



ISSUES SURROUNDING THE IMPLEMENTATION OF ISLAMIC LEGAL THOUGHT IN INDONESIA

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Abstrak	Article Info
<p><i>Implementasi pemikiran hukum Islam di Indonesia menunjukkan dinamika kompleks yang muncul dari interaksi antara prinsip-prinsip Syariah dan kerangka pluralistik hukum nasional. Studi ini mengeksplorasi isu-isu kunci seputar penerapan pemikiran hukum Islam, termasuk tantangan normatif, politik, dan sosial budaya. Dengan menggunakan pendekatan kualitatif-deskriptif melalui tinjauan pustaka dan analisis regulasi, penelitian ini mengidentifikasi beberapa isu kritis: kurangnya sinkronisasi antara fatwa ulama dan hukum positif, resistensi terhadap peraturan daerah berbasis Syariah, dan terbatasnya kewenangan hukum produk hukum Islam dalam sistem hukum nasional. Di sisi lain, kemajuan telah dicapai melalui kodifikasi seperti Kompilasi Hukum Islam dan pengakuan kelembagaan entitas berbasis Syariah. Temuan ini menunjukkan bahwa implementasi hukum Islam di Indonesia memerlukan pendekatan kontekstual yang mengakomodasi pluralisme masyarakat dan prinsip-prinsip konstitusional agar tetap relevan dan dapat diterima dalam lanskap hukum modern.</i></p>	<p>Submitted: 2-07-2025 Accepted: 2-08-2025 Published: 14-08-2025</p>
Abstract	
<p><i>The implementation of Islamic legal thought in Indonesia reveals a complex dynamic arising from the interaction between Sharia principles and the pluralistic framework of national law. This study explores the key issues surrounding the application of Islamic legal thought, including normative, political, and socio-cultural challenges. Using a qualitative-descriptive approach through literature review and regulatory analysis, this research identifies several critical issues: the lack of synchronization between ulama fatwas and positive law, resistance to Sharia-based regional regulations, and the limited legal authority of Islamic legal products within the national legal system. On the other hand, progress has been made through codifications such as the Compilation of Islamic Law and the institutional recognition of Sharia-based entities. The findings suggest that the implementation of Islamic law in Indonesia requires a contextual approach that accommodates societal pluralism and constitutional principles in order to remain relevant and acceptable within the modern legal landscape.</i></p>	<p>Kata kunci: <i>Isu, Seputar, Implementasi, Hukum Islam, Pemikiran</i></p> <p>Keywords: <i>Issues, Surrounding, Implementation, Islamic Legal, Thought</i></p>
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INTRODUCTION

Essentially, the legal provisions prescribed by God for humanity are intended to regulate the order of life in this world, encompassing both religious and social matters. More importantly, within Islamic teachings, the legal dimension constitutes an integral part of the religious doctrine as a whole, serving to govern human relationships with God,

fellow Muslims, non-Muslims, nature, and the surrounding environment. Islamic law is derived from specific sources of divine revelation both in content and wording from Allah, which is known as the Qur'an, as well as content from Allah conveyed in the Prophet's own words, known as Hadith. These two primary sources are then systematized by scholars into practical guidelines known as *fiqh*. (Noorhaidi Hasan, 2009)

Fiqh is defined as the body of knowledge concerning the divine legal rulings related to human actions, derived through detailed evidence; or more broadly, as a compilation of such legal rulings obtained from detailed textual sources. As a product of human intellectual endeavor, *fiqh* is inherently dynamic and open to change. It must be capable of offering juridical responses to the various issues of human life, given that the ever-evolving nature of human society continually brings about new challenges and transformations. (Azyumardi Azra, 2002)

Therefore, the scope for *fiqh* studies must remain open and continuously developed with close attention to the social implications of its legal products. *Fiqh* must remain relevant to the Qur'anic doctrines concerning human behavior. In line with this dynamic, Islamic law emerges as a response to the challenges faced by society. The emergence of heterogeneous issues resulting from the coexistence of various ethnic groups alongside the cultural evolution of society—has led to increasingly complex social dynamics. (E. J. Powell, 2020).

The rise of contemporary issues demands more sophisticated responses to address such challenges. Here, the role of *ijtihad* (independent legal reasoning) becomes essential, as many legal cases require nuanced and context-specific solutions. The presence of Islamic law is increasingly anticipated to address the demands of the times.

In Indonesia, Islamic legal thought occupies a strategic position in the formation of social and legal norms, despite the fact that Indonesia is not constitutionally an Islamic state. Islamic law in Indonesia is selectively implemented through various legal instruments, such as the Compilation of Islamic Law (KHI), the Law on Sharia Banking, the Law on Zakat and Waqf, as well as several regional regulations inspired by sharia, particularly in special autonomous regions like Aceh. This reflects that Islamic legal thought is not only a source of moral or religious guidance, but has also attained a formal legal position within the national legal system.

However, the implementation of Islamic legal thought in Indonesia does not proceed without challenges. The dynamics involve various factors, including legal pluralism, national legal politics, differences in Islamic legal schools (*madhhab*), and diverse interpretations of Islamic texts. On one hand, there is a strong impetus to institutionalize Islamic law within the national legal framework. On the other hand, there is a parallel need to uphold constitutional principles that safeguard diversity and citizens' rights, including gender equality and human rights. These value conflicts frequently generate debate over the application of Islamic law, especially in areas such as family law, inheritance, and criminal law. (H. B. Siregar (n.d.), 2021)

Furthermore, the implementation of Islamic law is influenced by social developments and globalization. Contemporary issues such as gender justice, individual freedom, and community participation in legal formulation require a reinterpretation of Islamic legal products to maintain their relevance. In this context, Islamic legal thought is

called upon to continue evolving—not only preserving the core values of Islam but also engaging in constructive dialogue with ever-changing social realities.

METHOD

This study employs a qualitative research design to comprehensively explore the issues surrounding the implementation of Islamic legal thought in Indonesia. The qualitative approach is chosen due to its strength in capturing the complex social, legal, and cultural dynamics involved in the process of applying Islamic law within a pluralistic legal framework. Primary data were gathered through semi-structured interviews with key stakeholders, including ulema, religious court judges, legal experts, and policymakers engaged in the development and enforcement of Islamic legal norms. These interviews aimed to uncover diverse viewpoints and firsthand experiences related to the challenges and adaptations in implementing Islamic legal thought. Secondary data were collected through documentary analysis of relevant legal texts such as the Compilation of Islamic Law (KHI), government regulations, academic literature, and institutional reports. This helped to contextualize the primary data and provided a broader understanding of the legal and socio-political environment. Data analysis was conducted using thematic analysis, which involved coding and categorizing data to identify key themes such as legal pluralism, jurisprudential conflicts, societal perceptions, and constitutional considerations. Ethical standards were maintained by ensuring informed consent, confidentiality, and cultural sensitivity throughout the research process. (Imran Ahsan Khan Nyazee, 2002)

RESULTS AND DISCUSSION

1. Products of Islamic Legal Thought

The products of Islamic legal thought refer to the intellectual outcomes derived from the processes of *ijtihad* (independent reasoning), interpretation, and legal reasoning by Muslim scholars in addressing various legal issues faced by the Muslim community, both in classical and contemporary contexts. These products are not absolute sources of law like the Qur'an and Hadith; rather, they represent elaborations, interpretations, and applications of Islamic legal principles to the ever-evolving realities of life. (Zubaidah Zainuddin, 2016).

As such, these legal products are *ijtihadi* in nature that is, they result from intellectual efforts and are therefore subject to variation among scholars and between different schools of thought (*madhhab*). Broadly speaking, the products of Islamic legal thought can be categorized into four main types: *fiqh* (Islamic jurisprudence), *fatwa* (non-binding legal opinions), judicial decisions, and legislation.

C. 1.1. *Fiqh*

Etymologically, *fiqh* means deep understanding. While the term understanding may be used for outward or external matters, *fiqh* is seen as a comprehension that connects external knowledge (*‘ilm al-zāhir*) with inner knowledge (*‘ilm al-bāṭin*). Understanding is also interpreted as the intellectual readiness to grasp what is being demanded. According to Hasbi Ash-Shiddieqy, *fiqh* is synonymous with the knowledge of *sharī‘ah*, whereas al-Āmidī defines *fiqh* as the knowledge of the practical legal rulings of

the *sharī'ah* pertaining to secondary matters (*furū'īyyah*), derived through reasoning or *istidlāl* (legal inference).

According to Hooker, M.B. (2008) similarly defines *fiqh* as the knowledge of Islamic legal rulings concerning practical actions, derived from detailed textual evidence. From these definitions, it can be understood that *fiqh* concerns the actions of those who are legally accountable (*mukallaḥ*). Given that the *Sunnah* holds equal authority with the Qur'an as a reference for legal rulings in *fiqh*, during the Prophet's lifetime the science of *fiqh* had not yet developed independently. All legal matters were resolved directly by the Prophet himself without the need for *ijtihād*, and his decisions and responses became known as *al-Sunnah*.

The development of *fiqh* as an academic discipline began during the time of the Prophet's companions, following his death. According to Abū Zahrah, the emergence and development of *fiqh* discussions were driven by the expansion of Islamic territories into regions with diverse ethnic and cultural backgrounds, which gave rise to new legal issues that had not been encountered during the Prophet's time. As a result, the companions were required to engage in legal reasoning to formulate rulings on such issues. (T. Santoso, 2012).

In certain discussions, the concept of *fiqh* is often confused with *sharī'ah*. Both are sometimes used interchangeably to refer to Islamic law, though the two concepts have distinct and universal differences. Among scholars of Islamic law, it is commonly stated that the contemporary understanding of *sharī'ah* is broader than that of *fiqh*. This is because the scope of *sharī'ah* encompasses not only *fiqh*, but also *‘ilm al-kalām* (Islamic theology) and other branches of religious knowledge. In other words, *fiqh* constitutes only a part of *sharī'ah*, as *sharī'ah* represents the entirety of the religion. The two terms also differ fundamentally in origin: *sharī'ah* is divinely revealed, whereas *fiqh* is a product of human reasoning.

C. 1. 2. Fatwa

A fatwa is the result of a *mufti's* *ijtihād* (independent legal reasoning) in response to a legal issue presented to them. The practice of issuing *fatwās* began during the expansion of Islam in the 7th and 8th centuries. As Muslims encountered various legal problems, particularly in large urban centers, judges (*qādīs*) were often available to resolve such issues. However, in regions distant from major cities, or in cases where explicit rulings were not found in the Qur'an or Hadith, scholars would provide legal responses in the form of *fatwās*.

In Indonesia, the issuance of *fatwās* was historically carried out exclusively by individual Islamic scholars (*ulama*). By the early 20th century, this practice began to evolve into collective deliberation. In 1926, traditionalist scholars founded the organization *Nahdlatul Ulama* (NU) and began issuing collective *fatwās*, coinciding with their first congress. Since then, each NU congress has produced not only organizational and political statements but also *fatwās* on matters pertaining to Islamic law. These were compiled and published under the title *Ahkām al-Fuqahā'*. (K. Suvirat, Famelia, D., Ratnasari, Y., Fedayeen, M. E., Wijayanto, D. P., & Cakraningrat, K, 2022).

Initially, Muhammadiyah a modernist Islamic organization did not prioritize the issuance of *fatwās*. However, as the need arose, the organization established a specialized committee known as *Majelis Tarjih*, tasked with addressing general religious questions

and Islamic legal matters in particular. This committee regularly convenes and produces *fatwās*, which are compiled in the *Himpunan Keputusan Majelis Tarjih Muhammadiyah* (Compilation of the Tarjih Council's Decisions). A significant development occurred in 1975 with the establishment of the Indonesian Council of Ulema (MUI). Both traditionalist and modernist groups are represented within MUI, which has since issued numerous *fatwās* collectively. From its founding to the present, MUI has produced a substantial body of *fatwās* on diverse issues.

A *fatwā* is more specific in nature than *fiqh* or general *ijtihad*. This is because a *fatwā* may relate to legal rulings already established in *fiqh*, but which the questioner does not yet understand. Scholars assert that a *mufti* must meet the qualifications of a *mujtahid* (an expert in Islamic legal reasoning). *Fatwās* also exhibit a relatively dynamic character, especially considering that they are tailored to the particular circumstances and concerns of the individual seeking legal guidance.

C. 1. 3. Judicial Decision

A *qāḍī* (judge) is an individual appointed by the head of state to adjudicate legal disputes and resolve conflicts. The tradition of judicial authority and legal education in Indonesia predates the colonial period and emerged alongside the development of Islamic centers of power. The principle of judicial independence is a fundamental tenet in Islamic teachings, as a judge is expected to render decisions impartially. Justice cannot be achieved if the judiciary is subject to the influence of other branches of power.

Religious courts and Islamic judiciary institutions have the potential to make significant contributions to legal thought, as their rulings are not based solely on man-made laws, but also on divine legal principles revealed by Allah to humankind. In any legal system, judicial decisions occupy a central role, as jurisprudence provides concrete expression to abstract legal norms. Furthermore, through jurisprudence, the judiciary plays a crucial function in adapting legal rules to changes in societal conditions and evolving notions of justice. (Arskal Salim, 2008)

Judicial decisions, as a product of legal thought, are the outcomes issued by a court following the examination of a case. In technical Islamic legal terminology, this is referred to as *al-qaḍā'* or *al-ḥukm*, meaning a verbal or written decision issued by an authorized body (*wilāyat al-qaḍā'*). Some scholars define it as a binding *sharī* ruling delivered by a duly appointed judge (*qāḍī*). Ideally, a judge's decision can also serve as a legal reference or precedent (*jurisprudence*) for other judges, contributing to the development and consistency of legal practice.

C. 1. 4. Statutory Regulations

Legislation issued by a legislative body, commonly referred to as statutory law or enacted regulations (*peraturan perundang-undangan*), represents a collective legal product that imposes binding sanctions on individuals who violate its provisions. As a collective product of legislative authority, its binding power extends beyond religious scholars (*ulama* or *fuqahā'*) to include intellectuals, policymakers, and political actors. An essential aspect of such legislation is the requirement for high legal quality, ensuring that it reflects the principles of justice and fairness within society. (Masykuri Abdillah, 1997)

This type of legal product statutory law is not uniformly present in all Muslim-majority countries. For instance, in Saudi Arabia, formal codified legislation has historically been minimal, as the state relies heavily on Islamic legal tradition (primarily

fiqh and *sharīʿah*), although developments in legal codification may have occurred in more recent years. In contrast, the majority of Muslim countries around the world have adopted statutory laws and regulations, particularly those that address specific administrative or societal matters through organic laws and legislative enactments.

2. The Dynamics of Islamic Legal Products in Indonesia

Given the dynamic nature of each form of Islamic legal thought, a key issue that arises is the misalignment between formulated legal dicta and the actual legal problems and prevailing sense of justice within society. *Fiqh*, in particular, must be applied effectively and should not be perceived as a ready-made, universally applicable legal system. With regard to legislation, it is important to recognize its dynamic process, which often involves significant deliberation and requires thorough preparation in order to integrate Islamic law into formal statutes. Such integration must be approached with a strong commitment, as a proper understanding of *sharīʿah* mediated through *fiqh* is essential for its effective implementation.

Nonetheless, the distinction between *fiqh* and *sharīʿah* must be clearly understood. A lack of professional comprehension of their differing characteristics may lead to confusion, and potentially to misinterpretations of *fiqh*. The fundamental difference lies in the fact that *sharīʿah* is divinely revealed and therefore absolute in its truth, while *fiqh* is a human intellectual construct formulated by *fuqahāʾ* (Islamic jurists), and its conclusions are inherently relative. An appreciation of this substantive difference fosters wisdom in approaching *fiqh*, and encourages a tolerant and respectful attitude toward diverse juristic formulations, recognizing the validity of differing opinions grounded in sound scholarly methodology. (Moch. Nur Ichwan, 2013)

During Indonesia's early post-independence period, there existed a dualism between groups advocating for Islamic *sharīʿah* as the foundation of the state, and nationalist-secular groups emphasizing pluralism. At that time, Islamic legal products were not widely accommodated within the national legal system, although in socio-cultural practice, Islamic law continued to be observed within Muslim communities, particularly in the areas of civil law (such as marriage, inheritance, and *waqf*).

Under the New Order regime, Islamic law began to be formally recognized in the national legal system through processes of legal compilation and codification. This culminated in the issuance of the Compilation of Islamic Law (KHI) in 1991, under Presidential Instruction No. 1 of 1991, which has since served as a primary legal reference for the religious courts in Indonesia. (C. H. Taylor Riddell, 2021).

The dynamic implementation of Islamic legal thought in Indonesia reflects ongoing efforts to contextualize *sharīʿah* within a democratic and pluralistic state governed by the rule of law. Despite ongoing challenges, Islamic legal products remain relevant as part of the aspirations of the Muslim community, so long as their application upholds the principles of justice, tolerance, and constitutional integrity.

CONCLUSION

Islamic legal thought, when incorporated into the national legal framework, can indeed be applied to the Muslim community in accordance with the legal needs of society. However, in the implementation of these legal products, a number of challenges arise—most notably the fundamental issue of misalignment between the formulated legal dicta

and the actual legal consciousness and needs of the people. This discrepancy often stems from the inability of such legal products to accommodate the dynamic changes occurring within society. To address and mitigate this problem, *ijtihad* must be optimized. Through active and context-sensitive *ijtihad*, Islamic legal products can evolve into a more responsive and integrative legal configuration one that not only addresses the legal needs of contemporary society but also resonates with the collective sense of justice.

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