



CHARACTERISTICS OF THE COMPILATION OF ISLAMIC LAW IN INDONESIA: A STUDY OF MARRIAGE LAW FROM THE PERSPECTIVE OF POLITICAL LAW

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Abstract

The Compilation of Islamic Law (KHI) in Indonesia serves as a normative guideline in the regulation of marriage law that integrates Islamic sharia values with existing social realities. However, the complexity of marriage issues in Indonesia, such as polygamy and child custody, shows the need for an in-depth study of the character and implications of KHI in the context of legal politics. This research aims to explore how KHI is formed and implemented, as well as its impact on society. This study uses a qualitative method with a descriptive approach of documentation analysis to explore the character of the Compilation of Islamic Law (KHI) and its implications for the practice of marriage law in Indonesia. The results show that the KHI functions not only as a formal regulation, but also as an instrument that reflects the aspirations of the community in achieving justice and welfare in family life. In addition, this finding emphasizes the importance of the involvement of the community and religious leaders in the KHI socialization process to overcome existing challenges, such as the protection of women's and children's rights. The conclusion of this study suggests the need for continuous evaluation of existing regulations in order to remain responsive to social dynamics, so that KHI can play an effective role in resolving marriage law problems in Indonesia. This research is expected to make a significant contribution to the development of Islamic law and legal practice in society, as well as strengthen the dialogue between law and social values.

Keywords: Compilation of Islamic Law, Marriage Law, Legal Politics

Abstrak

Kompilasi Hukum Islam (KHI) di Indonesia berfungsi sebagai pedoman normatif dalam pengaturan hukum perkawinan yang mengintegrasikan nilai-nilai syariat Islam dengan realitas sosial yang ada. Namun, kompleksitas masalah perkawinan di Indonesia, seperti poligami dan hak asuh anak, menunjukkan perlunya kajian mendalam tentang karakter dan implikasi KHI dalam konteks politik hukum. Penelitian ini bertujuan untuk mengeksplorasi bagaimana KHI terbentuk dan diimplementasikan, serta dampaknya terhadap masyarakat. Penelitian ini menggunakan metode kualitatif dengan pendekatan deskriptif analisis dokumentasi untuk mengeksplorasi karakter Kompilasi Hukum Islam (KHI) dan implikasinya terhadap praktik hukum perkawinan di Indonesia. Hasil menunjukkan bahwa KHI berfungsi tidak hanya sebagai regulasi formal, tetapi juga sebagai instrumen yang merefleksikan aspirasi masyarakat dalam mencapai keadilan dan kesejahteraan dalam kehidupan berkeluarga. Selain itu, penemuan ini menekankan pentingnya keterlibatan masyarakat dan tokoh agama dalam proses sosialisasi KHI untuk mengatasi tantangan yang ada, seperti perlindungan hak-hak perempuan dan anak. Kesimpulan dari penelitian ini menyarankan perlunya evaluasi terus-menerus terhadap regulasi yang ada agar tetap responsif terhadap dinamika sosial, sehingga KHI dapat berperan secara efektif dalam menyelesaikan permasalahan hukum perkawinan di Indonesia. Penelitian ini diharapkan dapat memberikan kontribusi signifikan bagi

pengembangan ilmu hukum Islam dan praktik hukum di masyarakat, serta memperkuat dialog antara hukum dan nilai-nilai sosial.

Kata Kunci: Kompilasi Hukum Islam, Hukum Perkawinan, Politik Hukum

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Introduction

Indonesia, as a country with the largest Muslim population in the world, presents a uniqueness in the management of Islamic law, which is officially recognized in its legal system through the Compilation of Islamic Law (KHI).¹ The KHI serves as a legal guide for the Religious Court, covering aspects of marriage, inheritance, and waqf, and plays an important role in regulating the lives of Indonesian Muslims.² As a product of legal politics, KHI not only reflects the principles of Islamic law, but also becomes a form of state response to religious demands in the midst of complex social, political, and cultural diversity.³ However, the political dynamics surrounding the process of formulating the KHI make the regulation more than just a juridical document—the KHI becomes a tool to balance the interests of the state with religious norms. In this context, the provisions of the marriage law in the KHI offer an interesting picture of how Islamic legal norms are adapted within the framework of a state that prioritizes legal pluralism.⁴

The discussion of marriage in the KHI shows the involvement of the state in the process of regulation that is private but has a public impact, where the marriage law not only reflects religious values, but also legal political policies that have developed over time.⁵ This issue is important to analyze, because marriage law is a key aspect that determines the validity of marriage and legal protection for the parties involved, including children born in the institution of marriage.⁶ This research will further explore how the character of KHI, especially in marriage regulations, is influenced by the political process

¹ Syahrizal Abbas, "History and Patterns of Islamic Law Taqin in Indonesia," *ARJIS* 3, no. 1 (2024): 68–79, <https://doi.org/https://journal.staisar.ac.id/index.php/arjis>.

² Umi Habibah and Rudi Hartono, "Analysis of Islamic Law Compilation on Application for Child Marriage Dispensation," *Technium Education and Humanities* 7 (2024): 66–75.

³ Juanda, "THE IMPLEMENTATION OF THE COMPILATION OF ISLAMIC LAW ON INHERITANCE LAW : A STUDY IN SLEMAN REGENCY," *Jurnal Studi Agama Dan Masyarakat* 19, no. 1 (2023): 22–31.

⁴ Muhammadong, "The Contextualization of The Teachings of Islamic Law in The Legal World in Indonesia," *The Easta Journal Law and Human Rights* 1, no. 03 (2023): 93–98, <https://doi.org/10.58812/eslhr.v1.i03>.

⁵ Abdul Aziz Harahap, "IMPLEMENTATION OF CUSTOMARY LAW IN THE FORCED MARRIAGE OF MINORS FROM A PERSPECTIVE (LAW NO. 1 OF 1974 AND KHI)," *Jurnal AL-MAQASID: Journal of Sharia and Civil Sciences* 9, no. 2 (2023): 211–26.

⁶ Siti Hanna, "Me 4, Nomor 1, Mei 2024 E- ISSN: 2776-3404 NASAB OF SIRRI MARRIAGED CHILDREN FROM A FIQH PERSPECTIVE AND THE COMPILATION OF ISLAMIC LAW (KHI)," *Al-Hakam* 4, no. 1 (2024).

that occurs in Indonesia, as well as the impact of these dynamics on society and the sustainability of the Islamic legal system in the country.

The main issue raised in this study is the extent to which the Compilation of Islamic Law (KHI), especially in the regulation of marriage law, reflects the influence of legal politics in Indonesia and how this characteristic affects the application of Islamic law in the context of the modern state. Although the KHI has been a key guideline in the practice of religious justice since it was inaugurated in 1991, the complexity that accompanies its preparation shows that there is a tug-of-war between the interests of the state, religious values, and the needs of society. The marriage law in the KHI is designed not only to meet religious norms, but also to enforce state policies in maintaining social stability, protecting individual rights, and creating harmony in the national legal order. However, there are challenges in accommodating these various demands, considering that Indonesia is a country with religious, ethnic, and cultural diversity that affects public acceptance of the provisions of the marriage law in the KHI.

Therefore, this study seeks to understand how marriage regulation in the KHI balances between Islamic norms and the political policy of state law, and identifies the implications of this approach on the legal system and the sustainability of Islamic values in the practice of marriage law. In the context of dynamic legal development, this study will clarify the specific problems faced in the adaptation of Islamic law in Indonesia, both in terms of its application in the field and in terms of its normative legitimacy in the eyes of the Indonesian Muslim community.

The main purpose of this study is to analyze the characteristics of the Compilation of Islamic Law (KHI) in Indonesia in relation to marriage law and to explore the influence of legal politics in its formation. In particular, this study aims to understand how the regulations in the KHI reflect a compromise between Islamic legal values and state policy interests, as well as how these compromises have an impact on the application of marriage law in society. This study aims to highlight the aspects that allow the adaptation of Islamic law in Indonesia, especially in the case of marriage law, in the context of a country that adheres to a national legal system with cultural and religious diversity. Thus, this study not only examines the substance of marriage law in the KHI, but also explores how the law plays a role as an instrument that represents political policy and legal stability in Indonesia.

The study of the Compilation of Islamic Law (KHI) in Indonesia has attracted widespread attention in the academic literature, especially in relation to marriage law which is structured based on the interaction between religious norms and state policies. Although many studies have discussed the content and application of the KHI, there is still a gap in the understanding of the influence of legal politics in the formation of such regulations, in particular regarding how political elements influence the principles of marriage law in the KHI. Most of the existing studies focus on technical implementation and its impact on society, but rarely discuss how the political process behind the drafting of the KHI can change or modify the understanding of Islamic law in the context of

marriage. A number of these studies are such as, Vinna Lusiana,⁷ Zulfirahman,⁸ Ajidin,⁹ Binarsa,¹⁰ and Sujono.¹¹

This research places itself in this gap, with the aim of analyzing how political policies and state interests shape the characteristics of KHI, especially in marriage law, so as to create a unique legal form in Indonesia. This study attempts to explain the contribution and influence of legal politics on the substance and purpose of marriage law in KHI, and to explore how this compromise allows the formation of a legal system that is adaptive to the cultural context and needs of Indonesian society. This research not only broadens the theoretical understanding of legal politics in the development of Islamic law, but also provides relevant insights to improve legal policies in a country with high socio-cultural diversity such as Indonesia.

This research offers a new contribution by exploring the perspective of legal politics in the formation of the Compilation of Islamic Law (KHI) related to marriage law in Indonesia, which has rarely been discussed comprehensively in previous literature. This study puts forward an interdisciplinary approach to understand how political and policy aspects affect the structure and substance of Islamic law in Indonesia, especially in the context of marriage. In the midst of rapid social changes and political dynamics, the need for a legal framework that is adaptive to the development of the times is becoming more and more urgent. This research seeks to meet this need by analyzing KHI as a result of a compromise between religious norms and political interests, highlighting the uniqueness of KHI as a product of legal politics that distinguishes it from the construction of Islamic law in other countries.

By focusing on the political significance of law in the formation of KHI, this research is expected to provide insight for academics, policymakers, and legal practitioners about the importance of understanding political factors in the process of Islamic law legislation. This not only enriches the study of contemporary Islamic law in Indonesia but also opens up a space for further discussion on how Islamic law can continue to develop in the context of a pluralist and democratic country.

⁷ Vinna Lusiana, "INHERITANCE LAW IN INDONESIA (Comparative Study Between the Compilation of Islamic Law and the Civil Code)," *Alwatzikhoebillah Journal: Islamic Studies, Education, Economics, Humanities* 8, no. 2 (2022): 291–306.

⁸ Hakiki Zulfirahman, "LEGAL PROBLEMS OF COMPILATION OF ISLAMIC LAW IN," *LAW BUREAU*, 2023.

⁹ Asep Ajidin, "The Legal Politics of the Compilation of Islamic Law (KHI) in the National Legal System," *Mediation : Journal Of Law Volume 1* (2022): 45–54.

¹⁰ Binarsa Binarsa, "Legal Legality of Pregnant Marriage in Indonesia Study on the Application of Khi Article 53 in Mlati District Prospective Fatwa Abno Taymiyah," *Jurnal Indonesia Sosial Teknologi* 5, no. 5 (2024): 2259–68, <https://doi.org/10.59141/jist.v5i5.1078>.

¹¹ Imam Sujono and Krisnadi Nasution, "Legal Politics Economic Democracy in Indonesia," *Journal of Business Management and Economic Development* 1, no. 02 (2023): 46–62, <https://doi.org/https://doi.org/10.59653/jbmed.viio2.29>.

Research Methods

In this study, the method used is a literature study, which focuses on the analysis of relevant legal texts and documents, including the Compilation of Islamic Law (KHI) and other related literature. Through this approach, this study aims to explore various perspectives and interpretations regarding the character and role of KHI in the regulation of marriage law in Indonesia. Data collection was carried out by reviewing books, articles, and academic journals that discussed aspects of marriage law, legal politics, and the interaction between Islamic law and legal practice in society. The analysis was carried out by identifying the main themes that emerged from the documents studied, as well as how the KHI functions as a reflection of the social and cultural values that exist in the Indonesian Muslim community. In this way, this research can provide in-depth insights into the challenges and opportunities faced by KHI in the context of family law. The findings from this literature study are expected to enrich the understanding of the legal implications of KHI and contribute to the development of policies that are more responsive to the needs of the community. In addition, by utilizing existing sources, this study seeks to develop a strong and comprehensive argument regarding the role of KHI in regulating marriage, so that it can be a reference for future studies in the field of Islamic law.

Legal Politics Analysis in the Formation of Islamic Law Compilation (KHI) in Indonesia

The establishment of the Compilation of Islamic Law (KHI) in Indonesia reflects the complexity between the interests of national law and the aspirations of Indonesia's diverse Muslim community.¹² As a country with the largest Muslim population in the world, Indonesia faces the challenge of accommodating Islamic law in its legal system without ignoring the principles of national law.¹³ The process of codification of the KHI in 1991 is one of the concrete efforts to provide a legal basis that can regulate Islamic family law uniformly, especially in matters of marriage, inheritance, and waqf.¹⁴ The Indonesian government, through the influence of religious leaders and policymakers, established the KHI as a guideline applicable to religious courts, so that Islamic law could be recognized and implemented in the national legal system.¹⁵ This step reflects a form of legal political compromise that tries to harmonize the ideological, religious, and legal interests of the country.

¹² Diana Farid et al., "Harmonizing the Iddah Period for Women Divorced Outside the Court According to KHI and Fiqh Law," *Justisi* 10, no. 1 (2023): 55–67, <https://doi.org/10.33506/jurnaljustisi.v10i1.2455>.

¹³ ^ A. Moyrati, "Jurnal AL-Kadhi," *Jurnal AL-Kadhi* 1, No. 2 (2023).

¹⁴ Khoirun Niam, "Analysis of Wills Through Notaries in the Perspective of Compilation of Islamic Law and Islamic Law," *Isti'dal: Journal of Islamic Law Studies* 10, no. 2 (2023).

¹⁵ Mohamad Maqin, "Value Rationality in KHI Ihdad for Husbands," *Tafaqquh: Journal of Islamic Research and Studies* 11, no. 2 (2023): 192–202.

Behind the decision, there are political and legal dynamics that are influenced by the aspirations of some people to maintain Islamic values in the family legal order.¹⁶ At that time, there was an urgent need to overcome the legal uncertainty experienced by Muslims in religious courts, especially due to the varied legal provisions in different regions. Therefore, the KHI was drafted in response to address differences in interpretation in Islamic family law and reduce conflicts between religious norms and positive law.¹⁷ The preparation of the KHI involved a number of religious leaders, academics, and government officials who aimed to create consistent guidelines while still respecting the characteristics of Islamic law.¹⁸ This preparation is carried out through discussions, seminars, and consultations with various stakeholders to ensure that the KHI can be accepted by the wider community and serves as an effective ukum guideline throughout Indonesia. The position of KHI in the national legal system can be seen from the following table:

Table 1: Hierarchy of Legislation from 1966 to Present

No	Year	Type of Legislation
1	1966	TAP MPRS No. XX/MPRS/1966
2	2000	TAP MPR No. III/MPR/2000
3	2004	Law No. 10 of 2004
4	2011-Present	Law No. 12 of 2011

Hierarchy of Legislation in Indonesia

- 1945 Constitution
- TAP MPR
- Laws/Government Regulations in Lieu of Laws (Perpu)
- Government Regulations (PP)
- Presidential Decrees (Keppres)
- Other Implementing Regulations:
 - a. Ministerial Regulations (Permen)
 - b. Presidential Instructions
- Regional Regulations (Perda):

¹⁶ Miftakhul Huda et al., "Development of Progressive Islamic Law in Indonesia Regarding ' Apostasy ' as Grounds for Divorce: Insights from Maqasid Shar i A," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 1 (2022), <https://doi.org/https://doi.org/10.30659/jua.v6i1.36754> Development.

¹⁷ Ilham Akbar Ryant Prabowo, "INTERSECTION OF SHARIA ECONOMIC LAW IN ASIAN RELIGIOUS," *Justisia Ekonomika* 8, no. 1 (2024): 1056–70.

¹⁸ Hannai, "Revisiting Islamic Law in Indonesia's Legal System Discourse: A Critical Analysis of the Legal and Social Implications," *International Journal of Law and Politics Studies*, 2023, 13–17, <https://doi.org/10.32996/ijlps>.

- a. Provincial Regulations
- b. Regency/Municipality Regulations
- c. Village Regulations (Perdes)

The table above shows that the existence of the Presidential Instruction (Inpres) is no longer recognized after it is revoked by MPR Decree No. III/MPR/2000, so the position of the Presidential Instruction in the legislative hierarchy is not considered a source of law. The Presidential Instruction is also not regulated in administrative legal regulations (*beschikking*) or in certain and specific issues.¹⁹ This provision is affirmed in Law No. 10 of 2004, which has been amended by Law No. 12 of 2011 concerning the Establishment of Laws and Regulations, where the legislative hierarchy expressly does not include the position of the Presidential Instruction, as stipulated in the MPRS TAP No. XX/MPRS/1966.²⁰

As a product of the Presidential Instruction, the Compilation of Islamic Law (KHI) is also not considered a source of law that binds the Indonesian people. The KHI has no formal position in the legal hierarchy, so the judges of the Religious Courts are not required to use it as the primary source of law.²¹ However, many judges still respect the KHI as an additional guide relevant to the Islamic legal tradition in Indonesia. In practice, Religious Court judges refer more often to the Marriage Law, while the KHI is used as an optional reference as per the needs of the case. Although it does not have formal legal force, the KHI plays an important role in providing guidelines that are in accordance with the daily lives of Muslims in Indonesia.

The Compilation of Islamic Law (KHI), despite its written form, is still considered a part of the unwritten law that grew and lived in Indonesian Islamic society. As an Islamic law development project, KHI aims to unite Islamic legal practices in Indonesia.²² From a historical and philosophical perspective, the KHI provides more specific guidance for Religious Court judges in handling marriage cases involving Muslims. While the Marriage Law is often general and lacks detail, the KHI details aspects of marriage law that are not explicitly regulated, making them an important component in shaping legal constructions that are appropriate to the socio-religious context in Indonesia.²³

Through Presidential Instruction No. 1 of 1991, KHI has a significant role in creating order, justice, and legal certainty for Muslims. The KHI can be used as a valid material law for the Religious Court, and its implementation can be enforced through the authority of

¹⁹ Ahmad Faisal, "The Intersection of Islamic Law and Nationhood in Contemporary Indonesia," *European Journal of Humanities and Social Sciences* 3, no. 2 (2023): 141–47.

²⁰ DRI SANTOSO, "Quo Vadis of Islamic Law in National Law 1," *RUSSIAN LAW JOURNAL* XI, no. 3 (2023): 669–79.

²¹ Suud Sarim Karimullah, "Pursuing Legal Harmony : Indonesianization of Islamic Law Concept and Its Impact on National," *Mazahib* 21, no. 2 (2022): 213–44.

²² Hannai, "Revisiting Islamic Law in Indonesia's Legal System Discourse: A Critical Analysis of the Legal and Social Implications."

²³ Faisal, "The Intersection of Islamic Law and Nationhood in Contemporary Indonesia."

the court.²⁴ However, on the other hand, KHI does not have an equivalent position with formal legal regulations, so it is more similar to a fiqh book that is a reference for judges in decision-making. Although judges of the Religious Courts are allowed to use the KHI as a reference, the main basis for their decisions still refers to Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and Government Regulation No. 28 of 1978 on Waqf.²⁵

If the judge does not find a material basis in the provisions of the legislation, they can place the KHI as the basis of material law in their decision, and even refer to the opinion of the scholar from one of the fiqh books contained in the KHI, which is 13 in number, as the basis for the decision.²⁶ This shows that, even though the KHI is only stipulated by the Presidential Instruction, its use in the Religious Court is still influenced by the opinion of scholars. However, it is important to note that the KHI has not been appointed into law, so hierarchically, the position of the law is higher than the Presidential Instruction, which is considered in law enforcement in the Religious Court.²⁷

Regarding the selection of laws in improving the enforceability status of the Compilation of Islamic Law (KHI) as a source of law, currently it no longer refers to the Presidential Instruction (Inpres) whose existence has been revoked after the MPRS TAP No. XX/MPRS/1966 was declared invalid through the MPR TAP No. III/MPR/2000. In this regard, the right concept for solving the KHI is to consider other legal sources that may be used, namely: (i) MPR TAP, (ii) Law (UU), and (iii) Presidential Regulation (Perpres). This can be illustrated in the following scheme: Presidential Instruction No. 1 of 1991 → Changes in the status of the → of the MPR TAP → KHI → the Presidential → Law.²⁸

Table 2: From Administrative to Positive Law

Instruction	Content
Presidential Instruction No. 1 of 1991	Compilation of Islamic Law (KHI)
Status Changes	TAP MPR

²⁴ R R Dewi Anggraeni and Dianna Primadianti, "Legality of Khulu ' Lawsuit for Wives in the Provisions of Legislation in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 20, no. 1 (2022): 34–52, <https://doi.org/https://doi.org/10.30984/jis.v20i1.181>.

²⁵ Position of Presidential Instruction et al., "Actualized Justice," *Actualization of Justice* 5, no. 1 (1991): 19–37.

²⁶ Abu Rokhmad, "Institutions and Contributions to Islamic Law in Indonesia ' s Legal System," *Walisongo Law Review (Walrev)* 3, no. 1 (2021): 21–44, <https://doi.org/10.21580/walrev/2021.3.1.7282>.

²⁷ Suci Ramadhan, "ISLAMIC LAW , POLITICS AND LEGISLATION : DEVELOPMENT OF ISLAMIC LAW REFORM IN POLITICAL LEGISLATION OF INDONESIA Suci Ramadhan," *ADHKI: Journal of Islamic Family Law* 2 (2020): 63–76, <https://doi.org/10.37876/adhki.v2i1.35>.

²⁸ Anggraeni and Primadianti, "Legality of Khulu ' Lawsuit for Wives in the Provisions of Legislation in Indonesia."

	Law
	Presidential Regulation

In the process of drafting the KHI, the political and legal approach used by the government reflects pragmatic policies. In establishing the KHI, the government seeks to avoid polarization between those who want the full implementation of Islamic law and those who support the implementation of secular national law. Therefore, the KHI was drafted to accommodate the basic principles of Islamic law but within the framework of national law. This can be seen in the choice of language and terms in the KHI which are made in such a way that they are in accordance with national legal norms without reducing the essence of Islamic law. This approach succeeded in creating an Islamic family law that is recognized by the state and accepted by the majority of Muslims in Indonesia, while preventing legal conflicts between religious courts and general courts in handling family cases.

In addition, the character of KHI as a legal product born from the political context of Indonesian law shows an adaptation to the existing legal plurality.²⁹ Indonesia adopts a pluralistic legal system, where national law, Islamic law, and customary law coexist side by side. In this context, the KHI plays an important role as a bridge between Islamic law and national law.³⁰ With the existence of the KHI, there is a harmonization of family law that not only accommodates the aspirations of Muslims but is also in line with national legal principles. This harmonization also helps prevent disagreements between community groups regarding the application of Islamic law in the family realm, because the KHI has a clear legal status and can be applied in religious courts.³¹

However, on the other hand, there are criticisms of the KHI which is considered not to fully represent comprehensive Islamic law. Some people consider that the KHI is the result of a political compromise that reduces the independence of Islamic law due to government intervention in the codification process.³² This criticism focuses on the difference in interpretation between the KHI and Islamic law traditionally taught in Islamic boarding schools and educational institutions.³³ Some Islamic jurists argue that the KHI is too influenced by elements of Western law and makes too many modifications to the basic

²⁹ Gazali, "Gazali Efforts to implement Sharia 'at Islam in Indonesia have been going on for a long time, we can trace it from the historical journey of the Indonesian nation, which began with the birth of the Jakarta Charter, which is an official letter agreed by the representatives of Bangs," *Muamalat: Journal of Sharia Economic Law Review* 16, no. 1 (2024): 69–84.

³⁰ Mursyid Djawas et al., "Hasanuddin LawReview Harmonization of State , Custom , and Islamic Law in Aceh : Perspective of Legal Pluralism," *Law Review* 1, no. 1 (2024): 64–82, <https://doi.org/10.20956/halrev.v1i0i1.4824>.

³¹ Evita Vibriana Wulandari, "THEORETICAL RESPONSES TO THE QUESTIONS OF ONE LAW FOR ONE," *IJAMESC* 1, no. 6 (2023): 1051–58, <https://doi.org/10.61990/ijamesc.v1i6.117>.

³² Suprijati Sarib and Sabil Mokodenseho, "Comparison Between Islamic Law and Positive Law in a Judicial Context," *West Science Islamic Studies* 1, no. 01 (2023): 34–41.

³³ N I Luh and Ariningsih Sari, "THE POSITION OF THE INHERITANCE RIGHTS OF ADOPTED CHILDREN IN INDONESIA'S POSITIVE LAW," *Jurnal Ganec Swara* 17, no. 3 (2023): 887–94.

principles of Islamic law.³⁴ Nevertheless, the government argues that KHI is a practical solution to create uniformity of family law for Muslims in Indonesia, amid the diversity of interpretations of Islamic law in society.³⁵

Other criticisms of the KHI also arise from a feminist and human rights perspective, especially regarding provisions in the marriage law that are considered to be less protective of women's rights. Some feminist groups consider that the KHI still contains provisions that tend to be gender-biased, especially in terms of polygamy and the rights of wives in marriage. In certain articles, the KHI still restricts women's rights in the context of marriage and divorce, which is considered incompatible with the development of the principles of justice and equality. The government has made several revisions to the KHI in response to the criticism, but the debate over the balance between Islamic legal principles and women's rights in the KHI is still ongoing today.

The political and legal implications of the KHI on Indonesian society can also be seen in its application which tends to be flexible in religious courts. KHI gives flexibility for judges in religious courts to adjust their decisions to the situation and conditions of the local community. This provides flexibility for religious courts to still consider local norms and community needs in resolving family law cases. However, this flexibility also opens up opportunities for differences in the interpretation and application of the law which sometimes causes legal uncertainty among the public. To overcome this, the government and related institutions continue to strive to improve the competence of judges and provide more detailed guidance in the implementation of KHI.

Ultimately, the Compilation of Islamic Law in Indonesia reflects the government's efforts to find a common ground between Islamic law and national law that can be applied in the context of Indonesia. KHI is a model of legal policy that accommodates Islamic values but still respects the principles of the rule of law. As a product of legal politics, the KHI is not only a set of rules, but also a symbol of integration between the interests of religion and the state. With its status as a recognized legal guideline, KHI is able to minimize legal conflicts in the realm of the Islamic family and provide a more certain legal foundation for Muslims in Indonesia.

Characteristics of Marriage Law in the Compilation of Islamic Law from the Perspective of Legal Politics

³⁴ Mitra Kurniawa, "Critical Analysis of Article 156 (c) of the KHI on the Transfer of Child Custody in the Context of Neglect by Mother: A Perspective of Maqāshid Al-Syarī'ah," *Legitima* 156, no. c (2023): 315–30, <https://doi.org/https://doi.org/10.33367/legitima.v3i1>.

³⁵ Ardicha Caterine, "Looking at the Legal Position of Customary Inheritance in the Perspective of the Hierarchy of Laws and Regulations in Indonesia, the National Development University of East Java 'Veteran' from within the State. The Position of Customary Law in the Hierarchy of Laws and Regulations If," *MANDUB: Journal of Politics, Social, Law and Humanities* 2, no. 1 (2024), <https://doi.org/https://doi.org/10.59059/mandub.v2i1.889>.

The Compilation of Islamic Law (KHI) reflects the characteristics of marriage law which is drafted to meet the legal needs of Muslims in Indonesia while still taking into account national legal principles. The KHI regulates several important aspects of Islamic marriage law, such as marriage, talaq, the rights and obligations of husband and wife, polygamy, and the rights and obligations towards children.³⁶ In its preparation, policymakers seek to maintain a balance between the provisions of Islamic law and Indonesia's pluralistic legal framework. Through KHI, the government seeks to create guidelines that can accommodate the diversity of practices and views that exist among Muslims in Indonesia, while reducing the potential for legal conflicts between religious norms and state law. The simple but comprehensive structure of the KHI reflects efforts to create a marriage law that is universally applicable to Muslims throughout Indonesia.³⁷

In the provisions of marriage law, the KHI shows different characteristics compared to Islamic marriage law in other countries. For example, in the provisions regarding marriage, the KHI emphasizes the importance of registering marriages to ensure the legality of marriage before the state.³⁸ This step aims to provide legal protection for parties involved in marriage, especially women and children. With the recording, their rights can be more guaranteed in the legal process in the event of a divorce or marriage-related dispute. This is where the Indonesian government uses the KHI as a tool to harmonize Islamic legal principles with the national legal system, which is in contrast to some other Muslim countries that do not require marriage registration in state law.

The provisions for marriage registration in the KHI also show the progressive influence of legal politics in guaranteeing women's rights. Marriage registration gives women a legal status recognized by the state, so that their rights in marriage become more legally protected. This is the government's effort to ensure that the Islamic marriage law in force in Indonesia is not only in accordance with the sharia, but also protects the rights of the individuals involved. This policy shows that the KHI is not just an adjustment to Islamic law, but also a political product of law that considers human rights issues, especially in the context of gender equality in marriage.

The policies in the KHI related to polygamy also reflect the unique characteristics of Islamic marriage law in Indonesia.³⁹ Although polygamy is allowed in Islamic law, the KHI imposes strict restrictions aimed at protecting women's rights.⁴⁰ One of the conditions set is that the husband must obtain permission from the religious court and obtain the

³⁶ Ilyas Ilyas, "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (2023): 897–919, <https://doi.org/10.22373/sjhc.v7i2.15650>.

³⁷ Irma Suryani, "The Role and Impact of Local Sharia Regulations in Indonesia's Constitutional Law," *Tsaqafah* 19, no. 1 (2023): 237–63, <https://doi.org/https://dx.doi.org/10.21111/tsaqafah.v18i1.7666>.

³⁸ Ramadhan, "ISLAMIC LAW , POLITICS AND LEGISLATION : DEVELOPMENT OF ISLAMIC LAW REFORM IN POLITICAL LEGISLATION OF INDONESIA Suci Ramadhan."

³⁹ Abbas, "History and Patterns of Islamic Law Taqin in Indonesia."

⁴⁰ Nurjamil Nurjamil1, "The Existence and Development of Compilation of Sharia Economic Law (KHES) and Its Urgency in Resolving Sharia Economic Law Disputes in Indonesia," *Ipsoe Jure* 1, no. 3 (2024): 15–27.

consent of the first wife before he can remarry. This provision reflects the influence of legal politics that considers the social impact of polygamy on women's rights and family stability. This requirement is expected to be able to reduce irresponsible polygamy practices, while maintaining the dignity and rights of wives in marriage. This approach shows that the Indonesian government is trying to create regulations that consider the balance between sharia principles and social justice values.⁴¹

On the other hand, the characteristics of marriage law in the KHI also consider the rights and obligations of husband and wife with the aim of creating balance in the household. KHI emphasizes the role of the husband as the main breadwinner and breadwinner, but is balanced with the husband's obligation to treat his wife well and fairly.⁴² On the other hand, wives also have the right to receive proper treatment and welfare from their husbands. The division of roles and responsibilities in KHI is based on Islamic values that prioritize harmony in the household. However, with moderate legal political influence, the KHI still provides space for couples to make agreements that suit their respective needs, demonstrating flexibility in the application of Islamic marriage law in Indonesia.⁴³

In the aspect of divorce, the KHI regulates clear ordinances and procedures to protect both parties, especially women. KHI requires a trial process in a religious court for a valid divorce. This step aims to provide legal protection for women so that unilateral divorces do not occur that harm them. This strict divorce procedure also shows the influence of legal politics that aims to ensure justice for all parties involved in divorce.⁴⁴ By requiring divorce to be processed through religious courts, KHI not only protects women's rights but also provides social control over household stability in society.

KHI also has provisions that regulate the rights and responsibilities of parents towards children after divorce. In this case, KHI prioritizes the principles of justice and the best interests of the child, by stipulating that the custody of the child falls to the party who is considered capable of providing the best care and education.⁴⁵ Religious courts also have an important role in determining child custody in the event of a dispute, based on the principles of justice and child welfare. This arrangement reflects the government's concern

⁴¹ Eneng Juandini, "Positive Law and Islamic Law Perspectives in Indonesia on Interfaith Marriage," *Journal on Education* 5, no. 4 (2023): 16405–13, <https://doi.org/10.31004/joe.v5i4.2795>.

⁴² Deva Tri Ananda and Lukmanul Hakim, "The Legal Impact of the Breakdown of Marriage of Heterothetical Couples on Common Property and Child Custody," *Justicia Sains: Journal of Law* 08, no. 02 (2023): 316–31, <https://doi.org/https://doi.org/10.24967/jcs.v8i2.2547>.

⁴³ Wulandari, "THEORETICAL RESPONSES TO THE QUESTIONS OF ONE LAW FOR ONE."

⁴⁴ Siti Nur Syifa and Ahmad Izzuddin, "Comparative Study of Reasons for Divorce Based on National Marriage Laws in Indonesia and Turkiye," *Islamic Review: Jurnal Riset Dan Kajian Keislaman* 13, no. April (2024): 37–56, <https://doi.org/doi.org/10.35878/islamicreview.v13.i1.1110>.

⁴⁵ Farid et al., "Harmonizing the Iddah Period for Women Divorced Outside the Court According to KHI and Fiqh Law."

for the welfare of children in Islamic marriage law, which is one of the important characteristics of the KHI.⁴⁶

As a legal product, KHI continues to experience developments in responding to social and political changes. Along with the development of thinking about the rights of women and children in family law, KHI has also undergone revisions to adapt to the demands of the times.⁴⁷ In this case, the KHI shows flexibility and adaptability to change, which is one of the characteristics of marriage law in Indonesia. The government and related institutions make adjustments to the KHI to remain relevant to the evolving social dynamics, without ignoring the basic values in Islamic law.

With its characteristics, KHI is a clear example of how legal politics in Indonesia affects the formation of adaptive and inclusive marriage law. The marriage law in the KHI is designed to be accepted by the wider community, without ignoring the principles of Islamic law.⁴⁸ At the same time, KHI demonstrated the ability of Islamic law to develop in the context of a modern, multicultural state. This shows that legal politics plays an important role in shaping the characteristics of Islamic marriage law in Indonesia which is not only based on religious texts but also considers aspects of social justice, equality, and legal protection for all parties involved.

Table 3: Characteristics of Marriage Law in the Compilation of Islamic Law (KHI)

Aspect	Characteristics of Marriage Law in KHI	Political and Legal Perspective
Source of Law	Based on Presidential Instruction No. 1 of 1991	Does not have the status of formal legislation; more akin to a guideline that is optional in nature
Purpose	Provides guidance for judges in deciding marriage cases among Muslims	Accommodates the needs of Islamic law in Indonesia without altering the existing national legal structure
Position in Legal Hierarchy	Does not fall within the hierarchy of laws	Positioned as a non-mandatory guideline; flexible in its application based on the needs of the judge
Nature of Application	Optional, can be used as a guideline by Religious Courts but not binding	Reflects the diversity of legal systems in Indonesia, allowing judges to choose appropriate legal sources

⁴⁶ Najichah, "Wife's Right to Property After Divorce: An Examination of Islamic Law and Legislation in Religious Court Decisions in Yogyakarta City," *QURU: Journal of Family Law and Culture* 2, no. 2 (2024): 211–32, <https://doi.org/10.59698/quru.v2i2.190>.

⁴⁷ Sarib and Mokodenseho, "Comparison Between Islamic Law and Positive Law in a Judicial Context."

⁴⁸ Djawas et al., "Hasanuddin LawReview Harmonization of State , Custom , and Islamic Law in Aceh : Perspective of Legal Pluralism."

Relationship with Laws	Complements the Marriage Law (Law No. 1 of 1974)	Supports national regulations by elaborating Islamic law within the context of marriage
Role in Society	Preserves Islamic legal traditions among Indonesian Muslims	Efforts to respect and accommodate cultural and religious values within the national legal system
Legal Force	Does not have the same legal force as Laws or Government Regulations	May be considered by judges as an additional reference, but not the primary basis for decisions
Social Relevance	Developed to meet the specific needs of Muslims in Indonesia in the context of marriage	Part of efforts to create a more inclusive and responsive national law system, respecting religious and cultural diversity

In the end, the characteristics of marriage law in the KHI show the Indonesian government's efforts to create a law that can be applied fairly and equally for Muslims in Indonesia. Taking into account the needs of national law and religious values, the KHI is a concrete example of harmonization between the principles of Islamic law and national law. The existence of KHI reflects an adaptive approach to legal politics, in which Islamic principles are adapted to function effectively in a pluralistic national legal system.

The Role of Legal Politics in the Formation of Islamic Marriage Law in Indonesia

Legal politics has a crucial role in the formation and implementation of Islamic marriage law in Indonesia, especially through the Compilation of Islamic Law (KHI).⁴⁹ As a legal instrument, KHI is not only a regulator of norms in marriage but also reflects the aspirations of Indonesian Muslim society in the face of ever-changing social dynamics. KHI is formed in the context of legal politics that considers sociocultural, economic, and political factors that exist in society.⁵⁰ Through KHI, the government's efforts to bridge between Islamic sharia and the legal needs of the community can be realized. Thus, KHI functions as a tool to achieve justice and social order in the context of marriage.⁵¹

One concrete example of the role of legal politics in KHI is in the regulation of the rights and obligations of husband and wife. In this context, KHI establishes the role of the husband as the head of the family who has the responsibility to provide for the living, while emphasizing that the wife has the right to receive good and fair treatment. Thus, the legal politics here serves to protect women's rights in marriage, strengthen their position in the

⁴⁹ Abbas, "History and Patterns of Islamic Law Taqin in Indonesia."

⁵⁰ Huda et al., "Development of Progressive Islamic Law in Indonesia Regarding ' Apostasy ' as Grounds for Divorce: Insights from Maqasid Shar i A."

⁵¹ Wulandari, "THEORETICAL RESPONSES TO THE QUESTIONS OF ONE LAW FOR ONE."

household, and reduce the potential for injustice that may occur. The division of roles regulated in the KHI reflects the government's efforts to harmonize the demands of Islamic sharia with existing social realities.⁵²

In the process of making legal policies, the importance of involving various parties, including religious leaders, community leaders, and academics, cannot be ignored. Through this dialogue between stakeholders, KHI can be formed in a more inclusive manner, so that it can accommodate various views in society. Politicians and policymakers are also expected to listen to the aspirations of the community in formulating legal policies related to marriage. This shows that legal politics is not only *top-down*, but also involves community participation in the decision-making process.⁵³

Inclusive legal politics in the context of KHI is also reflected in the regulation regarding polygamy. The KHI provides strict conditions for the practice of polygamy, including consent from the first wife and permission from the court. This provision not only upholds Islamic law but also responds to the demands of the community who want the protection of women's rights in marriage. By setting these limits, the KHI serves as a tool to reduce the risk of abuse of polygamy practices and ensure the welfare of the family. This is where the role of political law is very important to maintain a balance between religious freedom and the protection of individual rights.⁵⁴

KHI also shows the role of political law in regulating marriage registration. In this context, the KHI requires every marriage to be officially registered in a religious court, thus providing legality and protection for the couple. This recording is important to protect the rights of women and children, as well as to prevent harmful practices. With the existence of registration, married couples can obtain legal recognition, which is important in the event of a dispute, divorce, or child custody. In this case, the KHI not only serves as a norm regulator, but also as a legal political instrument that ensures justice in the practice of family law.⁵⁵

The availability of access to legal services related to marriage is also part of the role of legal politics in the KHI.⁵⁶ The government is expected to provide better access to the public to get information and services related to marriage and divorce. This effort is important to ensure that society, especially women, is not marginalized in the legal process. By increasing the accessibility of legal services, it is hoped that people can better

⁵² Abbas, "History and Patterns of Islamic Law Taqin in Indonesia."

⁵³ Huda et al., "Development of Progressive Islamic Law in Indonesia Regarding ' Apostasy ' as Grounds for Divorce: Insights from Maqasid Shar i A."

⁵⁴ Fauzah Nur Aksa and Muhammad Tahmid Nur, "An Analysis of Islamic Law on the Determination of Judges' Laws on Interfaith Marriage in Indonesia in Decision Number: 12 / Rev. P/2022/PN . Ptk," *Palita: Journal of Social Religion Research* 9, no. 1 (2024), <https://doi.org/http://10.24256/pal.v9i1.4927>.

⁵⁵ Sarib and Mokodenseho, "Comparison Between Islamic Law and Positive Law in a Judicial Context."

⁵⁶ Aksa and Nur, "An Analysis of Islamic Law on the Determination of Judges' Laws on Interfaith Marriage in Indonesia in Decision Number: 12 / Rev. P/2022/PN . Ptk."

understand their rights and obligations in marriage, which can ultimately increase legal awareness among Muslims in Indonesia.

In the regulation regarding child custody, the KHI shows a political and legal commitment to protect the best interests of the child. In the event of a divorce, KHI provides guidelines regarding the determination of child custody that focuses on the welfare of the child. Religious courts play an important role in decisions regarding custody, based on objective and fair considerations.⁵⁷ This reflects efforts to ensure that legal decisions are not only based on the interests of parents, but also take into account the needs and rights of children. This approach indicates that KHI seeks to realize social justice in the context of the family.

In the context of legal education, the role of legal politics is also seen in the government's efforts to educate the public about KHI and its implications for marriage law.⁵⁸ Legal counseling programs are expected to increase public understanding of rights and obligations in marriage in accordance with the KHI.⁵⁹ With a good understanding, the community is expected to avoid legal conflicts and take advantage of existing provisions to achieve justice in family life. In addition, effective legal education can strengthen the role of KHI as a source of law accepted by the community.⁶⁰

Through various efforts made, KHI is expected to function effectively in the context of Islamic marriage law in Indonesia.⁶¹ This is where it is important to see the KHI not only as a legal text, but as a legal political product that is responsive to social dynamics.⁶² By paying attention to various aspects that affect family life, KHI can adapt to the demands of the times and answer the challenges faced by society. This confirms that legal politics has a very significant role in the formation and implementation of fair and accountable Islamic marriage law.

Table 4: The Role of Political and Legal Policies in the Formation of Islamic Marriage Law

⁵⁷ Nurjamil Nurjamil, "The Existence and Development of Compilation of Sharia Economic Law (KHES) and Its Urgency in Resolving Sharia Economic Law Disputes in Indonesia."

⁵⁸ Mu'tashim Billah, "The Maslahah of State Policy in Responding to Unregistered Marriage: Inclusion of Unregistered Marriage on The Family Card," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 6, no. 2 (2024): 136, <https://doi.org/10.30659/jua.v6i2.31138>.

⁵⁹ Pooran Chandra Pande and K B Asthana, "Role Of Social Media In Legal Awareness," *Educational Administration: Theory and Practice* 30, no. 5 (2024): 865–69, <https://doi.org/10.53555/kuey.v30i5.2968>.

⁶⁰ Nasrullah, "The Character of Legal Products in Indonesia: A Study of Changes to the Marriage Law from a Political-Law Perspective," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8, no. 1 (2024): 602–27, <https://doi.org/10.22373/sjhk.v8i1.17302>.

⁶¹ Nguyen Mai Chinh, "Solutions to Improve the Quality of Legal Awareness Education for Current Students of Tan Trao University," *International Journal of Multidisciplinary Research and Growth Evaluation* 5, no. 3 (2024): 44–48, <https://doi.org/https://doi.org/10.54660/IJMRGE.2024.5.3.44-48>.

⁶² E Oviya et al., "Legal Awareness App Using Design Thinking Approach," *Nternational Journal for Multidisciplinary Research (IJFMR)* 5, no. 6 (2023): 1–8.

Political and Legal Aspect	Role in the Formation of Islamic Marriage Law
Goal of Legal Unification	The political and legal policy aims to unify various Islamic legal views on marriage into the Compilation of Islamic Law (KHI), providing consistent guidelines for Muslims in Indonesia. This facilitates judges in making consistent decisions in Religious Courts.
Role of the State	The state, through political and legal policies, plays an active role in formulating the KHI as an instrument complementing the Marriage Law (Law No. 1 of 1974). The government provides additional, more specific guidance on Islamic marriage law.
Recognition of Religious Values	The political and legal policy accommodates Islamic Sharia principles while maintaining the national legal structure. The formation of the KHI takes into account the values and traditions of Islam that are alive in Indonesian society.
Granting Authority to Religious Courts	The political and legal policy directs that the KHI be used as a reference for material law in Religious Courts, even though its use is optional. This grants judges the authority to choose whether to apply the KHI in resolving cases involving Muslims.
Response to Social Diversity	Indonesia's political and legal policy in forming Islamic marriage law demonstrates an inclusive effort to accommodate social and religious diversity in society. The KHI serves as a solution to meet the legal needs of Muslims within the national legal framework.
Formation of National Legal Identity	By introducing the KHI, Indonesia's political and legal policy seeks to form a national legal identity that respects Sharia principles while also meeting national legal standards. This reflects the integration of religious values and state legal norms.
Role in Social Stability	The political and legal policy uses the KHI to ensure social and legal stability among Muslims, providing guidelines that can prevent significant legal interpretation differences in Religious Courts.
Instrumentalization of Islamic Law	Political and legal policy treats the KHI as a tool (instrument) for achieving the goal of developing Islamic law in Indonesia, as part of a dynamic legal system that can evolve according to society's needs.

As such, it is important to note that while KHI has been designed to reflect the aspirations and needs of society, challenges in its implementation remain. In this case, collaboration between the government, society, and legal institutions is the key to ensuring that Islamic marriage law can run effectively. Efforts to increase legal awareness among the community are also important to achieve the ultimate goal of KHI, which is to create justice and welfare in the family. Thus, the role of legal politics in KHI is not only limited to policy making, but also to efforts to improve the quality of life of the community as a whole in the context of family law.

Conclusion

Based on the study of the character of the Compilation of Islamic Law (KHI) in the context of marriage in Indonesia, it can be seen that legal politics plays a central role in the formation, implementation, and supervision of legal norms that govern aspects of marriage. KHI not only reflects the aspirations of the Indonesian Muslim community, but also serves as an instrument that integrates sharia values with complex social realities. In the face of evolving legal challenges, it is important for the government and relevant institutions to strengthen collaboration with the community and religious leaders to increase socialization and understanding of KHI. The advice also includes the need for more responsive regulatory evaluation and updates to social change, so that KHI can continue to be relevant and effective in protecting the rights of individuals, especially women and children, and ensuring justice in family life. Through an inclusive and participatory approach, it is hoped that Islamic marriage law in Indonesia can become fairer, more transparent, and accountable.

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