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Beyond Family Law: Reconstructing Family Justice through Women's and Children's Rights

Emi Puasa Handayani*

Universitas Islam Kadiri, Indonesia

Zainal Arifin

Universitas Islam Kadiri, Indonesia

Zico Junius Fernando

Universitas Bengkulu, Indonesia

Zaid Bin Mohamad

Islamic University of Maldives, Maldives

Naufal Ghani Bayhaqi

Chulalongkorn University, Thailand

***Corresponding author:** emipuasa.fh@uniska-kediri.ac.id

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Abstract:

This article analyses the nexus between Indonesian family law and the legal protection of women and children within a human rights framework. Although family law regulates marriage, divorce, spousal relations, parental authority, custody, and maintenance, its implementation is often affected by patriarchal norms, regulatory disharmony, and weak protection mechanisms for vulnerable family members. This study employs normative legal research using statutory, conceptual, and case approaches. The statutory analysis examines the Marriage Law, Child Protection Law, Domestic Violence Law, Sexual Violence Crimes Law, and the Compilation of Islamic Law, while the case approach studies the Constitutional Court Decision No. 22/PUU-XV/2017 on the minimum marriage age and Religious Court practice concerning marriage dispensation, post-divorce custody or *hadhanah*, and domestic violence in marital relations. The article argues that women's and children's protection law functions beyond merely as a complementary regime; it serves as a corrective framework for family law when private family relations lead to discrimination, violence, unsafe custody, or child vulnerability. The findings show that Indonesian family law reform should be directed toward regulatory harmonisation, gender-responsive reconstruction of family norms, stricter judicial control over marriage dispensation, child-centred custody standards based on the best interests of the

child, and integrated protection mechanisms for victims of domestic and sexual violence. This article contributes to the development of a human rights-based model of family law reform that aligns gender equality, child protection, Religious Court practice, and the protection of vulnerable groups in family justice.

Keywords: family law; women protection; child protection; gender equality; human rights.

Introduction

The protection of women and children is recognised as a universal and urgent human rights issue.¹ Violence and human rights violations against this group have never been off the radar due to the wide physical, psychological, social, and economic impacts. This issue comes to the fore especially in the context of domestic violence and gender-based violence, as well as access to sexual and reproductive health rights.² The urgency of reforming family law in Indonesia must be understood against recent socio-legal data on violence against women and children. In 2025, the Ministry of Women's Empowerment and Child Protection recorded through SIMFONI PPA that 35,025 women and children became victims of violence, showing that violence within private and social spaces remains a serious protection issue. *Komnas Perempuan*—the National Commission for Women—also recorded 376,529 cases of gender-based violence against women throughout 2025, a 14.07 per cent increase from the previous year, with sexual violence being one of the most reported. These data demonstrate that the protection of women and children cannot be separated from the structure of family relations, given that many forms of violence, discrimination, and vulnerability occur within or are closely connected to domestic and familial domains.

¹ Rusdaya Basri et al., 'Evaluating the Effectiveness of Legal Support for Women's Post-Divorce Rights: Maslahah Approach in Indonesia and Malaysia', *El-Ussrah: Jurnal Hukum Keluarga* 8, no. 2 (December 2025): 979–99, <https://doi.org/10.22373/ujhk.v8i2.26951>; Muhammad Danil et al., 'From Provider to Partner: Reconstructing the Legal Concept of Livelihood Obligation in Indonesian Islamic Family Law through the Lens of Gender Justice and Maqāṣid al-Sharī'ah', *Sakina: Journal of Family Studies* 10, no. 2 (June 2026): 160–73, <https://doi.org/10.18860/jfs.v10i2.29511>; Lilik Sujandi et al., 'Integrated Existential Education Model for Juvenile Justice Reform: A Human Rights-Based Approach in Indonesia', *Trunojoyo Law Review* 8, no. 2 (August 2026): 505–45, <https://doi.org/10.21107/tlr.v8i2.33941>; Darmawan et al., 'Istihsān and Judicial Recalibration of Marital Property Rights in Indonesia's Religious Courts', *AHKAM : Jurnal Ilmu Syariah* 26, no. 1 (June 2026): 131–48, <https://doi.org/10.15408/ajis.v26i1.50333>.

² Rizal Darwis et al., 'An Integrative Preventive-Curative Model for Child Victims of Domestic Violence in Ambon City from an Islamic Family Law Perspective', *El-Mashlahah* 16, no. 1 (June 2026): 123–54, <https://doi.org/10.23971/el-mashlahah.v16i1.10444>; Ramadhita Ramadhita et al., 'Decriminalisation Against Women Who Perform Illegal Abortions From the Islamic Law Perspective', *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (December 2023): 2, <https://doi.org/10.32505/qadha.v10i2.6867>; Trianah Sofiani, Iqbal Kamalludin, and Raihanah Abdullah, 'Violence Against Women in Pre-Marital Relationships: The Ngemblok Tradition among the Muslim Community in Rembang', *Journal of Islamic Law* 5, no. 2 (August 2024): 147–69, <https://doi.org/10.24260/jil.v5i2.2680>.



Previous studies have shown that domestic and gender-based violence may increase during periods of social crisis, including the COVID-19 pandemic.³ However, the persistence of violence against women and children following the pandemic indicates that the problem is not merely situational, but structural. It is closely related to unequal power relations within the family, weak victim protection mechanisms, and the limited responsiveness of family law to human rights standards.⁴ The protection of women's sexual and reproductive health rights is also seen as a human right that must be respected and protected. The United Nations (UN) and the European Union have adopted various legal instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which require states to ensure women's access to safe, affordable, and quality health services.⁵ Member states are required to adjust their domestic regulations to align with those international standards.

In the context of mental health services, coercive practices tend to conflict with the principles of human rights and health service ethics.⁶ Practices such as forced detention or medical procedures without consent are often experienced by vulnerable women and children, especially those who are hampered from accessing legal protection. Structural changes are needed in the health and social systems to ensure the proper implementation of human rights protection in everyday life. The need for systematic data and good practices on a global scale was also identified as a major challenge in monitoring and enforcing human rights protection. International organisations such as the United Nations (UN), through instruments such as *the*

³ Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, 'Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia', *Cogent Social Sciences*, 31 December 2023, world, <https://www.tandfonline.com/doi/abs/10.1080/23311886.2023.2206347>; Dede Kania, Vienka Rahmannillah, and Litya Surisdani Anggarainiko, 'Can Penal Mediation Solve Domestic Violence? Insights from Islamic Law', *LITIGASI* 25, no. 2 (October 2024): 172–87, <https://doi.org/10.23969/litigasi.v25i2.13320>; Wardah Nuroniyah et al., 'Assessing Indonesia and Malaysia's Legal Responsiveness to Domestic Violence Victims within Islamic Law Framework', *Al-Manahij: Jurnal Kajian Hukum Islam*, 24 October 2025, 247–70, <https://doi.org/10.24090/mnh.v19i2.13736>; Nizla Rohaya et al., 'Unraveling the Legal Labyrinth: An In-Depth Review of Domestic Violence Regulation in Indonesia', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 1 (June 2024): 77–90, <https://doi.org/10.19109/nurani.v24i1.20011>; Umi Supraptiningsih et al., 'Understanding the Sexual Violence Reality: A Review of Community Perspectives and Legal Aspects', *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 10, no. 1 (March 2026): 296–320, <https://doi.org/10.22373/sjhk.v10.i1.26707>; Nofialdi et al., 'Urf, Gender, and Customary Law: Negotiating Women's Participation in Boar Hunting in Minangkabau, Indonesia', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 25, no. 2 (December 2025): 279–303, <https://doi.org/10.18326/ijtihad.v25i2.279-303>.

⁴ Deniz Ertan et al., 'COVID-19: Urgency for Distancing from Domestic Violence', *European Journal of Psychotraumatology* 11, no. 1 (2020): 1800245, <https://doi.org/10.1080/20008198.2020.1800245>.

⁵ Bianka Vida, 'New Waves of Anti-Sexual and Reproductive Health and Rights Strategies in the European Union: The Anti-Gender Discourse in Hungary', *Sexual and Reproductive Health Matters* 27, no. 2 (2019): 13–16, <https://doi.org/10.1080/26410397.2019.1610281>; Fahad Al Aghbari et al., 'Rights of Women in the Establishment and Dissolution of Marriage in Oman: Between CEDAW and Sharia Perspective', *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (February 2024): 33–50, <https://doi.org/10.22219/ljih.v32i1.31493>.

⁶ Cláudio Domingos Laureano et al., 'Ethical Issues in Clinical Decision-Making about Involuntary Psychiatric Treatment: A Scoping Review', *Healthcare* (Basel, Switzerland) 12, no. 4 (February 2024): 445, <https://doi.org/10.3390/healthcare12040445>.



Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the *Convention on the Rights of the Child (CRC)*, have encouraged member states to integrate the principles of gender equality and the best interests of the child into the domestic legal system.⁷ However, the reality on the ground shows that in many societies, family institutions remain an arena of patriarchal domination, where structural discrimination, domestic violence, child marriage, and neglect of custody remain common. Thus, despite the many instruments of protection, the conflict between traditional family norms and human rights principles remains obvious.⁸

At the national level, Indonesia has developed a legal framework, theoretically combining aspects of family law and special protection for women and children through several statutory laws, including Law No. 1 of 1974 on Marriage,⁹ Law No. 23/2004 on the Elimination of Domestic Violence (PKDRT),¹⁰ and Law No. 35/2014 on Child Protection.¹¹ However, the practice shows that these regulations currently face issues, such as a lack of synchronisation in provisions between family law and special protection, patriarchal biases in the application of family law (e.g. in post-divorce custody arrangements or property division), weak efforts to prevent and recover victims of domestic violence, and the prevalence of early marriage indicating a violation of children's rights. In some areas, customary or religious norms add to the complexity, as they continue to prioritise patriarchal authority or perpetuate the role of women and children in subordinate positions.¹²

A crucial turning point in Indonesian family law reform was Constitutional Court Decision No. 22/PUU-XV/2017, which declared the different minimum marriage age for men and women constitutionally problematic because it perpetuated discrimination and weakened the protection of girls from child marriage. This decision later influenced the enactment of Law No. 16 of 2019, which amended the Marriage Law by equalising the minimum age of marriage for men and women at 19 years. However, the reform of statutory family law cannot be understood apart from

⁷ Naimah Naimah, 'Perlindungan Hukum Terhadap Hak Kesehatan Reproduksi Perempuan Dari Kekerasan Berbasis Gender', *Egalita Jurnal Kesetaraan dan Keadilan Gender* 10, no. 1 (June 2015), <https://doi.org/10.18860/egalita.v10i1.4538>; Sanusi Naja'atu Baura and Abdulmumin Musa Omiya, 'Understanding the Patterns and Drivers of Domestic Violence against Women in Birnin Kebbi Nigeria', *An-Nisa' Journal of Gender Studies* 18, no. 2 (November 2025): 89–104, <https://doi.org/10.35719/annisa.v18i2.364>.

⁸ Miftahul Hadi, Hirmayadi Saputra, and Muhammad Faozan, 'Hak Asasi Manusia Dalam Hukum Keluarga Islam', *Familia: Jurnal Hukum Keluarga* 5, no. 2 (December 2024): 135–52, <https://doi.org/10.24239/familia.v5i2.261>.

⁹ Ghulam Ruchma Algiffary, 'Inkonsistensi Keadilan Gender Dalam Undang-Undang Perkawinan Tahun 1974 Tentang Pembagian Peran Kepala Keluarga', *Sakina: Journal of Family Studies* 5, no. 4 (January 2022), <https://urj.uin-malang.ac.id/index.php/jfs/article/view/1023>.

¹⁰ Mochamad Agus Rizal Dwi Santoso and Syabbul Bachri, 'Tinjauan Hak Asasi Manusia Terhadap Pasal 9 Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga', *Sakina: Journal of Family Studies* 6, no. 4 (November 2022), <https://doi.org/10.18860/jfs.v6i4.2305>.

¹¹ Retrin Roria, 'Implementasi Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak Terhadap Perlindungan Hak-Hak Anak Korban Kekerasan Seksual (Studi Di Unit Layanan Terpadu Perlindungan Sosial Anak Integratif Kabupaten Tulungagung)', *Sakina: Journal of Family Studies* 3, no. 3 (December 2019), <https://urj.uin-malang.ac.id/index.php/jfs/article/view/368>.

¹² Portia Nartey, Ozge Sensoy Bahar, and Proscovia Nabunya, 'A Review of the Cultural Gender Norms Contributing to Gender Inequality in Ghana: An Ecological Systems Perspective', *Journal of International Women's Studies* 25, no. 7 (October 2023): 14.



the *Kompilasi Hukum Islam* or the Compilation of Islamic Law (hereinafter, KHI) and the jurisdiction of the Religious Courts, which remain central in adjudicating marriage, divorce, custody, maintenance, and marriage dispensation cases for Muslim communities in Indonesia. Therefore, any discussion of protection of women and children in Indonesian family law must examine not only statutory norms but also Islamic family law doctrine, Religious Court practice, and the extent to which judicial reasoning incorporates human rights, gender equality, and the best interests of the child.¹³

At the local level, in many communities, including small towns and rural areas in Indonesia, discriminatory practices in the family and protection of victims of violence remain obvious. For example, victims of domestic violence are often reluctant to report due to social stigma, family pressure, or distrust of law enforcement officials; children of divorce victims are often neglected in custody or maintenance; and early marriage still occurs even though it is regulated in the law. Local contexts such as lack of access to legal advocacy, weakness of women and child protection institutions, and patriarchal cultural resistance encourage the need for family law adjustment to respond to this reality.¹⁴ The novelty of this article lies in its construction of law concerning the protection of women and children as a corrective framework for Indonesian family law. Unlike previous studies that separately examine domestic violence, child marriage, custody, or child protection, this article integrates these issues into a single doctrinal framework based on substantive equality, the best interests of the child, and state due diligence obligations. Its contribution is not merely to describe regulatory disharmony, but to show how family law should be normatively reconstructed when private family relations produce discrimination, violence, unsafe custody, or child vulnerability.¹⁵ This article also advances a provision-level reform orientation by linking the Marriage Law, Child Protection Law, Domestic Violence Law, Sexual Violence Crimes Law, KHI, and Religious Court practice within a human rights-based model of family justice.

Previous studies have demonstrated that the protection of women and children in the Indonesian family context remains constrained by interconnected legal, social, and institutional challenges. Leni Meyrina, Yani Achdiani, and Gina Indah Permata Nastia found that domestic violence has multidimensional consequences for mothers and children, including physical, psychological, social, and legal vulnerabilities, and therefore requires integrated legal, psychological, and social interventions.¹⁶ Supri Yadin Hasibuan and Asrizal Saiin demonstrated that the regulation of child custody

¹³ Darania Anisa and Erna Ikawati, 'Posisi Perempuan Dalam Hukum Keluarga Islam Di Indonesia (Analisis Kompilasi Hukum Islam Kajian Gender Dan Feminisme)', *Jurnal Kajian Gender Dan Anak* 5, no. 1 (May 2021): 1, <https://doi.org/10.24952/gender.v5i1.3730>.

¹⁴ Gebby Chyntia Detta Kaunang and Safarni Husain, 'Fleksibilitas Hukum Islam Dalam Menjawab Tantangan Hukum Keluarga, HAM Dan Ekonomi Modern: Tinjauan Maqashid Syariah', *Tasyri': Journal of Islamic Law* 4, no. 2 (July 2025): 1131–62, <https://doi.org/10.53038/tsyr.v4i2.387>.

¹⁵ Mariya Azis et al., 'Children's Rights in Family Law: Comparative Insights into Best Interests Principles', *Legalis: Journal of Law Review* 3, no. 3 (April 2025): 125–36, <https://doi.org/10.61978/LEGALIS.V3I3.812>.

¹⁶ Leni Meyrina, Yani Achdiani, and Gina Indah Permata Nastia, 'Kekerasan Rumah Tangga terhadap Ibu dan Anak: Kajian Sistematis dan Solusi Multidisipliner di Indonesia', *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 2, no. 10 (May 2025), <https://ojs.daarulhuda.or.id/index.php/Socius/article/view/1385>.



and protection in the proposed Family Law Bill requires greater alignment with the principle of the best interests of the child, particularly in post-divorce situations, indicating the need to shift from parental authority toward child-centred protection.¹⁷ Meanwhile, Alfitri showed that although Indonesia has established a legal framework for addressing domestic violence, significant gaps remain between formal legal protection and its implementation, particularly in relation to institutional capacity, victim protection, and access to justice. Collectively, these studies establish that domestic violence, child custody, and the implementation of family-law regulations are closely connected to the protection of women and children; however, the existing literature remains fragmented and largely examines these issues separately.¹⁸

More importantly, previous studies have not sufficiently examined the broader relationship between Indonesian family law and the protection of women and children as interconnected human rights subjects, nor have they systematically questioned whether the existing family-law framework is adequate to respond to contemporary human rights standards. The literature also tends to identify deficiencies in particular regulations or legal mechanisms rather than examining the need for a broader reconstruction of family law from a human rights perspective. This study addresses this gap by examining how Indonesian family law can be reconstructed to provide a more integrated and rights-based framework for protecting women and children, particularly across interconnected issues of domestic violence, divorce, child custody, and family welfare.

This research is expected to contribute to a more comprehensive understanding: family law cannot simply be left as a "traditional" normative domain, but must be harmonised with special protection laws to ensure equality and responsiveness to the realities of gender and the needs of children. This study offers a map of family law regulation reform through, for example, the harmonisation of laws, revisions of problematic articles, or an institutional model of protection in the family realm, as well as implementing recommendations so that the principles of gender equality and the best interest of the child can be actualised in family justice practices and victim protection in society. Based on the above background, this article addresses two main research questions: 1) How does family law relate to the law on the protection of women and children in regulating family relations in Indonesia? 2) What are the main challenges and directions for reforming Indonesian family law to ensure its consistency with human rights principles, gender equality, and the best interests of the child? These questions are examined to formulate a more responsive model of family law reform that integrates private family relations with the state's obligation to protect vulnerable groups.

Method

¹⁷ Supri Yadin Hasibuan and Asrizal Saiin, 'Revitalisasi Kebijakan Hak Asuh Dan Perlindungan Anak Dalam RUU Hukum Keluarga Terhadap Kesejahteraan Anak Di Indonesia', *ISLAMITSCH FAMILIERECHT JOURNAL* 5, no. 2 (December 2024): 83–104, <https://doi.org/10.32923/ifj.v5i2.5025>.

¹⁸ Alfitri Alfitri, 'Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia', *Studia Islamika* 27, no. 2 (August 2020): 273–307, <https://doi.org/10.36712/sdi.v27i2.9408>.



The normative legal research method was employed to answer the two research questions above. The main approach in this study focuses on laws and regulations, doctrines, and court decisions as primary legal materials, and on scientific literature as secondary legal materials.¹⁹ This research applies a statutory approach to examine Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, Law No. 35 of 2014 on Child Protection; Law No. 23 of 2004 on the Elimination of Domestic Violence; and Law No. 12 of 2022 on Sexual Violence Crimes. In addition, a case approach, or jurisprudential approach, was used to analyse court decisions related to the issue of child marriage, post-divorce custody, and domestic violence, to explore how the provisions of family law and the law on the protection of women and children are applied in judicial practice. This research collects primary legal materials (laws, implementing regulations, and court decisions) and secondary legal materials (books, journal articles, opinions, and legal commentaries).²⁰ Furthermore, these materials were analysed deductively and comparatively to explore the normative relationship between family law and the law on the protection of women and children, and to identify regulatory gaps or normative inconsistencies across different regulations. The analysis is developed based on the principles of human rights, gender equality, and the best interests of the child, with gender theory serving as the analytical framework for examining unequal power relations within family law. Through this framework, the study does not treat marriage, divorce, custody, and domestic obligations as neutral private-law issues, but as legal relations that may reproduce patriarchal structures, gender-based discrimination, and vulnerability for women and children. Gender theory was therefore used to assess whether family law norms and judicial practices provide substantive equality, protect women from domestic and sexual violence, and ensure that children's rights are interpreted through a child-centred approach. This analytical framework supports the argument that Indonesian family law reform must be more responsive to human rights, gender justice, and the best interests of the child. A similar normative approach can be found in studies on the synchronisation of marriage law from the perspective of the protection of women and children, which analyse the Marriage Law, Child Protection Law, Domestic Violence Law, and related regulations within a framework of regulatory coordination and protection.

Results and Discussion

Family Law and Protection Law as Complementary Legal Regimes

The relationship between family law and law concerning the protection of women and children should not be understood merely as a formal relationship between different statutes; instead, it must be understood as a relationship between a general private-law regime and a corrective human-rights-based protection regime. Family law establishes the legal structure of marriage, divorce, parental authority, custody, maintenance, and domestic obligations. However, when these legal

¹⁹ Zainal Arifin and Emi Puasa Handayani, 'Resolution of Inheritance Disputes Through Non-Litigation in Kediri', *UNISKA LAW REVIEW* 4, no. 2 (February 2024): 251–61, <https://doi.org/10.32503/ulr.v4i2.5072>.

²⁰ Zentoni et al., 'Know Your Customer (KYC) Model: A Legal Reform Strategy to Prevent Abuse of Financial Services in Child Sexual Exploitation Transactions', *Journal of Law and Legal Reform* 6, no. 1 (March 2025): 239–64, <https://doi.org/10.15294/JLLR.V6I1.19651>.



structures reproduce unequal power relations, normalise violence, or fail to protect children, protection law serves as a corrective instrument. In this sense, the law on the protection of women and children functions as a norm that limits patriarchal interpretations of family law. In practice, it is the articulation of the principles of the best interests of the child and substantial equality that connects the two regimes. The rules on marriage, divorce, and *hadhanah*—guardianship—must, on the one hand, be read in harmony with the norms of anti-violence, anti-discrimination, prevention of child marriage, and, on the other, guarantee the fulfilment of children's basic rights. This connectivity is evident after the change to the minimum age of marriage through Law 16/2019, which corrects the age limit in the Marriage Law and normatively closes the path to the normalisation of child marriage.²¹ However, its effectiveness is only realised when it is read in conjunction with child protection instruments and mechanisms for the prevention and handling of domestic violence, given that the driving factors for child marriage, including poverty, educational gaps, customary pressure, and marriage dispensation, are outside the pure cognition of family law and require normative and institutional interventions based on human rights.²²

To clarify the normative relationship between family law and the law on the protection of women and children, the following table compares the Marriage Law, the Child Protection Law, the Domestic Violence Law, the Sexual Violence Crimes Law, and the KHI. This comparison is important, considering that Indonesian family law reform cannot be understood solely through the Marriage Law. It must be read together with child protection norms, domestic violence protection, sexual violence protection, and Islamic family law practice in the Religious Courts.

Table 1. Systematic Comparison of Indonesian Family Law and Protection Law Instruments

Legal instrument	Main regulatory focus	Protection of women and children	Relevance to family law reform	Main normative gap or risk	Reform direction
Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019	Regulating marriage, legal requirements for marriage, spousal relations, divorce, parental	Providing formal protection against child marriage by increasing the minimum marriage age;	Functioning as the core framework of Indonesian family law; it determines the legal validity of	The main risk lies in marriage dispensation. If dispensation is granted too easily, the	Marriage dispensation must be treated as an exceptional mechanism; judges should apply strict

²¹ Emi Puasa Handayani et al., 'Urgensi Pengaturan Pidana Pencemaran Nama Baik Dalam Perspektif Hak Asasi Manusia', *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* 2, no. 4 (2024): 115–28.

²² Anak Agung Istri Ari Atu Dewi, Ni Ketut Supasti Dharmawan, Anak Agung Istri Eka Krisnayanti, Putu Aras Samsithawrati, and I Gede Agus Kurniawan, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia', *Sriwijaya Law Review*, July 2022, 268–85, <https://doi.org/10.28946/slrev.Vol6.Iss2.1885.pp268-285>.



Legal instrument	Main regulatory focus	Protection of women and children	Relevance to family law reform	Main normative gap or risk	Reform direction
	authority, and family obligations; the 2019 amendment decides that 19 is the minimum age of marriage for men and women.	it supports the idea that prospective spouses should have sufficient physical, psychological, and social maturity before entering marriage.	marriage and becomes the starting point for analysing divorce, parental responsibility, maintenance, and marriage dispensation.	protective function of the minimum-age reform may be weakened and child marriage may continue through judicial exception.	scrutiny, multidisciplinary assessment, meaningful child participation, written risk-based reasoning, and post-verdict monitoring.
Law No. 35 of 2014 on Child Protection	Strengthening the protection of children from violence, discrimination, exploitation, neglect, and other forms of rights violation; it places the child as a rights-bearing subject rather than an object of parental control.	Providing the child-centred standard for interpreting family law; it requires that every decision affecting children prioritise survival, growth, development, participation, dignity, and protection from violence.	Acting as a corrective framework for family law in matters involving child marriage, custody, maintenance, parental authority, children affected by domestic violence, and children exposed to unsafe family environments.	The main gap is weak integration between child protection norms and family adjudication; custody, marriage dispensation, visitation, and maintenance may still be decided formalistically without detailed child-risk assessment.	The best interests of the child should become a mandatory judicial standard in marriage dispensation, <i>hadhanah</i> , visitation, maintenance, protection orders, and post-divorce monitoring.
Law No. 23 of 2004 on the Elimination of Domestic Violence	Regulating the prevention and punishment of domestic violence, including physical, psychological,	Protecting women and children from violence within the household and rejecting the view that	Correcting traditional family law when marital obligations, reconciliation pressure, or patriarchal	The main gap is the separation between domestic violence proceedings and family	Domestic violence must be taken as a mandatory consideration in divorce, custody, visitation, maintenance,



Legal instrument	Main regulatory focus	Protection of women and children	Relevance to family law reform	Main normative gap or risk	Reform direction
(PKDRT Law)	sexual violence, and household neglect; it also recognises victim protection and recovery.	domestic violence is merely a private family matter; it authorises state intervention when family relations are where violence begins.	interpretations are used to silence victims; it is directly relevant to divorce, custody, maintenance, and protection orders.	proceedings. Allegations of violence are often treated as external to divorce, custody, access-to-child, or maintenance disputes.	and access-to-child decisions; family courts should integrate risk assessment, protection orders, and referral to recovery services.
Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS)	Regulating prevention, handling, protection, recovery, and criminal accountability for sexual violence; it emphasises victim rights, coordinated institutional response, and recovery-oriented justice.	Strengthening protection for women and children against sexual violence, including violence occurring within family, intimate, or domestic relations; it supports victim-centred and trauma-informed legal procedures.	Expanding the protection framework of family law by ensuring that sexual violence is not reduced to marital conflict, family shame, or private morality; it is relevant to divorce, custody, protection orders, and recovery services.	The main risk is that sexual violence within family relations may still be minimised through forced reconciliation, victim-blaming, evidentiary difficulties, social stigma, or pressure to preserve family reputation.	Family law proceedings should be connected with victim-centred procedures, protection orders, psychological recovery, safeguards against retraumatisation, and restrictions on mediation when violence is present.
<i>Kompilasi Hukum Islam</i> (KHI) based on Presidential Instruction No. 1 of 1991	Providing Islamic family law guidance on marriage, divorce, reconciliation, maintenance, parental	Offering an important normative structure for Muslim family law, particularly in Religious	Central to Religious Court adjudication in marriage, divorce, custody, maintenance,	The risk arises when KHI is applied mechanically or patriarchally, for example when	KHI should be reinterpreted through substantive equality, <i>maqasid al-sharia</i> , the best interests of the



Legal instrument	Main regulatory focus	Protection of women and children	Relevance to family law reform	Main normative gap or risk	Reform direction
	responsibility, <i>hadhanah</i> , inheritance, and family obligations for Muslim communities.	Court practice; Article 105 of KHI, for example, regulates custody of children who are not yet <i>mumayyiz</i> and children who have reached <i>mumayyiz</i> .	and family obligations; it must therefore be interpreted consistently with constitutional equality and child protection.	<i>hadhanah</i> is treated merely as parental entitlement or when concepts of marital obligation are used to subordinate women.	child, and protection from violence; religious Court practice should harmonise Islamic family law with constitutional and human rights standards.

Source: Authors' analysis based on Law No. 1 of 1974 as amended by Law No. 16 of 2019, Law No. 35 of 2014 on Child Protection, Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 12 of 2022 on Sexual Violence Crimes, and KHI.

The table shows that the relationship between family law and protection law is not merely complementary, but corrective. The Marriage Law provides the basic structure of marriage and family relations, while the Child Protection Law, the Domestic Violence Law, and the Sexual Violence Crimes Law ensure that this structure does not legitimise discrimination, violence, coercion, or child vulnerability. The KHI remains central to Religious Court practice, but its provisions must be interpreted in light of constitutional equality, the best interests of the child, and protection from violence. Within this framework, family law serves as the foundational regime governing the status, rights, and obligations of family members. By contrast, the law on the protection of women and children operates as a safeguard and corrective instrument, ensuring that family structures and practices do not become sites of violence, exploitation, or discrimination. It does so by criminalising domestic violence, including physical, psychological, and sexual violence, as well as household neglect, while also mandating victim recovery services and the fulfilment of the state's due diligence obligations.

Recent literature shows that although Indonesia has had a Law on the Elimination of Domestic Violence since 2004, the burden of implementation, ranging from low reporting and lack of safe places to the enforcement of invisible forms of violence, requires a rereading of family rules so as not to silence victims through norms of wives' obligations or the construction of domestic submission. This is where the protection law corrects the power relations in the household and affirms the



state's right to enter the private sphere to prevent human rights violations.²³ On the children's side, the relationship between the two regimes is most evident in the determination of *hadhanah* (custody) after divorce.²⁴ Family law texts (e.g., the precedence of mothers for children who have not been *mumayyiz*—children who have reached a level of discernment sufficient to distinguish benefit from harm in matters affecting them—or the distinction of parental rights and obligations) are increasingly *interpreted progressively* through the parameters of the best interests of the child, the traces of welfare, and safety from violence. Religious courts are increasingly *incorporating* the principle of child protection into decisions, including by deviating, to a limited extent (*contra legem*), from the standard formulation to secure the safety and development of children.²⁵ This integration works in two directions. First, the protection norms enrich family law with operational human rights indicators. A uniform minimum age of marriage of 19, the prohibition of domestic violence, and the obligation of the state provide a mechanism for the protection and rehabilitation of victims.²⁶ Second, family law provides a space for the realisation of rights, the determination of the status of children, recognition of origin, maintenance/maintenance responsibilities, and divorce procedures that must consider the sustainability of parenting and children's access to education and health. Recent research on the prevention of child marriage confirms that the success of the reform of the age of marriage does not stand alone, but must be tied into a multi-level design that combines human rights-based national law and local wisdom (custom) that is pro-children's rights, ensuring that family law is no longer a "shortcut" to marriage dispensation, but rather a coordination node that links human rights standards with community norms.

In the case of domestic violence, the classic "domestic vs public" dilemma that used to fence state intervention is now firmly decided by the perspective of protection. Domestic violence is a violation of rights, not just private disharmony. Consequently, family rules on the reciprocal obligations of husband and wife and the bond of fidelity should not be read as a barrier to the victim's access to justice, reproductive health services, or psychosocial recovery. This entire construction crystallises in three areas of strategic linkage: the age of marriage, post-divorce custody, and domestic violence law.²⁷ First, in terms of the age of marriage, the reform of the minimum age is the

²³ Mahfud Mahfud and Rizanizarli Rizanizarli, 'Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis', *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 4 (June 2021): 385–98, <https://doi.org/10.25041/fiatjustisia.v15no4.2276>; Kurniawati Hastuti Dewi et al., 'The Nexus of Religion, Ethnicity, and Money: Understanding Political Violence Against Women in Eastern Indonesia', *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 21, no. 1 (June 2026): 29–56, <https://doi.org/10.19105/al-lhkam.v21i1.20065>.

²⁴ Saidah et al., 'From Mediation to Advocacy: Post-Divorce Women's Empowerment Through Religious Court Practices in South Sulawesi, Indonesia', *Jurnal Al-Dustur* 9, no. 1 (June 2026): 212–27, <https://doi.org/10.30863/aldustur.v9i1.11184>.

²⁵ Rohmawati and Syahril Siddik, 'Legal Protection for Children Out of Wedlock: Ensuring the Best Interests of Children Through Judge Decisions', *Al-'Adalah* 19, no. 2 (December 2022): 315–38, <https://doi.org/10.24042/ADALAH.V19I2.11761>.

²⁶ Handayani et al., 'Urgensi Pengaturan Pidana Pencemaran Nama Baik Dalam Perspektif Hak Asasi Manusia'.

²⁷ Siti Nurlaila et al., 'Reconstructing Gender-Responsive Restorative Justice for Domestic Violence: A Study of Contextual Islamic Law in Indonesia', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan*



most explicit meeting point between child protection and family law, but the work of protection is not done in numbers; it demands strict dispensation arrangements, proof of risk, child participation, and documented judicial control, so that age changes do not "leak" at the practice level.²⁸

Second, in terms of post-divorce custody, the family apparatus establishes the formal flow (who is entitled to custody and who bears maintenance), but the protective apparatus adds possibilities of risk (history of violence, neglect, child manipulation) and the state's obligation to ensure that judgments are enforceable and do not plunge the child back into a dangerous environment; Recent normative legal research shows how judges refer to the principle of the best interests of the child to correct literal biases in family rules.²⁹ Third, domestic violence law regulates the reciprocal obligations and rights of husband and wife, but the protection law "puts on the emergency brake" that criminalises violence and provides comprehensive services to victims; this linkage requires synchronisation of civil procedures (e.g. divorce lawsuits, custody, and property division) with criminal/administrative channels (determination of protection, shelter, medical report, recovery) so that victims are not trapped in shopping forums or retraumatisation.³⁰ Domestic violence and sexual violence within family relations reveal the limits of traditional family law when the family is treated as a purely private sphere. Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 12 of 2022 on Sexual Violence Crimes should be read as corrective instruments that prevent the misuse of family norms to silence victims. In divorce, custody, and maintenance disputes, allegations of physical, psychological, economic, or sexual violence must not be treated as separate matters unrelated to family adjudication. Instead, they should become mandatory considerations in determining custody, access to children, protection orders, and recovery services. This approach ensures that family law does not reproduce victim-blaming, forced reconciliation, or procedural retraumatisation.

The temporal dimension is also essential: during crises (e.g. the COVID-19 pandemic), a surge in domestic-based violence suggests that family relationships are heavily influenced by external factors, such as lockdowns, economic pressures, and social isolation, among others, so the scope of protection should exist in the family's territory to guarantee access and security of the victim without sacrificing the civil rights of other families; it confirms that the family and protection regime must be

Keagamaan 13, no. 1 (May 2026): 344–60, <https://doi.org/10.29300/mzn.v13i1.10542>; Meisy Fajarani et al., 'Judicial Strategies in Addressing Domestic Violence: Gender-Responsive Legal Analysis from the Religious Court of Malang Regency, Indonesia', *Justicia Islamica* 23, no. 2 (June 2026): 477–504, <https://doi.org/10.21154/justicia.v23i2.11804>.

²⁸ Anak Agung Istri Ari Atu Dewi, Ni Ketut Supasti Dharmawan, Anak Agung Istri Eka Krisnayanti, Putu Aras Samsithawrati, and I. Gede Agus Kurniawan, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia', *Sriwijaya Law Review*, 19 July 2022, 268–85, <https://doi.org/10.28946/slrev.Vol6.Iss2.1885.pp268-285>.

²⁹ Inna Fauzital Ngazizah et al., 'Effectiveness Of Child Protection Law In Fulfilling The Right To Child Custody (Hadhanah) In Kudus Indonesia', *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 2 (July 2025): 265–86, <https://doi.org/10.20885/iustum.vol32.iss2.art1>.

³⁰ Mahfud Mahfud and Rizanizarli Rizanizarli, 'Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis', *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 4 (June 2021): 385–98, <https://doi.org/10.25041/fiatjustisia.v15no4.2276>.



structured adaptively, data responsive, and context-sensitive.³¹ From the point of view of constitutional human rights theory, the harmony of the two regimes is determined by the principle of *generalia specialibus non derogant*, which is reversed: the general rule of the family must not trump the *lex specialis* protection when there is a risk of human rights violations, especially against women and children. Consequently, the roadmap for family law reform must contain two-tiered strategies. First, vertical–horizontal harmonisation to remove disharmony (e.g. at the point of marriage dispensation, the qualification of non-physical violence, and the proof of domestic sexual violence), while ensuring explicit references to international standards (CRC/CEDAW) and certain non-derogable clauses (the right to life, freedom from torture), as set out in the Constitution and human rights laws.³²

Second, the gender-responsive reconstruction of family norms involve rearranging parenting-maintenance provisions to be more balanced, including domestic violence risk indicators in the determination of *hadhanah*, clarifying compliance obligations through sanctions and monitoring mechanisms, and ensuring the meaningful participation of children, as their views are heard in cases that have a direct impact on them; This direction has been seen in the tendency of jurisprudence to interpret *hadhanah* through the "best interests of the child" rather than the static formula of the age or gender of the caregiver.³³ At the socio-cultural level, linkages also demand dialogue between state law and customary/religious law. Studies on the prevention of Balinese customary-based child marriage, for example, show that local norms can be an effective vehicle if aligned with human rights standards; here, family law serves as a "binder" that provides legitimacy and channels of implementation (civil record, Religious Affairs Office, justice), while protection law ensures that customary adaptation does not normalise risky practices.³⁴

Conceptually, healthy relationships are not the subordination of one regime, but rather mutually reinforcing relationships: family law establishes the basic structure of relationships but whenever that structure has the potential to produce injustice in the form of child marriage, domestic violence, neglect, and unsafe parenting, the protection law "folds" the structure with human rights values, making the household a safe space for women and children again. With this design, future family law reform confirms a dual function: (a) as a social institution that protects the dignity of all family members without gender-based hierarchies; and (b) as an instrument of the state to fulfil positive and negative human rights obligations to prevent, investigate, punish, and restore when private relationships turn into a locus of violation.³⁵

³¹ Ani Purwanti and Fajar Setiawan, 'The State of Policy of Anti Domestic Violence During Covid-19 Pandemic in Indonesia', *Brawijaya Law Journal* 7, no. 2 (2020): 238–54, <https://doi.org/10.21776/ub.blj.2020.007.02.07>.

³² Dewi, Dharmawan, Krisnayanti, Samsithawrati, and I. Gede Agus Kurniawan, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia'.

³³ Ngazizah et al., 'Effectiveness Of Child Protection Law In Fulfilling The Right To Child Custody (Hadhanah) In Kudus Indonesia'.

³⁴ Dewi, Dharmawan, Krisnayanti, Samsithawrati, and I. Gede Agus Kurniawan, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia'.

³⁵ Mahfud and Rizanizarli, 'Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis'.



The *Kompilasi Hukum Islam* and Religious Court Practice in Family Law Protection

The analysis of Indonesian family law cannot be separated from KHI and the institutional role of the Religious Courts. For Muslim communities in Indonesia, KHI operates as one of the most important normative references in matters of marriage, divorce, parental authority, maintenance, custody, inheritance, and family obligations. Therefore, any discussion of the protection of women and children in Indonesian family law would remain incomplete if it only relies on the Marriage Law, the Child Protection Law, and the Domestic Violence Law without examining how Islamic family law norms are applied in Religious Court practice. KHI reflects both protective and potentially problematic dimensions. On the one hand, it provides a normative framework for regulating marital obligations, parental responsibility, maintenance, and child custody. Article 105 of KHI, for example, places the custody of a child who has not reached the stage of *mumayyiz* with the mother, while allowing a child who has reached the stage of *mumayyiz* to choose between the father and the mother. In this context, *mumayyiz* refers to a child who has reached a sufficient level of discernment to distinguish benefit from harm in matters affecting their life. This formulation may support child protection when interpreted in light of the best interests of the child. However, if applied mechanically, custody may be reduced to a formal parental entitlement rather than a substantive assessment of the child's safety, welfare, emotional stability, and protection from violence or neglect.

On the other hand, certain provisions and doctrinal concepts within Islamic family law require critical reinterpretation from the perspective of substantive equality and child protection.³⁶ The concept of *nushuz*, for instance, is often associated with a wife's disobedience to marital obligations. In patriarchal readings, this concept may be misused to justify unequal power relations within marriage or to normalise male authority over women. Although *nushuz* should not be understood as a justification for violence, coercion, or domination, its presence in family law discourse requires careful doctrinal control. A human rights-based reading of Islamic family law must affirm that no concept of marital obligation can be interpreted to legitimise domestic violence, psychological pressure, economic neglect, sexual coercion, or the silencing of women within the household.

Religious Courts occupy a strategic position in transforming these norms into protective legal practice. In cases involving divorce, custody, maintenance, and marriage dispensation, judges are not merely applying formal family law provisions; they are also determining whether family law functions as a mechanism of protection or as a continuation of unequal power relations. For this reason, Religious Court decisions should incorporate the principles of substantive equality, the best interests of the child, and protection from violence as mandatory interpretive standards. In custody cases, for example, the court should not only consider the age of the child or the formal position of the parent, but also the history of care, the presence of violence,

³⁶ Sri Wahyuni and Zuliza Mohd Kusrin, 'Gender Equality in the Concept of Family Maintenance and Marital Property in Indonesian and European Legal Context: A Comparative Study', *JURIS (Jurnal Ilmiah Syariah)* 24, no. 2 (December 2025): 265–76, <https://doi.org/10.31958/juris.v24i2.14909>.



the psychological condition of the child, the ability of the caregiver to provide a safe environment, and the child's own views in accordance with age and maturity.³⁷

The role of Religious Courts is also crucial in marriage dispensation cases. Although Law No. 16 of 2019 has set 19 as the uniform minimum age of marriage for both men and women, the continued availability of marriage dispensation means that judicial reasoning remains decisive in preventing or enabling child marriage. Dispensation should therefore be treated as an exceptional mechanism, not as a routine administrative pathway to legalise underage marriage. Judges should apply strict scrutiny by examining the child's psychological readiness, educational continuity, risk of violence or exploitation, economic dependency, parental pressure, and the long-term consequences of marriage on the child's development. Without such a standard, marriage dispensation may weaken the protective purpose of the marriage-age reform.

Marriage dispensation is one of the most important indicators for testing whether Indonesian family law reform has truly protected children. The reform of the minimum age of marriage did not emerge merely from ordinary legislative policy, but from a constitutional correction made by the Constitutional Court in Decision No. 22/PUU-XV/2017. In that decision, the Court held that the previous differentiation between the minimum marriage age for men and women under Article 7, paragraph (1) of the Marriage Law was constitutionally problematic, as it placed girls in a discriminatory and vulnerable position. This constitutional reasoning later influenced the enactment of Law No. 16 of 2019, which amended Law No. 1 of 1974 by equalising the minimum age of marriage for men and women at 19 years. The choice of 19 years reflects the legislative assumption that prospective spouses should possess sufficient physical and psychological maturity to enter marriage, reduce the risk of divorce, and support healthier reproductive and family outcomes.

However, the amendment of the minimum marriage age does not automatically eliminate child marriage. The persistence of marriage dispensation cases suggests that the protective purpose of Law No. 16 of 2019 may be undermined by judicial exceptions. Data from the Directorate General of Religious Courts shows that in 2024, Religious Courts across Indonesia decided 32,400 marriage dispensation cases, and 91.07 per cent of those applications were granted. As of 19 September 2025, 19,790 marriage dispensation cases had been decided, with 89.54 per cent granted. These figures indicate that marriage dispensation remains a significant legal pathway through which the practices of underage marriage may continue despite the statutory increase in the minimum marriage age.

The broader statistical context also confirms that child marriage remains a continuing socio-legal problem. The data issued by the Indonesian Central Bureau of Statistics (BPS), cited by the National Law Development Agency, shows that in 2024 the national proportion of women aged 20–24 who had married before the age of 18

³⁷ Arif Jamaluddin Malik and Cecep Soleh Kurniawan, 'Hadith as Legal Basis in Judicial Decisions: Examining The Application of Hadith in Child Custody Cases at The High Religious Court of Surabaya', *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 25, no. 1 (June 2025): 87–106, <https://doi.org/10.30631/alrisalah.v25i1.1802>; Farida Nurun Nazah et al., 'Gender Justice in Child Custody Disputes: The Maqāṣid al-Sharī'ah Approach in Contemporary Judicial Practice', *MILRev: Metro Islamic Law Review* 4, no. 2 (November 2025): 1328–58, <https://doi.org/10.32332/milrev.v4i2.10790>.



declined to 5.9 per cent. This decline, although reflecting progress, does not represent the disappearance of the problem, given that several regions still record higher or increasing rates of child marriage. In other words, the issue is not merely whether the law has formally raised the marriage age, but whether courts, families, local communities, and protection institutions can prevent marriage dispensation from becoming a routine mechanism for legalising child marriage. Therefore, marriage dispensation should be treated as an exceptional mechanism, not as an ordinary administrative solution to family pressure, pregnancy, poverty, or social stigma. Judges should apply strict scrutiny before granting dispensation by examining the child's psychological readiness, educational continuity, reproductive health risks, the possibility of coercion, the presence of parental or community pressure, economic dependency, and the potential risk of domestic or sexual violence. The child's own views must also be heard meaningfully in accordance with age and maturity. Without these safeguards, marriage dispensation may represent a legal loophole that reproduces patriarchal control over girls and weakens the constitutional objective of protecting children from premature marriage.

The issue of custody after divorce demonstrates how family law must be reconstructed through the best interests of the child. Custody should not be treated merely as a parental right or as a mechanical consequence of the child's age or the gender of the caregiver. It must be assessed in terms of child safety, psychological well-being, continuity of care, access to education and health, and protection from violence or neglect. In cases involving domestic violence, coercive control, or parental manipulation, the court should not separate custody determination from risk assessment. The best interests of the child require judges to consider whether the proposed caregiver can provide a safe, stable, and non-violent environment. Thus, custody reform must move from a parent-centred model to a child-centred model.

Accordingly, KHI and Religious Court practice should be positioned as central components of family law reform rather than as peripheral references. The reform of Indonesian family law must not be framed as a conflict between Islamic family law and human rights, but rather as an effort to reconstruct the interpretation of Islamic family law so that it protects dignity, equality, family welfare, and the best interests of the child. This approach allows Indonesian family law to develop a model of protection that is normatively rooted in national and Islamic legal traditions while remaining consistent with constitutional rights and international human rights standards.

Challenges and Directions of Human Rights-Based Family Law Reform

The challenges of family law reform in Indonesia can be mapped into three interconnected dimensions: substantive, structural, and cultural. Substantively, the challenge lies in disharmony between family law and special protection laws, particularly in relation to marriage dispensation, custody, domestic violence, and sexual violence. Structurally, the challenge concerns the weak integration among family courts, law enforcement agencies, social services, psychological assistance, and victim recovery mechanisms. Culturally, reform is constrained by patriarchal norms, stigma against victims, and interpretations of religious or customary norms that may subordinate women and children. Therefore, the direction of reform must



be designed not only as statutory amendment, but also as institutional and cultural transformation. Viewed through MacKinnon's feminist legal theory and Scott's gender theory, these substantive, structural, and cultural challenges show that family law reform is not merely a matter of legal harmonisation; it is a matter of correcting gendered power relations embedded in family norms, judicial reasoning, and social practices.

The main challenge for family law reform to be in harmony with human rights principles lies in three interrelated domains: substance, structure, and legal culture. At the substantive level, there is still disharmony and "leakage" of norms when the general provisions of family law (marriage, divorce, *hadhanah*/alimony) run incongruously with the *lex specialis* instrument for the protection of women and children especially in the prevention of child marriage, the handling and recovery of victims of domestic violence (KDRT), and the operationalisation of the principle of the best interests of children in custody decisions.³⁸ Updating the minimum age of marriage to 19 through amendments to the Marriage Law advances protection. However, its effectiveness is often undermined by loose dispensations, the tug-of-war between religious/customary interpretations, and the absence of uniform risk indicators at the judicial level, which is why the latest literature emphasises that the prevention of child marriage must link international human rights standards with local pro-child-rights wisdom. As a consequence, family norms are no longer a channel for legitimising risky practices.³⁹

Simultaneously, the strengthening of criminal and administrative mechanisms to deal with domestic violence has not yet fully "trickled" into family civil conduct: protection orders, access to rehabilitation services, and evidence of psychological/economic violence are often not integrated with divorce lawsuits, custody determinations, or alimony determinations, leaving victims, especially women and children, subject to procedural retraumatisation or exhausting forum shopping.⁴⁰ At the structural level, obstacles to implementation can be seen in the low literacy of the apparatus regarding forms of non-physical violence, the lack of integrated services (shelter, psychological assistance, legal assistance), the disparity in proof (especially for psychological violence and coercive control), and the central-regional budget gap in providing referral and recovery services. This situation has implications for decisions that are less sensitive to human rights, such as returning

³⁸ Laely Wulandari, 'Kebijakan Penanganan Kekerasan Dalam Rumah Tangga Melalui Mediasi Penal', *LAW REFORM* 4, no. 1 (October 2010): 1–19, <https://doi.org/10.14710/lr.v4i1.312>.

³⁹ Dewi, Dharmawan, Krisnayanti, Samsithawrati, and I Gede Agus Kurniawan, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia'.

⁴⁰ Muhamad Arifin Badri, Anas Burhanuddin, and Ghufuran Jauhar, 'Factors Influencing The Increase in Khulu's Divorce: A Case at The Jember Religious Court (2021-2023)', *Al-'Adalah* 21, no. 1 (June 2024): 53–76, <https://doi.org/10.24042/adalah.v21i1.21074>; Ani Purwanti and Fajar Ahmad Setiawan, 'Developing Anti Domestic Violence Policy during Covid 19 Pandemic in Indonesia', *Brawijaya Law Journal* 7, no. 2 (October 2020): 238–54, <https://doi.org/10.21776/ub.blj.2020.007.02.07>; Nirwan Junus et al., 'Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures', *Jambura Law Review* 6, no. 1 (January 2024): 183–205, <https://doi.org/10.33756/jlr.v6i1.19370>.



children to a risky environment or ignoring a history of violence in determining *hadhanah*.⁴¹

At the cultural level, the strong residue of patriarchy in family relationships, including the stigma of reporting, the normalisation of “domestic affairs,” and stereotypes regarding parenting roles, encourages victims to remain silent, while law enforcement authorities and judges remain reluctant to interpret family law progressively in favour of victims and children. The experience of the pandemic also shows that socio-economic shocks increase the vulnerability of women and children to domestic violence; therefore, protection design must be crisis-adaptive and should not remain confined within the outdated private-versus-public distinction.⁴² The direction of reform to match the state's obligation to prevent, investigate, prosecute, punish, and restore needs to be pursued in stages. First, harmonisation of regulations: (a) tightening the marriage age dispensation regime with risk proof standards, multidisciplinary assessments, and meaningful child participation, accompanied by the obligation to record reasons and monitor post-verdicts; (b) synergizing the civil route (divorce, joint property, *hadhanah*/alimony) with protection instruments (determination of protection, recovery services, referral obligations) so that a case process is adequate to complete the civil realm and victim protection; (c) including explicit references to CEDAW/CRC and the principle of the best interests of the child so that family norms cannot be read to deny special protection.

The operationalisation of international human rights standards is essential in this reform agenda. CEDAW General Recommendation No. 35 on gender-based violence against women should be used to interpret domestic violence and sexual violence not merely as private family disputes, but as forms of gender-based discrimination that trigger state due diligence obligations.⁴³ Under this framework, the state is required to prevent violence, protect victims, investigate violations, punish perpetrators, and ensure effective remedies. This standard should guide the interpretation of Law No. 23 of 2004 on the Elimination of Domestic Violence and Law No. 12 of 2022 on Sexual Violence Crimes, particularly in cases where family norms, reconciliation pressure, or patriarchal interpretations are involved to silence women victims.

In relation to child protection, CRC General Comment No. 14 should be applied as the interpretive basis for the principle of the best interests of the child. This principle should not be treated as a general moral phrase, but as a binding legal standard in every decision affecting children, including marriage dispensation, custody, maintenance, protection orders, and recovery services. Therefore, Law No. 1 of 1974 as amended by Law No. 16 of 2019, Law No. 35 of 2014 on Child Protection, and the relevant provisions of KHI must be read through a child-centred approach. In marriage dispensation cases, the best interests of the child require courts to examine psychological maturity, educational continuity, health risks, coercion,

⁴¹ Purwanti and Setiawan, ‘The State of Policy of Anti Domestic Violence During Covid-19 Pandemic in Indonesia’.

⁴² Purwanti and Setiawan.

⁴³ S. Pratiwi Aminuddin et al., ‘The Responsibility of Digital Platforms in Preventing Online Gender-Based Sexual Violence through a Gender-Responsive Approach’, *Jurnal IUS Kajian Hukum Dan Keadilan* 14, no. 2 (August 2026): 354–75, <https://doi.org/10.29303/ius.v14i2.2087>.



parental pressure, economic dependency, and the possibility of violence or exploitation. In custody cases, the same principle requires judges to prioritise safety, stability, emotional welfare, and protection from domestic violence over formal parental entitlement.

By connecting CEDAW General Recommendation No. 35 and CRC General Comment No. 14 to domestic law, family law reform can move beyond abstract references to human rights. The Marriage Law must be harmonised with child protection standards to ensure that marriage dispensation does not undermine the minimum-age reform. The Domestic Violence Law must be interpreted in line with gender-based violence standards so that psychological, economic, sexual, and coercive forms of violence are not minimised as ordinary household conflict. The Child Protection Law must function as a controlling norm in every family case involving children. Meanwhile, the Sexual Violence Crimes Law should strengthen victim-centred procedures, protection orders, recovery mechanisms, and trauma-informed approaches in family cases involving sexual violence. In this way, CEDAW and CRC operate not as external moral references, but as doctrinal standards for interpreting and reforming Indonesian family law. Jurisprudence, evidence, and normative studies over the past five years show a tendency for courts to interpret *hadhanah* in light of the best interests of the child, rather than relying on a static formula based on caregiver age or gender, though such consistency requires uniform national technical guidelines.⁴⁴

Second, the reconstruction of gender- and child-responsive family norms involves (a) reorganising the division of roles and obligations of husband and wife in the law with language that does not produce subordination, contains prohibitions of coercive control, and affirms equality in parenting; (b) affirming the risk indicators of physical, psychological, economic, and sexual violence as mandatory parameters in determining custody and access to children; (c) recognising and regulating the mechanism of the child's opinion according to their age/maturity in the case concerning them; (d) standardizing the standard of proof for psychological/economic violence to be in line with the development of forensic psychology and good practices of countries.⁴⁵ Third, strengthening service institutions involves ensuring that every family case involving alleged violence or exploitation is automatically "referred" to integrated services of legal assistants, psychologists, social workers, and health professionals with minimum public financing and service standards; integrating the family case information system with the child protection system and the violence victim service system; and implementing human rights compliance audits on high-risk family decisions.⁴⁶

Fourth, the arrangement of legal pluralism encompasses encouraging dialogue between state law and customary/religious law to allow progressive local practices,

⁴⁴ Ngazizah et al., 'Effectiveness Of Child Protection Law In Fulfilling The Right To Child Custody (Hadhanah) In Kudus Indonesia'.

⁴⁵ Viktoriia Kobko -Odarii et al., 'Reconstructing Gender Equality in Family Law: A Normative and Comparative Analysis of European Family Law Systems in Religious Context', *Syariah: Jurnal Hukum Dan Pemikiran* 25, no. 1 (August 2025): 195–214, <https://doi.org/10.18592/sjhp.v25i1.17694>.

⁴⁶ Purwanti and Setiawan, 'The State of Policy of Anti Domestic Violence During Covid-19 Pandemic in Indonesia'.



such as customary norms that postpone the age of marriage or mediation mechanisms centred on the safety of women and children, to be institutionalised without normalising risky practices. An article entitled "The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia," published in the journal *Sriwijaya Law Review*, presents an effective approach to marrying human rights-based policies with Balinese wisdom to prevent child marriage.⁴⁷ The trajectory of renewal also needs to read the emergence of Law 12/2022 on the Crime of Sexual Violence (TPKS) as a catalyst for family relations reform that is in line with human rights. The TPKS Law criminalises various forms of sexual violence, places the prevention and recovery of victims as a state mandate, and provides space for criminal accountability, including for corporate actors; Politically, it is a *lex specialis* that complements PKDRT and must be "connected" to the family decision through a coordinated procedural design (e.g., the establishment of protection as a temporary condition of custody arrangements).⁴⁸

However, implementation research highlights the need to accelerate rule implementation, strengthen law enforcement officials' capacity to prove non-physical violence, and provide adequate recovery services. Without it, a progressive normative umbrella is difficult to impact family justice practices.⁴⁹ The direction of family reform that is in harmony with human rights must be integrated with the implementation agenda of the TPKS Law:⁵⁰ (a) the flow of integrated civil-criminal-administrative cases for family cases that intersect with violence; (b) synchronous evidentiary standards for psychological/economic/sexual coercion violence so that family decisions do not "decide" the facts of violence; (c) victim-based (trauma-informed) recovery schemes that include compensation, counseling, and rehabilitation, as well as control of the implementation of decisions; and (d) process-based protections such as the prohibition of victimisation in family mediation when there is a history of violence.⁵¹

In the post-pandemic context, the legal literature emphasises the urgency of crisis response policies. During mobility restrictions, domestic violence cases increase, access to justice is disrupted, and victims more often resolve conflicts within the family circle, prompting the need for digital reporting channels, remote emergency protection orders, and car services that reach communities.⁵² Without this infrastructure, the constitutionally guaranteed right to freedom from violence

⁴⁷ Dewi, Dharmawan, Krisnayanti, Samsithawrati, and I Gede Agus Kurniawan, 'The Role of Human Rights and Customary Law to Prevent Early Childhood Marriage in Indonesia'.

⁴⁸ Topo Santoso and Hariman Satria, 'Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022', *Padjadjaran Jurnal Ilmu Hukum* 10, no. 1 (2023): 59–79, <https://doi.org/10.22304/pjih.v10n1.a4>.

⁴⁹ Santoso and Satria.

⁵⁰ Fauziati Fauziati, Syahrizal Abbas, and Muslim Zainuddin, 'Family Law Transformation: Addressing Forced Child Marriage as a Criminal Offense in Indonesia', *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsyiah* 7, no. 1 (July 2024): 39–51, <https://doi.org/10.58824/mediasas.v7i1.102>.

⁵¹ Santoso and Satria, 'Sexual-Violence Offenses in Indonesia: Analysis of the Criminal Policy in the Law Number 12 of 2022'.

⁵² Natasya Nadia Putri and Heru Suyanto, 'Legal Protection for Victims of Domestic Violence: The Pandemic of Covid-19', *Univikasi: Jurnal Ilmu Hukum* 8, no. 1 (June 2021): 95–104, <https://doi.org/10.25134/unifikasi.v8i1.3876>.



becomes an illusion for the most vulnerable groups.⁵³ On the other hand, the legal culture of the apparatus and society needs to be directed through continuous professional education (judges, prosecutors, police, advocates), the curriculum of human rights family law clinics, and public campaigns that normalise reporting and services.⁵⁴ Recent sociological studies show that cultural barriers of stigma, economic dependence, and perceptions of "disgrace" still break the involvement of state law in "domestic affairs", so community-based policies and women's economic empowerment must be part of the design of the renewal.⁵⁵

At this point, the state's due diligence does not stop at lawmaking but is measured by the quality of investigations, prosecutions, proportionate punishments, and, often forgotten, effective victim recovery, especially in family cases fraught with asymmetrical power relations.⁵⁶ Therefore, human rights indicators (access, participation, non-discrimination, accountability) must be mainstreamed into the Standard Operating Procedures of family courts, including a risk matrix to determine whether mediation is worth continuing, a child impact assessment mechanism before the verdict, and the necessity of the verdict mentioning referral of post-verdict services/monitoring.⁵⁷ Finally, the success of the reform of family law that is in harmony with human rights is not just a revision of the text but a paradigm realignment.⁵⁸ The family, as a social institution, is not immune from human rights obligations, and the state has positive and negative obligations to ensure that private relations do not become a locus of violations.⁵⁹

The roadmap for family law reform should be directed toward five legal agendas: first, the harmonisation of the Marriage Law, Child Protection Law, Domestic Violence Law, and Sexual Violence Crimes Law to ensure that family norms cannot be interpreted in ways that undermine the protection of women and children; second, the reconstruction of marital and parental norms through gender-neutral and child-centred language; third, the establishment of stricter standards for marriage dispensation, including multidisciplinary assessment, child participation,

⁵³ Purwanti and Setiawan, 'The State of Policy of Anti Domestic Violence During Covid-19 Pandemic in Indonesia'.

⁵⁴ Deppa Ringgi, 'Evaluasi Penerapan Azas Perlindungan HAM Dalam Proses Hukum Pidana: Studi Kasus Terhadap Kasus Penyalah Gunaan Kewenangan Oleh Aparat Penegak Hukum Di Indonesia', *Justisia Jurnal Ilmu Hukum Dan Humaniora* 8, no. 1 (February 2025): 418, <https://doi.org/10.31604/justitia.v8i1.418-425>.

⁵⁵ Mahfud and Rizanizarli, 'Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis'.

⁵⁶ P. Advent Christian S. P and Juniver Dame Panjaitan, 'Kebijakan Hukum Pidana Terhadap Korban Dalam Prespektif Undang-Undang Hukum Hak Asasi Manusia', *Action Research Literate* 9, no. 7 (July 2025): 1839–45, <https://doi.org/10.46799/ar.v9i7.2998>.

⁵⁷ Ngazizah et al., 'Effectiveness Of Child Protection Law In Fulfilling The Right To Child Custody (Hadhanah) In Kudus Indonesia'.

⁵⁸ Wahyu Wahyu, Moh. Adib Sya'bani, and Syahrul Permana Permana, 'Hak Waris Dan Keadilan: Menggagas Reformasi Hukum Keluarga Dengan Prinsip Maqasid Syariah', *Jurnal Studi Inovasi* 4, no. 2 (April 2024): 11–21, <https://doi.org/10.52000/jsi.v4i2.156>.

⁵⁹ Sesy Kirana, Anita Trisiana, and Wahyu Putri, 'Perlindungan HAM Dalam Siklus Negara Hukum', *Jurnal Global Citizen : Jurnal Ilmiah Kajian Pendidikan Kewarganegaraan* 10, no. 1 (July 2021): 44, <https://doi.org/10.33061/jgz.v10i1.4690>.



and post-verdict monitoring; fourth, the integration of civil, criminal, and administrative protection mechanisms in family cases involving violence; fifth, the strengthening of institutional cooperation among family courts, UPTD PPA, legal aid providers, psychologists, social workers, and law enforcement agencies. These agendas transform family law from a merely private-law framework into a human rights-based legal architecture.⁶⁰

Conclusion

This article concludes that Indonesian family law has a fundamental role in regulating marriage, divorce, spousal relations, parental authority, custody, and maintenance. However, its general and private-law orientation is insufficient when family relations become a space of discrimination, violence, child marriage, neglect, or unequal power relations. In this context, the law on the protection of women and children functions as a corrective framework that limits patriarchal interpretations of family law and aligns family relations with human rights, substantive equality, and the best interests of the child. The integration between family law and the law on the protection of women and children still faces substantive, structural, and cultural challenges. Substantively, there remains disharmony among the Marriage Law, the Child Protection Law, the Domestic Violence Law, and the Sexual Violence Crimes Law. Structurally, protection mechanisms are not yet fully integrated into divorce, custody, marriage dispensation, and domestic violence proceedings. Culturally, patriarchal norms, stigma, and restrictive interpretations of religious or customary values continue to weaken the protection of women and children. Therefore, family law reform should be directed toward regulatory harmonisation, gender-responsive reconstruction of family norms, stricter judicial control over marriage dispensation, child-centred custody standards, and integrated protection and recovery mechanisms for victims of domestic and sexual violence. The future of Indonesian family law should not be understood merely as the reform of marriage and divorce rules, but as the construction of a family justice system that protects human dignity within private relations. Such reform requires the state to ensure that the family remains a safe, equal, and protective space for women and children. Accordingly, the principles of gender equality, human rights protection, and the best interests of the child must become binding standards in legislation, judicial interpretation, institutional practice, and community-based protection mechanisms.

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⁶⁰ Mahfud and Rizanizarli, 'Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis'.



Conflict of Interest Statement

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this article.

Declaration of the use of AI

The authors declare that AI-assisted technology was used solely to improve the readability, grammar, and language quality of this manuscript. The authors have reviewed, edited, and take full responsibility for the final content of the article.

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