



Reinvigorating Civil Justice: The Urgency of Islamic Law Implementation in Indonesia

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ABSTRACT

Based on the fact that the majority of Indonesia's population is Muslim, this demographic reality serves as a fundamental basis for the realization of Islamic law in the country. Islamic law is divine law, revealed and regulated directly by the Almighty, capable of direct application without the intermediation of customary law. The Republic of Indonesia may also enact regulations based on Islamic law, provided these regulations apply exclusively to Muslim citizens. This study aims to analyze the position of Islamic Law within the framework of Civil Law in Indonesia and its contribution to the development of the national legal system. The research employs a descriptive qualitative method utilizing a library research approach, examining data from various reliable primary and secondary legal sources. The results indicate that the current position of Islamic law is on par with customary law and Western law. Furthermore, Islamic law serves as a source for future national law formation, alongside other legal systems growing within the Republic of Indonesia. Islamic law in Indonesia can be viewed from two perspectives: first, as formally juridical law codified within the national legal structure; and second, as normative law possessing sanctions or legal standing for the Muslim community. Within the system, at least four types of Islamic legal products have developed and are applicable in Indonesia: Fiqh, Ulama Fatwas, court decisions (jurisprudence), and statutory regulations. Civil Law itself is defined as a set of rules governing rights, property, and relationships between individuals and legal entities based on logical principles. Consequently, this paper utilizes a descriptive method to discuss the standing of Islamic Law within Indonesian Civil Law.

Keywords: *Reinvigorating, Civil Justice, Urgency, Islamic Law, Implementation in Indonesia*

ABSTRAK

Berdasarkan fakta bahwa mayoritas penduduk Indonesia adalah Muslim, hal ini secara tidak langsung telah menjadi alasan tersendiri bagi terwujudnya hukum Islam di Indonesia. Hukum Islam adalah hukum yang diturunkan dan diatur langsung oleh Yang Maha kuasa dan dapat diterapkan secara langsung tanpa melalui hukum adat. Negara Republik Indonesia juga dapat mengatur suatu hal sesuai dengan hukum Islam selama peraturan tersebut hanya berlaku bagi Warga Negara Indonesia yang memeluk agama Islam. Penelitian ini bertujuan untuk menganalisis kedudukan Hukum Islam dalam kerangka Hukum Perdata di Indonesia serta kontribusinya terhadap pembangunan hukum nasional. Metode penelitian yang digunakan adalah deskriptif kualitatif dengan pendekatan studi kepustakaan (library research), yang mengkaji data dari berbagai sumber hukum primer dan sekunder yang terpercaya. Hasil penelitian menunjukkan bahwa kedudukan hukum Islam saat ini sejajar dengan hukum adat dan hukum Barat, dan hukum Islam juga menjadi sumber pembentukan hukum nasional di masa depan, di samping hukum-hukum lain yang akan terus tumbuh dan berkembang di Negara Republik Indonesia. Hukum Islam di Indonesia dapat dilihat dari dua sisi. Pertama, hukum Islam berlaku secara yuridis formal atau dikodifikasikan dalam struktur hukum nasional. Kedua, hukum Islam berlaku secara normatif, yaitu memiliki sanksi atau padanan hukum bagi komunitas Muslim. Dalam sistem hukum Islam, setidaknya terdapat empat jenis produk hukum Islam yang telah berkembang dan berlaku di Indonesia, yaitu: Fiqih, Fatwa Ulama, putusan hakim/pengadilan, yurisprudensi, dan peraturan perundang-undangan. Hukum Perdata sendiri adalah seperangkat aturan atau kaidah yang mengatur hak, kekayaan, dan hubungan

antara individu dan badan hukum atas dasar logika. Penulisan makalah ini menggunakan metode deskriptif yang membahas kedudukan Hukum Islam dalam Hukum Perdata di Indonesia.

Kata Kunci: *Revitalisasi, Hukum Perdata, Urgensi, Hukum Islam, dan Penerapan di Indonesia.*

INTRODUCTION

The formation of the Indonesian legal system is due to the development of its plural history. Because at this time in Indonesia there are several different legal systems, where the legal system has a different basis, structure, and basis. The legal system consists of customary law system, Islamic legal system and Western legal system (Mardani, 2009). And it is also known that the oldest legal order is customary law, followed by Islamic law and western law.

The history of Islamic law in Indonesia can be applied before the Dutch controlled the legal system in Indonesia. Islamic law is a law that has been implemented in a real and full manner in Indonesia. The previous Islamic kingdoms applied Islamic law in their respective territories. According to Hamka (Hamka, 1976), the Islamic Kingdom of Samudra Pasai was founded in North Aceh at the end of the 13th century AD following the *Madzhab Syafi'i*. then from Samudra Pasailah the *Madzhab Syafi'i* spread to other Islamic kingdoms in Indonesia. Then the kingdom of Malacca was established, and asked the jurists in the Samudra Pasai kingdom to make decisions regarding the problems of Islamic law that they encountered in society. In the 15th and 16th centuries, on the north coast of Java, other Islamic kingdoms were found, such as Demak, Jepara, Tuban, Gresik, and Ngampel. Then there were also other Islamic kingdoms. (Daud, 1982)

At the beginning of the presence of Islam in the seventh century AD, the Islamic legal system had been practiced and developed within the Islamic community and judiciary. Hamka presented the facts of various works by Indonesian Islamic Law experts. For example, *Shirat al-Thullab*, *Shirat al-Mustaqim*, *Sabil al-Muhtadin*, *Kartagama*, *Syainat al-Hukm*, and others. However, all of these written works are still in the form of fiqh discussions. There are still legal doctrines and Indonesian fiqh systems that are oriented to the teachings of the *Imam Madhhab* (Daud, 1982).

The history of the existence of civil law in Indonesia is the acceptance of civil law that originated in some parts of European countries. In the Civil Code, known as the *Burgerlijk Wetboek* (BW) is a codification of civil law compiled in the Netherlands. The arrangement was strongly influenced by the French Civil Code (Napoleonic Code). The Napoleonic Code itself was compiled based on Roman law (*Corpus Juris Civilis*) which at the time was considered the most perfect law. The Codification of the Indonesian Civil Code (BW) was announced on April 30, 1847 through *statsblad* No. 23, and came into force on January 1, 1848. It should be noted that the history of the development of written civil law in force in Indonesia is a product of Dutch civil law strengthened by the *Corkondance* principle, which applies in the same colony (Netherlands) as the provisions in force in the colonial country.

In determining the law, Indonesia has also accepted many of the existing laws in Islam. For example in marriage law, inheritance, custody of children and so on. So that civil law can also be found as Islamic civil law which is a positive law that occurs in Indonesia which is sourced from Islamic law and certainly sourced from the Quran, Hadith, *Ijma* and other sources of law (*Hukum Perdata Islam di Indonesia - Dosen Perbanas, t.t.*).

METHODS

In writing this research, the authors employ a descriptive qualitative method based on library research,(Firdaus, 2022) deriving data from various reliable sources. The study highlights that the realization of the Islamic legal system in Indonesia plays a pivotal role in the nation's development. This significance stems from the fact that the Republic of Indonesia has been predominantly Muslim for centuries. Consequently, specific Islamic laws have been integrated into the national juridical and formal law for the general public, while also serving as special normative law for Muslim adherents.

RESULTS AND DISCUSSION

Islamic Law Position In Indonesia

In the Republic of Indonesia, the position of Islamic law is inseparable from the early influence of the entry of Islam into the archipelago in the 12th and 13th centuries AD, when the supporters of the teachings adhered to the majority of the Syafi'i sect. school of thought. Islamic law in Indonesia can be seen from two sides. First, Islamic law applies formally or is codified in the legal structure of the country. Second, Islamic law occurs normatively, that is, it has restrictions or legal equivalents for the Muslim community (Sumarni, 2012). The explanation can be explained as follows:

1. Formal juridical is two words that cannot be separated. Because it has interrelated meanings and meanings, then legal matters are certainly formal matters and vice versa. Juridical can also be defined as the law itself which is used in the aspect of enforcing the force of law or from the legal basis that has been regulated. While Formal according to KBBI means "official" or according to the rules of law; according to prevailing custom. If it is unofficial then it is unofficial.(Indova, 2017)
2. Normative, in Kamus Besar Bahasa Indonesia (KBBI) means "holding fast to norms; according to prevailing norms or rules "the normative meaning itself also means the inability of the subject to something universally. Mandatory implementation only applies to adherents of faith or adherents.

The idea of the transformation of Islamic law in Indonesia can be seen in terms of statehood. It is explained that for a country that adheres to the theory of people's sovereignty, it is the people who have the highest political policy. Similarly, a state based on the sovereignty of God, the sovereignty of the state/power (*rechtstaat*) and the state based on law (*machtstaat*), is highly dependent on the political style of the law of the power of the state itself.

Rousseau, for example, in his theory of people's sovereignty, says that the goal of the state is to enforce the law and guarantee the freedom of its citizens in the sense that freedom is within legal limits. What Rousseau meant by the people was not the number of individuals in the state but the unity formed by individuals with wills, whose wills were derived from those individuals through community agreements.all citizens directly participated in the process of making the Law. Or it can be called a democratic state.

Islamic law is one of the components of the Indonesian legal system, being one of the raw materials for the formation of national law, so this policy was described in detail eight years later (1989) by the Minister of Justice Ismail Saleh, but before knowing the position of Islamic law in the development of national law first. Previously, we followed the policy measures of national law development through three dimensions, among others: First, the dimension of preservation, which is to maintain the existing legal order even if no longer in accordance with the development of society. This dimension is to avoid legal voids, this is a logical consequence of Article II of the Constitution Transition Rules 1945. Second, the reform dimension is an effort to enhance and further perfect the development of national law with current needs. Third, the dimension of creation, i.e. the dimension of dynamics and creativity, in this case the dimension of the creation of new laws and regulations, which have never existed before.

Before Indonesia proclaimed its independence on August 17, 1945, there was disagreement about the ideology that Indonesia wanted to adopt. Initially, the 62-member Indonesian Independence Preparatory Work Investigating Body (BPUPKI) was fighting for the establishment of an Islamic state. However, of that number, only 15 members representing Islamic nationalist groups agreed on the basis of the Islamic state, while the majority (45 votes) voted on the basis of the national state. After that, committee 9 BPUPKI managed to reach a famous compromise with the Jakarta Charter, which, among others, contains, "Belief in God Almighty, by requiring its adherents to adhere to Islamic law". The inclusion of 7 words in the Jakarta Charter does not mean that an Islamic state has been formed. Thus, the idea of Islamic state policy was rejected but the 7 words can be interpreted that Islamic law applies to Muslims as well as the politics of Dutch East Indies law before 1929 (Lestari dkk., 2024). This shows the nature of Islamic law in Indonesia applies only to its adherents and not has the right from any party who can control it except the party concerned.

Among the products of law and regulation that are nuanced Islamic law, generally have three forms: (Arief, 2016) First, Islamic law that formally and materially uses the style and approach of Islam; Second, Islamic law in the process of taqniin is realized as a source of legal content, in which its principles and principles animate every product of rules and legislation; Third, Islamic law is formally and materially transformed by persuasive sources and sources of authority. (Arief, 2016)

The Urgence of Implementing Islamic Law in Indonesian Civil Law

The legal system in Indonesia is private law and public law. The division of the two types of law is based on the effects or consequences of the law, where private law involves legal consequences that only touch on individual issues because private law governs the interests of individuals, while public law deals with its effects on wider society. In this case, Islam enters and cooperates in it. While straightening out even allowing some of the rights or laws contained therein.

Islamic civil law in Islamic jurisprudence is known as *fiqh mu'amalah* (Ash-Shiddiey, 1989), which is a provision (Islamic law) that governs the relationship between individuals (Maksum dkk., 2019). In a general sense, Islamic civil law is defined as the legal norms related to Islamic family law, such as the law of marriage, divorce, inheritance, wills and waqf. While

in a specific sense, Islamic civil law is defined as a legal norm that regulates matters related to Islamic business law, *ba'I qard, ijarah, ujarah, syirkah, mudharabah*(Nurjaman dkk., 2024), *muzara'ah, mukhabarah*, and so on (Ja'far, 2016). Islamic civil law is all the laws that govern the rights and obligations of individuals among Indonesian citizens who practice Islam. In other words, Islamic civil law is a private matter as a subject that governs the interests of individuals specifically applied to Muslims in Indonesia (Ja'far, 2016).

Islamic civil law also does not apply to non-Muslim citizens. Laws on Islamic inheritance, marriage in Islam, *hibah, wakaf, zakat, and infaq*(Hisamuddin, 2017) are the material of Islamic civil law that is specifically enforced and enforced by citizens who profess the religion of Islam (Hisamuddin, 2017).

Based on the fact that the majority of the Indonesian population is Muslims, then the role of Islamic law is very important in its implementation in society. This is based on the principles and principles of Islamic law that must be justified and obeyed, namely the Qur'an and Hadith developed by the human mind that meets the requirements of *ijtihad*.

The principles of Islamic law are very necessary in its application in the Indonesian legal system. This is because not all solutions to civil and civil law problems in Indonesian law are described in detail as clearly stated in the Quran and Sunnah.

In the development of Indonesian *mashar'at* law, where the majority of Muslims must be careful and full of openness, it is undeniable that it is also colored by the demands of Muslims who want to uphold Islamic law. For the author, this idea certainly deserves support. However, in addition to providing support, such efforts must also be done wisely and prudently in order to achieve the goals and ambitions of this country. Because upholding *ma'ruf* also requires using *ma'ruf* measures. Moreover, the realization that the struggle to uphold the Islamic law itself is a long and winding road, in accordance with its *sunnatullah*. Because it takes patience in running it. Because without enough patience, enforcement efforts will only turn into anarchist actions that are not in line with Islamic wisdom (Munir, 2014).

The process of "accustoming" this nation to the Islamic law that has been carried out for so long, must be continued with patience and wisdom. Apart from that, of course, efforts to strengthen the political power and bargaining power of Muslims need to be enhanced. Because it is undeniable that in a democratic system, the power of political bargaining will determine the success or failure of certain goals and aspirations.

Indonesian society is a society rich in local culture or wisdom. They cling to local wisdom as an order, even becoming a law and those who violate it will get sanctions. The existence of local wisdom makes it a matter of consideration in every product of Islamic legal thought in Indonesia. This shows that Islamic law in Indonesia such as the law of marriage and inheritance greatly values the social life of society, both existing and developing in the past and the development of social life of society that is happening now and in the future.

The resolution of Islamic economic disputes is explicitly placed under the absolute jurisdiction of the Religious Court, as reinforced by legislation, including the Islamic Banking Law. Although this formal authority is established, there is a critical need to address the gap in a cohesive material legal source. The rapid growth of Islamic financial institutions from insurance (*takaful*) and pawnshops to capital market instruments (*sukuk*)(DSN-MUI, t.t.) requires a standardized legal guide. Therefore, the formalization of Islamic economic law into a comprehensive codification, such as the Compilation of Sharia Economic Law

(KHES)(Firdaus dkk., 2024), is essential to guarantee legal certainty and provide judges with a standardized reference for resolving cases, echoing historical codification efforts like the *Al-Majallah Al-Ahkam al-'Adliyah*(Muthalib, 2022) in the Ottoman era.

The urgency of this legal update is not exclusive to the Sharia sector but reflects a broader national need to reform outdated colonial legal legacies, such as the Civil Code (KUHPerdata)(Aryati dkk., 2022) and the Penal Code (KUHP)(Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana (KUHP), 2023). In the context of Islamic economics, updating the legal framework is crucial for regulations to adapt to the complexity of modern transactions, technological advances, and global economic dynamics. By updating these material legal sources, Indonesia can ensure that Sharia economic practices remain aligned with fundamental Islamic values such as justice, transparency, and sustainability while simultaneously fostering product innovation, boosting investor confidence, and strengthening the foundation for stability in the Islamic financial sector amid global changes.

To realize this regulatory reform, strategic collaboration among various key institutions is required. The People's Representative Council (DPR RI) and the President serve as the main legislative bodies. Meanwhile, the Supreme Court (Mahkamah Agung) plays a vital role in standardizing judicial practice through issuing Supreme Court Regulations (PERMA) and establishing the KHES. Other institutions, such as the Ministry of Law and Human Rights (Kemenkumham), DSN-MUI (as a doctrinal source), Bank Indonesia, and the Financial Services Authority (OJK), must also cooperate for harmonization and the drafting of technical regulations. This collective effort is the key to creating an adaptive, responsive legal system that supports the growth of Indonesia's Islamic financial sector in the face of contemporary economic challenges and complexities.(Firdaus dkk., 2025)

Islamic Legal Thinking Products In Indonesia

The product of Islamic legal thought cannot be separated from the issue of *ijtihad*, because through *ijtihad* the scholars produce various products of Islamic legal thought, both formal and binding or informal and non-binding. In general, there was no formal product of Islamic legal thought in classical times. What exists is in the form of a work born of the thought or *ijtihad* of scholars, or an agreement on the legal status of a problem that exists in society, such as *ijma* '. Similarly, the result of the scholars' thinking regarding the method of determining the law such as *qiyas*, *istihsan* and *maslahah al-mursalah*.(Rasyid, t.t.)

What these scholars produce can also be called the product of Islamic legal thought. Because even though it is a method of attributing the law, or works that are personal and not binding, it cannot be denied that their existence is very valuable. Why not, the work of these scholars has become a reference for any products of Islamic legal thought that are more specific, formal and binding to date, not least in Indonesia.

The product of Islamic legal thought as above has become a reference for Islamic scholars around the world in solving legal problems that exist in society. This happens because Islamic law is universal in nature that applies to all Muslims, even though it must coexist with national law or general law that applies in one country.

In the Islamic legal system, there are at least four types of Islamic legal products that have developed and are applicable in Indonesia, namely: Jurisprudence, Ulama Fatwas, judges, court decisions, jurisprudence, and legislation. The process of the birth of these four

things cannot be separated from the dynamic development of people's lives from time to time in collaboration with Indonesian conditions.

The products of Islamic legal thought adopted in the development of Islamic law in Indonesia have long been proclaimed by Islamic law scholars in the Islamic world with the various kinds of works they produce. The scholars of Islamic law or mujtahid scholars such as Imam Shafi'i, Imam Ahmad bin Hanbal and the scholars after him. They gave birth to Islamic law by taking into account the social conditions or local wisdom of the community in which they live and work.

CONCLUSION

The predominance of the Muslim population in Indonesia since the arrival of the Shafi'i school of law in the 12th century at Samudra Pasai has established a robust historical and sociological foundation for the formation of the national legal system; consequently, the integration of Islamic law into the civil legal sphere provides a more comprehensive normative clarity than previous systems by referencing the primary sources of the Qur'an and Sunnah. Currently, the existence of Islamic law in Indonesia operates through two primary dimensions: a formal-juridical dimension through codification into the national legal structure, and a normative dimension as a living value system carrying moral sanctions for the Muslim community. The manifestation of this legal enforceability is reflected in various integrated Islamic legal products, including *fiqh* (jurisprudence), *ulama* fatwas, judicial decisions (jurisprudence), and statutory legislation, which collectively strengthen the position of Islamic law as a vital pillar within the Indonesian legal order.

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