

Unity of Sciences (UoS) as a Paradigm or Indonesian Islamic Family Law Reconstruction

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Abstract: *Unity of Sciences (UoS) as a Paradigm or Indonesian Islamic Family Law Reconstruction.* This article aims to examine the use of the Unity of Sciences (UoS) application in efforts to reconstruct family law in Indonesia. This is because the existence of Islamic family law in this country has gained a good place in people's lives, evidenced by the transformation of several *al-ahwâl al-shakhsyiyah's* (Islamic Family Law) materials into national law. This transformation, even though it implies a renewal entity, however, at the same time, it draws a lot of criticism from some circles, ranging from constructive to deconstructive criticism. This study is a research library that uses a philosophical approach and a *siyâsah shar'iyah's* (Islamic politics of Law) perspective. The data were obtained through document-juridical sources which were then analyzed using inductive analysis and critical reflection. This study concludes that the characteristics of Islamic family law reform in the form of statutory regulations have used a reformative approach and *burhâni* reasoning. In addition, to respond to and anticipate the dynamics and legal changes that are profane in nature, Islamic law requires a Unity of Sciences (UoS) approach so that Islamic law can be grounded in Indonesia.

Keywords: Legal reform, Unity of Sciences (UoS), Islamic family law, Indonesian character

Abstrak: *Unity of Sciences (UoS) Sebagai Paradigma atau Rekonstruksi Hukum Keluarga Islam Indonesia.* Artikel ini bertujuan untuk mengkaji penggunaan aplikasi *Unity of Sciences* (UoS) dalam upaya rekonstruksi hukum keluarga di Indonesia. Hal ini karena eksistensi hukum keluarga Islam di negara ini telah mendapatkan tempat yang baik di tengah kehidupan masyarakat. Terbukti dengan telah bertransformasinya sejumlah materi-materi *al-ahwâl al-shakhsyiyah* ke dalam hukum nasional. Transformasi ini, meski menyiratkan entitas pembaruan di dalamnya, namun, pada saat yang sama, banyak menuai kritik dari sejumlah kalangan, mulai dari kritikan yang konstruktif hingga yang dekonstruktif. Studi ini adalah penelitian kepustakaan yang menggunakan pendekatan filosofis dan perspektif *siyâsah syar'iyah*. Data diperoleh melalui sumber dokumen-yuridis yang kemudian dianalisis dengan menggunakan analisis induktif dan refleksi kritis. Penelitian ini menyimpulkan bahwa karakteristik pembaruan hukum keluarga Islam dalam bentuk peraturan perundang-undangan sejatinya telah menggunakan pendekatan reformatif dan memakai nalar *burhâni*. Di samping itu, untuk merespon dan mengantisipasi dinamika dan perubahan hukum yang bersifat *profane*, hukum Islam membutuhkan pendekatan *Unity of Sciences* (UoS) agar hukum Islam dapat membumi di negara Indonesia.

Kata kunci: Pembaruan hukum, Unity of Sciences (UoS), hukum keluarga Islam, karakter keIndonesiaan

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Introduction

Family law is a set of laws and regulations that regulate internal relations within a family entity. Subekti, interprets family law as a law that regulates legal relations, which are born as a result of family relationships that are built, which include aspects of marriage and wealth relations between husband and wife, parent-child relationships, guardianship, and *curatele*.¹

Family law is included in the study of *al-ahwâl al-shakhsyiyah*, and is a branch of Islamic jurisprudence. Etymologically, *al-ahwâl al-shakhsyiyah* in matters relating to a person's legal problems. *Shakhsyiyah* is a form of ratio to the word *syakhsun* which means an individual or private person.² Wahbah al-Zuhailiy explained that the technical definition of *al-ahwâl al-shakhsyiyah* means a sentence that is quite comprehensive, namely the laws that govern family relationships from the time they are formed to the end which includes, marriage, divorce, lineage, maintenance, and inheritance.³

Islamic family law occupies a central position in the life of Muslims around the world and in Indonesia. Almost all activities of the daily life of a Muslim are closely related to family law (Islam). In the context of *siyâsah shar'iyah*,⁴ various Islamic family laws have been successfully transformed into national laws. This process of legal transformation has in turn invited many researchers to study the existence of family law in more depth both in several Muslim countries and in Indonesia.

Research related to the renewal of family law (Islam) in Indonesia has been widely outlined in various scientific works, with various approaches and methods, ranging from juridical, and philosophical to sociological approaches. Among several studies referred to, one of them is Wardah Nuroniyah's dissertation entitled construction of fiqh proposals in the Compilation of Islamic Law (KHI). This dissertation finds many facts

¹ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: PT. Intermasa, 1997), p. 16.

² Muhammad Rawâsiq al-Ahj, *Mu'jam Lughah al-Fuqâhâ 'Arabî-Injilîzî-Afransî* (Bairut: Lubnan, 1996), p. 230.

³ Wahbah al-Zuhaylî, *al-Fiqh al-Islâm Wa Adillatuhu* (Bairut: Dâr al-Fikr, 1989), p. 19.

⁴ About *siyâsah shar'iyah*, see Abdul Qodir Zaelani, "Politik Hukum 'Umar bin al-Khaththâb dan Relevansinya dengan Pengembangan Hukum Keluarga di Indonesia." PhD diss., UIN Raden Intan Lampung, 2020.

that fiqh proposals have contributed to the formulation of KHI.⁵ Apart from Wardah, another similar work is Ahmad Rajafi's dissertation which discusses "Progressiveness of Family Law in Indonesia". This dissertation examines many decisions of the Constitutional Court on the judicial review of the Marriage Law.⁶ Apart from that, there is also a dissertation by Malthuf Siroj entitled *Renewal of Family Law Study of KHI* which outlines aspects of KHI reforms.⁷ From all these studies, several findings were born which reflect the dynamics of renewal along with the theories and approaches within it.

Apart from these three dissertations, there are also some other scientific works in the form of articles, among which are the writings of Khoiruddin Nasution, Musdah Mulia, Hilal Malarangan, and Mohammad Hashim Kamali. Khoiruddin Nasution described at length the implementation of the methods used by experts in formulating Islamic family law reforms. In addition, this paper also criticizes the method of updating which is still partial.⁸ Next, an article by Musdah Mulia provides a lot of analysis related to legal reform approaches that have not mainstreamed gender issues.⁹ Another study is the Hilal Malarangan which analyzes political and legal dialectics associated with family law reform in Indonesia.¹⁰ Rizal has highlighted many shifts in phenomena and formulas for changes in family law. In addition to the writings above, there are also writings by Mohammad Hashim Kamali that reviews family law reform in many Muslim countries.¹¹

⁵ Wardah Nuronyah, *Kontruksi Ushul Fikih Kompilasi Hukum Islam Menelusuri Basis Pembaruan Hukum Perkawinan di Indonesia*, ed. by Zahrul thriyah, 1st edn (Tangerang Selatan: Cinta Buku Media, 2016).

⁶ Ahmad Rajafi, 'Sejarah Pembentukan dan Pembaruan Hukum Keluarga Islam di Nusantara', *Jurnal Aqlam*, 2.1 (2017), 1–19.

⁷ A. Malthuf Siroj, *Pembaruan Hukum Islam di Indonesia Telaah Kompilasi Hukum Islam*, 1st edn (Yogyakarta: Pustaka Ilmu, 2012).

⁸ Nasution, Khoiruddin, 'Metode Pembaruan Hukum Keluarga Islam Kontemporer', *UNISIA*, 30.66 (2007), 329-341.

⁹ Siti Musdah Mulia, 'Pembaruan Hukum Keluarga Islam di Indonesia', in *Islam Negara dan Civil Society: Gerakan dan Pemikiran Islam Kontemporer*, ed. by Komaruddin Hidayat dan Ahmad Gaus AF, 1st edn (Jakarta: Paramadina, 2005), p. 304.

¹⁰ Hilal Malarangan, 'Pembaruan Hukum Islam dalam Hukum Keluarga di Indonesia', *HUNAFI: Jurnal Studia Islamika* 5.1 (2008), 37-44.

¹¹ Mohammad Hashim Kamali, 'Islamic Family Law Reform: Problems and Prospects', *Islam and Civilizational Renewal*, 3.1 (2011).

The emergence of studies like the above is also driven by the fact that culturally Islamic law has grown and become an important part of Muslims. On the other hand, formally and politically, Islamic family law, which was originally only a living law, has now become part of the national legal system. This phenomenon is reasonable because, following the logic of legal politics, in every effort to develop a national legal system, the state is obliged to adopt the values found in society, including Islamic law, through a constitutional mechanism.¹²

This paper aims to determine the characteristics of Islamic family law reform in the Indonesian context, including the possibility of applying the concept of Unity of Sciences (UoS) in the construction of family law in Indonesia. This is important because, based on the preview findings study, so far there has been no writing related to the theme of renewal from the perspective of Unity of Sciences. From here, then the author will try to formulate it in the form of models and characteristics of family law reform in Indonesia.

Research Methods

This research includes normative-juridical research, which explores materials related to ushul fiqh and legislation. The approach used is the Unity of Sciences (UoS) approach in which family law reform in Indonesia is understood through a UoS perspective that involves integralist, collaborative, dialectical, prospective, and pluralistic principles. The data collection technique used was document study in the form of legal and statutory products, especially Islamic family law, and primary books in the field of *ushûl al-fiqh*, both from the classical and modern periods. The data is also enriched with other secondary sources consisting of articles, papers, and other intellectual works.

In the analysis phase, the researcher uses interpretation data analysis techniques and a combination of inductive and deductive methods. This technique is used to examine various realities, phenomena, and the

¹² Abdul Halim, 'Membangun Teori Politik Hukum Islam di Indonesia', *Abkam*, 13.2 (2013), p. 267.

thoughts of experts regarding the application of *ushûl al-fiqh* principles¹³ and laws, and regulations, then summed up into theories. The process of data analysis begins with the process of reducing (sorting, selecting) the data that has been collected; followed by the process of describing the data in a narrative text; then conclusions are drawn.

Typology of Thought and Unity of Science (UoS) Paradigm

Some theories can be used as "frames" to see the reform of Islamic law. One of them is Luthfi Asyaukani's theory which presents 3 typologies that influence contemporary Arab thought, namely: transformative typology, reformistic typology, and ideal-totalistic typology of thought. Transformational typology is characterized by a transformation of thought among Muslim thinkers who have moved from patriarchal reasoning to rational reasoning. Another feature of this typology is the existence of opposition to religious perspectives and mysticism tendencies that are not based on practical reason. Thinkers from this typology tend to see that religion and traditions of the classical period are no longer relevant to today's needs, and therefore must be abandoned. According to Assyaukani, the majority of this group of transformative thinkers has a Marxist orientation as shown by two Arab Marxist thinkers, Thayyib Tayzini and Abdullah Laroui in highlighting the problems of the contemporary Arab world.¹⁴

The second typology is the reformistic typology. In contrast to the transformative groups with radical characteristics, reformist thinkers still believe in turats. For them, as long as the turats are read and understood using modern standards, the turats are still relevant in modern times. Turats and modernity, both are a harmonious combination. The problem is, how to respond to both of them fairly and wisely without deviating from common sense and standards of rationality, which are the core of

¹³ About application of *ushûl al-fiqh*, see Abdul Qodir Zaelani and Rudi Santoso. "Understanding Civil Society Through the Perspective of Ushul Fiqh (Basic Principle in Islamic Law)." In *Ist Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019)*, Atlantis Press, 2020, p. 60-66.

¹⁴ Izomiddin, 'Teori dan Tipe Perubahan Hukum Islam Menurut Abdullah Ahmad Al-Na'im', *Ijtihad*, 10.1 (2010), 89-108.

reform.¹⁵ The main figures from this circle are Arkoun and al-Jabiri. In this typology, two trends emerge: 1) the tendency to use a reconstructive approach; and 2) the tendency to use a deconstructive approach. This second tendency is influenced by the French structuralist movement and several other postmodernist figures such as Foucault, Derrida and Gadamer, and Barthes. The two tendencies of the reformistic typology have the same goal and differ only in the method of delivering the treatment of the problem.

The last typology is the idealist-totalistic typology. This typology has an idealistic view of Islamic law which is considered kaffah (complete and perfect) and in harmony with socio-cultural, political, and economic life. Scholars from this circle also have a strong desire to revive Islam as a religion, culture, and civilization and oppose all foreign things that are Western. They invite all Muslims to return to referring to the purity of Islamic teachings (*al-ashlah*) as the Prophet and Khulafaur Rashidun did. They are skeptical of transformative or reformative methods because what Islam demands is a return to the sources, namely the Qur'an and Hadith. The scholars who belong to this last typology include al-Ghazali, Sayyid Qutb, Muhammad Qutb, Anwar Jundi, Said Hawa, and a number of other traditional scholars.

The typologies above have contributed to the development of contemporary Islamic law. Each of the typologies above explains the substance of the designers' ideas, including the logical reasons for the culture/traditions held by the community members. For example, the Arab nation enforces the law of cutting off the hands of the perpetrators of criminal theft because this act offends the victim's dignity. However, for now, the punishment of cutting off hands is no longer needed because the main factor that drives this behavior is no longer a matter of self-esteem, but purely economic factors. In this way, sharia is not only seen as a mere rule/punishment, however, when there are other rules to be applied in people's lives, but it should also first be ensured that the social atmosphere of society and the condition of its soul have been formed.

¹⁵ Izomiddin.

So that the law that will be applied can be morally justified.¹⁶

Concerning the paradigm of the unity of sciences (UoS), this paradigm is unique to Muslims; A paradigm that believes that all knowledge contained in this universe is one, sourced and emptied into one substance, namely Allah SWT. In the UoS paradigm, some sides are different from other theories. UoS necessitates a multi-disciplinary approach to establishing an entity. UoS also reflects the integration of science (law) and dialectics between sciences to understand the dynamics of Islamic law.¹⁷ In this way, all existing knowledge should have a dialogue with each other for the benefit of mankind which will ultimately meet with the same goal, namely to seek *taqarrub* to *al-'Alim* (get closer to Allah). So the UoS paradigm can lead mankind to know and be closer to God.¹⁸

The UoS paradigm contains five principles, namely integration, collaboration, dialectic, prospective and pluralistic. The principle of integration teaches belief in the unity of knowledge (because it originates from the One Essence) which is interconnected; The principle of collaboration teaches the belief in the ability to combine universal values contained in Islamic teachings with modern science; The principle of dialectics teaches about the necessity of continuous dialogue between revealed sciences, modern sciences and local wisdom; The prospective principle teaches about the belief that the birth of new sciences has sides that are more humane, ethical, beneficial for improving the quality of the nation and preserving nature; Finally, the pluralistic principle teaches about the belief that there is a plurality of methods, realities, and scientific approaches.¹⁹

¹⁶ Izomiddin.

¹⁷ Hendri Hermawan Adinugraha, 'Fenomena Integrasi Ilmu di Perguruan Tinggi Keagamaan Islam Negeri: Analisis Terhadap Konsep Unity of Sciences di UIN Walisongo Semarang', *Hikmatuna*, 4.1 (2018), p. 66.

¹⁸ *The Unity of Science in the Arabic Tradition: Science, Logic, Epistemology, and Their Interactions*, ed. by Shahid Rahman (New York: Springer, 2004), p. 15.

¹⁹ Tim UIN Walisongo, *Laporan Kegiatan Workshop Penyusunan Kurikulum Berbasis Unity of Sciences IAIN Walisongo*, 2013, p. 3.

Portrait of Indonesian Family Law

In Indonesia, Islamic family law occupies a very central and urgent position. This can be seen through the phenomenon of the successful transformation of Islamic family law (*al-ahwâl al-shakhsyiyah*) into national law. This is evidenced by the ratification of several Islamic law regulations to become national law, such as (1) Law Number 1 of 1971 concerning Marriage, (2) Government Regulation Number 28 of 1977 concerning Waqf, (3) Law Number 7 of 1989 concerning Religious Courts, Law No. 41 of 2004 and others. With the publication of these rules, the status of Islamic law which was originally unwritten eventually became written.

Unfortunately, in the implementation stage, it seems that the various regulations have not been fully understood by some members of the community. For example, even though Law no. 1/1974 concerning Marriage has been published, it turns out that people still tend to prefer fiqh over the rules that have been made by the government. This is shown by the many cases of unregistered marriages which are not only carried out by ordinary people but also by state officials, who have the position of executors of the law. Apart from that, there are also many illegal divorce cases because it is felt that it will be difficult to submit case files to court. There are also cases of lying about marital statuses, such as a woman who is still in the process of divorce but claims to be a widow, when in fact she is still married to another man.²⁰ The examples above show that even though Islamic law has begun to land on Indonesian soil, there are still Muslims among themselves who are reluctant to practice the provisions made by the government. solve the problem of the institution of the religious court which has become its absolute realm.²¹

Renewal of Family Law in Indonesia from the Perspective of Unity of Science

Family law reform in Indonesia was not born suddenly. A long process of time has gone through just to make formulations in Islamic family law

²⁰ Rajafi.

²¹ Edi Gunawan, 'Peranan Pengadilan Agama dalam Pembaruan Hukum Islam di Indonesia', *Syariah*, 16.1 (2016), 77–86.

in Indonesia that are responsive to the needs of society. Reforms in family law, at the same time, also sparked pros and cons, both from experts and practitioners. Various forms of criticism have been addressed to KHI, and family law in general, which eventually gave birth to various draft laws that have the spirit of reforming family law. RUU-HMPA (Material Law of the Religious Courts) of 2003; and Counter Legal Draft Compilation of Islamic Law (CLD KHI). All of the above efforts, even though they are still in draft form, show that there is a desire to reform family law in Indonesia.²² The drafters of the KHI CLD and the HTPA Bill saw that the existence of Islamic family law in Indonesia was considered to be no longer sufficient to meet the demands of democratic and egalitarian modernity, and even, according to them, contradicted the fundamental spirit of Islam. In addition, methodologically, KHI is still laden with fiqh formulations produced by past scholars and still reflects adjustments from Middle Eastern or Arabic-oriented fiqh.²³ Regardless of the criticisms and accusations above, of course, the changes that are designed must not depart from the principles of ushul fiqh which have been the foundation of ijihad by previous legal experts. In other words, the points of change that are formulated must apply the established theories and principles of ushul fiqh, because, before codification, the science of ushul fiqh had already been codified to become an independent science.²⁴

Forms of Indonesian Family Law Reform

Before elaborating in more detail on the forms of reform that exist in the family law formula in Indonesia, which are then linked to the Unity of Science (UoS) theory, researchers need to limit the object to be analyzed to three statutory regulations, namely: 1) the Marriage Law, 2) Compilation of Islamic Law (KHI); and 3) Law No. 41 of 2004 concerning Waqf. These three laws were chosen because they were seen

²² See Dewani Romli & Abdul Qodir Zaelani, 'Counter Legal Drafting of the Islamic Law Compilation, A Gender Perspective', *Advances in Social Science, Education and Humanities Research*, Vol. 49 (2019), p. 331-337.

²³ Marzuki, *Fiqh Indonesia* (Bandung: ISIF, 2014), pp. 200–201.

²⁴ Lindra Darnela, 'Interrelasi dan Interkoneksi Antara Hermeneutika dan Ushul Fiqh', *Jurnal Asy-Syir'ah*, 43.1 (2009), p. 147.

as representing family law renewal as well as adapting it to research needs. Through this study, it is hoped that it will be seen the shift in variables that are the focus of attention of reformers when studying Islamic law as well as changes in constructions or formulations that are indeed engineered by them to create laws that are strongly binding, and, at the same time, have Indonesian characteristics. In the proposed formulation it will appear many new provisions that are different from the previous formulations of Muslim jurists (*fuqaha'*). The following description provides an overview of the map of changes in the three areas of regulation referred to.

Field of Marriage

The New Order government took controversial actions to resolve marriage problems, namely by submitting the Marriage Bill in 1973 to the DPR which was eventually enacted to become Law no. 1 of 1974 concerning Marriage. This law consists of 14 chapters divided into 67 articles. With the promulgation of Law no. 1/1974 concerning marriage, the government has proved politically that Islamic law applies in Indonesia and also applies to its adherents. The evidence is stated in article 2 of Law no. 1/1974 which stipulates that "*marriage is legal if it is carried out according to the laws of each religion*". As well as article 63 states "*what is meant by courts in this law are religious courts for those who are Muslim and other general courts*".²⁵ The definition of marriage above emphasizes that the basic foundation of marriage is religion, or in other words, the religion followed by a person will determine whether a marriage is legal or not. That way, marriage is not a mere civil agreement.²⁶

The forms of changes to the provisions that can be taken from the new regulations include the following points:

²⁵ Eko Setiawan, 'Dinamika Pembaruan Hukum Keluarga Islam di Indonesia', *De Jure, Jurnal Syariah dan Hukum*, 6.2 (2014), 138–47.

²⁶ Muhammad Khaeruddin Hamsin, 'Gap Antara Fikih Munakahat dan Undang-Undang Perkawinan', *Jurnal Media Hukum*, 20.1 (2013), 118–37.

Table of Renewal of Islamic Law in the Field of Marriage in KHI

NO.	BEFORE THE CHANGES	AFTER THE CHANGES ARE	PROVIDED IN THE ARTICLE NO
1.	Marriage is legal without registration	Marriage must be registered	5
2.	There are no administrative technical provisions involving the role of formal institutions in the implementation of marriages, <i>itsbat</i> marriage, dissolution of marriages, or reconciliation.	There are administrative technical provisions that strengthen the role of VAT, PA in the implementation of marriages, <i>itsbat</i> marriage, dissolution of marriages, and reconciliation.	6-10
3.	Generally do not recognize the marriage agreement	Allows for the existence of a marriage agreement to protect the rights of the wife	45-52
4.	Polygamy is permitted with loose conditions	Polygamy is permitted, but with very strict conditions to protect women's rights	55-59
5.	Prevention and annulment of marriage through family institutions	Prevention and annulment of marriage by involving the role of the Religious Courts and KUA	65-69, 74
6.	Husbands tend to be dominant compared to wives	There is fair recognition of equal rights and obligations of husband and wife.	79
7.	There is no regulation regarding <i>gono-gini</i> (arbitrary) assets.	There is a regulation regarding <i>gono-gini</i> (arbitrary) assets.	85-97
8.	Not discussing the conception of children with technology.	Children born through technological tools are recognized as legitimate children.	99
9.	Divorce can be done in the family sphere	Divorce must be before the court hearing	129-148
10.	The time of mourning is only ordered for the wife when undergoing ' <i>iddah</i>	The time of mourning is ordered for the wife when undergoing ' <i>iddah</i> and, also, for the husband according to decency	170

The table above shows several renewal themes which can be grouped into three renewal clusters, namely: a) Involvement of state institutions in the form of registration of marriage, divorce and reconciliation events, b). protection of the rights of children and women (wife), and c). equality of relations between men and women.

When examined further, all of these formulations are closely related to creating orderly administration as well as realizing legal certainty which is the hallmark of modern law. Through orderly administration and legal certainty, pathways and conflict resolution schemes, if in the future conflicts arise related to certain parties, will be available. So that the parties involved in the conflict can fight for their respective rights through clear and definite legal channels.

Seen from a UoS perspective, the issue of orderly administration is an application of collaborative principles. The indications can be seen through the application of other sciences aimed at producing new legal provisions that are more humane, more ethical, and support the improvement of the quality of government administration. the involvement of state institutions in this field is included in the category of implementation of the principle of collaboration. Because in it there is the use of modern science to support the improvement of the quality of life and human civilization. The involvement of state institutions is also a form of ongoing control over the people in realizing the benefit of the citizens. This is because the Government, which in this case is represented by KUA and PA, can realize and guarantee order and legal certainty.

Related to the field of child protection, the government, through KHI and other laws, has also tried to create optimal protection for children's rights. This effort was manifested in the creation of regulations governing age restrictions for marriage, pregnancy out of wedlock, child rearing, legal child status, and the results of technological engineering. With this arrangement, children born out of wedlock receive clear guarantees and their rights are protected and equalized like other children. Apart from that, the regulation also regulates the issue of parenting until adulthood which is aimed solely at protecting children's rights which are often neglected in public life.

When examined through a UoS perspective, this regulatory reform concerning children's rights can be seen as a manifestation of the prospective principle. Because this update has the spirit to realize true happiness. At the same time, this renewal plays a full role in achieving the dignity and quality of the nation as well as creating a physically and spiritually strong society and generation.

The next update is related to gender equality. Updates in the field of gender equality can be found in several formulations in the KHI and some other regulations. To build fiqh with an Indonesian perspective, the provisions of classical fiqh, which place women as subordinate entities, in which the wife is positioned as an object, including the convenience of polygamy for husbands, have been overhauled and improved by law reformers in Indonesia. Included in this update is the requirement for agreement or agreement between the two brides and groom to carry out the marriage, the difficulty of polygamy, the right to apply for divorce and reconciliation, the right to joint property/ gono-gynae, including the stipulation of a mourning period for men (husbands), is a form of reform of gender bias fiqh which is a legacy of past fiqh.

Furthermore, reforms that are full of the concept of gender mainstreaming in household life have placed equal rights and obligations between men (husbands) and women (wives). From the UoS perspective, efforts to build an egalitarian relationship between husband and wife have applied the pluralistic principle because, in its formulation, this reform has used the method and approach to the phenomenon of plurality and gender science. Of course, this renewal must remain within the corridors of Islamic ethics without compromising fitrah. roles and functions of each person in the family.

Finally, it is also necessary to emphasize here, that the articles with the nuances of renewal contained in these themes are not empty of methods and basis for reform. This means that when formulating the provisions above, the experts have carefully considered the theories and methods to be applied so that they can be accounted for both morally and religiously. Provisions for registration of marriages, reconciliation,

and divorce, as well as arrangements for mutual assets, for example, have used the theory of *istihshân* and *maqâshid al-shari'ah* which are part of fiqh proposals. This is also the case with the provisions concerning the equal rights of husbands and wives. This provision absorbs the *usûl fiqh* method related to *maslahah mursalah* whose aim is the formation of legal certainty and mutual benefit.

Inheritance

The realm of inheritance has also not escaped the attention of family law reformers. Inheritance law, which is full of transcendent values and based on verses that are *qath'i*, in the hands of Indonesian reformers was successfully updated under the character of the Indonesian nation. Legal reforms are evident in inheritance provisions for adopted children and parents, including rules regarding substitute heirs (*munâsakah*) and deliberations on inheritance distribution. The forms of changes to these provisions include the following points:

Table of Renewal of Islamic Law in the Field of Inheritance in KHI

NO.	BEFORE THE CHANGES	AFTER THE CHANGES ARE	PROVIDED IN THE ARTICLE NO
1	Using a patrilineal inheritance system	Using a bilateral inheritance system that is aligned with the family system in Indonesia	174
2	There is no peace agreement in the distribution of inheritance	There is a loophole to reaching a peaceful agreement on the distribution of inheritance after all parties know their share of the inheritance	183
3	There is no <i>munâsakah</i> (substitute heir)	Gives a gap to do <i>munâsakah</i>	185
4	The division of inheritance is physical with the portion of each	Inheritance in the form of agricultural land if the area is less than two hectares should be jointly owned so that it remains productive	189
5	There's no <i>Gono-gini</i>	<i>Gono-Gini</i> has an impact on the distribution of inheritance	190

6	There is no obligatory will for adopted children and their adoptive parents	There is a mandatory will for adopted children and adoptive parents	209
7	There are no restrictions on grants (gifts); a grant is still a grant	The maximum limit for grants (gifts) is one-third and can be counted as inheritance	210, 211

The table above shows several forms of change. The first change relates to the adoption of a bilateral inheritance system. As is well understood, classical inheritance law adheres to a patrilineal system (based on paternal lineage). This system is an obstacle for substitute heirs (*munâsakhah*) of daughters' children (*banât banât*) because they cannot replace the position of their mother who has died. So far, in the fiqh tradition, the position of *dzawî al-arhâm*, especially for daughters of daughters (*banât al-banât*) will be hijab hirman while there is *dzawî al-furûdl*. This provision was then overhauled by implementing a bilateral system. Under the shadow of this reform, the formulation of inheritance has become wider in scope than the formulation of fiqh. If fiqh only recognizes heirs as substitutes from the male line, KHI includes granddaughters from daughters so that with the new system (bilateral) the granddaughter can inherit because she replaces the position of her mother who died earlier.

The next update is the distribution of inheritance based on peace. This provision is closely related to the tradition of the Indonesian nation which prioritizes deliberation for consensus. That is, if there is a dispute or conflict regarding the distribution of inheritance, peaceful distribution is the solution. Of course, with the note that all heirs, both *nasabiyah* heirs (heirs due to blood relations/heredity) and *sababiyah* heirs (heirs due to marriage), already know their respective parts according to normative inheritance law. After they know each other's share, then a conflict occurs, then it is possible to make peace, by dividing evenly for example.

Next is an update on the concept of a mandatory will. The regulation of obligatory wills is recognized in Islam as a form of affection from an adoptive parent to his adopted child. In customary law, the concept of

an obligatory will arises because it has become a common phenomenon in families in Indonesia with the custom of adopting a child who is then officially included as a family member. This situation has compelled Islamic law experts to compromise the gap between adoption institutions and fiqh law. So an attempt was born to compromise the values contained in the two laws which can be seen from the provisions governing the matter of inheritance of *dzawî al-arhâm*. As stated in the KHU, the heirs of *dzawî al-arhâm*, especially for adopted children or adoptive fathers who do not get a will or heir. KHI determines that they both must be given a mandatory will of up to 1/3 of the inheritance. The granting of this obligatory bequest in the adoption tradition in Indonesia is nothing but a form of moral responsibility which is then adopted into the Islamic legal system and contained in the KHI.

Apart from the reform points above, there are other forms of inheritance law changes, for example regarding the distribution of inherited assets in the form of land or agricultural land with an area of fewer than 2 hectares. In this matter, KHI offers that the heirs choose a collective system rather than individually; in other words, the heirs in the above situation did not physically divide but consulted with the aim that the land would not become extinct. However, if each of them wants money, then one of the heirs should replace it with money so that the function of the land does not change.

Next is about burlap treasure. *Gono-gini*²⁷ assets are assets acquired by a husband and wife whom both work for the benefit of the household during the marriage period which starts from the time the marriage contract is held. At this point, the law of inheritance of the Archipelago still determines the need for the division of the property of husband and wife. Gono-gini distribution is done first before the inheritance is given to other heirs. The magnitude of the gono-gini division is 50:50.

²⁷ About gono-gini, see Abdul Qodir Zaelani, Syamsul Hilal, and Abdul Hanif. "Pattern of Inheritance Distribution of Gono Gini's Assets Among Residents of Bandar Lampung City." *Al-'Adalah*, 18.1 (2021), 175-192; Abdul Qodir Zaelani, Syamsul Hilal, and Abdul Hanif. "Joint Property Inheritance Distribution Practiced by Community of Bandar Lampung." *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam*, 5.1 (2022).

Waqf (Endowment)

The study of Islamic family law reform has also penetrated the field of waqf. Waqf is a social institution that lies between individual rituals and social rituals. As part of the mu'amalah dimension, it becomes an open realm with change or renewal entities.

Many forms of reform are scattered in the KHI articles and the law. No. 41 2004 this. Among them are legal formulas: administrative provisions in waqf, the possibility of changing the function and designation of waqf objects, the permissibility of endowments for a certain period, waqf swaps, waqf movable objects, marriage certificates and certificates, and the existence of criminal provisions and administrative sanctions.²⁸

UoS Perspective UoS Waqf Legal Utilization Update Table

NO	Waqf Renewal Materials	Regulated in the Articles	Principle in the UoS
1	Registration of waqf objects by PPAIW	32-36	Collaboration
2	Waqf land certification	PP No. 25/2018 article 51A paragraph	Collaboration
3	The ability to exchange waqf objects	41	Dialectic-Pluralistic
4	Nazhir is a professional job; entitled to a 10% reward from waqf management	10, 12	Prospective-Dialectics
5	Waqf pledges with a more general designation	23 (2)	Prospective-Collaboration
6	Expansion of waqf objects to movable objects	16 (3)	Prospective-Collaboration
7	Formation of a national waqf institution (BWI)	47	Collaboration
8	Determination of criminal and administrative sanctions	67-68	Integration-collaboration

²⁸ Ibrahim Siregar, 'Pemburuan Hukum Perwakafan di Indonesia', *Tsaqafah*, 8.2 (2012), 273–94 <<https://ejournal.unida.gontor.ac.id/index.php/tsaqafah/article/download/25/24>>.

Reforms relating to administrative requirements, deed of pledge, waqf certification, and the establishment of the Indonesian Waqf Board aim to create and regulate administrative services on a national scale to educate existing waqf/nazhir managers to be more expert.²⁹ In the fiqh literature, there are no such requirements, because some have the view that if waqf is registered and notarized it can reduce the value of worship. This view is renewed by national law to avoid family conflicts after the wakif passes away. Through authentic evidence, the potential for conflict can be minimized as well as have an impact on the power of law. This kind of approach is commonly known as *siyâsa shari'iyah* (legal politics) to create the common good. Viewed from the UoS perspective, this update is an application of the principle of collaboration, namely combining the universal values of waqf with modern science to achieve a quality of life together.

The next renewal aspect concerns the permissibility of changes and the possibility of endowments with terms, changes to the designation of waqf, and swaps for waqf with conditions set by law. Normatively, the Shâfi'i school of thought does not allow changes in the designation of waqf, because it is *mu'abbad* (permanent). What's more, selling or replacing waqf objects with other forms, is strictly prohibited in the Shâfi'i and Mâliki fiqh traditions. A view that is relatively open to changes in the allocation of waqf and exchange of waqf is the Abu Hanifah school, which incidentally is rarely followed by the majority of Indonesian Muslims. This is also the case with movable object waqf and cash waqf. Both are not found in the Shâfi'i fiqh tradition. However, in the view of Hanâfiyyah scholars, movable objects may be donated as waqf provided that they accompany immovable property and are used to help immovable property.³⁰ The Indonesian Waqf Law has also allowed exchanges (*tabdîl*) by adjusting spatial needs, allowing cash waqf and movable objects, including changes to the designation of waqf with the permission of the KUA and MUI.

²⁹ Sam'ani, Paradigma Baru Perwakafan Pasca UU No. 41 Tahun 2004 Tentang Wakaf, *Jurnal Hukum Islam*, 12. <<https://media.neliti.com/media/publications/37051-ID-paradigma-baru-perwakafan-pasca-uu-no-41-tahun-2004-tentang-wakaf.pdf>>.

³⁰ Musthafa, *Sisi-Sisi Pembaruan Hukum Perwakafan di Indonesia (Studi Analitis UU No 41 Tahun 2004 Tentang Wakaf)* (Yogyakarta: UIN Sunan Kalijaga, 2009), pp. 101–2.

Of course, the reforms that have taken place are not devoid of methods and epistemological bases but have been formulated and designed using strong and well-established methods that also take into account aspects of local customs and wisdom. The formulators of reform have used a distinctive reason, which was formed through a planned process (by design) combined with the *talfiq* and superstition approaches.

Furthermore, if analyzed using the UoS approach, the reforms that have taken place in the *waqf* laws in Indonesia appear to have referred to a constructive idea, heading in a better direction, according to the needs of space and time. Apart from that, this change has also implemented the principle of plurality of methods in all aspects of legal development, including using the principle of integration, namely the belief that the structure of all laws as a unit is interconnected with others and all originate from God.

However, making Islamic law progressive and dynamic is not easy. These ideals are constrained by *ushul fiqh* which is used as the basis for Islamic law reform methods which are still trapped in language rules, have deductive lines of argumentation, and ignore facts on the ground. This logic, if continued, will produce a paradoxical phenomenon because it understands God's mind through grammar which incidentally is man-made,³¹ as if, armed only with grammar we can already understand God's purpose.

Apart from that, as is often the object of criticism, Indonesian family law still accommodates polygamy, prohibits religious marriage, is gender biased, is less egalitarian, is not universal, and uses a partial methodology. In other words, the existing update has not used an inductive, thematic, holistic, and collaborative approach. The existence of these criticisms did not dampen the enthusiasm of the formulators to dismantle and knit several aspects that were considered irrelevant to Indonesian conditions. All of this is done, of course, within the corridors of a strong and accountable method.

³¹ Anjar Nugroho, 'FIKIH KIRI: Revitalisasi Ushul Fiqh Untuk Revolusi Sosial', *Al-Jami'ah*, 43.2 (2005), 435.

However, apart from these criticisms, when viewed from the UoS framework, it appears that the change has accommodated relevant and applicable modern reasoning. This can be proven by the formulation of obligatory wills, joint assets, and substitute heirs loaded with dialectical principles. Even the provision of obligatory wills for non-Islamic heirs applies the principle of plural reality as well as the application of public logic in the form of local wisdom. In addition, *ijtihad*,³² towards collective inheritance, can also be seen as a form of prospective implementation. Because this legal policy can produce new laws that are more humane, more ethical, and efficient in building the quality of the nation as well as nature conservation. In short, the epistemology of Islamic law in the present and the future will depend heavily on the ability to reconcile *fiqh* proposals and classical *fiqh* principles with human problems in the modern era.³³

Conclusion

The renewal of Islamic family law that is currently underway in Indonesia reveals a legal struggle with political, social, and even cultural phenomena, which then gives birth to distinctive models and characteristics. Apart from that, to anticipate and respond to dynamic changes in law, the reform of Islamic family law in Indonesia has also utilized an approach beyond the science of *ushûl fiqh* and the principles that exist in the Unity of Sciences (UoS) paradigm, particularly collaborative and local principles. wisdom. In the process of developing and grounding it in Indonesia, this reform has also combined *turats* (fuqaha's inheritance) with *tajdid* (renewal) through the use of *burhâni* reasoning.

³² *Ijtihad* is the exertion of facultative mental energy in a generative process that seeks to extrapolate original-authoritative juridical orders; al-Qur'an, as-Sunnah, *Ijma'*, *Qiyas*; according to the will of *Shari'a*. If the activity does not meet the indicators described, then the activity is not considered a renewal of Islamic law. See Syafaul Mudawam, 'Syari'ah-Fiqih-Hukum Islam Studi Tentang Konstruksi Pemikiran Kontemporer', *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, 46.2 (2012), 424; Abdul Manan, 'Hukum Islam dalam Bingkai Pluralisme Bangsa: Persoalan Masa Kini dan Harapan Masa Depan', *Jurnal Asy-Syir'ah*, 42.2 (2008), 469.

³³ M. Amin Abdullah, 'Bangunan Baru Epistemologi Keilmuan Studi Hukum Islam Dalam Merespon Globalisasi', *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum*, 46.2 (2012), 365.

Author Contribution Statement

Junaidi Abdillah is the main researcher who plays many roles in drafting research concepts and designs, overseeing data collection, data analysis, interpretation of results, to the preparation of published articles. Meanwhile, Mahdaniyal H.N and Nafila Inarotussofia Miftahunnaja served as team members who assisted in data collection, drafters, manuscript revisions, and article publication correspondents.

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