

EQUALITY OF RIGHTS AND OBLIGATIONS OF HUSBAND AND WIFE IN THE KINSHIP SYSTEM: A PERSPECTIVE OF INDONESIAN POSITIVE LAW

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Abstract

The purpose of this research is to look at how the rights and obligations of husband and wife are applied in the kinship system in Indonesia from the perspective of positive law. This research will also evaluate the extent to which positive law can ensure this equality and find obstacles that hinder it. The research in this article uses normative legal research methodology, it aims to find legal rules, principles, and theories to solve legal problems. The research approach of this article uses a statutory approach. The results show that in forming a fair and harmonious family, couples must have equal rights and obligations. Gender equality in the family sphere can be achieved with a strong commitment from the community, government, and law enforcement agencies. This will greatly benefit all Indonesian people. As a country that is rich in diversity and has various kinship systems such as patrilineal, matrilineal, and parental, the implementation of equal rights and obligations between married couples is what is aimed for in positive law. While each system has its own characteristics, the goal of Indonesian law is to ensure that both husbands and wives can lead equal and fair lives. This is part of a larger effort to create a society that respects and protects the rights of everyone regardless of gender, but it also shows how important it is for the understanding between adat and positive law to achieve the goal of equal rights and obligations between spouses by understanding and applying the principle in various contexts. The implications of this show that equal rights and obligations of husband and wife in the kinship system in Indonesia need an important role from the community, government, and law enforcers in harmony between adat and positive law.

Keywords: *Equality; Kinship; Rights and Obligations; Indonesian Positive Law.*

Abstrak

Tujuan dari penelitian ini adalah untuk melihat bagaimana hak dan kewajiban suami-istri diterapkan dalam sistem kekerabatan di Indonesia dari sudut pandang hukum positif. Penelitian ini juga akan mengevaluasi sejauh mana hukum positif dapat memastikan kesetaraan ini dan menemukan hambatan yang menghalanginya. Penelitian pada artikel ini menggunakan metodologi penelitian hukum normatif, ini bertujuan untuk menemukan aturan, prinsip, dan teori hukum untuk menyelesaikan masalah hukum. Pendekatan penelitian artikel ini menggunakan pendekatan undang-undang. Hasil penelitian menunjukkan bahwa dalam membentuk keluarga yang adil dan harmonis, pasangan harus memiliki hak dan kewajiban yang sama. Kesetaraan gender dalam lingkup keluarga dapat dicapai dengan komitmen yang kuat dari masyarakat, pemerintah, dan lembaga penegak hukum. Ini akan sangat menguntungkan seluruh masyarakat Indonesia. Sebagai negara yang kaya akan keragaman dan memiliki berbagai sistem kekerabatan seperti patrilineal, matrilineal, dan parental, penerapan kesetaraan hak dan kewajiban antara pasangan suami-istri merupakan hal yang dituju dalam hukum positif. Meskipun setiap sistem memiliki karakteristiknya sendiri, tujuan hukum Indonesia adalah memastikan bahwa baik suami maupun istri dapat menjalani kehidupan yang setara dan adil. Ini adalah bagian dari upaya yang lebih besar untuk menciptakan masyarakat yang menghargai dan melindungi hak-hak setiap orang tanpa membedakan jenis kelamin, selain itu ini juga menunjukkan betapa pentingnya kesepahaman antara adat dan hukum positif untuk mencapai tujuan kesetaraan hak dan kewajiban suami-istri dengan memahami dan

menerapkan prinsip tersebut dalam berbagai konteks. Implikasi dari hal tersebut menunjukkan bahwa kesetaraan hak dan kewajiban suami istri dalam sistem kekerabatan di Indonesia perlu peran penting dari masyarakat, pemerintah, dan penegak hukum dalam harmoni antara adat dan hukum positif.

Kata kunci: Kesetaraan; Kekerabatan; Hak dan Kewajiban; Hukum Positif Indonesia.

INTRODUCTION

To build a fair and harmonious family, it is very important that husbands and wives have equal rights and responsibilities within the family system.¹ Equality of rights and obligations of husband and wife in the family system: The roles of husband and wife in Indonesia are often shaped by strong cultural norms and traditions, which sometimes do not align with the gender equality principles regulated by law. Most of Indonesia's positive laws, such as Law Number 1 of 1974 on Marriage and Law Number 23 of 2004 on the Elimination of Domestic Violence, recognize the equality of husband and wife in various aspects of family life. However, in real life, these laws often face various challenges. Many married couples still adhere to traditional role division, where the husband is responsible for providing for the household and children. In the effort to build a fair and united family, care is very important.²

Inequality can cause various problems in household life. For example, the double burden often experienced by working wives, who still have to handle most of the household chores, can lead to stress and dissatisfaction.³ Additionally, traditional norms that support male dominance can contribute to the occurrence of domestic violence, where wives often become victims. Furthermore, in the legal context, although there are laws that guarantee equality, there are still inconsistencies in their implementation. Many cases where women do not have sufficient legal protection or do not have adequate access to the resources and information they need to claim their rights.⁴

Article 1 of Law Number 1 of 1974 on Marriage defines marriage as a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the belief in the One and Only God.⁵

¹ Ani Rahmawaty, "Harmoni Dalam Keluarga Perempuan Karir: Upaya Mewujudkan Kesetaraan Dan Keadilan Gender Dalam Keluarga," *PALASTREN* 8, no. 1 (2015): 1–34, <https://doi.org/10.28918/muwazah.v9i2.1126>.

² Dyah Purbasari Kusumaning Putri and Sri Lestari, "PEMBAGIAN PERAN DALAM RUMAH TANGGA PADA PASANGAN SUAMI ISTRI JAWA," *Jurnal Penelitian Humaniora* 16, no. 1 (2015): 72–85, <http://journals.ums.ac.id/index.php/humaniora/article/view/1523>.

³ Dinnul Alfian Akbar, "Konflik Peran Ganda Karyawan Wanita Dan Stres Kerja," *Jurnal Kajian Gender Dan Anak* 12, no. 1 (2017): 33–48.

⁴ Dede Kania, "Hak Asasi Perempuan Dalam Peraturan Perundang-Undangan Di Indonesia (The Rights of Women in Indonesian Laws and Regulations)," *Jurnal Konstitusi* 12, no. 4 (2015): 716–34.

⁵ Pemerintah Republik Indonesia, "UU No. 1 Tahun 1974 Tentang Perkawinan" (1974).

Furthermore, if the marriage between the two is conducted according to their respective laws and religions, the marriage can be considered valid in the eyes of the law and religion. This aims to guarantee the rights of each party in the household to achieve a Sakinah and maslahah family.⁶

Although marriage has various legal consequences, it is important for us as citizens to be aware that the state protects its citizens by participating in marriage. This means that there will be legal consequences related to the administrative recording of marriage. Marriage registration provides several legal advantages, such as clarifying the status of children's birth and protecting you from potential legal claims from other parties involved in the marriage, including the rights and obligations of husband and wife.⁷ Both unmarried men and women or singles have the same rights and obligations for themselves. The rights and obligations related to their survival and the property they own, the individual does not have the same rights and obligations as others.⁸

Marriage between a man and a woman, the concept of becoming a single unit does not mean that each person's rights and obligations will merge into one. On the contrary, their rights and obligations will remain the same even though they unite in a legally and religiously recognized household. They should not feel superior to one another; they must respect and understand each other. This is very important to avoid disharmony in the household that can lead to further conflict and divorce.

Abd. Basit Misbachul Fitri, a previous researcher on the rights and obligations of husband and wife, only provided a general explanation of this issue with a focus on the comparison between Islamic law and marriage law in Indonesia.⁹ Not much different from the previously mentioned research, Ardika Lontoh conducted a study that only discusses the rights and obligations of husband and wife according to positive law in Indonesia and concludes that the rights and obligations between husband and wife can arise due to their

⁶ Wazni Azwar et al., "Latar Belakang Lahirnya Undang-Undang Perkawinan Indonesia Nomor 1 Tahun 1974 (UUP)," *Jurnal Hukum Islam UIN Suska Riau* 21, no. 1 (2021): 133–51, <https://doi.org/10.29313/bcsifl.vi.7967>.

⁷ Sifa Mulya Nurani, "Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)," *Al-Syakhsyiyah: Journal of Law & Family Studies* 3, no. 1 (2021): 98–116, <https://doi.org/10.21154/syakhsyiyah.v3i1.2719>.

⁸ Dwi Anindya Harimurti, "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif Dan Hukum Islam," *Jurnal Gagasan Hukum* 3, no. 02 (2021): 149–71, <https://doi.org/10.31849/jgh.v3i02.8908>.

⁹ Abd. Basit Misbachul Fitri, "HAK DAN KEWAJIBAN SUAMI ISTERI DALAM ISLAM DAN HUKUM PERKAWINAN DI INDONESIA," *Usratuna* 3, no. 1 (2019): 49–67.

marriage.¹⁰ The article by Happy Pian discusses the rights and obligations of husbands and wives in Islam from the perspective of gender justice and concludes that the rights and obligations of husbands and wives in Indonesian positive law still contain gender bias.¹¹ In this research, the author examines more comprehensively the kinship system in Indonesia and how this kinship is still applied in several tribes and regions. So, if previous research discussed the concept of rights and obligations in Indonesian positive law in general, this paper adds to the body of knowledge by focusing more on the reality of the kinship system, which has implications and influences on the implementation of husband and wife rights and obligations in Indonesia.

The context of positive law regarding the rights and obligations of husband and wife within the scope of positive law can be an interesting topic for us to discuss together. This is because the ideas proposed in the Law regarding the rights and obligations of husband and wife are contextually comparable to the ideas found in Islamic law. However, the justice that serves as the legal foundation ensures that both parties have a sense of responsibility to complement each other in fulfilling their obligations. Thus, some existing differences do not mean that one party's position in the family is diminished or reduced. Both parties, namely the husband and wife, throughout the entire duration from marriage to divorce. The rights and obligations of the couple will arise as a result of this law.¹²

METHOD

This research is classified as normative legal research because the research method is used to find basic rules, main principles, and legal doctrines to solve legal problems. The author uses a legal approach to examine the rights and obligations of spouses in Indonesian positive law, particularly those related to the kinship system.¹³ The sources of this research consist of primary, secondary, and tertiary legal materials because the sources were obtained through library research. Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law are used as the main sources for this research. Secondary legal materials as support use books and journals that discuss this issue comprehensively. Tertiary legal materials are those

¹⁰ Ardika Lontoh, "Analisis Yuridis Hak Dan Kewajiban Suami Istri Dalam Perkawinan Menurut Hukum Positif Indonesia," *Lex Privatum* III, no. 2 (2015): 121–27, <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/issue/view/975>.

¹¹ Happy Pian, "HAK DAN KEWAJIBAN SUAMI ISTRI DALAM ISLAM DARI PERSPEKTIF KEADILAN GENDER," n.d.

¹² Mega Meirina, "Hukum Perkawinan Dalam Perspektif Hukum Positif Dan Hukum Islam," *Ahkam* 2, no. 1 (2023): 22–49, <https://doi.org/10.58578/ahkam.v2i1.785>.

¹³ P D M Marzuki, *Penelitian Hukum: Edisi Revisi* (Prenada Media, 2017), <https://books.google.co.id/books?id=CKZADwAAQBAJ>.

that explain primary and secondary legal materials, using information accessible through the internet and news sites.

The data analysis techniques used in this research are derived from the literature, which were analyzed using the Miles and Huberman qualitative data analysis model, conducted according to the Library Research procedures: Data Reduction: Summarizing and selecting key information, focusing on important aspects, identifying themes and patterns, and eliminating irrelevant information. Data Display: Presenting data in the form of tables, graphs, diagrams, or pictograms in an orderly manner to make it easier to understand. Drawing Conclusions/Verification: Initial conclusions are made temporarily and can be changed if strong evidence is found from subsequent data. Conclusions will be more credible if the evidence is found to be valid and consistent. It is expected that this research will provide a deeper understanding by using primary, secondary, and tertiary data sources as well as systematic data analysis techniques.

RESULTS AND DISCUSSION

A. Rights and Duties of Husband and Wife

The rights and obligations of husband and wife are the rights and obligations accepted by both parties as a result of marriage. Articles 30 to 34 of Law Number 1 of 1974 on Marriage regulate these rights and responsibilities. The husband-wife relationship is considered a reciprocal relationship. The man who functions as a husband has certain rights and responsibilities, as does the woman who functions as a wife.¹⁴

Husband and wife have the obligation to be faithful to each other, help each other, and support one another to ensure their household runs smoothly until death separates them. People who are truly ready for marriage must understand the importance of creating such an atmosphere. They must understand the rights and obligations they will bear once they are officially recognized as a couple. The husband has rights and responsibilities that are equivalent to those of the wife. Articles 30 to 34 of Law Number 1 of 1974 on Marriage regulate the rights and obligations of husband and wife as follows: Article 30 stipulates that husband and wife have the noble responsibility to maintain the household, which is the main foundation of the social structure. Article 31 states that in household life and in social interactions, the rights and status of the wife are equal to those of the husband. Each

¹⁴ Laurensius Mamahit, "Hak Dan Kewajiban Suami Istri Akibat Perkawinan Campuran Ditinjau Dari Hukum Positif Indonesia," *Lex Privatum* 1, no. 1 (2013).

party has the right to perform legal acts; the husband acts as the head of the family and the wife acts as the homemaker.

Article 32: Husband and wife are obliged to love, respect, be faithful to, and provide both material and spiritual support to each other. Article 33 states that husband and wife are obliged to have a permanent residence. Article 34 contains: The husband must take care of the wife and fulfill all household needs as best as possible. The wife has the primary responsibility to manage household duties as best as possible. These articles explain the rights and obligations of husbands and wives in marriage and emphasize the importance of mutual support and respect, as well as proper household management and protection for family harmony. Husband or wife can file a lawsuit if they neglect their duties.

Paragraphs 1 and 2 of Article 31 of the Marriage Law emphasize the importance of creating a balance between the rights and positions of husbands and wives in societal life. This is in accordance with the standards present in modern society. This principle also applies to the right to joint property; with the mutual consent of both parties, husband and wife have the right to do as they please with their joint property. This principle emphasizes that in family life and social interactions in society, the rights and status of the wife should be equal to those of the husband. In such situations, everyone has the right to take legal action, and it is important to ensure that there is balance and justice between the husband and wife during their life together.¹⁵

The husband is responsible for providing maintenance to the wife and covering the family's living expenses, according to Article 34 Paragraph 1. However, there is an exception where the husband's responsibility to provide household necessities must be in accordance with their ability. This "ability" refers to the husband's financial situation. In other words, the amount of maintenance provided by the husband must be in accordance with his wealth. According to the principle of proportionality, the provision of maintenance to a partner with sufficient wealth must be commensurate with that wealth.¹⁶

The Compilation of Islamic Law outlines the rights and obligations of spouses in eight articles. The Compilation of Islamic Law has become the official substantive law in Indonesia, applicable in Religious Courts since the Presidential Instruction of the Republic of Indonesia No.1 of 1991. This serves as a guideline for judges in Religious Courts in

¹⁵ Mamahit.

¹⁶ Mamahit.

making decisions and resolving cases within the national legal system related to marriage, waqf, and inheritance.¹⁷

Although the Indonesian national legal system recognizes the existence of written and unwritten laws, the Compilation of Islamic Law (KHI) plays an important role in the legal life of Indonesian society, especially for those who are Muslim. KHI is present to fill the legal void for Indonesian citizens who practice Islamic teachings. Through several articles and verses, the Compilation of Islamic Law (KHI) explains the rights and obligations of husbands and wives. These articles and verses help uphold justice and order in households and society as a whole.¹⁸ The husband is considered the head of the household in the Compilation of Islamic Law Regulations (KHI), while the wife is considered the homemaker. They have mostly the same rights and obligations, but the husband has the advantage in leading and managing the family. As the head of the household, the husband is responsible for the safety, well-being of his family, and the overall household. So, a wife must obey and love her husband wholeheartedly. Respecting the husband's leadership in the household is the wife's duty. In household life, the wife's obedience to the husband must be carried out well and with good intentions.

B. The Fall of Husband and Wife Rights and Obligations

Divorce is the termination of the husband-wife relationship status. With divorce, their rights and obligations as husband and wife become void.¹⁹ The rights and obligations between married couples change as a result of divorce. During the iddah period, a divorced wife has rights and obligations equivalent to her former husband. One of the wife's rights is to receive mut'ah, which can be in the form of money or other items given by her former husband. Additionally, the wife is also entitled to clothing, housing, and protection from any violence that her former husband might inflict. The purpose of mut'ah is to ensure that the wife has what she needs during the transition period after the divorce.

With the emergence of rights and obligations related to the mut'ah obligation that must be fulfilled by the husband towards their wife, the rights and obligations related to the husband-wife relationship have been closely intertwined. For example, after divorce,

¹⁷ Eko Hidayat, "Kompilasi Hukum Islam Dalam Tata Hukum Nasional," *Asas: Jurnal Hukum Dan Ekonomi Islam* 9, no. 2 (2017): 377-116.

¹⁸ Perpustakaan Nasional RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*, Mahkamah Agung RI, 2011.

¹⁹ Rifki Rufaida, "Akibat Hukum Adanya Perceraian," *Iqtisodina: Jurnal Ekonomi Syariah & Hukum Islam* 4, no. 2 (2021): 74-91, <http://ejournal.iainata.ac.id/index.php/iqtisodina/article/view/177/159>.

the husband is responsible for providing the wife with the right to housing. Conversely, the husband has the right to respect the wife, including the right not to leave the house without the wife's permission. If the wife violates this rule, the wife's right to obedience from the husband may be lost. The husband is not obligated to provide mut'ah if the wife commits a legal violation or crime. One of the proofs that the purpose of Islamic divorce law is to enhance human dignity regardless of their social status or gender is the principle of balance between the rights and obligations of husband and wife.²⁰

Indonesian positive law recognizes the principle of equality of rights and obligations between husband and wife, especially in the context of household life. One concrete example of this equality is the obligation to provide for the family, where both husband and wife have the same responsibility to meet their family's basic needs. This equality is also evident in the obligation to bear family debts, where both husband and wife are equally responsible for the family's debts. Thus, they can settle debts together by sharing the burden of the debt.²¹

The relationship between husband and wife in the household is regulated by positive law and Islamic law to balance the rights and obligations of both. As the head of the household, the husband must manage the joint property or gono gini fairly without seeking personal gain. If a dispute arises regarding joint property, the case must be resolved in the Religious Court. In principle, there is no contradiction between positive law and Islamic law regarding the consideration of joint property or gono gini as property acquired during marriage.²²

The Compilation of Islamic Law (KHI) articles 77-84 regulates the rights and obligations of husband and wife in a balanced manner, in line with the Marriage Law (UUP) and the Civil Code. The explanations about the rights and obligations of husband and wife in these three regulations show that the provisions of the UUP provide a balanced position for husband and wife in marriage, which means they apply, fulfill, and reflect one of the rights and obligations.²³

²⁰ Rufaida.

²¹ Agustin Hanapi and M Furqan, "Konsep Penyelesaian Utang Bersama Suami Istri Ditinjau Menurut Hukum Islam Dan Hukum Positif," *Ahkamul Ussrah: Jurnal HUKUM Keluarga Dan Peradilan Islam* 1, no. 1 (2021): 106, <https://www.journal.ar-raniry.ac.id/index.php/ahkamulusrah/article/view/1422/705>.

²² Mokodompit Zulfiqar, "Penerapan Hukum Positif Terhadap Harta Gono-Gini Dihubungkan Dengan Hukum Islam," *Lex Administratum* 3, no. 6 (2015): 166-74, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/9169>.

²³ Nurani, "Relasi Hak Dan Kewajiban Suami Istri Dalam Perspektif Hukum Islam (Studi Analitis Relevansi Hak Dan Kewajiban Suami Istri Berdasarkan Tafsir Ahkam Dan Hadits Ahkam)."

According to Indonesian law, alimony can encompass everything related to reasonable living needs and in accordance with actual social conditions, as well as changes in situations and conditions that occur. Therefore, alimony can include everything related to reasonable living needs and in accordance with the social status of the husband and wife. Alimony can change according to social situations, the development of human living needs, and the realities of the husband and wife in marriage. This means that alimony can cover household expenses, maintenance costs, and medical expenses for the wife, and can be adjusted to the needs and actual conditions of both partners.²⁴

C. Kinship System

An important component of the social structure of society is the family system, which shows how individuals within a family are interconnected and interact with each other, as well as how these families interact with society as a whole. Family relationships are when two people are blood relatives. Someone is considered a relative because of their blood relationship with us.²⁵ Family as a system shows that changes in one component of the system can affect the entire system, providing important insights into social dynamics and human behavior. Three main types of kinship systems exist within the structure of Indonesian indigenous societies. These are parental, matrilineal, and patrilineal kinship systems, which regulate a person's position as a family member, the relationship between children and parents, and the child's position in relation to relatives based on lineage or blood.

This kinship system regulates how blood relationships are classified. The term "kinship" indicates the identity of relatives in relation to a specific individual. (ego). With this system, social relationships involving status, rights, and obligations between the individual and their family members can be conducted easily and orderly in accordance with the applicable rules.²⁶

D. Patrilineal Kinship System

The patrilineal kinship system, where lineage is traced through the father's line, gives men a greater role in inheritance than women. After marriage, a wife is considered

²⁴ Hidayat and Riyan Erwin, "Pandangan Imam Mazhab Tentang Hak Istri Pada Masa," *Jurnal Al Nidzom* 3, no. 2 (2019): 1–12.

²⁵ A Octamaya Tenri Awaru, *Sosiologi Keluarga*, ed. Rintho R Rerung, *MEDIA SAINS INDONESIA* (Bandung: CV. MEDIA SAINS INDONESIA, 2021), <https://doi.org/10.32388/zxlcjz>.

²⁶ Ketut Linda Dewi, Hermi Yanzi, and Yunisca Nurmalisa, "Pengaruh Sistem Patrilineal Terhadap Kesetaraan Gender Dalam Masyarakat Bali Di Desa Trimulyo," *Jurnal Kultur Demokrasi* 3, no. 1 (2015).

to leave her natal family and join her husband's family.²⁷ In summary, a married woman is considered part of her husband's family, regardless of her original family, which includes her parents and siblings. If they have a daughter, she is still considered part of her father's family, but after marriage, she loses her inheritance rights from her original family. Only male children can inherit because they remain in their original family, and the male side is responsible if there are any issues.²⁸

Only boys in patrilineal societies are entitled to inheritance, while girls are not because they are considered to leave their original families after marriage. Boys have the right to inheritance because they are expected to pay for their prospective wives and are fully responsible for their families. In the era of modernization, the differences in rights between men and women still exist within the context of customary law recognized by society. For example, in Batak society, if a man with the surname Sirait marries a woman with the surname Silalahi, their children will be given the surname Sirait, following the father's lineage. In Batak society, men are the heirs of the lineage.²⁹

The patrilineal kinship system consists of two categories. First, the pure patrilineal system emphasizes the male lineage. That means, family identity and inheritance are passed down from father to son; however, if there are no sons, the lineage continues, and daughters also have the right to inherit family property.³⁰ Second, Alternate Patrilineal. This system gives inheritance to boys, but girls from families without boys can still receive it. Boys can be adopted, severing their ties with their original family.³¹

The patrilineal system both depend on the male lineage. In this marriage system, a wife becomes a member of her husband's family and her relationship with her original family ends. This marriage usually results in the husband making an "honest" payment to the wife's family, indicating that the wife's relationship with her original family and community has ended. The patrilineal kinship system is practiced by several Indonesian tribes such as the Batak, Balinese, Ambonese, Asmat, and Dani. This system emphasizes

²⁷ Subekti Subekti and Suyono Yoyok Ucut, "Pewarisan Berdasarkan Hukum Waris Adat Terkait Sistem Kekerabatan Di Indonesia," *Jurnal Aktual Justice* 5, no. 1 (2020): 56–70, <https://doi.org/10.47329/aktualjustice.v5i1.520>.

²⁸ Dewi, Yanzi, and Nurmalisa, "Pengaruh Sistem Patrilineal Terhadap Kesetaraan Gender Dalam Masyarakat Bali Di Desa Trimulyo."

²⁹ Abdiilah Sulfany and Fitra Abduna Jalesvevano, "Analisis Hukum Terkait Sistem Waris Patrilineal Adat Batak Di Indonesia," *Indonesian Journal of Social Sciences and Humanities* 3, no. 2 (2023): 12–19.

³⁰ Sonny D Judiasih et al., "Pergeseran Norma Hukum Waris Pada Masyarakat Adat Patrilineal," *RechtIdee* 16, no. 1 (2021): 65–87.

³¹ Sandra Natalia et al., "Sistem Kekerabatan Dalam Hukum Adat Di Indonesia," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 10, no. 6 (2023): 3148–56.

the importance of marriage and family relationships in maintaining family integrity and lineage.

The groom's family gives "honesty" to the bride's family in the form of goods or money. The purpose is to determine how the bride will relate to her own family. After getting married, the wife will live in her husband's house with the children and descendants. This shows that the wife will transition from being a member of her own clan to becoming a member of her husband's clan.

E. Matrilineal Kinship System

Women have a dominant role in inheritance within the matrilineal kinship system. The term "matrilineal" comes from two Latin words: "mater," which means "mother," and "linea," which means line.³² Men in this system do not inherit property to their children. Considered part of the mother's family, the children continue the maternal line. This system depicts the lineage from mother to female ancestors. They believe that everything originated from a first mother. The marriage system in matrilineal societies is called "kawin sumendo" or "kawin menjemput," where the woman invites the man to join the wife's family. But the husband is not included in his wife's family; he remains living with his own mother's family.³³

Children are placed into the clan or family of their mother according to the kinship system of the Minangkabau society. Basically, the father does not have authority over his children. If a father or husband passes away, his wife and children do not inherit his possessions. The husband and wife, along with their children, use their wealth, which usually comes from the wife's family. The Mamak Kepala Waris, the eldest man in the family, is responsible for this wealth. A child usually does not inherit from their father, but from their mother's family. Children do not have the right to inherit their father's property. This inheritance system causes dissatisfaction in the current era. However, this can be resolved by the father giving part of his wealth to his children while he is still alive, and the father's family can accept it. Only the Minangkabau have such a matrilineal kinship system in Indonesia.³⁴

³² Esli Zuraidah Siregar; Ali Amran, "Gender Dan Sistem Kekerabatan Matrilineal," *Jurnal Kajian Gender Dan Anak Vol. 02, no. 2* (2018): 147–70.

³³ Natalia et al., "Sistem Kekerabatan Dalam Hukum Adat Di Indonesia."

³⁴ Sovia Santika and Yusnita Eva, "Kewarisan Dalam Sistem Kekerabatan Matrilineal, Patrilineal Dan Bilateral," *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 11 (02) (2023): 193–203, <https://doi.org/10.30868/am.v11i02.4874>.

A brief example of the use of matrilineal in Minang society, which is predominantly Muslim, is that, in terms of inheritance distribution, the Minang customary system still prioritizes the lineage system, specifically the maternal lineage (matrilineal), over the inheritance system according to Islamic inheritance law. They do this because their customs are still strong and they greatly respect their ancestors.³⁵ Women in this system are highly respected in terms of customs, daily life, and the distribution of inheritance. When gender bias is a major issue in many forms of discrimination against women, this system actually treats women worse than they should be.

The Minangkabau community uses a matrilineal kinship system, which means a person's clan follows their mother's clan. Women play an important role in the family. It is forbidden to marry within the same clan. The gadang family is bound by inheritance and titles. Limpapeh, also known as amban puruak, is the eldest woman in the family, and she has the honor of managing the entire family estate and distributing it among the people. At that time, tungganai, the eldest man in the family, was the mamak kapalo warih. Maintaining, managing, and developing the family's wealth is his responsibility, but not to use it.³⁶

F. Parental/Bilateral Kinship System

The parental or bilateral kinship system, where lineage is traced through both father and mother, so there is no distinction between families from the father's or mother's side. As a result, husbands and wives have two families, and their children do as well. Boys and girls have the same right to inherit if they get married.³⁷ This parental kinship system is most common in Java, Madura, Kalimantan, Sulawesi, Lombok, Bugis, and Ternate.

In Javanese society, the bilateral parental system emphasizes that lineage follows both sides, both father and mother. There is no significant difference between the families from the father's side and the mother's side, making this system more widely accepted. In this system, the status of families from both sides is considered equal and balanced in terms of inheritance, family identity, and social responsibilities.³⁸ A child has a bilateral

³⁵ H Maryani et al., "Sistem Kekerabatan Dan Pengaruhnya Terhadap Hukum Waris Islam," *Legal Brief* 11, no. 4 (2022): 2518–25, <https://doi.org/10.35335/legal.xx.xx>.

³⁶ Iva Ariani, "Nilai Filosofis Budaya Matrilineal Di Minangkabau (Relevansinya Bagi Pengembangan Hak-Hak Perempuan Di Indonesia)," *Jurnal Filsafat* 25, no. 1 (2015): 32–55.

³⁷ Wahyudi Muhammad Haikal et al., "Tinjauan Hukum Adat Dalam Sistem Kekeluargaan Di Kampung Adat Banceuy," *Jurnal Hukum Dan Kewarganegaraan* 1, no. 11 (2023).

³⁸ Helwan Kasra, "Prospek 19 Wilayah Hukum Adat Dilihat Dari Menguatnya Sistem Kekerabatan Parental Bilateral Dalam Bidang Hukum Keluarga," *Jurnal Hukum Doctrinal* 1, no. 1 (2016): 9–15.

relationship with parents and relatives. The father-mother or both parents and their relatives here are subject to the same regulations in their direct and indirect marriages, except for the marriage between the father and the mother.

Husband and wife have balanced rights and roles both in household life and in social interactions. They also share the responsibility of building and maintaining the integrity of the household as the foundation of society. It is very important in this relationship to love, respect, be faithful, and support each other physically and emotionally. As the head of the family, the husband is responsible for protecting and fulfilling the household's needs as best as possible. Meanwhile, the wife's responsibility is to manage the household well, including organizing daily needs and supporting the overall well-being of the family.³⁹ Furthermore, married couples have the same right to take legal action. If one of them fails to fulfill their responsibilities, the other partner also has the same opportunity to file a lawsuit in court. All married couples must be respected and have the same rights and obligations.

G. Equality of Rights and Obligations of Husband and Wife in the Kinship System under Indonesian Positive Law

Equality of rights and obligations between partners is an important issue in law and society; the fulfillment between husband and wife must be balanced and harmonious.⁴⁰ Furthermore, in marriage laws and regulations, the division of roles and rights between husband and wife differs in patrilineal, matrilineal, and parental kinship systems. Local traditions and cultures influence this. Efforts to align gender equality in marriage with these various kinship systems within Indonesia's positive law have become a complex challenge.

The line of descent in a patrilineal system starts from the father's side. This shows that the male lineage has more inheritance rights, family names, and social responsibilities. Husbands are often considered the heads of the family, while wives are more often responsible for household duties. However, Indonesian law, especially Law Number 1 of 1974 concerning Marriage, emphasizes that husbands and wives have equal rights and obligations in marital life. Article 31 paragraph (1) of the Marriage Law states

³⁹ Mahrita A. Lakburlawal, "Kedudukan Suami Dalam Sistem Keekerabatan Masyarakat Adat Ditinjau Dari Perspektif Hak Asasi Manusia (Studi Pada Desa Letwurung Kecamatan Babar Timur Kabupaten Maluku Barat Daya)," *Sasi* 20, no. 2 (2014): 36, <https://doi.org/10.47268/sasi.v20i2.325>.

⁴⁰ Dian Apriana and Nanda Silvia, "Imbalance of Rights and Obligations of Husband and Wife in the Family," *MILRev : Metro Islamic Law Review* 1, no. 2 (2022): 214, <https://doi.org/10.32332/milrev.v1i2.6210>.

that husbands and wives have balanced rights and obligations in their household life and in their social interactions within the community.

However, in a matrilineal kinship system, lineage is traced through the mother's side. This gives women more power in terms of inheritance rights and social roles within the family.⁴¹ The Minangkabau tribe is one of the communities in Indonesia that adheres to this system. In Indonesian positive law, the rights and obligations of husband and wife remain equal, although women have historically played an important role. This is demonstrated by Article 33 of the Marriage Law, which states that husband and wife must love each other, respect each other, be faithful, and help each other physically.

The parental kinship system, or bilateral, lineage is recognized from both sides, father and mother. Because there is no one party that is dominant in terms of lineage, this system tends to be more egalitarian in terms of the distribution of rights and obligations. This concept of equality is supported by positive law in Indonesia, which reinforces the equal roles of husbands and wives in managing joint property and raising children. Positive law in Indonesia employs various regulations and statutes to ensure that husbands and wives are treated equally and fairly, regardless of the existing kinship system. Regulation Number 1 of 1974 on Marriage, along with other regulations, emphasizes the importance of equal roles and responsibilities of husbands and wives at home and in society. This shows that Indonesia is committed to protecting women's rights and supporting gender equality in household life.

Paragraphs 1 and 2 of Article 31 of the Marriage Law state the importance of creating a balance between the rights and positions of husbands and wives in societal life. These verses are very relevant to modern societal standards. This also applies to joint property rights, where husband and wife have the right to use their joint property in a way that benefits each other with the consent of both parties.

This principle underscores that in family life and social interactions within society, the rights and status of the wife should be equal to those of the husband. In such situations, each person has the right to take legal action, and it is important to ensure that there is balance and justice between the husband and wife during their life together.⁴² Rights and

⁴¹ Ifitah Kurnia and Maisya Yusti Santosa, "Pluralisme Hukum Waris Di Indonesia: Pengaruh Sistem Kekebabatan Masyarakat Adat Terhadap Corak Hukum Waris Adat Di Indonesia," *SYARIAH: Jurnal Ilmu Hukum* 1, no. 2 (2024): 234–42.

⁴² Mamahit, "Hak Dan Kewajiban Suami Isteri Akibat Perkawinan Campuran Ditinjau Dari Hukum Positif Indonesia."

obligations must be viewed and assessed contextually so that core elements such as justice and equality can be fulfilled.⁴³

Furthermore, Indonesian law clearly states that the husband is responsible for providing for the wife and covering the family's living expenses. However, there is an exception where the husband's responsibility to provide household necessities must be in accordance with their ability. This means that this "ability" refers to the husband's financial situation. In other words, the amount of money given by the husband should be in accordance with his wealth. According to the principle of proportionality, the husband's salary must be commensurate with the husband's wealth.⁴⁴

The Compilation of Islamic Law (KHI) is very important for the legal life of Indonesians, especially those who are Muslim. KHI is present to fill the legal void for Indonesian citizens who embrace Islam, even though the Indonesian national legal system recognizes the existence of written and unwritten laws. A series of articles and verses in the KHI explain the rights and obligations of husbands and wives, and these verses serve to maintain justice and order within the household and society as a whole.⁴⁵ The Compilation of Islamic Law (KHI) stipulates that the husband is responsible as the head of the family, and the wife is responsible as the housewife. For the most part, husbands and wives have the same rights and obligations, but the husband has the advantage in leading and managing the family. As the head of the household, the husband is responsible for the safety and well-being of his family and the household as a whole.

CONCLUSION

To form a fair and harmonious family, couples must have equal rights and obligations. Although a supportive framework has been provided by Indonesian positive law, there are still issues in its implementation. Gender equality within the family sphere can be achieved with strong commitment from society, the government, and law enforcement agencies. This will greatly benefit the entire Indonesian society.

As a country rich in diversity and having various kinship systems such as patrilineal, matrilineal, and parental, the implementation of equality of rights and obligations between

⁴³ A. Kumedi Ja'far and Agus Hermanto, "Reinterpretation Of The Rights And Duties Of Contemporary Husbands And Wives," *Samarah* 5, no. 2 (2021): 648–67, <https://doi.org/10.22373/sjhk.v5i2.9124>.

⁴⁴ Mamahit, "Hak Dan Kewajiban Suami Isteri Akibat Perkawinan Campuran Ditinjau Dari Hukum Positif Indonesia."

⁴⁵ Perpustakaan Nasional RI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Serta Pengertian Dalam Pembahasannya*.

husband and wife is a significant step towards positive law. Although each system has its own characteristics, the goal of Indonesian law is to ensure that both husband and wife can lead an equal and fair life. This is part of a larger effort to create a society that values and protects the rights of every individual regardless of gender.

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