



Implication of Local Wisdom in Islamic Law Compilation Legislation

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Abstract

The approach of compromise with local customs (*al-'urf al-khāṣ*) in formulation of KHI especially to anticipate the formulation of legal values which is not found in special nas (Koran and Hadits). While the values of the law has grown and evolved as an indigenous norm in the customs of Indonesian society. In addition, the practical level of local customs values that bring goodness and harmony in community life. The possibility of approaching compromise with local customs is not limited to the adoption of local customs law values to be adopted and made into Islamic legal provisions, the compromise approach includes also integrating the development of existing Islamic legal values with local customs legal values. The goal is making the provisions of Islamic law more closer to the value of life awareness in society (living law). This kind of method can be expressed in a phrase: "Islamizing local customs and simultaneously bringing Islamic law into the local customs"

Keywords:

Legislation; Islamic Law Compilation; Local Wisdom; Local Customs.

Abstrak

Pendekatan kompromi dengan adat-istiadat (*al-'urf al-khāṣ*) dalam perumusan Kompilasi Hukum Islam (KHI) terutama untuk mengantisipasi perumusan nilai-nilai hukum yang tidak terdapat dalam nas khusus (al-Qur'an dan Hadis). Nilai-nilai hukum telah tumbuh dan berkembang sebagai norma adat dalam adat istiadat masyarakat Indonesia. Pada tataran praktis nilai-nilai adat setempat yang membawa kebaikan dan kerukunan dalam kehidupan masyarakat. Kemungkinan pendekatan kompromi dengan adat setempat tidak terbatas pada adopsi nilai-nilai hukum adat setempat untuk dianut dan dijadikan ketentuan hukum Islam, kompromi Pendekatan tersebut mencakup pula pengintegrasian pengembangan nilai-nilai hukum Islam yang ada dengan nilai-nilai hukum adat setempat. Tujuannya agar ketentuan hukum Islam lebih mendekatkan nilai kesadaran hidup dalam masyarakat (living law). Cara seperti ini dapat diungkapkan dengan ungkapan: "Mengislamkan adat-istiadat lokal dan sekaligus membawa syariat Islam ke dalam adat-istiadat lokal".

Kata Kunci:

Legislasi; Kompilasi Hukum Islam; Budaya Lokal.

Introduction

Indonesia is a unique country with a legal system. Indonesia adheres to a mixed legal system by combining three legal systems.¹ Indonesia also adheres to Continental European law (because historically, Indonesia was colonized by the Dutch).² In addition, Indonesia also enforces a customary law system (because it is a moral value that develops in society) and Islamic religious law (because the majority of Indonesia adheres to Islam).

Islamic law, a principal part of the teachings of Islam, is a source of law that is actually very important to be institutionalized (legislated) in Indonesia. This is because, empirically, Islamic law is a law that lives in Indonesian society (living law) that begins with Islam's entry into the archipelago. However, some aspects of Islamic law have not been made positive law by state power, or at least their validity remains in the shadow of customary law. This is a long-term result of the political engineering of the Dutch colonial law and the scientific engineering of the Dutch intellectuals who systemically are marginalized Islamic law.³

The recent developments show that the spirit of Islam is increasing. The secularist, nationalist and religious hegemony triggers alignments with moderate religious sects.⁴ Therefore, Muslims increasingly need answers to Islamic law to the problems of life they face. The institutionalization of Islamic law has answered some problems through the legislative process, so that it has become a positive law in the form of law, such as Law Number 1 of 1974; Law Number 7 of 1989 concerning Religious Courts; Law Number 38 of 1999 concerning Management of Zakat; Law Number 4 of 2002 concerning the Implementation of Hajj;⁵ and Law Number 10 of

¹ Bono Budi Priambodo, "Positioning Adat Law in the Indonesia's Legal System: Historical Discourse and Current Development on Customary Law," *Udayana aa of Law and Culture* 2, no. 2 (2018): 140, <https://doi.org/10.24843/ujlc.2018.v02.i02.p02>.

² Edi Rohaedi, "Jurisprudence Position in the Common and Civil Laws," *Jhss (Journal of Humanities and Social Studies)* 2, no. 2 (2018): 47–49, <https://doi.org/10.33751/jhss.v2i2.950>.

³ Bustanul Arifin, *Dimensi Hukum Islam Dalam Hukum Nasional* (Jakarta: Gema Insani Press, 1999), p. 33.

⁴ Muhammad Zuhdi, "Challenging Moderate Muslims: Indonesia's Muslim Schools in the Midst of Religious Conservatism," *Religions* 9, no. 10 (2018), <https://doi.org/10.3390/rel9100310>.

⁵ Abdul Syatar, "TRANSFORMATION OF FIQH IN THE FORMS OF HAJJ AND ZAKAT LEGISLATION," *Mazahibuna; Jurnal Perbandingan Mazhab* 1, no. 2 Desember (2019): 120–33, <https://doi.org/10.24252/mh.v1i2.11646>.

1999 concerning Banking, which is also a juridical hanger in the application of the sharia system in the banking fields and other financial institutions.⁶

However, many other aspects have not been touched or have not received the appropriate portion or are no longer relevant to the times. For this reason, legislative efforts in a broad sense are still needed, including codifying Islamic law, institutionalizing Islamic law, or revising (amending) existing ones. For example, the Indonesian Islamic Law Compilation (KHI) only regulates family law and does not touch the *jinayat* law. Regarding family law, many things can be criticized, revised, and adapted to the times. Because in the legislative process of KHI itself, not only purely referring to classical fiqh books, but also loaded with elements of local Indonesian culture. Local culture can change and develop; KHI can change with changes in local Indonesian culture. Therefore, it is necessary to re-examine local cultural considerations in the KHI legislative process. Because the KHI, although its instrument of the application refers to the Presidential Instruction but becomes the main reference for judges in the scope of the Religious Courts. In other words, the content of KHI can become law after being appointed by the judge as law.

The Nature of Islamic Law Legislation

The word "legislation" comes from English, which means making laws or the laws made; it is the formation of laws or legislation. Legislation is often identified with the codification of law. The word 'codify' comes from English, which means put into the form of code. Codify the law means to put it into the form of the law.⁷

Meanwhile, in Arabic, the word 'legislation' is often equated with the word '*taqnīn*', grammatically Arabic derived from the words '*qannana*' and '*al-qannu*', which means 'to explore information (*tatabbu'u al-ahbār*)'. So then, the word '*iqtatannā*' means 'we have taken'.⁸ Therefore, the last meaning is appropriate when it is matched with the word 'codify', in which the word 'codify' means to take parts and then collect them into one.

In Arabic, Islamic law legislation is termed '*taqnīn al-ahkām al-syar'iyyah*', while in English the 'codification of Islamic law' is:

⁶ Muhammad Amin Suma, *Himpunan Undang-Undang Perdata Islam* (Jakarta: Rajawali Press, 2004), p. 56.

⁷ As Hornby, *Oxford Advanced Learner's Dictionary of Current English* (London: Oxford University Press, 1974), p. 482 and 160.

⁸ Ibnu Manzūr, *Lisāān Al-'Arab Juz XII* (Cairo: Dār al-Ma'ārif, 1990), p. 204.

*"The formation (codification) of Shari'a law can be legalized by experts in legal materials and can be applied in the form of a requirement used as a reference by judges."*⁹

Therefore, according to the writer, Islamic law legislation in a narrow sense is an expression of the process of codifying Islamic legal norms in a compilation arrangement in written form legalized by the government through an authorized institution by referring to the basic principles in Islamic law. Meanwhile, in a broader sense, Islamic law legislation includes the process of codifying Islamic legal norms in written form and includes the process of revision, ratification, and socialization in the community. Therefore, the Islamic Law Compilation deserves to be used due to Islamic law legislation in Indonesia.

Legislation Process of KHI

KHI results from a legislative project on Islamic law through jurisprudence implemented by the Supreme Court of the Republic of Indonesia and the Ministry of Religion of the Republic of Indonesia. Then, it can become a reference for Religious Court judges through Presidential Instruction Number 1 of 1991. However, before the KHI was codified, there was a disparity in judicial decisions because there were no unique and positive legal references. Finally, there are struggles and debates between the existing fiqh books. Thus, in the end, the codification of KHI is initiated.

Since 1958, the material law applied in religious courts has referred to various fiqh books. In 1958, the Bureau of Religious Courts Circular Number B/1/735, dated February 18, 1958, was a follow-up to Government Regulation Number 45 of 1957 concerning the establishment of the Religious Courts of the Sharia Courts outside Java and Madura. To obtain legal unity in examining and deciding cases, in the Circular, judges of the Religious Courts/Shari'ah Courts were recommended to use the books that have been determined, namely: *al-Bajūri; Fatḥu al-Mu’īn; Syarqāwī ‘alā al-Tahrīr; Qalyūbī; Fatḥu al-Wahhāb; Targīb al-Musytāq; Qawānīn al-Syar‘iyyah li Sayyid ‘Usmān bin Yahyā; Qawānīn al-Syar‘iyyah li sayyidid Ṣadaqah Dahlan; Syamsūri li al-Farāiq; Bugyah al-Mustarsyidīn; al-Fiqhu ‘ala al-Mazāhib al-Arba’ah; dan Mugnī al-Muhtāj*.¹⁰

⁹ 'Abd al-Rahmān bin Sa'ad Al-Syaṣarī, *Taqnīn Al-Āḥkām Al-Syar‘iyyah-Tārīkhuhū Wa Ḥukmuḥū*, I (Riyadh: Dār al-Tauḥīd li al-Nasyr, 2014), p. 3.

¹⁰ Jazuni, *Legislasi Hukum Islam Di Indonesia*, I (Jakarta: Citra Aditya Bakti, 2005), p. 430.

Observing the preamble to the Joint Decrees of the Chief Justice of the Supreme Court and the Minister of Religion dated March 21, 1985 Number 07/KMA/1985 and Number 25/1985 concerning the appointment of the Implementation of the Islamic Law Development Project through jurisprudence or Islamic Law Compilation project, it is stated that there are two reasons why this project is held, namely:

In accordance with the regulatory function of the Supreme Court of the Republic of Indonesia on the running of the judiciary in all judicial environments in Indonesia, especially in the Religious Courts environment, it is necessary to hold an Islamic Law Compilation which has so far made positive law in the Religious Courts;

In order to achieve this goal to improve the smooth execution of tasks, synchronization and orderly administration in Islamic law development projects through jurisprudence, it is deemed necessary to form a project team whose preparation consists of officials from the Supreme Court and the Ministry of Religion of the Republic of Indonesia.¹¹

The writer summarizes the legislative process and substance of KHI from Prof. Dr. Alyasa' Abu Bakar, MA. He was the writer's professor while studying at State Islamic University of Ar-Raniry Banda Aceh.¹² The detailed explanation can be seen in the following:

Substantially, KHI is a document or, perhaps more accurately, a fiqh product compiled in the form of legislation due to relatively long and extensive research conducted by Indonesian ulema, judges and academics. This document is divided into three books (fields), the first book concerning marriage law (articles 1-170), the second book concerning inheritance (articles 171-214), and the third book concerning waqf law (articles 215-229). This document was prepared by a team formed and responsible to the Supreme Court of Indonesia and the Ministry of Religion on March 25 1985 (through a Joint Decree).

The team carried out four stages of project activities. The first stage was preparation; the second stage was data collection; the third stage was drafting the

¹¹ Abdurrahman, *Kompilasi Hukum Islam Di Indonesia*, I (Jakarta: Akademika Pressindo, 1995)., p. 15.

¹² Alyasa' Abubakar, *Metode Istislahiah; Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh*, I (Jakarta: Prenadamedia Group, 2016)., p. 229.

Islamic Law Compilation; the fourth stage was a refinement of the design through workshops, gathering views from Muslim ulema and scholars throughout Indonesia.

In the second stage, there were four activity lines carried out by the team. First, reading and researching fiqh books considered relevant, both *pre-mazhab* fiqh books, fiqh representing *mazhab*, and *post-mazhab* fiqh books, which were reform books. This study was then submitted to seven State Islamic Institutes, namely six books in the State Islamic Institute of ar-Raniri Banda Aceh, five books in the State Islamic Institute of Imam Bonjol Padang, six books in the State Islamic Institute of Syarif Hidayatullah Jakarta, five books in the State Islamic Institute of Sunan Kalijaga Yogyakarta, five books in the State Islamic Institute of Sunan Ampel Surabaya, six books in the State Islamic Institute of Antasari Banjarmasin, and five books in the State Islamic Institute of Alauddin Ujung Pandang (now Makassar). The total number was 38 books.

The procedure for the second activity was to conduct interviews with selected ulema and scholars, who were estimated to be truly experienced and authoritative. In addition, the geographical completeness of the scope of authority was taken into account. The interviews were conducted in ten areas of the Religious High Court, namely 20 ulemas from Banda Aceh, 19 ulemas from Medan, 20 ulemas from Padang, 20 ulemas from Palembang, 16 ulemas from Bandung, 19 ulemas from Surakarta, and 20 ulemas from Mataram. Thus, the total number was 285 ulema. All of them were asked 102 questions prepared by a team and included in the 'Guide Questioner' book. This study was conducted by nine judges and academics who were trained and prepared in advance. Then, in the next stage, they became members of the core compilation editing team.

The procedure for the third activity was jurisprudence research, which was carried out by the Directorate of Development of the Islamic Religious Courts Board of the Ministry of Religion. The materials studied were the decisions of the Religious Courts and other related documents, totalling 16 books. The material consisted of the four books from Association of Decisions of the Religious Courts and the High Court of Religion; three books from Fatwa Association; five books from 'Jurisprudence of the Religious Courts'; and four books from law reports.

The procedure for the fourth activity was to conduct comparative studies in three Muslim countries, namely Morocco, Turkey and Egypt, in October and November 1986, to learn how to implement fiqh, including the reforms they had carried out. The focus of the input sought from this comparative study activity revolved around the judicial system, the entry of Islamic law into the flow of the national legal system, and legal sources and material law that judges held on to the civil aspect.

The material from the four activity lines was enriched with input from three *Bahsul Masail* activities conducted by the East Java NU Shura Council and a national seminar organized by the Muhammadiyah Central Leadership Council.

The results of all the above activities were processed and compiled by a large team as the third research phase. This large team was those involved in data collection and research instrument design. The draft was then processed and discussed again by a core team of nine people, who have previously conducted interviews, representing ulema and *hamim Agung*.¹³

This result became the initial draft of the Islamic Law Compilation, the whole process of which took two years and nine months. The results of the team's work were officially submitted to the Minister of Religion and the chairman of the Supreme Court on December 29 1987. This manuscript was held at a national workshop from February 2-6, 1988, at Jakarta's Kartika Chandara Hotel. The workshop was attended by 124 Muslim ulema and scholars as representatives from the research area and interviewed, considering the breadth of their influence and areas of expertise.

The workshops were conducted at two levels, namely commission sessions and plenary sessions. There were three commissions, the Marriage Law Commission, the Inheritance Law Commission, and the Waqf Law Commission, each of them had its own drafting team. The closing in the Plenary Session of the Ratification of the Formulation of the Islamic Law Compilation was delivered by KH. Hasan Basri represented the Indonesian Ulema Council (MUI), KH Ali Yafie

¹³The nine figures are: Prof. HLM. Bustanul Arifin, S.HLM.; Prof. HLM. M.D Kholid, S.HLM.; Masrani Basran, M.A.; M. Yahya Harahap, S.HLM.; HLM. Zaini Dahlan, M.A.; HLM. A. Wasit Awlawi, M.A.; HLM. Mukhtar Zarkasji, S.HLM.; HLM. Amiroeddin Noer, S.HLM.; dan Drs. HLM. Marfuddin Kosasih, S.HLM.

represented Nahdatul Ulema (NU), and KH. A.R. Fakhruddin represented Muhammadiyah. The results of this process were expanded by a team that met for several days in Ciawi Bogor to become the final draft of the Islamic Law Compilation. This activity was the last of the four stages of the planned project activities.

On March 14, 1988, the Minister of Religion sent the final manuscript to the President of the Republic of Indonesia in order to obtain a legally binding juridical form to be used in the practice of religious courts. Finally, the Presidential Instruction Number 1 of 1991, dated June 10, 1991, was issued.

The purpose of the formulation of the Islamic Law Compilation in Indonesia is to prepare uniform guidelines (unification) for judges of the Religious Courts and become a positive law that all Indonesian Muslims must obey; therefore, there will be no more confusing decisions Religious Courts. If there is no Islamic Law Compilation or the judges in the Religious Courts in resolving cases, then they are guided by the reference to the book of fiqh made by previous jurists based on the situation and conditions, in which the *fujaha* are located, judges in resolving the same case often have different decisions; as a result, different references. The Islamic Law Compilation is Indonesian fiqh because it is compiled by taking into account the legal needs of Indonesian Muslims. The Indonesian fiqh is the fiqh initiated by Hazairin and T.M. Hasbi Ash Siddiqi. Fiqh previously had local types of fiqh such as *Hijazy fiqh*, *Mishry fiqh*, *Hindy fiqh*, other fiqh, which were very concerned about the needs and legal awareness of the local community, which was not a new school, but it united various fiqh in answering one fiqh problem. Therefore, it leads to the unification of schools in Islamic law. Therefore, in the legal system in Indonesia, this is the closest form to legal codification and has become the direction of the development of national law in Indonesia.¹⁴

Existence of KHI in the Legislative Hierarchy

According to Law Number 12 of 2011, which is regulated in article 7 paragraph one, the legislative hierarchy in Indonesia are as follows:

1. The 1945 Constitution of the Republic of Indonesia

¹⁴ Zainuddin Ali, *Hukum Islam Pengantar Ilmu Hukum Islam Di Indonesia*, I (Jakarta: Sinar Grafika, 2006)., h. 98.

2. Decree of the People's Consultative Assembly
3. Laws/Government Regulations in Lieu of Law
4. Government Regulation
5. Presidential Regulation
6. Provincial Regulation; and
7. Regency/City Regional Regulation.¹⁵

In addition to what has been stated in Article 7 Paragraph (1) above, the types of regulations are recognized for their existence and have binding legal force as long as they are ordered by a higher statutory regulation or formed based on authority, namely: regulations determined by the People's Consultative Assembly, People's Representative Council, Regional Representative Council, Supreme Court, Constitutional Court, Audit Board of the Republic of Indonesia, Judicial Commission, Bank Indonesia, Minister, Agency, Institution or commission of the same level established by law or government by order of law, Provincial Regional People's Representative Assembly, Governor, Regency/City Regional People's Representative Assembly, Regent/Mayor, Village Head or equivalent.¹⁶

While the foundation, in a sense as the legal basis for the existence of the Islamic Law Compilation in Indonesia, are:

First, Presidential Instruction Number 1 of 1991, on June 10, 1991, ordered the Minister of Religion to disseminate the Islamic Law Compilation to be used by Government Agencies and by people who needed it. *Second*, the Decree of the Minister of Religion of the Republic of Indonesia dated July 22, 1991 Number 154 of 1991 concerning Implementing the Instruction of the President of the Republic of Indonesia 1 of 1991 Number 3694/EV/HK.003/AZ/91 addressed to the Heads of Religious High Courts and Heads of Religious Courts throughout Indonesia regarding the dissemination of Presidential Instruction Number 1 of 1991 dated June 10 199.¹⁷

According to legal studies, the legal norms contained in the instructions are always individual concrete, which means that the instruction can only take place if

¹⁵ Asril, "Eksistensi Kompilasi Hukum Islam Menurut Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan," *Jurnal Hukum Islam* 15, no. 1 (2015): 35.

¹⁶ Asril.

¹⁷ Ali, *Hukum Islam Pengantar Ilmu Hukum Islam Di Indonesia.*, p. 61.

the giver of the instruction and the recipient of the instruction has a direct organizational relationship, unlike government laws, presidential decisions are always general, binding and applicable to all people in a country. Thus, Presidential Instruction Number 1 of 1991 was a concrete individual addressed to the Minister of Religion of the Republic of Indonesia to disseminate KHI, which was then followed up by the Minister of Religion Number 154 of 1991, which also contained legal norms that were individual and concrete which were addressed to the ranks of the Ministry of Religion below it to disseminate and implement KHI, because it was seen from the legal substance of the Decree of the Minister of Religion above was actually not a decision but rather an instruction of the Minister of Religion.¹⁸

According to Koesno, as cited by Jazuni, even though the Islamic Law Compilation is considered good and useful, and the government supports its dissemination, its position in the national legal system is still outside the positive legal order. The Islamic Law Compilation is still the opinion of a group of ulema and experts in Islamic law, which can be the result of consensus among these groups. Thus, the Islamic Law Compilation is still what in the science of law is called a limited *comunis oppodoctorum*. However, it is recognized that the Islamic Law Compilation is a positive step for interested parties' wider and faster knowledge of the Islamic Law Compilation.¹⁹

Observing the basis of the juridical strength of the Islamic Law Compilation, it can be concluded that:

First, the implementation of the Islamic Law Compilation is not an absolute necessity under national law. This means that it may or may not be carried out by a judge in the Religious Courts. It's just that at a practical level, KHI has become the main reference for a judge in the domain of religious courts.

Second, the Islamic Law Compilation is not included in the hierarchy of legislation in Indonesia. Because the Presidential Instruction has no legal force and must be implemented, the Presidential Instruction is only a recommendation that may or may not be implemented. This means that the Islamic Law Compilation is a

¹⁸ Dadang Muttaqien, *Peradilan Agama Dan Kompilasi Hukum Islam Dalam Tata Hukum Indonesia* (Yogyakarta: UII Press, 1999)., p. 45.

¹⁹ Jazuni, *Legislasi Hukum Islam Di Indonesia*., p. 430.

recommendation from the Minister of Religion for its implementation in the Religious Courts on Presidential Instruction.

Third, the Islamic Law Compilation results from the fiqh *ijtihād* of Indonesian ulema, which has been codified and adapted to the conditions of local Indonesian culture. Furthermore, it is ratified and instructed by the President to the Minister of Religion to be enforced within the scope of the Religious Courts. Thus, it is natural that the Islamic Law Compilation is in the spotlight among experts because the Islamic Law Compilation is not included in the hierarchy of legislation in Indonesia as contained in Article 7 paragraph (1) of Law Number 12 of 2011.

Implications of Local Culture in KHI

The compromise approach with local cultural law (*al-'urf*) in the formulation of KHI, especially to anticipate the formulation of legal values not found in specific texts. Meanwhile, these legal values have thrived and developed as customary norms in the habits of the Indonesian people. In addition, at the practical level, these local cultural values bring benefit, order, and harmony to people's lives.

The possibility of taking a compromise approach with local culture is not only limited to taking the values of local cultural laws to be adopted and made into provisions of Islamic law; the compromise approach includes integrating the development of existing Islamic legal values with local cultural values. The goal is that the provisions of Islamic law are closer to the value of awareness of life in society. Such attitudes and steps can be expressed in an expression: Islamizing local culture and at the same time bringing Islamic law closer to local culture.²⁰

The attitudes and steps above, in fact, do not conflict with the principles of Islamic legal philosophy. Because in Islamic law, changes in socio-cultural and geographical location become important variables that influence legal changes. Ibn Qayyim al-Jauziyah states the following monumental phrase:

تَغْيِيرُ الْفَتْوَى وَالْخَلْفَافَهَا بِحَسْبِ تَغْيِيرِ الْأَزْمَنَةِ وَالْأَمْكَنَةِ وَالْأَحْوَالِ وَالنِّيَاتِ وَالْعَوَانِدِ²¹

Meaning:

²⁰ Yahya Harahap, *Informasi Materi Kompilasi Hukum Islam: Mempositifkan Abstraksi Hukum Islam*, I (Jakarta: Logos Wacana Ilmu, 1999)., p. 47.

²¹ Abū 'Abdullāh Muḥammad bin Abū Bakr bin Ayyūb Ibnu Qayyim Al-Jauziyyah, 'Ilām Al-Muwaqqi'īn 'an Rabb Al-Ālamīn, IV (Riyadh: Dār Ibnu al-Jauzī, 2001)., p. 337.

"A fatwa (regarding certain sharia law) may change due to changing times, places, conditions, intentions, and customs."

Ibn Qayyim also includes specific material related to this expression. He explained the urgency of changing the fatwa due to changes in conditions, traditions, times and places by including theory and its application. Ibn Qayyim said:

*"Whoever gives fatwas to people only based on written books regardless of their differences in traditions, differences in time, conditions and contexts that surround them, then they have gone astray and misled, even the crime of a mufti like this is greater than the crime of a doctor who treats all people from different regional backgrounds, characters, situations and places based solely on a medical book. Such a stupid doctor or mufti is the most dangerous person for religion and human health."*²²

One concrete evidence of how socio-cultural environmental factors influence Islamic law is the emergence of two opinions of Imam Shafi'i, known as *qaul qadīm* and *qaul jadīd*.²³ The old opinion (*qaul qadīm*) was the legal opinion of Imam al-Shafi'i when he was in Egypt.²⁴ The differences in legal opinion on the same issue from a Mujtahid Imam al-Shafi'i are clearly caused by factors of social structure, culture, geographical location between Iraq and Egypt.

In the historical context, Islamic legal thought shows dynamic and creative power in anticipating changes and new problems.²⁵ This can be seen from the emergence of several schools of law that have their own style according to the socio-cultural and political background in which the schools grow and develop. However, the monumental legacy that still shows its accuracy and relevance is the methodological framework of extracting the law they created. With this methodological device, all problems can be approached and legalized by the *qiya>s*, *masahah mursalah*, *istihsan*, *istishab*, and 'urf methods.²⁶ In such a position, Islamic law will function as social engineering to make changes in society.

Therefore, the content of KHI should also have a strong sociological basis, as good laws and regulations have a sociological basis. That is, it must reflect the

²² Al-Jauziyyah., p. 338.

²³ Abdul Syatar and Chaerul Mundzir, *TOKOH DAN KETOKOHAN IMAM MAZHAB (Kontribusinya Terhadap Pengembangan Fikih Di Indonesia)* (Gowa: Alauddin University Press, 2021).

²⁴ Abd al-'Azīz Muḥammad 'Azzām, *Al-Qawā'id Al-Fiqhiyyah* (Cairo: Dār al-Ḥadīṣ, 2013)., p. 213.

²⁵ Muammar Muhammad Bakry, "Laws Exegesis Versus (Comparative Studies in Understanding Religious Text and Teh Istimbath Process of Law on Mahar," *JICSA (Journal of Islamic Civilization in Southeast Asia)* 9, no. 1 (2020): 1–21, <https://doi.org/https://doi.org/10.24252/jicsa.v8i2.12005>.

²⁶ Syamsul Arifin and Et.al, *Spiritualisasi Islam Dan Peradaban Masa Depan* (Yogyakarta: Sipress, 1996)., p. 72-73.

reality that lives in society. That fact can be in the form of needs or demands, or problems faced.²⁷

After examining the substance and history of the preparation of the KHI, it seems that KHI is full of local benefits adapted to local culture in Indonesia without marginalizing classical fiqh and opinions. Therefore, several fiqh products are contained in the KHI that is not sourced from specific texts but are concluded considering general Sharia principles, such as considerations of benefit. Among the examples that the writers refer to are the following:

For example, in *Gono Gin*²⁸ assets or assets earned by husband and wife in the fiqh books of the Sunni school of thought, there is no description of the existence of shared assets. According to the provisions contained in fiqh, the husband's property is separated from the wife's property; each of them owns their property and is free to spend it. The wife does not depend on her husband's permission to spend her wealth, and vice versa. According to the majority of ulema, the husband is obliged to fully bear the expenses (food, clothing, and board) of his wife and children, while the wife has relatively no obligation to support the family. The husband's obligation to bear a living includes all work, up to the availability of a house that can be occupied, clothes ready to be used, and food ready to be served and eaten. Furthermore, because considering to be part of the three types of livelihood above, all domestic work in the house, such as washing clothes, cooking and cleaning, becomes the husband's responsibility. If the husband cannot do it himself, then the husband must hire a house assistant.²⁹

In the customs of the various ethnic groups of the archipelago in Indonesia, husband and wife work together, helping each other meet household needs. In general, the customs of these various tribes do not recognize the husband's obligation to provide helpers in taking care of domestic tasks because Indonesian people consider domestic work to be the wife's work, while the husband is in charge of working outside the home. Because husband and wife work, the income or wealth

²⁷ Bagir Manan, *Dasar-Dasar Perundang-Undangan Indonesia* (Jakarta: Ind-Hill-Co, 1992), p. 16.

²⁸ Nur Ilma Asmawi and Muammar Bakry, "Kebebasan Perempuan Dalam Memilih Calon Suami; Studi Perbandingan Antara Mazhab Syafi'i Dan Hanafi," *Mazahibuna; Jurnal Perbandingan Mazhab* 2, no. 2 (2020): 212–29, <http://103.55.216.56/index.php/mjpm/article/view/17817>.

²⁹ Abubakar, *Metode Istislahiah; Pemanfaatan Ilmu Pengetahuan Dalam Ushul Fiqh.*, p. 196-197.

they earn becomes common property. As a result, in the event of a divorce, the joint property must be divided between the two of them. When one of the parties dies, only the joint property of the deceased person will be distributed as an inheritance.³⁰ Through the implication of the local culture of the majority of Indonesian people, the existence of this *gono-gini* property has also been recognized by the Islamic Law Compilation, as contained in Chapter XIII, articles 85-97.

According to the writer, another example in KHI, which considers the benefit of the local culture of the majority of Indonesian people, is the determination of the minimum age limit for marriage. Article 15 of the Indonesian Islamic Law Compilation (KHI) states that the minimum age limit for marriage is 19 years for men and 16 years for women to benefit the family and household. This limitation on the age for marriage is not found in the text specifically that regulates it. However, with research through empirical reality, ulema (especially Indonesian ulema) set this limit because of considerations of benefit where the age below that age is vulnerable to households, both from the aspect of household harmony and from the aspect of reproduction and fostering offspring.

Conclusion

First, the implementation of the Islamic Law Compilation is not an absolute necessity under national law. This means that it may or may not be carried out by a judge in the Religious Courts. It's just that at a practical level, KHI has become the main reference for a judge in the domain of religious courts. *Second*, the Islamic Law Compilation is not included in the hierarchy of legislation in Indonesia. Because the Presidential Instruction has no legal force and must be implemented, the Presidential Instruction is only a recommendation that may or may not be implemented. This means that the Islamic Law Compilation is a recommendation from the Minister of Religion for its implementation in the Religious Courts on Presidential Instruction. *Third*, the Islamic Law Compilation results from the fiqh *ijtihad* of Indonesian ulema, which has been codified and adapted to the conditions of local Indonesian culture. Furthermore, it is ratified and instructed by the President to the Minister of Religion to be enforced within the scope of the Religious Courts. Thus, it is natural that the

³⁰ Abubakar., p. 200.

Islamic Law Compilation is in the spotlight among experts because the Islamic Law Compilation is not included in the hierarchy of legislation in Indonesia as contained in Article 7 paragraph (1) of Law Number 12 of 2011. Among the contents of the KHI that are compromised with local culture are treasure *gono gini* and the minimum age limit for marriage.

Therefore, the writer recommends that the studies of Islamic law in Indonesia should be dynamic and forward-looking (futuristic fiqh) without neglecting classical fiqh adaptations (*takyif fiqhi*), especially to carry out legislative steps in a broad sense towards KHI, which not only includes the process of codifying KHI but also includes revisions and constructive criticism of the contents of KHI. Thus, KHI becomes more responsive and dynamic with the times full of the benefit of the Indonesian people.

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