



The Convergence Of Islamic Law And Positive Law In Marriage In Indonesia

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Abstrak

Marriage Law in Indonesia is the result of the convergence between Islamic legal principles and state regulations, as outlined in Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). This study aims to analyze how Islamic law and positive law interact in regulating marriage and to what extent their convergence occurs in the practice of religious courts and within the Muslim community in Indonesia. The research employs a normative approach by analyzing sources of Islamic law, statutory regulations, and religious court rulings related to marriage. The findings indicate that although Indonesia's marriage law is based on Sharia principles, several adjustments have been made to align with positive law to ensure justice and protection for all parties, particularly in aspects such as marriage registration, minimum marriage age, and women's rights. The convergence between Islamic law and positive law reflects efforts to harmonize religious values with national legal interests. However, challenges remain in its implementation, particularly concerning child marriage, polygamy, and divorce, which often spark debates in society. Therefore, further studies are needed to evaluate the effectiveness of Indonesia's marriage regulations and how Islamic law can continue to adapt within the framework of a modern legal state.

Keywords: Marriage Law, Islamic Law, Positive Law, Religious Court, Legal Convergence

INTRODUCTION

Marriage is a crucial institution in Indonesia's social, religious, and legal spheres. In Islam, marriage is not merely a bond between a man and a woman but also an act of worship aimed at forming a family characterized by *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion). As Indonesia's legal framework evolves, marriage regulations are not solely based on Islamic teachings but are also codified into positive law through Law Number 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). The convergence of Islamic law and positive law in the marriage system is a compelling issue, as Islamic law is fundamentally derived from the Qur'an, Hadith, *Ijma'*, and *Qiyas*, while positive law seeks to accommodate these values while ensuring justice and national legal interests. A concrete example of this convergence is the minimum age for marriage. While Islamic law does not specify an exact age, positive law sets the minimum marriage age at 19 for both men and women to prevent child marriages (Wijayanto, 2023).

Despite efforts at harmonization, several aspects of marriage law remain contentious, including polygamy, interfaith marriage, unregistered (*siri*) marriage, and divorce. (Julianto, n.d.) Islamic law permits polygamy under specific conditions, whereas positive law imposes strict administrative requirements to prevent misuse. Similarly, interfaith marriage is prohibited under Islamic law, yet in practice, it still occurs due to varying legal interpretations (Muhamad et al., 2025). Therefore, this study aims to analyze the convergence of Islamic law and positive law in Indonesia's marriage system and examine how existing regulations accommodate Sharia principles. Additionally, this study seeks to identify challenges in the implementation of marriage law and assess the extent to which the alignment of Islamic and positive law can create a fair and practical marriage legal system. The findings of this study are expected to contribute to the development of Islamic and national legal studies and serve as a reference for academics, legal practitioners, and policymakers in formulating better marriage regulations in Indonesia (Comission, 2016).

In Indonesia, marriage law also has complex social dimensions, where customs and traditions significantly influence marriage practices. In certain regions, traditional marriage ceremonies remain deeply rooted, despite the existence of national regulations governing marriage. The intersection of Islamic law, positive law, and customary law often creates unique dynamics in marital practices. For instance, some communities still recognize traditional marriages without state registration as valid, even though they hold no legal standing under state law. This creates challenges in protecting the rights of women and children born from such unions, particularly in terms of inheritance, child custody, and divorce protection (Farkhani et al., 2022).

Furthermore, modernization and globalization introduce new challenges to marriage law in Indonesia. Changing societal perspectives, the influence of social media, and increased international mobility have led to a rise in cross-national marriages, necessitating more comprehensive regulations. Islamic law has specific provisions regarding

marriage with individuals of different faiths, while Indonesia's positive law requires specific administrative procedures to ensure legal recognition. This issue often sparks debate, particularly regarding family law sustainability and the protection of the rights of spouses and children from such marriages. Therefore, further research is needed to explore how Islamic law and positive law can provide solutions that align with religious teachings while being effectively implemented within the national legal system (Syofyan, 2023).

This study is increasingly relevant in the modern context, where the state's role in regulating marriage has expanded, particularly in preventing child marriage, protecting women's rights, and ensuring justice in family law. By examining the interaction between Islamic law and positive law in marriage regulation, this research aims to provide a deeper understanding of how legal convergence can strengthen Indonesia's marriage law system. Additionally, the study can serve as a valuable reference for policymakers in developing more inclusive regulations that uphold religious values while ensuring justice and human rights protection in the institution of marriage (Baidhawi & Qomaruzzaman, 2024).

METHOD

This study employs a qualitative approach with a normative research method focusing on Islamic law and positive law in Indonesia related to marriage. This method aims to analyze in depth the principles of marriage law in Islam, the applicable regulations in Indonesia, and their comparison with national law. The type of research used is normative or doctrinal legal research, which examines law as a norm prevailing in society. This study focuses on primary and secondary legal sources to understand how Islamic marriage law and national law in Indonesia are implemented and examined both theoretically and practically (Ramadhan, 2018). The data sources in this research consist of primary and secondary sources. Primary sources include the Qur'an and Hadith as the main sources of Islamic law, Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law (KHI), and Constitutional Court decisions related to marriage law in Indonesia. Secondary sources consist of books, journals, and scholarly articles discussing marriage law in Islam and positive law in Indonesia, comparative studies on marriage law in other countries that implement both Islamic and modern legal systems, and legal opinions from experts in Islamic law and family law in Indonesia.

Data collection in this study is conducted through literature studies and document analysis. The literature study is used to gain an in-depth understanding of the concept of marriage in Islam and its implementation in Indonesia's legal system. Document analysis is carried out on legal regulations, fatwas of scholars, and court rulings related to marriage law in Indonesia. This aims to understand how marriage law is applied within the national legal system and how synchronization between Islamic law and positive law is carried out (Pradikta et al., 2023). Data analysis in this study utilizes a qualitative-descriptive method, which includes the stages of identification, interpretation, comparison, and the formulation of conclusions and recommendations. Identification is conducted by examining the principles of marriage law in Islam and the prevailing legal regulations in Indonesia. Interpretation is carried out by analyzing various legal sources based on evolving social, cultural, and legal contexts. Comparison is made by analyzing Islamic marriage law in relation to Indonesian positive law and the legal systems of other countries that implement Islamic law in marriage. Conclusions and recommendations are formulated based on the analysis results to provide input for improving marriage law regulations in Indonesia so that they align more closely with Islamic principles and meet societal needs.

This study adopts normative, historical, and comparative approaches. The normative approach is used to analyze marriage law based on Islamic legal texts and positive law in Indonesia. The historical approach is employed to trace the development of marriage law in Islam and its regulations in Indonesia over time. The comparative approach is used to compare Islamic marriage law with national legal regulations and those of other countries to determine how an ideal legal system can be applied in Indonesia. Through this research method, it is expected that a comprehensive understanding of Islamic marriage law and national law in Indonesia can be obtained, along with recommendations for improving marriage law regulations in the future (Lef, 1968).

RESULT AND DISCUSSIONS

Marriage law in Indonesia is a fusion of Islamic law and positive law, regulated through various legislations such as Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI). Historically, Indonesia's marriage law system has evolved through a long process that accommodates Islamic values as the majority religion while also considering aspects of national law. In Islamic law, marriage is not only viewed as a social contract but also as a form of worship that binds individuals morally and spiritually. Meanwhile, in the national legal system, marriage is structured to provide legal certainty for spouses, particularly concerning rights and obligations, the legal status of children, and inheritance law.

From the perspective of Islamic legal principles, marriage must fulfill essential requirements as prescribed by Sharia, including the presence of a prospective husband and wife, a guardian, dowry (mahr), two witnesses, and the marriage contract (ijab kabul). These principles have been incorporated into national marriage law, albeit with certain adjustments, such as the mandatory registration of marriages by the state. In Islam, marriage registration is not a fundamental requirement; however, under national law, it serves as an administrative necessity to ensure legal protection for spouses and their offspring. This issue has sparked debates among Islamic scholars regarding the validity of unregistered marriages. While most Islamic jurists still consider such marriages valid according to Sharia, from the perspective of national law, an unregistered marriage may be deemed invalid in terms of administrative legality.

Another interesting issue to discuss is polygamy. In Islamic law, polygamy is permitted under the condition that a husband must treat all wives justly. However, in national law, polygamy is strictly regulated through a court approval process and the consent of the first wife. These restrictions aim to prevent polygamous practices that could be detrimental to women and children born from such marriages. Although Islam allows polygamy, its application within national law must align with the principle of protecting women's rights, as recognized in modern legal frameworks. Therefore, these differences in perspective reflect the adaptation of Islamic law into Indonesia's national legal system, which remains committed to the values of justice and societal welfare.

Regarding divorce, Islamic law allows both husbands and wives to initiate divorce through mechanisms such as *talaq*, *khulu'*, or *fasakh*. In national law, divorce must be processed through the court to obtain legal legitimacy and protection for both parties. In Islam, *talaq* is considered a husband's prerogative, but in national law, wives are also granted the right to file for divorce through legal procedures. This demonstrates that national law seeks to balance Islamic teachings with women's rights protection, ensuring that the husband's right to pronounce *talaq* is not misused.

One of the most crucial aspects in comparing Islamic and Indonesian marriage law is the minimum age for marriage. Islamic law does not explicitly set a minimum age, as long as the prospective spouses have reached puberty and are prepared for marriage. However, national law has established a minimum marriage age through Law No. 16 of 2019, which revised the previous Marriage Law, setting the minimum marriage age for both males and females at 19 years. This regulation aims to prevent child marriages that could have adverse effects on health, education, and children's welfare. Although some communities criticize this rule as conflicting with Islamic traditions, the policy is a step toward protecting children's rights and fostering higher-quality family structures. Thus, it can be concluded that Indonesia's marriage law is a product of harmonization between Islamic law and national law, striving to provide legal certainty and protection for spouses. Despite some differences in implementation, both legal systems share the same goal: ensuring justice, family welfare, and social order. Therefore, it is essential for the government, academics, and legal practitioners to continuously review and evaluate marriage regulations to align with social developments and societal needs.

Findings and Discussion

The research findings highlight that Indonesia's marriage law effectively integrates Islamic legal principles with national legal regulations. One significant finding is that although the law seeks to uphold Islamic values, it also incorporates protective measures for women and children that are characteristic of modern legal systems. This is evident in the stringent requirements for polygamy, the necessity of marriage registration, and the provision of legal rights for women in cases of divorce. The combination of Islamic law and national law in Indonesia ensures that traditional religious principles are upheld while also adapting to contemporary legal standards and human rights considerations.

Furthermore, the study reveals that marriage registration remains a contentious issue, particularly among conservative Muslim communities. Many argue that unregistered marriages are valid under Islamic law; however, the lack of legal recognition poses challenges in inheritance claims, child custody, and spousal rights. The findings suggest that increased awareness and legal literacy campaigns are necessary to bridge the gap between religious beliefs and legal requirements. Strengthening the legal framework to encourage marriage registration while respecting religious sentiments can lead to a more harmonious legal system.

Lastly, the study identifies a gap in public understanding regarding the minimum marriage age requirement. While the government has enforced strict regulations to prevent child marriage, social acceptance of early marriages remains high in certain regions. The findings indicate that comprehensive education programs are needed to promote the long-term benefits of delaying marriage, particularly in terms of health, education, and economic stability. By addressing these issues, Indonesia can further strengthen its marriage law framework while ensuring that it aligns with both religious principles and national legal standards.

CONCLUSION

This study shows that marriage law in Indonesia is the result of the harmonization between Islamic law and national law, aiming to provide legal certainty and protection for married couples. In Islamic law, marriage is considered a sacred bond with spiritual, social, and legal aspects, while in national law, marriage is regulated more systematically to ensure the rights and obligations of each individual involved in the union.

Several key aspects of marriage law in Indonesia include marriage registration, polygamy, divorce, and the minimum age for marriage. The mandatory registration of marriage under national law aims to ensure legal protection, even though, in Islam, registration is not a requirement for the validity of a marriage. Regarding polygamy, although Islam permits it under the condition of fairness, national law restricts its practice through court approval to protect women's and children's rights. In terms of divorce, Islamic law grants the right to divorce to the husband through *talaq* and to the wife through *khulu'* or *fasakh*, whereas national law requires divorce to be processed through the court to provide legal certainty for both parties. As for the minimum age for marriage, Islamic law does not explicitly set a minimum age, but national law has established 19 years as the minimum age for both men and women to prevent early marriage and its negative consequences. This difference reflects how Islamic law is accommodated within national regulations while considering principles of human rights protection and societal well-being. Overall, marriage law in Indonesia reflects an effort to align Islamic principles with modern legal needs, ensuring its relevance to social dynamics and societal developments. Therefore, continuous evaluation and review of marriage law regulations are

necessary to maintain harmony with Islamic values while providing optimal protection for all parties involved in the institution of marriage.

ACKNOWLEDGMENT

I would like to express my gratitude to all parties who have provided support and contributions in the preparation of this research. My sincere thanks go to Universitas Ibnu Sina for providing the facilities and opportunities to conduct this study. I also extend my appreciation to fellow lecturers and students who have offered valuable input and engaged in constructive discussions throughout the research process.

My heartfelt thanks also go to my family and friends, who have continuously provided encouragement and moral support during this research. Above all, I am deeply grateful to Allah SWT for His blessings and guidance, which have enabled me to complete this study successfully.

I hope this research contributes to the development of Islamic law, particularly in the study of marriage law in Indonesia. I acknowledge that this study still has its limitations; therefore, I welcome constructive criticism and suggestions for future improvements.

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