TOWARDS JUSTICE IN MARITAL LAW: EMPOWERING INDONESIAN WOMEN

Siti Musdah Mulia

Introduction

It is no secret that religion and state ‘conspire’ against women. The Islamic Code of Law and a number of studies on women and law in Indonesia\(^1\) show that women's position is marginalized and gender inequity is deeply entrenched in the country.\(^2\) Gender inequity is a social problem that needs to be addressed integrally by analysing every factor involved in preserving it, including legal aspects that are often justified by religion.

Analyses of legal cases in Indonesia show that gender inequity in the legal field\(^3\) is found in the content, culture, and structure of law. Regarding law structure, gender inequity is marked by low gender sensitivity among law enforcers, particularly prosecutors and judges. Existing legislations and laws such as the Criminal Code, the Marital Law (Undang-Undang Perkawinan No. 1 Tahun 1974), and the Islamic Code of Law (Kompilasi Hukum Islam Tahun 1991) have inadequate contents, being heavily charged with gender-biased and patriarchal values. The Code of Law even blatantly defines women as sexual objects and confirms their subordinate status. The whole situation is worsened by a law culture that is still very much influenced by patriarchal values and strongly legitimized by religious interpretation. Religion is thus on trial as one of the guilty parties in preserving patriarchal culture and gender inequity.

On the other hand, Indonesian society is currently facing a number of social problems that require marital law reform. Cases of exploitation and discrimination against women are rampant, including domestic violence, woman and child trafficking using the modus operandi of marriage, the

---

\(^1\) See the research results of Ihromi (1997); Mulia (2001); Irianto (2003).

\(^2\) A more detailed analysis of the forms of gender inequity in Indonesia can be found in the report of the Indonesian State Ministry of Women Empowerment (2001:71–93).

\(^3\) Details on legal cases of gender inequity in Indonesia can be found in Katjasungkana (2002).
mushrooming practice of contract marriages that harm women and children, a high number of underage child marriages and unregistered marriages, and the widespread practice of prostitution. This contribution intends to point out the extent of Islamic marital law reform necessary in Indonesia to accomplish a democratic, just, and religious society and to empower women.

The Family Law Reform in Indonesia

While not formally declaring itself an Islamic state, Indonesia is the country with the largest Muslim population in the world. The first attempts to reform the family law were launched in the 1950s. On 1 October 1950, the religious affairs ministry appointed a team to study all regulations on marriage and to draft a marriage bill that was appropriate for the situation at that time. However, one year after the bill had been handed over to the House of Representatives in 1958, the House was temporarily dismissed through a Presidential Decree on 5 July 1959. The bill was never heard of again (K. Nasution 2002:51).

There was another effort to reform family law in the 1960s, which resulted in the passing of the Law No. 1/1974 on marriage. This was the first law in Indonesia that regulated marriage on the national level. Before then, marriage had been regulated by several laws: custom laws for general citizens; Islamic law for Muslim citizens; the Christian Indonesian Marriage Ordinance for Christian citizens in Java, Minahasa, and Ambon; the Civil Law Code for citizens of European and Chinese descent; and the Interfaith Marriage Regulation for interreligious marriages. The main purpose of the Marriage Law was to unify or to standardize diverse marital regulations. Ideally, the Marriage Law needs to be evaluated as a legal source to see whether it is effective in controlling society’s behaviour with regard to marriage. But 32 years have passed since its enactment, and there have been no real efforts to evaluate the law, how society has responded to it, and whether the law is still relevant.

On 10 June 1991, then President Suharto issued the Islamic Code of Law (KHI) through the Presidential Instruction No. 1/1991. Covering marriage, inheritance, and religious donation regulations, the Code of Law is the official legal guidance for judges in religious courts all over Indonesia (Indonesian Religious Affairs Ministry 2002:152). The law consists of three books: Book I

---

4 Indonesia has three types of courts: the District Court deals with general cases of citizens regardless of their religion; the Religious Court handles marital cases, divorce,