


Factors Causing Reform of Marriage Law in the Islamic World

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Abstract

Introduction: The reform of Islamic marriage law is fundamentally influenced by many factors.

Purposes of the Research: This paper aims to find out what factors caused the reform of marriage law in the Islamic world, and what the wisdom of the reform of marriage law is for the Muslim community.

Methods of the Research: This research employs the library study approach (library research). Primary sources of information are derived from publications pertaining to the discourse on the reform of marriage law in the Islamic world.

Results of the Research: The results of the study show that there are many things that become factors causing the reform of the marriage law, but the main factor is the development of the times in terms of socio-cultural changes so that new problems arise that need new laws in response to this. While the wisdom of the renewal of the marriage law is to keep the teachings of Islam in the family field still accepted by modern society.

Keywords: Legal Protection; Traditional Knowledge; Sui Generis.

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INTRODUCTION

Speaking of Islamic law, it can be seen that Islamic law is one of the laws that has been accepted and has been carried out positivism to the legal system in Indonesia so it is not surprising why there is a special court system that addresses Islamic religious issues in the Religious Court. Historically, Islamic law is the legal framework that governs Indonesia before the colonial era. It is not surprising that Islamic law has evolved into a positive law that applies in this country. In the field of family law, it has been widely followed and lives in the midst of the lives of Muslim communities in Indonesia.¹

The discourse on Islamic law is eternal because of its dynamic nature, which adapts to the circumstances of each era. In contrast, Islamic law, commonly referred to as as-syari'ah al-Islamiyah (Islamic law) or al-fiqh al-Islamy (Islamic jurisprudence), has undergone significant historical transformation in Indonesia. Each era, starting from the kingdom era (before colonization), the Dutch and Japanese colonial eras, to the contemporary independence era, has provided different nuances, allowing Islamic law to evolve according to the cultural context of Indonesian society.²

Amendments to laws are made to align them with the progress of society and the needs of society. Advances in science, economic globalization, legal reform, and the revitalization

¹ Ahmad Zaenal Fanani, *Pembaharuan Hukum Sengketa Hak Asuh di Indonesia (Perspektif Keadilan Gender)*, (Yogyakarta: UII Press, 2015), p. 1.

² Ahmad Yasir Sinulingga dan Faisar Ananda, "Sejarah dan Urgensi Hukum Keluarga Islam Dalam Transformasi Sistem Hukum Nasional", *Jurnal Review Pendidikan dan Pengajaran*, Vol. 7, No. 4, p. 15886, <https://journal.universitaspahlawan.ac.id/index.php/jrpp/article/download/36858/24012/121814>.

of Islamic thought can influence the dynamics of the application of Islamic law. It is important to realize that an effective legal system in any country is always subject to modification and adjustment.³ The intersection between Islamic law and social life presents internal and external challenges to society. Therefore, legislative reform is very important, because the history of social phenomena is dynamic and continues to develop.

METHODS OF THE RESEARCH

Study This is a normative legal research, with a focus on secondary data, which includes primary materials, namely binding legal documents such as laws and regulations, secondary materials that provide explanations of primary legal materials, and tertiary materials that provide instructions or explanations of primary and secondary legal materials, including electronic media and dictionaries.⁴

RESULTS AND DISCUSSION

A. Factors Causing Reform of Marriage Law in the Islamic World

In this article, the author will focus on the discussion of what are the factors that cause a renewal of marriage law in the Islamic world. So it should be noted that the issue of this renewal is the first step that needs to be discussed first regarding the renewal of the law. The renewal of marriage law in the Islamic world has a very large influence, so it is not surprising why Indonesia has also experienced changes in its marriage law.

Reform of Islamic marriage law in Indonesia is urgently needed. This is due to the demands of the ever-evolving era, the demands of scientific progress, the impact of economic globalization, the impact of reform in various fields of law, and the revitalization of Islamic thought, which requires continuous openness to *ijtihad* to establish new laws for contemporary problems. Family law is the oldest type of law, rooted in the history of mankind, especially in terms of marriage.⁵ After the formation of a wider society, public law, including constitutional law, state administrative law, and criminal law, emerged.⁶ So it can be concluded that the law that first appeared before other legal systems was family law.

Furthermore, the analysis of Islamic law reveals that factors of change can drive the transformation of society within the framework of Islamic philosophy, including the reform of Islamic jurisprudence. The revitalization of Islamic legal philosophy emphasizes the local and temporal dimensions of Islamic teachings, without ignoring the universal and eternal characteristics of Islamic law itself. The absence of efforts to renew Islamic law will hinder the dissemination of Islamic law in particular and Islamic teachings in general.⁷

In the current literature of Islamic law studies, the term “renewal” is known and then replaced by the terms reform, modernization, reactualization, deconstruction, reconstruction, *ishlâh*, and *tajdîd*. Among these terms, the most widely used are reform, *ishlâh*, and *tajdîd*. The term reform comes from the English word “reformation”, which means re-formation or restructuring.⁸ The term reform is synonymous with renewal, which

³ Izomiddin, *Pemikiran dan Filsafat Hukum Islam*, (Jakarta: Prenadamedia Group, 2005), p. 100

⁴ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), p. 13.

⁵ Mustafa Ahmad Zarqa, *al-Fiqh al-Islam wa Madarisuhu*, (Dar al-Qalam, Damaskus, 1995), h. 11-12.

⁶ Muhammad Amin Suma, *Hukum Keluarga Islam di Dunia Islam*, (Jakarta: RajaGrafindo Persada, 2004), p. 4-5.

⁷ Muhammad Azhar, *Fiqh Kontemporer Dalam Pandangan Neomodernisme Islam*, (Pustaka Pelajar, Yogyakarta, 1996), p. 60.

⁸ John M. Echol dan Hasan Shadily, *Kamus Inggris-Indonesia* (Jakarta: Gramedia, 2003), p. 473.

comes from the word "new", which signifies an improvement to achieve newness or replacement in a new way.⁹ The term *tajdîd* indicates the process of reconstruction, revitalization, reorganization, or restoration to ensure proper functionality. The term *ishlâh* is defined as repair or restoration.¹⁰

From the discussion above, although there are differences in sentences, they still have the same meaning elements. In the sense of having similarities in improving with the aim of renewing something to be better. Renewal of Islamic law requires the progress of *ijtihad* to formulate legal provisions that answer contemporary issues and developments that arise from modern science and technology, both by establishing laws for new problems and by replacing outdated legal provisions that are no longer in accordance with current human conditions and interests. So we can conclude that the movement to reform marriage law in the Islamic world needs to be carried out in order to maintain the integrity of the family.

It should be understood that, when discussing marriage law, it indirectly enters the realm of family law itself. Therefore, Islamic family law, as one component of the legal system, is closely related to the basic social unit in a national community. The evolution of civilization, influenced by advances in science and technology and the homogenization of global culture, influences behavioral patterns and requires regulations that are in line with this global dynamic. This socio-economic reality requires family law reform, especially in the Islamic world, to meet the needs of ever-evolving family regulations.¹¹

Then, when discussing the factors that cause changes or renewal of Islamic marriage law, basically there are so many factors that cause changes in Islamic law. Especially in marriage law in the Islamic world. Therefore, at least here the author has summarized some of these factors as follows: a) The existence of a legal vacuum: The meaning of a legal vacuum here is when there is a new problem that arises in the midst of society, where the problem does not yet have a law in the classical *fiqh* book that regulates it so that there is a fear of a legal vacuum that does not regulate it. So here it is necessary to demand the *ijtihad* process of scholars to issue laws that can answer each new problem; b) The development of globalization and technology: Almost the same as the first point, but at this point due to the rapid development of globalization and technology, it is not surprising why its influence has a great impact on Islamic law, especially on the marriage law system. Thus, society can be calm and can know to answer every new case that arises along with the development of the era; c) The influence of state reform: With the influence that then provides space for Islamic law to become national law, it is not surprising that Islamic law needs to be renewed so that it can answer every problem that arises related to the state; d) The influence of bad external socio-cultural changes: At this point, talking about the influence of socio-cultural aspects, which means the influence of foreign communities that influence the order of life of the local community. Both in terms of habits and lifestyle, so that sometimes the external socio-cultural influence is not in accordance with the applicable law, in this case the author takes the example of the case of the bad habit of free sex from western countries.

Therefore, the change requires a movement to develop Islamic law, especially marriage law. Therefore, it can formulate legal steps that can address current problems and

⁹ Depdikbud, *Kamus Besar Bahasa Indonesia*, cet. Ke-3 (Jakarta: PN Balai Pustaka, 1990), p. 82.

¹⁰ Lois Ma'luf, *Al-Munjid al-Abjadi*, (Beirut, Libanon: Dâr al-Masyriq, 1986), p. 229.

¹¹ Fathul Mu'in, Miswanto, dkk, "Pembaharuan Hukum Keluarga Islam Di Indonesia Dalam Peningkatan Status Perempuan", *Jurnal Legal Studies*, Vol. 2, No. 1, p. 14.
<https://ejournal.unuja.ac.id/index.php/ljsj/article/download/3390/1298#:~:text=Pembaruan%20hukum%20keluarga%20Islam%20di%20maksudkan,mujtahid%20dengan%20kebutuhan%20masa%20kini>.

developments arising from the advancement of modern science and technology. This involves two components for the formation of new legal regulations. The first objective is to establish legal principles for new problems that do not have existing regulations, while the second objective is to identify or formulate new legal provisions for problems that currently have regulations but are no longer in line with contemporary circumstances and the interests of society.

B. Wisdom Marriage Law Update

In the following discussion, the author will try to provide further explanation regarding the wisdom of the renewal of marriage law so that by knowing it can make us accept the renewal of Islamic law. It should be remembered again, in the previous discussion the author has explained several factors causing the renewal of Islamic law, which in essence is to be able to provide answers for the community if they find cases that are contemporary (new), where the law is not yet known. The objectives of the renewal of Islamic law in general can be grouped into three as follows: a) Raising the status of women; b) Responding to the development of the times; c) Providing unity (universification) to the law.

First, raising the status of women here is with the aim of giving women a better status in every legal issue that applies, especially in the field of marriage law in the Islamic world. Of course, in raising the status of women, it can be seen in the field of marriage law, both in polygamy law, especially in Indonesia, where to give permission to a husband to practice polygamy, he must go through very complicated requirements, and one of them must have the approval of the first wife.

Then, in the field of joint property law (joint property) which provides flexibility for the wife to obtain her property. The position of women is strengthened by the provisions on joint property. Joint property refers to assets acquired during marriage that are different from the individual assets of the husband and wife. Both parties have the same duties and rights regarding the maintenance and expenditure of the property. This condition requires authorization or approval. The wife can apply to the Religious Court for Marital Seizure of joint property if the husband's actions endanger the integrity of the property. Examples include gamblers, alcoholics, and similar people. This can be seen in the Marriage Law No. 1 of 1974, articles 35-37.¹²

In addition, there is also in the field of divorce law, This relates to divorce cases initiated by the wife (Khulu'). Family law in Islamic countries stipulates that divorce can be initiated not only by the husband but also by the wife through a divorce complaint (Khulū'). A divorce complaint can be filed when the husband violates the marriage bond stipulated in the marriage contract or when he violates the ta'lik talak as outlined in Indonesian family law regulations,¹³ and there are many other areas of family law that provide women with a better status. From this explanation, it can be seen that all of this aims to provide peace of mind for women in every family law issue, thus raising the status of women.

Second, responding to the development of this era, it can basically be understood that every time the development of the era is getting faster. So it is not surprising that it can have an impact on Islamic law itself. With the development of the era, there will be many new cases of phenomena that emerge. Which new cases do not yet have classical Islamic law that

¹² *Ibid.* p. 27.

¹³ Ibnu Radwan Siddik Turnip, *Hukum Perdata Islam Di Indonesia (Studi Tentang Hukum Perkawinan, Kewarisan, Wasiat, Hibah dan Perwakafan)*, (Depok: Rajawali Press, 2021), p. 127.

regulates them, so they are afraid of a legal vacuum. Therefore, this is where the purpose of the *ijtihad* process applies, namely issuing new laws to overcome new cases.

Therefore, legal change becomes very important. Another factor is the legal factor, namely the need for legal rules (legislative framework) that are in line with the contemporary legal system. This interest affects the legal process and administration, as well as the content of the law. An illustration is documented evidence for a particular legal situation. Oral testimony is not enough for legal issues that require comprehensive evidence. This explanation relates to the importance of legislation throughout society. Effective laws must address social problems and not be an obstacle to growth and progress. To restore the relevance of Islamic law or to reconcile theoretical doctrines in *fiqh* texts derived from the reasoning of the *mujtahids* with contemporary needs.¹⁴

Third, providing legal unity. This next point will lead to the unification of Islamic law to all local communities, in this case usually in Indonesia known as the term legality of law. So that the law applies to all citizens without exception. Unification requires the application of a certain legal framework uniformly for all individuals in a particular country. If a law is unified, then only one particular form of law applies in that country, without any other laws or legal systems in effect. The measure of legal uniformity or legal unification that will be applied uniformly in all aspects of the country under a certain jurisdiction as national law.

The benefits and insights gained from legal unification include the guarantee of legal certainty, where the application of the law is consistent for all individuals in the jurisdiction, regardless of ethnicity, class, or race. This uniformity helps society understand and obey the law, reduces confusion regarding legal knowledge and interpretation, and reduces intentional and unintentional misapplication of the law, thereby preventing misunderstanding of the applicable legal framework. So it is clear that the meaning of legal unification has been successful, namely with the efforts to compile laws and laws for all areas of society.¹⁵

In Indonesia, there are at least several points that have made changes or legal updates, especially in the field of family law. Referring to Tahir Mahmood's research, he identified that there are 13 crucial issues in family law that must be updated, namely: a) Minimum age limit for marriage; b) The role of guardians in marriage; c) Marriage registration; d) Economic capacity in marriage; e) Polygamy; f) Family support; g) Restrictions on the husband's divorce rights; h) Rights and obligations of husband and wife after divorce; i) Pregnancy and its implications; j) Parental coercion (*ijbar*) rights; k) Division and amount of inheritance rights; l) Mandatory wills; m) *Waqf*.¹⁶

The changes above are basically in line with the theory that was once put forward by Imam Syafi'i, namely that the law can also change due to changes in the legal arguments applied to certain events in implementing the *maqāsyid sharia*, which is known as the term *qaul qadim* and *qaul jadid*.¹⁷ From the explanations above, it can be understood that the wisdom and benefits of the renewal of Islamic law are numerous. Both in terms of raising the status of women by providing comfort and security in the field of family law, then with

¹⁴ Fathul Mu'in, Miswanto, *Oo. Cit.* p. 25.

¹⁵ Umar Al-Faruq, Noch Ropik Al-Jamal dan dkk, "Kodifikasi dan Unifikasi Hukum Islam", *Jurnal Kajian Agama dan Multikulturalisme Indonesia*, Vol. 3, No. 2, p. 71, <http://jurnal.anfa.co.id/index.php/reonesia/article/view/1879/1742>.

¹⁶ Tahir Mahmood, *Personal Law in Islamic Countries* (Time Press, New Delhi, 1987), p. 11-12

¹⁷ Hadir Budiman Ritonga dan Kurniawan, "Qaul Qadim dan Qaul Jadid Imam Syafi'i Pembaruan Pemikiran Hukum Islam Dalam Konteks Qaul Aqdim dan Qaul Jadid", *Jurnal Hukumah*, Vol. 6, No. 2, p. 24, <https://ojs.staituankutambusai.ac.id/index.php/HUKUMAH/article/download/573/349>.

the renewal of Islamic law it can also be a bridge in overcoming every problem of new cases (contemporary), so that there is no legal vacuum at any time. Then, what is no less important is the unification of law or unity of law so that the law applies to every citizen, in this case in Indonesia it is known as legal legality or positivism towards law so that the scope of its application extends from Sabang to Merauke.

CONCLUSION

The reform of Islamic law is basically caused by many factors, but in this writing, it is focused that there are three causes of the change or reform of Islamic marriage law, including the existence of a legal vacuum, the development of globalization and technology, the influence of state reform and the influence of bad external socio-cultural changes. Reform of Islamic family law can be implemented as necessary in accordance with the limitations set by Sharia. The purpose of the reform of Islamic family law is to improve the position of women, adapt to contemporary conditions, and build legal cohesion in Islamic jurisprudence. This reform seeks to answer the challenges of modernity, because traditional interpretations of the Qur'an, Hadith, and fiqh texts, as well as outdated laws, are considered insufficient to solve contemporary legal problems. Thus, Islamic law remains in effect and remains the solution to every new problem that arises in every era.

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