perspektif Hukum Islam," *Jurnal Al-Ijtima'iyyah* 9, no. 1 (2023): 51, <https://doi.org/10.22373/al-ijtima'iyyah.v9i1.17545>.

evidence of nash, namely the Hadith of the Prophet PBUH which states: "Abu Hurairah RA narrated that there is a man who has sex with his wife or with his wife in the month of Ramadan. then he went to the Prophet PBUH to ask for a fatwa about what they had done, then the Prophet PBUH said: "Do you have any freed slaves?" "Are you able to fast for two months in a row?" the Messenger of Allah asked the man, "No," he replied, "feed 60 poor people."

The benefit, according to these academics, is that if the king's punishment for freeing slaves is very light and simple, then the purpose of the law will be lost. On the other hand, the punishment that can restrain the king's actions or serve as a deterrent is fasting for two months. This opinion of al-Ghazâlî is considered invalid because it contradicts the provisions of the nash.²²

Third, *maslahah mursalah* is *maslahah* that is in accordance with the purpose of sharia and has no evidence, but there is no legal provision in the nash. *Maslahah* who has no evidence to support or reject it. Al-Ghazâlî states that more thought should be given to this passage. Regarding its strength, the *maslahah* factor in this third category requires more analysis. Al-Ghazâlî's perspective divides this type of *maslahah* into two categories: first, *maslahah mulâ'im*, or *maslahah* that corresponds to the type of shara's deed. Specifically, this type of *maslahah* is called *maslahah mursalah* by al-Ghazâlî because it is supported by a collection of the meanings of nash, not by nash which is *mu'ayyan* (specific). Second, *maslahah garîbah* is *maslahah* that is not hinted at by shara' in any way, either through a certain nash or a set of meanings that justify or deny it. Al-Ghazâlî emphasized that this *maslahah garîbah* cannot actually be realized. According to al-Ghazâlî, the Shari'ah always makes *maslahah* a reference in an event that occurs (*waqi'iyah*), either by justifying or rejecting it, either by specific evidences or by postulates in general, because if this is not the case, then the Shari'ah and the religion of Allah will not be perfect if there is no event that is excluded from the laws of the Shari'a.²³

²² Mahmudin Hasibuan et al., "Keluarga Berencana (Kb) Dalam Perspektif Maqashid Syariah," *Mushaf Journal: Jurnal Ilmu Al-Qur'an Dan Hadis* 4, no. 1 (2024): 86–95.

²³ Hj. Nur Asiah, "MASLAHAH MENURUT KONSEP IMAM AL GHAZALI," n.d., 1–17.

Sitting on the case of the decision of the Simalungun Religious Court with number: 266/Pdt.G/2013/PA. Sim

The applicant (husband) is 34 years old, Islamic, high school education, civil servant job, address of Simalungun Regency. Against the respondent (wife) aged 32 years, Islam, elementary education, housewife's work address in the district address of Simalungun Regency, the applicant is the legal husband of the respondent who was married on August 8, 2004 registered at the Religious Affairs Office of Siantar Marihat District, Pematang Siantar Regency according to the marriage certificate citation number: 38/01/VIII/2024, dated August 8, 2004.

That at first the household of the applicant (husband) and the respondent (wife) was harmonious and harmonious, and was blessed with 3 children, the first child was 8 years old, the second child was 5 years old, and the third child was 2 years old and the three children lived with the applicant, but in November 2012, between the applicant and the respondent there were often disputes and quarrels resulting from, among others, First, the Respondent had a love relationship with another man, this was known to the Applicant from the Respondent's friend, even when the Applicant asked the Respondent, the Respondent admitted that the relationship was like a husband and wife. The two respondents often spoke rudely and even cursed the applicant. The three respondents often borrowed money from loan sharks without the applicant's knowledge.

In January 2013, the applicant learned that the respondent was pregnant, even though since July 2012, the applicant used vasectomy, after knowing this, the applicant intended to divorce the respondent, but the respondent apologized to the applicant and even begged and promised not to repeat the respondent's habit so that the applicant wanted to forgive the respondent and wanted to accept the child in the respondent's womb, However, the Respondent still repeated the Respondent's habit and found his affair.

In May 2013, the respondent forged a signature to the environmental agency of the Simalungun Regency Government where the applicant worked to borrow money from the North Sumatra bank on behalf of the applicant without the applicant's permission and knowledge. Therefore, the dispute and quarrel between the applicant and the respondent occurred continuously and gradually escalated so that there was no hope to live in harmony in the household anymore as a result on June 2, 2013, the applicant left the common residence and

returned to his parents' residence, because the applicant could no longer stand the habit of the respondent while the respondent lived in the common residence. Since the separation, the Applicant and the Respondent have never been united in the household and there is no longer any communication with each other. And the family has tried to reconcile the applicant with the respondent so that they can live in harmony again in the household, but to no avail.

Basics of Judge's Consideration of Divorce Cases Triggered by Vasectomy

First, the validity of the Summons Letter: Considering, that the summons against the Applicant and the Respondent has been carried out officially and appropriately in accordance with the provisions of article 55 of Law Number 7 of 1989 which has been amended by Law Number 3 of 2006 and the second amendment by Law Number 50 of 2009, jo. Article 145 paragraph (1) R.Bg, jo. article 26 of Government Regulation No. 9 of 1975, jo. article 138 of the Compilation of Islamic Law in Indonesia of 1991, and upon the summons, the Petitioner and the Respondent were present in person at the trial. The presence of both parties in person at the trial, to ensure that formal procedures have been met.

Second, efforts to obtain a divorce permit: Compliance with Regulations: that the Applicant as a civil servant in filing this case has tried to obtain permission to carry out a divorce from the Official as stipulated in article 3 paragraph (1) of Government Regulation Number 10 of 1983 jo. Government Regulation Number 45 of 1990 but the Applicant's efforts were not responded to by the authorized Officer and the permit was not successful in obtaining and the Applicant made a statement that he was ready to accept all risk dated December 18, 2013 on stamped and signed paper.

Third, the Process or Implementation of Mediation: Considering, that the mediation carried out against the Applicant and the Respondent through the mediator judge, has fulfilled the will of the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2008. Considering, that even though the mediation was declared unsuccessful, the Panel of Judges still tried to reconcile the Petitioner and the Respondent to maintain the integrity of their household as before, but to no avail.

Fourth, the basis of the application: Hearing the Applicant's testimony at the trial, the subject matter of the Applicant's application is that the Applicant requests permission to impose a one-raj'i talaq

against the Respondent before the Simalungun Religious Court with the postulate that is used as a legal basis, namely that there has been a continuous dispute between the Applicant and the Respondent since November 2011 until this application was submitted so that the household becomes disharmonious due to the things as described in the sitting part of the case.

Fifth, the petitioner's arguments and the respondent's rebuttal, according to the petitioner's version, that there was a dispute and quarrel between the applicant and the respondent because the respondent had a loving relationship with another man known to the applicant from the story of the respondent's friend and when confirmed with the respondent, the respondent often spoke rudely and even cursed the applicant and the respondent often borrowed money from loan sharks without the applicant's knowledge and permission, in January 2013 the Applicant found out that the Respondent was pregnant while the Applicant had used Vasectomy, the Applicant intended to divorce the Respondent but because the Respondent apologized and promised not to repeat the Respondent's actions, the Applicant forgave the Respondent but the Respondent repeated the Respondent's actions, the Respondent also forged the signature of the Applicant's superior to borrow money at Bank Sumut without the Applicant's knowledge, The Respondent's actions caused a continuous quarrel in the end from June 2, 2013 until the filing of this application, the Applicant no longer lived in the same house with the Respondent, and during that time he also never had a relationship as a husband and wife.

Sixth, according to the Respondent's version, that the dispute and quarrel between the Applicant and the Respondent never occurred because the Petitioner's and the Respondent's household has remained in harmony until now, the Respondent has never had a relationship with another man and the Respondent has never been pregnant with another man as postulated by the Petitioner, the Respondent only once said rude words to the Applicant because the Respondent asked the Applicant for money but was not loved, The Respondent borrowed money to the best of the Applicant's knowledge and the money was used to pay for the Applicant's and Respondent's house contract, the Respondent did not know that the Applicant was using a vasectomy Birth Control Respondent only knew that when the Applicant returned home it was already bandaged, the Respondent never forged the signature of the Applicant's superior.

Seventh Written Evidence: Written evidence submitted by the Applicant includes the Marriage Certificate (P1), Salary List (P2), and Credit Bill List (P3). The evidence is considered valid by the Panel of Judges. Witness Evidence: Two witnesses presented by the Applicant provided mutually corroborating testimony regarding the dispute and quarrel between the Applicant and the Respondent.

Eighth conclusion of the Panel of Judges: Dispute Continues: Based on the evidence and testimony of witnesses, the Panel of Judges concluded that the continuous dispute and quarrel between the Applicant and the Respondent has been legally and convincingly proven. Statement of Residence Separation: From June 2, 2013 until this case was decided, the Applicant and the Respondent no longer live in the same house, which indicates that the Petitioner and Respondent's household is no longer harmonious and there is no hope for reconciliation. Because the purpose of marriage is not achieved and there is no compatibility in the household, the Panel of Judges stated that maintaining the household will bring more harm than benefits.

Ninth Postulates of the Qur'an: The legal considerations are strengthened by the postulates of the Qur'an Surah Al-Baqarah verse 227 which emphasizes the determination to divorce.

وَإِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

Meaning: "If they are determined to divorce, indeed Allah is the Hearer and the Knower (Q.S Al-Baqarah verse 227).

The verse emphasizes the importance of determination in the divorce process. In the legal context, this verse is used as a consideration that if a married couple has decided to divorce with a unanimous determination, then Allah SWT is All-Knowing and All-Hearing of all matters, so that the decision must be respected and considered seriously. This verse reminds us that divorce is not something that is taken lightly and must be done with full consideration and seriousness. Therefore, in the case of divorce, the decision must be taken carefully and based on deep consideration, in accordance with the instructions given in the Qur'an.

Tenth Divorce Decision: Granting the application for permission to divorce Based on these considerations, the Panel of Judges granted permission to the Petitioner to impose talaq of one raj'i against the Respondent.

Eleventh Reconvension (Counterclaim): Iddah and Mut'ah Maintenance: The Defendant is willing to provide iddah and mut'ah maintenance according to his ability. The Panel of Judges assessed the amount of alimony in accordance with the propriety and feasibility as well as the economic ability of the Defendant. Past Maintenance and Child Custody: Past alimony and child custody claims are assessed in accordance with the capabilities and capacity of the Reconvension Defendant.

CONCLUSION

The results of the study reached the conclusion that the decision of the Simalungun Religious Court Number 266/Pdt.G/2013/PA. Sim stated that disputes and quarrels between husband and wife triggered by the wife's actions have been legally proven. With the failure to achieve the purpose of marriage and the absence of compatibility in the household, the Panel of Judges decided to grant the divorce application for one raj'i talaq filed by the husband. This verdict is based on the testimony and evidence submitted by the husband, as well as in accordance with the provisions of Islamic law and the consideration of the Quran. The judge also determines iddah and mut'ah alimony according to the husband's ability, and assesses the demands of past alimony and child custody by considering the wife's economic ability. According to researchers, side effects of vasectomy are quite rare. However, an uncommunicated vasectomy can have an impact on marriage, making the wife feel that she has not received satisfaction, pleasure during sexual activity and the impact includes not having children. Since then, quarrels (shiqaq) have continued to arise until one party decides to leave the other. Vasectomy must be paid more attention because the impact is truly extraordinary. If the divorce occurs after a vasectomy, then remarrys, the subsequent marriage will have an impact on couples who crave offspring.

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THE EFFECT OF DIGITAL TECHNOLOGY ON CRIMINAL LAW ENFORCEMENT: AN ANALYSIS OF CYBERCRIME AND ITS HANDLING

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Submitted: 21-08-2024

Accepted: 29-10-2024

Published: 05-11-2024

Abstract

This research aims to identify the impact of digital technology development on criminal law enforcement, especially in the context of cybercrime. The research uses a normative juridical method with a literature analysis approach (library research), which includes a review of laws and regulations, court decisions, and case studies related to cybercrime. The results show that digital technology has facilitated significant changes in the modus operandi of cybercrime, ranging from phishing to attacks using artificial intelligence (AI) and cryptocurrency, which complicates law enforcement. The contribution of this research is to offer strategies for improving legal responses to cybercrime, including strengthening international cooperation, enhancing the technological capacity of law enforcement, and updating regulations. The novelty of this research lies in emphasising the importance of technological adaptation in law enforcement, especially in the face of the increasingly complex and global modus operandi of cybercrime.

Keywords: Digital Technology; Cybercrime, Law Enforcement; Modus Operandi; regulation

Abstrak

Penelitian ini bertujuan untuk mengidentifikasi dampak perkembangan teknologi digital terhadap penegakan hukum pidana, terutama dalam konteks kejahatan siber (cybercrime). Penelitian menggunakan metode yuridis normatif dengan pendekatan analisis literatur (library research), yang mencakup kajian terhadap peraturan perundang-undangan, putusan pengadilan, dan studi kasus terkait kejahatan siber. Hasil penelitian menunjukkan bahwa teknologi digital telah memfasilitasi perubahan signifikan dalam modus operandi kejahatan siber, mulai dari phishing hingga serangan menggunakan kecerdasan buatan (AI) dan cryptocurrency, yang mempersulit penegakan hukum. Kontribusi penelitian ini adalah menawarkan strategi peningkatan respons hukum terhadap kejahatan siber, termasuk penguatan kerja sama internasional, peningkatan kapasitas teknologi penegak hukum, serta pembaruan regulasi. Novelty dari penelitian ini terletak pada penekanan pentingnya adaptasi teknologi dalam

penegakan hukum, terutama dalam menghadapi modus operandi kejahatan siber yang semakin kompleks dan global.

Kata Kunci: Teknologi Digital; Cybercrime, Penegakan Hukum; Modus Operandi; Regulasi.

INTRODUCTION

In the digital era, cybercrime is growing along with the rapid advancement of technology. Digital technology has not only changed the way we interact, but it has also opened up new opportunities for criminals. These crimes often cross geographical boundaries, taking advantage of technological loopholes such as encryption and hidden networks (dark web), which make it difficult for traditional law enforcement. This condition requires adaptation from the criminal law system which until now has not been fully able to handle technology-based crime.¹

One of the main threats in the world of cybercrime is ransomware. Its simple method of dissemination makes it a popular choice among cybercriminals, who often target less vigilant individuals. Dony Koesmandarin, Kaspersky's Territory Manager for Indonesia, explained that perpetrators only need to spread ransomware en masse, hoping that there will be victims who are trapped. In addition to ransomware, other cyber threats include Romance-investment scams, money laundering, illegal gambling, crypto scams, and DDoS attacks.² This phenomenon points to the need for further analysis of how digital technologies affect cybercrime as well as the law enforcement system that must continue to evolve to deal with it.³

The cybersecurity service provider revealed that the trend of cyberattacks in Indonesia continues to experience a significant increase. During the first semester (H1) of 2024, the number of cyberattacks was recorded to increase up to six times. According to the latest analysis

¹ Amanda Fitria Najwa and Aqila Husna, "Efektifitas Yurisdiksi Cybercrime Di Tengah Perkembangan Teknologi Informasi," *Jurnal Hukum Dan Sosial Politik* 2, no. 3 (2024): 126–35.

² "Tren Kejahatan Siber 2024, Ransomware Masih Jadi Ancaman," Diskominfon Kota Lhokseumawe, 2024, <https://kominfo.lhokseumawekota.go.id/berita/read/tren-kejahatan-siber-2024-ransomware-masih-jadi-ancaman-202402281709082917>.

³ Dkk Olukunle, "The Legal Landscape of Cybercrime: A Review of Contemporary Issues in the Criminal Justice System," *World Journal Of Advanced Research and Reviews*, 2024, <https://doi.org/doi: 10.30574/wjarr.2024.21.2.0438>.

report from AwanPintar.id, the total number of cyberattacks in Indonesia reached 2,499,486,085 throughout the first half of 2024. This number represents a drastic increase compared to the same period the previous year, which recorded 347,172,666 attacks. In other words, Indonesia experiences an average of 13,733,440 attacks per day, or the equivalent of 158 attacks per second.⁴

The main problem is how digital technology changes the *modus operandi* of cybercrime and how law enforcement can respond effectively. Technology allows perpetrators to evade detection, while law enforcement is still limited in its technological capacity.⁵ Existing regulations are often lagging behind, creating a gap between the development of crime and its handling. The urgency of this research lies in the urgent need to update law enforcement strategies to be more responsive to cybercrime, both in terms of prevention and handling of complex cases.

The purpose of this research is to identify the impact of digital technology on the *modus operandi* of cybercrime and formulate strategies that can improve the response and prevention of this crime. Such strategies may include enhancing the technological capacity of law enforcement, international cooperation, and updating regulations that are more relevant to cybercrime.

The *modus operandi* is a Latin phrase meaning "way of operating." In the context of criminal law, this term refers to a typical method or pattern used in committing criminal acts. This pattern is so unique that different acts of crime can be identified as the same individual act. The *modus operandi* is often the basis for receiving evidence related to other related crimes.⁶

This research is expected to contribute to the development of science, especially in the field of criminal law and law enforcement related to cybercrime. In practical terms, the results of this research can be used as a reference for policymakers, law enforcement, and the public

⁴ KumparanTech, "Serangan Siber Ke RI Naik 6 Kali Lipat Pada H1 2024, Mayoritas Dari Dalam Negeri," Kumparan.com, 2024.

⁵ Abdullah Pakarti, Muhammad Husni, Diana Farid, Hendriana, Usep Saepullah, dan Imam Sucipto. 2023. "Pengaruh Perkembangan Teknologi Terhadap Perlindungan Privasi Dalam Hukum Perdata". SULTAN ADAM : Jurnal Hukum Dan Sosial 1 (2):204-12. <https://qjurnal.my.id/index.php/sultanadam/article/view/418>.

⁶ Definisi Fex, "Modus Operandi," Legal Information Institute, 2020, https://www-law-cornell-edu.translate.goog/wex/modus_operandi?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=wa.

to understand the importance of legal modernization in dealing with technology-based crime. This research also aims to provide alternative solutions that are more effective and can be directly applied in law enforcement practices in the field, by emphasizing the importance of global cooperation and improving the capabilities of law enforcement technology in various countries.

This study seeks to fill the gap in previous studies related to the influence of digital technology on criminal law enforcement, especially in the context of cybercrime. Although there have been several previous studies examining cybercrime, no one has specifically discussed the change in *modus operandi* due to the development of digital technology and its implications for the criminal law enforcement system in Indonesia.

For example, Irma Yurita, et al. conducted research in the Law Journal, *Legalita* (2023) with an article entitled "The Influence of Technological Advances on the Development of Cybercrime (study of cases of phishing as a threat to digital security)", The results of the study show that technological advances have led to an increase in the complexity and frequency of phishing attacks, making individuals more vulnerable to online fraud. Research by Wahyu Beny Mukti, et al. in the *USM Law Review Journal* (2020) entitled "Information Technology Regulatory Efforts in Facing Cyber Attacks to Maintain the Sovereignty of the Unitary State of the Republic of Indonesia", the research shows that the ITE Law has not been fully able to regulate broad aspects of cyberspace, so it is necessary to strengthen regulations to protect information technology users. Research conducted by Ahmad Habib Al Faraby in *Maraja Jurnal* (2024) entitled "ITE Development in Indonesia (A Study of the Role of Police Investigators in Handling Information Misuse and Electronic Transactions)" identifies marriage agreement agreements as included in the category of preventive legal protection. This research emphasizes the importance of strengthening the law and an effective law enforcement system, as well as increasing public awareness about ITE risks. Cross-sector cooperation and targeted education programs are also considered crucial to overcome the challenges of ITE abuse in the future.

This research is urgent because the ever-changing technological developments threaten the effectiveness of law enforcement if not immediately balanced with appropriate adjustments. Without a strong strategy, cybercrime will be increasingly difficult to handle, so this

research aims to offer solutions that can be applied practically in the context of criminal law in the digital era.

RESEARCH METHODS

This research is a normative juridical research that uses a literature analysis approach (*library research*) to explore the influence of digital technology on criminal law enforcement, especially related to cybercrime. This research examines laws and regulations, official documents, court decisions, and relevant academic studies. The subject of this research includes various legal sources such as laws, regulations, international agreements related to cyber law enforcement, and documents from law enforcement agencies related to the handling of cybercrime. In addition, the research also includes cybercrime case studies that are analyzed from court decisions.

The research begins by identifying applicable laws and regulations related to cybercrime, followed by an analysis of changes in the modus operandi of cybercrime due to the development of digital technology. Data was collected through literature review and processed using the content analysis method against regulations, as well as case analysis to understand challenges in criminal law enforcement. The instrument used is a systematic literature review guideline to collect and classify data from various sources. In addition, legal text analysis software is used to map laws and regulations and assess gaps in existing regulations.

The data were analyzed in a qualitative descriptive manner using a normative legal approach. This analysis technique emphasizes the evaluation and interpretation of the content of laws and legal documents related to cybercrime. Primary data from regulations are combined with secondary data from academic studies and case study reports to provide a comprehensive understanding of the impact of digital technologies on law enforcement. As a literature review research, this study does not involve human subjects, so it does not require ethical permission. However, all sources of information are respected and properly cited according to academic standards.

RESULTS AND DISCUSSION

Digital Technology Changes Cybercrime Modus Operandi And Affects Criminal Law Enforcement

In this modern era, digital technology has changed many aspects of our lives, including the way crimes are committed. In the past, crimes were more common physically and limited to a specific location. Now, with the internet, crimes can be committed from anywhere, even from the comfort of the perpetrator's home. This change clearly shows how

sophisticated the world of cybercrime is, where the perpetrators are able to reach victims in distant parts of the world with just a few clicks.⁷

Cybercrime, or cybercrime, utilizes a variety of technological tools to create increasingly diverse and complex crimes. Starting from identity theft to financial fraud, everything can be done easily by the perpetrator. For example, malware and ransomware are now the main weapons for cybercriminals. Malware is used to infiltrate computer systems and steal data, while ransomware threatens to lock the victim's data until the ransom is paid. Phishing techniques are also a common method where perpetrators pretend to be trusted parties to obtain the victim's personal information.⁸

Identity theft cases will experience a sharp spike in 2024. Of the 5.7 million reports received by the FTC, as many as 1.4 million (25%) of them were related to identity theft. The FTC separates identity theft as a special category that differs from fraud in its report.

A number of job applicants in Cililitan, East Jakarta, fell victim to fraud after their personal data was used to apply for online loans (pinjol) without their knowledge, causing losses of up to Rp 1.1 billion. This fraud mode was carried out by a woman with the initials R, who pretended to be a labor distributor at a cellphone counter. The victim was asked to submit an identity such as an ID card and selfie as a condition for a job application. A total of 26 job applicants were affected, and this case has been reported to the East Jakarta Metro Police for further investigation.⁹

Endang became a victim of online fraud after clicking on a fake invitation sent through a short message application. The invitation was in the form of an APK file disguised as a family invitation, but it turned out to be aimed at stealing personal data and draining account balances. After clicking the invitation, Endang's balance decreases without him making any transactions. Luckily, his quick action to report to Bank BRI and change the security code succeeded in minimizing the loss to only

⁷ Marzuki Ismail, "Digital Policing; Studi Pemanfaatan Teknologi Dalam Pelaksanaan Tugas Intelijen Kepolisian Untuk Mencegah Kejahatan Siber (Cybercrime)," *Jurnal Ilmu Kepolisian* 17, no. 3 (2023): 15.

⁸ Ferry Irawan Febriansyah, Alfalachu Indiantoro, and Afiful Ikhwan, "Model Kejahatan Dunia Maya (Cybercrime) Sebagai Upaya Pembentukan Hukum Nasional," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 242–55.

⁹ Wildan Noviansah, "Terungkap Modus 'Pencuri' Data Pelamar Kerja Buat Pinjol Hingga Rp 1,1 M," *News.detik.com*, 2024, <https://news.detik.com/berita/d-7429484/terungkap-modus-pencuri-data-pelamar-kerja-buat-pinjol-hingga-rp-1-1-m>.

150 thousand rupiah. This case is a warning for the public to be aware of online fraud, especially those that use fake digital invitations.¹⁰

One major challenge in dealing with cybercrime is its nature, which knows no boundaries. Many of these crimes involve perpetrators and victims who are in different countries, which makes it difficult for law enforcement to coordinate. Differences in legal systems in each country are often an obstacle, so international cooperation is needed to overcome this problem.¹¹

Digital technology has drastically changed the modus operandi in cybercrime and affected criminal law enforcement in various parts of the world. One of the main findings of the related study shows that technological advances have made criminals more sophisticated in planning and executing cybercrimes, which has an impact on law enforcement who must pursue these developments. Digital technology facilitates various types of crimes, from *phishing*, *hacking*, to *ransomware*, which threaten the integrity of personal data, financial security, and the country's vital infrastructure.¹²

The modus operandi of cybercrime is also growing with the existence of *artificial intelligence* (AI) and *machine learning*, where criminals can automate cyberattacks on a large scale with little human intervention. This technology is used in more sophisticated and personalized phishing attacks, called *spear-phishing*, where victims are specifically targeted using data collected from social media accounts or publicly available information.¹³

Cryptocurrencies, such as Bitcoin, have added a new layer to cybercrime operations by enabling financial transactions that are difficult to trace. Crypto is often used in ransomware cases, where

¹⁰ Dailypost.id, "Terlanjur Klik Undangan Via WA, Saldo Endang Hilang Secara Misterius," Dailypost.id, 2024, <https://dailypost.id/news/terlanjur-klik-undangan-via-wa-saldo-endang-hilang-secara-misterius/>.

¹¹ Ita Musarrofa and Holilur Rohman, "'Urf of Cyberspace: Solutions to the Problems of Islamic Law in the Digital Age," *Al-Ahkam* 33, no. 1 (2023): 63–88, <https://doi.org/10.21580/ahkam.2023.33.1.13236>.

¹² Wahyu Beny Mukti Setiyawan, Erifendi Churniawan, and Femmy Silaswaty Faried, "Information Technology Regulatory Efforts in Dealing With Cyber Attack To Preserve State Sovereignty of the Republic of Indonesia," *Urnal USM Law* 3, no. 2 (2020): 275–95.

¹³ Wahyu Beny Mukti Setiyawan, Erifendi Churniawan, and Femmy Silaswaty Faried, "Upaya Regulasi Teknologi Informasi Dalam Menghadapi Serangan Siber (Cyber Attack) Guna Menjaga Kedaulatan Negara Kesatuan Republik Indonesia," *Jurnal USM Law Review* 3, no. 2 (2020): 275–95.

victims are forced to pay a ransom in the form of a digital currency that is difficult for authorities to identify. This creates new challenges in tracking and breaking the chain of cybercrime related to ransom or other illegal financial activities.¹⁴

In addition, *the dark web* has become a means for criminals to conduct illegal transactions anonymously. Trading of personal data, illegal goods, and even cybercrime services such as *hacking-as-a-service* can be found in this *marketplace*. The anonymity provided by *the dark web* adds an extra layer of protection for bad actors, making it difficult for law enforcement to track their activities.¹⁵

Law enforcement in the face of cybercrime faces many challenges, one of which is the issue of *encryption*. Bad actors often use encryption to protect their communications and data, making them difficult for authorities to access. In addition, the growing development of technologies such as *virtual private networks* (VPNs) allows perpetrators to hide their identities, adding complexity for law enforcement in tracking cybercrime.¹⁶

Lack of effective international cooperation in law enforcement against cybercrime. Although several countries have cooperated through initiatives such as *the Budapest Convention on Cybercrime*, jurisdictional barriers often make the law enforcement process slow and ineffective. Criminals can easily move their operations from one country to another to avoid prosecution. Anonymity in cyberspace is making things worse. By easily hiding their identity through various means such as VPNs, perpetrators feel safe and more daring to commit crimes. As a result, the investigation process becomes more complicated for law enforcement who are trying to identify and arrest the perpetrators.¹⁷

However, there is a positive side to this technological advancement. Law enforcement now has more sophisticated digital forensic tools to track the digital footprint of perpetrators, such as log

¹⁴ Kapinus Oksana, "Digitalization of Crime and Criminal Law," 2022, [https://doi.org/10.17150/2411-6262.2022.13\(1\).22](https://doi.org/10.17150/2411-6262.2022.13(1).22).

¹⁵ Uswatun Hasanah, "The Effectiveness Of Islamic Law Implementation To Address Cyber Crime: Studies In Arab, Brunei Darussalam, And China," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 2 (2018): 107–22, <https://doi.org/10.22515/alakhkam.v3i2.1348>.

¹⁶ Edy Susanto et al., "Manajemen Keamanan Cyber Di Era Digital," *Journal of Business And Entrepreneurship* 11, no. 1 (2023): 23–33.

¹⁷ Yogi Oktafian Arisandy, "Penegakan Hukum Terhadap Cyber Crime Hacker," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 1, no. 3 (2020): 162–69.

data and IP addresses. By utilizing this technology, they can gather stronger evidence to bring the perpetrator to justice.¹⁸

However, while technology offers opportunities, there are still legal hurdles to face. Many countries do not have adequate regulations to deal with increasingly complex cybercrime. This legal loophole is often used by perpetrators to avoid punishment. In Indonesia, the Electronic Information and Transaction Law No. 1 of 2024 is the basis for handling cybercrime, in Article 28 paragraph (1) reads as follows:

"Any Person knowingly distributes and/or transmits Electronic Information and/or Electronic Documents that contain false notices or misleading information that results in material losses to consumers in Electronic Transactions."

Then, people who violate the provisions in Article 28 paragraph (1) of the ITE Bill can be imprisoned for a maximum of 6 years and/or fined a maximum of IDR 1 billion, as stipulated in Article 45A paragraph (1) of the ITE Bill. but many argue that this law still needs to be updated to be more relevant.¹⁹ Some of the issues of concern related to the ITE Law include:

1. Ambiguity of Definitions in the ITE Law

Articles in the ITE Law, such as Article 27 and Article 28 on the dissemination of false or misleading information, are often interpreted broadly. This raises concerns about freedom of expression as the definition of harmful information has not been clearly defined. Clearer and more specific revisions are needed to avoid multiple interpretations and ensure that implementation is in line with human rights.

2. Regulations That Are Not Responsive to Technological Developments

The current ITE Law is not able to capture all aspects related to the development of new technology-based crimes, such as cyberattacks involving artificial intelligence (AI) and the use of cryptocurrencies. Law enforcement is still constrained in

¹⁸ Zainuddin Kasim, "Kebijakan Hukum Pidana Untuk Penanggulangan Cyber Crime Di Indonesia," *Indragiri Law Review* 2, no. 1 (2024): 18–24.

¹⁹ Ahmad Habib Al Faraby, "ITE) DI INDONESIA (Suatu Kajian Dari Peran Penyidik Kepolisian Dalam Menangani Penyalahgunaan Informasi Dan Transaksi Elektronika (ITE)," *Faraby Meraja Journal* 7, no. 1 (2024): 48–61.

handling these cases because the law does not regulate in detail how these new crimes are handled.

3. Weak Law Enforcement

Technologies such as encryption and the dark web complicate the investigation process. Law enforcement is often not equipped with enough tools and skills to deal with these technology-based crimes. An update in the ITE Law should include an obligation to increase the capacity of law enforcement technology.

4. Lack of Data Protection

The current ITE Law does not provide sufficient protection regarding data breaches. Many cases of data leakage and misuse of personal information have not been properly accommodated by this regulation. The revision of the ITE Law needs to tighten sanctions against companies that are negligent in safeguarding customer data and set strict security standards.

5. The Need for International Harmonization

The ITE Law also does not accommodate cross-border cooperation in dealing with cybercrime. Given the large number of cybercrimes committed by foreign perpetrators, it is necessary to strengthen regulations to encourage international collaboration in cyber law enforcement.

Through this juridical analysis, it can be concluded that the ITE Law requires updates to adjust to technological changes and rapidly evolving social dynamics. Such updates should include strengthening definitions, increasing the technological capacity of law enforcement, stronger data protection, and regulations that are more responsive to new crimes arising from digital technology.

Data breaches are a significant security threat, where hackers enter data networks to gain access to confidential and sensitive personal information for financial gain. Losses resulting from cybercrime are estimated to reach \$9.5 trillion by 2024, slightly lower than the previous projection of \$10.5 trillion for 2025 (Embroker, Govtech).²⁰ This demonstrates the ongoing and significant financial impact of cyber

²⁰ Naida, "Mind-Blowing Cybersecurity Statistics in 2024," *Softactivity-Com.Translate.Goog*, 2024, https://www-softactivity-com.translate.google/ideas/cybersecurity-statistics/?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc.

threats on companies. Where there are 26 residents in East Jakarta who are victims of the misuse of ID card data for online loans.²¹

The protection of privacy and personal data is becoming an increasingly important issue. In many cases, victims' personal data is stolen and misused, leading to financial and psychological losses for them. Therefore, it is important to have a strong data protection policy so that people feel safe when doing activities in cyberspace. The speed of technological change is also a challenge. Cybercrime continues to evolve as technology advances, and law enforcement can often only react after a crime has occurred. Therefore, it is important to have a more proactive approach to preventing cybercrime before it happens.²²

One noteworthy development is the emergence of the Internet of Things (IoT). Many devices are now connected to the internet, from security cameras to cars. However, it also opens up opportunities for cybercriminals to exploit vulnerabilities in these devices, making it easier for them to attack.²³

Strategies That Can Be Implemented To Improve Response And Prevention Against Cybercrime

In the midst of increasingly rapid technological developments, cybercrime has become a real threat faced by many countries around the world. Technology, which is supposed to make our lives easier, now also provides opportunities for criminals to carry out attacks, such as data theft, hacking, and the spread of malware. This problem not only impacts individuals, but also companies and even the critical infrastructure of a country. Effective law enforcement against cybercrime is now a very urgent task for the government and law enforcement officials.²⁴

Dealing with cybercrime clearly cannot use conventional approaches. This type of crime crosses geographical boundaries and often occurs in cyberspace, requiring smarter and more complex

²¹ Aguido Aidro, "26 Warga Jadi Korban Pencurian Data Pribadi Untuk Pinjol," Kompas.id, 2024, <https://www.kompas.id/baca/metro/2024/07/08/26-jadi-korban-pencurian-data-pribadi-untuk-pinjol>.

²² Ria Ermina Purba et al., "Peranan Hukum Positif Dalam Mengatur Cyberspace Untuk Menghadapi Tantangan Dan Peluang Di Era Digital," *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 2 (2024): 167–76.

²³ Adji Saputra, Kristiawanto Kristiawanto, and Mohamad Ismed, "Rekonstruksi Penegakan Hukum Tindak Pidana Siber Di Indonesia," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 3, no. 1 (2024): 63–70.

²⁴ Zulhamid Ridho et al., "Implementasi Program PELITA: Sosialisasi Dan Pencegahan Cyber Bullying Melalui Literasi," *Jurnal Pengabdian Masyarakat Bangsa* 2, no. 7 (2024): 2549–61.

handling. Law enforcers must understand the ever-evolving technology, and be able to follow the mindset of cybercriminals who are highly adaptive. Without the right strategy, law enforcement efforts can be slow and ineffective in dealing with threats that move so quickly. For this reason, a strategy that is not only reactive but also preventive is needed.²⁵

The strategy for improving response and prevention to cybercrime is, *First*, to overcome the increasingly sophisticated threat of cybercrime, law enforcement officials must have access to cutting-edge technology. Technologies such as digital forensic analysis software allow investigators to extract and analyze digital evidence from devices used in crimes. By using this tool, the authorities can find the digital traces of the perpetrators more quickly and accurately. In addition, the integration of artificial intelligence (AI) in the investigation process can make it easier to detect complex crime patterns and accelerate the analysis of big data.²⁶

In addition to digital forensics technology, it is important for law enforcement officials to be equipped with powerful cybersecurity tools. For example, malware tracking software can help identify the source of cyberattacks and map the criminal networks involved. Advanced encryption technology is also necessary to protect sensitive information during investigations. With this kind of technology, data collected and stored by law enforcement can be kept safe from hacking or manipulation by unauthorized third parties.

Law enforcement officials also need to invest in the development of real-time cyber activity monitoring devices. This monitoring allows for early detection of suspicious activity that indicates a cyberattack. With the ability to continuously monitor data traffic on the network, law enforcement officials can immediately respond to threats before data damage or theft occurs. This will also help them to be more proactive in dealing with cybercrime threats, rather than just being reactive after the incident has taken place.²⁷

²⁵ Soecipto Soecipto, "Optimalisasi Hukum Siber (Cyber Law) Dalam Penanggulangan Kejahatan Penipuan Melalui Internet Dalam Menyelamatkan Kehidupan Masyarakat," *TEKNOLOGI NUSANTARA* 4, no. 2 (2022).

²⁶ Lutfi Aziz Febrika Ardy et al., "Phishing Di Era Media Sosial: Identifikasi Dan Pencegahan Ancaman Di Platform Sosial," *Journal of Internet and Software Engineering* 1, no. 4 (2024): 11.

²⁷ Tri Ginanjar Laksana and Sri Mulyani, "Pengetahuan Dasar Identifikasi Dini Deteksi Serangan Kejahatan Siber Untuk Mencegah Pembobolan Data Perusahaan," *Jurnal Ilmiah Multidisiplin* 3, no. 01 (2024): 109–22.

Second, law enforcement officials need to take part in ongoing training on the latest developments in cybercrime. This training should include effective investigative techniques for technology-based crimes. They need to be equipped with the skills to understand the encryption methods used by criminals and how to crack them without damaging digital evidence. Comprehensive education will make the apparatus better prepared to deal with the challenges faced in law enforcement against cybercrime.²⁸

In addition, training should include case studies from various countries on successes and failures in handling cybercrime. This will help law enforcement officials learn from practical experience, understand how cybercrime cases can occur, and what preventive measures can be applied. Presenting international cybersecurity experts in the training can also enrich the perspective of the authorities in dealing with this cross-border crime.

Training must be carried out regularly so that the apparatus always keeps up with the latest developments in the world of information technology and cyber threats. With the rapid development of technology, cybercrime methods are also constantly changing. If the authorities are not equipped with the latest knowledge, they will find it difficult to keep up with the speed of the perpetrators. Therefore, regularly scheduled training is essential to maintain the quality of response to cybercrime.²⁹

Third, cross-border cybercrime makes international cooperation a key element in its prevention efforts. Countries need to forge strong partnerships to share information on emerging threats. Real-time exchange of information can help other countries to prepare for similar potential attacks. Without this cooperation, law enforcement in one country will be hampered if the perpetrators are in different jurisdictions, making the process of arrest difficult.³⁰

International cooperation should also include harmonization of regulations between countries. With uniform regulations, criminals

²⁸ Edy Soesanto et al., "Analisis Dan Peningkatan Keamanan Cyber: Studi Kasus Ancaman Dan Solusi Dalam Lingkungan Digital Untuk Mengamankan Objek Vital Dan File," *Sammajiva: Jurnal Penelitian Bisnis Dan Manajemen* 1, no. 2 (2023): 172–91.

²⁹ Dewi Rizka Yuniarti et al., "Analisis Potensi Dan Strategi Pencegahan Cyber Crim Dalam Sistem Logistik Di Era Digital," *Jurnal Bisnis, Logistik Dan Supply Chain (Blogchain)* 3, no. 1 (2023): 23–32.

³⁰ Maluleke Mandlenkosi, Richard, Mphatheni., Witness, "Cybersecurity as a Response to Combating Cybercrime," *International Journal of Research In Business and Social Science*, 2022, <https://doi.org/doi: 10.20525/ijrbs.v11i4.1714>.

cannot seek “refuge” in countries where regulations are more lax. This is important to create a more conducive environment for effective law enforcement against cybercrime. For example, through international agreements, countries can agree on minimum standards in data protection as well as severe sanctions for violations related to cybercrime.

In addition, international cooperation also involves technical assistance, such as training for law enforcement officials in developing countries that do not yet have adequate infrastructure and technology. Developed countries that have more advanced digital forensic technology can provide training and share resources with other countries. Thus, the handling of cybercrime can be more equitable and efficient around the world, not only concentrated in countries with high-tech capacity.³¹

Fourth, public awareness about the risk of cybercrime needs to be increased through intensive public campaigns. People are often easy targets for cybercriminals due to a lack of knowledge about how to protect themselves in the digital world. Through awareness campaigns, individuals can be provided with information on the importance of keeping personal data confidential, recognizing phishing, and how to avoid malware. These educational programs can be carried out through various media, including television, the internet, and seminars in schools.³²

In addition to campaigns, governments and non-governmental organizations can work together to provide online educational materials that are easily accessible to the general public. Cybersecurity education is not only important for individuals, but also for small and medium-sized enterprises that are often the target of attacks. Through free webinars or training modules, people can learn basic ways to protect their information systems from cyber threats.

High public awareness of the risk of cybercrime will help reduce the number of victims who are deceived by technology-based crimes. Individuals who understand this threat are more vigilant and tend to take preventive measures. For example, they will be more selective in sharing

³¹ Dkk Edwin, “Investigating the Intersection of Cybercrime and Machine Learning: Strategies for Prevention and Detection,” 2023, <https://doi.org/doi:10.1109/ICIDCA56705.2023.10099631>.

³² Supanto Supanto et al., “Pencegahan Dan Penanggulangan Kejahatan Teknologi Informasi Di Wilayah Pdm Kabupaten Klaten Melalui Metode Sosialisasi Interaktif,” *Gema Keadilan* 10, no. 3 (2023): 170–82.

personal information on social media or more cautious when downloading apps from unknown sources. This is an effective form of prevention from the end user side who is the main target of cybercriminals.³³

Fifth, regulations governing the protection of personal data must continue to be developed in line with the increasing threat of cybercrime. This policy should include clear and firm sanctions for companies or individuals who are negligent in protecting the data they manage. With strict sanctions, companies will be more encouraged to comply with the rules and implement adequate security measures to protect user data. This regulation also needs to cover the company's responsibility in the event of a data leak.³⁴

In addition to data protection regulations, there are also minimum security standards that must be met by companies that manage personal data. These standards should include the use of encryption, periodic security audits, as well as early detection systems against hacking attempts. Strict security standards will ensure that people's personal data is properly safeguarded, and companies that fail to meet these standards should be held legally responsible for any data leaks that occur.

Supervision of the implementation of data protection policies must be strictly carried out by the relevant authorities. It is not enough to have good regulations, but implementation in the field must also be well supervised. The authority that oversees data protection must have the authority to conduct inspections and impose sanctions if violations are found. Thus, existing regulations can run effectively and provide maximum protection for people's personal data.³⁵

Sixth, Artificial Intelligence (AI) can be integrated in security systems to detect anomalies that have the potential to become cyber threats. AI systems are able to process large amounts of data quickly and accurately, so they can identify suspicious patterns that may not be visible to humans. For example, AI can detect distributed denial of

³³ Ihsania Karin Azzani, Susilo Adi Purwantoro, and Hikmat Zakky Almubaroq, "Urgensi Peningkatan Kesadaran Masyarakat Tentang Kasus Penipuan Online Berkedok Kerja Paruh Waktu Sebagai Ancaman Negara," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 10, no. 7 (2023): 3556–68.

³⁴ Muhammad Farhan et al., "Penerapan Hukum Dalam Menanggulangi Kejahatan Siber Penegakan Hukum Terhadap Tindak Pidana Siber," *Kultura: Jurnal Ilmu Hukum, Sosial, Dan Humaniora* 1, no. 6 (2023): 8–20.

³⁵ Balqis Tsabitah Azzahrah et al., "Tantangan Pertahanan Dan Keamanan Data Cyber Dalam Era Digital: Studi Kasus Dan Implementasi," *Jurnal Pendidikan Tambusai* 8, no. 2 (2024): 23934–43.

service (DDoS) attacks before their impact is widespread, so mitigation actions can be taken immediately. The use of AI in security systems provides advantages in terms of speed of response to attacks.³⁶

In addition, AI can be used to analyze user behavior online, and alert law enforcement when such behavior deviates from the norm. With this technology, criminal attempts such as identity theft or fraud can be anticipated before harm is done. AI can also help in the digital forensics process, where complex algorithms can be used to analyze the digital footprint of cybercrime offenders. This makes investigations faster and more efficient.

In preventing cybercrime, AI can also be applied to filter potentially unlawful content on the internet. This technology allows the system to automatically block access to content that is considered malicious, such as phishing websites or malware. Thus, potential losses for users can be minimized. However, the use of AI in law enforcement and cybersecurity must be balanced with strict regulations so as not to violate individual privacy or be used arbitrarily.³⁷

CONCLUSION

The results of the study concluded that digital technology has drastically changed the modus operandi of cybercrime, with advanced tools such as AI, IoT, malware, and ransomware. Law enforcement faces major challenges, especially in dealing with cross-border crime powered by cryptocurrencies and the dark web. Differences in jurisdiction as well as encryption technology complicate the investigation. For this reason, law enforcement needs to increase technological capacity and encourage stronger international cooperation. Further research is suggested to focus on the use of AI and IoT in cybercrime as well as more effective prevention strategies. In addition, regulatory updates relevant to technological developments are urgently needed, as well as increased public awareness of personal data security to prevent further cybercrime.

³⁶ Yusep Ginanjar, “Strategi Indonesia Membentuk Cyber Security Dalam Menghadapi Ancaman Cyber Crime Melalui Badan Siber Dan Sandi Negara,” *Dinamika Global: Jurnal Ilmu Hubungan Internasional* 7, no. 02 (2022): 295–316.

³⁷ Aisyah Putri Nabila, Nathania Aurell Manabung, and Aquilla Cinta Ramadhansha, “Peran Hukum Internasional Dalam Menanggulangi Cyber Crime Pada Kejahatan Transnasional,” *Indonesian Journal of Law* 1, no. 1 (2024): 26–37.

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