

The Modification of the Compilation of Islamic Law in Reinforcing Its Legal Status

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ABSTRACT

This study aims to examine the need for modifications to the Compilation of Islamic Law (KHI) in order to strengthen its legal standing within Indonesia's national legal system. The KHI, as the primary reference in resolving Islamic family law cases, is considered insufficiently responsive to societal developments and the dynamics of modern law. The research employs a normative juridical method, using a statutory approach and a conceptual approach. Data were collected through literature review of the KHI, related regulations, academic literature, and previous research findings. The results indicate that the weaknesses of the KHI lie in several provisions that are no longer relevant to the needs of contemporary Indonesian Muslim society, particularly regarding the protection of women's and children's rights, and the principle of justice. Therefore, the modification of the KHI is necessary through alignment with the principles of *maqāṣid al-sharī ah*, substantive justice values, and harmonization with national legislation. These modifications are expected to strengthen the legal legitimacy of Islamic law within Indonesia's legal system and enhance the societal acceptance of the KH.

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1. INTRODUCTION

One of the legislative instruments in force in Indonesia is the Compilation of Islamic Law (KHI). The ecosystem within the national legal and political system forms an integral part of the religious court system. Although the KHI faces various challenges, these issues are often overshadowed by the spirit embodied in its provisions and the commitment of legal practitioners, who view the KHI as providing the Muslim community with a formal legal reference for realizing legal justice and certainty.

The KHI derives its legal basis from Presidential Instruction No. 1 of 1991 in conjunction with the Decree of the Minister of Religious Affairs No. 154 of 1991, and the Circular of the Director of Islamic Religious Institutions Development (Dirbimbaperais) on behalf of the Director General of Islamic Religious Institutions Development (Dirbimbagais) No. 3694/Ev/Hk.003/Az/1991.

Some legal scholars argue that the legal force of a presidential instruction (*inpres*) is relatively weak in the hierarchy of legislation. On the other hand, there are those who contend that there is no significant difference between a presidential instruction (*Inpres*) and a presidential decree (*Kepres*). This latter view suggests that the KHI, as it currently stands, is sufficient. The former view, however, advocates for formal legal reinforcement, so that the KHI is not merely perceived as a symbolic political gesture for Muslims, but is instead established in a written legal form with permanent and binding legal force. These differing views have shaped the development of the KHI, which, though still relatively young at around ten years of age, has made significant contributions in addressing societal issues and ensuring legal certainty. (Ahmad Ali, 1990).

In the 1993 Decree of the People's Consultative Assembly (TAP MPR 1993), the second long-term phase of legal development in Indonesia included three aspects: legal substance, legal apparatus, and legal infrastructure. The direction of legal substance development included the establishment of laws carried out in an integrated and democratic manner, based on Pancasila and the 1945 Constitution, aiming to produce legal products down to their implementing regulations. In the law making process, it is essential to observe philosophical, sociological, and juridical values. (Cik Hasan Bisri (ed), 1999). Sociologically, the enforcement of law can be viewed from two perspectives. First, the theory of force, which posits that the law is valid when imposed by the authorities, regardless of whether it is accepted by the public.

Theoretically, the formation and enactment of the Compilation of Islamic Law (KHI) is derived from legal instruments that meet formal requirements. Sociologically, its legitimacy is further supported by the full and unanimous acceptance by the Indonesian Muslim community and scholars during the National Ulama Workshop held from February 2–5, 1988. This acceptance was subsequently reinforced through Presidential Instruction No. 1 of 1991, marking the KHI as part of the process of transforming Islamic legal norms into statutory law (*takhrīj al-aḥkām fī al-naṣṣ al-qānūn*).

2. RESEARCH METHOD

If, during its formulation, the Compilation of Islamic Law (KHI) encountered political, economic, and procedural obstacles, the struggle did not end there. The KHI is not final law but the result of an ongoing unification process that remains unfinished. Fundamentally, the KHI has legislative prospects within the statutory legal framework. This prospect is not without reason, as questionnaire data indicate that the majority of legal experts hold an optimistic view regarding the KHI's potential for formal legislation. However, this process is not as simple as turning one's hand; the opportunity depends on the participation and effectiveness of implementers in society, especially judges in the Religious Courts. Enhancing human resources through higher education in Islamic law and fostering an understanding of the KHI as Indonesian *fiqh* are essential. Equally important is the support from government authorities (executive) and the House of Representatives (legislative). (Abdurrahman, 1992).

3. RESULTS AND DISCUSSIONS

Order Of Legislation

The 1945 Constitution (UUD 1945) mentions only a few types of legislation, namely laws (UU), government regulations in lieu of law (Perpu), and government regulations (PP). However, in practice, Indonesia's constitutional system has undergone modifications and revisions in line with legal politics, as reflected in MPRS Decree No. XX/MPRS/1966. This decree formulated the legislative hierarchy in the following order: the 1945 Constitution, MPR Decrees, formal laws (UU), Perpu, PP, presidential decrees (Kepres), and lower implementing regulations such as ministerial regulations or ministerial instructions. (Edi Rudiana Arief, et al., 1991).

MPRS Decree No. XX of 1966 did not fully reflect the constitutional system, and it was subsequently revised through MPR Decree No. V of 1973 and MPR Decree No. IX of 1978. The legislative hierarchy was then formulated as follows: the Constitution and Perpu (equal in status to laws), PP, Kepres, ministerial decrees, decisions of heads of non-departmental government agencies, decisions of director generals of departments, decisions of state bodies, level I regional regulations, and decisions of governors of level II regions.

As a result of the constitutional amendments adopted at the 2000 annual session of the MPR, further revisions were made as part of efforts to consolidate Indonesia's status as a *Rechtsstaat* (a state based on law). The outcome of these amendments established the legislative hierarchy as follows: the 1945 Constitution, MPR Decrees, laws (UU), Perpu, PP, presidential decrees (Kepres), and regional regulations (Perda). The Preamble of the 1945 Constitution serves as the fundamental norm, while the body of the Constitution constitutes the basic rules, and the types of regulations beneath it are referred to as statutory laws. The 2000 amendment to the 1945 Constitution also detailed the responsibilities of each institution, such as MPR Decrees being issued by the MPR, laws by the DPR, and Perpu, PP, and presidential decrees by the President. The following table illustrates these types of legislation based on the classification set out in the MPR Decrees of 1973 and 1978.

If the 1945 Constitution (UUD 1945) is regarded as the fundamental norm (Preamble) and the basic rule (body of the Constitution), then the regulations beneath it serve to elaborate these fundamental and basic norms. The Compilation of Islamic Law (KHI) belongs to this second category, as a derivative of the basic rule set out in Article 29, paragraphs (1) and (2) of the 1945 Constitution.

In accordance with the principle *lex superior derogat legi inferiori*, a law or regulation of lower rank in the legislative hierarchy must not conflict with one of a higher rank. Philosophically, the KHI, which is based on a Presidential Instruction (Inpres), does not contradict any higher-level regulation; in fact, its legal content fills a normative gap within the jurisdiction of the Religious Courts in line with constitutional mandates. (Nugroho, Arifin & Ratna Dewi, 2024).

The general elucidation of the 1945 Constitution provides that, alongside the Constitution, written laws are also in effect. Given that the KHI is categorized as unwritten material law, it nevertheless holds juridical legal force. The key issue that arises is whether statutory regulations, particularly unwritten material law such as the KHI (despite its form resembling written law), can be amended. This is especially significant considering that the optimization of a regulation is determined by the socio-historical conditions in which it applies.

Legal Status Change of the Compilation of Islamic Law

There are several views concerning the modification of the Compilation of Islamic Law (KHI), particularly in optimizing its legal status from a presidential instruction (Inpres) to a higher-level regulation, such as a statutory law (Undang-Undang). Some legal scholars argue that the legal position of the KHI, being based on a presidential instruction, is relatively weak. This view represents a paradigm that advocates for change in the name of legal certainty and the supremacy of law.

Although the KHI resembles a statutory law in its formal structure consisting of chapters and articles as typically required for written legislation it is not considered a law in the material sense. Laws such as Law No. 1 of 1974 on Marriage represent both formal and material legislation, whereas the KHI belongs to the category of formal rules, but its substance does not carry the same legal weight as formal statutory law. (Fauna Alwy, 2018).

In terms of its legal force, a presidential instruction (Inpres) is considered a concrete, individual norm it applies specifically to the Muslim community and functions repeatedly in coordinating particular governmental institutions. This differs from statutory laws, government regulations (PP), or presidential decrees (Kepres), which are general and abstract in nature. On the other hand, there is also a viewpoint that the KHI, in its current form, is sufficient, supported by various arguments.

Juridically, there is no substantive difference between a Presidential Decree (Kepres) and a Presidential Instruction (Inpres), as an Inpres is considered a part of the broader category of presidential decisions issued under the authority of the President. This authority is derived from Article 1 paragraph (1) of the 1945 Constitution (UUD 1945), which grants the President the power to hold executive authority over the administration of the state. Therefore, whether it is termed an Inpres or Kepres, its status is essentially the same in terms of its origin of authority.

Sociologically, the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) has effectively become applied law and a primary reference in the Religious Courts. It is regarded as a legal manual, a legal code, passive law, autonomous law, *iftihādī* law (independent reasoning), and is even described as an *ijmā'* (consensus) of Indonesian ulama from various groups. Beyond that, it represents an accommodative effort rooted in the classical fiqh schools, particularly the Shafi'i madhhab.

Other judicial institutions namely the General Courts (Pengadilan Negeri, PN), Administrative Courts (PTUN), and Military Courts (Pengadilan Militer, PM) in accordance with Law No. 14 of 1970, recognize both the absolute and relative jurisdiction of the Religious Courts (Pengadilan Agama) and respect the Compilation of Islamic Law (KHI) as the applicable law within the Religious Courts. Procedural justice alone is insufficient if substantive justice is not fulfilled. Formal legislation is indeed necessary; however, if it does not meet the community's sense of justice, the statutory regulations will be meaningless. (Yeni Salma Barlinti, 2011).

Legislative Prospects

If, during its formulation, the Compilation of Islamic Law (KHI) encountered political, economic, and procedural obstacles, the struggle did not end there. The KHI is not final law but the result of an ongoing unification process that remains unfinished. Fundamentally, the KHI has legislative prospects within the statutory legal framework. This prospect is not without reason, as questionnaire data indicate that the majority of legal experts hold an optimistic view regarding the KHI's potential for formal legislation. However, this process is not as simple as turning one's hand; the opportunity depends on the participation and effectiveness of implementers in society, especially judges in the

Religious Courts. Enhancing human resources through higher education in Islamic law and fostering an understanding of the KHI as Indonesian fiqh are essential. Equally important is the support from government authorities (executive) and the House of Representatives (legislative). (Abdurrahman, 1992)

4. CONCLUSION

Theoretically, the formation of law and the legislative hierarchy position the Compilation of Islamic Law (KHI) as having a strong standing within the national legal system. Therefore, its legal validity is recognized juridically, despite differing opinions regarding the status of presidential decrees (Kepres) and presidential instructions (Inpres). The possibility of upgrading the KHI's status from an Inpres to a higher-level regulation is feasible due to its solid legal position within the national legal framework. However, this requires more intensive efforts through the door of *ijtihad* (independent legal reasoning). Public awareness is crucial to understanding the KHI as an inseparable part of societal life, contributing to the advancement of national legal supremacy.

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