

# Effectiveness of Islamic Law Compilation as Guidance at Religious Court of Palu City in Indonesia

*By Gasim Yamani*

## Effectiveness of Islamic Law Compilation as Guidance at Religious Court of Palu City in Indonesia

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**ABSTRACT:** *The compilation of Islamic Law shows that there are unwritten laws in the lives of Indonesian Muslim people. Indonesian national law recognizes written and unwritten law. Therefore the compilation has Islamic law made to fill the void for Indonesian Muslims. This study aims to examine the effectiveness of the compilation of Islamic law in the religious court of Palu city in Indonesia. This research is qualitative research with a case study approach. Data has been collected through field observations and in-depth interviews with court judges and religious court officials in Palu. Furthermore, the data is presented in a matrix which is then analyzed using a thematic approach. The results of this study indicate that the use of compilations of Islamic law as a guideline in the religious courts of the city of Palu has been very effective. Since the beginning of its use on June 10, 1991, there have been many judges' decisions based on the compilation of Islamic law. Then the judges also no longer give different decisions in the same case because they already have one standard guideline. However, this research is only limited to the study of decisions related to divorce without involving cases of claims for the distribution of marital property. Future research needs to examine whether religious court decisions related to the distribution of marital property have also followed the compilation of Islamic law uniformly.*

**KEYWORDS:** Islamic law, law compilation, Islamic religious court

### INTRODUCTION

The Indonesian government officially ratified the Compilation of Islamic Law in Indonesia through Presidential Instruction No. 1/1991 on compilations of Islamic law. The presidential instruction was followed up by the Minister of Religion of the Republic of Indonesia through his Decree No. 154/1991 on compiling Islamic law (Trigiyatno, 2021). The compilation of Islamic law consists of three books. The first book discusses marriage, the second book deals with inheritance, and the third book deals with endowments, grants, and marriage agreements.

The term "compilation" in Indonesian law has not been widely discussed. The term that is better known in the community is "codification," which means the process of systematically collecting

and compiling various laws, regulations, or regulations in certain fields determined by the state. At the same time, the term "compilation" is defined as "a collection of laws consisting of quotations, books, and others (Hölkeskamp, 2005). The compilation is also understood as the act or act of gathering various materials, essays, and information to be compiled in literature (Masuhara, Kiczales, & Dutchyn, 2003).

<sup>9</sup>In the context of Islamic law, a compilation of Islamic law is a collection of Islamic legal rules based on the Shari'a sourced from the Al-Qur'an and Al-Hadith (S. Hasan, 2012). These legal rules are combined with jurisprudence, customary law, and the opinions of the scholars and *Fiqh* by not leaving *akidah* and the rules of Islamic law. The compilation of Islamic law minimizes conflicts and debates on misunderstanding issues in Islamic law (Shah, 2011), for example, debates in the fields of marriage law, inheritance, and *waqf*. With the compilation of Islamic law, all opinions can be united to give birth to the same legal decision.

Before the compilation of Islamic law, religious court judges used various "*fiqh*" rules as a reference in deciding various cases in religious courts (Furqan, Alfitri, & Haries, 2018). Meanwhile, the understanding of a *fiqh* rule often differs among religious court judges. As a result, the same case is often decided differently in religious courts. However, after the compilation of Islamic law, cases of the same marriage have received the <sup>6</sup>me verdict because the judges are guided by the same legal guide, namely the compilation of Islamic law.

The implementation of compilations of Islamic law in each religious court is based on the context of a religious court in an area. For this reason, the use of compilation guidelines for Islamic law is still adapted to the social conditions of society so that the final decision of a religious court in a region in Indonesia may differ from the decision of a religious court in other regions even though the case is the same. However, the use of compilations of Islamic <sup>8</sup>law in a religious court as a guide for judges in making decisions has not been widely studied. For this reason, this study will examine the use of compilations of Islamic law in religious courts in Palu. This research will provide understanding to academics <sup>12</sup>in the field of law as well as practitioners of Islamic law regarding the use of compilations of Islamic law as a guide for judges in making decisions.

## LITERATURE REVIEW

### The Term of Compilation

A Compilation is a Latin term derived from the word "Compilare," which means to collect together and collect different rules (Hathaway, 2019). The term compilation was later developed into "compilation," which comes from the Dutch language. The word compilation was then adapted into Indonesian so that it became the word "compilation." The word compilation is then defined as a collection of laws arranged regularly about various information, essays, and other legal conventions (Machkasova & Turbak, 2000). In other words, compilation can also be

understood as an effort to collect or collect legal materials or works from various authors to be put together as a new literary composition.

In Islamic law, the word compilation refers to a collection of opinions and literature on Islamic law. Islamic law is understood as the law ordered by Allah for humankind brought by a prophet related to belief and charity (Lowry, 2008). The term Islamic law which is commonly used in the Indonesian context comes from the word "*al-fiqh al-Islam*" In certain contexts, and it is also understood as "*al-Syariah al-Islam*." Meanwhile, Hasbi Shiddeiq defines Islamic law as a collection of legal experts' efforts to apply sharia to the community's need (Adam & Bakar, 2014). Islamic law is regulations taken from God's revelation, which are formulated in four products of legal thought, namely *fiqh*, was, court decisions, and laws that are guided and enforced in Indonesian Muslim society (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2021).

### Islamic Law Compilation

The Compilation of Islamic Law is one of the many great works of Indonesian Muslims in the context of religious life and the revival of Indonesian Muslims (Hasan, 2009). By reading the work, one can be assessed the level of ability of Muslims in the process of law formation. The Compilation of Islamic Law is not seen as an end and is not more open to accepting efforts to improve and succeed. The Compilation of Islamic Law shows that there are unwritten laws in the lives of Indonesian people who are Muslim. Indonesian National Law recognizes written and unwritten laws, so the compilation of Islamic Law is here to be a legal reference for Indonesian Muslim citizens (Manullang, 2021). The Islamic Law Compilation consists of three books. The first book discusses marriage, the second book discusses inheritance, and the third book discusses *waqf* or donation. The division in these three books is simply a grouping of the legal fields discussed, namely the field of marriage law (*munakahat*), the field of inheritance law (*fara'idl*), and the field of waqf law. In its systematic framework, each book is divided into several chapters, and then for certain chapters, it is divided into several sections, which are further detailed in chapters.

The Compilation of Islamic Law consists of 229 chapters with different distributions for each book. The largest portion is in marriage law books, 16 then inheritance law, 17 and the least are *waqf* law. Thus, the Marriage Law consists of 19 chapters covering 170 articles. Judging from the content of the Compilation of Islamic Law, especially regarding marriage law, it can be seen that there are many duplications with what is regulated in Law no. 1 of 1974 and Government Regulation No. 9 of 1975, considering that the Compilation of Islamic Law also regulates procedural provisions, but does not turn a blind eye to the many new things found in the Compilation of Islamic Law.

### A Brief History of the Compilation of Islamic Law

The process of forming the Islamic Law Compilation is related to the conditions of Islamic law in Indonesia. According to previous research, the focus of the compilation of Islamic law is aimed at the position of Islamic law in the Indonesian legal system (Wahyudi, 2015). Islamic law, as a legal order obeyed by the majority of the population and the people of Indonesia, is a law that has been lived in society, which is part of the teachings and beliefs of Islam and also exists in the life of national law.

The formation of Islamic law related to written family law has long been the need and desire of the Indonesian Muslim community. Since the formation of a religious court that has the authority to resolve family law problems, it is very necessary to have written Islamic family law. Therefore, the idea of compiling a compilation of Islamic law emerged to find a pattern of *fiqh* that is uniquely Indonesian. The process of forming this compilation of Islamic law has been going on for a long time in accordance with the development of Islamic law in Indonesia.

The birth of a compilation of Islamic law in Indonesia is a great achievement for Muslims. With the compilation of Islamic law, currently, in Indonesia, there is no longer a difference in the decisions of the religious courts because the laws used as references by judges of religious courts are the same, namely compilations of Islamic law. In addition, *fiqh*, which has not been positive, has been transformed into positive law that applies and binds all Indonesian Muslims (Muslihun, 20018).

Indonesia is a country with the largest Muslim population in the world. Islamic law as a legal order that is guided and obeyed by the majority of the Indonesian Muslim population is Islamic law that has lived in Indonesian society for a long time ago. Islamic law is part of the teachings and beliefs of Islam that exist in the life of national law that continues to be fostered and developed (Mayer, 1987). The object of discussion of Islamic law is so broad that, among other things, it relates to actions in everyday life. The more advanced humanity is, the more advanced the level of intensity of its movements and activities, all of which are recorded by Islamic law. The depth and breadth of Islamic law must be able to accommodate the various changes that occur in people's lives that are constantly changing (Ermawati, Musyahidah, & Nurdin, 2021; Khraim, 2010).

After Indonesia's independence, thirteen books of *fiqh* were established as material legal references in the Religious Courts through a letter from the Indonesian Religious Courts. No. B/1/735 dated February 18, 1985. This was done because the Islamic law that applies in the mind of society is not written and scattered in various *fiqh* books. However, the determination of the *fiqh* books also failed to become legal certainty and unity in the Religious Courts. A crucial issue arises regarding the lack of uniformity of the judges in making legal decisions on the problems they face. The various issues and situations of Islamic law have prompted the compilation of Islamic law in Indonesia. This process also ensures the certainty and unity of the application of Islamic law in Indonesia.

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## RESEARCH METHOD

This study employed a qualitative method with a case study approach to study a topic deeply from the participants' perspectives (Nurdin, 2018; Nurdin, Stockdale, & Scheepers, 2014). The method was used as a basis to collect data from an empirical study of a case in the Islamic law implementation context. This research was conducted in the religious court of Palu city, Central Sulawesi, Indonesia. A qualitative method is also understood as a method in which findings can be discussed based on themes found during an in-depth interview with the participants (Strauss & Corbin, 1998). Qualitative research is also understood as a process of understanding the tradition of certain methods by investigating social or human problems that are the object of research (Myers, 2000).

Data analysis began when the researcher conducted a preliminary study, and the analysis was carried out during data collection and after the data collection had been collected and is completed. The data were gathered through field observation, in-depth interviews with the religious court judges and their staff, and document analysis related to the use of compilation Islamic law. The data, then, was analyzed using a thematic approach as suggested by Strauss and Corbin (1998) and as practiced by (Jismin, Nurdin, & Rustina, 2022).

## RESULTS AND DISCUSSION

### The Function of Islamic Compilation Law

The Compilation of Islamic Law is the ijtihad of Indonesian scholars, which is in harmony with the sociological, anthropological, and cultural contexts that develop in Indonesian society. The Compilation of Islamic Law can be said to be the fiqh of the Indonesian schools of thought because the elements that make up Islamic law the compilation of Islamic law start from the initiative of Muslim scholars and the research process. The final form of the compilation of Islamic law is the result of the work of a team formed by the state and consisting of judges and state legal experts. The background of the formation of the legal logic used is also as commonly used by Indonesian positive law, which is recognized by the state (McCarthy, 2004).

The compilation of Islamic law also reflects the politics of accommodation during the Indonesian New Order against the power of Islam (Baswedan, 2004). To a certain level, the compilation of Islamic Law is fiqh, which can represent Indonesian character and characteristics, and is the pinnacle of fiqh thought in Indonesia. The main purpose of formulating the compilation of Islamic law in Indonesia is to prepare uniform guidelines for judges of religious courts and become positive laws that must be obeyed by all Indonesians who are diverse in Islam. This compilation of Islamic law is also a solution to solve the problems of Islamic law in Indonesia, especially those related to family law.

In this compilation of Islamic law, there are several reforms made to Islamic family law in Indonesia. In the process of formulating the compilation of Islamic law, there was a merger of the opinions of the schools of *fiqh* through the study of *fiqh* books from various schools of thought. The merger process was done by unifying various jurisprudential studies, interviews with scholars, and comparative studies in Middle Eastern countries. Furthermore, the formation of the compilation of Islamic law was also carried out by several national workshops involving scholars from several community organizations such as Indonesia Ulama Council, Nahdhatul Ulama, and Muhammadiyah. Thus, the content and substance of the compilation of Islamic law are aspirational and provide values of justice in line with the law that lives in public awareness. An informant said as follows.

"The background behind the birth of the compilation of Islamic law is the non-uniformity of legal sources in the decision-making process by judges in religious courts, and is to homogenize the sources of Islamic law, a compilation of Islamic law is made so that there is legal certainty in every judge's decision. As a result, the compilation of Islamic law can be a guide for all judges in religious courts in making decisions in court.

Meanwhile, the scope and function of the compilation of Islamic law, according to Islamic law experts, include the value of renewal needed to complete various Islamic religious understandings. Various new social problems continue to develop in society due to modern science and technology progress. This new social problem resulted in changes in values, systems, and at the same time, legal problems that required a definite solution.

Since the compilation of Islamic law, the authors have not explicitly stated the meaning of the compilation of Islamic law <sup>2</sup>still, after various studies have been conducted on the process of compiling the compilation of Islamic law, the concept of the compilation of Islamic law has provided clear guidelines for practitioners of Islamic law. Furthermore, the compilation of Islamic law is used as a standard legal opinion for all judges in every court decision. Substantively, various efforts to collect *fiqh* into the language of legislation have long been pioneered by Indonesian jurists and scholars. For example, Law no. 1 of 1974 concerning marriage is one of the efforts to compile Islamic law even though it is still in the form of law.

### **The Effectiveness of Compilation of Islamic Law as a Guide**

One important way to appreciate the birth of religious courts is by modernizing the religious courts in every decision-making. Religious courts have also been included in the current judicial structure in Indonesia. The Law of the Republic of Indonesia in 1970 concerning the basic provisions of judicial power also requires the establishment of a religious court. The law also encourages the restructuring of religious courts to be incorporated into the Indonesian justice system. There are two aspects here, namely the modernization of the religious courts so that they are equivalent to the judicial system in the modern legal system. Second, make and place religious courts at the same level as other courts in Indonesia so that they become part of the courts in Indonesia.

After the ratification of the compilation of Islamic law in 1991, the compilation of Islamic law in Indonesia served as the main guide for judges in religious courts throughout Indonesia. The compilation of Islamic law is in accordance with the instructions of the Indonesian president, which is open to development in accordance with the times and the fulfillment of the legal needs of Muslims in Indonesia. From the perspective of the development of national law, the development of religious court law is included in the category of the reform dimension, namely efforts to complete and perfect the legal material of religious courts. These legal materials are now systematically compiled in the form of compilations of Islamic law. The presence of compilations of Islamic law has given birth to a Law standard, a standard measure of the rules of official Islamic law, and a standard for both religious courts and the Muslim community seeking justice. With the compilation of Islamic law, it is also hoped that several things can be realized, including:

1. The unity of the legal basis (Unified Legal Framework) and the uniformity of legal views (Unified Legal Opinion) so that different decisions can be avoided and minimized (high disparity) and minimize the deviations of judges in making decisions.
2. Provide certainty for judges in giving legal decisions in order to uphold the life of a state of law and the supremacy of the "rule of law," namely the superiority of legal power, not arbitrariness.
3. Giving the same decision on the same case (equal treatment in similar cases). So that the compilation of Islamic law is expected to be able and able to play a role in enforcing "predictable," i.e., the truth of the decisions that the judges in the Religious Courts will give has been predicted. The compilation of Islamic law provides legal standards that have been systematically formulated to provide a unified legal basis and uniform legal views in realizing law enforcement certainty.

According to Islamic law experts, compiling new Islamic law is the first step <sup>5</sup>of the compilation of Islamic law. The compilation of Islamic law has not been completed. It is not yet perfect, but it can become a legacy for the next generation to be perfected regarding formal materials and material substance. Overall, the compilation of Islamic law consists of 229 articles which are divided differently in each book. The first book regulates marital problems which consists of 19 chapters and 170 articles covering general provisions, explanation of terms, basics of marriage, proposals, pillars, marriage conditions, dowry, marriage prohibitions, marriage agreements, marriage annulment, rights and obligations of a wife, wealth, divorce, and mourning. Book II on inheritance consists of 6 chapters and 44 articles covering general provisions, heirs, share size, wills, and grants. Book III contains waqf, which comprises 5 chapters and 14 articles covering general provisions, functions, elements, and conditions of waqf, changes, supervision of waqf objects, and provisions for disputes.

The effectiveness of the compilation of Islamic law as applied law by religious judges in resolving cases in religious courts has been going well. We found that no more cases were filed for appeal or cassation. Then the compilation of Islamic law has been compiled based on the

legal awareness of the community through a long process using methods that involve scholars, community leaders, and scholars.

The compilation of Islamic law as a guide in making decisions by judges in resolving cases in religious courts has become a very effective guide. This effectiveness can be seen in the application of the compilation of Islamic law in one of the religious courts in the city of Palu. One informant said the following:

“The compilation of Islamic law has become an effective guide for judges in making decisions because the compilation of Islamic law has been able to become the main reference for judges of religious courts in every legal decision making. The compilation of Islamic law contains the laws that are in the Qur’an and hadith that can be a reference for judges. We also feel that the compilation of Islamic law is also very efficient because various opinions of the scholars have been formulated in the compilation of Islamic law, making it easier for judges to make decisions.

The opinions of the informants indicate that the compilation of Islamic law has become an efficient and effective guide for judges in the religious courts of the city of Palu. The judges were greatly helped because the compilation of Islamic law contained various verses of the Al-Qur’an, hadith, and opinions of scholars related to family law. As a result, judges can make decisions that do not deviate from Islamic law. Islamic law requires judges to be fair in every decision and not take sides. Thus the Muslim community gets a fair decision in every court decision given by the judges.

## CONCLUSION

The effectiveness of Islamic law as a guideline in the Religious Courts as material law in the guidelines for decision-making by judges is evidenced by the reduced number of justice seekers who accept decisions that appeal or appeal to the Religious High Court because the compilation of Islamic Law itself is Indonesian-style *fiqh* which in the compilation involved ulama, community leaders, traditional clerics and intellectuals, who demand the implementation of the compilation Islamic law should be under the typology of Indonesian society.

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