

THE TRANSFORMATION OF ISLAMIC LAW IN SHARIA MARRIAGE AND BANKING LEGISLATION IN INDONESIA

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Abstract

This research discusses the transformation of Islamic law in the Indonesian legal system, with a focus on marriage legislation and Islamic banking. This transformation is not only in the form of normative adoption, but also a dialectical process that involves adaptation, accommodation, and assimilation between sharia principles and a positive national legal framework. The research uses a qualitative approach with a case study method, through the analysis of primary and secondary literature in the form of laws and regulations, fatwas, jurisprudence, and academic publications. The results of the study show that Islamic law has made a significant contribution to the formation of national law, especially through the recognition of religious courts, codification of marriage laws, and the development of the Islamic banking sector. However, there are major challenges in the context of digital banking and Islamic fintech, such as regulatory vacancies, low Islamic financial literacy, and suboptimal market share. This study recommends the importance of harmonizing inter-institutional regulations, establishing special rules for Islamic fintech, increasing Islamic financial literacy, and strengthening the social role of Islamic banking so that the principle of Islamic substantive justice can be realized. These findings confirm that the sustainability of Islamic law in the national system depends on its ability to adapt to global technological, social, and economic dynamics, without losing its normative identity.

Keynote: Islamic Law; Transformation; Marriage Legislation; Islamic Banking; Sharia Fintech; National Regulations

Introduction

In the context of a pluralistic legal system, Indonesia faces a major challenge in integrating the positive religious norms, customs, and laws of colonial heritage into the national legal framework. This reality is reflected in the existence of three coexisting legal systems: customary law, Islamic law, and positive law (colonial and modern heritage). The transformation of Islamic law in Indonesia shows the complex dynamics of interaction between religious norms and national legislation frameworks, especially in areas that concern the public interest such as marriage and Islamic

banking (Baidhowi, 2019). This interaction is not only formal, but also substantial, because it concerns the values of justice, the protection of human rights, and the economic development of the majority Muslim community.

This transformation is not just a normative adoption, but a dialectical process that involves adaptation, accommodation, and even assimilation between the principles of Islamic law and Indonesia's positive legal structure (Baehaqi, 2021). Demographic data shows that around 87% of Indonesia's 277.7 million population is Muslim (BPS, 2023), so the integration of Islamic law into national legislation is very significant. The process of fostering and developing Islamic law through this legislative route is seen as essential to realize the unity of the national legal system, although it often gives rise to discourses about legal unification (Islamy, 2019).

These integration efforts are reflected in several concrete steps: making Islamic law one of the materials for the preparation of national law, updating colonial law products that are not in harmony with Islamic values, and drafting new regulations that contain Islamic legal norms (Tahmid, 2021). History shows that the existence of Islamic law in Indonesia's positive legal system has been present long before independence and continues to be implemented by its adherents, indicating its inseparable role in the nation's journey (Shofi, 2022). Thus, the recognition of Islamic law as part of the material for the formation of positive laws shows that there is room for the development of Islamic law in a multicultural society (Sulthon, 2020).

In practice, the contribution of Islamic law is evident in two important areas, namely marriage and Islamic banking. Marriage as a social institution not only regulates personal relationships, but also has an impact on family structure and social stability. On the other hand, Islamic banking plays a strategic role in economic development, with the note that in 2023, national Islamic banking assets will reach **IDR 785.26 trillion**, but its market share is only around **6.75% of the total national banking industry** (OJK, 2023). This shows that there is great potential as well as challenges in the implementation of Islamic law in the modern financial sector.

A number of previous studies have highlighted the transformation of Islamic law in Indonesia. For example, Fasial (2023) emphasizes the significance of Islamic law in the formation of national law considering that the majority of Indonesia's population is Muslim (Faisal, 2023). Fidhayanti et al. (2024) specifically examine the development of marriage legislation and Islamic banking as a representation of the implementation of Islamic law (Fidhayanti, 2024). Lohlker (2021) added that adaptation and universalization of fiqh are needed to adjust to the principles of religious freedom, human rights, and the rule of law in Indonesia (Lohlker, 2021). In addition, Dewi (2021) reviews theories of the implementation of Islamic law, including *receptio in complexu*, which is the historical basis for the existence of religious courts (Dewi, 2021).

However, a number of these studies tend to discuss the normative integration of Islamic law, while studies that explore the socio-economic dynamics of the implementation of marriage regulations and Islamic banking are still relatively limited. For example, studies (Indrawan et al., 2020) and (Andriani & Sacıpto, 2022) emphasize legal pluralism and the integration of religious-customary law, but have not profoundly highlighted the practical impact of Islamic law regulation on social cohesion and national economic development. On the other hand, (Mas'ulah et al., 2020) and (Silfiah, 2020) highlight the flexibility of fiqh through the concepts of *'urf* and *al-'adat al-muhakkamah*, but have not explicitly linked it to the challenges of contemporary legislation.

This *research gap* underscores the need for a more comprehensive analysis of how Islamic law is not only adopted in regulations, but also internalized in the social and economic practices of society. For example, there is still criticism of the success of Islamic banking which is often seen as emphasizing the business aspect more than its social function (Alimin, 2025). Similarly, in the realm of marriage, the application of regulations often clash with local social and cultural practices, which shows the tension between formal law and social reality.

Therefore, this research focuses on analyzing how the principles of Islamic law are adapted and internalized into the framework of national legislation, particularly in the regulation of marriage and Islamic banking. This study will explore the evolution of legislation, highlight the challenges and opportunities of the interaction between Islamic doctrine and the demands of legal modernity, and examine its impact on social cohesion and national economic development. With this approach, the research seeks to make an academic contribution that fills the gap of previous research, as well as offer a new understanding of the dynamics of legal pluralism in Indonesia within the framework of progressive legal development. (Rahmad, 2021; Prasetyo, 2021)

Research Methods

This study uses a qualitative approach with a case study method to analyze in depth the transformation of Islamic law in marriage legislation and Islamic banking in Indonesia. The research data was obtained through extensive literature studies, including analysis of primary and secondary literature in the form of laws and regulations, fatwas, court decisions, and relevant scientific publications (Guntoro, 2022). The selection of this approach allows researchers to identify patterns of adaptation of Islamic law, implementation challenges, and socio-legal implications of applicable regulations, emphasizing comparative analysis between fiqh principles and positive legal formulations.

An in-depth analysis was carried out on the legal framework of marriage and sharia banking in Indonesia, by comparing the normative concept of sharia as contained in fiqh sources with its implementation in national laws (Fidhyayanti, 2024). This

research also explores the role of jurisprudence and court decisions in shaping the interpretation and practice of the application of Islamic law in Indonesia, thereby providing a more comprehensive understanding of the dynamics of the integration of Islamic law into the national legal system.

The content analysis method is applied to examine legal texts, academic literature, and religious doctrine, especially those sourced from the Qur'an, hadith, and the rules of fiqh, in order to produce valid, systematic, and replicable conclusions (Zakiyah, 2022). Thus, this study seeks to connect normative and practical aspects in marriage legislation and Islamic banking, while highlighting the contribution of Islamic law to the development of national law.

Results and Discussion

Juridical-Normative Analysis in the Transformation of Sharia Financial Regulation

The transformation of Islamic financial regulations in Indonesia cannot be separated from the pluralistic national legal framework. Islamic finance began to gain formal legitimacy since the enactment of Law No. 7 of 1992 concerning Banking, which was later amended through Law No. 10 of 1998 by recognizing the dual banking system. This recognition paves the way for Islamic banks to operate side by side with conventional banks. Normatively, this step reflects the process of accommodating the demands of the majority Muslim community who want usury-free financial institutions (Baidhowi, 2019). However, this normative recognition does not necessarily answer the operational needs of Islamic banking. The initial regulations are more general and have not provided adequate space for sharia instruments such as mudharabah, musyarakah, and murabahah. Therefore, the birth of Law No. 21 of 2008 concerning Sharia Banking is an important milestone. This law provides a firmer and more detailed juridical basis, including the regulation of the Sharia Supervisory Board (DPS) as a mechanism for monitoring sharia compliance (Baehaqi, 2021). Thus, these regulations are not only formal but also substantive, linking sharia norms with modern banking practices.

From the perspective of Islamic law, Islamic banking legislation reflects the principles of al-'adalah (justice) and al-maslahah (benefit). The sharia contract instruments adopted in the law accommodate the needs of the Muslim community while expanding the national financial system alternatives (Shofi, 2022). This normative transformation is proof that Islamic law is not positioned marginally, but is integrated into the national legal system. However, existing regulations still face the problem of disharmony. For example, the overlap of rules between the Financial Services Authority (OJK), Bank Indonesia, and the National Sharia Council-MUI gives rise to differences in interpretation in practice. This indicates

that there is a gap between normative idealization and legal operationalization (Islamy, 2019). Sharia-based regulations often still have to negotiate with the principles of market law and the capitalistic global financial system.

Furthermore, jurisprudence also plays an important role in shaping the legal face of Islamic banking. Religious court rulings related to sharia economic disputes show concrete efforts in bridging fiqh norms with positive law (Fidhayanti, 2024). In this context, the theory of *receptio in complexu* that used to place Islamic law as the law that applies to its adherents has found new relevance: Islamic law is not only recognized, but also enforced through state judicial mechanisms (Dewi, 2021). In addition, the existence of derivative regulations such as OJK Regulations and DSN-MUI fatwas enrich the normative dynamics of Islamic banking. The DSN fatwa is the main reference in determining the validity of Islamic financial products, while POJK provides technical instruments for implementation. The two interact synergistically, although they often cause debates about the position of fatwa in the hierarchy of laws and regulations (Tahmid, 2021).

Thus, the juridical-normative analysis shows that the transformation of Islamic financial regulation in Indonesia is not just a formality, but a dialectical process. This process integrates the principles of fiqh into positive law while also facing the challenge of harmonization with the modern legal system. Its contribution is significant to efforts to build a national legal system that is inclusive and responsive to the needs of the Muslim community (Sulthon, 2020). In the end, this juridical-normative aspect shows that the existence of Islamic law in the realm of Islamic finance is no longer limited to a symbol of identity, but has become an integral part of the national legal system. However, the success of these regulations still depends on the consistency of harmonization between institutions and the strengthening of the legal basis so that there is no dualism of interpretation in its implementation (Rahmad, 2021).

Challenges of Implementing Sharia Principles in Digital Financial Services

The development of financial technology (fintech) brings great opportunities as well as challenges for the implementation of sharia principles. Digital financial services, such as peer-to-peer lending, digital wallets, and sharia marketplaces, require regulations that not only accommodate innovation but also ensure compliance with sharia principles. However, regulatory developments in this field are still lagging behind in comparison to *pasa* innovation (Mas'ulah, 2020). One of the fundamental challenges is how to ensure that digital contracts remain in accordance with sharia. The concept of *ijab-qabul*, for example, must be adapted in the form of an electronic contract. Although positive law in Indonesia has recognized electronic documents as legal evidence through the ITE Law, debate is

still taking place among scholars regarding the validity of ijab-qabul online (Silfiah, 2020).

In addition, the issue of loan interest in fintech lending is a serious concern. Many fintech platforms offer fast loans with high interest, which is clearly against the principle of prohibition of usury. This is where sharia fintech tries to offer an alternative based on murabahah or ijarah contracts. However, the penetration of Islamic fintech is still relatively low compared to conventional fintech. According to OJK data in 2023, only about 10% of the total fintech lending providers are sharia-based. Another challenge is the limitation of Islamic financial literacy among the public. Although Indonesia is the country with the largest Muslim population in the world, the OJK survey in 2022 shows that the level of Islamic financial literacy has only reached 9.1%, far behind the general financial literacy of 49.7%. This condition hinders the adoption of sharia-based digital financial services (Alimin, 2025).

In terms of regulation, there is still a significant legal vacuum. For example, there is no clear regulation regarding dispute resolution mechanisms in Islamic fintech services. Whether the dispute is resolved in a general court, a religious court, or through sharia arbitration is still a matter of debate. This shows the need for regulatory updates that are responsive to technological dynamics while being consistent with sharia principles (Lohlker, 2021). In addition, there are challenges in integrating customary law and Islamic law in the context of digital finance. Many local communities still prioritize customary-based economic practices, which need to be accommodated so as not to cause clashes with the modern financial system. The concept of 'urf and al-'adat al-muhakkamah is an important instrument to bridge this (Soekanto, 2017).

The implementation of sharia principles in digital finance must also consider consumer protection aspects. Many cases of personal data misuse and unethical billing practices occur on conventional fintech platforms. Therefore, sharia fintech is required not only to be free of usury, but also to apply the principles of ethics and justice in its digital services (Prasetyo, 2019). Thus, the challenges of implementing sharia principles in digital financial services show that the integration of Islamic law in the modern financial system still requires regulatory innovation, increased literacy, and consumer protection. The flexibility of fiqh allows adaptation to new technologies, but it must still be maintained so as not to sacrifice fundamental sharia principles (Indrawan, 2020).

Strategy to Strengthen Regulation and Increase the Competitiveness of Islamic Banking

In the face of global dynamics, strengthening regulations is the key to increasing the competitiveness of Islamic banking in Indonesia. Although the market share of Islamic banking continues to increase, OJK data in 2023 shows that the market share of Islamic banking only reaches around 7.3% of total national banking assets. This figure is still relatively small when compared to Indonesia's potential as a country with the largest Muslim population in the world (Fasial, 2023). One of the strategies to strengthen regulations is the harmonization of inter-institutional rules. Currently, Islamic banking supervision still involves many institutions, ranging from OJK, Bank Indonesia, to DSN-MUI. This fragmentation often leads to overlapping authority. Therefore, a more effective coordination mechanism is needed to create legal certainty and regulatory efficiency (Andriani, 2022).

In addition to harmonization, innovation in Islamic financial products is also an important agenda. Islamic banking is not enough to only offer murabahah or ijarah-based products, but also to develop investment instruments that are competitive in the global market, such as sukuk and Islamic fintech. Regulations that are adaptive to this innovation will determine the competitiveness of Islamic banking in the digital era (Alimin, 2025). Strengthening regulations must also be accompanied by increasing public literacy. The low understanding of Islamic financial products hinders market penetration. Systematic and sustainable educational programs need to be encouraged, not only through Islamic banking but also educational institutions and religious organizations (Mas'ulah, 2020).

On the other hand, Islamic banking must strengthen its social function. Sharia principles emphasize a balance between economic gain and social justice. Therefore, Islamic banks need to expand their role in financing the MSME sector, alleviating poverty, and empowering the economy of small communities. Regulations that encourage this social role will increase the legitimacy of Islamic banking in the eyes of the public (Silfiah, 2020). No less important, the strategy of strengthening regulations must consider integration with international law. As part of the global financial system, Indonesian Islamic banking must be able to compete with other more developed countries, such as Malaysia and Middle Eastern countries. Standardization of regulations with international principles will strengthen the attractiveness of sharia investment in Indonesia (Rahmad, 2021).

In addition to formal regulations, the role of DSN-MUI fatwa remains essential. However, a mechanism is needed so that fatwas can more quickly adapt to the development of new financial products. Delays in issuing fatwas are often an obstacle to the innovation of sharia products. Therefore, synergy between regulators, practitioners, and scholars needs to be improved (Tahmid & Fautanu,

2021). Overall, the strategy to strengthen Islamic banking regulations in Indonesia must be directed at the creation of a harmonious, innovative, inclusive, and competitive legal system. This effort is not only to increase market share, but also to ensure that Islamic banking truly becomes an instrument of social justice and national economic development (Sulthon, 2020).

Conclusion

The transformation of Islamic law in the Indonesian legal system, especially in the field of marriage and Islamic banking, shows the existence of a dynamic dialectic between fiqh norms and national regulations. This integration has been carried out through legislation, legal codification, and the establishment of Islamic banking laws, which affirm the contribution of Islamic law in shaping a national legal system that is relevant to the needs of society. Nonetheless, its implementation still faces serious challenges. Regulations in the Islamic digital banking and fintech sectors are not fully comprehensive, there is an overlap of authority between institutions, the level of Islamic financial literacy of the community is still low, and the market share of Islamic banking is not optimal. This condition shows that there is a gap between sharia principles and the developing technical and social realities.

Based on these findings, the study recommends four important things. First, the need for regulatory harmonization through synergy between relevant authorities so that there is no legal fragmentation. Second, the establishment of special regulations for sharia fintech that regulate electronic contracts, consumer protection, and dispute resolution mechanisms. Third, systematically improving Islamic financial literacy so that the public understands not only the religious dimension but also its practical benefits. Fourth, strengthening the social role of Islamic banking by encouraging inclusive financing for MSMEs and vulnerable groups, so that the principle of substantive justice in Islamic law can be truly realized. Thus, the sustainability of the transformation of Islamic law in Indonesia is largely determined by its ability to adapt to technological developments, global market demands, and the needs of a multicultural society, without losing its normative identity as a law oriented towards justice and benefit.

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