Proceeding of International Conference on Sharia and Law (ICOSLAW) 2026
Navigating Women's Roles in Legal Development
Vol. 3, No. 01 (2026)

Women's Agency in Constitutional and Supreme Court-Driven Family Law Reform: Strategic Litigation, Judicial Responses, And Legal Transformation in Indonesia

Rachmat Trijono
rach028@brin.go.id
National Research and Innovation Agency

Abstract:
Despite extensive scholarship on family law reform in Indonesia, the literature has predominantly focused on legislative developments and judicial decisions, leaving the contribution of women's agency to legal transformation insufficiently explored. This article addresses that limitation by investigating the role of women and women's organizations in advancing family law reform through strategic constitutional litigation and judicial policy-making. The study uses a qualitative method and a normative-juridical approach. Qualitative methods aim to gain a deep understanding of legal phenomena by interpreting the meanings, principles, and relationships among legal norms. The normative legal research approach views law as a norm or rule (law on the books). The research focus is not on societal behavior, but rather on legislation, court decisions, legal principles, expert doctrine, legal theory, and relevant legal concepts. The findings indicate that women have become significant constitutional actors who strategically employ judicial review to contest discriminatory legal norms, influence constitutional interpretation, and encourage gender-responsive reforms within the judiciary. The synergy between women's agency, constitutional adjudication, and judicial governance has generated a distinctive model of court-driven family law reform.
Keywords: Constitutional adjudication; Family law reform; Judicial governance; Strategic litigation; Women's agency.

Introduction

Family law occupies a distinctive position within the Indonesian legal order because it regulates intimate relationships while simultaneously distributing rights, responsibilities, authority,

and legal status between women and men. Marriage, divorce, child status, parental authority, maintenance, and the legal consequences of marital relationships are therefore not merely matters of private ordering. They are also institutional sites through which the state defines equality, autonomy, dignity, and the permissible boundaries of gender relations. When statutory rules differentiate between men and women, or when formally neutral rules produce disproportionately adverse consequences for women, family law becomes a constitutional question concerning equality before the law and the protection of fundamental rights. The persistence of gendered inequality in family law therefore raises a broader question concerning who is capable of transforming law and through what institutional mechanisms such transformation occurs.

The Indonesian experience demonstrates that family law reform cannot be adequately understood solely as a product of legislative action. The post-reformative constitutional order has created additional institutional avenues through which legal norms can be contested, reinterpreted, and transformed. The expansion of judicial review under the amended 1945 Constitution, particularly the authority of the Constitutional Court to review statutes against the Constitution, has enabled individuals and civil society organizations to transform experiences of legal inequality into constitutional claims. The courts have consequently become not only institutions for resolving disputes but also arenas in which competing understandings of equality, discrimination, family, gender, and constitutional rights are negotiated.

This development is particularly visible in cases involving marriage and the legal position of women and children. Constitutional Court Decision No. 46/PUU-VIII/2010, for example, altered the legal consequences attached to children born outside a legally registered marriage by recognizing a relationship with the biological father where the relationship could be established

through scientific and technological evidence. [1] The decision illustrates how a dispute originating in family law inequality could be transformed into a constitutional claim concerning the rights and legal status of the child. More significantly for women's rights, Constitutional Court Decision No. 22/PUU-XV/2017 confronted the unequal minimum marriage age prescribed for women and men under the 1974 Marriage Law. The Court held that the provision establishing a minimum marriage age of sixteen for women was contrary to the Constitution and ordered legislative reform.2 The decision subsequently contributed to the enactment of Law No. 16 of 2019, which equalized the minimum marriage age for women and men at nineteen years.

Yet these developments should not be interpreted simply as evidence that courts independently produce progressive family law reform. Such an interpretation risks obscuring the actors who identify discriminatory rules, formulate constitutional arguments, collect evidence, construct legal narratives, select appropriate plaintiffs, mobilize expert knowledge, and sustain litigation beyond an individual dispute. In other words, the legal transformation visible in judicial decisions is preceded and accompanied by processes of legal mobilization. Law does not automatically become an instrument of social change merely because a constitutional court possesses the power of judicial review. Legal change depends upon actors who perceive law as a potential resource, translate social grievances into legally cognizable claims, construct coalitions, and strategically interact with legal institutions.[3]

This dimension is especially important in the Indonesian women's movement. Indonesian women's organizations have historically used multiple strategies to challenge gender inequality, including legislative advocacy, public campaigns, legal drafting, policy engagement, litigation, research, and coalition building.

[1] The Constitutional Court of the Republic of Indonesia, Decision Number 46/PUU-VIII/2010 (2010).
[2] Mahkamah Konstitusi, "Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017" (2017).
[3] Michael W Mccann, "Rights at Work Pay Equity Reform and the Politics of Legal Mobilization," n.d.

Existing scholarship demonstrates that women's movements have played an important role in legal reform during the post-authoritarian period. Cagna and Rao, for example, demonstrate that feminist mobilization in Indonesia and other Asian countries operates through iterative processes of negotiation among state and non-state actors rather than through a linear model of legal change. [4] Mutaqin similarly shows how Indonesian women's movements have mobilized resources and negotiated between religious discourse, feminist aspirations, and legal reform, including in debates surrounding the Marriage Law and the Counter-Legal Draft of the Compilation of Islamic Law. [5] More recently, Eddyono demonstrates that women's movements continue to employ complex advocacy strategies to pursue gender-just legislation and that internal organizational dynamics influence the trajectory of legal reform.[6]

Nevertheless, the existing literature leaves an important analytical gap. Much of the scholarship concerning Indonesian family law reform examines what courts decided or what legislation subsequently changed. In contrast, scholarship concerning women's movements tends to emphasize legislative advocacy, social movements, or policy reform. The two dimensions are rarely integrated into a single explanation of how women's agency operates across the constitutional and judicial arenas. The result is an institutional separation between studies of judicial decisions and studies of feminist activism. Such separation makes it difficult to explain why particular grievances become constitutional cases, why particular legal arguments gain judicial traction, why unsuccessful litigation can nevertheless generate subsequent

[4] Paola Cagna and Nitya Rao, "Feminist Mobilisation for Policy Change on Violence against Women : Insights from Asia," *Gender & Development* 24, no. 2 (2016): 277–90, https://doi.org/10.1080/13552074.2016.1194035.
[5] Zezen Zaenal Mutaqin, "Culture , Islamic Feminism , and the Quest for Legal Reform in Indonesia," *Asian Journal of Women's Studies* 24, no. 4 (2018): 423–45, https://doi.org/10.1080/12259276.2018.1524549.
[6] Sri Wiyanti Eddyono, "Advokasi Legislasi Hukum Yang Berkeadilan Gender Oleh Gerakan Perempuan Di Indonesia Pasca-Transisi Demokrasi Advocacy for Gender-Just Lawmaking by the Women ' s Movement in Post-Transition Indonesia" 30, no. 2 (2026): 157–78, https://doi.org/10.34309/jp.v30i2.1241.

strategic adaptation, and how women's mobilization can move from constitutional adjudication toward judicial governance.

The significance of this gap becomes clearer when considering the relationship between constitutional litigation and the subsequent development of judicial policy. The Constitutional Court's intervention concerning the minimum marriage age did not itself exhaust the process of legal transformation. The legislative response through Law No. 16 of 2019 was followed by institutional responses within the judiciary, including Supreme Court Regulation No. 5 of 2019 on guidelines for adjudicating applications for marriage dispensation.7 At an earlier stage, the Supreme Court had issued Regulation No. 3 of 2017 concerning guidelines for adjudicating cases involving women facing the law. The latter explicitly seeks to guide judges in recognizing gender equality, avoiding gender stereotypes, and preventing discriminatory treatment.8 Thus, family law reform can be observed as a sequence extending from social grievance, mobilization, constitutional litigation, judicial interpretation, legislative response, and judicial institutionalization.

The significance of this sequence is not merely procedural. It demonstrates that women's agency may operate beyond the conventional understanding of agency as direct participation in lawmaking. Women may exercise legal agency by selecting litigation as a strategic arena, by transforming personal experiences into public constitutional claims, by constructing arguments around equality and non-discrimination, by producing or mobilizing expertise, and by building institutional alliances capable of sustaining reform. Legal mobilization theory provides an appropriate analytical lens for examining this process because it conceptualizes law not simply as a set of formal rules but as a

[7] Mahkamah Agung, "Peraturan Mahkamah Agung Nomor 5 Tahun 2019," no. 1489 (2019).
[8] Ketua Mahkamah Agung, "Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum" (2017), http://urj.uin-malang.ac.id/index.php/jfs/article/view/488%0Ahttp://urj.uin-malang.ac.id/index.php/jfs/article/download/488/363.

resource that social actors can strategically invoke to pursue broader political and social objectives.[9]

The Indonesian case is therefore analytically significant because it reveals a movement from law as an object of contestation to law as an instrument of institutional transformation. The central issue is not simply whether women have benefited from constitutional judgments or judicial regulations. Rather, the issue is whether women and women's organizations have functioned as constitutional actors whose mobilization has contributed to changing the meaning, application, and institutional governance of family law.

The distinction is crucial. A court-centered account would describe Decision No. 22/PUU-XV/2017 as a judicial intervention against discriminatory marriage-age regulation. A legislative-centered account would emphasize the enactment of Law No. 16 of 2019. A judicial-administration account would focus on PERMA No. 3 of 2017 and PERMA No. 5 of 2019. A legal-mobilization account, by contrast, connects these developments and asks how social actors moved between these institutional sites and used law strategically to advance gender equality. It therefore shifts the analytical unit from the judicial decision alone to the mobilization process surrounding the decision.

This perspective is particularly relevant because litigation does not necessarily produce immediate success. Strategic litigation may generate partial victories, institutional resistance, delay, or even judicial rejection. Yet unsuccessful litigation may provide legal knowledge, expose institutional constraints, strengthen networks, refine arguments, and encourage actors to alter their strategies.[10] Consequently, legal mobilization should be understood as an iterative process rather than a simple relationship between litigation and legal victory. The important analytical question is not merely whether a case was won or lost but what

[9] Stuart A. Scheingold, *The Politics of Rights: Lawwyers, Public Policy, and Political Change*, 2010.

[10] Annual Review, Social Science, and Michael Mccann, "Law and Social Movements : Contemporary Perspectives" 2, no. December 2006 (2010): 1693694.

actors learned from the process and how that learning affected subsequent mobilization.

Against this background, this article examines women's agency in constitutional and Supreme Court-driven family law reform in Indonesia. It treats women and women's organizations as active legal mobilizers rather than passive beneficiaries of judicial reform. The article focuses particularly on the interaction between strategic litigation, constitutional interpretation, coalition building, legal framing, evidence and expertise, and subsequent judicial governance. The central argument is that Indonesian family law transformation cannot be sufficiently explained as an autonomous product of judicial activism. Rather, it is better understood as a court-mediated process of legal mobilization in which women's agency connects social grievances to constitutional claims and subsequently to judicial institutional reform.

Previous Research and State of the Art

Recent scholarship provides several important foundations for understanding gender, law, and legal reform in Indonesia. However, these studies tend to occupy distinct analytical positions.

First, scholarship on women's movements emphasizes the political and organizational dimensions of feminist legal reform. Cagna and Rao's comparative study demonstrates that feminist mobilization in Asia, including Indonesia, operates through negotiation, bargaining, and strategic engagement with state institutions.[11] Their contribution is important because it challenges the assumption that legal reform is simply imposed by the state. Nevertheless, their primary focus is broader feminist policy mobilization concerning violence against women rather than the specific movement from women's mobilization to constitutional litigation and judicial governance in family law.

Mutaqin examines the relationship between Islamic feminism, social movement mobilization, and legal reform in Indonesia. His

[11] Cagna and Rao, "Feminist Mobilisation for Policy Change on Violence against Women : Insights from Asia."

analysis of the Marriage Law and the Counter-Legal Draft of the Compilation of Islamic Law demonstrates the importance of ideology, resources, religious discourse, and political context in feminist legal activism.[12] This research is particularly valuable for understanding why family law is a contested field. However, it does not primarily analyze constitutional litigation as an iterative mobilization strategy or trace the institutional consequences of women's litigation across the Constitutional Court and Supreme Court.

Eddyono's recent analysis further demonstrates the continuing importance of women's organizations in Indonesian legal reform. She shows that advocacy processes are complex and shaped by both cooperation and internal dynamics among women's organizations. [13] This work confirms the agency of women's movements but primarily examines legislative advocacy. The present study extends that insight into judicial institutions by asking how women's movements use courts as strategic arenas of law reform.

Second, a substantial body of research examines the Constitutional Court's family law decisions, particularly Decisions No. 46/PUU-VIII/2010 and No. 22/PUU-XV/2017. Research on Decision No. 22/PUU-XV/2017 generally concentrates on the constitutional reasoning concerning the minimum marriage age and its implications for women and children. Nugraha, Izzaty, and Putri, for example, conceptualize the reconstruction of the minimum marriage age as a form of legal protection for women.[14] Ilhami, meanwhile, demonstrates that the Court's decision did not automatically eliminate child marriage because the legal system

[12] Mutaqin, "Culture , Islamic Feminism , and the Quest for Legal Reform in Indonesia."
[13] Eddyono, "Advokasi Legislasi Hukum Yang Berkeadilan Gender Oleh Gerakan Perempuan Di Indonesia Pasca-Transisi Demokrasi Advocacy for Gender-Just Lawmaking by the Women ' s Movement in Post-Transition Indonesia."
[14] Xavier Nugraha, Risdiana Izzaty, and Annida Aqiila Putri, "Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan (Analisa Putusan MK No. 22/Puu-Xv/2017)," *Lex Scientia Law Review* 3, no. 1 (2019): 40–54, https://journal.unnes.ac.id/sju/index.php/lslr/article/view/30727/13413.

continued to provide opportunities for marriage dispensation.[15] These studies are significant because they reveal the limits of judicial intervention.

Similarly, studies of Decision No. 46/PUU-VIII/2010 tend to focus on the legal status of children born outside marriage and the doctrinal implications of the Court's interpretation.[16] Although these studies establish the importance of constitutional adjudication for family law, they generally treat the judgment as the principal object of analysis rather than asking how women or women's organizations mobilized law to produce the conditions under which constitutional adjudication became possible.

Third, research on PERMA No. 3 of 2017 has increasingly examined the implementation of gender-sensitive adjudication. Recent research finds that the regulation provides a legal basis for judges to avoid gender stereotypes and to apply principles of gender equality in cases involving women.[17] Research concerning religious courts likewise examines the implementation of gender equality in women's cases and indicates that the institutionalization of gender-responsive adjudication remains an important issue.[18] The Supreme Court itself identifies PERMA No. 3 of 2017 as part of its institutional effort to protect women facing the law.

These studies, however, generally examine the implementation or doctrinal content of judicial regulation, rather than the preceding mobilization process through which gender-sensitive judicial governance emerged. This distinction matters because institutional reform does not arise in an institutional

[15] H. Ilhami, "The Relevance of Constitutional Court Decision Number 22/PUU-XV/2017 Related to the Dispensation of Marriage to Prevent Child Age Marriage | Relevansi Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Dalam Upaya Mencegah Perkawinan Usia Anak," *Jurnal Konstitusi* 17, no. 2 (2020): 284–308.
[16] Yusuf Mardani, "Aanalisis Yuridis Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Tentang Judicial Review Terhadap Undang Undang Perkawinan," no. 46 (2010): 1–11.
[17] Iin Aulia Mahardini and Siti Aisyah, "Feminist Legal Theory Dalam Peraturan Mahkamah Agung ; Studi Analisis Hukum Islam" 3, no. 1 (2022): 96–107.
[18] Dede Kania et al., "Gender Equality Implementation in Women's Legal Cases in Religious Court" 25, no. 2 (2025): 205–20, https://doi.org/10.30595/kosmikhukum.v25i2.25472.

vacuum. Judicial regulations are products of institutional learning, advocacy, expertise, professional networks, and broader normative struggles.

The state of the art therefore reveals three separate bodies of literature: (1) studies of women's movements and legislative advocacy; (2) studies of Constitutional Court decisions concerning family law; and (3) studies of Supreme Court gender-responsive judicial policy. What remains insufficiently explored is the relationship among these three domains.

This article fills that gap by treating them as stages within a single process of strategic legal mobilization. Its novelty lies not merely in identifying women's participation in legal reform but in explaining how women's agency operates across institutional boundaries: from identifying gendered legal inequality, to constructing constitutional claims, to mobilizing evidence and expertise, to building coalitions, to adapting strategies after litigation setbacks, and finally to influencing judicial governance.

The analytical contribution is consequently different from a conventional decision-based study. Instead of asking only whether a judicial decision is progressive, this study asks how actors make progressive adjudication possible and how judicial outcomes are converted into institutional change. It therefore shifts the focus from judicial output to the interaction between mobilization and judicial institutions.

This approach also allows the article to explain an apparent paradox. Constitutional adjudication may produce formal legal change while simultaneously leaving structural inequalities intact. The continued use of marriage dispensations after the Constitutional Court's intervention illustrates this problem.[19] The implication is that litigation success is neither equivalent to social transformation nor the endpoint of mobilization. Rather, litigation

[19] Ilhami, "The Relevance of Constitutional Court Decision Number 22/PUU-XV/2017 Related to the Dispensation of Marriage to Prevent Child Age Marriage | Relevansi Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Dalam Upaya Mencegah Perkawinan Usia Anak."

can produce institutional openings that require further mobilization, implementation, and judicial governance.

Accordingly, the contribution of this article is to conceptualize Indonesian family law reform as court-mediated legal mobilization, in which women's agency transforms social experiences of inequality into constitutional claims and then seeks to institutionalize those claims through judicial governance.

Research Question and Objective

Based on the foregoing discussion, the article addresses the following research question: How have women and women's organizations strategically mobilized law through constitutional litigation and Supreme Court judicial policy-making to transform gendered family law norms in Indonesia?

The article has three related objectives. First, it identifies how women and women's organizations transformed experiences of gender inequality within family law into legally and constitutionally cognizable claims. Second, it analyzes the strategic mechanisms through which legal mobilization was conducted, particularly litigation, legal framing, coalition building, evidence production, and expert participation. Third, it examines how judicial responses transformed individual litigation outcomes into broader forms of judicial governance and family law reform.

The article argues that women's agency has contributed to a distinctive model of family law transformation in which strategic legal mobilization operates across constitutional adjudication and judicial governance. The significance of women's agency therefore lies not merely in their ability to initiate litigation but in their capacity to transform legal grievances into constitutional discourse and subsequently use judicial openings to encourage institutionalization of gender-responsive legal norms.

Method

This study employs a qualitative normative-juridical method. The normative-juridical approach treats law primarily as a normative system consisting of legislation, constitutional

provisions, judicial decisions, regulations, legal principles, doctrines, and concepts. The research consequently does not seek to measure the behavior of women, judges, or organizations through empirical social-science methods. Instead, it reconstructs the legal and institutional process through which women's claims entered and influenced constitutional and judicial arenas.

The primary legal materials consist of the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, Constitutional Court Decision No. 46/PUU-VIII/2010, Constitutional Court Decision No. 22/PUU-XV/2017, PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Cases Involving Women Facing the Law, and PERMA No. 5 of 2019 concerning Guidelines for Adjudicating Applications for Marriage Dispensation. PERMA No. 3 of 2017 was formally established on 11 July 2017 and remains in force.

Secondary legal materials include scholarly books, peer-reviewed journal articles, legal commentaries, academic writings, and relevant institutional publications. The materials are analyzed through conceptual and case-oriented analysis. The analysis first identifies the gendered legal problem; second, reconstructs how the problem was translated into a legal claim; third, examines the legal strategies employed by mobilizing actors; fourth, evaluates judicial responses; and fifth, traces the transformation of judicial responses into broader legal or institutional consequences.

The theoretical framework is legal mobilization theory. The theory is used to examine law as a resource that actors outside the state strategically invoke to pursue broader social transformation.[20] The concepts of strategic litigation, legal framing, resource mobilization, coalition building, and institutional interaction are consequently used as analytical categories. Feminist legal scholarship is employed only as a supporting conceptual resource for identifying the gendered character of the legal problems being mobilized.

[20] Whitney K Taylor, "Conceptualizing Legal Mobilization : How Should We Understand the Deployment of Legal Strategies?," no. October (2019).

Discussion

From Gendered family law Inequality to Legal Mobilization

The first finding is that women's legal mobilization began not simply with an abstract commitment to gender equality but with the identification of specific legal rules and institutional practices that produced unequal consequences. This distinction is important because legal mobilization requires the transformation of a social grievance into a legal grievance. A condition may be experienced as unjust without necessarily becoming a matter for litigation. Mobilization occurs when actors identify a legal rule, institutional practice, or interpretation as a potential target of legal challenge.

Family law provides particularly fertile ground for this process because its rules historically regulate gender roles through apparently ordinary categories such as marriage, legitimacy, parental authority, and marital responsibility. Rules differentiating marriage age between women and men provide a particularly clear example. Under the original Marriage Law, women could legally marry at sixteen while men were required to be nineteen. The constitutional challenge transformed this statutory distinction from a conventional family law rule into a question of constitutional equality.

The significance of this transformation lies in legal framing. The issue was no longer merely whether sixteen was an appropriate age for women to marry. Instead, the inequality was framed as a constitutional problem involving discrimination, equality, children's rights, health, education, and the state's obligations to protect citizens. Decision No. 22/PUU-XV/2017 confirms this transformation: the Constitutional Court declared the sixteen-year threshold for women unconstitutional and required legislative change.

From a legal-mobilization perspective, the constitutional framing altered the political and institutional character of the dispute. A legislative policy disagreement became a constitutional claim. This increased the potential authority of the argument

because the Constitution provided a higher normative standard against which statutory law could be assessed.

This is precisely why strategic litigation differs from ordinary litigation. Ordinary litigation primarily seeks a remedy for the parties. Strategic litigation selects or constructs cases with the expectation that judicial decisions can affect a wider category of people, alter legal doctrine, or generate institutional reform. [21] Women's constitutional litigation therefore represents agency exercised through institutional selection: the court becomes an arena in which an individual or group can challenge a rule whose effects extend beyond the immediate litigants.

The same logic can be observed in Decision No. 46/PUU-VIII/2010. The dispute concerning the legal relationship between a child born outside marriage and the biological father was transformed into a broader constitutional question concerning legal recognition and equality. The Court's reasoning altered the legal consequences of Article 43 of the Marriage Law by recognizing a relationship between the child and the biological father where biological linkage could be established through science and technology.[22] The significance of the case is therefore not limited to its immediate factual circumstances. It illustrates how a concrete family dispute can be transformed into a broader constitutional claim.

The first analytical implication is that women's agency operates through problem definition. Before courts can change law, actors must determine which legal rule constitutes the problem, who is harmed by it, which constitutional norm is violated, and what legal remedy should be sought. Legal mobilization is consequently interpretive before it is adjudicative.

This finding also explains why feminist legal mobilization cannot be reduced to the number of cases filed. The more important question is how gendered experience is translated into the language of law. Women's organizations and legal advocates

[21] David Hollander, "Rights into Action : Public Interest Litigation in the United States," 1999.
[22] Mahkamah Konstitusi, "Putusan Nomor 46/PUU-VIII/2010" (2010).

perform this translation by connecting personal experience with constitutional concepts such as equality, non-discrimination, dignity, protection, and children's rights.

Strategic Litigation as a Shift from Earlier Advocacy Strategies

The second finding concerns the strategic character of litigation. Women's movements in Indonesia have historically pursued legislative and policy advocacy, including engagement with governmental institutions, parliamentary processes, public campaigns, and legal drafting. [23] However, the difficulty of transforming gendered family law norms through political institutions creates incentives to seek alternative institutional arenas.

The movement toward constitutional litigation should therefore not be interpreted as a rejection of legislative advocacy. Rather, it represents institutional diversification of legal mobilization. When legislative processes are constrained by political bargaining, religious contestation, institutional conservatism, or the persistence of gendered assumptions, courts may provide an alternative arena in which constitutional norms can be invoked.

Mutation's analysis of women's mobilization around the Marriage Law and the Counter-Legal Draft demonstrates that family law reform in Indonesia has long been embedded in contestation over religion, gender, and political authority. [24] This history is important because it shows why litigation can become an attractive strategic instrument. Constitutional adjudication provides an institutional forum in which actors can move the debate from the political acceptability of reform toward the constitutional validity of existing rules. The strategic shift can therefore be conceptualized as follows: gendered grievance → legislative advocacy → institutional constraint → constitutional

[23] Cagna and Rao, "Feminist Mobilisation for Policy Change on Violence against Women : Insights from Asia."
[24] Mutaqin, "Culture , Islamic Feminism , and the Quest for Legal Reform in Indonesia."

framing → strategic litigation → judicial interpretation → legislative/judicial institutionalization.

The important point is that this sequence is not linear. Actors may move backward and forward between institutions. A failed legislative proposal may encourage litigation; an unsuccessful case may generate a new legal strategy; a judicial judgment may reopen legislative negotiations; and judicial regulations may subsequently become mechanisms for implementing the normative principles established through earlier mobilization.

This iterative character is central to legal mobilization theory. McCann's influential account of legal mobilization demonstrates that legal rights may have transformative effects even when litigants do not achieve complete judicial victories because litigation can reshape political consciousness, organizational capacity, and understandings of rights.[25] Epp similarly emphasizes the importance of support structures lawyers, organizations, funding, and professional networks in sustaining rights litigation.[26]

Applied to Indonesia, these insights suggest that the significance of women's litigation cannot be assessed solely by the formal outcome of individual cases. The mobilization process creates legal capacity. It produces arguments, networks, expert knowledge, precedents, and institutional relationships that can be used in subsequent reform efforts.

This also explains why unsuccessful litigation should not automatically be classified as failed mobilization. A rejected claim may reveal the limits of judicial doctrine, clarify standing requirements, expose evidentiary deficiencies, or identify which constitutional provisions are more persuasive. Strategic actors can then redesign their claims. The capacity to learn from litigation is itself a form of agency.

Coalition Building and the Construction of Constitutional Claims

[25] Mccann, "Rights at Work Pay Equity Reform and the Politics of Legal Mobilization."
[26] Charle R. Epp, *The Rights Revolution* (The University of Chicago Press, 1998).

The third finding is that women's legal agency is fundamentally collective rather than exclusively individual. Constitutional litigation concerning family law requires more than an individual claimant's willingness to challenge legislation. Strategic cases depend upon lawyers, researchers, women's organizations, experts, advocacy networks, and sometimes institutional allies.

This corresponds to Epp's concept of the support structure for legal mobilization.[27] Rights litigation becomes sustainable when organizational resources are available to identify cases, provide legal representation, develop legal arguments, produce evidence, and sustain litigation over time.

Indonesian feminist mobilization illustrates this organizational dimension. Cagna and Rao demonstrate that feminist movements operate through negotiations among civil society organizations and state actors.[28] Eddyono's recent analysis similarly identifies the complexity of Indonesian women's organizations and their different positions concerning legal reform. This complexity should not be interpreted merely as organizational weakness. From a legal-mobilization perspective, diversity may enable different organizations to contribute different resources: grassroots experience, legal expertise, research capacity, access to policymakers, public legitimacy, or links with professional communities.

Coalition building also matters because constitutional claims require translation across different fields of expertise. A gender-discrimination argument may require constitutional lawyers to formulate doctrine, social researchers to demonstrate the effects of a rule, medical experts to explain health consequences, psychologists to explain developmental effects, and women's organizations to connect technical evidence with lived experience.

The use of expertise therefore constitutes a form of legal power. Courts operate through legal reasoning, but legal reasoning

[27] Epp.
[28] Cagna and Rao, "Feminist Mobilisation for Policy Change on Violence against Women : Insights from Asia."

frequently depends upon knowledge produced outside doctrinal law. Evidence can transform an abstract claim of discrimination into a demonstrable pattern of unequal impact.

The marriage-age litigation demonstrates this mechanism. The argument for equalizing marriage age could not be reduced to formal equality. It was strengthened by considerations concerning health, education, development, and the consequences of early marriage. Thus, the legal claim operated through a combination of constitutional doctrine and empirical knowledge.

This finding expands the meaning of women's agency. Agency does not mean that women must personally produce every legal argument. Agency can be distributed through networks. Women's organizations can exercise agency by selecting experts, producing knowledge, connecting affected communities with lawyers, supporting litigation, and constructing public narratives that make judicial intervention intelligible. Consequently, strategic litigation is best understood as a coalitional legal practice rather than an isolated courtroom event.

Judicial Response and the Transformation of Women's Claims into Constitutional Law

The fourth finding concerns the role of the judiciary. Legal mobilization does not guarantee judicial acceptance. Courts retain institutional autonomy and may reject, narrow, reinterpret, or partially accept mobilized claims. The transformation of a social claim into constitutional law therefore depends upon interaction between mobilizing actors and judicial institutions.

Decision No. 22/PUU-XV/2017 represents an important moment in this interaction. The Constitutional Court did not merely identify the age difference as a policy preference. It characterized the statutory distinction as constitutionally problematic and required legislative intervention. The subsequent enactment of Law No. 16 of 2019 demonstrates that constitutional litigation can create an institutional pathway from judicial judgment to legislative reform.

However, the Court's decision also demonstrates the limits of judicial transformation. Ilhami shows that the continued possibility of marriage dispensation means that equalizing the statutory marriage age did not eliminate child marriage. This is analytically important. It demonstrates that formal legal change and substantive transformation are not identical.

From the perspective of legal mobilization, this limitation does not invalidate the strategy. Instead, it changes the object of mobilization. Once the statutory rule has changed, the struggle moves toward implementation. The relevant legal arena therefore shifts from constitutional review to judicial administration and adjudication.

This transition is central to the article's argument. Women's legal mobilization does not end when the Constitutional Court issues a favorable judgment. The new legal norm must be implemented by other institutions. Judges must interpret it, administrative institutions must operationalize it, and subsequent cases must determine its practical boundaries.

The institutional significance of this process becomes visible in the Supreme Court's development of gender-responsive judicial policy. PERMA No. 3 of 2017 provides judges with guidance for handling women facing the law and expressly addresses gender equality, stereotypes, discrimination, and power relations. PERMA No. 5 of 2019 subsequently provides guidelines for marriage-dispensation cases and emphasizes the best interests of children. The result is a shift from rights recognition to institutionalization.

From Constitutional Litigation to Supreme Court Judicial Governance

The fifth finding is therefore that the most important transformation generated by women's legal mobilization is not confined to the Constitutional Court. It extends into the Supreme Court's institutional governance of adjudication.

This is particularly significant because the Supreme Court occupies a different institutional position from the Constitutional Court. The Constitutional Court primarily determines

constitutional validity, whereas the Supreme Court exercises judicial authority through adjudication, regulation of judicial practice, and institutional administration within the court system.

PERMA No. 3 of 2017 illustrates how gender equality can be translated from constitutional principle into judicial practice. The regulation instructs judges to avoid discriminatory treatment and gender stereotypes and establishes standards for handling women facing the law. The Supreme Court itself explains that the regulation was intended to guide judges in applying gender equality and non-discrimination.

From the legal-mobilization perspective, this represents an important institutional transition. The original target of mobilization may be a discriminatory statute. After constitutional adjudication, however, the target becomes the institutional practices through which law is interpreted and applied. Thus, the process can be represented as contesting the rule → changing the rule → changing interpretation → changing judicial practice.

This is why the title's reference to "Constitutional and Supreme Court-Driven Family Law Reform" is analytically important. Constitutional adjudication and Supreme Court governance should not be examined as disconnected developments. They constitute different stages in the institutionalization of gender-responsive law.

Recent research on PERMA No. 3 of 2017 supports the importance of implementation. Studies have examined its application to women victims of sexual violence and in religious courts, indicating that the existence of gender-sensitive judicial regulation does not automatically resolve implementation challenges. This finding reinforces the legal-mobilization argument: institutional reform generates new opportunities but also new sites of contestation.

Evidence, Expertise, and Legal Framing as Instruments of Women's Agency

The sixth finding concerns the role of evidence and expertise. Strategic legal mobilization is not simply the invocation of

constitutional language. It requires the production of a persuasive relationship between normative principles and demonstrable consequences.

Three forms of framing are particularly important. First is equality framing. A statutory distinction is presented as unequal treatment between women and men. This framing activates constitutional principles of equality before the law.

Second is rights-protection framing. The consequences of gendered family law rules are connected to broader rights such as health, education, dignity, bodily autonomy, and protection from discrimination.

Third is institutional-responsibility framing. The argument is directed not only toward individual rights but toward the constitutional responsibility of the state to remove discriminatory rules and establish institutional mechanisms capable of protecting equality.

These frames allow women's organizations to translate feminist concerns into legal categories recognizable to judges.

The importance of framing confirms Scheingold's insight that legal rights operate politically because actors construct meanings around them. 29 Law becomes mobilizable when rights are transformed into claims that can organize collective action. In the Indonesian context, constitutional provisions concerning equality and non-discrimination therefore become resources that women's organizations can strategically deploy.

The evidentiary dimension is equally significant. Research on family law and marriage age has demonstrated the continuing consequences of early marriage and the limitations of formal age reform. Ilhami's findings concerning marriage dispensation are especially important because they show that the formal elimination of one discriminatory provision does not necessarily eliminate the institutional mechanisms that reproduce the underlying problem.

[29] Scheingold, *The Politics of Rights: Lawwyers, Public Policy, and Political Change*.

Evidence therefore serves two functions. First, it supports the claim that the existing law causes harm. Second, it reveals whether the judicial remedy actually addresses the structural problem.

This distinction enables legal mobilization to evolve from claim-making to monitoring. Once a judgment is delivered, evidence can be used to identify implementation gaps and generate new legal strategies.

The Limits of Court-Driven Reform: From Formal Victory to Structural Transformation

The seventh finding is that court-driven reform has significant limitations. The existence of progressive constitutional decisions does not necessarily produce immediate social transformation.

The clearest example is child marriage. Constitutional Court Decision No. 22/PUU-XV/2017 resulted in legislative reform through Law No. 16 of 2019, but the continued availability and use of marriage dispensation demonstrates that legal change can create new procedural routes through which the original problem persists.

This creates an important analytical distinction between: normative transformation and modification of the formal legal rule; interpretive transformation and modification of how the rule is understood; institutional transformation and modification of judicial procedures and practices; and social transformation and changes in actual gender relations.

Strategic litigation can directly affect the first two and contribute to the third. Its effect on the fourth is more indirect and depends upon implementation, social acceptance, institutional capacity, and continuing mobilization.

Consequently, the article does not conceptualize courts as autonomous engines of social transformation. Instead, courts are institutional mediators of legal mobilization. They can amplify, restrict, reinterpret, or redirect claims advanced by social actors.

This interpretation avoids two opposite errors. The first is excessive judicialism, the assumption that courts alone produce

reform. The second is excessive skepticism, the assumption that judicial decisions have little significance because structural inequality persists.

The evidence suggests a more nuanced conclusion: judicial intervention creates institutional openings, while sustained legal mobilization determines whether those openings become durable reform.

Women's Agency and the Emergence of a Court-Mediated Model of family law Reform

Taken together, the findings support the proposition that Indonesia has developed a distinctive form of court-mediated family law reform.

The model can be conceptualized in five stages: First, identification. Women and women's organizations identify a family law rule or practice as producing gendered inequality. Second, translation. The grievance is translated into constitutional language through equality, non-discrimination, dignity, and rights-based framing. Third, mobilization. Organizations construct coalitions, mobilize lawyers and experts, collect evidence, select litigants, and pursue strategic litigation. Fourth, adjudication. Constitutional or judicial institutions respond by invalidating, reinterpreting, or regulating the contested legal norm. Fifth, institutionalization. Judicial decisions are translated into legislation, judicial regulations, guidelines, and subsequent adjudication.

This model differs from a conventional top-down understanding of legal reform. In the latter, reform begins with state institutions and moves downward toward society. In the court-mediated model identified here, reform can move in the opposite direction: social experience → civil-society mobilization → constitutional claim → judicial decision → legislative/judicial institutionalization → renewed mobilization.
The process is therefore cyclical rather than linear.

The concept of legal mobilization is particularly useful because it captures this cyclical character. McCann's work demonstrates that litigation can have political effects beyond

judgments; Epp emphasizes the organizational infrastructure necessary to sustain rights litigation; and Keck and Sikkink's work on transnational advocacy networks demonstrates the importance of networks, information, and strategic framing in rights campaigns. [30] These insights help explain why the Indonesian women's movement should not be treated merely as an external actor petitioning the judiciary. It is better understood as an actor participating in the construction of the legal environment within which judicial decision-making occurs.

The ultimate significance of women's agency therefore lies in changing the relationship between society and judicial institutions. Women are not merely recipients of judicial protection. Through strategic legal mobilization, they become participants in the production of constitutional meaning and judicial norms.

Conclusion of the Discussion

The analysis demonstrates that Indonesian family law reform cannot be adequately explained through legislative or judicial decision-making alone. From the perspective of legal mobilization theory, legal transformation emerges from interaction among social actors, legal institutions, and constitutional norms.

Women's agency operates through several interconnected mechanisms: identification of gendered legal inequality, strategic selection of litigation, constitutional framing, coalition building, mobilization of evidence and expertise, and institutional engagement with courts. Strategic litigation is particularly important because it allows gendered experiences to be translated into constitutional claims capable of challenging statutory rules.

The cases examined also demonstrate that litigation victory is not the endpoint of legal mobilization. Constitutional Court decisions may create normative openings, but those openings must be translated into legislation, judicial regulation, and adjudicative practice. The subsequent development of Law No. 16 of 2019, PERMA No. 3 of 2017, and PERMA No. 5 of 2019 illustrates this

[30] Margaret E Keck, "Activists beyond Borders : Advocacy Networks in International Politics," 1998, 7591.

movement from constitutional adjudication toward judicial institutionalization. At the same time, continuing challenges such as marriage dispensation demonstrate that formal legal transformation does not automatically produce substantive equality.

The central theoretical implication is therefore that women should be understood as constitutional actors and legal mobilizers, rather than simply as beneficiaries of judicial reform. Their agency lies in their ability to transform social grievances into constitutional claims and to sustain those claims across institutional arenas.

The article consequently proposes the concept of court-mediated legal mobilization to describe the Indonesian experience. Under this model, courts do not independently produce family law transformation. Rather, they mediate, institutionalize, and sometimes reshape claims generated through social mobilization. Legal transformation is thus the product of an iterative interaction between women's agency and judicial institutions.

Bibliography

Cagna, Paola, and Nitya Rao. "Feminist Mobilisation for Policy Change on Violence against Women : Insights from Asia." Gender & Development 24, no. 2 (2016): 277–90. https://doi.org/10.1080/13552074.2016.1194035.

Eddyono, Sri Wiyanti. "Advokasi Legislasi Hukum Yang Berkeadilan Gender Oleh Gerakan Perempuan Di Indonesia Pasca-Transisi Demokrasi Advocacy for Gender-Just Lawmaking by the Women ' s Movement in Post-Transition Indonesia" 30, no. 2 (2026): 157–78. https://doi.org/10.34309/jp.v30i2.1241.

Epp, Charle R. The Rights Revolution. The University of Chicago Press, 1998.

Hollander, David. "Rights into Action : Public Interest Litigation in the United States," 1999.

Ilhami, H. "The Relevance of Constitutional Court Decision Number 22/PUU-XV/2017 Related to the Dispensation of Marriage to Prevent Child Age Marriage | Relevansi Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 Dalam Upaya Mencegah

Perkawinan Usia Anak." Jurnal Konstitusi 17, no. 2 (2020): 284–308.

Kania, Dede, Siti Nur Fatoni, Hazar Kusmayanti, and Vienka Rahmannillah. "Gender Equality Implementation in Women's Legal Cases in Religious Court" 25, no. 2 (2025): 205–20. https://doi.org/10.30595/kosmikhukum.v25i2.25472.

Keck, Margaret E. "Activists beyond Borders : Advocacy Networks in International Politics," 1998, 7591.

Ketua Mahkamah Agung. Peraturan Mahkamah Agung Nomor 3 Tahun 2017 Tentang Pedoman Mengadili Perkara Perempuan Berhadapan Dengan Hukum (2017). http://urj.uin-malang.ac.id/index.php/jfs/article/view/488%0Ahttp://urj.uin-malang.ac.id/index.php/jfs/article/download/488/363.

Mahardini, Iin Aulia, and Siti Aisyah. "Feminist Legal Theory Dalam Peraturan Mahkamah Agung ; Studi Analisis Hukum Islam" 3, no. 1 (2022): 96–107.

Mahkamah Agung. "Peraturan Mahkamah Agung Nomor 5 Tahun 2019," no. 1489 (2019).

Mahkamah Konstitusi. Putusan Mahkamah Konstitusi Nomor 22/PUU-XV/2017 (2017).

———. Putusan Nomor 46/PUU-VIII/2010 (2010).

Mardani, Yusuf. "Aanalisis Yuridis Putusan Mahkamah Konstitusi No. 46/PUU-VIII/2010 Tentang Judicial Review Terhadap Undang Undang Perkawinan," no. 46 (2010): 1–11.

Mccann, Michael W. "Rights at Work Pay Equity Reform and the Politics of Legal Mobilization," n.d.

Mutaqin, Zezen Zaenal. "Culture , Islamic Feminism , and the Quest for Legal Reform in Indonesia." Asian Journal of Women's Studies 24, no. 4 (2018): 423–45. https://doi.org/10.1080/12259276.2018.1524549.

Nugraha, Xavier, Risdiana Izzaty, and Annida Aqiila Putri. "Rekonstruksi Batas Usia Minimal Perkawinan Sebagai Bentuk Perlindungan Hukum Terhadap Perempuan (Analisa Putusan MK No. 22/Puu-Xv/2017)." Lex Scientia Law Review 3, no. 1 (2019): 40–54.

https://journal.unnes.ac.id/sju/index.php/lslr/article/view/30727/13413.

Review, Annual, Social Science, and Michael Mccann. "Law and Social Movements : Contemporary Perspectives" 2, no. December 2006 (2010): 1693694.

Scheingold, Stuart A. The Politics of Rights: Lawwyers, Public Policy, and Political Change, 2010.

Taylor, Whitney K. "Conceptualizing Legal Mobilization : How Should We Understand the Deployment of Legal Strategies?," no. October (2019).

The Constitutional Court of the Republic of Indonesia. Decision Number 46/PUU-VIII/2010 (2010).