

The Development of Ideas on The Reform and Transformation of Islamic Family Law Into Legislation in Islamic Countries

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Article Information

Submitted: 20
November 2023
Accepted: 24
November 2023
Online Publish: 27
November 2023

Abstrak

Reformasi Hukum Keluarga di Negara-Negara Muslim masih menjadi perdebatan di Masyarakat Muslim Dunia karena menganggap hukum Keluarga Islam dan Hukum Keluarga tidak memiliki kesetaraan. Artikel ini bertujuan untuk mengetahui pembaharuan dan transformasi Hukum Keluarga di dunia Islam. Penelitian ini merupakan kepustakaan, dengan tipe penelitian deskriptif analitik. Pendekatan yang digunakan ialah interdisipliner yaitu pendekatan komparatif, yuridis, filosofis, dan historis, adapun sumber penelitian ini menggunakan sumber primer buku-buku Hukum sumber sekunder seperti tesis, disertasi, dan artikel jurnal, Hasil Faktor Yang Mempengaruhi Pembaharuan Hukum Keluarga Islam di Dunia ialah, Politik, Ekonomi, Hukum Sosial, Metode Reformasi Hukum Islam ialah, Siyasyah al-Shar'iyah, Takhayyur, Takhsis al-Qhadha, Teori lama Ijtihad, Ijma, Qiyas, Maslahah Mursalah, Sadd' al-Dhari'ah Pembaharuan Hukum Islam di Dunia ialah, Poligami, Kewarisan, Pencatatan Pernikahan dan Perjanjian Pernikahan Transformasi Hukum Keluarga Islam di Indonesia ialah Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Lembar Negara Nomor 1 Tahun 1974, Tambahan Nomor 3019/1974. Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam yang menjadi acuan standar bagi hakim dalam memutus perkara. Undang-Undang Tahun 2002 tentang Perlindungan Anak, Undang-Undang Nomor 23 Tahun 2004 tentang Kekerasan Dalam Rumah Tangga, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual Dan Peraturan Perundang-Undangan tersebut selaras dengan Hukum Keluarga Islam.

Kata Kunci: *Pemikiran, Transformasi, Hukum Keluarga, Perundang-Undangan*

Abstract

Family Law Reform in Muslim Countries is still a debate in the Muslim World Community because it considers Islamic Family Law and Family Law to have no equality. This article aims to know the renewal and transformation of Family Law in the Islamic world. This research is a literature, with a type of analytical descriptive research. The approach used is interdisciplinary, namely comparative, juridical, philosophical, and historical approaches, while this research source uses primary sources of secondary source Law books such as theses, dissertations, and journal articles. Results of Factors Affecting the Renewal of Islamic Family Law in the World are, Politics, Economics, Social Law, Islamic Law Reform Methods are, Siyasyah al-Shar'iyah, Takhayyur, Takhsis al-Qhadha, The old theory of Ijtihad, Ijma, Qiyas, Maslahah Mursalah, Sadd' al-Dhari'ah The Reform of Islamic Law in the World is, Polygamy, Inheritance, Marriage Registration and Marriage Agreement The transformation of Islamic Family Law in Indonesia is Law

How to Cite

DOI

e-ISSN

Published by

Alex Kusmardani, Siah Khosyi'ah, Oyo Sunaryo Mukhlas, Nurrohman, Usep Saepullah/The Development of Ideas on The Reform and Transformation of Islamic Family Law Into Legislation in Islamic Countries/Vol 4 No 5 (2023)

<http://doi.org/10.36418/syntax-imperatif.v4i5.296>

2721-2246

Rifa Institute

Number 1 of 1974 concerning Marriage, State Sheet Number 1 of 1974, Supplement Number 3019/1974. Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law which became a standard reference for judges in deciding cases. Law of 2002 concerning Child Protection, Law Number 23 of 2004 concerning Domestic Violence, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and these laws and regulations are in line with Islamic Family Law.

Keywords: *thought, transformation, family law, legislation*

Introduction

In the 20th century, one of the emerging phenomena in the Islamic world was the Family Law Reform (Zaelani,2013). Islamic Family Law is one of the most recognized fields in Muslim societies around the world today (Muslim and Ja'far,2019). Its existence is not only because it is still practiced in their traditional socio-cultural life, but also manifested in legal form through legislation that is transformed into official legislation in the country. Almost all Islamic countries in the Africa-Asia region have family law, including Indonesia with Marriage Law No. 1 of 1974, Law of 1989 concerning Religious Courts, Presidential Instruction of 1991 concerning the Compilation of Islamic Law in 1991. Supreme Court Regulation No. 2 of 2008. (Afdal,2016) This shows that the field of Islamic Family Law is very important to be applied in all countries of the Islamic world today. Muslim countries have always regarded Turkey as the first country to reform family law, beginning in 1917, followed by Egypt in 1920, Iran in 1961 and Indonesia in 1974 (Nurroniyah,2016). Islamic Family Law reform in Indonesia is considered slower than other Muslim countries, because it was only implemented in 1974 with the existence of Law No. 1 of 1974 on Marriage which regulates Family Law (Bakar,2019).

But the facts and reality in the process of family law reform throughout Muslim countries are not easy, because in some Muslim countries there is still a dichotomous debate between religion and state which according to Heldon where the relationship between religion and state often forms unequal regulations in Family Law (Welchman at al,2023) In addition, ongoing Family Law reforms, particularly in Indonesia, have faced significant resistance from social groups over the years (Asosiasi Dosen Hukum Keluarga Islam Indonesia,2020). Muslim countries in reforming Islamic Family Law can be categorized into three groups:

First, countries that have not transformed Islamic family law into legislation such as the Kingdom of Saudi Arabia and this country have made legal adjustments from classical jurisprudence, Second, countries that have liberalized Islamic law. most come from European laws such as Turkey. The three countries undertook moderate reforms to adapt to contemporary needs and changes, focusing on conventional ideas with a long-term perspective of Egypt, Tunisia, Pakistan, and Indonesia.

The factors that influence the reform of transformation of laws and regulations are asked first, in anticipation of the vacuum of legal regulation because the culture and customs contained in the *Books of Fiqh* only answer where scholars wrote in their time, while the prolematics of mankind is very dynamic which has a lot of contemporary problems that require legal certainty (*rule of law*) Allow the foundation to be set. The second is that Science and Technology are constantly developing which urgently need regulation to be regulated, especially matters that have never been discussed by Islamic Jurists in classical times so that contemporary Islamic Jurists are required to answer problems that are new to society. Third, the influence of reforms in various social, political, economic fields that open up opportunities for Islamic Law as a reference in producing National Law. Fourth, the influence of Islamic legal thought reforms implemented by the Mujtahids both at the international and national levels; (Setiawan, 2014). Such as age restrictions in marriage,(Aemanah,2023)

Polygini, (Zein,2010) Divorce in Court, (Kusmardani at al 2022) Inheritance for adopted children and different religions, (Raharjo and Putri,2019) Pencatatan Pernikahan (Khosyi'ah,2015), Domestic Violence (Nurzakia,2020), Post-Divorce Child Custody (Kusmardani & Khosyi'ah,2022), Waqf Management, (Adawiyah,2019), Common Treasure (Muthia,2021)

According to the Rules of Fiqh it is explained: "*La Yunkar Thagayyur al-Fatwa bi Thagayur al-Azman wa al-Amkinah*" (Jum'ah 2012) It is undeniable that laws can change with changing times and places Or in other lafadz *Thagayyur al-Ahkam bi thaggur al-Azman wa al-Ahwal wa al-Awa'id* (Aj-Jauziyyah 1996) Changes in Law seen from situations and conditions, Therefore, to legalize Islamic Family law derived from the classic books of ijtiḥad of scholars, legislation is needed as a way to regulate laws and regulations in carrying out legal reforms (Parolin, 2021) As for Family Law Reform by conducting musyarrah in parliament in every Muslim country, generally Muslim-majority countries, especially Indonesia, so as to fair the public policy (Suntana,2014).

So it can be understood that Islamic family law legislation against legislation becomes the policy of policymakers for the sake of a problem based on *Tasharuf al-Imam Ra'iyah manut bi al-Maslahah* (Al-Suyuti, 2012) So the existence of legislation products is a benefit. Based on the description and problems above, the author is interested in examining the study in Family Law which the author entitled Development of Thought on the Reform and Transformation of Islamic Family Law into Legislation.

Research Method

This research is a *library research* (Zed,2004) jenis penelitian kualitatif (Melong,2020) Descriptive analytic research type. The approach used is an interdisciplinary approach, namely a comparative approach, by comparing between Indonesian Law and Other Muslim Countries then juridical, which is an approach used derived from legislation, philosophical based on the rules of Islamic Family Law (Arfa, 2010). Historical, which is associated with the history of the development of Family Law in the Islamic world, while the source of data in this study was obtained from the results of studies in libraries and Family Law Books as primary sources plus secondary sources, namely theses, dissertations and journal articles that support it.

Result and Discussion

Family Law in Islamic countries has different names. Some of them are *Ahkam al-Usrah*, *Nidzam al-Usrah*, *Qanun al-Usrah in Morocco called Mudawanah with reference to the work of Imam Malik ibn Anas and the most popular al-Ahwal al-Shaqshiyah*, which literally means personal behavior. And it could be that this naa is taken from *personal law* in English. (Laili & Bazikh, 2023) And Dutch is called *personrecht* Both terms in Western Law cover the issue of legal validity (*rechtsbevoegdheid*) and weedness act (*handelingsbevoegdheid*). The first person to make *al-Ahwal al-Shakhsiyah* a study and codify it in a book was Muhammad Qadri Pasha, an Islamic jurist from Egypt. Which is defined by Legal experts. Abdul Wahab Khallaf defines *al-Ahwal Shakhsiyah* as a Law relating to the family since its inception, and is intended and intended to govern each other's spouses and relatives. ('Khallāf,2002) Wahbah Az-Zuhaily defines *ahwal al-shakhsiyah* with laws that regulate family relationships from the early days of its formation to the final or final days (*family*) in the form of marriage, *talaq* (divorce), nasab (offspring), livelihood and inheritance (Al-Zuhaylī,1986).

From the two family law terminology above shows that editorially it looks different, but substantially the stress is the same, and can be accumulated at least: First, the law of family

relations between husband and wife occurs through the process of marriage (*khitbah*) until marriage occurs, even until there is separation between husband and wife caused by the death of one of them, or because of divorce. Second, the law of kin relations, in the sense of guardianship relations and maintenance of immature children as a consequence of marriage. Third, family property law, which includes the division of property due to divorce, the division of inheritance due to the death of one family member, wills, grants, and endowments.

LJ Van Apeldoorn define with the term *familierecht* is the rule of legal relations arising from family relationships, it contains about it contains rules about first. Marriage, including property law relationships between husband and wife. Second. The relationship between parent and child, third The relationship between guardian and supervised child, fourth. Relationships between people who are placed under forgiveness because of insanity or unhealthy thoughts or because of extravagance and forgiveness (Apeldoorn, 2012). Islamic Family Law in its Basic Principles includes four subsystems of Law namely, Marriage, Parenting and Maintenance of Children, Inheritance and Wills, Guardianship and Guardianship (Suma, 2004)

Hasbi Ash Shidique in principle humans have the habit of wanting to be immortal in their lives in the world as humans who then eternity is turuan, children, grandchildren and great-grandchildren, therefore it is necessary to regulate family problems. Good offspring in Islam can be obtained through marriage, and marriage is a strong bond whereby as a sunatullah for humans who distinguish from animals, a good household is treated in stages: first, knowing the bride to be invited, second, knowing physical and mental health, third mutual pleasure between the two spouses and family. Mutual pleasure from both spouses and families. Fourth, sekufu, fifth dowry. (Hasbi, 2001) Thus it can be affirmed that what is meant by Islamic family law is the law that regulates the relationship between family members, both small family members / nuclear such as father, mother, and child as well as extended family members (*al-'ā'ilah*) such as nuclear family members plus grandparents, uncle's children, aunts' children, and other relatives in family life, and they in living family life are in one household, or not in one household because there was separation because they married other family members, because of divorce, and died. All family life is carried out based on the values of Islamic teachings (Syaltut, 2001).

The essence of Family Law is formed from marriage relationships built by love and affection between men and women Women are oriented towards the formation of the Sakinah family, which is based on the cinta of affection besides marriage includes a strong sacred covenant between fellow brides Family in human practice. Which has a function in life between individuals to interact with each other (Saepullah, 2021).

History Of The Development Of Islamic Family Law Reform

In the late 20th century, geopolitical developments focused on Islamic law and its role as a sign of identity and legality for opposition political movements in Muslim-majority countries. Postivarian approaches to legislative power have concentrated on the application of law in various fields. This is inseparable from the period of independence of Middle Eastern countries, a number of countries have announced a legal instrument that will be presented as a basis for the implementation of regulatory obligations on Islamic criminal sanctions. Such as the Islamic banking and finance system which is also developing rapidly. Constitutional arguments based on formalization with Islamic law being the source of statutory law in Muslim-majority countries, the Court being a place for contestation about the requirements of sharia and the extent to which the law will accommodate Islamic law (Welchman, 2007)

The development of Family Law could not be separated from the political attention that was then held by the Ottoman Empire which ruled in Arab countries and other countries, both

in Muslim-majority and Muslim-minority countries. And this focus became a more consistent feature in the new History than any other field. Western scholars have described with the metaphor the last bastion of law as a picture of forces trying to fight globalization against harmful cultures, so from there policymakers codified Islamic Law which was then held by the Ottoman Empire with the enactment of the Ottoman Law on Family Rights in 1917 With Islamic Law aimed at enforcing the Law, this caused a debate among Muslims where the applicable Law only came from the Hanafi madhhab, because some sources of law were adapted by the Hanafi madhhab developed by the newly built Turkish Government to establish formal relations between the Ottomans and Sunni schools (Welchman, 2007).

Ottoman Law on Family Right is already applied in various countries that continue in its application. As in Palestine which was part of Ottoman Law applied only to Muslims and Christianity and Jews applied their own family law. Then in Israel, which is part of the Ottoman Law on Family Right, it still applies Family Law to Palestinians even though it is codified for local law. In the Middle East, the Ottoman Law on Family Rights was used as a substantial reference to be codified as the Muslim Family Law in newly independent Arab countries in 1950. In 1950 Family Law was enacted in Jordan, Syria, Tunisia, Morocco and Iraq, and since then all Muslim-majority countries have begun to implement Family Law which was transformed into Law while the new Arab countries codifying Family Law are the United Arab Emirates in 2005 and Qatar in 2006. This codification of Family Law has different applications such as in Jordan, Lebanon and Palestine where the codification of Muslim Family Law is determined through a separate Sharia Court system. In Egypt the Sharia system has been abolished with family law applied through a regular system nationwide. This began in 2004 by establishing a Family Law Court that handles Family Law without intervening with the Shari'ah Court system. Ottoman Law on Family Right has been widely used as a reference for Muslim Family Law Reform in the Arab world over the past quarter century. And countries in the Middle East that implement Ottoman Law on Family Rights through local regulations or certify it with a new national system by applying it through an integrated national regular system or Islamic law separately.

This means that in some Arab countries there is still a dichotomy between Islamic Law as Religious Law and State Law as Law derived from human reason. However, the codification that occurred in Arab countries was none other than a refinement of the legal vacuum that had not been regulated in classical scholars and in another sense as a basis for establishing legal certainty, especially in the field of Family Law. Di Indonesia, although not classified as an Islamic country, but the majority of the population is Muslim. Reform in the realm of Family Law is very evident in some Muslim countries. In some literature, the form of legislation dominates various forms of change. Although the results of the regulation of Family Law in Muslim countries which generally get obstacles in social circles, the State with its consistency has Efforts to reform Family Law are inseparable from the emergence of Muslim reformist thinkers, both from foreign figures from abroad can be mentioned, among others, Rif'ah al-Thantawi (1801-1874), Muhammad Abduh (1849-1905), Qasim Amin (1863-1908), Mustafa al-Maraghi (1881-1945), Sayyid Ameer Ali (1849-1992), Tahir Hadad (1899-1935), Fazlur Rahman (1919-1988) (Adawiyah,2019). While the figures of the National Muslim reformists include a number of reformers in Indonesia Mukti Ali, Haran Nasution (1919-1998), Nurcholis Majid (1939-2005), Muhammad Hasbi al-Sidiqi (1904-1975), Munawir Sadjili (1925-2004), Abdurahman Wahid (1940-2009) with Islamic Indigenization" Sahal Mafudz (1937-2014) with Social Fiqh and Masdar F Mas'udi (1954) with the religion of Justice.(Setiawan,2014) When viewed from its purpose, the renewal of family law broadly aims to improve the status of women in all aspects of life and family law including inheritance law.

The author views that with the codification of Family Law in the Islamic world as an

effort to establish Family Law with various cases that often occur in our social society, because some problems related to family law between Indonesia and the world have similarities and problems that often occur in family law are the Age Limit for Marriage, the Role of Guardians in marriage, Marriage Registration, Polygamy, Wife Talaq in Court, Rights of Divorced Wife, Child maintenance after divorce, Male Woman's Inheritance Rights, Wills for heirs, Family endowment management, Domestic Violence, Forced Marriage and Forced Divorce, as well as Parental and Social Intervention in the Family.

Factors Affecting Family Law Reform

Legal reform is closely related to how a country/government manages its society effectively and efficiently. Anderson therefore suggests that support for legal reform in the Islamic world, and not just family law, has several reasons. next: (Muh, at al 2023)

Firs, Economic, Economic considerations are most clearly seen in changes in economic laws governing commercial activities as part of family law reform. An example is the reform of waqf regulations. Waqf has great potential as a tool for hoarding national wealth. Therefore, measures are needed that are able to optimize the role of Waqf. In addition to endowments, the banking sector is also important in encouraging economic growth. For reformist groups of the year, traditional interpretations of existing Islamic law on interest and banking were too rigid and strict

Second: Politics In addition to economic reasons, some of them are also political, which are closely related to the interests of the Islamic world in addressing external ideas. In this context, the desire of Muslims to follow the progressive steps of the West requires change. The changes also aim to show foreigners the ability of the Islamic world to free itself from Islamic legal systems deemed inappropriate for modern society, such as stoning adulterers. And the punishment of chopping off the thief's hand according to family law. Estimating gestational age at two, four, or even five months is a rule that arguably makes no sense. The development of medical science and technology has made it possible to predict gestational age to find out the condition of the child in the womb, which can be determined through careful consideration. Therefore, legal reform is needed.

Third, law Another reason lies in legal considerations, namely the need for regulations (legislation) that are in harmony with the modern legal system. This interest not only affects legal and administrative procedures, but also the nature of law. An example is written evidence of a particular legal issue. In legal cases that require detailed evidence, oral testimony alone is not enough.

Fourth, Social. This society shows the importance of law to society. Good laws must be able to answer the problems that exist in society and not as a means of control, restraint that always hinders the development and progress of society. Therefore, it is important to carry out legal reforms.

Methods Of Reforming Islamic Family Law

The emergence of various laws and regulations from the results of the renewal as described above is not in a vacuum, but has a specific purpose. In general, the legislation is shown as an effort to unify Islamic law in the different classical books of jurisprudence, for the purpose of contextualizing Islamic teachings, especially elevating the status of women to support the process of forming the law involves several methods:

Anderson discusses methods of reforming Islamic Family Law, including administrative regulations such as Takhsis al-Qadha and siyasah al-Shar'iyyah, Takhyir and Talfiq, Ijtihad, and sanctions (Anderson, 1957). Thahir Mahmood identifies two modern methods: old theories such as Ijma, Qiyas, and Ijtihad, and new theories such as Talfiq and

Takhayyir. These reforms have placed the views of the Islamic Madhhab in an equal place in Muslim countries, using methods such as Istihsan, Maslahah Mursalah, Shisha Shar'iyah, Istidlal, and Tadwin. (Mahmood, 1987)

In general, it can be concluded that the method used by classical and modern scholars, especially in modern forms, especially in the form of laws and regulations, in general, still uses the partial deductive method, which is to take legal provisions from the passage only by recording one or a few verses of the Qur'an and Sunnah are then concluded, without first relating to other verses or sunnahs, and put them as a unified whole.

Family Law Reform In The Islamic World

To respond to the reality that exists in society, reform efforts are carried out, especially in the field of family law, which aims to improve the status of women. Although Islam does not discriminate against women by nature, many people previously thought that they were inferior to men and had no equal rights. The situation of women is getting worse, they do not have access to education, let alone work outside the home. This situation drove the hearts of the warriors away from home. Such a situation has changed the hearts of activists who want to improve the status of women by protecting and guaranteeing the rights of neglected women. The forms of preservation and protection of women's rights are divided into various forms:

First, The Age of Marriage

The age of marriage and guardianship in classical fiqh books mentions the age of marriage only in adolescence which is biologically characterized by menstruation and in the case of men having wet dreams. Some Islamic countries have set a higher age of marriage for both men and women. The goal is to curb and eliminate the practice of early marriage and protect the health of the reproductive organs. According to Imam Hanafi, the initial age of marriage is when a man has wet dreams (12 to 18 years) or 9 to 17 years when a woman is menstruating. According to Imam Malik, the minimum age for marriage is 17 years. While Imam Syafii and Hambali argue that the upper age of child marriage is 15 years. This view persisted until the mid-12th and 19th centuries. This is due to the increasing awareness of the closing of the door of ijihad, causing stagnation of thought. According to Syafiyah Ulama, the minimum limit for marriage is 15 years, Hanafi Ulama set 17 years, and Malikiyah Ulama set 18 years. While Yusuf Musa set the minimum age of marriage is 21 years and Sarlito 25 years. According to March Hendry Frank, the legal age of marriage is 25 years for men and 20 years for women.(Latief, 2016) Regarding the age limit for marriage, between one country and another country has differences. As for. These differences can be explained in the following table:

Table 1. Marriage Age Comparison in Muslim Countries

No	Country	Foundation	Information
1.	Indonesia	Article 7 of Law No. 1 of 1974 promulgated on January 2, 1974	Marriage is only reported by the man to have reached the age of 16 years verse 1. In case of deviation from paragraph 1 of the Article it may seek dispensation to the court or other officials appointed by both the parents of the party and the female party paragraph 2

No	Country	Foundation	Information
2.	Malaysia	Islamic Family Law 1984 Pasal 8	No marriage can take place or be registered
3.	Aljazair	The Family Law Code 1984 Pasal 7	The legal age of marriage is 21 years for men and 18 years for women
4.	Yordania	The Code Of Personal Status 1976 Pasal 5	To be healthy, both partners must be healthy and the bride and groom must be 16 years old for men and 15 years old for women
5.	Libanon	The Law on Family Right 1917-1962 Article 6	To be able to carry out the marriage both spouses must be healthy and the bride and groom must be 16 years old for men and 15 years old
6.	Tunisia	Code of Personal Status 1956-1981	A man who marries that a man must be 18 years old and a woman 17 years old.
7.	Maroko	Article 5 Paragraph 5 Code Personal Status 1956-1981	The age of marriage in Morocco is 18 years for both men and women

The table above shows that each Muslim country has differences in the age of marriage between countries due to differences in customs that apply in each country. In the 20th century, along with the reform of Islamic Family Law, one of the main points was the minimum age of marriage as outlined in the law and with this age limit, the blurring of the interpretation of the age limit both in custom and Islamic law could be avoided. The issue of guardianship, on the other hand, is a highly suppressed issue in some Muslim countries. Its purpose is to protect women's interests; however if the guardian acts unjustly and unlawfully by the law of the State. Even in certain countries criminal sanctions are given for child marriage.

Second, Polygamy,

The growing understanding in society of marriage involving multiple wives is often referred to as polygamy. This type of marriage is permissible in writing by the Qur'an provided that the husband can act fairly. Polygamy is a marriage performed by a man whose family life includes multiple wives. Islamic law stipulates polygamy as a permissible practice and is also limited to a maximum of four wives.

Table 2. Comparison of Polygamy Laws of Muslim Countries

No	Country	Fondation	Information
1.	Turkish	Undang-undang Sipil Swis sebagai Pengganti Undang-Undang Syariah	Establishing the basis of monogamy as well as a ban on polygamy
2.	Pakistan	The Muslim Family Law Ordinance	Polygamy is allowed with court permission

No	Country	Fondation	Information
3.	Morocco	Law of 1958	Pelaksanaan Poligami dibatas
4.	Egypt	Law No. 100 of 1985	It is allowed to practice polygamy, but if you sue, you are allowed to file for divorce

Based on the table above, it can be understood that the regulation of polygamy in Islamic countries has no uniformity and varies, both related to harmony and conditions. Some are tightening regulations by practicing polygamy altogether to men, such as in Tunisia and Turkey. And if Islamic countries do not ban polygamy, such as Morocco, Indonesia, Iran and South Yemen. But still give strict requirements by getting permission from the first wife. This matter is based on the idea proposed by JND Anderson and Muhammad Abduh to the Judge in the court where a man who has been *sitri* is prohibited from marrying another woman if the court is not sure that the man if in the court of that country has fulfilled the conditions of polygamy set by the *Qur'an*, namely the condition of justice in various loves (inner justice) and the condition of being able to fulfill all obligations financially. In fact, only prophets can do justice to their wives. For looking at the present situation in an irrefutable presumption that a Muslim husband cannot possibly fulfill a requirement in the *Qur'an*.

Third, Inheritance

In the field of inheritance, the *nash* of the *Qur'an* assures that the male part is the male part is the second part of the female part. The indication of this *nash* is clearly that men are higher in position than women who textually discriminate women. Turkey and Somalia regulate the equal share of men and women and Turkey has enacted rules since 1926 adopted from the Swiss Civil Code. Meanwhile, Somalia regulates in Law No. 23 of 1975 which says that men and women have equal rights in the field of *warisan*. Unlike the case with Indonesia, which still applies *susai* with *nash* as outlined in the Compilation of Islamic Law.

Fourth, Marriage Registration and Marriage Agreement

The issue of marriage is considered a form of family law reform because it is not found in conventional law textbooks. Therefore, the concept of fraudulent marriage does not appear in classical *fiqh*. So far, the concept of *sirri* marriage is only found in the book *Sahun al-Mudawanah*. In this book Imam Malik distinguishes between *nikah siri* and *nikah siri*. In this case. *Sirri's* marriage is considered invalid because the parties involved in the marriage deliberately keep it secret. (Siswanto,2021).

Marriage Agreement and *Ta'lik Talak* were not known in the marriage or marriage law. As for now, this agreement is held with the aim of protecting the rights of wives. At first glance, this marriage agreement is similar to *ta'lik talaq*, but if you look closely, the marriage agreement is both parties before entering into a marriage contract. In essence, the prospective wife makes an agreement with the prospective husband whose content does not conflict with the purpose of marriage in particular and Islamic law in general. The content of the Agreement is for example in the form of: the husband is not married to another woman or does not prohibit her from working outside the home. Sdangkan *Ta'lik Thalak* is an expression of *thalak* by the husband, if the husband does not fulfill the covenant he vowed. A wife can sue her husband for divorce, if he violates the *ta'lik*.

The Marriage Agreement in Egypt is done with the aim of entering into a mutually beneficial agreement between the two parties to enter into a marriage without any restriction or restraint of either party to cancel the agreement. However, if the agreement is void and harms the other party either morally or materially, then the aggrieved party can file this case

in court for the loss. So the agreement can be done and canceled by both parties with the agreement of both so that one or both parties do not feel disadvantaged. This agreement does not require one or both parties to enter into a marriage if they no longer love each other.

Meanwhile in Jordan related to the Promise to hold a wedding is regulated in Articles 2 and 3 of the 1951 Law. The Articles make it clear that vows in marriage. But there is an agreement, then one dies or the agreement is void, then some of the previous gifts can be taken back by the male side. Article 4 of Iran's 1967 Marriage Law explains that couples who intend to enter into a marriage contract are allowed to enter into an agreement on the marriage contract, as long as it does not conflict with the purpose of marriage. The agreement was executed under court protection. In addition, *ta'lik talaq* is also essentially a marriage agreement that primarily aims to protect the rights of the wife so that the husband does not neglect, including the agreement not to be polygamous by the husband. in view of the Turkish Legislation on family rights of 1917 article 38, for example, it is stated that a wife has the right to include in the *talaq ta'lik* that more than one husband's wife can be grounds for divorce.

So it is in Morocco, in agreement to include in *ta'lik* that the husband's polygamy can be a reason for divorce. Similarly, in Morocco on a marriage contract, the bride can submit a condition not to be polygamous, if this condition is violated, then the wife has the right to file for divorce to the court. conditions and agreements for not having more than one wife of this kind from the Hanafi, Maliki, and Shafaii madhhabs are not allowed, because society does not allow a right that is actually lawful by religion. however, the Hambali madhhab allowed such a requirement. Thus, some Islamic countries do not follow the views of the fiqh madhhab which is more predominant in their territory but perform superstition to choose the opinion that is called the most synchronized for social society

The Transformation of Islamic Family Law In Indonesian Law

Transformation Has the Meaning of changing the form, form, nature, function or transferring, the purpose of transforming Islamic Law into National Law here, namely changing the form, form of nature or transferring Islamic Law to National Law, so that Islamic law does not only belong to Muslims, but Islamic Law belongs to the State as a result of national law with the theory of transformation (Khisni,2011). Indonesia values religion and its application, with the majority of Muslims prioritizing the middle line since Indonesia's independence until the reform period. This close relationship ensures that one religion serves as the basis of the state while rejecting secularistic relations that deny the place of religion in everyday life. The policy of enforcing Islamic law as a living law in society pays attention to aspects of social and cultural diversity, prioritizing the interests of the nation and the integrity of the nation first. (MD, 1998).

Opportunities for incorporating religious and social values in the law of the country are increasingly open as the era of reform progresses. The contribution of Islamic law to the development of the national legal system, particularly the effort to integrate it towards compromise and reconciliation, shows the politics of Islamic law in countries with diverse laws. The National Legislation Program aims to implement laws that reflect the religious and national values of the Indonesian nation, with Islamic law having bright prospects compared to Western law. The National Law is a regulation made by the Government together with the legislature that applies to everyone in one society in a State. Islamic Family Law in Indonesia (Saepullah, 2021)

First, Law No. 1 of 1974 concerning Marriage and Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage

Historically it has been transformed since the first time since the establishment of Islamic Kingdoms in the archipelago until today. During the VOC period, it provided facilities so that Islamic Law could develop as it should. Forms of convenience provided by the VOC by publishing books on Islamic Law to be the Guide of Religious Court Judges in Deciding Cases. The books published were *Kitab al-Muharrar Di Semarang Shirathal Mustaqim* written by Nasruddin al-Rainari in the Kingdom of Aceh and this book was explained by Arsyad Al-Banjari with the title *Sabilul Muhtadin* which was intended for judges in the wailing qadhi in Banjar Masin then Sirajud which was used by sharia courts in the Sultanates of Demak, Jepara, Gersik and Mataram Last VOC Compiled Islamic Law called Today, There has been Islamic Law in Positive Law with gradually the first Law in force in Indonesia regarding marriage and divorce is Law No. 22 of 1946 which is also the forerunner of the renewal of Family Law in Indonesia, at first this Law only applies in the Java region, only after the birth of Law No. 32 of 1954 this Law finally applies throughout Indonesia (Asyhadie, et al 2020)

Among them are the Law on registration and registration of marriage, divorce and reconciliation. The presence of Law No. 2 of 1946 is a continuity and *staatsbled*, No. 248 of 1929 *Junco statsblad*. No. 467 of 1931, and *Vorstenlandse Huwelijks Ordonantie Staatsblaad*. No. 98 of 1933. On January 2, 1974 which was promulgated as Law Number 1 of 1974 concerning Marriage. It is a continuation of Law no. 22 of 1946. (Asyhadie, et al, 2020). This law was born from a long process that could not be separated from the political and legal situation at that time which immediately became the demand of the majority of Muslims in Indonesia. Which means that the status of the Marriage Law is inseparable from changes in laws and regulations that existed before independence, during the colonial government and after independence. Therefore, it can be understood that the history of marriage law in Indonesia has been divided into three periods, namely the period before imperialism colonialism, the period after and the period of independence. (Arifin, 2020).

Law No. 1 of 1974 consists of 14 Chapters and 16 Articles that have been formulated in each Chapter sequentially in the Law consisting of the basis of marriage, the conditions of marriage, the prevention of marriage, the annulment of marriage, the marriage agreement, the rights and obligations of husband and wife, property in marriage, the breakup of marriage and its consequences, the position of children, rights and obligations between parents and children, guardianship, other provisions, transitional provisions, and closing provisions. And until now Law Number 1 of 1974 concerning Marriage is still a debate in Indonesian society so that this matter is brought to the Constitutional Court. So that the Constitutional Court gave a decision as a form of family law reform, such as Constitutional Court Decision Number 12 / PUU-V / 2007 which strengthened the provisions of Polygamy in Law Number 1 of 1974 which requires husbands to give permission to the first wife. Then the Constitutional Court Decision Number 22 / PUU-XI / 2017 which then the Indonesian House of Representatives passed the Amendment of Law Number 1 of 1974 to Law No of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage with the minimum age of equal marriage for men and women to 19 years.

The author views that with the codification of the Marriage Law in Indonesia with Law Number 1 of 1974 and Law Number of 2019 Amendments to Law Number 1 of 1974 concerning Marriage is a form of modernization of Family Law in Indonesia although until now it still experiences pros and cons, but in the thoughts and ideas of Islamic Law reformers when it is inseparable from technological advances, Science then the independence of women who then demand justice which has been a patriarchal culture that is more dominant until now.

Second, Law No. 7 of 1989 concerning Religious Justice. Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts

Then Law Number 7 of 1989 concerning Religious Courts, the Law passed on December 14, 1989 generally contains a general court system, including covering court decisions, procedural law, including marriage and the composition of the trial. Among them include court provisions, procedural law, including marriage and the composition of the funeral. According to Ali Yafie, the birth of the Law on Religious Courts occurred naturally because it became a necessity factor that was adjusted to the increasing growth of society in Religion instead of coercion. However, the birth of this law seemed to cause a pro and con response among Islamic leaders who welcomed it but some did not approve. Abdurahman Wahid argued that the State should not interfere too much with the religion of its citizens in carrying out worship even though it is clear.(Wahid, 1999). The enactment of Law No. 7 of 1989, a national law, was a response to the growing reliance on religion rather than coercion. Then there were amendments to Law Number 7 of 1989 concerning Religious Courts until the issuance of Law Number 3 of 2006, which covers employment, marriage, inheritance, wills, grants, waqf, sadaqah, infaq, Islamic economics, matters involving Muslims and non-Muslims, and disputes over property rights or civil rights .(Edyar, 2020)

Presidential Instruction No. 1 of 1991 on the Compilation of Laws came after the Supreme Court pushed for religious courts for several years. The duties of Religious Court Judges have been stipulated in Law Number 11 of 1970, which regulates the organization, work procedures, and finances of justice. This law was implemented in the Religious Court in 1983 with a Joint Regulation between the Minister of Religious Affairs of the Republic of Indonesia and the Chief Justice of the Supreme Court. The compilation of Islamic Law is necessary to fulfill the functions of the Supreme Court in all areas of Religious Courts. This compilation of Islamic Law becomes the legal basis for judges in resolving Islamic Family Law disputes in Indonesia such as Marriage, Inheritance of Wakafan. As for the contents of the Compilation of Islamic Law sourced from the Qur'an and Sunnah and the Thirteen Books of Fiqh, in the Compilation of Islamic Law there are Islamic Family Law Reforms such as inheritance of adopted children, iddah and mut'ah bread, divorce in court and in addition, In the Compilation of Islamic Law Indonesia has a tendency to be characterized by Intra Doctrinal Reform which takes outside the madzhab which is usually used in a region in Indonesia that Taking the Shafii madhhab is about to but still within the corridors of the madzhab in Islam. And in its application which is used based on the methods of Talfiq, Takahyyur and siyasah sharia this is done by scholars and umara none other than for the benefit of Muslims in Indonesia. (Syarif,2020). Then it can be seen from the table as follows:

Table 3

No	Description	Artikel	Statemen
1	That Divorce is Legal if it is done in court proceedings	Article 15 Paragraph 1 Compilation of Islamic Law	Divorce can only be made before a religious tribunal after the religious court has tried and failed to reconcile the parties. In other words, a divorce not done in court is an unlawful divorce.

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No	Description	Artikel	Statemen
2	In Islamic Inheritance Law there is the term Successor Heir of a deceased heir	Article 115 Paragraph 1 of Compilation of Islamic Law	The heir who is earlier than the heir then his position can be replaced by his son.
3	Girls Equals Boys can shut down or hinder siblings	Article 185 of the Compilation of Islamic Law	When all the heirs are there, then the one entitled to the inheritance is only the child, father, mother, widow or widower
4	In the Compilation of Islamic Law there is a Mandatory Will intended for adopted children or adoptive parents	Article 209 of the Compilation of Islamic Law	Adoptive parents who do not receive a will are given a mandatory will of a maximum of 1/3 of the will of their adopted child. (verse 1). For adopted children who do not receive a will, a mandatory will is given as much as 1/3 of the estate of their adoptive parents

The implementation of takhsis al-Qadha in the application in Indonesia which is a transformation of Islamic Family Law in Indonesia because this problem arises because of different contemporary contests now and in the past related to issues such as inheritance of adopted children, iddah and mut'ah income can be seen from the table as follows.

Table 4

No	About	Decision Number and Year	Statemen
1	Inheritance of Different Religions	Supreme Court Decision Number: 368 K / AG / 1995	Central Jakarta Religious Court Non-Muslim heirs do not inherit PTA and MA For non-Muslims can inherit by the mandatory will method
2	Adopted Children of Different Religions	Supreme Court Decision Number 51 K / AG / 1999 and Decision Number 16 K / AG / 2010	Granting of Mandatory Wills to adopted children and children of different religions
3	Iddah and Mut'ah	Decision No. 276.K/AG/2010	Wife Earns iddah and mut'ah in divorce lawsuit
4	Portion of Division of Common Property Husband of	Decision No. 266.K/Ag/2010	The wife gets 3/4 share while the husband gets 1/4 share
5	Different Religions Because of Apostasy	Decision No 331 K/AG/2018	Husband gets 1/4 share

Transformation of Islamic Family Law into Law Number 2002 concerning Child Protection, Law Number 23 of 2004 concerning Domestic Violence, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

The Historical Child Protection Act was in place in 1979 with the passing of Act No 4

of 1979 on the Welfare of children. This law is one of the government's concerns over child protection in Indonesia. (Saepullaah, 2018). The 1989 International Convention on the Rights of the Child establishes the Convention on the Rights of the Child. In 1990, the International Convention on the Rights of the Child was reactivated with a focus on universal child protection principles such as non-discrimination, good parenting, and child protection. The existence of this Regulation aims to protect and protect the rights of children to be institutionalized through legislation. In 2002, the Government and Members of the Legislature passed Law No. 23 of 2002 concerning Child Protection (Kamarusdiana & Aprianita 2020). which is the legal umbrella and legal certainty that regulates children's rights without including the Convention on the Rights of the Child. However, the Convention on the Rights of the Child can be adopted as legal material for the four aspects of the Child Protection Law including philosophical, ethical, and juridical. Over time there was a development of the Law amended in 2014, which was carried out by the government with Law Number 35 of 2014. Regarding Amendments to Law Number 23 of 2022 concerning Child Protection The changes include the definition of children's rights, protection of children's rights in education, parental rights, and protection of children from discrimination.

The amendments aim to ensure effective child protection policies. Then in 2016, cases of sexual crimes against children in Indonesia increased, with many cases involving many parents, grandparents, and extended family members. thus leading to numerous legal cases, including the Indonesian government's right to enforce laws on child sexual abuse. President Joko Widodo enacted Government Regulation in Lieu of Law Number 1 of 2016 Second Amendment to Law Number 23 of 2002 concerning Child Protection to address this issue, stating that sexual abuse is considered an extraordinary crime and requires serious investigation. Government Regulation in Lieu of Law Number 1 of 2016 Second Amendment to Law Number 23 of 2002 concerning Child Protection was passed by the House of Representatives, but the process was stopped by court order. The Government Regulation was then amended by the House of Representatives with Law No. 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Government in Lieu of Law Nomoe 1 of 2016 concerning the Second Amendment to Law Nomoe 23 of 2022 concerning Child Protection into Law.

Law Number 23 of 2004 concerning Domestic Violence has been promulgated by the government of the Republic of Indonesia on September 22, 2004 which if calculated this Law is 10 years old but unfortunately the existence of this Regulation there are still many people who are apathetic and who do not obey this regulation. The enactment of this Law is actually a reference to meet the needs and social demands of the community, especially among women, in order to overcome Domestic Violence in all families in Indonesia. In addition, this law is drafted to protect every right for Indonesian citizens to get equality and be free from all forms of violence (Mestika, 2022).

Then Law Number 12 of 2022 on Sexual Violence as an extension of the mandate of the 1945 Constitution (Manuputty, 2023) the presence as a real form in implementing prevention against sexual violence in every person (Risal, 2022). This regulation began with the first Bill on the Prevention of Sexual Offences only introduced in 2012 by the National Commission for the Prevention of Sexual Offences. Then it changed its name to the Draft Law on the Elimination of Sexual Violence then in 2014 and then changed its name to the Draft Law on Sexual Violence in 2016 and was socialized to the Indonesian People and passed by the Indonesian House of Representatives in 2022 into Law Number 12 of 2022 concerning Sexual Violence Criminal Acts (Manuputty, 2023).

Law No. 12 of 2022 concerning Sexual Violence Criminal Acts substantially regulates the right for everyone to get protection from degrading treatment, preventive efforts and recovery for victims of sexual harassment where this Law plays a role as a legal umbrella in

the occurrence of an act of sexual violence. The points include rape, lewd acts, sexual intercourse, lewd acts, and / or sexual exploitation of children, forced prostitution, sexual violence in the domestic environment. And the presence of this Law is expected to be a Legal Instrument to overcome the occurrence of sexual harassment crimes and become a complement to previous legal instruments that have not been comprehensively and optimally applied to it.

Some of the above laws on Child Protection, Domestic Violence, Criminal Acts of Sexual Violence understood by the author are actually more inclined to the Criminal Law but in them are still related to Islamic Family Law as for the values that are in harmony with Family Law in this Law are First, Human Rights, Principles of Gender Justice, Non Discrimination, Victim Protection. (Faizal, 2019) And the purpose of the Government and the House of Representatives of Indonesia is to compile and legalize this Law so that it can be enforced by the Law, especially violence that is often committed by husbands against wives and women who often become koban so that this law can function maximally as an effort to resolve domestic violence so that it can be overcome optimally. (Fauzan, 2020)

From the description above, it can be understood that with the circulation of Law number 1 of 1974 concerning Marriage, State Sheet Number 1 of 1974, Supplement Number 3019/1974. Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law which is a standard reference for judges in deciding cases. The Law of 2002 concerning Child Protection, Law Number 23 of 2004 concerning Domestic Violence, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence are regulations resulting from the transformation of Islamic Family Law towards the positivization of binding laws for citizens of the unitary Republic of Indonesia.

However, some of these laws and regulations still have weaknesses, namely weaknesses in Social Control which are indeed violations committed by Indonesian society are still many such as unrecorded marriages, polygamy by serial marriage that is not carried out in litigation, interfaith marriages that have no redacted legal certainty from the provisions of the Domestic Violence Law which every year the cases are increasing. Sexual violence that occurs in every government agency, college, school and even pesantren. So that its application, according to the author, is not optimal, but on the one hand, the existence of legislation that has been determined by policy makers is a benefit that is prioritized as the rules of Fiqh say, "*Tassaruf al-Imam Ra'iyah manut bi al-Maslahah, al-Maslahah al-Ammah muqaddamun ala maslahah al-Khasah, Dar'u al-Mafasid maqaddamun ala jalb al-Mashalih*, the benefit that is prioritized for the creation of a mutamaddin society. Basically, Islamic Law is a living law, but with the existence of laws and regulations with postivization and codification of law, it is nothing but a translation and explanation so that all Indonesian people can understand it and carry out regulations set by the state. In addition, the existence of this Legislation is very much required with the protection of women which actually does not contradict Islamic Law.

Conclusion

Based on the problems and research objectives formulated earlier, conclusions can be made in this discussion as answers to the problems raised as follows: the methodology of legal determination carried out in Muslim countries takes various forms as follows: Tahsis al-Qada, takhhayyur, reinterpretation, siyasah shar'iyyah, and court decisions. The nature and methods of reform used by Muslim countries in reforming Islamic family law above can generally be grouped into: Intra-doctrinal reform and Extra doctrinal reform; The issues updated in Islamic Family Law are, Age of Marriage, Registration and Agreement of Marriage, Polygamy, Divorce. The factors influencing Islamic family law reform are,

economic, social, legal and political. The Transformation of Islamic Family Law into the Law Are, Marriage Law, Religious Court Law, Compilation of Islamic Law, Child Protection Law, Undanag-Law on Domestic Violence and Law on Domestic Violence.

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(2023)

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Jurnal Syntax Imperatif: Jurnal Ilmu Sosial dan Pendidikan

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