Analytical Study of the Development of Islamic Law in Indonesia

Natriani Hazanah¹, Misra Netti², Yosi Aryanti³

¹STAI Solok Nan Indah, Indonesia
²Institut Agama Islam Lukman Edy, Indonesia
³STIT Ahlussunnah Bukittinggi, Indonesia

natrianihazanah@gmail.com

Abstract

The study of Islamic law is currently experiencing development, because the impact of developments in science and technology, especially information and communication technology, is taking place rapidly. Changes in society in one place quickly spread to people in other places. The events occurring at this time stimulated the emergence of movements demanding free forms of the Quran and the Prophet's Sunnah, the reopening of the doors of ijtihad, and the abandonment of the doctrine of taqlid.

This study uses a qualitative method with content analysis approach, all data taken from various sources are derived from classical holy books, books, theories and expert opinion of Islamic education. The results of this research found the results of the development of Islamic studies during colonial rule, Islamic law in Indonesia during the period of national independence and types of Islamic law and their application. Methods for updating Islamic family law include: Takhshish al-qadha', giving authority to judges, Takhayyur, choosing between opinions within one dominant school, or among four schools, even outside the Sunni school, Re-translating verses of the Quran an and Hadith (retranslatio), Siyasah syar'iyyah, determining law based on benefits, Judge's Decision.

INTRODUCTION

It cannot be denied that Muslims in Indonesia are the majority element. Even at the international Islamic world level, Indonesian Muslims can be called the largest Muslim community gathered within one state territorial boundary (Kurniawan, 2018; Almalik, 2022; Mulyawan & Tiara, 2020). Therefore, it is very interesting to understand the historical trajectory of Islamic law in the midst of the largest Islamic community in the world. Questions such as how much influence the majority of Indonesian Muslims have on the application of Islamic law in the country, for example, can be answered by explaining the theories regarding the application of Islamic law that have been implemented in Indonesia.

This topic will always be interesting because the study of theories on the application of Islamic law in Indonesia can be used as a stepping stone (for Muslims in particular) to determine the right strategy in the future in bringing this nation closer and "familiarizing" this nation with Islamic law.
The historical process of Islamic law which is characterized by "collisions" between Islamic law and previously prevailing traditions, as well as state political policies, as well as actions taken by previous Indonesian Islamic leaders (ulama') can at least become important material for study in present and future. History has shown that the process of "Islamization" of a society is not a process that can be completed in a moment (At, 2012; Kholid, 2016; Chumaedi, 2018).

In a simple formulation, it can be stated that in essence Islamic law in Indonesia is legal norms originating from Islamic law which has grown and developed in people's lives throughout the history of Indonesia (Aris, 2015; Irawan, 2015; Djafri et al., 2022). The form of Islamic law in Indonesia was born from the marriage between normative Islamic law (syari'ah) and local Indonesian content (Sulaeman, 2013; Putra, 2017). Therefore, to see Islamic law in Indonesia as a whole, the use of a historical perspective is very important.

Most Muslims agree that as a religion, Islam regulates all aspects of social life with a set of norms, including legal norms. From the beginning, the Prophet SAW had established a legal structure to regulate the lives of his people (Islam et al., 2021; Sembodo et al., 2021). Thus, acceptance of Islam as a religion, including the meaning in it, is acceptance of Islamic law. Based on this, it can be stated that the existence of Islamic law in Indonesia coincides with the existence of Islam in Indonesia (Hakim, 2017; Aseri, 2018; Wahyuni, 2019). Therefore, when Indonesian people declare their conversion to Islam, it automatically means recognizing the authority of Islamic law over them. This is what is called theory faithorsyahādah, this theory was developed by Snouck Hurgronje who said that if Indonesian people say the two sentences of the shahada they automatically recognize the authority of Islamic law over themselves (Nurjannah et al., 2023).

Creed theory orsyahādahThis is also referred to by H.A.R Gibb as the theory of acceptance of legal authority, namely the theory that requires the implementation of Islamic law by those who have recited the two sentences of the shahada as a logical consequence of the statement. So, with the statement of the pledge of "there is no god but Allah and Muhammad is His messenger", every Muslim is required to follow all the commands of Allah written in the Quran and at the same time obey the Messenger of Allah through his Sunnah (Ulwan et al., 2021).

In the Quran there are several verses that can be used as a basis for the theory of credo or syahādahsuch as: the verse which explains that Muslims are basically commanded to obey Allah and His Messenger (an-Nisā': 49 and an-Nūr: 51), Muslims are not justified in taking other choices, if Allah and His Messenger have determined the law is certain (al-Ahzāb: 36), if you choose a law other than that of Allah in His Book, then you will be given a stigma in the Quran as an unjust, infidel and wicked person (al-Mā'idah: 44 , 45, and 47). Thus, it can be said that in terms of Islamic teachings themselves, without being linked to other laws or realities in society, the principle that Islamic law applies automatically to Muslims.

Regarding the application of Islamic law, Imam Malik, Imam as-Sya'fi'i and Imam Ahmad bin Hanbal when discussing the environment in which Islamic criminal regulations apply, they are of the opinion that Islamic law is applied to every sarimah(criminal acts) committed in Islamic or non-Islamic countries. So, Islamic criminal law does not recognize territorial boundaries. This theory became known as non-territorial theory. Apart from theory non-territorial, also known as theory territorial states by Imam Hanafi, he stated that Islamic law can only be applied in countries that are officially Islamic countries (Setiawan, 2014; Marzuki, 2019).

In the context of Indonesian criminal law itself, the principle of territoriality is also known, namely a principle that applies the Criminal Code (KUHP) to all people who commit criminal acts within the territory of Indonesia. This principle is the basic principle and is considered the oldest principle because it is based on state
sovereignty. The provisions on the principle of territoriality in Indonesia are contained in Article 2 of the Criminal Code, which reads: "Criminal rules in legislation apply to every person who commits a criminal act in Indonesia". Based on these provisions, the Indonesian Criminal Law applies to anyone, whether Indonesian citizens or foreign citizens, who commits criminal acts in Indonesian territory.

For this reason, this article is presented. Of course, this article cannot describe in detail every detail of the history of the implementation of Islamic law in the country. However, at least what the author will explain here can provide an overview of the journey of Islamic law, from the beginning of the arrival of Islam in the archipelago until this era of reform.

METHOD

This study uses a qualitative method with content analysis approach, all data taken from various sources are derived from classical holy books, books, theories and expert opinion of Islamic education. According to Downe, (1992) and Guthrie et al., (2004) this research approach design can be done to discuss problems, issues or specific topics derived from the literature collected thoroughly and then take the appropriate themes with the necessary data. Once all the data the authors collected then the next step is to choose the necessary data in accordance with the issues raised in this article.

Methods of the research results with these themes are also in accordance with the opinion Hsieh & Shannon (2005), and Anderson (2007) explains that, discussion of the results by content analysis approach can be done by using a theme or a major review in accordance with the issues and problems discussed.

RESULT AND DISCUSSION

Islamic Law in Indonesia during Colonial Colonization

In the evolution of Indonesian power, the conflict between the needs of daily living institutions and the guidance of the Islamic faith system has always played a very important role. This conflict can be seen from the struggle between Islamic law and customary law in Indonesia from time to time. There are times when conflict arises because there is a conflict between the two legal systems, but it is not uncommon for conflict to occur due to political problems that are deliberately created by certain parties.

1. Theory Reception at the Complex

The presence of the Dutch trade organization in the East Indies, or better known as the VOC (Dutch East-India Company) was the forerunner of Dutch colonization of the Indonesian region. As a trade organization, the VOC had a role that exceeded its function. This is very possible because the Kingdom of the Netherlands made the VOC an extension of its arm in the East Indies region, apart from carrying out trade functions, the VOC also represented the Kingdom of the Netherlands Indies in carrying out government functions, of course by enforcing the Dutch laws they brought.

In reality, the application of Dutch law encountered difficulties because the native population found it difficult to accept laws that were foreign to them. As a result, the VOC freed the native population to carry out what they had been doing. In this phase, theory is known as reception in the complex proposed by Salomon Keyzer and Lodewijk Willem Christian Van Den Berg (1845–1927). This theory states that "for every resident, their respective religious laws apply. If that person embraces Islam, then Islamic law applies to him, as well as to followers of other religions." However, Islamic law that applies remains only in family law (marriage and inheritance) issues (Hatta, 2017). This theory was valid from the time of the
Islamic kingdom until the beginning of the VOC era, namely when the Dutch had not yet intervened in all legal issues that applied in society.

The influence of theory reception in the complex colonial policy was clearly visible with the promulgation of several regulations, such as the Dutch East Indies Government Resolution (Resolution of the Indian Government) dated 25 May 1670, this resolution contains a compilation of Islamic law regarding marriage and inheritance which was applied in the VOC courts, a collection of Primary Javanese Laws taken from the Islamic Law BookInevitable for general courts in Semarang, and other regulations containing Islamic law enforced in Cirebon, Goa, and in several other areas (Alamsyah et al., 2021).

Apart from existing political factors, the emergence of theories of reception in the complex. This shows that at that time Indonesian society already had two very strong legal systems, namely the religious legal system and the customary legal system. These two legal systems are a reflection of what exists in society. So, theory reception in the complex is basically a legitimation of what is reflected in society. When the Dutch and their VOC became stronger in plundering Indonesia's wealth, on May 25 1760, the Dutch officially issued a regulation Resolution of the Indian Government Which later became known as Compendium Freijer. This regulation not only contains the application of Islamic law in the field of family affairs, but also replaces the authority of the Islamic judicial institution formed by Islamic kings with a Dutch-made judiciary (Tamam, 2018; Ridlo, 2021). Then with government gazette No. 152/1882 stipulated the establishment of Religious Courts in Java and Madura, without reducing their legality in carrying out judicial duties in accordance with the provisions of fiqh. The existence of Islamic law in Indonesia was only fully recognized by the Dutch after its repealCompendium Freijer gradually, and finally with staatstabled No. 354 /1913 (Zaelani, 2019).

2. Theory Front desk

When the Religious Courts established by the Dutch government were running properly, the Dutch government actually felt that Islamic law had really been enforced by Muslims in Indonesia and they felt threatened by it because they considered that Islam was the only force that threatened and could destabilize their power over Indonesia. To anticipate this, the colonial government introduced the term Indian adat lawlor Indonesian customary law. This idea was sponsored by an advisor to the Dutch East Indies government on Islamic issues and colonial children, Christian Snouck Hurgronje (1857-1936) and then developed by Cornelis Van Vallenhoven (1874-1933) and Ten Haar (1892-1941), they have background expertise in the field of customary law (Tamam, 2017).

In their ideas, the point is that the law that applies to Muslims is their respective customary law. Islamic law can apply if it has been accepted or accepted by customary law. So, in this case the law is what determines whether or not Islamic law exists. From here the theory was born front desk which states, "not all parts of religious law can be accepted in customary law, Islamic law is only certain parts of customary law," namely, especially parts of human life that are very personal in nature and are closely related to inner beliefs, for example family law, law marriage and inheritance law. This is clearly visible in several colonial policies such as in State paper No. 116 of 1937 which stated that jurisdiction over inheritance matters was transferred from the Religious Court to the General Court, where the cases that arose were not decided according to Islamic law but according to customary law.

Snouck Hurgronje stated that Islam in Indonesia is divided into two models, namely: "Islam as a religion" and "Islam as a political doctrine". Towards the former, he offered an attitude of "tolerance" which was later translated into a neutral attitude towards religious life. On the other hand, if it appears to contain "political characteristics", it must be purged by any means, including violence. Any interference
in issues related to Islam and foreign countries must be cut down to the roots. Supported by his appearance as a white Habib (Batavian mufti) with a green robe and turban, Snouck Hurgronje easily deceives and makes people admire him without being suspicious of his "devil's plans". His neutral attitude towards religious activities not only succeeded in convincing the majority of religious officials, but most (if not all) kiai and ulama, did not need to be afraid of the colonial government, as long as they did not carry out political propaganda activities.

Thus, for Hurgronje, no matter how much power is exercised by Islamic judges or independent religious teachers, in worldly and political matters the Indonesian people remain subject to the guidance of their customs. With this idea, he rejected the theory of his predecessor Van Den Berg, that Islamic law had been fully accepted by society. With theory front desk Likewise, Hurgronje is known as the architect of Islam’s most legendary political successes. Main load reception theory is a principle avoid and command (politics of fighting against each other) which aims to inhibit and stop the spread of Islamic law and form a rival legal concept that supports the divisive politics of the colonial government. According to Hurgronje, the enemy of colonialism is not Islam as a religion but Islam as a political doctrine. He saw the fact that Islam often posed a threat to the continuity of Dutch power.

In order to apply theory front desk At that time, the Dutch established the Office of Native Affairs (Office for Home Affairs), this institution became the starting point in the future as the forerunner to the Ministry of Religion that exists today. The institution led by Snouck is more focused on Islamic circles in particular, although it also regulates inter-religious relations in general. Meanwhile, in the realm of education, the Dutch East Indies provided strict control and supervision, even limiting the movement of Islamic education. At the same time, the colonial government promoted public schools, such as the establishment of HIS (Dutch native School; Dutch Native School). Apart from that, colonial policy also provided injections of subsidies, even the development of schools managed by Christian and Catholic missions. Indonesian students studying at Leiden University are also fed with theory at the front desk in the implementation of law in Indonesia, the same thing also happens at the Law School in Jakarta. Many alumni from this university become lecturers at several state universities in Indonesia, this theory is then also taught to students and so on, so that some law graduates in Indonesia follow the theoretical understanding, front desk. As a result, in every discussion regarding the contribution of Islamic law to national legislation, there are always parties who issue it.

Things that need attention and need to be noted from the theory front desk is that this theory originates from scientific research on customary law carried out by Snouck Hurgronje and his friends. They realized that to understand indigenous institutions, they had to study the subject from an eastern (indigenous) point of view as well. During Van Vallenhoven’s time, research on customary law led him to the conclusion that in Indonesia there was cultural pluralism. Therefore, he divided Indonesia’s territory into 19 customary law areas based on culture, language and customs. This research proves that Islam only has a slight influence on customary law, in other words that basically what applies in society is customary law. Because what applies in society is customary law, when Islamic law is to be enforced it must first be accepted by the customary law (Somawinata, 2009).

Ironically, when customary law is increasingly understood theoretically, the character of customary law is increasingly disturbed. The benefits of collecting customary law in written form are many, but once the customary law is written down on paper, customary law has ceased to be a living tradition. One will no longer be able to talk about customary law, but only a system developed by the Dutch on the basis of original law. Moreover, when research on customary law is carried out on the
basis of Western methodology which tends to focus on the substantive aspects of the law only, the fundamental importance of customary law is that its rules can be negotiated, adjusted and changed according to new circumstances, actually often escapes the attention of researchers.

**Islamic Law in Indonesia During the Nation's Independence**

Echoes and influence of theory front desk apparently it has been going on for quite a long time and has dominated the legal minds of the Indonesian people. This theory has been deeply embedded in their minds. It is as if they have felt that it is something that is right and normal, that Islamic law is not the law in Indonesia. It has been ingrained in people's minds that what applies is customary law and only when Islamic law has become customary law will it become law. Theory Front desk. This had an influence not only on scholars who lived in the pre-independence period and the enactment of the 1945 Constitution which formally abolished this theory, but also until in the mid-1970s, many judges in the General Court were asked to resolve inheritance cases between Muslims, resolved according to customary law (Adiasih, 2018).

First, Theory Reception Exit. Theoretical phenomena front desk which was deeply rooted in society, ultimately made Islamic figures sympathetic to the state of Islamic law in Indonesia at that time, including Hazairin. He is an expert on Indonesian customary law and Islamic law who is very opposed to theory front desk. According to him, theory front desk It was deliberately created by the Dutch to oppose the progress of Islam in Indonesia. The theory is the same as "devil theory" because it invites Muslims not to obey and carry out the orders of Allah and His Messenger. To counter the theory front desk. Hazairin then came up with a theory of reception exit. According to him, after Indonesia proclaimed its independence and the 1945 Constitution was established as the country's basic law, even though the Transitional Regulations stated that the old law was still valid as long as its spirit did not conflict with the 1945 Constitution, all statutory regulations of the Dutch East Indies colonial government were based on theory. The front desk is no longer valid because its spirit is contrary to the 1945 Constitution. Theory Front desk adopted by the colonial government must exit (leave) because it is contrary to the Quran and Sunnah (Rana, 2018).

According to Hazairin, Indonesia is very familiar with the belief in God Almighty. In the preamble and body of the 1945 Constitution, the words "Belief in One Almighty God" are always included. Even though these words are the result of a compromise to replace "belief in God with implementing Islamic law for its adherents," there is no intention to get rid of religious law. In this term, the religious law that applies in Indonesia to its adherents is not just Islamic law, but the laws of other religions also apply. Therefore, after independence, Indonesian Muslims should obey Islamic law because that law comes from Allah and His Messenger, not because Islamic law has been accepted by customary law as explained in theory. front desk. This means that during this period of independence, Islamic law was applied to Muslims. With the presence of Hazairin's theory, a new chapter of fiqh renewal with its Indonesian nuances began.

Hazairin's view is actually very realistic because it is in line with existing historical evidence. For example, in Aceh the people want marriage and property issues, including inheritance issues, to be regulated according to Islamic law. Traditional provisions in marriage ceremonies, as long as they do not conflict with Islamic law, are acceptable (Saiin et al., 2019). Hazairin's view is also in line with the view of Ismail Suny who stated that after Indonesia became independent and the 1945 Constitution became effective as the basis of the State even though it did not contain the seven words of the Jakarta Charter then the theory front desk declared no longer valid and loses its legal basis. Furthermore, Islamic law applies to the
Indonesian people who are Muslim in accordance with article 29 of the 1945 Constitution. This era is referred to by Ismail Sunny as a period of acceptance of Islamic law as a persuasive source (persuasive source).

Second, Theory Receive Contrary. This is in line with theory reception exit; this was also stated by Sajuti Talib, one of Hazairin's students. Sajuti Talib believes that Islamic law is what applies to Muslims and customary law can only apply if it does not conflict with Islamic law. This opinion became known as theory receiving the opposite (acceptance of the opposite). Sajuti Talib does not agree with Van Den Berg's theory which says that the Indonesian nation's customary law is its own religious customary law, as if original customary law did not exist at all. According to Sajuti Talib, customary law still exists because it originates from the culture and traditions of a nation and is valid if it does not conflict with Islamic law. In fact, he even disagrees with the theory front desk Snouck Hurgronje who denigrated Islamic law which originates from the Quran and Sunnah, and raised the status of customary law.

Theory Receive the opposite this seems similar to the theory reception exit developed by Hazairin. The difference between the two lies in the basis of their thinking. On theory reception exit, the basis used by Hazairin is that since the founding of the Republic of Indonesia in 1945, he has not accepted the understanding of the formulation of the Transitional Regulations only at a formal level. Meanwhile, the rationale is based on theory and the opposite is that in the independent Republic of Indonesia, in accordance with inner ideals, moral ideals and legal awareness of independence, it means that there is freedom to practice religious teachings.

Daud Ali tries to analyze why Islamic law that applies in Indonesia is only limited to muamalah law, or more narrowly, family law, inheritance and endowments. He divided Islamic law in Indonesia into two. First, Islamic law that applies formally juridically, namely Islamic law that regulates human relations with other humans and other objects is called muamalah law. Second, Islamic law is normative in nature and has sanctions. This second Islamic law can be in the form of pure worship or criminal law. According to Daud Ali, criminal matters do not require regulations because they depend more on the awareness and level of faith of Indonesian Muslims themselves.

Since 1974, the relationship between Islamic law and customary law has begun to enter a harmonious phase as stated in Daud Ali's opinion as follows: (1) formally juridical, Islamic law can apply directly without going through customary law, (2) Islamic law has the same position as customary law and western law, and (3) the Republic of Indonesia can regulate a matter with Islamic law as long as the regulation is to meet the special legal needs of Muslims.

Third, Theory Existence. To emphasize the meaning of the theory and the opposite in relation to national law, Ichtiyanto put forward a theory Existence. Theory Existence Strengthening the existence of Islamic law in national law. According to him, Islamic law: (1) exist (exists) as an integral part of national law, (2) exist with its independence, in the sense that its power and authority are recognized as national law and given the status of national law, (3) exist in the sense of Islamic legal norms as a filter for national legal materials, and (4) exist as the main material and source of national law (Bo'a, 2018).

So, basically existentially the position of Islamic law in national law is a sub-system of national law. Therefore, Islamic law also has the opportunity to contribute to the formation and renewal of law. Reformulation of Islamic Law in Indonesia: Towards Indonesian Fiqh. The emergence of the reform movement towards the rigidity of Islamic law gave birth to a concept of fiqh that was more locally based or could be said to be Indonesian fiqh. Indonesianist is a continuation of the "Return to
the Quran and Sunnah Movement” but at the same time it is a return to traditional attitudes and thought patterns that maintain customs but are rejected by reformists. The reformists aspire to build Islamic law with Indonesian characteristics by liberating Indonesian culture from Arab culture and making Indonesian customs one of the sources of Islamic law in Indonesia. This movement was marked by the emergence of the idea of Indonesian fiqh (Tohari, 2017).

In the early 1950s, Hazariin offered a concept Sect National in the sense of "school" as a meaning that actually relies on al-Quran, Sunnah and "National", namely Indonesia, with the intention that Islamic law in Indonesia becomes "practical" carried out by its people. Even though it is based on the Syafi’i school of thought, the National School limits its scope to non-worship laws that have not been made into law by the state. The indirect influence of the National School that can be felt today is with the Marriage Law number 1 of 1974, Law Number 7 of 1989 concerning Religious Courts and the Compilation of Islamic Law. This is proof that there is another way for contemporary Indonesian society to find solutions that make reference books easier. In 1987, Munawir Sjadzali also offered a review of the interpretation of Islamic law, emphasizing changes tradition, maşlahat, and mafsadat, which is popular with" Reactualization of Islamic law", although Munawir called it "Dynamics of Islamic Law". This idea is motivated by the increasingly widespread "ambiguous attitude" among Muslims regarding religion. In the same year, Abdurrahman Wahid (Gus Dur) put forward the idea "Indigenization of Islam".

Long before theories of the implementation of Indonesian fiqh law emerged, in 1940, Hasbi Ash-Shiddieqy put forward the idea of the need to establish "Indonesian Fiqh", which later in 1961 was defined as “fiqh determined based on the personality and character of the Indonesian nation”. To justify the locality of Indonesian fiqh, Hasbi adheres to the history of the development of fiqh (tārīkh tasyrī'). Tārīkh tasyrī'According to Hasbi, it proves that local fiqh has emerged since the beginning of the spread of Islam beyond the boundaries of Mecca and Medina. Hanafi school in Kufah, Maliki in Medina, Shafi'i in Baghdad (Old saying) and then in Egypt (qaul jadīd), as well as the Hambali school of thought in Baghdad, are certainly among the popular examples. According to Hasbi, the locality of this school of thought is due to differences in opinion, place, customs and the spirit of the mujtahid himself. Even though it was legitimized by tārīkh tasyrī', Hasbi still emphasizes that the locality of Indonesian fiqh must be supported by case studies (dirāsat alwaqā'î) regarding Indonesian society and other contemporary societal systems. This study must use a legal sociology approach and legal studies in general to see its influence and ability to solve the needs of society, and after that it will enter the phase of problem solving.

Hasbi recommends that supporters of Indonesian fiqh use the method of comparing schools of thought when the problems faced have been solved by ijtihad in various existing schools of thought. This comparison, which is not limited to Sunni schools of thought, is divided into two stages. First, choosing from among the four Sunni sects. Second, choosing from all schools of thought including non-Sunnis. Both were carried out in order to seek opinions that best fit the context of space, time, character and the benefit of the Indonesian nation. Hasbi further emphasized that comparative studies of this school of thought must be followed by comparative studiesuşūl fiqh from each school of thought, with the hope that these views can be integrated or even united. Comparative studyşūl fiqh this is done with the following stages: (1) Studying the principles held by each sect’s imams as well as the problems they disagreed with by examining their reasons. (2) Studying the arguments that are used as references as well as those that are disputed. And (3) Studying the arguments offered by each sect regarding the disputed arguments and choosing the strongest arguments.
On the other hand, if the problem faced has never been solved by previous mujtahids, it is recommended that supporters of Indonesian fiqh ijtihad bi ar-ra‘iyi, namely determining the law based on mashahat, rules kulliyat and smell (causa) law, while the method used is sometimes qiyās, istihsān, istiṣlah, ‘urf, and istishab. Hasbi further explained that the law in question must be decided through ijtihad jama‘ī (ijma’) which is in consultation with state orders, not ijtihad fardī. For this reason, Hasbi suggested that an institution be established ahl al-hall wa al-aqd which is supported by two sub-institutions. First, institutions hayat as-siyāsah (political institutions), namely those consisting of people elected by the people. Second, institutions love (the mujtahids) and the boardahl al-ikhtiṣāş (specialists) who are also representatives of the people.

Historically, the idea of Indonesian fiqh put forward by Hasbi in 1940 is still an ideal. And up to the stage above, actually Indonesian fiqh is still not grounded so it needs to be Indonesianized. Therefore, to perfect Hasbi's idea, Yudian Wahyudi put forward a theory of reorientation of Indonesian fiqh (Indonesianizing Indonesian fiqh). The first step to take is to create traditional Indonesia as one of the sources of Islamic law in Indonesia. The second step is to link existing institutions ahl al-hall wa al-aqd (in Hasbi's theory) with several social and political institutions in Indonesia. It could be said that ahl al-ijtiḥādorhay‘at at-tasyri‘iyyah that is the Indonesian Ulama Council (MUI), with mujtahids drawn from representatives of Islamic organizations, such as Nahdlatul Ulama’ (NU), Muhammadiyah, Islamic Association, and AlIrsyad. This is with the assumption that prospective Indonesian mujtahids are those with bachelor's, master's and doctoral degrees with expertise in the field of Islamic law. For those who do not have a formal diploma, they can still be recognized as mujtahid candidates after their skills have been demonstrated. Ahl al-ikhtiṣāş Hasbi's version can be translated as the Indonesian Muslim Scholars Association (ICMI) (Mukri, 2017).

Types of Islamic Law and Their Application

The long explanation regarding the theories of legal enforcement above raises at least one main question, namely "which Islamic law will be enforced in Indonesia?". Therefore, according to the author, it is necessary to explain the types of Islamic law and their implementation, to provide a complete picture. According to Atho Mudzhar, there are at least four types of products of Islamic legal thought that are known in the history of Islamic law, namely:

First, the book of fiqh, the books of fiqh are comprehensive and cover all aspects of Islamic law. It tends to be immune to change because revisions to parts of it are considered to disrupt the integrity of the content of the whole. History has proven that, although written fiqh books were not intended to be applied generally in a particular country, in reality several fiqh books have been implemented as books of law. Fiqh books when written by their authors also do not explicitly mention their validity period, so they tend to be considered valid for all time.

Second, Court Decision. Court decisions tend to be more dynamic because they are responses to real cases faced by society. Religious court decisions do not cover all aspects of Islamic legal thought like the book of fiqh, but in terms of legal force they are more binding, especially for the parties concerned.

Third, Legislative Regulations. Like court decisions, statutory regulations are also binding, in fact their binding power is broader. The people involved in its formulation were not limited to just ulama or fuqaha, but also politicians and intellectuals. The validity period is usually limited, or if it is not officially stated, in reality the validity period will cease to exist when the statutory regulations are revoked or replaced with new statutory regulations.

Fourth, Ulama Fatwa. The characteristics of a ulama's fatwa include that it is casuistic, because basically the fatwa is a response to questions asked by the fatwa
applicant. In contrast to court decisions, ulama's fatwas do not have binding force, meaning that the person requesting the fatwa does not have to follow the contents of the fatwa. Likewise with the wider community, they do not have to be bound by the ulama's fatwa because the ulama's fatwa in one place may be different from the fatwa of another ulama in the same place.

**Implementation of Islamic Law in a Political-Legal Perspective**

Juridically and constitutionally, the Indonesian state is neither a religious state nor a secular state. According to him, Indonesia's Religious nation state or a religious nation state. Indonesia is a country that uses religious teachings as a moral basis, as well as a source of material law in the administration of national and state life. Therefore it is clearly said that one of the foundations of the Indonesian state is "Belief in One Almighty God". Abdul Ghani Abdullah stated that the enactment of Islamic law in Indonesia has received a constitutional place based on three reasons, namely: First, philosophical reasons that Islamic teachings are the way of life, moral ideals and legal ideals of the majority of Muslims in Indonesia, and this has an important role in creating the fundamental state norm Pancasila. Second, sociological reasons that the historical development of the Indonesian Islamic community shows that legal ideals and legal awareness based on Islamic teachings have a continuous level of actuality, and Third, the juridical reasons contained in articles 24, 25 and 29 of the 1945 Constitution provide a place for the implementation of Islamic law in a formal juridical manner (Najib, 2020).

Regarding the position of Islamic law in the legal system of the Indonesian state, the legal system in Indonesia is plural, this is a result of its historical development. It is called that because currently in Indonesia three legal systems apply at once, namely the customary law system, the Islamic legal system and the western legal system. However, it is not an exaggeration to say that Islamic law in Indonesia is "living law" (the living law), even though it is official in certain regulatory aspects, it is not or has not been made into a positive legal rule by the state. The many questions and problems regarding law in society that are submitted to ulama, mass media, and Islamic social and religious organizations, should be seen as a sign that Islamic law is the law that lives in society.

To realize this assumption, it is necessary to actualize Islamic law itself, so that it remains an urgent part of the national legal development process. The actualization of Islamic law can be divided into two forms: First, efforts to enforce Islamic law by establishing certain legal regulations that apply specifically to Muslims. Second, an effort to make Islamic law a source of law for drafting national law (Hikmatullah, 2017). The legislative procedures for Islamic law must refer to the legal politics adopted by state authorities collectively. A law can be established as a written regulation that is codified if it has gone through a political process in state power bodies, namely the legislature and the executive, and meets the requirements and proper legislative design.

**CONCLUSION**

The study of Islamic law is currently experiencing development, because the impact of developments in science and technology, especially information and communication technology, is taking place rapidly. Changes in society in one place quickly spread to people in other places. The events occurring at this time stimulated the emergence of movements demanding free forms of the Quran and the Prophet's Sunnah, the reopening of the doors of ijtihad, and the abandonment of the doctrine of taqlid. Meanwhile, women are getting education and working outside the household, so there are changes in their position in the social, cultural, political, economic and economic fields other. This study uses a qualitative method with content analysis approach, all data taken from various sources are derived from
classical holy books, books, theories and expert opinion of Islamic education. Methods for updating Islamic family law include: Takhshish al-qadha’, giving authority to judges, Takhayyur, choosing between opinions within one dominant school, or among four schools, even outside the Sunni school, Re-translating verses of the Quran and Hadith (re-translation), Siyasah shari’yyah, determining law based on benefits, and Judge’s Decisions.

REFERENCES


analysis. Qualitative health research, 15(9), 1277-1288.


Copyright holder:
© Hazanah, N., Netti, M., Aryanti, Y.

First publication right:
Jurnal Elsyakhshi

This article is licensed under:
CC-BY-SA