THE EPISTEMOLOGY OF ISLAM NUSANTARA JURISPRUDENCE AND ITS CONTRIBUTION IN FAMILY LAW REFORM IN INDONESIA

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ABSTRACT

The term Islam Nusantara has sparked and caused polemics, pros, and cons that are quite warm in Indonesia since 2015 until now. As happened in the West Sumatra MUI environment. Islam Nusantara is interpreted as a religious pattern that exists in the archipelago, both at the level of religious practice and how to preach it. The level of *amaliyah* is interpreted as religious behavior that exists in the archipelago, especially in relation to *fiqh* which originates from its religious understanding. The problem is: What is the source of knowledge used in formulating Islamic *fiqh* in Nusantara? What is the validity and method of understanding the sources of knowledge used in formulating Islamic jurisprudence in Nusantara? How is the contribution of Islam Nusantara jurisprudence in reforming family law in Indonesia? This study aims to find answers to the epistemological formulation of Islamic jurisprudence in the archipelago and its contribution to reforming family law in Indonesia. To answer the questions above, the author uses qualitative research methods, types of literature research, the theory of *ijtihad* with the *ushul fiqh* approach. This means that the study of the concept of Islam Nusantara is carried out using the framework of *ushul fiqh* knowledge, especially regarding the concept of *ijtihad*. At the level of research work, the stretching of thinking to produce *fiqh* concepts that are unique to the archipelago is seen as part of *ijtihad* activities. The findings of the research are: (a) The source of knowledge used in formulating Islamic jurisprudence in the archipelago is a source of knowledge commonly known in the study of *fiqh* and *ushul fiqh*, both the *mujma 'alaih* and the *mukhtalaf fih*, (b) the source of knowledge as said to be valid. By giving a large enough portion to *'urf,* and a benefit-oriented understanding, (c) Islam Nusantara's *fiqh* can be used as an alternative law in the context of reforming family law in Indonesia.

Keywords: *Islam Nusantara, Jurisprudence, Epistemology, Legal Reform*

A. INTRODUCTION

The term Islam Nusantara has triggered and caused polemics, pros, and cons which are quite warm. For pro groups, in this case, driven by the Nahdlatul Ulama (NU) mass organization, Islam Nusantara is interpreted as a religious pattern that exists in the archipelago,

both at the level of religious practice and how to preach it. As far as possible, his religious practice should be harmonized with existing traditions and culture, as well as the way to preach it. Culture, preaching, and traditions carried out by the ulama of the archipelago have been carried out since the 14th century. Some spiritual values (Sufism) have been taught by the Walisongo. With a cultural approach, it was easy for the Javanese people at that time to convert to Islam in droves (Hatmansyah, 2017; Sultoni, 2016; Suparjo, 2008). Not only in local traditions and culture that are characteristic of Islam Nusantara, on the other hand, in the scientific treasures and contributions of the works of archipelago scholars, they also give local colors from the past to the present (Abubakar, 2017). This confirms that in the Islamic literature, culture, da'wah, and traditions carried out by the scholars do not leave primary sources of reference and at the same time guidelines for Muslims, namely the al-Qur'an and Hadith (Istiani et al., 2020; Marfu'ah, 2018). It's just that, in the process of grounding these texts and Islamic teachings in the archipelago by using traditional and cultural approaches. Not only that, even some of his preaching uses art. Such as music, puppets and several songs and poems containing the contents of the al-Qur'an and Hadith (Arifani, 2010; Fitriani, 2011; Sakdullah, 2014). In this case, the religious and cultural relations in Islam Nusantara complement and complement each other, not mutually reject and negate (Sahal & Aziz, 2015).

Meanwhile, the contra group thinks that Islam Nusantara is perceived as an Islam that carries a racial spirit, because it raises a regional theme, and is confronted with Islam in Arabic. As a result, Muslims are increasingly fragmented in terms of territory and tend to primordial fanaticism. Furthermore, Islam Nusantara is considered a new stream that is different from real Islam and therefore is considered heretical and misleading. There is also an assumption that Islam Nusantara is an 'ordered sect' that carries the idea of liberalism and is friends with Zionism (Sahal & Aziz, 2015). According to them, Islam Nusantara is considered as new packaging for the idea of the Liberalist group, where the concept that is carried in it is the same as what the liberalists have conceptualized so far.

In fact, the rejection of Islam Nusantara, apart from being a personal opinion, also came from a religious institution, namely the West Sumatra MUI. According to the West Sumatra MUI, the use of the term Islam Nusantara is considered to be of no benefit at all and tends to distort the glory of Islam itself. As a result, Muslims are faced with something that is confusing and confusing. The ideal, according to them, is Islam, without the term Nusantara (Abdurahman, 2018). This kind of assumption is more visible as a one-sided assumption and tends to be ahistorical because it ignores facts in the form of *fiqh* that has existed and been practiced in the archipelago (Harisuddin, 2018).

Islam Nusantara is thus a distinctly Indonesian-style Islam, in which there is a combination of Islamic values that are theological in nature, with local traditional values in the form of culture and customs that exist in Indonesia (Bizawie, 2015). Its existence is manifested in the variety of Indonesian Muslim practices, both at the level of belief and legal activity.

The ideas and thoughts regarding the Islam Nusantara model have become the attention and concern of several figures in Indonesia, for example, Gus Dur with the term indigenous Islam. Gus Dur emphasized that indigenous Islam carries the concept of thinking that revelation should be understood by involving contextual factors, including awareness of law

and justice (Mahmudah, 2016). At this point, Gus Dur emphasized the concept of reconciliation between religion and culture, with complementary patterns of relations. Religion as teaching that comes from belief, is understood by seeing actual conditions as the reality of life.

In fact, there are many writings that make Islam Nusantara and its *fiqh* a topic of study. Muhammad Rafi'i's book entitled Islam Nusantara Perspective Abdurrahman Wahid, Thought and Epistemology. According to him, the emergence of Islam Nusantara is not something sudden, but he has been present in discourse discussions long before this term became popular. One of the triggers is Gus Dur's idea of indigenous Islam (Mahmudah, 2016). The book Nalar Islam Nusantara by M. Mukhsin Jamil., Et al. In their study, the researchers used the Islamic Nusantara indicator in the form of religious organizations in Indonesia. There are four mass organizations studied: Muhammadiyyah, Persis, Al-Irsyad and Nahdlatul Ulama (NU). This book describes the profiles of each mass organization, and the scope of their Islamic studies, including the method of legal *istimbath*. The Islamic studies that were discussed were also broad, not only on the topic of Islamic law alone (Jamil, 2008).

Ahmad Baso's writing entitled Islam Nusantara. The relation of Islamic law is also discussed in this book, but the study is limited to 'preliminary reading' which looks at the relationship between religion and culture in giving birth to the conception of Islamic law in the archipelago (Baso, 2015). Ayang Utriza Yakin's book, entitled The History of Islamic Law of the Archipelago in the XIV-XIX century M. Ayang concluded that there had been quite an intense struggle between Islamic law and customary law as stipulated in several statutory regulations in the kingdom of the archipelago (Yakin, 2016).

The book *Fiqh* Nusantara, Pancasila and the National Law System in Indonesia. This book explores Islam Nusantara with the main topic of its fiqh. M. Noor Harisudin, author of this book, describes the Islamic *fiqh* of the archipelago by explaining the struggle between *fiqh* and existing traditions and life in the archipelago. The initiators of Nusantara jurisprudence, used a dialectical approach in marrying Islamic law and Nusantara culture with the result of the Marriage Law, KHI, and other recent laws (Harisudin, 2019).

The object of discussion as written in the above works, according to the author, is that no one has specifically and deeply studied Islam Nusantara regarding the concept of *fiqh* as a whole. Harisudin's book can be said to be the most focused writing on the theme of Nusantara *fiqh*. However, the book does not yet show a chronological portrait of the birth of the Archipelago *Fiqh*. This is important to emphasize that Nusantara *fiqh* is actually a locality of *fiqh*, having a real example in the context of Islamic law legislation in the classical period. It is urgent to put forward area-based *ijtihad* as a manifestation of the dynamic character of *fiqh* (Alamsyah, 2020). Moreover, there is also no study that reveals the epistemological side of the Islam Nusantara jurisprudence. In fact, the study of *fiqh* and its epistemology is very important, because it relates to the validity of the source of religious knowledge which is the basis of *amaliyyah* in the archipelago. This is the specificity of the object of study in this study.

B. METHOD

To answer the questions above, the author uses qualitative research methods, types of literature research, the theory of *ijtihad* with the *ushul fiqh* approach. This means that the study of the concept of Islam Nusantara is carried out using the framework of *ushul fiqh* knowledge, especially regarding the concept of *ijtihad*. At the level of research work, the stretching of thinking to produce *fiqh* concepts that are unique to the archipelago is seen as part of *ijtihad* activities.

C. DISCUSSION
I. Of Islam Nusantara Jurisprudence in the Framework of *Tasyri'*
a. Geographical *Fiqh* in *Tasyri* Date'

Geographical *fiqh* is a form of *fiqh* that is generated by looking at and considering the real conditions that exist in one area, then these conditions will become part of legal considerations and stipulations. Therefore, this *fiqh* is a form of the dynamics of *ijtihad* (Mustofa, 2015).

Conceptually, *ijtihad* itself is actually something that is necessary in order to respond to existing and developing religious problems. Its existence, allegedly has existed and been carried out since the prophetic period by the Prophet Muhammad Saw. When the Prophet was still alive, all legal issues were resolved brilliantly without making any significant difference. This is because the Prophet served as the only reference for any existing problems. As a single reference, the Prophet was able to provide the best solution and was accepted by all circles. The Prophet himself, when faced with various problems, often carried out *ijtihad* (Bek, tt.). The *Ijtihad* he did - although it is reported that he had been wrong several times, it was confirmed to be true, because it was immediately corrected and guided by revelations. So, practically this leads to the nuance of a harmonious legal unity. Although several seeds of *ijtihad* emerged among friends, the end result was still 'consulted' with the Prophet, so that when the *ijtihad* was not right, it would immediately receive correction and be replaced with the appropriate one (Mukhtar, 1995).

After the Prophet died, there was no longer a single authority in legal matters. Every friend has the same position in the legislative process, of course, taking into account the natural capabilities of each (Mubarok, 2000). On the other hand, the Islamic region has penetrated a wider area with various traditions in it. This has resulted in the increasing complexity of existing legal issues. As a result, this fact forces friends to make efforts to make use of ijtihad in order to find legal solutions to the problems at hand (Bek, tt.; Mukhtar, 1995).

In this position, the friends then issued a legal fatwa in response to the problems at hand. This fatwa is a personal fatwa that is produced as an accumulation of Islamic cognition from friends who 'dialogue' with the reality of the life in which they are located. The direct contact between law and social reality carries a distinctive nuance. This means that when legal norms collaborate with the traditions of one area, they will produce a different color from the law in other regions when the style of the traditions is different. These two things lead to the emergence of a 'different' legal style between one friend and another (Zuhri, 1996).

This pattern of diversity of opinion was also inherited by the tabi'in, the post-friend generation. *Tabi'in*, who were direct students of friends, inherited the mindset of their respective teachers, so that when the teacher was different from other teachers, the different shades also colored the students (Mazkur, tt.). In the *tabi'in* era, the diversity of opinions of the scholars began to converge with the name of the area as its affiliation. The tendency of thinking between one group and another, is represented by the name of the area where the group is located. In this position, several names of regions and their mentor figures emerge with a distinctive legal style that differentiates them from other regions (Azizi, 2004).

On the next trip, the affiliation of the mazhab based on this region then crystallized and changed to using individual names, namely the most popular people in the area. The Hijaz mazhab then narrowed and changed to the name Imam Malik as the most authoritative scholar in the Hijaz. The Iraqi mazhab of thought then changed to use the name of the most popular ulama ', namely Imam Abu Hanifah. Likewise in other areas, big names appeared as references to mazhab of thought, including al-Awza'i in Syria, ash-Shafi'i, and also Ahmad Ibn Hanbal, as-Sauri, at-Tabari, and also az-Zahiri (Azizi, 2004). From this, it can be seen that there is a change in the pattern of penance for the mazhab from being originally regional in nature, and that means it is a form of a collectivity of the ulama'-ulama' in that area, to become penance under individual names. The latter 'seems to' reduce other scholars' when a region is only' represented 'by the name of an ulama'.

This happens because there is no binding provision that the students and followers of an Imam of a mazhab of thought must accept the overall opinion of the existing mazhab. There is the freedom that is owned by every individual to bring forth the law, even though in its *grand design it* still 'takes refuge' in a particular mazhab of thought.

On the other hand, the format of the mazhab itself is actually more natural (Azizi, 2004). That is, the emergence of the existing mazhabs of thought was more of a natural process and historical necessity, rather than as a standard design. This is because, according to Anwar Harjono, the Imams of the mazhab do not intend to form their opinion as an established sect and are followed by many people. What happened then was a natural process in which the opinion of the *mujtahid* received a 'warm welcome' which was then followed and formed a community in the form of a mazhab (Harjono, 1968). This is the initial phase of the development of Islamic law which is manifested in the framework of legal mazhabs (Sirry, 1996).

The description above shows how the law was very dynamic in the early era until at least the 3rd-century Hijriah. This of course at the same time illustrates the existence of a complete awareness among the *mujtahid* that social change has a direct impact on legal change, both in the form of reform and development (L. Nasution, 2001).

However, after the codification of the law within the framework of the mazhab of thought, there was tremendous stagnation, in which *mujtahid* ulama were considered 'not born' anymore. In fact, many slogans say that the door to *ijtihad* has been closed (Anderson, 1976; Az-Zarwi, 1993). There are no longer people who have the right and license to do *ijtihad* because the conditions set are very heavy. In fact, social reality shows how the dynamics of life with all its sociological aspects continues to develop, which thus always requires renewal of

thought in its legal concept (Sisworo, 1983). Especially when Islam has touched many new areas with all the cultures that exist in it, the need for *ijtihad* is a must.

b. Islam Nusantara *Fiqh* as Geographical *Fiqh*

In the context of Islam Nusantara, the spirit of *ijtihad* has been captured and has inspired a number of archipelago figures to make concrete efforts in the context of actualizing Islamic law in the archipelago. The birth of the terms Indonesian Jurisprudence, National Mazhab of Law, Jurisprudence, Reactualization of Islamic Teachings, Religion of Justice, Indigenousization of Islamic and Social Jurisprudence, is a concrete manifestation of the thoughts of Nusantara figures in the movement of the intended *ijtihad* (Sahal & Aziz, 2015).

In addition, there is also the development of *ijtihad* in the archipelago which is collective through social organizations (ormas). There are at least four mass organizations that have significantly contributed to pioneering the birth of Islamic civilization in the archipelago, namely NU, Muhammadiyyah, Al-Irsyad and Persis (Jamil, 2008). These mass organizations have a distinctive style of thought as a result of their dialectic concept of *ijtihad* with the realities of society in the archipelago. Each has a legal product as a reference for its members, even though it is not binding (Jamil, 2008).

MUI as a semi-government Ulama organization, also represents religious patterns in the context of responding to the problems of Muslims. In fact, its existence is a religious institution that has national authority. In this position, MUI has also produced a number of fatwas related to religious life in Indonesia. These fatwas, although they also do not have legal binding power, serve as minimal references to the Government. Structurally, there is also a commission that specifically oversees fatwa issues called the Fatwa Commission (Hooker, 2002).

In the context of the state, the Government has also produced regulations related to religious provisions concerning Islamic civil laws, both material law and formal law, especially with regard to marriage law. The legal product is in the form of law. Compared to a fatwa, the legitimacy of the law is certainly stronger. It has legal binding power and legal consequences. According to Amir Syarifuddin, the marriage law in the context of this kind of discussion is all the rules related to marriage in Indonesia that can be used as guidance by Muslims, as well as guidelines for judges in the judiciary. The real form of this product, among others, is Law no. I of 1974 and the Compilation of Islamic Law (KHI) (Syarifuddin, 2006).

Thought within the scope of Islam Nusantara, whether done individually, through collectivity in a mass organization, or at the state level, reaches various aspects of Islam. Hasbi Ash-Shiddieqy carried the theme of Indonesian Jurisprudence. In his proposal, he emphasized the importance of awareness to present fiqh which has Indonesian nuances. *Fiqh* must be present in an understanding frame that takes into account the real conditions of Indonesian society. In his fatwa, Hasbi, for example, did not prohibit handshakes between men and women who were not mahroms. According to him, there is no provision of a qath'i text regarding this matter. Therefore, the provisions are based on a tradition that has existed and developed in the archipelago, namely the tradition of handshaking between all people. Furthermore, regarding

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Zakat, Hasbi saw the need to expand the scope of the object of zakat from the original contained in classical books, to be adapted to the realities of society in today's economic sector in Indonesia. Therefore, according to him, industrial businesses are also subject to the obligation of zakat (Sahal & Aziz, 2015).

Hazairin, through the term National Mazhab of Law Jurisprudence, proposes a re-reading of Islamic jurisprudence, especially the shafi'i mazhab of jurisprudence as jurisprudence that lives in Indonesia, involving new disciplines such as anthropology. He believes that the main message of the Koran reflects the value of justice, which is compatible with various situations and conditions. Concretely, Hazairin examined the jurisprudence of *mawaris*, which, according to him, needed some corrections and proposals for new conceptions. For him, jurisprudence *mawaris* is actually bilateral in character, and not patrilineal as it has been understood so far (Hooker, 2002; Sahal & Aziz, 2015).

Social Jurisprudence KH. Sahal Mahfudz speaks in a variety of areas, both about faith, worship and *muamalah*. Things that are contemporary and require a touch of law are his attention. No less, for example, he discusses population, which in his view is important to be enlightened in the light of *fiqh*. Population is the end of a series of kinship systems. So, talking about population cannot be separated from how we build a family and the legal instruments in it. There are aspects of education, responsibilities, livelihoods and also family health. When *fiqh* accompanies these concepts, *fiqh* will live on and at some point animate the family and society (Mahfudh, 2004).

Islamic organizations in Indonesia, as already mentioned, also have thoughts related to the Islamic concept in all its aspects. The relationship between faith, worship and muamalah is an area of study that does not escape the *ijtihad* of each mass organization. Muhammadiyyah has a *Tarjih* institution which functions as its fatwa institution. In it, it examines issues of faith, religious jurisprudence, muamalah jurisprudence and contemporary issues that have developed recently. Regarding women, for example, Muhammadiyyah discussed women related to legal objects in the form of congregational prayer and jum'ah for women, traveling for women, parades and hijab for women (Mulkhan, 1994).

Meanwhile, Nahdlatul Ulama, as a mass organization that promotes Islam Nusantara, in its organizational apparatus has an institution that specifically handles religious studies called the *Bahsul Masail* Institute. This institution is actively studying legal issues by referring to the wealth of Islamic treasures (turas). The object of study is diverse, and as far as possible it is an answer to current legal problems. Issues of faith, worship and also *muamalah* with all its derivations, are studied in relation to the problems of contemporary law (Zahro, 2004).

The Islamic Jurisprudence of Nusantara is composed of two sources, namely written sources and unwritten sources. Written sources are in the form of texts from the Al-Qur'an and Hadith, plus a reference source in the form of *fiqh* books by previous scholars. All existing legal products that have become Islam Nusantara jurisprudence are always based on these basic sources. Meanwhile, unwritten sources are in the form of culture, traditions and value systems that exist and live in the people of the archipelago. The combination of written and unwritten sources has made Islam Nusantara jurisprudence a distinctive *fiqh* with nuances of the archipelago locality.

As a product of *ijtihad*, Islam Nusantara jurisprudence was born based on legal sources and methodologies that are recognized in Islamic legal theory. Referring to the early stages of Islam Nusantara, there are many well-known archipelago figures with international reputations. They become prominent scholars who have a wide network with an amazing scientific reputation. Many scientific works in various Islamic disciplines were born from the hands of these scholars. Citing among them are Shaykh Nawawi al Bantani, Syaih Arysad al Banjari, and Sheikh Ihsan Jampes. These Ulama, in formulating their scientific conception, of course, always refer to and base on reference sources and methodological frameworks that are recognized in Islamic scholarship.

Likewise, the figures of Islam Nusantara activists who almost all have an established Islamic scientific basis, of course in formulating their thoughts always rests on valid sources and methodologies of Islamic law. Hasbi, for example, is a figure who is widely recognized as an expert in Islamic law and its philosophy. For example, he emphasized that Islamic legal thought should be based on *maslahah mursalah*, petty, benefit and preventive considerations. What is conveyed is of course the result of reading the sources of Islamic law, both in the form of texts from the Koran, hadiths and the opinions of scholars.

In simple terms it can be concluded, by referring to the opinion of MN. Harisuddin, that the methodology used is based on the ushul fiqh methodology that has been known so far, namely *maslahah*, *urf*, *sad dzari'ah* and application of scientific approach to science. Furthermore, in terms of legal methodology, according to Abdul Muqsith Ghazali, Islam Nusantara jurisprudence is actually an attempt to anchor Islamic law in the context of the archipelago's diverse cultures. In the language of *Ushul Fiqih*, such activities are referred to as *ijtihad tathbiqi*, namely *ijtihad* in applying a legal provision in the reality of human life. Thus, the existence of Islam Nusantara is not something new at all, it is a further step in the form of concrete efforts to ground Islamic law in the Indonesian context (Zahro, 2004).

2. Epistemology Islamic Jurisprudence Nusantara

Epistemology discusses knowledge from the source side, then tests the validity of the knowledge sources by - among other things - discussing the methods used. Meanwhile, Amsal Bahtiar said that epistemology is a branch of philosophy that deals with the nature and scope of knowledge, assumptions, and its basis as well as accountability for statements regarding knowledge possessed (Bakhtiar, 2010). Thus, the epistemology of science means talking about knowledge itself from its source, its validity, and the method of understanding the source of that knowledge.

The epistemology of science can be divided into three, each of which reflects the source of obtaining this knowledge (Tafsir, 1994). *First,* empiricism. The epistemology of empiricism rests on the source of knowledge that comes from the five senses. What is known by the senses is conceptualized into a statement containing knowledge. For example, ice is cold. This information is generated by the touch of the sense of touch to an object in the form of ice, and it is reported that the ice is cold. *Second,* rationalism. Rationalism emphasizes knowledge based on reason or reason, including logic in it. In epistemology, rationalism has a very dominant role. It could be that knowledge information reported by the senses does not necessarily become

knowledge *valid* when corrected by reason. On the other hand, the object of the study of reason is also not only something sensory, but also other objects beyond the reach of the senses, such as a source of knowledge in the form of a religious text. *Third,* intuition. The epistemology of intuition rests on a spiritual intelligence system whose main source is the heart.

The epistemology of *fiqh* can be traced by understanding the nature of Islamic law as conceived by the *Ushuliyyun*. Islamic law is a commandment of God (*Khitab asy-Shari'*) which is contained in the verbality of His words. Therefore, in the perspective of *ushul fiqh*, it was *'qadim' in the* past. Its position thus precedes the object of its law, and it existed before humans even perceived it. Within this limitation, according to Syamsul Anwar, Islamic law is discovered and not created (Anwar, 2000). In this position, there are two important issues, namely, first, how do humans reveal and grasp the meaning of the verbal of the word of Allah, so that Islamic law can be understood. Second, how to apply the law in concrete human situations.

Looking at the brief description above, and comparing it with the various epistemologies of knowledge as already mentioned, the epistemology of Islamic *fiqh* is the epistemology of rationalism, in the sense that Islamic jurisprudence is produced by a series of logical-systematic thinking as an effort to find or reveal the content of the meaning of law as contained in the source of law. There is a dialectical movement between reason and revelation in giving birth to a legal conception called *fiqh* (Huda, 2006). In practice, methodologically, *fiqh* can be born through deductive as well as inductive patterns. Deductive pattern is interpreted as *istimbathiy*, namely by making legal texts as the main object in giving birth to legal conceptions. Meanwhile, inductive patterns are interpreted as *istidlaliy,* namely formulating laws by considering the sociological-anthropological aspects as *living reality* (Pancasilwati, 2015).

As part of the jurisprudence, the author's hypothesis, Islamic jurisprudence in Nusantara has the same epistemological basis as jurisprudence itself. It's just that, when examined in more depth, the sources of Islamic *fiqh* knowledge in the archipelago are based on the Qur'an and Hadith, as well as other 'sources of law' commonly known in *fiqh ushul*, the portion and role of Nusantara culture as a form of *'urf,* also had an effect. *'urf* itself is interpreted as something that is accustomed and becomes a habit by the community. In a legal context, the existence of *'urf is* more in *muamalah* territory (Mutawali, 2017).

Just as Imam Malik considers the *'deeds of ahl al-Madinah* as a consideration in *istimbath* legal (Alamsyah, 2020), so it is with the culture that exists in the archipelago. It is also used in formulating legal conceptions as long as the culture is confirmed not to contradict the provisions of *Nash Sharih* (Rofam, 2018).

Furthermore, the method of understanding commonly used in producing the achievements of Nusantara *fiqh* also refers to the values of benefit. Of course, the benefit here is the benefit that is relevant to the context of the Indonesian people. This local-territorial nuance of benefit is an important thing because the jurisprudence to be applied in essence is also in realizing the benefit itself. The value of benefit has a close relationship with the traditions and culture of one society, so when the concept of archipelago *fiqh* offers benefit-oriented legal rules in a territorial style, the law will be accepted and become an inherent part of society. This is in the context of realizing the objective of law (*maqashid asy-sayri'ah*) in the form of benefit (Dahlan, 2020).

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3. Contribution of Islam Nusantara Jurisprudence in Family Law Renewal

One example of a legal product in the form of Islam Nusantara jurisprudence is what was formulated by Syekh Arsyad Al Banjari (Azra, 1995; Ensiklopedi Islam, 2001), a scholar from Kalimantan who is also the author of the book Sabilal Muhtadin (Steenbrink, 1984), Shaykh Arsyad once issued a fatwa regarding the distribution pattern of inheritance using the consideration of the custom of prohibition. According to him, the inheritance before being distributed to the heirs must be divided in two first, namely according to the husband and wife's share. This is called the treasure *gono gini*. After being divided, then distributed to other heirs. In the fiqh tradition *faraid*, this pattern does not apply. This *gono gini* division is based on the principle of justice and also cultural considerations (Alamsyah, 2020). With this pattern, more benefit values can be realized. This is an example of an extraordinary legal breakthrough, within the framework of Islam Nusantara jurisprudence.

The scope of family law is mapped at least into three parts: *munakah, mawaris* and *waqf.* Of the three, which often becomes the topic of renewal and often collides with the methodological norms of *fiqh*, is the inheritance part, especially in relation to the share of inheritance. In this matter, Islam Nusantara jurisprudence has been able to give birth to a conception that is not completely confined to the conception of classical *fiqh mawaris*, but has also formulated a legal pattern that is more in line with cultural values in the archipelago. What Shaykh Arsyad al-Banjari witnessed was clear evidence of the birth of a very good and relevant legal breakthrough. Furthermore, Article 183 KHI also provides a 'space for peace' between the heirs to agree to share the inheritance according to mutual agreement. This example shows how the aspects of family law, which have been known to be rigid and *untouchable,* can be adapted in the framework of Islamic jurisprudence in the archipelago. That means that the realm of family law in the context of Islam Nusantara jurisprudence can be an object of renewal to be adjusted to the pulse of change and the culture of the archipelago.

Here are some examples of the formulation of the Marriage Law and its comparisons with conventional jurisprudence.

No	Themes	Conventional Fiqh	Law	Information
1.	Marriage Guardian	According to the Maliki, Shafi'i and Hambali Mazhabs, guardian is a legal requirement in marriage. Meanwhile, according to Imam Abu Hanifah, Zufar, ash-Syu'bi, and Az-Zuhri that guardianship is not a legal condition of marriage. Meanwhile, Az-Zahiri distinguished between girls and widows, where the former required a guardian, while the latter did not (Rushd, tt.).	In explicit, the provisions regarding the position of guardian as the pillar of marriage are contained in KHI article 14: "To carry out a marriage, there must be: a. prospective husband, b. future wife, c. guardian of marriage, d. two witnesses, e. consent and Kabul.	In the existing regulateons, the guardian of marriage is confirmed to be part of the rukun of marriage. Consequently, a marriage is considered valid if there is a guardian, and vice versa. This means that the law takes one legal provision in conventional jurisprudence while neglecting other provisions which are inconsistent with it.

| 2. | Marriage Registration Strictly | Speaking, in conventional jurisprudence, there are no provisions that mandate the registration of a marriage. At the most, the concept that is in line with the purpose of recording is the provision regarding witnesses (K. Nasution, 2013). In the case of witnesses, Imam Malik, Abu Hanifah and Asy-Shafi'I agreed that witnesses were a condition of marriage (Rushd, tt.). | Law No.1 / 74 states: "Every marriage is flawed according to the prevailing legislation". (Article 2 paragraph 2) | The application of 'suggestion' to register marriage in the law is a concrete form in the framework of legal certainty. The witness, as in conventional jurisprudence, is still made harmonious, and notes are added to strengthen it. |
| 3. | Age of Marriage | Provisions regarding the age of marriage are not found in conventional fiqh realms. In this fiqh discussion, the boundaries that are raised are the status of baligh or not, and the status of widow or virgin (Rushd, tt.). | Law No.1 / 74 states: "Marriage is only permitted if the male has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years". (Article 7 paragraph 1). In addition: "To marry a person who has not reached the age of 21 (twenty one) years must obtain permission from both parents. (Article 6 paragraph 2). | In terms of the age of marriage, the Marriage Law explicitly stipulates the age limit for marriage. This is certainly a good rule, even though it is not explicitly addressed in conventional jurisprudence. Determination of the age fit for marriage, of course, has been through a thorough study, with the aim that the marriage that is carried out is able to achieve the goals of marriage. |

Observing the concept of Islam Nusantara *fiqh* as exemplified, it can be seen that Islam Nusantara *fiqh* seeks to make a legal conception that is more relevant to the context of the archipelago's locality. This effort was sometimes sufficient to 'adopt' from the classical jurisprudence and adapt it to the local context of the archipelago. There are also those who formulate a new conception with reference to the spirit of the goal of the *Shari'ah* in the form of benefit. Thus, Islam Nusantara jurisprudence was born with the main consideration of '*urf* or custom as a reflection of locality and leading to efforts to create benefit.

D. CONCLUSION

In the description of this research, several conclusions can be drawn as follows:

1. Islam Nusantara Jurisprudence as part of Islam Nusantara is a jurisprudence concept that has a territorial style, in this case the archipelago. Its existence has a clear example

in the stretch of *tasyri'* Islam, where jurisprudence with regional characteristics has existed and been practiced since the classical era. The existence of such *fiqh* is a concrete manifestation of the dynamics of *ijtihad.*

2. Sources of knowledge used in formulating Islamic *fiqh* in the archipelago are sources of knowledge commonly known in the study of *fiqh* and *ushul fiqh*, both *mujma 'alaih* and *mukhtalaf fih*, (b) sources of knowledge as said to be of valid value with a large enough portion. towards *'urf,* and with a benefit-oriented understanding.

3. Islam Nusantara Jurisprudence can be used as a legal alternative in the context of reforming family law in Indonesia. This can be seen from several concepts formulated, both in the form of individual *fatwas* of *fiqh* Ulama, as well as in the form of legal products in the form of laws, such as in the registration of marriage, the age limit of marriage, and also the distribution model of inheritance.

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