



The Role of Customary Institutions in Resolving Islamic Family Law and Customary Law Conflicts: A Sociological Perspective

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Abstract: This research explores the complexity of family law conflicts in Indonesia, triggered by differences between Islamic law and customary law in the context of mixed marriages and inheritance division. Using a desk study approach, this research collects data from relevant primary and secondary sources to analyze the factors that influence family law conflicts. The results show that the conflicts are caused by differences in values and norms, unclear boundaries between the two legal systems, and gender inequality in customary law norms. The role of sociology is recognized as key in understanding the root causes, while customary institutions have great potential as mediators. The conclusions of this study emphasize the need for an inclusive approach that respects diversity and promotes peace and justice. Efforts are needed to strengthen the role of customary institutions in resolving conflicts, taking into account local wisdom, community beliefs and restorative approaches.

Keywords: Family Law Conflict, Islamic Law, Customary Law Role, and Customary Institutions

1. Introduction

Indonesia, with its wealth of culture and religion, has created diverse legal systems that have evolved within its society, including Islamic law and customary law. (Wayan Resmini, Abdul Sakban, and Havivi Indriyuni, n.d.) However, the complexity of communal life often gives rise to conflicts, especially within the family sphere, when these two legal systems contradict each other. For example, in the case of mixed marriages or inheritance division. To address these challenges, it is important for the state and society to adopt an inclusive approach that respects diversity, promotes peace and justice, and encourages intercultural dialogue as a means of resolving conflicts related to cultural and religious differences (Marni et al., 2023).

Family legal conflicts characterized by a combination of Islamic law and customary law are complex and challenging to resolve. Religious courts and civil courts, as formal institutions for resolving legal disputes, often encounter difficulties in understanding and accommodating the cultural and customary values inherent in these conflicts. (Busthanul Arifin, 1996)

This is where the role of customary institutions becomes crucial. Customary institutions, with their local wisdom and profound knowledge of local culture and customs, have great potential to serve as facilitators and mediators in resolving family legal conflicts involving Islamic and customary elements. (Mursyid Djawas and Sri Astuti Abdul Samad, 2020)

The complexity of conflicts arising from differences in values and norms, the ambiguity of boundaries between the two legal systems, and gender inequality in some

customary legal norms present a complex and demanding landscape in the context of legal dispute resolution. (Gani Jumat, Fadlun Fadlun, and Sitti Nurkhaerah, n.d.) A sociological approach becomes crucial for understanding the root causes of issues and formulating appropriate solutions. This is where the role of customary institutions, with their local wisdom and profound knowledge of local culture and customs, becomes pivotal as facilitators and mediators in resolving these family legal conflicts. This research aims to analyze the complexity of conflicts, understand the role of sociology, examine the role of customary institutions, and formulate recommendations to strengthen their role (Liza et al., 2023).

2. Method

This research employs a qualitative research method with a literature review approach. This approach is chosen because the research aims to understand and analyze the complexity of family legal conflicts involving Islamic law and customary law through an in-depth study of literature. Data collection is conducted through literature review by reading, understanding, and analyzing various relevant primary and secondary data sources related to the research topic. Primary data sources used include books, scholarly journals, academic articles, and previous research findings discussing family legal conflicts, Islamic law, customary law, and legal sociology. Meanwhile, secondary data sources include official government documents, legislative regulations, and statistical data related to the research topic (Hizbullah et al., 2023).

The data analysis technique used in this research is content analysis. This technique is employed to analyze and interpret the meaning contained within the collected data sources. The data analysis process begins with the first step of reading and comprehending the contents of the data sources thoroughly. Subsequently, it proceeds with identifying themes and key concepts related to the research topic. Then, these themes and key concepts are categorized based on their relevance to the research objectives. The next step involves analyzing and interpreting the meaning contained within each identified theme and key concept. Finally, this process concludes with the formulation of research conclusions and findings based on the results of the data analysis conducted (Wahyudi et al., 2023).

3. Result And Discussion

Family Legal Conflict: Islamic Law and Customary Law

Family legal conflicts involving Islamic law and customary law entail several complexities that need to be considered. These two legal systems often have different principles and rules in regulating aspects of family life, such as marriage, inheritance, and family rights. These differences can create tensions among family members who follow Islamic law and those who adhere to customary law, especially in situations where the two legal systems contradict each other. Moreover, in pluralistic societies like Indonesia, conflicts can also arise due to differences in religious beliefs and cultural beliefs among diverse family members (Fitria, 2023).

This can complicate conflict resolution and necessitate a sensitive and inclusive approach to finding fair and sustainable solutions. Therefore, it is important for all involved parties, including the state and community institutions, to understand and respect the diversity of laws and family values prevailing within society, and to promote dialogue and reconciliation that fosters harmony and peace in resolving family legal conflicts. (Samad, 2021)

1. Differences in Values and Norms

Family legal conflicts involving Islamic law and customary law bring about complexities that require thorough consideration. Differences in principles and rules between these two legal systems often constitute the root of problems that frequently lead to tensions among family members. For instance, in the context of marriage, Islamic law and customary law may have different requirements, such as in the marriage process, asset division, and rights granted to spouses. When conflicts arise, especially when Islamic law and customary law are in conflict, finding a solution that satisfies all parties can become a complex challenge. Not only differences in legal systems but also the diversity of religious beliefs and cultural beliefs in Indonesian society serve as additional factors complicating the resolution of family legal conflicts. In this pluralistic society, individuals or families with different backgrounds may have varying perspectives on matters such as inheritance, mixed marriages, or the regulation of other family rights. This demands a more sensitive and inclusive approach to conflict resolution, accommodating all perspectives and interests involved (Dafizki et al., 2023).

2. Unclear Boundaries

The boundaries between Islamic law and customary law in regulating family life often give rise to confusion and legal uncertainty among individuals bound by both legal systems. A concrete example of this uncertainty is related to the phenomenon of conflicts between Al-'urf (Customary Law) and Islamic Law in Indonesia. Debates about whether Islamic law, or what is often referred to as Sharia, rejects or accommodates the local values embraced by communities within specific geographical boundaries remain unresolved. While some argue that Islam rejects local values in regulating life, another approach suggests that some teachings in Islam are actually adoptions, adaptations, reforms, or even innovations from traditions, customs, or customary laws that have existed within Arab culture itself. (Hakim, 2017)

The cultural and religious diversity in Indonesia creates a complex landscape in the regulation of family life. The distinction between Islamic law and customary law becomes increasingly blurred because of the frequent overlap and interaction between the two. For example, in the marriage process, some aspects may be governed by Islamic law, while others follow customary law provisions. This often leaves individuals confused in determining the appropriate procedures and their rights in the context of family law (Wandri et al., 2023).

3. Gender Inequality

In some cases, customary law still upholds norms that are not always aligned with the principles of justice and gender equality, which are highly esteemed values in Islam. A striking example is gender conflicts arising from the perspective of Dalihan Natolu Customary Law integrated with Islamic law in Padanglawas. Strong social norms often serve as the primary cause of gender inequalities, which in turn give rise to various issues related to gender equality. Inequality in family rights, unfair inheritance distribution, and norms limiting women's roles and freedoms are some concrete examples of the negative impacts caused by the misalignment between customary law and Islamic principles regarding gender equality. (Nur Hakima, Akhirani Nasution, and Erwin Harahap, 2023)

It is important to note that gender equality is one of the fundamental values underlying Islamic teachings, which emphasizes the importance of fair and equal treatment of all

individuals, regardless of gender. Therefore, when there is a discrepancy between customary legal norms and Islamic principles regarding gender equality, there is a need to make efforts to formulate interpretations that are more inclusive and consistent with the pure Islamic values. In this regard, the role of scholars and religious leaders becomes crucial in providing guidance and correct understanding of Islamic teachings, so that they can be effectively applied in diverse societal contexts (Sundari et al., 2023).

Education and awareness of gender rights are also key to addressing the remaining inequalities in customary legal systems. Through holistic and inclusive education, communities can better understand the importance of gender equality in Islam and take concrete steps to address the injustices that occur. Thus, harmonizing customary law with Islamic principles of gender equality is not only a moral imperative but also a crucial step in building a more just, inclusive, and equitable society for all individuals, regardless of gender.

The Role of Sociology in Understanding Family Law Conflicts

Sociology, as a social science, plays a very important role in understanding the complexity of family law conflicts involving Islamic law and customary law. A sociological approach allows us to conduct in-depth analysis of the social, cultural, and political factors that underlie these conflicts, enabling us to understand the dynamics at play. (Fajri M. Kasim and Abidin Nurdin, 2020)

1. Social Factors Social

Factors are one of the important elements that can underlie family law conflicts. Differences in social status among family members, such as between husband and wife, in-laws, or families from the husband's and wife's sides, can be a source of tension. Social pressure from family, society, or community to adhere to certain customs can also be a cause of conflict, especially if these customs conflict with Islamic principles or principles of justice and equality. (Sidiq Siadio and Endri Yenti, 2023)

2. Cultural Factors Cultural

Factors also have a significant influence on family law conflicts. Different cultural values regarding marriage, divorce, child custody, and inheritance can be sources of misunderstanding and conflict among family members. Similarly, different cultural traditions in resolving family conflicts, especially if these traditions contradict Islamic principles or principles of justice and equality.

3. Political Factors Political

Factors can also play a role in family law conflicts. Political intervention from certain parties in family conflicts can exacerbate the situation and make resolution more difficult. Additionally, political injustices experienced by minority groups can also trigger family conflicts, especially if these injustices are related to legal issues and human rights. (Usman Usman et al, 2022)

Thus, the sociological approach provides valuable insights into understanding the dynamics of these complex family law conflicts. By considering the social, cultural, and political factors involved, we can develop more holistic and inclusive conflict resolution strategies that take into account the interests of all parties involved and promote peace and justice in society.

The Importance of Customary Institutions

Customary institutions play a crucial role in resolving family law issues involving Islamic law and customary law for several fundamental reasons. Customary institutions are renowned for their deep local wisdom and broad understanding of local culture and customs. By gaining a profound understanding of the socio-cultural framework in which

disputes arise, individuals are empowered to design resolutions that align with the values and conventions existing in society. (Analisis Hukum et al., 2023)

Customary institutions enjoy high levels of trust within communities. Their credibility enables them to act as impartial mediators recognized by all parties involved in conflicts. Therefore, they have the ability to create a conducive atmosphere for discussion and achieve fair resolutions. (Anselmus Migelson Molebila, Daud Tallo, 2023)

Customary institutions typically employ a restorative approach in resolving issues. This method prioritizes relationship restoration and reconciliation processes between conflicting parties, rather than emphasizing punishment. This restorative method aligns with Islamic beliefs in forgiveness and brotherhood, prioritizing the importance of restoring relationships among individuals and families above all other considerations. (T Erwinsyahbana, 2024)

Customary institutions function as mechanisms for resolving family law issues and promoting harmony and peace within society. They can significantly contribute to the establishment of a sustainable conflict resolution system rooted in justice and brotherhood, by incorporating local wisdom, community beliefs, and restorative approaches. This applies to both Islamic law and customary law (Jayusman et al., 2024).

4. Conclusion

Family law conflicts involving Islamic law and customary law are a complexity that needs to be studied in more depth. A sociological approach can provide a valuable perspective in understanding the root causes of the conflict. Traditional institutions have an important role in resolving family legal conflicts by using local wisdom, community trust, and restorative approaches.

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