

Product Renewal in the Field of Family Law in Indonesia

Arif Sugitanata

Universitas Islam Negeri Sunan Kalijaga Yogyakarta
arifsugitanata@gmail.com

DOI: 10.23917/laj.v6i1.10699

Submission Track:

Received:
15 February 2021

Final Revision:
19 April 2021

Available online:
24 May 2021

Corresponding
Author:
Arif Sugitanata
arifsugitanata@gmail.com

ABSTRACT

This article discusses the product of the family law renewal in Indonesia. Family law is a law that has provisions in the area of munakahat and mawaris. The main focus of the study of this article is why there is family law renewal and what are the products of family law renewal in Indonesia. By using a literature study which materials and data in its arrangement use books and journals related to renewal products in the field of family law in Indonesia, then the data used in this study is a qualitative study, then the method used is descriptive-analytical. found that the appearance of Islamic law renewal, especially in the realm of family law, which developed in this era, in the view of Islamic jurists in Indonesia, is due, first, to fill the legal vacuum caused by the existing rules in classical fiqh books that have not been regulated where the times always demand new rules to answer issues that continue to develop in society. Second, the demands of the modern era of economic development, science and technology which are completely sophisticated. Third, demands for changes in various fields so as to provide space for Islamic law to become a reference in formulating national law. Fourth, demands for renewal of Islamic legal thought from international Islamic jurists to national Islamic jurists, one of which is related to science and technology and issues of gender equality. Then the products of family law renewal in Indonesia are divided into two scopes, namely munakahat and mawaris, where part of munakahat itself includes marriage registration, minimum age restrictions for marriage, the role of marriage guardian, polygamy, interfaith marriage, dowry in marriage, hadhanah and pledge of divorce. Whereas in mawaris includes substitute heirs and wajibah escrow.

Keywords: Renewal, Family Law, Indonesia

PRELIMINARY

Islam as a religion of renewal that is blessed by God Almighty through the intermediary of Rasulullah Muhammad SAW. Islam is present as a bearer of guidance to the truth from Allah SWT, which has been preached by His Messenger, as a result of the deviations that have been committed by his followers. Therefore, Islam is a religion that is true and blessed by Allah SWT until the end of time (Nawawi, 1993).

The problems in Islam are increasingly complex, when it meets multi-culture, which is of course very different from the Islamic culture itself where it was made (Mecca and Medina). Islam appeared in the Arab world which was still very simple, the existing regulations required laws regarding events and judicial problems that occurred at that time

when the laws were made, they did not make laws regarding events that had not and might occur (Khallaf, 2000).

In the 21st century, the movement for renewal in Islamic thought began with a significant paradigm shift (Kodir, 2017) and the new problems regarding Islamic law in this modern era requires the *mujtahids* to answer these new problems in order to determine their legal status in order to provide answers to the unrest of the ummah.

It should be noted that Islamic law preached by the Messenger of Allah, is a blessing for all living things (Khatimah, 2007). Therefore, Islamic law can apply and be applied to all times and for all nations because there is a very broad scope and elasticity in all situations and conditions (Shomad, 2010). Where Islamic law is a scientific discipline that deals with all the actions and deeds of a human being quoted from Nash (Khoiriyah, 2013).

Produk-produk hukum yang telah dihasilkan dari ijtihad-ijtihad ulama yakni meliputi aturan-aturan yang berkaitan dengan problem-problem yang ada di dalam keluarga, yang kemudian kita sebut hukum keluarga Islam. The legal products that have been produced from religious scholars' ijtihad include rules relating to problems in the family, which we then call Islamic family law. In the taxonomy of Islamic law that is mutually agreed upon by the *mujtahid*, including the law of action within the scope of muamalah law (Khallaf, 2004). The necessity for renewal of Islamic law at this time fosters efforts for *mujtahids* to try and produce and provide legal decisions that are the answer to the unrest of the ummah, including those that are no less important, namely in the field of family law. Basically, what is happening and has been going on in this century is a consequence of social change, where a change will continue to provide demands for change in every field such as the field of family law which is the author's study.

The renewal that occur in the doctrine above can take the form of *Intra-Doctrinal Reform* and *Extra-Doctrinal Reform*, where *Intra-Doctrinal Reform* is an amalgamation of opinions that exist in the schools or choosing opinions other than the ones they adhere to, such as the application of *takhayyur* and *talfiq*. *Takhayyur* referred to here is a judge's decision in circumstances of leaving one school of law and adopting another law. While the term *talfiq* is a combination of various schools to produce a rule (Mahmood, 1972). Examples of this form in various Muslim countries such as Pakistan (Zuhdi, 2016), Malaysia, Indonesia, and

Morocco where the application of family law in legislation is carried out in response to the demands of the times to determine the majority provisions stipulated in fiqh (Huda, 2018).

The renewal that are classified as *Extra Doctrinal Reform* are a type of family law renewal which is carried out by providing the latest provisions on existing texts (Atun Wardatun dan Hamdan, 2014). For example, the Tunisian and Turkish family laws are very sensitive to gender issues where there is a marriage of a bride without a guardian, prohibits polygamy, and the distribution of inheritance property equally between men and women (Huda, 2018).

Basically the ideas of the *mujtahids* are included in the realm of *ijtihadi* which can be renewed in accordance with the times by always referring to the existing texts, so that the products of the *mujtahid's ijtihads* are always based on transcendental revelations, but it needs to be emphasized that the *ijtihad* products of the *mujtahids* are not revelations itself, but is a product of interpretation of the meaning of revelation, so that the product of *mujtahid's ijtihad* is not permanent (Nur, 2012).

The study of Islamic family law is very interesting to discuss in-depth and continuously because the texts of Qur'an on family law are more dominant than other legal texts, where there are as many as 70 subsections regarding family law (Khallaf, t.th). From the explanation above, it is very urgent to try to study the relation of Islamic renewal in the field of family law which is closely related to issues of modernization as a form of this renewal.

Several scientific studies on the renewal of the field of family law have been written. As Eko Setiawan wrote, with a focus on the study of ideas on reforming Islamic family law in Indonesia (Setiawan, 2014). The next research is the writing of Sri Wahyuni (Wahyuni, 2013), which aims to show about the family law renewal in Muslim countries. Yushadani (Yushadani, 2015), in her writing discusses the controversy surrounding the renewal of Islamic family law in Indonesia. The writing of Fatah Hidayat (Hidayat, 2014) describes how Islamic family law in Indonesia has experienced ups and downs in its development, especially when it is linked to an institution that has the authority to resolve family law problems. The work of Abdul Ghofur (Ghofur, 2014), which explains that the current era in the Muslim world has a global tendency to impose classical private law due to the high demands from various circles to renew the rules regarding the family which have not been updated for a long time. Ahmad Rajafi (Rajafi, 2017) who discusses the history of the formation and renewal of

Islamic family law in the archipelago and Hilal Malarangan (Malarangan, 2008) who examines the Islamic law renewal in family law in Indonesia.

STUDY METHOD

This study uses literature study because the materials and data in its arrangement use books and journals related to renewal products in the field of family law in Indonesia, then the data used in this study is a qualitative study, then the method used is descriptive-analytical.

RESULTS DAN DISCUSSION

There are several translations that can be used regarding family law itself, such as the word *ahkam al-zawaj*, *huquq al-'alaih*, *qanun al-usrah*, *qanun*, and *al-ahwal al-sykhshiyah* (الأحوال الشخصية) where Wahbah al-Zuhaili interpreted it as a law relating to human relations with his family, starting from marriage to ending with the distribution of inheritance because family members as heirs have died (Ahmad Rajafi, 2015).

From a brief explanation of the definition above, it can be simplified that the family law is a law that has provisions on family members within the scope of the household covering certain fields such as marriage, descent, livelihood, *hadhanah*, guardianship and inheritance.

Then the scope of family law, here the author provides an explanation of two opinions that are already popular in order to provide comparisons, where Wahbah al-Zuhaili's opinion, he provides coverage of family law into 3 parts, namely *first*, family law which begins from the process of engagement to divorce, whether caused by an incident or caused by a divorce, *second*, family property law which includes inheritance, escrow, and something related to other transactions such as income and expenses, *third*, law of guardianship in children is unable to act legally (al-Zuhaili, 1989).

The second opinion is Mushthafa Ahmad Az-Zarqa, he also provides coverage on family law into 3 parts, namely: *first*, Marriage and anything closely related to it, *second*, guardianship and escrow, *third*, inheritance (Az-Zarqa,t.t)

A. Background of the Renewal of Family Law in Indonesia

Legal renewal in various fields has been carried out with a long process, developing and adapting to the situation and conditions of development as well as the demands of the globalization era. This is because the laws that exist in the classical fiqh literature are starting to be deemed insufficient to provide answers in the face of new phenomena that continue to develop, so at the beginning the author cites that the renewal is a necessity that will occur.

In this era, in the Muslim world there is a global trend, to impose classical private law due to the high demands from various circles to update the family rules which have not been updated for a very long time (Ghofur, 2014). Change or renewal itself can (occur due to the socio-culture of society and the forms of) renewal itself, as concluded by Ibn Qayyim with his expression (Djazuli, 2011):

في تغيير الفتوى واختلاها بحسب تغير الأزمنة والأمكنة والأحوال والنيات والعوائد

"Decisions change and differ according to changes in time, place, circumstances, intentions and customs"

Other rules are also like:

المحافظة على القديم الصالح والأخذ بالجديد الأصح

"Maintaining the old condition which is beneficial and taking the new one which is more beneficial"

From the fiqh rules above, it provides an opportunity to always present renewal, with a gesture to keep the previous situation which is beneficial, if you use a new one, it is preferable to have more benefit, where the above rule can apply in all fields, including the family law field..

The emergence of legal renewal, especially in the realm of family law, which developed in this era, in the view of Islamic jurists in Indonesia, is because:

1. Filling in the legal vacuum caused by the existing rules in classical fiqh books that have not been regulated where the times are always demanding new rules to answer problems that continue to develop in society.
2. The demands of the modern era of economic development, science and technology are all sophisticated.

3. The demands for changes in various fields to provide space for Islamic law to become a reference in formulating national law.
4. The demands for renewal of Islamic law thought from international Islamic jurists to national Islamic jurists, one of which is related to science and technology and issues of gender equality (Setiawan, 2014).

In Indonesia, the formation and renewal of family law started when Islam began entering the archipelago (Indonesia) in the VII or 630s century, which was basically a period in which Hinduism and Buddhism were still very strong, this was also influenced because at that time the power of the existing kingdoms such as Majapahit and Sriwijaya.

Islam is able to enter Indonesia with its teachings that are peaceful and harmonious and with its three teaching substances, namely knowledge, humanity, and tolerance, which continues to develop and face shifts from the kingdom to the reform era by producing the driving rules, namely in the form of Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law (Rajafi, 2017).

B. Product in the Field of Family Law in Indonesia

Renewal products in the field of family law have developed quite a lot in Indonesia, some renewal products in the field of family law in the context or applicable in Indonesia are as follows:

1. Munakahat Field

a. Record of Marriage

It should be noted that almost all family laws in Islamic world have enacted the mandatory registration and registration of marriages, though in different intensities and forms. Most of these provisions only concern administrative matters and are not related to the legality of a marriage.

In the contextual realm, the author does not conclude a little about the purpose of this marriage registration, where the goal is to manifest, create, order, and protect the honor or dignity of the husband and wife for the chastity of their marriage.

The renewal that occurs in the context of recording marriage is that in classical fiqh, which we have studied, there are no provisions regarding the obligation to record a marriage, because it is neither a pillar nor term of the marriage, whereas in Law no. 22 in 1946, Law No. 1 year 1974 jo. Article 10, PP. 9 of 1975 and articles 5, 6, 7 of the Compilation of Islamic Law (KHI) states that marriage must be recorded, meaning that there is an obligation or requirement for the couple who will carry out the marriage to register the marriage (Djubaidah, 2010).

We need to know that changes in family law in the realm of registration of marriage in various regulations of Muslim countries there are similarities in views and demands in terms of statutory regulations regarding the need for a marriage contract to be registered. This is due to the importance of recording the marriage contract because it involves further legal implications, and in the opinion of the author also hopes that in the future Indonesia will provide a firm attitude towards the applicable marriage registration rules so that it is not just an administrative formality, but the attitudes and views that the applicable marriage registration can be a new pillar in the marriage contract so that it can be realized and carried out by the Indonesian people for the benefit of it.

b. Minimum Age Limit for Getting Married

The renewal in the context of the minimum age limit for getting married in the provisions of fiqh are usually marked by the puberty period, both male and female, where at the age of adulthood, a person is said that has been mukallaf which means being able to bear the legal burden (taklif) and can already accept the consequences of carried out or abandoning a rule of law, in simple terms, it is permissible to get married, but in the explanation of UUP (Marriage Law) No. 16 of 2019 concerning amendments to the Marriage Law No. 1 of 1974 article 7 subsection (1): Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. A person is considered an adult if she/he is 21 years old or has married. Likewise in the Marriage Law which is allowed to get married if she/he is 19 years old (Marriage Law No. 16 of 2019)

The minimum limit of marriage in the Marriage Law is considered to have matured in mind and body to carry out a marriage and it is hoped that a good marriage

can be realized without ending a divorce. Then also able to get healthy and quality offspring and can reduce the birth rate and reduce the risk of maternal and child mortality.

What is stated in the rules above should be the primary or basis for creating and presenting a sense of a country's legal policy, because it is a formal juridical activity that is obliged to carry out compliance with the procedures that have been determined or established, namely regarding something that has become the will of the community, so that in the future it is able to provide a sense of protection including the minimum limit provisions for marriage as a firm step in considering a condition and the physical and mental condition of the prospective bride and groom.

Then also the community must be fully aware and obey the rules that applied in Indonesia, including the minimum age limit for getting married which means giving benefit. Where the principle of obedience implies that all people without exception are obliged to obey the government and also exist in the rules of fiqh, namely:

تصرف الإمام على الرعية منوط ب المصلحة

“Government action against people is carried out on the basis of benefit”

c. The Role of the Guardian of Marriage

If we look closely, the rules of classical fiqh regarding guardianship of marriage, especially for guardians *adlal* and also the guardians of judges appointment, have no firmness and clarity, so that in the renewal that occurs in this era, bright spots are found and affirmation of these problems contained in the KHI (Compilation of Islamic Law) rules in article 23 and 24 which explicitly discusses the matter (Compilation of Islamic Law Articles 23 and 24).

The simple is, the role of a marriage guardian in a marriage contract is an obligation. Where the guardian of marriage is one of the pillars of marriage that has been agreed by the religious scholars in principle, as also in Article 19 of the Compilation of Islamic Law, it is stated that the guardian of marriage is a pillar that must be fulfilled in carrying out a marriage contract. If the *nasab* guardian has the most right to *adlal* (does not want to), the solution is to be proven by a decision from the competent Religious Court as stated in article 23 Compilation of Islamic Law

subsection 2, that is “*In the case of a guardian ad litem, the guardian of the judge can only act as the guardian of marriage after the court's decision regarding the guardian*” (Compilation of Islamic Law Articles 23).

d. Polygamy

Polygamy in the renewal era we find that in the Compilation of Islamic Law article 56 states that polygamy must obtain the blessing or permission of the Religious Court is different from classical fiqh, wherein the concept does not require permission from a court or another (Compilation of Islamic Law Article 56).

Many people misunderstand and think that polygamy is a teaching brought by Islam and some even say, if it was not Islam then polygamy would not be known in the course of human history (Mulia, 2007). It should be noted that polygamy existed before the arrival of Islam and was widely practiced by the leaders of the nations at that time (Tihami, 2010), even the prophets before the Prophet Muhammad also did it (al-Habsyi, t.t.). In the work of *Fiqih al-Sunnah*, Sayyid Sabiq said that the nations which practiced polygamy for the first time, among others; *Jahiliyah* Arabic (Abdurrahman, trans. Basri Aba Asghary and Wadi Masturi, 1992), Ibrani, and Cisilia who then gave birth to most of the population who inhabit countries, such as; Russian, Polish and German (Mulia, 2007).

Meanwhile, Indonesian marriage law actually adheres to the principle of monogamy. The principle of monogamy makes it possible to carry out polygamy if desired, some say that the principle adhered to by Indonesia is the principle of open monogamous marriage (Ridwan 2010). However, as explained above, to do polygamy, of course, you have to go through procedures and requests to court.

e. Interfaith Marriage

Seeing the novelty context of interfaith marriage in the regulations that have been determined or applied in Indonesia, it seems that it closes the implementation of interfaith marriage, which is clearly stated in Law No. 1 of 1974 concerning marriage, article 2 subsection 1, states that marriage is carried out according to the laws of their

respective religions and beliefs, and also emphasized in article 44 of the Compilation of Islamic Law which prohibits interfaith marriage (Umar Haris Sanjaya and Aunur Rahim Faqih, 2017), different from classical fiqh, we know that it is justified to marry *ahlu al-kitab*.

The existing legal products in Indonesia regarding interfaith marriage are in accordance with the decisions of the Indonesian Council of Religious Scholars (MUI), Nahdlatul Ulama (NU), and Muhammadiyah. The Indonesian Council of Religious Scholars decides: first, the marriage of a Muslim woman to a non-Muslim man is haram. Second, a Muslim man is forbidden to marry non-Muslim woman. There are differences of opinion between Muslim men and *Ahlul Kitab* women. “After considering that the meanness was greater than the benefit, the Indonesian Council of Religious Scholars declared that marriage was haram”, said the Second National Deliberative Council of the Indonesian Council of Religious Scholars, Hamka, in the declaration (Heri Ruslan, 2021). The religious scholars of Nahdlatul Ulama has also issued declarations related to interfaith marriage. The declaration was stipulated in the 28th Congress in Yogyakarta at the end of November 1989. It was decided that marriage between two people of different religions in Indonesia was not legal.

The Tarjih and Tajdid Council of Muhammadiyah Central Leadership also have beliefs about interfaith marriages. Explicitly, religious scholars of Muhammadiyah state that a Muslim woman is prohibited from marrying a non-Muslim man in accordance with al-Baqarah (2) subsection 221 above. “Based on the subsection, Muslim men are also prohibited from marrying non-Muslim women and Muslim women are prohibited from their guardians from marrying non-Muslim men,” said the religious scholars of Muhammadiyah in their declaration.

The occurrence of interfaith marriage is considered contrary to the purpose of marriage, how it can be able to create a *sakinah, mawaddah, and rahmah* family if each partner has different beliefs. In the perspective of *sadd az-zari'ah*, interfaith marriage is prohibited because it is feared that it could damage the existence of one's faith. The Indonesian Ulama Council, The Tarjih Council of Muhammadiyah Central Leadership, and the religious scholars of NU prohibited interfaith marriages on the basis of closing the possibility of harm that would occur as a result of interfaith

marriages. This prohibition has also gained momentum when it is linked to the current discourse on Christianization (Mas'udi, 1995). Today's inter-religious marriages are incompatible with the purpose of inter-religious marriages at the time of the Prophet. Now inter-religious marriages are only a proof of prestige and satisfaction of lust, not for the glory of the Islamic religion so this is better avoided.

f. Dowry in Marriage

Some issues that have long been debated by classical religious scholars and Muslim intellectual are the status and function of the dowry and its ownership status so that the novelty of family law in the current era we need to note that the status and function of the dowry and its ownership status have been carried out by several parties. The ownership that was previously in the hands of the guardian was changed to the right of the wife who was married as well as functionally, where it was used as compensation to become a symbol of love and affection.

In Indonesia, if we reopen the provisions of Article 32 of the Islamic Law Compilation, it is stated that the dowry is a gift from the husband to his wife and the absolute right of the dowry belongs to the wife, meanwhile, the Marriage Law does not yet regulate the issue of dowry because it is not part of the marriage pillar.

However, dowry is a gift that is mandatory for future husbands to wife candidates as stated in Article 32 of the Compilation of Islamic Law and the revelation of the Qur'an, Sura An-Nisa verse 4. Dowry in the context of novelty is the right of the married wife which aims to give a future husband a sense of sincerity to his future wife. Even though from a religious perspective, the amount of dowry given by a prospective husband to a prospective wife at the minimum to maximum level has no definite provisions, but rather a sense of sincerity from both parties, so that it does not burden the prospective husband and does not demean the prospective wife. Dowry can also be given in cash or can be paid in installments (in debt) on the basis of an agreement (Kohar, 2016)

g. Responsibilities of Child Care (*Hadhanah*)

One of the themes of family law renewal that is quite interesting for us to observe as an academic is the rights of child care. This is because the guidance are not found to explicitly regulate this discussion. The detailed concept of childcare in its

development continues to experience dynamics and a wide variety of opinions among *fuqaha*'.

In the Islamic Law Compilation, it has explicitly indicated that the judge's decision on divorce must also be determined regarding the rights or duties of this *hadhanah* against married couples who have underage children. This is as decided in the provisions of Article 156 of the Islamic Law Compilation as a result of divorce.

Mentioned in Law No. 23 of 2002 regarding child protection, the one who has more rights in caring for and nurturing the child is one of the two parents who have a close relationship with their child, even though Article 105 in (a) The Islamic Law Compilation states that caring for and nurturing a child who is not yet 12 years old or *mumayyiz* is the mother's right, but that does not mean that a mother cannot always get the right to care for a child for several reasons, such as the mother of the child is someone who likes to gamble, likes to hit, likes to drink alcohol or is drunk, does not pay attention to the child or often neglects him or her. The mother is bad at educating her child and can even physically abuse her child.

Then also if the mother does not do this directly, but gives a bad example to her child such as the lifestyle of a mother of the child is wasteful, has bad behavior, the environment of the mother is not good or bad for the development of her child, for example, the location of drug dealers, prostitution. So it is most likely if the mother character mentioned above is carried out or occurs, it is most likely that the custody of the child will be accepted to the father and vice versa.

h. Pledge of *Talak*

In the Compilation of Islamic Law, Article 115 states that divorce can only be carried out in a Court session (Malarangan, 2008). Whereas in classical fiqh it only regulates the issue of *khulu'*, *talak*, *li'an*, and *fasakh*, but its legality is not confirmed in a Court session.

Then also regarding the pledge of *talak*, it is contained in Law no. 1 of 1974 that the pledge for *talak* only occurs if the process is announced in front of the court council and that must wait for the completion of the divorce verdict which has permanent legal force, only after that the pledge of *talak* is determined.

Article 39 subsection 1 of Law no. 1 of 1974 concerning Marriage states that the pledge of *talak* can be carried out in a Court session or in front of a panel of judges after the court has tried to make reconciliation between the two sides and it is unsuccessful because it does not find common ground to be able to go back again. This rule is immediately different from the classical fiqh rules, where the pledge of divorce can be made with a one-sided statement, in this case, a husband, as verbally or in writing, seriously or in a joke, will still be said to have uttered a pledge of *talak*.

The purpose of Law no. 1 of 1974 and the Compilation of Islamic Law Article 105 is to limit or complicate and lessen divorce in society. Then to allow for a divorce, the related side must have certain reasons and of course it must be in front of a court session, then processed by the court. So that everything related to the sides, both the wife and the husband, which includes the decision on divorce, ideal living to the matter of marital property after the divorce has been fully recorded and decided because the court has the authority over this. Next, if in the future the husband does not fulfill the obligations that the court has imposed on him, then the wife can sue him in court to get her rights.

2. Mawaris Field

a. Substitute Heirs

In the Islamic Law Compilation Article 185, it is stated that the heirs who die first from the heir of his/her position can be replaced by the child unless the child commits a criminal case as stated in Article 173 (Mallarangan, 2008). Meanwhile, in classical fiqh, there are no substitute heirs.

The brief review in Article 185 is, where a grandson as a substitute heir can have or occupy the position of his/her parents, if the parent has a position as *dhawi al-furud*, then he/she will have a *furud dhawial* position, if his/her parents are as *ashobah*, he/she will also be *ashobah*, he/she can get the inheritance with the part his/her parents get if they are still alive.

Basically, substitute heirs are heirs caused by replacement, namely people who are in this case become heirs because their parents have the dead inheritance rights before the heirs. Therefore, the position of his/her parents was replaced by him/her.

Looking back at the inheritance provisions in Islamic law, not all grandchildren can replace the position of a deceased person to get an inheritance. In Islamic law, only male grandchildren of sons can acquire or replace their fathers, however, it is not possible for grandchildren of both male and female daughters to change the position of their mothers in obtaining inheritance..

Regarding the grandson of a son, it still has its own provisions, namely if when the heir dies, he does not leave any heirs, in this case, what is meant is that the son is still alive. If a son is still alive, then the grandson of the deceased son still cannot inherit the property from his grandfather.

The explanation above indicates that the provisions of the Islamic Law Compilation which are enforced provide a sense of justice for Muslims in the realm of *mawaris* in line with the bilateral principle as the goal of sharia. Although the provisions of Article 185 subsection 2 do not stipulate the number of shares received by the grandchildren who replace the position of their parents in terms of *mawaris*, the judge has the right to determine the amount of the share, as long as it is acceptable to all heirs.

b. *Wajibah* Escrow

The development of family law renewal in the field of inheritance, namely the problem of *wajibah* escrow, is a new concept in the distribution of inheritance, which is based on the fiqh references that the author has discussed at bachelor degree in the subject of fiqh mawaris, it is said that the concept of *wajibah* escrow was introduced by Ibn Hazm in the book *Al -Muhalla* who explained that both parents and relatives who cannot inherit are due to different beliefs so that an escrow is obliged to be given. If a Muslim during his lifetime never had an escrow, the guardian or heir who carried out the escrow.

Thus, the obligation of an escrow is not only the responsibility of a person in carrying out religious orders but can also be enforced if he neglects to carry it out

because it concerns the interests of other people or society, be it adopted children, adopted parents or heirs of different religions..

In the Compilation of Islamic Law, *wajibah* escrow and compulsions have their own provisions and concepts, namely only for adopted children and adopted parents. It is stated in Article 209 of the Islamic Law Compilation that the inheritance of adopted children is divided on the basis of Article 175 to Article 193 Islamic Law Compilation, then adopted parents who do not get an escrow are given *wajibah* escrow of one-third of the inheritance of their adopted children. In order to meet the needs of life in the community, the provisions of the *wajibah* escrow law are enforced because the relationship between adoption is included in the Islamic Law Compilation, where the Islamic Law Compilation is the legal basis for Muslims in Indonesia..

The position of the adopted child in the Islamic Law Compilation is to remain a legitimate child on the basis of a court decision without breaking the bloodline relationship with the biological parents. This is because the principle of adoption according to the Islamic Law Compilation is a manifestation of faith that carries a human mission that is manifested in the form of maintaining and preserving growth and development by fulfilling their needs. In the distribution of inheritance to adopted children in the Islamic Law Compilation by means of a grant or by means of a *wajibah* escrow, provided that it does not exceed one-third of the inheritance of the adoptive parents in order to protect other heirs.

From the brief explanation above, we can see and feel that the spirit of *ijtihad* in dealing with contemporary problems has begun, especially in the realm of family law which has been elaborated. Renewal and shifts have occurred, from the more dominant “individual” *fardi ijtihad* to the “collective” *jama’i ijtihad*. As one of the main holdings, namely the books of *fiqh* in solving a problem, starting to move on to renewal, where *fiqh* books are used as material in the making and ratification of regulations covering civil law to public law because they are considered to have more legal certainty.

Future challenges are getting tougher but not without hope. As long as we are willing to struggle, be creative and work hard to achieve the pleasure of Allah, Allah SWT will explain His instructions, as stated in Sura al-Ankabut verse 69.

والذين جاهدوا فينا لنهدينهم سبلنا...

“And those who strive for Us – We will surely guide them to Our ways. And indeed, Allah is with the doers of good”.

CONCLUSION

From the explanation above, several important notes can be written as a conclusion, family law is a law that has provisions in the area of munakahat and mawaris. The emergence of the Islamic law renewal that developed in this era in the view of Islamic jurists in Indonesia is due, *first*, to fill the legal vacuum caused by the existing rules in classical fiqh books that have not been regulated where the times have always demanded new rules to answer problems that continue to develop in society. *Second*, the demands of the modern era of economic development, science and technology which are completely sophisticated. *Third*, demands changes in various aspects to provide space for Islamic law to become a reference in formulating national law. *Four*, demands reform of Islamic legal thought from international Islamic jurists to national Islamic jurists, one of which is related to science and technology and issues of gender equality.

Then the products of family law renewal in Indonesia are divided into two scopes, namely munakahat and mawaris, where part of munakahat itself includes marriage registration, minimum age restrictions for marriage, the role of marriage guardian, polygamy, interfaith marriage, dowry in marriage, hadhanah and pledge of *talak*. Whereas mawaris includes substitute heirs and *wajibah* escrow.

REFERENCES

- Khallaf, A. W. (2000). *Perkembangan Sejarah Hukum Islam*, alih bahasa: H. Ahyar Amiudin (M. A. Djalil (ed.)). Bandung: Pustaka Setia.
- Doi, A. R. I. (1992). *Perkawinan dalam syariat Islam = Shari'ah the Islamic Law*; penerjemah H. Basri Iba Asghary, H. Wadi Masturi. Jakarta: Rineka Cipta.
- Wardatun, A., & Hamdan. (2014). *Kontekstualisasi Hukum Keluarga di Dunia Islam*. Mataram: LEPPIM IAIN Mataram.
- Djazuli, A. (2011). *Kaidah-Kaidah Fikih*. Jakarta: Kencana.
- Djubaidah, N. (2010). *Pencatatan Perkawinan & Perkawinan Tidak Dicatat: Menurut Hukum Tertulis Di Indonesia Dan Hukum Islam*. Jakarta: Sinar Grafika.
- Setiawan, E. (2014). *DINAMIKA PEMBAHARUAN HUKUM KELUARGA ISLAM DI INDONESIA*. *Journal de Jure*, 6(2). <https://doi.org/10.18860/j-fsh.v6i2.3207>

- Hidayat, F. (2014). DINAMIKA PERKEMBANGAN HUKUM KELUARGA DI INDONESIA. *An Nisa'a*, Vol 9 No 2 (2014): *An Nisa'a*, 1–22.
<http://jurnal.radenfatah.ac.id/index.php/annisa/article/view/265>
- Ghofur, A., & Sulistiyono, S. (2015). Eklektisisme dalam Taqîn Hukum Keluarga di Dunia Islam. *ISLAMICA: Jurnal Studi Keislaman*, 8(2), 261.
<https://doi.org/10.15642/islamica.2014.8.2.261-291>
- Ruslan, H. (2010). *Hukum Nikah Beda Agama dalam Islam dan Kristen, Samakah?* Republika.Co.Id. <https://republika.co.id/berita/113862/hukum-nikah-beda-agama-dalam-islam-dan-kristen-samakah>
- Mallarangan, H. (2008). PEMBARUAN HUKUM ISLAM DALAM HUKUM KELUARGA DI INDONESIA. *HUNafa: Jurnal Studia Islamika*, 5(1), 37.
<https://doi.org/10.24239/jsi.v5i1.150.37-44>
- Nur, I. (2017). PEMBAHARUAN KONSEP KESEPADANAN KUALITAS (KAFAA'AH) DALAM AL-QUR'AN DAN HADIS|. *KALAM: Jurnal Studi Agama Dan Pemikiran Islam*, 6(2), 411. <https://doi.org/10.24042/klm.v6i2.413>
- Khalaf, Abdul Wahab. (2004). *Ilmu Ushul Al Fiqh, Terjemahan: Al-Haramain*.
- Khallaf, Abdul Wahhab. n.d. *'Ilm Ushul Al-Fiqh, Terjemahan: Maktabah Al-Dakwah Al-Islamiyyah*.
- Khatimah, Husnul. (2007). *Penerapan Syari'ah Islam*. Yogyakarta: Pustaka Pelajar Offset.
- Khoiriyah. (2013). *Memahami Metodologi Studi Islam*. Yogyakarta: Teras.
- Kodir, K. A. (2017). *Metodologi Studi Islam (cet-2)*. Bandung: Pustaka Setia.
- Kohar, A. (2016). KEDUDUKAN DAN HIKMAH MAHAR DALAM PERKAWINAN. *JURNAL ASAS, Vol 8, No 2 (2016): Asas, Vol. 8, No. 2, Juni 2016*.
<http://ejournal.radenintan.ac.id/index.php/asas/article/view/1245>
- Kompilasi Hukum Islam.
- Mahmood, T., & Indian Law Institute. (1972). *Family law reform in the Muslim world*. Bombay: N.M. Tripathi.
- Mas'udi, M. F. (1995). Meletakkan Kembali Masalah Sebagai Acuan Syari'at. *Ulumul Qur'an: Jurnal Ilmu Dan Kebudayaan*, VI(3).
- al-Habsyi, M. B. (n.d.). *Fiqh praktis: Menurut al-quran al-sunnah dan pendapat para ulama*. Bandung: Mizan Media Utama.
- Mulia, S. M. (2004). *Islam Menggugat Poligami*. Jakarta: PT Gramedia Pustaka Utama.
- Nawawi, H. (1993). *Kepemimpinan menurut Islam*. Yogyakarta: Gadjah Mada University Press.
- Rahardjo, S. (1987). *Permasalahan hukum di Indonesia*. Bandung: Alumi.
- Rajafi, A. (2015). *Nalar Hukum Keluarga Islam di Indonesia*. Yogyakarta: Istana Publishing.
- Rajafi, A. (2018). SEJARAH PEMBENTUKAN DAN PEMBARUAN HUKUM KELUARGA ISLAM DI NUSANTARA. *Aqlam: Journal of Islam and Plurality*, 2(1).
<https://doi.org/10.30984/ajip.v2i1.507>
- Ridwan, S. (2010). *Poligami di Indonesia (No. 2 Vol.)*.
- Shomad, A. (2010). *Hukum Islam, Penerapan prinsip syariah dalam hukum Indonseia*. Jakarta: Kencana.
- Soekanto, S. (1985). *Efektivikasi Hukum Dan Peranan Sanksi*. Bandung: CV. Remadja Karya.

- Wahyuni, S. (2013). Pembaharuan Hukum Keluarga Islam Di Negaranegara Muslim. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, Vol 6, No 2 (2013), 211–219. <http://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/06208>
- Summa, M. A. (2004). *Hukum Keluarga Islam Di Dunia*. Jakarta: Raja Grafindo Persada.
- Tihami, (2010), *Fikih Munakahat*, Jakarta: Rajawali Pers.
- Sanjaya, U. H., & Faqih, A. R. (2017). *Hukum Perkawinan Islam di Indonesia*. Yogyakarta: Gama Media.
- Yushadani, Y. (2015). Kontroversi Seputar Pembaharuan Hukum Keluarga Islam Di Indonesia. *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 8(1), 25. <https://doi.org/10.14421/ahwal.2015.08102>
- Zarqa, M. A. az. (n.d.). *Al-Fiqhul Islami fi Tsaubihil Jadid*. Damsyiq: al-Adib.
- Zuhdi, S. (2016). REFORMULASI HUKUM PERCERAIAN DI PAKISTAN. *Law and Justice*, 1(1), 41–53