



MODIFYING ASSESSMENT FOR THE ADVANCEMENT OF FAMILY LAW THEORIES AND PRACTICES

Wirani Aisiyah Anwar

UIN Sunan Gunung Djati Bandung, Indonesia

Email: wiraniaisiyahanwar@iainpare.ac.id

A. Rio Makkulau Wahyu

IAIN Parepare, Indonesia

Email: a.riomakkulau@iainpare.ac.id

Oyo Sunaryo Mukhlas

UIN Sunan Gunung Djati Bandung, Indonesia

Email: oyosunaryomukhlas@uinsgd.ac.id

Si'ah Khosyiah

UIN Sunan Gunung Djati Bandung, Indonesia

Email: siah.khosyiah@uinsgd.ac.id

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ABSTRACT

Family law primarily refers to the legal rules that regulate relationships within the family, which can derive from either blood relations or the act of marriage. The purpose of this article is to analyze the concept and the norm of altering Islamic family law in Indonesia. To examine the subject of altering Islamic family law in Indonesia, a qualitative methodology backed by literature can be used. A combination with descriptive normative approach entails researching legal documents related to Islamic families in Indonesia, selecting some contentious family law cases and analyzing their impact on the legal system, and interviewing Islamic legal experts, human rights activists, or family members involved in specific legal cases. The results of the study underline the significance of family bonds in influencing problems such as parental and filial rights,

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inheritance laws, along with custody and guardianship. Essentially, family law has its foundation on two sources: written and unwritten regulations. Written sources include a wide range of legal topics, including law, jurisprudence, and treaties. Unwritten sources, on the other hand, refer to legal ideas that emerge and shape themselves within the context of cultural life.

Keywords: Family Law; Islamic Law; Alteration; Reformulation of Law

INTRODUCTION

Islamic Family law covers numerous aspects of family life, including inheritance, parental duties toward their children, and the rights and obligations of family members. It is not just restricted to the regulation of marriage and divorce. As a result, Islamic family law establishes a thorough legal framework to direct and control family life in line with Islamic values. Muslims are thought to need to have a thorough understanding of family law since it not only regulates the legal aspects of daily life but also reflects the moral and ethical principles that underpin Islamic teachings. Family law is therefore seen as the cornerstone for the development of a Muslim society founded on religious ideals rather than just a set of legal regulations.¹ In Indonesia's pluralistic background, where numerous religions and beliefs exist together, including non-Islamic religions, it is critical to freely discuss Islamic family law and grasp the framework of societal diversity. The history and setting of Islamic family law reflect the dynamics of religion-state relations in Indonesia's legal system.

Different points of view on how Islamic family law should work with the larger national legal system may also give rise to this disagreement. There is discussion on the degree to which the rules of

¹ YUSDANI FAUZIYAH, Terry Ana., "Pemikiran Munawir Sjadzali Tentang Kedudukan Ahli Waris Laki-Laki Dan Perempuan Ditinjau Dari Kompilasi Hukum Islam Dan Fikih Indonesia'," *Universitas Islam Indonesia*, 2018.



Islamic family law can be applied and the amount of accommodations that should be made within the national legal system, given that the nation was built on Pancasila, which values diversity.

Islamic family law aims to achieve justice, equality, and balance in family interactions while taking into consideration Islamic beliefs and principles. Matters like marriage and inheritance play a crucial role in the structure and continuity of Muslim society. Islamic family law is designed to provide guidance in accordance with Islamic teachings to address family-related issues.² Legal reform techniques must be used in the face of swift societal change in order to keep up with the dynamics and needs of a developing society. The Compilation of Islamic Law (KHI) and Law Number 1 of 1974 regarding marriage are responses to the worries, doubts, and desires of the Muslim community. Both laws are viewed as recommendations and guidelines designed to address various family law-related issues in step with changes and advancements in Muslim society.

The government's attempts to control and establish an official legal basis for various facets of communal life, notably in the framework of Islamic family law, are reflected in the rules of Muslim countries, particularly those pertaining to family law. This entails the government-endorsed formulation of laws and regulatory decisions with the goal of governing and establishing legally binding norms that apply at the national level.³ Meanwhile, the compilation of Islamic law, especially in Indonesia, represents a form of legal innovation. This compilation is not codified like positive laws, but it is also not a fiqh book containing laws derived from Islamic sources. The compilation of Islamic law is more about collecting, summarizing, and reorganizing existing Islamic legal

² Daud Ali, *Kedudukan Hukum Islam Dalam Sistem Hukum Indonesia Dalam Taufiq Abdullah (Ed.), Tradisi Dan Kebangkitan Islam Di Asia Tenggara* (Jakarta: Penerbit LP3ES, 2017).

³ M. Mudzhar, "Dampak Gender Terhadap Perkembangan Hukum Islam," *Sejarah Pemikiran Islam*, 2019, 172.



norms, providing guidance for legal practitioners and the general public in addressing family law issues. Thus, the evolution of Islamic legal literature in the modern era reflects efforts to compile and organize Islamic law within the framework of the state's positive law, as well as innovation in the form of a compilation that provides clearer and more practical guidance in the context of community life.

Some scholars who wish to uphold the provisions of old laws may view them as an integral part of the tested tradition of Islamic law, considered in line with religious teachings. They might express concerns about the potential deviation from religious principles or the loss of the authenticity of Islamic law if too many changes are made.⁴ On the other hand, some scholars, particularly those considered as reformers, may see the need for adapting family law to the changing times and societal demands. The enactment of laws such as Law Number 1 of 1974 and Law Number 7 of 1989 is seen as a positive step to address social changes and the practical needs of Muslims in their daily lives. These differing perspectives reflect the complexity of balancing tradition and contemporary needs within the context of Islamic family law. Despite these differences, efforts to achieve harmony between religious values and societal needs continue to be part of the discussions and dynamics in the advancement of family law in Muslim countries.⁵

Different interpretations of religious teachings and differences with traditional perspectives can be the reason for the contrasting opinions of some traditional scholars who have not fully agreed with these restrictions. Certain provisions in Islamic family law may be questioned as they contend that these rules should be derived directly

⁴ John Donohue, *Islam Dan Pembaharuan Ensiklopedi Masalah-Masalah* (Jakarta: Rajawali Press, 2015).

⁵ Wahidah Wahidah, "Relasi Setara Antara Laki-Laki Dan Perempuan Dalam Kasus Kewarisan Islam (Faraidh)," *Syariah Jurnal Hukum Dan Pemikiran* 18, no. 1 (2018), <https://doi.org/10.18592/sy.v18i1.2144>.



from fiqh literature and classical Islamic teachings.⁶ On the other hand, for scholars supporting the adoption of these two laws, it is considered a positive response to the demands of the time and the needs of society. They see the necessity to develop family law in accordance with social realities and societal progress, while ensuring that these legal norms remain aligned with Islamic values.

The agreement on the Compilation of Islamic Law by the scholars and the presidential instruction to implement it reflects consensus and support in the effort to achieve harmony between Islamic values and the needs of family law in the context of modern Indonesia. This serves as a significant evidence in the evolution of Islamic thought in Indonesia, where tradition and progress can synergize in the development of family law that aligns with the demands of the time. Furthermore, with the agreement on the Compilation of Islamic Law by Indonesian scholars in 1988, followed by Presidential Instruction Number 1 on June 10, 1991, to disseminate and implement the content of the compilation as widely as possible, this marks a crucial milestone in the evolution of Islamic thought in Indonesia, especially in the domain of family law.⁷ The reform of family law in Indonesia needs attention for several reasons:

1. Marriage as the Primary Focus: In the family law system of Indonesia, marriage receives special attention. Substantively, Indonesian marriage law can be considered an interpretation of Islamic marriage law. As the country with the largest Muslim population globally, Indonesia bases its legal foundation on Islam, particularly in the context of marriage. Therefore, family law reforms are crucial to accommodate Islamic values and societal needs.

⁶ Muhammad Ali Ash-Shabuni, *Pembagian Waris Menurut Islam* (Jakarta: Gema Insane Press, 1995).

⁷ L.J. Van Alperdorn, *Pengantar Ilmu Hukum, Cet. XXVI* (Jakarta: Pradnya Paramita, 1996).



2. History of Family Law Reforms: Indonesian history records that the issue of family law reforms has been present for a long time, even before independence. During the Women's Congress of 1928, this matter surfaced due to numerous cases affecting women within the context of marriage. Some of these issues included underage marriage, forced marriages, polygamy, arbitrary divorce, and neglect of women's rights. Hence, family law reforms serve as a response to longstanding challenges and issues within society.
3. The Significance of Family Law in Islam: The crucial role of family law in Islam is acknowledged as the core of Sharia. This is related to the perspective of Muslims who perceive family law as the primary gateway to a deeper understanding of Islamic teachings. Therefore, family law reforms not only reflect responses to practical issues in society but also uphold the values and principles of Islamic teachings.

Considering these factors, the reform of family law in Indonesia is aimed at creating a legal framework that aligns better with social realities, addresses historical issues, and remains consistent with the values of Islam as an integral part of legal development in the country.

METHODS

The mixed-method research that combines qualitative and library-based approaches involves the use of qualitative data collection methods and a comprehensive review of existing literature from the library.⁸ This approach enables researchers to gain a more holistic understanding of research questions or topics by leveraging the strengths of both qualitative inquiry and library research. Because family interactions have a direct impact on subjects like inheritance laws, parental and filial rights, and parental responsibility disputes, the research findings clarify the significance of family relationships. Legal

⁸ Tim Reality, *Kamus Terbaru Bahasa Indonesia Dilengkapi Dengan Ejaan Yang Disempurnakan (EYD)* (Surabaya: Reality Publisher, 2008).



sources—both written and unwritten—are the fundamental foundation of family law.

RESULTS AND DISCUSSION

Family Law: An Overview

There are always going to be changes in family law. Nevertheless, these modifications frequently differ between nations. Significant changes in family law also happen gradually, particularly as society advances economically, socially, and culturally. Islamic family law was first found in traditional fiqh books, which were written laws after surviving and evolving in society. These jurisprudential books provide guidelines on the legal norms governing marriage, divorce, and other aspects of family law within the context of Islamic teachings. Each school of thought has slightly different approaches and interpretations, reflecting the diversity in Islamic legal perspectives. Despite these differences, the core of family law in these jurisprudential books is usually grounded in Islamic legal sources such as the Quran, Hadith (sayings and actions of Prophet Muhammad), Ijma (consensus of scholars), and Qiyas (analogical reasoning). The significance of these jurisprudential books in the context of family law lies in providing legal guidance that aligns with Islamic teachings and addresses the specific needs of the Muslim community. They serve as primary references for scholars and practitioners of Islamic law to understand and apply family law in everyday life.⁹ Family law, especially concerning marriage and divorce, can be found in jurisprudential books representing various schools of thought within Islam. These schools of thought include the four major Sunni schools: Hanafi, Maliki, Shafi'i, and Hanbali, as well as three schools within the Shia tradition.

1. Hanafi School: The Hanafi school was founded by Imam Abu

⁹ Rifyal Ka'bah, *Penegakan Syari'at Islam Di Indonesia* (Jakarta: Khoirul Anam, 2021).



Hanifa, and its followers are commonly found in the Middle East and Central Asia. Hanafi jurisprudential books elaborate on family law with distinctive perspectives and interpretations.

2. Maliki School of Thought: Imam Malik founded the Maliki School of Thought, which has many followers in the Maghreb region (North Africa) and parts of West Africa. The Maliki legal books provide legal perspectives on family matters that align with the social and cultural conditions in those areas.
3. Shafi'i School: Imam Shafi'i founded the Shafi'i School, which is predominant in the Arab region and parts of Southeast Asia. Shafi'i fiqh books provide guidance on family law with interpretation methods and arguments that align with the principles of this school.
4. Hanbali School: Imam Ahmad bin Hanbal is the founder of the Hanbali School, widely followed in the Arab region, particularly by Salafis. Hanbali fiqh books provide a conservative perspective based on a textual understanding of Islamic legal sources.
5. Shia School: In addition to Sunni schools, family law is also found in the jurisprudential books of Shia schools. These schools, such as Imamah, Ismailiah, and Zaidiah, have their own fiqh books that provide specific perspectives on family law within the Shia context.

The jurisprudential books from various schools provide different frameworks for family law guidelines, reflecting the diversity of interpretations and applications of Islamic law within different legal traditions.

Although the legal views produced by jurists (fuqaha) in the past met the needs of the Muslim community in their time, they are now considered not necessarily relevant. Additionally, differences in reasoning and content among the views of jurists within the same school of thought can also occur. Dissatisfaction with the content of



family law due to differing opinions has led some Muslims who do not fully understand to choose to follow customary law inherited through generations or even the Christian (Western) legal system, which is systematically organized and detailed in a single book or legislative regulation.¹⁰ In general, family law can be defined as a set of rules governing family relationships, whether arising from blood ties or marriage. This connection is of significant importance as it encompasses relationships between parents and children, inheritance laws, guardianship, and other aspects related to family life.¹¹

Understanding family ties can be divided into two aspects: first, considering it in terms of blood relations, and second, looking at it from the perspective of marital relationships. In the context of blood relations, family ties often refer to the familial bond among individuals who share the same ancestors or lineage.¹² Marital kinship is the family bond that occurs due to the marriage between an individual and the non-blood-related family of their spouse (husband or wife).

Sources of Family Law

The primary sources of family law in Islam are found in the Quran and Hadith. The Quran is considered a direct revelation from Allah SWT to Prophet Muhammad SAW. The verses of the Quran provide the foundational principles of Islamic family law, including rules on marriage, divorce, family rights, and other family-related issues. Scholars conduct study and interpretation of these verses to formulate legal provisions that align with them.¹³ Meanwhile, Hadith refers to the

¹⁰ Yahya Harahap, *Kedudukan Kewenangan Dan Acara Peradilan Agama* (Jakarta: Sinar Grafika, 2015).

¹¹ Amran Suadi, *Pembaruan Hukum Acara Perdata Di Indonesia* (Jakarta: Prenada Media Group, 2019).

¹² Djazuli, *Kaidah-Kaidah Fikih Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis* (Jakarta: Pranadamedia Group, 2019).

¹³ M. Atho Mudzhar, "Pengaruh Faktor Sosial Budaya Terhadap Produk Pemikiran Hukum Islam," *Jurnal Mimbar Hukum* 2 (2019).

records of the sayings, actions, and approvals of Prophet Muhammad SAW. These Hadiths provide further explanations and concrete examples related to the application of Quranic teachings in everyday life. Scholars employ the science of Hadith to examine the authenticity and credibility of Hadiths, and then derive family law principles from them. Through their analysis of the Quran and Hadiths, scholars develop Fiqh, which is a collection of Islamic laws and teachings encompassing various aspects of life, including family law. Fiqh covers topics such as marriage, divorce, inheritance, and other family rights.

In addition to Fiqh, fatwa is also a form of family law produced by scholars. Fatwa is a legal opinion provided by a mufti (Islamic legal expert) regarding a legal issue raised by an individual or the community.¹⁴ Despite not having legal force, fatwas have a big impact on how Muslims conduct their religion.

While fatwas and jurisprudence are applicable in religious practice, Islamic law products must be transformed into legislation in order to be formally enforced at the level of national law. Integrating Islamic legal ideas into national legal systems can be a process that involves legislators and governments. This shows attempts to bring Islamic law and constructive legal frameworks into balance at the state level.¹⁵

Indonesia, as a country with a majority Muslim population, has unique characteristics in managing Islamic law in the context of a country that adheres to a secular national legal system. Although the majority of the population is Muslim, Indonesia has not officially declared itself an Islamic state. This is reflected in the Preamble to the 1945 Constitution which states Indonesia as a state of law (Rechtsstaat),

¹⁴ Ichtijanto, *Pengembangan Teori Berlakunya Hukum Islam Di Indonesia Dalam, Hukum Islam Di Indonesia Perkembangan Dan Pembentukan* (Bandung: Rosdakarya, 2019).

¹⁵ L Sudirman, Wirani Aisiyah Anwar, and A Rio Makkulau, "Judicial Institution and Judicial Power : How Judicial Authority Existence in Administering Judicial Power in the Islamic View" 20 (2022): 169–83.



not a state based on a particular religion.¹⁶ Although it does not declare Islam as the official religion, Indonesia's constitution recognizes the authority of religion in shaping the nation's character. This reflects the spirit of diversity and pluralism in Indonesia, which recognizes religious and cultural diversity. Islamic law is accommodated as one of the sources of national legislation. Although there is no full implementation of the Islamic legal system, Islamic law is applied in several contexts, especially in family law. This application involves religious courts handling family law cases based on the principles of Islamic law. Islamic law in Indonesia is juxtaposed with customary law and western law as a source of national legislation. The concept of *Bhinneka Tunggal Ika* ("Unity in Diversity") reflects the spirit of tolerance and harmony among diverse religious and cultural groups

Although Islamic law is less visible in many aspects of Indonesian law, family law is an exception. Family law arrangements are more strongly related to the principles of Islamic law, especially regarding marriage, divorce, inheritance, and other family rights.¹⁷ Thus, conditions in Indonesia reflect an inclusive approach to Islamic law in the context of a secular state, where family law is the only domain in which the principles of Islamic law still have a significant influence.

This process demonstrates the inclusivity and participation of religious stakeholders in drafting family law that reflects a diversity of views and interpretations.¹⁸ The uniqueness of this compromise approach reflects the spirit of inclusivity, tolerance, and adaptability to change in formulating family law. Efforts to create harmony between

¹⁶ M. Yahya Harahap, *Mempositifkan Abstraksi Hukum Islam Dalam Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional* (Jakarta: Logos, 2019).

¹⁷ Mohammad Daud Ali, *Hukum Keluarga Dalam Masyarakat Kontemporer* (Jakarta: Fakultas Hukum Universitas Indonesia dan Pusat Ikatan Hakim Peradilan Agama, 2013).

¹⁸ Abdullah Saeed, *Pemikiran Islam: Sebuah Pengantar* (Yogyakarta: Baitul Hikmah, 2014).



sharia and secular law characterize the face of Islamic law in Indonesia that is different from countries that implement sharia exclusively.¹⁹

Principles of Family Law

Based on the analysis of the Civil Code (KUH Perdata) and Law No. 1 of 1974 concerning marriage in Indonesia, several principles in family law can be formulated as follows:

1. Principle of Monogamy:
 - a. Implies that a man is only allowed to have one wife, and a wife can only have one husband.
 - b. This principle confirms the restrictions on polygamy, which are put in place to create balance in the marital relationship.
2. Consensual principle:
 - a. Shows that the validity of marriage depends on the agreement or consensus between the prospective husband and wife who will marry.
 - b. This principle emphasizes the importance of free agreement from both parties in establishing a marital bond.
3. Principle of Unanimous Unity:
 - a. Stipulates that property between husband and wife is considered as a unit, as stipulated in Article 119 of the Civil Code.
 - b. This principle emphasizes the existence of shared responsibility for property in the marital relationship.
4. Proportional Principle:
 - a. Affirm the balance of rights and position between husband and wife in domestic and community life.
 - b. Regulated in Article 31 of Law No. 1 of 1974, this principle guarantees justice and equality in husband-wife

¹⁹ Juhaya S. Praja, *Hukum Islam Di Indonesia, Pemikiran Dan Praktik* (Bandung: Remaja Rosda Karya, 2019).



relationships.

5. The Indivisible Principle:

- a. States that each trust may only be held by one trustee.
- b. This principle emphasizes clarity of responsibility and authority in exercising guardianship.

The application of these principles aims to create a solid and fair legal basis in the institution of marriage, as well as to regulate proportional and balanced family relations between the parties involved. These principles reflect the values of justice, equality, and harmony in the context of family law in Indonesia.

The Framework of family Law: Rights and Duties

As a legal bond, marriage carries significant consequences of rights and obligations for married couples. "Rights" in this context refer to something that a husband or wife has or can have as a result of his or her marriage bond. These rights cover a number of aspects, including the right to support, inheritance rights, and the right to live together in domestic life.

On the other hand, "Duties" indicates a series of actions or responsibilities that must be performed by a husband or wife to fulfill the rights of the other party. This can include financial responsibility, responsibility for children, and responsibility to maintain and support the family.²⁰

Indonesian laws pertaining to the rights and duties of husband and wife are governed by the Marriage Law No. 1 of 1974. In the realm of family law, these rights and duties can be grouped into three main categories:

1. Rights and duties between husband and wife: Involves rights such

²⁰ Fauziah, Terry Ana., "Pemikiran Munawir Sjadzali Tentang Kedudukan Ahli Waris Laki-Laki Dan Perempuan Ditinjau Dari Kompilasi Hukum Islam Dan Fikih Indonesia'."



- as the right to live together, the right to support, and obligations such as looking after each other and providing emotional support.
2. Rights and Duties between parents and children: Including the right of parents to educate their children, as well as the obligation to provide financial support, education, and protection to children.
 3. Rights and Duties between children and parents when parents experience the aging process: Involves the obligation of adult children to care for and support aging parents.

Indonesia's Islamic Family Law in Practice

Islamic Family Law in Indonesia refers to a set of legal norms and principles taken from Islamic teachings and applied in the realm of laws and regulations.²¹ Some important aspects to know related to Islamic family law in Indonesia include: 1) Marriage: Islamic family law regulates marriage as a recognized and respected institution. The requirements of marriage, the procedure of the marriage contract, and the rights and duties of the husband and wife are regulated in accordance with Islamic principles. 2) Divorce: Islamic family law governs divorce procedures and rights arising from divorce. Principles such as *iddah* (waiting period), child custody, and inheritance rights after divorce are part of this law. 3) Inheritance: Islamic family law provides for the division of inheritance between heirs in accordance with the provisions of *sharia*. This division involves clear provisions regarding who is entitled to receive a share of the estate. 4) Parental Duties and Children's Rights: Islamic family law regulates parental obligations towards their children, such as the right to education, maintenance, and livelihood. Children have certain rights and protections in family law. 5) Religious Courts: Religious justice systems, including Islamic religious courts, have an important role in handling family law cases. This includes marriage, divorce, and other family law matters. 6) Compilation of Islamic Law: Indonesia has a

²¹ Arifki Budia Warman, "Dinamika Perkembangan Hukum Keluarga Islam Di Indonesia," *Ijtihad* 35, no. 2 (2019): 11–28.

Compilation of Islamic Law (KHI) that integrates Islamic legal norms into the national legal system. It covers rules related to family law. 7) Balance Between Islamic Law and National Law: Indonesia seeks a balance between the principles of Islamic law and national law. Some regulations, such as the Marriage Law, create space for certain aspects of Islamic law within the context of national law. 8) Family Law Reform: The understanding of Islamic family law continues to evolve along with social changes and the demands of the times. Family law reform is essential to accommodate these changes without neglecting Islamic religious principles.²²

In reality, the existence of religious courts in Indonesia has not been supported by comprehensive positive legal instruments or means and applies unification as a reference. Although the material law under the jurisdiction of religious courts has been codified in Law No. 1 of 1974 and Government Regulation No. 9 of 1975, its contents are still general. Therefore, the law only covers the principles of law.

As a result, judges in religious courts should refer to the law, but often refer back to the doctrine of jurisprudence. This condition can cause differences in legal decisions between religious courts related to the same issue. This phenomenon is often explained by the expression "different judge different sentence" which reflects the variation of different legal decisions by different judges. When the government realized this, it decided to take the initiative and provide religious tribunals with a unified legal framework. The compilation of Islamic law (KHI), an attempt to reassemble and incorporate the principles of Islamic law into a more organized and methodical whole, allowed for the realization of this stage. It is anticipated that KHI will bring consistency to Indonesia's religious courts' interpretation and application of Islamic law.

According to the sociological theory of law introduced by A. P. Craabree LLB, it is explained that "law is clothing for the living body of society." Laws should be tailored to the size and needs of society, reflecting the obligations that arise as a result of the relationships

²² Ali, *Hukum Keluarga Dalam Masyarakat Kontemporer*.



established between them. In essence, the law needs to follow the needs of society and reflect the responsibilities arising from interactions among its members, including rights and obligations in the common interest.²³ Within the framework of this theory, Islamic family law contained in various legal regulations still shows significant shortcomings when analyzed in depth. This weakness is a logical result of the dynamics of life and is increasingly complex when faced with the demands and problems of today's society. Therefore, efforts are needed to actualize or update Islamic family law to adapt it to the conditions of the times. These include responses to currents that support equality between men and women, the abolition of laws that are gender-biased and tend to place women in subordinate positions. In addition, it is necessary to pay attention to the incompatibility of some articles of law with the structure and cultural patterns of society in order to achieve a better balance.

The lack of community response to compliance with family law that has been in force so far is caused by the incompatibility of these legal norms with social reality and community progress.²⁴ Therefore, the need for legal reform through the process of contextualization is a must. The process of contextualizing Islamic law involves reviewing existing legal formulations by making improvements or adding certain elements. The main objective is to harmonize the law with the demands and development of the dynamics of society, so that it becomes more relevant and acceptable to directly affected parties.²⁵ Here what needs to be considered is the text of the nash, the context of the text, the context of Indonesian society. These three things must be used as a basis for the contextualization process, so that local cultures and the reality of people's needs are not eliminated. The assumption that needs to be built is that the unification of Islamic law is still necessary for the common good. The foundation of jurisprudence used is "ma layudraku kulluhu layutraku kulluhu,"

²³ Dadan Muttaqien, *Peradilan Agama Dan Kompilasi Hukum Islam Dalam Tata Hukum Indonesia*, Jakarta (UIII Press, 1999).

²⁴ M. A. Wafa, *Hukum Perkawinan Di Indonesia Sebuah Kajian Dalam Hukum Islam Dan Hukum Materiiil* (Tangerang Selatan: Yasmin, 2018).

²⁵ M. Mudzhar, "Dampak Gender Terhadap Perkembangan Hukum Islam."



which can be interpreted as "Do not throw something away, because a truly perfect whole cannot be achieved."²⁶ Absolute perfection is only in the sight of God. With this assumption, the goal of the unification of Islamic law is to achieve as much justice and benefit as possible within the overarching legal framework, although it may not achieve absolute perfection.

Determinants of Innovation and Development: Advancing Practices in Family Law

There are historical, sociological, and legal explanations for the development of family law in Muslim nations, which started in 1917 when Turkey introduced the Ottoman Law of Family Rights, also known as Qanun Qarar al-Huquq al-'A'ilah al-Uthmaniyah. Turkey's 1917 family law reform took place in the midst of the Ottoman Empire's downfall from World War I. Turkey took a bold step to replace the conventional Islamic family law system with the European civil law paradigm by applying the Ottoman Law of Family Rights. The purpose of this is to emulate Western nations that have embraced civil law systems. Turkey's reform measures have had a major impact on surrounding countries such as Lebanon, Jordan, and Syria. These countries are following Turkey's lead in modernizing their family law, although some have opted for a more moderate approach while maintaining the foundation of Islamic law. The difference in approach between Turkey and other Muslim countries reflects a debate between groups that support radical reform and groups that want to preserve the foundations of traditional Islamic law, such as the Qur'an and Hadith. This conflict reflects the dynamic between modernity and tradition in the context of Islamic family law.

Although Turkey adopted European civil law, Muslim countries generally sought to maintain the Qur'an and Hadith as the cornerstones of their family law, albeit through codification efforts to achieve a more modern arrangement. Scientifically, this phenomenon can be analyzed using historical, sociological, and legal approaches to

²⁶ Fatimatuz Zahro and Shinta Pramesti K.M., "Kesetaraan Gender Dalam Hukum Kewarisan Islam," *Journal of Islamic Family Law* 7, no. 1 (2023): 25–46.



understand the factors that motivate and shape the process of family law reform in Muslim countries. As Egypt practiced in 1920 and 1929, Tunisia, Pakistan, Jordan, Syria, and Iraq.

In Indonesia, although not classified as an Islamic country, but the majority of the Muslim population, efforts to reform family law are inseparable from the emergence of Muslim reformist scholars, both from foreign and domestic figures. From abroad can be mentioned among others Rifa'ah al-Tahtawi (1801-1874), Muhammad 'Abduh (1849-1905), Qasim Amin (1863-1908), also Fazlur Rahman (1919-1988). Meanwhile, figures from national Muslim scholars include Mukti Ali, Harun Nasution, Nurcholis Madjid, and Munawir Syadzali. The figure of Munawir Syadzali is known to be very strong in encouraging the Islamic community to perform *ijtihad* honestly and courageously, especially regarding inheritance law. His famous idea was about the need to change inheritance law, especially regarding a more fair and proportional distribution for women.²⁷

Indeed, when viewed from its purpose, family law reform is broadly aimed at improving the status of women in all aspects of life and family law including inheritance. Although this goal is not explicitly stated, the legal material formulated that the laws surrounding family law are made generally respond to a number of demands for a more just and equal status and position of women.²⁸ Marriage laws, especially those of Egypt and Indonesia, clearly roll out that goal.

Islamic countries have another goal in updating family law, namely the unification of laws. This unification effort was carried out because the people adhered to various schools or even different religions. For example, in Tunisia, efforts to unify marriage laws are aimed at all citizens regardless of religious differences.²⁹ Apart from

²⁷ Fauziyah, Terry Ana., "Pemikiran Munawir Sjadzali Tentang Kedudukan Ahli Waris Laki-Laki Dan Perempuan Ditinjau Dari Kompilasi Hukum Islam Dan Fikih Indonesia'."

²⁸ Wahidah, "Relasi Setara Antara Laki-Laki Dan Perempuan Dalam Kasus Kewarisan Islam (Faraidh)."

²⁹ Afdol, *Legislasi Hukum Islam Indonesia* (Surabaya: Airlangga University Press, 2022).



these goals, there is also another purpose of efforts to reform family law, namely responding to the demands of the times. In this context, the demands of the times and the dynamics of the development of society are the result of global influences that affect almost all aspects of human life.

In family law reform, the main focus has generally been on issues of personal status that are still governed by established Islamic law in some Muslim countries. To reduce resistance from conservatives, these changes are often implemented indirectly through existing procedures.³⁰ For example, the introduction of a new law that establishes requirements that marriages must be recorded to obtain legal validity, and that couples must reach a certain minimum age, aiming to address early marriage and forced marriage. Related to this issue, the idea emerged from the mujtahids to reform the law, especially in terms of muamalah related to the interests of the people. In this regard, relevant methods need to be applied to review the law by the mujtahids.

In order to understand legal reform methods, it is necessary to first provide some background on the reform concept. In current Islamic legal literature, the terms "renewal" are sometimes used synonymously with reform, modernization, reactualization, and so forth. Of these, "reform" is the most often used word. The word "reformation" is derived from the English word "form" or "regroup." Reformation is the act of renewing, the process of creating new customs and ways of life, or the root of the term "new," which implies to improve in order to become new or to replace it with a new one. From the concept of reform reform above, it can be understood that what is meant by reform of Islamic law is as an effort or action through a certain process with full sincerity carried out by those who have competence and authority in the development of Islamic law (mujtahid) in ways that have been determined based on the rules of justified legal *istinbâth* so as to make Islamic law fresher and modern not outdated.

³⁰ Ali, *Hukum Keluarga Dalam Masyarakat Kontemporer*.



Family law reform in Indonesia has long historical roots, emerging before the country's independence. The Women's Congress of 1928 addressed the issue of inequality and unfair treatment of women in marriage, sparking attention to changes in family law.³¹

In 1937, the Dutch colonial government responded to pressure from women's organizations by drafting a marriage registration ordinance, providing monogamy and equal divorce rights for women and men.³² In 1950, Indonesia did not yet have a marriage law that accommodated interfaith and racial interests. Attempts at reform emerged with the establishment of the Marriage Commission in 1950, which formulated a general marriage law. This law created a legal framework that reflected universal values in marriage, allowing polygamy under strict conditions.

In 1974, Law No. 1 on marriage was born as a result of demands for legislation more in line with the principles of justice, equality, and family welfare.³³ Family law should evolve to include values that develop in society, reflecting customs, traditions, and religions. The dynamics of family law reform in Indonesia are influenced by globalization factors, advances in science and technology, reforms in various sectors, and the renewal of Islamic legal thought by mujtahid.³⁴ This process is in line with the concepts of qaul qadim and qaul jadid in Islamic law, where the law can change as the postulates applied to certain events change.

The method of family law reform involves major approaches: the conventional method, which involves ijtihad with reference to verses of the Qur'an and the sunnah of the Prophet Muhammad, and the contemporary method, which includes taksuperyur, talfiq, takhshish al-qadla, siyasah shari'ah, and reinterpretation of nash. Family law reform aims to improve the status of women, respond to

³¹ Djazuli, *Kaidah-Kaidah Fikih Kaidah-Kaidah Hukum Islam Dalam Menyelesaikan Masalah-Masalah Yang Praktis*.

³² Viky Vinola, Syahrudin Naw, and Ahyuni Yunus, "Journal of Lex Generalis (JLS)," *Journal of Lex Generalis (JLS)* 3, no. 3 (2022): 404–17.

³³ Wahidah, "Relasi Setara Antara Laki-Laki Dan Perempuan Dalam Kasus Kewarisan Islam (Faraidh)."

³⁴ Afdol, *Legislasi Hukum Islam Indonesia*.



the demands of the times, and create diversity and family welfare³⁵. The renewal strategy involves conventional and contemporary methods, with the basis of considerations involving *mashlahah mursalah* and concepts that are in line with changing times.³⁶ Innovations in the development of family law were influenced by the need to overcome the legal vacuum, the influence of globalization, the impact of reforms, and the renewal of Islamic legal thought. This transformation reflects adaptation to changing conditions, situations, and demands of the times, in line with the concepts of *qaul qadim* and *qaul jadid* in Islamic law.

CONCLUSION

Regarding the advancement of family law, especially Law No. 1 of 1974 concerning marriage, it can be built on several fundamental bases:

1. Common Good (*Maslahah*): Legal reforms should be based on the principle of common good. Laws that align with social realities and meet the needs of society can provide greater benefits to the entire community.
2. Islamic Principles and Human Rights: Ideally, the law should always refer to basic Islamic principles and human rights, including justice, *maslahah*, pluralism, democracy, and equality. Reforms should support these values to maintain harmony with religious teachings and human rights.
3. Pluralism and Equality: In the context of family law, it is important to accommodate the principles of pluralism and equality, including gender equality. Reforms can help reduce gender inequalities that may still exist in existing regulations.
4. Societal Demands and Contemporary Developments: The diverse demands of society and the evolution of time require a dynamic response from the law. Reforms can reflect social,

³⁵ Abdul Manan, *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama* (Jakarta: Prenada Media Group, 2016).

³⁶ John Donohue, *Islam Dan Pembaharuan Ensiklopedi Masalah-Masalah*.



technological, and cultural changes in society.

5. Gender-Sensitivity Amendments: The demand for amendments to Law No. 1 of 1974 reflects awareness of gender bias in family law. Amendments are expected to achieve gender equality and ensure that the law does not unfairly favor one gender.

Family law reforms can establish an equitable and more inclusive legal system that is compatible with Islamic teachings and universal human rights values by fulfilling these requests.

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