
Academia Open



By Universitas Muhammadiyah Sidoarjo

Table Of Contents

| | |
|---|----------|
| Journal Cover | 1 |
| Author[s] Statement..... | 3 |
| Editorial Team | 4 |
| Article information | 5 |
| Check this article update (crossmark) | 5 |
| Check this article impact | 5 |
| Cite this article..... | 5 |
| Title page..... | 6 |
| Article Title | 6 |
| Author information | 6 |
| Abstract | 6 |
| Article content | 7 |

Originality Statement

The author[s] declare that this article is their own work and to the best of their knowledge it contains no materials previously published or written by another person, or substantial proportions of material which have been accepted for the published of any other published materials, except where due acknowledgement is made in the article. Any contribution made to the research by others, with whom author[s] have work, is explicitly acknowledged in the article.

Conflict of Interest Statement

The author[s] declare that this article was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright Statement

Copyright © Author(s). This article is published under the Creative Commons Attribution (CC BY 4.0) licence. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this licence may be seen at <http://creativecommons.org/licences/by/4.0/legalcode>

Academia Open

Vol. 11 No. 1 (2026): June
DOI: 10.21070/acopen.11.2026.13160

EDITORIAL TEAM

Editor in Chief

Mochammad Tanzil Multazam, Universitas Muhammadiyah Sidoarjo, Indonesia

Managing Editor

Bobur Sobirov, Samarkand Institute of Economics and Service, Uzbekistan

Editors

Fika Megawati, Universitas Muhammadiyah Sidoarjo, Indonesia

Mahardika Darmawan Kusuma Wardana, Universitas Muhammadiyah Sidoarjo, Indonesia

Wiwit Wahyu Wijayanti, Universitas Muhammadiyah Sidoarjo, Indonesia

Farkhod Abdurakhmonov, Silk Road International Tourism University, Uzbekistan

Dr. Hindarto, Universitas Muhammadiyah Sidoarjo, Indonesia

Evi Rinata, Universitas Muhammadiyah Sidoarjo, Indonesia

M Faisal Amir, Universitas Muhammadiyah Sidoarjo, Indonesia

Dr. Hana Catur Wahyuni, Universitas Muhammadiyah Sidoarjo, Indonesia

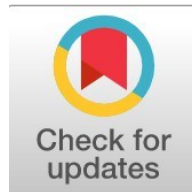
Complete list of editorial team ([link](#))

Complete list of indexing services for this journal ([link](#))

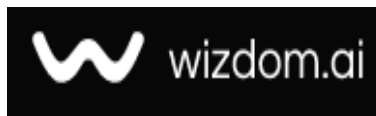
How to submit to this journal ([link](#))

Article information

Check this article update (crossmark)



Check this article impact (*)



Save this article to Mendeley



(*) Time for indexing process is various, depends on indexing database platform

Muhallil Marriage in Islamic Law and Women's Rights

Aisyatul Maghfiroh, firohaisyah961@gmail.com (*)

Pascasarjana Universitas Islam Negeri Kiai haji Achmad Siddiq Jember, Indonesia

Ishaq Ishaq, ishaqmardiyah@gmail.com

Pascasarjana Universitas Islam Negeri Kiai haji Achmad Siddiq Jember, Indonesia

Martoyo Martoyo, martoyo78@uinkhas.ac.id

Pascasarjana Universitas Islam Negeri Kiai haji Achmad Siddiq Jember, Indonesia

(*) Corresponding author

Abstract

General Background: Muhallil marriage, conducted after a triple divorce to permit remarriage with a former husband, remains a contested issue in Islamic family law due to its ethical and legal implications. **Specific Background:** Classical jurisprudence debates its formal validity, while contemporary practices reveal recurring manipulation that places women in vulnerable positions. **Knowledge Gap:** Existing studies largely address doctrinal legality or socio-legal aspects, with limited integration of feminist jurisprudence and maqasid al-shariah, particularly within the Indonesian context. **Aims:** This study aims to examine the concept and practice of muhallil marriage through classical and contemporary Islamic legal thought and to critically assess it using feminist jurisprudence and maqasid al-shariah perspectives. **Results:** Based on a qualitative literature review of fiqh texts, fatwas, religious court decisions, and feminist legal scholarship, the findings indicate that muhallil marriage contradicts the objective of preserving human dignity (ḥifẓ al-'ird) and undermines gender justice within maqasid al-shariah. Feminist jurisprudence identifies the practice as instrumentalizing women for the interests of others. **Novelty:** The study integrates Jasser Auda's maqasid framework with feminist jurisprudence, an approach rarely combined in prior research on muhallil marriage. **Implications:** The findings support the need for reformulating Islamic family law to ensure substantive protection of women's rights while remaining grounded in the normative objectives of Islamic law.

Highlights:

- The practice conflicts with the objective of preserving human dignity within Islamic legal principles.
- Gender injustice emerges through the treatment of women as legal instruments in marital arrangements.
- Integrating maqasid analysis with feminist legal theory offers a comprehensive framework for family law reform.

Keywords: Muhallil Marriage, Islamic Family Law, Maqasid Al-Shariah, Feminist Jurisprudence, Women's Rights

Published date: 2026-01-28

Introduction

Nikah muhalil, which is a marriage carried out solely for the purpose of making a former wife permissible again to her first husband after the third divorce, has become a practice that sparks serious debate in contemporary Islamic law. [1] Although some parties consider it valid according to classical fiqh, this practice often raises moral issues, violates principles of justice, and has the potential to harm women. This phenomenon is important to reassess in light of the growing awareness of women's human rights and feminist critiques of patriarchal practices in Islamic family law.[2] The research gap arises due to the limited studies that combine the perspective of feminist jurisprudence with the analysis of maqasid al-shariah to critique muhallil marriage, particularly in the Indonesian context. This study addresses two main research questions. First, how is the concept and implementation of *muhallil* marriage understood within classical and contemporary Islamic legal thought? Second, how can *muhallil* marriage be critically evaluated through the lenses of feminist jurisprudence and women's rights protection? The research employs Jasser Auda's *maqāṣid al-sharī'ah* framework to evaluate whether *muhallil* marriage aligns with the fundamental objectives of Islamic law, alongside feminist legal theory to analyze its gendered consequences. Using a qualitative descriptive literature review method, the study examines sources including classical *fiqh* texts, fatwas, religious court rulings, and Islamic feminist scholarship. The preliminary findings suggest that *nikah muhallil* contradicts the principles of dignity preservation (*ḥifẓ al-'ird*) and gender justice within *maqāṣid al-sharī'ah*. From a feminist jurisprudential perspective, the practice is viewed as treating women instrumentally for the interests of others, highlighting the need for a reconfiguration of Islamic family law that more fully addresses and safeguards women's rights.



Figure 1. Infographic of nikah muhalil

The image above explains the concept of Nikah Muhallil, also known as 'blind Chinese marriage.' This practice refers to a marriage between a man and a woman who is divorced with talaq three times, with the main purpose of allowing the woman to remarry her former husband. In Islamic law, marriage after talaq three is only permitted if the wife has legally married another man, lived a normal married life, and then parted ways through a proper divorce or the second husband's death.

Therefore, Nikah Muhallil is not merely procedural but contains strict Sharia rules to prevent manipulation within the institution of marriage.[3] The phenomenon of nikah muhallil has sparked controversy in society because it is often practiced in a manipulative way, for example, by using a paid husband solely to make the marriage with the first husband lawful again. This practice contradicts the *maqashid al-shariah*, which emphasizes the sanctity of marriage and the protection of women's dignity. Therefore, there is a need for legal education and comprehensive socialization so that the public understands the essence of marriage law in Islam, and does not fall into practices that diminish the spiritual and moral values of marriage.[4]

Studies on muhallil marriage have so far focused more on classical *fiqh* aspects, the legality of the marriage contract, and scholars' views regarding its validity. Some research also highlights the practice of muhallil marriage in society, both from socio-cultural and normative Islamic law perspectives. However, research that specifically links this practice to the perspective of feminist jurisprudence is still very limited. This creates a research gap, particularly in the context of Indonesia, where the issue of muhallil marriage still occurs but has not been extensively examined through an analysis of gender justice and comprehensive protection of women's rights.[5] The novelty of this research lies in the integration of two analytical frameworks that are rarely combined, namely Jasser Auda's *maqasid al-shariah* theory and the perspective of feminist jurisprudence. Through the application of the *maqāṣid* framework, this study evaluates whether muhallil marriage is consistent with the core objectives of *sharī'a*, particularly the preservation of dignity (*ḥifẓ al-ird*), justice, and family well-being. At the same time, feminist jurisprudence is employed to examine the patriarchal effects and the instrumental use of women inherent in this practice. The integration of these perspectives enables a more rigorous and comprehensive analysis, contributing a novel discourse to the reform of Islamic family law in Indonesia.

This research holds both academic and practical significance. From an academic standpoint, it advances scholarship in contemporary Islamic law through an interdisciplinary approach that bridges Islamic legal theory and feminist legal analysis. In practical terms, the study offers policy-relevant insights for reforming Islamic family law in Indonesia, particularly in addressing legal gaps that permit muhallil marriage. This urgency is further heightened by increasing awareness of women's rights and the growing demand for family law frameworks that are more attuned to gender justice. Thus, this research is expected to contribute to strengthening the protection of women's rights and maintaining the integrity of marital values in Islam.[6] In a study, it is necessary to conduct a review to provide a distinctive analysis of the ongoing research. In this paper, the collected articles are:

First, the research conducted by Fenni Febiana et al., titled 'The Urgency of Implementing Muhallil Marriage Socialization Using Paid Men According to the Perspective of Islamic Law (Case Study in Domo Village, Kampar Kiri District, Kampar Regency)', provides information related to the fact that in marriage, there are inevitably some problems in running household life. Since Islam prohibits divorce, which can destroy the foundations of the family, spread its flaws, weaken the unity of the community, create resentment, and tear apart the veil of honor, divorce signifies separation or division. The method used in this research is field research, conducted in Domo Village. The results of this study include the implementation of muhallil marriage, the locations where muhallil marriages involving paid men take place, the amounts used in the execution of paid marriages involving men, and whether all of this complies with Islamic law. The urgency of socializing muhallil marriage using paid men in Domo village is very beneficial for the surrounding community because it provides a deeper exploration of the legal aspects of muhallil marriage using paid men.

The second is a study conducted by Anggry Muktiah et al. titled 'The Phenomenon of Paid Muhallil Marriage: An Urgency Review of Socialization from the Perspective of Hadith.' This study provides information related to the phenomenon of paid muhallil marriage, which reflects a serious deviation in the public's understanding of Islamic teachings on marriage. This practice is undertaken as a means of bypassing the prohibition on reconciliation following a third *ṭalāq* by arranging a temporary marriage in exchange for financial compensation. The study seeks to analyze paid muhallil marriage through the lens of the Prophet's hadiths and to highlight the urgency of proper dissemination and understanding of Islamic legal principles. Employing a qualitative, descriptive-analytical approach combined with hadith verification (*takhrīj*), the research relies on library-based analysis of both primary and secondary sources. The findings demonstrate that the hadiths prohibiting muhallil marriage are authentic (*ṣaḥīḥ*) and widely transmitted (*mashhūr*), as evidenced in major hadith collections and supported by scholarly consensus. Consequently, this practice is explicitly prohibited, as it contravenes the objectives of *sharī'a* (*maqāṣid al-sharī'a*) and erodes the moral and spiritual foundations of marriage. The study underscores the necessity of systematic education and dissemination of hadith knowledge to prevent legal manipulation that jeopardizes family cohesion and Islamic ethical values.

Another relevant study was conducted by Lailatul Qodariah, entitled "Marriage Engineering for Muhallil in Mangar Village, Tlanakan, Pamekasan from the Perspective of Islamic Law." This research examines the practice of muhallil marriage, which is intended to legitimize the remarriage of a couple following a triple *ṭalāq*. In such cases, a husband is prohibited from reconciling with his former wife unless she first marries another man. Some individuals therefore arrange muhallil marriages formally, whereby the former wife marries a third party and subsequently divorces after a certain period in order to remarry her initial husband. Using a qualitative descriptive method based on interviews and literature review, the study finds that muhallil marriage in Mangar Village, Tlanakan District, Pamekasan Regency is considered legally valid, as it fulfills the formal conditions and pillars of marriage without explicitly stipulating special conditions in the marriage contract. According to Islamic law, muhallil marriage is valid according to the opinions of Imam Shafi'i and Abu Hanifah, although some other schools of thought have different opinions.

The fourth is research conducted by Jumadiah J et al. with the title "Legal Analysis of Muhallil Marriage on the Social Interaction of Divorced Widows in Society." This study provides information aimed at understanding Muhallil marriage from a social perspective and the negative views towards the former wife. The approach used is normative. Data collection prioritized primary, secondary, and tertiary legal sources, in the form of legal theories such as the Qur'an, Hadith, and *fiqh*

books. The research results show that scholars have differing opinions regarding muhallil. Some scholars permit it on the condition that the marriage is done sincerely, will not be divorced later, sexual relations have been conducted, and so on. There are also scholars who do not allow muhallil for any reason because the goal is for the marriage to be valid for the ex-husband. However, looking at social interactions in society toward divorced men, it is considered normal if a couple is no longer compatible, which leads to divorce or divorced status. It is not taboo, but divorced men who have been divorced three times become topics of discussion in society and are mocked. Studies on community life show that there are challenges faced after living as a widow/widower, especially after three divorces, which result in difficulties in working independently, challenges in raising children on their own, difficulty in meeting economic needs, and experiencing feelings of discomfort regarding their status as a widow/widower.

The five studies conducted by Kristiani Virgi Kusuma Putri and colleagues, titled 'The Practice of Nikah Muhallil as a Legal Loophole in the Enforcement of Islamic Family Law in Indonesia,' discuss that marital conflicts can lead to divorce, and after the third talaq, reconciliation is only valid through nikah muhallil. Although valid if it meets legal requirements, Prophet Muhammad (peace be upon him) condemned this practice when it is done solely to enable remarriage with a former husband, as it goes against the true purpose of marriage. This normative juridical research examines the implementation of Indonesian Islamic family law concerning nikah muhallil through legislative analysis and *uṣūl al-fiqh* approaches. The findings indicate that although Qur'an 2:230 is frequently invoked to legitimize muhallil marriage, its misinterpretation has been used to justify contractual marriages that diminish women's dignity and contradict the higher objectives of marriage (*maqāṣid al-nikāḥ*). At present, Indonesian legal regulations do not specifically address this practice. Existing frameworks, such as the Marriage Law and the Compilation of Islamic Law (KHI), emphasize marriage as an institution aimed at establishing a permanent and harmonious family. Nevertheless, legal ambiguities have allowed muhallil marriages to persist in regions including Padarincang, Kampar, and Muko Muko Bathin VII. Accordingly, revising the KHI to explicitly prohibit muhallil marriage, along with reinforcing premarital education, is essential to safeguarding the sanctity and justice of marriage.

Various studies on muhallil marriage demonstrate a range of perspectives within Islamic legal discourse, from those who view it as formally valid based on the fulfillment of marital pillars to those who categorically prohibit it for conflicting with the objectives of marriage (*maqāṣid al-nikāḥ*). However, a critical examination through the lens of feminist jurisprudence reveals that paid muhallil marriage and engineered marital arrangements constitute a profound form of gender injustice. Women are positioned as objects in legal transactions, where their bodies and status are used as tools to accommodate the interests of the former husband in order to reconcile, while women's emotional, social, and spiritual experiences are ignored. This has implications for neglecting the principles of equality and dignity of women that should be upheld in Islamic family law, particularly in building a family that is *sakinah*, *mawaddah*, and *rahmah*. [7]

From a feminist jurisprudential standpoint, the urgency of disseminating Islamic legal norms concerning the prohibition of muhallil marriage extends beyond affirming normative texts or validating hadith authority; it fundamentally involves safeguarding women's rights from exploitative practices that inflict psychological, social, and economic harm. Feminist critiques emphasize that the lack of explicit provisions in the Marriage Law and the Compilation of Islamic Law (KHI) generates legal gaps that perpetuate the subordination of women within the marital framework. [8] Thus, a critical approach demands the reformulation of Islamic family law regulations that explicitly prohibit muhallil marriage, while also emphasizing the importance of premarital education based on gender equality. This aligns with the *maqashid al-shariah* in safeguarding dignity, justice, and welfare, which fundamentally not only aims to protect the family structure but also ensures that women have full rights and agency in marriage.

Method

The research method used in this study is library research with a qualitative-descriptive approach. The main data sources come from primary Islamic law literature, such as classical *fiqh* books, *tafsir*, *hadith*, as well as *fatwas* and decisions from religious courts in Indonesia that are relevant to the practice of nikah muhallil. [9] In addition, the research also examines secondary sources in the form of books, journals, and scientific articles discussing feminist jurisprudence, Islamic feminist legal theory, and Jasser Auda's thought on *maqasid al-sharia*. Data collection was carried out through documentation and content analysis to identify both normative arguments and feminist critiques of the practice of temporary marriage (*nikah muhallil*). Data analysis in this study was conducted in two stages. [10] First, a normative analysis of the concept and practice of muhallil marriage based on the perspective of classical and contemporary Islamic law, including scholars' debates regarding its validity. Second, this study employs a critical examination based on Jasser Auda's *maqasid al-shariah* framework to evaluate whether *muhallil* marriage is consistent with the core objectives of Islamic law, particularly the safeguarding of human dignity (*hifz al-'ird*) and the realization of justice. A feminist jurisprudential approach is utilized as an analytical lens to explore the implications of this practice for women's rights and their position within the family. Accordingly, this approach not only foregrounds the normative principles of Islamic law but also underscores concerns of gender justice and the protection of women's rights in the context of contemporary Islamic family law.

Results and Discussion

A. Muhallil Marriage According to Islamic Law and the Protection of Women's Rights: A Review from the Perspective of Feminist Jurisprudence

Marriage according to language in Arabic *fiqh* literature consists of two words, namely *nikāḥ* and *zawaj*, which mean joining and mixing. And these words are the ones used in the Qur'an to refer to marriage for Muslims. [11] *Nakaḥa* means to bring

together, while *zawwaja* means a couple. So, linguistically, marriage is the act of bringing two people together as one. Through marriage, someone who initially lived alone is united with another person through a marriage contract to become husband and wife, complementing each other's shortcomings. In terms of terminology, marriage is a contract of exchange between a man and a woman with the purpose of mutually satisfying each other and establishing a harmonious household and a prosperous society.[12] Marriage is a *sunnatullāh* that is universal and applies to all of His creatures, whether humans, animals, or plants. Marriage is a way chosen by Allah SWT, which is used as a means for His creatures to reproduce and sustain their lives.[13] Marriage according to *fiqh* is one of the main foundations of life and is very important in a community relationship. According to Law Number 1 of 1974, marriage is a bond of body and soul between a man and a woman as husband and wife with the aim of forming a happy and everlasting family (household) based on the One Almighty God. Meanwhile, according to the Compilation of Islamic Law Article 2, marriage is a contract that is very good for obeying Allah's commands, and its implementation is considered an act of worship.[14]

In Islamic teachings, marriage is generally referred to as '*nikah*,' and *nikah* itself means carrying out an agreement that involves mutual commitment between a man and a woman, which can legalize the intimate relationship between them. Therefore, marriage must be conducted without coercion in order to create happiness within the household, accompanied by mutual love and a sense of peace according to Islamic teachings. Marriage is a goal of the *Sharia* brought by the Prophet Muhammad (peace be upon him), which is an arrangement of human affairs concerning both worldly and spiritual life.[15]

B. Normative and Critical Analysis of *Nikah Muhallil* in Islamic Law

Terminologically, a *muhallil* marriage is a marriage performed by a man with a woman who has been divorced three times by her husband, with the aim of making the woman permissible again for her first husband. This practice is generally carried out with a secret agreement between the woman, the first husband, and the prospective *muhallil* that after the marriage contract is completed, the second husband will immediately divorce the woman. From the perspective of classical Islamic jurisprudence, *muhallil* marriage is viewed as a phenomenon that goes against the purpose of *Sharia*, because the marriage is used merely as a means to make something permissible again that has been forbidden.[16] Normatively, the argument of the Qur'an in Surah Al-Baqarah verse 230 clearly regulates that a woman who has been divorced three times cannot remarry her former husband before she lawfully marries another man, and then a divorce occurs naturally or she is widowed by the second husband. This rule is reinforced by the Hadith of the Prophet Muhammad, who cursed those who engage in the practice of *muhallil* and *muhallal lahu* marriages, because such an arrangement corrupts the sanctity of marriage. Thus, Islamic legal norms indicate that a marriage conducted with the intention of manipulating it to make a wife permissible again for her first husband is prohibited.[17]

Scholars from the four schools of thought agree that a *muhallil* marriage is forbidden if it was intended from the beginning as a means to return to the first husband. When a divorce condition is expressly included in the marriage contract, the contract is deemed invalid as it violates the fundamental principles of marriage. Conversely, if the condition of divorce is not explicitly stated and remains merely an internal intention, the contract is legally valid in form but remains sinful due to the distortion of the true purpose of marriage. This jurisprudential analysis demonstrates that Islamic law prioritizes the substance of intention and the objectives of marriage over the mere formal validity of the contractual arrangement.[18]

When analyzed using the *maqāṣid al-sharī'ah* approach, *muhallil* marriage cannot be considered a valid marriage in substance. The main purpose of marriage in Islam is to preserve offspring (*ḥifẓ al-nasl*), create a family characterized by tranquility, affection, and mercy, and uphold human dignity. The practice of *muhallil*, however, contradicts these *maqāṣid* because it turns women into objects of legal manipulation, thereby undermining the noble purpose of marriage.[19] Therefore, normatively, a *muhallil* marriage does not align with the spirit of Islamic law. Critically, a *muhallil* marriage raises a number of issues. First, this practice is a form of abuse of *sharia* law. The provision of triple divorce in Islam is intended to encourage husbands to be cautious in pronouncing a divorce. With the existence of a *muhallil*, this provision loses its meaning, as if a triple divorce can be "canceled" in a manipulative way. Second, this practice impacts the exploitation of women. Research by Wulandari & Septian shows that women involved in *muhallil* marriages often experience psychological trauma, social pressure, and a sense of lost dignity because they are treated merely as a means to serve the interests of the first husband.

Furthermore, *muhallil* marriage also deviates from the true purpose of marriage. If marriage is only used as a legal-formal means to legitimize a previously forbidden relationship, then the sacred value of marriage is lost, and the contract merely becomes a legal game. In society, this practice creates a negative stigma against women who are used as intermediaries. Research by Munir, Wathoni, Supriadi, and Dahri on the Sasak community in Lombok found that the *muhallil* practice not only contradicts the *maqāṣid al-sharī'ah*, but also causes social unrest and gender injustice, as women are positioned as tools rather than as the main subjects of marriage.[6] Thus, normative and critical analysis shows that *muhallil* marriage is a practice that is substantially invalid, although under certain conditions it is considered formally valid. This practice is prohibited because it contradicts the principles of the Qur'an, hadith, scholarly consensus, and the objectives of Islamic law. From a critical perspective, *muhallil* marriage clearly harms women, undermines the purpose of marriage, and diminishes the dignity of Islamic law in the eyes of society. Therefore, contemporary Islamic law, including the fatwa of the Indonesian Ulema Council (MUI), affirms that *muhallil* marriage is a forbidden practice and should not be carried out.

C. Protection of Women's Rights and the Perspective of Feminist Jurisprudence

Within the framework of legal theory, the protection of women's rights can be analyzed through the approach of justice theory, feminist jurisprudence, and human rights theory.

First, according to John Rawls' theory of justice, the main principles of justice are the equal liberty principle and the difference principle. Rawls emphasizes that everyone should have the same basic freedoms, and inequalities are only justified if they benefit the least advantaged. Applied to the issue of women's rights protection, women as a historically marginalized group are entitled to stronger legal protection to counter patriarchal dominance. Thus, merely neutral laws are not enough; they must include affirmative action that favors women.[20]

Second, within the framework of feminist jurisprudence, the law is seen as never neutral, but rather biased toward male interests because it is built within a patriarchal social structure. This theory rejects the claims of legal universalism that often overlook women's experiences, such as in cases of domestic violence or workplace discrimination that are frequently regarded as 'private issues.' Feminist jurisprudence argues that the law must be reformed to be more responsive to women's experiences and needs, as well as to acknowledge the existence of gendered power relations in society.[21]

Third, human rights theory also provides a normative foundation for the protection of women's rights. The principles of universality and non-discrimination in international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), affirm that women's rights are part of human rights. However, feminist jurisprudence highlights that the implementation of human rights instruments often remains confined to formal equality, whereas substantive equality demands recognition of women's specific conditions, such as reproductive rights, maternity protection, and protection from gender-based violence.[22]

Fourth, in the context of critical legal studies, law is understood as a product of power that often perpetuates injustice. Feminist jurisprudence, which emerged from the spirit of critical legal theory, views that law that does not favor women only reinforces patriarchal structures. Therefore, the protection of women's rights should be seen not merely as a normative-formal issue, but also as a matter of legal politics to change gender power relations.[23]

From these four theoretical frameworks, it can be concluded that the protection of women's rights requires an approach that not only recognizes formal equality but also ensures substantive justice. Feminist jurisprudence makes an important contribution by shifting the focus of law from claims of neutrality toward support for marginalized groups. This argument emphasizes that without a gender-sensitive legal paradigm shift, the protection of women's rights will remain at the level of discourse without producing real justice. The protection of women's rights is a fundamental issue in both modern law and Islamic law. Historically, women have often been positioned as the weaker party and have experienced subordination in various aspects, including within the family, work, and social life. Positive law in many countries seeks to provide protection for women through regulations regarding equality, protection from violence, and guarantees of reproductive rights. In the context of Islamic law, the principle of equality is reflected in the Qur'an, which affirms that men and women are both servants of Allah, both are caliphs on earth, and both have the right to receive rewards and consequences for their deeds. Thus, Islam positions women as legal subjects who have the same dignity as men.

From the perspective of feminist jurisprudence, law is viewed not as neutral, but rather often reflects patriarchal dominance that places women in a subordinate position. This theory critiques legal structures created from a male perspective and that ignore the experiences and needs of women. Feminist jurisprudence emphasizes the need to reconstruct the law to be more responsive to women's realities, for example through recognition of gender-based violence experiences, rights to bodily autonomy, and protection of reproductive work that is often undervalued within formal legal frameworks.[24] In practice, the protection of women's rights often clashes with patriarchal cultural values. For instance, in family law in many societies, women still face limitations in their right to choose a partner, their right to divorce, and their right to child custody. Feminist jurisprudence offers a critical approach by asserting that the law should not only protect women from formal discrimination but also from substantive discrimination that occurs as a result of social structures. This aligns with the substantive equality approach, which demands that the law take into account the specific conditions of women so that real justice is achieved, not just formal justice.[25]

In addition, the perspective of feminist jurisprudence also highlights the importance of access to justice for women. International research shows that although regulations regarding women's rights have been widely adopted in international and national law, women's access to judicial institutions is still limited due to economic, cultural, and social barriers. Effective legal protection can only be achieved if women are empowered to exercise their rights through legal mechanisms that are fair, gender-sensitive, and free from patriarchal bias. Thus, the protection of women's rights from the perspective of feminist jurisprudence demands a reconstruction of the law to be more responsive to women's needs, eliminate patriarchal biases within the legal structure, and ensure the realization of substantive justice. Law must not stop at normative recognition of equality, but must provide tangible instruments to protect women from discrimination, violence, and structural injustices.

Conclusion

A critical analysis of the practice of *muhallil* marriage in Islamic law shows that although, formally, a marriage contract may be considered valid if it meets the pillars and conditions, its substance contradicts the principles of Sharia. The Qur'an, hadiths, and the consensus of scholars emphasize that *muhallil* marriage is a legal manipulation that does not align with the *maqāṣid al-sharī'ah*, because the marriage is merely used as a means to make something previously forbidden permissible again. From the standpoint of Islamic law, this practice not only contravenes established norms but also erodes the noble aims of marriage, which are intended to foster tranquility, ensure the continuity of progeny, and uphold the dignity of both spouses. Viewed through the lens of feminist jurisprudence, *muhallil* marriage is understood as a practice imbued with patriarchal bias and the exploitation of women. In this framework, women are reduced to transactional objects rather than

recognized as legal subjects endowed with dignity and full autonomy. Feminist jurisprudence asserts that legal norms must be attentive to women's lived experiences and structural vulnerabilities and should not reinforce social arrangements that subordinate women. Consequently, safeguarding women's rights calls for a more substantive and gender-responsive reinterpretation of Islamic law, while remaining anchored in its normative foundations. In this respect, both normative Islamic legal analysis and feminist jurisprudence converge in rejecting *nikah muhallil*, as each regards it as a form of legal manipulation that harms women and contradicts the essential objectives of marriage. This conclusion underscores that the protection of women's rights must be regarded as an integral part of the enforcement of contemporary Islamic law, so that the law is not only formally valid, but also substantively just.

References

1. M. T. Maloko, "Nikah Muhallil Perspektif Empat Imam Mazhab," *Jurnal Perbandingan Mazhab*, vol. 1, no. 1, pp. 45–60, 2019. [Online]. Available: <https://ejournal.staidapondokkrempyang.ac.id/index.php/jmj/article/view/143>
2. S. Wardana and H. Hikmat, "Nikah Muhallil: Rekayasa Nikah Dan Keabsahannya Dalam Hukum Keluarga Islam," *Jurnal Riset Hukum Keluarga Islam*, vol. 5, no. 1, pp. 1–15, 2025, doi: 10.29313/jrhki.v5i1.7099.
3. A. M. Naseh, "Keabsahan Nikah Muhallil Perspektif Mazhab Hanafi," *Mabahits: Jurnal Hukum Keluarga Islam*, vol. 5, no. 1, pp. 23–38, 2024, doi: 10.62097/mabahits.v5i01.1652.
4. W. A. Maghfiroh and F. Nashrullah, "Imam Shafi'i's View On Nikah Tahlil," *Sakina: Journal of Family Studies*, vol. 6, no. 4, pp. 201–214, 2022, doi: 10.18860/jfs.v6i4.2393.
5. T. Maloko, "Nikah Muhallil: Analysis of the Opinions of the Four Sunni Schools," *Mazahibuna: Jurnal Perbandingan Mazhab*, vol. 1, no. 2, pp. 89–105, 2019, doi: 10.24252/mh.v1i2.10627.
6. N. Nikmatullah, "Misinterpretation of Islamic Texts in the Practice of Blind Chinese Marriage in Indonesia," *Reflektika: Jurnal Kajian Keislaman*, vol. 18, no. 1, pp. 55–70, 2023, doi: 10.28944/reflektika.v18i2.1309.
7. L. F. Zainurrahma, N. Meilani, and A. Kurniati, "Factors Associated With Early Marriage In Playen District, Gunung Kidul Regency," Ph.D. dissertation, Poltekkes Kemenkes Yogyakarta, Yogyakarta, Indonesia, 2018.
8. E. Wulandari and R. Septian, "The Social And Psychological Impact Of Muhallil Marriage On Women From An Islamic Legal Perspective," *Indonesian Journal of Islamic Law*, vol. 3, no. 2, pp. 112–128, 2020, doi: 10.35719/ijil.v3i2.2034.
9. M. Sari and A. Asmendri, "Library Research In Science Education Studies," *Natural Science Journal*, vol. 6, no. 1, pp. 41–52, 2020, doi: 10.15548/nsc.v6i1.1555.
10. K. Singh and A. K. Siwach, "Researchers' Expectations Towards Library Research Support Services: A Case Study Of Maharshi Dayanand University, Rohtak," *DESIDOC Journal of Library and Information Technology*, vol. 44, no. 2, pp. 89–98, 2024, doi: 10.14429/djlit.44.2.18976.
11. A. S. Malisi, "Marriage In Islam," *Seikat: Journal of Social, Political, and Legal Studies*, vol. 1, no. 1, pp. 1–10, 2022, doi: 10.55681/seikat.v1i1.97.
12. N. R. M. Ichrom et al., "Islamic Marriage Law," *Al-Wasith: Journal of Islamic Law Studies*, vol. 9, no. 1, pp. 77–91, 2024, doi: 10.52802/wst.v9i1.1117.
13. R. Mardiyah and E. R. Kustanti, "Marital Satisfaction Among Couples Without Children," *Jurnal Empati*, vol. 8, no. 2, pp. 130–142, 2019, doi: 10.24239/msw.v16i1.3135.
14. M. F. Hasbi and D. Apandi, "Marriage In The Perspective Of The Qur'an," *Hikami: Journal of Qur'anic and Tafsir Studies*, vol. 3, no. 1, pp. 15–28, 2022, doi: 10.59622/jiat.v3i1.53.
15. R. Antika, A. Khumas, and E. S. Jafar, "Forgiveness And Marital Quality Among Wives," *Socius: Journal of Social Science Research*, vol. 6, no. 1, pp. 44–56, 2024, doi: 10.24239/msw.v16i1.3135.
16. M. O. Hasibuan, "Islamic Law And Religious Courts In Early Indonesian Independence," *El Madani: Journal of Islamic Law*, vol. 1, no. 1, pp. 1–12, 2022, doi: 10.55438/jile.v1i1.10.
17. M. A. Muthhar and I. Musyafirudin, "Sanctions For Illegal Marriage Practices," *Shakhsyah Burhaniyah: Journal of Islamic Legal Studies*, vol. 7, no. 1, pp. 66–79, 2022, doi: 10.33752/sbjphi.v7i1.3939.
18. I. Pratiwi and S. Juwita, "Authority Of Religious Courts In Deciding Divorce Cases Involving Pregnant Wives," *Ex-Officio Law Review*, vol. 2, no. 1, pp. 25–39, 2023, doi: 10.36294/exofficio.v2i1.2945.
19. H. H. A. S. M. Q. Aini, "Nikah Muhallil From The Perspective Of The Four Sunni Schools," *JAS Merah: Journal of Islamic Family Law*, vol. 2, no. 2, pp. 88–101, 2022, doi: 10.24239/msw.v16i1.3135.
20. A. J. Rosa et al., "The Role Of The Mahardhika Women's Movement In Resisting Discrimination And Poverty," *West Science Multidisciplinary Journal*, vol. 1, no. 2, pp. 33–45, 2022, doi: 10.58812/jmws.v1i02.61.
21. S. D. Seely, "Imagination And Individuation: Drucilla Cornell's Feminist Jurisprudence Of Persons," *Feminist Legal Studies*, vol. 33, no. 1, pp. 1–20, 2025, doi: 10.1007/s10691-025-09574-3.
22. F. Fatimawali, "Women As Heads Of Households In Feminist Jurisprudence Theory," *Musawa: Journal of Gender Studies*, vol. 16, no. 1, pp. 55–70, 2024, doi: 10.24239/msw.v16i1.3135.
23. Y. Wu, "Women's Bodily Redemption In Revolutionary Road: A Feminist Jurisprudence Analysis," *Theory and Practice in Language Studies*, vol. 14, no. 9, pp. 1321–1329, 2024, doi: 10.17507/tpls.1409.33.
24. H. Setiawan, S. Ouddy, and M. G. Pratiwi, "Gender Equality Issues In Feminist Jurisprudence And Its Implementation In Indonesia," *FIAT Justisia: Journal of Law*, vol. 12, no. 4, pp. 301–315, 2018, doi: 10.25041/fiatjustisia.v12no4.1386.
25. K. Ratajczak and J. Teut, "Queering Title IX: Protecting Transgender And Gender Non-Conforming Students From Discrimination," *Victims & Offenders*, vol. 18, no. 3, pp. 345–362, 2023, doi: 10.1080/15564886.2022.2138665.