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Eclecticism and Non-Systematic Approaches in the Transformation of Indonesian Islamic Marriage Law

Fatma Amilia*, Mukhamad Hadi Musolin

Universitas Islam Negeri Sunan Kalijaga Yogyakarta, Indonesia, Sultan Abdul Halim Mu'adzam Shah International Islamic University (UniSHAMS), Kuala Ketil, Malaysia

Email: fatma.amilia@uin-suka.ac.id*, mdmusolin@unishams.edu.my

*Corresponding Author

Abstract

This article analyzes the transformation of Islamic marriage law in Indonesia by highlighting the characteristics of legal eclecticism and the non-systematic approach in its formation and implementation. The study employs a socio-normative approach, which views law as a normative system and a social reality within Indonesian society. Data were obtained from primary legal materials such as the Compilation of Islamic Law (KHI) and Law on Marriage, as well as secondary materials including scholarly research and contemporary literature on Islamic law. The findings reveal that Islamic marriage law in Indonesia is eclectic, combining various fiqh traditions with principles of modern national law. This is evident in the regulation of marriage guardianship (*wali*) that merges Syafi'i and Hanafi views, child custody (*hadhanah*) that balances parental rights, and the regulation of polygamy and divorce through the courts, which integrates classical fiqh norms with modern notions of justice. Meanwhile, the practice of religious courts demonstrates a non-systematic approach, as judges interpret the law contextually by referring to other statutes such as the Child Protection Law, Law on Human Rights, and the Law on the Elimination of Domestic Violence. This cross-system approach illustrates that Indonesian Islamic law is open, adaptive, and progressive, capable of bridging religious values, national law, and social justice.

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INTRODUCTION

Eight decades since Indonesia's independence in 1945 mark a long journey of evolution in the national legal system, including the position of Islamic law in the state's

institutional structure. Since its inception, religious courts have been an important forum for implementing Islamic law in marriage, inheritance, and waqf. During this period, the substantive law applied by religious courts underwent fundamental changes—shifting from classical fiqh texts to a legal system integrated into the national legal system. The state took over the role of determining the fiqh formulation process through bureaucratization, Islamic law education curricula, and religious media.¹

The codification of the Compilation of Islamic Law (KHI) in 1991 was an important milestone in forming a more modern Indonesian Islamic law. This marked the institutionalization of Islamic law into the national legal system.² The transformation of Islamic law is also demonstrated by the active use of new norms from various thematic laws by religious court judges, such as the Child Protection Law (Law No. 23 of 2002, which was later refined into Law No. 35 of 2014), the Human Rights Law (Law No. 39 of 1999), and the Law on the Elimination of Domestic Violence (Law No. 23 of 2004). Religious court judges no longer adhere strictly to classical fiqh, but instead use broader interpretations based on social justice.³

This dynamic shows that Islamic law in Indonesia is not static or systemic in the classical sense, but rather continues to adapt to modern social, political, and humanitarian values. This shows that classical fiqh does not stand alone. Its existence is supported by a more inclusive and nationalistic approach to law. This signifies the integration of Islamic law into the national legal system, rather than standing autonomously as classical fiqh.⁴

Although there have been numerous studies on Islamic marriage law in Indonesia, most still emphasize normative-dogmatic aspects based on specific schools of thought or textual analysis of legislation. This approach assumes that Islamic law is a closed and hierarchical rational system. Islamic law is often considered a closed system due to its dependence on fixed sources and principles. The concept of ijma (consensus)

¹ Wildani Hefni, "The New Fiqh in A National School of Legal Thought: A Paradigm Shift in National School of Islamic Law on M. Barry Hooker's Perspective," *Justicia Islamica* 17, no. 1 (June 2, 2020): 17, <https://doi.org/10.21154/justicia.v17i1.1966>.

² Fitriyani Zein, "Diferensiasi Legislasi Hukum Islam Di Indonesia," *Mizan: Journal of Islamic Law* 4, no. 1 (June 12, 2018), <https://doi.org/10.32507/mizan.v4i1.171>.

³ Muhammad Lutfi Hakim, "Between Hibah and Wasiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 17, no. 2 (December 30, 2024): 147–66, <https://doi.org/10.14421/ahwal.2024.17201>.

⁴ Atika Sandra Dewi and Dhiauddin Tanjung, "Pengaruh Hukum Islam Terhadap Hukum Nasional: Analisis Konstitusi," *Rayah Al-Islam* 7, no. 2 (October 28, 2023): 588–610, <https://doi.org/10.37274/rais.v7i2.750>.

in Islamic jurisprudence represents the highest legal certainty level, transforming controversial issues into strong evidence.⁵

On the contrary, in reality, the formation of Indonesian Islamic law – particularly in the field of marriage – does not proceed deductively and systematically as in classical fiqh construction, but rather through a process of selection, compromise, and adaptation across legal sources. Islamic law in Indonesia is not a stand-alone system, but is integrated into the national legal framework. This integration is evident in applying Islamic principles in various laws and regulations and in the role of Islamic law in religious courts.⁶

This phenomenon shows that Islamic law in Indonesia has developed eclectically and non-systematically, combining classical fiqh values, state policies, and modern social norms contextually. However, few studies have explicitly framed this phenomenon as an epistemological shift from madhhab to context, let alone related it to a non-systematic theoretical approach in legal science.

The theoretical framework of this study refers to two primary constructs. First, Islamic legal eclecticism is based on takhayyur and talfiq, which select and combine opinions across schools of thought to achieve a more contextual benefit. Takhayyur (selection of opinions from various schools of thought) and talfiq (combining opinions from different schools of thought) are included in the five methods of Islamic law reform in Indonesia, especially in family law, as a response to the dynamics of modern society.⁷ The practice of talfiq in emergencies is helpful for the common good, as it is in line with the Islamic principle of providing convenience, as long as it is not done to seek legal leniency indiscriminately.⁸ Eclecticism is understood here not merely as a pragmatic strategy but as a legal epistemology that recognizes the plurality of sources and methods of istinbāt in Islamic law.

⁵ Ayhan AK, "İslam Hukuku Perspektifiyle Hukukî Realizmin Analizi," *Cumhuriyet İlahiyat Dergisi* 26, no. 2 (December 15, 2022): 717–41, <https://doi.org/10.18505/cuid.1151808>.

⁶ Aula Damayanti, "Contribution Of Islamic Law To Legal Development In Indonesia," *MILRev : Metro Islamic Law Review* 1, no. 1 (December 26, 2022): 17, <https://doi.org/10.32332/milrev.v1i1.6188>; Ahmad Yasa, "THE DEVELOPMENT OF INDONESIAN ISLAMIC LAW: A Historical Overview," *JOURNAL OF INDONESIAN ISLAM* 9, no. 1 (June 8, 2015): 101, <https://doi.org/10.15642/JIIS.2015.9.1.101-122>.

⁷ Adang Muhamad Nasrulloh and Nurrohman Nurrohman, "Perkembangan Hukum Keluarga Di Indonesia Perspektif Politik Hukum Islam," *AL IMARAH : JURNAL PEMERINTAHAN DAN POLITIK ISLAM* 8, no. 2 (October 3, 2023): 157, <https://doi.org/10.29300/imr.v8i2.11302>.

⁸ Mohamad Rana, "TALFĪQ DALAM BERMAZAHAB (KAJIAN PEMIKIRAN IBRAHIM HOSEN)," *Mahkamah: Jurnal Kajian Hukum Islam* 2, no. 1 (June 5, 2017), <https://doi.org/10.24235/mahkamah.v2i1.1611>.

Second is the non-systematic approach to law, which is rooted in sociological and post-positivist legal theory developed by Satjipto Rahardjo, Roberto Unger, and Duncan Kennedy. This approach rejects the view of law as a closed rational system. Instead, it views law as a social process that negotiates values, politics, and empirical contexts. Law must be understood as part of a social process, not as a closed and neutral rational system.⁹ Law cannot be separated from the social, cultural, and political context in which it develops. This approach rejects the understanding of law as a purely normative structure, and instead emphasizes the importance of empirical context in understanding and interpreting law.¹⁰

The integration of these two frameworks leads to the view that Islamic marriage law in Indonesia results from non-systematic eclecticism—a dynamic, contextual, and reflective approach to law that addresses social complexity. Based on this framework, this study seeks to answer two main questions. First, what form does legal eclecticism take in transforming Islamic marriage law in Indonesia? Second, how does applying a non-systematic approach by religious courts reflect the nature of Indonesian Islamic law? These two questions reveal the epistemological dynamics behind the formation of Indonesian Islamic law—that Islamic law is no longer determined by the orthodoxy of a particular school of thought, but rather by the interaction between text, context, and national legal policy.

This study offers theoretical novelty. Theoretically, this article introduces the concept of "non-systematic eclecticism" as a new framework for understanding the dynamics of contemporary Islamic law formation in Indonesia. This concept asserts that Islamic law cannot be understood solely as a doctrinal system, but rather as the result of social selection and negotiation between classical legal sources, modern society's needs, and universal justice principles. This approach is expected to enrich the study of Islamic law with a more reflective, adaptive, and relevant perspective on the challenges of modernity, while also opening up new space for the renewal of Islamic legal epistemology in Indonesia.

METHOD

⁹ M. Zulfa Aulia, "Hukum Progresif Dari Satjipto Rahardjo," *Undang: Jurnal Hukum* 1, no. 1 (June 1, 2018): 159–85, <https://doi.org/10.22437/ujh.1.1.159-185>.

¹⁰ Marilang Marilang, "Menimbang Paradigma Keadilan Hukum Progresif," *Jurnal Konstitusi* 14, no. 2 (November 2, 2017): 315, <https://doi.org/10.31078/jk1424>.

The research method used in this study is a socio-normative approach, which views law not only as a set of written norms but also as a living social reality that interacts with the dynamics of society.¹¹ Through this approach, the study seeks to comprehensively understand the transformation of Islamic marriage law in Indonesia in terms of its normative construction and practical application in the field. The normative aspect is realized through an analysis of relevant legislation, particularly the Compilation of Islamic Law (KHI) and the Law on Marriage, along with regulations related to marriage law, to identify the principles and characteristics of eclecticism formed therein. Meanwhile, the social aspect is explained by examining religious court practices and the dynamics of legal interpretation by judges in an ever-evolving social context. In the analysis process, this study also utilizes the results of scientific research and articles in academic journals as secondary materials to strengthen theoretical arguments and provide empirical context to the findings. This socio-normative approach allows the study to explore the relationship between Islamic legal norms, national legal principles, and the social realities that shape the character of marriage law in Indonesia.

The analysis was conducted qualitatively and interpretively through hermeneutic interpretation of legal texts and their socio-historical contexts. Legal hermeneutics involves interpreting legal texts by considering sociocultural factors and the broader context in which the law applies.¹² The data was analyzed in three stages: reduction, interpretation, and synthesis, to find eclectic and non-systematic patterns in forming Islamic marriage law. The validity of the analysis was ensured through triangulation of sources and theories, by comparing various legal documents, academic literature, Islamic legal theory, and modern legal theory. This approach enabled the study to produce a reflective understanding of Indonesian Islamic law as an open system that developed through the selection, negotiation, and adaptation of social values within the framework of Islam and nationality.

¹¹ Rizal Irvan Amin, "PENDEKATAN SOSIOLOGI HUKUM DALAM MEMAHAMI KONFLIK PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," *Jurnal Hukum Dan Pembangunan Ekonomi* 8, no. 2 (July 16, 2021): 156, <https://doi.org/10.20961/hpe.v8i2.49764>.

¹² M Golebiewska, "The Research Traditions of Legal Hermeneutics - from Schleiermacher to Amselek," in *HERMENEUTYKA FENOMENOLOGIA FILOZOFIA NADZIEI: Teksty Dedykowane Włodzimierzowi Lorencowi*, 2023, 19-42, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-105014907985&partnerID=40&md5=c3ed596f96c7e1618d5fbb5fc2a288e8>; P P Baranov and A I Ovchinnikov, "Main Ideas of the Legal Hermeneutics," *Social Sciences (Pakistan)* 11, no. 13 (2016): 3357-60, <https://doi.org/10.3923/sscience.2016.3357.3360>.

LITERATURE REVIEW

Studies on Islamic law in Indonesia show that from the colonial period to post-independence, Islamic law underwent a long adaptation process to the national legal and political systems. Researchers such as Lev (1972) and Hooker (1972) emphasize that Islam does not function as an autonomous legal system, but rather constantly negotiates with customary law and state policy.¹³ In the context of religious courts, Islamic law is a compromise between sources of fiqh and national regulatory needs, forming what is known as the Indonesian Islamic legal hybrid system. This pattern confirms that Islamic law in Indonesia cannot be understood through the theory of a closed legal system, but rather as the result of dynamic interactions between normative ideals and social realities.¹⁴

The concept of eclecticism in Islamic law has its roots in classical tradition through the practices of *takhayyur* (selection of opinions across schools of thought) and *talfiq* (combination of opinions) carried out to adapt the law to the needs of society. This methodological plurality is an epistemological necessity in Islamic law.¹⁵ In Indonesia, this eclecticism was institutionalized through the 1991 Compilation of Islamic Law (KHI), which combined the opinions of various schools of thought and adopted modern values such as gender justice and child protection. Drafting and implementing the KHI demonstrated the role of political and social compromise in making Islamic marriage law open, adaptive, and cross-cultural.¹⁶

Meanwhile, the non-systematic approach to law is rooted in critical legal thinking that rejects positivistic formalism and views law as a product of social contestation. The thinking of Roberto Unger (1986) and Satjipto Rahardjo (2006) emphasizes law as a social process that is constantly changing and oriented towards substantive justice. When this concept is combined with the principle of Islamic legal

¹³ Daniel S Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, vol. 12 (Univ of California Press, 1972); MB. Hooker, "Introduction: Islamic Law in South-East Asia," *Studia Islamika* 10, no. 1 (January 1, 1970), <https://doi.org/10.15408/sdi.v10i1.636>.

¹⁴ Khairuddin Tahmid and Idzan Fautanu, "Institutionalization of Islamic Law in Indonesia," *AL-ADALAH* 18, no. 1 (June 29, 2021): 1-16, <https://doi.org/10.24042/adalah.v18i1.8362>.

¹⁵ Ahmed Fekry Ibrahim, "Legal Pluralism in Sunni Islamic Law," in *Routledge Handbook of Islamic Law* (New York, NY: Routledge, 2019.: Routledge, 2019), 208-20, <https://doi.org/10.4324/9781315753881-14>.

¹⁶ Athoillah Islamy, "Eksistensi Hukum Keluarga Islam Di Indonesia Dalam Kontestasi Politik Hukum Dan Liberalisme Pemikiran Islam," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 (November 30, 2019): 161, <https://doi.org/10.29240/jhi.v4i2.1059>.

eclecticism, a non-systematic eclecticism framework emerges—a way of understanding Islamic marriage law as the result of selection, negotiation, and adaptation between religious texts, national legal politics, and the social values of modern society. Islamic law has historically adapted to various cultural and geographical contexts, demonstrating flexibility and relevance in different societies and times.¹⁷ This adaptability is essential for addressing contemporary legal issues and ensuring that Islamic law remains relevant.¹⁸ This framework illustrates Indonesian Islamic law's flexible, reflective, and contextual nature in response to the changing times.

RESULTS AND DISCUSSION

Eclecticism in Islamic Marriage Law

The legal journey of Islamic marriage in Indonesia shows a long and complex dynamic transformation. In the early days of independence, Islamic law in the field of marriage still operated within a madhhabistic paradigm. Religious courts used classical fiqh books, especially those of the Shafi'i madhhab, such as *Fath al-Qarib* and *Tuhfat al-Muhtaj*, as their primary sources of law. Legal authority was entirely in the hands of local scholars and religious leaders, who had fiqh scholarly authority.¹⁹ As a result, marriage law practices in various regions tended to differ depending on local authorities and prevailing social traditions. During this period, Islamic law had not yet been formally codified and was not yet part of an integrated national legal system, but instead functioned as a particularistic communitarian legal system.

The transformation began in the 1990s, when the state sought to establish a unified national legal system. This transformation was rooted in broader efforts to formalize Islamic law into the national legal system of Indonesia, which is a constitutional state.²⁰ The enactment of Law No. 1 of 1974 on Marriage and

¹⁷ Khaled Abou El Fadl, "The Islamic Legal Tradition," in *The Cambridge Companion to Comparative Law* (Cambridge University Press, 2012), 295–312, <https://doi.org/10.1017/CBO9781139017206.018>.

¹⁸ Abdul Wahab Abd Muhaimin, "Aktualisasi Syariah Dan Fikih Dalam Menyelesaikan Berbagai Persoalan Hukum," *AHKAM: Jurnal Ilmu Syariah* 15, no. 2 (July 20, 2015), <https://doi.org/10.15408/ajis.v15i2.2868>.

¹⁹ Hakim, "Between Hibah and Wasiat Wājibah for Non-Muslims: Expansive Legal Interpretations by Indonesian Religious Judges in Inheritance Cases."

²⁰ Ahmad Yani and Megawati Barthos, "Transforming Islamic Law in Indonesia from a Legal Political Perspective," *Al-Ahkam* 30, no. 2 (October 30, 2020): 159–78, <https://doi.org/10.21580/ahkam.2020.30.2.6333>; Rahmatunnair Rahmatunnair, "Paradigma Formalisasi Hukum Islam Di Indonesia," *AHKAM: Jurnal Ilmu Syariah* 12, no. 1 (February 1, 2012), <https://doi.org/10.15408/ajis.v12i1.984>.

subsequently the Compilation of Islamic Law (KHI) through Presidential Instruction No. 1 of 1991 marked an important milestone in Indonesia's history of Islamic law. The KHI signified the first codification of Islamic law under state authority and demonstrated an eclectic tendency in its formation. This compilation combines principles from various schools of fiqh, adapted to Indonesia's social and political context. Its drafting process involved scholars, academics, bureaucrats, and religious organizations, making the KHI a result of a cross-interest dialogue representing Islam's moderate and adaptive face in Indonesia.²¹

Theoretically, the eclectic nature of Islamic marriage law in Indonesia can be understood as the result of the encounter between classical Islamic legal traditions and the socio-political realities of the modern state. In the fiqh tradition, eclecticism is reflected in *takhayyur* (selection of opinions across schools of thought) and *talfiq* (combining several opinions from different schools of thought in a single case). These two concepts arose from the awareness of the *fuqaha* that Islamic legal texts have a diversity of interpretations that must be responded to contextually according to the needs of the *ummah*. Methodological plurality in Islamic law is not a form of deviation, but rather evidence of the epistemological elasticity of Islam. In the Indonesian context, this principle of plurality finds its actualization in the formation of marriage law, which is not based on a particular school of thought but rather is the result of a synthesis of various views adapted to the social and political values of the state.

The idea of eclecticism in forming Indonesian Islamic law was institutionalized in Law No. 1 of 1974 on Marriage. The formation of Law No. 1 of 1974 on Marriage in Indonesia is an example of the principle of pluralism. This law was influenced by various religious and social perspectives, which aimed to unite the diverse legal traditions in the country. The development of this law involved significant debate and synthesis from various points of view to create a cohesive legal framework.²²

²¹ Fajar Sugianto and Slamet Suhartono, "The Existence of President Instruction of The Republic of Indonesia Number 1 The Year 1991 on The Wide Spread of Compilation of Islamic Law in Indonesian Legal System," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 13, no. 2 (December 31, 2018): 291-309, <https://doi.org/10.19105/al-lhkam.v13i2.1727>.

²² Farkhani Farkhani et al., "Converging Islamic and Religious Norms in Indonesia's State Life Plurality," *Indonesian Journal of Islam and Muslim Societies* 12, no. 2 (December 17, 2022): 421-46, <https://doi.org/10.18326/ijims.v12i2.421-446>; MG. Endang Sumiarni, "Historical Study of Marriage Law Between the Norms and the Problematics," *Revista de Gestão Social e Ambiental* 18, no. 5 (March 13, 2024): e05403, <https://doi.org/10.24857/rgsa.v18n5-012>.

This eclectic character is further evident in the 1991 Compilation of Islamic Law (KHI). This codification serves as a formal source of law for religious courts and a manifestation of the process of legal hybridization—the combination of Islamic law, customary law, and national legal principles.²³ KHI combines views from various schools of jurisprudence, particularly Shafi'i, Hanafi, and Maliki, and accommodates modern ideas such as gender justice and child protection. Its drafting process involved scholars, bureaucrats, and academics, creating more contextual legal norms. This shows that eclecticism in Indonesian Islamic law is not merely a pragmatic strategy, but an epistemological approach that allows Islamic law to remain alive and relevant within the framework of a modern state.

Some examples of eclectic Islamic marriage laws are guardianship, divorce, child custody (hadhanah), and polygamy. The KHI adopts the view of the majority of scholars (majority of schools of thought) that guardianship is a necessary part of marriage, but also accommodates the more lenient view of the Hanafi school of thought. In the KHI, the nasab guardian is still preferred. However, if there is no guardian or the guardian refuses without a shari'i reason, the judge can act as the guardian (Article 23 KHI). This is a compromise between the Shafi'i (which requires a guardian) and the Hanafi (which allows baligh women to marry without a guardian).²⁴

Regarding divorce, classical fiqh, especially Shafi'i, considers that divorce is valid only with the husband's words without having to go through court.²⁵ However, the KHI and the Marriage Law require that divorce be pronounced before a religious court, so there is legal protection for the wife and children. Indonesian law does not recognize divorce pronounced outside of court, even though this is accepted in Islamic jurisprudence.²⁶ This is a syncretism between the principles of fiqh (the husband's right to divorce) and modern legal values of justice and protection.

²³ I Suntana, "From Internalization to Formalization; Islamic Law Development in Indonesia," *Islamic Quarterly* 64, no. 1 (2020): 115–26, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85099103150&partnerID=40&md5=ba8fd800658687791627d4d1fec0ecb2>.

²⁴ Asman Asman, "Comparative Analysis of the Istinbath Methods of the Shafi'i and Hanafi Schools Regarding the Role of the Wali Mujbir in Marriage Law," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 9, no. 1 (October 30, 2024): 29–46, <https://doi.org/10.22515/alahkam.v9i1.9447>.

²⁵ Irham Zahir, "COMPARATIVE ANALYSIS OF TALAQ THAT PASSED OUTSIDE THE COURT IN THE PERSPECTIVE OF ISLAMIC LAW AND COMPILATION OF ISLAMIC LAW," *Jurnal Al-Dustur* 4, no. 1 (June 2, 2021): 1–18, <https://doi.org/10.30863/jad.v4i1.1343>.

²⁶ Nur Rofiq et al., "JUDGES PERSPECTIVE ON THE THIRD TALAK IMPOSED OUTSIDE OF COURT SESSION," *Diponegoro Law Review* 8, no. 1 (April 30, 2023): 76–92, <https://doi.org/10.14710/dilrev.8.1.2023.76-92>; Nita Azita Zein, Imam Yazid, and Heri Firmansyah, "The

The characteristics of eclecticism are further evident in child custody. The KHI stipulates that children who are not yet mumayyiz (under 12 years of age) shall be in the care of their mother, while children who are mumayyiz may choose to be cared for by either their father or mother. This provision compromises the Shafi'i view (young children automatically stay with their mother) and the Hanafi view (hadhanah rights can be transferred after a certain age). Both schools of thought recognize the importance of the child's best interests, but their application differs. The Shafi'i school of thought tends to prioritize the mother, while the Hanafi school of thought has specific age criteria for the transfer of custody rights.²⁷ Eclectic characteristics are also evident in the rules on polygamy. Classical fiqh permits polygamy on condition of fairness, without any administrative mechanism. However, the KHI and the Marriage Law require permission from a religious court and the wife's consent, which is an adjustment to the principles of social justice and modern legal equality.²⁸

Thus, the eclectic nature of Indonesian Islamic marriage law does not merely reflect the diversity of schools of thought but symbolizes a more inclusive and reflective legal paradigm. Eclecticism is an epistemological bridge connecting classical Islamic texts with contemporary social realities. This character makes Indonesian Islamic law unique compared to Islamic legal systems in other countries. Indonesian Islamic marriage law is not a new school of thought, but a new way of thinking that represents Islam that is contextual, dynamic, and in harmony with the spirit of humanity.

The formation of Islamic law in Indonesia is not a process of copying old doctrines, but rather a creative process involving the negotiation of values, legal politics, and demands for social justice. This eclectic characteristic aligns with the spirit of *ijtihad*, which places reason and context as integral parts of the law formation process. In the law formation process, context allows for incorporating new relevant

Dualism of Reconciliation Law After Triple Talaq Outside the Court," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 10, no. 1 (April 30, 2023): 186, <https://doi.org/10.29300/mzn.v10i1.4964>.

²⁷ Hamda Sulfinadia and Jurna Petri Roszi, "Moderation of Madhhabs in West Sumatra Towards Hadhanah of Minors Whose Mothers Remarry," *El-Ussrah: Jurnal Hukum Keluarga* 7, no. 2 (December 31, 2024): 789, <https://doi.org/10.22373/ujhk.v7i2.23941>.

²⁸ Sifa Mulya Nurani, "Perspektif Keadilan Dalam Rumah Tangga," *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 1, no. 1 (January 25, 2021): 1-14, <https://doi.org/10.53754/iscs.v1i1.1>; Ah. Kholish Hayatuddin Desti Widiani, "Socio-Juridical Analysis on Polygamy Requirements in the Compilation of Islamic Law (KHI)," *Al-'Adalah* 19, no. 1 (June 20, 2022): 195-222, <https://doi.org/10.24042/adalah.v19i1.10266>.

information into legal knowledge through discursive maneuvers by legal practitioners.²⁹

Non-Systematic Approach in the Application of Indonesian Islamic Marriage Law

The non-systematic approach in Islamic law emerged as a response to the limitations of the positivistic view, which places law as a closed and hierarchical rational system. In the classical legal paradigm, both in Western law and Islamic jurisprudence, law is understood as a structure that works deductively, where rules are derived from texts and applied linearly to reality. The hierarchical nature of the legal system, as assumed by positivism, can be problematic.³⁰

The legal reality in Indonesia shows that Islamic law does not continuously operate according to such systematic logic. Instead, the law develops adaptively and reflectively in response to social dynamics.³¹ This view aligns with Satjipto Rahardjo's idea of progressive law, that law should be understood to achieve substantive justice, not merely as a formal instrument that guarantees certainty. The non-systematic approach views law as a living, open social process constantly negotiating with human values.

In Indonesian Islamic law, a non-systematic approach is evident in how judges and policymakers interpret and apply legal norms. Not all cases in society can be answered textually through fiqh books or articles in the Compilation of Islamic Law (KHI). In such situations, judges use a reflective and contextual approach, considering the principle of public interest (*maslahah mursalah*) and the objectives of Islamic law (*maqāṣid al-syarī'ah*).

This transformation is evident in the way religious courts respond to social change. When society faces new issues such as domestic violence, early marriage, or child custody disputes. Judges do not find all the answers in classical fiqh texts. They combine different sources of law—between the KHI, national regulations, and

²⁹ Laura Angioletti, Federico Tormen, and Michela Balconi, "Judgment and Embodied Cognition of Lawyers. Moral Decision-Making and Interoceptive Physiology in the Legal Field," *Frontiers in Psychology* 13 (March 24, 2022), <https://doi.org/10.3389/fpsyg.2022.853342>.

³⁰ Ksenija Grubišić, "Efficacy and Autopoiesis of the System of Science, Education, Law and Politics," *Zbornik Pravnog Fakulteta Sveučilišta u Rijeci* 45, no. 3 (2024): 519–41, <https://doi.org/10.30925/zpfsr.45.3.2>.

³¹ Muhammad Faisol, "HUKUM ISLAM DAN PERUBAHAN SOSIAL," *JURIS (Jurnal Ilmiah Syariah)* 18, no. 1 (June 30, 2019): 33, <https://doi.org/10.31958/juris.v18i1.1397>.

humanitarian moral values—to create legal solutions appropriate to modern society's context.³²

Religious courts no longer apply Islamic law solely based on classical fiqh. Judges have begun to use the KHI as a formal reference, but they also interpret its contents dynamically according to the community's social needs. For example, in divorce cases, judges not only refer to the provisions on divorce in fiqh, but also consider the principles of justice and public interest as emphasized in Law No. 23 of 2004 on the Elimination of Domestic Violence.³³ Judges not only apply the provisions of the KHI textually, but also interpret and adapt them to society's social, cultural, and moral conditions. In divorce cases resulting from domestic violence, judges not only adhere to the provisions of fiqh regarding *darar syar'i* (sharia harm), but also refer to the principle of victim protection as stipulated in the Law on the Elimination of Domestic Violence.³⁴

The same applies to inheritance cases. The courts have played an important role in reforming and interpreting the KHI, especially in light of contemporary social and economic realities. For example, several court decisions have awarded equal inheritance shares to male and female heirs, reflecting changes in social roles and economic contributions.³⁵ Traditional Islamic inheritance law favors male heirs with a ratio of 2:1. However, recent court rulings have granted equal shares to sons and daughters, reflecting changing social and economic dynamics. This shift is justified through

³² Fajar Rachmadhani, Mualimin Mochammad Sahid, and Muchammad Ichsan, "THE USE OF SADD AL-DHARI'AH ON CONTEMPORARY ISLAMIC FAMILY LAW IN INDONESIA: CONCEPT AND PRACTICE," *Malaysian Journal of Syariah and Law* 12, no. 1 (April 26, 2024): 206–15, <https://doi.org/10.33102/mjssl.vol12no1.505>.

³³ Adnan Bayu Wicaksono and Winning Son Ashari, "Analisis Perlindungan Islam Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga Dalam Tinjauan Maqashid Syariah," *Rayah Al-Islam* 8, no. 3 (August 28, 2024): 888–904, <https://doi.org/10.37274/rais.v8i3.1027>.

³⁴ Bani Syarif Maula and Vivi Ariyanti, "Justice Negotiations for Women: Divorce Cases Due to Domestic Violence in Religious Courts," *Jurnal Hukum Islam* 20, no. 1 (June 24, 2022): 155–80, <https://doi.org/10.28918/jhi.v20i1.6024>.

³⁵ Theresia Dyah Wirastri and Stijn Cornelis Van Huis, "The State of Indonesia's Marriage Law: 50 Years of Statutory and Judicial Reforms," *AHKAM: Jurnal Ilmu Syariah* 24, no. 2 (December 5, 2024): 215–32, <https://doi.org/10.15408/ajis.v24i2.38424>; Yusida Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 25, no. 1 (May 1, 2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>.

judicial *ijtihad* and the *maqashid al-shariah* framework, which emphasizes substantive justice.³⁶

In post-divorce child custody cases, judges not only refer to the provisions of *hadanah* in *fiqh*, but also assess the psychological aspects of the child and the principles of protection stipulated in the Child Protection Law.³⁷ Judges play an important role in considering the welfare of children when deciding on divorce.³⁸ This practice shows that the application of Islamic law in Indonesia is non-systematic—meaning that it is not subject to a closed system of reasoning, but is open to a combination of values and social contexts.

The non-systematic approach reflects the diversity of legal rationalities that operate in parallel. This approach allows for a plurality of different lines of legal reasoning, depending on the circumstances of the case, social interests, and moral values to be upheld. In critical legal theory, this is similar to the critical legal pluralism proposed by Roberto Unger (1986), namely that law is not a fixed structure, but rather an arena for contesting values and interpretations.³⁹

More than just a method of interpretation, the non-systematic approach also reflects an epistemological shift in how Islamic law is understood. Whereas previously the law was seen as a direct derivative of the revealed text, it is now understood as the result of a social construct that remains rooted in *sharia* principles. This shift shows that legal authority no longer resides solely in the text, but also in the process of interpretation carried out by legal actors—judges, academics, and policymakers. Judges in Islamic courts are tasked with interpreting and applying Islamic law to contemporary issues, often requiring a balance between traditional texts and modern contexts.⁴⁰

³⁶ Fitriyati et al., "Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of *Maqashid Al-Shariah*."

³⁷ S M Subeitan et al., "The Authority of Ex Officio Judges in Protecting Women's and Children's Rights Post-Divorce at the Manado Religious Court," *Jurnal Ilmiah Al-Syir'ah* 23, no. 1 (2025): 102–16, <https://doi.org/10.30984/jis.v23i1.3318>.

³⁸ Ibnu Radwan Siddik Turnip et al., "Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the *Maslahah* Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 20, 2024): 463–84, <https://doi.org/10.29240/jhi.v9i2.10117>.

³⁹ Isabel Lifante Vidal, "In Defence of a Constructivist Conception of Legal Interpretation," *Revus*, no. 40 (August 14, 2020): 63–83, <https://doi.org/10.4000/revus.5897>.

⁴⁰ Nadirsyah Hosen, "Natural Law in Islam from Theological and Legal Perspectives," in *Research Handbook on Natural Law Theory* (Edward Elgar Publishing, 2019), <https://doi.org/10.4337/9781788110044.00016>; Intisar A. Rabb, "Interpreting Islamic Law through Legal Canons," in *Routledge Handbook of Islamic Law* (New York, NY: Routledge, 2019: Routledge, 2019), 221–54, <https://doi.org/10.4324/9781315753881-15>.

This fact shows that the practice of Islamic marriage law in Indonesia has shifted from a deductive, sectarian pattern to a reflective, contextual pattern that prioritizes the substance of justice. The transformation of the Compilation of Islamic Law in Indonesian Religious Courts reflects the dynamic interaction between traditional Islamic principles and the contemporary legal and social context. The transformation of Islamic law in Indonesia involves adapting to the country's multicultural, multiethnic, and multireligious context. This adaptation is necessary to ensure the acceptance and relevance of the law.⁴¹

Thus, Islamic law in Indonesia operates within a more organic and reflective logic, where the meaning of law is constantly shaped through a dialogue between text, context, and human values. This approach allows Islamic law to remain relevant without losing its theological legitimacy. The transition of legal authority in Islamic law from text to judge reflects the dynamic interaction between historical tradition, modern legal reform, and the evolving role of judicial institutions. This process underscores the importance of legal interpretation and the role of judges in ensuring that Islamic law remains relevant and applicable in contemporary society.⁴²

CONCLUSION

The transformation of Islamic marriage law in Indonesia shows the character of legal eclecticism, combining various schools of jurisprudence with modern national legal principles. This is clearly seen in the Compilation of Islamic Law (KHI) and the Marriage Law, which result from synthesizing various legal sources. For example, the regulation on marriage guardians combines the views of the Shafi'i and Hanafi schools of thought by providing space for judicial guardians; the provisions on *hadhanah* combine Shafi'i and Hanafi principles; while the regulation of polygamy and divorce in court shows the integration of classical *fiqh* values with the principles of justice and modern legal protection. This eclectic character shows that Islamic marriage law in Indonesia is not dogmatic, but dynamic and contextual, adapting *fiqh* teachings to social needs and Indonesian values.

⁴¹ Yani and Barthos, "Transforming Islamic Law in Indonesia from a Legal Political Perspective."

⁴² Ibnu Elmi AS Pelu, "KEDUDUKAN FATWA DALAM KONSTRUKSI HUKUM ISLAM," *El-Mashlahah* 9, no. 2 (January 1, 2020), <https://doi.org/10.23971/mashlahah.v9i2.1692>.

Meanwhile, applying a non-systematic approach in religious court practices reflects the flexibility and adaptability of Islamic law in Indonesia. Judges not only adhere textually to the KHI or the Marriage Law, but also interpret the law by referring to other regulations such as the Child Protection Law, the Law on the Elimination of Domestic Violence (PKDRT), and the Basic Law on Human Rights. For example, in divorce cases involving domestic violence, judges can assess aspects of justice based on the protection of victims; in inheritance and child custody cases, judges often consider the best interests of the child as a universal principle. This cross-system approach shows that Indonesian Islamic law is open, responsive, and progressive, capable of bridging religious norms, state law, and the social realities of modern society.

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