

WHY IS INDONESIAN ISLAM IMPORTANT IN THE ENTRENCHMENT OF WOMEN'S RIGHTS?

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Abstract: Driven by strong political reforms in Indonesia, women's rights have become one of the nation's most prominent agendas. But Indonesia's women's equality agenda is running out of steam. The argument is that we have ignored the importance of Indonesian Islam, which informs and shapes the nation's 'habit of the heart'. So that the nation's efforts to entrench gender equality substantively, legally and culturally have been inefficient. With this argument, this paper emphasizes the importance of considering Indonesian Islam as a crystallization of local values that can strengthen women's rights in CEDAW, as has been proven. There is gender perspective in private legal products such as the Marriage Law and KHI (which intersect with culture and religion) and the development of expert opinions that use these arguments. This article presents examples of the use of Islamic customs and Indonesian culture to advance women's rights in the Indonesian context, even though in reality they are not fully CEDAW-compliant.

Keywords: CEDAW, Habits of the Heart, Indonesian Islam, Cross Culture.

Introduction

It has been over three decades since Indonesia ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women ("UN-CEDAW"). This is in view of the patriarchal cultural practices that are still ongoing today, some of which seem difficult to change. There is still evidence of inequality against women according to the Human Development Index (IPM) for women in 2020 is still below that of men, namely 69.19, while the HDI

for men is 75.98.¹ When compared with ASEAN countries in 2020, Indonesia's HDI still ranks fifth (5) together with the Philippines, with an HDI of 71.8 (High Criteria) below the HDI of Thailand 77.7; Malaysia (81); Brunei Darussalam (83.8); and the highest in ASEAN is Singapore (93.8).

Since Indonesia still has not met the indicators of successful implementation of CEDAW/stipulation of international women's rights in the country, proposing an agenda for Indonesian women's rights must also prioritize the nation's cultural norms, which shape family dynamics, religious beliefs, and local political involvement, to uphold women's rights. It is because substance and structural/institutional reform alone are not enough. From the above, inspired by Tocqueville's 'Democracy in America'² which is then revived by Bellah.³ Regarding 'habits of the heart', it is suggested that the Indonesian women's rights agenda takes seriously Indonesia's "habits of the heart", as the nation's cultural software that animates family life, religious beliefs, and participation in local politics. Therefore, this article aims to carry out Abdullahi Ahmad An-Na'im's cross-cultural approach⁴ which has been well received by the international community of human rights scholars. In cross-cultural approach in Indonesia, repeating the success when Islam first entered Indonesia, namely as quoted from the book *History of Wali Songo* by Zulham Farobi⁵, the spread of Islam in Java which was accepted voluntarily, because it took place peacefully, using gentle preaching methods, and without coercion. This matter later known as

¹ Central Bureau of Statistics, Human Development Index (IPM) Based on Gender 2019-2020 <https://www.bps.go.id/indikator/40/462/2/index-development-human-ipm-menurut-tipe-gender.html>

² Alexis de Tocqueville, *Democracy in America* (Chicago: The University of Chicago Press, 2000).

³ Robert N. Bellah, "The House Divided," *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley and Los Angeles: University of California Press, 1996), pp. vii-xxxix

⁴ Abdullahi Ahmed An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman or Degrading Treatment or Punishment," Abdullahi Ahmed An-Na'im (ed), *Human Rights in a Cross-Cultural Perspective: The Search for Consensus* (Philadelphia, PA: University of Pennsylvania Press, 2010), p. 19.

⁵ Zulham Farobi, *The History of Walisongo: The Journey of Spreading Islam in the Archipelago* (Yogyakarta: Mueeza, 2018).

'Indonesian Islam'/'*Islam Nusantara*', and hence Islam, which originates from Arabia, has now become the majority religion in Indonesia and has a major influence on the Indonesian legal system. Because of that, "Indonesian Islam" and the culture of society can also be "Habits of the Heart" to maximize entrenchment of Indonesian women's rights.

Several previous studies aimed at streamlining the introduction of women's rights in Indonesia by relating them to Islam and culture, such as research from Hardiman Wirahmat, Nur Alfiyani "Women Between Religion and Culture"⁶ that concludes religious values do not demean women, but with these rules elevate women in the sight of God. Alimatul Qibtiyah⁷ which aims to explore the Muslim women's movement and its strategies for accommodating or resisting Islamic domination in terms of the nation-state, constitution and dominant cultural norms in Indonesia; research entitled "Reinterpretation of the Domestic Role of Women by Saleh Darat About Strengthening the Role of Women in Indonesia" by Sri Suhanjati and Hamdan Hadikusuma⁸ integrates Javanese culture and conditions during Dutch colonialism; and research Zulhamdi⁹ on "Islamic Sharia Renewal in Indonesia and Its Character" in the purpose of finding out the concept of Islamic Sharia reform and figures who have contributed to the reform of Islamic Sharia in Indonesia and to conclude the idea of reform in realizing Islamic Sharia with Indonesian character, moving towards gender equality. It is illustrated from these studies that efforts to reform law in Indonesia, cannot be separated from the culture, religion and social politics of society, which are the "habit of the heart" of this nation. However, none of these studies conceptualizes the importance of "Indonesian Islam" as a 'habit of the heart'.

Therefore, the principal argument of this article is the failure to take 'habit of the heart' seriously will hinder progress on Indonesia's

⁶ Hardiman Wirahmat, and Nur Alfiyani, "Perempuan di Antara Agama dan Budaya," *Spectrum, Journal of Gender and Children Studies* 2, 1 (2022), pp. 57–74.

⁷ Alimatul Qibtiyah, "Indonesian Muslim Women and the Gender Equality Movement," *Journal of Indonesian Islam* 3, 1 (2009), pp. 168–196.

⁸ Sri Suhandjati Hamdan Hadikusuma. "Reinterpretation of the Domestic Role of Women in Saleh Darat's Thoughts on Strengthening Women," *Indonesian Islamic Journal* 12, 2 (2018), pp. 195–218.

⁹ Zulhamdi, "Renewal of Islamic Law in Indonesia and Its Figures," *Jurnal Kajian Islam Futura* 19, 2 (2019), p. 239 <https://doi.org/10.22373/jiuf.v19i2.4414>, 2019.

women's rights reform. Therefore, it can be said that considering that "Indonesian Islam" already has cultural elements, it will be easier to apply than directly through the diverse cultures in Indonesia, so that it can further legitimize the project of strengthening Indonesian women's rights. Despite paying attention to the previously studied cases, the Indonesian Muslim community still prioritizes their culture over their religion. It is therefore very important to reflect on how 'Indonesian Islam' as a 'habit of the heart' for the entrenchment of women's rights agenda.

With this aim, the previous study's "sociological jurisprudence" method was analyzed qualitatively described based on Abdullahi's "Cross-culture" approach Ahmad An-Na'im, which localizes international women's rights on culture and religion, which is the Indonesian "habit of the heart". So that it can be said that "Indonesian Islam" is the key to further legitimizing projects to strengthen Indonesian women's rights.

CEDAW Defined

CEDAW stands for the Convention on the Elimination of All Forms of Discrimination Against Women. The United Nations General Assembly adopted CEDAW in 1979 and instituted in 1981. Described as an international bill of rights for women, it was instituted on 3 September 1981. 189 states have ratified the convention,¹⁰ including Indonesia. The convention enumerates women's rights in the public sphere with an emphasis on political life, representation, and rights to nationality. It also describes the economic and social rights of women, especially on education, employment, and health. It also includes special protections for rural women and the problems they face. Furthermore, it outlines women's right to equality in marriage and family life as well as the right to equality before the law.

CEDAW Implementation Success Indicators consist of,¹¹ *first* Legal substance and policy, namely the integration of the principles of equality, justice and equality for women and men in the legal system; abolition of discriminatory laws and regulations and enactment of new

¹⁰ Christine Chinkin and Keina Yoshida, *40 Years of the Convention on the Elimination of All Forms of Discrimination Against Women* (London: Centre for Women, Peace and Security, 2020), p. 4

¹¹ Adhi Santika, et al. "Legal Study Report on Optional CEDAW Protocol Against National Laws Impacting Women's Empowerment" (2020)

regulations prohibiting discrimination against women. Application of the principles, norms and standards regulated in the substantive provisions of CEDAW (articles 1-16) in planning, implementing, monitoring and evaluating the successful implementation of policies at the national and regional levels in protecting, enhancing and fulfilling women's human rights and realizing justice, equality for men -male and female. Based on this indicator, Indonesia has not been in flying color even though it already has 360 regulations with a gender perspective, among others.¹² Pancasila state ideology; The 1945 Constitution of the Republic of Indonesia (RI) which is contained in 14 (fourteen) Rights Clusters, and elaborated in 40 Constitutional Rights of every Indonesian citizen; Decree of the People's Consultative Assembly of the Republic of Indonesia Number XVII/MPR/1998 concerning Human Rights (HAM); Republic of Indonesia Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Discrimination Against Women (CEDAW); Republic of Indonesia Law Number 39 of 1999 concerning Human Rights; and others. On the other hand, there are 421 local regulations that discriminate against women.¹³

The *second* indicator is Institutional Structure and Process namely the development of institutional capacity that implements and enforces non-discriminatory and gender-responsive laws and policies, including legal institutions and law enforcement agencies; establishment of an institutional mechanism to monitor progress in fulfilling women's human rights and preparation of CEDAW implementation reports from local to national levels. In this regard, not yet completely succeed, proven in fact the implementation of CEDAW as reported in Indonesia's report 2012-2019,¹⁴ who recommend sanctionable practices that prohibit negative stereotypes of women; harmful practices, such as all forms of female genital mutilation; prevent and deal with gender based violence against women; including sexual

¹² Sasmita, "Parameter Kesetaraan Gender dalam Pembentukan Peraturan Perundang-undangan," *Jurnal Legislasi Indonesia* 9, 1 (2012)

¹³ "38 tahun Cedaw: Tubuh Perempuan Dikontrol Lewat Perda Diskriminatif?" <https://www.konde.co/2022/07/busana-dan-tubuh-perempuan-dikontrol-lewat-perda-diskriminatif-38-tahun-peringatan-cedaw.html/>

¹⁴ Ministry of Women Empowerment and Child Protection of the Republic of Indonesia, 2019 "Indonesia's 8th CEDAW Periodic Report (2012-2019)," https://ke-menpppa.go.id/lib/uploads/list/1d669-translasi-cedaw-report_indo.pdf

violence; ensuring inclusive education for women and girls with disabilities, and others. This shows that the existing regulations and policies related to women's rights and protection does not fully eliminate inequality in its implementation by legal institutions and or law enforcers who should better understand the intent of the policy or regulation. In fact, they belittle, even punish victims (women) who report their experiences of violence or are encouraged to just mediate.

The *third* indicator is Socio-Cultural Factors, namely developing and increasing the awareness of the whole society, including the executive and legislative institutions. Thus far, the executive and legislative institutions has yet to be adequately implemented while the customary law in some communities is still piously adhered to in patrilineal kinship communities such as in Alas, Ambon, Bali, Irian Jaya, Gayo Land, Timor, Tapanuli, both non-Muslims and Muslims, share inheritance only on the male line, as evidenced by Sulistyowati Irianto,¹⁵ Azhari Akmal Tarigan,¹⁶ Septia Alamanda, Akmal Akmal, therefore women deny the substance of customary law by seeking protection from state institutions. Meanwhile, the men are trying to demand the application of customary law continuously. This shows the need for additional knowledge, for law enforcers and indigenous peoples to better understand women's rights.

Finding *Adat* in 'Indonesian Islam'

Religion and custom are two important elements in society that intersect and influence each other. When religious teachings enter a cultural society, there will be a tug-of-war between religious interests and customary interests. This happened when the Islamic religion was passed down in the midst of Arab society which has its own customs, as well as in Indonesia, having to face local culture that are closely attached to the lives of its people. Inevitably, there will be a struggle between Islam and the culture of the local community, both Arabs as recipients of revelation, as well as Indonesia and other Muslim countries that accept the spread of Islam. In Indonesia, as stated by

¹⁵ Sulistyowati Irianto, "Competition and Interaction between State Law and Customary Law in Courtrooms: A Case Study of Inheritance in Indonesia," *Journal of Legal Pluralism and Unofficial Law* 36,49 (2004).

¹⁶ Azhari Akmal Tarigan, "UIN North Sumatra Implementation of Inheritance Law in Karo Muslim Communities in Karo District," <http://repository.uinsu.ac.id/80/8/BAB%20V.pdf>, 2014.

Farobi, the spread of Islam by wali songo was done through trade, marriage, education, sufism and culture/puppet show, sculpture, fashion and gamelan music. The "Cross-Cultural" approach from Islam, which is influenced by Arabic culture, into Indonesian Javanese culture has worked well.

Therefore, international women's equal rights will also be accepted by Indonesian society, which is 86.7% Muslim, as long as the spread is carried out with "habit of the heart" "Indonesian Islam" or "culture", carried out "cross-culturally" into women's rights. This is because of 'Indonesian Islam' or 'Islam Nusantara'¹⁷ is not the normative Islam,¹⁸ and distinctive because of the contextualization of universal Islam with social, cultural, and literary realities in Indonesia.¹⁹

In such an understanding, the women's rights agenda, is understood as a historical phenomenon that emphasizes the importance of the dynamic interaction between "pen and sword".²⁰ Therefore, efforts to understand the assumptions that underlie Indonesia's modern women's rights agenda presuppose a proper understanding of the nation's character. However, we know that the characteristics of the original Indonesian nation are very diverse, so that the constitutive characteristics of this construction are difficult to place on the Indonesian women's rights agenda. For this reason, Islam must be the focus of our attention, given Indonesia's status which is recognized as a Muslim-majority country, but still adaptive to social forces.

It should be noted that Indonesia defines the basis of its public governance as "religious constitutionalism", the practice of constitutional deliberation that places universally recognized religious values as the overarching regulative norm.²¹ The appropriation of

¹⁷ Ahmad Najib Burhani, "Islam Arab dan Islam Nusantara," <https://nasional.sindo-news.com/berita/1186907/18/islam-arab-dan-islam-nusantara> accessed on 7 March 2023

¹⁸ Mujamil Qomar, "Islam Nusantara: Sebuah Alternatif Model Pemikiran, Pemahaman, dan Pengamalan Islam," *el-Harakah: Jurnal Budaya Islam* 17, 2 (2016).

¹⁹ Kamaruzzaman Bustam-Ahmad and Patrick Jory (eds), *Islamic Studies and Islamic Education in Contemporary Southeast Asia* (Kuala Lumpur: Yayasan Ilmuwan, 2011).

²⁰ J. Tully, "The Pen is a Mighty Sword: Quentin Skinner's Political Analysis," J. Tully (ed.), *Meaning and Context: Quentin Skinner and his Criticism* (Princeton: Princeton University Press, 1988), pp. 7–25.

²¹ P. Iskandar, "Religious Constitutionalism: An Interpretive Reading," *Indonesian Journal of International and Comparative Law* 6, 1 (2019), pp. 55–93.

Islam in Indonesia or the meaning of the term “religion” itself, must be studied carefully that we can show the categorical differences.²² For starters, Indonesia is on the peripheries of ‘Islamic civilization’, illustrating cultural manifestations that do not arise explicitly from the Islamic religion but from ‘social and cultural complexities historically associated with Islam,’ both among Muslims themselves, and non-Muslims.²³ Within that framework, Indonesia is in a dynamic interaction so that Islam is accepted by *adat*. Within the construction of ‘Indonesian Islam’, there needs to be a more nuanced understanding of the “Indonesian social imagination” which influences how the women's rights agenda is understood in Indonesia. Inspired by famous works by Charles Wright American social theorist on ‘social imagination’. It is Indonesia's social imagination that informs how socio-cultural facts, including popular beliefs, laws and institutions, are used. Among other things, the consensus-based decision-making model in Indonesia is revived through the adoption of various customary concepts, such as *musyawarah mufakat* and *gotong royong*.²⁴

Indonesian Women's Rights Agenda: Trapped Between a Rock and a Hard Place

Indonesia's women's rights agenda is too preoccupied with reforming its formal aspects, ignoring the relevance of deep-rooted *adat*. As stated in the introduction, there have been many legal efforts regarding gender equality and protection for women, but their implementation is still far from what it should be. Cases of violence against women continue to increase as data from the 2022 Ministry of Women's Empowerment and Child Protection (PPPA) records that 25,050 women are victims of violence in Indonesia. This number increased by 15.2% from the previous year of 21,753 cases.²⁵ In

²² M. Picard and R. Madinier (eds.), *The Politics of Religion in Indonesia: Syncretism, Orthodoxy, and Religious Contestation in Java and Bali* (London: Routledge, 2011), pp. 117–141.

²³ MGS Hodgson, *The Venture of Islam: The Classical Age of Islam* (Vol. 1) (Chicago: Chicago University Press, 1977).

²⁴ John R. Bowen, “On the Political Construction of Tradition: Gotong Royong in Indonesia,” *Journal of Asian Studies* 45, 3 (1986).

²⁵ “Ada 25.050 Kasus Kekerasan Perempuan di Indonesia pada 2022,” <https://datain-donesia.id/varia/detail/ada-25050-kasus-kekerasan-perempuan-di-indonesia-pada-2022> accessed on 9 March 2023.

addition, there are still many cases of injustice to women's rights in the family, work, politics, economy and socio-culture in society. Institutionally, we know that in every police station there is a special task-force that handles domestic violence issues, but this does not guarantee a smooth complaint process for women victims of violence. Direct observation shows that female officers, who are expected to empathize with victims, often perpetuate the anti-human rights approach by advocating "family consultation" with abusive partners, and recommended to be "rukun".²⁶ Recently, the media reports that there have been decisions by legal institutions that have burdened domestic violence victims, such as the case of Valencya (45 years)²⁷ who was charged with 1 year imprisonment because of scolding her drunk husband; and the case of a domestic violence victim was detained, while her husband was not in Depok.²⁸ Matters like this cause violence against women to become an iceberg phenomenon due to the reluctance of victims to report to the authorities because there is still no rooted understanding of the prohibition of discrimination and domestic violence, alongside a strongly patriarchal culture.

These practices result in gender inequality that affects various aspects of life. Whether we realize it or not, this patriarchal culture gets justification and even takes root in indigenous peoples, which has an impact on marginalization and violence against women, even in Muslim and non-Muslim religious communities. Patriarchy is also rooted in the parental kinship system in Java, which is predominantly Muslim. In practice, inheritance is divided fairly; *dum dum kupat/sigar semangka*, in the sense that sons and daughters get the same share, but there are those who divide the inheritance unequally *segendong sepikulan* sons get 2 times more than daughters similar with Islamic law. However, it is different in the parental Bugis community, in practice in the Muslim Enok tribe uses customary law to divide inheritance,

²⁶ M. Hawkins, "Is *Rukun* Dead? Ethnographic Interpretation of Social Change and Javanese Culture," *The Australian Journal of Anthropology* 7, 1 (1996), pp. 218–234.

²⁷ "Awal Mula Viralnya Kasus Istri Dituntut 1 Tahun Bui karena Marahi Suami Mabuk, Sempat Saling Lapor," <https://www.tribunnews.com/regional/2021/11/18/awal-mula-viralnya-kasus-istri-dituntut-1-tahun-bui-karena-marahi-suami-mabuk-semapat-saling-lapor> accessed on 9 March 2023.

²⁸ "Fakta Lain Istri Korban KDRT Dipenjara, Polisi Tak Lihat PB Babak Belur, Adik Viralkan Foto Lawas," <https://jatim.tribunnews.com/2023/05/25/fakta-lain-istri-korban-kdrt-dipenjara-polisi-tak-lihat-pb-babak-belur-adik-viralkan-foto-lawas> accessed on 21 May 2023.

namely among men and do not divide the share of women in half from men as stipulated in Islamic law.

Similarly, matrilineal kinship society in Muslim Minangkabau follow the customary inheritance determined by the clan elder *Ninik mamak* (man) regardless his young age. The existence of *ninik mamak* in the community is very important *tampek baiyo and bamolah* (place of deliberation and determination of inheritance), so that men are still more influential in Minangkabau. Even though certain customary laws provide a share for women *bundo kanduang*, it is only to manage the *rumah gadang*, but do not have the right to inherit, and only a few shares the inheritance equally. It is different from the Muslim Enggano Tribe²⁹, inheritance is fully delegated to the eldest daughter (matrilineal *mayoral*) to retain assets and not share inheritance, due to the historical conditions of this tribal society, where men often go to war and migrate far away.

It is clear from the empirical facts that some cases mentioned above describe the variety of women's situation in Indonesia. In some cases, they enjoy equal rights with men, but they are often marginalized for many reasons. Therefore, we must not overlook the importance of a humanistic understanding of the Indonesian social imagination, namely considering Indonesian *adat*, or 'habit of the heart'. The inability to do so has slowed down the entrenchment of women's rights in Indonesia. Ignoring "heart habits" in the agenda of discussing the 'foreign' concept of women's rights is proven to be futile, because building the cultural foundation is more important than building institutional foundation.

Responding to "Habit of the Heart" of Indonesia

It can be described that the Indonesian "habit of the heart" is a friendly and tolerant culture that exists in 'Indonesian Islam'. There are two characteristics that determine the meaning of Indonesian Islam; *First*, it is a 'religious system that is not doctrinal enough to be Middle Eastern and not refined enough to be South Asian'. Indonesian Islam is different from 'Arabic Islam'³⁰ due to its acceptance to customary law; *Second*, it further implies that Indonesian Islam is "syncretism in which the composition of the elements, the weight and meaning given

²⁹ Ahmad Dasan and Mikho Ardinata, "Hukum Waris Islam dalam Pelaksanaan dan Pandangan Masyarakat Enggano Bengkulu," *Res Nullius Law Journal* 2, 2 (2020).

³⁰ Burhani, "Islam Arab dan Islam Nusantara,

to the various elements is very different, because there is something more important between one sector of society and another.” The second characteristic shows the inevitability of religious pluralism, which is inherent in the understanding of 'Indonesian Islam' and also shows the rooted nature of *adat* as a characteristic of Indonesian people's lives.

With this argument, 'Indonesian Islam' manifests the plurality of Indonesian perspectives on Islam, and shows the superiority of traditional Indonesian ways of managing its public and private affairs. This means that any attempt at reform, understanding women's rights, must be presented in such a way that it can be legitimized in 'Indonesian Islam' and, by extension, *adat*. For this reason, An-Na'im's cross-cultural approach needs to be adopted because: First, as its basic assumption, is 'the lack of or insufficient cultural legitimacy of human rights standards is one of the major causes of the violations'.³¹ Based on these assumptions, it is important that 'internal and cross-cultural legitimacy of human rights standards' be developed.³² This implies that plurality is a fact that can be used as an opportunity for entrenchment of women's rights. Identifying the dynamism of cultural values and norms as an entry point for legitimacy, then activate like-minded individuals to act as a catalyst in strengthening women's rights is the way to go. Acknowledging the subtle differences among the various customary law groups in Indonesia is what is next to advance the legitimacy of women's rights, because the existence of various customary law groups did not gain widespread acceptance amongst the Indonesian legal community, let alone Indonesian women's rights groups.

CEDAW in Indonesia as a 'foreign' entity will not be successfully implemented, because what fits the 'habit of the heart' of this nation is "Indonesian Islam", as cultural groups in Indonesia are plural. On one hand, this could be an opportunity, as in highly Islamic Minang society should absorb 'Indonesian Islam' easily, but in fact, the matrilineal culture gives great power to men as *Ninik mamak*. However, the 'cross-culture' of women's rights in several legal products in Indonesia has been relatively successful with the use of the concept of 'Indonesian Islam' in reforming family law with a more gender perspective,

³¹ An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights, p. 19

³² Ibid.

including drafting the Marriage Law (UUP), Compilation of Islamic Law (KHI), which is the national law and Indonesian Islamic law, an *ijtihad/fiqh* resulting from the accumulation of intensive cross-examinations on contextual understanding of Islamic law and the local wisdom of the Indonesian people. This acceptance is the beginning of the unification of Islam with Indonesian culture as seen in KHI, several of which consists of women's rights, customary provisions, and Islamic law, even regulations from the Dutch colonial civil code. KHI has protected and raised the status of Muslim women, with the statements in Articles 5, 6 and 7 that a marriage must be legally registered. Likewise, the arrangement of marital assets is regulated according to *adat (gono gini)*, which means joint assets must be divided equally in the event of divorce and death (Articles 96 and 97 KHI), which in fact Islam does not recognize joint assets. Similarly, related to Article 79 paragraphs 2 and 3 KHI” The rights and position of the wife are in balance with the rights and position of the husband in domestic life and association in living together in society, even though their position in the same article is still in the dichotomy that the position of the husband is the head of the family and the wife is the housewife, with different rights and obligations (Art. 79 verse 1).

Another example of the “habits of the hearts” is article 209 KHI relates to inheritance, which is regulated by *wasiat wajibah* (obligatory bequest) for adopted children. This is related to the habits of the Indonesian people who do not differentiate rights and obligations of biological children and adopted children even though Islam does not recognize adoption. The same provisions are also regulated in Law No. 1 of 1974 concerning marriage, as Article 2 paragraph 1; which has implications for the application of pluralism of marriage law. So that it can be concluded that the two legal products when they were made paid attention to the "habits of the heart" of the community, even though in their current development, it should be changed back according to the 'habit of the heart' of today's society which is still considered to be gender biased. However, it turns out that reforming laws and regulations is difficult, as evidenced by efforts to revise the KHI in 2005 which offer transformative reforms that turned out to be a failure, as well as the revision of Law No. 1/1974 concerning Marriage, which only changed one article, namely Article 7 (1) regarding the marital age.

Based on the explanation above, Indonesia cannot fully accept 'Arabic Islam' nor implement CEDAW, including family relations based on the equality between men and women Article 16 of CEDAW. Even though there already is Law No. 1/1974 concerning Marriage and others that satisfy CEDAW's Article 16, observers of women's rights view that the law is still gender biased. For instance, Article 31 (1) states that the husband and wife are equal, but the husband is considered the head of the family. Family and wife are housewives Article 31 (3), which is then interpreted as a husband whose position is higher than the wife and followed by the separation of the husband's duties as breadwinner and the wife in charge of the house. This law is still influenced by patriarchal culture which is also sanctioned by text of Al-Qur'an 4:34. Likewise the registration of marriages as a condition for the validity of a marriage according to Article 2 of Marriage Law³³ also could protect women more if paragraphs 1 and 2 are combined so that unregistered marriages, which can be detrimental to women and cannot be interpreted as 'technically' legal. Therefore, it is necessary to unify these articles to protect women and satisfies CEDAW Article 16 (2), bearing in mind that some Muslim communities are of the opinion that marriage registration is not required in the Al-Qur'an or hadith. Although in its current development with the *qiyas* method, *fiqh* scholars agree to refer to Al Baqarah verse (282), that marriage must be registered under consideration of *maslahah mursalah* in Islamic law, because marriage registration brings more good than harm in social life.³⁴

Gender bias is also evident in articles related to polygamy, namely Articles 3, 4 and 5 of the Marriage Law, where the reason for allowing polygamy is only from the husband's point of view. It is gender biased because there are no sanctions for men who do not carry out their obligations because, in the event of a divorce, men are supposed to remain responsible for their children. However, the stipulation on polygamy which requires approval from existing wife/ves for husband who wishes to marry polygamously has considerably departed from traditional Islamic jurisprudence. Apart from that, there are still many

³³ Article 2 (1) Law Number 1 of 1974 concerning Marriage "Marriage is legal, if it is carried out according to the laws of each religion and belief". Paragraph (2) Every marriage is recorded according to the applicable laws and regulations.

³⁴ Imam Faishol, "Pencatatan Perkawinan dalam Hukum Kekeluargaan di Indonesia," *Jurnal Ulumul Syar'i* 8, 2 (2019).

violations and/or dispensation, as there is an increasing request for dispensation for marriage age recently due to the issuance of Law Number 16/2019 concerning amendments to Law Number 1 of 1974 concerning marriage. Likewise, regarding the transfer of property rights due to inheritance, as in the examples of inheritance described above, while gender equality is still not possible because it still uses the concept of *adat* in some regions, many women in different context across Indonesia do enjoy better share, even equal share. Therefore, in domestic activities, more efforts are still needed from all parties to use the 'habit of the heart' of 'Indonesian Islam'.

In contrast to inheritance issues, CEDAW Article 11 and Article 14 concerning the prohibition of discrimination in employment and rural women's rights to work in the economic field is relatively well-implemented. When viewed from the culture of the Indonesian people from the Minangkabau and Enggano matrilineal kinship groups, the existence of the "*Bundo Kanduang*" institution in Minangkabau means *limpapeh*/ caretakers of the *rumah gadang*, *Pusako Tinggi*, as well as symbols of respectable position for women, can be used as a way for 'cross-culture' to apply CEDAW to women's rights. Similar to the Enggano tribe, the management of the family economy is on the women's side. In an agrarian society such as in Java which is parental and in Bali Sumatra which are patrilineal, it tasks the husbands as the breadwinner, but in fact, it is not uncommon for women to also work in the fields and farms to help their husbands' economy. This is due to the current demands of middle to lower class society, working women have become part of their daily needs,³⁵ there is even a tendency now that women are the breadwinners of the family, as the results of research in Subulussalam and Songan. Women already have the same opportunities as men in working for the welfare of the family.

While related CEDAW article 10 regarding the prohibition of discrimination in education has been implemented in various regulations per laws related to national education that support equal rights for education. the implementation considerably reflects thus equal right of education based on the article 4 and 5 of Law No.

³⁵ Jeroh Miko, "Peran perempuan sebagai pencari nafkah utama di Kota Subulussalam" (Master Thesis, UIN Sumatera Utara, 2017); Ni Luh Sinta Yani and Luh Indrayan, "Keterlibatan Perempuan Dalam Sektor Pertanian Untuk Menunjang Kesejahteraan Keluarga Menurut Perspektif Feminisme; Studi Kasus Di Desa Songan, Bangli, Bali," *Ekuitas, Jurnal Pendidikan Ekonomi* 9, 2 (2021).

20/2003 on System of National Education. The statistic by Ministry Education and Culture shows that in 2018, in elementary school there were 13.288.345 male students and 12.198.161 female students. Similarly, in junior high school there were 5.173.914 male students of junior high school and 4.951.810 female students. Moreover, there are more female students in high school with 2.654.752, and only 2.128.893 male students.³⁶ In addition, there are more female university students with 3.250.158 students with only 3.099.783 male students.³⁷ Consequently, there are more women who graduate of universities than men.³⁸ The statistics shows that the practice of prioritizing men over women in term of education opportunity is diminishing in many regions in Indonesia.

In addition to education, good legal platform is also well-established in the effort of the eradication of discrimination against women in political life mandated by CEDAW Article 7. It stipulates that the state must guarantee equal rights for women and men in the right to vote and be elected. Indonesian voted in election since the first election back in 1955.³⁹ in practice the right to vote is not too problematic compared to the right to be elected. It already exists Law Number 2 of 2008 concerning Political Parties which requires political parties to include a minimum of 30% representation of women in formation and management at the central and regional levels (Article 2 and Article 20); and Law Number 10 of 2008 concerning Elections for the DPR, DPD, DPRD also confirms that political parties can participate in elections unless they have implemented a minimum of 30% representation of women in their management at the central, provincial/district/city levels (Articles 8 and 53). Nonetheless, the results still lagged, given the data on women's representation in the legislature, especially in the DPR, even though the election results show an increasing trend. This is due to the electoral system which results in the election of people's representatives being carried out

³⁶ <https://statistik.data.kemdikbud.go.id/>, accessed on 27 April 2023

³⁷ <https://pddikti.kemdikbud.go.id/mahasiswa> accessed on 27 April 2023

³⁸ "Lulusan Perguruan Tinggi Lebih Banyak Perempuan ketimbang Laki-laki," <https://databoks.katadata.co.id/datapublish/2022/03/09/lulusan-perguruan-tinggi-lebih-banyak-perempuan-ketimbang-laki-laki> accessed on 27 April 2023

³⁹ Amelia Fauzia, "Mendefinisikan kembali Gerakan Perempuan," Jajat Burhanuddin and Oman Fathurahman (eds), *Tentang Perempuan Islam: Wacana dan Gerakan* (Jakarta: Gramedia Pustaka Utama, 2004), p. 61

based on popularity, and the excess financial capabilities of the candidates alone, even in some local communities there are still those who think women should not become leaders, because it refers to religious views (in Riau),⁴⁰ or because they are still shackled by patriarchal culture (in Bulukumba).⁴¹ With regard to this kind of opinion, as stated above, it is necessary to adopt a 'customary' approach by using 'Indonesian Islam', which in its understanding of the concept of Islam has been adapted to local culture. Furthermore, what has been taken place should be acknowledged as the Indonesian style of implementing the Convention on the Elimination of Discrimination Against Women, albeit with several shortcomings and limitation here and there.

Conclusion

Neglecting the importance of 'habit of the heart' has caused the sluggish progress of several women's rights agendas, including CEDAW. Admittedly, some areas have shown certain success, namely in the areas of economy, education, and politics. Still, it trailed behind in others, such as domestic violence and inheritance. Therefore, I argue that Indonesia's women's rights agendas need to start addressing the question of how to introduce cultural legitimacy. Apart from that, the women's rights agenda must also work towards a long-term goal, namely education reform. To achieve this, it is proposed that the next step is to identify 'Indonesian Islam' as the 'habit of the heart of the Indonesian people'. Given that Indonesian Islam is a form of "religious style" that pays attention to local values. It is even more important to take the various customs and habits of the Indonesian people seriously. Bearing in mind that the inequality felt by women seems to have taken root and entered various aspects and scopes of human activity, including domestic, economic, political, religious, and cultural activities, as well as education, caused by the factor of cultural plurality or religious understanding. []

⁴⁰ Nurcahaya, Akbarizan, Sri Murhayati, Nurrahmi Hayani, *Law of Women's Political Leadership (Study of the Perspective of Muballigh Pekanbaru Riau)* 2020

⁴¹ Jusri Adi, Fitriani Sari, Handayani Razak, Hendri Kurniawan, *Community Perceptions of Women in the Local Political Sphere of Bulukumba Regency*, 2022

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