

Comply with the Marriage Act Same with Comply with the Qur'an and Sunnah of Prophet Muhammad PBUH

Khoiruddin Nasution^{1,a}, Noryamin Aini^{1,b}, Muhammad Helmy Hakim^{2,a}

¹ Islamic Family Law, Sunan Kalijaga State Islamic University, Indonesia

² Department of Legal Sciences, Syarif Hidayatullah State Islamic University, Indonesia

³ Faculty of Sharia, Antasari State Islamic University, Indonesia

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Abstract: Obeying the Marriage Act for 'Abduh is the same as the command and obligation of the same status by obeying the Qur'an and sunna of the Prophet Muhammad PBUH. Because obeying the Marriage Act set by the parliament is a form of obeying the government (*ûli al-amr*). Obedient obligations to the government in the form of the the Marriage Act is the realization of the command to obey Allah, obey the apostle and obey the government (*ûli al-amr*), as stated in al-Nisa' (4): 59 and 83. the Marriage Act as a manifestation of Parliament's decision is the realization of the agreement of all people in one country. The people as a whole are represented by members of parliament, because to gather all the people, the present, is something that is not possible. As a solution, the representation system is one of the ways that can be taken. So the decisions of these representatives are positioned as agreements and decisions of all people. Consequently, this agreement must be obeyed. The people's representative agreement is also for the present time become *ijmâ'*, the third source of Islamic law after the al-Qur'an and the sunnah of the prophet Muhammad PBUH. This paper tries to explain how the basis used by 'Abduh to declare the obligation to obey the Marriage Law, is the same as obeying the Qur'an and sunnah of the prophet Muhammad PBUH.

1 INTRODUCTION

Obeying the Marriage Act for 'Abduh is the same as obeying the Qur'an and sunna of the Prophet Muhammad PBUH. Because obeying the laws set by the parliament is a form of obeying the government (*ûli al-amr*). Obedient obligations to the government in the form of the law is the realization of the command to obey Allah, obey the apostle and obey the government (*ûli al-amr*), as stated in al-Nisâ' (4): 59 and 83. Act as a manifestation of Parliament's decree is the realization of the agreement of all the people. The people as a whole are represented by members of parliament, because to gather all the people, for the present, is something that is not possible. As a solution, the representation system is one of the ways that can be taken. So the decisions of these representatives are positioned as agreements

and decisions of all people. Consequently, this agreement must be obeyed. The people's representative agreement is also for the present time become *ijmâ'*, the third source of Islamic law after the al-Qur'an and the sunnah of the prophet Muhammad PBUH.

This paper tries to explain how the concept of law authority theorized by Muhammad 'Abduh, and how relevant this theory is with the obligation to comply with the laws stipulated in Indonesia, as a form of obedience to the government (*ûli al-amr*), as governed by Islam in Qur'an al-Nisa' (4): 59 and 83, and as a manifestation of obedience to *ijmâ'*.

In analyzing how Indonesian Muslim respond to marital law regulations are used, Max Weber's theory of social action is used. Max Weber's social action is an individual action as long as the action has a subjective meaning or meaning for him and is

directed to the actions of others. An action will be said as a social action when the action is actually directed to other people (other individuals).

There are 5 main characteristics of social action according to Max Weber, namely; 1. If the human action according to the actor has a subjective meaning and this can include various real actions, 2. Actual actions can be completely fixed, 3. The action can come from the result of a positive influence on a situation, actions that are deliberately repeated, or action in the form of secret consent from any party, 4. The action is directed at someone or to several individuals, and 5. The action is concerned with the actions of others and directed to others.

Social action is divided into four (4). First, instrumental rationality. This type of action is an action taken by someone on conscious consideration and choice in accordance with the availability of tools and / or facilities used to achieve it. Second, rational action of value. This type is an act that has the nature that the existing tools are only conscious considerations and calculations, while its objectives already exist in relation to absolute individual values, such as someone prioritizing older people when queuing for groceries, because including social and religious values. Third, emotional action. This type of action is an action based on emotion, such as a loving relationship between two teenagers who are in love or are in love. Fourth, traditional actions. Traditional action is an action taken because of habits obtained from ancestors, without conscious reflection or planning.

It could be said that the first two entered actions that had conscious, rational and objective planning and consideration, while the last two had no planning and no conscious, rational and objective consideration.

In the act of instrumental rationality there is planning, and the basis of planning depends on the availability of facilities and infrastructure. While in Rational Actions there is value planning, and consideration is the value (Ritzerr, 2014).

The scope of the discussion of this paper as well as the systematic discussion is the explanation of the process of the birth of the law in the Indonesian constitution system, after the background. Then explained the concept of *ijma'* of Muhammad 'Abduh. After that it was shown the authority of Indonesian law when correlated with the concept of Muhammad 'Abduh. Finally the screw is closed with a concluding remark in the closing section.

2 THE PROCESS OF STIPULATION OF LAW IN THE INDONESIAN CONSTITUTION

Regarding the process of the birth of the Law in the Indonesian Constitution, more specifically to look at the authority of the law can be measured by referring to Law No. 12 of 2011 on Formation of Legislation. Of the thirteen chapters and 104 articles contained in this law, there are 6 (six) chapters that are relevant to the authority of the law, namely Chapter IV: Planning, Chapter V: Preparation of Legislation, Chapter VII: Discussion and Ratification of the Bill, Chapter IX: Enactment, Chapter X: Dissemination, Chapter XI: Community Participation (Law No. 12 of 2011).

Based on these 6 (six) chapters, nine (9) points can be recorded. First, that the making of legislation includes five stages, namely; 1. planning, 2. preparation, 3. discussion, 4. ratification or determination, and 5. enactment, as stated in article 1 paragraph (1) of this Law. Each stage certainly involves many people.

Second, that the law is a legislative and executive product through certain procedures, as mentioned in article 1 paragraph (2) that the Law is established by the House of Representatives (DPR) with mutual agreement with the President, as stated in Article 1 paragraph (3).

Third, that the legislation planning starts from the National Legislation Program which is prepared in a planned, integrated and systematic manner, in order to realize the national legal system, which is based on the aspirations and legal needs of the community. This point can be deduced from article 1 paragraph (9), article 17 and 18.

Fourth, it is still planning, that the birth of legislation is the result of the study, which is called the academy script, as in article 1 paragraph (11).

Fifth, in connection with the process of drafting the law, the second step is mentioned in Chapter V: Preparation of Legislation, Part One, Formulation of Laws, articles 43 to 51. In this discussion there are 3 articles that are relevant to this discussion, namely articles 43, 44 and 50. Core article 43, that the Draft Law can come from the DPR or the President. Whereas the Draft Law must be accompanied by an Academic Manuscript and a statement containing the subject matter and the regulated content matter. While the core of article 44, that Academic Text is an integral part of the Act. Article 50, the DPR discusses the Draft Law within a maximum period of 60 (sixty)

days from the date the President's letter is received.

Sixth, concerning the discussion of the law, step 3, Chapter VII: Discussion and Ratification of the Draft Law, Part One Discussion of the Draft Law, Article 67. That the discussion of the draft law is carried out in two levels of discussion, namely: a. level I talks in commission meetings, joint commission meetings, Legislation Board meetings, Budget Agency meetings, or Special Committee meetings; and b. level II talks at the plenary meeting.

Seventh, with regard to the passage of the law, step 4, Part Two Ratification of the Draft Law, Article 72. The essence of this article is that the draft law that has been approved by the DPR was submitted by the DPR leadership to be passed by the president.

Eighth, related to the dissemination of the law, Chapter X: Dissemination, Part One: Dissemination of the National Legislation Program, Draft Law, and Law, Article 88. That the purpose of the National Program on the Legislation (Prolegnas) dissemination, Draft Law and Act is to provide information and / or obtain community input and stakeholders.

Ninth, regarding the participation of the community, in Chapter XI: Community Participation, Article 96 paragraph (1). That the community has the right to provide input verbally and / or written in the Establishment of Legislation, can be done through: a. public hearings; b. work visit; c. socialization; and / or d. seminars, workshops, and / or discussions, and can be carried out by individuals or groups of people who have an interest in the substance of the Law. To facilitate the community in providing input, each draft of legislation must be easily accessed by the community.

The entire process of producing laws and regulations, in accordance with the applicable laws and regulations, does not always work according to the ideal and stated. Five stages of the enactment of the law referred to in the law, there may be among those stages that do not run according to the ideal and stated in the law. Maybe at the planning stage is not in accordance with the rules of the law. It may also be in the next stage, the preparation that is not in line with the law. Also does not close the possibility in the discussion phase that is less than optimal. Likewise there is a possibility that it is not ideal at the discussion stage. It could also be at the stage of ratification or stipulation that is not in line with the law. It may also be at the stage of enactment that is not ideal. Finally, maybe the stage that is not ideal is at the stage of community participation.

However, from the description of the process of the birth of the law in the Indonesian constitution,

from planning to endorsement, it can be concluded how many people were involved in the process of birth of legislation. The grouping of people involved, in constitutional terms is called from the legislative, executive and community groups. The people involved can also be grouped into expert groups ('*âlim*, '*ulamâ*'), leaders ('*âmir*, '*umara*'), and community leaders (*râis*, *ru'asâ*'). This agreement can be equated with the decision of *uli al-amr* in the language of the Qur'an. Thus, following this agreement is identical with following *uli al-amr*, an agreement that must be obeyed after the Qur'an and the sunnah of the prophet Muhammad PBUH.

To compare with other Islamic legal thought products; *fikih*, *fatwa*, *tafsir* (interpretation), jurisprudence, can be explained by the birth process of each.

Fikih (Jurisprudence) in terms of language means *al-fahmu* (understanding). In terms of the usually used, *fiqh* is defined, for example, by 'Abd al-Wahhb Khallâf, 'a collection of laws that are practical and detailed, originating from a detailed argument' (Khallâf, 1971). In the process of birth of *fiqh* there are 3 (three) basic elements in it, namely: 1. the *fâqih* (Islamic jurists) who do *ijtihad*, meaning *fâqih* is *mujtahid*, 2. *nash* (the source of Islamic teachings, in the form of the Qur'an and the sunnah of the prophet Muhammad SAW.), and 3. *fiqh* (the result of understanding / thinking of a *fâqih* on texts). From this definition and process it can be concluded that *fiqh* is the result / product of thought / understanding in the field of Islamic law as a result of understanding the texts. *Fikih* (Jurisprudence) is the result of individual understanding. The point is that these thoughts or opinions are the result of individual understanding, not collective opinions (opinions of many people). As for if there is the same understanding between one expert (*mujtahid*, *fâqih*) with another *fâqih*, or some experts (*fuqahâ'* / plural of *fâqih*) is not designed (by designed).

Fatwa is the opinion of scholars on a particular problem, the procedure of which begins with the question. Therefore, in the procedure the birth of a *fatwa* has three elements, namely: 1. *mufti*, a person or group of experts who issue opinions (*fatwa*), 2. *mustafti*, people who ask, and 3. *fatwa*, opinions or answers from *muftis*. In general, a *mufti* is a person who is trusted by the general public to answer the problems that arise in the life of society, namely to determine the law of *halal* or *haram*, may or not (Al-Nawawi, 1990). *Fatwas* can be grouped into two: individual *fatwas*, and group *fatwas*. In Indonesia group *fatwas* are generally born from religious organizations, such as the religious council by

Muhammadiyah, Bahtsul Mas'il in Nahdlatul Ulama, and Majelis Fatwa in the MUI. Thus, fatwas can be grouped into two, namely: (1) fatwas that are individual in common with fiqh, and (2) fatwas that are group, collective, results of understanding, ijthad a number of Islamic jurists.

Tafsir (Interpretation) is the same as fiqh, which is also the result of individual thoughts (individuals) from an expert of interpretation (*mufassir*) who do ijthad. *Mufassir* are also mujtahid. From this definition it can be concluded that interpretation is also the result / product of thought in the field of Islamic law as a result of understanding the texts. Thus, in the process of the birth of interpretation there are 3 (three) main elements involved, namely: 1. the *mufassir* (expert of interpretation) who do ijthad, which means the *mufassir* are also mujtahid together with *fâqih*, 2. *nash* (the source of Islamic teachings, in the form of the Qur'an and the sunnah of the prophet Muhammad SAW.), which is the source of determination, and 3. Tafsir (interpretation) (the result of the understanding / thought of an exegete on the text). Again and again the same as fiqh, interpretation is the result of individual understanding (thinking), not collective opinion (the opinion of many people).

The jurisprudence in terms of language is the science or philosophy of law (science or philosophy of law). In terms of terms or usage that are more popular, jurisprudence is defined as a collection of judges' decisions in the court that can be used by judges as a basis for decisions, especially in cases where the law has not been found in writing in the legal books. So the main idea that emerges from jurisprudence is the judge's decision (*qâd'i*). Basically the process of the birth of a judge's decision in court is the same as the birth process of the fatwa, namely: starting with the person who asks / complains (problem people), then, the judge (*qâd'i*) gives an answer (decision) in the court, the decision is an opinion or the answer from *qâd'i*, and of course the opinion / answer is also based on the *nash* (al-Qur'an and / or sunnah of the prophet Muhammad SAW).

The difference between fiqh, tafsir (interpretation) and fatwa on the one hand, with the judge's decision on the other hand, is that the judge's judgment in court is sometimes collective (judges), for example 3 judges sit together into one council.

Again need to be reminded that *qâd'i* is also a mujtahid. The effort they did to find an answer was called ijthad, the same as the effort carried out by the *fâqih*, *mufassir* and *mufti*. In summary, *fâqih*, *mufassir*, *mufti*, and *qâd'i* are both mujtahid, and the effort they make to establish law (opinion) is called ijthad. The result of their ijthad is what is called the

product of Islamic legal thought. To remind, the thoughts (legal products) of each are: *fâqih* (jama' or pluralnya *fuqahâ'*) gives birth to fiqh, *mufassir* (jama' or plural *mufassirûn / mufassirîn*) gives birth to interpretation, *mufti* gives birth to fatwa, and *qâd'i* gives birth court ruling.

The Compilation of Islamic Law (KHI) is the opinion of many people, the same as the law. The birth process of the Compilation of Islamic Law (KHI) is the same principle as the process of the birth of the law. The stages of the process are namely; 1. planning, 2. preparation, 3. discussions, 4. ratification or determination, and 5. enactment. In the KHI process only one process was not carried out, namely the Enactment stage. This is also the reason why KHI is not become a law. With the process carried out in the birth of KHI, it was proven that the involvement of many experts and scientists was the same as the process of the birth of the law. Similarly with the involvement of many leaders in producing KHI is same as in law. Thus KHI is also the result of the thinking of many people, many experts, many scientists, many leaders, even though the birth process is less than one when compared to the law. It is not even exaggerating to say that the stages carried out in the birth process of KHI are the same and follow the stages of the birth process of the law, only less the stage of stipulation by the legislative body. So it is no exaggeration to say the legal power of KHI is the same as the law.

Thus when the products of Islamic legal thought are grouped, two large groups will be born. First, the product of Islamic legal thought that is individual. Second, products are thoughts that are collective. The products of Islamic legal thought that are individual are *fikih*, *fatwa*, *tafsir* (interpretations), and jurisprudence. *Fatwa* and jurisprudence are individualized, because even though there are collectives, the number of experts involved remains very limited when compared to the products of collective Islamic legal thought. On the other hand, there are two products of collective thinking, namely the law and the KHI.

3 IJMA' OF MUHAMMAD 'ABDUH AND ITS RELEVAN TO INDONESIA MARRIAGE ACT

In order to understand the concept of Muhammad 'Abduh more complete and perfect, it is necessary to know a little about 'Abduh' life. 'Abduh was born in

1266 H / 1849 AD in a village in Egypt's Gharbiyah Province. After moving from the original village of Mahllat al-Nashr, the Shubrakhit region, Buhayrah Province, his father, 'Abduh bin Hasan Khairullah had built a house for his family in the new village. 'Abduh's mother named Junaynah was a widow who came from a village near Tanta, Gharbiyah Province ('Abduh, 1922). Birth of 'Abduh coincides with a time when society does not get justice from the government. At that time Egypt was led by Muhammad Ali Pasha. Abduh' father is among many people who disagree and oppose the tyrannical policy. One of the tyrannical policies meant is the high tax that must be paid by the people. As a result, Mr. 'Abduh was expelled by the government for 15 years. Having finished the tyranny, his father returned to Mahlat Nashr, a place where 'Abduh grew, developed and spent most of his childhood. The beginning of his education, age 10 'Abduh learned to read and write from his father. Then 'Abduh was sent to study al-Qur'an at the Ahmadi mosque in Tanta. Finally, the results earned the title of *al-Qari al-Hafidz*. 'Abduh is able to memorize the whole Qur'an in a period of 2 (two) years, something that is not commonly done by many people.

'Abduh had stopped school because of the method of learning which he thought could not educate. End of the disappointment 'Abduh married. Fortunately 'Abduh met Jamaluddin al-Afghani, who changed his destiny because he was invited to go together to Paris France and become a disciple from 1871 to 1879. Together with al-Afghani they established the *Journal of al-Urwah al-Wusqa* in Paris, as a media for carrying out political movements. Since he was appointed as the Grand Mufti of Egypt on June 3, 1899, and became a member of the Legislative Body on June 22, 1899, 'Abduh carried out many reform efforts in Egypt. Among them are renewal in court and changing the school curriculum. Judges are equipped with general knowledge. Thus the curriculum was changed from a curriculum that only studied religious knowledge coupled with general knowledge. Likewise, changing conventional learning methods becomes more common and newer methods ('Abduh, 1960).

Obedience to the law for 'Abduh is the same as the command and obligation of the same status by obeying the Qur'an and sunna of the Prophet Muhammad. Because obeying the laws set by the parliament is a form of obeying the government (*uli al-amr*). Obedient obligation to the government in the form of the law is the realization of the command to obey Allah, obey the apostle and obey the government (*uli al-amr*), as mentioned in al-Nisa'

(4): 59 and al-Nisa' (4): 83. The law as a form of the parliament's decree is the realization of the agreement of all the people. The people as a whole are represented by members of parliament, because to gather all the people, the present, is something that is not possible. As a solution, the representation system is one of the ways that can be taken. So the decisions of these representatives are positioned as agreements and decisions of all people. Consequently, this agreement must be obeyed. This people's representative agreement is also for the present time the form of *ijmâ'* which is the source of the third Islamic law after the Qur'an and the sunnah of the prophet Muhammad saw.

The concept of 'Abduh is different from the concept of thinkers in general who demand agreement from all Muslims as an agreement that must be obeyed. According to 'Abduh, the agreement of all Muslims from all over the world, for the present time, can hardly be done with three main reasons. First, the number of Muslims is so large, it is not possible to collect, or it is very difficult to get their representatives. Second, the context of different needs and demands between one country and another. Likewise, the criteria and demands for the welfare of one nation with another, even between one city and another is different. So welfare considerations vary according to the different demands of place, circumstances, and environment, into consideration (Rida, 1373). Third and is a continuation of the second reason, the purpose of establishing and enforcing the law which is state's stipulation is to uphold and realize the welfare of the people. People's welfare is also very dependent on the country context. Therefore, the agreement of citizens in one country, represented by chosen people, is the way out, 'Abduh.

The obligation to comply with the law as a form of agreement between the people (citizens) is a realization of the obligation to comply with the government, which means it is formal and legal. The basic obligation to comply with this law is the mandatory obligation to obey the government, as stated in the letters al-Nisa' (4): 59 and al-Nisa' (4): 83. Obligation to comply with the government in al-Nisa' (4):59 and al-Nisa' (4): 83, for the present context, according to 'Abduh, is a government in one country, not a government in the context of an Islamic state throughout the Muslim world.

For the complete of two verses of the al-Qur'an referred to are the following: al-Nisa' (4): 59, "O ye who believe! Obey Allah and obey the Messenger (Him), and ulil amri among you. Then if you disagree about something, then return it to Allah (the Qur'an) and the Prophet (sunnah), if you truly believe in Allah

and the day after that. That is more important (for you) and better as a result". Al-Nisa' (4): 83, "And when it comes to them a news about security or fear, they then broadcast it. And if they give it to the Apostle and ulil amri among them, surely those who want to know the truth (will be able to) know it from them (the Apostle and ulil amri). If it is not for the gift and mercy of Allah to you, surely you will follow shaitan, except for a small part (among you)".

The meaning of the words *uli al-amr* referred to in al-Nisa' (4): 59 and 83, according to 'Abduh consists of large groups, namely experts in various scientific fields ('*âlim* singular, '*ulamâ*' plural), and famous leaders in the community (*râ'is* singular, *ruasa'/ ru'ûs al-nas* plural), both in the tribal environment, at the city, provincial level, and so on to the national level. Such understanding is in accordance with the meaning of the word *uli al-amr*, where the word is in the form of *jama* (plural), which means a number of famous people in the community (Hasan, 1976).

To support the theory, 'Abduh gave the historical facts of Muslims, especially in the time of *khulafa' al-râsyidîn*, more specifically the first two caliphs. At that time the word *uli al-amr* was used to refer to people who became community leaders (*ru'ûs al-nâs* leaders) and experts ('*ulamâ*', scientists) in various scientific fields ('*ulamâ*') (Faruqi, 1992).

The basis for making scientists and famous leaders in society is because of their ability to solve problems that arise in their environment. Thus, their status as representatives of the people is based on the public's trust in their abilities in various fields of social life, both the ability related to science (as a scientist) and the ability to lead (as a leader).

In other places 'Abduh said, the word *uli al-amr* was actually a pronoun from experts in solving the problems faced by the ummah. So *uli al-amr* by itself is a people who are believed to be able to provide welfare to the ummah.

To support this opinion, 'Abduh again recorded the historical realities of Muslims that occurred during the time of the Prophet Muhammad and *Khulafa' al-râsyidîn*, especially the first two caliphs, Abu Bakr and 'Umar ibn Khattab. 'Abduh noted, in Rasulullah's time, there were a number of people in Medina who were to whom these people consulted in solving the problems they faced; in the fields of politics, administration, justice, and other fields.

The effort to get the best and quality representatives in accordance with the above criteria, according to 'Abduh, can be done by holding general elections, which can be done starting from the city, province, to national level. On the other hand,

still in order to get truly qualified candidates, voters must be truly given freedom. In line with this endeavor, Faruki has the same idea as 'Abduh, that to get truly competent and trustworthy representatives, is through general elections (elections) (Khel, 1980).

4 COMPLY WITH THE MARRIAGE ACT

Based on the 'Abduh concept, it can be concluded that adhering to the Marriage Law No. 1 of 1974 on Marriage, and other laws follow is obligatory for Indonesian citizens. Other laws are; Law No. 7 of 1989 on the Islamic Court, Law No. 3 of 2006 on the Amendment of Law No. 7 of 1989 on the Islamic Court, Government Regulation (PP) No. 10 of 1983 on Marriage and Divorce Permits for Civil Servants (PNS), Government Regulation (PP) No. 45 of 1990 on Amendments to PP No. 10 of 1983 on Marriage and Divorce Permits for Civil Servants (PNS) and Compilation of Islamic Law of 1991.

The obligation to comply with these laws as the realization of the obligation to obey the Indonesian government (*uli al-amr*), as instructed in al-Nisa' (4): 59 and 83. In addition, the law as a product of a number of experts in various scientific fields, and experts in solving various problems of the community, have more comprehensive and authoritative legal power from the products of jurisprudence and individual fatwas. Since jurisprudence and fatwa are principally only Islamic law products that are individual (individual). While the law is the result of the thinking of many (collective) experts, and 'Abduh positions the law as *ijmâ'*, the third source of Islamic law after the al-Qur'an and the sunnah of the Prophet Muhammad. So that obeying the law is the same as obeying the command to obey the government and implementing *ijmâ'* as the source of the third Islamic law after the Qur'an and the sunnah of the Prophet Muhammad. Very concisely, there are two basic reasons why the Marriage Law must be obeyed according to 'Abduh. First, complying with the law is the realization of the order to obey the government (*uli al-amr*). Second, obeying the law is an obedient realization of *ijmâ'*, the source of Islamic teachings after the Qur'an and the sunnah of the prophet Muhammad saw.

From the legislative process in the Indonesian constitution, it can be concluded how many experts are involved, experts in various aspects of life in society. So that the involvement of a number of these experts when linked to the basic substance of

'Abduh's stipulation obliged to comply with the government's decision, that in the law-making process in Indonesia there were also many experts involved. Thus it is not excessive to state that Indonesia's constitutional law is in line with the thoughts of 'Abduh.

Indeed, Indonesian marital legislation is not only a form of law, but there are also the Government Regulations (PP) and Compilation of Islamic Law (KHI). But it should be noted that these two rules in principle contain rules that are in line and support the contents of the law. The government regulation is the implementation and description of the law, so the substance must be in line with the law. While KHI is also the result of many people's thoughts, even though the birth process is not exactly the same as the law. It is not even exaggerating to say that the stages carried out in the birth process of KHI are the same and follow the stages of the birth process of the law, only less the stage of stipulation by the legislative body. So it is no exaggeration to say the legal power of KHI is the same as the law.

Thus based on the concept of 'Abduh, Muslims must obey the rules written in marriage laws and regulations. Among the rules written in Indonesian marriage legislation are as follows;

First, the principle of marriage is monogamy, as stated in Law No. 1 of 1974 on Marriage, Article 3 paragraph (1), in principle in a marriage a man may only have a wife, a woman may only have a husband.

Indeed there is a possibility of polygamy for a husband, but only under certain conditions and with specific requirements, as stated in Article 3 paragraph (2) of Law No. 1 of 1974 on Marriage, The court can give husband permission to have more than one wife if desired by the party concerned. Article 4 paragraph (1), If a husband has more than one wife as mentioned in Article 3 paragraph (2) of this Law, he is obliged to submit an application to the Court in his area of residence. Article 4 paragraph (2) The court referred to in paragraph (1) of this article only gives permission to a husband who will have more than one wife if (1) the wife cannot carry out her obligations as a wife; (2) the wife gets a disability or an incurable disease; (3) the wife cannot give birth to offspring.

Besides, the husband who will polygamy must also be able to fulfill certain conditions, as stated in article 5 paragraph (1) of the Law, To be able to apply to the Court as referred to in Article 4 paragraph (1) the Law must be fulfilled as follows: a. There is agreement from the wife/wives; b. there is certainty that the husband can guarantee the necessities of life of their wives and children; c. There is a guarantee that the husband will be fair to their wives and

children. The same rules are mentioned in KHI articles 55 to 59.

Second, the necessity of the approval of the two prospective brides, as mentioned in Law No. 1 of 1974 on Marriage, article 6 'marriage must be based on the agreement of the two brides'. The same rule is stated in KHI articles 16.

Third, the rules of age for men and women, as mentioned in of Law No. 1 of 1974 on Marriage, Article 7 paragraph (1), marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. The same rule is stated in KHI articles 15.

Fourth, divorce can only be done in front of a court hearing, as stated in Law No. 1 of 1974 on Marriage article 39 paragraph (1), divorce can only be done in front of a court hearing after the court concerned tries and does not stop reconciling the two parties. The same rule is stated in KHI articles 115.

The same content is also mentioned in several laws and regulations, such as Government Regulation No. 10 of 1983 On Permission of Marriage and Reliability for Civil Servants, and Indonesian law books, such as the compilation of Indonesian Islamic law. The application of the Compilation of Islamic Law (KHI) is based on Presidential Instruction No. 1 of 1990.

Fifth, inheritance rights for boys and girls, including for children of children who died first. That the boy's part is the same as the girl's part, as stated in the Compilation of Islamic Law, article 183, 'The heirs can agree to peace in the distribution of inheritance, after each is aware of its share'.

Sixth, it is possible that there is a substitute heir, as mentioned in the Compilation of Islamic Law, Article 185 paragraph (1) 'Heirs who die earlier than the guardian, their position can be replaced by their children, except those in Article 173'. The point of article 173 is that heirs are not entitled to inheritance because of the murder of the heir or are not entitled to inheritance for committing slander which results in the heir being sentenced to 5 years imprisonment or a heavier sentence.

Likewise, marriage registration rules are intended as a means to ensure that the marriage to be carried out has fulfilled the conditions set out in Indonesian legislation. The rule is stated in Law No. 1 of 1974 on Marriage, article 2, and the same rule is stated in KHI articles 5.

The relevance of Abduh's view of the Indonesian context, that the majority of Indonesian Muslims still confront fiqh, fatwas and interpretations on the one hand, with the law on the other. Jurisprudence, fatwas and interpretations have the same position and

authority as the Qur'an and the Sunnah of the Prophet Muhammad, which is why it must be obeyed. While the law has the same position as the government, it is not compulsory to obey. Consequently, the legality of marriage is still based on the views of the imam of the school, such as the views of Imam al-Shafii from the Shafi'i school. While the marriage law and the rules that follow do not constitute the legality of the abash or not of marriage. By borrowing from Max Weber's social action theory, this behavior is still in a position of emotional and / or traditional action, not yet reaching objective rational action. Because by considering the birth process of the law on the one hand, with fiqh products, fatwas and interpretations, on the other hand, of course the laws are more authoritative and comprehensive. The law is called more authoritative and more comprehensive, because in the birth process the law involves many people and many experts. Experts are also involved from various sciences and expertise. The leaders involved in the process of the birth of the law are also from various layers, various contexts, and various cultures.

5 CONCLUDING REMARKS

Based on the discussion above, three conclusions can be noted. First, in the legislative process in the Indonesian constitution, there are many experts from various fields of science and experts in various aspects of life in society. Second, the key concept of the law that is mandatory uh Abduh to comply is the law discussed and determined by various experts. These various experts are grouped 'Abduh into two, namely experts from various sciences, and experts from various problems faced by society in their lives. Third, the involvement of a number of experts in the process of establishing laws in the Indonesian constitution when linked to the basic substance of apan Abduh's stipulation obliged to comply with the government's decision, it could be stated that Indonesia's constitution law was in line with 'Abduh.

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