

CONSERVATIVE MUSLIM ON THE SCREEN

The Narrative of Islamic Family Law in Indonesian Films

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Abstract

This article focuses on the paradigm of Islamic family law in four Indonesian Islamic films: When Cinta Bertasbih 2 (2009), The Unmissable Heaven (2015), Talak 3 (2016), and Wedding Agreement (2018). This article brings a discussion of family law issues that were constructed in these films, with the purpose to find out what kind of family law tendencies are presented. This research utilizes a qualitative content analysis approach. It means the data was collected by examining scene by scene related to family law issues in the four films and then analyzed. As a result, this article argues that a variety of Islamic family law issues, including unregistered marriage, polygamy, triple talaq, and marriage agreements in the films, tend to result in conservative rather than progressive fiqh. This demonstrates that there is an attempt (wittingly/unwittingly) to emphasize the conservative Islamic family law paradigm in these Islamic films'.

Artikel ini fokus pada paradigma hukum keluarga Islam di beberapa film islami Indonesia. Film-film yang dimaksud adalah Ketika Cinta Bertasbih 2 (2009), Surga Yang Tak Dirindukan (2015), Talak 3 (2016), dan Wedding Agreement (2018). Artikel ini menyajikan diskusi isu hukum keluarga yang direka dalam beberapa film tersebut, di mana tujuannya adalah untuk menemukan seperti apa kecenderungan hukum keluarga yang dihadirkan. Penelitian ini memanfaatkan pendekatan analisis isi (content analysis) secara kualitatif. Artinya, data-data dikumpulkan dengan menelaah adegan demi adegan yang berkaitan dengan isu hukum keluarga Islam dalam keempat film tersebut, kemudian dianalisis. Alhasil, artikel ini berargumen bahwa ragam isu hukum perkawinan, seperti nikah siri, poligami, talak tiga, hingga perjanjian perkawinan dalam film-film itu cenderung mengarah kepada fikih konservatif, bukan progresif. Hal ini menandakan adanya geliat mengutamakan paradigma hukum keluarga Islam yang bernalar konservatif dalam film-film tersebut, terlepas apakah itu disengaja atau tidak.

Keywords: *Conservatism, Islamic Film, Muslim Family Law*

A. Introduction

Portraying Islamic family law in Indonesia is not enough to see the practice of law in the field as played by legal practitioners and the community. Thought of Islamic family law or the discourse can manifest in various media. Some are contained through academic/non academic sources such as textbooks, journals, opinions in the media, legal fatwas, judge interpretation (*ijtihad*), social media, and also films. All of these media have the capacity in transmitting knowledge to broader audiences, then later subtly bring in influences. Nevertheless, the reality of public interest in something more entertaining and imaginative is to be reckoned because it

draws considerable attention to the message and doctrine brought about by the media. Another side that should be considered is how the film as one of the media entities can shape and define a digital world with specific perspectives¹ that I call paradigm.

Zahida by reviewing the film *Surga Yang Tak Dirindukan* (Heaven That Is Not Missed) concluded that polygamy discourse is constructed as a solution to social problems.² She also considered the polygamy discourse presented in that film to be misogynistic.³ Kusumaningtyas with a gender perspective in reviewing five Islamic films argued that the presence of polygamy discourse in Islamic films is a medium of educating the values of

¹ Gary R. Bunt, *Hashtag Islam: How Cyber-Islamic Environments Are Transforming Religious Authority* (Chapel Hill: The University of Carolina Press, 2018), p. 28.

² Ana Zahida, 'Surga Yang Tak Dirindukan: Wacana Polygamy dalam Film Islami', *Tabligh*, vol. 18, no. 1 (2017), hlm. 17.

³ ws Zahida, 'Surga Yang Tak Dirindukan: Wacana Polygamy dalam Film Islami'.

gender equality and women's rights.⁴ Here, we see how film dialogue may serve as a vehicle for resolving societal concerns and serving as an instructional medium.

Some researches highlight how piety is built in Islamic films. Hoesterey and Clark examined several Islamic films under the family law topic, in which both argued that the film they studied built the construction of male masculinity in piety.⁵ This finding is also echoed by Sukowati's study. By reviewing *Ayat-Ayat Cinta* (2008), which is thick on the issue of polygamy, Sukowati argued that this film teaches how to be an ideal Muslim, not an ideal Muslim woman. This is what he calls the dominance of the construction of masculinity in Islamic films.⁶ In other contexts, in addition to being considered as a new authority on Muslim practice while shaping its identity as Hariyadi argued,⁷ Islamic films are also open to being seen on two sides, namely, the commodification of Islam and Islamization, a trend of reading that has recently been popular.⁸

Referring to Zahida, the subject of family law in Islamic films is important to research because it represents a mainstream regime in society. But what Zahida, Kusumaningtyas, Hoesterey and Clark, Sukowati, Hariyadi, and in broader fields, Izharuddin⁹ has not yet specifically prioritized a gap between film and *fiqh*, particularly the paradigm of Islamic family law. In this context, the author reviews four Islamic films by focusing on

the issues of Islamic family law. This article quests on the extent to which Islamic family law issues are featured in Islamic films and ended with a conservative paradigm. Films that were studied are *Ketika Cinta Bertasbih 2* (2009), *Surga Yang Tak Dirindukan* (2015), *Talak 3* (2016), and *Wedding Agreement* (2018). The selection of this film is based on the results of the initial research that shows these films are considered massively displaying the issue of Islamic family law rather than other Islamic films. These films were also had been studied by some previous researchers. It means this article would like to continue in broader issues of Islamic family law in Indonesia and then try to conclude single reasoning which articulates *fiqh* tendency visualized in the films, as what has been studied by Arifki in the case of self-help books¹⁰ and Hayat in the case of *dakwahtainment*.¹¹

B. Why Islamic Film?

Islamic film has many terms, such as *film religi* (religious genre), *film bernapaskan Islam* (spirit of Islam), and also *film dakwah* (propagation).¹² These various terms allow one to define Islamic films variedly. Some consider that Islamic films are films featuring Islamic symbols¹³ and showing the Qur'anic verses and hadiths, while others define Islamic films based on the presence of Islamic moral teachings, although it does not show snippets of Quranic texts and hadiths. Huda confirmed that by citing several definitions of some

⁴ A.D. Kusumaningtyas, 'Perspektif Gender tentang Isu Poligami dalam Lima Film Bergener Religi', *Jurnal Muttaqien*, vol. 1, no. 1 (2020), hlm. 31.

⁵ James B. Hoesterey and Marshall Clark, 'Film Islami : Gender , Piety and Pop Culture in Post-Authoritarian Indonesia Film Islami : Gender , Piety and Pop Culture in Post-Authoritarian Indonesia', *Asian Studies Review*, vol. 36, no. 1 (2012), p. 221.

⁶ Muria Endah Sokowati, 'Islamic Masculinity in Indonesian Islamic Movies: The Representation of Men and The Practice of Men's Power in Indonesian Islamic Movies in The Post New Order Period', *The Third International Conference on Sustainable Innovation* (2019), p. 208.

⁷ Hariyadi, 'Finding Islam in Cinema: Islamic Films and the Identity of Indonesian Muslim Youth', *Al-Jami'ah*, vol. 51, no. 2 (2013), p. 444.

⁸ Eric Sasono, 'Islamic-themed Films in Contemporary Indonesia : Commodified Religion or Islamization ?', *Asian Cinema*, vol. 21, no. 2 (2010), pp. 48-68.

⁹ Alicia Izharuddin, *Gender, Sexuality, an Culture in Asia* (Singapore: Palgrave Macmillan, 2017).

¹⁰ Arifki Budia Warman, *Konservatisme Fikih Keluarga: Kajian Terhadap Buku-Buku Populer Rumah Tangga Islami* (Yogyakarta: Program Pascasarjana UIN Sunan Kalijaga, 2017).

¹¹ Muhammad Jihadul Hayat, *Tradisionalisme Pemikiran Hukum Keluarga Islam dalam Dakwahtainment (Studi Relasi Gender pada Vidio Ceramah Program Mamah dan Aa Beraksi)* (Yogyakarta: Program Pascasarjana UIN Sunan Kalijaga, 2018).

¹² Izharuddin, *Gender, Sexuality, an Culture in Asia*, p. 38.

¹³ Alicia Izharuddin, 'Dakwah at The Cinema: Identifying the Generic Parameters of Islamic Films', in *Gender and Islam in Indonesian Cinema* (Singapore: Springer, 2017), pp. 31-62.

researchers.¹⁴ Ekky-as cited by Huda-, for example, refers to Islamic films as “Prophetic films” because it can bring the audience to become a ‘better’ person, take the audience away from despicable acts, and build their faith in God and the prophet to follow the teachings of Islam.¹⁵ Dwyer defines Islamic film as a film that depicts Islam manifested in everyday life, even though it is not produced by Muslim producers or directors.¹⁶ Therefore, he called it the “Islamicate film”.¹⁷ Meanwhile, Huda himself, in defining an Islamic film, does not refer to the visual representation of Islam and its adherents of the film but also to the negotiation of how Muslims accept it as an Islamic film.¹⁸

What does the law have to do with Islamic films? Film as popular culture has an interrelated relationship with the law, other than just a moral message. First, the film derives its idea from the law. Friedman, as explained by Greenfield, illustrated that public understanding of the law is constructed from the cultural representation of the law.¹⁹ Second, the film contains and shows the issues of legal regulation within contemporary cultural life.²⁰ Not only that, in Islamic films, the close relationship between legal and the implementation of Islamic law is also depicted interestingly and sometimes imaginatively. Thus, the term “Islamic films” in this context refers to the extent to which a film presents a concept or practice of Islamic law, even if the

film is not generally considered an Islamic film by the audience.

Whatever their genres, popular films are produced for entertainment and economic purposes.²¹ However, films should not only be seen from the entertainment and economic side. The variety of issues featured in the film needs to be re-questioned because it relates to the socio-cultural context of its production process²² and also its audience. Therefore, other interests such as the spread of doctrine, ideology, moral messages, and criticism are plausible to be presented in a varied and exploratory discourse.

Observing the legal discourse in films is important for two reasons. First, the film is considered to have stunning power in drawing public attention.²³ Second, film as part of popular culture is also considered to have the power in shaping the public understanding of the law, legal awareness.²⁴ This is where the film affects public visualization,²⁵ how the public acts legally, solving legal issues, including Islamic family law in this piece. Through this way, we can absorb any concepts of laws²⁶ implemented in the films. In this position, the film plays a role in socializing what the law is and how it roles.²⁷ Simply, it is a discourse playing a nuance of any legal paradigm.

C. The Narration of Islamic Family Law in Indonesian Islamic Films

¹⁴ Ahmad Nuril Huda, ‘Negotiating Islam With Cinema: A Theoretical Discussion on Indonesian Islamic Films’, *Wacana*, vol. 14, no. 1 (2012), pp. 1–16.

¹⁵ *Ibid.*, p. 3.

¹⁶ Rachel Dwyer, *Filming the Gods: Religion and Indian Cinema* (Routledge, 2006).

¹⁷ Ahmad Nuril Huda, ‘Negotiating Islam With Cinema’, p. 3.

¹⁸ *Ibid.*

¹⁹ Steve Greenfield, Guy Osborn, and Peter Robson, *Film and The Law* (London: Cavendish Publishing Limited, 2001), p. 4.

²⁰ *Ibid.*

²¹ For example, is a violent film. See S. Abraham Ravid and Suman Basuroy, ‘Managerial Objectives, the R-rating Puzzle, and the Production of Violent Films’, *The Journal of Business*, vol. 77, no. S2 (JSTOR, 2004), pp. S155–92.

²² Alberto Baracco, *Hermeneutics of The Film World: A Ricoeuan Method for Film Interpretation* (Gewerbestrasse: Palgrave Macmillan), p. 4.

²³ Steve Greenfield and Guy Osborn, ‘Law, Legal Education and Popular Culture’, in *Reading in Law and Popular Culture*, ed. by Steve Greenfield and Guy Osborn (New York: Routledge, 2006), p. 4.

²⁴ Lawrence Liang, ‘Cinema, Citizenship, and The illegal City’, in *Cinema, Law, and The State in Asia*, ed. by Corey K. Creekmur and Mark Sidel (New York: Palgrave Macmillan, 2007), p. 11.

²⁵ Lieve Gies, ‘The Media and Public Understanding of Law’, in *Reading in Law and Popular Culture*, ed. by Steve Greenfield and Guy Osborn (New York: Routledge, 2006), p. 65.

²⁶ Orit Kamir, ‘Why “ Law-and-Film ” and What Does it Actually Mean ? A Perspective’, *Continuum: Journal of Media and Cultural Studies*, vol. 19, no. 2 (2005), p. 257.

²⁷ While in other positions, the film can also be legal creditors, forming the negative face of the law. See Gies, ‘The Media and Public Understanding of Law’.

There are four films in this article: *Ketika Cinta Bertasbih 2* [abb: KCB 2] (2009), *Surga Yang Tak Dirindukan* [abb: SYTD] (2015), *Wedding Agreement* (2019) and *Talak 3* (2016). The first two films were ranked top in terms of audience reach, which is about 1.5 million viewers. While *Wedding Agreement* reached 734,000 viewers²⁸ and *Talak 3* reached 567,000 viewers.²⁹ The first three films are adapted from novels with the same name, except the last one, *Talak 3*.

KCB 2 is a sequel to KCB 1, adapted from the novel by Habiburrahman El-Shirazy. There are two parts that I highlight in this film. First was when Ana asked for a divorce with Furqan. The second was when Azam was married to Ana. The divorce between Ana and Furqan was shocking. This was because Furqan was judged to have bumped into the essence of marriage. Furqan has been judged to be hurting women for his dishonesty with the HIV/AIDS virus that infects him, which makes him not dare to have sex with Ana. The lies in the marriage are what Ana requested to Furqan to divorce her in terms of *fiqh*. Instantly, Ana asked Furqan to divorce her religiously. This divorce scene is very prominent, while the divorce process in court only shows Ana's scene when taking the divorce certificate. Therefore, this narrative displays the practice of divorce outside the courts.³⁰

The story of Azam's marriage to Ana is shocking. When despair has attended to his life, Azam relies on the charismatic authority of *Kiai* Lutfi as the leader of *pesantren* (boarding school) as well as the father of Ana to find the best soul mate for him. With various considerations, *Kiai* Lutfi finally married Azam to his only daughter, Ana, who had completed her *iddah* period. Without waiting for a long time, the marriage contract was immediately carried out that day after Maghrib prayers in the mosque of *pesantren*

and witnessed by students of *pesantren* and residents around *pesantren*. This second narrative features underhand marriage (*nikah siri*) case practiced in *pesantren*.³¹

The second film is SYTD (2015). The film is also adapted from the novel, *Surga Yang Tak Dirindukan*, by Asma Nadia. The standout theme in the film is polygamy. Prasetya who had married and had a child was forced to commit polygamy based on mercy towards a woman named Mei, a Christian woman who eventually converted (*muallaf*) when married by Prasetya. On her wedding day, Mei was pregnant with old gestational age. However, the marriage failed because her future husband did not come. Her first meeting with Prasetya was when Prasetya save him successfully from a single accident. Mei was rushed to the hospital and the baby in her womb had to be born regarding safety. However, Mei who feels her life is no longer useful wants to commit suicide. This suicide attempt was successfully prevented by Prasetya with his promise to marry her at that time. Unbeknownst to his wife, Prasetya eventually married Mei in the hospital with the help of an *ustaz*. Interestingly, who became Mei's guardian of marriage was an *ustaz* (teacher).³²

The third film is *Wedding Agreement*. The film is also adapted from the novel by Mia Chuz. The theme in the film is also Islamic family law. The conflict of stories begins with the marriage of Bian and Tari based on matchmaking. Bian forced marriage as a form of devotion to his parents, even though he did not love Tari at all. Based on this condition, the day after the wedding marriage, Bian made a marriage agreement with Tari. Some points that must be agreed are that the two must not regulate each other, do not take care of each other's needs, do not need to carry out obligations as a husband or wife, do not enter their respective rooms without permission,

²⁸ '2 Pekan Ditayangkan, Film *Wedding Agreement* Ditonton Lebih dari 734 Ribu Penonton', *Liputan6.com* (2019), <https://www.liputan6.com/showbiz/read/4044741/2-pekan-ditayangkan-film-wedding-agreement-ditonton-lebih-dari-734-ribu-penonton>, accessed 6 Nov 2021.

²⁹ Ratnaning Asih, 'Berapa Pendapatan Film Indonesia Terlaris Tahun 2016?', *Liputan6.com* (2016), <https://www.liputan6.com/showbiz/read/2549667/berapa-pendapatan-film-indonesia-terlaris-tahun-2016>, accessed 6 Nov 2021.

³⁰ Chaerul Umam, *Ketika Cinta Bertasbih 2* (Indonesia: SinemArt Pictures, 2015).

³¹ *Ibid.*

³² Kuntz Agus, *Surga Yang Tak Dirindukan* (Indonesia: MD Pictures, 2015).

and do not need to ask permission to the husband or wife if each one want to travel. The point of agreement that is quite surprising is that after one year of marriage the two must agree to divorce.³³

The fourth film is *Talak 3*. Although the film is a comedy, the main theme presented is family law. The family law conflict in the film begins when a couple, Bagas and Risa, are in debt. While the two are divorced. The only way that can be done is to submit a wedding organizer project because the results can pay off that debt. However, the conditions proposed by the manager make it difficult for them. They have to remarry officially. Finally, Bagas and Risa went to *penghulu* (marriage registrar officer)³⁴ to help them to remarry. *Penghulu* argued that marriage could not be done because Bagas had placed triple divorce at once in front of a judge and approved by the judge. *Penghulu* then explained that the consequences, for the marriage to take place, is that Risa must first marry another man (*muhallil*) officially with earnest intentions. Even, Risa has to have sex with that man. This is the way which allows the remarry again officially.³⁵ In general, some of the narratives above explain the four issues; divorce, unregistered marriage (*nikah siri*), polygamy, and marriage agreements. All of these issues have been discussed at length in *fiqh* and positive law, whether it tends to be progressive or not.

1. Divorce Issues

Based on these films, there are two topics of divorce, namely *t}alaaq raj'iy* and triple divorce. The first issue is *t}alaaq raj'iy* which exists in the narrative of Furqan and Ana's story in *KCB 2*. The legal construction is interesting. First, Ana forces Furqan to divorce her, instead of taking *khulu'* or suing the court. Second, divorce must be taken because Furqan is suspected of contracting HIV/AIDS and both have never had sex since they married.

Third, the practice of divorce that is shown in the film occurs outside the court and it is considered a legitimate divorce.

The first construction is *t}alaaq raj'iy*. In this case, we have to look at the positive law and *fiqh*. Referring to the Compilation of Islamic Law (KHI) article 117, divorce is only valid if a husband pledged divorce before a panel of judges in an authoritative Religious Court. Not only that but the validity must also be based on several reasons according to article 116 KHI. One of the reasons is the health condition of the couple which is related to the case of divorce in that film. If there is a disease or disabling condition which is difficult to cure so that it cannot carry out the obligations of the husband or wife, the man or the woman may sue for divorce from the court. *Hanafiyyah* scholars categorize divorce into two, namely divorce which must be imposed on a court ruling and can be imposed outside the court. Focusing on the first type of divorce, several causes of divorce can be referred to divorce because of *li'an*, divorce due to disability conditions in husbands such as *al-jubb*, *al-'unnah*, and *al-khisa* |', or in wives, such as *ar-ratq* and *al-qarn*, and divorce because of the couple's rejection to Islam.³⁶ In this position, regarding KHI and *fiqh*, the consideration of divorce of that film ideally should be based on the judge's decision, not on the will of the person.

The construction of divorce law, in this case, is irrelevant to the context of Indonesian Islamic law. KHI does not recognize the validity of divorce outside the court. The judge also considers the validity of divorce only since the divorce was pledged in the court. The presence of divorce law construction outside the court indicates that the existence of KHI is not considered to be followed.

The other side has to observe is the reason used in divorce. Dangerous diseases such as HIV/AIDS are not immediately the reason for divorce prosecution. Whether this disease already has a powerful drug also

³³ Archie Hekagery, *Wedding Agreement* (Indonesia: Starvision Plus, 2019).

³⁴ According to Webster, *penghulu* refers to a district or village headman in Indonesia, Malaya, or British Borneo. See <https://www.merriam-webster.com/dictionary/penghulu>. The good illustration of *penghulu*, see Muhammad Latif Fauzi, 'Registering Muslim Marriages: Penghulu, Modin, and the Struggles for Influence', *Al-Jami'ah: Journal of Islamic Studies*, vol. 57, no. 2 (2019), pp. 397-424.

³⁵ Ismail Basbeth and Hanung Bramantyo, *Talak 3* (Indonesia: MD Pictures, 2016).

³⁶ Wahbah Az-Zuhaili, *Al-Fiqhu al-Islamiyy wa Adillatuhu* (Damaskus: Dar al-Fikr), vol. XVII, hlm. 353-354.

needs to be seen. HIV/AIDS does not prevent a person from carrying out their duties as a husband or wife. The condition only hinders the husband or wife at the moment, until the disease can be cured. This kind of perspective that is more friendly to people with disabilities or malignant diseases is not featured in the film. HIV/AIDS is only described as frightening and should be avoided for the safety of the soul and offspring in the film. It is the point of view that further builds legal characteristics that are unresponsive to changing legal cultural contexts, technological cultures, and treatment cultures. Of course, this is contrary to the positive spectrum of Islamic law which is essentially responsive and accommodating to the present.³⁷

The second issue is triple divorce at once in the film *Talak 3*. There are two matters to be highlighted. The first is the pledge of triple divorce as well as the husband in front of the judge. The second is when the judge affirms the husband's desire to do triple divorce at once. Everything happens in the context of a divorce hearing in court, not an out-of-court debate. These two sections are crucial issues in the decision-making of judges in religious courts.

In general, the two points above are not in line with Islamic family law in Indonesia. This argument is based on several things. First, KHI does not accommodate the practice of triple divorce. It is based on Article 120 which asserts that *t}ala>q ba>in kubra>* is divorced for the third time, not with a pledge of three at once. The consequence of this type of divorce is that the wife can be remarried if she has married *muh}allil* then she is divorced after having sex and ended the iddah period. This concept provides affirmative legal certainty to women. Unlike KHI, in *fiqh*, there are several views on this type of divorce. Ibnu Rusyd described it in two parts. The first group considers that triple divorce at once has been considered as the third divorce, *t}ala>q ba>in kubra>*. This is the opinion of most scholars.

The second group argued that triple divorce at once is account for once (the first or second). Therefore, the word triple divorce does not affect at all the change in divorce law.³⁸ Based on this, the concept of triple divorce that is presented again through the film *Talak 3* is a traditional concept that is based on traditional *fiqh*, not KHI.

Then, there's also a legal oddity when the focus turns to how the judges approved the divorce application of the husband, Bian, with triple divorce at once. The judges are portrayed as a figure who does not want to look at the positive law, KHI, or the Marriage Act. Judges are portrayed as more obedient to the doctrine of *fiqh*. This portrayal is not excessive. Nurlaelawati proved that judges often do not refer to KHI in resolving cases in court. They often use the *fiqh* approach because *fiqh* is considered to present a choice of answers that provides *mas}lah}ah* and detailed arguments.³⁹ The conflict presented in the film seems to reestablish the power of judges as legal interpreters based on *fiqh* but is ignored in the legal context.

2. Marriage Contract

KHI in article 45 paragraph (2) states that the marriage agreement should not conflict with Islamic law. Therefore, the marriage agreement must contain benefits for both parties, especially women who are often harmed. If there is an element violating the provisions of Islamic law, the contents of the agreement can be automatically canceled. However, in the *Wedding Agreement*, before that marriage agreement was made, Bian is portrayed as a husband who had intended to marry his wife within a year because he marry Tari without love and was under force. This practice has violated the essence of marriage from the beginning and this is prohibited by

³⁷ Mukhammad Nur Hadi, *Pernikahan dan Disabilitas: Nalar Hukum Penghulu di Kota Malang*, 1st edition (Jakarta: Publica Institute, 2020), hlm. 166.

³⁸ Muhammad bin Ahmad bin Muhammad bin Rusyd, *Bidayah al-Mujtahid* (Jakarta: Dar al-Kutub al-Islamiyyah, 2012), vol. II, hlm. 63.

³⁹ Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010), p. 222.

various scholars of the school.⁴⁰

The portrayal of a contract marriage in the *Wedding Agreement* is a new image. This can be seen from a few aspects. First, marriage is not practiced in secret and is legally valid based on state law and religious law. Second, the narrative of marriage is not presented as a practice of sexual desire, but to fulfill the wishes of parents. Third, although this marriage is openly implemented, the contract marriage agreement is done covertly to maintain the dignity of the family. This construction presents the new world and perspective on the contract marriage that has been practiced in several places in Indonesia, such as in Bogor.⁴¹ Therefore, a more appropriate term for this context is *nikah al-mu'aaqat*, not *nikah al-mut'ah*, in which both terms articulate the limited time of marriage.

If the last term is used, *nikah al-mut'ah*, several things need to be considered besides restriction. First, the contract of marriage (*'aqdu an-nikah*) is carried out covertly only by relying on the doctrine of *fiqh* and without being recorded. Second, marriage is conducted to fulfill sexual desire. Third, marriage has no impact on the implementation of obligations and rights of marriage. In addition, this marriage practice is also a business field for pimps and marriage facilitators. Even this practice also causes many children to be displaced because there is no responsibility for rights and obligations with the couple. It is degrading to women's dignity.⁴² However, the practice of contract marriage featured in this film seems to show that there is a gap to practice contract marriage with different narratives and legal constructions.

3. Unregistered Marriage and Polygamy

In this section, the topic of unregistered

marriage and polygamy are discussed in one box. These topics are interrelated. This is because common cases of polygamous marriage are carried out through underhand marriage⁴³ without registering to the Religious Office. Before landing on the legal narrative in the film, we need to occupy the definition of unregistered marriage.

In Indonesia, several terms are considered to have the same meaning as *nikah siri*. There is *nikah di bawah tangan*, *kawin syar'i*, *kawin modin*, and *kawin kiai*.⁴⁴ All terms go to one definition, namely, a marriage that meets all conditions according to *fiqh* or KHI but is not registered and recorded by *penghulu* in the Religious Office (KUA).⁴⁵ In *fiqh*, the term underhand marriage refers to a marriage contract that is only witnessed by one man and a woman.⁴⁶ In several Islamic films that have been selected, there are two legal constructs. The first is the underhand marriage of Azam and Ana in *pesantren*. The second is polygamy through underhand marriage between Prasetya and Mei.

We will first highlight how the face of the marriage law is presented in the context of Azam and Ana. The marriage case is a fast marriage that takes place through the authority of an ulama figure, *Kiai* Lutfi, who is also Ana's guardian. According to *fiqh*, this marriage is legal because it has qualified based on its pillars and requirements. However, juridically this marriage is problematic because it is not possible in a short time for a person can get the services of marriage administration from KUA. Marriage is not procedural. Anthropologically, underhand marriage in this context often occurs in *pesantren*

⁴⁰ Sayyid Sabiq, *Fiqh as-Sunnah* (Beirut: Dar al-Fatah al-'Ilam al-'Arabiyy, 2012), hlm. 26.

⁴¹ 'Fenomena Kawin Kontrak di Kawasan Puncak Bogor', *CNN Indonesia* (2021), <https://www.cnnindonesia.com/nasional/20211217070218-20-735134/ada-6-desa-kawin-kontrak-di-puncak-bogor-larangan-segera-terbit>, accessed 31 Jan 2022.

⁴² Irmawati Rais, 'Praktek Kawin Mut'ah di Indonesia dalam Tinjauan Hukum Islam dan Undang-Undang Perkawinan', *Ahkam*, vol. 15, no. 2 (2014), hlm. 99.

⁴³ Underhand marriage is translated literally from Bahasa Indonesia "nikah di bawah tangan". It connotes the meaning that marriage without the presence/involvement of *penghulu* – state authority. It shares the same meaning as unregistered marriage.

⁴⁴ Halili Rais, *Penguhulu Di Antara Dua Otiritas Fikih dan Kompilasi Hukum Islam* (Yogyakarta: Penerbit Lingkaran, 2020), hlm. 159.

⁴⁵ *Ibid.*

⁴⁶ Az-Zuhaily, *Al-Fiqhu al-Islamiyy wa Adillatuhu*; Sabiq, *Fiqh as-Sunnah*.

culture. The slogan “as long as they are legal first based on religious law” is often used to legitimize the validity of this marriage in the *pesantren* community. Interestingly, the film does not present Azam and Ana’s efforts to obtain the legality of their marriage from the state. It is the most important part that is not featured, in the novel or the film. This method seems to strengthen the argument that underhand marriage is legitimate. The construction of that marriage in the Islamic film, on the one hand, portrays a fast marriage culture with the religious authority that is difficult to refute. But on the other hand, this display seems to show that underhand marriage is a common thing in the world of *pesantren*.

The film also shows how the public responds to that marriage case in which students and residents around *pesantren* also witnessed the sacred moment. Such positive responses also occur in the real world. In Warurejo, underhand marriage is facilitated by *modin* or *kiai* who works as a ‘broker’ of underhand marriage although for economic purposes. This practice has been going on for decades and the broker profession was inherited hereditarily based on blood relation (*nasab*). The public also realizes that the practice of marriage has historical roots that are quite long and well internalized in the community.⁴⁷

The second legal construction is the underhand marriage through polygamy

between Prasetya and Mei. Underhand polygamy is not a new practice in Indonesia. This polygamy is commonly practiced when the husband does not get permission from the first wife. Not only that, polygamy is considered the only way to avoid sin (of *zina*). Uniquely, this practice is also carried out by celebrities and Islamic figures where the practice is popular in the post-reform era,⁴⁸ even public officials.⁴⁹

The practice of underhand polygamy in the film shows the uniqueness. First, polygamy is done clandestinely and unplanned. Second, polygamy is not done for ideological reasons such as for the sake of piety⁵⁰, performing the *sunnah* (prophet’s way of life), maintaining the tendency of male sexuality,⁵¹ or regarding the population of women.⁵² The motive is to save women from the practice of suicide and guarantee the life of their children. These two motives form an imaginative discourse about polygamy. This motive is to construct polygamy as a savior of humanity, which I argue counter-narrative with the concept of humanity. These new motives remind us of the exegesis of the polygamy verse, the third verse of *an-Nisa’*. The legal construction in the film seems to spell out the interpretation of Shihab which explains that such an emergency could be a logical reason to conduct polygamy.⁵³ Nonetheless, ideally, it is procedural, not in a way that violated Islamic law or state law.

⁴⁷ Thriwarty Aرسال et al., ‘Nikah Siri di Warurejo dalam Perspektif Sejarah’, *Paramita*, vol. 25, no. 2 (2015), hlm. 219.

⁴⁸ Euis Nurlaelawati, ‘Problematika Isbat Nikah: Dualisme Kepentingan dan Perlindungan Terhadap Perempuan dan Anak dalam Legalisasi Poligami Siri’, in *Membela Hak-Hak Masyarakat Rentan: HAM, Keragaman Agama, dan Isu-Isu Keluarga*, ed. by Noorhaidi Hasan (Yogyakarta: Pascasarjana UIN Sunan Kalijaga Press, 2021), hlm. 93.

⁴⁹ Muhammad Latif Fauzi, ‘Aligning Religious Law and State Law: Street-Level Bureaucracy and Muslim Marriage Practices in Indonesia’ (Leiden University, 2021), p. 1.

⁵⁰ Eva F. Nisa, ‘Battling Marriage Laws: Early Marriage and Online Youth Piety in Indonesia’, *Hawwa*, vol. 18, nos. 2-3 (2020), p. 97.

⁵¹ Musdah Mulia, *Ensiklopedia Muslimah Reformis: Pokok-Pokok Pemikiran Untuk Reinterpretasi dan Aksi*, ed. by Penerbit BACA (Tangerang Selatan, 2020), hlm. 152-74.

⁵² Muhammad Faried Nabil, ‘Narasi Poligami di Kalangan Muslimah Aktivistis Dakwah Kampus di Yogyakarta: Konservatisme dalam Hukum Keluarga Islam’, *Al-Ahwal*, vol. 12, no. 1 (2019), hlm. 65-83.

⁵³ Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan, dan Keserasian al-Qur’an* (Jakarta: Lentera Hati, 2005), vol. II, hlm. 342.

The question is whether saving the lives of others should take the polygamy? This is where it is necessary to reconsider the articulation of the problem of polygamy practices in this film. Saving lives (*hifdhu an-nafs*) is urgent.⁵⁴ Regardless, the realization of *hifdhu an-nafs* should ideally not undermine other benefits that are also important positions. In this context compliance with the law, such as recording marriages and applying for polygamy permits to the courts, and family harmony occupies the same position as saving the lives of others. While this construction demonstrates a new articulation of *maslahah*, it also seeks to position polygamy as a solution to humanity's urgent problems. On the other hand, this construction does not feature a person's legal adherence to the state law which has asserted that the principle of marriage is monogamy, which has also been created based on *maslahah* principle. Regarding *maslahah* created in this film, I argue that it does not depend on how *maslahah* existed for a long time but only on how *maslahah* preserves the one without regarding negative impacts to come.

We also need to look back at the context of the prophet's polygamy to position the polygamy motive in the SYTD film. Are *maslahah* considerations in the prophet's polygamy re-presented with narrative modifications in the film? Hussein Muhammad asserted that polygamy was only for temporary political gain, although some were also conducted based on human values. This argument is built on the fact that some of the prophet's wives were the daughters

and widows of Arab political figures, even widows of political enemies of the prophet.⁵⁵ Not only that, besides the prophet's marriage, which is not based on the beauty of women, the practice of marriage strengthens the power of Islam.⁵⁶

Another strange of the polygamy series in the film is the picture of underhand marriage practices relating to the judge guardian (*wali hakim*) of Mei. The guardian of Mei, is an *ustaz*, not from the KUA who has been mandated to be the guardian of the judge. Juridically, this marriage guardian is problematic because the government through the Minister of Religious Affairs Regulation (PMA) Number 30 of 2005 has confirmed that the right to be a judge guardian is the Head of KUA. The case of the guardian of non-Muslim as the story of Mei in this film has also been arranged through PMA Number 20 of 2019 which requires the Head of KUA as the guardian of that woman.

Making *ustaz*, *kiai*, or figure as the judge guardian for the converted women (*muallaf*) in marriage is not new, as happened in Sukabumi and Singaraja. These practices arise because of a different context. The cases came out to the public because the relevant parties requested a marriage license with a non-chief judge guardian of the KUA to the religious court. In Sukabumi Court, the application was rejected because it was juridically taken in violation of the applicable law. While in the Singaraja Court, the marriage legislation application was granted taking into account the low understanding of the surrounding community regarding Islamic marriage law and the local KUA did not function optimally in responding to marriage cases.⁵⁷ Based on this fact, the practice of underhand marriage through *ustaz* as the guardian marriage in the film should be criticized because besides it

⁵⁴ Gus Dur (Abdurrahman Wahid, the fourth President of Indonesia) also looks to put this value in the top position than other values. See Johari, *Fikih Gus Dur: Pemikiran Gus Dur dan Kontribusinya dalam Pengembangan Islam di Indonesia* (Jombang: Pustaka Tebuireng, 2019), hlm. 231.

⁵⁵ Husein Muhammad, *Poligami: Sebuah Kajian Kritis Kontemporer Seorang Kiai* (Yogyakarta: IRCiSoD, 2020), hlm. 116.

⁵⁶ Shihab, *Tafsir Al-Misbah: Pesan, Kesan, dan Keserasian al-Qur'an*.

⁵⁷ Makbul Bakari and Rizal Darwis, 'Analisis Yuridis terhadap Perkawinan Perempuan Muallaf dengan Wali Nikah Tokoh Agama', *Al-Mizan*, vol. 15, no. 1 (2019), hlm. 29.

does not consider the applicable regulations, the legal construction presented also does not consider the context of the local community in which the awareness of Islamic marriage law collectively may be developed.

D. The Conservatism of Islamic Family Law in Indonesian Islamic Film

As far I have explored, the main paradigm in the above narration of Islamic films tends to be *fiqh* paradigm. Not much of the content of those films address progressive *fiqh*, even positive law. The strength of this paradigm certainly seems to correlate with Islamic conservatism.⁵⁸

The strong argument of the conservative paradigm is based on two findings. First, the discourse of family law in Islamic films is presented with a framework of *fiqh*. The product of modernization of family law is hardly involved in various discourses such as divorce, polygamy, and underhand marriage, except marriage agreements. The practice of marriage agreements does not meet legal standards that have been set by *fiqh* or positive law. This leads to a question of its validity and legality. Although *fiqh* is represented and articulated as having a role toward humanity as in the practice of polygamy in the film SYTD, it is only portrayed as a moral norm, not a legal norm. Whereas, when *fiqh* is also portrayed as the norm of law, it will also appear by considering 'urf.⁵⁹

Second, in some of these films, the image of a *kiai* and *penghulu* is identical with the establishment of *fiqh* values and positioned as the figure who affords to finish some problem of family law. An example exists when *Kiai* Lutfi facilitated the underhand marriage of Azam and Ana. Another example is how *penghulu* argues about his rejection of the marriage intention of Bian and Tari. It is noted that the film intends to reintroduce the

authority of *kiai* in the practice of *fiqh*. *Kiai* is also positioned ambiguously, in one case as the 'blocker' of modernization of Islamic family law thought in Indonesia, but in others as the supporter of positive law. This argument correlates to the finding that, although in one case like underhand marriage *kiai* also supports the implementation of Indonesian Marriage Law, in another case like divorce outside marriage *kiai* tends to validate such practice.⁶⁰ This fact guides us to recognize that *kiai* cannot be separated from *fiqh* in any case whether *fiqh* contains a *mas}lah} ah* or not.

The establishment of this conservative paradigm also displays a significant impact on women's issues. All the narratives in this film positioned women on the side of the aggrieved. Women are presented as powerless parties, such as polygamy practices in SYTD, and unfulfilled women rights, such as practices of underhand marriage in KCB 2 and SYTD. Though it has been fought by the government through the presence of regulations, such as the Marriage Act, KHI, and other regulations. In this position, I argue that the existence of a conservative paradigm on Islamic film shows challenges to the modernization of Islamic family law in Indonesia. This challenge is blunt through how the film presents a legal debate between the doctrine of classical *fiqh* and state law. Reading the contents of Islamic films, the debate of classical doctrine and state law appears with new faces. It can be detected through how the figures in those films practice classical doctrine rather than state law which was codified.

The question that may arise then is: did the government or the Commission of

⁵⁸ That spreads out massively after the collapse of the New Order in 1998. Read Yanwar Pribadi, 'Kebangkitan Konservatisme Islam: Politik Identitas dan Potret Demokrasi di Indonesia', *Studia Islamika*, vol. 28, no. 2 (2021), hlm. 468.

⁵⁹ Agus Moh. Najib, 'Urgensi Redesain Ushul Fikih Bagi Pengembangan Ilmu Hukum Islam Kontemporer', *Pidato Pengkuhan Guru Besar dalam Bidang Ushul Fikih* (UIN Sunan Kalijaga Yogyakarta, 2021), hlm. 36.

⁶⁰ Yasin, 'Kiai Lokal Antara Penghambat dan Penyelamat dalam Pelaksanaan Undang-Undang Perkawinan No. 1 Tahun 1974', *Yudisia*, vol. 7, no. 1 (2016), hlm. 71.

Indonesian Broadcasting (KPI) and public control that debate issues? Toward Islamic films, they tend to read on sensitive issues about belief in which may influence social conflicts or about the forbidden organization, for example, *Jejak Khilafah di Nusantara* (2019). The content of family law that often escapes the KPI's monitoring is similar to Nurlaelawati's argument that examines the role of female speakers in building the Islamic family law discourse movement. She argued that preachers, male or female, were not properly controlled by the country and related institutions. Their independence is very real in countering arguments or family law discourse on the podium. Moreover, some preachers are not very good at understanding the teachings of Islam.⁶¹ In this case, the escaped content of Islamic films is not only caused by the ignoring government but also the freedom of expression or campaign through the films that are facilitated by the government. Therefore, any concept of Islamic family law as long as provides information based on the religious teachings and doesn't break the fundamental belief of religion can be accepted and allowed. Here, it is safe to say that the legal debate in the film seems to strengthen the basic function of *fiqh* in responding to social change, namely, social control.⁶² However, this function does not support the movement of legal modernization.

The construction of Islamic family law discourse in Islamic films also strengthens the existed legal paradigm.

This is related to the emergence of the narrative of *fiqh*. The introduction of the practice of Islamic family law through Islamic films is considerably able to subtly input bias in society. This is because the film is obviously a text, (functionally) not far different from the writing texts.⁶³ If written text communicates primarily with rational consciousness, visual text communicates with imagination and unconscious impulses.⁶⁴ Thus, the doctrine of illegal family law practice contributes to the collective consciousness, particularly in legal cases. It could be called the dominant forces of law and film in reconstructing a concept of identity, justice, truth, and belief.⁶⁵

E. Conclusion

It could be concluded that Islamic films are cinematic of Islamic family law practices. Islamic films with the issues of law introduce the viewers to jurisprudential issues and value-system. These Islamic films are failed in sharing the progressive view of *fiqh*, side by side with positive law. The debate between classical doctrine and state law is chosen as the way to construct public perception. The Islamic films examined in this research imply the inconsistent perspective of law and (unfortunately) the dominant paradigm of Islamic family law used and presented is conservative. In broader critics, this is a manifestation of the failure of the modernization attempt of Islamic family law in Indonesia.

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⁶² Abd. Salam Arief, 'Ijithad, Perubahan Sosial, dan Dinamika Hukum Islam', in *Antologi Studi Islam*, 1st edition, ed. by Octoberiansyah dan Lukman Santoso (Yogyakarta, 2013), hlm. 152.

⁶³ Warman researched some popular books providing themes of Islamic households. He concluded that most of the books represent and reinterpret the discourses of Islamic family law providing a conservative paradigm and gender bias. This may hamper developments of Islamic family law with its modernization. See Warman, *Konservatisme Fikih Keluarga: Kajian Terhadap Buku-Buku Populer Rumah Tangga Islami*.

⁶⁴ Bambang Sugiharto, *Kebudayaan dan Kondisi Post Tradisi*, 1st edition (Sleman: PT Kanisius, 2019), hlm. 90.

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