

THE DISCOURSE AND PRACTICE OF ISLAMIC FAMILY LAW IN INDONESIA

Abstract

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Family law is the most powerful law practiced in Islamic history, but this does not mean that it avoids the demands of changing times. Today, there are no less than thirteen problems related to family law that have arisen in the Muslim world. This problem arises not only because of demands for changing times, but also because of efforts to unify, codify and legislate Islamic law in a number of Muslim countries. This problem requires not only solutions but also reforms. This study aims to examine the model of understanding, practicing, reforming and transforming Islamic law in Indonesia and its impact on the position of standard classical fiqh books and the independence of judges in the Religious Courts. This research is a non-doctrinal normative qualitative research type. This study found a variety of models in the exploration, practice and reform of family law in Indonesia. The impact of the reform and transformation of family law in Indonesia is that classical fiqh books are no longer used as the main reference and the Religious Court System is closer to the civil law system. However, the reform and transformation of family law in Indonesia did not reduce the independence of religious judges in exploring and discovering more contextual Islamic law.

Keywords: Islamic Law, Reform, Religious Courts, Indonesia, Legislation

INTRODUCTION

Change is a natural law so that in this world basically nothing is permanent and eternal, everything changes. Likewise, Islamic law, although this law contains a sacred content because it is believed to come from God, the way Muslims understand and the methods used to explore it are constantly evolving in line with the changing times. The Prophet Muhammad SAW realized these developments and changes from the beginning. He not only encourages the judges to perform *ijtihad* (individual reasoning) but also predicts that in every century there will always be reformers of their religion (Abu Daud, juz II, tt: 240). Therefore, it is understood if in Islamic law there are rules for changing laws to occur due to changes in time and space (*taghayyurul ahkam bi al-taghayyuril azminah wa al-amkinah*). However, in order for this change not to run wild and remain under control, the scholars have formulated a number of principles, rules and objectives of Islamic law itself, so that the change does not deviate from the goals to be achieved by Islamic law.

There are at least six principles that can be used to develop Islamic law, namely: (1) eliminating difficulties (QS 22: 78 and QS 2: 286). (2) minimizing the rules (QS 66: 1). (3) in line with benefit (QS 21 al-Anbiya: 107) (4) realizing equitable justice (QS 5: 8). (5) prioritizing reason over religious texts (QS 17: 36) (6) each person bears his own responsibility. (QS 6: 164). In line with the principles of fostering Islamic law, in *fiqh* there are also five basic principles or legal maxims, namely: (1) All problems depend on their objectives. (*al-umur bimaqashidiha*) (2). This harm must be eliminated (*al-dlarar yuzalu*) (3) The custom can be made into law. (*al-adat muhakkamat*) (4) That conviction cannot be dispelled with doubt. (*al-yaqin la yuzalu bi al-syak*) (5) The difficulty can attract convenience (*al-masyaqqh tajlibu al-taisir*). This basic

principle by Imam Muhammad Izzudin bin Abdis Salam is summarized into the rule of "Rejecting damage and attracting benefit" (Ash Shiddieqy, 1975: 73-92)

Apart from having a number of principles, Islamic law also has a purpose (Auda, 2007). Family law in Islam exists with the aim of protecting three basic human rights, namely: property, life and to obtain offspring / self-respect (Hosseini et al, 2013: 143) In Islamic history, although family law is the most strongly practiced law (Schacht, 1983: 83), but this does not mean that it able to avoid the demands of change in dealing with problems that arise from the times. Today, there are no less than thirteen problems related to family law that have arisen in the Muslim world. (Mahmood, 1987: 11,12). Problems arise not only because of demands for changing times, but also because of efforts to unify, codify and legislate Islamic law in a number of Muslim countries as a result of the influence of the civil law system. In its long history, Islamic law is actually not the same as the legal system that has existed in other countries , namely; civil or common law system. Islamic law is the third system known as juristic law (legal expert law). Because it is compiled and developed by private specialists, not by the state. Law science and scholarly handbooks play a legislative role and also have the power of law. (Black, Ismaeili and Hosen, 2013: xi). In other words, Islamic law with its various variations develops outside state institutions (Alam, 2007). Therefore, the idea of unification, codification and legislation as proposed by Ibn Muqaffa (d. 139/756) was not popular in classical times (Schacht, 1983: 49).

This study aims to examine; (1) models of understanding, practice, reform and transformation practiced in Indonesia; (2) the impact of reform and transformation on standard classical fiqh books which are used as references in the Religious Courts in Indonesia and (3) the impact of reform and transformation on the independence of judges in exploring Islamic law.

This issue is important to raise because with the assumption that the model of reform and transformation of Islamic law is not singular, Indonesia deserves to have its own model in developing Islamic law with reference to its own culture and the objectives of Islamic law and the constitution. The view that it is impossible for Muslims in Indonesia to fully implement Islamic law because Indonesia is not an Islamic state cannot be accepted. This is because a study proves that Indonesia is no less Islamic than other Muslim countries which formally declare themselves an Islamic state. (Rehman and Askari, 2010: 1-37). The contribution of the formal constitutional declaration in realizing the formation of an Islamic state is only five percent. Because the Islamic weight of a country is more measured by the qualifications and legitimacy of its leaders and the governance of its government as a whole (Abdul Rauf, 2015: 58).

So, this article is actually an effort to support the views of a number of experts, such as Farid F Mas'udi (Mas'udi, 2011) and Hasbullah Bakri (Bakri, 1984: 32) who state that Indonesia is, substantively, an Islamic country even though it does not make Islam the basis of the state. This article also strengthens Hazairin's view on the need for Indonesian-style law or Hasbi Ashidieqy's view on Indonesian *Fiqh*. (Lubis, 1997: 33 -92). This article also strengthens the theory linking Islamic law with faith or what is known as the credo theory. (Praja, 2009). This article rejects the views of Islamism groups that tend to be theocratic, exclusive and authoritarian in interpreting Islam so that it is not suitable to be developed in a democratic era. (Tibi, 2012: 1). So, the originality or novelty of this article does not lie in the substance being studied but in the way the existing data or facts are reviewed and linked to developments in Indonesia. This research is a continuation of previous research which is also related to the theme of transformation and integration of Islamic law into national law.

METHODOLOGY

This research is a library research related to legal aspects, so it can be called normative research (Soekanto and Mamudji, 2001: 13-14). But it can also be called non-doctrinal qualitative legal research because it includes problem analysis, policy and reform. (Dobinson and Johns, 2007: 20). This article is based on the assumption that Islamic law actually has an unchanging essence, namely realizing justice, benefit, bringing mercy and containing wisdom. (Ibn Qayyim, tt: 37). This is what is called the ideal concept of the perfect, flawless sharia, because it is divine. (Abou El-Fadl, 2004: 34). However, as sharia developed, in history there are classical sharia, historical sharia and contemporary sharia. (Otto, 2010: 25-26). Classical sharia is a set of rules, principles and cases collected by the jurists during the two centuries after the death of the Prophet Muhammad, in order to find out what is actually God's will. Sharia in this case can be found in the works of classical scholars in the dominant schools of thought, therefore it is more concrete. Historical sharia includes the principles, rules, cases and interpretations developed by the jurists and transmitted from time to time throughout the Islamic world over a period of more than a thousand years. Contemporary sharia is the sharia understood by Muslims today all over the world. In this context, the sharia is incarnate in its plural form.

Even though there are dynamics and plurality in the development of sharia, it has a purpose. The essence of sharia and its purpose is relatively unchanged. According to classical and contemporary scholars, sharia or Islamic law aims to protect five or six things, namely, religion, life, property, reason, descent / family and honor (Auda, 2007). The study of reform and transformation of family law is divided into several stages. The first discusses the model of excavating, practicing and reforming family law in the Muslim world in general; the second discusses the model of excavation, practice, reform and transformation of family law in Indonesia; third, discussing the impact of reform and transformation on classical *fiqh* books which are used as references for religious courts in Indonesia; fourth, the impact of reform and transformation on the independence of Religious Court judges in deciding cases. Lastly are the conclusions and recommendations.

RESULTS AND DISCOURSES

Model of Understanding, Practicing, Reforming and Transforming Islamic Law

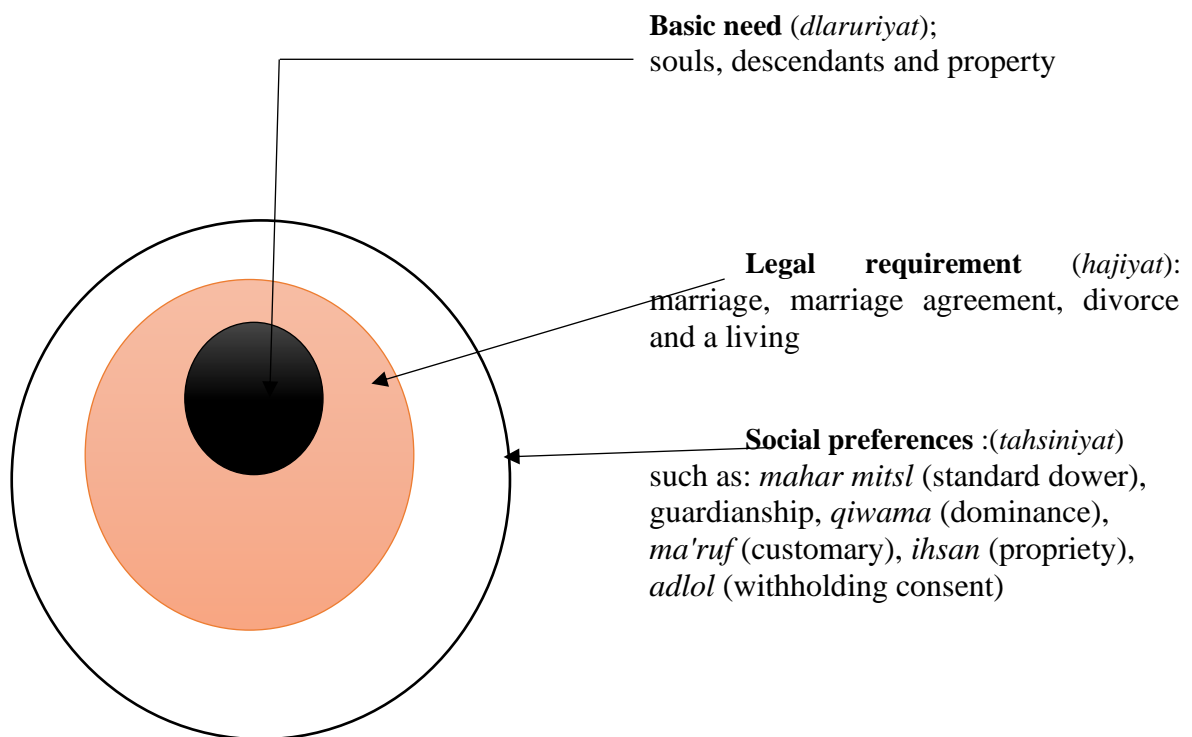
The model of transformation and integration of Islamic law into national law in a number of countries cannot be separated from the way in which Islamic law is explored, formulated and practiced. Different ways of exploring, practicing and formulating have resulted in differences in Muslims in transforming Islamic law into national law. Therefore, the discussion about the transformation model needs to be preceded by a discussion about the model of extracting and practicing Islamic law. Seen in its history, in general, the model of extracting Islamic law can be carried out through the model of *bayani*, *irfani* and *burhani*. In the *bayani* excavation model, sharia or Islamic law is extracted from religious text sources using the *istinbath* or *istidlal* method through linguistic approach. Truth is measured by the principle of correspondence. The source of *irfani* excavation model is intuition, the method is *kasyf* or illumination, the approach is psycho-gnostic. The truth is measured through inter-subjective. The source of the *burhani* excavation model is ratio, the method used is analytical discourse, the approach is logic and the truth is measured by the principle of coherence or consistency. (Syarif, 2019: 347-359)

Table I
Model for Understanding Islamic Law

Type/ model	Source	Method and approach	<i>The validity of truth</i>
<i>Bayani</i>	Religious texts	Legal reasoning with a linguistic approach	Correspondence
<i>Irfani</i>	Intuition	Divine radiance with a psychological approach (psycho-gnostic)	Inter-subjective
<i>Burhani</i>	Ratio	analytical discourse through logical approach	Coherence or consistency

All models of extracting Islamic law can be used in order to realize the objectives of Islamic law. In family law, the objectives of Islamic law can be described as follows (Hosseini, et al. 2013: 143

Figure 1
Maqashid Sharia in Family Law



The prohibition of polygamy in the form of polygyny and polyandry in a number of Muslim countries is a form of progressive reform resulting from the *burhani* excavation model. The prohibition on polygamy is the result of a process of discourse analysis (analytical discourse) through a logical approach by looking at the historical background, process and textual guidance, the function of discourse in the text of the Koran and the effort to explore the unspeakable. Likewise, the prohibition against slavery. (Ridwan, 2013)

Table 2
Examples of *Burhani* Model in Excavating Islamic Law (Polygyny)

	Background, process and instructions (<i>dilalah</i>)			The function of discourse in the Qur'an	The unspeakable
Polygyny / Polygamy	Polygyny was practiced indefinitely before Islam	Polygyny restriction to a maximum of four wives who are treated fairly	The husband's impossibility to be fair	The final direction of the marriage norm is monogamy.	Prohibition against polygamy.

Table 3
Example of the *Burhani* Model in Exploring Islamic Law (Slavery)

	Background, process and instructions (<i>dilalah</i>)			The function of discourse in the Qur'an	The unspeakable
Slavery	Slavery is part of the pre-Islamic socio-economic system	Liberation of slavery is recommended through various ways	Slavery is directed so that it does not become a part of the socio-economic system	The discourse of slavery is studied as limited historical evidence.	The ultimate goal is the elimination of all forms of slavery

In general, there are three models of implementation or practice of Islamic law 1) exclusive textual model 2) inclusive substantive and 3) a combination model of the two (Nurrohman, 2019: 347-359). In general, Islamic law reform in the Islamic world can also be divided into two, namely: extra doctrinal reform, intra doctrinal. Reformation referred to here is all activities related to change and renewal.

Table 4
Islamic Law Reform Model

Model	Description	Example
<i>Extra doctrinal reform</i>	Reformation is carried out by reinterpreting the Al-Qur'an and Sunnah texts. This is because this renewal has no reference in the doctrine of classical <i>fiqh</i> . (Classical sharia)	In Tunisian law, divorce only falls and is legal when it occurs in court. According to the Turkish Civil Code 1926, polygamy is completely prohibited and if it occurs then the marriage is declared invalid.
<i>Intra doctrinal reform</i>	Reform is carried out by taking a view that is contained within one	Examples of countries implementing this reform model include:

	school but outside the schools that are commonly used in one area. The methods used are <i>talfiq</i> (amalgamation), <i>tahyir</i> (choosing from various schools of thought) and <i>siyasah syariyyah</i> (political law) for the benefit of the citizens.	Indonesia, Malaysia, Morocco, Algeria, Iraq Pakistan
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Viewed from the perspective of gender equality and justice, there are progressive and non-progressive Islamic legal reforms. Reform is called progressive when considering gender sensitivity. Among the Muslim countries that are carrying out progressive reforms in family law is Somalia. (Huda, 2017)

Although family law reform can be broadly divided into two, namely; intra and extra doctrinal reform, but the methods and techniques vary. There are at least seven methods used by the Islamic world, namely: 1) making all schools of thought in Islam equal (*musawat al-madzahib* 2) *istihsan* 3) *masalih al-mursalah*. 4) *siyasah syar'iyah* 5) *istidlal* 6) legislation 7) codification. There are five techniques used, namely: 1) *ijma* 2) *qiyas* 3) *ijtihad* individually and collectively. 4) eclectic choices. 5) merging two legal rules from different schools of thought into one / *talfiq*. (Mahmood, 1987: 13). *Tahayur* (choosing a suitable opinion) and *talfiq* (combining two or more opinions taken from various schools of thought), in the classical fiqh tradition especially among *Syafiiyah* are considered unethical. Because it is considered to make it easier or to play with religion.

Etymologically, transformation means a change in shape, appearance, format and character. This change can be a whole or it can be a specific part. It can also happen by evolution or revolution (Abdul Hakim, 2018: 60-63). What is meant by transformation here is the change of fiqh into national law or law. The model of transforming sharia into national law can be divided into three, namely substantive progressive, normative adaptive, and symbolic attributive. (Nurrohman et al, 2018: 59)

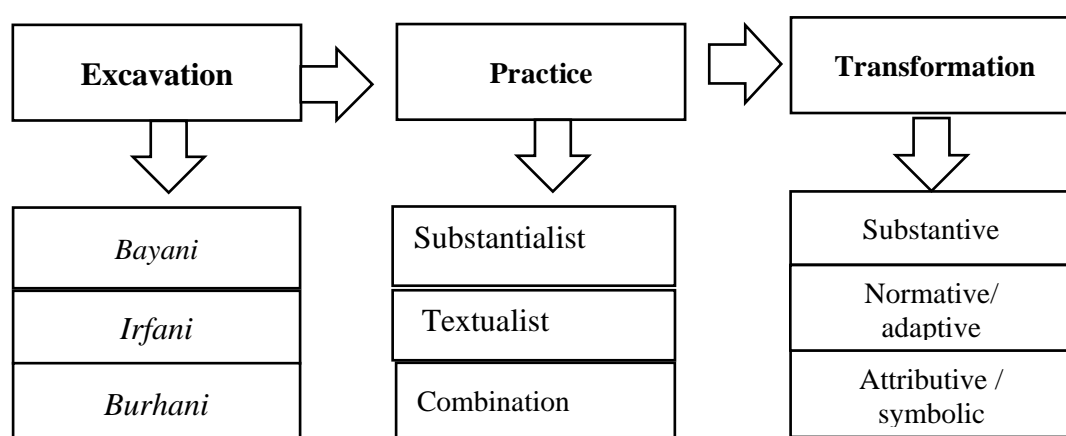
Table 5
Model of Transformation of Islamic Law into National Law

Model	Description	Example/ note
Substantive /progressive	Transformation is called substantive if the substance of Islamic law, namely justice, benefit and protection of human rights has been accommodated in the national legal system.	The Indonesian Constitution has adopted the principles of Islamic law based on the research of Harun Nasution and Masdar Farid Mas'udi
Normative (adaptive)	The transformation of Islamic law into national law occurs when the norms contained in Islamic law are accommodated and made into national legal norms.	Most of the Islamic legal norms on Marriage have been accommodated in Law No. 1/1974 on Marriage.

Attributive or symbolic	Symbolically or attributively, Islamic law has changed into national law if the attributes or symbols of Islamic law such as sharia, <i>al-adl</i> (fair), <i>hikmah</i> (wisdom), zakat, waqf and so on are accommodated in national law.	There are several attributes that symbolically denote Islamic law such as the terms <i>zina</i> , <i>waqaf</i> and <i>zakat</i> , although the contents may differ from what some scholars want.
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So, in each model there are three variants, as illustrated in the following table.

Table 6.
Models for Excavation, Practice, and Transformation



Source: Nurrohman et al, 2018: 59

Model of Family Law Reform and Transformation in Indonesia

The model of reform and transformation of family law in Indonesia has historically been influenced by the theory and politics of law adopted by the government or the state. For example, since 1855, the *Receptio in complexu* theory has been used by the Religious Courts in resolving family disputes among Muslims. The *receptie* theory then replaced it in 1929. However, since Indonesia declared its independence, another theory has emerged called the *Receptio a contrario*. This theory is then strengthened by a theory called the positivation of Islamic law. (Syarif, 2019)

Table 7
Family Law Theory Practiced in Indonesia

Name	Description	Implication	Notes or references
<i>Receptio in complexu</i>	Muslims must obey and follow the norms of sharia as a consequence of their religion.	Sharia norms are immediately applied to Muslims without waiting for the norms to be	Practiced in the Religious Courts since 1855

		accepted or not by customs.	
<i>Receptie</i>	In civil disputes between fellow Muslims, the Islamic Judge shall decide with customary law if the customary law so requires.	The application of sharia norms depends on customary acceptance of it.	Colonial government policy reference since 1929.
<i>Receptio a contrario</i>	For Muslims, Islamic law must be applied to them.	Customary law can be applied if it does not contradict Islamic law.	
Positivati-on of Islamic law	Islamic law has, in principle, become positive law for Indonesian Muslims	The validity of Islamic law is not determined by acceptance of customary law.	The references to this theory are: Law No.1 / 1974 on Marriage

If seen from the form of family law reform carried out by Indonesia, the reforms carried out by Indonesia tend to be intra-doctrinal reform by taking a view that is outside the schools commonly used in one region of Indonesia, namely the Syafii school of thought but still within the principles of the Islamic schools of thought. The methods used are *talfiq* (amalgamation), *tahyir* (choosing from various schools of thought) and *siyasah syariyyah* (political law) for the benefit of the citizens. Prior to the existence of the Compilation of Islamic Law (KHI), the reference source for judges at the Religious Courts in Indonesia was only 13 books which generally had the Syafii school of thought. But after the existence of KHI, the book references used were 38 books with a more diverse variety of schools.

At least five reforms were found in family law contained in the KHI. Among these are: (1) a person can marry at least 16 years of age for a woman and 19 years for a man as stated in Article 15 paragraph 1 KHI. (2) Whereas divorce is legal if it is carried out before a Religious Court hearing as stated in Article 115 KHI. In other words, a divorce that is not carried out in court is an illegal divorce. (3) In the Law of Inheritance there is the term Substitute Inheritance of an Inheritance who has died, namely in Article 185 KHI. (4) Girls as well as boys can prevent a sibling's inheritance as stated in Article 174 paragraph (2). (5) Regarding wills, in the KHI, there is the term compulsory wills for adopted children or adoptive parents, namely in Article 209 KHI.

This provision is different from the provisions contained in the classical *fiqh* book, which means that in the KHI there are reforms that are adjusted to the sense of justice and benefit for the Muslims in Indonesia. Apart from this renewal, there are also opinions that do not follow the provisions of the *jumhur ulama* (majority of scholars) such as marrying a pregnant woman as contained in Article 53 paragraph (1) of the KHI. Article 183 KHI reads: In the case of inheritance, the heirs can agree to make peace in the distribution of the inheritance, after each realizes their share. (Nurrohman, et al, 2018)

Table 8.
Reform in Compilation of Islamic Law

Number	DESCRIPTION	ARTICLE	NOTES / EXPLANATION
1	That a person can be married at least 16 years old for a woman and 19 years old for a man	Article 15 paragraph 1 KHI	For the benefit of the family and household, marriage may only be performed by a prospective bride who has reached the age stipulated in Article 7 of the Law. Law No.1 of 1974, namely that the prospective husband is at least 19 years old and the prospective wife is at least 16 years old. The age for marriage between a man and a woman was then changed based on the decision of the Constitutional Court in December 2018, namely that both men and women must have reached the age of 19.
2	Whereas a divorce is legal if it is carried out before a Religious Court hearing.	Article 115 KHI	reads: "Divorce can only be carried out before a Religious Court hearing after the Religious Court has tried and failed to reconcile the two parties". In other words, a divorce that is not carried out in a court hearing is an illegal divorce.
3	In the Law of Inheritance, there is the term Substitute Inheritance for a deceased Inheritance	Article 185 KHI	Heirs who die earlier than the heir, then their position can be replaced by their children.
4	Girls as well as boys can prevent sibling's inheritance.	Article 174 paragraph 2	Article 174 paragraph (2) reads: if all heirs are present, only children, fathers, mothers, widows or widowers are entitled to inheritance.
5	In the KHI, there is the term wills compulsory for adoptive children or adoptive parents.	Article 209 KHI	for adoptive parents who do not receive a will is given a mandatory will of up to 1/3 of the wills of their adopted children. (paragraph 1) Adopted children who do not receive a will, be given a mandatory will of up to 1/3 of the inheritance of their adoptive parents.

The Impact of Reformation and Transformation on the Position of Classical *Fiqh* Books

Through the Circular of the Bureau of Religious Courts Number B / 1/735 dated February 18, 1958, judges were advised to examine and decide cases based on the 13 books of *fiqh*. Then, through a presidential instruction in 1991, judges were recommended to make KHI which refers to 38 books of *fiqh* as a reference in examining and deciding cases submitted to the Religious Court. When compared between the transformation of Islamic law into national law,

between 1958 and 1991, two things can be found. First, there is an expansion of the Islamic law schools as a reference, second, there is a renewal in a number of aspects. If in 1958 the *madzhab* used was dominated by the Syafi'i school, then in 1991 the *madzhab* used was expanded to include five schools, namely, Hanafi, Maliki, Syafi'i, Hanbali, and Zhahiri. This means that through reform and transformation, the schools of *fiqh* are positioned in the same position (*musawat al-madzahib*). Each of them may be taken as long as it can manifest the purpose of Sharia in family law. This also means that the classical sharia is no longer considered sacred, which cannot change. Likewise, the Syafii school of thought is no longer seen as the dominant school of thought. As long as it can realize the goals of sharia, schools outside the mainstream can be used as a reference. This is what Mahfud MD, former chairman of the Constitutional Court meant that the adoption of Islamic law into Indonesian national law takes place through an eclectic process. (Mahfud MD, 2018). The impact of reform and transformation is that the provisions of the *fiqh* law used by religious judges must also be synergized with the provisions of material laws in force in Indonesia, such as the law on child protection and the law on the elimination of domestic violence.

The Impact of Reform and Transformation on the Independence of Judges

Does the reform and transformation of family law in Indonesia have an impact on the lack of independence of judges in exploring and finding Islamic laws that are more contextual to Indonesian conditions? In other words, will reform and transformation make religious judges at the Religious Courts no longer carry out legal reform? The results of this study indicate that the judges at the Religious Courts are still making reforms through the jurisprudence they issue. At least, there have been recorded family law reforms in Indonesia that have been issued through cassation at the Supreme Court. The four reforms are about: 1) inheritance of different religions 2) adopted children of different religions 3) *iddah* and mut'ah livelihoods 4) the share of shared assets. (Suadi, 2018). At least, there are two family law reforms in Indonesia that were born from the decisions of the constitutional court, namely; the civil rights of a child born out of wedlock to the biological father and the age limit of marriage for men and women. This research found that independence of judges here means independence in exploring and finding Islamic law that is in line with Indonesian culture and constitution.

Table 9.
Islamic Law Reform through Cassation in the Supreme Court or Constitutional Court

About	Number of decree and year	Information
Interfaith inheritance	Supreme Court Decision Number: 368 K / AG / 1995	Religious Court of Central Jakarta: non-Muslim heirs cannot inherit. High Court and Supreme Court: non-Muslims can inherit on the basis of a mandatory will.
Adopted children of different religions	Supreme Court Decision Number: Decision Number 51.K / AG / 1999 and Decision Number 16.K / AG / 2010	Provision of compulsory wills to adopted children and children of different religions

<i>Nafkah iddah</i> and <i>mut'ah</i>	Decision Number 276.K / AG / 2010	Wives earn iddah and mut'ah livelihoods in a divorce suit
Sharing of joint assets for divorced husbands and wives	Decision Number 266.K / AG / 2010	In specific case, wife gets $\frac{3}{4}$ share while husband gets $\frac{1}{4}$ share.
The civil rights of a child born out of wedlock to the biological father	Constitutional Court Decree Number: 46/PUU-VIII/2010	In decree, it said that: "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with a man as their father which can be proven based on science and technology and / or other evidence by law to have blood relations, including civil relations with their father's family";
The age limit of marriage for men and women	Constitutional Court Decree Number: 22 /PUU-XV /2017	canceling the minimum age of marriage for women, 16 years, so that for both women and men, the minimum age of marriage is 19 years

CONCLUSION

This study found a variety of models in the exploration, practice and reform of family law in the Islamic world. Variations can also be found when the Muslim world carries out the process of transforming family law into national law. The impact of the reform and transformation of family law in Indonesia is that the classical *fiqh* books that were originally used as the main reference and are considered sacred, have lost their sanctity. This study concludes that the reform and transformation of family law in Indonesia does not reduce the independence of religious judges in exploring and finding more contextual Islamic law as evidenced by the emergence of a number of reforms that have emerged from a number of jurisprudences.

In order for reform and transformation to support the formation of Indonesian *fiqh*, the rulings of religious judges must reflect the spirit of the Indonesian national legal system. This means that the rulings of religious courts as a product of Indonesian *fiqh* must be synergized with the principles and objectives of national law. In other words, the decision of the religious court must not contradict the basic principles that have been stated in the Indonesian constitution. Because, substantively, Islamic law has been transformed into the constitution. Therefore, for Indonesian Muslims, demands for faith and demands for the constitution must be synergized.

In the Indonesian context, religious law and state law can be distinguished but cannot be separated. Therefore, the choice is not to take one of the various religious laws but to choose which of the religious laws (*fiqh*) is the most appropriate to Indonesian conditions. To protect the objectives of Islamic law in family law which includes protection of property (*al-mal*), soul (*al-nafs*) and descendants / family (*al-nasl*), the normative formulations contained in classical *fiqh* can change or be changed with new formulations. . Because the normative formulation in

the *maqashid* sharia hierarchy falls into the category of *hajiyyat*, while the protection of these three things is *dlaruriyat*.

Given that Islamic law has historically developed outside state institutions, codification and legislation for family law is not something urgent. Family law in Indonesia can develop through jurisprudence, along with the development of law in Indonesia as a whole. In order for family life problems to be resolved through one institution, the idea of the need for an integrated family justice system that can examine and resolve various problems related to family matters, such as domestic violence or under age marriage needs to be supported and continued.

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Nurrohman, born in Tegal, August 17, 1958. His father is HM Syarif. He sometimes uses Nurrohman Syarif as the name of his publication. He obtained a doctorate in Islamic studies from the Syarif Hidayatullah State Islamic University (UIN), Jakarta. Now he is an associate professor at the State Islamic University (UIN) Sunan Gunung Djati, Bandung. He teaches Islamic Law, especially related to politics (*Fiqh Siyasah*). His area of interest is the study of the relationship between religion, politics, law and economics in Islam. Apart from being the head of the Master of Family Law study program at UIN Sunan Gunung Djati, Bandung, he is also a member of the Associate Council for Research in Values and Philosophy (CRVP), Washington DC.

