

Development of Islamic Civil Law in Indonesia (Marriage and Inheritance Aspects)

Irwan Haryowardani

Universitas Pembangunan Panca Budi Medan, wanharyowardani@gmail.com

ARTICLE INFO

Keywords:

Development of Islamic Civil Law;
Marriage;
Inheritance .

ABSTRACT

This paper discusses the development of Islamic civil law in Indonesia restricted regarding aspects of marriage and inheritance. Discussion of developments means in Islamic civil law in the reform era, either already in the form of implementation or as ideas. These developments can be seen on various topics of discourse and implementations are carried out in Indonesia as a discussion of children born out of wedlock, the legal registration of marriages , polygamous regulation, wasiah wajibah, replacement in inheritance and other issues regarding Islamic law in marriage and inheritance in Indonesia.

Article history:

Received 2023-12-05

Revised 2023-12-08

Accepted 2023-12-09

This is an open access article under the [CC BY-NC-SA](https://creativecommons.org/licenses/by-nc-sa/4.0/) license.



Irwan Haryowardani

Universitas Pembangunan Panca Budi Medan, wanharyowardani@gmail.com

1. INTRODUCTION

Development of Islamic civil law Indonesia, some of them its aspects, namely marriage and inheritance, are one of the excesses of social and political changes that occurred in Indonesian society.(Maktabah Wahbah, Kairo, 2001) Especially Social change is something that cannot be avoided in life real, including the assumptions and views of some Muslims that

Islamic law is something sacred and eternal. So the assumption arises that social change must adapt to Islamic law, not vice versa, social changes influence legal enactment. A phenomenon that causes emergence assessment that Islamic law is a law that has eternal validity.³ For In response to the sacredness and eternity of Islamic law, a suspension was carried out First of all, the nature of the relationship that seems transcendent, between Islam (as religion) with the formalization of Islamic law, which has been known as sharia. According to Abdullah Ahmed an-Na'im, sharia is not Islam itself, but rather only interpretations of texts that are basically understood in historical context certain. (J.N.D. Anderson, 1991).

The development of Islamic civil law in Indonesia cannot be separated from the history of Islam itself. Talking about Islamic law is the same as talking about Islam as a religion. Islamic civil law existed in Indonesia long before the arrival of the colonialists. (Abdullah Ahmed an-Na, 2015) However, post-colonial Indonesian law is generally a legacy of Dutch colonialism. When Indonesia proclaimed independence there was indeed a transfer of power from the colonialists to the Indonesian people, but there was no systematic transition from Dutch law to Indonesian law, except for the 1945 Constitution as a product. Indonesia which arranged on an emergency basis. All laws that came into effect after the ratification of the 1945 Constitution on 18 August 1945, whether civil law, criminal law, procedural law, or other laws, are a continuation of the laws in force in administrative region of the Netherlands. After starting to stabilize, Indonesia also introduced its own Indonesian law, but in fact the insight of law designers and makers in Indonesia has not been able to escape the insight of foreign law. (Prof. Mr. Rosalan Saleh, 2018).

Basically, a country's laws must have more national and local characteristics than international and universal ones. On this basis, it is also necessary to have international law that regulates relations between countries. Therefore, each country has its own laws, and what is considered unlawful in one country may not be so in another country. The strong influence and legacy created by the legal politics of the Dutch Colonial government in this country means that there is still a stigma towards other legal systems in Indonesia, especially Islamic law. (Mukhtar Zamzam, 2018) Apart from that, there is often a tug-of-war in the authority to adjudicate between courts which in fact were raised by the Dutch colonial government and courts based on Islamic law, ranging from those in the form of option rights to legal dualism.

METHODS

Based on the required data, this research uses a descriptive qualitative form of research, namely the data collected is in the form of words, images, not numbers. Qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observed behaviour.

2. FINDINGS AND DISCUSSION

a. Field of Marriage Law

The Birth of MPR Decree No. III/MPR/2000 concerning Legal Sources and the Sequence of Legislative Regulations increasingly opens up opportunities for the birth of legal regulations based on Islamic law. Especially in Article 2 paragraph (7) which confirms the inclusion of regional regulations based on the special conditions of a region in Indonesia, and that these regulations can override the application of general regulations. One proof of this is the birth of Law Number 32 of 2004 and Qanun of Nangroe Aceh Darussalam Province concerning the Implementation of Islamic Sharia Number 11 of 2002. Thus, in this era of reform, wide opportunities are open for the Islamic legal system to enrich the treasures of legal tradition in Indonesia, so that reform steps can be taken, and even the formation of new laws that are sourced and based on the Islamic legal system, to then be used as positive legal norms that apply in National law in Indonesia.

As has been stated, there are at least four products of Islamic legal thought that have developed and are applicable in Indonesia, along with its growth and development. The four products of Islamic legal thought are fiqh, ulama fatwas, court decisions and statutory regulations. Apart from these dynamic developments, there are also very interesting things in the reform era, namely that there are many problems with Islamic civil law, legal conflicts, and the pros and cons of these legal events. However, ironically there are very few positive legal products relating to Islamic civil law.

Law on Illegitimate Children In principle, there is no problem regarding the law on illegitimate children in Islamic civil law, this problem has arisen since the issuance of the Constitutional Court (MK) decision Number 46/PUU-VIII/2010 concerning the status of

illegitimate children, 8 of these decisions include change the sound of Article 43 paragraph (1) of Law Number 1 of 1974 concerning Marriage which originally read: "Children born outside of marriage only have a civil relationship with their mother and her mother's family". Based on the Constitutional Court's decision, Article 43 paragraph 1 of this Law must be read as, "Children born out of wedlock have a civil relationship with their mother and their mother's family and with a man as their father which can be proven based on science and technology and/or other evidence. according to the law, he has blood relations, including civil relations, with his father's family.

There would be no problem from an Islamic law perspective if the Constitutional Court annulled Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage, likewise if the Constitutional Court did not add information to Article 43 paragraph (1) because there is nothing contrary to the law. Islam. However, this is different because the Constitutional Court added the provisions of Article 43 paragraph (1) which means that a child born out of wedlock can also have a civil relationship with his biological father's family. Even the Indonesian Ulema Council (MUI) then issued a fatwa that clearly opposed the Constitutional Court's decision. In principle, the MUI rejects the conversion of illegitimate children to their biological fathers.

Marriage Laws for Foreign Citizens in Indonesia At the National Working Meeting of the Supreme Court in 2005, the idea emerged of the need to imitate Egypt. There, every foreign citizen (WNA) who wants to marry a local woman must deposit 25,000 Egyptian pounds into the bank. This money functions as collateral if their marital relationship breaks down. If converted into rupiah, the value is approximately equivalent to IDR 500,000,000 (five hundred million rupiah). This idea emerged to protect Indonesian women. Especially if all this time she has only relied on her husband's income. Once the husband leaves Indonesia, either because his work contract expires or he gets divorced, the wife's burden will increase. This idea immediately sparked debate, as if the Supreme Court (MA) had made a decision that every foreigner who wanted to marry an Indonesian woman had to deposit IDR 500,000,000 (five hundred million rupiah).

Then regarding the continuation of the Supreme Court's idea, until now there has been no visible progress, and there are no regulations governing it. The marriage of 2 (two) foreign citizens who are not domiciled in Indonesia can be carried out in Indonesia based on Article 35 letter b of Law Number 23 of 2006 concerning Population Administration and its explanation jo. Law Number 1 of 1974 concerning Marriage must be carried out according to the marriage law in force in Indonesia. Based on statutory regulations, there are two things that are regulated, namely: First, it must be based on religious law. Second, the marriage must be registered at the local marriage registration agency. Regarding this registration, it is then regulated in Minister of Home Affairs Regulation Number 12 of 2010 concerning Guidelines for Marriage Registration and Reporting Deeds Issued by Other Countries.

b. Field of Inheritance Law

Islamic civil law regarding the Islamic inheritance legal system has experienced quite significant developments. Where initially Islam used a patrilineal inheritance system, which could inherit only from the male line, then it developed into a bilateral inheritance system initiated by Hazairin, which was deemed to be in accordance with what was contained in the Koran. In this bilateral inheritance system, the term substitute heir has finally become known, namely an heir who obtains inheritance rights because he replaces the position of his parents who have died first. The Qur'an as the main source of Islamic law has provided legality as well as providing an explanation regarding replacement heirs, although the explanation in question is not complete.

According to Hazairin, the concept of a substitute heir is the result of thinking in interpreting the word *mawali*. Where *mawali* are people who become heirs because there is no longer a link between them and the heir, because the person who is the link has died before the heir, who should have received the inheritance if he was still alive. This concept does not contradict what is in the Qur'an, Surah an-Nisa' verse 33. Hazairin freely explained that the text of Verse 33 of Surah an-Nisa contains the meaning that Allah made *mawali* for so and so from the wealth left by parents and family. near the heir.

The complexity of Indonesian society means that judges have to leave the existing formal jurisdiction, namely by using the *rechtsvinding* function which is justified by positive

law if there is no law that regulates it. This authority is given in article 5 of Law Number 48 of 2009 concerning Judicial Power. Apart from that, the Compilation of Islamic Law in article 229 also gives judges the authority to resolve cases by paying close attention to the legal values that exist in society so as to provide decisions that are in accordance with a sense of justice. In principle, judges have the authority to use their function as *rechtsvinding* or in Islamic law called *ijtihad* as an alternative. In the case of a narrow mandatory will for adopted children and adoptive parents, the judge is obliged to use the authority of his *rechtsvinding* or *ijtihad* function. It will be difficult to carry out formal jurisprudence in the Compilation of Islamic Law against people close to the heir outside of the adopted child and adoptive parents. In fact, if the judge does not carry out *rehtvinding* because there is no law that regulates it (*ius coria novit*) then the judge can be given sanctions (article 22 *Algemeen Bepalingen van Wetgeving Voor [AB]*)

The definition of *walad* in Arabic is child, especially for boys using the word "ibn" and for girls using the word "bint". Then the word "walad" is used to mean children, so what is meant is boys and girls. This is proven by the absence of the word *walad* in the *muannast* form. This is the concept of *walad* which is understood in its Islamic essence in the *syarah* of the Qur'an. Scholars differ in their understanding of the word *walad* which is mentioned twice in the Qur'an, Surah An-Nisa' verse 176, thus influencing the concept of *kalalah* which is closely related to the meaning of *walad*. In this verse, *kalalah* is an heir who does not leave *walad*, which means giving his "brother" the opportunity to receive the inheritance. (Ali, Zainuddin, 2006) Thus, the existence of the *walad* perspective above causes the *mahjub* "brother" in terms of inheritance. This difference is what underlies the question, why elsewhere in the Qur'an the scholars agree in understanding the word *walad*, whereas in verse 176 of surah an-Nisa they differ in opinion. Differences of opinion are also driven by several other factors, including social culture, the situation and conditions in which the *ulama* live.

In terms of its meaning, *lafaz walad* is a type of *musytarok lafaz*. It is said to be the *lafaz musytarok* because seen from the meaning of *musytarok* itself, it is a *lafaz* which has two or more meanings, such as the *lafaz al-yadu* (hand) which can mean the right hand as well as the left hand, likewise the *lafaz walad* can mean boy or girl. (Nurlaelawati, Euis dkk, 2012)

3. CONCLUSION

Islamic civil law has increasingly developed dynamically, especially since the birth of Law number 7 of 1989, followed by Law Number 3 of 2006 and several other laws which are in line with the development of Islamic civil law in Indonesia, especially in the field of marriage law and the field of law. inheritance. These developments can be seen from various discourse and implementation discussions carried out in Indonesia, such as discussions regarding children born out of wedlock, marriage registration laws, polygamy regulations, mandatory wills, substitute heirs and so on. Based on this conclusion, it is appropriate for the state to always support the development of Islamic law or Islamic civil law in particular, some of the most important aspects of which are the areas of marriage and inheritance. Because enforcing Islamic law is not only a necessity for Muslims, but more than that, Islamic law is one of the frameworks of worship and carrying it out is a form of obedience and obedience of a Muslim to his God. Therefore, the 1945 Constitution has guaranteed that every Indonesian person can practice their religion, there is no longer any need to have phobias about Islam, and for every Muslim to always practice Islam according to the Kaaffah.

REFERENCES

- Al-Bari, Zakaria Ahmad. 1977. *Ahkam al-Auladh fi al-Islam*, Jakarta: Bulan Bintang
- Ali, Mohammad Daud. 1998. *Hukum Islam: Pengantar Ilmu Hukum dan Tata Hukum Islam di Indonesia*, Jakarta: Raja Grafindo Persada.
- Ali, Zainuddin. 2006. *Hukum Perdata Islam di Indonesia*, Jakarta: Sinar Grafika.
- Al-Qardawi, Yusuf. 2001. *Madkhal li Dirasah asy-Syari'ah al-Islamiyyah*, Kairo: Maktabah Wahbah.
- Al-Qoshir, Fada Abdul Razak. 2004. *Wanita Muslimah Antara Syari'at Islam dan Budaya Barat*, Yogyakarta: Darussalam Offset.
- Ansori, Abdul Ghofur. *Implementasi Hukum Ekonomi Islam Dalam Sistem Perbankan di*

- Indonesia, (Makalah disampaikan dalam kuliah perdana Mahasiswa Angkatan XII Program Magister (S2) Ilmu Hukum PPS UIR tanggal 7 Februari 2009)
- An-Na'ım, Abdullah Ahmed. 1994. Dekonstruksi Syari'ah: Wacana Kebebasan Sipil, Hak Asasi Manusia dan Hubungan Internasional dalam Islam, Yogyakarta: LKIS.
- As-Syatibi, Abu Ishaq. 1975. *al-Muwafaqat fi Usul asy-Syari'ah*, Beirut: Dar alMa'rifah.
- Fuad, Muhsun. 2005. *Hukum Islam Indonesia; dari Nalar Partisipatoris Hingga Emansipatoris*, Yogyakarta: LKIS
- Hamid, Al-Qamar. 2005. *Hukum Islam Alternative Terhadap Masalah Fiqh Kontemporer*, Jakarta: Restu Ilahi.
- Mubarok, Jaih. 2006. *Hukum Islam Konsep, Pembaruan dan Teori Penegakan*, Bandung: Benang Merah Press.
- Nurlaelawati, Euis dkk. 2012. *Problematika Hukum Kewarisan Islam Kontemporer di Indonesia*, Jakarta: Badan Litbang dan Diklat Kementrian Agama RI.
- Zamzami, Mukhtar. 2008. *Varia Peradilan; Stigma Warisan Kantoor Voor Inlandsche Zaken*, Jakarta: IKAHI.