

Research Article

The Implementation of Islamic Family Law in Indonesia A Study on the Application of the Marriage Law and the Compilation of Islamic Law

Abdul Wahid ¹

Institut Agama Islam Hasan Jufri Bawean Gresik ¹

Corresponding Author, Email: abdulwahidcarabaka@gmail.com

Abstract

Islamic family law is an essential component of the Islamic legal system that regulates personal matters such as marriage, divorce, inheritance, and guardianship. In Indonesia, the implementation of Islamic family law gains a strong legal foundation through Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), enacted under Presidential Instruction Number 1 of 1991. This article aims to examine the application of Islamic family law in Indonesia, with a focus on the synchronization between normative provisions in Islamic law and their implementation within the religious court system. This study employs a qualitative method with a normative juridical approach, analyzing legislation, court decisions, and Islamic legal literature. The findings indicate that although Islamic family law has been formally institutionalized, challenges remain in law enforcement, public awareness, and differences in interpretation between legal texts and social practices. Continuous reform and harmonization are needed to ensure that Islamic family law is applied in a fair, relevant, and contextually appropriate manner in Indonesia.

Keywords: Islamic family law, Compilation of Islamic Law, Marriage Law, Religious Courts, Legal implementation

INTRODUCTION

Islamic family law is one of the legal fields that holds a central position in the lives of Muslim communities. In the Islamic context, family law does not merely regulate



interpersonal relationships but also forms part of the implementation of the Sharia, which encompasses both spiritual and social dimensions. In Indonesia, the implementation of Islamic family law gains formal legitimacy through Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). These two legal instruments serve as the primary foundation for religious courts in resolving cases related to marriage, divorce, reconciliation, inheritance, guardianship, and related matters.

The application of Islamic family law in Indonesia cannot be separated from the social, political, and legal dynamics that have evolved from the colonial period to the reform era. Before the passage of the Marriage Law of 1974, Muslim communities in Indonesia applied Islamic law inconsistently due to the influence of customary law and Dutch colonial regulations such as the *Regeeringsreglement* and the *Burgerlijk Wetboek* (Indonesian Civil Code). After independence, the need emerged to unify the family law system in accordance with Islamic values while remaining aligned with the principles of the Pancasila-based rule of law.

The Compilation of Islamic Law, enacted in 1991, became an important milestone in the codification of Islamic law in Indonesia. Through the KHI, many fiqh-based provisions, previously rooted in various schools of Islamic jurisprudence, were reformulated into positive law that could be applied uniformly by judges in the religious courts. However, in practice, discrepancies still arise between normative provisions and field implementation, particularly concerning polygamy, divorce, and inheritance distribution.

The Concept of Islamic Family Law and Its Legal Foundations in Indonesia **Definition and Scope of Islamic Family Law**

Islamic family law, known in fiqh as *al-ahwāl al-syakhsīyyah*, is a branch of Islamic law regulating legal relationships within the family, including marriage, divorce (*ṭalāq*), reconciliation, financial maintenance, guardianship, and inheritance. This field belongs to Islamic private law, addressing individual rights and obligations based on Sharia principles.

In classical Islamic jurisprudence, the sources of Islamic family law come from the Qur'an, Hadith, *ijma'* (consensus), and *qiyas* (analogical reasoning). These sources formed the basis of various schools of legal thought, including the Shafi'i, Hanafi, Maliki, and Hanbali schools. In Indonesia, the Shafi'i school has historically held strong influence, forming the doctrinal basis for many family law regulations.

The scope of Islamic family law includes:

1. Marriage (*nikah*): its pillars, requirements, and legal consequences.
2. Divorce (*ṭalāq*): legal procedures and post-divorce rights.
3. Inheritance (*mīrāt*): transfer of property from deceased to heirs.
4. Lineage and guardianship: including child status, custody, and family responsibilities.

Philosophical and Juridical Foundations of Islamic Family Law in Indonesia

Islamic family law in Indonesia stands on two main foundations: the philosophical foundation derived from Islamic teachings and Pancasila values, and the juridical foundation originating from national legislation.

Philosophically, the implementation of Islamic family law reflects the objectives of Islamic law (*maqāṣid al-syarī'ah*): the protection of religion, life, lineage, intellect, and wealth. In the context of family, the protection of lineage (*ḥifẓ al-nasl*) is particularly crucial as it relates to building a morally upright and civilized society.

Juridically, Islamic family law in Indonesia has strong legal standing within the national legal system. Some key regulations include:

1. Law No. 1 of 1974 on Marriage, which establishes general principles of marriage in Indonesia, including for Muslims.
2. Government Regulation No. 9 of 1975, serving as the implementing regulation of the Marriage Law.
3. Presidential Instruction No. 1 of 1991, which enacts the Compilation of Islamic Law (KHI), codifying Islamic family law into three books: Marriage, Inheritance, and Endowments.
4. Law No. 3 of 2006 on Religious Courts, which expands the authority of religious courts to include Islamic economic disputes.

Through these legal instruments, Islamic family law has become an integral part of Indonesia's formal legal system and is binding upon all Muslims.

The primary aim of Islamic family law is to establish families characterized by *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion), as stated in Qur'an 30:21. Thus, the law is not solely legal-formal but also moral and spiritual. Its application must consider justice, public benefit, and protection of vulnerable parties, especially women and children.

In the Indonesian context, these principles are reflected in:

- Monogamy as the general principle of marriage (Article 3, Marriage Law), with restricted exceptions for polygamy.
- Equality of rights and responsibilities between husband and wife (Article 31).
- Divorce settlement through religious courts (Article 39, Marriage Law; KHI Book I).
- Obligations for financial support and child protection after divorce (Article 149, KHI).

Thus, Islamic family law in Indonesia seeks a balanced path between Islamic normative principles and modern values concerning human rights and gender justice.

2. METHOD

This study employs a library research method, using a qualitative and normative juridical approach in order to analyze the implementation of Islamic family law in Indonesia based on authoritative textual sources. As a library-based study, the

research does not involve field observations or interviews. Instead, it relies entirely on the examination, interpretation, and comparison of written materials that have legal relevance and academic credibility.

The primary sources of data consist of legislative documents, including *Law Number 1 of 1974 on Marriage*, *Government Regulation Number 9 of 1975*, *Law Number 3 of 2006 on Religious Courts*, and the *Compilation of Islamic Law (KHI)* enacted through Presidential Instruction Number 1 of 1991. These legal instruments serve as the core references for understanding the normative framework governing Islamic family law in Indonesia. In addition, the study analyzes judicial decisions from religious courts, which provide insight into how these legal norms are interpreted and applied in real judicial practice.

Secondary sources include Islamic legal literature, such as classical fiqh works, contemporary scholarly writings, textbooks, journal articles, and commentaries on Islamic family law. These sources help contextualize the normative provisions and reveal the diversity of interpretations within Islamic jurisprudence. Works by scholars such as Wahbah al-Zuhaili, Amina Wadud, Amir Syarifuddin, and Ahmad Rofiq are consulted to provide theoretical depth and comparative perspectives.

The research follows several procedural steps:

1. Collecting relevant primary and secondary materials from legal documents, academic publications, and judicial archives.
2. Classifying the data into thematic categories such as marriage law, divorce, polygamy, inheritance, and court implementation.
3. Analyzing the materials through content analysis and normative interpretation to evaluate the consistency between Islamic teachings, statutory regulations, and judicial practice.
4. Drawing conclusions by synthesizing the findings to assess the effectiveness, challenges, and implications of Islamic family law implementation in Indonesia.

Through this library research method, the study is able to provide a comprehensive and integrative understanding of Islamic family law as both a normative system and an applied legal framework within Indonesia's religious court system.

3. RESULT AND DISCUSSION

The Position of Islamic Family Law within the National Legal System

The position of Islamic family law in Indonesia is integrative, meaning it is formally recognized as part of the national legal system applicable to Indonesian citizens who adhere to Islam. This integration is realized through the existence of the religious courts as a judicial body authorized to handle cases pertaining to Islamic family law.

Furthermore, the formal recognition of Islamic law in the area of family matters reflects Indonesia's legal pluralism, in which Islamic law coexists alongside customary law and Western civil law (the Indonesian Civil Code). However, this pluralism also creates challenges in legal coordination and harmonization, particularly when conflicts arise between different legal systems.

Overall, the existence of Islamic family law in Indonesia represents a concrete manifestation of Islamic values applied within the framework of a modern legal state founded on Pancasila and the 1945 Constitution.

Implementation of Islamic Family Law in the Marriage Law and the Compilation of Islamic Law

Application of Islamic Legal Principles in Law Number 1 of 1974 on Marriage

Law Number 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law) is a major milestone in the reform of family law in Indonesia. This law applies to all citizens, with specific provisions for Muslims implemented in accordance with their religious laws. Article 2(1) states:

"A marriage is lawful if conducted according to the laws of each party's religion and belief."

Thus, for Muslims, the validity of a marriage is determined by Islamic law, while its registration is carried out by the Office of Religious Affairs (KUA), as provided in Article 2(2).

The main principles of the Marriage Law that align with Islamic law include:

1. The Principle of Monogamy

The Marriage Law emphasizes that, in principle, a man may only have one wife and a woman only one husband (Article 3(1)). However, Islam permits polygamy under strict conditions, such as obtaining court authorization and securing the wife's consent.

2. The Purpose of Marriage

According to Article 1, the purpose of marriage is to establish a happy and everlasting family based on the belief in God Almighty. This aligns with the Islamic concept of *sakinah*, *mawaddah*, and *rahmah* (Qur'an 30:21).

3. The Position of Husband and Wife

The Marriage Law affirms equality between husband and wife in rights and responsibilities (Article 31(1-3)). In Islamic law, although the husband carries leadership responsibility (*qawwamah*), justice and consultation form the basis of marital relations.

4. Divorce Through the Courts

The Marriage Law requires that divorce may only take place before a court session after attempts at reconciliation have been made (Article 39). This strengthens the Islamic principle of *iḥtiyāt* (prudence), discouraging impulsive divorce.

Implementation of the Compilation of Islamic Law (KHI) as Substantive Law in Religious Courts

The Compilation of Islamic Law (KHI), enacted through Presidential Instruction No. 1 of 1991, is the primary source of substantive law for judges in the religious courts. The KHI consists of three major books:

1. Book I: Marriage Law
2. Book II: Inheritance Law
3. Book III: Endowments Law

KHI serves as a codification of Islamic family law that adapts classical jurisprudence (*fiqh*) to Indonesia's social context. For instance, Article 4 states that "Marriage aims to create a household that is *sakinah*, *mawaddah*, and *rahmah*," illustrating a synthesis between traditional *fiqh* and national values.

Examples of KHI implementation include:

- Underage marriage: KHI (Article 15) sets a minimum age of 19 for both bride and groom, consistent with the 2019 amendment to the Marriage Law.
- Divorce: Articles 115–148 regulate divorce procedures and post-divorce rights such as *iddah* maintenance, *mut'ah*, and child custody.
- Polygamy: Articles 55–59 require that court authorization be obtained and specific conditions be fulfilled.
- Inheritance: Book II follows Islamic principles (e.g., *ashabah* and *dzawil furud*), with contextual adaptations such as the mandatory will (*wasiat wajibah*) for adopted children.

KHI provides flexibility in applying Islamic law while upholding *ijtihad jama'i* (collective reasoning) and *maslahah mursalah* (public interest).

Relationship Between the Marriage Law and the KHI in Religious Court Practice

In practice, the Marriage Law and KHI complement each other. The Marriage Law provides the general legal framework, while KHI serves as the substantive legal guideline specifically for Muslims.

For example:

- In divorce cases, Article 39 of the Marriage Law governs procedural rules, while grounds for divorce, post-divorce rights, and custody are regulated in KHI.
- In polygamy cases, the Marriage Law (Articles 3–5) stipulates the requirement for court approval, whereas KHI explains the substantive criteria such as fairness and financial capability.

This interplay reflects a syncretic system combining Sharia and national law, embodying the principle of “Islam within the framework of the Pancasila legal state.”

Challenges in Implementing the Marriage Law and KHI

Despite the strong legal foundation, several challenges remain:

1. Unequal Legal Awareness
Many citizens are unaware that unregistered marriages (*siri*) have serious legal consequences, especially for women and children.
2. Normative Dualism Between the Marriage Law and KHI
Conflicts occasionally arise, such as differing minimum marriage-age provisions before the 2019 amendment.
3. Differences in Interpretation Among Judges
Some KHI provisions can lead to varied judicial interpretations.
4. Social and Cultural Barriers
Customary norms often overshadow formal Islamic legal rules, particularly in rural areas.

Implementation in Religious Courts and Indonesian Society

Role of Religious Courts

Religious courts handle cases involving Islamic family law, including marriage, divorce, inheritance, and economic Sharia disputes. Their functions include:

1. Upholding justice in family matters.
2. Protecting vulnerable parties (especially women and children).
3. Mediating household disputes.

Judges must consider not only formal law but also *maslahah* (public interest) and *adl* (justice).

Marriage and Divorce Cases

- **Marriage:** Issues include underage marriage and unregistered marriage. Despite the legal age requirement, applications for marriage dispensation remain high.
- **Divorce:** Divorce cases dominate religious court caseloads (over 70%). Economic hardship, infidelity, and domestic violence are leading causes.

Inheritance Cases

Inheritance issues often conflict with customary practices, such as matrilineal inheritance in Minangkabau. Judges typically seek reconciliatory solutions that balance fairness and Islamic principles.

Evaluation of Islamic Family Law Implementation in Indonesia

1. Regulatory Aspects

Marriage Law and KHI require updates to address contemporary issues such as interfaith marriage and recognition of children born outside wedlock.

2. Law Enforcement

Courts face resource constraints, including limited personnel in remote areas.

3. Legal Awareness

Public understanding of family law remains low.

4. Gender Justice and Child Protection

Reform must align with CEDAW and the Convention on the Rights of the Child.

5. General Analysis

Islamic family law reflects a blend of religious norms, state regulations, and social realities. Its effectiveness depends on both structural enforcement and cultural education to ensure the law is not only normative but functional.

4. CONCLUSION

The implementation of Islamic family law in Indonesia reflects a long process of integrating Islamic legal values with the national legal system. Through two primary legal instruments—Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI)—Islamic family law has gained a strong and formal position within Indonesia's legal structure. Based on the findings discussed in the previous chapters, several important conclusions can be drawn. First, Islamic family law in Indonesia rests on solid philosophical and juridical foundations. Philosophically, it derives from Islamic teachings that emphasize justice, public welfare, and the protection of family members; juridically, it is supported by national legislation that recognizes the authority of Islamic law. Second, the Marriage Law and the KHI function complementarily, with the Marriage Law serving as the general legal framework (*lex generalis*) for all citizens, and the KHI operating as specific substantive law (*lex specialis*) for Muslims in matters of marriage, divorce, inheritance, and endowment. Third, the Religious Courts play a central role in the application of Islamic family law, as judicial decisions translate Islamic legal principles into practical outcomes that prioritize substantive justice over mere procedural formality. Fourth, challenges remain in its implementation, including

low levels of legal awareness among the public, conflicts between customary law and Islamic law, varying judicial interpretations, and issues related to gender justice and child protection. Finally, there is a strong need for more progressive and responsive reform of Islamic family law. Such reform should aim to harmonize Islamic principles, national law, and human rights so that Islamic family law can meet contemporary demands while preserving its essential values.

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