

Woman Rights to Refuse Rujuk: Gender Equity on Islamic Family Law in Indonesia, Malaysia, and Brunei Darussalam

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Keywords: Gender Equity, Rujuk, Islamic Family Law

Abstract: The gender equality on Islamic Family Laws perspective still remains as an interesting issue to be discussed. Those issues still pointing to the growing argumentation on the Islamic its teaching unresponsively to answer gender equality. Moreover, can be understand that women still stand on subordinate rather than men, hence their rights has to be the second level. Conversely, on this research result on Rujuk discussion on Islamic Family law in Indonesia, Malaysia and Brunei will argue its argumentation. Furthermore, those Islamic countries uphold women rights, for example on Rujuk. The woman have rights to refuse Rujuk. If they still forced to accept her ex-husband demand, it becomes irrelevant law hence the court has rights to cancel its decision. The law comparison method was used in this research to compare Islamic Family Law which has been applied on those three Islamic countries vertically, horizontally nor diagonally thus can be analysed on gender perspective.

1 INTRODUCTION

Marriage in Islamic Law is often considered as gender insensitive, such as the problem of matrimony that see woman as an object of transaction, leadership within a family, the issue of sexual needs fulfilment, right of divorce and the issue on inheritance. Other thing that is considered as having a gender bias in Islam is the issue regarding rujuk (the reconciliation between a husband and his wife after the process of talak raj'i or divorce) without undergoing new matrimony as the sole right of the husband, as long as the divorced wife is still in her iddah period.

This right of a husband to reconcile with his former wife without needing an approval from the former wife, as explained by many Ulama of classical fiqh, was regarded as contradictory to the concept of justice and gender equality. The issue of rujuk is actually detrimental to the wife because the wife is considered only as an object by the husband, who has the absolute right to ask for a reconciliation and divorce. The question is then whether the marriage law in the three Muslim majority countries of Indonesia, Malaysia and Brunei Darussalam are

following classical fiqh thinking strictly, or have the marriage law experienced a shift along with the rules of Islamic law that allow changes in law depending on the changes in place and time.

2 METHODS

This study uses a normative-doctrinal approach, which is used when discussing the legislation governing rujuk in the countries of Indonesia, Malaysia and Brunei Darussalam, if examined from the perspective of Islamic law and gender perspective. In addition, this study also employs an empirical approach, which is used to find out how the rujuk are practiced today by people in Indonesia, Malaysia and Brunei Darussalam. The method of data analysis in this study is to use content analysis and also comparative law. Content analysis is a method that analyzes the contents of the regulations regarding rujuk rights in Indonesia, Malaysia and the State of Brunei Darussalam, which will be reviewed from the perspective of Islamic law and gender perspective. Whereas comparative law is the method analyzing and comparing a problem will be examined. This

method is divided into vertical, horizontal, and diagonal comparisons. Vertical comparison is the comparison between the concept of Islamic jurisprudence and marital legislation in the three countries of Indonesia, Malaysia and the State of Brunei Darussalam. Horizontal comparison is the comparison between Islamic family law on marriage in three countries, Indonesia, Malaysia and Brunei Darussalam. A diagonal comparison is a comparison that searches for different aspects of rules, between Indonesia, Malaysia and Brunei Darussalam and the level of difference.

3 DISCUSSIONS

3.1 The Right of Rujuk in Fiqh

In fiqh, there are some perspectives from the mazhab Imam regarding procedures on the process of rujuk. However, these perspectives still have tendency on gender bias since all of the fiqh school (mazhab) allow the process of rujuk without the approval of the former wife. According to the majority of the Ulama (Hanafiyah, Malikiyah, and Hanabilah), rujuk that was done by the husband to his former wife when she was still in her iddah period of talak raj'i by directly engaging in a sexual act, without any verbal expressions to do rujuk, is legal.

The differences that arise are there were Ulama who consider the deeds to be important and there were Ulama who need intentions or niyyah. According to Malikiyah, niyyah rujuk or reconciliation intentions are prioritized for the husband who is directly doing intercourse with his former wife. If the husband doing intercourse directly with his former wife without any intention to do reconciliation, then the rujuk is not valid, even though he will not be charged with Had of adultery. Meanwhile Hanabilah argued that in rujuk, no intention or niyyah was needed. By simply engaging in a sexual act with his former wife in iddah period, it is sufficient to be considered as rujuk even if it was done without any intention or niyyah rujuk. However, it is required that the husband truly doing intercourse directly. If the husband only touched and kissed his former wife, even though it is accompanied by lust, the act can not be considered as rujuk. In contrast to the majority of Ulama, Syafiiyah stated that if the husband had the desire to reconcile in rujuk with his former wife of talak raj'i, then the rujuk must be conveyed in words or by letter first. It is forbidden to do rujuk by directly ask to intercourse with his former wife. If the husband ask to intercourse directly, then

he is obliged to pay a moral dowry or mahar mitsil, because he has done an act of watha' syubhat.

Islam permits the husband to do rujuk with his former wife in order to improve the relationship between husband and wife who were previously cracked and not harmonious, so that by reconcile with rujuk, their relationship become better and more harmonious. This is different from the tradition in the jahiliyyah period (the age of ignorance). In the jahiliyyah society, the right of the husband to divorce his wife is without any limits. The husband can divorce and reconcile with his wife whenever he wants. Oftentimes, the reconciliation was made not on the desire to correct past mistakes, but to prevent the wife who has been divorced from being able to remarry with another man. Such conditions resulted in the divorced wife experiencing harm.

Islam came to correct mistakes and protect the honor of women who have been disregarded in the days of jahiliyyah period. According to Islamic teachings, husbands are prohibited from reconciling by rujuk with their wives if they intend to abuse their wives. Therefore, the provisions regarding reconciliation are regulated thoroughly, as stated in Quran Surah Al-Baqarah verse 231 that when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them].

Based on the verse above and also Surah al-Baqarah verse 228, the fiqh experts (fuqaha) have agreed that the reconciliation made by the husband in the iddah period of talak raj'i does not require the approval of his former wife or her guardian, even though the wife does not like the reconciliation, the wife does not have the right to reject it. According to the fuqaha, reconciliation by rujuk is the absolute right of the husband during the iddah period of talak raj'i.

The sentence of فامسكوهن in Quran Surah Al-Baqarah verse 231 implies that Allah SWT ordered that the act of reconciliation by rujuk is the right of the husband and not the right of the wife. According to Syekh 'Ali al-Sâ'is, a mufassir, in the verse of إن ارادوا إصلاحا in Quran Surah Al-Baqarah verse 228 and the word بمعروف that was then reinforced with the words ولا تمسكوهن ضرارا لتعتدوا in verse 231 suggests that the act of rujuk does not cause harm to the wife.

Aside of those verses, the fuqaha also based their opinion on the hadith narrated by Muslim that when Ibn Umar divorced his wife while she was menstruating and he mentioned that to the Prophet. The Prophet said: "Let him take her back"

Based on this hadith, the Ulama understand that in the conduct of reconciliation by rujuk, the husband does not need the consent of his wife or her guardian, because the Prophet told Ibn 'Umar to do rujuk without specifying whether the wife agreed to the reconciliation or not.

The opinion of the fuqaha described above, asserts that the former wife does not have any right to refuse reconciliation from the husband, as long as the divorce was done within the means of talak raj'i. The rujuk done by the husband was considered as valid and they fully returned to the status of marriage even though the former wife does not approve of it.

3.2 The Rights to Refuse Rujuk in the Islamic Family Law in Indonesia, Malaysia, and Brunei Darussalam

There are several laws and regulations governing marriage in Indonesia, including the Marriage Law No.1 of 1974, Government Regulation No.9 of 1975, and Law No.7 of 1989. However, there are no clear rules regarding rujuk in some of these regulations. Legislations in Indonesia that regulate the problem of reconciliation are Law No.22 of 1946 on the Recording of Marriage, Divorce, and Reconciliation, and the Compilation of Islamic Law articles 10, 118, 150, and 163-169 which explains the parts genera and procedures for referring.

In the regulations regarding rujuk, married couples who have divorced and intend to reconcile must come before the Head of the Office of Religious Affairs in the region in which the wife resides with a reference to do rujuk from the Village Head and a note from the Divorce Registration Book or Divorce Certificate. Before the implementation of rujuk, there are several requirements that must be met, such as: First, the husband who is doing rujuk must meet the conditions specified in the munakahat fiqh, which states that the husband is not an apostate and must be able to act lawful. Second, the woman he is going to do rujuk with is his former wife. Third, rujuk must be done within the iddah period. Fourth, the former wife agreed to the reconciliation done by the husband. Fifth, there must be witnesses to the reconciliation pledge.

Nevertheless, there is a significant explanation in the implementation of rujuk in Article 164 of the Compilation of Islamic Law that is different from the fiqh, stating that "A woman in her iddah period of talak raj'i has the right to object to the wish of reconciliation by her former husband in front of the Marriage Registration Officer witnessed by two witnesses". Even article 165 confirms that "rujuk

done without the consent of a former wife can be declared invalid by the decision of the Religious Court". Therefore the process to refuse rujuk by the wife is divided into two forms, which are: First, rujuk refusal can be made by the wife when the intention to reconcile has not been registered by the authorization of PPN or P3N. Second, the wife refused to do rujuk after the reconciliation has been registered by PPN or P3N.

The rujuk procedure for Muslims in both Malaysia and Brunei Darussalam does not seem to have many differences, from registration to rujuk refusal. In Malaysia, rujuk does not have to be done in front of the Registration Officer. However, rujuk done not in front of the authorized officer must be reported for registration. In Malaysia, this is regulated in the Islamic Family Law (Federal Territory) 1984 Act section 51 (2) "If, after a revocable divorce, recohabitation takes place by mutual consent, the parties shall within seven days report the fact of recohabitation and other relevant particulars to the Registrar for the *kariah masjid* in which they reside". Similar regulations were found in the 1999 Brunei Darussalam Emergency Order (Islamic Family Law) Article 52 paragraph (1) "If, after a revocable divorce, recohabitation takes place by mutual consent, the parties shall within seven days report the fact of recohabitation and other relevant particulars to the Registrar for which they reside".

In Malaysia and Brunei Darussalam, if a husband does rujuk to his former wife without reporting it to the Officer where they reside, then they are sentenced guilty and must be sanctioned. The sanction is different from one country to another. In Federal Territory, Negeri Sembilan, Selangor, Pulau Pinang, Terengganu, Johor, Sabah, Sarawak, and Perlis, sanctions can be in the form of a fine of RM 500 maximum, or in the form of six months imprisonment maximum, or both in the form of fines and prison time. Whereas in Kelantan, Melaka, Perak, and Pahang, the sanction applied was in the form of a fine of RM 500 maximum, or in the form of three months imprisonment maximum, or both in the form of fines and prison time. Both are also different from Kedah. In Kedah, the sanction given was in the form of a fine of RM 300 maximum, or in the form of two months imprisonment maximum, or both in the form of fines and prison time.

In relation with the right to refuse rujuk, the 1999 Brunei Darussalam Emergency Order (Islamic Family Law) article 52 paragraph (8) "If after recovable divorce the husband pronounces a ruju' but the wife has not consented to the ruju' for reason allowed by Hukum Syarak, she shall not be ordered

by the Court to resume conjugal relations, but the Court shall appoint a conciliatory committee (Pegawai Khidmat Nasihat Keluarga) to settle the case”, explains that a woman has the right to refuse rujuk to her husband's wishes for reasons justified by the Sharia law. Thus, the Court inducted a Family Advisory Officer (Pegawai Khidmat Nasihat Keluarga) as a peace agent to reconcile and settle the case. In Malaysia, the Islamic Family Law (Federal Territory) 1984 Act section 51 (9) states “If after recoverable divorce the husband pronounces a ruju’ but the wife has not consented to the ruju’ for reason allowed by Hukum Syarak, she shall not be ordered by the Court to resume conjugal relations, but the Court shall appoint a conciliatory committee as provided under section 47 and that section shall apply accordingly”, that if the wife refuses to live together again for reasons justified by the Sharia law, the Court may not force the wife to accept rujuk. Furthermore, the Court must induct a Reconciliation Committee (Jawatankuasa Pendamai) to settle the case.

Thus, Indonesia, Malaysia, and Brunei Darussalam each have their regulations regarding the ability of the wife to refuse rujuk and give the wife the freedom of opinion.

3.3 The Shifting on Gender thought in Islamic Family Law on Marriage: A Comparison Analysis

As described above, there is similarity and at the same time diametric difference between the opinions expressed by the fuqaha and the laws and regulations of Islamic families in Indonesia, Malaysia, and Brunei Darussalam. The similarity lies in the way both the Islamic family law in these three countries and the opinion of the fuqaha place the right to do rujuk as the right of the husband. Meanwhile, the difference between the fuqaha and the Islamic family law in Indonesia, Malaysia, and Brunei Darussalam is on the involvement of the wife in whether to accept or refuse the offer to do rujuk.

In the perspective of fiqh, women do not have the right to refuse rujuk and must accept to recocile whether they like it or not. However, the regulations in all three countries seek to give the rights to the husband and wife in an equal manner, which is a contemporary view that is different from the classical school of fiqh, resulting in significant conceptual shift from fiqh to legislation.

The policy to give rights to women can actually be understood from the initial essence of marriage, in which it must be based on the agreement of both

parties who will become husband and wife. Moreover, the rujuk done after the divorce are almost certainly caused by disharmony in the household. If the status was forced to be returned to a legal marriage without the consent of the wife, then that means that the household is rebuilt in an atmosphere that is not harmonious and will be very vulnerable to another separation again. Indeed, the iddah period of talak raj'i was meant to be a period to rethink whether the marriage that has been called off will be permanently offed by the means of divorce or will it be rebuilt again to reconcile the household. If there is a strong intention to reconcile (rujuk), the regulations in Indonesia, Malaysia and Brunei Darussalam require the approval of the former wives. The requirement of the approval means that the former wife is given the right whether to accept the rujuk and return to a legal marriage status or to refuse it. The wife can consider whether reconciliation will be more beneficial for her or not.

When viewed in terms of whether there are changes in the benefit or not, then the right to refuse rujuk is among the Maslahah al-Mutaghayyirah, which is the benefit that changes according to changes in place, time, and subject of law. In order to realize the benefit of humans in the world and in the hereafter, the benefit can be realized if the five basic elements can be maintained and realized. Therefore, the review of cases regarding rujuk refusal must be carried out by Religious Court Judge in Indonesia or a Sharia Court Judge in Malaysia and Brunei Darussalam to ensure fair rights for the husband and wife.

The right to refuse rujuk given to the wife through legislation in Indonesia, Malaysia, and Brunei Darussalam indirectly provides protection against religion, mind, reason, descent, and property. As stated in fiqh, that refusing harm takes precedence over taking benefit.

Thus, thinking about the possibility of the harm (mafsadat) is more prioritized than thinking about things that are of benefit. It can be concluded from this postulate, that the right of the wife is much more preferred because the wife herself, and not someone else, knows about the benefit and harm she will face regarding whether she accepts or refuses the offer of reconciliation.

From a gender perspective, what is stated in the legislation concerning marriage in Indonesia, Malaysia and Brunei Darussalam has long shifted compared to the opinion of classical school of fiqh which does not give women the right to refuse rujuk and are obliged to accept it and the rujuk is considered valid even if the wife refused it.

However, ultimately gender inequality can occur in both women and men. But most cases of gender injustice often occur in women, so like gender looks a form of women the face. The opinion of ulama which states that the consent of the wife is not needed seems to cause forms of discrimination that often occur in women, among them:

First, women's age (subordination) often occurs in many ways, making especially in decision because are considered women as irrational and emotional beings. Tradition, customs, rules state and religion even are often used an excuse women to subordinate. The opinion of the jurists that it is not necessary to approve the wife in reconciliation, seems to show women subordination. So, that there is no opportunity for the wife to give a decision related to being yelled at or rejected

Second, labeling (stereotype) is a negative labeling that results in various kinds of injustice. This doesn't happen to alone women, men, ethnicity, and certain religions experience can it. According the law, in this reference the wife does not have the right slightest let her opinion alone. This labeling applies only to husbands because referring is the right absolute of the husband. If investigated have to husband and wife equal rights in any case, both in the family, social and community.

Third, violence (violence) that is violence occurs to women is very diverse, ranging from verbal violence (such as whistling, teasing), sexual violence (such as rape) and so on. One of the reasons wives refuse to refer former husbands is because of the consequences of violence both verbal violence, physical violence, psychological violence, or sexual violence. The reasons can be that accepted by the law or sharak law are violence caused by other people or a married couple.

The shifting Islamic legal thought regarding the consideration of women's right in the matter of rujuk should be appreciated as an adjustment of Islamic law to the recent time demands and benefit considerations in building a household. The Ulama in the three countries of Indonesia, Malaysia, and Brunei Darussalam are actually very strong in adhering the fiqh, but the demands of ijtihad which are more in line with the thinking and development of various aspects that surround them are also being considered, so there is a courage to be more forward-thinking and take a different step from the the opinion of classical school of fiqh while still keeping in mind the rules in formulating Islamic law, such as " al hukmu yaduru ma'a al-illati wujudan au `adaman" (the law will change according to the legal illat surrounding it).

Moreover, the authority to refuse rujuk stated in the legislation is a step forward by the state in defending the women's right in Indonesia, Malaysia, and Brunei Darussalam in order to protect and fulfill the basic rights of married couples, especially regarding the need for wife approval in reconciliation process. If everyone was equal, then there should be no discriminatory treatment. Thus, the state becomes the main legal subject as a duty holder responsible for protecting, upholding, and advancing human rights both nationally and internationally.

The Religious Courts in Indonesia and the Sharia Court in Malaysia and Brunei Darussalam are a form of access to Justice from the government, stating that all citizens of Indonesia, Malaysia, and Brunei Darussalam are entitled to access the Court and obtain justice. This is in accordance with the principle of positive obligation which stated that a country must not intentionally ignore the rights and freedoms of its citizens; on the contrary the state must actively protect and ensure the fulfillment of rights and freedoms. This is line with Article 7 of the Universal Declaration of Human Rights that all people are equal before the law and are entitled to the same legal protection without discrimination. This is a form of renewal the women of position in the fields of religion, social, economic, political, and so on.

Table 1: Comparison analysis between Islamic Family Law in Indonesia, Malaysia and Brunei Darussalam.

| Point of comparison | Fiqh | Indonesian Islamic Family Law | Malaysia n Islamic Family Law | Brunei Darussalam Islamic Family Law |
|----------------------------|---|---|---|---|
| Former Wife Right | Former wife has not the right to refuse rujuk | Former wife is given chance to refuse rujuk | Former wife is given chance to refuse rujuk | Former wife is given chance to refuse rujuk |
| Regulation Strength | Permanently from the qur'an and Sunnah | Not yet in permanent law | Permanent law | Permanent law |

| Point of comparison | Fiqh | Indonesian Islamic Family Law | Malaysia Islamic Family Law | Brunei Darussalam Islamic Family Law |
|----------------------------|---|--|--|--|
| The Method of Rujuk | According to the majority of the Ulama rujuk that was done by the husband to his former wife when she was still in her iddah period of talak raj'i by directly engaging in a sexual act, without any verbal expressions to do rujuk, is legal | Rujuk must be done verbally (bi qauli), in front of 2 witness and supervised directly by Employee Marriage Registrar and must be listed on KUA | Rujuk must be done verbally (bi qauli), at before 2 witnesses and not necessarily must be watched directly by Registrar. Although rujuk musn't do in front of Registrar, however rujuk has to be reported and noted to Registrar | Rujuk must be done verbally (bi qauli), in the presence of 2 witnesses and not necessarily must be watched directly by Registrar. Although rujuk musn't do in front of Registrar, however rujuk that has to be reported and noted to Registrar |
| Sanction | No sanctions | There are no sanctions for those who not register rujuk | Penalties are not exceed 500 ringgit and prison does not exceed 6 month | Penalties not exceeding 1000 ringgit Dollar Brunei and prison does not exceed 3 month |

From the table above, there are legal similarities and differences about regulations from each country. There are differences between the jurists and these three countries including about the ability of the wife to refuse rujuk from the husband, the procedure for rujuk and sanctions for husband and wife who do not report the rujuk.

Imposition of sanctions for couples who do not report their rujuk, such as Malaysia provides sanctions in the form of fines of not more than five hundred ringgit and prison sentences not exceeding 6 months and / or both. This statement contained in article 51 paragraph (5) "Any party to a marriage who fails to report the fact of recohabitation as required by subsection (2) commits an offence and shall be punished with a fine not exceeding five hundred ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment" concerning the implementation of referrals in Family law Islam, Act 1984. Then, sanctions imposed by

Brunei Darussalam are in the form of fines do not exceed one thousand ringgit and imprisonment does not exceed 3 months funds know both, this statement contained in article 52 paragrah (4) "Any party to a marriage who fails to report the fact of recohabitation as required by subsection (1) commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding three months or with both such fine and imprisonment". For Indonesia, there are no sanctions imposed when a married couple does not register and report the rujuk before Marriage Registration Officer, the Marriage Certificate is still held in the Office of Affairs Religion. So that in the state data even the husband and wife status is still in divorce status, then the referrals made are referrals that are not recorded. In carrying out rujuk procedures in Indonesia, Malaysia and Brunei Darussalam seems to strengthen Imam Syafi'i's opinion that reconciliation must be conducted verbally and two witnesses. Then there is social indulgence in each country, in Indonesia the rujuk is done verbally, two witnesses, and registered at the Office of Religious Affairs. Likewise with Malaysia and Brunei Darussalam rujuk must be recorded and witnessed by two witnesses but inside the implementation does not have to be in the presence of Registrants.

The countries of Indonesia, Malaysia and Brunei Darussalam make rules about rujuk this not without reason. Rather it aims to align rights women to realize justice. In harmony with the main objectives carry out Islamic law which is to realize human benefit, which is where human benefit will continue to change and increase according to progress of the times.

Looking at the lives of women in Indonesia, Malaysia, and Brunei Darussalam, each has a social and cultural difference adopted. Likewise, with the legislation, especially regarding marriage that many regulate the rights and obligations of husband and wife that must be obeyed. Laws and cultures that live in society (living law) are closely related like two sides of a coin that cannot be separated. Catherine MacKinnon emphasized that the state is more male and fights for men.

When viewed from the standpoint of gender equality that all people regardless of how the background has similarities in opportunities, access, participation or involvement in a productive activity. However, in reality, especially in the context of gender equality, the different roles of status, gender, often prevent a person from accessing basic rights. When talking about women in law, it is necessary to understand that law is a product of social and cultural dynamics. Noryamin Aini quoted Lawrence

Friedmaan's argument which emphasized that the effectiveness of law enforcement is determined by three interrelated things, namely substantive (material aspect), structural (institutional) and cultural (cultural).

Problems related to marriage law are a problem that has become a debate among experts on Islam. One of them is the right of rujuk by the wife, which is regulated by these three countries, which does not intend to reduce the rights of the husband but to try to regulate the interests of each party to be protected. These three countries have the same goal of protecting women, so it can be seen which laws of the country prioritize women in rujuk rights, namely:

- The provisions rujuk in the Compilation of Islamic Law in Indonesia are one form of protection for women. This is based on the Compilation of Islamic Law article 79 paragraph (2) that the right and position of the wife is balanced with the rights and position of the husband in domestic life, and the association of living together in society. Then in reference, women are given the right to consider their opinions. Judging from the stretching of gender, Indonesian women seem to be very enthusiastic about this one study so that gender-sensitive education stands a lot and becomes the spotlight of Muslim women in Indonesia. Rujuk regulations regulated by the Compilation of Islamic Law, show that the legislative hierarchy gives the power that Law No. 1 of 1974 concerning Marriage has permanent legal force. Likewise with the Compilation of Islamic Law, although it does not have permanent legal force, it is used as a reference by judges in the Religious Courts in deciding a case. This is appreciated by women in Indonesia because they have made a large contribution especially in the right of rujuk refusal.
- In Malaysia, Muslim women are given the same legal rights and protection, one of which is the right of refusal of rujuk and impose sanctions in the form of punishment or fines for couples who do not report their rujuk. This rujuk regulation is one of the legislative forms of Islamic family law, namely Status, both in the form of Deed, Energy and Ordinance. The reference itself is a rule of the Islamic Family Law (Federal Territories) Act 1984 which is a legal product that is a model for the enjoyment of Islamic family law, in terms of position even the statute has strong legal force and can be used directly in making decisions in court.

Therefore, Muslim women in Malaysia get state protection in the form of reconciliation rights and Malaysian women are also sensitive to gender bias. Evidenced by the existence of women's groups namely Sisters in Islam (SIS), Malaysia also became a country that did not escape the attention of women in order to get their rights.

- The State of Brunei Darussalam makes Syaff'i School a reference and guideline by the government and society because it is considered the most flexible and representative and can be accepted by all people of Brunei Darussalam well. Women begin to get special attention from the government in the right to refuse reconciliation, women or wives are given the opportunity to consider rujuk submitted by their husbands. Then as with Malaysia, Brunei Darussalam added sanctions in the form of fines or imprisonment for couples who did not report their rujuk. As Muslim women in Brunei do not have to use the veil / burqah, provided that the existence of the woman does not cause harm. Therefore, it also appears that women are positioned moderately not restricted in their territory. Evidenced by the number of women in Brunei who work outside the home; as state officials, soldiers (askar), instructors (directors), banking employees, hotel workers, even many who serve as ministers and assistant ministers in the kingdom. There does not appear to be a stretch of gender and gender education in this country. Brunei women listen more to the king's decree as long as it brings good to him. Basically living in Brunei is very comfortable for women, crime rates are very low, even because of the high level of security so women are free to go out for a walk until 12 pm without worrying. The police (Asykar) will continue to patrol and will warn of the possibility of a hazard. From the explanation above, it can be seen that Malaysia is more gender sensitive towards women. With the permanent legal power it has over rujuk regulations, it will provide more legal certainty for women.

The data diagonal analysis above indicated that Brunei Darussalam have shifted farther than another country from the point of departure in fiqh school. Malaysia in the second position and the last position is Indonesia. Indonesia have note obligate the women right to refuse rujuk in permanent law until now but

still in the president instruction, Compilation of Islamic Law.

The promulgation of the opinions of the jurists in these three countries shows that the ulama in these three countries are very concerned about gender issues in considering *ijtihad* in the field of law. They dare to take a different position from the opinions of the jurists because of different conditions and times. If all legal products carried out pay attention to the latest conditions, then it is very possible that all Islamic law products will be far from gender bias.

4 CONCLUSIONS

The shifting ideas related to gender perspective in the regulation on family law in Indonesia, Malaysia, and Brunei Darussalam, specifically regarding the right to refuse rujuk for women, confirms that Islamic law is very dynamic and constantly changes from time to time in accordance with the demands of human needs and not as static as in the opinion of many people. Indeed, the differences in the results of *ijtihad* in Islam are common and were not a disgrace. Especially when Islamic law has been incorporated into state law, the results of contemporary *ijtihad* while still paying attention to the references to the thoughts of *fiqh* scholars then are urgently needed so that Islamic law does not lose its essence. Therefore, the principal of implementing to relize Islamic law is human benefit. Human benefit will to change continue and in accordance increase with the progress of times. It's clear that the purpose of Islamic law the lowering is for the interests, happiness, welfare and safety of mankind in the world and in the hereafter.

REFERENCES

- ‘Ali Hasballah, *Ushûl al-Tasyrî ‘al-Islamî, Dâr al-Ma’ârif, Kuwait.* 309.
- Ahmad Mukri Aji, *Urgensi Mashlahah Mursalah dalam Dialektika Pemikiran Hukum Islam, Pustaka Pena Ilahi, Bogor,* (2011) 43.
- Ahmad Tholabi Kharlie, *Modernisasi, Tradisi dan Identitas: Praktik Hukum Keluarga Islam Indonesia, Studia Islamika Indonesia Journal For Islamic Studies.* (2011) 167.
- Catherine A. MacKinnon, *Toward a Feminist Theory of the State, Harvard University Press, Cambridge.* (1998) 163.
- Dede William-de Vries, *Gender Bukan Tabu: Catatan Perjalanan Fasilitasi Kelompok Perempuan di Jambi,*

- Center for International Forestry Research (CIFOR), Bogor, (2006) 22.
- Euis Nurlaelawati, Arskal Salim, *Gendering The Islamic Judiciary: Female Judges in the Religious Court of Indonesia, Al-Jamiah Journal of Islamic Studies, Sunan Kalijaga State Islamic University.* 51(2) (2013).
- Muhammad ‘Ali al-Sâyis, *Tafsîr Ayât al-Ahkâm,* 139.
- Marhumah, *The Roots of Gender Bias: The Roots of Gender Bias: Misogynist hadiths in Pesantrens, Post Graduate Program IAIN Salatiga.* 5(2) (2015) 295.
- Muhammad Jawad Mughniyah, *al-Ahwâl al-Syakhshiyah, Dâr al-‘Ilm, Beirut,* (1964) 160.
- Noryamin Aini, *Diskursus Hukum Feminis, Gender dan KTP, Potret Perempuan dalam Teori dan Realitas Meretas Paradigma Kesetaraan, PSW UIN Jakarta, Jakarta.* (2007) 8.
- Nuril Hidayati, Ashfa Fikriyah, *Perempuan dan Politik: Antara Cita dan Fakta Studi atas Peran Perempuan dalam Pembangunan di Brunei Darussalam, Jurnal Realita,* (14)(1) (2016) 111.
- Raihanah Abdullah, *Rujuk: Peruntukan Undang-undang dan Pelaksanaanya di Malaysia, Shariah Journal, Academy of Islamic Studies University of Malaya* (2010) (25-52).
- Rhona K.M. Smith, *Hukum Hak Asasi Manusia, PUSHAM UII, Yogyakarta.* (2008) 38-39.
- Siti Ruhaini Dzuhayatin, *Gender dalam Tatanan Internasional dan Nasional, dalam Agama, Politik, Global dan Hak-hak Perempuan, (Ed) Din Wahid dan Jamhari Makruf, PPM UIN Jakarta & British Embassy, Jakarta.* (2007) 5.