

Analysis of Receptie a Contrario Theory and its Effect on Islamic Family Law Legislation in Indonesia

1st Suci Ramadhan¹, 2nd J. M. Muslimin¹, 3rd Asep Saepudin Jahar²

{suciramadhan95@gmail.com¹, jm.muslimin@uinjkt.ac.id¹, asepjahar@uinjkt.ac.id²}

UIN Syarif Hidayatullah, Islamic Studies Department, Jakarta, Indonesia¹,
UIN Syarif Hidayatullah, Sharia and Law Department, Jakarta, Indonesia²

Abstract. This research is aimed to analyze the effect of *Receptie a Contrario* theory on the legislation of Islamic family law in legal system of Indonesia. The researcher used qualitative research by using analytical-description with literatures as main data. Furthermore, the study explained that theory of *Receptie* placed Islamic law as the second law that only applicable as long as approved by customary law. The theory got the criticism with *Receptie Exit Theory* which expended as *Receptie a Contrario* theory which said that Islamic law can stand independently and other law is applied if approved by Islamic values. Therefore, the result reveals that *Receptie a Contrario* theory has influenced the dynamic of Islamic family law development and has an authoritative legal concept in legislation system of Indonesia. And the other laws, can be codified with Islamic family law as long as suitable with Islamic law principles.

Keywords: theory, receptie a contrario, islamic family law, legislation

1 Introduction

Islam is a much more autonomous and complete representation of classical patterns than other monotheisms. its historical tradition describes it as a repetition of the monotheistic process of formation from the top to the top. Specifically, Islam presents itself to the world as the owner of a law that is unique in itself and different from other laws [1]. Islamic law which is also known as sharia or fiqh is an integral part of Islamic teachings and an important element as the root of the Islamic religion. According to experts in sociology, Islamic law is present in Indonesian society together with the existence of an Islamic community in the archipelago. Then developed in the community as a law that began to be practiced gradually even a judicial body that emerged based on Islamic principles among the Islamic kingdoms at that time [2]. Indonesia's independence opens space for opportunities to form a complete legal system to be enforced in Indonesian territory. Although at that time there was a judicial system established by Indonesia after independence specifically related to civil law, in addition to customary law, the old colonial laws were also applied, although through a different interpretation from the previous one [3].

The embryo of the formal application of Islamic law has been present since the existence of the Indonesian republic by the Muslim community at that time. This spirit of legalization of Islamic law through the insertion of a clause in the opening of the 1945 Constitution which came to be known as the Jakarta Charter which contains that Muslims in the country of

Indonesia must comply with Islamic law through the phrase “with the obligation to carry out Islamic law for its adherents”. But this formulation drew debate among other people. Then in the last minute revision, before the constitution was proclaimed, the controversial sentence was changed because it was seen as a betrayal of the aspirations of non-Muslim populations in eastern Indonesia in Indonesia's independence participation [4].

Hadikusumo suggested removing these seven words with the assurance that the government would be responsible for implementing Islamic law, by ensuring that there was no legal dualism for citizens and implying that Islamic law would become state law for citizens of all religions. Hadikusumo explained that without these seven words, it is necessary for Muslims to practice Islamic law without government involvement [5]. After experiencing the dynamics of legal development in Indonesia, the state legal system in Indonesia then absorbed several laws namely customary law, western law, and religious law (in this case Islamic law) to be used as a source of national legal legislation.

Support for opportunities in religious law legislation appears in the provisions of Article 29 paragraph (1) of the 1945 Constitution explaining that the state is based on almighty divinity, basically containing three important elements in legal legislation, in this case, Islamic law [6] (a) the state must not make legislation or carry out policies that are contrary to the basis of the faith in an almighty God; (b) the state is obliged to make laws and regulations or implement policies for implementing the manifestation of a sense of faith in the almighty God from a group of religious adherents who need it; (c) the state is obliged to make laws and regulations that prohibit anyone from harassing religious teachings (atheism)

With the establishment of Pancasila as a principle and guideline for all political power organizations, and there has been a national agreement not to change the 1945 Constitution and evidence of the rise of Law Number 1 Year 1974 concerning Marriage, Compilation of Islamic Law and Islamic Law, which succeeded in transforming Islamic norms in national positive law [6]. Besides, support also comes from the mandate of the 1945 Constitution explicitly directing the existence of good and dynamic reforms and developments in the law in Indonesia. It is intended that the legal system can accommodate all problems that arise in Indonesian society.

In a seminar on eastern studies held at New York University in 1958, insider and outsider Islamic law experts expressed their comments on Islamic law. They were Nashih Ulwan who stated that Islamic law is a law that has definite power to be utilized for the continuity of law and human problems, through authentic sources that are maintained and maintained throughout time. Besides, Izco Insapato also explained that Islamic law contributes significantly to an eternal legal system. Then, Santilana expressed his opinion that Islamic law is very qualified for the integrity of the law among Muslim communities, he even said that Islamic law can solve all problems that occur in society. Then, Hoking said that Islamic law has the capital and readiness to exist and develop without the need for external factors, and Islamic law already has complete theories which are prerequisites to be made as a legal system. Meanwhile, JND Anderson expressed his opinion that Islamic law has a strength that cannot be matched by its perfection by other legal systems [7]

According to H. A. R Gibb in his book *Mohammedanism: An Historical Survey* [8] that Islamic law has the most far-reaching and effective tools in shaping social order in Islamic societies. The moral authority of law forms a neat and secure social structure through political fluctuation. Thus Islamic law can, of course, be said to be a tool of social engineering and social life to achieve a good order and quality of life. Furthermore, Islamic law is concerned with the field of family law, where all aspects of law and principles to achieve a harmonious and good family are already in Islamic law.

The application of Islamic law in Indonesia is periodically divided into two periods: the Dutch East Indies period and the Republic of Indonesia period. At the time the Dutch East Indies came to Indonesia which then began to carry out political activities, placing Islamic law in two conditions namely the full acceptance of Islamic law or known as the Receptie in Complexu theory, in addition to the theory which states that acceptance of Islamic law first gets approved by customary law or known as receptie theory. During the Republic of Indonesia, Islamic law was also in two conditions, these are the acceptance of Islamic law as a source of persuasion and the acceptance of Islamic law as an authoritative source. The acceptance of Islamic law during the Republic of Indonesia was inseparable from the theory of Receptie a Contrario by Sajuti Thalib and Hazairin who stated that Islamic law was accepted as an independent and authoritative source of law.

The effort to codify Islamic law is a necessity both in the context of academic studies and constitutional law which always follows eclecticism and the process of democratization based on the majority of the Indonesian population as well as being a challenge for Islamic law to show its main goal, which is to fulfill all matters relating to human benefit, especially religious communities. As stated by H.A.R. Gibb in his book *The Modern Trends of Islam* [9] that if someone has accepted Islam as his religion then he must accept the authority of Islamic law as his life norms. The legal values in Islamic family law are inseparable from sharia norms and principles. Aside from Islamic law (customary law and western law) can be absorbed, dialogue as long as the law does not violate the principles and norms of Islamic law and can bring benefit and order to the community.

Some theories that emerged during the reign of the Dutch East Indies were considered to be the theory of the application of Islamic law in Indonesia. One of them is receptie a contrario theory. This theory is a “weapon” in the implementation of Islamic legal legislation in Indonesia that Islamic law as an authoritative law needs to be given space in the Indonesian state administration system and in the efforts of Islamic legal legislation related to family law. Through this theory, Islamic law is enforced as a source of law in Indonesia and becomes a legal-formal basis for Indonesian society, and Muslims in particular.

2 Methods

This research was a type of qualitative research with the library field to find the data and literatures related to the problem [11]. To find data about the Islamic family law legislation, researcher used the library field because it was suitable to look for all documents about legislation. The research data source used literature related to Islamic law, Islamic family law, customary law and statutory regulations. The method of collecting data through the literatures study by searching for sources of scientific literature such as books, documents, reports, encyclopedias, legislation and related issues that are being discussed at this time. Furthermore, this study were analyzed using descriptive analitical methods by collected and selected systematically then analyzed and described descriptively. Based on the purpose of this analysis was to find out the influence of the theory on the dinamic of Islamic family law and legislation system in Indonesia.

3 Findings and Discussions

3.1 Islamic Law Implementation Process in Indonesia

The enactment of Islamic law in Indonesia does not implement directly, there are processes occur step by step to recognize Islamic law as an independent source and authoritative law. as in history that Islamic law with customary law and the Dutch East Indies ensued a dialogue and tug of war in its position in the legal system in Indonesia.

Customary law experts, both from the Dutch East Indies experts and Indonesian traditional experts, differed in their opinions regarding whether religious law is also customary law. According to MR. L. W. C. Van Den Berg in his theory of receptie in complexu explained that customary law is a religious law which adhered by the community in the related country. The theory contains as follows: (a) Laws for pribumi (native Indonesian people) follow religious law, because if a native embraces a certain religion then he must also follow the provisions of these religious laws; (b) Religious law is a law that is round and whole

This receptie in complexu theory was opposed by customary law experts from the Dutch East Indies, namely Prof. Snouck Hurgronje who argues that religious law only a few parts of customary law are influenced by religious law. In this case, Islamic law especially relating to family law such as Islamic marriage law and inheritance law. So not all customary law is in accordance with Islamic law. Hurgronje's statement is then called the receptie theory. In addition, another customary law expert, Cornelis Van Vollenhoven, also stated that Islamic law will apply and can be contained in the customary law of a particular area if the customary community accepts Islamic law if it is not desired then customary law is in force.

While Indonesian traditional law experts, Hazairin strongly opposed the statements of the receptie in complexu theory and the receptie theory, and stated that the theory was a dirty strategy of the policy politics of the Dutch East Indies government that wanted to eliminate Islamic law from the Indonesian national legal system and said that the theory was the devil theory [6]. Hazairin explained that the position of customary law and Islamic law in Indonesia was the same, namely as a source of statutory law. He also mentioned that customary law can only apply as national law and be implemented if it does not conflict with Islamic law. Hazairin's statement is known as the Receptie a Contrario theory.

Furthermore, Ter Haar disputed the opinion of Snouck Hurgronje. Ter Haar stated that inheritance law did not originate from religious law but was indigenous customary law and was not influenced by Islamic law, and inheritance law was adjusted to the social and cultural structure of the community. This Receptie in Complexu theory actually contradicts reality in society. That is because customary law is a combination of original law namely Malay Polynesia and from the provisions contained in religious law. Therefore, it is indeed difficult to explain the boundaries of traditional law and religious law, especially customary law that has been influenced by religious law [20].

In 1950, Hazairin responded to Receptie's theory that had been conveyed by Snouck Hurgronje that Islamic law could apply if it had been approved and recognized by customary law first. Furthermore, Hazairin in a working meeting of the Ministry of Justice said that Islamic law was re-applied in Indonesia. This opinion is called the Receptie Exit theory. In 1963, Hazairin published a book on national family law. According to him, the enactment of Islamic law for Indonesians was based on the appointment of laws and regulations. In his view, Hazairin argues that the receptie exit theory as stated in article 134 paragraph (2) IS is invalid. That is because the transitional rules of the 1945 Constitution state that any existing provisions remain in force before being replaced or significantly changed.

The receptie exit theory above was a response to some Dutch product law experts, although the effects of receptie theory have erased the role of the religious court, and merged it into the general court in particular. Thus Law Number 19 of 1948 stipulates three judicial environments, namely general court, general court and army court.

The receptie exit theory confirmed that all laws in Indonesia return to Pancasila as a basic reference and philosophy of the Indonesian state. In this regard, Hazairin emphasizes that above Pancasila democracy there is God's sovereignty, that is, God's sovereignty. In the almighty divinity lies in the first precepts, it means that if the law will be formed in a legal legislation, the teachings of religion must take precedence. Furthermore, Hazairin refers to article 29 paragraph (1) of the 1945 Constitution that the existence of customary law, religion and positive law need not be disputed. Therefore, there are no new provisions and regulations that may conflict with Islamic law.

The receptie exit theory had a very significant influence on the birth of Law Number 14 of 1970 concerning the Principles of Judicial Power in Indonesia conducted by four courts, including the Religious Courts which had their position removed in Indonesia. Then, the birth of Law No. 1 of 1974 concerning Marriage emphasized the position of the Religious Court as a judicial institution for civil affairs for Muslims. Government Regulation No. 9/1975 also gives strength to the existence of the Religious Courts. And the birth of Law No. 7 of 1989 concerning Religious Courts further strengthened the role of the Religious Courts in Indonesia.

The receptie exit theory was developed into the receptie a contrario theory by Sajuti Thalib. The receptie a contrario theory is the result of Sajuti Thalib's thought about the relationship between customary law and Islamic law that emerged based on the results of research on marriage and inheritance law in force at that time in Indonesia. This theory also explained that in the republic of Indonesia which is based on Pancasila and the 1945 Constitution, then Muslims should obey their religious law, and customary law can apply if it is not contrary to Islamic law. Examples of areas in Aceh, West Sumatra, South Kalimantan, and Buton are some examples of areas that have legal norms that are guidelines for local communities to solve problems.

Receptie a contrario theory used several rules. First, the command of Allah and the Apostle is obligatory. Second, basically the prohibition is haram. Third, customs can be made law. In the first principle it can be understood that all the commands that are required must be carried out, if not done it will get the sin. The second rule explains that all prohibitions must be abandoned, if left behind will get a reward. The third rule explains that customs in society can be made a law if they do not violate the provisions of Islamic law. Therefore, the receptie a contrario theory explained that in the legal legislation system, Islamic law must be implemented and used as a main guideline than other laws, such as customary law and western law

3.2 Development of Islamic Law and Adat Law in Indonesia

The application of Islamic law and customary law had already been applied in various regions in Indonesia before the arrival of the western invaders with the western legal system. The western legal system is the most influential in the development of law in Indonesia, and even politicians who want to get rid of and even negate Islamic law.

According to Socio-historical, Indonesian people have long practiced Islamic law in their daily lives. Likewise with customary law which created the cultural and religious life of the Indonesian islands for centuries before Islam came. Islam played an important role in

mobilizing religion and national awareness in leading towards freedom including in bringing Islamic legal instruments [12].

Islamic law and customary law were legal systems present in the community to regulate life in that community. Between Islamic law and customary law certainly has truths that are believed respectively. According to customary law, the truth is based on what is believed by indigenous people from generation to generation from their ancestors. It effected through customary law to lived and accepted by them as sacred teaching that lives in their culture. As for Islamic law, truth is rooted in principles and values in the *al-Qur'an* and *Hadith*. The relationship between them is very close, it can be seen from a number of local sayings and expressions such as in Aceh states that *hukum ngen adat hantom cre, lagee zat ngon sipeut* which, means that Islamic law and customary law cannot be separated, both are like the substance and nature of an object. While in the Minangkabau society says that *adat syara' sanda menyanda syara' mengato adat memakai*, which means the relationship between customary law and Islamic law is very tight, mutual support, because actually what is called adat law that is truly adat is syara ' itself. [13]

Given the great cultural and ethnic heterogeneity in Indonesia, West Sumatra is often seen as a relatively homogeneous region with regard to culture and customs. The majority of people in the province include Minangkabau ethnic groups, the majority of which are Muslims and share a strong ethnic identity. However, this does not mean that different opinions do not circulate in West Sumatra regarding the role that adat must play in everyday life, and in particular with regard to the relationship between adat and Islam [14]. In the matrilineal system that still occurs in Minangkabau customary law, where the lineage is taken from the mother or the woman. Thus, children, both men, and women have a tribal group taken from the mother. This then affects the aspect of the distribution of inheritance, where the portion of women's inheritance is more than the share of men. Likewise, the Batak community applied a patrilineal system, in which lineage was drawn from the male side. So that male offspring are more dominant in the distribution of inheritance.

Acculturation between customary law and Islamic law also occurs in the regions of South Sulawesi, Riau and South Tapanuli, and several other areas in Indonesia. The process of a strong interaction between customary law and Islam creates a new legal system that has local values and wisdom in the community's environment. Despite the establishment of the codification of Islamic law, customary law needs to be sorted and selected to produce Islamic law that is accepted by all Indonesian Muslim communities.

According to N. J Coulson in his book *a History of Islamic Law* that family law, insofar as the Islamic Arab population, is generally given in strict accordance with Sharia doctrine as a system that was based on the customs of the regions where the law originated, such as the Hijaz and Iraq, and which has succeeded in absorbing it within the framework of legal reform introduced by The Prophet, which is largely in accordance with the innate nature of Arab society. But for others, receptions of Sharia law pose a serious problem, because essentially the concept is often completely foreign to the traditional structure of their society. Among some indigenous communities, the indigenous forces were strong enough to deny Shari's influence altogether in the regulation of their family relations [15].

Hazairin argued that when Islamic law is derived from the interpretation of classical scholars and is applied in a particular society, there is no guarantee that it will be in accordance with that society. That is because every community has its own culture. Therefore, customary law which is a cultural product can certainly have an influence on existing provisions for a long time. This can be seen from the development of Islamic inheritance law which was influenced by the practice of Arab society before Islam came. If this theory is

valid, then it shows that Islamic law contained in the Qur'an is flexible to be interpreted in society.

Furthermore, Hazairin realized that there are social problems in Indonesian society and the values that exist in that society. This is based on the confusion over the application of each customary law. Hazairin then considered the values of Islamic and customary law to do social engineering by reforming the law. He tried to develop a hypothesis based on a comparison of Indonesian and Arabic social conditions. The conclusion reached by Hazairin is that the bilateral system is a solution to the complexity of the problems in Indonesian society. However, he explained that the bilateral system can function when Islamic law is officially included in the country's national legal system [16].

The development of Islamic law in Indonesia was closely related to historical factors since the existence of the Islamic kingdom in the archipelago before the arrival of the VOC. At the time the Islamic empire grew in Indonesia by bringing various kinds of teachings and rules, Islamic law had already begun to be enacted and there was even an Islamic justice institution even though it was still mixed with local customary values.

After the Dutch colonials went to Indonesia and changed the national legal system, Islamic law was considered a law that could not be enforced and needed to be erased. The colonials aimed to make customary law into state law by codifying and writing it down, or "restating" in legal terms, and then including it as state law in the national system [17]. The effort of the Dutch East Indies government was very strong to abolish the application of Islamic law, even though it could not be realized due to the strong roots of Islamic law which were binding in society. But the Islamic law that is meant to be applied is limited to the field of family law, namely marriage for Muslims [18]. Apart from opposition to the policy of the Dutch East Indies government in fostering a legal system that actually contradicted customary law. Religious values seem to be too firmly rooted in society so the solution is to codify the field of family law, especially Islamic marriage law in Indonesia, which then publishes a *freijer compendium* (the Islamic family law codification which legislated by Colonial government in pre-independence era).

It can be said that currently only Islamic family law still has the resilience of the blows of colonial intervention and westernization carried out through secularism in all fields of life through renewal and codification since the beginning of the twentieth century [19]. The legalization of Islamic law in Indonesia could only be accepted after there had been many pros and cons by each party. In the pre-independence era, Islamic law was only as ideological with the construction of the 1945 Constitution, then after a few years, Islamic law in Indonesia was not merely ideological but had begun to lead to Islamic law legislation or legislation into positive law.

The debate on Islamic law legislation notion in the period 1945-1959 was political-ideological-constitutionalist. Efforts to apply Islamic law by pro-implementation groups can be said to be done in a democratic-constitutional way. It was only in the period of 1959 to the beginning of 1990 that the controversial issues disappeared or were deliberately removed by the political approach at the time and while in the 1990s until now it was more legal-formalist. The application of Islamic law as a source of material law in Indonesia developed and move forward significantly with the law related to Islamic law in Indonesia.

3.3 Islamic Family Law Legislation in Indonesia

The National Long-Term Development Plan (RPJP) for 2005-2025 explained that the renewal of legal material must still pay attention to the plurality of legal arrangements in force

in Indonesia and the effect of globalization in order to realize and increase legal certainty and legal protection. That explains that the material of Islamic law must also be a material consideration in the process of national legal legislation, including those related to Islamic family law in Indonesia.

Islamic family law legislation is the most important manifestation of Islamic modernism today as well as one of the important integrated parts in understanding the dynamics of legal and legislative development. With the integration of Islamic law (in this case family law) with national law, it is possible that various problems in social society will be solved and fill the legal vacuum that occurs in society. Considering that there are quite a lot of social problems in the family field that have a big impact on the development and progress of the life of the nation and state.

In the aspect of marriage, where various types of marriages in society such as endogamy and exogamy, eugenic, periodic, etc., while in Islam there are no such teachings. Islamic teachings greatly facilitate marital legislation between men and women as long as they meet the requirements and harmony. Islam explains that the solidarity of the faithful must replace the solidarity of the tribe, that is, the tribe and the like is not a barrier for everyone to carry out marriage efforts. Therefore transforming Islamic legal principles into national law is very possible to do, given the new problems in society that continue to emerge and changing times lead to new things that have never happened before [21]

According to An-Naim, there are two patterns in the absorption of Islamic law into national law. First, absorption with the pattern of Islamization of national law and second is absorption with the nationalization of Islamic law. The first pattern explains that Islamic law seeks to enter the national legal system normatively. This pattern is exclusive and ignores the heterogeneous plurality of Indonesian society. The consequence of this pattern is the birth of symbolic Islam that is not friendly to the pluralistic Indonesian society. The second pattern is the orthodox tendency. According to An Naim that the nationalization of Islamic law is an effort to synergize Islamic law with national law in a transformative-contextual manner, without ignoring plurality and not prioritizing Islamic symbols in the products of legislation [22].

Some opportunities and strengths of Islamic law to be used as a source of national law are due to the following:

- a. The characteristics of Islamic law, namely universal, flexible, dynamic, and have two dimensions, namely tsubut (consistency) and tathawwur (transformation) that make Islamic law always relevant in every space and time (shalihun fi kulli azminah wa al amkinah) and the dynamics of change social community that continues to occur.
- b. Islamic law has a strong and unlimited binding power, which is a rule that has a humanistic profane dimension and a transedental dimension.
- c. The existence of Islamic law is accepted by Muslim communities, and the population of Indonesia is the majority Muslim population
- d. Historically and sociologically, Islamic law has taken root in the practice of people's legal life.

The opportunities for Islamic law in transformed to national law, among others [21]:

- a. Religion has the main and important position in the Indonesian state, as written in the first precepts in Pancasila, the almighty God. Pancasila as the source of all sources of law in Indonesia and the 1945 Constitution recognizes the importance of religion in the life of Indonesian people. Thus Islamic law that originates from religion is also clearly recognized for its existence in Indonesia, both theoretically and practically.
- b. Legal development is directed at the growth of public legal awareness, and legal

awareness for Muslim communities cannot be separated from Islamic law. This means that the applicable national law in Indonesia is a law that contains elements and principles of religion and does not violate religious rules and norms.

- c. There is a political will from the government to develop and legislate Islamic law in the national legal system, even though it is still limited.
- d. Indonesian Muslim community has a strong desire to implement religious law in daily life in accordance with the demands of faith.

Islamic law in Indonesia divided into two forms. Firstly, Islamic law that applies legally, namely Islamic law that regulates the relationship between humans and other humans (mualamat) which is then accepted and used as a reference in the formation of legislation [21]. Islamic law like this for example Law Number 1 Year 1974 concerning marriage, Compilation of Islamic Law, Compilation of Sharia Economic Laws, Law Number 41 Year 2004 concerning Waqf, Law on Management of Zakat, and many other Islamic laws that have been politicized and codified according to positive legal rules in Indonesia. Secondly, normative Islamic law which has sanctions in the local community as determined. Laws like these are like Jinayah (Islamic criminal law) which have been codified in the Aceh Qanun.

In 1991 it was introduced through a Presidential Instruction namely Compilation of Islamic Law. Although it was not mentioned explicitly in the hierarchical structure of laws (because the legalization comes from the president's instructions), but actually the Compilation can be applied legally to the community needs. This compilation does not aim to replace traditional fiqh which transforms into a legal standing in Indonesia. Basically, it collects and systematizes various sources of Islamic law contained in various classical fiqh texts on marriage, divorce, inheritance, and gifts. In addition, customary practices that have been assimilated into Islamic law, as well as reform ideas that are considered consistent with the needs of contemporary families and Islamic values promoted by some Muslim scholars since the 1950s were absorbed into them. Among these are the concept of heir representation, equal inheritance rights regardless of gender, adoptive children's rights and adoptive parents' inheritance. Formulated in local languages to be used as a source of material law for judges in the Religious Courts in Indonesia [23].

Due to a sociological approach, Islamic legal legislation is an important thing, because according to the sociology study of law that law is the dress of society which must be in accordance with the size and stitching with the needs of the community. Related to realism or functionalist theory, a legal instrument does not have to be made rigidly in accordance with the national legal system. Because it is not only related to the values in positive and objective law but can be formulated by a legal instrument in another form, as long as the values are true and in accordance with the social reality of the society concerned and have validity and authority as laws to protect the order of life of the people [24].

If we look at the example in Article 2 paragraph 2 of Law Number 1 Year 1974 about Marriage states that every marriage must be registered according to the applicable laws and regulations. The article states that marriage registration is a must. Yet in the view of customary law, that marriage does not need to be recorded. This kind of Islamic marriage law legislation is intended for efforts to curb the administration of law by the state and justice for society. Then in Article 39 it is explained that the Divorce can only be carried out in front of the Trial Court after the relevant Court tries and fails to reconcile the two parties. The article explains that a legal divorce is carried out in a court of law [25]. While the problem which often occurs in the community is many divorces is not done in court to get a judge's decision, meaning that between divorced parties were disinclined to register their divorce cases to court

because they are considered too long and procedural. The articles explain that although in Islam there is no certainty about the registration of marriage, or divorce before a judge. But it is a principle that aims to maintain problems. Similarly, customary law exists in every community where there are no rules for registering marriages and divorcing before a judge. So it needs to be made law in the legislation of articles in family law.

we can pay attention to the customary systems that still exist in society such as the matrilineal system on Minangkabau adat and the patrilineal system on Batak adat, the prohibition of marriage in customary legal systems such as endogamy and exogamy, the dowry of marriage in adat which is of very high value, marriage bans in Java and many family law system in other community in Indonesia.

The whole customary teaching cannot be legalized together with Islamic law because the values contained in the teaching law are not in accordance with Islamic principles, as Islam actually adheres to a bilateral system that is from two directions (male and female lineage) not matrilineal or not only patrilineal. Likewise, Islam is essentially no prohibition to marry among tribes or clans as the prohibition contained in endogamy and exogamy marriages, dowry marriages of very high value and so on. For this reason, the Islamic family law system offers the concept of ease and benefit for people who adhere to the teachings of Islam, so that the diverse problems of indigenous peoples in Indonesia can be accommodated through the Islamic family law. However, some indigenous people still adhere to old traditions, and some other indigenous people have replaced the Islamic family law system. As for customary law and Islamic law that develops can be cultured in harmony without damaging Islamic values. So, it can be said that reducing the position of religion into the development of a society is not enough. Geertz calls attention to people with comparable levels of development where the level of religious articulation is very different [26].

4 Conclusions

Receptie a Contrario's theory explained the urgency of Islamic law to be recognized as authoritative national law. This theory explained that Islamic law can work in regulating the social structure of Indonesian Muslim societies. Whereas other laws, such as customary law, international law or the others can be absorbed and integrated with Islamic law if the values of the law do not violate the principles and values of Islamic law to then become a positive law in Indonesia. So, the laws can be implemented together in a legal system in Indonesia. The problem of Islam family law in Indonesia can be viewed by all culture and adat which developed in the community, and it can not be removed from their life. Due to the characteristic of Islamic law, all the family law in customary can be run well as the living law. Besides Islamic family law in the national legal system also find the way out to unite the pluralism laws in Indonesia.

So far, the law that specifically discussed Islamic family law is Law number 1 of 1974. Although this law applied to all Indonesian people, the articles contained in the law contain the values and principles of Islamic law. dynamic. This means that Islam can synergize with other laws such as customary law or western law which indeed aims to provide a sense of justice and benefit to family law in Indonesia. In addition, there is also the Presidential Instruction in 1991 to codify the Islamic family law as material law for judges in religious jurisdiction court, called the *Kompilasi Hukum Islam* (KHI). The compilation is a collection of

ijtihad results of Indonesian Muslim intellectuals sourced from various classical fiqh books and moderation things that aimed to fill the legal vacuum that occurs in Muslim societies, in the field of family law. Although Kompilasi Hukum Islam is only used for Muslim communities in Indonesia, the articles contained in the compilation are not only limited to the teachings of normative Islamic law, there have been many adapted to the conditions and customs that develop in Indonesian society.

In this research, we can see that the theory of *Receptie a Contrario* has an effect on the modification and legislation of Islamic family law. It can be analyzed that Islamic law can be accepted as an authoritative legal system to form a national law. Moreover, in the formation of the Islamic family law, it not only includes Islamic law textually but also contextually by looking at the socio-cultural facts, customs that developed long before the teachings of Islam were present in Indonesia. [27]. Thus, Islamic law and customary law become a source of law that greatly influences and becomes the basis of positive law in Indonesia. In terms of Islamic family law legislation in Indonesia until now it still exists to continue in experience legal reform in order to fill the legal vacuum and fulfill legal certainty for the people of Indonesia.

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