

Problems of Islamic Law Compilation In Indonesia*

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Abstract.

Islamic Law Compilation is one of the efforts to implement Islamic law in Indonesia constitutionally. Islamic Law Compilation covers three legal fields, namely marriage, inheritance and benefaction. The Islamic Law Compilation contributes positively in providing legal certainty, especially for judges in religious courts. In addition, there are still a number of problems related to the Islamic Law Compilation, namely the issue of socialization, equality of perception and the fear of reducing Islamic law.

Keywords: Islamic Law Compilation, Marriage Law, Inheritance Law, Benefaction

Abstrak.

Kompilasi Hukum Islam merupakan salah satu upaya untuk mengimplementasikan hukum Islam di Indonesia secara konstitusional. Kompilasi Hukum Islam mencakup tiga bidang hukum, yaitu perkawinan, waris dan wakaf. Kompilasi Hukum Islam memberikan kontribusi yang positif dalam memberikan kepastian hukum, khususnya untuk para hakim di pengadilan agama. Selain itu, masih ada beberapa masalah terkait Kompilasi Hukum Islam, yaitu masalah sosialisasi, persamaan persepsi dan adanya kekhawatiran tereduksinya hukum Islam.

Kata Kunci: Kompilasi Hukum Islam, Hukum Perkawinan, Hukum Waris, Wakaf

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Introduction

Islamic law as a legal order that is guided and obeyed by the majority of the population and Indonesian society is a law that has lived in society, and is a part of Islamic teachings and beliefs that exist in the life of national law and is one of the sources in its development.

In the history of legal in Indonesia, the presence of Islamic law in national law is a struggle for existence. Existence theory, which formulates the state of Indonesian national law of the past, present and future, confirms that Islamic law is a part in Indonesian national law, both written and unwritten. Islamic law exists in various fields of legal life and legal practice.

Existence theory, in relation to Islamic law is a theory that explains the existence of Islamic law in national law, namely:

1. Exist, that meaning is sense of being an integral part of Indonesian national law;
2. Exist, that meaning is sense of its independence recognized, has the power and authority and is given the status as national law;
3. Exist, that meaning is sense of national law and Islamic legal norms that function as a filter for national legal materials in Indonesia;
4. Exist, that meaning is sense of being the main ingredient.²

Existentially, the position of Islamic law in national law is a sub-system of national law. Therefore, Islamic law also has the opportunity to contribute to the establishment and renewal of national law, even though there must be acknowledged problems and obstacles that have never ended.

Sociologically, the position of Islamic law in Indonesia involves awareness of diversity for society, which is more or less related to the issue of legal awareness, both religious norms and legal norms, always demanding obedience.

Thus, it is clear that the relationship between the two is very close. Both must be developed in a unidirectional, harmonious and balanced manner. Both cannot be allowed to contradict each other.

One of the efforts to applied Islamic law is the birth of Presidential Instruction Number 1 Year 1991 to disseminate the Compilation of Islamic Law which was followed up with the Decree of the Minister of Religion Number 154 Year 1991 concerning the Implementation of that Presidential Instruction.

² Said Agil Husin al-Munawwar, MA, *Hukum Islam & Pluralitas Sosial*, (Jakarta:Penamadani, 2004), p.13-14.

Islamic Law Compilation in Indonesia

It has become common knowledge that the Compilation of Islamic Law (after this referred to as KHI) is an Islamic law promulgated by the State during the New Order (Orde Baru). KHI was prepared based on a joint decision of the Supreme Court and Minister of Religion, on March 21, 1985 and subsequently gave birth to the Project for the Development of Islamic Law through Jurisprudence (KHI Project). The preparation of KHI lasted for six years (1985-1991). And on June 10, 1991, KHI was inaugurated as an official guideline in the field of material law for judges in the Religious Courts throughout Indonesia, handling three areas of Islamic law which were formulated into 229 articles, namely marriage law (*munakahat*), inheritance law (*mawarits*) and legal benefaction (*waqf*).³

These three fields are considered adequate, because the establishment of KHI at that time was intended to meet the judicial needs of religious courts which were specifically prepared to deal with cases of Muslims in these three matters.

The presence of KHI is actually the government's response to the emergence of various unrest in the community due to the various decisions of the Religious Courts in the same case. This diversity is a logical consequence of the variety of sources of law taking in the form of books of jurisprudence used by religious judges in deciding a case. Therefore, an idea arises about the need for a positive law that is formulated systematically as a reference base for religious judges as well as an initial step to realize the codification of national law. Therefore, the presence of KHI is considered to be very effective for use by religious judges, Kantor Urusan Agama (KUA/Religious Affairs Office) officials and the community as sources and legal basis in various religious justice decisions. Effectiveness occurs because the KHI used Indonesian language and clear and definite language for a legal decision. This is certainly very different from the book of Islamic jurisprudence (*fiqh*) which was previously used by religious judges, which is only able to be understood by people who have good Arabic skills and also the material of Islamic law. The book of *fiqh* always provides many legal alternatives that make judges feel uncertain.

Because of this effectiveness, in 2003 the Ministry of Religion of the Republic of Indonesia through Direktorat Pembinaan Peradilan Agama (The Directorate of Religious Justice Development) before moving to the Supreme Court had sought KHI to become a Constitution Draft on Islamic Family Law. This effort is carried out in addition to improving the legal status of KHI from Presidential Instruction to constitution, also to supplement the scope of Islamic

³ Amrullah Ahmad, et.al, *Dimensi Hukum Islam dalam Sistem Hukum Nasional*, (Jakarta: Gema Insani Press, 1996), p.10-12, and look again Busthanul Arifin, *Pelebagaan Hukum Islam di Indonesia; Akar Sejarah dan Prospeknya*, (Jakarta: Gema Insani Press, 1996), p.57-61.

legal material not only limited to the three fields of civil law, but more broadly. This effort in other contexts can be an alternative to the choice of legal deadlock to implement Islamic law into the body of the state.

With regard to the position of KHI in the national legal system, it is measured by elements of the national legal system, namely:

First, the constitutional basis of the KHI is Pancasila and the Constitution of 1945. This is contained in the consideration of the Presidential Instruction and in the General Explanation of KHI. It was drafted as part of the national legal system that guarantees the survival of religion based on the One God Almighty which is at the same time a manifestation of the legal awareness of the Indonesian people and nation.

Second, KHI is legalized by a legal instrument in the form of a Presidential Instruction carried out by the Decree of the Minister of Religion, which is part of a series of applicable laws and regulations.

Third, KHI is formulated from the order of Islamic law originating from the Koran and Sunnah. This is the core of Islamic law which covers various dimensions: *shari'ah*, *fiqh*, *fatwa*, *qanun*, *idarah*, *qadha* and tradition. KHI is an embodiment of Indonesian-style Islamic law.

Fourth, channels in the actualization of KHI include courts within the Religious Courts, as can be interpreted teleologically from the General Explanation of KHI.⁴

Islamic Law Compilation Purposes

If we look at the KHI, then we see that the main theme is positively promoting Islamic law in Indonesia. By positively and systematically formulation of Islamic law in the law book, there are several main targets to be achieved and addressed,⁵ namely:

1. Complete the pillars of the Religious Courts;
2. Equalize the perception of the application of law;
3. Speed up the juxtapose process among community component;
4. Get rid of private-affairsism.

⁴ Cik Hasan Bisri (Ed.), *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*, (Jakarta: Logos Wacana Ilmu, 1999), p.8-10.

⁵ Cik Hasan Bisri (Ed.), *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*, p.27-35.

Formulation Approach of Compilation of Islamic Law

What is meant by the KHI formulation approach is the method carried out in the formulation. Before we formulate the formula, we first determine the method of thinking, analysis and assessment as a benchmark. With the limitation of the standardized approach to thinking, analysis and assessment in formulating the substance of the articles, the compilation formulation must not exceed the stipulated handle. Thus, the formulation approach is within an analysis and assessment framework that adheres firmly to the benchmark bases outlined.

Benchmarks of defined approaches are sought from various sources and opinions that are considered to be accountable for their views and thoughts. The views and thoughts are also tested for the truth with the historical reality and the development of law and jurisprudence of Islamic law from time to time.

The approach to formulating the KHI includes that the main sources are the Koran and the Sunna, prioritize problem solving today, unity and variety, a compromise approach to customary law.⁶

Islamic Law Compilation and Its Problems

Although the existence of KHI in the national legal system has been relatively long, it is still faced with various problems (in addition to expectations), both among community leaders and their followers. These problems are:

First, the issue of KHI socialization to citizens, especially among Muslims in general. Although this KHI has existed since 1991, not all Muslims know about it. In this case, the relevant government officials are required to play a role as a consistent instructor and decision maker. Likewise the Muslim scholars and community leaders are required to socialize KHI in their respective environments. Socialization will be easy when they have the same perception about the substance, urgency and mission of KHI.

Secondly, the problem of perceptions among community leaders on KHI, especially among those who were not involved in the process of drafting, while they had a strict attachment to the teachings of the *fuqaha* (Muslim scholar in Islamic law) and had a strong influence among their followers. This group of leaders basically has the freedom to have different views because it originates from the beliefs they hold. And this, even though it is an element of inhibiting the socialization of KHI, can also be used as an opportunity to engage in open and

⁶ Cik Hasan Bisri (Ed.), *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*, p.39-49.

honest dialogue. If the KHI socialization can provide an Islamic message vibration, then their support will be easily obtained.⁷

Third, the problem of national diversity. It must be remembered that the Indonesian state has a very wide area and each has different social and cultural conditions so it is not easy to get closer to each other. Thus, there is a possibility of clashes between KHI and the structure and cultural patterns of KHI compiled and decided by community elites at the center of government and education, while most of the people live in rural areas that are tied to local traditions.⁸

Fourth, the problem of naming. KHI only covers Islamic law about three things, namely concerning the issue of marriage, inheritance and benefaction. Whereas Islamic law actually covers all fields covered by general law, even wider. In other Islamic countries, the legal regulations contained in the KHI are called *qanun al-ahwal al-syakhsiyah*. Therefore, the right name for KHI is actually a Compilation of Marriage Law, Inheritance and Islamic Benefaction, and it is increased into law, then it can be called the Book of the Islamic Law on Marriage, Inheritance and Benefaction.⁹

Fifth, if the status of KHI is increased into constitution, it is feared that Indonesian law makers have limited the universal nature of Islamic law, reduced the creativity of judges, and further hampered the development of Islamic law through *ijtihad* and new opinions. Concerns like this can be understood in view of the breadth of Islamic law throughout its long history so that people have many options for choosing opinions that are more suitable to their conditions and times. Even most of the famous jurists in the past were reluctant to write their schools to become a material law in a country. With the enactment of a school, they are worried that they will close the door to other schools or opinions which may be more correct than them. Given the piety and humility of these scholars, we can understand their reasons. Even so, such objections can no longer be maintained at this time. Most modern legislation has anticipated this objection, for example by making certain clauses that allow certain laws to be revised, refined and even canceled in the future if they are no longer compatible with the law that lives in society. Indonesian legislation, including the 1945 Constitution, has many experienced revisions, improvements or even cancellations like this.¹⁰

Sixth, with the enactment of Law Number 3 Year 2006 concerning Amendments to Law Number 7 Year 1989 concerning Religious Courts, the

⁷ Cik Hasan Bisri (Ed.), *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional*, p.16-17.

⁸ Said Agil Husin al-Munawwar, *Hukum Islam & Pluralitas Sosial*, p.17.

⁹ Rifyal Ka'bah, *Penegakan Syariat Islam di Indonesia*, (Jakarta: Khairul Bayan, 2004), p.87. See also: Aji, Ahmad Mukri, *Urgensi Masalah Mursalah Dalam Dialektika Pemikiran Hukum Islam*, Bogor: Pustaka Pena Ilahi, 2012, p.55.

¹⁰ Rifyal Ka'bah, *Penegakan Syariat Islam di Indonesia*, p.87-89.

competence of the Religious Courts has expanded to include the issue of Islamic economics. Of course, this requires material law as a reference in making decisions for judges in religious courts.

Conclusion

Because Indonesia is not a secular country and not a religious state, but a country based on the One God Almighty with a Muslim majority population, then in an epistemological and theoretical manner, the law established as a means of solving problems between Muslims and engineering the nation's future journey should represent the value values adopted by the majority. The prospect of Islamic law in the development of national law in Indonesia is positive because culturally, juridically and sociologically have strong roots.

Sociologically, the law is a reflection of the values that are believed by society as an institution in the life of society, nation and state. This means that the legal content should be able to capture the aspirations of the people who grow and develop, not only those that are contemporary, but also as a reference in anticipating social, economic and political developments in the future. The thinking above shows that law is not just a static norm that prioritizes certainty and order, but also norms that must be able to dynamize thinking and engineer people's behavior in achieving their goals.

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