



The Dynamics of Marriage Law in Islam: Between Tradition and State Regulations

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Abstract:

Marriage law in Islam is a fundamental component of fiqh al-munakahat that governs the legal and spiritual aspects of the marital relationship. In practice, this body of law undergoes dynamic shifts due to the intersection of religious norms, local traditions, and state regulations. This article aims to examine how Islamic marriage law is understood and applied in contemporary contexts, with particular attention to the roles of tradition and state intervention through legislation. The research employs a literature review method, drawing upon classical Islamic jurisprudence, Indonesian legal statutes, and contemporary academic studies. The findings reveal both tensions and harmonization between fiqh and state regulations, especially concerning issues such as minimum age for marriage, guardianship (wali), and marriage registration. The adaptation of Islamic law to the sociopolitical context of the state emerges as a critical factor in developing a fair and applicable family law system.

Keywords:

Marriage law, Fiqh al-munakahat, Family law, State regulation, Islamic tradition.



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INTRODUCTION

Islamic law as a comprehensive system of norms not only regulates the relationship between man and God, but also includes the governance of the social life of Muslim society(Firdaus, 2022). One of the important branches of Islamic law is jurisprudence, which is a law that deals with issues surrounding marriage, divorce, alimony, and family rights. In Islamic societies, the law of marriage occupies a very central position because it concerns the formation of the smallest social unit, the family, which is the foundation for the wider social order. Thus, the law of marriage cannot be separated from Islamic efforts to build a just, moral, and morally stable society(Poli, 2024).

Marriage is not just a social contract or legal institution, but it is also a worship that has a spiritual dimension. The main purpose of marriage in Islam is to create tranquility (sakinah), affection (mawaddah), and mercy between married couples(Kholik, 2017). Therefore, Islam provides quite detailed signs related to the conditions, harmony, and rights and obligations in marriage. The main reference in this case is the Qur'an, Hadith, and the opinions of scholars through ijtihad

recorded in classical fiqh literature from various schools. However, even though the source of the law is transcendent, its implementation is still contextual. The concepts of fiqh contained in classical books are born from certain socio-cultural and historical contexts(Izzah, 2011). Therefore, its application in modern society does not always take place automatically or without challenges. One of the factors that influenced the implementation of Islamic marriage law was the existence of local traditions that developed in Muslim society. These traditions, while not always contrary to Islamic teachings, often have different interpretations and practices in looking at the institution of marriage. For example, the practice of traditional guardianship, symbolic dowry, and local rituals in marriage contracts.

Local traditions in Muslim society have their own normative forces that are sometimes even more dominant than the law of fiqh itself in the practice of daily life(KUSUMA, 2024). For example, in some cultures in Indonesia, the practice of elopement or marriage without the blessing of the guardian of the nasab is considered customarily valid, although from a fiqh perspective this can be problematic. In addition, customs also determine the ideal age of marriage, the amount of dowry, or even who can be a witness in the marriage contract. Traditions like this sometimes perpetuate gender inequality or ignore the principles of justice in Islam. The Indonesian state is also present in regulating the practice of marriage through positive legal regulations. This state intervention aims to guarantee legal certainty, protect the rights of individuals, and align religious practices with human rights principles. Law No. 1 of 1974 concerning Marriage and its amendments is a concrete example of how the state seeks to standardize an integrated national family law system, including in terms of minimum age of marriage, official registration, and divorce procedures(Nomor, 2007). However, this regulation is not always in accordance with the view of classical fiqh.

When Islamic law, local traditions, and state regulations meet in one social space, complex tensions often arise. These tensions can be in the form of differences in standards in determining the age of marriage, the validity of guardianship, or the legality of serial marriage. On the other hand, in some cases, these three elements can actually synergize and strengthen each other, especially if there is a space for ijтиhad that is used creatively to answer the needs of the times. Therefore, the dynamics between the three are not absolute opposition, but a process of dialogue that continues to take place. The social conditions of the Indonesian Muslim community, which are very ethnically and culturally diverse, make the issue of marriage law even more complex(Naim, 2016; Pandie et al., 2021). The diversity of fiqh interpretations, the strength of local traditions, and the ever-evolving state policies demand a fair, contextual, and inclusive approach. In this context, it is important not to impose a single approach, either in terms of jurisprudence, customs, or positive legal regulations, but to seek a common ground that prioritizes maqashid al-shariah, which is the main goal of Islamic law itself: justice, protection, and the benefit of the ummah(Jamarudin, 2021; Ridwan, 2024).

The discourse on marriage law has also grown along with increasing awareness of women's rights, gender justice issues, and the protection of children in marriage(Badruzaman et al., 2020). Therefore, Islamic law in this field is required to be able to answer the challenges of the times without losing its essence. The reformulation of marriage law through contemporary ijтиhad is an important step so that Islamic values remain relevant and applicable. In the Indonesian context, the

role of fatwa institutions, religious organizations, and academics is crucial in drafting an adaptive legal framework. Considering the complexity of the relationship between Islamic law, local traditions, and state regulations in the context of marriage, the study of the dynamics of marriage law is very important to be carried out. This research will not only enrich the academic literature in the field of jurisprudence and family law, but can also be a real contribution in formulating fair and applicable policies. The urgency of this research lies in efforts to bridge the differences between religious norms and social reality through an objective, critical, and contextual scientific approach.

METHOD

The research method used in this study is a qualitative method with a library research approach(Darmalaksana, 2020). This approach was chosen because the topics discussed are conceptual-normative, namely related to the theoretical understanding of Islamic marriage law in its interaction with state traditions and regulations. The data sources studied include authoritative texts in classical fiqh from the four main schools: Hanafi, Maliki, Shafi'i, and Hanbali, which are the main references in understanding the basic concepts of munakahat fiqh. In addition, this study also uses positive Indonesian legal documents as formal legal data, such as Law Number 1 of 1974 concerning Marriage and its derivative regulations, as well as several fatwas of the Indonesian Ulema Council that are relevant to family law issues.

In addition to these primary sources, this study examines various contemporary academic literature, such as scientific journals, reference books, dissertations, and reports of research institutions that focus on the study of Islamic law and family law in Indonesia. Data analysis was carried out in a descriptive-analytical manner, namely by describing, examining, and interpreting the content of the text to find the conformity or difference between the principles of classical fiqh and the implementation of marriage law in social reality and the national legal system. By comparing the three elements of jurisprudence, tradition, and state regulations, this study seeks to uncover the dynamics that occur and offer a holistic understanding of Islamic marriage law in the context of modern society.

RESULTS AND DISCUSSION

The marriage law in Islam, known in fiqh literature as fiqh munakahat, is an integral part of the Islamic legal system that regulates relationships between individuals in family institutions(M AMIN ABDULLAH, 2016). It not only serves as a normative tool for legitimizing the relationship between husband and wife, but also represents the spiritual and social values that are the foundation of the Muslim social order. Classical jurisprudence has detailed the legal structure of marriage by establishing strict rules and conditions, such as the existence of a guardian, two witnesses, and a valid kabul ijab. However, in contemporary social reality, this normative structure cannot always be fully implemented due to the interaction with various social variables, including local customs and the positive legal system of the state. In a country like Indonesia, the confluence of fiqh teachings, community traditions, and state regulations gives rise to complex dynamics in the implementation of marriage law, creating space for adaptation, shifting meaning, and even normative tension. The following are the results and discussions in this study.

Results

Marriage law in Islam (fiqh munakahat) has a complex normative structure, encompassing legal-formal aspects and spiritual values(Jonwari, 2018). Classical fiqh stipulates the conditions and pillars of marriage in detail, such as the presence of guardians, witnesses, and ijab kabul(Sallom, 2024). However, when faced with the diversity of local culture and the country's positive legal system, this provision has adapted. Some customary practices such as wali adat or elopement show differences with fiqh, while the state through Law No. 1 of 1974 plays a role in limiting and directing the practice of marriage in accordance with the principle of legal protection.

The role of the state appears to be dominant in terms of determining the minimum age of marriage, marriage registration, and restrictions on serial marriages(Afrizon, 2016). These things are often contrary to traditional fiqh law, but are actually considered necessary in order to guarantee the rights of women and children, as well as provide legal certainty. Marriage registration, which was once not a requirement in fiqh, is now an important legal tool to ensure the legal status of wives and children. This reform shows an effort to harmonize Islamic law and state law within the framework of maqashid al-shariah.

Tensions between customs, fiqh, and state law continue to arise, especially in issues such as guardianship, dowry, and child marriage. However, points of convergence also arise through contemporary ijтиhad and maslahat approaches. Scholars, academics, and religious institutions are beginning to be open to new interpretations that are relevant to the modern social and legal context. This shows that Islamic law is not static, but dynamic and able to adapt without losing its normative essence.

The dynamics of marriage law in Islam are not only a religious discourse, but also a field of dialogue between fiqh norms, the strength of local traditions, and state regulations. This research emphasizes the urgency of reforming Islamic family law based on the values of justice, protection of rights, and contextualization of sharia in modern society. The harmonization of these three is the key to building a fair and applicable legal system.

Discussion

In the classical fiqh tradition, marriage is seen as a contract that has the dimension of worship and muamalah at the same time(Siregar & Kelana, 2021). As a contract, it requires the fulfillment of formal elements, such as the presence of a qualified groom and bride, a guardian of the woman's side, two witnesses, as well as an explicit statement of ijab and kabul and carried out in one assembly. The Shafi'i and Hanbali schools strongly emphasize the presence of the wali as a harmonious relationship, while the Hanafi school is looser by allowing adult women to marry without a wali. The legal status of marriage is also dynamic in fiqh; It can be obligatory for someone who is worried about falling into adultery, haram for those who are unable to provide for themselves or commit wrongdoing, and makruh if the purpose is unclear. In this context, classical jurisprudence proves the flexibility in establishing laws according to individual conditions, but still within the framework of morality and sharia.

Local traditions have a significant influence on the implementation of marriage laws, especially in the Muslim community in Indonesia. Tradition often adds symbolic, social, and even normative elements to the marriage process. An example is the practice of merrik in Lombok, where couples who want to get married elope as part of the custom. Although socially accepted, this practice often ignores the provisions of fiqh such as the blessing of the guardian of the nasab or the presence of legitimate witnesses. In other regions, traditional leaders or chiefs can function as guardians, even if they do not have a nasab relationship with the bride, contrary to the requirements of guardians in fiqh. Tradition also determines the shape of the dowry, the type of clothing worn, and the time of the wedding. Although many local traditions are in line with Islamic values, some of them need correction so as not to violate the principles of sharia and justice.

The State, through Law No. 1 of 1974 concerning Marriage and its derivative regulations, took an active role in shaping the national family law system. One of the important points in this regulation is the determination of the minimum age of marriage, which is 19 years for men and women after the revision of the law in 2019. This provision is intended to protect the rights of children and prevent the practice of early marriage that poses a high risk to health and education. The state also requires the registration of marriages through the Office of Religious Affairs for Muslims, which is different from classical fiqh where registration is not included in the conditions or pillars of marriage. In addition, this law establishes procedures for divorce, division of property, and child custody in a formal legal manner, which often intersects with the provisions of the fiqh of the madhhab. The role of the state here shows the efforts to modernize Islamic law within the framework of the protection of civil rights and legal certainty.

Tension arises when positive legal norms are contrary to the provisions of fiqh or customary(Syahabuddin, 2008). The case of child marriage is one of the prominent issues. In some schools, marriage at the age of puberty is permissible by fiqh, but the state considers that health, psychological, and social readiness aspects must be the main considerations. This has led to debates between religious authorities, legal institutions, and indigenous peoples. However, there are also points of harmonization that arise through the maqashid al-shariah approach, where the main objectives of sharia such as the protection of soul, intellect, and posterity are the basis of consideration in contemporary legal ijtihad. The Fatwa of the Indonesian Ulema Council has begun to respond to this problem with a contextual approach, for example by supporting the prevention of early marriage to maintain the benefits of.

The issue of guardianship is one of the crucial points in the interaction between fiqh, customs, and state law. In Shafi'i fiqh, wali nasab is an absolute requirement for the validity of marriage. However, in some regions, such as Minangkabau or Kalimantan, the matrilineal system or customary structure makes the uncle of the mother or traditional leader as the guardian. The state, through the KUA, generally follows the provisions of Shafi'i fiqh, so that there is a discrepancy between the social structure of society and bureaucratic policies. In some cases, marriages that are legally legal in custom but without a guardian cannot be registered by the state, thus creating legal uncertainty. This shows the importance of dialogue efforts between traditional leaders, scholars, and state authorities to find an accommodating formulation of social reality without colliding with basic

fiqh principles.

Marriage registration is a meeting point as well as a conflict point between fiqh norms and the state. In classical fiqh, there is no obligation to record the marriage administratively, as long as the conditions and harmony are met, and it is witnessed legally. However, the state makes registration a condition of legality, with a direct impact on the legal status of wives and children, inheritance rights, and access to legal protection. Many marriages are legally legal, but not legally recorded, so they are classified as series marriages. This practice is vulnerable to making it difficult for women to obtain economic and legal rights. Therefore, it is important to realize that marriage registration is not only an administrative aspect, but part of the protection of rights in accordance with maqashid al-shariah in maintaining posterity and honor.

Dowry is the absolute right of the wife that must be given by the husband, provided that no minimum or maximum limit is determined(Kafi, 2020). In practice, however, dowry is often a symbol of social status and even a high economic burden, depending on local traditions. In some areas, the amount of dowry is determined based on social caste, educational status, or family origin. This puts pressure on the future husband and can hinder the marriage. The state does not regulate the amount of dowry, but in practice, the KUA and religious leaders often play a role in mediating between the customary demands and the economic ability of the bride-to-be. This study shows the need for an educational approach so that dowry is understood as a symbol of respect, not as a transactional instrument.

Nikah siri, or marriages that are not legally registered, is a sensitive issue in the study of Islamic family law. In many cases, nikah siri is valid according to fiqh because it meets the requirements of sharia. However, the absence of records makes wives and children lose their legal rights, such as inheritance rights, child recognition, and protection from domestic violence. The state views this practice as a form of administrative offense, although it is still socially acceptable in some communities. The tension between the validity of shari'a and the legality of positive law shows the need for contextual fiqh reform and increased public awareness of the importance of formal legality in the modern legal system.

Child marriage is one of the most controversial issues in the encounter between classical fiqh and state regulations. In some madhhab views, the age of puberty is an indicator of marriage readiness. However, the state and many human rights institutions emphasize the importance of a minimum age that takes into account physical, psychological, and social maturity. The revision of the Marriage Law which raises the age limit to 19 years for men and women reflects the paradigm of protecting children's rights and gender equality. Some contemporary scholars welcome this change as a form of ijtihad that is in harmony with maqashid al-shariah, while others still retain traditional fiqh views. This shows the importance of opening a space for dialogue between schools and between legal authorities.

One of the important dimensions of the dynamics of marriage law is the protection of women's rights. In classical fiqh, women have the right to dowry, maintenance, and good treatment from their husbands. However, in the practice of customary or unrecorded marriages, these rights are

often ignored. The state seeks to guarantee these rights through legislation governing the division of common property, child custody, and protection from domestic violence. This study found that state law enforcement is an important protector for women, but its success depends heavily on public legal awareness and the readiness of implementing agencies.

As social changes and awareness of gender justice and human rights increase, there is a need to reformulate Islamic family law through a contemporary ijtihad approach. Muslim scholars and scholars began to develop new views that were more responsive to the context of the times, such as the reinterpretation of the age of marriage, women's rights, and the legality of marriage registration. The MUI fatwas and Supreme Court decisions are also important instruments in bridging the gap between religious norms and state law. The maqashid al-shariah approach is the normative basis that gives sharia legitimacy to the legal reform.

This research shows that marriage law in Islam cannot be understood in isolation from the social context and the state legal system. Local traditions, state regulations, and fiqh principles interact with each other in shaping complex legal dynamics. On the one hand, there is a potential for normative conflict, but on the other hand, there is also room for harmonization through the ijtihad approach, inter-governmental dialogue, and legal reform based on maqashid values. The biggest challenge ahead is to create an Islamic family law system that is able to guarantee substantive justice for all citizens, without sacrificing sharia principles or civil rights guaranteed by the constitution.

CONCLUSION

Marriage law in Islam shows dynamic characteristics because it is in the space of interaction between fiqh norms, local traditions, and state regulations. When fiqh munakahat is faced with cultural diversity and modern legal demands, it is evident that it is not a rigid legal system, but is able to transform through ijtihad and contextual reinterpretation. The role of the state in setting the age limit for marriage, requiring registration, and protecting the rights of women and children is evidence of the importance of positive interventions for substantive justice. However, this adaptation must still maintain the essence of Islamic teachings so that they are not reduced by temporal interests alone. Therefore, critical and constructive collaboration between scholars, the government, and society is indispensable to form a just, responsive, and effective Islamic family law in facing the challenges of the times.

REFERENCES

Afrizon, F. D. (2016). *Sanksi Pelanggaran Terhadap Aturan Poligami Dan Pencatatan Perkawinan Di Indonesia, Malaysia, Dan Negara Brunei Darussalam*. Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta.

Badruzaman, D., Hermansyah, Y., & Helmi, I. (2020). Kesetaraan Gender Untuk Perempuan Korban Kekerasan Dalam Rumah Tangga. *Justitia et Pax*, 36(1).

Darmalaksana, W. (2020). Metode Penelitian Kualitatif Studi Pustaka dan Studi Lapangan. *Pre-Print Digital Library UIN Sunan Gunung Djati Bandung*, 1–6.

Firdaus, S. (2022). Al-Qurâ€™ an dan Pembangunan Lingkungan Berkelanjutan di Indonesia: Analisis Maqashid Syariah untuk Pencapaian SDGs. *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah*, 7(2), 120–138.

Izzah, I. Y. U. (2011). Perubahan pola hubungan kiai dan santri pada masyarakat muslim tradisional pedesaan. *The Sociology of Islam*, 1(2).

Jamarudin, A. (2021). *Islam, hak beragama dan dinamikanya di Indonesia*.

Jonwari, M. H. I. (2018). *Nilai-Nilai Tasawwuf Dalam Fikih Mu'amalah (Tela'ah Atas Pemikiran Al-Ghazali)*. nd.

Kafi, A. (2020). Mahar pernikahan dalam pandangan hukum dan pendidikan islam. *Paramurobi: Jurnal Pendidikan Agama Islam*, 3(1), 55–62.

Kholik, A. (2017). Konsep Keluarga Sakinah dalam Perspektif Quraish Shihab. *INKLUSIF: Jurnal Pengkajian Penelitian Syariah Dan Ilmu Hukum*, 2(2), 17–32.

KUSUMA, D. W. S. (2024). *Implementasi Strategi Pembinaan Karir Personel Polda Jawa Timur Untuk Mendukung Kesetaraan Gender Berbasis Inovatif Teknologi Informasi*. Universitas Islam Sultan Agung Semarang.

M Amin Abdullah, D. K. K. (2016). *Implementasi Pendekatan Integratif-Interkoneksi dalam Kajian Pendidikan Islam*. Pascasarjana UIN Sunan Kalijaga.

Naim, N. (2016). Membangun Kerukunan Masyarakat Multikultural. *Harmoni*, 15(1), 203–213.

Nomor, U.-U. R. I. (2007). Tahun 1974 Tentang Perkawinan dan Kompilasi Hukum Islam. *Bandung: Citra Umbra*.

Pandie, D. A., Han, L. K., & Lele, J. I. (2021). Konstruksi Sosial Masyarakat Desa Oelaba Yang Beragama Kristen Terhadap Realitas Sosial Etnis Bajo (Manusia Perahu) Yang Beragama Islam Dalam Perspektif Teori Konstruksi Sosial Peter L Berger. *Matheteuo: Religious Studies*, 1(2), 89–98.

Poli, A. R. (2024). Karakteristik dan Pendekatan Aspek Sosial Hukum Islam, Fungsi, Tujuan Hukum Islam serta Korelasinya dengan Pembinaan Masyarakat. *Al-Ubudiyyah: Jurnal Pendidikan Dan Studi Islam*, 5(2), 1–13.

Ridwan, R. (2024). *Resiliensi Tradisi Metawe Dalam Pola Komunikasi Keluarga Mandar Perspektif Maqashid al-Syariah*. IAIN Parepare.

Sallom, D. S. (2024). Interpretasi terhadap Syarat Ijab Kabul Ittihad al-Majlis dalam Akad Nikah Perspektif Ulama Empat Madzhab. *Hukum Islam*, 22(2), 152–175.

Siregar, F. Y. D., & Kelana, J. (2021). Kesetaraan Batas Usia Perkawinan di Indonesia dari Perspektif Hukum Islam. *Mahakim: Journal of Islamic Family Law*, 5(1), 1–10.

Syahabuddin, S. (2008). Membaca Gelombang Fikih dalam Hukum Nasional di Indonesia. *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, 42(1), 17–36.