

CONTRADICTIONS OF CIVIL LAW WITH ISLAMIC LAW AND ITS IMPLICATION ON A MUSLIM'S RESPONSIBILITY

Siti Khadijah Binte Mahfuh^{1*}

^{1*} Magister Ilmu Hukum, University of Muhammadiyah Malang, Indonesia,
sitikhadijah.86@gmail.com (*corresponding*).

Abstract: This paper aims to understand the implications of civil law on a Muslim's responsibility resulting from contradictions between civil law and Islamic law. The research uses the qualitative method. This paper looks at general laws that allow Muslims not to practise Islamic law. The study shows that law acts contradict Islamic practice. Thus, every Muslim should not disregard his responsibilities to fulfil worldly desires.

Keywords: law; responsibility; Muslim; religion; contradict

I. INTRODUCTION

Law is vital for a country to ensure benefit for society (Aulia & Al-Fatih, 2017). It protects individual freedom and rights by providing important frameworks and rules to help resolve disputes and by offering legal alternatives to finding solutions for the community (Burchardt, 2019).

In Singapore, all Singaporeans are bound with the legal system based on English common law regardless of their race, language, or religion. Hence, the government plays a vital role in crafting appropriate state laws for society. Singapore law is founded on four pillars – Constitution, Legislation, Subsidiary Legislation and judicial decisions of judges (GuideMeSingapore, 2008).

Here, the Muslim community is also subjected to Shariah law, which is regulated explicitly by the AMLA (Administration Muslim Law Act) apart from Singapore's civil law. For most Muslims, Shariah law relates to wills, administration, inheritance planning, and divorce (Abbas, 2012).

Although AMLA is intended for the Singaporean Muslim community, its scopes are limited to a few areas. While most Singaporeans are subject to the common law, the minority Muslim community raises the question of their responsibility to apply what Islam advocates. Here lies the contradiction between the provisions to use Islamic law and that which is contained in the Koran, as-Sunnah, and the *ijtihad* (the exercise of personal judgement in legal matters) of Islamic scholars.

II. RESEARCH METHOD

The research method that will be used is in the form of qualitative. The information collected is through library research, available articles & law act (Sonata, 2015).

III. RESULTS AND DISCUSSION

A. WOMEN'S CHARTER AND HUMAN RIGHTS

In Singapore, women are protected by the Women's Charter, a general election promise made by the People's Action Party in 1959. The charter came into operation in 1961. It was first introduced when polygamy became a common practice in the community. The legal rights for women at that time were minimal and not pronounced. The establishment of the Women's Charter was a significant leap in enforcing gender equality in Singapore (Hoodfar & Sadr, 2010). Other than the Women's Charter, AWARE was one of the other organisations that shared the same sentiment as the Women's charter. It upholds true gender parity where women and men are considered individuals who are free to make choices and take responsibility for their lives. AWARE not only focuses on protecting women but is also actively campaigning for the Women's Charter to extend their umbrella of protection to men (Hoodfar & Sadr, 2010).

Among the legal acts of the Women's Charter, in section 12 of the Avoidance of Marriages between Persons of Same-Sex, 1961, the charter recognises the validity of marriage for those who have undergone a sex change.

This amendment law protects human rights, including those who have carried out a sex change procedure. However, it is against the Syariah law which considers it a same-sex marriage.

In Islamic law, a person's gender is determined at birth. Any sex change performed later is considered as altering Allah's creation. Humans are created according to a state of nature that Allah has determined. They are not given the freedom to decide on the gender they prefer. If a baby was born a male at the time of birth, then Allah has created him to be a man. Likewise, if the baby was born a female, he must accept the original *fitrah* (the nature made by Allah in which He created man).

Allah says in Surah Ar-Rum verse 30, which means "So, turn your face straight to the religion of Allah; (stay on) the nature of Allah who has created man according to that nature. There is no change in the nature of Allah. (That is) the straight religion, but most people do not know. The interpretation of the above Surah is as follows:

One, it is clear that there is no change in anything that Allah has created by nature. The interpreters have given several interpretations regarding the meaning of *fitrah* as follows: *Fitrah* or "nature" is used to signify Islam. So, this means that Allah has created all human beings according to their nature and instincts. In other words, all humans are born Muslims, but the environment in which they live makes them deviate from the right path. This happens if parents teach children things and beliefs contrary to Islam. Therefore, children get misled into having the wrong beliefs.

Two, "nature" here is interpreted as "capacity". If this meaning of the word "nature" is adopted, then the phrase means that Allah has given every human being the ability to recognise his Creator and believe in Him. This ability automatically leads to submission to Islam if one uses this divine grace.

Three, "لا تُبَدِّلْ إِخْلُقَ اللَّهِ" means that no one can change the nature that has been created by Allah.

From the explanation above, it is clear that a person cannot escape from his original nature, even though he has carried out procedures to dispose himself of his actual gender. Islam strictly places legal boundaries on altering one's gender through a sex change other than what Allah has

created at birth. A person's gender is still determined according to the gender at birth, and nothing can change that. If a man who had performed a sex change gets married to another man, it is considered same-sex marriage.

In one of the hadith, the Prophet SAW said, "Whoever you find doing the actions of the people of Lut, then kill the person who did it, and what was done to him".

Since Islamic law regarding gender reassignment is beyond the scope of AMLA, impulsive Muslims regard the general law to be their pathway to fulfilling their wish. In this circumstance, the contradiction of the general law with Islamic law opens the door for the Muslim community to reject religious practices and legitimise the law according to their wishes.

B. AMLA AND INHERITANCE

The Muslim community in Singapore is governed by the Administration of Muslim Law Act (AMLA), which regulates religious affairs and advises matters related to Islam. Among the provisions of this law include inheritance. In AMLA, if a Muslim Singaporean who is domiciled in Singapore dies, the inheritance and its effects will be distributed according to Islamic law (Ratu, 2017). With AMLA, inheritance rights to the estate are guaranteed and will be distributed according to the Shafi'i school of Islamic law.

Often, the administrative process takes a long time before the inheritance is distributed to the heirs, as it requires the involvement of multiple parties. While processing the distribution, the question of *nafaqa* (maintenance) of the child who is left orphaned by the death of their father to continue their livelihood is a subject of frequent debate. According to Imam Al-Mardawi, the responsibility to provide for the child's living expenses rests with his father, grandfather, etc..

About the monthly expenditure of the orphans, a practising lawyer said that:

"As he has passed on, he is no longer obligated to maintain the child. The child will inherit a share of the deceased's estate".

The above statement contradicts the responsibility of safeguarding the rights of orphans. In surah al-Baqarah verse 220, Allah says, "They ask you (Muhammad) about orphans. Say, "It's good to improve their situation!" (N. Abdullah, Rahman, & Hamid, 2017).

In Malaysia, Article 71 of the Family Law Act stipulates the rights and obligations to bear child support are as follows:

1. Unless an agreement or an order of the Court provides for something other than that, then a man must bear the maintenance of his child, whether the child is in his care or the care of someone else, whether by providing them with shelter, clothing, food, treatment, and education according to his ability and standard of living, or by paying the cost

Except as mentioned above, it is the duty of a person charged under Hukum Syarak, to bear maintenance or contribute to the maintenance of a child if the father of the child has died or the place where his father is is unknown or if and to what extent his father is not able to support themselves (Islamic Family Law (Federal Territories) Act 1984, 1984)

This act ensures the interests of orphans concerning their rights to living expenses under sharia law. According to this act, the party responsible for the orphans must provide the maintenance to the orphans concerned.

However, the reality among legal practitioners in Singapore is not as regulated as in Malaysia. Here, while the inheritance is being processed, the party responsible for the orphans is dismissed from the responsibility to provide for the orphans. Speaking of responsibilities, another practising attorney emphasised that:

“You have outstanding duties and legal obligations as a Muslim under shariah, but being in a common law country, that is diluted, and you’re not punishable for it here due to the dilution.”.

The legal contradiction occurs when “common law” is prioritised, and the responsibility to provide for orphans that are imposed by the shariah is not carried out. Thus, the party responsible for the orphans may choose to give or not to give. In such a matter, sharia law should be enforced and should not be classified as optional.

C. CIVIL MARRIAGE IN SINGAPORE

In Singapore, civil marriage allows couples of different faiths to marry. If a Muslim wants to marry someone from another religion, the couple can do so by registering for a civil marriage. This allows the couple, not to apostate from their current beliefs. Civil marriage is against sharia. Children born from such marriages are not legally recognised under Islamic law. Other issues arising from civil marriages include the issue of *hadanah* (child custody) rights if divorce were to happen and the distribution of inheritance if death occurs.

One of the reasons couples choose to have a civil marriage is love. Some argue that there is no solid evidence in the Qur’an that forbids Muslim from marrying someone of a different faith. The couple could agree to raise their children in an Islamic way at a young age and allow them to decide the religion they wish to believe in when they grow up. They define a good person not based on his faith but their personality and obedience to their parents (Wahyuni, 2017).

The said problems may not emerge in the early stages of marriage, but they will eventually contribute to a more significant problem later on. In cases where pregnancy out of wedlock happens, the male partner is made to be responsible. Thus, civil marriage becomes the best option as it facilitates their marital affairs without considering religion before deciding.

The decision to ignore the sharia in the two cases relating to AMLA an inheritance, and civil marriage should not be taken lightly.

D. NADRA RIOT

Over a decade ago, Singapore went through the Hertogh court case, where the court decision affected many Malay Muslims. It was about a 13-year-old Christian girl named Maria from the Netherlands. The case is more often viewed from its historical perspective, neglecting some legal aspects of the failure to uphold the identity and religion of Maria or Nadra at that time (Hooker, 2013).

There were various versions of the case, but the status of the adoption of Maria or Nadra to Che Aminah remains questionable. Although Maria/ Nadra was raised as a Muslim under Che Aminah’s care, that does not automatically make her a Muslim. According to “Mohammedan marriage customs”, Maria/Nadra was married to a schoolteacher named Mansor Adabi. When the second litigation was carried out, the court decided that Maria/Nadra were bound by Dutch law and considered a minor. The marriage was deemed invalid. The riots arose when the court decided that Maria/Nadra’s biological parents had the right over her. Even though Nadra’s litigation was assisted by M. A Majid, the president of the Muslim Welfare Association, the court ruled in favour of her Dutch parents.

A general manager in the Muslim publishing division named Karim Ghani seized the opportunity of Maria Hertogh’s controversy to pursue his political goals by urging Singaporean Muslims to continue the legal battle to return Maria Hertogh to Che Aminah and Mansoor Adabi

(Riyanto, Surwandono, Warsito, & Cipto, 2018). Both parties received substantial support from their respective communities. A committee was formed to raise funds in conjunction with the fight for legal justice. Besides the committee's support, news coverage played an important role in substantiating the right of Nadra. Among other examples, The Brabants Nieuwsbald bulletin repeatedly emphasised the failure of Hertogh's side in bringing back Maria and said that they were not trying to get Maria back.

Both news coverages triggered two different actions but have one thing in common, to uphold the rights and responsibilities towards Maria Hertogh. The Hertogh family used the news insulting them to win their daughter back. They fought the case with more substantial facts and succeeded in getting Maria back according to the colonial law.

Muslims in Singapore felt enraged with the court's decision because of the news coverage written by Karim Ghani. He united the Malay-Muslim community by defending Nadra's rights as a Muslim child (Riyanto et al., 2018). The Muslim community could not accept the court's decision to reject that Nadra was a Muslim woman and denied her religion. The riot resulted from the government's failure to seriously consider Muslims' sensitivity. The Malays then were a not-so-reputable community; hence, the riot gave them a united voice to stand up for what they deemed proper. The case was seen as mocking the Muslim community because Malays were known for their polite manners and following orders without question (D. M. F. Abdullah, Noor, Sharif, Hussain, & Wahab, 2021). British law denies the credibility and power of the Muslim community at that time. The British were only worried about the harm caused by the exploitation of the riot. They failed to see that the event triggered the Malays to be more assertive during the post-colonial period. As a result, political Islam became more organised.

The Nadra's case demonstrates the contradiction between Colonial law and Islamic law regarding Nadra's religious identity. The Colonial law rejected Nadra's religious identity as a Muslim, thus revoking her Islamic rights given to her by Che Aminah. Although the documentation could not prove Nadra's religious status and Che Aminah's right to custody (Hughes, 1980), she was only doing her duty to defend a mother's rights over her child. Che Aminah felt it is her responsibility as a Muslim mother to fight for Nadra's welfare.

IV. CONCLUSION

Law is a significant part of a state to ensure the benefit of society. It serves as a protection of individual freedoms and rights. As a minority group, Muslims are responsible for upholding their religious values. The following are four conclusions that could be drawn from the research:

1. Humans should not alter the original state of being created by Allah. Instead, a responsible Muslim needs to be aware that decisions made by going against Allah's law do not make something that is *haram* (unlawful) becomes *halal* (lawful), such as sex change, even if it is allowed by the state law.
2. The responsibilities toward the orphans cannot be removed just because the common law allows it. A responsible Muslim does not shun his obligation to provide subsistence for the orphans even if the common law allows it.
3. Choosing civil marriage as an alternative driven by love and other circumstances should not be a reason for Muslims to reject Shariah law regarding marriage. A Muslim should think of the long-term consequences to his lineage and children's rights before deciding on civil marriage.

4. As responsible Muslims, we should understand that we are accountable on Judgement Day for every decision. In the case of Maria/Nadra, Che Aminah felt the need to defend Nadra's identity and religion. Although the legal system at that time failed to uphold the status of Maria/Nadra, the unity of the Islamic community at that time echoed her concern.

Hence, all decisions must be based on knowledge to be a true practising Muslim. Ignorance cannot be the basis for making decisions with serious implications on Judgement Day.

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REFERENCES

- Abbas, A. N. bin. (2012). The Islamic Legal System in Singapore. *Washington International Law Journal*, 21(1), 163–181.
- Abdullah, D. M. F., Noor, A. M., Sharif, M. S. A. M., Hussain, N., & Wahab, N. A. (2021). Di Sebalik Isu Natrah, 1950 : Reaksi Pembaca The Straits Times terhadap Tragedi Natrah. *Journal of Al-Tamddun*, 16(1), 151–167. <https://doi.org/10.22452/JAT.vol16no1.4>
- Abdullah, N., Rahman, L. A., & Hamid, N. A. (2017). Tafsir Pimpinan Ar-Rahman: Tinjauan Terhadap Unsur Kesopanan Dalam Sociolinguistik Melayu. *JSASS: Journal of Humanities and Sjocial Sciences*, 4(2), 135–149.
- Aulia, F., & Al-Fatih, S. (2017). Perbandingan Sistem Hukum Common Law, Civil Law dan Islamic Law dalam Perspektif Sejarah dan Karakteristik Berpikir . *Legality : Jurnal Ilmiah Hukum*, 25(1), 98–113. Retrieved from <http://202.52.52.22/index.php/legality/article/view/5993>
- Burchardt, D. (2019). The Functions of Law and their Challenges: The Differentiated Functionality of International Law. *German Law Journal*, 20(4), 409–429. <https://doi.org/10.1017/glj.2019.29>
- Hoodfar, H., & Sadr, S. (2010). Islamic Politics and Women's Quest for Gender Equality in Iran. *JSTOR*, 31(6), 885–903.
- Hooker, M. (2013). Essay: Maria Was a Christian - Nadra Was a Muslim: Hertogh Revisited. *Australian Journal of Asian Law*, 14(2), 291–395.
- Hughes, T. E. (1980). *Tangled Worlds The Story of Maria Hertogh*. <https://doi.org/10.1355/9789814377751>
- Ratu, F. A. (2017). Praktek Pembagian Harta Waris Masyarakat Suku Lio Perspektif Fikih Mawaris. *Maqasid: Jurnal Studi Hukum Islam*, 6(1), 78–91.
- Riyanto, S., Surwandono, S., Warsito, T., & Cipto, B. (2018). Islam dalam Politik Luar Negeri Singapura. *Jurnal Hubungan Internasional*, 7(2), 56–67. <https://doi.org/10.18196/hi.72138>
- Sonata, D. L. (2015). Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 8(1), 15–35.

<https://doi.org/10.25041/fiatjustisia.v8no1.283>

Wahyuni, S. (2017). Pelaksanaan Perkawinan Campur Beda Agama Antara Warga Melayu Malaysia dan Dayak Kalimantan. *Al-Ahwal Jurnal Hukum Keluarga Islam*, 9(1), 31–51.
<https://doi.org/10.14421/ahwal.2016.09103>