



## **Da'wah : A Contextual Islamic Sociological Jurisprudence Approach in Religious Court**

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**Abstract.** *This study examines the dynamics of divorce cases and child custody disputes in the Religious Court through a Contextual Islamic Sociological Jurisprudence approach, positioning family da'wah as an instrument of socio-legal transformation. The study aims to analyze how Islamic law is not only applied in a normative-juridical manner, but also understood within complex social realities—particularly in the context of family conflicts. A qualitative method with a juridical-sociological approach is employed, encompassing analysis of court decisions, interviews, and literature review. The novelty of this research lies in the integration of the Islamic legal sociology approach with the concept of family da'wah in the dispute resolution process, areas that have previously been treated separately. The findings indicate that a contextual approach can yield more humane and equitable solutions, particularly in determining child custody by accounting for psychological, social, and Islamic values. Furthermore, family da'wah plays a strategic role as both a preventive and curative medium in minimizing conflict and strengthening family resilience after divorce. This study therefore proposes a new model for religious court practice that is more adaptive to the social realities of modern society.*

**Keywords:** *Child Custody; Divorce; Family Da'wah; Islamic Sociology Of Law; Religious Court.*

### **1. INTRODUCTION**

Divorce cases and child custody disputes in the Religious Court present a complexity that is not only juridical in nature, but also sociological and psychological. In practice, judges are required not merely to apply legal norms textually, but to consider the best interests of the child as the primary orientation of their decisions. The Islamic Sociological Jurisprudence approach emerges as a new paradigm that integrates the normative dimensions of shari'ah with the social realities of modern society. This approach emphasizes the importance of contextual and progressive rechtsvinding grounded in maqāsid al-shari'ah, in order to achieve substantive justice and optimal child protection in the resolution of family cases.

### **2. DISCUSSION**

#### **Contextual Islamic Sociological Jurisprudence in Divorce and Child Custody**

The Islamic Sociological Jurisprudence approach in divorce cases and child custody disputes emphasizes the importance of integrating legal norms with social reality. Judges are not merely law appliers, but also contextual interpreters who consider psychological, social, and child welfare aspects in their decisions. The progressive rechtsvinding model demonstrates that substantive justice can be achieved through a multidisciplinary approach oriented toward maqāsid al-shari'ah. Furthermore, modern family dynamics—such as emotional immaturity

resulting from early marriage—also affect the quality of child-rearing, and thus require a more responsive and humane legal approach.

### **Harmonization of Islamic Law, National Law, and Pancasila Values**

The integration of Pancasila values within the Islamic Sociological Jurisprudence framework strengthens efforts to harmonize Islamic law and national law in resolving family disputes. Pancasila functions as an ethical-normative foundation capable of bridging differences between the two legal systems, particularly in divorce and child custody cases. This approach encourages judges to prioritize social justice, humanity, and the best interests of the child as the primary consideration in their decisions. Accordingly, the judicial process not only produces legal certainty, but also creates a more inclusive and sustainable social balance within a pluralistic society.

In the context of religious adjudication, the contextual approach demands harmonization among Islamic law, national law, and Pancasila values as the basis for resolving family conflicts. The tension between legal norms and human rights—as evident in cases of interfaith marriage—demonstrates that law cannot be separated from evolving social reality. Therefore, judges must adopt an inclusive and adaptive approach, taking into account values of justice, humanity, and the best interests of the child in every decision. This approach is also relevant in minimizing the social and psychological impact of divorce through the integration of family *da'wah* as a preventive and reconstructive solution.

The strengthening of this approach is further reflected in efforts to integrate Pancasila values into Islamic legal practice, including in judicial considerations at the Religious Court. Values such as social justice, humanity, and national unity serve as essential foundations in formulating decisions that are not merely legalistic, but also responsive to the needs of society. This integration demonstrates that Islamic law in Indonesia is dynamic and adaptive to the pluralistic national context. Accordingly, family *da'wah* can function as a medium for internalizing these values in order to strengthen family resilience and minimize post-divorce conflict.

The harmonization of Islamic law and national law through Pancasila values further underscores the urgency of an approach that is not only normative but also socio-legal in religious court practice. The principles of deliberation and social justice in Pancasila serve as important foundations in resolving family conflicts—including divorce and child custody—while taking into account the plurality of Indonesian society. This approach enables the creation of decisions that are not only legally valid, but also responsive to social needs and the constitutional rights of the parties involved. Thus, the integration of family *da'wah* reinforces

these values as a preventive effort to maintain harmony and the sustainability of the family institution.

From a broader perspective, the concept of harmonization between national law and Islamic law as discussed in the context of citizenship law shows that the principles of amanah (trustworthiness) and equality of rights are important points of convergence in building legal justice. These principles are relevant to the application in divorce and child custody cases, where parental responsibilities and the protection of children's rights must be prioritized. Nevertheless, differing interpretations of certain aspects of sharī'ah require constructive dialogue between positive law and Islamic law in order to achieve a just and contextual balance. This approach thereby strengthens the role of family da'wah as an ethical instrument in conflict resolution.

Pancasila as the basis of constitutional law affirms that every judicial practice—including at the Religious Court—must be oriented toward the values of justice, humanity, and democracy. These values serve as the foundation for the formulation of legal policies and their implementation in resolving family disputes. Accordingly, judicial decisions do not merely function as conflict resolution, but also as instruments of social guidance that reflect the ideals of national law. The integration of sociological approaches and family da'wah therefore becomes relevant in strengthening the legitimacy of decisions and creating substantive and sustainable justice.

### **The Marriage Guardian (Wali Nikah) and Pre-Marital Foundations**

Within this framework, the role of the wali nikah (marriage guardian) holds significant relevance in establishing a stable family foundation prior to marriage. The wali nikah does not merely function as a formal legitimacy of the marriage contract, but also as a party ensuring the psychological and social readiness of the prospective spouses. This is important because the initial quality of a marriage significantly influences the potential for future conflict, including divorce and child custody disputes. The presence of a wali nikah can also serve as a protective mechanism for women against potential harm in the household. Strengthening this function is therefore consistent with preventive efforts within the family da'wah approach.

### **Unregistered Marriage (Nikah Sirri), Polygamy, and Legal Implications**

The phenomenon of unregistered marriage (nikah sirri) has significant implications for divorce cases and child custody disputes at the Religious Court. The absence of official registration results in weak legal protection for wives and children, particularly with respect to maintenance rights, inheritance, and legal status recognition. From the Islamic Sociological Jurisprudence perspective, this situation requires judges to be more progressive in exploring

substantive justice values in order to protect vulnerable parties. Marriage registration is, in essence, consistent with *maqāsid al-sharī'ah* in preserving lineage and family rights. Family *da'wah* therefore plays an important role in enhancing legal awareness within society.

The practice of polygamy in the context of divorce and child custody disputes also reveals a high level of complexity in the application of Islamic family law in Indonesia. Although normatively permitted under certain conditions, its practice often gives rise to injustice—particularly for the first wife and children. Weak legal implementation and insufficient protection of women's rights have the potential to exacerbate family conflict and adversely affect child welfare. From the Islamic Sociological Jurisprudence perspective, this situation demands a more just and responsive approach oriented toward social justice and gender equality. Family *da'wah* thus becomes important as a preventive effort in building legal and moral awareness.

### **Elopement (Kawin Lari) and Marriage Dispensation (Dispensasi Nikah)**

The phenomenon of elopement (*kawin lari*) reinforces the urgency of the Islamic Sociological Jurisprudence approach in understanding the dynamics of family law in Indonesia. This practice often arises due to social pressure, family opposition, or economic factors, yet carries serious legal implications—particularly regarding marital status and child protection. The absence of official registration weakens the legal position of wives and children in divorce and custody cases. Judges must therefore adopt a contextual approach that takes into account social aspects and the value of substantive justice in every decision, while affirming the importance of family *da'wah* as a preventive measure.

Furthermore, the phenomenon of elopement reveals a gap between formal legal norms and the complex social realities of society. From the Islamic Sociological Jurisprudence perspective, this situation demands harmonization among Pancasila principles, constitutional law, and social practice so as to create contextual justice. Factors such as social pressure, economic conditions, and gender inequality are the primary causes of this practice, necessitating a legal approach that is adaptive and responsive to the dynamics of society. Accordingly, family *da'wah* becomes important as a means of education and guidance to prevent conflict and strengthen family resilience in a sustainable manner.

The practice of marriage dispensation (*dispensasi nikah*) is also a contributing factor to the high rate of divorce and child custody disputes. Early marriages facilitated through dispensation are often not accompanied by the psychological, economic, and social readiness of the couple, making them prone to household conflict. From the Islamic Sociological Jurisprudence perspective, this situation demands that judges be more selective and contextual

in granting dispensation, taking into account the principle of *maslahah* (public welfare) and child protection. This approach is consistent with efforts to uphold the objectives of *shari'ah* in building a *sakinah* and sustainable family.

### **Toward a Holistic and Progressive Judicial Model**

The various family law phenomena discussed affirm that the resolution of divorce and child custody cases cannot be carried out partially, but requires a holistic approach that integrates legal, social, and moral aspects. Within the Islamic Sociological Jurisprudence framework, judges are required to conduct *rechtsvinding* progressively, considering the interests of all parties—particularly the child as the most vulnerable party. This approach places substantive justice and welfare as the primary orientation in every decision. Family *da'wah* therefore becomes a strategic instrument in building collective awareness to create a harmonious and sustainable family.

At this stage, the strengthening of the Islamic Sociological Jurisprudence approach demands synergy among normative, sociological, and educative aspects in the resolution of family cases. Judges do not only function as law enforcers, but also as agents of social change capable of delivering substantive justice through contextual considerations. This is particularly important in child custody cases, where the child's welfare and future are the primary priorities. A progressive *rechtsvinding* approach enables the emergence of decisions that are more responsive to the dynamics of modern society. The integration of family *da'wah* is therefore a strategic step in strengthening moral values and family resilience.

Finally, the Islamic Sociological Jurisprudence approach affirms that the reformulation of family law in the Religious Court must be directed toward the creation of justice oriented to *maslahah*. Judicial decisions are not merely legal products, but also instruments of social engineering capable of shaping fairer and more sustainable family relational patterns. In child custody cases, the orientation toward the best interests of the child is a fundamental principle that must be prioritized through a contextual and multidisciplinary approach. The synergy among law, social values, and family *da'wah* is thus the key to creating a judicial system that is humane and responsive.

### **3. CONCLUSION**

Based on the overall discussion, it can be concluded that divorce cases and child custody disputes in the Religious Court cannot be adequately resolved through a solely normative-legal approach, but require an integrative and contextual Islamic Sociological Jurisprudence approach. This approach positions the judge as a *rechtsvinding* practitioner who

is responsive to social reality, foregrounding maqāṣid al-sharī‘ah and the best interests of the child as the primary orientation.

Various phenomena such as domestic violence, unregistered marriage, polygamy, elopement, and marriage dispensation demonstrate the complexity of family law that demands holistic solutions grounded in the values of justice, humanity, and maslahah. The integration of Pancasila values further strengthens the legitimacy of decisions so that they not only provide legal certainty, but also substantive justice.

Thus, family da‘wah holds a strategic role as a preventive and educative instrument in building legal and moral awareness within society. The synergy among law, social values, and family da‘wah is the key to creating a religious court system that is humane, adaptive, and sustainable.

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