

Analysis of the Theory of the Enactment of Islamic Law: Implications and Challenges in the Indonesian Context

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Abstrak: *Applying Islamic law, there needs to be a deep understanding of the theory of the enactment of Islamic law by the principles of national law, justice, and national values, this paper dissects the analysis of the theory of the enactment of Islamic law, How is the conceptual framework of the theory of the enactment of Islamic law in Indonesia, and What is the purpose of understanding the theory of the enactment of Islamic law in Indonesia, using the library research method is a study whose data is in the form of theories, concepts of thoughts and ideas, examining data and events that have occurred among Muslims in Indonesia in previous research, writing books and articles then continued research using relevant legal reasoning methodologies whose results found a condition that we can realize the complexity and challenges in integrating aspects of Islamic law into a country's national legal system, including in the Indonesian context.*

Keywords: *Challenges, Implications, Law Enactment Theory*

INTRODUCTION

The importance of the theory of the enactment of Islamic law in the Indonesian context. In Indonesia's complex religious, cultural, and socio-political diversity, the question of enacting Islamic law has great relevance. As a country with the largest Muslim population in the world, understanding and applying Islamic law is an integral part of Indonesian people's lives (Maswir 2019).¹ However, in applying Islamic law, there needs to be a deep understanding of the theory of the enactment of Islamic law under the principles of national law, justice, and national values.

First of all, it is important to explain that the theory of the enactment of Islamic law is a conceptual framework that provides a

foundation for understanding how Islamic law can be integrated into a country's national legal system (Ja'far 2012).² In the Indonesian context, where there is a plurality of religions and beliefs, a careful understanding of this theory is necessary to enact Islamic law in a fair, inclusive, and in accordance with the principles of social justice.

In addition, it is important to remember that Indonesia is a democratic country that adheres to the principle of the rule of law (Marilang 2017).³ Therefore, in the enactment of Islamic law, it is necessary to ensure that the process is within a legal framework that is following the country's constitution and does not contradict the

¹ Maswir, Maswir. 2019. "Implementasi Hukum Islam Di Indonesia Dalam Perspektif Siyasah Syar'iyah." *Hukum Islam* 19 (1): 81. <https://doi.org/10.24014/hi.v19i1.7249>.

² Ja'far, Kumedi. 2012. "Teori-Teori Pemberlakuan Hukum Islam Di Indonesia." *Asas* 4 (2): 2.

³ Ja'far, Kumedi. 2012. "Teori-Teori Pemberlakuan Hukum Islam Di Indonesia." *Asas* 4 (2): 2.

principles of democracy, human rights, and civil liberties.

In facing the various social, economic, and political challenges faced by contemporary Indonesian society, a deep understanding of the theory of the application of Islamic law is also the key to finding appropriate and effective solutions(Sulistiyati 2022).⁴ By considering the values of justice, equality, and diversity, the enactment of Islamic law in Indonesia can be an instrument to promote social welfare, resolve conflicts, and strengthen moral and ethical foundations in the life of the nation and state.

Therefore, through an in-depth analysis of the theory of the enactment of Islamic law in the contemporary Indonesian surroundings, we can gain better insight into how to manage the diversity and complexity of Indonesian society wisely, justly, and progressively(Alvian and Ardhani 2023).⁵ Thus, this article aims to explore the relevance and urgency of understanding the theory of the application of Islamic law in facing the challenges faced by Indonesia as a country that seeks to build a just, prosperous, and just society.

Thus, there are three main things that are the subject of discussion as well as limitations in the discussion of this paper, namely: Analysis of the theory of the enactment of Islamic law, how the conceptual framework of the theory of the enactment of Islamic law in Indonesia, and What is the purpose of understanding the theory of the promulgation of Islamic law in Indonesia.

METHODS

This research approach makes use of library research, which gathers information by reading, analyzing, and investigating pertinent books about the issue under study. We might refer to this study as a qualitative technique approach research. Based on this, the researcher gathered information by looking through and in-depth a number of print and electronic books, journals, and documents, in addition to other sources of data and information that will be utilized in this investigation. By reading, comprehending, and evaluating pertinent literature, this data is gathered. Following collection, the data is categorized according to the subtitles of the discussion subpoints. In addition, the data analysis methods of data reduction, data presentation, and conclusion are applied to the data.

RESULTS AND DISCUSSION

The theory of the application of Islamic law

The theory of the enactment of Islamic law refers to a conceptual framework that outlines how Islamic law is implemented and enforced within the of a country's national law(Gunawan 2017).⁶ It involves an understanding of the way Islamic legal teachings are integrated into existing legal systems, whether through formal legislation, legal interpretation, or courts. The theory also includes various approaches to adopting Islamic law, ranging from comprehensive implementation to selective use depending on the needs and socio-political context of the country.

The scope of the Theory of The official procedure by which Islamic law is acknowledged and implemented in the domestic legal system is included in the

⁴ Sulistiyati, Mardian. 2022. "Otoritas Keislaman Di Indonesia: Sebuah Pembacaan Ulang." *Studia Islamika* 29 (1): 189–203. <https://doi.org/10.36712/sdi.v29i1.24649>.

⁵ Alvian, Rizky Alif, and Irfan Ardhani. 2023. THE POLITICS OF MODERATE ISLAM IN INDONESIA: Between International Pressure and Domestic

Contestations. *Al-Jami'ah*. Vol. 61. <https://doi.org/10.14421/ajis.2023.611.19-57>.

⁶ Gunawan, Edi. 2017. "Pengaruh Teori Berlakunya Hukum Islam Terhadap Pelaksanaan Peradilan Agama Di Indonesia." *Jurnal Ilmiah Al-Syir'ah* 15 (2): 74–93. <https://doi.org/10.30984/as.v15i2.475>.

Enactment of Islamic Law.(Rohidin 2016) This includes the establishment of laws, regulations, and policies that conform to The official procedure by which Islamic law is acknowledged and implemented in the domestic legal system is included in the Enactment of Islamic Law. As well as covering aspects of interpretation and interpretation of Islamic legal sources, such as the Quran, Hadith, and *ijtihad* (legal reasoning).⁷

This involves a deep understanding of the values and principles of Islamic law and their application in changing social, economic, and political contexts (Andi Muhammad Akmal 2018). The aspect of Practical Implementation, it includes how Islamic law is applied in people's daily lives, whether in the realm of family law, economics, crime, or other sectors. It involves the implementation of legal regulations, policies, and practices based on the principles of Islamic law as well as oversight of compliance with them. By understanding the meaning and scope of the theory of the application of Islamic law, we can realize the complexity and challenges in integrating aspects of Islamic law into a country's national legal system, including in the Indonesian context.

Receptio in complex It's The period of full acceptance of Islamic law (Receptio in complex) is the period when Muslims fully apply Islamic laws as guidelines in religious life. Before the Dutch came to Indonesia, Islamic law had also established many religious court institutions with various existing names (Ahmad 2015). These religious courts were established in the middle of the kingdom or sultanate in order to assist in the resolution of problems related to Islamic law, at which time marriage law and Islamic inheritance law had become the living and applicable law in Indonesia.

Various sets of laws are guidelines for officials in solving the legal problems of the indigenous people. So it is not surprising that they still recognize and implement marriage law and Islamic inheritance law through the regulation "*Resulitie Der Indersche Regeering*", which is a collection of rules of marriage law and Islamic inheritance law by the Dutch court, known as Compendium Freijher (Fathurohman 2002).⁸ It is thus evident that the position of Islamic law at that time was very strong and lasted roughly from 1602 to 1800.

Then in 1882 religious courts were formed in places where there are district courts, namely the Religious Court competent to resolve cases among Muslims concerning marriage law and Islamic inheritance law (Ahmad 2015).⁹ Thus, Islamic law received official recognition and confirmation from the Dutch government since the establishment of the religious court in 1882.

A figure named Lodewijk Willen Christiaan Van Den Breg (1845-1927) who lived in Indonesia concluded that the Indonesian people have essentially fully accepted Islamic law as the law they realize, for Muslims full Islamic law applies because they have embraced Islam (Tobroni 2009).¹⁰ Hence came the theory known as "Theorie Receptie In Complex".

The period of acceptance of Islamic law by customary law, known as the Receptie theory, is the period when Islamic law is only enacted when desired or accepted by customary law. So it can be said that this theory opposes the theory that has prevailed before, namely the theory of Receptie In Complex. This theory was put forward by Christian Snouck Hurgranje (1857-1936). An advisor to the Dutch East Indies government in Islamic Affairs and not Bumi Putera. According to Snouck, Islamic law can be applied if it has become part of

⁷ Rohidin. 2016. Pengantar Hukum Islam. Journal of Chemical Information and Modeling. Vol. 53.

⁸ Fathurohman, Oman. 2002. "Hukum Islam Dalam Perspektif Hukum Ketatanegaraan Di Indonesia," 139-59.

⁹ Ahmad. 2015. "Peradilan Agama Di Indonesia." *Yudisia* 6 (2): 313-39.

¹⁰ Tobroni, Faiq. 2009. "Keberhasilan Hukum Islam Menerjang Belenggu Kolonial Dan Menjaga Keutuhan Nasional." *Unisia* 32 (72): 197-208. <https://doi.org/10.20885/unisia.vol32.iss72.art7>.

customary law. For Snouck, the attitude of the Dutch East Indies government previously accepted the theory of *Receptie In Complexu* stemming from his ignorance of the situation of indigenous peoples, especially Muslim communities.

As an advisor to the Dutch East Indies government, Snouck gave advice known as "Islam Policy". The formulation of his advice to the Dutch government in managing Muslims in Indonesia in an effort to attract the people of Peribumi to be closer to European culture and the Dutch East Indies government. This advice is based on the fact that matters concerning Muslim worship must be given full freedom, with the hope that in the social field, the Dutch East Indies government must respect the prevailing customs and customs of the people, by avoiding approaching the Dutch East Indies government.

This reception theory by Snouck was given a legal basis in the Constitution of the Dutch East Indies which became a substitute for the RR called *Wet Op De Staat Snrichting Van Nederlands Indie*, abbreviated as *Indische Staat Regeering (IS)* promulgated in 1929. It is further mentioned in article 134 paragraph 2, which reads "In the event of a civil case between Muslims settled by an Islamic religious judge if their customary law so requires it and to the extent not otherwise specified by an ordinance". But in fact, the policy of the Dutch government actually wanted to undermine and hinder the implementation of Islamic law, including by; They did not include *hudud* and *visas* in the field of criminal law at all, Islamic teachings concerning marriage and inheritance law began to be narrowed.

1. Early Independence Period (1945-1950):

The role of Islamic law in the legal system of the Republic of Indonesia began to improve again when the formation of the Indonesian Independence Preparatory Business Investigation Agency (BPUPKI), where Islamic leaders fought for the re-enactment of Islamic law with the strength of Islamic law itself without any connection with customary

law. The committee of nine from BPUPKI succeeded in triggering a formula called "Piagam Jakarta" on June 22, 1945. It contains the foundations of the country's philosophy which, among others, are based on: "*Ketuhanan dengan kewajiban menjalankan syariat Islam bagi pemeluk-pemeluknya*". However, then this formulation underwent changes on August 18, 1945, which was the day after the Proclamation of Indonesian Independence. The change reads "Ketuhanan Yang Maha Esa", for Moh. Hatta explained that although the sound is different the content has not changed, the soul of the Jakarta Charter still remains even if it is not clearly stated. Based on the Proclamation of Independence of August 17, 1945, and the enactment of the 1945 Constitution, this reception theory has lost its legal basis.

The theory of *Receptio A Contrario* was put forward by Sayuti Talib, who argued that: 1) For Muslims Islamic law applies. 2) It is in accordance with his beliefs and desires and ideals of law, inner and moral ideals. 3) Customary law applies to Muslims if it does not contradict the religion of Islam and Islamic law. In this theory, customary law only applies if it does not conflict with Islamic law. This theory looks at the position of Islamic law over customary law where Islamic law takes precedence as the applicable law.

Sayuti Talib's opinions on the *Receptie A Contrario* Theory above are consistent with those of Prof. Subhi Mahmassani, who contended that custom can only serve as a legal foundation insofar as it does not conflict with the *fiqh* experts' *nash* requirements. Strong opinion holds that if there are *nash* provisions in the *Syari'ah* that deviate from the custom, the custom should not be regarded as genuine based on this *nash* provision. as the legal standing of the stipulations of the *nasfi syari'ah*, or law, is stronger than that of customary practices.

2. Orde Lama Era (1950-1965):

In this era, the Indonesian government seeks to integrate Islamic principles in the formation of laws, especially in the fields of family and religious law.

Indonesian National Law is a national law based on the state philosophy of *Pancasila*,

servicing Indonesia's national interests which contains diverse values, especially religious beliefs. It is therefore clear that religious law (*Islamic Law*) must be present in Indonesian national law.

As evidence that Islamic law increasingly exists in Indonesian national law, the following authors put forward some regulations; Basic Agrarian Law No. 5 of 1960 concerning basic regulations on agrarian principles which clearly illustrates that Islamic law is the source of material for national agrarian law.

3. New Order Era (1966-1998):

The idea of transforming Islamic law in the State of Indonesia can be seen in terms of state science (Sumarni 2012). It is explained that for a country that adheres to the theory of popular sovereignty, the people become the highest political policy. Since the 1970s until now, the direction of the dynamics of Islamic law and the process of transformation of Islamic law has run synergistically in line with the political dynamics in Indonesia.

Under the New Order government, the enactment of Islamic law was more regulated within a more structured national legal framework. The government issued various regulations governing Islamic law, the main law on judicial power No. 14 of 1970 affirmed that the Indonesian national judicial system is composed of general judicial bodies, military courts, religious courts, and state administrative courts. Here it appears that religious justice is one of its main elements, The establishment of the Indonesian Ulema Council (MUI) in 1975 was also a significant step in regulating the enactment of Islamic law in Indonesia.

Marriage Law No. 1 of 1974 and Government Regulation No. 9 of 1975 recognize Islamic law as an independent religious law as national law. Likewise, government regulation No. 28 of 1977 concerning the wakaf of owned land.

It is a juridical foundation for Muslims to resolve civil matters (Sumarni 2012), with the birth of Law No. 7 of 1989 concerning Religious Courts, further strengthened by the emergence of Presidential Instruction of the

Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law consisting of three books, namely Marriage Law, Inheritance Law and wakaf Law. which codified Islamic family law.

4. Reformation and Post Reformation (1998–present):

After the fall of the New Order regime, there was a significant change in the context of the enactment of Islamic law in Indonesia. The desire to nationalize Islamic law is very strong. The development of Islamic law at this time progressed. Accurately Islamic law began to be socialized in social life. Influenced by the emergence of Regional Autonomy, it was initially Law No.22/1999 on regional government, which was later amended through Law No.31/2004 on regional autonomy. The main thing in this law is that each region has the authority to regulate its own territory, including in the field of law. The scope becomes very broad, not only in private or civil law matters but also in the realm of public law.

The result for the development of Islamic law is that many regions apply Islamic law more completely. This can be seen from Nangroe Aceh Darussalam province, which not only establishes its legal material, but also structures its law enforcement agencies. Nangroe Aceh Darussalam Province is the leading region in the implementation of Islamic law in Indonesia. The legal basis is Law No.44 of 1999 concerning the Privileges of Nangroe Aceh Darussalam Province, then the above Law is the enactment of Law No.18 of 2001 concerning Special Autonomy of Nangroe Aceh Darussalam.

The fact of the implementation of Islamic law also spread in other parts of Indonesia, although the system was different from Aceh. From the principle of regional autonomy, local regulations with Islamic syari'ah nuances were created in level I and level II regions. These areas include West Sumatra Province, Solok City, Padang Pariaman, Bengkulu, Riau, Pangkal Pinang, Banten, Tangerang, Cianjur, Gresik, Jember, Banjarmasin, Gorontalo, Bulukumba, and many more.

Application of Islamic Law in the Indonesian National Legal System

The Indonesian Constitution, known as the 1945 Constitution, provides the basis for the country's legal system. Although not a faith-based state, the constitution guarantees freedom of religion and recognizes the existence of Islamic law within the realm of national law. This is reflected in the state principle of Pancasila which recognizes religious and cultural diversity.

As a legal state that prioritizes the application of the country's current legal framework, Indonesia's legal system is primarily based on the civil law system and has codification features. Judges are not constrained by precedent or *stare decisis*, making the law the primary source of authority, and the judiciary is inquisitorial, allowing Islamic law to become a positive law in Indonesia. Islamic law must therefore be able to transition from religious law to national law. Political law, particularly Islamic legal politics, plays a crucial role in achieving this goal by enabling Islamic law to become a positive national law that can provide certainty and binding authority for Indonesia's Muslim community. (Sutrisno, Mappasessu, Badrah Uyuni and Iqlima Zahari, Arditya Prayogi, Mohammad Ridwan, Muhammad Taqiyuddin Pratama 2011).¹¹

In this regard, the concept of developing Islamic law that quantitatively influences the socio-cultural, political and legal order in society. Then the direction was changed, namely qualitatively accommodated in various sets of rules and regulations legislated by government and state institutions. The concretization of this view is hereinafter referred to as the attempt to transform (*taqin*) Islamic law into the form of legislation.

One of the main areas of application of Islamic law in Indonesia is in family law. The Indonesian government has enacted various

regulations governing marriage, divorce, inheritance, and other aspects of family life based on Islamic law. One example is the Compilation of Islamic Law which governs matters of Islamic family law.

Justice System, Islamic law is also applied in the Indonesian judicial system, especially in religious courts. Religious courts have special jurisdiction in handling matters relating to Islamic family law and other religious matters. These religious courts provide legal certainty in dispute resolution based on the principles of Islamic law.

Economic and Financial Law, Aspects of Islamic law also began to be applied in the economic and financial fields in Indonesia (Mappasessu 2024).¹² An example is the development of an Islamic financial system that follows Islamic economic principles such as the prohibition of *riba* (interest), clear and fair trade, and fair sharing of risk and profit.

Public policy and legislation, Additionally, the Indonesian government keeps enacting laws, rules, and policies that incorporate the ideals and tenets of Islamic law into mainstream practices. This covers a variety of fields, including social, health, and education. the effects of the adoption of Islamic law on society, the economy, and politics.

In more concrete reality, there are several products of laws and regulations that formally and materially expressly have the juridical content of Islamic law, including:

- UU No. 1/1974 tentang Hukum Perkawinan;
- UU No. 7/ 1989 tentang Peradilan Agama, (kini UU No. 3/2006) diperbahruhi dengan UU nomor 50 tahun 2009;
- UU No. 7/1992 tentang Perbankan Syariah (kini UU No. 10/1998)
- UU No. 17/1999 tentang Penyelenggaraan Ibadah Haji;

¹¹ Tobroni, Faiq. 2009. "Keberhasilan Hukum Islam Menerjang Belenggu Kolonial Dan Menjaga Keutuhan Nasional." *Unisia* 32 (72): 197–208. <https://doi.org/10.20885/unisia.vol32.iss72.art7>.

¹² Tobroni, Faiq. 2009. "Keberhasilan Hukum Islam Menerjang Belenggu Kolonial Dan Menjaga Keutuhan Nasional." *Unisia* 32 (72): 197–208. <https://doi.org/10.20885/unisia.vol32.iss72.art7>.

- UU No. 38/ 1999 tentang Pangelolaan Zakat, Infak dan Shadaqah (ZIS) diperbahruai dengan UU nomor 23 tahun 2011.
- UU No. 44/1999 tentang Penyelenggaraan Otonomi Khusus Nangroe Aceh Darussalam;
- UU Politik Tahun 1999 yang mengatur ketentuan partai Islam;
- UU No. 41/2004 tentang wakaf
- Undang-Undang No. 21 tahun 2008 tentang Perbankan Syariah

The birth of Islamic banking in 1991 was marked by the birth of Bank Muamalat Indonesia (BMI)

- UU Nomor 19 Tahun 2008 tentang Surat Berharga Syariah Negara (SBSN)

Case Study: Implementation of Islamic Law in Inheritance Cases in Religious Courts

In Indonesia, Islamic law is applied in various aspects of life, including in inheritance issues. One example of the implementation of Islamic law in legal practice in Indonesia is in the settlement of inheritance disputes in religious courts.

For example, there is a family that has a dispute regarding the division of inheritance after the death of the head of the family. The head of the family is a Muslim and has several heirs governed by Islamic law, such as children and wives. When a dispute arises between the heirs about the division of the inheritance property, the matter is taken to the Religious Court for resolution.

In the Religious Courts, the process of resolving inheritance disputes will follow the principles of Islamic law related to the division of inheritance, such as provisions regarding inheritance for sons and daughters, the rights of wives, and other provisions stipulated in Islamic law. The judge will refer to the Compilation of Islamic Law and previous court rulings as the legal basis for making decisions.

In resolving the case, the judge will consider the evidence presented by the disputing parties as well as the principles of justice and balance stipulated in Islamic law. The main objective is to reach a just settlement

and in accordance with the provisions of Islamic law, so that the rights of all parties are fulfilled proportionately.

Through the trial process in the Religious Court, a final agreement will be reached between the parties to the dispute or the judge will issue a judgment that forms the basis for the implementation of the division of inheritance. Such rulings shall be in accordance with the principles of Islamic law and enforceable in accordance with applicable legal provisions.

Thus, through case studies of the implementation of Islamic law in the settlement of inheritance disputes in Religious Courts, we can see how the principles of Islamic law are applied in legal practice in Indonesia to achieve a fair settlement in accordance with applicable legal provisions.

CONCLUSION

Highlighting the complexity and significance of the development of Indonesian law and society. The implications of the enactment of Islamic law include its influence on various aspects of people's lives, such as social, economic, and political, as well as its relevance to the principles of the constitution and the rule of law in Indonesia. However, the challenges faced, such as ensuring consistency with democratic principles, pluralism, and maintaining a balance between Islamic law and positive national law, demonstrate the complexity of achieving inclusive and equitable enactment of Islamic law. In this context, solving these challenges requires a holistic approach, a deep understanding of constitutional values, and a commitment to creating an inclusive and sustainable legal framework is essential. Thus, Indonesia can achieve the enactment of

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