

Islamic Personality Principles in Religious Justice

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Abstract

Religious courts in Indonesia were established to serve the legal needs of Muslims, especially in family and inheritance matters. The application of the principle of Islamic personality is the main principle in determining the jurisdiction of the Religious Court, which means that it only applies to individuals who are Muslim. This article analyzes the normative basis, history of formation, and application of the principle of Islamic personality in the practice of religious justice in Indonesia. The research method used is juridical-normative through literature study and analysis of laws and regulations such as Law Number 7 of 1989 concerning Religious Courts and its amendments, the Compilation of Islamic Law, and Supreme Court jurisprudence. The results of the study show that this principle provides legal certainty and protection for the applicability of Islamic law for Muslims. Nevertheless, challenges remain in the context of legal pluralism and dual citizenship status that require further harmonization.

Keywords: Religious Justice, Islamic Personality, Islamic Law, Legal Pluralism, Jurisdiction

INTRODUCTION

Indonesia is a country with a complex and pluralistic social structure, both in terms of ethnicity, religion, and culture. This diversity is also reflected in its legal system, which does not adhere to a single legal system, but a pluralistic legal system. In the framework of legal pluralism, the existence of the Religious Court as part of the national judicial system has a very important position in accommodating the legal needs of Muslims in the field of family law and inheritance.¹

One of the fundamental principles that is the basis for the application of Islamic law through religious courts is the principle of Islamic personality, which is the principle that states that the provisions of Islamic law only apply to individuals who embrace Islam.² This principle is not a new concept in the Indonesian legal system, but has been known since the Dutch colonial period when the colonial government applied laws based on religion and population groups. At that time, customary law was applied to non-Muslim indigenous populations, while Islamic law was recognized as applicable to Muslims, and European law was applied to Foreign Easterners and Dutch citizens.³

After independence, Indonesia maintained this principle in the national legal system as a form of recognition of religious identity and legal autonomy of religious people. This is expressly accommodated through Law Number 7 of 1989 concerning Religious Courts and its amendments, which states that religious courts have jurisdiction over certain cases only for parties who are Muslims.⁴ This provision is in line with the mandate of Article 29 paragraph (2) of the 1945 Constitution which guarantees the freedom of each resident to embrace his religion and worship according to his religion.⁵

¹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), p.14.

² Zainuddin Ali, *Hukum Islam: Pengantar Ilmu Hukum Islam di Indonesia*, (Jakarta: Sinar Grafika, 2017), p.185.

³ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts*, (Amsterdam: Amsterdam University Press, 2010), p.45.

⁴ Law Number 7 of 1989 concerning Religious Courts, Article 49.

⁵ The 1945 Constitution of the Republic of Indonesia, Article 29 Paragraph (2).



The application of the principle of Islamic personality in religious justice aims to ensure that Muslims can resolve their religious cases in accordance with the sharia principles that have been codified in the Compilation of Islamic Law. However, in practice, the application of this principle cannot be separated from challenges, especially in the face of the dynamics of modern society that is increasingly open, cases of interfaith marriage, and debates about the Islamic status of a person in certain civil cases.

This study is important to carry out because the existence of the principle of Islamic personality is not only related to the normative aspects of Islamic law, but also touches on the dimensions of constitutionality, human rights, and legal plurality in Indonesia. Thus, a deep understanding of this principle will contribute to strengthening a justice system that is not only legally fair, but also sensitive to the social and religious realities of Indonesia's multicultural society.

METHOD

This study uses a juridical-normative approach with a descriptive-analytical method. Primary data sources are obtained from relevant laws and regulations, such as: Law Number 7 of 1989 concerning Religious Courts (which has been amended by Law Number 3 of 2006 and Law Number 50 of 2009); Compilation of Islamic Law; Relevant Supreme Court rulings. Secondary data include scientific journals, books, and legal articles that discuss personality principles, Islamic law, and the judicial system in Indonesia. The analysis is carried out by examining how the legal provisions are implemented and analyzing the strengths and challenges in their implementation.

RESULT

The results of the study of legal regulations and practices in Indonesia show that the principle of Islamic personality is a fundamental principle that is the basis of the jurisdiction of the Religious Court. This is explicitly stated in Article 49 of Law Number 7 of 1989 concerning Religious Courts which states that religious courts are only authorized to adjudicate certain cases if the subject of law is a Muslim.⁶ The scope of this authority includes cases of marriage, inheritance, wills, grants, waqf, zakat, infaq, shadaqah, and sharia economics, as has been expanded through Law Number 3 of 2006 and Law Number 50 Year 2009.⁷

The implementation of this principle of personality is also affirmed in judicial practice, where in every case submitted to a religious court, the main condition that must be met is that both parties to the dispute are Muslims. If one of the parties is found to be not a Muslim, then the case must legally be transferred to the General Court. For example, it can be seen in the case of inheritance or divorce, when it is proven that one of the parties has left Islam (apostasy), then the jurisdiction of the Religious Court becomes void.⁸

Furthermore, the Compilation of Islamic Law became the basis for operational law in the Religious Court. Compilation of Islamic Law which was established through Presidential Instruction Number 1 of 1991, contains positive Islamic legal norms that apply specifically to Muslims in Indonesia. In Book I (marriage), Book II (inheritance), and Book III (*waqf* and *grants*), all the provisions used rely on sharia principles and apply only to Muslims.⁹ Religious courts in many cases refer to this Compilation of Islamic Law, especially when there are legal gaps in other laws and regulations.

However, in practice, the application of the principle of Islamic personality does not always take place without obstacles. Some of the obstacles found in the field include the status of Islam which is formal, administrative, not factual. For example, a citizen is registered as a Muslim on his ID card, but in his daily life practice he does not practice Islamic law or even secretly embrace other religions.

⁶ Law Number 7 of 1989 concerning Religious Courts, Article 49.

⁷ See. Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989.

⁸ Decision of the Supreme Court of the Republic of Indonesia Number 1400 K/AG/2012, in a divorce case where one of the parties apostatized.

⁹ Compilation of Islamic Law, Presidential Instruction Number 1 of 1991, Books I–III.

In such conditions, religious judges are still obliged to base their decisions on administrative status, not on substantive faith.¹⁰

In addition, problems also arise in the case of interfaith marriage or conversion (conversion) in the middle of the legal process. This often triggers debates about the relative competence between religious courts and district courts. For example, when a Muslim married couple divorces and one of them converts before the trial, there is a tug-of-war between judicial institutions.¹¹

Nevertheless, the principle of Islamic personality remains the main pillar of legal protection for Muslims in the Indonesian judicial system. This principle ensures that Muslims can resolve family and inheritance law issues through a forum that is in accordance with their religious teachings. In the context of a democratic and religious state of law such as Indonesia, the existence of this principle also reflects the state's efforts to respect and protect religious freedom, as guaranteed in the constitution.

DISCUSSION

The principle of Islamic personality in the Religious Courts is a concrete manifestation of the principle of legal pluralism recognized in the Indonesian national judicial system. The application of this principle ensures that every individual is treated based on his or her religious identity, especially Muslims who need legal channels in accordance with Islamic sharia values. This principle affirms that the jurisdiction of the Religious Court is not universal, but personal-subjective, which only applies to those who are formally registered as adherents of the Islamic Religion.¹²

The concept of legal personality is not only known in the Indonesian legal system, but is also part of the classical doctrine in private law, known as the principle of "lex personalis" in the continental European legal system. In the Indonesian context, this principle is justified in Article 49 of Law Number 7 of 1989, which was later strengthened by amendments through Law Number 3 of 2006 and Law Number 50 of 2009. In practice, this means that religious court judges do not have absolute competence over cases where one of the parties is not a Muslim, so that a transfer to the General Court becomes inevitable.¹³

The application of this principle is also closely related to the existence of the Compilation of Islamic Law, which only applies to Muslim cases. Compilation of Islamic Law is not binding on adherents of other religions, even when they are in a Muslim-majority society. This shows that Islamic law as a substantive norm also follows the principle of legal personality in its implementation, not applied territorially or universally.¹⁴

However, the application of the principle of Islamic personality also raises a number of challenges and praxis problems in the judiciary. One of the prominent ones is in the case of interfaith marriage. In many cases, there are situations where a Muslim wants to marry a non-Muslim. Since the Religious Court is only authorized to adjudicate inter-Muslim cases, there is no official forum in the Religious Court that can legitimize interfaith marriage, and this leads to the rejection of marriage registration at the Religious Affairs Office.¹⁵

Similar problems also arise in inheritance cases, especially when one of the heirs is not a Muslim. In Islamic law, non-Muslims cannot inherit property from Muslims and vice versa.¹⁶ But in the Indonesian context, the courts are often faced with the pressures of social realities, where blood relations and family values take precedence over the principles of religious law. In certain cases,

¹⁰ Nurlaelawati, Euis, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts*, (Amsterdam: Amsterdam University Press, 2010), p.86.

¹¹ Jimly Asshiddiqie, *Hukum Acara Peradilan Agama*, (Jakarta: Konstitusi Press, 2010), p.110.

¹² Zainuddin Ali, *Hukum Islam: Pengantar Ilmu Hukum Islam di Indonesia*, (Jakarta: Sinar Grafika, 2017), p.191.

¹³ Jimly Asshiddiqie, *Hukum Acara Peradilan Agama*, (Jakarta: Konstitusi Press, 2010), p.87.

¹⁴ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practices of the Indonesian Religious Courts*, (Amsterdam: Amsterdam University Press, 2010), p.92.

¹⁵ Compilation of Islamic Law, Presidential Instruction Number 1 of 1991, Book I, Article 40.

¹⁶ Wahbah Az-Zuhaili, *Al-Fiqh al-Islami wa Adillatuhu*, Jilid VIII, (Damaskus: Dar al-Fikr, 1997), p.67.

religious court judges may recommend settlement through grants or mandatory wills, as a form of compromise between fiqh norms and humanitarian needs.¹⁷

Furthermore, Islamic identity in the context of personality principles is also an issue of debate, especially when a person's Islam is only administrative. There are cases where an individual is legally Muslim, but ideologically or in daily practice has changed his religion. In this case, religious court judges still have to refer to formal status in population documents, since the legal system does not have the instruments to substantively test religious beliefs.¹⁸

Despite its limitations, the principle of Islamic personality is still considered relevant and crucial in ensuring the implementation of Islamic law in a fair and directed manner. This reflects the state's efforts to accommodate people's religious identities without sacrificing the principle of the rule of law. In Indonesia's modern legal framework, the religious courts are a symbol of an inclusive but structured, pluralistic legal system but still within the constitutional corridor.¹⁹

In the long run, the harmonization between the legal systems in Indonesia— Islamic law, customary law, and national law – will depend heavily on the success of this personality principle in being operationalized with social flexibility and sensitivity to the realities of society. This principle not only provides legal protection, but also becomes a means of forming the legal identity of Muslims in a pluralistic society.

CONCLUSION

The principle of Islamic personality is the main foundation in the judicial system of the Religious Courts in Indonesia. This principle not only provides clear legal limits on who is the subject of religious matters, but also ensures that Muslims can resolve family and other civil law issues in accordance with the principles of Islamic sharia recognized by the state. In the context of a legal state that upholds religious diversity and belief, the existence of this principle reflects a constitutionally valid form of legal protection based on religious identity.

Nevertheless, the implementation of the principle of Islamic personality in practice is inseparable from a number of juridical and sociological challenges, especially in cases involving religious differences, administrative Islamic status, and pluralism of values in modern society. This complexity requires judicial officials, especially religious court judges, to not only understand positive legal norms, but also to have sensitivity to the social and cultural context that surrounds the parties.

Therefore, it is necessary to strengthen understanding of this principle, both through legal education, training of judges, and regulatory reforms that are more responsive to the reality of a pluralistic society. In the future, the principle of Islamic personality must continue to be developed within the framework of harmonizing the national legal system, so as to be able to answer the legal needs of Muslims without causing overlapping jurisdiction or inequality in legal protection for other community groups.

Thus, the principle of Islamic personality is not only a technical norm in procedural law, but also a reflection of Indonesia's efforts to build a pluralistic, fair, and contextual legal system, as well as respect the religious rights of every citizen.

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¹⁷ Ahmad Azhar Basyir, *Hukum Waris Islam*, (Yogyakarta: UII Press, 2008), p.109.

¹⁸ Decision of the Supreme Court of the Republic of Indonesia Number 1400 K/AG/2012, concerning the validity of Islamic status in divorce cases.

¹⁹ Soerjono Soekanto, *Pokok-Pokok Sosiologi Hukum*, (Jakarta: Rajawali Pers, 2010), p.142.

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