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## DECOLONIZATION OF ISLAMIC FAMILY LAW IN INDONESIA: TRACING TRANSFORMATION AND CONTINUITY

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### Abstract

The legal history of the Indonesian Islamic family provides the significance influence of the fiqh of Shafi'i and colonization at the same time. This article aims to explore the process of decolonization of Islamic family law in Indonesia by tracing its historical transformation, policy changes, and the continuity of its legal practices from the colonial period to the post-reform era. Through a conceptual, historical, and legislative approach, this article analyzes how the colonization of Islamic family law took place in Indonesia. This article argues that the decolonization of Islamic family law in Indonesia did not occur in a single manner, but instead in two primary forms. First, accommodative decolonization, which was realized through post-independence state policies, such as the theories of *receptie exit* and *receptio a contrario*, the Religious Court Law, the Compilation of Islamic Law, and various policies of the Supreme Court and the Ministry of Religious Affairs, which negotiated fiqh traditions with the need for modern legal protection, especially for women and children. This pattern aligns with Khaled Abou El Fadl's view, which regards legal reform as an inherent part of the Islamic legal tradition. Second, conservative decolonization is reflected in fatwas and classical fiqh discourse developed by Islamic boarding schools and religious organizations, in line with Wael B. Hallaq's criticism of colonial legal modernity. This article argues that the decolonization of Islamic family law in Indonesia is an ongoing process involving the state and religious scholars, and that it does not merely aim to erase the colonial legacy but also to create a contextual, just, and responsive Islamic family law system for vulnerable groups.

**Keywords:** *Decolonization of law; Islamic family law; Legal transformation*

### Abstrak

Sejarah hukum keluarga Islam Indonesia menampilkan pengaruh kuatnya wajah fikih Syafi'i dan kolonisasi sekaligus. Artikel ini membahas bagaimana proses dekolonisasi hukum keluarga Islam di Indonesia dengan melacak transformasi historis, perubahan kebijakan, dan keberlanjutan praktik hukumnya dari masa kolonial hingga pascareformasi. Melalui pendekatan konseptual, historis, dan perundang-undangan, artikel ini menganalisis bagaimana kolonisasi hukum keluarga Islam berlangsung di Indonesia. Artikel ini berargumen bahwa dekolonisasi hukum keluarga Islam di Indonesia tidak berlangsung secara tunggal, melainkan hadir dalam dua corak utama. Pertama, dekolonisasi akomodatif yang diwujudkan melalui kebijakan negara pascakemerdekaan, seperti teori *receptie exit*, *receptio a contrario*, Undang-Undang Peradilan Agama, Kompilasi Hukum Islam, serta berbagai kebijakan Mahkamah Agung dan Kementerian Agama, yang menegosiasikan tradisi fikih dengan kebutuhan perlindungan hukum modern, terutama bagi perempuan dan anak. Corak ini selaras dengan pemikiran Khaled Abou El Fadl yang memandang reformasi hukum sebagai bagian inheren dari tradisi hukum Islam. Kedua, dekolonisasi konservatif yang tercermin dalam fatwa dan diskursus fikih klasik yang dikembangkan oleh pesantren dan organisasi keagamaan, sejalan dengan kritik Wael B. Hallaq terhadap modernitas hukum kolonial. Artikel ini berargumen bahwa dekolonisasi hukum keluarga Islam di Indonesia merupakan proses berkelanjutan yang melibatkan keterlibatan negara dan ulama, serta tidak semata-mata bertujuan menghapus warisan kolonial, tetapi juga menciptakan bangunan hukum keluarga Islam yang kontekstual, berkeadilan, dan responsif terhadap kelompok rentan.

**Kata Kunci:** *Dekolonisasi hukum; Hukum Keluarga Islam; Transformasi hukum*

## INTRODUCTION

Colonialism, which invaded almost all Muslim countries in the world, gave rise to new configurations in many forms in the colonized countries. Colonialism not only brought political and economic domination, but also reshaped ways of life and ways of thinking, for example through educational institutions and the epistemic framework of Muslim societies.<sup>1</sup> Because the colonial powers were vastly superior, militarily, administratively, and ideologically, Muslim societies were ultimately forced to accept what the colonizers brought without any meaningful resistance. Resisting, in fact, became a threat to the social and physical lives of Muslim communities. Here, the ways of life and modes of thought imposed and enforced by the colonizers profoundly affected various aspects of life.

Colonialism not only conquered territories but also gradually reshaped the foundations of how Muslim communities understood and practiced their own laws and identities.<sup>2</sup> By introducing the principles, substance, and models of law from the colonizers' home countries, local legal structures were compelled to conform to a completely foreign system. The impact did not stop during the colonial period; it continues to seep into the present day, shaping the mindset, legal practices, and even the identity of Muslim communities. Thus, colonialism has had a significant impact on how the legal systems of Muslim countries were formed and engineered, leading to a fairly sharp transformation of Islamic law. Many Muslim countries experienced the transplantation of Western law during the colonial period, either through full adoption as in Turkey or through integration with local law as in Egypt, Indonesia, and Malaysia.<sup>3</sup> In Nigeria, for example, the British established a hybrid legal system that combined English law, Islamic law, and customary law, while making English law the dominant.<sup>4</sup> In Kenya, the British instituted Kadhi, Liwali, and Mudir courts to control and reorganize the local legal structure.<sup>5</sup> In Algeria, France imposed

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<sup>1</sup> Howard M. Federspiel, "European Colonialism and Southeast Asian Islam," in *Routledge Handbook of Islam in Southeast Asia*, ed. Khairudin Aljunied (Taylor and Francis, 2022), 128–43, <https://doi.org/10.4324/9780429275449-9>; Abdul Momen, Mansoureh Ebrahimi, and Kamaruzaman Yusoff, "British Colonial Education in the Indian Subcontinent (1757-1858): Attitude of Muslims," *Journal of Islamic Thought and Civilization* 14, no. 1 (2024): 17–39, <https://doi.org/10.32350/jitc.141.02>.

<sup>2</sup> Iza Hussin, "The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State," *Law and Social Inquiry* 32, no. 3 (2007): 759–88, <https://doi.org/10.1111/j.1747-4469.2007.00076.x>.

<sup>3</sup> Sri Wahyuni, "Legal Transplant: Influence of the Western Legal System in the Muslim Countries," *Justicia Islamica* 19, no. 1 (2022): 21–37, <https://doi.org/10.21154/justicia.v19i1.2756>.

<sup>4</sup> Mamman Lawan, "Islamic Law and Legal Hybridity in Nigeria," *Journal of African Law* 58, no. 2 (2014): 303–27, <https://doi.org/10.1017/S0021855314000151>.

<sup>5</sup> Hassan Mwakimako, "The Historical Development of Muslim Courts: The Kadhi, Mudir and Liwali Courts and the Civil Procedure Code and Criminal Procedure Ordinance, c. 1963," *Journal of Eastern African Studies* 5, no. 2 (2011): 329–43, <https://doi.org/10.1080/17531055.2011.571392>.

French law, especially property law, while making Muslim personal status law a transitional rule.<sup>6</sup> The codification of Islamic law in Malaya was a colonial epistemic intervention that changed the way Islam was understood and passed down, while also reshaping Malay identity. In fact, many contemporary interpretations of Islam still bear traces of this colonial engineering.<sup>7</sup> The strength of this colonization ultimately gave rise to a decolonization movement aimed at dismantling the influence of Western perspectives in various fields, including law.<sup>8</sup>

The idea of decolonization emerged as a way to confront and challenge the enduring legacy of colonial thought—an intellectual inheritance that has long appeared firmly established and difficult to dislodge. Calls for decolonization have largely come from thinkers in the Global South, regions that experienced colonization firsthand, since colonial power historically originated from countries in the Global North.<sup>9</sup> Decolonization seeks to redefine resistance by placing local or Indigenous perspectives at the center rather than deferring to colonial viewpoints as the primary lens.<sup>10</sup> This movement addresses a wide range of issues, including the field of Islamic law. Unfortunately, reforms in Islamic law across many Muslim-majority countries are often quickly labeled as progressive—particularly because they are seen as advancing the protection of women and children. What is often overlooked, however, is a deeper question: do these reforms reinforce inherited colonial legal frameworks, or do they represent a genuine effort to resist and move beyond colonial legacies—an effort that could truly be called decolonization?

Various researchers have examined decolonization in Islamic studies. Rizvi argues that transforming the ontological, epistemological, and practical aspects of scholarship

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<sup>6</sup> Gustavo Gozzi, “Colonial Law and Muslim Law,” in *The Islamic World and the Mediterranean: From Colonial Legacy to Political and Cultural Interdependence*, ed. Gustavo Gozzi (Taylor and Francis, 2025), 53–66, <https://doi.org/10.4324/9781003431206-8>.

<sup>7</sup> Iza Hussin, “The Pursuit of the Perak Regalia: Islam, Law, and the Politics of Authority in the Colonial State,” *Law and Social Inquiry* 32, no. 3 (2007): 759–88, <https://doi.org/10.1111/j.1747-4469.2007.00076.x>.

<sup>8</sup> Muhammad Rofiq Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam* (Sleman: Yayasan Bentala Tamaddun Nusantara, 2023), 7.

<sup>9</sup> See Alireza Samiee Esfahani and Ali Alihosseini, “China and the Global South: A Postcolonial Reading of the Northern-Led Global Order,” in *Implications, Prospects, and Challenges in China’s Global South Strategy*, ed. Enayatollah Yazdani (IGI Global, 2025), 395–429, <https://doi.org/10.4018/979-8-3373-0938-5.ch014>; Amy Duvenage, *Roads to Decolonisation: An Introduction to Thought from the Global South* (New York: Routledge, 2024), <https://doi.org/10.4324/9781003468400>; Sakhumzi Mfecane, “Decolonizing Masculinities,” in *The Routledge Handbook of Feminist Anthropology* (Routledge, 2024).

<sup>10</sup> See Eriel Tchekwie Deranger et al., “Decolonizing Climate Research and Policy: Making Space to Tell Our Own Stories, in Our Own Ways,” *Community Development Journal* 57, no. 1 (2022): 52–73, <https://doi.org/10.1093/cdj/bsab050>; Gabrielle Legault and Denica Bleau, “Indigenizing or Appropriating? Navigating the Boundaries of Institutional Decolonization,” *Capitalism, Nature, Socialism* 36, no. 2 (2025): 71–91, <https://doi.org/10.1080/10455752.2024.2445586>.

requires serious decolonization efforts, drawing on Syed Hussein Alatas's ideas.<sup>11</sup> Ashraf asserts that, in the critical dialogue between decolonial studies and Islamic liberation theology, the latter must be situated within a decolonial political praxis that promotes a preferential option for the poor.<sup>12</sup> Seedat argues that a decolonial approach can help Islamic psychology (KI) reorganize its vision and orientation through the principles of epistemic freedom, liberation, and humanization, and can also encourage the development of psycho-spiritual and methodological resources within the framework of Islamic humanism oriented towards pluriversal and transformative knowledge.<sup>13</sup> Woodward also emphasizes that the decolonization of Islamic studies in Indonesia requires critiquing the legacy of the colonial paradigm and formulating a new postcolonial model, particularly by examining the strong influence of Raffles and Snouck Hurgronje in shaping understandings of Indonesian Islam.<sup>14</sup> Faruque acknowledges that the dominance of Western knowledge has severed Muslims' connection with their own intellectual heritage, fragmenting their identity. Therefore, decolonization should be pursued not by rejecting dialogue with the West, but by revitalizing the categories and concepts of Islamic knowledge so that Muslims can develop a way of thinking rooted in their own traditions.<sup>15</sup>

Decolonization has also been examined from several perspectives in legal studies. Ihsany and Lutfi found that the practice of electing presidents in Indonesia remains influenced by colonial politics, thereby undermining the ethical, spiritual, and substantive dimensions of justice.<sup>16</sup> Widjajanto et al. emphasize that, to carry out legal decolonization, the government must integrate customary law into criminal justice practices in Indonesia to ensure true justice.<sup>17</sup> Akbar and Yuwanto argue that decolonizing environmental law requires an epistemic shift from state-based sovereignty to a pluralistic, community-based legal

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<sup>11</sup> Sajjad Rizvi, "Decolonising 'Islam,'" in *Conceptualizing Islam: Current Approaches*, ed. Frank Peter, Paula Schrode, and Ricarda Stegmann (Taylor and Francis, 2025), 95–107, <https://doi.org/10.4324/9781003259350-8>.

<sup>12</sup> Ashraf Kunnummal, "Islamic Liberation Theology and Decolonial Studies: The Case of Hindutva Extractivism," *Religions* 14, no. 9 (2023), <https://doi.org/10.3390/rel14091080>.

<sup>13</sup> Mohamed Seedat, "Signifying Islamic Psychology as a Paradigm: A Decolonial Move," *European Psychologist* 26, no. 2 (2021): 131–41, <https://doi.org/10.1027/1016-9040/a000408>.

<sup>14</sup> Mark Woodward, "Paradigms, Models, and Counterfactuals: Decolonializing the Study of Islam in Indonesia," *Studia Islamika* 32, no. 1 (2025): 101–35, <https://doi.org/10.36712/sdi.v32i1.46005>.

<sup>15</sup> Muhammad U. Faruque, "Decolonizing the Muslim Mind: A Philosophical Critique," *Philosophical Forum* 55, no. 4 (2024): 353–75, <https://doi.org/10.1111/phil.12378>.

<sup>16</sup> Any Ihsany Nasution and Mustafa Lutfi, "Decolonizing Constitutional Democracy: Reconfiguring Indonesia's Presidential Election System from the Perspective of *Siyasah Syar'iyah*," *Tribakti: Jurnal Pemikiran Keislaman* 36, no. 2 (July 2025): 239–58, <https://doi.org/10.33367/9jff0ph27>.

<sup>17</sup> Agus Widjajanto, I. Gde Pantja Astawa, and Muhammad Rulyandi, "Decolonising Restorative Justice in Indonesia: A Comparative Study across Customary Law Traditions," *Legality: Jurnal Ilmiah Hukum* 33, no. 2 (September 2025): 470–92, <https://doi.org/10.22219/ljih.v33i2.40481>.

order.<sup>18</sup> Sulasman even argued that efforts to decolonize Islamic law in Indonesia culminated in the Compilation of Islamic Law (the KHI), which was in line with Pancasila and the 1945 Constitution of the Republic of Indonesia.<sup>19</sup>

This article differs from existing studies. Filling an existing gap, this article traces efforts to decolonize Islamic family law in Indonesia by building upon and extending the research previously undertaken by Sulasman. This investigation is important for clarifying how the government and non-governmental institutions have carried out decolonization efforts, thereby providing a clearer picture of the debate over the ideal construction of Islamic family law in Indonesia.

This article explores how the space for the decolonization of Islamic family law is formed and implemented. Therefore, this article draws on the theories of Wael B. Hallaq and Khaled Abou El Fadl regarding Islamic legal decolonization. Hallaq emphasized that, in essence, the decolonization of Islamic law must completely abandon its Western heritage and highlight an epistemology of Islamic law grounded in Islam. Meanwhile, Fadl believes that integrating Western and Islamic perspectives is a middle way that allows Islamic law to remain alive with its original spirit while not being left behind in social and cultural developments. So, with these two theories in mind, this article seeks to determine whether the decolonization of Islamic family law in Indonesia tends to be extreme (non-accommodative) as Hallaq proposes or accommodative as El-Fadl proposes.<sup>20</sup>

This article argues that the decolonization of Islamic family law in Indonesia can be understood in terms of two main approaches: accommodative decolonization and conservative decolonization. The first type of decolonization is reflected in how the state has attempted to accept the changes and modernization of the law inherited from the colonizers while utilizing and developing the doctrine of fiqh as a source of legal norms. Meanwhile, the second type of decolonization emerges in how non-state institutions often offer alternative perspectives on issues of Islamic family law formulated by the state. Finally, this article also emphasizes that the friction between these efforts illustrates that the decolonization of Islamic family law in Indonesia is still ongoing.

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<sup>18</sup> Nuruddin Al Akbar and Yuwanto, "Decolonizing Environmental Law: Laudato Si' and Al-Mizan as Political-Legal Paradigms for Environmental Justice," *IOP Conference Series: Earth and Environmental Science* 1537, no. 1 (September 2025): 012057, <https://doi.org/10.1088/1755-1315/1537/1/012057>.

<sup>19</sup> Sulasman, "The Process of Decolonization on Islamic Law in Indonesia: A Historical Perspective," *Tawarikh: Journal of Historical Studies* 8, no. 2 (2017): 131–42, <https://journals.mindamas.com/index.php/tawarikh/article/viewFile/822/780>.

<sup>20</sup> Muhammad Rofiq Muzakir, *Studi Islam Dan Masyarakat Muslim Kontemporer: Dari Neo-Tradisional, Liberal, Sampai Dekolonial* (Yogyakarta: Suara Muhammadiyah, 2025).

## RESEARCH METHOD

This research is a normative legal research with a qualitative design. Data were collected through documentation from various sources, such as journal articles, books, and laws, to illustrate the processes of colonization and decolonization in Indonesia. Thus, this research uses conceptual, historical, and legislative approaches. First, a conceptual approach is used to identify the legal concepts in use. It is also employed by positioning the theories of decolonization proposed by Wael Hallaq and Khaled Abou El Fadl as analytical lenses through which the data were examined and interpreted. Hallaq's ideas are used to understand a model of decolonization that is both strict and uncompromising. In contrast, El Fadl's ideas are employed to interpret a model of decolonization that tends to be more accommodative and open to engagement. Second, a historical approach examines how colonization gave way to decolonization in the context of Indonesian Islamic family law. Third, the historical approach ultimately shows how these social changes are closely related to the legal changes enacted by the colonies and the Indonesian government. Therefore, the data in this study is analyzed using a deductive approach, beginning with general premises and moving toward more specific conclusions. This process was complemented by an interpretative analysis, in which the collected data were carefully examined and meaningfully interpreted to yield a deeper, more nuanced understanding of the issues under study.

## FINDINGS AND DISCUSSION

### Decolonialism as a Perspective

This section outlines the decolonial approaches offered by several thinkers. In this presentation, the author summarizes key points about decolonialism as a perspective for analyzing key issues. Therefore, the ideas of several essential figures in decolonial studies are outlined here, including Aníbal Quijano, Walter D. Mignolo, Linda T. Smith, and Farid Alatas. In the context of Islamic law studies, the decolonization approaches of Wael Hallaq and Abu El Fadl are also presented.

Unlike postcolonial studies, which originated from Palestinian thinkers, decolonial studies originated from South American scholars, who initially focused on studying the history of colonization in America. Anibal Quijano and Walter D. Mignolo are prominent figures from South America who call for decolonial studies. Although decolonialism was initially intended to resist Western political and economic colonization, its development has

taken it in a different direction. Decolonialism has ultimately been cast in a more general direction, seeking to reverse or reject all legacies of colonialism.<sup>21</sup> Quijano asserts that decolonialism aims to undermine the legitimacy and power of modern Western perspectives that have persisted and dominated, resulting from a system of domination that presents itself as a global necessity.<sup>22</sup> Like Quijano, Mignolo argues that decolonialism is a method of de-linking. He emphasizes the plurality of alternative perspectives as a rejection of singular or unified perspectives.<sup>23</sup>

Linda T Smith wrote an important book on decolonialism, *Decolonizing Methodologies: Research and Indigenous Peoples*. Decolonization, in Linda's thinking, is an effort to dismantle how colonialism shaped the knowledge, identity, and life experiences of indigenous peoples. She asserts that imperialism has shaped the life experiences of indigenous peoples, which ultimately became the framework that shaped the way indigenous peoples understand the world and modernity.<sup>24</sup> She points out that scientific disciplines actually serve to maintain the epistemic position of Europe, where Western knowledge and science are the beneficiaries of the colonization of indigenous peoples. This is because knowledge taken from indigenous peoples is then used to colonize them through the colonization of the mind.<sup>25</sup> Thus, for Linda, decolonization requires dismantling the epistemological structures that, for centuries, have placed indigenous peoples as objects and restoring them as full subjects of knowledge.

Thambinathan and Kinsella point out that for communities that have experienced colonization, research is a dirty word. This is because historical research has often been a space for exploitation, the formation of negative stereotypes, and the reproduction of stigmas that undermine the dignity of colonized communities.<sup>26</sup> They even assert that the colonialism of knowledge has not ended. To this day, vulnerable communities, including indigenous peoples and refugees, still avoid research due to collective trauma over colonial practices that

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<sup>21</sup> Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam*, 134–35.

<sup>22</sup> Anibal Quijano, “Coloniality of Power and Eurocentrism in Latin America,” *International Sociology* 15, no. 2 (June 2000): 215–32, <https://doi.org/10.1177/0268580900015002005>.

<sup>23</sup> Walter D. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press, 2011), <https://doi.org/10.2307/j.ctv125jqbw>.

<sup>24</sup> Linda Tuwaihi Smith, *Decolonizing Methodologies: Research and Indigenous People* (London: Zed Books Ltd, 1999), 19.

<sup>25</sup> Smith, 58–59.

<sup>26</sup> Vivetha Thambinathan and Elizabeth Anne Kinsella, “Decolonizing Methodologies in Qualitative Research: Creating Spaces for Transformative Praxis,” *International Journal of Qualitative Methods* 20 (January 2021): 1–2, <https://doi.org/10.1177/16094069211014766>.

reduced them to “others.”<sup>27</sup> From this perspective, decolonization is not merely a theoretical discourse, but a response to a long history of dehumanization carried out in the name of science and objectivity.

At the methodological level, Linda offers a framework that positions research as an ethical, political, and spiritual process. Linda emphasizes that research must be rooted in the restoration, respect, and revitalization of local cultures.<sup>28</sup> This approach aligns with the key principles articulated by Thambinathan and Kinsella, who propose four practices of research decolonization: critical reflexivity, reciprocity and self-determination, embracing other perspectives, and transformative action.<sup>29</sup> Through critical reflexivity, researchers become aware of their epistemic position and biases; through reciprocity, the power relations between researchers and participants are reconfigured; through the acceptance of alternative ways of knowing, the dominance of Western epistemology is challenged; and through transformative praxis, research is directed towards effecting real social change. Therefore, if Linda believes that theory must depart from community needs and research practices must be a space for recovery, not reproduction of injustice,<sup>30</sup> Thambinathan and Kinsella reinforce this view by arguing that research must be a safe space that allows community voices to rise rather than be silenced again, and that researchers must internalize transformative action by making research part of everyday social struggle.<sup>31</sup>

Sayyid Husein Alatas, an important figure in decolonial studies, has an interesting perspective. For Alatas, decolonialism is a process of liberating knowledge as a moral effort to restore human dignity in the postcolonial era. He shows how colonialism not only deprived people of material resources but also left its mark on their way of thinking, resulting in what is known as coloniality without colonialism, a condition in which Western intellectual domination continues even though colonial power no longer exists.<sup>32</sup>

Syed Farid Alatas, the intellectual successor to Sayyid Husein Alatas, not only maintains this tradition but also develops it into the framework of the School of Autonomous

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<sup>27</sup> Thambinathan and Kinsella, 2.

<sup>28</sup> Smith, *Decolonizing Methodologies: Research and Indigenous People*.

<sup>29</sup> Smith, 1.

<sup>30</sup> Smith, 142–43.

<sup>31</sup> Thambinathan and Kinsella, “Decolonizing Methodologies in Qualitative Research,” 6–7.

<sup>32</sup> Leon Moosavi and Syed Farid Alatas, “The Intellectual Biography of Syed Farid Alatas: Hegemonic Orientations, Epistemic Decolonisation and the School of Autonomous Knowledge,” *Current Sociology* 72, no. 6 (2024): 1165, <https://doi.org/10.1177/00113921231194094>.

Knowledge. Farid emphasizes that the autonomy of knowledge is a practice of epistemic consciousness: the courage to think from one's own social experience without being trapped in academic dependency. Therefore, autonomy is not an emotional rejection of the West, but an intellectual stance that rejects blind dependence, which can dull creativity and diminish the relevance of knowledge to local communities.<sup>33</sup> Not only that, while Syed Hussein Alatas focuses on coloniality as a structure of domination, Farid Alatas shows that Eurocentrism, Orientalism, androcentrism, traditionalism, ethno-nationalism, and sectarianism are equally hegemonic orientations that can limit society's ability to understand itself clearly.<sup>34</sup> Thus, Farid broadens the field of criticism and deepens the humanistic dimension of the decolonial project by reminding us that the liberation of knowledge requires the courage to challenge domination, both that inherited from colonialism and that rooted in the cultural and social structures of society itself.

Based on these ideas, decolonization can be understood as a gradual process that engages three critical layers of human life. At the epistemic level, decolonization invites us to dismantle the colonial legacy of knowledge that has long viewed indigenous peoples as mere objects, while restoring space for local experiences, memories, and wisdom to be valued once again as legitimate sources of knowledge. At the methodological level, decolonization guides us to reorganize how we research and understand humans in more ethical, equitable, and humane ways by ensuring that every voice, especially those of vulnerable groups, is heard and respected. Meanwhile, at a socio-emancipatory level, decolonization presents knowledge as a space for healing and liberation, where research is no longer a tool that harms or alienates, but a means to restore dignity, strengthen communities, and, together, emerge from the shadow of colonial domination.

In Islamic legal studies, two figures are particularly relevant to understanding decolonization: Wael B. Hallaq and Khaled Abou El Fadl. These two figures have different perspectives on the decolonization of Islamic law, with Hallaq adopting an extreme position and El Fadl an accommodative one. These two perspectives are used as the primary lenses for examining the decolonization of Indonesian Islamic family law. For Hallaq, *turath* presents a diverse and comprehensive view of traditional Islamic law, but due to European-influenced modernization, Islamic law has been reduced. He rejects the reform of Islamic

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<sup>33</sup> Moosavi and Alatas, 1167–68.

<sup>34</sup> Moosavi and Alatas, 1170.

law because it is a project of colonial modernity that erases the supremacy of traditional law in Islamic history. Therefore, he criticizes Muslim reformists for being uncritical of modernity. This differs from El Fadl, who believes that legal reform is an inherent part of the Islamic legal tradition. For him, the problematic reform is liberal reform that aims to undermine the supremacy of Islamic law and the Islamic intellectual tradition. Therefore, it is natural that El Fadl appreciates and supports the work of Muslim reformists who negotiate change in Islamic law by mapping what can and cannot be changed.<sup>35</sup>

**Table 1. Comparison of Hallaq and Abou El Fadl on Islamic Legal Decolonization**

Key Aspect	Wael B. Hallaq	Khaled Abou El Fadl
<b>Theoretical Position</b>	Takes a more radical and critical stance toward modernity	Adopts a more accommodative and moderate position
<b>View of <i>Turath</i> (Islamic Legal Tradition)</b>	Sees it as a comprehensive and superior legal tradition diminished by European modernity	Values the tradition but views it as open to reinterpretation and development
<b>Attitude toward Legal Reform</b>	Rejects modern legal reform as a colonial project that undermines classical Islamic law	Considers reform an inherent and legitimate part of the Islamic legal tradition
<b>Critique of Muslim Reformists</b>	Criticizes them for being uncritical toward modernity	Supports reformists who carefully negotiate what can and cannot be changed
<b>Meaning of Decolonization</b>	Calls for a fundamental rejection of modern colonial legal frameworks	Encourages selective engagement with modernity while safeguarding Islamic legal authority

Based on these theoretical explanations, the following sections use the last two perspectives on decolonization from Hallaq and Abou El Fadl as a framework for analysis. The analysis examines whether the construction of Islamic family law in Indonesia represents a complete epistemological break from colonial knowledge structures, as proposed by Hallaq, or a negotiated approach to modernization, as asserted by Abou El Fadl. These two points are the subject of important discussion in this paper.

### Colonization in the History of Islamic Law in Indonesia

Initially, Islamic law was freely practiced and applied by the Muslim community in Indonesia. Cases were also resolved in various ways. Fiqh opinions became a vital guide for

<sup>35</sup> Muzakkir, *Studi Islam Dan Masyarakat Muslim Kontemporer: Dari Neo-Tradisional, Liberal, Sampai Dekolonial*, 1761–183.

the application of legal cases. Here, fiqh was not yet subject to state control, allowing it to retain its original form: flexible, adaptive, responsive, and even inclusive. Its application across various regions also led to differences. With this spirit, the law came to life and developed rapidly.

As Islamic kingdoms developed, the tahkim institution, initially simple, evolved into a more structured judicial system, including the courtyards of various mosques in Javanese royal palaces, sharia courts in Sumatra, and qadhi assemblies in the Banjar and Pontianak regions. At this point, the ulama were not only religious figures, but also public servants who ensured that Islamic law was implemented in everyday life. This situation meant that the Dutch, through the VOC, who came as colonists, had to understand and regulate Islamic law, as it was already in practice within the community. Since the 17th century, they had issued various regulations. Through the Batavia Statute of 1642, the VOC also recognized the existence and position of Islamic law for the indigenous community.<sup>36</sup> In 1670, through the Resolutie der Indihe Regeering, the VOC also recognized Islamic marriage and inheritance laws, as set out in the Compendium Freijer. Several other documents also present the same position regarding the VOC, such as Pepakem Cirebon, Babad Tanah Jawa, and the Compendium Mogharrer, all sourced from fiqh literature, including the book al-Muharrar. In some places, such as South Sulawesi, regulations were enacted that afforded greater scope to Islamic law.<sup>37</sup> This formal effort was reinforced by the Governor-General's Resolution dated June 3, 1823, No. 12, in which the Religious Court in the city of Palembang was inaugurated and Pangeran Penghulu became its chairman. Here, the Religious Court was tasked with several matters, including marriage, divorce, property division, post-divorce rights, child custody, inheritance and wills, guardianship, and other religious legal issues.<sup>38</sup>

At this point, it can be seen that the application of Islamic law, which turned out to be more focused on Islamic family law, in the colonial period of Indonesia never stood in a vacuum; it was shaped by the dynamics of power, identity politics, and colonial interests that sought to reorganize the social order of the indigenous community. In this context, Receptie in Complexu became one of the earliest epistemic constructions that determined the position

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<sup>36</sup> Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah: Journal of Religious Studies*, December 31, 2021, 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>.

<sup>37</sup> Abdul Haq Syawqi, "Perkembangan Politik Zaman Hindia Belanda dan Pengaruhnya Terhadap Hukum Islam," *Al-Adalah* 24, no. 1 (April 2021): 29–43, <https://doi.org/10.35719/aladalah.v24i1.69>.

<sup>38</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2013), 14.

of Islamic law. Introduced by Van den Berg during the VOC era and the early days of Dutch colonialism, this theory held that Islamic law automatically applied to indigenous Muslims, that the entirety of family law and certain *muamalat* (transactions) were inherent to Islamic identity, and that its applicability did not require acceptance by customary law. This framework served as the basis for formal colonial recognition of Islamic law, whereby the institutionalization of religious courts, later codified in Staatsblad 1882 No. 152 for Java and Madura, also became part of that recognition.<sup>39</sup>

Colonial intervention became increasingly apparent with the issuance of Staatsblad 1835, which stipulated that Religious Court decisions were valid only if the state court had ratified them through an *executoire verklaring*. This provision was not merely an administrative matter; it changed the way the *penghulu* stood before the state. Whereas previously the *penghulu* had decided family and inheritance cases with authority derived from the community's trust, since the Decree was issued and enforced, they have had to seek permission from the colonial court. Many religious leaders felt that their room for maneuver had narrowed, and their long-respected authority had become fragile because it depended on the approval of the colonial authorities. Although its existence was recognized, Islamic law was positioned as inferior through the subordination of the religious court.<sup>40</sup>

Understanding that Islamic law played an essential and decisive role for the Muslim community in the archipelago at that time, the Dutch suppressed the power of Islamic law. In this position, the application of Islamic family law in Indonesia during the colonial period was greatly influenced by the dynamics of political identity and colonial interests, which sought to reorganize the indigenous community's social order in accordance with their own standards. The theory of *receptie* was ultimately used as the first weapon to undermine Islamic law, as Snouck Hurgronje proposed. This theory was used as an instrument to guide how Dutch colonial legal policy was constructed as an epistemic project that deliberately subordinated Islamic law to customary law, thereby reducing the religious authority of

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<sup>39</sup> H. Sulasman, "The Islamic Law in Indonesia in Historical Perspective," *Islamic Quarterly* 62, no. 2 (2018): 247–69.

<sup>40</sup> Rifqi, "The Superiority of Customary Law over Islamic Law on the Existence of Inheritance."

Muslims to a mere cultural expression. Therefore, this theory asserts that they recognize the validity of Islamic law only if it is consistent with customary law.<sup>41</sup>

The receptie theory was clearly illustrated in Staatsblad 1929 No. 221, which explicitly states that civil cases between Muslims may be resolved only by religious judges if customary law recognizes the existence of Islamic law. This provision was the most fundamental shift in the history of Islamic law in the Dutch East Indies. The impact was enormous: inheritance, which had previously been the natural jurisdiction of the Religious Court, was no longer considered part of religious competence. Religious judges' decisions were invalid if they contradicted customary provisions or failed to conform to the structure of colonial law.<sup>42</sup> Ultimately, customary law took precedence and became the primary standard. Meanwhile, Sharia in this context referred to Islamic law that had no authority in the eyes of the authorities. This strategy must ultimately also be seen as a move to corner Muslims so that they were unable to form independent legal and political forces. This stemmed from Snouck Hurgronje's observations of the Muslim community in Aceh. Based on his observations, he drew a distinction between orthodox “textual Islam” and local practices considered heterodox. Then he recommended a colonial policy that elevated customary law as the primary source of legitimacy.<sup>43</sup>

At the end of the colonial period, the authority of religious courts was further restricted through various regulations that specified the limits of their jurisdiction in detail. In 1937, the Dutch government issued Staatsblad No. 116. This Staatsblad regulated the authority of Religious Courts in Java and Madura, which were authorized only to examine marriage cases. Meanwhile, inheritance cases were handed over to the General Court. The Dutch colonial government also issued Staatsblad No. 638 and 639, which established the Kerapatan Qadli and Kerapatan Qadli Besar in South Kalimantan. These institutions were designed to resemble the religious courts in Java and Madura, but their authority was strictly defined. Through Staatsblad 1937 No. 116, the government detailed what could be handled by the Religious Court, namely: disputes between Muslim husbands and wives; cases of

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<sup>41</sup> Muhammad As'ad, Muhammad Zainuddin, and M. Samsul Hady, “The Western Perspective on Islam: Reading the Legacy of Snouck Hurgronje on Islamic Studies,” *Teosofi: Jurnal Tasawuf Dan Pemikiran Islam* 13, no. 1 (March 2023): 80–104, <https://doi.org/10.15642/teosofi.2023.13.1.80-104>.

<sup>42</sup> Rifqi, “The Superiority of Customary Law over Islamic Law on the Existence of Inheritance.”

<sup>43</sup> Jajat Burhanudin, “The Dutch Colonial Policy on Islam: Reading the Intellectual Journey of Snouck Hurgronje,” *Al-Jami'ah: Journal of Islamic Studies* 52, no. 1 (June 2014): 25–58, <https://doi.org/10.14421/ajis.2014.52.1.25-58>.

marriage, divorce, reconciliation, and divorce requiring the mediation of a religious judge; the determination of divorce; dowry cases; and the wife's living expenses that the husband must fulfil.<sup>44</sup>

However, one development offered a glimmer of hope for the continued existence of Islamic legal institutions at that time. Through Staatsblad No. 610, the colonial government established the High Islamic Court (*Hof Voor Islamietische Zaken*) as an appellate body for the Religious Court. Although it cannot be separated from colonial political motives, the existence of the High Islamic Court remains historical evidence that Islamic legal institutions were formally recognized within the colonial legal structure. Interestingly, these strict restrictions were not applied evenly. In areas outside Java, Madura, and South Kalimantan, Islamic law continued to apply more broadly, with only modest restrictions. This shows how colonial policy was often selective, tailored to political interests and regional control strategies.<sup>45</sup>

Snouck Hurgronje did indeed play an important role in shaping Dutch legal policy during the colonial period. However, the role of indigenous people in how Snouck created a legal discourse that cornered Islamic law cannot be separated from his indigenous informants. Haji Hasan Mustapa, as researched by Jajang A Rohmana, who served as an indigenous informant, played a significant role, as evidenced by 18 letters sent to Snouck. The collected letters, especially letter Or. 8952, successfully describes how the indigenous people influenced Snouck's view of Islam.<sup>46</sup> This fact clearly shows that indigenous information was an important consideration in how to treat the Muslim community in the archipelago.

The analysis in this section highlights several important points related to the colonization of Islamic law, including Islamic family law. First, the colonization of Islamic law was carried out to suppress its power, which was considered a means of resistance against colonialism. Thus, colonization sought to portray Islamic law as inferior to the colonizers' positive law. Therefore, secondly, colonization was carried out through a structured mechanism involving the issuance of legal documents.

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<sup>44</sup> Rofiq, *Hukum Perdata Islam Di Indonesia*, 14–15.

<sup>45</sup> Rofiq, 15.

<sup>46</sup> Jajang A. Rohmana, *Informan Sunda Di Masa Kolonial: Surat-Surat Haji Hasan Mustapa Untuk C. Snouck Hurgronje Dalam Kurun Waktu 1894-1923* (Sleman: Octopus Publishing, 2018), 296.

## Decolonization of Indonesian Islamic Family Law: From Idea to Policy

Several essential questions require exploration in this section. After colonial rule ended, was there a widespread decolonization of Indonesian Islamic family law? What form did this decolonization take and to what extent? However, did the steps taken truly represent decolonization, or was it actually recolonization? These three questions are the starting point for the discussion in this section.

The *Staatsblad*, which the Dutch East Indies government issued several times, has harmed the Muslim community due to its limited practice. The impact was quite significant, as the Religious Court could no longer handle inheritance cases. This is because the provisions of Muslim inheritance law differ substantially from those applied in the General Court. This is where criticism began to emerge, offering new theoretical ideas that undermined the internalized theories of Islamic legal practitioners.

During the colonial period, the validity of Islamic law was recognized as long as it derived its legitimacy from customary law, thereby systematically weakening Sharia authority to serve the political interests of the Dutch East Indies government.<sup>47</sup> In the long history of the struggle for Islamic law in Indonesia, the theories of *receptie exit* and *receptio a contrario* emerged as a moral and intellectual response to the colonial legacy that placed Muslims in a subordinate position through Snouck Hurgronje's theory of *receptie*. The emergence of reception and *receptio a contrario* was not merely a theoretical controversy but an initial effort to restore the dignity of Islamic law and to restore the voice that the colonial legal structure had silenced. This is a humanistic step that warrants attention. Here, we can clearly see the struggle to reestablish the Muslim community as a legal subject with the right to determine the moral and normative orientation of its life.

Several years after Indonesia's independence, Hazairin proposed the theory of *receptie exit*. Therefore, the theory of *receptie* must be declared invalid or rejected (*exit*) because its principles contradict Pancasila and the 1945 Constitution. Here, Hazairin emphasized that God's sovereignty, mentioned first, is superior to the people's sovereignty, so that the people deliberate on the implementation of God's commands through their representatives. From this, it is clear that the application of Islamic law has an important

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<sup>47</sup> Khoiruddin Buzama, "Pemberlakuan Teori-Teori Hukum Islam di Indonesia," *Al-'Adalah* 10, no. 4 (2012): 469–70.

position and cannot be ignored. On this basis, the receptie theory applied by Snouck has been beneficial to the Muslim community in Indonesia. Therefore, Hazairin ultimately referred to the exit theory as the devil's theory.<sup>48</sup>

Sayuti Thalib then refined Hazairin's theory by formulating *receptio a contrario* as a total reversal of colonial logic. He emphasized that, for Muslims, Islamic law is the primary guide in life, while customary law is respected and enforced as long as it does not conflict with the fundamental values of Sharia.<sup>49</sup> This theory undermines the claim that customary law is completely superior. Upon closer examination, the theory of *receptio a contrario* seems similar to the theory of *al-'urf*, which intersects with the principle of *al-'adah al-muhakkamah* (custom is law).<sup>50</sup> However, it should be emphasized here that not all customs can be accepted or accommodated by Islamic law. Only customs that are relevant and do not violate the principles of Islamic law can be accepted and applied. Islamic law ultimately becomes the primary filter governing the enforcement of customary law. In essence, this theory is not merely correcting the epistemic injustice of the colonial era, but also restoring the position of Sharia as a source of ethics and social order within society. Humanistically, *receptio a contrario* recognizes that Muslim communities have moral and spiritual integrity that the legal system must respect; they are no longer seen as objects of colonial policy that must be regulated, but as human beings who are entitled to laws that are in line with their beliefs.

This push for decolonization gained momentum when the Presidential Decree of July 5, 1959, stipulated that the Jakarta Charter “informs” the 1945 Constitution, thereby restoring Islamic law to its position as an authoritative source rather than merely a moral persuasion.<sup>51</sup> With this step, the state acknowledged that Islamic law could exist within the national legal system without the reductionist mechanisms of the receptie theory. When viewed substantively, the theory of *receptio a contrario* also opens up space for the integration of Islamic law into national law as part of the identity, history, and moral aspirations of the Indonesian people. However, from a humanistic perspective, this theory does not merely erase the colonial legacy; it rebuilds a legal system that makes space for the

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<sup>48</sup> Imron Rosyadi, *Rekonstruksi Epistemologi Hukum Keluarga Islam* (Jakarta: Kencana, 2022), 26–27.

<sup>49</sup> Buzama, “Pemberlakuan Teori-Teori Hukum Islam di Indonesia,” 471.

<sup>50</sup> Hazar Kusmayanti et al., “Contradiction Implications of the Receptie a Contrario Theory in Minangkabau Inheritance,” *Justicia Islamica* 21, no. 2 (November 2024): 362, <https://doi.org/10.21154/justicia.v21i2.8859>.

<sup>51</sup> Buzama, “Pemberlakuan Teori-Teori Hukum Islam di Indonesia,” 471.

values held by the community, allowing them to live under laws that not only regulate but also glorify human life.

What are the significant impacts of the implementation of the theory of *receptio a contrario*? The authority to adjudicate Islamic inheritance disputes has been returned to the Religious Court. As stipulated in Government Regulation No. 45 of 1957, Article 4, the authority of the Court extends to the settlement of disputes in the realm of Islamic family and civil law, including marriage and divorce matters, inheritance, waqf, grants, alms, the management of *baitul mal*, and other matters. Specifically, Law No. 7 of 1989 on Religious Courts explicitly reassigns authority to adjudicate inheritance cases among Muslims. However, according to Rosyadi, the Religious Court still has not freed itself from the shackles of the *receptie* theory. This means that the paradigm of resolution in the Religious Court remains colonized. This is because the general explanation of Law Number 7 of 1989 concerning Religious Courts still gives the parties the right to choose how to resolve inheritance cases, thereby allowing Muslims to resolve conflicts in the General Court. Ultimately, this option was successfully removed through Law Number 3 of 2006 concerning Amendments to Law Number 1989 concerning Religious Courts.<sup>52</sup> Here we can see how influential the theory of *receptie* has been in Islamic legal politics in Indonesia for more than half a century in the application of Islamic law in Indonesia.

What about the codification of Indonesian Islamic law? Is codification a way of breaking away from the colonial paradigm, or is it actually the opposite? Researchers view the 1991 introduction of the KHI as part of state law, issued as a Presidential Instruction, as an attempt to incorporate the perspectives of indigenous people and local religious scholars on how Islamic law should be adopted and implemented by the state. This may be an initial movement towards decolonization. In terms of its historical origins, the KHI was not only a legal policy project of the New Order but also a response to the urgent need to provide a single set of guidelines for religious court practices. This is because, prior to 1991, religious court judges relied on various *fiqh* sources, leading to inconsistent rulings. Euis Nurlaelawati notes that the diversity of *fiqh* references led judges to be perceived as lacking practical legal tools to ensure legal consistency and certainty.<sup>53</sup> Therefore, the state encouraged unification by compiling three books of KHI on marriage, inheritance, and waqf, which were accepted

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<sup>52</sup> Rosyadi, *Rekonstruksi Epistemologi Hukum Keluarga Islam*, 26–27.

<sup>53</sup> Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), 1.

by the ulama at a workshop held on February 2-5, 1988, and were finally formalized through Presidential Instruction No. 1 of 1991.<sup>54</sup>

This process demonstrates that the KHI is not a codification that stifles diversity, but rather a bridge between the state's administrative needs and the long tradition of fiqh that endures in society. Although ratified by the state, the KHI remains the result of negotiations between legal modernization, Islamic tradition, and the social identity of Indonesian Muslims. Euis emphasizes that the KHI, although often regarded as a codification, is not formally binding because it functions primarily as a reference that shapes judges' mindsets and legal culture. In her analysis of judicial practice, Euis shows that judges often refer to the KHI to strengthen their arguments, particularly on issues not explicitly addressed in classical fiqh texts, thereby making the KHI a rational legal instrument that encourages the development of a more consistent and modern pattern of legal reasoning<sup>55</sup>

Although the KHI has been compiled and established as a legal reference, judges in Religious Courts in Indonesia still often consult fiqh books when deciding cases, even after the KHI was enacted as an official guideline. By analyzing 118 verdicts, Euis shows that references to fiqh are actually more dominant than references to the KHI, with 101 references to fiqh compared to 94 references to the KHI. Therefore, she asserts that references to fiqh books are still very dominant and that judges are very reluctant to abandon the habit of quoting fiqh books.<sup>56</sup> Even when using the KHI, judges still feel the need to add religious legitimacy by referring to classical texts so that, according to Euis, the position of fiqh texts remains difficult to replace.<sup>57</sup> Regardless of whether judges in the Religious Court consider Arabic texts to have stronger inherent legitimacy,<sup>58</sup> this step shows that fiqh is an essential source in resolving legal issues.

The above description indicates that efforts to decolonize Islamic family law departed from theoretical ideas, which were then addressed through government policies. The role of the government appears to be significant in maintaining Islamic law so that it remains in the context of national law, rejecting efforts to dismantle Islamic law, which is a legacy of colonialism. However, an important question arises: if decolonization is an effort

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<sup>54</sup> Nurlaelawati, 271–72.

<sup>55</sup> Nurlaelawati, 1.

<sup>56</sup> Nurlaelawati, 139.

<sup>57</sup> Nurlaelawati, 25.

<sup>58</sup> Nurlaelawati, 222–23.

to break away from the colonialist perspective, isn't the codification of law a colonial legacy? Isn't the standardization of law a form of colonial legacy that facilitates control over society? If so, can the KHI be called a form of colonization? This question is answered through the character of the thinking of Wael B Hallaq and Khaled Abu Fadhl.

At this point, Muzakkir's analysis of Hallaq and Fadhl's thinking warrants elaboration. Hallaq has a more extreme interpretation of decolonization. He believes that Muslims' efforts to reform Islamic law today will only fail and that the only way to preserve Islamic law is by creating an era that replaces the modern era. This differs from El Fadl, who argues that Islamic law can still evolve and will not fail completely, as Hallaq contends.<sup>59</sup> In another discussion, Hallaq rejects modern fiqh outright, whereas El Fadl takes the opposite view, arguing that some aspects of fiqh can be modified while others cannot.<sup>60</sup>

From this perspective, Muzakkir more concretely distinguishes the characteristics of Hallaq's and Fadhl's thinking in three respects, particularly with respect to reform. First, while Hallaq considers reform Eurocentric and a project of colonial modernity, El Fadl regards reform as natural, as change is inherent to the legal tradition. Second, Hallaq explicitly states that reform replaces traditional legal elements with new structures. In contrast, Fadhl holds that reform that neither destroys nor ignores the Islamic intellectual tradition is not problematic, whereas liberal reform is clearly problematic. Third, Hallaq openly rejects the role of Muslim reformists because they are considered uncritical of modernity. At the same time, Fadhl appreciates their contributions and recognizes their potential to creatively negotiate which parts of Islamic law may be changed and which cannot.<sup>61</sup>

Based on Muzakkir's notes, the researcher stands with El Fadl's point of view. This choice is considered more relevant to efforts to modernize and reform Indonesian Islamic family law. Why is that? Based on the researcher's analysis, the codification of Indonesian Islamic law, along with other modernizations or reforms of Islamic family law represented by the KHI, provides numerous legal guarantees and protections for the Muslim community in Indonesia. Here, bringing Islamic law closer to the authorities does not necessarily have a negative connotation. However, this method is considered a strategic means of protecting the rights of vulnerable groups. For example, in protecting the rights of wives married in

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<sup>59</sup> Muzakkir, *Studi Islam Dan Masyarakat Muslim Kontemporer: Dari Neo-Tradisional, Liberal, Sampai Dekolonial*, 151.

<sup>60</sup> Muzakkir, 174–75.

<sup>61</sup> Muzakkir, 183.

secret, which are often ignored by their husbands, the state can provide legal safeguards through various instruments.<sup>62</sup>

At this point, however, it must be acknowledged that codification is indeed a colonial legacy. Interestingly, codification in the Indonesian context has actually been used to revive and strengthen the position of Islamic law, rather than to weaken it. It is true that codification raises certain problems, particularly the idea of legal uniformity, whereas previously, communities could choose the legal opinions that were most convenient or beneficial to them.<sup>63</sup> Moreover, legal codification is often closely tied to state political interests,<sup>64</sup> which can sometimes lead people to move farther away from applying Islamic law to resolve the cases they face. Nevertheless, what needs to be emphasized is that legal codification, such as the KHI, should be understood as an effort to position Islamic law as a legitimate legal reference recognized by the state to respond modernity,<sup>65</sup> while also providing clearer legal certainty and protection for women and children—who have often been disadvantaged due to arbitrary legal choices in case resolution. Thus, the decolonization of Islamic family law in Indonesia can be seen as following the path proposed by El Fadl, who does not view the colonial legacy as entirely negative, while at the same time presenting the state as actively protecting the Muslim community. Thus, in the analysis, decolonization efforts appear as accommodative decolonization.

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<sup>62</sup> Rusdi Rizki Lubis et al., “Towards Legal Justice: Expanding Criteria for Obligatory Bequests in Unregistered Wives in Polygamous Marriages,” *Al-Ahkam* 35, no. 1 (2025): 117–46, <https://doi.org/10.21580/ahkam.2025.35.1.25358>; Rusdi Rizki Lubis et al., “Reconstruction of Obligatory Bequest in the Perspective of the Objectives of Islamic Law: Contextualizing Islamic Law in a Case Study of The Secret Wife in Polygamous Marriage,” *Jurnal Ilmiah Mizani* 12, no. 1 (2025): 64–85, <https://doi.org/10.29300/mzn.v12i1.3809>; Novita Dewi Masyithoh et al., “Unregistered Polygamous Marriage of Civil Servants and Its Implication for Wives’ Financial Problem, Social Fate and Loss of Children’s Welfare,” *International Journal of Early Childhood Special Education* 13, no. 2 (2021): 312–18, <https://doi.org/10.9756/INT-JECSE/V13I2.211067>.

<sup>63</sup> see Nahda Shehada, “Flexibility versus Rigidity in the Practice of Islamic Family Law,” *Political and Legal Anthropology Review* 32, no. 1 (2009): 28–46, <https://doi.org/10.1111/j.1555-2934.2009.01022.x>.

<sup>64</sup> See Ahmad Imam Mawardi and A. Kemal Riza, “WHY DID KOMPILASI HUKUM ISLAM SUCCEED WHILE ITS COUNTER LEGAL DRAFT FAILED? A Political Context and Legal Arguments of the Codification of Islamic Law for Religious Courts in Indonesia,” *JOURNAL OF INDONESIAN ISLAM* 13, no. 2 (December 2019): 421–53, <https://doi.org/10.15642/JIIS.2019.13.2.421-453>.

<sup>65</sup> Ahmad Zayyadi et al., “Understanding of Legal Reform on Sociology of Islamic Law: Its Relevance to Islamic Family Law in Indonesia,” *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 2 (2023): 249–62, <https://doi.org/10.24090/mnh.v17i2.7584>.

## The Continuity of Decolonization of Indonesian Islamic Family Law Post-Reformation

In the context of law, efforts at decolonization in Muslim countries appear difficult to implement. This can be seen, for example, in the context of Algeria, where family and property laws were engineered to facilitate colonial domination. Gozzi notes that the Islamic legal system in Algeria was essentially engineered by France and used as a tool to maintain inequality between the Muslim population and French citizens. In the context of property, for example, waqf was dismantled by decrees issued in 1844 and 1858 to enable the transfer of Muslim land to European settlers.<sup>66</sup> Moreover, the codification of colonial versions of Islamic law, such as the 1916 Morand project, further produced family laws that continued to influence Algeria after independence, demonstrating how deeply colonial traces are embedded in the modern laws of Muslim countries.<sup>67</sup> This colonial legacy shaped the trajectory of postcolonial Muslim countries, including their understanding of legal modernization. The Algerianization process after independence was not entirely free of colonial legal patterns, as the new state inherited French administrative logic and legal structures.<sup>68</sup> In fact, even Muslim nationalism could never escape colonialism because postcolonial states were built within a framework designed by colonialism.<sup>69</sup>

Other Muslim countries experienced similar situations. Since Muslim countries were established, coloniality has continued through the internalization of Western legal values by the national elite. Wang notes that Turkey, under Atatürk, abolished the caliphate, closed Sharia courts, and adopted the Swiss Civil Code. In contrast, Egypt and Tunisia imitated the French and Italian models of legislation to the extent that Sharia covers only family law.<sup>70</sup> At this point, the coloniality of knowledge phase occurred, whereby Muslim elites considered modernity achievable only through the imitation of Western law, ultimately transforming the legal structure of the state into an arena of self-colonization, where Muslim rulers inherited the colonial logic that positioned Sharia as a traditional entity and a potential obstacle to progress. If so, colonialism did not end with the colonial period; it continues to shape the

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<sup>66</sup> Nacer-Eddine Ghozali, “The Inadequacies of the Algerian Political System—or the Impossibility of a Democratic Transition,” in *The Islamic World and the Mediterranean*, 1st ed., by Gustavo Gozzi (London: Routledge, 2024), 54, <https://doi.org/10.4324/9781003431206-8>.

<sup>67</sup> Ghozali, 55.

<sup>68</sup> Ghozali, 62.

<sup>69</sup> Ghozali, 63.

<sup>70</sup> Wang Yongbao, “The Impact of Colonialism and Nationalism on the Marginalization of Islamic Law in the Muslim World,” *Malaysian Journal of Syariah and Law* 12, no. 2 (August 2024): 375–87, <https://doi.org/10.33102/mjssl.vol12no2.653>.

legal structures of modern Muslim states, influencing how they understand, regulate, and negotiate the position of Islamic law within the national legal order. What Saleymah said, that the term Islamic law is a colonial knowledge construct, because in Islam only the terms al-fiqh al-Islamiy and shari'ah are known, is relevant here.<sup>71</sup>

In the context of Indonesian Islamic family law, can decolonization be revived through state policy? Although Indonesia is not an Islamic state, the state has issued various policies related to Islamic family law. This demonstrates that the state continues to ensure the supremacy of Islamic law, which cannot be overridden by other laws, in resolving Islamic family law cases. Islamic family law continues to be shaped by the state in accordance with the legal protection needs of the Muslim community. The following are examples of state policies regulating the marriages of Muslim communities in Indonesia. These policies have succeeded in creating a new configuration or face of Indonesian Islamic family law with a spirit that is more favorable to women and children. This condition further strengthens the position of Islamic family law within the state. This is very different from colonial rules, which were only intended to control society, not to protect Muslim communities.

The Supreme Court, through the Religious Chamber, has issued numerous Supreme Court Circular Letters (SEMA) from 2012 to 2022 as guidelines for judges in the Religious Court in their practice. These SEMAs are considered important instruments for reorganizing the practice of Islamic marriage law to make it more uniform and controlled. One crucial example is the amendment to SEMA No. 3 of 2015 (Religious Chamber Formulation No. 8), which was later refined in a subsequent formulation, providing access to marriage validation for Indonesian citizens who were married abroad but did not register with the Indonesian Embassy, or who registered late after returning to Indonesia. This formulation practically shifts the issue of marriage from a purely “formal administrative” matter to one of protecting the constitutional rights of Muslim families, with the Religious Court as the central institution authorized to validate the legality of such marriages. Amendments to SEMA No. 2 of 2019. The formulation of the Religious Chamber in point 1, letter e, states that requests for annulment of marriage after the marriage has ended due to death must be declared inadmissible, unless there is evidence of bad faith from the outset. In addition, SEMA directs judges to exercise greater caution in divorce cases, including when assessing

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<sup>71</sup> Lena Salaymeh, “Decolonial Translation: Destabilizing Coloniality in Secular Translations of Islamic Law,” *Journal of Islamic Ethics* 5, nos. 1–2 (March 2021): 250–77, <https://doi.org/10.1163/24685542-12340054>.

formal claims that could harm one party. These formulations not only limit the scope for legal manipulation but also strengthen the ethical dimension of marriage, which, in many respects, aligns with the principle of *maslahah* in Islamic legal tradition.

The Ministry of Religious Affairs has also issued several key policies to regulate the administration and registration of Muslim marriages. These regulations can take the form of Minister of Religious Affairs Regulations (PMA), Minister of Religious Affairs Decrees (KMA), and Circular Letters from the Directorate General of Islamic Community Guidance (SE Dirjen Bimas Islam). PMA is more general and normative, serving to implement laws and government regulations in the religious field. KMA is primarily a stipulation that determines matters of an operational or administrative nature. SE is internal, instructional, or technical in nature. For example, the Minister of Religious Affairs Regulation Number 30 of 2024 provides technical guidelines for marriage registration while still adhering to the KHI and other Islamic legal rules used as guidelines for marriage registration. There is also SE Number P-005/DJ.III/Hk.00.7/10/2021, which regulates the postponement of a husband's remarriage during his wife's *iddah* period in the event of a *talak raj'iy*.<sup>72</sup> In essence, the state's reform of Islamic law does not abandon *fiqh*. In other words, *fiqh* remains the primary norm in lawmaking while also accounting for flexibility and benefit.

The above policy, which originated at the state level, can be regarded as a form of accommodative decolonization. This refers to El Fadl's argument, which does not reject the reform of Islamic law. The above policy is not a move to corner Islamic law, but to bring back a more accommodative and responsive face of Islamic law towards the protection of vulnerable groups, especially women and children. In this position, the author affirms Muzakkir's argument that some Islamic *turath* legacies are unproductive. In this way, Muzakkir emphasizes that it is inappropriate to position *turath* as a perfect historical legacy ready to be used to heal modern wounds.<sup>73</sup> What Muzakkir expresses clearly supports the steps of Islamic legal reform, as has happened in Indonesia, where it is also part of decolonization.

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<sup>72</sup> See Sam'un Sam'un and Mukhammad Nur Hadi, "Husband's 'Iddah in Indonesian Islamic Law Context: Insights from the Fatwa Approach of the Indonesian Women's Ulema Congress," *Al-Hukama': The Indonesian Journal of Islamic Family Law* 13, no. 2 (December 2023): 2, <https://doi.org/10.15642/alhukama.2023.13.2.297-323>.

<sup>73</sup> Muzakkir, *Dekolonisasi: Metodologi Kritis Dalam Studi Humaniora Dan Studi Islam*, 11.

The question that then arises is whether the continuation of decolonization leaves problems behind. The answer is yes in complex factual cases. This happens, for example, when there is a secret polygamous marriage, whereas currently the Religious Court is no longer allowed to grant requests for the legalization of secret polygamy. This becomes problematic when the man refuses to divorce his second wife, whom he married unofficially, while the wife seeks to escape a relationship that cannot protect her and her children, as in the case of Inara Rusli.<sup>74</sup> Similarly, proving a marriage based solely on formal evidence can also be problematic. Cases of unregistered remarriage, where the husband has entered into a legal marriage without the knowledge of his former wife, become complicated when dealing with Islamic family law in Indonesia. In this case, formal evidence is indeed strong, but the judge's interpretation, which takes into account the force of traditional law, can override it to guarantee legal protection for women and children, as happened in the Bima Religious Court.<sup>75</sup> In these two cases, the judge's courage in exercising *ijtihad* became urgent in order to go beyond the letter of the law.<sup>76</sup> Thus, even though the decolonization of Islamic law seeks to bring its power to bear in regulating society, in some respects, it still encounters problems that must be resolved through more progressive legal reforms that favor women.

The decolonization of Islamic family law in Indonesia can also be understood through Hallaq's firm rejection of transforming classical *fiqh* into a modernized version of *fiqh*. From this perspective, decolonization seeks to restore Islamic law to a form that remains untouched by the forces of modernization. In that sense, such an effort may lean toward a more conservative vision of family law, as it prioritizes preserving established *fiqh* traditions rather than reshaping them. Within this framework, the argument that reviving Islamic law is only possible by first uncovering the colonial and nationalist foundations that have "weakened the function of sharia in all aspects of life," and then rebuilding its authority

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<sup>74</sup> See Muhammad Ahsan Nurrijal, "Awal Mula Inara Rusli Nikahi Siri Insanul Fahmi gegara Tertipu Status Single," *detikjogja*, accessed February 21, 2026, <https://www.detik.com/jogja/berita/d-8233744/awal-mula-inara-rusli-nikahi-siri-insanul-fahmi-gegara-tertipu-status-single>.

<sup>75</sup> Muhamad Isna Wahyudi and Inayah Rohmaniyah, "Interpretasi Berkeadilan Dan Local Wisdom Dalam Kasus Pembatalan Nikah: Dilema Kasus Rujuk Bawah Tangan Di Bima," in *Nilai-Nilai Budaya Dan Keadilan Bagi Perempuan Di Pengadilan Agama Indonesia: Praktik Terbaik*, ed. Livia Holden and Euis Nurlaelawati (Yogyakarta: SUKA-Press in cooperation with Pusat Pengarusutamaan Gender dan Hak Anak (PPGHA/PSW) UIN Sunan Kalijaga and GCRF – Oxford University, 2019), 93–118.

<sup>76</sup> See Suci Ramadhan and J. M. Muslimin, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *Juris: Jurnal Ilmiah Syariah* 21, no. 1 (2022): 89–100, <https://doi.org/10.31958/juris.v21i1.5723>.

within a body of knowledge liberated from colonial influence, becomes a key lens for understanding this particular model of decolonization.<sup>77</sup>

Building on the previous argument, this position maintains that arguments rejecting the modernization of Islamic family law in Indonesia—and instead upholding classical *fiqh* as the authoritative doctrine to be applied—can be understood as forms of decolonization. Such a stance is not only an effort to resist the influence of modernity within *fiqh*, but also a way of reaffirming the perspective of Indonesia's indigenous Muslim communities, who have long relied on *fiqh* as their primary reference in resolving legal matters. In this context, the outcomes of *Bahtsul Masail* forums—regular scholarly deliberations on Islamic legal issues held by Islamic boarding schools and administrators of Nahdlatul Ulama—may be interpreted as part of this decolonizing process in Indonesian Islamic family law. Fundamentally, the issuance of a *fatwa* serves as a mechanism for decolonizing Islamic family law.

One example of an important issue addressed in a decolonial spirit is divorce outside the court. Administratively, divorce among Muslims in Indonesia must be carried out in court to obtain legal certainty. This rule, within El Fadl's paradigm, which does not reject renewal, reflects an accommodative form of decolonization. However, the majority disagree with this model because it is inconsistent with *fiqh* and significantly affects the calculation of the *iddah* period, thereby illustrating their attitude towards the modernization of Islamic family law. This is evident in the decision of the Bahstul Masail Nahdlatul Ulama North Jakarta Institute, which explicitly rejects the requirement that divorce be conducted before a judge, as stipulated in the KHI, because the *fiqh* of the four madhhabs does not require divorce to be conducted before a court.<sup>78</sup>

Efforts to decolonize Islamic family law in Indonesia using the Hallaq school of thought have been practical through the formulation of Islamic laws from discussions or meetings of scholars through fatwa institutions of several Islamic organizations, such as Nahdlatul Ulama through Bahtsul Masail, Muhammadiyah through the Muhammadiyah Tarjih Council, Persis through fatwa institutions, the Indonesian Ulema Council, and so on.

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<sup>77</sup> Yongbao, "The Impact of Colonialism and Nationalism on the Marginalization of Islamic Law in the Muslim World," 383.

<sup>78</sup> "Putusan LBMNU Jakut soal Cerai Talak dalam Kompilasi Hukum Islam," NU Online, accessed November 25, 2025, <https://jakarta.nu.or.id/bahtsul-masail/putusan-lbmnu-jakut-soal-cerai-talak-dalam-kompilasi-hukum-islam-69KOK>.

The products of Islamic legal thought that emerged from major Islamic boarding schools in Indonesia, such as Lirboyo, Ploso, Sidogiri, and others, have provided a range of options. This means they are moving in a decolonial context, in the sense of rejecting the singularity or codification of laws that are reductive and fail to reflect the flexible and dynamic nature of *fiqh*.

Considering this fact, this condition cannot deny that through them, the indigenous Muslim perspective in discussing Islamic legal issues is very strong. This diversity of perspectives is clearly part of the decolonial movement, which opposes a form of unification considered not to represent *fiqh* relevant to the needs of the Indonesian Muslim community. However, we cannot deny that specific characteristics of their fatwas support the reform of Indonesian Islamic family law. This can be seen, for example, in the fatwa declaring siri marriages haram issued by Nahdlatul Ulama<sup>79</sup> and Muhammadiyah,<sup>80</sup> which is referred to as a *ta'yidiy* fatwa because it reinforces state policy or supports the reform of Islamic family law for the public good.<sup>81</sup>

This explanation shows that the decolonization of Islamic family law in Indonesia is still unfolding in two main forms: first, through policies issued by the government—whether by the Supreme Court or the Ministry of Religious Affairs—and second, through fatwas produced by various Islamic organizations and pesantren-based fatwa bodies. The first form illustrates an effort to strengthen *fiqh* norms within state law, even if that requires modifying them. This approach serves to gradually shift away from colonial legal legacies that have long been firmly embedded in the resolution of family law cases. The second form shows that *fiqh* continues to play a dominant role in addressing legal issues not widely regulated by state policy, while also functioning as a form of critique of the state's version of Islamic law.

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<sup>79</sup> “Bahtsul Masa’il NU Sumbar: Nikah Sirri Haram,” NU Online, accessed December 20, 2025, <https://nu.or.id/nasional/bahtsul-masa039il-nu-sumbar-nikah-sirri-haram-PpaWW>.

<sup>80</sup> “Hukum Nikah Sirri,” *MTT*, n.d., accessed December 20, 2025, <https://tarjih.or.id/hukum-nikah-sirri/>.

<sup>81</sup> Asrorun Niam Sholeh, *Menghidupkan Fatwa: Dinamisasi Fatwa Untuk Kemaslabatan Bangsa* (Jakarta: Sekretariat Komisi Fatwa, 2024), 22.

## CONCLUSION

The decolonization of Indonesian Islamic family law takes two forms. First, it adopts an accommodative approach, evident in the state's reform of Islamic family law, which continues to treat fiqh norms as guidelines, in line with El Fadl's argument for the decolonization of Islamic law. Second, it appears in the form of legal fatwas issued by various Islamic community organizations that are accommodating or maintain traditional Islamic legal doctrines, reflecting the application of El Fadl and Hallaq's ideas of Islamic legal decolonization. At this point, the author argues that efforts to decolonize Islamic family law have succeeded in establishing Islamic law as the primary reference for its development. This effort continues through the state's role as a policymaker and the ulama's role as guardians of the Islamic legal tradition. However, by tracing the development of Islamic family law in Indonesia, the state has played a significant role in shaping public policy, promoting norms that decolonize Islamic family law and continue to advocate for legal protections for vulnerable groups. At this point, the article offers a fairly holistic picture of efforts to decolonize Islamic family law in Indonesia. It clearly shows that decolonization has been underway for a long time, even though it has often been framed as legal reform. However, this study does not explore in depth how fatwas in Indonesia function as forms of decolonization within Islamic family law. For that reason, this topic remains open and could be examined more thoroughly in future research.

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