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Gender Equality in the Establishment of Justice Marriage Law

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Abstract: This research was carried out with the aims to: (1) explain, analyze and find gender equality and justice in the Laws of Marriage; (2) describe, analyze and find manifestations of gender injustice in the Laws of Marriage; (3) know, find and analyze the contextual background of the Laws of Marriage composing that contains gender bias or gender inequality and injustice.This study was used secondary data that consist of primary legal materials, namely the 1945 Constitution, Laws Number 39 of 1999 concerning Human Rights, Laws Number 7 of 1984 concerning CEDAW, Laws Number 23 of 2004 concerning the Elimination of Domestic Violence, Laws Number 35 of 2014 concerning Child Protection, Laws Number 1 of 1974 concerning Marriage, Presidential Instruction No. 1 of 1991 concerning KHI, Presidential Instruction Number 9 of 2000 concerning Gender Mainstreaming. The Secondary legal materials that used by this study consist of all documents or legal files in the form of court decisions, literature and various books references relating to gender equality and justice in marriage. Likewise with tertiary legal materials, namely materials or documents in the form of legal dictionaries, encyclopedias, cumulative indices and so on.
Keywords: Gender Equality, Laws of Marriage

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I. INTRODUCTION

Inauguration of roles based on sex by UUP is found in Article 31 paragraph (3) which basically states that the husband is the head of the family and the wife is a housewife. Whereas stereotyping of women and men by stiffly dividing the role of women in the domestic sector and the role of men in the public sector is contained in Article 34 which essentially says that husbands are obliged to provide a living and their wives are obliged to take care of the household as well as possible. The article establishes the notion that wives belong to husbands so that the division of roles and work in the family emphasizes differences according to sex. The result of the construction of the division of roles within the family turned out to cause extraordinary stigma. A husband who has been positioned as the head of the family will bear a burden that is not light.[1]

In addition, the age difference between prospective brides who are allowed to marry in this Law, for men and women is quite striking. This can be seen in Article 7 paragraph 1 which states that "Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years." It should be noted, that the age regulation of women in this UUP is contrary to several other laws such as the Child Protection Act No. 35 of 2014 Article 1 paragraph 1 which states that "a child is someone who is not 18 (eighteen) years old, including child who is still in the womb." Contrary to Law Number 13 of 2003 concerning Manpower Article 26 states that "children are every person under the age of 18 (eighteen)," Law Number 4 of 1979 concerning Child Welfare Article 2, "a child is someone who has not reached the age of 21 years and have never been married," and especially Law Number 35 of 2014 concerning Child Protection, namely Article 1 paragraph 1 which states that "a child is someone who is not 18 (eighteen) years old." Thus, the Indonesian Marriage Law legalizes underage marriage and violates the Child Protection Act if the age of the bride has not reached 18 years.

The Marriage Law since its birth in 1974 until now mid-2019 has not experienced significant changes. In fact, the people of Indonesia have experienced rapid development both in education and development. Especially with the digital world today, which greatly influences and increases his insight and knowledge. Especially the existence of a wife and her considerable potential to take part in realizing the ideals of the nation

[1]Based on the results of the author's research in Susi Susilawati. *Analisis Jender Terhadap Hak dan Kewajiban Istri Menurut Undang-Undang Perkawinan dan Hukum Islam*. Palu: Mars Publishers, 2010, p. 107.

and the Republic of Indonesia. Therefore, it should be seen again the context of the Marriage Law was born because of the current situation and conditions are different from the previous ones

Based on the foregoing, in order to create an egalitarian system in the structure and culture of society, as well as equality before the law and the implementation of justice values in the Marriage Law, an in-depth study of the nature of equality and gender justice in the Marriage Law and the manifestation of injustice need to be carried out. his gender and found a contextual background for the preparation of the Marriage Law.

II.STATEMENT OF THE PROBLEM

1. What is the nature of equality and gender justice in the Marriage Law?
2. What is the manifestation of gender injustice in the Marriage Law?

III. THEORETICAL FRAMEWORK

A. Theoretical Basic

1. Gender Theory

a. Gender Insight

Gender is generally used to identify differences in men and women in terms of social culture, while sex is generally used to identify differences in men and women in terms of biological anatomy, including differences in chemical composition and hormones in the body, physical anatomy, reproduction, and other biological characteristics. Gender concentrates on social, cultural, psychological, and other non-biological aspects that are flexible, can be owned and played by everyone.

The difference between men and women can be seen in two aspects. First in terms of sex and the second in terms of gender. Sex (sex) is the difference between men and women which is God's nature, permanent and not interchangeable. So, sex is a biological difference that is inherent in men and women that they have since birth.

Gender according to Oakley, the person who first carries this concept, is a difference that is not biological and not the nature of God or differences that are not God's creation, but created by both men and women through long cultural and social processes. Therefore, gender can change from time to time and from place to place, even from class to class.[2]

b. Gender Equality

Gender equality is a concept that states that women and men have equal rights and opportunities to play an active role in all fields of development without considering biological characteristics.[3]The definition is similar to that women and men have the freedom to choose different roles (or the same) and different results (or the same) according to their choice and purpose.

Based on this, the concept of gender equality states that if the rights and opportunities of women and men are not in an equal position or position, then women will be exploited continuously. This is what crystallizes in the socio-cultural system in society which is called patriarchal culture.

Gender disparity is a reality that must be faced by women in almost all parts of the world and can be found in all domains, both public and private, both domestic and reproductive and productive. In public organizations women can be said to be in a marginalized position. A system of patriarchal culture that instills an understanding that the public area (politics and the world of work) as a male area, is usually accused of being the main cause of why women's work in the public sphere is generally in the subordinate position of men.[4]

c. Principles of Gender Equality in the Qur'an

The position of man on the side of God is the same, regardless of gender, status, wealth and others. God glorifies man because of his piety. Equality or the principle of equality is one of the fundamental principles in religious teachings, especially Islam. Al-Quran equalizes men and women as servants of Allah.

d. Gender in theory

1) Theory of Nature

Adherents to the theory of nature or nature consider that the differences between men and women are caused by the biological differences of both. This without thinking knows that men and women are different

[2]Mansour Fakih, Ratna Megawangi, A. M. Saefuddin, Syu'bah Asa, Siti RuhainiDzuhayatin, M. Hidayat Nur Wahid, Masdar F. Mas'udi, BudhyMunawar Rachman. *Membincang Feminisme: Diskursus Gender Perspektif Islam*. Surabaya: Risalah Gusti, 1996, p. 46.

[3]Holzsner. "Pendekatan-Pendekatan Dasar dalam Analisis Gender." *In Lokakarya Gender Program Pasca Sarjana (PPS)*. Malang: Universitas Brawijaya, 2004, p. 17.

[4]Sri Yuliani. "Pengembangan Karier Perempuan Di Birokrasi Publik: Tinjauan Dari Perspektif Gender." *Jurnal Pusat Studi Pengembangan Gender UNS Wanodya* vol. 14, no. 16 (2004).

creatures. This difference can be clearly known in the accessories of each reproductive organ which is determined by the sex determinant organ factor commonly called gonad; men have testicles to produce sperm (testes), and women have ovaries to produce ovaries. In addition, men have penises and Adam's apple while women also have wombs, breasts, and milk.

2) Nurture Theory or Culture

Adherents of nurture or cultural theories refute the nature theory which states that the segregation of positions and roles of men and women is nature's nature. This nurture theory concludes that differences and practices of differences between men and women are very dependent on the socio-cultural construction that is formed through socialization. As Sanderson said that biological factors do not cause male superiority to women. Sorting at the same time leading to men is due to the cultural elaboration of each biological.[5]

3) Theory of Psychoanalysis or Identification

The pioneer of this theory was Sigmund Freud (1856-1938). This theory assumes that the behavior and personality of men and women from the beginning is determined by the development of sexuality. Freud said that a person's personality is composed of three structures, namely id, ego, and superego. The interaction of the three structures according to Freud determines one's behavior.

Id is the innate physical characteristics of a person from birth, including sexual appetites and instincts that tend to be always aggressive. Id like an energy source giving strength to the next two structures. Id works outside the rational system and always provides a drive to seek biological pleasure and satisfaction. Whereas the ego works in a rational sphere and seeks to tame the aggressive desires of the id. Ego helps a person to get solutions to individual subjective problems and nurture to survive in the world of reality. The last is the superego which functions as a moral aspect in personality, trying to realize the perfection of life, more than just seeking pleasure and satisfaction. The Superego also always reminds the ego to always carry out its functions to control the id.[6]

4) Theory of Structural Functionalism

This theory is based on the assumption that a society consists of various kinds of parts that influence each other. Although this theory does not directly address the problem of segregating roles between men and women, this theory seeks out the fundamental elements that influence within a society, identifies the function of each element, and explains the function of these elements in society. The initiators of this theory are Hilary M. Lip, Linda L. Lindsey and R. Dahrendorf.

5) Conflict Theory

This theory is based on the assumption that the arrangement in a society there are several classes that fight over influence and power. Whoever owns and controls the sources of production and distribution has the opportunity to play a leading role in it. This is in line with Marx's theory because Marx has a strong influence in the theory of conflict, especially gender issues.

6) Socio-Biological Theory

This theory is a combination of two theories. Nature theory and nurture theory. According to this theory, nature and nurture collaborate simultaneously in shaping human behavior. The intensity of male excellence is not only determined by biological factors but the cultural elaboration of human biograms. Because of the involvement of biological and social factors in explaining gender relations, this theory is called "bio-social." This theory was developed by Pierre van den Berghe, Lionel Tiger and Robin Fox.[7]

2. Development Law Theory

The ongoing development of the Indonesian nation aims to achieve the aspirations of the Indonesian people as stated in the preamble of the 1945 Constitution, namely to protect the entire Indonesian nation and the entire Indonesian bloodshed and to realize public welfare, educate the nation's life and participate in creating world peace based on lasting peace and social justice. Therefore, development is carried out in all the joints of the life of the nation and state in a sustainable manner. One aspect that is the target of development is the aspect of law itself. The construction of the law is needed to continue the struggle of an independent nation after being separated from the shackles of colonialism in the West, and is an existence as a sovereign state which certainly requires the presence of national law that reflects the values of culture and national culture. Legal development basically includes efforts to make updates on the nature and content of applicable legal provisions and efforts directed at the formation of new laws needed in community development.[8]

[5]Achmad Muthali'in. *Bias Gender dalam Pendidikan*. Surakarta: Muhammadiyah University Press, 2010, p. 24.

[6]Nasaruddin Umar. *Fikih Wanita untuk Semua*. Jakarta: PT. Serambi Ilmu Semesta, 2010, p. 46.

[7]*Ibid*., p. 68.

[8]Satjipto Rahardjo in Abd. G. Hakim Nusantara, and NasroenYasabari. *Beberapa Pemikiran Pembangunan Hukum di Indonesia*. Bandung: PT. Alumni, 1980, p. 1.

One form of legal development is the birth of the theory of development law pioneered by Mochtar Kusumaatmadja in 1973.[9]Initially, the theory of development law was actually not conceived to be a theory, but only as a concept of fostering national law, but because of the need for the birth of this theory this theory can be accepted quickly as part of a new, more dynamic legal theory, so that in its development the concept of legal development is finally given the name of the theory of development law, better known as the School of UNPAD. The background of the birth of the idea of the concept of development law stems from the concern of Mochtar Kusumaatmadja who saw a melaise and lack of trust in the function of law in society. The lethargy seemed to be paradoxical, when faced with the many screams of the people who echoed The rule of law with the hope of the return of the queen of justice to her throne to bring about the community of *Tata tentramkerta raharja*.[10]

The obstacles faced by the theory of development law are as follows:[11]

a. Its cost determines the purpose of legal development (renewal);
b. At least empirical data can be used to conduct a descriptive and predictive analysis;
c. The cost is an objective measure to measure the success / failure of legal reform efforts.

3. Justice Theory

The concept of justice is inseparable from the development of philosophical thought and legal theory. This concept is also not a monopoly on the minds of just one expert. Many experts from various disciplines provide answers to the definition of justice. Thomas Aquinas, Aristotle, John Rawls, R. Dowkrin, R. Nozick and Posner some names that provide answers to the concept of justice. However, the first to give a definition of justice was Upianus, a Roman jurist, "*tribuereiussuumcuique*" which means giving based on their respective rights.[12]

Antony J.W. Taylor writes, justice has four main components, namely distribution, power, equality, and rights.[13]

4. Legal System Theory

Lawrence M. Friedman stated that "The legal system" would be nothing more than all these put together systems.[14] Lawrence M. Friedman also stated that "A legal system in actual operation is a complex organism in structure, substance, and culture interest."[15]Thus it can be seen that in the legal system there are sub-systems - the legal sub-system as one interacting entity.

B. Legislation in the Law State of the Republic of Indonesia

Indonesia's commitment as a legal state is stated in the 1945 Constitution of the Republic of Indonesia NRI Article 1 paragraph (3). The arrangement in Article 1 paragraph (3) of the 1945 Constitution is the result of the third amendment to the 1945 Constitution, wherein in the 1945 Constitution the original text paragraph (3) in the article is not included. In the beginning, the notion that Indonesia was a legal state or rechstaat was stated in the explanation of the original 1945 Constitution, which meant rechstaat as a state based on law. The choice of the type of rule of law for Indonesia by the founding fathers of Indonesia is not without a clear background. The experience of being a colonized country is a strong reason for choosing the type of rule of law. This is because the type of State of Law was born from the rejection of absolute power and was carried out arbitrarily.

The principle of the rule of law adopted in Indonesia is the State of Pancasila Law, which is a type of modern law state, wherein the function of the Laws and Regulations is not only to give shape to the values and norms that live in society, and not only just a function of the state in the field of regulation, but the Laws and Regulations are one of the powerful methods and instruments available to regulate and direct people's lives towards the expected ideals.[16] In a modern legal state, legislation is expected to be able to "walk ahead" to lead and guide the development and change of society.[17] In accordance with what Koopmans revealed, that these

[9]In RomliAtmasasmita. *Teori Hukum Integratif*. Yogyakarta: Genta Publishing, 2012, pp. 59 – 60. The concept of law as a development tool began to be put forward by Prof. Mochtar Kusumaatmadja through writings in a seminar on development law in 1973, the concept of development law was included as legal material for Pelita 1 (1970 - 1975), then poured into GBHN in 1978.

[10]Mochtar Kusumaatmadja. *Konsep-Konsep Hukum dalam Pembangunan*. Bandung: PT. Alumni, 2002, p. 1.

[11]RomliAtmasasmita. *Op.cit*., p. 77.

[12]Muhammad Syarif. "Prinsip Keadilan dalam Penyelesaian Perselisihan Hubungan Industrial di Indonesia." *Disertasi*, Universitas Airlangga, 2002, p. 10.

[13]Anthony J. W. Taylor, ed. *Justice as a Basic Human Need*. New York: Nova Science Publishers Inc., 2006, p. 27.

[14]Lawrence M. Friedman. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, 1975, p. 10.

[15]*Ibid*., p. 16.

[16]Tim Pengajar, ed. *Teori Perundang-Undangan*. Depok: Fakultas Hukum Universitas Indonesia, 2000, pp. 36 – 37.

[17]*Ibid*., p. 37.

conditions made the formation of legislation no longer carried out by codification but rather a modification.[18] Legislation that is made by means of modification focuses more on changes in community life (social modification), because it no longer collects values or norms that have long been settled in society.

One of the legal principles of many other principles states that if this truth, gender equality and justice in the UUP, is accepted by another subject, then it becomes an intersubjective truth. The broader the subject that has the same thoughts, the truth of the principle becomes more widespread and can be categorized as objective truth, namely the common thinking of legal subjects in general.[19]

C. Principles of Equality in Human Rights

Human Rights are rights that exist and are inherent in self or human dignity, because he is human. Rights exist in humans, and cannot be separated from them. The right is owned by humans, because he is a creature whose name is human. That right is not obtained or conferred upon it from a state or government authority. It is owned by humans because he is humanly dignified. Precisely because as humans, humans have basic rights, fundamental rights, which cannot be separated or divorced from themselves. If the rights are separated from the man, then his human values or dignity will degenerate, be humbled, insulted and undermined, which in the end he is not valued as a human anymore.

The Universal Declaration of Human Rights (UDHR) states the reasons for discrimination include: race, color, sex, language, religion, political opinion or other opinion, national or nationality, ownership of an object (property), birth or other status. The whole is an unlimited reason, and more and more instruments are expanding the reasons for discrimination, including sexual orientation, age, deliberately ignoring rights and freedoms. On the contrary, the State is assumed to have a positive obligation to protect actively and ensure that rights and freedoms are fulfilled.

Indonesia in this case regulates it in various regulations as follows:

1. Republic of Indonesia Law Number 39 of 1999 concerning Human Rights.
2. Republic of Indonesia Law Number 2 of 2008 concerning Political Parties.
3. Presidential Instruction Number 9 of 2000 concerning Gender Mainstreaming.
4. Instruction of the Minister of Home Affairs Number 050/1232 / SJ concerning Gender Mainstreaming within the Ministry of Home Affairs.
5. Minister of Home Affairs Decree No. 232/2003 concerning General Guidelines for Gender Mainstreaming at Provincial and District / City Levels.

D. Marriage Principles

1. Definition of Marriage

The Civil Code does not provide understanding about marriage. Marriage in civil law is a civil marriage. The point is that marriage is only an outward bond between men and women. Elements of religion are not considered here. The purpose of marriage is not to obtain offspring because it is possible for marriage in extremism.

On the contrary, Article 1 of the Marriage Law states that marriage is an inner and outer bond between men and women with the aim of forming a happy and eternal family based on the One Godhead. Marriage according to Law Number 1 of 1974 is not only an outward bond, but also an inner bond based on the belief of a prospective husband and wife. According to Article 2 of the Marriage Law, marriage is legal if it is carried out according to the laws of each religion and its beliefs.

2. Marriage Principles

a. Marriage principles according to the Civil Code:

1) Monogamous principle. This principle is absolute / absolute, cannot be violated.
2) Marriage is a civil marriage so it must be done in front of civil registry employees.
3) Marriage is an agreement between a man and a woman in the field of family law.
4) In order for marriage to be legal then it must meet the conditions specified by the Act.
5) Marriage has consequences for the rights and obligations of husband and wife.
6) Marriage causes blood connection.
7) Marriage has a result in the field of wealth of husband and wife.

b. Marriage principles according to the Marriage Law:

1) Agreement Principle (Chapter II Article 6 Paragraph (1) of the Marriage Law), that is, there must be an agreement between the prospective husband and wife.

[18] *Ibid*.

[19] A. MuktiArto. *Penemuan Hukum Islam Demi Mewujudkan Keadilan*. Yogyakarta: Pustaka Pelajar, 2017, p. 5.

2) Principles of monogamy (Article 3 Paragraph (1) of the Marriage Law). In principle, a man may only have one wife and a woman may only have one husband, but there are exceptions (Article 3 Paragraph (2) of the Marriage Law), with the conditions stipulated in Articles 4-5.
3) Marriage is not merely an outward but also inner bond.
4) So that legal marriage must meet the requirements specified by the Act (Article 2 of the Marriage Law).
5) Marriage has consequences for the personal husband and wife.
6) Marriage has an effect on the child / offspring of the marriage.
7) Marriage has consequences for the property of the husband and wife.

E. Applied Law in the Field of Marriage

In 2003, the government submitted a bill concerning the Law of Applied Marriage in the Field of Religion to the DPR. The manuscript is the result of the formulation of a meeting of the Small Team of BPPHI Members on 18-20 August 2003 and inputs from the results of the socialization in several High Religion Courts (PTA). It can be assumed that every new law is born, there are a number of new rules that accommodate legal values that live and develop in a society that has the character of improvement. Therefore, the provisions of the new marriage law contained in the Draft Law on the Law of Religion in the Marriage Sector, need to be known and examined closely.

1. Fiance

In the Marriage Law there are no provisions regarding specialization (application). However, provisions regarding specialization are contained in Book I of KHI concerning Marriage Law and the Applied Law Bill on Religious Courts in the field of Marriage, both in KHI and in the Law on Applied Law of the Religious Courts in the Marriage field, there are four provisions regarding specialization. First, it can be done in two ways: (1) directly by the person concerned, (2) through an intermediary (representative) who can be trusted.[20] Second, women who are illegitimate are (1) women who are accused of their husbands who are still in the period of iddahraj'i, and (2) women who are under someone else's proposal.[21]Third, the proposal can be broken because of the statement of termination of the proposal or secretly, the men who have proposed marriage have shunned and abandoned the woman who has been favored.[22]Fourth, specialization does not have legal consequences so that each party is free to terminate the proposal in a manner that is in accordance with the guidelines of religion and local customs.[23]Even so, in the Applied Law Bill there was an improvement in provisions regarding fiance, namely the stipulation concerning leaving women who were silently disgraced by men who asked for their hand.

2. Childcare

Child care in marriage is regulated by UUP Article 45-49, KHI, and the Draft Law on the Law of Religion in Marriage. In KHI and the Law on Applied Law on Religious Courts in the field of Marriage, it is stipulated: first, the maintenance of children who are not yet mature or not yet 12 years old "in the event of divorce" is the right of their mother, second, if they are adults, the child can choose between father or mother as the holder of the right to maintain it, and thirdly, the cost of maintaining the child is borne by his father.[24]

3. Obligatory Obligations

Provisions for the age of children under guardianship change. In Law No. 1 of 1974 concerning Marriage (Marriage Law) Article 50 paragraph 1 it is stipulated that children who are not 18 years old or who have never had a marriage are under the authority of the guardian "if they are not under the authority of parents." Whereas in KHI Article 107 Paragraph 1 it is stipulated that guardianship only applies to children who have not reached the age of 18 years or have never been married. This change was then returned to its origin in the Law on the Law of Applied Religion in the Marriage Sector Article 99 Paragraph 1, namely guardianship only applies to children who have not reached the age of 18 or have never been married.

[20]Article 11 in the Compilation of Islamic Law (KHI), and Article 10 in the Draft Bill of Applied Law of the Religious Courts in the Field of Marriage.

[21]Article 12 Paragraphs 1 – 3 in the KHI, and Article 11 Paragraph 2 in the Draft Bill of Applied Law of the Religious Courts in the Field of Marriage.

[22]Article 12 Paragraph 4 in the KHI, and Article 11 Paragraph 3 in the Draft Bill of Applied Law of the Religious Courts in the Field of Marriage.

[23]Article 13 in the KHI, and Article 12 in the Draft Bill of Applied Law of the Religious Courts in the Field of Marriage.

[24]Article 105 in the KHI, and Article 96 in the Draft Bill of Applied Law of the Religious Courts in the Field of Marriage.

As with the age of a child under guardianship, the guardian's obligation changes. In the Marriage Law Article 50 it is stipulated that the obligations of the guardian are threefold: first, taking care of the child under its management and property as well as possible by respecting the religion and trust of the child concerned (Paragraph 3), second, listing the child's assets in under his supervision and record all changes in the assets of the child he is entitled to (Paragraph 4), and thirdly, be responsible for the property of the child under his guardianship as well as the losses incurred due to errors or due to negligence (Paragraph 5).

4. Reasons for Divorce

In the Marriage Law Article 38 it is stipulated that marriage can break up because: first, one party (husband or wife) dies, second, divorce is filed by the husband or wife and third, court decision. However, there is no detail in the UUP regarding the reasons for divorce. Provisions regarding these details are contained in KHI.

KHI in Article 116 stipulates that the reasons for divorce are:

a. One party commits adultery, becomes a drunkard, compactor, or gambler who is difficult to cure,
b. One party leaves the other party for two consecutive years without permission from the other party and without valid reason or because anything else is beyond his ability,
c. One party gets a sentence of five years or longer after the marriage takes place,
d. One party commits acts of cruelty or severe abuse which endanger the other party.
e. One of the parties experiences a disability or illness which consequently cannot carry out obligations as a husband or wife,
f. Continuous disputes occur between husband and wife so there is no hope of living in harmony again,
g. Husband violates taklik talak,
h. Transition of religion or apostasy which causes unrest in the household.

5. Criminal Marriage

In the Marriage Law and KHI there are no criminal provisions. The provisions of marital crimes are only found in the Draft Law on the Law of Religion in the Marriage Sector. In the bill it was stipulated that violations including non-criminal acts were: first, under-marriage (Article 141), second, to do marriage with the second, third and / or fourth wife without obtaining permission from the Religious Court first. Sanctions for perpetrators are a maximum fine of 3 million rupiah or a maximum of three months imprisonment (Article 142), thirdly, divorce is not before the Religious Court sentenced to a maximum fine of 3 million rupiah or a maximum of three months imprisonment (Article 143), fourth, the VAT that ignores its obligations is sentenced to imprisonment for a maximum of 1 year or a maximum fine of 12 million rupiah (Article 144), and fifth, someone who acts as a VAT when not entitled to a maximum fine of 6 million rupiah or confinement for a maximum of 6 months (Article 145).

The Law on the Applied Law of the Religious Courts in the field of Marriage has not yet been confirmed due to the material in which it saves many problems and does not reveal renewal efforts. The material is conservative in nature, does not reflect the principles of pluralism, discrimination, and does not accommodate women's voices and demands for gender equality. This conservatism is born because the paradigm used is a classic mindset that is full of nuances of patriarchy and exclusive and textualistic religious understanding. This is inseparable from the understanding of the Indonesian people about the nature of a marriage that will not be separated from the views of the teachings of religions about marriage itself.[25]One example is the implementation of a Workshop in order to improve this bill on September 28, 2003 which was attended and dominated by men and only involved a few women who in fact received the most direct consequences and effects of the application of the law. The failure of the bill to be promulgated gave the designer a new marriage law the opportunity for a better, more egalitarian direction.

IV.DISCUSSION

Indeed, gender equality and justice in marriage has a juridical-constitutional foundation, namely the IV Amendment of the 1945 Constitution which provides the highest legal basis for the recognition, protection and fulfillment of the human rights of every human being regardless of sex. In addition, Indonesian legislation regulates in more detail the Human Rights in Law No. 39 of 1999 which treats and gives equal rights to both men and women.

Law Number 7 of 1984 regulates the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the convention which is the first comprehensive international agreement on women's rights that requires legal obligation (leg obligation) for the government that signs it. to ratify it by

[25]Sri Wahyuni. *Nikah Beda Agama; Kenapa ke Luar Negeri?*. Tangerang Selatan: PT. Pustaka Alvabet, 2016, p. 47. This is due to the paradigm that something originating from religion cannot be debated, in line with the statement of Syamsuddin Pasamai that revelation cannot be revised. God's Word must be humbly accepted, in Syamsuddin Pasamai. *Sosiologi dan Sosiologi Hukum*. Makassar: PT. Umitoha Ukhuwah Grafika, 2011, p. 17.

incorporating it into local national law. This Convention eliminates various forms of discrimination against women, the article that is very relevant to this research is Article 16 of this Law, namely: "equal rights and responsibilities in all matters relating to marriage and family relations on the basis of equality between men and women."

In addition, it is contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 35 of 2014 concerning Child Protection. Even stated in several articles of the Marriage Law itself namely Law Number 1 Year 1974, which is the focus of this study, namely Article 31 paragraph 1 which states "The rights and position of the wife are balanced with the rights and position of the husband in domestic and social life. living together in society." Likewise with paragraph 2 of the article namely "Each party has the right to carry out legal acts."

Whereas in the Compilation of Islamic Law (KHI) contained in Article 79 number 2, namely: "The rights and position of the wife are balanced with the rights and position of the husband in the household life and social life together in society," and number 3 "Each party has the right to do legal actions." Gender equality is also clearly stated in Presidential Instruction Number 9 of 2000 concerning Gender Mainstreaming.

The reality is that there are still articles in the UUP that are gender biased. As the results of previous studies which found that Article 31 Paragraph (3) and Article 34 Paragraph (1) and (2) concerning the rights and obligations of husband and wife are gender biases and the finding of manifestations of gender injustice in the rights and obligations of husband and wife, this is found in CHAPTER VI of the Marriage Law. Based on that, the Researchers felt the need to explain the philosophical, juridical and sociological foundation of the Republic of Indonesia to further strengthen and explore the essence of gender equality in building equitable marriage law, and dismantle of the Marriage Law and find also analyzing the entire substance of the Marriage Law with a gender perspective based on legal feminist theory, development law theory, legal system theory and justice theory. So finding the essence of gender equality in building justice laws for marriage. Then, the next step is to describe, analyze and find the manifestation of gender injustice in the Marriage Law. Forms of manifestation of gender injustice are 5 (five) categories, namely Marginalization (economic marginalization / impoverishment), Subordination (the general assumption that women's position is not important), Stereotypes (negative labeling), Violence (Double) and Double Burden (double burden / excessive workload)) Finally, explain and analyze the contextual background of the formulation of the Marriage law that is gender biased or contains gender inequality and injustice. Thus it is hoped that the results will become a material consideration and reference in the formation of new marriage legislation, so that the realization of gender equality in the building of Justice Law is fair.

The ambivalent meaning of the role in the Marriage Law, explains that the State has affirmed patriarchal values in marital law which have resulted in other regulations in the public sector. In other words, women's rights in the public sector can only be articulated well if there is a fair relationship in the domestic sector. The state (and all the groups it represents) has used the family concept to fulfill its political economy interests. The definition of the role of men and women in the Marriage Law has become the basis for the formulation of policies, laws and other regulations and is reflected in existing social institutions and organizations.[26] Therefore, the revision and deconstruction of the Marriage Law is a must.

V.CONCLUSION

1. The philosophical foundation of the nature of equality and gender justice in the Marriage Law is Pancasila, the Preamble of the 1945 Constitution, the Universal Declaration of Human Rights (UDHR), and the Vienna Declaration and Program of Action (Vienna Declaration and Program of Action). The juridical foundation is Article 27 Paragraph (1) and (2) of the 1945 Constitution of the Republic of Indonesia, Article 28I, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, and International Law on Human Rights that have been accepted by Indonesia, legally binding) one of which included the Republic of Indonesia's Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on the Elimination of All Forms of Discrimination against Women. The sociological foundation is Although the General Declaration of Human Rights has been established, the Decree of the People's Consultative Assembly on Human Rights, guarantee of fulfillment of Human Rights in the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, and the ratification of the International Convention and Covenant on Human Rights, but the fact shows that the principle "women, as human beings, have equal rights (equal and fair) with men in every field of life" has not been achieved real as expected by our country's constitution. This is reflected in the reality of today, among others, the abandonment of gender-biased legislation, the high maternal

[26]NursyahbaniKatjasungkana. "Hak Perempuan Sebagai Hak Asasi Manusia." *In Perempuan dan Pemberdayaan*. Jakarta: Program Studi Kajian Wanita Program Pasca Sarjana (PPS) Universitas Indonesia bekerja sama dengan harian KOMPAS dan Yayasan Obor Indonesia, 1977, pp. 26 – 27.

mortality rate (AKI), the high crime of trafficking in women and children, the increasing acts of violence against women in the public and private spheres, increasing feminization in poverty, and so on, which is not conducive to the fulfillment of women's rights. Articles of UUP that contain gender bias, which are found in Article 3 Paragraph (2) to Article 4 concerning polygamy, Article 7 Paragraph (1) concerning marriage age, Article 11 concerning period of idah, Article 29 Paragraph (1) concerning marriage agreement, Article 31 Paragraph (3) and Article 34 Paragraph (1) and (2) concerning the rights and obligations of husband and wife, Article 41 Number (b) concerning the consequences of the termination of marriage, and Article 43 Paragraph (1) concerning the position of the child.

2. The manifestation of gender injustice in the UUP was found by Researchers in Article 3 Paragraph (2) to Article 4 concerning polygamy, Article 7 Paragraph (1) concerning marriage age, Article 11 concerning the period of idah, Article 29 Paragraph (1) concerning marriage agreements, Article 31 Paragraph (3) and Article 34 Paragraph (1) and (2) concerning the rights and obligations of husband and wife, Article 41 Number (b) concerning the consequences of the termination of marriage, and Article 43 Paragraph (1) concerning the position of the child. The manifestation of gender injustice in these provisions is clearly seen in 5 manifestation factors, namely marginalization, stereotype, subordination, violence and double burden. The central point of the problem lies in the Provision of Article 31 Paragraph (3) of the Marriage Law which places the wife solely as a housewife as a form of domestication of the role of the wife in the household. Domestication of wives naturally results in marginalization of wives from access to the public sector. Placement of husband as sole authority head of the household and wife only as a housewife, is a form of subordination manifested in the Marriage Law through provisions concerning the rights and obligations of husband and wife in marriage. The manifestations of other gender injustices in the form of stereotypes, violence and double burdens are inevitable implications of the provisions of the Marriage Law.

3. The contextual background of the birth of the Marriage Law gives an important influence on gender normative construction. The social conditions with unequal social relations, the patriarchal culture of the Indonesian agrarian society, and the masculine hegemonic masculine situation of the New Order government have had a strong influence that cannot be separated from the normative Marriage Law which is gender biased. The influence of the unequal social relations and patriarchal culture of the Indonesian people is strongly influenced by the provisions of the Marriage Law regarding polygamy, age of marriage, waiting period, marriage agreement, rights and obligations of husband and wife, due to the breakup of marriage and the position of the child. The dominant male role of patriarchal society which always places men as the center of hegemony of social relations and women only as subordinated to even second sex from the central role and male hegemony, manifests almost entirely in these provisions.

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