

Wife's Obligations According to Marriage Law: Perspective of Legal Purpose Theory

Abstract

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Background. *The wife's obligations under marriage law are contrary to Islamic law.. This difference raises questions about the suitability of the law with social values. Social history records significant developments in the role of the wife in the dynamics of household affairs.*

Aims. *To analyze the basis of Article 34 paragraph 2 of the Marriage Law concerning the wife's obligation to manage household affairs and theoretical views on the purpose of the law on the article.*

Methods. *Normative legal research uses a conceptual approach to explore the understanding of the basis of law. Data were obtained through literature studies and analyzed descriptively based on the theory of the purpose of law.*

Results. *Article 34 paragraph 2 in terms of justice, reflects distributive and commutative justice. The fair division of roles between husband and wife is reflected and affirms equality in lineage and family identity. Justice will be achieved by avoiding exploitation or inequality in the exchange of roles. The wife's obligations in terms of benefits are considered an effort to achieve the greatest possible benefits for individuals and families. Consistent and clear application of the law is very important in terms of certainty. The history of marriage law shows the complexity in the interpretation and application of the law. Efforts to create legal certainty have been made through the unification and simplification of laws, as well as the affirmation of norms that regulate the wife's obligations firmly and unambiguously.*

Keywords: *Marriage law, wife's obligations, theory of legal purpose*

INTRODUCTION

The concept of a wife's obligations in the material law of the Marriage Law is contrary to Islamic Law. A wife is obliged to manage household affairs as well as possible. Article 34 Paragraph 2 of the Marriage Law states that a wife in a household has obligations in the domestic sphere.¹ Islamic law states that a wife's obligations in a household are only directed at non-material elements. Wahbah al-Zuhaili firmly stated that the role of a wife is to obey her husband, while managing household affairs or the domestic sphere is not an obligation.² Contextually, there is a gap regarding a wife's obligations in the household between the material law of the Marriage Law and Islamic Law. This raises questions about the extent to which positive law reflects the values and social demands of Indonesian society.

Socio-historically, women's rights in Indonesia during the colonial era were heavily dominated by men, or gender discrimination still applied, both in terms of education and others and became the background for the feminist movement initiated by R.A. Kartini. Women's rights in the social reality of the modern era have developed significantly. Women have a public role. A study on

¹ Kementerian Sekretariat Negara RI, "Undang-Undang Nomor.16 Tahun 2019 Tentang Perubahan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. <https://peraturan.bpk.go.id/Home/Details/122740/uu-no-16-tahun-2019>.

² Wahbah Az-Zuhaili, *Fiqh Al-Islami Wa Adillatuhu*. (Damaskus: Darul Al-Fikr, 1975), 334.



the phenomenon of the role of career wives concluded that household matters are a shared obligation between husband and wife.³

Gustav Radbruch's theory of legal objectives states that a legal rule must have the values of justice, benefit and legal certainty.⁴ A legal norm must have the basic values of justice as a philosophical basis, benefit as a sociological basis and certainty as a legal basis.⁵

The questions that will be answered through this study are: What is the basis for compiling the Marriage Law Article 34 Paragraph 2?, and; what is the view of the theory of legal objectives on the Marriage Law Article 34 Paragraph 2?. This study will provide knowledge about the basis and views of the theory of legal objectives on the Marriage Law Article 34 Paragraph 2 Article 34 Paragraph 2.

LITERATURE REVIEW

Theory of the purpose of law

Law is a human idea about a rule or norm that provides an indicator of human behavior. Law is a demand for human will so that it can be guided and directed. Law has a track record of various ideas that are then sorted by society which gives birth to a norm and this is called justice.⁶

The classical theory of legal objectives states that law has only one objective. The ethical school states that the basis of the purpose of law is solely to create justice, Aristotle states that justice is divided into two, namely: distributive justice and commutative justice.⁷ The utility school considers the basis of the purpose of law to be to realize benefits or happiness for society. Jeremy Bentham is of the view that law is an assessment of actions that occur in society or a concrete event by measuring it from the aspect of its benefits.⁸

The normative-dogmatic school states that the creation of legal certainty is the basis of the purpose of law. Hans Kelsen states that law is a normative rule and accountability that can be described with a general scheme of normative relationships between conditions and consequences, and wrong behavior. Law is born because of human will and reason. Actions carried out by a person have certain consequences. Hans Kelsen considers law to be a compulsion for a person to follow the law and every law must have a suggestion to force it.⁹

The purpose of law in the modern era is a development of the basic values of justice, benefit and legal certainty. The difference lies in the perspective that measures from the aspect of its priority. Gustav Radbruch's standard priority theory states that law must have a basis in justice, benefit and legal certainty. Shinta Agustina states that the three bases put forward are often contradictory, such as legal certainty is contrary to benefit and so on.¹⁰ Radbruch states that of the three legal bases, if there is a gap, then one must be favored. If there is a gap between justice and legal certainty, then what is prioritized is justice. If there is a gap between legal certainty and benefit, then what is prioritized is benefit.¹¹

³ Badriah, "Hak dan Kewajiban Suami Istri Perspektif Hukum Islam (Studi Kasus Wanita Karir di Desa Benda Kecamatan Sirampog Kabupaten. Brebes)" 3, 1 73–89, 2023.

⁴ Mario Julyano dan Aditya Yuli Sulistyawan, "Pemahaman terhadap Asas Kepastian Hukum melalui Konstruksi Penalaran Positivisme Hukum," *Crepido* 1, 1, 2019. 13–22, <https://doi.org/10.14710/crepido>

⁵ Satjipto Rahardjo, "Ilmu Hukum" (Bandung: Cipta Aditya Rahardjo, 2021), h. 19.

⁶ Rahardjo, "Ilmu Hukum," h. 15.

⁷ Izzy Al Kautsar & Danang Wahyu Muhammad, "Urgensi Pembaharuan Asas-Asas Hukum Pada Undang-Undang No 37 Tahun 2004 Berdasarkan Teori Keadilan Distributif," *Jurnal Panorama Hukum* 5, 2, 182–92, 2020. <https://doi.org/10.21067/jph.v5i2.4529>.

⁸ Faradistia Nur Aviva, "Pengaruh Teori Positivisme Hukum dan Teori Utilitarianisme Hukum dalam Penegakan Hukum Indonesia," *Jurnal Relasi Publik* 1, 4, 111–23. 2023. <https://doi.org/10.59581/jrp-widyakarya.v1i4.1837>.

⁹ Faradistia Nur Aviva.

¹⁰ Dave David, "Keberadaan Surat Ijo Dikaji Berdasarkan Pendekatan Kasus Dan Teori Tujuan Hukum Gustav Radbruch," *Jurnal Education and Development* 9, 4, 478–84, 2021.

¹¹ Dave David.

RESEARCH METHOD

The research study is a normative legal research. The study uses a conceptual approach that provides a perspective on the background of a legal concept. The conceptual approach provides an explanation of various ideas with an understanding of the legal concept or basis that underlies the problem. Data were obtained from literature study documentation. Data were analyzed using descriptive analysis. The theory of legal objectives was used to analyze Article 34 Paragraph 2 of the Marriage Law concerning the wife's obligations in the household, as well as data related to the legal, political, social, and philosophical basis for the formation and determination of Article 34 Paragraph 2 of the Marriage Law.

DISCUSSION

Basis of Wife's Obligations in Household in Marriage Law Article 34 Paragraph 2 Philosophical basis

Satjipto Rahardjo stated that countries that were previously colonies tend to inherit the legal systems of their colonizers. At the beginning of independence, Indonesia adopted a civil law system, which included a codification of written laws that applied to the community. However, the conditions at that time, especially during Soekarno's leadership from 1945 to 1948, which was still in a war situation to maintain independence, made it difficult to form all new legal regulations. When Indonesia became independent, there were no written legal regulations that covered the entire community, so Article 1 of the 1945 Constitution was born and enforced so that all regulations would continue to apply before there was a renewal. This reflects the initial challenges in building a legal system that was in accordance with the new independence.¹²

After independence, marriage regulations in Indonesia still follow various legal regulations inherited from the colonial invaders. Various regulations such as the Burgerlijk Wetboek for Europeans, the Burgerlijk Wetboek for Chinese, the BW Ordinance for Arabs and Easterners, HOCl (Huwelijk Ordinantie Christen Indonesiers) for Christians, and the Royal Decree 1896 No. 23 for mixed marriages, created diversity in marriage regulations. It is also known that in 1946 AD, the Indonesian government tried to form Religious Court regulations regarding registered marriages, divorce, and reconciliation. However, this regulation does not yet have an adequate legal basis, so that the marriage law of the Islamic community is overcome by using the yellow book as a reference for material law.¹³

In fact, the marriage rules inherited from the Dutch created various controversies in society, such as stereotypes or intimidation of women, which are reflected in the high divorce rate, forced marriage, polygamy, arbitrary divorce, and other problems. This is contrary to the principles of Pancasila as the basis of the ideology of the Indonesian nation and the 1945 Constitution which emphasizes the value of social justice.¹⁴

Rusydi Malik in his book shows that western law, which focuses on Articles 108 and 110 of the Civil Code, has a gender discrimination value against married women by assuming that they cannot apply the law without the help of their husbands. This highlights that Indonesia still does not have a comprehensive legal regulation. Therefore, comprehensive legal reform is needed through the renewal of all existing legal regulations in Indonesia.

During Soeharto's leadership, there was an effort to develop law through the 1973 GBHN, which aimed to modernize law based on codification and unification, develop legal aid, establish state administrative courts, draft a law on human rights, and update various aspects of law. In 1973, Soeharto also proposed the Marriage Law which was expected to further strengthen the development

¹² Firdaus Muhamad Iqbal, "Kontribusi Sistem Civil Law (Eropa Kontinental) terhadap Perkembangan Sistem Hukum di Indonesia," *Jurnal Dialektika Hukum* 4, 2, 180–200, 2022. <https://doi.org/10.36859/jdh.v4i2.1120>.

¹³ Rizqi Suprayogi, "Reformasi Hukum Perkawinan Islam di Indonesia," *Indonesia Journal of Business Law* 2, 1, 29–37, 2023. <https://doi.org/10.47709/ijbl.v2i1.1962>.

¹⁴ Suprayogi.

of the Indonesian nation by forming families that reflected national identity and a modern vision. Despite facing various protests, this law was successfully passed in 1974.¹⁵

Thus, Article 34 Paragraph 2 of the Marriage Law, regarding the role of the wife in the household which requires the wife to manage it as well as possible, has a philosophical basis that reflects the long journey of the formation of marriage law in Indonesia. This reflects the transformation of Indonesian law towards social justice, gender justice, and a response to human rights, which adheres to Pancasila and constitutional principles that have existed since the beginning of independence.

Sociological basis

Indonesian society around the colonial era adopted a patrilineal family system where there was still a lot of discrimination against women in the education, public, inheritance sectors and so on so that a term patriarchal culture emerged. It can also be seen at the beginning of the women's movement, the issues of child marriage, education and polygamy became the center of attention, followed at the end of the colonial period by the issue of women's suffrage. Although the Child Marriage and Polygamy Laws were one of the main concerns, there has been no significant response from the government. Therefore, the struggle of feminists about the age limit for marriage and the prohibition of polygamy which is still controversial continued until the 1970s.¹⁶

This issue took a lot of energy and time because it caused quite a big controversy among women's organizations themselves. However, the government responded in terms of education and political rights by giving women the ability to be educated and the right to vote in 1941. Of course, this was a success because all women's organizations spoke with one voice about women's education and voting rights. In 1928, it became a historical record for the first time that a women's congress voiced protest against the government about polygamy in Indonesia, and there were street demonstrations against the law that gave pensions to all widows of civil servants who practiced polygamy in 1952, protests against President Soekarno's polygamous marriage, and campaigns for marriage law from 1940 to 1970.¹⁷

The National Women's Congress took place again in 1935 in Jakarta which contained the formation of an Islamic marriage law commission, and a marriage law investigation commission, in this second congress led by Maria Ulfah Santoso. The results of the congress elicited a response from the government and a revised Marriage Law was born. The form of the revised law includes marriages must be registered, the principle of monogamy, and if a man wants to marry, giving the right to sue for divorce in court to the first wife for polygamous practices.¹⁸

However, the results of the second women's congress received a response from Islamic figures who opposed this law, because it prohibited polygamy and proposed official marriage registration. In the third National Women's Congress (1935), the Marriage Commission, a commission entrusted with designing Indonesian marriage regulations without attacking Islam, was formed. Maria Ulfah, president of the Marriage Commission, presented the results of the discussion in the form of a working paper. In her writing, she contained information at the national level about the feminist movement in Muslim countries, such as Turkey, which distinguishes between positive law and Islamic law. This is because of personal interests, not rejecting the teachings of Islam. However, the idea of separating religious beliefs and practices from the state is an idea that is rejected by the majority of Muslims in

¹⁵ Otto Trengginas Setiawan, "Reformulasi Sistem Perencanaan Pembangunan Nasional dengan Model GBHN Sebagai Haluan Negara," *Parapolitika: Journal of Politics and Democracy Studies* 2, 2, 20–50, 2021. <https://doi.org/10.33822/jpds.v2i2.5902>.

¹⁶ Sovia Santika & Yusnita Eva, "Kewarisan dalam Sistem Kekerabatan Matrilineal, Patrilineal dan Bilateral," *Al-Mashlahah: Jurnal Hukum Islam dan Pranata Sosial Islam* 11, 193–203, 2023. <https://doi.org/10.30868/am.v11i02.4874>.

¹⁷ Suprayogi, "Reformasi Hukum Perkawinan Islam di Indonesia."

¹⁸ Riska Dwi Agustin, "Ham, Cadar dan Narasi Pluralisme di Indonesia," *Jurnal Kajian Islam Interdisipliner* 3, 1, 43, 2018, <http://ejournal.uin-suka.ac.id/pasca/jkii/article/view/1211>.

Indonesia. This is because the first principle of the five basic principles of Indonesia, Pancasila, is belief in the One Almighty God.¹⁹

After independence, the Indonesian government realized that there was a need for a body to handle religious issues, including marriage law. Therefore, on January 3, 1946, the government established the Ministry of Religious Affairs. Due to continued requests from women's associations and from female members of parliament, in 1950 the Indonesian government established a marriage law commission. The initial draft of the proposed law was sent to all women's associations in October 1952 to seek their opinions on issues such as: mutual consent in marriage; minimum age limit for marriage; gender equality in divorce; making a health certificate from both parties before marriage; and permission to practice polygamy only after the first wife gives her consent and only if the husband can guarantee that he is able to support more than one family.²⁰

Muslim women's associations disagreed with the draft law because it was inappropriate. The same reaction came from Catholic associations who disagreed because the draft law allowed polygamy and divorce. In 1954 and 1955, both drafts were sent to the Ministry of Religious Affairs, and in 1956, they were sent to the cabinet. After two years, the cabinet discussed the main issues. In February 1959, the government and Islamic parties rejected the draft Marriage Law, but the government promised to enact a neutral Marriage Law that applied to each religious group. So that by 1974, the social conditions surrounding marriage had undergone significant changes. With the Indonesian government passing its first national Marriage Law, which aimed to ensure the human right to achieve happiness in the family institution. The law limited and even abolished child marriage, restricted polygamy, limited the right to unilateral divorce (arbitrary divorce), and established equality between husband and wife. Divorce in Indonesia is very common among very young couples, and carries a bit of a social stigma.²¹

The position of women in marriage has improved over time, although it has remained unsatisfactory for a long time. Efforts by the government and women's organizations have been made to improve the position of women in marriage. The issue of early marriage has been discussed since the Indonesian Women's Congress in 1928, which aimed to address the problems of education, early marriage, and polygamy. Child marriage is still widespread in Indonesia, especially among families with low socioeconomic status. Single is defined as the status of an adult who is currently unmarried, including divorced or widowed. However, from a social perspective, being single can carry some stigma, especially for women. Overall, the social conditions surrounding marriage in Indonesia have changed significantly since independence, with efforts being made to improve the position of women in marriage and to address issues such as early and child marriage. However, challenges remain, especially in terms of enforcing the law and changing social norms and attitudes towards marriage and singleness.²²

So on January 29, 1972, in a symposium meeting held by the Indonesian Women Scholars Association, a recommendation was submitted to the ISWI management to advocate efforts to return attention to the issue of the Marriage Law so that it could apply equally to all Indonesian people. Furthermore, on February 22, 1972, two draft laws were resubmitted by Indonesian Islamic women's organizations aimed at encouraging the government to resubmit two Draft Laws related to Marriage that had previously been returned by the DPR to the government. On February 11, 1973, the Indonesian Islamic Students Association again raised the discussion regarding the regulation of Muslim Marriage in Indonesia through a discussion session held in Jakarta. On that occasion, Indonesian Islamic Students Association expressed its hope that the government would immediately

¹⁹ Budi Sujati & Ilfa Harfiatul Haq, "Gerakan Perempuan di Jawa (1912-1941)," *Ishlah: Jurnal Ilmu Ushuluddin, Adab dan Dakwah* 2, 1, 16–31, 2020. <https://doi.org/10.32939/ishlah.v2i1.10>.

²⁰ Muhammad Hadyan Wicaksana & Maulana Mohammad Makhtum, "Pemikiran Ibrahim Hosen Mengenai Dasar Wajib Patuh Terhadap Undang-Undang Perkawinan (UUP)," *As-Salam: Jurnal Studi Hukum Islam & Pendidikan* 10, 2, 79–93, 2021. <http://ejournal.staidarussalamlampung.ac.id/index.php/assalam/article/view/471>.

²¹ Muhammad Jazil Rifqi, "Sejarah Sosial Talak di depan Pengadilan Agama dalam Undang-Undang Perkawinan di Indonesia," *Al-Hukama'* 11, 2, 55–84. 2021. <https://doi.org/10.15642/alhukama.2021.11.2.55-84>.

²² Suprayogi, "Reformasi Hukum Perkawinan Islam di Indonesia."

resubmit the RUU on Marriage to the Indonesian House of Representatives, with the aim of undergoing a debate stage and being implemented in law and enforced for all Indonesian people.²³

Then on September 18, 1979, there was a United Nations session that discussed the elimination of forms of discrimination against women and the Indonesian government also took part in the convention. So that it had an impact on social development when this law was drafted, the role of women in Indonesian society began to change. Women were increasingly involved in various sectors, including education and work. However, the law reflected the social reality at that time which still recognized differences in gender roles in the family.²⁴

The value of gender equality is also clearly stated in Law Number 7 of 1984, which is stated in Article 16 Paragraph 1 which reads “that countries are obliged to take appropriate steps to eliminate discrimination against women both in marriage and family relationships, in particular will guarantee: a) equal rights regarding the level of marriage, b) equal rights to freely choose a husband in entering the level of marriage with free and full consent.”²⁵

Thus, it can be concluded that in Article 34 Paragraph 2 of the Marriage Law regarding the role of the wife in the household which requires her to take care of it as well as possible has a sociological basis, namely providing a fair division between husband and wife in order to achieve a harmonious household or one that is not vulnerable to or reduces divorce as described above.

Legal basis

After Indonesia gained independence from the colonizers, the constitution and high-level laws were based on Pancasila and the 1945 Constitution, which contain several human rights values, gender equality, and legal protection for all Indonesian citizens. However, the Indonesian government after independence has not made written regulations on marriage, so that there is no legal vacuum, the government has worked around this by including regulations contained in the 1945 Constitution which reads; That all existing regulations remain in effect as they should as long as there are no new legal regulations.²⁶

It is also known that marriage law in Indonesia in the colonial era until the enactment of Law Number 1 of 1974 was still pluralistic in nature, in the simple sense that marriage rules were still diverse. This is based on the population in Indonesia consisting of several groups, including; European groups, foreign eastern groups, Chinese groups and so on. As stated by Apong Herlina who stated that the colonial era, precisely in the 19th century, there was an ordinance on marriage rules by the Netherlands which was enforced in the State of Indonesia, namely Customary Law (Dutch legal ordinance), B.W (Burgelijk) and the Civil Code.²⁷

Tri Lisiani stated that the ideology of Pancasila and the 1945 Constitution are an essential meaning of the relationship between men and women in marriage and family in Indonesia. As stated in Article 2 and 3 of Law No. 12 of 2011; “Pancasila is the source of all laws”, and “The 1945 Constitution of the Republic of Indonesia is the legal basis for legislation”. This means that the root source of Indonesian state law is Pancasila and as a reinforcement is contained in the opening of the 1945 Constitution which contains the philosophy of the nation and state and all norms are prohibited from opposing the values of Pancasila.²⁸

²³ Abdur Rahman Adi Saputera Putra, “Telaah Al-Siyasah Al-Ahkam Al-Usrah Terhadap UUP No. 1 Tahun 1974,” *El-Ahli: Jurnal Hukum Keluarga Islam* 1, no. 1 (2020): 103–22, <https://doi.org/10.56874/el-ahli.v1i1.59>.

²⁴ Abdur Rahman Adi Saputera Putra.

²⁵ Rifqi, “Sejarah Sosial Talak Di Depan Pengadilan Agama Dalam Undang-Undang Perkawinan Di Indonesia.”

²⁶ Abdur Rahman Adi Saputera Putra, “Telaah Al-Siyasah Al-Ahkam Al-Usrah Terhadap UUP No. 1 Tahun 1974.”

²⁷ Nopan Wiranata, Ismail Ismail, and Alimni Alimni, “Tinjauan Hukum Perkawinan Islam Berdasarkan Sejarah Pembentukannya,” *El-Usrah* 5, no. 2 (2022): 318–27, <https://doi.org/10.22373/ujhk.v5i2.15623>.

²⁸ Apong Herlina, “Laporan Hasil Penelitian “The Study of Gender and Access to Justice in Indonesia,” 1991.

One of the principles contained in Pancasila is the realization of social justice for all people, in simple terms a norm must eliminate the birth of an exploitation system and reduce the gaps that occur in society. On the other hand, a legal norm has the principle of *Lex Superior derogat legi inferiori* where a higher legal regulation deactivates a lower legal regulation. Arso stated that during the Dutch colonial period in the family life of Indonesian society there had been several cases, such as cases of divorce that were very high, early marriage, forced marriage, the prevalence of polygamy without the wife's consent, arbitrary divorce and many others.²⁹

So it can be said that the rules of marriage law left behind by the Dutch colonial era have become a polemic for Indonesian society. Rusydi Malik in his book explains several rules of marriage law left behind by the Dutch colonial era that are contrary to Indonesian society, including:³⁰ KUHPer (BW) Articles 108 and 110 which state that a wife is considered incapable of acting legally without the assistance of her husband; KUHPer Article 34 states that a woman who is a widow whose husband has died or has divorced is prohibited from remarrying for 300 days or 10 months, and; Mixed Marriage Regulations (GHR.S.1898-158) Article 12 states that a woman who enters into a mixed marriage must submit to the public law or civil law of her husband.

So the emergence of Marriage Law number 1 of 1974 is a solution to answer this and create a regulation that is nationalistic in nature or in the simple sense of not being partial to something. Seen in general terms, marriage law is very pluralistic, civil law is very prominent and tends to be secular, resulting in implications for legal uncertainty.

It is also known that the position of women in Indonesia has legality both in law and in public, which can be seen in the words of Article 31 Paragraphs 1 and 2; "the rights and position of the wife are balanced with the rights and position of the husband in household life and social life in society, each party has the right to carry out legal acts."³¹

Thus, it can be concluded that in Article 34 Paragraph 2 of the Marriage Law No. 16 of 2019, the renewal of the Marriage Law No. 1 of 1974 which explains the wife's obligation to manage household affairs as well as possible legally has a basis in terms of gender equality or the elimination of all forms of discrimination as described above.

The Role of the Wife in the Household Article 34 Paragraph 2 of the Marriage Law Perspective of the Theory of Legal Purpose

Satjipto Rahardjo quoted the idea of Gustav Radburch's theory of legal purpose that a norm or law has values contained in it, namely the values of justice, utility and legal certainty. First, the aspect of justice is a legal rule that emphasizes that every individual must be treated fairly in court, Second, the aspect of utility is interpreted as the emphasis of a legal norm on respecting the rights of each individual and Third, the aspect of legal certainty is interpreted as a legal norm must have a balance between violations and the law.³²

Then Satjipto provides a relevance related to the superiority of the three basic values in his book entitled Theory of Law that the values of justice and legal certainty are something that remains in the law. While the aspect of utility contains an element of relativity, this is because the purpose of justice is to foster the value of goodness for humans so that the value of goodness when compared to ethical values in a law is superior.

²⁹ Sadam Asir, "Konsep Pembatalan Norma Hukum (Studi Perbandingan Konsep Asas *Lex Posteriori Derogat Legi Periori* dan Konsep *Nasikh Mansukh*) Sadam," *Dinamika* 28, 15, 5285–5300, 2022. <https://jim.unisma.ac.id/index.php/jdh/article/view/16482>.

³⁰ H Rusdi Malik, *Memahami Undang-Undang Perkawinan* (Jakarta: Universitas Trisakti, 2009), h.10.

³¹ Kementerian Sekretariat Negara RI.

³² Rahardjo, "Ilmu Hukum," h.19.

Justice

The aspects of Aristotle's legal justice, which consist of distributive justice and commutative justice, can be analyzed in the context of the wife's obligation in Article 34 Paragraph 2 of the Marriage Law to manage household affairs as well as possible as follows:³³

First, Distributive justice refers to the fair allocation of an individual's role in society. In the context of a wife's obligations, Article 34 Paragraph 2 mandates that a wife has an obligation to manage household affairs. In this view, there is an element of distributive justice because the wife's role in managing household affairs and children is an allocation of roles that are divided fairly in the household.

Distributive justice here reflects the division of roles based on the traditional concept of gender roles in the family that applies in Indonesian society. It has been explained that Indonesian society during the colonial period generally followed a patrilineal family system. At that time, there was a lot of discrimination against women, especially in terms of education, participation in public life, inheritance rights, and so on. This condition has contributed greatly to the development of patriarchal culture.

However, after Indonesia's independence and declared that Indonesia was a country with the ideology of Pancasila and became the philosophical basis of the nation and state where one of the values of justice is found in the second and fifth principles. Therefore, every material contained in the norms or rules must be in line with Pancasila values, and it is not permitted to oppose them.

On the other hand, Hazairin said that the concept of parental or bilateral family is a family system that is to be constructed in Indonesia, the bilateral or parental concept is a family system where the lineage and family identity are recognized and inherited from both, namely mother and father. In a family, a father and mother both have important roles in the family and children are recognized as part of both families. In other words, children are considered to have strong ties with the family from both their mother and father, and lineage is respected from both sides.³⁴

Second, Commutative justice is related to individual relationships and fair exchanges between individuals in society. In the case of a wife's obligations, commutative justice can be seen from the elements of the husband and wife relationship in marriage. Article 34 Paragraph 2 gives the husband a role as head of the family and the wife manages household affairs. Commutative justice can be viewed from the existence of an agreement or exchange of roles between the husband (as leader) and the wife (as manager of the household). However, it is important to ensure that this exchange takes place fairly and does not involve exploitation or inequality.

Thus, it can be concluded that the aspects of Aristotelian legal justice, both distributive and commutative, underline the importance of ensuring that the wife's obligations in Article 34 Paragraph 2 of the Marriage Law are not only applied fairly, but also in accordance with the principle of equality between husband and wife. In marriage, justice must be the basis for dividing obligations, rights, and responsibilities between the two parties in order to realize a harmonious and fair marital relationship.

Utilitarianism

The theory of utilitarianism in the context of law refers to the view that laws should be designed and implemented to achieve the greatest happiness or benefit for society. In the context of the wife's obligations in the Marriage Law, the Benefit of Individuals and Families seen from the perspective of utilitarianism, the wife's obligations in managing household affairs can be seen as an effort to achieve the benefit of the individual (wife) and the family as a whole. By managing the household well, the wife can create a comfortable and harmonious environment for the family, which in turn can increase the happiness of the individual and other family members.³⁵

The formation of the Marriage Law is basically inseparable from the reality that the family is a social institution that is vulnerable to the influence of existing social and cultural conditions. Although

³³ Kautsar and Muhammad, "Urgensi Pembaharuan Asas-Asas Hukum Pada Undang-Undang Nomor 37 Tahun 2004 Berdasarkan Teori Keadilan Distributif."

³⁴ Santika and Eva, "Kewarisan dalam Sistem Kekerabatan Matrilineal, Patrilineal dan Bilateral."

³⁵ Nur Aviva, "Pengaruh Teori Positivisme Hukum dan Teori Utilitarianisme Hukum dalam Penegakan Hukum Indonesia."

the family is built in a smaller social framework, the values embedded in it have a significant impact in general on society. Therefore, efforts are needed to protect and maintain the family from values and norms that are far from religious values and social norms that generally apply in Indonesia.

This is because the social conditions that occurred during the colonial era until before the Law on Marriage was made, women in households did not have a good position in the public sector and so on so that in 1928, precisely at the first Indonesian Women's Congress, there was a public protest against polygamy in Indonesia, and there were street demonstrations against the law that provided pensions to all widows of civil servants who practiced polygamy in 1952, protests against President Soekarno's polygamous marriage, and campaigns for marriage law from 1940 to the 1970s. Then after the Marriage Law was formed and enforced, it had social benefits, the wife's obligation to take care of the household can also be considered to have social benefits. A well-organized household can reduce the potential for conflict and tension in society, thus creating a more peaceful and stable atmosphere. This contributes to the happiness and welfare of society as a whole.³⁶

Khoirudin Nasution in the view of Islamic Law highlights several texts of the Qur'an that describe the principle of gender equality or the equality of men and women. First, there is a Verse in the Qur'an that states that men and women come from the same kind (Verse 1 of Surah al-Nisa'). Second, both have equal positions as servants of Allah SWT (Verse 56 of Surah al-Dzariyat). Third, men and women are appointed as caliphs on earth (Verse 31 of Surah Al-Baqarah). And fourth, it cannot be denied that men and women have great potential in achievement (Verse 97 of Surah al-Nahl).³⁷

So it can be interpreted that the wife's obligations do not lead to gender injustice. The theory of utilitarianism can be used to consider whether the regulations governing the wife's obligations provide balanced benefits for all parties, including husband and wife. If there is an imbalance or injustice, then there needs to be a change in the law to achieve greater benefits for all members of society.

Thus, the analysis of the legal benefit aspect using the theory of utilitarianism can help in designing and considering the Marriage Law, including the wife's obligations, to achieve the goal of the greatest benefit for individuals and society as a whole, while maintaining gender justice and individual rights.

Legal certainty

The aspect of legal certainty in normative theory is related to how laws and regulations are interpreted and applied consistently, especially in the context of obligations in Article 34 Paragraph 2 of the Marriage Law. During the Dutch colonial period until the emergence of Law Number 1 of 1974 concerning marriage, the applicable marriage rules were still pluralistic. Which indicates that the rules are still diverse and social conditions in Indonesia have several groups of residents such as European citizens, East Asian citizens, Chinese citizens, and so on. In the 19th century, the Dutch implemented marriage rules in Indonesia involving Customary Law, Dutch Legal Ordinance (B.W), and KUHPer (Civil Code) as forms of applicable marriage law.³⁸

Then after Indonesian independence, marriage was regulated by various laws inherited from the colonial period. These rules are divided based on social groups such as B.W (Burgerlijk Wethboek) or known as the civil law code, enforced for European citizens since April 30, 1917. Its contents are similar to the rules of colonial Dutch law. Burgerlijk Wetboek (Ordinance of March 29, 1917), applicable to Chinese people, similar to European rules, but there are exceptions in some parts. The BW Ordinance on December 9, 1924, applies to Arabs and Easterners starting March 1, 1925. Huweljik Ordinantie Christen Indonesiers (HOCl) Ordinance of February 15, 1933 applies to Indonesian people who adhere to Christianity. Koninklijk Besluit December 29, 1896 No. 23 (Mixed Marriage Regula-

³⁶ Rifqi, "Sejarah Sosial Talak di depan Pengadilan Agama dalam Undang-Undang Perkawinan di Indonesia."

³⁷ Rahma Pramudya Nawang Sari & Anton, "Wanita Karier Perspektif Islam," *Sangaji: Jurnal Pemikiran Syariah dan Hukum* 4, 1, 82–115, 2020. <https://doi.org/10.52266/sangaji.v4i1.446>.

³⁸ Wiranata, Ismail, & Alimni, "Tinjauan Hukum Perkawinan Islam Berdasarkan Sejarah Pembentukannya."

tions) applies to Indonesians other than those groups above. So that it shows the complexity of marriage law in Indonesia which varies according to the ethnic and religious background of its people.³⁹

During the Soeharto era, the law was built through the 1973 GBHN and the Decree of the MPR RI No. IV/MPR/1973. The goal was to change the law by unifying and simplifying, assisting the law, improving the judiciary, creating a Human Rights Law, a national legislation program, replacing colonial rules, and legal planning through the formation, research, and legal information. So that the aspect of legal certainty demands that laws and regulations relating to the wife's obligations in marriage be applied consistently. This means that the norms governing the role and obligations of the wife must have clarity or be unambiguous so that there is no room for different interpretations.⁴⁰

So with the description above, it can be concluded that applying the normative understanding theory related to the wife's obligations in Article 34 Paragraph 2 of the Marriage Law Number 1 of 1974, it is important to ensure that the applicable regulations reflect the values of justice, gender equality, and legal protection of the wife's rights. In addition, firmness and consistency in the application of the law are also important to create the legal certainty needed in society.

CONCLUSION

The aspect of Justice, in the context of the analysis of the wife's obligations in Article 34 Paragraph 2 of the Marriage Law, the aspect of justice is based on the view of Aristotle's legal theory, which includes distributive and commutative justice, providing a deep understanding. Distributive justice is reflected in the allocation of fair roles between husband and wife in the household, which reflects gender traditions and cultural evolution in Indonesian society. The concept of a bilateral or parental family, which recognizes the role of both parents in the family, also emphasizes the importance of equality in lineage and family identity. On the other hand, commutative justice highlights the fair exchange of roles between husband and wife in marriage, with an emphasis on the importance of ensuring that the exchange does not involve exploitation or inequality

The aspect of Benefit, in the context of the analysis of the utilitarianism theory of the wife's obligations in the Marriage Law, emphasizes that these obligations can be viewed as an effort to achieve the greatest benefit for the individual (wife) and the family as a whole. In this view, managing a household well can create a comfortable and harmonious environment, which contributes to the happiness of the individual and other family members.

Certainty Aspect, based on the analysis of the legal certainty aspect in the normative theory, especially in the context of the wife's obligations in Article 24 Paragraph 2 of the Marriage Law Number 1 of 1974, it can be concluded that the application of the law must be consistent and clear is very important. The history of marriage law in Indonesia, which was initially pluralistic due to the diverse social conditions of society so that the applicable rules were also diverse, indicates the complexity in the interpretation and application of the law. The Soeharto era marked an effort to unify and simplify the law, which was included in the 1973 GBHN and the Decree of the MPR RI No. IV/MPR/1973. This aims to create legal certainty by emphasizing the norms that regulate the wife's obligations in marriage clearly and unambiguously, thereby reducing the space for different interpretations.

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³⁹ Wiranata, Ismail, & Alimni.

⁴⁰ Setiawan, "Reformulasi Sistem Perencanaan Pembangunan Nasional dengan Model GBHN Sebagai Haluan Negara."

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