



Aspects of Islamic Legal Reform within the Family Law System in Indonesia

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Abstract

This study explores the dynamics of Islamic legal reform within the family law system in Indonesia, emphasizing its material, methodological, and sociological aspects. As a country with a pluralistic legal system—comprising Islamic law, customary law, and civil law Indonesia presents unique challenges and opportunities for integrating Islamic principles into national legislation. The research employs a normative legal method complemented by a socio-legal approach, analyzing key legal sources such as Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). The study identifies that reform efforts occur through four main legal instruments: fiqh, fatwas, jurisprudence, and statutory regulations. Moreover, the role of public interest (maṣlaḥah), historical context, and social realities are central to shaping legal developments. This paper argues that effective reform requires harmonizing Islamic legal values with contemporary societal needs, thus ensuring both legal relevance and faithfulness to foundational religious principles.

Keywords: Aspects, Islamic Legal, Reform, Family Law, Indonesia

A. Introduction

The renewal of Islamic law essentially stems from pre-existing (existing) legal norms that undergo qualitative changes as a result of interactions within the dynamics of social life. It can be stated that the process of Islamic legal reform is, to some extent, autonomous; however, it simultaneously engages with other societal elements, resulting in a mutually dependent relationship. Whenever Islamic law interacts with the realities of social life, it inevitably faces various challenges, both internal and external in nature. Therefore, the concept of reforming Islamic law necessitates an adaptive approach toward the societal context in which it operates. (Ahmad Hanafi, 1986)

In this regard, the application of the legal maxim *al-muḥāṣaẓatu 'ala al-qadīm al-ṣāliḥ wa al-akhḍu bi al-jadīd al-āṣlah* (preserving what is good from the past and adopting what is better from the present) becomes imperative. This principle is crucial since the behavior of the *mukallaf* (legal subject), which is the object of Islamic legal regulation, is continuously evolving and subject to change. (Jazuli, A, 1991)

Consequently, changes in Islamic law are essential to appropriately respond to the demands arising from evolving societal conditions. Such responsiveness reflects one dimension of the universal nature of Islamic law, particularly in terms of its adaptability and flexibility. This implies that Islamic legal thought does not remain static across time, space, or circumstance; rather, it is inherently dynamic, evolving in tandem with changing temporal, spatial, and societal conditions.

This notion aligns with the view of Ibn Qayyim al-Jawziyyah, who emphasized that changes in legal reasoning and interpretation must correspond with changes in time, place, condition, intent, and necessity. He further asserted that neglecting such contextual

considerations constitutes a fundamental error in the application of Islamic law. (Ibn Qayyim Al-Jauziyah, T,th)

Although Islamic legal reform is widely regarded as a necessity, it must be underscored that such reform, particularly in the realm of *mu'āmalāt* (social transactions), is permissible under Islamic law only insofar as it does not contradict the spirit and fundamental objectives (*maqāṣid*) of the Sharī'ah. This is because Islamic law, especially in the domain of *mu'āmalāt*, generally outlines broad, foundational principles, while the specifics are left to human reasoning and *ijtihād*, provided these efforts remain grounded in the core objectives of Islamic jurisprudence. (Muhammad Daud Ali, 1997)

Thus, while the fundamental principles and spirit of Islamic law remain constant, permanent, and stable over time, its technical and derivative rulings may evolve in response to contextual demands.

One of the most crucial areas in *mu'āmalāt* is family law. In this regard, J.N.D. Anderson has stated that family law is considered the core of Islamic Sharī'ah, as it is often viewed by Muslim communities as the gateway into religious and social life. As an essential component of Islamic law, family law has not been exempt from reformist discourse. In fact, the renewal of Islamic family law has emerged as a global discourse across the Muslim world, especially in Indonesia. It signifies that the reform of Islamic law has become one of the most discussed aspects of legal modernization within Islamic societies. (Cik Hasan Bisri, 1998)

Nevertheless, the reform process cannot be detached from various contextual factors surrounding the development of Islamic family law. In this context, at least two broad categories of influencing factors can be identified: internal and external. Internal factors include the diverse understandings among Muslim

communities regarding the concept and methods of reform, both substantively and methodologically. External factors, on the other hand, encompass the surrounding social structures and even state power and governance.

B. Methodology

This study employs a qualitative normative legal research approach combined with a socio-legal perspective. The normative legal research focuses on analyzing primary and secondary legal sources, including Indonesian statutory laws related to family law, Islamic jurisprudence (*fiqh*), fatwas, and court decisions. These legal materials are examined to understand the substance, formulation methods, and reform dynamics of Islamic family law within Indonesia's pluralistic legal system. Complementing this, the socio-legal approach is used to explore how social realities, such as cultural diversity, political institutions, and social norms, influence the process and outcomes of Islamic legal reform. This approach acknowledges that law does not operate in isolation but is embedded within the broader social and political context. Data collection relies primarily on documentary research, reviewing relevant legislation such as Law No. 1 of 1974 on Marriage, Government Regulations, and the Compilation of Islamic Law (KHI). Additionally, classical and contemporary *fiqh* texts, scholarly articles, and legal rulings are included to provide a comprehensive understanding.

The data is analyzed through qualitative content analysis to identify the key aspects—material, methodological, and sociological—that shape the reform of Islamic family law in Indonesia. This methodological combination enables a holistic analysis bridging Islamic legal theory and Indonesian socio-legal realities. (Fiona Cownie, and Bradney, Anthony, 2003)

C. Aspects of Islamic Family Law Reform in Indonesia

The reform of Islamic family law is an urgent necessity that must be promptly addressed in order to provide relevant solutions to contemporary issues. The formulation of Islamic family law as found in classical *fiqh* texts should not be regarded as fixed and immutable, but rather as the interpretations and legal formulations of scholars of their time—interpretations which require critical re-examination in light of modern realities and social changes. Therefore, Islamic family law must continually be interpreted in ways that are responsive to current challenges without abandoning its fundamental principles. This is crucial to prevent Islamic family law from becoming fossilized (read: stagnant) and ultimately losing its relevance and being abandoned by the Muslim community itself. (J. R. Bowen, 2003).

The inability or unwillingness of Islamic legal scholars to address emerging contemporary problems risks undermining the adaptability and responsiveness of Islamic family law in the eyes of the Muslim public. Such stagnation is inevitable if the Muslim community remains trapped in orthodox paradigms that no longer align with the developments of modernity. A clear indication of this concern is the tendency among some segments of the Muslim population to adopt foreign or secular family law systems wholesale, often without critical evaluation, and to apply them within the Islamic context.

Within the Indonesian context, the reform of Islamic family law reflects a unique and complex dynamic. This is due to Indonesia's plural legal system, which incorporates customary law (*adat*), Islamic law, and Western-derived civil law. According to Hooker, none of these three legal systems has outright dominance

or eliminates the others. However, the equal standing of these legal systems does not always function harmoniously. In certain situations and under particular conditions, these systems may come into conflict. Such legal pluralism has often resulted in tensions that significantly impact the efforts to reform Islamic law in Indonesia. (M. E. Cammack, 2005)

As such, Islamic legal reform in the field of family law in Indonesia cannot be understood as a solitary or isolated process. Rather, it must be seen as a configuration that is constantly influenced by various surrounding aspects. These aspects include, but are not limited to:

1. Substantive Aspect

Following Indonesia's declaration of independence on August 17, 1945, legal reform efforts began in earnest. These reforms aimed to replace the colonial Dutch legal legacy, which was largely inconsistent with the constitutional foundations of the newly independent Indonesian state. According to Hazairin, once the 1945 Constitution was adopted as the official constitution of the Republic, all laws and regulations inherited from the Dutch East Indies were effectively nullified. Consequently, the reform of Indonesia's legal system was intended to eliminate colonial legal products that were no longer in line with the fundamental principles of Pancasila and the 1945 Constitution. (Mahsun Fuad, 2005)

This reform is particularly important because several Dutch colonial laws that remain in force today are no longer compatible with the foundational values of a sovereign Indonesian state. Within the broader framework of legal reform, especially in the domain of family law, Islamic law has played a pivotal and strategic role. This is because Islamic family law, in addition to being legally recognized as a source of law, embodies universal principles that align with the cultural identity of the Indonesian people. Sociologically, Islamic family law is deeply rooted in, and functions as, living law within the majority of Indonesian society. (M. B. Hooker, 2008)

The status of Islamic law as a legal source in Indonesia positions it as existentially significant in the reform of family law materials. At least two arguments support this claim. First, Islamic family law is based on universal principles, which allows for its substantive translation into the Indonesian family law system. In this sense, the substantive values of Islamic family law have inspired various aspects of Indonesia's legal regulations, such as several articles in Law No. 1 of 1974 on Marriage, Government Regulation (PP) No. 9 of 1975, and Government Regulation No. 10 of 1983 on the marriage and divorce of civil servants.

Second, the reform of Islamic family law materials within the national legal system can be realized by codifying these Islamic legal materials into binding statutory regulations. In other words, the reform of Islamic legal content produced through collective scholarly deliberation (*ijtihād jamā'ī*)—can be formally adopted as positive law, as was the case with Presidential Instruction (Inpres) No. 1 of 1991 concerning the Compilation of Islamic Law. Moreover, reforms may also emerge from individual *ijtihād* and be proposed for legislative adoption to replace outdated legal provisions, as demonstrated by scholars such as Munawir Sjadjali through his concept of Islamic law re-actualization, and Musdah Mulia through her efforts to draft a counter-legal proposal for the reform of the Compilation of Islamic Law.

2. Methodological Aspect

The reform of Islamic law within the context of family law in Indonesia is far from a simple matter. At the very least, this complexity can be examined from two key aspects:

- a. The objective condition of Indonesian society, which is inherently pluralistic, must be considered as a critical variable in any legal reform. This consideration is essential to avoid counterproductive reforms that could ultimately harm the Muslim community itself.
- b. The methodology employed in the formulation of Islamic legal reform must be carefully considered in the context of Indonesian family law. This is to ensure that the resulting legal formulations do not contradict the prevailing legal consciousness or the national legal character.

In the context of Islamic legal reform, methodology is regarded as a decisive factor in shaping the legal outcomes (the results of *ijtihad*). Therefore, to ensure that the reform of Islamic family law in Indonesia aligns with the people's legal consciousness and the characteristics of national law, several methodological approaches can be applied:

1.2. Historical Approach

The historical approach aims to understand the socio-historical background of a particular legal product. Its application in the reform of Indonesian family law can be observed in, for instance, Article 2(2) of Law No. 1 of 1974 on Marriage, and Articles 6(1) and (2) of the Compilation of Islamic Law (KHI), which regulate the registration of marriage. In classical *fiqh* literature, there is no provision mandating the registration of marriage. According to Ahmad Rofiq, this absence is due to the high level of trust and integrity among Muslims at the time, which made fraudulent marriage practices relatively rare. However, with the growing complexity of modern society, the provision requiring marriage registration has become increasingly vital.

2.2. The *Maṣlahah* Approach

The degree of *maṣlahah* (benefit/public interest) should ideally serve as the guiding spirit of every provision in the reform of Islamic family law in Indonesia. The regulation on marriage registration is viewed as a brilliant legal achievement by Indonesian Islamic legal scholars, primarily because it carries a high degree of *maṣlahah* and serves as a legal solution to the increasing occurrence of unregistered marriages (*nikah sirri*). Based on the *maṣlahah* perspective, it can be argued that unregistered marriages are invalid—not only because they contravene Indonesian positive law but also because they conflict with the spirit of the Sharī‘ah. (T. Lindsey & Steiner, K, 2012)

2.3. Social Reality Approach

The social reality approach is conceptually understood as an attempt to reform the law by incorporating social realities alongside other methodological perspectives in the process of legal discovery (*istinbāt al-hukm*). In other words, in the reform of Islamic family law, social realities must be considered as a significant variable in the analytical and interpretive process, rather than deriving law purely from textual sources. The application of this empirical approach is evident in various provisions of the Compilation of Islamic Law (KHI). One such example is the provision that assets given by parents as gifts (*hibah*) to their children are later treated as part of the child's inheritance after the parents' death. This legal principle is not found in classical *fiqh* literature but emerges from customary law as a reflection of lived social realities. (M. A, Mudzhar 2000)

3. Sociological Aspect

In the context of legal reform, sociological aspects—constantly evolving over time are considered integral elements that accompany and shape the reform process. Several sociological

factors influencing the reform of Islamic law, particularly in the realm of family law in Indonesia, include the following:

a. Kinship Institutions

Kinship institutions serve to fulfill the needs of reproduction and the development of future generations. They also function to preserve and transmit collective cultural values. In order to meet these needs, social relationships within the family—as the smallest unit of social organization—must be structured. These institutions allocate values and legal norms related to *al-ahwāl al-shakhsiyah* (personal status laws), including the acceptance of new family members through engagement and marriage, the rights and obligations of spouses, childbirth regulations, childcare and education, the management of marital assets, divorce, and the transfer of property rights in cases of inheritance.

b. Educational Institutions

Educational institutions serve to fulfill the need for socializing beliefs, values, and norms from one generation to the next. This socialization process also includes the transmission of new knowledge and relevant life skills necessary in a modern society. To meet these needs, regulations are established concerning educational pathways, types, and levels. As such, the level of education becomes a determining factor in the process of legal reform in Indonesia.

c. Scientific Institutions

Scientific institutions are essential for developing understanding of the divine signs of Allah, both the *qawlīyyah* (revealed verses) and *kawnīyyah* (cosmic verses). The first verses of the Qur'an revealed to the Prophet Muhammad (peace be upon him) emphasized the importance of knowledge. To meet this epistemic need, a systematic approach is undertaken regarding sources, substance, methodology, and the utility of acquired knowledge. The outcomes of this understanding are disseminated through scholarly works, including *fiqh* literature across various schools of thought (*madhāhib*).

d. Political Institution

Political institutions serve as a medium for articulating legal reform in the field of family law in Indonesia. This articulation occurs through both the infra- and supra-structures of political life within society, the state, and the nation. Legal reform is advanced through political decisions made by the state apparatus. The more effectively political life is organized, the greater the opportunity for Islamic legal reform to be formally recognized and codified as positive family law.

e. Legal Institutions

Legal institutions function to provide juridical legitimacy for the reform of Islamic family law in Indonesia. As is well established, the Indonesian Constitution (1945 Constitution) offers a strong legal basis for the incorporation and reform of Islamic family law as part of the national legal system.

D. Conclusion

Referring to the discussions presented above, the following conclusions can be drawn:

1. The reform of Indonesia's family law is considered a constitutional mandate aimed at replacing the remnants of Dutch colonial legal products still in effect, as well as revising existing legal provisions that are no longer aligned with contemporary societal needs and demands for change.
2. The reform of Islamic law in the context of Indonesian family law encompasses four main categories: *fiqh*

(Islamic jurisprudence), *fatwā* (legal opinions), jurisprudence (court decisions), and statutory legislation.

- Several key aspects are associated with the reform of Islamic family law in Indonesia, including material aspects, methodological aspects, and sociological aspects.

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