

**Political Transformation of Islamic Law in the Context of National Family Law:
Between Idealism and Reality**

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Abstract

The era continues to move dynamically, whether towards positive change or the opposite, making transformation inevitable. In this process, numerous political processes occur, especially in the transformation of Islamic law within the current national family law as manifested in Marriage Law Number 1 of 1974 and other legislations. It needs to be comprehensively understood regarding the transformation process from classical/conventional Islamic law to the emergence of *ijtihad (ijma')*, giving birth to the Compilation of Islamic Law (KHI). There is a contradiction between idealism and the reality that occurs in the transformation of Islamic law. This research addresses essential questions about how the political process occurs in the transformation to legislation. The method used in this study is literature review with primary sources being books or articles related to Islamic law, political aspects of Islamic family law, transformation and reform of Islamic law, contemporary family law, and other relevant sources as secondary sources. The results of this research prove that there are crucial points in the transformation of Islamic law into national family law related to marriage, divorce, inheritance, and endowment, which still require further integration to review the realities that occur in the field.

Keywords: *law transformation, legal politics, family law, Compilation of Islamic Law*

Introduction

The scholarly discourse on Islamic jurisprudence, Islamic law, and Islamic Sharia is an ongoing and endless discussion. The multitude of assumptions from various references is the root cause of this complexity (*maraji*). It is clear that these three elements fundamentally constitute law. The use of terminology by Mahfud MD (1999: 29) makes it challenging to describe the law in such a way that it can provide a comprehensive understanding to readers about the intended meaning of these terms (Marzuki, 2006).

Because Islamic law is the most tangible expression of Islam as a religion, it is one of the essential aspects of Islamic teachings that holds a significant place in the Islamic worldview. Without an understanding of Islamic law, one cannot comprehend Islam. In addition to the legal aspect (*sharia*), Islam also encompasses aspects of faith and morality, all of which are closely interrelated (Khisni, 2011). Islamic law needs to be examined because Indonesia is currently implementing a national legal reform agenda, and Islamic law is a part or subsystem of national law. This means that the agenda for national legal reform must also determine how Islamic law will be restructured, considering the aspects of the Islamic legal system that can ultimately be incorporated into national law, which is expected to make Islamic law the “highest” law in the legal system of the Unitary State of the Republic of Indonesia (NKRI). Islamic law, as a social construct, possesses unique characteristics such as responsiveness, adaptability, and dynamic nature (Mu'allim & Yusdani, 2001).

Sharia, or Islamic law, has several qualities, one of which is a strong religious bond. Therefore, in addition to having a sacred meaning, it is inherently individual. However, some Muslims who view religion as a political doctrine will alter the personal essence of Islamic law. For them, political methods capable of enforcing coercion are needed to revitalize a religion that has evolved into a political ideology in the society they desire. State law is one of those tools. Consequently, they will continue to advocate for Islamic law as long as it has not been fully incorporated into national legislation. Paradoxically, in the conflicts that arise, some of them even defend their cause by any means, including violence (Nurrohman et al., 2018).

The entire legislative process that makes this Islamic legal system dynamic and allows for the evolution of its development originates from academic research and a distinctive intellectual effort known in Islamic terminology as *ijtihad* (Al-Maududi, 1995). *Ijtihad*, in its broadest sense, is the exertion of all capabilities and efforts available to achieve a desired outcome. Therefore, *ijtihad* encompasses all aspects of human life that are burdensome in their pursuit of happiness in both the worldly and hereafter realms (Djazuli & Aen, 2000).

Literature discussing how the idealism and reality of the transformation of Islamic family law into national law is still limited. If understood more comprehensively, it would strengthen the resolution of issues related to Islamic family law within national family law. Previous research, such as Hajani's study (2021) titled "Fiqh reasoning paradigm oriented to legal logic (transformation of Islamic law into national legislation)," and studies by Syafri Gunawan (2020) titled "History of the transformation of Islamic Sharia into national law" and Ahmad Suganda & Hamdan Firmansyah (2022) titled "Transformation of Islamic law into national law" have not comprehensively delved into the model of the actual realities that occur in the transformation of Islamic Family Law into National Law. Therefore, based on previous studies, research related to this is still limited, and researchers have not found a comprehensive study.

The purpose of this writing is to address the shortcomings of previous studies that tend to analyze the problems of the transformation of Islamic law into national law partially, making it less comprehensive and leaving the problem-solving in a gray area. Given the numerous issues that arise, an integral (holistic and comprehensive) approach is needed, particularly considering various perspectives and how Islamic law is applied in actual national family law. In line with this, there is a fundamental question in this research: How is the transformation of Islamic family law into national law?; What are the problems and solutions between the idealism and reality in this transformation? The results of this research are expected to comprehensively resolve the existing problems from various aspects.

This article argues that solving the issues of transforming Islamic law into national family law, if discussed partially, is less effective. Especially for scholars and practitioners in the field of family law. If only referring to the transformation of Islamic law as a whole, without incorporating existing national family law as a reference in its resolution, other problems often arise in reality. Therefore, in addition to focusing on resolving the existing problems, this research describes the model of transforming Islamic law into national family law, aiming for a collaborative scholarly approach by presenting each aspect comprehensively, congruent with the highly complex issues at hand.

Methods

Qualitative research methodology is a relatively recent development due to its increasing popularity. As it is based on postpositivist theory, it is also known as the postpositivistic approach. The research process is sometimes referred to as an artistic technique because it is considered somewhat patternless. Since a significant portion of the research data focuses on interpreting field data, an interpretative approach is

also employed. Finally, because the audience is likely to find scattered data findings and subsequent subject developments more relevant and easily understandable, this strategy is sometimes referred to as the constructive method (Sugiyono, 2019).

Creswell (2017) states that there are six types of qualitative methods: phenomenological research, grounded theory research, ethnographic research, case studies and narrative research, as well as literature research. This study employs both inductive and deductive data analysis based on emerging issues and falls under the category of literature research. In this literature review, primary sources include books and articles on Islamic law, family law, law transformation, contemporary family law, and others. Meanwhile, secondary sources include other relevant books related to this research.

Discussion

Renewal of Islamic Law and Its Manifestation in Legislation

Historically, Islamic law has taken the form of *fiqh* and clashed with pre-existing social laws (customary and conventional laws) wherever Islam emerged. In such cases, religious authorities at that time allowed those laws to remain in effect as long as they did not contradict Islamic law. Therefore, the most crucial aspect in this situation is to prevent injustice because a corrupt and skewed environment can lead to a crisis that harms society (Mahfud MD, 1999: 400).

One of the reasons Islamic law experienced stagnation (lack of development) since the arrival of Dutch colonial rule in Indonesia in the 17th century was the prevalence of the idea of *resepsi in complexu*. This was one of the legal strategies used by the Dutch colonial government to separate itself from Islamic law. With the concept of *het indische adatrecht*, the Dutch colonizers continued to restrict the development of Islamic law, resulting in a weakened legal system that did not undergo changes at the time because it was dominated by customary law (Gunawan, 2020).

After Indonesia gained independence, representatives proposed that the state be founded solely based on citizenship. These individuals were later dubbed secular nationalists. This term referred to Muslims, Christians, and others who advocated a strong separation between state and religion. It did not mean that those in this group were indifferent to religion. Some factions, known as Islamic nationalists, argued that Islam should be the foundation of the state. This expression describes nationalists who fought based on Islam and believed that Islam, as a true religion, should control not only personal interactions with God but also the state and society (Syamsuddin, 2015).

When someone seeks to examine and delve into Islamic law, there are three terms that they must truly understand. Especially when looked at superficially, these three terms are often synonymous in meaning and purpose, namely (1) Sharia, (2) Fiqh, (3) Islamic law (Ismatullah, 2011).

By incorporating fiqh into social regulations in Indonesia, a practice different from conventional fiqh from various schools of thought in Indonesia, a method known as the legal level theory is used in the conversion of fiqh or Islamic law into national regulations. This theory argues that the enactment of a rule must comply with rules of a higher order (Suntana, 2014).

Islamic legal scholars did not refer to Islamic law in their writings published in conventional fiqh. The terms Islamic law, fiqh, and Sharia' are usually used. It was only after Western orientalist began to examine the provisions of Islamic law that were accurately translated as "Islamic law". Although the true meaning is unknown, some terms used in Arabic are also related to life and are used in the Indonesian language. These terms are collectively referred to as Islamic law (Pardjaman, 2017).

In Indonesia before the 20th century, it was almost the same as mentioned above, except that the language of customary law that had long been in use was replaced with the language of fiqh. As for customary legal institutions that applied (such as inheritance), but conflicted with fiqh provisions, efforts were made to gradually replace them with similar fiqh legal institutions, such as the provisions of Shafi'i inheritance, or other fiqh legal institutions, such as gifts and wills (Marzuki, 2006).

At that time, Indonesian scholars applied fiqh to the existing law using the method of *hilah*. The Islamic inheritance law that entered Indonesia was the inheritance law based on the patrilineal kinship system, a system that determines that relatives consist of males connected by blood through the male line (Marzuki, 2006). In contrast, marriage law involved transforming Islamic marriage law by replacing customary marriage law with Islamic marriage law. Then, the customary marriage law was downgraded from a legal institution to a moral guideline. Subsequently, Islamic marriage law was given the status of positive law and implemented alongside customary provisions as moral guidelines. The same applies to contract law, including the use of the *hilah* method in transforming Islamic contract law. For example, avoiding interest-bearing debts by using the legal institution of buying and selling, even though the essence of the act is the same as interest-bearing debts prohibited by Islamic teachings. This method is called *hilah* (Marzuki, 2006).

Islamic scholars used methods to transform fiqh into national regulations as concrete norms with a cultural approach (*hilah*). Islamic law applied to Muslim communities in Indonesia includes rules on marriage, inheritance, and endowments that have become national regulations. Islamic law (fiqh) is confronted with rules that have long been applied in Muslim communities in Indonesia. Scholars allow the already applied rules to remain in effect, but they are still enforced as long as they do not conflict with Islamic rules. The language used in the law is fiqh. Therefore, scholars transform Islamic law using the already applied rules and make them customary. Thus, existing customary law is still applied as long as it does not conflict with fiqh, but the legal language is fiqh (Najmuddin et al., 2023).

Islamic law functions both as a new social norm and as a means of social transformation, serving as a mechanism for social control. *First*, Islamic law is positioned as a guide or an example from God, serving not only as social control but also societal guidance. *Second*, laws are historical creations that are sometimes used to support calls for social, cultural, and political change. Consequently, Islamic law in this situation must be flexible enough to address societal issues without sacrificing its core values (Rofiq, 2021).

The legal thinking of Islamic scholars in Indonesia has developed along with the evolution of legal thinking among scholars in other Muslim countries. In matters previously determined in fiqh books by earlier mujtahids, Indonesian scholars accept reinterpretation efforts for the sake of the actualization of Islamic law as long as it falls within the scope of laws not based on clear and definitive evidence and is outside of worship in the specific sense. Faced with events that emerge in the social life of the Muslim community, Indonesian scholars are responsive and always provide fiqh answers based on considerations of benefits and harms (Khisni, 2011).

The influence of state politics on Islamic law is highly significant, with many legislations bearing the label of Islam. This is a result of the cooperative relationship between scholars (*ulama*) and rulers (*umara*) in carrying out their respective functions. Scholars perform the functions of *ijtihad*, both individually (*fardhi*) and collectively (*ijtihad jama'i*), and the outcome of their *ijtihad* is called fiqh. This fiqh, resulting from scholars' *ijtihad*, is contributed to rulers (legislative and executive authorities), who have the function of establishing laws, enforcing them, and executing legal decisions, including imposing sanctions on law violators. The legal outcome of scholars' *ijtihad* contributed to rulers is known as *siyasah* (legal politics), aiming to protect and regulate the common welfare (Khisni, 2011).

In the pursuit of realizing Islamic law, there has been a significant contribution to the development of Indonesia's legal system, evolving alongside the increasing

complexity of legal issues due to historical events and considerations for societal well-being. Regarding the evolution of Islamic law in Indonesia, there are at least two categories of growth (Hidayatullah, 2020). First, through social institutions or organizations known in the lives of Indonesian Muslims, including: a) Worship institutions, such as surau; b) Educational institutions, such as pesantren (Islamic boarding schools), madrasahs; c) Health institutions, such as hospitals, clinics; d) Economic and Cooperative institutions, such as banks, cooperatives; e) Preaching institutions, such as Nahdatul Ulama (1926), Muhammadiyah (1912), and others; f) Legal institutions, such as Religious Courts, Office of Religious Affairs (KUA). The second category is through Legislation, including: a) Marriage Law; b) Religious Courts Law; c) Compilation of Islamic Law (KHI); d) Zakat Law; e) Sharia Banking Law; f) Waqf Law; g) Pornography Law; and h) Compilation of Sharia Economic Law (KHES) (Najmudin et al., 2023).

In the effort to incorporate Indonesian-flavored Islamic fiqh into the formal laws of the state, the government pays close attention to the situation and culture of Muslims in Indonesia, ensuring that the resulting legislation does not contradict the customs of the Indonesian Muslim community. For example, in the preparation of the Compilation of Islamic Law (KHI), the intended compilation aims to accommodate the values and legal norms that have grown, lived, and developed within Indonesian society. To achieve this, the committee takes four approaches in the compilation process as follows (Tohari, 2015):

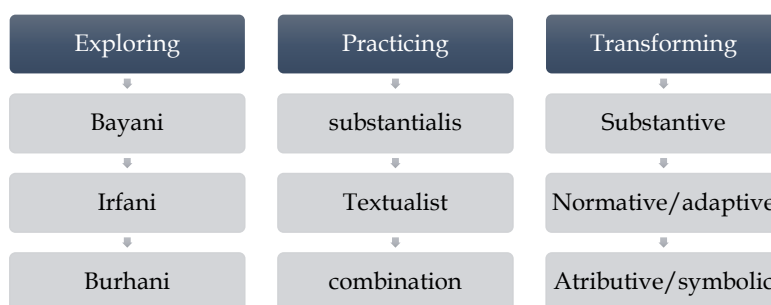
1. Study of the fiqh books of the Shafi'i school.
2. Gathering opinions from Indonesian scholars to be used as input and considerations in the compilation process.
3. Collecting jurisprudence gathered from decisions of Religious Courts throughout Indonesia from the Dutch colonial era until the compilation is completed.
4. Comparative study of the implementation and enforcement of Islamic law in Muslim countries.

Model of Transforming Islamic Law into National Legislation

The model of transformation and integration of Islamic law into national law in several countries is inseparable from how Islamic law is derived, practiced, and formulated. Historically, the general models for deriving Islamic law include the *bayani*, *irfani*, and *burhani* models. In terms of the application or implementation of Islamic law, Muslims' tendencies can be divided into three categories: literalist exclusive, contextualist substantive, and a combination of both. Meanwhile, the models for transforming Sharia into national law can be categorized into three:

substantive progressive, normative adaptive, and symbolic attributive (Nurrohman et al., 2018).

Fig. 1 Exploring, Practising, and Transforming Model



Source: Nurrohman et al. (2018)

The presence of law as a subject of study continues to evolve with the advancements in science and technology within the framework of social change. Therefore, scholarly discussions on Islamic law persist, demonstrating that the nature of legal products continues to evolve alongside changes in political order (Hajani, 2021). In incorporating Islamic law into national legislation, Muslim communities in various countries have diverse options for researching and applying Islamic law. Different Muslim countries vary in defining the relationship between Islamic law and the state due to these differences. Alternatively, variations in how Muslim countries define the relationship between the state and Islamic law lead to differences in how these countries undergo the transformation process and incorporate Islamic law into their legal frameworks (Nurrohman et al., 2018).

Although family law reform can be broadly divided into intra and extra-doctrinal reform, the methods and techniques employed vary. There are at least seven methods used in the Islamic world, namely: 1) equalizing all madhabs in Islam (*musawat al-madzahib*); 2) *istihsan*; 3) *masalih al-mursalah*; 4) *siyasah syar'iyah*; 5) *istidlal*; 6) legislation; and 7) codification. The techniques used include five: 1) *ijma*; 2) *qiyas*; 3) individual and collective *ijtihad*; 4) eclectic choice; 5) combining two legal rules from different madhabs into one/*talfiq* (Mahmood, 1987:13). *Tahayur* (selecting suitable opinions) and *talfiq* (combining two or more opinions taken from various madhabs) are considered unethical in classical *fiqh* traditions, especially among the Shafi'is, as they are seen as simplifying or playing with religion (Nurrohman, Saepullah & Fu'adah, 2020).

The connection between Islamic law and state institutions and authorities, referring to established legal policies, is an example of how all relevant parties and institutions must participate in the process of making Islamic law the highest national law in Indonesia. The interaction among political elites from different sociocultural groups results in legal politics. The likelihood of changes in Islamic law is greater when Islamic political elites have significant negotiating power in political affairs (Suganda & Firmansyah, 2022).

Dilemmas Between Idealism and Reality of Islamic Law within National Family Legislation

Muslims have the power to use legislation and the support of legislative and judicial institutions to transform Islamic law into national law. The current challenge is how legal experts and Islamic scholars can update existing Islamic law to reflect societal changes while maintaining the integrity of Islamic law even when it is not explicitly mentioned. There are three steps to transform Islamic law into national law: *first*, understanding and accepting the principles found in the Quran and Sunnah. *Second*, understanding the legal foundations and how the laws of Indonesia apply them. *Third*, the implementation of national laws (Hidayah & Zafi, 2020).

Islamic family law is crucial as it regulates family life, which is the foundation of social life and aligns with the idea that humans are superior to other animals as ideal beings. Even in contemporary times, the state's objectives are realized through the administration of legislation governing families. Indonesia, as a sovereign state, has its own legal system that regulates family issues (Asmaret, 2019). The political process of a country generates various policies, including legislation. Legislation, as a legal product in the abstract, requires other components to shape it into a concrete form, necessitating structural instruments that embody it in society. From this, institutions or bodies emerge that produce legislation or regulations directly impacting society. Examples include the Ministry of Law and Human Rights, the Ministry of Religious Affairs, and the Supreme Court, which significantly influence the development of Islamic law in Indonesia. An example is the collaboration between the Supreme Court and the Ministry of Religious Affairs in formulating the Compilation of Islamic Law (KHI). Subsequently, in court products as an effort to apply Islamic law in specific cases through Religious Courts gathered in a collection of jurisprudence. Thus, judges (Religious Courts) play a crucial role in shaping Islamic law (Khisni, 2011).

Unlike conventional legal studies widely practiced in Indonesia, the Compilation of Islamic Law (KHI) in Indonesia (Presidential Decree No. 1 of 1991) represents a dynamic renewal of Islamic legal thought. It contains ideas that can be

seen as a reflection of the consciousness of Indonesian society's *ijtihad* and is used by judges in Indonesian Religious Courts (Khisni, 2011). The resurgence of the KHI cannot be separated from the government's initiative to enhance the understanding of Muslims about the law—in this case, the Ministry of Religious Affairs and the Supreme Court. The KHI was compiled for two reasons: first, Islamic law found in *fiqh* books until now is recognized as positive law in Religious Courts; second, there is a need for a compilation of Islamic law that can serve as a reference for judges in Religious Courts when making decisions. Support for Marriage Law No. 1 of 1974 by Indonesian Muslims persisted even after it was enacted 17 years later, leading to the need for a compilation of Islamic law based on *fiqh* books. Presidential Decree No. 1 of 1991 dated June 10, 1991, and Decision of the Minister of Religious Affairs of the Republic of Indonesia No. 154 of 1991 established the KHI and its status as one of the legal materials in Religious Courts. In matters related to personal status law, gifts and inheritance, as well as marriage, the establishment of the KHI further strengthens and perfects the Marriage Law (Suwarjin, 2020).

There are perceived weaknesses in the Religious Courts during the technical guidance from the Supreme Court to the Religious Courts, as scholars have different opinions on almost everything, causing confusion. To provide uniformity and legal certainty, it is important to have a legal book that compiles all applicable regulations relevant to the context of the Religious Courts. Judges can use this book as a guide in carrying out their duties (Muthiah, 2016).

Below are presented as examples of renewal ideas. There are three main themes in the Compilation of Islamic Law (KHI) that will be explained, outlining how they are renewed and the issues between idealism and reality in their practice.

1. Marriage Law

The first highlighted aspect in the marriage law is related to marriage registration. Regarding the validity of marriage, it is stated in Articles 4, 5, 6, and 7 of the KHI as follows: Article 4 emphasizes, "Marriage is valid if conducted according to Islamic law in accordance with Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage," which states, "Marriage is valid if conducted according to the laws of each religion and belief." Article 5 paragraph (1) of the KHI states, "To ensure the order of marriage for the Muslim community, every marriage must be recorded," (2) Marriage registration in paragraph (1) is carried out by the Marriage Registrar as regulated in Law No. 22 of 1946 jo. Law No. 32 of 1954. Article 6 paragraph (1) states, "To fulfill the provisions in Article 5, every marriage must be conducted in the presence and under the supervision of the Marriage Registrar," (2) Marriages conducted outside the supervision of the Marriage Registrar have no legal force. Article 7 paragraph (1)

states, "Marriage can only be proven by the Marriage Certificate made by the Marriage Registrar," and (2) In the event that marriage cannot be proven by the Marriage Certificate, a marriage validation (*itsbat nikah*) can be submitted to the Religious Court.

In reality, clandestine marriages or secret marriages still occur, especially in rural areas. Many factors underlie this, primarily due to economic issues. Even though there is no cost involved if the marriage contract is executed at the Religious Affairs Office (KUA), in reality, not many people take that step. Moreover, for secret marriages involving widows or widowers, people often opt for simplicity rather than dealing with divorce certificates or other complexities.

The principle of marriage is monogamy. Polygamy can only be justified if done with the permission of the wife and the court. Article 55 of the KHI states: (1) Having more than one wife simultaneously is limited to only four wives, (2) The main condition for having more than one wife is that the husband must treat his wives and children fairly, (3) If the main condition mentioned in paragraph (2) cannot be fulfilled, the husband is prohibited from having more than one wife.

In reality, there are various perspectives on the principle of monogamy in Indonesia. Polygamy is allowed but with strict conditions. Due to these strict conditions, formal registration of polygamous marriages is still uncommon. Most polygamous marriages are performed without official registration, even though this approach can lead to issues such as inheritance disputes. This topic remains controversial in society, with some perceiving government regulations as burdensome. However, considering various perspectives and interpretations, there is a continuous transformation of Islamic law related to polygamy entering the legislative domain.

The determination of the marriage age in Indonesia is stipulated in the Marriage Law of 1974 in Article 7 (1). Marriage is only allowed if the man is at least 19 years old and the woman is at least 16 years old. However, if the prospective spouses are not old enough for marriage, they can apply for a marriage dispensation to the court according to Article 7 (2). In case of deviation from paragraph (1) of this article, a dispensation can be requested from the court or another official requested by both parents of the man or woman. Article 15 number (1) of the Compilation of Islamic Law (KHI) governing prospective spouses states: "(1) For the well-being of the family, marriage may only be carried out by prospective spouses who have reached the age stipulated in Article 7 of Law No. 1 of 1974, namely the prospective husband must be at least 19 years old, and the prospective wife must be at least 16 years old."

In reality, despite the age limit for marriage, many underage couples apply for marriage dispensation for various reasons. These applications are sometimes accepted and sometimes rejected, sparking debates. Some argue that Islam does not specify an age limit, while others adhere to the KHI and Law No. 1 of 1974 as binding laws that align with contemporary well-being.

Divorce is complicated, as seen in Articles 113, 114, 115, and 116 of the KHI. Article 113 states: "Marriage can be terminated due to: (a) death, (b) divorce, and (c) by court decision." Article 114 states: "The termination of marriage caused by divorce can occur through talak or based on divorce claims." Article 115 states: "Divorce can only be done in front of the Religious Court after the Religious Court has attempted and failed to reconcile both parties."

In reality, although the rules clearly state that divorce must be done in court, the independent calculation of talak without the involvement of the Religious Court is still common in society. Despite the clear rules, many people only realize the benefits of processing divorce through the Religious Court over time.

The development of the principle of consultation between husband and wife is articulated in Article 79 of the KHI. Article 79 states: (1) The husband is the head of the household, and the wife is the homemaker, (2) The rights and position of the wife are balanced with the rights and position of the husband in family life and social interactions within society, and (3) Each party has the right to perform legal actions.

In reality, the concept of the head of the household as the husband has been widely accepted. However, there are still different perspectives on the term *qowwam*. The concept of a homemaker has also changed significantly. Due to differing views on these matters, conflicts within households are still common in society.

2. Inheritance Law

In the field of inheritance, several provisions can be found that are not present in fiqh. According to Article 49 of Law No. 7 of 1989 concerning Religious Courts, the inheritance law practiced in Religious Courts is Islamic Inheritance Law. Traditionally, when Islamic inheritance law is mentioned, the assumption is that it follows the Shafi'i school of thought or the opinion of Hazairin. Islamic Inheritance Law is characterized by a patrilineal pattern. However, the Compilation of Islamic Law (KHI) introduces several unconventional methods according to the Shafi'i school of thought, including peaceful inheritance division (Article 183), replacement of the position of mawali or Platsvervullings (Article 185), inheritance division while the deceased is still alive (Article 187), and joint property provisions or *gono-gini* (Article 190) (Tohari, 2015).

Peaceful Inheritance Division: Article 183 of the KHI states: “that heirs can agree to make peace in the distribution of inherited property after each is aware of their share.” In Islamic law, the legal maxim “*al-'addah muhakkamah*” (customary practices can be considered as evidence) is recognized. Customary practices can become law if they bring benefit and goodness.

Reality: Many people delay the distribution of inheritance due to the fear of disputes. Although detailed guidelines for inheritance are provided in the Quran, customary laws can also apply if they are beneficial for the family. This should still follow established rules before considering various perspectives.

Replacement of the Position of Mawali: The model of a replacement heir is regulated in Article 185 of the KHI. Paragraph (1) states that if an heir dies before the deceased, their position can be replaced by their children, except for those mentioned in Article 173. Paragraph (2) emphasizes that the share of the replacement heir must not exceed the share of the heir being replaced.

Reality: Controversies still exist regarding replacement heirs, especially concerning obligatory bequests to adopted children and other issues that often lead to family discord.

Inheritance of Illegitimate Children (*Anak Zina*) or children of *li'an*: Article 186 of the KHI states: “Illegitimate children or children of *li'an* only have inheritance rights to the mother or her family. It doesn't matter if the man who committed *zina* (adultery) marries the mother; the issue arises when the child is born from a *zina* relationship with a man not involved in adultery.”

Reality: In practice, situations like these are challenging to control if there is no legal action taken in the Religious Court (PA). Consequently, in the distribution of inheritance, the legitimacy of the child is often not considered, primarily due to social factors such as the reluctance to admit that the child is born out of wedlock.

Inheritance Division While the Deceased is Still Alive: Article 187 of the KHI states, paragraph (1) mentions that if the deceased leaves an estate, during their lifetime or by the heirs, several people can be appointed to carry out the inheritance division with the task of recording the estate in a list, including movable and immovable property, which is then ratified by the relevant heirs. If necessary, the value should be assessed in cash. Paragraph (2) emphasizes that the remaining amount after the specified expenses is the inheritance property to be distributed to the rightful heirs.

Reality: Many cases involve individuals not adhering to the above rules when providing gifts, either due to a lack of understanding or sometimes because knowledgeable individuals are reluctant to do so.

Request for Inheritance Division: Article 188 of the KHI states, "Heirs, either collectively or individually, can request other heirs to distribute the inheritance. If one of the heirs disagrees with the request, the concerned party can file a lawsuit through the Religious Court to carry out the inheritance division." Meanwhile, Article 175 states, paragraph (1) outlines the obligations of heirs to the deceased, including handling funeral arrangements, settling debts related to medical care, and dividing the inheritance among eligible heirs. Paragraph (2) specifies that the heirs' responsibility for the deceased's debts is limited to the amount or value of the estate.

Reality: Filing a lawsuit in the Religious Court is often a resource-intensive option available to families with substantial inheritance. Consequently, families with modest estates may refrain from litigation due to various factors, such as not wanting to complicate matters, even if they feel unfairly treated, or because the value is not commensurate with the effort involved in litigation. Regarding the inheritance rights, these are often not fulfilled, not addressing other issues before the final distribution of the inheritance.

Joint Property or *Gono-Gini*: Article 190 of the KHI states: "For a deceased person who has more than one wife, each wife is entitled to receive a share of the joint property from her husband's estate, while the entire share of the deceased is the right of his heirs." The division of joint property or *gono-gini* in the KHI represents a renewal in Islamic jurisprudence in Indonesia that was not discussed in conventional fiqh books.

Reality: The concept of joint property is not commonly understood by the general public and is rarely applied unless brought to the Religious Court. Despite this, in some cases, wives who are left behind may receive a 1/8 share of the inheritance, and there is a misconception in society that a wife is responsible for supporting the children when the husband dies. However, according to fiqh rules, this is not accurate. When the father/husband dies, the primary responsibility for providing for the heirs lies with the male relatives of the deceased.

3. *Waqf Law*

Similarly, developments have occurred in the field of waqf (Islamic endowment). Since the advent of Islam, waqf has been practiced based on the beliefs held by the majority of the Indonesian Muslim community, namely local customary practices (Suntana, 2014). Government Regulation No. 28 of 1977, Article 1, and KHI

(Compilation of Islamic Law) Article 215 define waqf as a legal act performed by an individual, a group of people, or a legal entity that separates a portion of their wealth and institutionalizes it for worship purposes or other public needs, in accordance with Islamic teachings. All legal schools essentially follow the *mu'abbad* doctrine (Tohari, 2015).

However, subsequent developments have introduced variations. For example, in Government Regulation No. 28 of 1977, Chapter IV Article 11 paragraph 1 states: "Basically, changes in the allocation or use of *wakaf* land cannot be made other than what is intended in the waqf pledge." This article appears to be based on the principle of *mu'abbad* in waqf, alongside preserving the sustainability of waqf property. However, deviations are possible, as indicated by the inclusion of paragraph 2 in the same chapter and article. It states that "Deviation from the provisions of paragraph 1 can only be done for specific matters after obtaining written approval from the Minister of Religion, namely (a) because it is no longer in line with the waqf donor's declared purpose, and (b) for public interest" (Tohari, 2015).

Article 215 of the KHI states: "Waqf as a legal act of an individual or group of people or a legal entity by separating a portion of their property and institutionalizing it indefinitely for the benefit of worship or other public needs in accordance with Islamic teachings."

In this context, waqif (donor) is designed to be carried out by legal entities and not only by individuals, and waqf law in Indonesia has evolved beyond traditional jurisprudence as it now includes administrative-judicial documentation. By doing so, waqf can assist more people and reduce the possibility of exploitation by a few individuals who are negligent.

Article 223 of the KHI related to the requirement to register waqf property is another regulation worth mentioning. As stated in Surah Al-Baqarah (p. 282), the issue of documenting or certifying waqf is more closely related to matters of obligation and debt. However, fiqh texts do not mention this recording. This implies that current administrative and legal adjustments are needed to improve the formulations presented in fiqh literature in practice. This is intended to expand the scope of benefits that can be obtained from the actual implementation of waqf, for example, by adding a waqf pledge deed or as a substitute for waqf pawn documents or waqf land certificates (Tohari, 2015).

The discussion of Islamic family law in Indonesia focuses on the KHI and CLD (Counter Legal Draft) KHI. There are slight differences in perspectives that seem to occur not only at the grassroots level but also at the highest levels among legislators.

First, historically; second, trends toward normative perspectives. It makes sense if their viewpoints differ from each other due to educational backgrounds, experiences, and other factors. However, it would be strange if this had an impact on a broader population (Sadari, 2017).

In addition to CLD KHI, another term worth mentioning is “Tandingan KHI”, which refers to the KHI document created by the Gender Mainstreaming Team (PUG) of the Ministry of Religious Affairs. This draft is appropriately dubbed “Komunis” (Non-Islamic Law Compilation). There has been much debate in Indonesian society about this draft. For many Muslims, it is unthinkable that a document weakening certain components of Islamic law, whose legitimacy has been recognized since the time of Prophet Muhammad, would emerge from the workings of the Ministry of Religious Affairs (Supriyadi, 2006).

Conclusion

The transformation of Islamic law into national family law is an inevitable occurrence as times continue to change, and political processes from top to bottom are deeply intertwined. From upstream to downstream, it is inseparable from a political process that can sometimes be beneficial or, conversely, detrimental. The process of Islamic law will never be detached from various perspectives and socio-political influences. Nevertheless, starting from the history and renewal of Islamic law and its embodiment in legislation in Indonesia, then the model of transforming Islamic law into national legislation, the inevitable dilemma between the idealism and reality of Islamic law cannot be avoided. The political process is deeply ingrained between the scholars (*ulama*) and rulers (*umara*), and when there are conflicting matters, it has become a common occurrence. It is a process that must be traversed and cannot be avoided for the benefit of the community in general.

Islamic law related to marriage and divorce, inheritance, and endowment laws contained in the Compilation of Islamic Law (KHI) is a manifestation of the result of *ijtihad* (consensus of scholars), considering each article for the benefit and justice of all parties. Currently, KHI is still very relevant and used by judges to decide and settle cases, although there has been controversy regarding a competing KHI. At present, KHI is still considered equivalent or synchronized with Law No. 1 of 1974 and other legal regulations and can be used as a guide for *ijtihad*, as transformation in various aspects in this era is a certainty. However, the hope is that the principles contained in the KHI do not contradict the primary sources of law.

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