



The Development of Islamic Family Law in Indonesia

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Abstract

This article aims to delve deeply into the development of Islamic law in Indonesia, especially in the context of its interaction with customary law and positive law. This study uses a qualitative method with a historical approach to trace the dynamics of the development of the law from time to time. The data used in this study includes primary data, such as legal documents and historical archives, as well as secondary data consisting of literature reviews and previous research. The main focus of this research is to understand the development process of customary law, especially when customary law and Islamic law interact, complement each other, and achieve harmony without causing significant controversy. In addition, this study also highlights how the judicial process runs when the government implements a policy of legal uniformity through codification and unification of laws. This includes the incorporation of customary law values and Islamic law into a positive legal framework regulated in laws and regulations. This research is expected to provide an overview of how customary law still survives today as an integral part of the life of Indonesian people. Despite the challenges of modernization, customary law is still recognized for its existence and plays an important role in shaping the legal identity of the community, as well as coexisting with Islamic law and positive law in creating social harmony and legal justice.

Keywords: *Development; Islamic Family Law; Indonesia*

Abstrak

Artikel ini bertujuan untuk menggali secara mendalam perkembangan hukum Islam di Indonesia, khususnya dalam konteks interaksinya dengan hukum adat dan hukum positif. Penelitian ini menggunakan metode kualitatif dengan pendekatan historis untuk menelusuri dinamika perkembangan hukum tersebut dari masa ke masa. Data yang digunakan dalam penelitian ini mencakup data primer, seperti dokumen-dokumen hukum dan arsip sejarah, serta data sekunder yang terdiri dari kajian literatur dan penelitian sebelumnya. Fokus utama penelitian ini adalah memahami proses perkembangan hukum adat, khususnya ketika hukum adat dan hukum Islam berinteraksi, saling melengkapi, dan mencapai harmoni tanpa menimbulkan kontroversi yang berarti. Selain itu, penelitian ini juga menyoroti bagaimana proses peradilan berjalan ketika pemerintah menerapkan kebijakan keseragaman hukum melalui kodifikasi dan unifikasi hukum. Hal ini mencakup penggabungan nilai-nilai hukum adat dan hukum Islam ke dalam kerangka hukum positif yang diatur dalam peraturan perundang-undangan. Penelitian ini diharapkan dapat memberikan gambaran tentang bagaimana hukum adat tetap bertahan hingga saat ini sebagai bagian yang integral dari kehidupan masyarakat Indonesia. Meski dihadapkan pada berbagai tantangan modernisasi, hukum adat tetap diakui keberadaannya dan memainkan peran penting dalam membentuk identitas hukum masyarakat, sekaligus hidup berdampingan dengan hukum Islam dan hukum positif dalam menciptakan harmoni sosial dan keadilan hukum.

Kata Kunci: *Perkembangan; Hukum Keluarga Islam; Indonesia*

Introduction

The development of Islamic family law in Indonesia reflects the long journey of adaptation of Islamic law that continues to evolve in diverse social, cultural, and political

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international law and changing people's mindsets also drive the need for harmonization between Islamic family law and a more inclusive national legal system. Thus, the development of Islamic family law in Indonesia shows that this law is not static, but continues to evolve and adapt.⁸ The process of adaptation, codification, and implementation of Islamic family law not only serves to create legal uniformity but also to build legal harmony in a pluralistic society. This study aims to further explore how Islamic family law plays a role in maintaining a balance between tradition and modernity, as well as how interaction with customary law and national law can create a legal system that is fair, relevant, and responsive to the needs of Indonesian Muslim society.

Previous studies related to the development of Islamic family law in Indonesia have shown how this law has undergone a transformation process along with the social, political, and cultural dynamics of the community. Research Muhammad Hasan for example, highlights the adaptation of Islamic family law into the national legal system through the establishment of the Compilation of Islamic Law (KHI) in 1991. KHI is considered one of the important milestones in the development of Islamic family law because it serves as a guideline for judges in religious courts in resolving family cases.⁹ Meanwhile, research conducted by Fatima Osman underlined the influence of legal politics in the process of unifying Islamic family law, especially during the New Order period, where codification efforts were made to create legal uniformity in the midst of the diversity of existing practices.¹⁰ Furthermore, a study conducted by Mohd Amir bin Abdullah discusses the integration of customary law and Islamic law in family practice, especially in cases of marriage and inheritance. Mohd Amir bin Abdullah observes that although Islamic family law has been accommodated in national legal systems, interactions with customary law often create variations in its implementation, depending on the local context.¹¹ Another research by Khaiyyil Faizunan Nurun Nafi highlights the modernization of Islamic family law through the reinterpretation of fiqh texts by scholars and judges.¹² He noted that this reinterpretation not only serves to answer the needs of modern society but also to strengthen the legitimacy of Islamic family law in the national legal system.

Previous studies have shown that the development of Islamic family law in Indonesia is not only influenced by religious factors but also by social, cultural, and state policy dynamics. This process reflects efforts to contextualize Islamic law in the pluralistic reality of Indonesia, while emphasizing the importance of dialogue between Islamic legal traditions, customary law, and positive law in the formation of a family law system that is relevant to the needs of modern

⁸ Hud Leo Perkasa Maki, "Impact of Digitalization on Islamic Family Law," *Law Studies and Justice Journal (LAJU)* 1, no. 1 (2024): 01–14, <https://journal.ppipbr.com/index.php/laju/article/view/188>.

⁹ Muhammad Hasan, "Construction of Modern Islamic Inheritance Law based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 650–68, <https://jurnal.ar-raniry.ac.id/index.php/samarah/article/view/8852>.

¹⁰ Fatima Osman, "The Communal Nature of the South African Customary Law of Succession: Developments in the 21st Century," *Reimagining Legal Pluralism in Africa: Balancing Indigenous, State, and Religious Laws* 80 (2024): 62.

¹¹ Mohd Amir bin Abdullah, "Analyzing the Dynamics Between Sharia Law and Civil Law in Governing Divorce Proceedings Among Muslims in Malaysia and Comparing Legal Outcomes," *Law and Economy* 3, no. 4 (2024): 29–38, <https://www.paradigmpress.org/le/article/view/1091>.

¹² Khaiyyil Faizunan Nurun Nafi dan Ahmad Taufiqur Rohman, "Digitalization in Islamic Family Law: an Opportunity or a Threat?," *International Journal of Religion and Social Community* 2, no. 2 (2024): 34–48, <https://jurnalpascasarjana.iainkediri.ac.id/index.php/ijoresco/article/view/3498>.

society. What distinguishes this study from previous studies is that it focuses on the influence of social transformations, such as changes in the mindset of the younger generation of Muslims and the application of gender justice principles, on the reinterpretation of Islamic family law in Indonesia. The study will also expand the scope of the analysis by comparing the practice of Islamic family law in Indonesia with other Muslim countries that have different approaches to legal pluralism, such as Malaysia and Morocco. With this multidimensional approach, the research is expected to make a new contribution to the development of Islamic family law that is more adaptive, relevant, and responsive to the needs of modern society, as well as strengthening the harmony between Islamic law, customary law, and national law in Indonesia.

Method

This study uses the library research approach as the main method to gain a deep understanding of Islamic family law and customary law in Indonesia. This library research method allows researchers to dig up information from various written sources, such as scientific journals, books, articles, and official documents that are relevant and accountable. These sources are selected selectively to ensure the reliability and validity of the data used in the research.¹³ The subjects in this study are scientific works that discuss Islamic family law and Indonesian customary law, both from a historical, normative, and sociological perspective. The main focus of this research is to conduct an in-depth analysis of the concepts of Islamic family law and customary law, as well as to understand how they interact and influence each other in the context of a pluralistic Indonesian society. The data collection process is carried out through literature review, where various relevant sources are critically evaluated to obtain valid data and support the researcher's arguments. In this case, the literature review not only serves as a means of data collection, but also as a tool to identify gaps in previous research that will be filled by this review.

The researcher will also present an in-depth analysis of Islamic family law, especially regarding its application in the lives of Indonesian Muslims, as well as how customary law plays a role in shaping family law practice in Indonesia. ¹⁴This research will examine various literature that is aligned and supports the research objectives, so as to provide a comprehensive view of the interaction and synergy between Islamic family law and customary law. With this approach, the research is expected not only to produce a theoretical understanding, but also to make a practical contribution to the development of Islamic family law and customary law in Indonesia's national legal system.

Result and Discussion

Religion and Cultural Influence in Indonesia

In the universe, humans still see supernatural forces that must be mastered with various kinds of religious ceremonies. This natural strength is considered a shared trust and value that

¹³ Bui Thanh Khoa, Bui Phu Hung, dan Mohsen Hejsalem Brahmi, "Qualitative Research in Social Sciences: Data Collection, Data Analysis and Report Writing," *International Journal of Public Sector Performance Management* 12, no. 1/2 (2023): 187-209, <https://doi.org/10.1504/IJPSPM.2023.132247>.

¹⁴ Audrey Alejandro dan Longxuan Zhao, "Multi-Method Qualitative Text and Discourse Analysis: A Methodological Framework," *Qualitative Inquiry* 30, no. 6 (Juli 2024): 461-73, <https://doi.org/10.1177/10778004231184421>.

intersects with belief. The historical roots of Islamic law in the archipelago, according to some historians, began in the first century of the Hijri, or around the seventh and eighth centuries AD. As the gateway to the archipelago, it was the northern area of the island of Sumatra that was then used as the starting point of the da'wah movement of Muslim immigrants.¹⁵ Slowly, the da'wah movement then formed the first Islamic society. The development of the Muslim community was then followed by the establishment of the first Islamic kingdom in the country in the thirteenth century. This kingdom is known as Samudera Pasai. It is located in the North Aceh region.

The influence of Islamic da'wah that quickly spread to various regions of the archipelago then caused several Islamic kingdoms to stand following the establishment of the Samudera Pasai Kingdom in Aceh.¹⁶ Not far from Aceh stood the Malacca Sultanate, then on the island of Java stood the Sultanate of Demak, Mataram and Cirebon, then in Sulawesi and Maluku stood the Kingdom of Gowa and the Sultanate of Ternate and Tidore.¹⁷ These sultanates, as recorded in history, of course, then established Islamic law as a positive law that applies. The establishment of Islamic law as a positive law in each sultanate certainly strengthened its practice which had indeed developed in the Muslim community at that time.

The source of pure Islam came directly from Arabia, and entered for the first time in Aceh.¹⁸ The proponents of this theory include Hamka. The forerunner of the Dutch colonization of the archipelago began with the presence of the Dutch Trade Organization in the East Indies, the source of Islam in the Malay-Indonesian archipelago is the Indian subcontinent or better known as the VOC.¹⁹ As a trade organization, the VOC can be said to have a role that exceeds its function. This is very possible because the Royal Dutch Government did make the VOC its extension in the East Indies region. Therefore, in addition to carrying out the function of trade, the VOC also represents the Kingdom of the Netherlands in carrying out government functions. Of course, by using Dutch law that brought. In reality, the use of Dutch law found difficulties. This is because the indigenous people are very receptive to laws that are foreign to them.

As a result, the VOC also freed the indigenous people to carry out what they had been doing. In relation to Islamic law, it can be noted that several "compromises" were made by the VOC. In the Batavia Statute established in 1642 by the VOC, it is stated that Islamic inheritance law applies to followers of Islam.²⁰ There are efforts to compile Islamic family law that has been

¹⁵ Nur Lailatun dan Kholid Mawardi, "Islamization of The Archipelago: A Study of The Arrival and Spread of Islam in Indonesia and Malaysia," *Al-Munqidz: Jurnal Kajian Keislaman* 11, no. 1 (2023): 10–30, <https://jurnal.unugha.ac.id/index.php/amk/article/view/538>.

¹⁶ Tutin Aryanti, "THE MOSQUES OF SOUTHEAST ASIA," *Southeast Asian Islam: Integration and Indigenisation*, 2024.

¹⁷ Nafachatul Firdausi Nuzula, Mohammad Naufal Hakim, dan Dian Rafiq Rizky, "Analysis Of The Role Of Religious Justice In The Time Of The Surakarta Sultanate," *Mawaddah: Jurnal Hukum Keluarga Islam* 2, no. 1 (2024): 32–50, <https://journal.umbandung.ac.id/index.php/mawaddah/article/view/8>.

¹⁸ Edward Aspinall, "From Islamism to Nationalism in Aceh, Indonesia," *Nations and Nationalism* 13, no. 2 (April 2007): 245–63, <https://doi.org/10.1111/j.1469-8129.2007.00277.x>.

¹⁹ Shohei Okubo, "Markets and Competition: Opium Trade in the Malay-Indonesian Archipelago from the Late Seventeenth to the Early Eighteenth Century," dalam *Connecting the Indian Ocean World* (Routledge India, 2023), 11–34, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003362487-3/markets-competition-shohei-okubo>.

²⁰ Aulal Musyafiul Aliya Dewi dan Nurwanti Nurwanti, "Uncovering The Traces Of Freijer's Compendium: Historical Analysis And Its Role In Islamic Marriage Law In Indonesia," *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 2 (2024): 82–97, <https://ijlil.uinkhas.ac.id/index.php/ijl/article/view/402>.

in force in the community. This effort was completed in 1760. This compilation became known as the Compendium Freijer. There are similar compilation efforts in various other regions, such as in Semarang, Cirebon, Gowa and Bone.²¹ In Semarang, for example, the result of the compilation is known as the Mogharraer Law Book.²² However, this compilation has advantages over the Compendium Freijer, where it also contains the rules of Islamic criminal law. This recognition of Islamic law continued even before the transition of power from the British Empire to the Kingdom of the Netherlands. After Thomas Stanford Raffles served as governor for 5 years (1811-1816) and the Dutch regained control of the Dutch East Indies, it became increasingly apparent that the Dutch were trying hard to grip their power in this region.

However, these efforts encountered difficulties due to religious differences between the colonizers and their colonists, especially Muslims who knew the concepts of dar al-Islam and dar al-harb. That is why the Dutch Government is trying to find various ways to solve the problem.²³ Among them are (1) spreading Christianity to the indigenous people, and (2) limiting the application of Islamic law only to the inner (spiritual) aspects. On the basis of the reception theory issued by Snouck Hurgronje, the Dutch East Indies Government in 1922 then formed a commission to review the authority of religious courts in Java to examine inheritance cases (on the grounds that it had not been accepted by local customary law). In 1925, changes were made to Article 134 paragraph 2 of the Indische Staatsregeling (which is the same as Article 78 of the Regerring sreglement), which essentially states that civil cases between Muslims will be settled with an Islamic religious judge if it has been accepted by customary law and is not otherwise determined by an ordinance. The weak position of Islamic law continued to occur until the end of the Dutch East Indies' rule in Indonesian territory in 1942.

Islamic Law in the Old Order and New Order Era

It may not be too wrong to say that the Old Order was the era of nationalists and communists. Meanwhile, Muslims in this era need to bow a little in fighting for their ideals. One of the parties that represented the aspirations of Muslims at that time, Masyumi had to be dissolved on August 15, 1960 by Sukarno, on the grounds that its figures were involved in the rebellion (PRRI in West Sumatra).²⁴ Meanwhile, NU, which then received Soekarno's Manipol Usdek together with the PKI and PNI, then compiled the composition of the Gotong Royong House of Representatives with the spirit of Nasakom. Based on that, the MPRS was formed which then produced 2 decrees, one of which was about efforts to unify the law that must pay

²¹ Hasan Basuni dan Lena Hanifah, "Islamic Inheritance Law in Indonesia: the Experiences of Banjar Women" (PhD Thesis, UNSW Sydney, 2021), <https://unsworks.unsw.edu.au/entities/publication/14ba12d6-bf71-40dc-96da-8f0a6913bcc0/full>.

²² Ahmad Imam Mawardi dan A. Kemal Riza, "Why did Kompilasi Hukum Islam succeed while its counter legal draft failed? A political context and legal arguments of the codification of Islamic law for religious courts in Indonesia," *Journal of Indonesian Islam* 13, no. 2 (2019): 421-53, <http://repository.uinsa.ac.id/id/eprint/501/>.

²³ Lex A. van Gunsteren, "REFLECTIONS ON HOW THE NETHERLANDS COULD RESOLVE ITS MAIN LONG-TERM ISSUES," 2023, https://werf-gusto.com/wp-content/uploads/2024/01/A4-boek_Reflections_Binnenwerk_c-10.21.02.pdf.

²⁴ Imam Ibnu Hajar, M. Yunus Abu Bakar, dan Mochammad Nginwanun Likullil Mahamid, "Political Islam in the Old and New Orders: Actions and Reactions of Islamic Figures Versus the State (1945-1973)," *Islam Realitas: Journal of Islamic and Social Studies* 10, no. 1 (2024): 46-61, http://ejournal.uinbukittinggi.ac.id/index.php/Islam_realitas/article/view/8103.

attention to the general realities that live in Indonesia. Although Islamic law is one of the common realities that has always lived in Indonesia, and on that basis the Tap MPRS opens the opportunity to position Islamic law as it should, but again the unclear boundaries of "attention" make this even more blurred. And the role of Islamic law in this era has not again received its proper place.

Following the failure of the PKI coup in 1965 and the coming to power of the New Order, many Indonesian Islamic leaders had high hopes in their political efforts to place Islam as it should be in the political and legal order in Indonesia.²⁵ Moreover, later the New Order freed former Masyumi figures who were previously imprisoned by Sukarno. But immediately, this Order affirmed its role as a defender of Pancasila and the 1945 Constitution. Even in early 1967, Suharto insisted that the military would not approve of the Masyumi party's rehab efforts.²⁶ Then what about Islamic law? Although the position of Islamic law as one of the sources of national law was not so firm in the early days of this Order, efforts to affirm it continue to be carried out. This was shown by K.H. Mohammad Dahlan, a minister of religion from the NU circle, who tried to propose the Muslim Marriage Bill with the strong support of the Islamic factions in the DPR-GR.

Although it failed, this effort was then continued by submitting a formal draft law regulating the judiciary in Indonesia in 1970. This effort then yielded results with the birth of Law No. 14/1970, which recognized the Religious Court as one of the judicial bodies that is the parent of the Supreme Court.²⁷ With this law, according to Hazairin, Islamic law has taken effect directly as a stand-alone law. The affirmation of the enactment of Islamic law became clearer when Law No. 14 of 1989 concerning religious justice was enacted. This was then followed by intensive efforts to compile Islamic law in certain areas. And this effort paid off when in February 1988, Suharto as president accepted the compilation, and instructed the Minister of Religious Affairs to disseminate it.

Observing the journey of Islam in human history can be described in two views. Suharto finally fell. The rumble of democracy and freedom rumbles in all corners of Indonesia. After going through a long journey, in this era at least Islamic law began to occupy its position slowly but surely. The birth of MPR Decree No.III/MPR/2000 concerning Legal Sources and the Order of Laws and Regulations has further opened up opportunities for the birth of legal rules based on Islamic law. Especially in Article 2 paragraph 7 which emphasizes the accommodating of regional regulations based on the special conditions of a region in Indonesia, and that the regulation can override the enactment of a general regulation.

Moreover, in addition to the increasingly obvious opportunities, concrete efforts to realize Islamic law in the form of laws and regulations have yielded tangible results in this era. One of the proofs is Law Number 32 of 2004 and the Qanun of Nangroe Aceh Darus Province

²⁵ Ali Munhanif dan M. Bakir Ihsan, "Ideas, Politics, and The Making of Muslim Democracy: An Historical Trajectory in Indonesia.," *Studia Islamika* 30, no. 3 (2023).

²⁶ Elizabeth F. Drexler, *Infrastructures of Impunity: New Order Violence in Indonesia* (Cornell University Press, 2023).

²⁷ Muhammad Siddiq Armia, "Constitutional courts and law reform: a case study of Indonesia" (PhD Thesis, Anglia Ruskin Research Online (ARRO), 2023), https://aru.figshare.com/articles/thesis/Constitutional_courts_and_law_reform_a_case_study_of_Indonesia/23765400.

regarding the Implementation of Islamic Shari'a Number 11 of 2002. Thus, in this era of reform, there are wide opportunities for the Islamic legal system to enrich the treasures of legal traditions in Indonesia. We can take steps to renew, and even the establishment of new laws that are sourced and based on the Islamic legal system, to then be used as positive legal norms that apply in our national laws.

The Development of Islamic Family Law in Indonesia

The development of family law in Indonesia has started since the Islamic kingdom, colonialism, the old order, the new order, and the reform. The journey of family law is inseparable from the factors of interest as well as the contestation of discourse and ideology that leads to negotiations. During the Dutch period, for example, in order to strengthen its power, the Netherlands applied family law based on groups. After Indonesia's independence, the battle of discourse and interests became more complex. This can be seen from the length of the debate around the reform of family law. Efforts to reform family law, at first, were championed by women's organizations. It is recorded that before independence, precisely on December 22, 1928, the first Indonesian Women's Congress was formed.²⁸ The discourse on women in the family raised in this congress includes: marriage and divorce rules that cannot protect women's rights, women's status, equality between men and women, prevention of child marriage, allowances for widows and orphans, obligations of women in the household, and taklik talaq.

In subsequent developments, after Indonesia became independent, the state took the initiative to form a Marriage Law due to the insistence of various parties. However, in its formulation, there are many differences of opinion. In 1973, with the mandate of the President of the Republic of Indonesia dated July 31, 1973 No. R.02/PU/VII/1973 submitted to the leadership of the House of Representatives of the Republic of Indonesia, the Bill on Marriage consisting of 15 chapters and 73 articles was issued. This bill then caused pro and con reactions from all levels of Muslim society, sermons in mosques, lectures, recitations, writings in the mass media, demonstrations and various statements of attitude from Islamic organizations because they were considered contrary to Islamic teachings.²⁹ The protests culminated in September 1973 when 335 people came and entered the House of Representatives courtroom and disrupted the proceedings and dominated the debate. From this incident, a compromise was made to the law which was later accepted by the House of Representatives on December 22, 1973. On that same day, the RUUP, which took approximately 3 months to talk, was passed by the House of Representatives and promulgated on January 2, 1974 as Law No. 1 of 1974 concerning Marriage. At the end of the 20th century, there was a discourse on the formation of a compilation of Islamic law.

The emergence of the demand for the birth of the compilation of Islamic law is due to the lack of legal certainty used by the judges of the Religious Court, as well as the demand for

²⁸ Sabina Satriyani Puspita, "The Butterfly Effect: Stealth Politics by the Reformist Women's Movement in Indonesia in the Struggle for Gender Equality (1945-Present)" (PhD Thesis, Northwestern University, 2023), <https://search.proquest.com/openview/987d19695453e5b67cce524e560e0644/1?pq-origsite=gscholar&cbl=18750&diss=y>.

²⁹ Jasbeer Musthafa Mamalipurath, *TEDified Islam: Postsecular Storytelling in New Media* (Singapore: Springer Nature Singapore, 2024), <https://doi.org/10.1007/978-981-97-3748-2>.

contextualization of Islamic law in Indonesia. On June 10, 1991, President Soeharto signed the Presidential Instruction of the Republic of Indonesia No. 1 of 1991. Thus, formally the KHI applies throughout Indonesia as a material law used in the Religious Court. Then on July 22, 1991, the Minister of Religion issued Decree No. 154 of 1991 concerning the Implementation of the Instruction of the President of the Republic of Indonesia No. 1 of 1991.³⁰ The KHI was then disseminated to all Chairmen of the High Court of Religion and the Chairman of the Religious Court through the Circular Letter of the Director of the Development of the Islamic Religious Court Agency dated July 25, 1991 No.3694/EV/HK.003/AZ/91. Thus, KHI has a firm position in the Indonesian legal system as a law that regulates the lives of Muslims.

The existence of KHI cannot be separated from criticism. One of them is in terms of reviewing the theory and order of Indonesian legislation. KHI is seen as not having strong legal force. This is because the KHI is based on the Presidential Instruction, even though the Presidential Instruction is in seventh place in the legislative order. Another note on the status of KHI, as quoted by Khoiruddin, is first, the status of KHI as an unwritten law is not included in the series of laws and regulations that are the source of written law. Second, KHI can be categorized as written law because these sources show that KHI contains laws and rules. Subsequently, it was raised to become a law with potential political power, namely Presidential Instruction No. 1 of 1991. The debate related to Indonesian family law did not end only after the emergence of the UUP and KHI. In the reform era, some circles applied for judicial review to the Constitutional Court because the UUP was considered detrimental to it. At least, there are five applications submitted to the Constitutional Court, namely regulations on polygamy, marriage age, registration of marriage and child status, divorce process, and interfaith marriage. Of the five applications, only the application for child status was granted by the Constitutional Court, and about the marriage age limit which was later revised in 2019.

Departemen Agama RI merancang draft revisi terhadap KHI. Sementara itu, Tim Pengarus utama Gender (PUG) Departemen Agama RI juga membuat sebuah draft yang dikenal dengan Counter Legal Draft (CLD) KHI. Dengan demikian, ada dua rancangan yang beredar dan didiskusikan masyarakat Indonesia untuk memberikan masukan demi perbaikan. Rumusan CLD berdasarkan pada Maqasid al-syariah (tujuan dasar syariah), yakni menegakkan nilai prinsip keadilan sosial, kemaslahatan umat manusia, kerahmatan semesta, dan kearifan lokal dengan menggunakan empat pendekatan utama, yaitu gender, pluralisme, HAM, dan Demokrasi. Meskipun demikian, rumusan yang dipublikasikan pada bulan September 2004 ini dibatalkan oleh Menteri Agama RI, karena ada banyak kesalahandalam perumusannya. Selain itu, Tim CLD menurut kelompok ulama menciptakan syariat Islam baru.

From the debate surrounding these developments, it can be understood that Indonesian family law cannot be separated from the legal discourse that has been deeply rooted and ingrained in Indonesian society. In addition, family law also cannot be separated from the development of society and the discourses that develop in it. Thus, the debate around the development of Islamic family law in Indonesia is a debate between conservatives who

³⁰ Ahmad Rofii dan Nadirsyah Hosen, "Freedom of Religion and Religious Minorities in Indonesia: The Local Beliefs Case," dalam *Freedom of Religion and Religious Diversity* (Routledge, 2025), 271–98, <https://www.taylorfrancis.com/chapters/edit/10.4324/9781003458128-17/freedom-religion-religious-minorities-indonesia-ahmad-rofii-nadirsyah-hosen>.

maintain the old legal discourse and modernists who offer laws that are in accordance with the demands of the times and developing discourses. However, looking at the current conditions, it is necessary to make continuous contextualization efforts so that Islamic family law in Indonesia is still able to survive and adapt to the times, and be able to answer contemporary family problems.

Islamic Family Law in Society

The diverse sources of Islamic family, customary, and state law and the ambiguity of state law result in different legal practices in society. This can be seen for example in the practice of nikah sirri and marriage registration. Islamic law does not require marriage registration, while state law (UUP) requires everyone to register their marriage. This causes the public's understanding of marriage registration to vary. Some people understand that marriage registration is indeed mandatory, while others understand it as an administrative requirement. This is then one of the reasons why the practice of nikah sirri (not recorded) still occurs in Indonesian society.

The practice of sirri marriage still occurs a lot in the community. According to Alfarabi, in his research, the culture of kiai marriage (nikah sirri) is still running to this day. Furthermore, he explained that the practice of nikah sirri (kiai marriage) is carried out by the community because of two aspects. First, the internal aspect, namely low understanding of marriage registration, religious understanding, indifference, and complicated procedures. Second, external aspects, namely the role of kyai, lack of socialization, difficult access, negligence of representative officials in the village, recording costs, views of the local community, and the culture of kyai marriage in the community. Based on the practice of kyai marriage, Alfarabi sees that there is dualism in the community. He termed the head of state and the non-head of state. The head of state is the head of state who has been appointed by the state in the KUA as an official authorized to marry prospective husband and wife. The state ruler is a kyai who is trusted by the community because of his religious knowledge and charismatic to marry a prospective husband and wife. Society is dependent on these two authorities, albeit to different degrees. In the implementation of recorded marriages, the community uses the authority of the head of state, while the non-state head is used as an alternative authority for the culture of kyai marriage.

Based on Alfarabi's research, it can be understood that in practicing nikah sirri, people tend to refer to Islamic law with ulama or kiai (non-state headmen) as the authority holders. This is because Islamic law does not prohibit such unregistered marriages. In addition, customs and culture also play a role in the practice of nikah sirri. This can be seen from the kiai marriage culture itself, which for the community is an ordinary thing and has been cultured and does not violate the provisions of customs. The same thing also happens with the practice of underage marriage (early marriage). Although the UUP has set the age limit for marriage, which is 19 years for men and 16 years for women (before the revision), in practice, there are still many people who marry underage. This is as summarized by Ahmad Tholabi Kharlie based on research and news related to child marriage. Of the 50% of every graduate at the elementary level, only 5% of women continue until they graduate from high school, the rest choose to get married. Likewise in some villages.

Many factors cause the practice of early marriage in Indonesia. Ahmad Tholabi Kharlie noted that the very simple and wrong way of looking at society in understanding marriage is the cause of early marriage. This is due to the low education of the community. Early marriage is also caused because there has been an extramarital relationship. In addition, the beliefs of traditional communities also play a role in this practice, for example those who believe not to refuse the first proposal to girls. There are many other factors that affect the increase in early marriage in Indonesian society. These factors are also supported by a strong understanding of religion, especially Islam, in society. Islamic law does not prohibit early marriage. Marriage is allowed if the prospective husband and wife have reached puberty, which is marked by dreams for men and menstruation for women. The practice of family law that is no less interesting than the practice of marriage and early marriage is polygamy. Although the UUP has restricted polygamy, the practice of polygamy in Indonesia is still relatively high. No less important than the practice of law is the practice of customary marriage law. In this case, it is customary marriage traditions that are still maintained by several indigenous peoples in Indonesia, both from the marriage system and the marriage ceremony. As previously explained, in Indonesia still strictly adheres to the customary law of marriage, such as the provisions that can be married, the exogamous and endogamous system, and the tradition of elopement. This tradition has also colored the practice of family law in Indonesia.

Conclusion

The development of Islamic law in Indonesia is a reflection of the long journey of interaction between Islamic values, customary law, and the national legal system. As a country with a majority Muslim population, Indonesia has shown a distinctive dynamic in integrating Islamic law into the national legal framework without neglecting local cultural diversity. From the colonial period to the modern era, Islamic law has undergone a significant transformation, ranging from its informal application in society to becoming part of a positive legal system through official institutions such as the Religious Court. An important milestone in the development of Islamic law in Indonesia was the preparation of the Compilation of Islamic Law (KHI) in 1991, which became the official guideline for the settlement of cases in the field of family law. This codification process shows the government's efforts to create legal uniformity in the midst of legal pluralism involving customary law and national law. However, challenges such as differences in interpretation and potential conflicts between Islamic law, customary law, and positive law remain part of the dynamics of its application.

In the modern era, Islamic law continues to evolve along with social, economic, and technological changes. The reinterpretation of the law by scholars, academics, and judges of the Religious Court shows the flexibility of Islamic law in responding to the needs of the times, without abandoning its basic principles. This process reflects that Islamic law in Indonesia is not static, but adaptive to local contexts and global challenges. Thus, the development of Islamic law in Indonesia shows great potential in creating legal harmony that is relevant and responsive to the needs of a pluralistic society. This is an important foundation for the development of Islamic law in the future, both in order to strengthen the values of justice and in creating integration between local legal traditions and modernity.

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