

Research Article

The Urgency of Reforming Marriage Laws and Compilation of Islamic Law Entering the 5.0 Era

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Marriage laws and the compilation of Islamic Law in Indonesia have a very important role because they are a reference for the people and judges in religious courts. However, several rules in the two regulations are no longer in accordance with the times, which are currently entering the 5.0 era. This research includes library research whose data sources come from laws and scientific articles. This study concludes that the rapid development of times and technology has an impact on Islamic law. Therefore, reforms are needed that can respond actively to changes that occur in society, so that the relevance of Islamic law is maintained.

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1. Introduction

Islamic law is an aspect of teaching that occupies an important position because it is the most concrete manifestation of Islam as a religion. It is impossible to understand Islam without understanding Islamic law. Islamic law also always changes so that laws and regulations also need to be updated.[1] The legal reform was carried out to adapt the law to social developments and community needs in the 5.0 era, especially in the public sector.[2] When Islamic law interacts with social life, society is always faced with problems both internal and external.

Legal reform is a historical imperative because social phenomena are not static or fixed, but are always changing.[3] The movement to revive ijthad to develop Islamic law emerged to stipulate legal provisions capable of responding to new problems and developments brought about by the advancement of modern science and technology. Establishing legal provisions capable of responding to new problems and developments

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contains two elements. The first is to determine the law for new issues that do not yet have legal provisions and the second is to establish or look for new legal provisions for a problem that already has legal provisions but are no longer in accordance with the conditions and welfare of today's people. What is meant by "not in accordance with the conditions and benefits of today's people" is that the provisions of the old law which were the result of the *ijtihad* of the previous scholars were no longer able to realize the needs and benefits of modern society. For this reason, it is necessary to stipulate new legal provisions that are more capable of realizing the benefit of the people which is the aim of the *Shari'a* by taking into account the new knowledge generated by the advancement of modern technological science or 5.0, which also requires human resources (HR).[4]

Islamic law can be transformed into national law, so the renewal of Islamic law is absolutely carried out by developing the principles of Islamic law. Without interaction between the principles of Islamic law and the development of society, it is impossible to achieve the goal of realizing Islamic law to become national law.[5] Islamic legal legislation is the most important manifestation of Islamic modernism. With the integration of Islamic law with national law, various internal problems in the epistemology of Islamic law will be solved by themselves.[6]

Marriage law which is part of the law is very closely related to the smallest unit of society in a community in a country. The development of society which is dilated behind by the development of science and technology and the unification of the cultures of the world community in the global era has an impact on patterns and behavior and the need for rules that are in line with these global dynamics in the family realm. This social reality demands legal reform, especially Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law which is the reference for Muslims in Indonesia and judges in religious courts. Updates are also needed as a response to technological developments 5.0.

Renewal of Islamic law in Indonesia through the legislative process uses two ways. First, Islamic law is formally legislated for Muslims, such as Government Regulation Number 28 of 1977 concerning *Waqf*, Law Number 17 of 1999 concerning the Implementation of *Hajj Pilgrimage*, and Law Number 38 of 1999 concerning Management of *Zakat*. Second, Islamic legal materials are integrated into national law without formally cornering Islamic law, such as Law Number 1 of 1974 concerning Marriage and Law Number 3 of 2006 concerning Religious Courts. Whereas the Compilation of Islamic Law is basically discussing one aspect of Islamic law in Indonesia and when talking

about Islamic law in Indonesia, we will enter into a complex conversation even though Islamic law occupies a very important position in the life of the nation and state today.

Demands for renewal of the two laws and regulations continue to blow due to the increasingly advanced human civilization and the rapid development of technology. This is of course the task of the executive, legislative, judiciary as well as Islamic jurists to synergize the legal needs of Muslims. Based on these problems, this issue is very interesting to study in order to reform marriage laws and the Compilation of Islamic Law in preparation for the inevitable 5.0 era.

2. Methods

This study uses a normative juridical method. Normative juridical research is legal research that is carried out by focusing on library research, namely by researching and reviewing library materials, namely laws and regulations and scientific articles.

3. Results and Discussion

3.1. Concepts and Methods of Reforming Islamic Law in Indonesia

Renewal of Islamic law means the *ijtihad* movement to establish legal provisions capable of responding to new problems and developments brought about by modern scientific and technological advances, both establishing laws for new problems to replace old legal provisions which are no longer suitable for the current situation and benefit of humanity. Then what is meant by legal provisions here are the provisions of Islamic law in the category of *fiqh* which are the result of the *ijtihad* of the scholars, not the provisions of Islamic law in the category of *sharia*. Renewal can also be done with *pentahqiqan* efforts. With this *pentahqiqan* effort, the authenticity and purity of Islamic teachings will be seen. This method is easier, compared to *ijtihad*. Although this way, perhaps included in the area of *ijtihad*. It is said to be easier, because it only corrects an opinion. It will be even easier if you have the above facilities.

The movement to revive *ijtihad* to develop Islamic law is called the movement for reform of Islamic law, because this movement emerged to establish legal provisions capable of responding to new problems and developments brought about by the advancement of modern science and technology. Establishing legal provisions that are capable of responding to new problems and developments contains two elements, namely establishing laws for new issues that do not yet have legal provisions and

establishing or seeking new legal provisions for issues that already have legal provisions but are no longer in accordance with the circumstances and modern human welfare.

For Muslim countries, the reform of Islamic law was driven by Turkey, in 1917, with the presence of the Ottoman Law of Family Rights or *Qanun Qarar al-Huquq al-'A'ilah al-Uthmaniyah*. Furthermore, Turkey's renewal of its family law was followed by a number of other countries such as Lebanon (1919), Jordan (1951), and Syria (1953). Turkey is actually included in the category of Islamic countries that have radically reformed family law and replaced it with European civil law. Meanwhile, other Muslim countries are only trying to codify family law without eliminating the basic principles, namely the Koran and Hadith. As practiced by Egypt in 1920 and 1929, Tunisia, Pakistan, Jordan, Syria and Iraq.

Renewal of Islamic law is carried out by various methods. According to Taheer Mahmoud, there are three update methods. First, Intra-doctrinal Reform. This method is an update by still referring to conventional *fiqh* concepts, by way of superstition and *talfiq*. The Prophet once said that differences of opinion among Muslims is a mercy. This has been proven in the development of Islamic law. Flexible Islamic law has given rise to plurality and differences of opinion among Islamic jurists. In the early days of the formation of Islamic law, it was known for the emergence of various schools of *fiqh*, because there were several Imams and *Faqihs* who gained many adherents from Muslims. Among them are Imam Malik, Imam Abu Hanifah, Imam Shafi'i and Imam Hambali, who are known as the Sunni school of thought besides there are also various Shi'i schools of thought.

Until now the influence of these *fiqh* schools is still strong in various Muslim countries. For example, the 'Osmani dynasty adhered to the Hanafiyah school; later this school spread in the Arab world; and brought to the Mughal dynasty by the Ottoman Turks, so that the majority of Muslim communities in Afghanistan, Pakistan and India also adhere to this school. Muslim communities in several Malay countries adhere to the Shafi'i school of thought. Iran adheres to the Ja'fari (Shi'a) school of thought. As for Muslim countries in North Africa, Algeria, Libya, Tunisia, Morocco, and so on, adhere to the Maliki school of thought.

The renewal of Islamic law with this intra-doctrinal method is a renewal of Islamic law which is based on the school of Islamic law (*fiqh*) which is adhered to by the majority of the people of a country. As in Indonesia, which adheres to the Sunny school and takes more from the Imam Syafi'i doctrine; Egypt initially adhered to the Shafi'-iyyah, then after spreading through the 'Osmani dynasty, switched to the Hanafiyah school until now, and so on.

Second, Extra-doctrinal Reform. Sometimes the renewal of Islamic law in several Muslim countries comes from the opinions of the fiqh schools that are adhered to by the people. Like, the new Islamic legal *ijtihad* that they do. This method is referred to as the extra-doctrinal method. Among the existing applications of *ijtihad* are obligatory wills in inheritance law; the prohibition of polygamy and so on. Third, Regulatory Reform. In the development of Muslim society after coming into contact with the West, Islamic law is also influenced by various procedures that exist in western law, such as legislation and various administrative regulations with a modern administrative system. Various Muslim countries have reformed Islamic law in this way, such as Pakistan, Indonesia, Malaysia, Brunei, Singapore and others.

3.2. The Importance of Marriage Law Reform and Compilation of Islamic Law

In general, the objectives of updating Law No. 1 of 1974 can be grouped into three, namely increasing the status of women, legal unification, and responding to the developments and demands of the 5.0 era. A number of countries carried out this reform with the aim of elevating the status of women. The purpose of elevating the status of women is often in responding to the demands and developments of the times and the goal of legal unification. So that the aim of elevating the status of women is in line with the goal of legal unification and responding to the demands and developments of the times.

Referring to Tahir Mahmood's research, there are at least 13 crucial issues that need to be reformed, namely the minimum age limit for marriage,[7] role of guardian in marriage, marriage registration, economic capacity in marriage, polygamy, family maintenance, restrictions on husband's divorce rights, rights and obligations of husband and wife after divorce, pregnancy and its implications, forced rights (*ijbar*) of parents, division and number of *ḥalāh* inheritance rights, *wājibah* will and *waqf*.[8]

This change is in line with the theories of *qaul qadim* and *qaul Jadid* put forward by Imam Syafi'i, that law can also change due to changes in legal propositions applied to certain events in implementing *maqāsyid syarī'ah*. As for the dynamics of family law reform in general, it boils down to three goals to be achieved by Islamic countries, as follows:[9]

First, for the purpose of increasing the status of women. Although this goal is not stated explicitly, it can be seen from the legal material formulated that the law responds

to a number of demands for increasing the status and position of women. The Marriage Laws of Egypt and Indonesia can be included in this group.

Second, for the purpose of legal unification. Unification efforts are carried out because the people adhere to various schools of thought or even different religions. In Tunisia, for example, efforts to unify marriage law are aimed at all citizens regardless of religious differences. Third, to respond to the demands of the times and the dynamics of societal development due to global influences that affect almost all aspects of human life.

Apart from marriage law, the Compilation of Islamic Law which is a product of Indonesian jurisprudence also needs to be reformed. In addition, from the point of view of its legal form, the position of KHI is not visible in the order and hierarchy of legislation in Indonesia which is based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Establishment of Legislation Regulations. Since the background of the birth of the Compilation of Islamic Law, the Formulation and Determination and the struggle so that the Compilation of Islamic Law can be used as an Islamic Family Law in the Religious Courts. This is because the existence of KHI is sufficient to help Indonesian Muslims in understanding Islamic law. Although, the presence of KHI which is currently infrequent has not been able to accommodate a number of family law issues that are developing. The impact and non-accommodation of legal issues that arise cause differences of opinion in the application of law.

In this context, it is necessary to have a uniform understanding of Islamic law to serve as a benchmark in order to avoid disparities in decisions in the same case with different judges' decisions. Even though the Compilation of Islamic Law in Indonesia has been disseminated and has been used as a guide by Judges in the Agma Judiciary in resolving various legal issues for Muslims, it does not mean that the Compilation of Islamic Law is a final result that does not require refinement. Therefore, the effort to make the Compilation of Islamic Law in the form of an Act is a very appropriate effort, because the Compilation of Islamic Law, whose current status is still a Presidential Instruction, is seen as having a lower level than the Act. Therefore, the increase in the legal status of the Compilation of Islamic Law which was originally only in the form of a President's Instruction to become a law is expected to be applied law can be positioned as a product of a law that has coercive power, legally binding formally to be guided as a source of law.

The improvement in this direction is intended so that the existence of Islamic law is not just a complement, but is able to provide a solution for the development of Islamic law in the future. Currently, the development of law and society cannot be denied. Because of this, it is appropriate that in anticipating more rapid developments, the Compilation

of Islamic Law should be reformed and its status enhanced as a legal product that is developing and living in society so that its presence can fulfill people's sense of justice. Apart from that, some Muslims also want an update to the Compilation of Islamic Law, because besides its existence only through the Presidential Instruction, it also contains a lot of content, in some ways it does not fulfill the people's sense of justice. Besides that, attachment to the Syafii school of thought is very visible in KHI, so it seems that KHI is less relevant to the times and places. Even though the knowledge of the judges was very broad, not only related to the Syafii school of thought, but also the Hanafi, Maliki, and Hanbali schools.

The extensive knowledge possessed by the judges has resulted in them only applying the Syafii School of Religion within the Religious Courts. To fight for the status of the Compilation of Islamic Law to become a Law, it was carried out and compiled by the Small Team of BPPHI Members on October 20, 2004 and then discussed by 30 Legal Experts throughout Indonesia in the third week of January 2005 and in May 2005 the draft was final under the name draft Draft Law of Applied Law of the Religious Courts in the Field of Marriage. Constitutionally, Muslims in Indonesia have a huge opportunity to formulate Islamic law to become national law (positive law) through the legislative, executive, educational, da'wah and through the judiciary.

4. Closing

Renewal of marriage law and compilation of Islamic law in Indonesia is a must as a form of response to the times and technology 5.0. Bearing in mind, some of the existing rules are no longer relevant to the current conditions. Moreover, the status of compilation of Islamic law is not as strong as law. This renewal is an attempt to respond to the challenges of modernity, because the established conventional understanding of various interpretations of Al-Quran, Hadith and books of fiqh and laws and regulations has not been updated for a long time.

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