

Social Changes In Islamic Law Implementation In Indonesia

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Abstract

Islam came and become a crucial guide to human life which has implications for the changing mankind civilization and the world order. In the regional scope, communities also experience changes over time and space. This paper discusses how changes in Arab society occurred in the range of history to modern society in the Indonesian context. The changes observed in Arab and Indonesian societies are based on social aspects but are closely related to legal changes. In the Indonesian context, across the time the implementations of Islamic law also change because of the complexity of the problems that occur among them in terms of the implementations of Waqf, marriage law and inheritance law in Indonesia. Changes and problems that occur are considered as challenges that need to be responded for the renewal of the compilation of Indonesian Islamic Law (KHI).

Keywords: Social, Changes, Islamic Law

Introduction

Islam as a religion has come to give benefit to humanity. Islam does not only come but it is related to space and time. In space and time, Islam has historical traces. Islam is not a man-made religion, but it is the word of God conveyed to the Prophet Muhammad through the angel Jibril a. s for the happiness of living in this world and the hereafter. That's why to achieve world happiness and the hereafter there are guidelines and demands that must be carried out. All the rules, guidance contained in the Qur'an and Hadith are used as the core guidelines in treading life. In the context of practicing religion, the followers of Islamic law can work and even become the culture of a country.

Islamic law covers various dimensions: namely, the abstract dimension and the concrete dimension. The abstract dimension is reflected in the form of all commands and prohibitions of Allah and the Messenger of Allah. The concrete dimension can be seen in the form of a patterned behavior that is steady among Muslims as an effort to carry out the commandments of Allah and His Messenger. The more concrete one is in the form of human behavior ('amaliyah) both individually and collectively. In social reality, religion often appears with a paradoxical face with its universal mission. It can sometimes be social glue that can unite the community. On the other hand, religion is also often seen in the process of social disintegration between religious communities.

Literature Review

Theories of Social Change

Based on the origin of legal changes, there are three types of legal changes, namely:

1. Changes originating from outside the legal system, namely from society, politics and science.
2. Changes originating from the legal system itself. Internal changes of law happen a lot and

happen continuously for example, improvements to details of the law or jurisprudence.
3. Changes in centralized law. In this case, law changes are made consciously, which are designed centrally by law-maker bodies at the central government level in a country.

Laws and Problems of Stability and Change

In this section, we will observe the changes that occur in Islamic societies related to law: Islamic Inheritance Law which is based on nasab and marital relations, the relationship between al-Qur'an and Sunnah with customs (Arabic culture) at the time of the Prophet Muhammad basically has a general tendency (mainstream) to change Arab customs.

According to Toshihiko Izutsu, Qur'an has formed a broad semantic field of the social system which deals with the laws and provisions governing various human relations in Islamic society. He classified these concepts into seven sub-fields:

1. Marriage relationships which include concepts relating to marriage, divorce, adultery;
2. Parent-child relationships, which include parental obligations towards their children, children's obligations towards parents, and regulations regarding adoption;
3. Inheritance law;
4. Criminal law, specifically murder, theft and revenge;
5. Trade relations which include concepts of agreements, debts, usury, bribes and regulations in the distribution of profits in trade;
6. Laws on charity, in the sense of alms and alms;
7. Laws related to slavery.

Inheritance law stipulates standard parts by prioritizing inheritors from close relatives to distant ones. There is no universal inheritance (*successio in universum ius*). The Arabian Peninsula is the center of Islamic civilization because it was on this peninsula that the Prophet Muhammad was born and the Qur'an as a human guide was revealed. According to their lineage, historians divided Arabs into three parts. The kinship structure of Arab society is patrilinear. For Arab society this kinship system is very useful. It is used for trade and warfare. In commerce they are always in groups, where the basis for forming groups is their kinship system. In commerce they need a long journey across the desert they need a group consisting of their relatives. The tribal ties of the Arabs are very close, so that if there is friction with other tribes they will fight to defend their tribe.

The sociological conditions, culture and political models of the Arabs which surrounded the emergence of Islam (Al-Qur'an and As-Sunnah) had a very dominant role in the building of texts and the products that were issued. The people of Mecca and Medina, who consisted of various tribes with specific languages and cultures, participated in shaping the character of the texts that were raised. The Arabic language with various dialects (*lajnah*) used by Qur'an brings a conclusion that the Qur'an is truly an anthropological network and Arabic culture.

The patrilinear system of kinship in Arab society is also shared by the Sunnis, because at the time of the formation of *fiqh*, knowledge about the forms of society had not yet developed so that the jurists in various jurisprudence schools have not yet obtained comparisons regarding various inheritance systems in various forms of society. Therefore, it is not surprising that the later drafted inheritance law was Patrilinear. Regarding the cause of

inheriting in the context of Islamic law / faraidh, this happens due to the death that brings influence and legal consequences to self, family, community and the surrounding environment. Inheriting is due to the blood relations. This is in accordance with the reported Hadith narrated by Bukhori and Muslim: "... From Abdullah bin Thawus from his father from ibn 'Abbas from the Prophet SAW said: ..." pass to the rightful heirs, then some of the excess is for men which is closer (kinship) to the corpse ". According to the hadith above, the father becomes 'ashabah' for the inheritance left by his son. The father finished off the inheritance after being given a third to the mother. If the deceased does not leave a son or grandson, then the father becomes an 'ashabah' on the grounds that at that time the father was the boy who was the closest kin to him.⁸ In general, the scholars agree that the offspring who are entitled to inherit are only descendants through the male line, without considering the possibility that the descendants through the female line have the same rights as those granted to male line descendants.

In Indonesia, related to grandchild's inheritance as a successor to a successor, there is still no standard in the settlement of inheritance cases because there are still legal choices in resolving the issue, even though there are already grandchild inheritance rules (as substitute heirs) contained in the Compilation of Islamic Law (KHI) but has not become a standard in making decisions about the inheritance rights of grandchildren whose parents have died. In KHI, the issue of inheritance of grandchildren to replace the position of his parents is regulated in article 185 paragraph (1) and (2) which reads:

1. Heirs who die first than heirs, their position can be replaced by their children, except those mentioned in article 173.
2. The portion of an heir must not exceed the portion of the heirs who are equal to those replaced.

Although the two articles above are considered by some experts unclear because in the case of inheritance arising in the community, there is a problem with the court decisions that have been implemented. But article 185 KHI is one form or effort to provide justice in the distribution of inheritance. And in principle does not occupy the full position as the heirs who were replaced and will not harm the heirs who are equal to the heirs who were replaced. And the maximum amount of inheritance is the same as the number of inheritance heirs which is one level. Furthermore, in some cases the heirs receive a smaller portion.

The rationale for placing a grandchild as a surrogate heir is to provide an umbrella of inheritance law against him when he is with a son so that originally according to Sunni inheritance law, he was hijacked by a son, became unincarnated because of occupying the position of his father or mother who had died earlier than his grandfather or grandmother. Provisions on the inheritance of grandchildren in KHI when viewed from a sociological perspective can be said that the social structure or the smaller one, the family structure can influence Islamic inheritance law. In modern societies which tend to provide equal opportunities for men and women, it is natural that his aspirations regarding balanced rights and obligations in this case are inherited.

With regard to the causes of inheriting, the Qur'an has been explained in Q. An-Nisa 'verse 11:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

11. Allah prescribed to you about (the distribution of heirlooms to) your children, that is, the portion of a son is the same as the portion of two daughters; and if the children are all more than two women, then for them two thirds of the assets are left; if the daughter is one, then she gets half the wealth. And for two mothers and fathers, for each of them one-sixth of the assets left, if the deceased has a child; if the deceased person has no children and he is inherited by his mother (only), then the mother gets a third; if the deceased has several siblings, then the mother gets one sixth. (The divisions mentioned above) after fulfilling the will he made or (and) after being paid the debt. (About) your parents and your children, you do not know which of them is the closer (much) benefit to you. This is a decree from God. Verily Allah is All-knowing, All-Wise.

Then we can also find it in Q.S.An-Nisa 'verse 34:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ وَاللَّاتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاضْرِبُوهُنَّ فَإِن أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا (٣٤)

34. Men are leaders for women, because Allah has increased their portion (men) over another (women), and because they (men) have spent part of their property".

Discussion

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Changes in Indonesian Waqf Implementation

Perwakafan is an institution that has long been known in Indonesian society as a socio-religious institution. As reflected in the considerations of Government Regulation No. 28/1977 which is the legal basis for representation. It is stated that waqf is a religious institution that is religious in nature, whereas in Law Number 41 of 2004 concerning Waqf it is said that waqf is a legal act of wakif to separate and or surrender a part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and or general welfare according to sharia. According to article 15 jo. Article 20 and Article 21 sub (a) Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Endowments, types of movable objects for endowments may be in the form of money, and non-money movable objects (ships, aircraft, motorized vehicles, industrial machinery, metals and precious stones, stocks, bonds, government bonds and other securities which can be valued in money). In addition, intellectual property rights, rental rights, usufructuary rights, usufructuary rights to movable property (Article 21 sub b and sub c PP No. 42 of 2006).

Observing social changes that occur in Indonesian society and regarding money waqf in Indonesia, Uswatun Hasanah, chairman of the Research and Development Division (R & D) of the Indonesian Waqf Board, said that at this time there were no more problems with this form of waqf. According to her, on May 11, 2002 the Indonesian Ulema Council Fatwa Commission had issued a fatwa on endowments of money. It contained "Waqf money (Waqf al-Nuqud) is waqf made by a person, group, institution or legal entity in the form of cash, waqf money is also included in the understanding of securities" waqf jawaz (permissible) legal money. Actually cash waqf is basically aimed at raising endowment funds sourced from the people, which can then be utilized for the maximum benefit of preaching and society. So far, the community only knows waqf in the form of land and buildings whereas the endowments in the form of money have not been well socialized.

With this cash waqf will provide an opportunity for everyone to bersadaqah jariyah and get an unbroken reward without having to wait to become a wealthy landowner or merchant. People can do a waqf just by buying a cash waqf certificate issued by the waqf management institution (nadzir). Endowments of money may also only be distributed and used for things that are permissible sharply. While the principal value of endowments must be guaranteed sustainability, may not be sold, granted or bequeathed. Cash Waqf in Islam has a long history, even in the days of the Bani Mamluk and Ottoman Turks, cash waqf (cas Waqf) was well developed. When in Indonesia, cash waqf was introduced and developed after Mannan gave a seminar in Indonesia on cash Waqf in 2001. He was one of the Islamic economic leaders and a pioneer of Social Investment Bank Limited (SIBL), Dhaka, Bangladesh. Mannan introduced a new concept of cash waqf management implemented by SIBL.

Cash Waqf has been implemented in several countries. In Egypt, Al-Azhar University carries out all its activities by relying on waqf funds. Al-Azhar University merged its endowment funds to set up a goods storage building on the Suez Canal. Al-Azhar University as Nadzir used the results of its fusion for educational purposes even the Egyptian royal government borrowed the endowments of Al-Azhar University to fund government activities. The substance of cash waqf has actually emerged long ago. Furthermore, in the study of

classical jurisprudence along with the emergence of the idea of mu'am revitalization of fiqh in the perspective of sharia maqasid which leads to Al-Mashalih Al-Mursalah (Universal benefit) including efforts to realize social welfare through justice distribution of income and wealth.

In this context, through the initial discussion in the National Sharia Council (DSN) - MUI which was followed up by the decision of the Fatwa-MUI Commission meeting in accommodating the benefits in line with the maqasid as-syari'ah contained in the concept of cash waqf based on Az-Zuhri's opinion, Hanafi, Maliki and Hanbali religious scholars such as Ibn Taimiyah and Ibn Qudamah, Indonesian scholars have decided to allow cash endowments.

Islamic Law Changes in Marriage Law

Changes also occur regarding marital problems that have been terminated by courts. Viewed from the principles of marriage in Islamic law, marriage occur because:

- a. There is a voluntary agreement (not forced) between the prospective husband and wife to get married.
- b. Between prospective husband and wife there is no prohibition to hold a marriage (not muhrim)
- c. harmony and marital conditions must be met
- d. The basic purpose of marriage is to establish a household that is sakinah, mawaddah, warrohmah (happy, prosperous, peaceful and eternal) which is legal according to shari'ah / law
- e. Rights and obligations between husband and wife are balanced.

The following is the benefits of marriage.

- a. maintain human survival by breeding and progeny.
- b. keep husband and wife trapped in contempt and able to curb lust and hold the view of something that is forbidden.
- c. soothe and placate the soul,
- d. make women carry out their duties in accordance with the created female nature.
- e. complement of each other in the atmosphere of life with children.
- f. Cause responsibility and create a diligent and earnest attitude to provide for the family.
- g. The division of tasks in taking care of household and other outside work.
- h. Cultivate the family ties and strengthen relationships.

Divorce by condemnation from both parties is also mentioned in Qur'an and is also strengthened by the sunnah of the Prophet. History: a husband from the Anzor group has accused his wife of adultery. The Apostle then asked the two parties to swear, then he ordered the two to divorce. A husband's lian procedure accuses his wife of adultery, but cannot prove it. In such circumstances the wife has the right to submit a request for divorce. Quoting the decision above, the writer considers that the panel of judges only sees its sociological aspects based solely on the inner atmosphere which causes both households to be far from being at ease. Though a marriage is intended to create a harmonious family life in order to form and foster a prosperous and happy family throughout the ages. According to Jurisprudence, marriage is one of the most important basic principles of life in association or a perfect society. Marriage is not only to regulate domestic life and descent but also the introduction of one people to another. Another opinion states that marriage is a gift of sunnah

which if carried out will get a reward but if it is not done it does not get sin but is affirmed for not following the sunnah of the Prophet.

Some of the views of classical scholars in some Fiqh literature show that divorce can occur if the husband drops divorce even though the wife does not accept, does not know or not hear. In this case, it seems that divorce matters can be very easy. Unlike the case with a marriage that expects couples to form families Sakinah, Mawaddah, Warrahmah. Of course, maintaining a samawa marriage is not easy. The following are the accompanying conditions, such as the existence of a contract, the presence of witnesses and dowry. Why is getting married hard while getting divorced is easily? Whereas divorce does not require witnesses. Certainly, this is different from the views of contemporary scholars and KHI held in Indonesia. The author assumes that the cause of divorce is due to a third person, the occurrence of an affair, adultery causes disputes, hostility, prolonged and tense bickering between husband and wife. The mounting crisis occurred in such a way (Syiqaq). Especially because this problem has reached the level of appeal, which in the first level has been reconciled and there is mediation, but this does not work, until it continues at the appeal level. With regard to this issue, the panel of judges should also be more careful in issuing decisions through evidence and witnesses. This proves that there is one party who still wants to maintain this marriage even though each of them acknowledges the affair they have committed. In the opinion of the author, at the appeal stage, the one who filed the appeal was the husband, who was formerly called the Defendant (first instance court), and now is called the Appellant, and his wife who was referred to as the Plaintiff in the first court, is now called the Comparable.

With regard to disagreements and quarrels, being an impossible party to meet and the two parties cannot overcome it, the word of God in the Qur'an an-Nisa verse 35 states:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا (٣٥)

35. And if you are worried that there is a dispute between the two, then send an hakam from a male family and a hakam from a female family. If the two hakam people intend to make improvements, surely Allah gave taufik to the husband and wife. Truly Allah is All-Knowing, All-Knowing.

Based on the command of Qur'an, the quarrels that arise should be reconciled. The question arises, the quarrel is caused by the mistakes of each party who has admitted having an affair / adultery. Here the panel of judges cannot bring witnesses who claim each of them has committed adultery. Only based on the recognition of each who has an affair. While the criteria for cheating and adultery are not yet united opinions among legal experts. Against other sociological aspects, that the wisdom of marriage that is expected to be able to keep a husband and wife to fall into abusive acts turns out not to be done. Defendants and plaintiffs are not even able to curb lust towards others who are not their mahrom. So, they fall into illicit acts because they can not refrain from their lust.

The Future of Inheritance Law in Indonesia: Legal Pluralism and Legal Unification

Based on the Indonesian context regarding inheritance cases, there is legal pluralism that applies and is applied in the midst of this complex and complex society. Indonesia as a unitary state has a variety of cultures and religions that have survived to this day. In terms of customary law, with characteristics and colorful patterns, with the most tribes in the world, it is understandable that in the distribution of inheritance cases will also be classified as diverse. Likewise, civil law which generally provides arrangements regarding the distribution of inheritance. As for example, not all Muslim citizens automatically use faraidh law, and vice versa, non-Muslim citizens do not automatically use civil inheritance law. The majority of non-Islamic communities use the respective customary inheritance law while the majority Muslim community uses Islamic law.

Ter Haar defines customary inheritance law including relevant legal regulations with a very impressive and ongoing process of continuing and operating material, and material wealth, from one generation to the next.

Soepomo, known as the father of Indonesian customary law, said that customary law inherited from the principles that arose from the schools of communal and concrete thoughts of the Indonesian people. Furthermore, he expressed his view that the customary law contains inheritance regulations governing the process of continuing and passing property goods and intangible goods (*immateriele goederen*) from a human force (*generatie*) to its derivatives.

With regard to unification (legal unity), it is very difficult to implement because of a pluralistic society. Inheritance law that exists and applies in Indonesia until now is not a legal unification. The form and legal system of inheritance is very closely related to the form of society and the nature of the family, while the family system in Indonesian society is based on the system of drawing a lineage. With regard to lineage withdrawal systems, as is generally known in Indonesia, at least three types of hereditary systems are known, namely:

1. Patrilineal
2. Matrilineal
3. Parental or Bilateral

However, in the concept of Islam and adherents of Islam, we are required to kaffah and carry out the commands of the Qur'an consistently including the distribution of inheritance. Inheritance law is closely related to the scope of human life, because every human being will surely experience a legal event, one of which is death. The legal consequences of death is how the maintenance and continuation of the rights and obligations of someone who died. In the development of Islamic inheritance law in Indonesia, a new perspective emerged from Hazairin with his opinion based on the background of the diversity of cultures of the kinship of the Indonesian nation (patrilineal, matrilineal, and bilateral or parental). According to him the inheritance law desired by al-Qur'an and As-Sunnah is a legal system of individual bilateral inheritance or individual parental.²¹

Hazairin's theory of bilateral inheritance is a new theory in which he has changed the patrilineal and matrilineal kinship system to be parental (bilateral). He developed the principle of social anthropology which is also called ethnology and has shown that the other side is reality when revelations as sacred documents come into contact with old Arab society. Thus Hazairin has placed Islamic inheritance law as a central part of the family system. According to Hazairin, the Qur'an only requires a bilateral social system. Thus, the inheritance law outlined therein is also bilateral, not patrilineal as commonly known so far. According to him, patriarchal-style Sunni inheritance law has caused conflicts with the

customs of the people in Indonesia. The conflict arose because the Sunni Islamic inheritance law did not fulfill their sense of justice. He also stated that the patrilineality of Sunni inheritance law was the result of the influence of the patrilineal Arab family system. Using the same perspective, he also believed that the family system that the Qur'an wants is a bilateral family system. Hazairin's ideas influenced the Compilation of Islamic Law in Indonesia (KHI), especially in the matter of inheritance. Furthermore, the bilateral Islamic inheritance law was developed by the Supreme Court in Book II of the 2007 Technical Edition Administration and Technical Guidelines which are applied as guidelines in the Religious Courts Environment. Based on the given explanation, the researcher argues that if the Qur'an requires a bilateral social system, then the outlined inheritance law also has a bilateral character.

Renewal of Islamic law cannot be separated from the renewal of Islamic thought as a whole. Renewal of Islamic law is only part of the renewal of Islamic thought which includes reform in the fields of education, politics, culture, law and so on. Efforts to reform Islamic law continue to run in the Islamic world today. In Egypt, a prominent and productive Islamic figure who is still intense nowadays is Yusuf Al-Qardhawi. From some of his writings, it can be concluded that contemporary *ijtihād* is a very urgent need that must be done. As an effort in that direction, Qardhawi offered a methodological concept named *ijtihād intiqā'i* and *ijtihād inshā'i*. The discourse about the re-actualization of Islamic law in Indonesia was increasingly discussed when Munawir Sadzali served as Minister of Religion of the Republic of Indonesia in 1985. When he threw the idea of Islamic legal reactualization by presenting several examples of legal cases that invited controversy, such as the distribution of equal inheritance between men and women, and halal bank interest. Throwing the ideas surprised many parties. However, it may need to be noted that the catapult has a positive impact. Islamic study grows through the forums that discuss the issue of whether or not renewal of Islamic law is necessary. Another issue that was no less controversial is Abdurrahman Wahid's eccentric notion of *Islamic Indigenization*, including *indigenization of Islamic law*, which among them offered to change the expression "assalamu 'alaikum" with "good morning", "good evening", "good evening" and others. He saw that the existence of Islamic law in Indonesia had experienced legal-formalism and no longer paid attention to the contextualization aspects in terms of its understanding and practice.

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