

## The Basic Concept of Proceedings in Religious Courts: Sharia Perspectives and Positive Law

Fatimatuz Zahroil Batul

Universitas Nahdlatul Ulama Indonesia, Jakarta, Indonesia

email: fazabatul05@gmail.com

### Abstract

*This research examines the fundamental concepts of legal proceedings in Indonesian religious courts through the perspectives of sharia and positive law. The main issue studied is how to harmonize these two legal systems in religious court practice. The research method uses a normative juridical approach with comparative analysis of Islamic legal sources and Indonesian legislation. The research findings show that the concept of legal proceedings from a sharia perspective is based on the principles of justice ('adl), transparency (syafāfiyyah), and public interest (maṣlaḥah) sourced from the Qur'an and Hadith. Meanwhile, Indonesian positive law applies the principles of contradictory proceedings, publicity, and dispositional nature sourced from Herziene Indonesisch Reglement (HIR) and the Rechtsreglement voor de Buitengewesten (RBg). Although there are similarities in the principles of justice and evidence procedures, fundamental differences are found in legal sources, philosophical approaches, and procedural flexibility. Harmonization is achieved through the adoption of peace principles (islah) and sharia evidence systems within the civil procedural law framework. This research recommends the need for reformulation of religious court procedural law that integrates sharia values with the national legal system to achieve legal certainty and substantive justice.*

**Keywords:** Legal procedure, Religious courts, Islamic law, Positive law, Harmonization

### INTRODUCTION

The practice of religious justice in Indonesia faces complexity in the application of procedural law which stems from the dualism of the legal system. Religious courts in carrying out their functions use the HIR and the RBg as procedural law, but on the other hand must consider Islamic sharia principles in adjudicating cases.<sup>1</sup> This condition poses a practical dilemma when judges are faced with situations where the provisions of the civil procedure law are not fully in line with the values and procedures taught in sharia. As a result, there are inconsistencies in the application of procedural law which can have implications for disparity in verdicts and legal uncertainty for justice seekers.<sup>2</sup>

The dualism of the legal system in the Indonesian religious court creates a gap between the ideals of sharia and the reality of the positive law applied. The religious justice system, which is expected to be a forum for Islamic law enforcement in the civil field, in reality still faces obstacles in harmonizing the fundamental principles of sharia with the applicable civil procedure law procedures. This problem is further complicated when religious court judges have to decide cases taking into account not only the formal legality aspects, but also the substantive values contained in Islamic teachings. This gap creates an urgency to conduct an in-depth study of the basic concept of proceedings that can harmoniously integrate the two legal perspectives.<sup>3</sup>

<sup>1</sup> Ahmad Fauzi. "Analisis Yuridis Penerapan HIR/RBg dalam Peradilan Agama Indonesia." *DIKTUM: Jurnal Syariah dan Hukum*, Vol. 17, No. 2 (2019): 134-152.

<sup>2</sup> Abdul Manan, "Penemuan Hukum oleh Hakim dalam Praktek Hukum Acara di Peradilan Agama," *Varia Peradilan*, Vol. 28, No. 331 (2013): 15.

<sup>3</sup> Suriyadi, Taufik Hidayat, Zakky Addarajat, dan Ardi. "Integrasi Qawā'id Fiqhiyyah dalam Reformasi Hukum Acara Perdata: Tantangan dan Peluang." *Jurnal Ilmu Syariah dan Hukum*, Vol. 4 No. 1 (2025): 205-211.

The study of the harmonization of procedural law in religious courts is very important in the context of the development of Islamic family law in Indonesia. The main challenge faced is how to develop a procedural concept that not only meets the procedural standards of national law, but also reflects the values of justice and benefit that are the spirit of Islamic sharia.<sup>4</sup> This issue has become increasingly relevant considering that religious courts have increasingly broad authority in handling cases of family law, sharia economics, and waqf. The development of a comprehensive procedural concept will make a significant contribution to strengthening the religious justice system as an integral part of the national legal system with a religious and just character.

This study aims to analyze the basic concepts of proceedings in religious courts from the perspective of sharia and positive law, identify points of similarity and differences between the two legal systems, and formulate a harmonization model that can be applied in the practice of Indonesian religious courts. The specific purpose of this study is to examine the fundamental principles of procedural according to Islamic sharia, analyze the principles of civil procedural law applicable in religious courts, and find an integration formula that can bridge the gap between the two legal perspectives in the context of the Indonesian national legal system.<sup>5</sup>

The results of this research are expected to make practical contributions for religious court judges, legal practitioners, and policymakers in developing religious court procedural law that is more comprehensive and responsive to the needs of the Indonesian people. From the theoretical aspect, this research will enrich the scientific treasures of Islamic law and civil procedural law through in-depth comparative analysis. The academic benefit of this research lies in its contribution to the development of the theory of legal harmonization in the religious justice system, which can be a reference for future research in the field of Islamic family law and procedural law of religious courts. Practically, the results of this research can be used as a basis for the reformulation of the law of religious justice that is more in accordance with the characteristics and needs of the Indonesian religious justice system that is fair and legal certain.

## **METODE**

This research uses a qualitative approach with a normative juridical method that examines the basic concept of proceedings in religious courts from the perspective of sharia and positive law. The subject of this research is the fundamental concepts of procedural procedures contained in primary and secondary Islamic law sources, as well as Indonesian laws and regulations that regulate the procedural law of religious courts. The focus of this research study is the harmonization of the principles of procedural in Islamic sharia with the principles of civil procedural law that apply in the Indonesian religious justice system, by analyzing the points of similarity, differences, and possible integration of the two legal perspectives.

Data collection is carried out through *library research* using primary and secondary data sources. Primary data sources consist of the Qur'an, valid hadiths related to the judiciary, religious justice law, Compilation of Islamic Law, HIR/RBg, and relevant religious court rulings. Secondary data sources include classical and contemporary literature on Islamic procedural law, civil procedural law books, scientific journals, previous research results, and academic works that discuss the harmonization of law in religious courts. Data collection techniques are carried out through documentation, inventory, and categorization of all legal materials related to the research topic.

Data analysis uses a content analysis method with a comparative approach and critical analysis of procedural concepts in both legal perspectives. The analysis stage begins with data reduction through the selection and classification of legal materials based on their relevance to the research topic. Furthermore, a comparative analysis was carried out to identify similarities and differences in the concept of events in sharia and positive law. A critical analysis is carried out to evaluate the

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<sup>4</sup> Ahmad Ibrahim. "Peradilan Agama dalam Sistem Hukum Indonesia: Perspektif Filosofis dan Sosiologis." *Jurnal Hukum dan Peradilan*, Vol. 9, No. 2 (2020): 189-206.

<sup>5</sup> Harun Nasution. "Dualisme Sistem Hukum dalam Peradilan Agama: Tantangan dan Solusi." *Jurnal Hukum Respublica*, Vol. 17, No. 2 (2018): 234-251.

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implementation of both legal systems in the practice of religious justice, identify emerging problems, and formulate a harmonization model that can be applied.

## HASIL

The findings of the study show that the harmonization of the concept of proceedings in religious justice is not only possible, but has become an urgent need in judicial practice. The integration of sharia principles with the principles of civil procedural law has created a new paradigm in the religious justice system that is more responsive to Islamic values without neglecting the procedural standards of national law.<sup>6</sup> Future predictions suggest that this trend of harmonization will strengthen as the legal awareness of the Indonesian Muslim community grows and desires a judicial system that not only formally accommodates Islamic law, but also substantively reflects Islamic justice values.

The implementation of the principle of benefit in the practice of proceedings has changed the orientation of religious courts from just applying formal rules to the achievement of substantive justice. This can be seen from the tendency of judges to consider the social and psychological impact of the verdict handed down, especially in cases of divorce and child custody.<sup>7</sup> Long-term predictions suggest that this approach will strengthen the social legitimacy of religious courts in the eyes of the public, as the resulting judgments not only meet the formal legality aspect but also provide a substantive sense of justice for the parties.

Data analysis shows that the main challenge in harmonizing the concept of event lies in the limitation of human resource competencies and the lack of clear standardization in the application of sharia principles.<sup>8</sup> Many religious court judges still have difficulty in integrating the two legal systems due to limited understanding of fundamental sharia concepts or lack of mastery of legal harmonization techniques. Future predictions suggest that this problem can be addressed through intensive training programs and the development of a legal education curriculum that integrates the study of Islamic law and civil procedural law.

A wide open development opportunity is the preparation of an independent and comprehensive religious court procedural law. The findings of the study show that the reliance on HIR/RBg as procedural law has caused many problems in practice, because the characteristics of the cases handled by religious courts have specificities that are not fully accommodated in general civil procedural law. Medium-term predictions suggest that the drafting of the Religious Court Procedural Law Bill will be a top priority in reforming Indonesia's religious justice system, by integrating sharia principles that have proven effective in practice.

## DISCUSSION

### The Basic Concept of Events in a Sharia Perspective

An analysis of Islamic law sources shows that the concept of proceedings in sharia is built on five fundamental principles. First, the principle of justice (*'adl*) which is sourced from QS. An-Nisa: 135 and QS. Al-Maidah: 8, emphasizes the importance of the fair attitude of judges regardless of the social status of the parties.<sup>9</sup> Second, the principle of transparency (*syafāfiyyah*) which requires the judicial process to be carried out openly and accessible to the public.<sup>10</sup> Third, the principle of speed (*sur'ah*) which requires the settlement of cases in a reasonable time to prevent legal uncertainty. Fourth, the principle of legal certainty (*yaqīn*) which requires the verdict to be based on strong and non-

<sup>6</sup> Jaih Mubarak, "Modernisasi Hukum Acara Peradilan Agama dalam Perspektif Maqashid Syariah," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 20, No. 1 (2020): 95.

<sup>7</sup> Suhaili, Achmad. "Integrasi Maqāshid al-Syarī'ah dalam Praktik Peradilan Agama di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga." *Mahabits: Jurnal Hukum Keluarga*, Vol 6 No 01 (2025): 29-42.

<sup>8</sup> Darania Anisa. *Hukum Acara Peradilan Agama: Dilengkapi Penjelasan E-Court dan E-Litigation*. Indramayu: Adab, 2024.

<sup>9</sup> Amir Syarifuddin. "Konsep Adl dalam Al-Qur'an dan Implementasinya dalam Sistem Peradilan Islam." *Jurnal Studi Al-Qur'an*, Vol. 15, No. 2 (2019): 89-106.

<sup>10</sup> Muhammad Usman. "Prinsip Syafāfiyyah dalam Sistem Peradilan Islam dan Aplikasinya di Indonesia." *Mizani: Jurnal Hukum Keluarga Islam*, Vol. 1, No. 2 (2020): 78-95.

speculative evidence. Fifth, the principle of benefit (*maṣlaḥah*) which emphasizes that every decision must provide benefits and prevent harm (*mafsadah*).<sup>11</sup>

The evidentiary system in sharia recognizes the hierarchy of evidence consisting of confession (*iqrār*), testimony (*syahādah*), oath (*yamīn*), and *qarinah* (indication). Confessions occupy the highest position because they are considered the “queen of proof” who can end a case without the need for other evidence. Testimony requires two male witnesses or one male and two female witnesses for a given case, taking into account the mental and moral capacity of the witnesses. An oath is used when other evidence is insufficient, both the plaintiff’s oath (*yamīn al-mudda’ī*) and the defendant’s oath (*yamīn al-mudda’ā ‘alayh*). *Qarinah* or indications can be used as supporting evidence when there are strong clues leading to the truth.

### The Basic Concept of Proceedings in Indonesian Positive Law

The civil procedural law applicable in Indonesian religious courts adheres to five main principles adopted from the Western legal system. The principle of contradiction emphasizes that both sides should be given an equal opportunity to present their opinions before the judge.<sup>12</sup> The principle of publicity requires that trials be held in public to the public, except in certain cases that are declared closed by law. The dispositive principle gives the parties the authority to determine the scope of the lawsuit and the judge is bound not to decide beyond what is requested (*ne ultra petita*). The principle of audi alteram partem requires that the judge must listen to the testimony of both parties before making a decision. The principle of oral trial requires that the trial process be carried out orally even though it is supported by written documents.<sup>13</sup>

The evidentiary system in Indonesian civil procedure law recognizes five pieces of evidence regulated in Article 164 of the Civil Code, namely letters, witnesses, suspicions, confessions, and oaths. Letter evidence is divided into authentic deeds and deeds under hand, where authentic deeds have perfect evidentiary power.<sup>14</sup> Witness evidence requires at least two capable and trustworthy witnesses. The judge’s suspicion can be used as evidence when there is a strong indication based on the facts revealed in the trial. An acknowledgment can be a pure confession or a qualified confession, while an oath can be an appraisal oath, a deciding oath, or a complementary oath.<sup>15</sup>

### Comparative Analysis of Both Perspectives

**Table 1. Comparison of the Concept of Events in Sharia and Positive Law**

Aspects	Shariah Perspective	Indonesia’s Positive Law
Legal Resources	al-Qur’an, Hadith, <i>Ijma’</i> , <i>Qiyas</i>	HIR/RBg, Religious Justice Law
Key Principles	Justice, Benefit, Transparency	Kontradiktoir, Publiciteit, Dispositif
Key Evidence	<i>Iqrār</i> , <i>Syahādah</i> , <i>Yamīn</i> , <i>Qarinah</i>	Letters, Witnesses, Confessions, Oaths
Approach	Theodemocracy, Divine Values	Anthropocentric, Legal Rationality
Flexibility	Adaptive to Benefit	Strict Procedural
Final Destination	Substantive Justice	Formal Legal Certainty

Comparative analysis shows that there is a convergence in terms of the principles of justice and transparency, but divergence in aspects of legal sources and philosophical approaches. Both systems recognize the importance of providing equal opportunities for the parties to express their opinions, prioritizing openness in the trial process, and applying a hierarchy of evidence in evidence. However,

<sup>11</sup> Muhammad Syafi’i Bukhari, “Konsep Keadilan dalam Sistem Peradilan Agama: Antara Fiqh al-Qadha dan Hukum Acara Perdata,” *Al-Qadau: Peradilan dan Hukum Keluarga Islam*, Vol. 7, No. 1 (2020): 28.

<sup>12</sup> Linda Rachmainy dan Ema Rahmawati. “Penerapan Rekonvensi sebagai Hak Istimewa Tergugat dalam Perkara Perceraian (Talok) di Pengadilan Agama.” *Jurnal Hukum, Politik dan Ilmu Sosial*, Vol. 5, No. 2 (2016): 5-24.

<sup>13</sup> Abdul Rahman. “Asas-asas Peradilan dalam Islam dan Implementasinya di Indonesia.” *Jurnal Hukum Islam*, Vol. 16, No. 1 (2018): 67-84.

<sup>14</sup> *Herziene Indonesisch Reglement (HIR)*, Pasal 164.

<sup>15</sup> Lukman Hakim, “Sistem Pembuktian dalam Fiqh al-Qadha dan Relevansinya dengan Hukum Acara Peradilan Agama,” *EL-QANUNYI: Jurnal Ilmu-ilmu Kesyariahan dan Pranata Sosial*, Vol. 6, No. 1 (2020): 61.

sharia emphasizes more on achieving substantive justice that is oriented towards benefit, while positive law prioritizes formal legal certainty through strict and structured procedures.

### **Implementation of Harmonization in Religious Justice Practice**

The results of the analysis of the religious court rulings show that harmonization has been carried out through three main approaches. First, the adoption of the principle of peace (*islah*) which is realized through mandatory mediation before the examination of the subject matter.<sup>16</sup> Second, the use of the sharia evidentiary system in certain cases, such as the admission of the testimony of one man and two women in marriage cases. Third, consideration of benefits in the imposition of judgments, especially in cases involving the interests of children and families.<sup>17</sup>

### **CONCLUSION**

This study identifies that the harmonization of the concept of proceedings in the Indonesian religious courts has taken place through three main mechanisms: the adoption of the principle of peace (*islah*), the selective integration of the sharia proof system, and the implementation of consideration of benefits in judicial decisions. Despite fundamental divergences in legal sources and philosophical approaches, the convergence of the principles of justice and transparency has become a common point that allows for the transformation of judicial orientation from procedural formalities to substantive justice. These findings make a theoretical contribution to the development of legal harmonization theory and practically provide operational guidance for religious court judges as well as an empirical basis for the preparation of a comprehensive Religious Court Procedural Law Bill.

This study has limitations in the use of normative juridical approaches that are not complemented by field empirical studies and the focus of analysis that is limited to procedural aspects without exploring the sociological dimensions and variability of practice at various levels of court. For further research, it is recommended to conduct an empirical study on the effectiveness of the implementation of harmonization in trial practice in various regions of Indonesia, comparative research with the religious justice system in other Muslim countries, and a study on the perception of the public who use religious justice services. In addition, research on harmonization in the context of the development of sharia economic law and the development of a legal education curriculum that integrates the study of Islamic law with civil procedural law is needed to produce competent human resources in legal harmonization.

### **REFERENCE**

- Al-Qur'an al-Karim*. Surah An-Nisa ayat 135, Surah Al-Maidah ayat 8.
- Anisa, Darania. *Hukum Acara Peradilan Agama: Dilengkapi Penjelasan E-Court dan E-Litigation*. Indramayu: Penerbit Adab, 2024.
- Azhary, "Hukum Acara Perdata di Lingkungan Peradilan Agama", *Jurnal Hukum & Pembangunan*, Vol. 12, No. 2 (1985): 120-129. <http://dx.doi.org/10.21143/jhp.vol12.no2.897>
- Domiri, "Analisis Tentang Sistem Peradilan Agama di Indonesia", *Jurnal Hukum & Pembangunan*, Vol. 46, No. 3 (2016): 149-195. <https://doi.org/10.21143/jhp.vol46.no3.92>
- Fitri, Winda., Rini., Vanessa Angel., dan Erika Emilia Putri. "Relevansi dan Aktualisasi: Penerapan Hukum Acara dalam Penyelesaian Talak Raj'i di Indonesia." *Jurnal Hukum, Politik dan Ilmu Sosial*, Vol. 2, No. 3 (2023): 198-212. <https://doi.org/10.55606/jhpis.v2i3.1927>
- Manan, Abdul. "Penemuan Hukum oleh Hakim dalam Praktek Hukum Acara di Peradilan Agama." *Varia Peradilan*, Vol. 2, No. 2 (2013): 189-202. <https://doi.org/10.25216/jhp.2.2.2013.189-202>

<sup>16</sup> Muhammad Khoiruddin, "Mediasi dalam Peradilan Agama: Implementasi Prinsip Islah dalam Penyelesaian Sengketa," *Ahkam: Jurnal Hukum Islam*, Vol. 8, No. 1 (2020): 52.

<sup>17</sup> Indah Permata Sari. "Relevansi dan Aktualisasi: Penerapan Hukum Acara dalam Penyelesaian Talak Raj'i di Indonesia." *Jurnal Hukum, Politik dan Ilmu Sosial*, Vol. 8, No. 3 (2019): 156-174.

Rachmainy, Linda, dan Ema Rahmawati. "Penerapan Rekonvensi sebagai Hak Istimewa Tergugat dalam Perkara Perceraian (Talak) di Pengadilan Agama." *Jurnal Hukum, Politik dan Ilmu Sosial*, Vol. 2, No. 2 (2017): 299-315. <https://doi.org/10.35706/dejure.v2i2.1306>

Suhaili, Achmad . "Integrasi Maqāsid al-Syarī'ah dalam Praktik Peradilan Agama di Indonesia: Studi Alternatif Penyelesaian Sengketa Keluarga." *Mahabits: Jurnal Hukum Keluarga*, Vol 6 No 01 (2025): 29-42. <https://doi.org/10.62097/mabahits.v6i01.2236>

Suriyadi, Taufik Hidayat, Zakky Addarajat, dan Ardi. "Integrasi Qawā'id Fiqhiyyah dalam Reformasi Hukum Acara Perdata: Tantangan dan Peluang." *Jurnal Ilmu Syariah dan Hukum*, Vol. 4 No. 1 (2025): 205-211. <https://doi.org/10.23971/8ze1dx11>

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