



## Compilation of Islamic Law as a Product of State Ijtihad: An Analysis of Its Position and Implementation in the Indonesian Legal System

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### Abstrak

This study discusses the Compilation of Islamic Law (KHI) as a product of state ijtihad and analyzes its position and implementation in the Indonesian legal system. The background of this research is the need for harmonization between sharia norms and national law, in the midst of the complexity of modern society that demands legal certainty and substantive justice. The purpose of the study is to examine the position of KHI in the national legal hierarchy, assess the effectiveness of its implementation in Religious Courts, and identify criticisms and challenges that arise in the context of contemporary social and legal developments. This research uses normative legal research methods with a statute and conceptual approach through literature studies of laws and regulations, Islamic legal literature, ulema fatwas, and related academic documents. The analysis was carried out in a descriptive-qualitative manner to assess the position, relevance, and adaptability of KHI in judicial practice. The results of the study show that KHI occupies a strategic position as an instrument of harmonization of Islamic law with national law, provides uniform guidelines for judges, and ensures legal certainty. The implementation of KHI has succeeded in bringing substantive justice through contextual interpretation, despite the challenges of social change, human rights, and modern family dynamics. Criticism of KHI emphasizes the need for text adaptation, socialization, and periodic revision to remain relevant. In conclusion, KHI plays a role as a living legal instrument, integrating sharia principles, legal certainty, and community benefits. Research recommends routine evaluations, capacity building of judges, and contextual interpretation mechanisms to ensure that KHI remains effective and responsive to the needs of modern society.

## I. INTRODUCTION

Indonesia is a country that adheres to a pluralistic legal system, where national law consists of positive laws that are sourced from laws and regulations, judicial practices, as well as customary law, and Islamic law as the source of law that lives in Muslim society (Stars, 2025). The State of Indonesia, based on Pancasila and the 1945 Constitution, places religion as the moral and ethical basis of the life of the nation and state. Article 29 paragraph (1) of the 1945 Constitution affirms that *"The state is based on the One Godhead,"* and paragraph (2) emphasizes that *"The state guarantees the freedom of each citizen to embrace his or her own religion and to worship according to his religion and belief."* This provision is a constitutional basis that gives legitimacy to the implementation of Islamic law in the national legal system, while ensuring that Islamic law must be implemented in accordance with the principles of statehood and positive law.

Islamic law itself is sourced from the Qur'an, Hadith, Ijma' ulama, and Qiyas, which cover all aspects of life, ranging from individual worship, social ethics, to family law and inheritance (Sholihah et al., 2025). The principle of justice (adl) is the main foundation, as Allah SWT says:

*"Indeed, Allah commands you to be just and to do good, to give to your relatives, and Allah forbids evil deeds, iniquity, and enmity"* (QS. An-Nahl: 90).

The Prophet Muhammad (PBUH) also emphasized that justice is the foundation of every human affair:

*"Verily justice is the basis of every affair"* (HR. Ahmad and al-Tirmidhi).

This principle of justice not only covers moral aspects, but also becomes the basis of the law that demands the application of sharia by considering the maslahat (maslahah) and the purpose of the sharia (maqashid al-sharia). The concept of maqashid al-shariah, which emphasizes the protection of religion, soul, intellect, descent, and property, serves as a guideline in drafting Islamic

law that is responsive to the needs of the community while safeguarding the public interest (Umar, Bafadhal, & Putri, 2025).

In Indonesia, the application of Islamic law in the realm of formal justice requires clear legal instruments so that sharia norms can be integrated with national law. One of these instruments is the Compilation of Islamic Law (KHI), which was stipulated through the Presidential Decree of the Republic of Indonesia Number 1 of 1991 (Rahmanto & Wahyoeono, 2022). The KHI was compiled as a guideline for judges in the Religious Court in handling family, inheritance, and guardianship law cases. This document is a product of state *ijtihad*, which combines sharia principles with the legal, social, and cultural context of Indonesia.

The history of the establishment of KHI shows the state's efforts to provide legal certainty as well as harmonization between Islamic law and national law. Prior to KHI, judges of the Religious Court used various legal sources that sometimes overlapped or were inconsistent, resulting in differences in decisions and legal uncertainty (Gazali & Gazali, 2026). With KHI, the state seeks to unify the interpretation of Islamic law in a formal legal framework, which can be applied consistently throughout Indonesia. KHI also reflects the practice of collective *ijtihad* that takes into account social, cultural, and national legal conditions, so that Islamic law is not only the private law of the community, but has a public and state character.

However, although KHI has become an official guideline, its implementation in judicial practice faces various challenges. Some of them include differences in judges' interpretations of the KHI text, limited Islamic legal literacy among judicial practitioners, and changing social dynamics, including the issue of polygamy, divorce, inheritance, and women's rights that increasingly demand proportional legal protection (Rosyadi, 2022). This challenge raises critical questions about the extent to which KHI is able to function as an effective and adaptive legal instrument, while bridging sharia principles with national law.

The study of the position and implementation of KHI is important because it shows how the state institutionalizes Islamic law, as well as tests the consistency of the harmonization of Islamic law with the national legal system. This analysis is not only academically relevant, but also strategic for the development of Islamic law that is responsive to the needs of modern society, fair, and in

harmony with the principles of statehood. Through this research, it is hoped that a deep understanding of the role of KHI as a state legal instrument, its implementation effectiveness, and the potential for strengthening it in order to increase legal certainty, justice, and protection of citizens' rights in accordance with the principles of *maqashid al-sharia*.

## II. RESEARCH METHODS

This study uses a normative legal research method with the aim of analyzing the position and implementation of the Compilation of Islamic Law (KHI) as a product of state *ijtihad* in the Indonesian legal system (Sonata, 2014). This research focuses on the study of legal norms and rules, both written and sourced from the principles of Islamic law, so that it is relevant to the context of positive law and religious justice in Indonesia.

In its implementation, this study adopts a statutory and conceptual approach. The statute approach is carried out through the study of laws and regulations that regulate Religious Courts and Islamic law, including Law Number 7 of 1989 concerning Religious Courts and its amendments, Presidential Decree Number 1 of 1991 concerning the Compilation of Islamic Law, and other implementing regulations. This approach allows researchers to assess the position of KHI in the national legal hierarchy and its relevance in judicial practice.

Meanwhile, the conceptual approach is focused on the analysis of the principles of Islamic law that are the foundation of KHI, such as justice (*adl*), benefit (*maslahah*), and the purpose of sharia (*maqashid al-sharia*). This study was carried out through an in-depth literature study of classical and contemporary Islamic legal literature, scientific journals, reference books, as well as fatwas and opinions of Islamic legal experts in Indonesia.

The data obtained was then analyzed in a descriptive-qualitative manner, by interpreting and evaluating the position and implementation of KHI, and comparing it with the principles of Islamic law and other laws and regulations. This analysis aims to understand the legal strength, limitations, and relevance of KHI as a state instrument in institutionalizing Islamic law, so that this study is able to provide a comprehensive understanding from the perspective of positive law and Islamic law.

### III. RESULTS AND DISCUSSION

#### A. Background of the Establishment of a Compilation of Islamic Law in Indonesia

The Compilation of Islamic Law (KHI) was born as an answer to the need for the integration of Islamic law in Indonesia's plural and complex national legal system (Jannah, Kurniati, & Ilyas, 2025). Since the beginning of the state's formation, the religious courts have been the official institutions that handle disputes of Islamic law, especially in the areas of marriage, inheritance, and guardianship. However, before the KHI, religious court judges faced various difficulties because there were no standard official guidelines, so the verdicts often varied between regions and between judges, even though the cases were similar.

From the perspective of Islamic law, the formation of KHI can be seen as a form of collective *ijtihad* codified by the state (Salsabila, 2025). *Ijtihad* in Islam, as explained by scholars, is an attempt to find law from shari'a sources when the text of the Qur'an and Hadith does not explicitly regulate a problem or when social conditions and the context of society require adjustment. The Qur'an emphasizes the importance of making fair and wise decisions according to the context:

*"And ask for help (from Allah) with patience and prayer, and indeed that is hard, except for the righteous"* (QS. Al-Baqarah: 45).

This postulate emphasizes the need for wisdom, wisdom, and contextual considerations in enforcing the law, so that the formulation of KHI becomes a relevant instrument to bridge the text of sharia with the social dynamics of Indonesian society.

The history of the formation of KHI also cannot be separated from the context of Indonesian statehood. After independence, the government faced challenges in harmonizing customary law, western (Dutch) law, and Islamic law. The laws and regulations governing the Religious Courts, such as Law Number 7 of 1989, provide a formal basis for the establishment of uniform Islamic legal guidelines (Fikri, 2025). KHI is compiled through an in-depth study process of classical and contemporary literature on Islamic law, *ulama* fatwas, and existing judicial practices, so that the final product is normative, systematic, and applicative.

KHI not only emphasizes compliance with sharia, but also considers the principles of justice (*adl*) and benefit (*maslahah*). The concept of

*maqashid al-sharia* is the philosophical foundation of KHI, where the main purpose of sharia is to protect religion, soul, intellect, descendants, and property (Suhaili, 2025). In QS. An-Nahl verse 90, Allah commands:

*"Verily Allah commands you to be just and do good..."*

This order serves as a guideline for KHI makers to balance the interests of individuals, families, and communities in the context of formal Islamic law and applied in the judiciary.

In addition, KHI also emerged as a response to the need for legal certainty. Before KHI, judges often had to refer to classical *fiqh* books that were diverse and sometimes contradictory, so that religious court decisions were prone to inconsistencies. With KHI, the state provides an official reference that is binding, thus supporting the creation of uniformity, legal certainty, and institutional legitimacy for religious courts.

Thus, the background of the establishment of KHI can be summed up as an effort to institutionalize Islamic law by the state, which combines sharia principles with national law, bridges the gap in practice and text, and ensures the protection of individual rights and the interests of society in a fair and consistent manner. The establishment of KHI is a tangible form of implementing the state's collective *ijtihad* that is tailored to the social, cultural, and legal context in Indonesia.

#### B. The Position of the Compilation of Islamic Law in the National Legal Hierarchy

The position of the Compilation of Islamic Law (KHI) in the Indonesian national legal system raises important questions related to the legitimacy, legal certainty, and role of the KHI as an official guideline for religious justice (Watson, 2025). Formally, KHI was established through the Presidential Decree of the Republic of Indonesia Number 1 of 1991, which provides a legal basis for religious court judges to apply sharia norms uniformly. Although the KHI is not a law, its existence is recognized as a binding operational guideline in the realm of Religious Courts.

In the perspective of the hierarchy of laws and regulations, Indonesia adheres to the principle that every regulation has a certain position. According to Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, Presidential Decrees are included in the type of regulations that have binding legal force, even though they are under the Law. The KHI, as a

Presidential Decree, thus has higher normative power than internal guidelines, but remains subject to the 1945 Law and Constitution (M. Saputra, Ananda, & Turnip, 2025). This confirms that the KHI is not a primary source of law, but an instrument that facilitates the application of Islamic law within the framework of national law.

Philosophically, the position of KHI can also be analyzed from the perspective of Islamic law as public law. In Islam, the principles of justice (adl) and maslahat (maslahah) require consistency in law enforcement in order to create certainty and protection of rights. QS. An-Nahl verse 90 emphasizes the obligation to be just:

*"Indeed, Allah has commanded you to be just and to do good, to give to your relatives..."*

This postulate is the normative basis for the state to institutionalize Islamic law through KHI, so that the principles of sharia can be applied uniformly without ignoring the hierarchy of national law. In other words, KHI functions as a harmonization mechanism between textual sharia norms and positive legal practices that are structural and state-like.

The position of KHI can also be seen from the juridical-operational aspect of the Religious Court. Judges in religious courts are required to use KHI as the main guideline in deciding family, inheritance, and guardianship cases, as stipulated in Law Number 7 of 1989 concerning Religious Courts (Merchiano, Syafariansyah, Effendi, Ichandri, & Sadli, 2023). This confirms that the KHI has a practical normative function, although not equivalent to the Law in the formal legal hierarchy, but has strong operational legitimacy to ensure the uniformity and certainty of court decisions.

In addition, KHI occupies a strategic position in the national legal framework because it bridges sharia norms with positive law, so that every judge's decision remains within the national legal corridor without ignoring sharia principles. Thus, the position of the KHI is intermediate, that is, it is between the fundamental principles of Islamic law and the practice of formal national law.

From the perspective of maqashid al-sharia, KHI acts as a state tool to ensure the protection of individual rights, family interests, and the benefit of society. This concept is in line with the principles of fiqh which emphasizes that the law must be able to provide benefits and prevent losses (*Don't Be Fooled By The Saying*) (Maulida, Syabani, Sarhan, Fauzan, & Ananda, 2024). In other words, the position of the KHI is not just an

administrative instrument, but a form of collective ijihad that is treated as an official state guideline, which integrates sharia values in the national legal order.

Thus, the KHI has a dual position: formally as a presidential decree with certain normative powers, and substantively as an instrument of harmonization of Islamic law with national law. This position affirms the role of the state as a guardian of legal certainty as well as a mediator between the sharia text and the socio-political context of Indonesian society.

### **C. Implementation of the Compilation of Islamic Law in the Practice of Religious Justice**

The implementation of the Compilation of Islamic Law (KHI) in the practice of Religious Courts is a critical stage to assess the effectiveness of KHI as an instrument of state law. Although the KHI has been established through Presidential Decree No. 1 of 1991 as an official guideline, its success depends largely on how the norms contained in it are applied by judges in a real context. The implementation of KHI in religious courts reflects an operational ijihad that combines sharia principles, justice principles, and national legal demands (Gazali & Gazali, 2026).

In practice, Religious Court judges are required to refer to KHI in handling marriage, divorce, alimony, inheritance, and guardianship cases. This is in line with Law Number 7 of 1989 concerning Religious Courts, which emphasizes that religious court decisions must refer to applicable regulations, including KHI as an official Islamic legal guideline (Efendi, Rifanto Bin Ridwan, & Hamengkubuwono, 2025). Thus, the KHI functions as an instrument that ensures uniformity of judgments, reduces disparities in the interpretation of Islamic law between regions, and strengthens legal certainty for the community.

From the perspective of Islamic law, the implementation of KHI must still refer to the principles of justice (adl) and benefit (maslahah). QS. An-Nisa verse 58 affirms:

*"Indeed, Allah has commanded you to convey the message to those who are righteous, and when you establish the law among men, that you may judge justly."*

This argument emphasizes that judges not only enforce the text of the KHI mechanically, but must also consider the social context and the needs of the litigants. For example, in the case of

inheritance distribution or divorce, the judge uses the KHI to determine the rights of each party fairly, but still adjust the verdict to the conditions of the family and the local community.

Empirical studies show that the implementation of KHI faces various challenges. First, the legal literacy of judges is an important factor. Not all judges understand the entire substance of the KHI in depth, so sometimes the verdict still contains different interpretations. Second, the social dynamics of society, such as changes in family structure, shifting cultural values, and demands for gender equality, require judges to interpret KHI contextually, so a balance is needed between the text and the principles of maqashid al-syariah (E. Saputra, 2025). This concept is in accordance with the hadith of the Prophet Muhammad PBUH which emphasizes the principles of benefits and prevention of losses:

*"Cannot cause loss and cannot return loss"* (HR. Malik).

In addition, the practice of implementing KHI in the Religious Court shows that KHI functions as a tool of state legal legitimacy, which affirms that Islamic law in Indonesia is not purely private or communitarian, but has a public and state character. This strengthens the position of the Religious Court as an institution that is able to unite sharia norms with national law, while providing legal certainty for the Muslim community.

However, the implementation of KHI must also continue to be evaluated to remain relevant to social changes. For example, the issue of women's rights in divorce, the inheritance of children out of wedlock, or the determination of family maintenance, requires judges to interpret the KHI dynamically and contextually, so that the principles of justice and benefit are maintained. In other words, KHI is not just a normative text, but a living instrument that is actualized through judicial practice, which combines sharia ijihad, national legal principles, and the needs of modern society.

The implementation of KHI in the Religious Courts can be seen as a process of integrating Islamic law into an operational national legal system, where judges act as mediators between sharia norms, legal certainty, and community needs. The effectiveness of the implementation of KHI is not only measured by the uniformity of the verdicts, but also by the ability of the judiciary to uphold the principles of justice (adl), benefit (maslahah), and the protection of citizens' rights

in accordance with the principles of maqashid al-sharia.

#### **D. Criticisms and Challenges to the Compilation of Islamic Law in the Context of the Development of Modern Society**

The Compilation of Islamic Law (KHI), as a product of state ijihad codified through Presidential Decree Number 1 of 1991, is an important milestone in the integration of Islamic law into the Indonesian national legal system. However, with the increasingly complex dynamics of modern society, KHI faces a variety of substantive criticisms and operational challenges that need to be comprehensively analyzed.

Normatively, one of the main criticisms of KHI is its relatively static and rigid nature. The KHI is designed to provide standard guidelines for judges of Religious Courts, but the text still refers heavily to classical jurisprudence literature that is general and normative, so it is sometimes difficult to apply to contemporary cases that have not been explicitly regulated (Wildaniyah & Muktafi, 2025). For example, inheritance disputes in mixed families, digital asset management, or custody disputes in non-traditional family structures, require flexible legal interpretations. In the context of Islamic law, the principles of *maslahah* (public interest) and *dharuriyat* (the necessity of protecting basic aspects of human life) are guidelines for interpreting laws that are relevant to the needs of the times. Al-Ghazali emphasized in *al-Mustashfa*:

*"Sharia law is established to ensure human welfare and prevent harm."*

The relevant Qur'anic evidence emphasizes the ease and benefits of the law:

*"Allah wills ease for you and does not want hardship for you"* (QS. Al-Baqarah: 185).

This postulate emphasizes that the interpretation of KHI must be able to adapt the legal text to social conditions and the needs of modern society, so that the principles of maqashid al-sharia are still fulfilled.

From a human rights perspective, criticism of KHI has arisen regarding the rights of women and children. Modern society demands gender equality and child protection more strictly, while some provisions in the KHI are still oriented towards traditional norms (Hadaiyatullah, Fikri, Dharmayani, Karini, & Ismail, 2024). For example, provisions on inheritance or divorce rights sometimes require reinterpretation so that the

principle of justice (adl) for women and children is maintained, in line with the QS. An-Nisa verse 7:

*"For men there is a share of the inheritance of their parents and relatives, and for women there is a balanced share with an acceptable share."*

Religious justice judges, in this context, are faced with the requirement to interpret the KHI contextually, without disregarding sharia principles, so that substantive justice for all parties remains guaranteed.

In addition, from the sociological side, KHI faces challenges due to changes in social and cultural patterns of society. Globalization, technological advancements, and family modernization have resulted in new phenomena such as cross-cultural marriage, digital inheritance, non-normative family custody, and digital platform-based property disputes (Hamzah, 2025). These cases require judges to use a contextual ijtihad approach, combining the principles of KHI with contemporary fiqh principles such as qiyas (analogy) and istihsan (preference for benefits). The hadith of the Prophet Muhammad PBUH affirms the principle of prevention of loss in Islamic law:

*"Cannot cause loss and cannot return loss"* (HR. Malik).

This principle is the basis for judges to adjust the provisions of the KHI to the needs of modern society, so that the law remains relevant, fair, and benefit-oriented.

Other challenges arise from the formal legal aspects and integration with national law. The KHI, as a presidential decree, has certain normative powers, but it falls under the 1945 Law and Constitution in the legal hierarchy. This raises a dilemma when the norms of the KHI clash with broader national legal principles, for example related to the protection of children's rights, women's rights, or international human rights standards that are part of national legal practice (Tan, Budi, & Purwaka, 2025). Thus, the KHI requires a regular evaluation and harmonization mechanism, both through formal revision and interpretive guidance for judges.

In addition, academic criticism shows the need to improve the literacy of judges and socialization of KHI. Empirical studies reveal that differences in judges' understanding of the KHI text can result in significant variations in verdicts, even though the cases are similar. This requires continuous training, consultation with contemporary scholars, and empirical legal research, so that KHI

becomes not only a formal text, but also an effective and adaptive tool of living law.

The challenges and criticisms of the KHI emphasize that the Compilation of Islamic Law should be seen as a dynamic product of ijtihad, not just a static normative text. The success of KHI depends on the ability of judges and state institutions to actualize sharia principles in a contextual manner, maintain legal certainty, ensure justice, and protect the interests of modern society. KHI, in this context, is a bridge between classical Islamic law and the demands of contemporary society, which must continue to evolve to be relevant, fair, and *benefit-oriented*.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

The Compilation of Islamic Law (KHI) is a concrete form of state ijtihad which acts as an official guideline in the Religious Court, as well as an instrument to integrate Islamic law into the national legal system. The position of KHI occupies a strategic position, located between basic sharia norms and national laws and regulations, so that it functions as a tool for legal harmonization. The implementation of KHI in religious courts shows that the success of the application of Islamic law depends on the ability of judges to interpret texts contextually, maintaining a balance between legal certainty, the principle of justice (adl), and benefit (maslahah).

However, the challenges that arise emphasize that KHI is not a static document. Social change, modern family dynamics, technological advances, and human rights demands require adaptive interpretation. The effectiveness of KHI in judicial practice is not only measured by the uniformity of decisions, but also by its ability to provide substantive justice and protection of the rights of litigants. Thus, the KHI must be seen as a living and evolving legal instrument, which unites sharia principles, national legal certainty, and the needs of contemporary society.

##### B. Suggestion

First, the government needs to conduct periodic evaluations and revisions of the KHI to be in line with the development of national law and contemporary judicial practices. Second, it is necessary to increase the capacity of judges through training and socialization, so that the understanding of the principles of maqashid al-sharia and the application of KHI is more consistent. Third, strengthening the mechanism of

contextual interpretation and consultation of contemporary ulema fatwas can ensure that KHI remains relevant, adaptive, and able to bring substantive justice to modern society.

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