Islamic family law in Indonesian scholarship: Mapping focuses and approaches

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Abstract

Family law is one of the areas in Islamic law widely accepted and applied in contemporary Muslim countries. In the process of its application, Islamic family law had to adapt to contemporary needs and demands, and thus received modification and reform. In line with this phenomenon, schools of Islamic law were established, and the study of Islamic family law has thrived among students and researchers affiliated to Islamic universities.

This paper aims to examine the development of the study of Islamic family law in Indonesia. It analyzes issues and topics mostly studied by students and researchers of the faculty of Islamic law and the ways in which they approached the issues, particularly after the state's policy of codifying Islamic legal rules.

Deploying a historical political approach and content analysis, this paper demonstrates that the focus in the study of Islamic family law has shifted from the issue of legal reform to those of societal legal attitudes in the connection with the living *adat* law and the domination of a classical legal perspective. While the normative basis for reform and practice remains dominantly studied, the studies have recently focused also on the empirical discussions of the Islamic family law with sociological, anthropological, political, and gender perspectives, as to contribute to the development of legal rules relevant to social landscape.

1. Introduction

In 1957 the Ministry of Religious Affairs established Religious Teachers and Judges Training School (SGHA), which later became divided into Religious Teacher Training School and State Muslim Judge Training School.[2] These two schools served as the forerunners of Islamic Teacher Training and Religious Justice Programs established at State Islamic Colleges (PTIN) and State Institutes for Islamic Studies

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[2] Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institution*, California: University of California Press 1972. See also Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts*, Amsterdam: Amsterdam University Press, 2010.

(IAIN), which were later transformed into full-pledged State Islamic Universities (UIN). The study of Islamic law was developed at Sharia faculty of the institutes, which gradually became integrated into legal studies in general when the institutes were transformed into UIN. The Sharia faculty itself was developed into the Faculty of Sharia and Law.

In the Sharia faculty several majors were offered. In 1990, there were three majors, namely the Islamic Justice, which was close to Islamic family law in substance, Comparative Madhhab, and Islamic Civil and Criminal Code. In the following years the majors increased and changed. In 2008 in Jakarta, for example, after IAIN transformed into UIN in 2002, there were five departments in the Faculty of Sharia and Law, i.e., the Department of Islamic Family Law (*Al Ahwal Al- Shakhsiyya*), Comparative Madhhab and Law, Islamic Constitutional Law (*Siyasa*), Islamic Criminal Law (*Jinaya*), Sharia Economic Law (*Mu'amala*), and Legal Studies. In its curriculum, each study program at the Sharia and Law Faculty required certain competencies to meet by students before they finish their studies and enter professional jobs, such as lecturers, researchers, and legal positions such as judges, prosecutors, registrars, advocates, and others.[3] Islamic law constitutes one of the sources of national law in Indonesia.

Historically, in the field of family law, Islamic law has long been applied by Indonesian society. Struggling with *adat* or customary law that is practiced by traditional community, Islamic family law has become a reference for Muslim communities and judges in resolving family law issues.[4] In subsequent developments, Islamic economic law has been also integrated into the national legal system. Since 2006 the Religious Courts have the authority to settle not only family law cases, but also economic law cases performed or practiced based on the Sharia system and Islamic law.[5] Despite the growing popularity of Islamic economics, Islamic family law remains one of the favorite departments in the Faculty of Sharia and Law for the Islamic family law administers daily life of Muslims and the state has interfered the legal arrangements by introducing the legal code as to well administer the legal action of familial issue.

[3] Euis Nurlaelawati, 'Pendidikan Hukum Islam di Indonesia: Gelar Kesarjanaan, Kompetensi Penguasaan Kitab Kuning, dan Pengembangan Ke-Ilmuan Syariah,' in Kholiyah Tahir, *Memasyarakatkan Syariah dan Mensyar'ikan Masyarakat*, Jakarta: Kolam Publising, 2021, 148-252.

[4] See John R. Bowen. *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003). See also Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable*, London and New York: Routledge, 2013.

[5] In resolving these cases, judges have since 1991 referred to the Compilation of Islamic Law for family law and since 2006 to the Compilation of Sharia Economic Law and several related laws and regulations. The *fiqh* texts that have been studied for a long time in various elementary, junior, high school, and college level educational institutions also remain a reference.

Up till current time, there have been no specific works discussing the studies or scholarship on Islamic family law in Indonesia and their focuses and approaches. In his article 'Tantangan Kajian Hukum Islam (The Challenge to the Studies of Islamic Law', Mudzhar observed the preference of Islamic studies students at the Graduate School of Jakarta State Islamic University and concluded that Islamic law remained the most preferred field in Islamic studies. Nevertheless, as he noted, various challenges have been facing Islamic studies especially in trying to maintain its relevance to contemporary developments.[6] Legal scholars accordingly introduced new approaches to deal with the challenges. Arskal Salim,[7] for instance, argued that the study of Islamic law has shifted from normative or juridical approach to a social science approach. Taking his experience as the primary data, he concluded that through an autoethnography, a scholar could share a unique and subjective experience, which would not only contribute to the understanding of social phenomenon but also would reflect on possible different situations upon knowing the reality.

Criticizing the rise and the growing use of the socio-legal approach in the study of law in general, Mulyani (2010) wrote an article entitled 'Pendekatan Sosial dalam Penelitian Hukum (*Social Approaches in Legal Studies*)'.[8] According to her, the approach is useful for the development of law. She, therefore, values that the approach has been relevant to employ as long as it is for the purpose of the improvement of law suiting the societal conditions. On this, few others were written, including a very recent article which maps the debate on normative and socio-legal research and explores the origins and debates of normative legal research methods in Indonesian legal education and some of the mainstream approaches commonly used in normative legal studies.[9]

Few other articles have been written about the general issue of the influence of Western universities to the way Indonesians developed Islamic legal studies. The authors of these articles argued social science in Indonesia was very much influenced by Western and American social scholarship and that they proposed that Indonesian scholars offer a native social sciences Akmaliah, for example, argued that the Indonesian social sciences alternative discourse had emerged during the Sukarno's presidency, but it was dismissed during the Suharto's presidency, resulting in two contesting attitudes of scholars, i.e., accommodating and supporting the formal new order's development policies and resisting it by providing the alternative dependency theory. He further argued, however, that, despite this debate, with the support of international

[6] Atho Mudzhar, 'Tantangan Studi Islam di Indonesia Dewasa Ini', *Indo-Islamika*, Vol 2. No. 1. 2012.
[7] Arskal Salim, "From Usul Fiqh to Legal Pluralism: An Autoethnography of Islamic Legal Thought,' *Mazahib Jurnal Pemikiran Hukum Islam*, Vol 19 No. 1 (June 2020).
[8] Lilis Mulyani, 'Pendekatan Sosial dalam Penelitian Hukum', *Jurnal Masyarakat & Budaya*, Special Edition, 2010.
9 See, for an example, Tunggul Ansari Setia Negara, 'Normative Legal Research in Indonesia: Its Origins and Approaches', *Audito Comparative Law Journal*, Vol. 4, No. 1, 2023.

atmosphere young Indonesian scholars have strengthened the deploy of social sciences theories as to observe the societal phenomenon and contribute to the development of society, and at the same time offered an alternative discourse on social sciences.[10]

Based on the observation on the catalogue of theses in several libraries of the faculties of Sharia and law, personal academic experiences, and conversations with several managers of Islamic law departments, this paper aims to trace the study of Islamic family law and seeks to map the focuses taken and approaches deployed by its researchers. It attempts to see the development of the study of Islamic family law, the drivers behind the preference among students and researchers, and the factors that have led to the shift of the approach from normative one to socio-legal one and the extent of the shift relevant with the aim of the study. From a global perspective, this paper displays the debates and struggles Indonesian legal researchers have with creating an alternative approach of the study of law relevant to the social context of Indonesia and to the growing contemporary legal issues.

2. The development and focuses of the study of Islamic family law

Like any other Muslim countries, the Indonesian state has made significant reforms on Islamic family law and introduced *Kompilasi Hukum Islam* (Compilation of Islamic Law) in 1991. This is part of the state project of modernizing Islamic law developed under the dominant developmentalism ideology during Suharto's era. Compared to other countries in the Muslim world, Indonesia was in fact a little late in modernizing Islamic law. The Indonesian government sees codification as a necessity to answer contemporary challenges, especially because legal codification is considered capable of providing uniformity, systematization, and accessibility to the legal system. It was also intended to unify references in Islamic family law, or to create a single frame of reference for solving family problems that must be resolved through a court process (due process of law).[11] At the same time, it was introduced to provide references to the application of Islamic law in a modern format and system that is easily accessible to judges, lawyers, and public society. In so doing, Indonesia sought to respond to the ongoing demands for certainty of women's legal status, as well as to the notion that classical *fiqh* books, in many cases, can no longer answer various kinds of legal issues that arise in modern society.[12] Through codification, for example, a man wishing to practice polygamous marriage must ask for a permission from courts and a

[10] Wahyudi akmaliah, 'Between Decolonization and Intellectual Nativism: Seeking the Indonesian Alternative Discourse on Social Sciences', *Southeast Asian Social Science Review*, Vol. 7, No. 2, 2022.
[11] J.N.D. Anderson, 'The Tunisian Law of Personal Status', *International and Comparative Law Quarterly* 7 (1958), 266.
[12] Tanzilur Rahman, *Islamization of Pakistan*, Karachi: Hamdard Academy, 1987, 7.

woman can file for divorce under certain conditions specified in the law and that a divorced wife has an equal share of marital property as her husband.

The phenomenon of modernization of Islamic family law in Muslim countries is considered to have an association with or relevance to the very identity of Muslims. Hosseini, for instance, argued that while in many Muslim countries Western-inspired legal codes eventually replaced the Sharia, the areas of Islamic family law were retained. This can be seen against the background that the Islamic family law has traditionally been the most developed areas of Islamic law in which the 'ulama' or religious authorities have the highest control. In their modernizing scheme the colonial governments were, either consciously or unconsciously, arranging the Western liberal distinction between public and private realms. Family law was left in the hands of the 'ulama' as it was deemed to be private and hence politically less significant. In this way the modernizing governments (or colonial powers) paid lip service to the Sharia and avoided an open confrontation with its guardian. Furthermore, it has been also widely assumed that family law is an element of Islamic law most liable to be subjected to the administrative intervention of the State.[13]

As a matter of fact, Islamic family law has attracted most of the students majoring in Islamic law in Islamic universities in Indonesia, including Jakarta, Yogyakarta, and Semarang. Based on the data of final academic works from the libraries of the Sharia faculties, family law has in fact dominated the Islamic legal studies areas. Islamic family law has received high interest from bachelor, master, and doctoral students of the faculty of Sharia. This preference is very much relevant with, besides the adoption of Islamic family law by Indonesians, the fact that the establishment of Islamic courts since 1940s granted exclusive jurisdiction over Islamic familial legal issues, and therefore needed legal practitioners to hear the cases. As a comparison, Islamic economic issues were only in 2006 introduced into the jurisdiction of Islamic court. The criminal issues, which are also studied in the Sharia faculty, are never included into the jurisdiction of the Islamic courts. The introduction of Islamic economic law into the religious court in 2006 has not swayed the students' interest in studying and writing the issue of Islamic family law because of their interest in applying for the position of judges at the Islamic courts.[14]

[13] Ziba Mir-Hosseini, *Marriage on Trial*, London: Tauris, 2000, 10. See also, Euis Nurlaelawati, *Modernization, Tradition, and Identity*, 90.

[14] The consistent interest of students and researchers in Islamic family law is illustrated in the founding of Asosiasi Dosen Hukum Keluarga Islam (ADHKI)/association of lecturers of Islamic family law in 2016 and of a journal of Islamic Family Law in 2019. The faculties of Islamic law.

2.1. Codification of Islamic family law

As mentioned earlier, the fact that state had interfered the implementation of the Islamic family law strengthened the interest of the students and lecturers or researchers at the faculty of Sharia. Master and doctoral students have mostly focused on this. Several books resulting from Master and PhD theses were produced and published. Few of the most read ones include the works by Husni Rahim,[15] Bustanul Arifin,[16] Fadhil Lubis,[17] M. Hisyam,[18] and Mawardi.[19] In his work entitled *Otoritas Penghulu*, Rahim discussed about the administration of legal familial problems in Indonesia and depicted the roles of penghulu (marriage administrator). The discussion on penghulu was also done by Hisyam who saw penghulu had to struggle to face three main and strong forces of the state, 'ulama, and the Dutch government. Meanwhile Lubis observed the transition of Islamic justice in Indonesia and argued that Indonesia was directing its judicial system into modern and bureaucratic character. Mawardi looks at the political landscape of the issuance of the Kompilasi Hukum Islam and observed how Kompilasi Hukum Islam was the product of political adaptation or accommodation. His work was strengthened by those on the wider issue of Islam and politics done by Bahtiar Effendi,[20] Marzuki Wahid,[21] Rumadi Ahmad, as well as of specific issue of politics of Islamic family law done by Muslimin,[22] Jainal Aripin,[23] Abdul Halim,[24] Ahmad Rofiq,[25] Yayan Sopyan,[26] and Ahmad Tholabi Kharlie.[27]

[15] Husni Rahim, *Sistem Otoritas dan Administrasi Islam, Studi tentang Pejabata Agama Masa Kesultanan dan Kolonial di Palembang*, Jakarta: Logos, 1998.

[16] Bustanul Arifin, *Prospek Hukum Islam dalam kerangka Pembangunan Hukum Nasional di Indonesia: Sebuah Kenangan 65 Tahun Prof. Dr. H. Bustanul Arifin, SH*. Jakarta: PP-IKAHA, 1994.

[17] Fadhil Lubis, *Islamic Justice in Transition: A Socio-legal Study of the Agama Court Judges in Indonesia,* Los Angeles: University of California, 1994.

[18] Muhammad Hisyam, *Caught Between Three Fires: The Javanese Panghulu Under the Dutch Colonial Administration 1882,* Leiden: INIS, 1994.

[19] Mawardi, Ahmad Imam, *Socio-Political Background of The Enactment of Kompilasi Hukum Islam di Indonesia*, Montreal: McGill University, 1998

[20] Bahtiar Effendy, *Islam dan Negara: Transformasi Pemikiran dan Praktik Politik di Indonesia*, Jakarta: Paramadina, 1998.

[21] Marzuki Wahid dan Rumadi, *Fikih Mazhab Negara: Kriti katas Politik Hukum Islam di Indonesia*, Yogyakarta: LKiS, 2001.

[22] JM Muslimin, 'Islamic Law and Social Change: A Comparative Study of the Institutionalization and Codification of Islamic Family Law in the Nation States Egypt and Indonesian (1950-1995)', *A PhD Thesis*, zur Erlangung der Würde des Doktors der Philosophie der Universität Hamburg, 2005.

[23] Jaenal Aripin, *Peradilan Agama dalam Bingkai Reformasi Hukum di Indonesia*, Jakarta: Kencana, 2008.

[24] Abdul Halim, *Peradilan Agama dalam Politik Hukum di Indonesia; Dari Otoritatif Konservatif menuju Demokratis-Responssif*. Jakarta: Raja Grafindo Persada, 2002.

[25] Ahmad Rofiq, *Pembaharuan Hukum Islam di Indonesia*, Yogyakrta: Gama Media, 2001

[26] Yayan Sopyan, 'Islam-Negara Transformasi Hukum Perkawinan Islam Dalam Hukum Nasional,' *A Doctoral Thesis*, State Islamic University, Jakarta, 2010.

[27] Ahmad Tolabi Kharlie, *Modernisasi Hukum Keluarga Islam (1974-2008)*, A PhD Thesis, Graduate School, State Islamic University, Jakarta, 2009.

2.2. Legal thoughts of scholars

The other focus in the early stage of the study of Islamic family law is on legal thoughts of Indonesian Muslim scholars. Several Muslim scholars were taken as the objects of the study, but three of them gained popular interest and attention, namely Hasbi as Shiddieqy, Hazairin, and Munawir Syadzali. The interest in these three Muslim legal scholars was not without reason. Hasbi produced numerous works of Islamic law and offered a genuine method of establishment of Islamic law in Indonesia. Hazairin was a legal scholar or legally trained, graduated from faculty of law of Utrecht University. Different from Hasbi, Hazairin was focused more on local practices of Islamic family law and therefore gave empirical contribution to the development of Islamic family law. Both Hasbi and Hazairin were considered to have provided clear methodological and local basis to the reform on Islamic family law.[28] Syadzali was a statesman who worked behind the effort of the reform on Islamic law in general. In addition, he also enriched the actual discussion of the very sensitive and gendered issue of inheritance for which he proposed to change the ratio of the distribution of wealth to male and female heirs.[29]

The studies focusing on the legal thoughts of these Indonesian Muslim scholars were done by, to mention few, Yudian Wahyudi,[30] El Yasa Abu Bakar,[31] Raihan Rosyid, Damrah Khair,[32] and Sukiati.[33] Wahyudi studied Hasbi and his thoughts on methodology of Islamic law establishment. Abu Bakr was concerned more with the specific issue of inheritance and observed the legal thoughts of Hazairin by looking at the Islamic legal rationales from the Qur'anic texts borrowed by Hazairin's and discussing it within other scholars' Islamic rationales. By so doing he put Hazairin in a broader context of the study of Qur'anic exegesis.

The studies on legal thoughts by these three legal scholars, interestingly, continue to be done by academicians in so many papers until 2022. These studies seemed to merely reproduce the ones produced by earlier authors and did not offer any new findings or significant issues or problems to the development

[28] Michael Feener wrote an extensive article on this issue of the preliminary attempt of the formulation of an Indonesian Madhhab. See Michael Feener, 'Indonesian Movements for the Creation of a National Madhhab", Islamic Law and Society, 9:1 (2002).
[29] On his general ideas on Islamic law reform see Bahtiar 'Effendi, Islam and the State: The Transformation of Islamic Political Ideas and Practices in Indonesia', *Ph.D. Dissertation*, Ohio University, 1994.
[30] Yudian Wahyudi, 'Hasbi's Theory of Ijtihad in the Context of Indonesian Fiqh', *MA thesis*. Montreal: McGill University, 1993.
[31] Al Yasa Abu Bakar, *Ahli Waris Sepertalian Darah: Kajian Perbandingan terhadap Penalaran Hazairin dan Penalaran Fikih Mazhab*, Jakarta: INIS, 1998.
[32] Damrah Khair, *Hukum Kewarisan Islam di Indonesia: Suatu Kajian Pemikiran Hazairin,* Bandar Lampung: Balai Penelitian dan pengabdian pada Masyarakat (BPPM) IAIN Raden Intan Bandar Lampung, 1995.
[33] Sukiati Sugiono, 'Islamic Legal Reform in Twentieth Century Indonesia: A Study of Hazairin's Thought', *A Master Thesis,* The Faculty of Graduate Studies and Research Institute of Islamic Studies McGill University Montreal, Canada, 1999.

of legal thoughts. From this, in regard with the study on legal thoughts, students and or academicians seem to be not aware of the emergence of new legal thinkers in Indonesia, including Mukti Ali, Qadri Azizi, and others. Academicians consider that the newly born legal thinkers on the methodological issues and general legal issues do not significantly contribute to the Islamic legal discourse in Indonesia. It is true that there are studies on Mukti Ali, Qadri Azizi, and others by students of the faculties of Islamic law in Indonesia, as conducted by Najib,[34] but they had not been very familiar to readers. As will be discussed below, there are some Muslim scholars whose thoughts get considerable attention among students, including Faqihuddin Qadir and Hossein Muhammad. Nonetheless, as, these legal thinkers focus on quite specific issues of women and children, the topic of these studies accordingly deal with such those issues of women and children and not on wider issues of Islamic family law.

2.3. Muslim society's legal attitudes

The focus of the study later shifted to Muslim society's legal attitudes. Within this field researchers discuss the adherence of Muslims to Islamic law provided by the state. The authors generally problematized the introduction of Islamic law by the state in the context of the existence of local or *adat* law. The problematization is also driven by the internalization of the classical legal views offered by classical legal scholars among Indonesian Muslim society. Such studies were conducted mostly by PhD students. MA and Bachelor students are not specifically directed to such this focus. If they are, they see it in normative ways, giving legal value to the local and or classical legal practice within society.

This kind of studies are done mostly in later periods of 2000s, and these include those by Nurlaelawati, Yasrul Huda, Atun Wardatun, Latif Fauzi, Wirastri, Farabi, and others. These studies were done mostly under the supervision of international scholars or professors. They observe the legal understanding and or practices of Muslim society in Indonesia toward and of the state Islamic law on familial issues. Nurlaelawati sought to see the legal attitude of Muslim judges and society after the issuance of Islamic law interpreted by the state to codified laws and also looked at the legal awareness of Muslim society and their legal attitudes when they were faced with disputes of familial issues.[35] Wardatun studied the practice of specific issue of family law, i.e., *mahr (*dower) and its connection with local ideas of mahr preparation and awarding, and of women empowerment to equate their position in family life by offering to pay *mahr* and other

[34] Agus Moh. Najib, 'Pengembangan Metodologi Fikih Indonesia dan Kontribusinya bagi Pembentukan Hukum Nasional', *Disertasi,* UIN Sunan Kalijaga, Yogyakarta, 2011.
[35] Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and* Legal Practices of Indonesian Religious Courts, Amsterdam: Amsterdam University Press, 2010.

financial elements of marriage.[36] Fauzi looked at a more specific issue of the role of officials of religious affairs in resolving the cases of family. He considered the existence of other groups of legal authorities including legal brokers and ‘ulama in dealing with familial legal practices.[37] For his PhD project, which is about to complete, Farabi studied the legal attitude of Muslim society in a certain district in Indonesia on marriage registration. Besides these studies, others are done by PhD students in Indonesian universities. Few of them include a very recent study by Dewi Sukarti.[38]

2.4. Children and women: work of judges, fatwa’s councils, and legal thinkers

Recently, the study on Islamic family law has shifted to a more specific issues on women and children. The issues that attract students and researchers in general are divorce, property, custody, guardianship, and paternity. The studies are brought to the discussion on fatwas, judges’ decisions, and legal opinions of feminists and scholars affiliated to the centers they developed. The detailed focuses vary from the legal rationales of the fatwa, judges’ decisions, and opinions of feminists. Some are focused on societal practices of Islamic rules on women and children with various social sciences approach and juridical approach, but the interest in fatwa and judges’ decisions is more evident.

These works of this kind include that of Edi Riadi,[39] Yuniati Faizah,[40] Rohmawati, and others. Faizah and Rohmawati observed the decisions of Islamic courts on children’s welfare in family law. Faizah looked at custody issues and considers the qualification of custodian which are not specified in the regulations in Indonesia. Deploying juridical empirical approach, she sought to see the legal rationales of the judges when resolving the cases of children’s custody and observed the accordance of the decisions with the legal rules. Some others looked at how women and children are managed in legal rules and analyzed them with international conventions, such as The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Declaration on the Elimination of Violence against Women (DEVAW), and Convention on the Rights of the Child (CRC).

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[36] Atun Wardatun, ‘The Social Practice of Mahr among Bimanese Muslims: Negotiating Rules, Bargaining Rules” *In Women and Property in Contemporary Islamic Law* (EJ Brill: 2018).
[37] M. Latif Fauzi, ‘Aligning Religious Law and State Law: Street-Level Bureaucrats and Muslim Marriage’, *A PhD Thesis*, Leiden University, the Netherlands, 2021.
[38] Dewi Sukarti, ‘Respons Perempuan Muslim Besemah terhadap Hukum Waris Adat di Kabupaten Lahat dan Kota Pagaralam, Sumatera Selatan’, *A Doctoral Thesis*, submitted to the Graduate School, State Islamic University, Syarif Hidayatullah, Jakarta, 2021.
[39] Riadi, Edi. “Dinamika Putusan Mahkamah Agung Republik Indonesia dalam Bidang Perdata Islam,” *A Doctoral Thesis*, UIN Syarif Hidayatullah, 2011.

[40] Yuniati Faizah, ‘Konstruksi Perlindungan Hak Anak dan Kepentingan Terbaik bagi Anak,’ *A Doctoral Thesis*, Graduate School, Kalijaga Islamic University, Jogjakarta, 2020.

The studies on these specific issues of women and children have also been done in relation to the studies on the thoughts of Muslim thinkers. This means that Muslim thinkers have again become one of the focuses of the study of Islamic law. Musdah Mulia, Huzaemah Tahido Yanggo, Hussein Muhammad, Faqihuddin Qadir are, as slightly mentioned above, among few that receive attention among researchers, particularly Master and PhD students.[41]

3. Debating approaches: normative and social eyes

The researchers have deployed two main approaches in their studies of Islamic family law, i.e., juridical, and social sciences. The preference of the approach is very much correlated with the focuses I discussed above.

3.1. Juridical approach: juridical-normative and juridical-empiric

This approach is divided into two, based on the focus of the study. First is juridical normative by which researchers, as it is theoretically so conceptualized and intended,[42] looked at the rules as to observe or find values and principles contained and to conclude their legal rationales or sources. The studies using this approach, for an example, sought to find the value or aim of the rule of minimum age of marriage. As to fit with the field of Islamic studies, the researchers usually take the theory or concept of ‘maqasid al-sharia’ or the ultimate goals of establishment of Islamic law’ as to precisely denote their approach. As for the conclusion or finding, they, for an example, draw that the determination of 19 as the minimum age of marriage is to protect reproduction right of women. As for another example, the researchers questioned about the Islamic values of the regulation that the property acquired within marriage constitutes joint property and then drew that it is to establish the equal status between male and female spouse to the property and is to protect women when they are divorced by their husbands. There are abundant works on Islamic family law with this approach.[43]

Such an approach is meant also to discover the legal reasoning or scripture of the rules introduced in the state version of Islamic law. The researchers, for an example, concluded that the rule of representation of heirs has its legal base in the legal opinions of Hazairin and certain hadith on ‘*mawali*’. Or they concluded that the rule of joint property has its roots in local practice in several regions and in the legal concept of

[41] See, for example, Naili Suroya, ‘Rekonstruksi Konsep Nusyuz dalam Hukum Keluarga: Kajian Pemikiran Faqihuddin Abdul Qadir’, *A Master Thesis,* Faculty of Sharia and Law, UIN Sunan Kalijaga Yogyalarta, 2022.
[42] See Soerjono Sukanto, *Pengantar Penelitian Hukum*, Jakarta: UI Press, 1986.
[43] Let us mention one of them written by Teguh Ansori, ‘Batas Usia Ideal Perkawinan Perspektif Maqasid Syari’ah’, *A Master Thesis*, Universitas Islam Negeri, Sunan Kalijaga, Yogyakarta, 2020.

‘*shirkah or partnership*’. In addition, the approach also looks at the accordance of the relevant laws on a certain issue on vertical or horizontal way. Here, the researchers discussed two relevant laws at the same level as to see whether the two laws are in conformity with or in contradiction with each other. Or they discussed two relevant laws at different level as to see whether the two laws are supporting each other. This can be witnessed for example that based on their research the rule of allowing polygamy is in contradiction with the law of elimination of violence against women, i.e., that the rule of permitting polygamy, though with restriction, has discriminated women and put women in unequal position as men in deciding the fate of their marriage.[44]

The second type, juridical-empirical approach, employed by researchers, mostly also Master and Bachelor students of Islamic law, entails studying the legal practices of Muslim society and values provided to them in the light of Islamic juridical norms. As for their findings, they usually argued that the practice is not in accordance with the norms or with the principles or values offered in the law. They, for example, argued that the practice of succession among Muslim society in Minangkabau has not been in the line with the rules in the state. Or researchers would argue that, although the marriages of couples are not in accordance with the rule of registration, the children born within such unregistered marriages are legitimate children and, therefore that they are affiliated to their parents, as the failure of marriage registration was not due to the ignorance of the couple but of the registrars, and that this is in line with the concept of children protection.

Interestingly, the actual practice of Indonesian Muslim society is often also valued and researched from the normative or conceptual perspective of *maqasid al-sharia*, the ultimate goals of Islamic law establishment. The students are directed to look at the *maqasid* and deploy it as to value whether the practice has or has not brought and is relevant with the goals of the establishment of the Sharia. Accordingly, not intending to say that the approach is not relevant, the use of the approach is often abused and is not proper and is merely used to accommodate the aspect of sharia into their studies. Or for the case of civil law program, it is merely to differentiate the competence of the alumni of the Sharia faculty from those from the faculty of (civil) law.

Using this approach, the researchers seem to only evaluate the wrongness or rightness of the practice from a legal point of view without mostly deep analysis of why the practice is right or wrong. With this way of researching, researchers, as told by their supervisors that understand legal research means knowing legal

[44] See, for example, Mhd Yazid, ‘Relasi Agama dan Negara: Studi Putusan Mahkamah Konstitusi tentang Poligamu dan Nikah Beda Agam’, *A Master Thesis*, UIN Sunan Kalijaga Yogyakarta, 2017.

practices and valuing it with the normative perspective, felt obliged to evaluate and fix the practice as to be in line with the ideal legal norms. Therefore, while that might be relevant as to assist Muslims to abide by the laws and to some extent assist practitioners to resolve the cases as to create legal certainty, the approach seems to be irrelevant to the development of law and to the resolution of legal cases from the perspective of justice and utility among current society.[45]

The approach had been deployed since the legal studies started to be done and has become strongly established in the era of New Order where 'certainty' is stressed. In a global context, it is argued that after Indonesia received its independence from the Dutch, Indonesian scholars have struggled to establish social science tradition with Indonesian characteristic and imagination. Armyn Pane was one of Indonesian intellectuals criticizing the bias of Eurocentrism and their 'version' of Indonesian history. This spirit and struggle unfortunately however changed radically when Suharto took power after the reign of Soekarno.[46] Akmaliah noted that besides the intellectual history, the political and economic history of Indonesia also faced transformation under the Suharto regime, and they even turned from anti-imperialist into serving the imperialism through the vast investment under the project of development and modernization. Referring to Thufail, Akmaliah wrote that 'during these periods, the governments struggled significantly to create 'ideological apparatuses' by getting scholars who were teaching and researching this agenda.' He added that state universities, with departments of social sciences, established the development curriculum and directed lecturers to train their students to become 'development practitioners'.[47] In line with this policy, the direction of legal practitioners and scholars is more legal oriented or is positivist.

3.2. Socio-legal studies

Law must be applied and aims to control the attitudes within society. However, law serves also as a mechanism to create justice, and, therefore, practitioners need to understand the condition of justice seekers and legislators need to adapt the law to the societal condition.

The socio-legal approach has been introduced and developed by legal scholars who intended to study law. The 'socio', as defined by proponents of socio-legal research such as Banakar and Travers and as described by Irianto, includes sociology, anthropology, psychology, gender, politic, history, and others. In the book

[45] The legal studies with this approach are abundant and has filled up the dossier of libraries of faculties of (Islamic) law in Indonesia, such as those done by Intan Oktaviani, 'Praktik Nikah Sirri dalam Perspektif Hukum Islam dan Hukum Positif: Studi Kasus di Benda', *Master Thesis*, Sultan Maulana Banten, 2022.
[46] Wahyudi Akmaliah, 'Between Decolonialization and Nativism', 2022.
[47] Wahyudi Akmaliah, 'Between the Colonialization and Nativism', 2022.

of methodology of legal research this approach is called the empirical approach.[48] To differentiate this from the empirical juridical approach that is categorized as the normative approach, since it sees the practice with normative eyes, as discussed above, the phrase 'socio-legal approach' is more relevant and clearer. Number of legal scholars popularized this approach, including Sulistyowati Irianto at Indonesian University. In cooperation with legal scholars from Van Vollenhoven Institute/VVI, the Netherlands, she held series of workshop on socio-legal studies. Together with her collaborators, she also produced a book on socio-legal studies.[49] The book has helped Indonesian students understand the approach and, as a result, the approach became more popular among legal students. It needs to bear in mind that the historical approach which to my understanding is part of socio-legal approach[50] has been used by PhD students and researchers for their studies on the state' legal modernization or reform, as I have discussed above. However, several other social sciences, anthropology, sociology, gender, politics, had not been popularly used at that time.

It is argued that the socio-legal approach had been deployed in the era of Soekarno, but it faded away in the era of Suharto. In his speech, Afandi, however, identified that the approach has again arisen and stated that 'juridical empirical approach' is a manifestation of the socio-legal approach.[51] While that has been widely understood as such, I argue that the juridical empirical approach is very much different from socio-legal approach. Based on my experiences and observations, juridical empirical approach as discussed above looks at the legal practices with normative eyes or perspective and therefore this approach is included into normative or, in this sense, juridical approach. It is 'the legal eye' that is borrowed to see the legal practices. The researchers of this approach merely value the practice with the legal prescription, and they give legal values of 'right' or 'wrong' or of 'in accordance with' or 'not in accordance with' to the societal practice.

Owing to the idea spread by Muslim scholars who argued that Islam can be studied by using the perspective of social sciences, Islamic law as general or civil law can be researched or observed by social sciences. For

[48] Reza Banakar and M. Travers, 'Law, Sociology and Method', in R. Banakar & M. Travers (eds.), *Theory and Method in Socio-Legal Research*. Onati: Hart Publishing Oxford and Portland Oregon, 2005, xii; Sulistyowati Irianto, 'Memperkenalkan Kajian Socio-Legal dan Implikasi Metodologisnya' in Adriaan Bedner et.al, *Kajian Socio-Legal*, Bali: Pustaka Larasan 2012, 3.

[49] Adriaan Bedner, et.al, *Socio-Legal Studies*, Bali: Pustaka Larasan, 2012.

[50] There is disagreement on whether historical approach is grouped in socio-legal approach or normative or juridical approach. Some writers of book on methodology of legal studies include the historical approach into normative one. See Lexy J. Maleong, *Metodologi Penelitian Hukum Kualitatif*, Bandung: Remaja Rosda Karya, 1993. Mudzhar criticized this and stated that historical approach is included into social sciences approach. See Atho Mudzhar, 'Tantangan Studi Islam di Indonesia Dewasa Ini', 96.

[51] See Pradnya Wicaksana, "Pendekatan Socio-Legal dalam Pusaran Normatif', at https://news.unair.ac.id/2020/12/05/fachrizal-afandi-pendekatan-sosio-legal-dalam-hukum-itu-layaknya-tenda-yang-sangat-besar/?lang=id. See also Fachrizal Afandi, 'Penelitian Hukum Interdisipliner Reza Banakar: Urgensi dan Desain Kajian Socio-Legal', *Undang*, Vol. 5, No. 1, 2022.

general scope of study of law Soerjono Sukanto,[52] Adnan Buyung, and others, had revived the socio-legal studies, and Atho Mudzhar, Masykuri Abdillah, and others, had then noted the significance or the relevance of the approach for the study of Islamic law. In wider context, indeed, some Indonesian intellectuals had put their struggle to challenge the ideological stream and thanks to their collaboration with international scholars they had begun to develop social science.[53]The spirit was spread to also scholars in the Islamic studies academic circle at the Islamic State University (UIN) who tried to develop their curriculum system and thesis subjects for their students' final projects with social sciences approaches. Abdullah, for example, has vividly introduced and gauged what is called '*integrasi-interkoneksi* or integration and interconnection' model of study.[54] Despite the debate on the colonization of social sciences and the struggle of its decolonization, the emerging trend of the use of social sciences approach by legal students has been moved when particularly many students of law were sent to Europe, USA, and Australia to study. With more support and awareness of Muslim students and scholars, the approach is now gaining more acceptance and use among particularly Master and PhD students in Indonesian universities.

The revival of the socio-legal approach is criticized by and debated among number of legal scholars. In the context of Islamic law in general and Islamic family law in particular the debate has arisen because of the remaining debate on whether Islam is put as a doctrine or can be placed as knowledge and practice that can be studied and analyzed.[55] This is also relevant with the idea of the establishment of Islamic university and its goal of studying Islam (Islamic studies); to strengthen and improve the quality of piety and faith or to develop Islamic knowledge and its production as to bring Muslim society into more prosperous and modernized society or good human. As Mudzhar observed, most of students under the guidance of professors with such understanding of the aim of the study of Islam and certainly Islamic law tended to observe Islamic law in both normative and practical forms through normative eyes.[56] In fact, to my observation, these professors argued that Islamic law is sacred, and the sacredness could not be interrupted. To them social sciences approach could desacralize Islamic law. Accordingly, they insisted that the study of law should be done with its particular and relevant approach, i.e., normative approach.

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[52] See his work, *Fungsionalisme dan Konflik dalam Perkembangan Sosiologi* (Functionalism and Conflict in Sociology Development) 1988) and his *Teori Sosiologi tentang Perubahan Sosial (A Theory of Sociology on Social Change*.

[53] Arskal Salim, 'From Usul Fiqh to Legal Pluralism', 91-95. See also Wahyudi Akmaliah, 'Between the Colonialization and Nativism', 47-48.

[54] Amin Abdullah, 'Agama, Ilmu dan Budaya: Kontribusi Paradigma Integrasi- Interkoneksi ilmu dalam Menghadapi Isu-isu Islamic Studies Kontemporer', in Amin Abudllah, et.al, *Praksis Paradigma Integrasi-Interkoneksi dan Transformasi Islamic Studies di UIN Sunan Kalijaga*, Jogjakarta: Paskasarjana UIN Sunan Kalijaga, 2014, 1-31.

[55] Atho Mudzhar, *Pendekatan Studi Islam: Dalam Teori dan Praktik*, Jakarta: Pustaka Pelajar, 1998. See also his, *Islam and Islamic Law in Indonesia: A Socio-Historical Approach,* Jakarta: Religious Research and Development and Training, 2003.

[56] Atho Mudzhar, 'Tantangan Studi Islam di Indonesia Dewasa Ini', 99-100.

The proponents among legal scholars of this approach argue that the use of social sciences as approaches in studying Islamic law is significant to develop law (Islamic law, and or particularly in this context, Islamic family law). They were of the opinion that by using only the normative approach the research led law to be stagnant and would not contribute to the development of law itself nor would it solve the problems of the implementation or actual practice of Islamic family law among Muslim society.[57] In so thinking, legal scholars and students have therefore started again and or establish themselves to deploy this approach. With that approach they, for example, question in their study; why Muslims remained to marry informally and/or marry at their young (minor) ages, neglecting the minimum age of marriage determined by the state? To what extent the marriage registrars adapt to the legal attitudes of society and how they positioned themselves as legal practitioners within pluralistic legal thinking? How Muslim judges integrate or incorporate cultural values in resolving cases brought before them? Why do Muslims come to courts to resolve their conflict on succession and or other property conflicts? What have brought Muslim women to have ignored their legal financial rights after divorce, while they know that it is their legal right or claim?

Besides these two contrasting positions, some legal scholars convince themselves to take a mediating position and accept the approach with restriction and arguments. Lilis Mulyani, for an example, argued that:

> Every approach taken to study law has its own particular parts. In the context of law enforcement and implementation, like it or not, a normative approach is the most appropriate method to maintain legal certainty and order. While in the context of law formation and law enforcement to be effective in society, the social approach can be used more flexibly to see what situations or conditions need to be regulated by law, what kind of sanctions need to be applied, as well as to see why a rule of law doesn't work effectively in its implementation.[58]

Having stated this, she sought to bridge the gap and took the middle position. Nevertheless, while it might be true that the normative approach is not to be neglected or curbed when socio-legal approach is to be accepted, such division she made is a bit vague. Comprehending the focuses of the study of law with either normative or socio-legal approach, we can deploy both approaches depending on what we are going to study about law. In other words, by reintroducing socio-legal studies, one does not diminish the normative approach fully.

Due to this debate among Indonesian legal scholars in general and Islamic legal scholars in particular, the approach is therefore less popular among Indonesian students studying in Indonesian universities. Master and Doctoral Indonesian students studying in Europe, following up previous studies by both Indonesian

[57] Soerjono Sukanto, *Pengantar Penelitian Hukum*, Jakarta: Rajawali Press,1986. See also JM. Muslimin, 'Hukum Keluarga Islam dalam Potret Interrelasi Sosial', *Ahkam*, Vol. XV, No. 1, January 2015.
[58] Lilis Mulyani, 'Pendekatan Sosial dalam Peneltian Hukum', *Jurnal Masyarakat & Budaya,* Special Edition, 2010, 52.

and European scholars, studied Islamic law (Islamic family law) with this approach. Number of books deploying this approach which involve Indonesian scholars and were edited by international authors were also produced. Very few books on socio-legal studies were produced whose authors are all Indonesian. One book authored by Indonesian scholars on women and property was published in 2016. The book is edited by Arskal Salim, an Indonesian scholar, with collaboration with an international scholar, John Bowen, and was funded by international research institution.[59] Interesting is that such a collaboration is thought by those against the approach to be one of the factors to the growing interest in the socio-legal studies among legal scholars and that legal studies would be colonized by non-legal scholars.[60]

The lack of the production of research and books with this focus and approach is correlated with the fact that as I have mentioned that many considered such research to disrupt the character of Islamic law as sacred and to provide hole for Muslims to not abide by it. Such an argument, I think, resulted from their confusion about the sociology and anthropology of law, which constituted the focus of the students or scholars of the faculty of social sciences. Irianto has clearly made the difference,[61] and agreeing with her, I would say that the study by legal students with social sciences are directed to contribute to the legal knowledge itself and practically to the development of Islamic law and not to the development of social knowledge or sciences. On this, Banakar, in his introduction to the book edited by him and Travers, stated that ‘when socio-legal researchers use social theory for the purpose of analysis, they often tend not to address the concerns of sociology or other social sciences, but those of law and legal studies’.[62]

In fact, in line with this confusion, many students and researchers in Indonesian Islamic universities are still confused about the research questions to be raised in their studies and about the aim of such this research bringing them to again ask normative questions at the end, such as these following questions; how Muslims in Java or other areas in Indonesia distribute wealth succession? Why have they remained to stick to local ways of distribution. And then they ask the normative question, namely, is the distribution in accordance with the legal norms and how they should do the distribution? In another words, they tend to be normative at the end of the research, giving value and normative statements on the societal attitudes. Even, they are directed themselves or by supervisors to show their doctrinal way and lead the study to be doctrinally oriented.

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[59] John Bowen and Arskal Salim, *Women and Property Rights in Indonesian Islamic Legal Context*, London: Brill, 2018.
[60] Lilis Mulyani, ‘Pendekatan Sosial dalam Penelitian Hukum’, 48.
[61] Sulistyowati Irianto,’ Memperkenalkan Kajian Socio-Legal dan Implikasi Metodologisnya’, 3-5.
[62] On this, see Reza Banakar and Maz Travers, *Theory and Method in Socio-Legal Research,* Bloomsbury Publishing, 2005, xii. See also his ‘Norms and Normativity in Socio-Legal Research.’ In: Normativity in Legal Sociology. Springer, 2015.

4. Theoretical and practical contribution: Development of legal discourse and policy

Research is required to contribute theoretically and societally. The research on Islamic law is not an exception. Here, I will provide a discussion and mention examples of studies focusing on Islamic family law using a social sciences approach and how they provide a theoretical contribution and a practical one as well. The social sciences approach is employed in the studies in all the familial legal issues, i.e., marriage, divorce, property rights, paternity, custody, guardianship, succession, and others. Here, I will take the example of the study on polygamous marriage and the minimum age of marriage.

Number of studies, including by Nina Nurmila, Wirastri, myself, and others and those conducted by international researchers,[63] have argued that the practice of polygamy have created harm to existing families, children, and first wives, in terms of financial support. Nurlaelawati stressed that the practice has been determinant to dissolution of marriages by first wives.[64] Nina argued that financial security has been disturbed by the polygamous marriage of husbands; and that although the wives initially accepted polygamous marriage of the husband because of some personal and ideological reasons, they finally found themselves marginalized, discriminated, and abused.[65]

On the attitude of Muslim judges on the polygamy proposals, Nurlaelawati found that many judges showed an expansive and loose interpretation of relevant regulations on legal grounds and qualification for polygamy, and this has led Muslim husbands to easily propose polygamous marriage as to protect them from *zina* (extra-sexual intercourse) and to hinder their conceived children from illegitimate status. She argued that while the judges referred to the concept of *maslaha* (goodness) and *mafsada* as to create *maslaha* (goodness) and avoid *mafsada* (harm) they have in practice therefore created another *mafsada*, and even greater one.[66]

These authors also argued that most of polygamous marriage were not conducted with registration, and this is correlated with the idea of the polygamous husbands and wives that such these marriages are very much

[63] Suzanne Brenner, “Holy matrimony? The Print of Politics of Polygamy in Indonesia.” In Islam and Popular Culture in Indonesia and Malaysia, edited by Andrew Weintraub (London: Routledge, 2011), 212–34.
[64] Euis Nurlaelawati, *Modernozation, Tradition and Identity*, 2010. See also her article, ‘Expansive Legal Interpretation’ 2021.
[65] Nina Nurmila, *Women, Islam and Everyday Life: Renegotiating Polygamy in Indonesia* (London: Routledge, 2009.
[66] Euis Nurlaelawati, ‘Expansive Legal Interpretation and Muslim Judges’ Approach’, *Hawwa*, 2021.

concerned with their social and financial security in their marriages. Wirastri specifically looked at this issue and found that decisions of wives to or not to demand their husbands to register their marriages is based on their social and or financial security of the wives. Many women decided to become second wives as merely to have social status and to avoid *zina* and do not expect to be supported financially, as they are themselves financially capable, and registration is therefore not important to them.[67]

These studies and, of course other relevant ones, have so far, in my view, contributed to the development of Islamic law and the development of women and children protection through some reform proposals. In the case of polygamy, in 2006, the Supreme Court, for example, issued a guideline for polygamy that existing wives must be positioned as defendants who could say 'no' to their husbands' proposal of polygamy and that the judges should play their judicial role to create justice to women. The supreme court has also issued its decision (jurisprudence) that sexual desire could not be taken as a ground for polygamy. Furthermore, in 2018, the Supreme Court issued its circular letter that unregistered polygamous marriage are not allowed to legitimize by Islamic courts through the rule of *Isbat nikah* (legalization of unregistered marriage at court) even if the proposal for the *isbat* (polygamous) nikah is aimed to protect the legitimacy of the children conceived by the prospective second or third or fourth wives.

The development of Islamic family law on some other issues is also made as the mark of the practical contribution of the socio-legal studies. This can be seen in the issues of minimum age of marriage and *iddah* after divorce. The legal development of the first issue is made in the form of a legal amendment. As I have discussed elsewhere, judicial review on the minimum age of marriage was submitted two times in 2014 and in 2017.[68] The proposals of judicial reviews were of course based on the experiences of the relevant parties involved in marriage practices where they were subordinated and abused as they were forced to marry when they were under the formal minimum age of marriage. In the hearing expert witnesses from scholars and researchers were invited to convey their academic views and arguments based on their expertise and research results. While the first one was rejected, the second one gained approval from the Constitutional Court. The Court demanded the parliamentary to change the rule of minimum age of marriage and in 2019 the government issued a new rule contained in Law No. 16/2019 that the minimum age of marriage is 19 for both boys and girls. It seems to be apparent that the studies with socio-legal approaches by academic

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[67] Theresa Dyah Wirastri, 'Living with Unregistered Islamic Polygamous Marriages: Cases from Greater Jakarta', *PhD Thesis* (Eingericht am an der Kultur-, Sozial- und Bildungswissenchaftlichen Fakultät der Humboldt-Universität zu Berlin, 2018.

[68] Euis Nurlaelawati, 'Sharia-based Laws in Indonesia: The Legal Position of Women and Children in Banten and West Java', *Islam, Politics, and Change: The Case of Indonesia*, Leiden: Leiden University Press, 2015.

researchers as well as by researchers of study centers, such as *Rumah Kitab* led by Lies Marcoes,[69] is significant here for the legal consideration and note for legal change or amendment.

The studies seem to have worked this following way or argument:

1. that the study on the issue with anthropological approach found that the marriage by couples of early ages might be relevant and beneficial in several local settings;
2. that the study on the issue with a sociological approach found that the marriage of couples of early ages might be relevant with the economical purposes of poor family, but this might not be relevant with the global economic improvement as the poverty would remain in those poor family from one generation to another, and,
3. that the study on the issue using a gender approach found that the marriage has established discrimination and marginalization.

From at least three findings of studies of different approaches conducted by several researchers, Indonesian or international, it is concluded that the practice of marriage of minimum age brought goodness and harm at the same time to women or minors. How do these various findings contribute therefore to the development of the law of minimum age of marriage? As to take decision whether the minimum age of marriage, i.e., 16 for girls and 19 for boys, need to be risen or to remain, the methodology of legal establishment is urgently deployed. In the context of Indonesia where Muslims become majority, the methodology of Islamic legal establishment is significant. The legal maxims, such as 'dar'ul maafsid muqaddamun 'alaa jalb al mashaalih', which means that avoiding harms are preferred to taking benefits, are for an example highly deployed as to provide strong Islamic legal rationales and mechanism.

The other legal development, which is relevant to the polygamy issue, is seen in the circular letter issued by Directorate of Counselling of Society of the Ministry of Religious Affairs[70] which dictates that husbands are not allowed to re-marry other women within the waiting period (*iddah*) of their ex-wives. The letter was issued as to anticipate the growing practice of hidden polygamous marriage. Many husbands married other wives within the period of waiting period and at the same time revoked their previous wives,[71] and such were discovered in some research.

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[69] Mukti Ali, et.al, *Fikih Kawin Anak:Membaca Ulang Teks Keagamaan Perkawinan Usia Anak-anak*, Jakarta: Tim Penulis Rumah Kitab, 2015.
[70] The circular letter is identified as Surat Edaran Direktorat Jendral Bimbingan Masyarakat No. p005/DJ.III/HK.00.7/10/2021 and was issued in 2021.
[71] KumparanNews, 'Cegah Poligami Terseulubung, Pria Duda Harus Melewati Masa untuk Menikah Lagi' at https://kumparan.com/kumparannews/cegah-poligami-terselubung-pria-duda-harus-lewati-masa-idah-untuk-

5. Conclusion

Based on the list of bachelor, master, and doctoral theses from the faculties of Islamic law, interviews, personal experiences of the author as lecturer, supervisor, and examiner, and the discussion above several conclusions can be drawn. First of all, the early study of Islamic family law had focused on the issue of legal reform and codification made by the state and the legal thoughts of Muslim scholars using a historical approach. The focus then turned to the issues of societal legal attitudes in the connection with the living *adat* law, established classical Islamic legal doctrines (f*iqh*), and resulted in a concentration on specific legal issues encountered by women and children.

Secondly, while observing such topics, at the early stage the researchers deployed a doctrinal or normative approach, looking at the systems and values of the Islamic legal norms as well as the societal practices of Muslim society and how these are in accordance with the norms. Later this shifted to sociological, anthropological, political, and gender perspectives, particularly done by doctoral students and senior researchers collaborating with international scholars. With such focuses and approaches the studies have contributed to the understanding of the values of Muslim society and systems contained in the legal norms. They also informed the legal attitudes of Muslim society and the drivers of their legal attitudes. These knowledge of or findings on the legal practice has offered theoretical discourse, that for an example, the practice of Islamic family law within society was influenced by local values, educational and economical background or financial interest, and ideological motives, and provide the empirical bases for legal development and reform to be made by the government and relevant authorities.

Third is that there has been debates on the employment of the socio-legal approach in the study of Islamic family law. Most of the legal scholars argued that law must be researched with a specific approach relevant to the nature and the role of law, i.e., to control legal attitudes within society. Such this way of thinking is stronger within the context of the observance of Islamic law by Muslim society, bringing the normative and even doctrinal or dogmatic orientation to remain dominantly maintained.

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menikah-lagi-1ytxdsNK9Gg, accessed on January 2, 2023. See Halili Rais, *Penghulu di Antara Dua Otoritas dan Kompilasi Hukum Islam*, Yogjakarta: Penerbit Lingkaran, 2020, 198-199; Alimin M and Euis Nurlaelawati, *Potret Administrasi Keperdataan Islam di Indonesia*, Jakarta: Orbit, 2013.