

# A Review of The "Head Of The Family" Concept From The Family Law, Gender Perspective

Wahyuni Retnowulandari<sup>1\*</sup>

<sup>1</sup>Faculty of Law Trisakti University, Jakarta, Indonesia

**Abstract.** Although the concept of "Head of Family" as the backbone of the family in the positive law is usually a man/the husband, but I argue not all of them are so, because in fact, recently more women become "head of the family", the reasons are whether due to the existing custom, or non-working husband because he is sick, lazy, or other reasons. This normative study aims to identify the pluralism of the concept of "head of the family" in the positive law in Indonesia and the facts in social life, culture and religion, and then to be compared with the concept of "head of family" in Thailand and South Korea. Based on such matter, by considering CEDAW and equity for women, this research recommends re-conception of a gender-perspective "Head of the Family", namely *"Husband and Wife must support each other in right and obligation to finance the family life according to equity, unless stipulated otherwise by their respective religion/culture"*.

## 1 Introduction

The concept of "Head of the Family" in Indonesia is contained in the Marriage Law no. 1 year 1974 (UUP) Chapter VI on the rights and obligations of husband and wife, Article 31 (3) "The husband is the head of the family", while "the wife is the housewife". However, the fact in society, the head of the family is not always the husband/man. The reason is because of the structure of plural genealogical society in Indonesia, such as; Patrilineal, Matrilineal and Parental, especially in matrilineal society the head of family is not the husband. In addition, the six religions recognized by this nation add to its diversity[1]. Especially, for Muslims who are majority in Indonesia, Qur'an An-Nisa verse 34 implies "the head of the family" is the husband; *"Men are leaders for women, because God has given more to some of them (men) over the others (women), and because they (men) have spent some of their property ..."*. Currently, the phenomenon in the society about the family's economy cannot be as ideal as the wording of article of the UUP and the verses of the Qur'an referred to, because women are seldom given more by God and given the role of the main provider in the family, either forced by some situations(because the husband was sick, died, divorced, the husband left the family), or not (because the destiny set wife's career better than the husband).In the Central Statistics Bureau's data on the percentage of family by province updated March 27, 2018 related to "Women Family Head" increased in number in 34 provinces in rural and urban areas in 2015 (14.63); 2016 (15.02); 2017 (15.17).

---

\*Corresponding author :wahyuni.r@trisakti.ac.id

In addition, when listening to the news in the mass media, both of the general public, as well as artists lately many women reported "suing for divorce" their husbands who do not meet their obligations, such as Yuni Shara, Elma Theana and the phenomenon of industrialization in some areas that increase the number of working women, and the husband chose not to work because the wife works.

So that the contents of Article 31 (3) according to the researcher is no longer appropriate at this time, especially since the year of 1984 Indonesia has ratified Convention on the Elimination of All forms of Discrimination Against Women (hereinafter abbreviated as CEDAW or the Women Convention), which mandated that in the family, husbands and wives shall have equal rights and responsibilities, ownership, acquisition and management.

Therefore it is interesting to assess this problem, and it has proven that many researchers have raised this problem with different perspectives[2].

## **2 Objective of the study**

This study aims to identify concepts of custom and religion in the society related to the "head of the family" in Indonesia. It will be compared with those in South Korea and Thailand, as well as their conformity with CEDAW. Furthermore, it explains the researcher's argument that the concept of "head of the family" should not always be men, as it is supported by evidence of statistical data about "family head" and other facts supporting the researcher's argument. Thus, by using the theory of L.M. Gandhi Lapien[3] which explains that "*feminist studies are born to fight for justice for women who are oppressed, nor that this study merely apply the principle of legal certainty but rather the principle of **justice and equity***", the researcher proposes a recommendation to re-concept the Head of Family in accordance with the principle of justice and equity in the prevailing laws and regulations in Indonesia.

## **3 Research Methodology**

The method used in this study is normative method [4]. It is comparing Marriage legislation in Indonesia with the provisions of family law in Korea and Thailand in which they apply *patriarchy* culture, same as the majority of cultures in Indonesia. By knowing the diversity of cultures and religions, and the regulation of the head of the family in UUP, this qualitative study recommends the re-conception of "head of family" in purpose to give a better protection to women in a marriage, given the fact that actually "female head of the family" continues to increase in the society.

## **4 Discussion**

### **4.1 Identification of the Family Head Concept**

Having studied about the concept of "Head of the family" sociologically, culturally and religiously. However, the diversity related to this in Indonesia is not due to religion differences, because according to the scriptures of the six religions recognized by the state, all religions place husband / man as "head of the family". Here is evidence that in the religious book on the family is Patriarchy, in *Islamic law* as contained in the Qur'an verse 4:34 described that it is clearly Patriarchy because Husband is seated as "Head of Family"; *The Catholic Religion* Ephesians 5:23[5] ; and *The Christianity* 1 Corinthians 11: 3; Ephesians

5:23[6] "*the head of a woman is a man*"; *The Hindu religion* according to Manava Dharmasastra IX.2,3,9[7] *The Buddhism religion* in the Sigalovada Sutta[8]; *Confucianis*[9]... *husband performs his duty as responsible husband as head of the family and maintain family's reputation.*

#### **4.1.1 Customary Law / Adat Law**

The diversity related to the concept of "Head of the family" in fact exists in the culture society. Since, in the customary law, there are 3 (three) genealogical social structures that resulted in the role of the head of the family to be plural, among others, as follows;

##### **4.1.1.1 Patrilineal**

among others, adopted by the Gayo, Alas, Batak, Bali, Nias, Lampung, Buru, Seram, Nusa Tenggara, Irian, genealogical system draw from the father's line, so that the position of men is more prominent than women, due to *Jujur*[10] marriage hence consequently; the husband is the "head of the family", the wife loses clan, the treasure goes to the husband (called *hokas* in Tapanuli), and women do not get any property when divorced.

Exceptions to the above provisions can occur especially in Bali, because although the Balinese people are patrilineal society, upon marriage, women leaves their family and enters the family of husbands by *mepamit* in *mejauman* ceremony, but the custom opens another possibility, the marriage is done by *nyeburin*[11].

##### **4.1.1.2 Matrilineal (Minangkabau, semenda land of South Sumatra).**

*The genealogical system that draws the maternal line, the position of women is more prominent than the male position, where the marriage is sumando/ semendo.*[12] When marriage occurs in a matrilineal society the wife remains in her clan and the husband does not belong to the clan's wife but remains with his own clan, he is a stranger in *somah seperutnya*. There are several forms of marriage in Minangkabau that affect the rights and obligations of husband and wife and the arrangement of property in marriage such as *semendo menetap* (exogamy marriage system), *semendo raja-raja* (eleutherogamy marriage system), *semendo betandang* where husband only visits the wife's home, like a guest who comes at night and disappears in the morning, does not have right over the children and property belongs to the wife and has no obligation to his family. Husband's work is only for his sisters and children of his sisters (nephew). So the "head of the family" depends on how they married and there is a tendency that husbands have no role in the family. Although since 1952 *ninik-mamak* and Islamic scholars have agreed to give inheritance to the children, because marriage now tends to be free, so it is not familiar with *pusako* property, and only recognize the *suarang* property [13] or common property and has become a bilateral system, so that *suarang* property becomes *somah* property so that when divorce happens, it can be divided between the former husband and wife. This shift does not mean abolishing the original Minangkabau customary law, which until now is still exist, even there are those who strongly defend it, namely; *ninik-mamak*. Since, in fact even though the *pusako* property fell to the maternal line, that money is managed by *ninik-mamak*, namely the brother of the elderly mother's family. So, actually the control over the treasures in Minangkabau remains patriarchal as well.

##### **4.1.1.3 Parental (Aceh, Java, East Sumatra, Riau, Kalimantan, Sulawesi and others).**

The descendant system is drawn from the parent line, or both side (father-mother), where the

position of man and woman is the same in inheritance. However, in fact, "the head of the family, is not the same in every society of genealogical parental, depending on the form of marriage which can lead to dominations in the family depending on who brought more wealth, although in general the rights of women and men are the same but the nature of patriarchy is still apparent mainly in giving name to their offspring, and the attitude of the wife who is very afraid and devoted to the husband. In Javanese society, for example, the head of the family depends on the way the marriage is done because there are two kinds of marriage; *Nyalindung Kagelung* (Pasundan), or *Tut buri* in Java, marriage where the wife is rich and the husband is poor, and on the contrary marriage of *Manggih Kaya/ mendakkaya/ ngomohi* (rich husband and poor wife). In the case of divorce in Javanese society, the grant will be controlled by the parties who have it, for the married *Nyalindung Kagelung / Tut buri*, all the property belongs to the wife and on the contrary when married by *Manggih Kaya / Ngomohi*, the property belongs to the husband because the wealth comes from them[14]. In fact, in West, Central and East Java, which is related to the marriage property in general, the division of common property in the event of divorce is divided between them equally (*gono-gini*). But there are some places (regions) that have a habit for dividing in such a way that the husband gets 2/3 and the wife gets 1/3 (in Central Java called *Sagendong Sapikul*) which is similar to the inheritance of Islam.

From the description above the diversity of "head of the family" in Indonesian culture society depends not only on the family system, but also their marriage system because who leads the family correlate with who is rich, who brings the money. But when viewed in general it seems patriarchy remain dominant, although in matrilineal society, as well as parental.

## **4.2 Comparison of "Head of the family" in Indonesia, Thailand and Korea.**

**4.2.1.** As described in the introduction "Head of the Family" in the Indonesian legislation is the husband, and he is obliged to protect his wife by providing all the necessities of family life in accordance with his abilities as regulated in Article 31 (3) UUP[15]. For the majority of Muslim community in Indonesia the special provisions of Article 79 of the Compilation of Islamic Law (KHI Inpres No. 1 of 1991)[16] set up similarly; (1) the husband is the head of the family and the wife is the housewife. (2) The right and status of a wife is equal to the rights and position of the husband in the family life and in social life. (3) Each party shall have the right to conduct a legal act. This is because in Al-Quran Annisa verse 34 puts men as leaders / heads of families for women, and assigns men to carry out their responsibilities, to provide for food, *maskan* and *khiswah* of some of their property for their wives and children. So, it can be concluded that the positive law, written or unwritten in Indonesia is still patriarchy, because the "head of the family" label is attached only to men despite the fact that not all husbands can fulfill their duties as head of the family as the provisions of the law.

The standardization of the concept of "head of the family" only to this husband affects the standardization of the role also in work; such as in the provision of family allowance (children and wives) is only given to male workers, whereas for women workers there is no allowance of husband and children, while it is often the wife that is the backbone of the family. Therefore, the fact now triggers many divorces due to the wife's demands on the husband's responsibilities. Moreover, Article 34 (3 ) jo Article 77 (5) KHI supports the wife to file a suit if the husband does not perform his duty, and vice versa. The consequence of divorce is more severe. Generally, division of property due to divorce, if resolved through the court must be shared equal (*gono-gini*) between husband and wife regardless of where the property comes from and who acts as the breadwinner of the family, because pursuant to UUP Article

37jo KHI Article 96 and 97, divorced Muslim couple by death or live, must share equally their common property. This is contrary to the content of Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) [17] Article 16 (c) *“The same rights and responsibilities during marriage and at its dissolution”*; (h) *“The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”*, which has been ratified by Indonesia, so should it be related to the rights and obligations of husband and wife, the above provisions are enforced.

**4.2.2** The following studies about the concept of "head of the family" in Thailand and Korea, countries that have ratified CEDAW, as a comparison of family law

#### **4.2.2.1 Thailand**

The concept of the head of the family in Thailand in Chapter III Relationship of husband and wife Section 1461 The Civil and Commercial Code of Thailand[18] is *“The husband and the wife shall cohabit as husband and wife. The husband and the wife shall support and maintain each other in accordance with their capacity and individual status.* “ Thus, the responsibility for the family is not placed solely as the husband’s or wife's authority, but must be on the joint support according to their respective abilities.

#### **4.2.2.2. In South Korea**

The concept of the head of family system is in The Civil Code of Southeast Korea[19] Section 4. The Effect of Marriage Article 826 (Duties of Husband and Wife): (3).*The wife shall have her name entered in her husband's family register. When the wife is the head or the successor of headship of her parents' family, the husband may have his name entered in his wife's family register ;(4). In case of proviso of paragraph (3), a child born between husband and wife shall assume the mother's surname and the origin of surname, and shall have its name entered in the mother's family register.*

From the above article, it appears that in the system "Head of the family" (*hojujedo*), the husband and wife mutually support the family's rights and duties, even the husband's name can enter the family of Wives and vice versa depending on who plays the head of the family. This provision exists after 2005 when the Constitutional Court revoked the previous provision because it grants full authority only to men and this is contrary to gender equality and human dignity

From the description of the contents of the above legislation, compared to the provisions of the law in Indonesia which positioned the husband as the "head of the Family" (is Patriarchy), in Thailand is not referred to whom, only husband and wife must complement each other. Even more, in South Korea even before being patriarchal, but since 2005 they have put the equal status of women and men. In addition, as "family head" they can exchange roles in the family.

### **4.3. The phenomenon of "Head of the family" in Indonesia.**

In relation to the standardization of the "head of the Family" to husband / man in the National law, resulting in an increase number of divorce cases caused by the non fulfillment of the obligations of husbands and/or wives as outlined. This is because the fact that women who work as breadwinners for the family is increase, so it cannot perform the task at home in full

while her husband just does not work, as happened in Majalengka[20], the last 3 years divorce number is increased due to women working in the industry in Majalengka district and data in 2016 according to the junior registrar of Court of Majalengka District, the divorce rate reached 4,535 cases, an increase compared to the previous year of only 4,385 cases. Cases of divorce are always dominated by "divorce suit" which reaches 65 percents; the remaining 35 percents are *talak*/divorce. Similarly, conditions in Ambon[21] the wife suing for divorce for reasons of economic pressures also increases because they feel abandoned by their husband for so long because they are lazy to work, while the wives in general have become accustomed to independence when they come from outside Ambon.

This is supported by BPS data which noted that female heads of family are increasing from year to year in urban and rural areas in 34 Indonesian province [22] which can be resumed in the last 3 years, represented by 6 provinces as follows:

PROVINCE	2015			2016			2017		
	Man	Women	Total	Man	Women	Total	Man	Women	Total
<b>IN INDONESIA</b>	<b>85,37</b>	<b>14,63</b>	<b>100,00</b>	<b>84,98</b>	<b>15,02</b>	<b>100,00</b>	<b>84,83</b>	<b>15,17</b>	<b>100,00</b>
Aceh	79,81	20,19	100,00	79,80	20,20	100,00	79,91	20,09	100,00
Sumatera Barat	83,97	16,74	100,00	82,24	17,76	100,00	82,54	17,46	100,00
Jawa Barat	85,97	14,03	100,00	85,71	14,29	100,00	85,92	14,08	100,00
B a l i	90,35	9,65	100,00	90,17	9,83	100,00	89,81	10,19	100,00
Maluku Utara	89,30	10,70	100,00	88,73	11,27	100,00	88,33	11,67	100,00
P a p u a	91,77	8,23	100,00	91,59	8,41	100,00	90,94	9,06	100,00

Table 1. BPS data updated 27 March 2018.

#### 4.4. Recommendation of gender perspective concept of "Head of the family" in Indonesia

Taking into consideration the identification of the concept of "head of the family" in religion, customs and laws and regulations in Indonesia; and compare the family concept in Thailand and South Korea which also patriarchy in their cultural life, according to the researcher the provisions of South Korea or Thailand legislation can be followed, because these two countries do not refer the head of the family to whom. Given that in Indonesia the prevailing religious provisions as well as various customary provisions still allow men and or women to become "head of the family".

In addition, in fact, women's role as the backbone of the family is increase. Therefore, it is proper that the law in Indonesia does not refer to the head of the family, although it can still refer to the provisions of their respective religions. It must stipulate that husbands and wives be supported each other and still consider who were the main source of income. It is important to reduce the number of divorces, as there is no demand on husbands who have to provide more income than wives, since family life must be shared except the spiritual provision that the Imam in Islam must be a man. The recommended re-conception of the rights and obligations of husbands is sufficiently described as follows: "Husbands and wives shall support each other in right and obligation to finance the family life according to propriety, unless otherwise provided for by their respective religions / cultures".

According to the researcher, the concept, in addition to accommodating the fact of legal pluralism that exist in society, can also eliminate divorce that arises only because the husband cannot provide a living / provide more than the wife. However, for the sake of justice and in accordance with propriety, the concept must be followed by changing the provisions of

Article 96 and 97 KHI also the necessity of equitable division of property if there is a divorce of life shall be re-concept as follows "*Widow and divorced divorcees shall be entitled to share in common property equal to each other in accordance with the competent appropriateness, to the extent not specified otherwise in the marriage agreement 'as the researcher has examined in the researcher's dissertation.*

## 5. Conclusion

"Head of the Family" in Indonesia according to the Law of Religion, customs and national law in Indonesia, is identified as plural, especially in culture communities, but in general is patriarchy because the "head of the family" is imposed on men or husbands.

The concept of "Head of the Family" in CEDAW may be implied from Article 16c and Article 16h that the right of a husband and wife in marriage shall be the same, in all cases of ownership, acquisition, management, administration, enjoyment and property wealth. Thus, no need to be standardized for who should look for property, because the husband and wife together should be jointly responsible in the family; as the concept of "Head of Family" in the legislation, in South Korea and Thailand, has not mentioned "head of the family" to the husband, but the obligation of husband and wife support each other according to their respective capacities. Giving that heads of family are standardized to men, the phenomenon in the community is now increasingly headed by the female head of family, as divorce increases over such rights and obligations.

The concept of a gender perspective on the "head of family" in Indonesia should be the same as in Korea and Thailand; so that the rights and duties of the husband are sufficiently described as follows: "Husbands and wives should support each other in the right and obligation to finance family life according to propriety, unless otherwise provided according to their respective religions / cultures." As it is reflected on the theory of justice and equity by L.M. Gandhi Lopian related to justice and equity. In this new conception, pluralism is possible, but it does not negate equitable justice. This is expected to reduce the number of divorces due to the demands of the wife to the husband to support family life or "head of the family". When the responsibilities are shared and / or the role of "head of the family" can be exchanged, the husband and wife can complement each other to build a happy family. Nevertheless, according to equity, the role of "head of the family" that turns to the wife must make men realize that if the divorce is finally reached due to lack of understanding of the importance of each other, the property acquired by the wife must remain the property of the wife and not be " *gono-gini* ".

---

## References

1. Presidential Decree No. 6/2000 on the Revocation of Presidential Instruction No. 14/1967 on Religion, Belief and Chinese Customs
2. <http://jurnal.iainambon.ac.id/index.php/THK/article/viewFile/3/pdf>; downloaded Sunday, 22 July 2018  
<https://journal.uny.ac.id/index.php/humaniora/article/view/3082/2571>; downloaded Sunday, 22 July 2018  
<https://ojs.unud.ac.id/index.php/srikandi/article/view/2893/2062>; downloaded Sunday, 22 July 2018

- 
- journal.unair.ac.id/download-fullpapers-comm2a653f235afull.pdf; downloaded Sunday, 22 July 2018
- journals.ums.ac.id/index.php/humaniora/article/download/.../1056; downloaded Sunday, 22 July 2018
- ejournal.bunghatta.ac.id/index.php?journal=JFH&page...; downloaded Sunday, 22 July 2018
- ejournal.unp.ac.id › Home › Vol 10, No 1 (2011) › Sasmita; downloaded Sunday, 22 July 2018
- e-journal.iainpekalongan.ac.id/index.php/Muwazah/article/.../786/; downloaded Sunday, 22 July 2018
- e-journal.sos.fisip-unmul.ac.id/.../02\_format\_artikel\_ejournal\_mulai...; downloaded Sunday, 22 July 2018
3. L.M. Gandhi Lapien "*Legal Discipline that embodies Gender Equality and Justice*" (YayasanPustakatoror Indonesia, Jakarta, 2012)
  4. S. Soekanto, "*Introduction to Legal Research*," (Universitas Indonesia Perss, Jakarta: 1986)
  5. *The Catholic Religion* Ephesians 5:23: "*So husbands are called to love, to sacrifice and to consecrate their wife, according to the example that Jesus gave to His Church; and wives are called to obey their husband who is called 'wife's head' "*
  6. *The Christianity* 1 Corinthians 11: 3; Ephesians 5:23, "*the head of a woman is a man*".
  7. Manava Dharmasastra IX.2,3,9 dan 11 *The husband seeks to ensure the life of his wife and to provide for her living, especially when in business or when he has to perform his duty out of the region ...*
  8. artikelbuddhist.com/2011/.../perkawinan-dalam-agama-buddha.htm...;downloaded Sunday, 22 July 2018; , "*the Buddha outlines the obligation of a husband and wife to be able to establish a harmonious family relationship. A husband should treat his wife: a. Respectfully, b.Cordially and Kindly, c. Faithful, d. Give power to his wife, e.Provide gifts / jewelry; a wife ...*"
  9. web.budaya-tionghoa.net/.../699-seri-tulisan-confucius-10-hubung...; downloaded Sunday, 24 July 2018."*Confucianis is a relationship based on harmony where husband performs his duty as responsible husband as head of the family and maintain family's reputation*"
  10. S. Wignjodipoero "*Introduction and Principles of Customary Law*", (PT. Shop GunungAgung, Jakarta, 1995). p. 155; *Jujur : "marriage is a form of marriage in which the man gives jujur (some property) to the woman"*
  11. T.I.P Astiti "*The Rights of Balinese Women in Customary Law of Inheritance*" in the book *Elimination of discrimination against women*, (IKAPI, Bandung, 2000) *nyeburin: "is a marriage custom in Bali where married women remain in their own family (sentanarajeg) and men who enter the women's family. This marriage is usually done when a family has only one daughter or only girls in the family, thus the family gets the purusa to continue its generation.*
  12. *Op cit* Soerojo (1995): p. 130 *urangsumando: at the time of marriage the groom is picked up (in japuig) from his home and brought to the bride's home.*
  13. *ibid*, Soerojo (1995): p.155
  14. *ibid*, Soerojo(1995): p.154
  15. Law no.1 / 1974 on *Marriage*

16. Presidential Instruction No. 1 of 1991 on *the Compilation of Islamic Law*
17. Law no 7 of 1989 on *Convention on the Elimination of All forms of Discrimination Against Women* (CEDAW).
18. The Civil and Commercial Code of Thailand
19. The Civil Code of Shout east Korea
20. pikiran-rakyat.com , downloaded Saturday, 21 Juli 2018
21. <http://jurnal.iainambon.ac.id/index.php/THK/article/viewFile/3/pdf>; downloaded Sunday, 22 July 2018.
22. <https://www.bps.go.id/.../persentase-rumah-tangga-menurut-provins> downloaded Sunday, 22 July 2018