



## **Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia**

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**Abstract:** This study examines the Compilation of Islamic Law (KHI) as consideration for Religious Court Judges in North Sulawesi in resolving legal cases. This paper is an empirical legal research using a sociology of law approach based on fact related to the considerations of judges and decisions of the religious courts in North Sulawesi as application of the Compilation of Islamic Law. The data collection technique is based on literature review, especially court decisions and in-depth interviews with judges. The findings show that there are four forms of application of KHI, namely: *First*, KHI is the main reference with considerations: 1) if there is no basis for legal considerations in Laws and Government Regulations; 2) KHI is the agreement of the ulema and is a series of written laws; 3) KHI is jurisprudence, *Second*, KHI is a reinforcement reference to Government Laws and Regulations with the following considerations: 1) KHI is a reaffirmation of Government Laws and Regulations; 2) KHI provides Islamic characteristics and values; 3) KHI is a special provision for Muslims; 4) KHI realizes marriages must be carried out based on the provisions of the law of religion and belief. *Third*, KHI is a special reference with the considerations: 1) KHI regulates specifically, while it is not found in laws and Government Regulations; 2) KHI is a special reference for Religious Courts; 3) KHI has regulated while the laws and regulations have not regulated, and *Fourth*, KHI is not a reference at all with the consideration that no legal basis is found.

**Keywords:** Compilation of Islamic law, basic considerations, judge's considerations, religious court.

**Abstrak:** Penelitian ini bertujuan untuk mengkaji tentang Kompilasi Hukum Islam (KHI) sebagai pertimbangan Hakim Pengadilan Agama di Sulawesi Utara dalam menyelesaikan perkara hukum. Tulisan ini merupakan penelitian hukum empiris dengan menggunakan pendekatan sosiologi hukum berdasarkan fakta terkait dengan pertimbangan hakim dan putusan pengadilan agama di Sulawesi Utara sebagai penerapan Kompilasi Hukum Islam. Adapun teknik pengumpulan data dilakukan dengan berdasarkan pada kajian literatur khususnya putusan pengadilan dan wawancara mendalam dengan para hakim. Temuan dalam penelitian ini bahwa terdapat empat bentuk penerapan KHI, yaitu: Pertama, KHI sebagai rujukan utama dengan pertimbangan: 1) apabila tidak ditemukan dasar pertimbangan hukum dalam Undang-undang dan Peraturan Pemerintah; 2) KHI adalah kesepakatan para Ulama-ulama dan merupakan rangkaian hukum tertulis; 3) KHI merupakan yurisprudensi, Kedua, KHI sebagai rujukan penguat terhadap Undang-undang dan Peraturan Pemerintah dengan pertimbangan: 1) KHI sebagai penegasan kembali terhadap Undang-undang dan Peraturan Pemerintah; 2) KHI memberikan ciri-ciri atau nilai-nilai Islam; 3) KHI menjadi ketentuan khusus masyarakat yang beragama Islam; 4) KHI mewujudkan perkawinan yang harus dilakukan berdasarkan ketentuan hukum agama dan kepercayaan dalam Undang-undang, Ketiga, KHI sebagai rujukan khusus dengan pertimbangan: 1) KHI mengatur secara khusus dan Undang-undang dan Peraturan Pemerintah tidak ditemukan; 2) KHI sebagai acuan khusus Peradilan Agama; 3) KHI sudah mengatur sedangkan peraturan Perundang-undangan belum mengatur, dan Keempat, KHI tidak menjadi rujukan sama sekali dengan pertimbangan tidak ditemukan dasar hukumnya.

**Kata Kunci:** Kompilasi hukum Islam, dasar pertimbangan, pertimbangan hakim, pengadilan agama.

## Introduction

Generally, in terms of determining the law, the Muslim community today differs significantly from the Muslim community during the time of the Prophet Muhammad PBUH. Several societal cultural transformations necessitate the evolution of legal instruments to provide community solutions.<sup>1</sup> In Indonesia, Muslims can firsthand witness the application of Islamic law in Islamic civil cases before the Religious Courts. The trial process has adopted legislation such as the Islamic Law Compilation (*Kompilasi Hukum Islam/KHI*),

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<sup>1</sup>Solomon A Nigosian, *Islam: Its History, Teaching, and Practices*, Indiana University Press, 2004. Mursyid, "Ijtihad Hakim Dalam Penyelesaian Perkara Harta Bersama Di Mahkamah Syar'iyah Banda Aceh," *Ar-Raniry: International Journal of Islamic Studies* 1, no. 2 (2020), p. 317-346. Dewi Kemalasari, "Analisis Yuridis Penerapan KHI dalam Penggantian Tempat Ahli Waris/Ahli Waris Pengganti Pada Masyarakat Kecamatan Banda Sakti Kota Lhokseumawe," *Premise Law Journal* 3 (2015).

as references for Religious Court judges when receiving, examining, and determining cases.<sup>2</sup>

The Religious Courts are part of Indonesia's judicial system and operate under the supervision of the Supreme Court, which possesses absolute authority. This is stated in Article 49 of Law Number 3 of 2006. The absolute authority of the Religious Courts covers various disputes for the Muslim community such as in marriage, inheritance, wills, grants, waqf, zakat infaq, shadaqah and economics sharia.<sup>3</sup>

All power of the Religious Courts enumerated above is contingent upon a material legal source that serves as the foundational reference for deciding diverse cases. The sources of law used by the Religious Courts as a legal basis in making decisions are Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law and the laws that are still recognized as valid relating to the absolute competence of the Religious Courts. In addition, it utilizes Islamic legal sources, such as the Quran and Hadith, which include eternal legal provisions. In addition, it also employs *al-ra'yu*, or human thought deemed capable, and satisfies the prerequisites for *ijtihad*.<sup>4</sup> This is accomplished by the *ijtihad* of judges in Religious Courts on matters for which there is no legal basis in the legislation and the Compilation of Islamic Law. These sources of law have always served as the foundation for judges within the Religious Courts to examine, adjudicate, and decide cases within the Religious Courts.<sup>5</sup>

In analyzing, adjudicating, and settling cases, the Legislation and Compilation of Islamic Law serves as the primary reference for the Religious Courts, which have the jurisdiction to settle numerous Islamic civil cases. This indicates that judges in the Religious Courts employ the Compilation of Islamic Law as one of their legal bases when deciding matters submitted before them.<sup>6</sup>

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<sup>2</sup> Instruksi Presiden Nomor 1 Tahun 1991 tentang Komplasi Hukum Islam. Karmawan, "Mediation in The Religious Courts of Indonesia," *Ahkam: Jurnal Ilmu hukum* 20, No. 1 (2020).

<sup>3</sup> Amran Suadi, "The Role of Religious Court in Women and Children Rights Protection Through Partial and Executable Decision," *Jurnal Hukum Dan Peradilan* 7, no. 3 (2018), p. 353-374.

<sup>4</sup> Andi Herawati, "Kompilasi Hukum Islam (KHI) Sebagai Hasil Ijtihad Ulama Indonesia," *Hunafa: Jurnal Studia Islamika* 8, no. 2 (2011), p. 321-340. Syahrul Mubarak Subeitan, et.al., "Kewenangan Manusia Dalam Pembentukan Hukum Sebagai Perubahan Hukum," *PLENO JURE* 11, no. 1 (2022), p. 30-48. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

<sup>5</sup> Andi Herawati, "Kompilasi Hukum Islam (KHI) Sebagai Hasil Ijtihad Ulama Indonesia," *Hunafa: Jurnal Studia Islamika* 8, no. 2 (2011), p. 321-340. Syahrul Mubarak Subeitan, et.al., "Kewenangan Manusia Dalam Pembentukan Hukum Sebagai Perubahan Hukum," *PLENO JURE* 11, no. 1 (2022), p. 30-48.

<sup>6</sup> Dodon Alfiander, "Disparitas in The Considerations of Judges in Deciding Divorce Dispute in Religious Courts and District Courts," *Juris: Jurnal Ilmiah Syariah* 21, No. 1 (2022).

Although the Compilation of Islamic Law is one of the guidelines or legal bases upon which judges make decisions in civil matters, it is merely a Presidential Instruction (*Instruksi Presiden/INPRES*) and not law, legislation, or an absolute and binding basis for decision-making guidelines.

The Compilation of Islamic Law based on the Instruction of the President of the Republic of Indonesia Number 1 of 1991, hierarchically or the order of legislation is not included in the hierarchy of laws and regulations based on Law Number 12 of 2011 concerning the Establishment of Legislation. The hierarchy or order of law according to Law Number 12 of 2011 concerning the Establishment of Legislation is 1) the 1945 Constitution of the Republic of Indonesia; 2) MPR Decree; 3) Law/Perppu; 4) Presidential Regulation; 5) Provincial Regulations; 6) Regency/City Regional Regulations. The Compilation of Islamic Law in Indonesia is a presidential instruction that directs the president's orders to specific subordinates. This means the INPRES regarding the Compilation of Islamic Law, from the external, is not a form of law or legislation because it is only an INPRES. However, as a norm, it can be seen in the contents of the Compilation of Islamic Law that there are laws regulating and are considered unique Indonesian *fiqh*.<sup>7</sup>

Islamic law, in the form of the Compilation of Islamic Law, is a recognized legal system in Indonesia, despite the fact that it is still an INPRES. However, the Compilation of Islamic Law in the form of INPRES in no way diminishes its authority and validity to serve as a reference or basis for Religious Court judges in deciding various cases. All of this transpired as a result of the Compilation of Islamic Law's formulation of various community requirements.<sup>8</sup>

Based on the consideration of Presidential Instruction Number 1 of 1991 letter b in the considering section, it explains that the Compilation of Islamic

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Suci Ramadhan adn JM Muslim, "Indonesian Religious Court Decisions on Child Custody Cases: Between Positivism and Progressive Legal Thought," *Juris: Jurnal Ilmiah Syariah* 21, No. 1 (2022).

<sup>7</sup>Yulkarnain Harahap, "Kompilasi Hukum Islam Dalam Perpektif Hukum Perundang-Undangan," 2010. Edi Gunawan, "Eksistensi Kompilasi Hukum Islam Di Indonesia," *Jurnal Ilmiah Al-Syir'ah* 8, no. 1 (2016). Fajar Sugianto and Slamet Suhartono, "The Existence of President Instruction of The Republic of Indonesia Number 1 The Year 1991 on The Wide Spread of Compilation of Islamic Law in Indonesian Legal System," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 13, no. 2 (2018), p. 291–309. John R. Bowen, "'You May Not Give It Away': How Social Norms Shape Islamic Law in Contemporary Indonesian Jurisprudence," *Islamic Law and Society* 5, no. 3 (1998), p. 382–408.

<sup>8</sup>Amiur Nuruddin and Azhari Akmal Tarigan, *Hukum Perdata Islam Di Indonesia: Studi Kritis Perkembangan Hukum Islam Dari Fikih, Undang-Undang Nomor 1 Tahun 1974 Sampai Kompilasi Hukum Islam*, Jakarta: Kencana, 2019. Hikmatullah, "Selayang Pandang Sejarah Penyusunan Kompilasi Hukum Islam di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 1, no. 2 (2017). Mochammad Muslim, "Pengaruh Konfigurasi Politik Hukum Orde Baru Terhadap Kompilasi Hukum Islam (KHI) di Indonesia," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 1 (2014), p. 220–42.

Law by Government Agencies and by the people who need it may be used as a guide in solving problems in the scope of Marriage Law, Inheritance Law and Waqf Law.

Based on the word “may” above, it shows two understanding, which are:

- 1) Compilation of Islamic Law "may" be used as a legal basis by judges in making decisions in solving legal problems occurring in society.
- 2) Compilation of Islamic Law "may not" be used as a legal basis by judges in making decisions in resolving legal problems occurring in society.

Based on the background above on the issue of the Compilation of Islamic Law as one of the legal bases in making decisions by the Panel of Judges whose legal basis is only based on Presidential Instructions, it is necessary to research to describe the forms of application of the Compilation of Islamic Law as the basis for the decision making of the Panel of Judges of the Religious Courts in North Sulawesi and to analyze the various considerations of the Panel of Judges on the forms of application of the Compilation of Islamic Law as the legal basis in making decisions of the Panel of Judges of the Religious Courts in North Sulawesi.

Numerous scholars have investigated the application of the Compilation of Islamic Law as a guide for deciding cases in religious courts, with various outcomes. In his research on the position of KHI in relation to case settlement in the PA, Amrul explained that the position of KHI in the Indonesian legal system is still considered weak, as the implementation of KHI is merely a presidential instruction and not part of the Indonesian legal structure. Regardless, the judges always consider KHI as a guide when resolving issues in the Religious Courts.<sup>9</sup>

Then, Barmawi Mukri revealed the use of KHI in cases in the Religious Courts by judges when there is a legal vacuum or legislation that regulates cases on trial. In the trial, the judge uses KHI as a guide to achieve justice in the Religious Courts context for the benefit of both parties.<sup>10</sup> In addition, Luthfi's research on the application of Islamic law in the Religious Courts in the Hadhonah case and the Execution of Decisions revealed that judges always use

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<sup>9</sup>Amrul, et.al., “Kedudukan Kompilasi Hukum Islam Dalam Penyelesaian Perkara Di Pengadilan Agama: Perspektif Sistem Hukum Indonesia,” *Al-Azhar Islamic Law Review* 3, no. 1 (2021), p. 11-23.

<sup>10</sup> Barmawi Mukri, “Kedudukan dan Peranan Kompilasi Hukum Islam dalam Sistem Hukum Nasional,” *Jurnal Hukum IUS QUI IUSTUM* 8, No. 17, no. 1 (2017), p. 22–29. Euis Nurlaelawati, *Modernization, Tradition, and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Court*, Amsterdam: Amsterdam University Press, 2010. Euis Nurlaelawati, “Muslim Women in Indonesian Religious Courts,” *Islamic Law and Society* 20, no. 3 (2013), p. 242-71.

KHI as applied law when determining cases, despite the fact that it is still in the form of an INPRES.<sup>11</sup>

The research mentioned above demonstrates that religious court judges continue to use KHI while making decisions. Additionally, this research contains both similarities and differences from earlier studies. It addresses the implementation and position of the Compilation of Islamic Law as a reference for deciding cases in Religious Courts. In contrast, the difference is in the site or location of the research and the findings at the end of the study. Therefore, this research does not constitute plagiarism of prior work.

This study is empirical legal research, or how the law is applied in legal institutions and society. This research uses the sociology of law approach as the application of Islamic law, in terms of the application of the Islamic Law Compilation.<sup>12</sup> The researcher analyzed the results of interviews and the decisions of the Panel of Judges and described the results of the judges' interviews as well as various essential pieces of documentation related to this research. All the results of a review of the decisions of the Panel of Judges and the results of interviews were made in the form of natural narratives so that the readers easily understood them. Data collection in this study was carried out in three ways widely used by researchers: interviews, document studies, and observation. The document study in this research examined the decisions of the Panel of Judges around 2020 and 2021 on all cases that had legal provisions in the Religious Courts. Interviews were conducted with judges at the Religious Courts in North Sulawesi. In comparison, the observation in this study was the initial problem-finding technique before doing the research. It meant the researchers visited several Religious Courts in the North Sulawesi region as a plan for conducting research.

### **Forms of Application of KHI as Consideration of the Panel of Judges**

After examining these decisions, the researchers interviewed the judges to inquire about the application in which the Islamic Law Compilation is applied as the foundation for making decisions. From the nine Religious Courts, 480 decisions were read and examined with the following information: 1) Manado Religious Court decisions from January to November 2021, 75 (seventy five) decisions were taken as a sample for review; 2) The Kotamobagu Religious Court decisions from January to November 2021, 50 (fifty) decisions were taken as sample for review; 3) Bitung Religious Court, there were 70 (fifty)

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<sup>11</sup>Lutfi and Amir Muallim, "Penerapan Kompilasi Hukum Islam Pada Peradilan Agama Dalam Perkara Hadhonah Dan Eksekusi Putusannya," *Millah: Jurnal Studi Agama* 20, no. 2 (2021): 275–300.

<sup>12</sup>Munir Fuady, *Metode Riset Hukum: Pendekatan Teori dan Praktik*, Depok: Rajawali Press, 2018. Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2014. Munir Fuady, *Teori-Teori Dalam Sosiologi Hukum*, Jakarta: Kencana, 2013, p. 189.

decisions from January to November 2021 which were taken as samples for review; 4) Tondano Religious Court, the decisions from January to November 2021, 50 (fifty) decisions were taken as samples for review; 5) Amurang Religious Court, the decision of the case from January to November 2021, 40 (forty) decisions were taken as samples review; 6) The Lolak Religious Court, the decision of the case from January to November 2021, 50 (fifty) decisions were taken as samples for review; 7) Bolaang Uki Religious Court, the court decision from January to November 2021, 35 (thirty five) decisions were taken as samples for review; 8) Boroko Religious Court, the court decision from January to November 2021, 60 (sixty) decisions were taken as samples; and 9) Tutuyan Religious Court, the court decision from January to November 2021, 50 (fifty) decisions were taken as samples.

A review of several decisions from 9 (nine) PTA Regional Religious Courts reveals that in Manado, North Sulawesi, the Panel of Judges applied KHI in 4 (four) different ways as the foundation for their decisions. Based on the findings of the review, interviews were held with judges in nine Religious Courts regarding the forms of KHI application. The purpose of the interview was to investigate the Panel of Judges' considerations regarding four (four) methods of application of the Islamic Law Compilation as the legal basis for decision-making by the Panel of Judges. The 4 (four) ways in which the Compilation of Islamic Law serves as the legal basis for the Panel of Judges' decisions are as follows:

### **1. KHI as the Primary Reference in Judges' Considerations at the Religious Courts**

The Compilation of Islamic Law as the Primary Reference for the basis of decision-making can be seen in Decision Number: 328/Pdt.G/2021.PA.Mdo related to the Divorce case in the evidence section. In the Divorce case, the first document that must be formally proven is the Marriage Certificate or Marriage Book. It shows that Plaintiff and Defendant are married under the provisions of Islamic Law.<sup>13</sup>

In the Divorce Case with Decision Number 328/Pdt.G/2021.PA.Mdo, the Judge considered the fact that the Plaintiff and Defendant were legally married. Judge indicated in the conclusion that Plaintiff had filed evidence P, a duplicate of the Marriage Certificate Excerpt issued by the authorized official as an authentic document, appropriately stamped, postmarked (nazegelen), and resembling the original. The proof has satisfied the formal prerequisites. The contents of the evidence demonstrated that Plaintiff and Defendant were married on August 6, 1995, relevant to Plaintiff's case to be proven, so satisfying the material requirements. As an authentic document, Evidence P had perfect and

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<sup>13</sup>Putusan Pengadilan Agama Manado, Nomor 328/Pdt.G/2021.PA.Mdo.

binding evidentiary force. The Panel of Judges proceeded describing their deliberations by stating that based on evidence P, it was established that the Plaintiff and the Defendant were legally married on August 6, 1995.

Concerning the considerations mentioned above, the Panel of Judges decided to accept the Plaintiff's Divorce lawsuit because it was proven that Plaintiff and Defendant were husband and wife, as evidenced by the Marriage Certificate or Marriage Book. The primary reference was the Compilation of Islamic Law article 7 paragraph (1) KHI: "Marriage can only be proven by a Marriage Certificate made by the Marriage Registrar". Similarly, considering the imposition of Divorce, the Judge handed down *talaq bain sugra* (Irrevocable divorce of minor degree) as the main reference for the Compilation of Islamic Law, as stated in Article 119 paragraph (1) of the Compilation of Islamic Law: "*Ba'in Sughra's* divorce is an irrevocable divorce, but a new marriage contract with her ex-husband is allowed even though it is in the *iddah*."

The Panel of Judges used KHI as the primary reference for these two considerations in determining the legal basis for the decision because it did not find a legal basis in Law Number 1 of 1974 Concerning Marriage and Government Regulation Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage.

The Compilation of Islamic Law is the Primary Reference for judges of the Religious Courts in North Sulawesi in civil cases if the basis for their decisions is not found in laws or government regulation especially in relation to article 49 of Law number 3 of 2006 concerning Amendments to Law number 7 of 1989 concerning the Religious Courts is related to the absolute competence of the Religious Courts institutions which include issues of "marriage, inheritance, wills, grants, endowments, *zakat*, *infaq*, *sadaqah* and economics sharia ". According to Masita Oliy, the Chief Judge of the Bitung Religious Court, KHI was the main reference in making decisions if there was no legal basis for legal considerations found in laws and government regulations. Specifically, for cases related to marriage, it must be referred to Law Number 1 of 1994 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.<sup>14</sup>

Masita Oliy further explained that if there was no legal basis for consideration in the Laws and Government Regulations pertaining to marital issues, the Compilation of Islamic Law was used as the basis for consideration. This is because the Compilation of Islamic Law has become a consensus among Indonesian Ulema, and according to the existing legal system in Indonesia, KHI is a series of written laws understood from the instruments of enforcement,

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<sup>14</sup>Interview with Masita Oliy, the Chairperson of the Bitung Religious Court, North Sulawesi, August 27, 2021.



which are based on Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law and followed by Ministerial Decree Number 154 of 1991 concerning the Implementation of Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.<sup>15</sup>

The reason Masita Olli made the Compilation of Islamic Law the basis for consideration in deciding cases as mentioned above was that the Compilation of Islamic Law has become an agreement of the Indonesian Ulemas, and it is a series of written laws that are understood from the instruments of its application. Moreover, according to Dadang Hermawan and Sumarjo, in their writings in the Journal of Islamic Law and Legal Thought entitled "Compilation of Islamic Law as Material Law in Religious Courts," "The Compilation of Islamic Law has been agreed upon by Indonesian Ulema. KHI is a series of written laws and is acknowledged in the Indonesian Legal System through Presidential Instruction Number 1 of 1991".<sup>16</sup> Both opinions are in accordance with the consideration of the Presidential Instruction of the Republic of Indonesia Number 1 of 1991.

According to the author, the KHI is used as the primary reference in making decisions by judges at the Religious Courts in the Manado High Religious Court (PTA) in North Sulawesi when there is no legal basis for legal considerations found in the laws and government regulations applicable in Indonesia.

Muhammad Anwar Umar explained that there had been many Supreme Court decisions that had been determined and become a reference for judges in the Religious Courts and Book II of Guidelines for the Implementation of Duties and Administration of Religious Courts published by the Supreme Court of the Republic of Indonesia, the Directorate General of Religious Courts in 2013. The Head of the Religious Chamber of the Religious Courts instructed the Leaders, Judges, and Registrar's Offices to use the Revised Edition of Book II of 2013 as a guide, as well as possible. The Guidebook regulates Family Law which is used in Law Number 1 of 1974 concerning marriage; Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning marriage; and also Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law as references.<sup>17</sup>

The explanation by Muhammad Anwar Umar, Chief Judge of the Boroko Court above, that book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts, published by the Supreme Court of the

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<sup>15</sup> Interview with Masita Olli, the Chairperson of the Bitung Religious Court, North Sulawesi, August 27, 2021.

<sup>16</sup> Dadang Hermawan and Sumardjo Sumardjo, "Kompilasi Hukum Islam Sebagai Hukum Materiil Pada Peradilan Agama," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 6, no. 1 (2016), p. 24–46.

<sup>17</sup> Interview with Muhammad Anwar Umar, the Chairman of the Boroko Religious Court, North Bolaang Mongondow Regency, North Sulawesi, October 1, 2021.

Republic of Indonesia, Directorate General of Religious Courts in 2013, which regulates Family Law based on the Compilation of Islamic Law, is related to the arrangement of joint assets that has been regulated in article 94 of the Compilation of Islamic Law still refers to article 49 with the understanding as explained in book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts related to Special Guidelines in letter a Family Law number 1) Permit for polygamy letter b) number (5).

The Compilation of Islamic Law as one of the statutory regulations whose basic considerations can be considered jurisprudence can be seen in the arrangement of the heirs of a sibling of the mother's side from a sibling of the father's side and biological siblings. This is regulated in articles 181 and 182 of the Compilation of Islamic Law; then, the Supreme Court equalizes the position of a sibling with a sibling or half-brother, that is, they jointly get a share as heirs in the form of *ashabah*. This has been explained in book II of the Guidelines for the Implementation of Duties and Administration of Religious Courts letter b. Inheritance Law number 6).

The Book II, Guidelines for the Implementation of Duties and Administration of the Religious Courts, provides guidance to judges in the Religious Courts regarding the interpretation of articles 181 and 182 of the Compilation of Islamic Law, which is the primary source of the jurisprudence of the Supreme Court of the Republic of Indonesia. This indicates that the Supreme Court of the Republic of Indonesia recognizes the Compilation of Islamic Law as one of the sources of law governing marriage, inheritance, and *waqf*. Since the Supreme Court of the Republic of Indonesia recognizes KHI as a source of law, it must be taken into account when decisions are made by the Religious Courts. This is based on Article 32, paragraph 4, of Law Number 3 of 2009 on the Second Amendment to Law Number 14 of 1985 pertaining to the Supreme Court: "The Supreme Court has the ability to issue instructions, warnings, or cautions to courts in all judicial bodies." The Compilation of Islamic Law is regarded as jurisprudence and is based on Law Number 48 of 2009 concerning Judicial Power; this law states that courts may not refuse to examine, hear, or decide cases submitted on the grounds that the law does not exist or is ambiguous; the court must examine and prosecute.

The existence of jurisprudence is based on Law Number 48 of 2009 concerning Judicial Power, which regulates that courts may not refuse cases to be examined, tried, and decided on cases submitted by the parties on the grounds that there are no legal rules governing or that they are unclear and vague.<sup>18</sup> Therefore, should there be problems with marriage, inheritance, and *waqf*, or if

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<sup>18</sup>Arskal Salim, *Contemporary Islamic Law in Indonesia: Sharia and Legal Pluralism*, Edinburgh University Press, 2015. Arskal Salim, "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh," *The Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (2010), p. 1-29.

there are no rules in Government Laws and Regulations, the Islamic Law Compilation becomes the main reference to replace Government Laws and Regulations because Presidential Instructions include a series of written laws.

The explanation above certainly describes the legal model in Indonesia. It is in accordance with Jimly Asshiddiqie's formulation that the sources of constitutional law are unwritten constitutional values; the basic constitution, both its preamble and its articles; written laws and regulations; judicial jurisprudence; constitutional conventions; legal science doctrines that have become *ius commissionis opinio doctorum*; and international law that has been ratified or has been applied as customary international law.<sup>19</sup>

## **2. KHI as a Reinforcement Reference to Laws and Government Regulations Judges's Consideration in Religious Courts**

The Compilation of Islamic Law as a reference for Reinforcement Laws and Government Regulations can be observed in the decisions of the Panel of Judges in cases or lawsuits that the Plaintiff has brought before the Religious Court. In deciding the divorce case 328/Pdt.G/2021.PA.Mdo involving the lawsuit filed by the Plaintiff against the Defendant, the Panel of Judges considered a variety of legal factors. After finding the legal facts during the trial by listening to Plaintiff's testimony, reading the written evidence, and listening to the witness testimonies, the Panel of Judges determined whether or not the Plaintiffs' arguments (*posita*) were proven and provided legal considerations. The Panel of Judges conducted a trial by listening to the plaintiff's statements, reading the written evidence, and hearing the testimony of the witnesses, the Panel of Judges then determined the legal facts.

In this divorce case, it had been proven that the Plaintiff and Defendant were legal husband and wife. It had been proven that there had been continuous disputes and quarrels, and it had been proven that the cause of the quarrel between Plaintiff and Defendant was that the Defendant has a bad temper, spoke harshly, often cursed, insulted, and even the Defendant did not provide a living cost for the Plaintiff.

After hearing the statement of the Plaintiff, who was determined to divorce and had separated from his residence with the Defendant, the Panel of Judges concluded that the Plaintiff's and Defendant's household had been broken up due to the dispute that resulted in a separation of residence, which had lasted for approximately two months, and there was no chance of reconciliation because the Plaintiff was determined to divorce the Defendant.

Having knowledge of the above-described situation in Plaintiff's and Defendant's households for approximately two months, the Panel of Judges was

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<sup>19</sup>Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, Jakarta: Raja Grafindo Persada, 2014, p. 121. Melissa A Crouch, "Law and Religion in Indonesia: The Constitutional Court and the Blasphemy Law," *Asian Journal of Comparative Law* 7, (2011), p. 1-46.

convinced that the problems were caused by a dispute resulting in separation of residence, and that Plaintiff's and Defendant's would no longer coexist peacefully.

On the basis of this belief, the panel of judges concluded that the Plaintiff's and Defendant's households could not be expected to accomplish the objective of marriage, which is to create a happy and eternal family. With this understanding, the Panel of Judges considered granting Plaintiff's claim to the Defendant for divorce so that the Panel of Judges handed down Defendant's one *ba'in sugra talaq* against Plaintiff.

The Panel of Judges pronounce Defendant's *ba'in sugra talaq* against Plaintiff with the belief that Plaintiff's and Defendant's household had no chance of reuniting due to the fact that the situation in Plaintiff's and Defendant's household lasted approximately 2 (two) months and was the result of a dispute that led to residence separation. In accordance with the intent of Article 1 of Law Number 1 of 1974 on Marriage, the Panel of Judges concluded that the above-mentioned household did not fulfill the objective of marriage, which is to build a happy and eternal household. The Panel of Judges made Law Number 1 of 1974 concerning Marriage the primary reference because, based on the above-mentioned facts, the Panel of Judges believed that the Plaintiff's and Defendant's households had broken down as a result of the dispute, resulting in the separation of residences that had already occurred for two (two) months, and there was no chance of reconciliation because the Plaintiff had declared his intent to divorce.

The panel of judges continued its analysis by stating that the family, as noted previously, could not be expected to fulfill the aim of marriage, which is to create a happy and eternal family. Based on these factors, the Panel of Judges determined that the purpose of marriage required by Article 1 of Law Number 1 of 1974 Concerning Marriage, which states, "Marriage is an inner and outer bond between a man and a woman as husband and wife with the intention of forming a happy and eternal family (household) based on God Almighty," had not been achieved.

The provisions of Article 1 of Law Number 1 of 1974 concerning Marriage are in accordance with Article 3 of the Compilation of Islamic Law related to the purpose of marriage, namely, "Marriage aims to realize a *sakinah, mawaddah, and rahmah* household life".

Observing the two regulations, Article 1 of Law Number 1 of 1974 Concerning Marriage and Article 3 of the Compilation of Islamic Law, which both regulate the purpose of marriage, the Compilation of Islamic Law is a reinforcement of Article 1 of Law Number 1 of 1974 Concerning Marriage because there is no conflict between the two laws.

The provisions of Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementation of Law

Number 1 of 1974 concerning Marriage were applied in resolving marriage arrangements prior to the stipulation of the Compilation of Islamic Law as a source of law when making decisions on marriage-related issues. These laws and regulations apply to all citizens of the Republic of Indonesia, including Indonesian Muslim citizens, and regulate marriages on a national level.

Articles in the Compilation of Islamic Law that are similar to or correspond with articles in Law Number 1 of 1974 Concerning Marriage and Government Regulation Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage strengthen existing regulations in those Laws and Regulations. The Panel of Judges uses the Compilation of Islamic Law as a Reinforcement Reference to Laws and Government Laws in decision-making if it is not in conflict with these regulations' standards.

Fitroh Nur'aini Layly (Judge at the Tutuyan Religious Court) explained that they were considering using the Islamic Law Compilation because they recognize that the rules in KHI, particularly in the marriage law, are provisions that reaffirm the problems that have been regulated in Law Number 1 of 1974 Concerning Marriage and Government Regulation Number 9 of 1975 Concerning the Implementation of Law Number 1 of 1974 Concerning Marriage.<sup>20</sup>

Fitroh Nur'aini Layly also explained, in addition to the Compilation of Islamic Law, it is also a reaffirmation of the problems that have been regulated in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. The Compilation of Islamic Law aims to provide Islamic characteristics or values stipulated in the provisions that explain that the Religious Courts are courts for Muslim people.

As did Fitroh Nur'aini Layly, Asmawati Sarib (Judge and Deputy Chairperson of the Tutuyan Religious Court) explained that Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage is a provision that applies to all citizens of the Republic of Indonesia. Then, the general provisions of Law Number 1 of 1974 regarding Marriage and Government Regulation Number 9 of 1975 on the Implementation of Law Number 1 of 1974 regarding Marriage are transformed into special provisions for KHI to be used as a reference for Muslims.<sup>21</sup>

Asmawati Sarib also explained that in addition to the Compilation of Islamic Law outlining general provisions of Laws and Government Regulations as special provisions for Muslims, KHI also incorporates Article 2 of Law

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<sup>20</sup> Interview with Fitroh Nur'aini Layly, a Judge at the Tutuyan Religious Court, East Bolaang Mongondow Regency, North Sulawesi Province, October 8, 2021.

<sup>21</sup> Interview with Asmawati Sarib, the Deputy Chairperson at the Tutuyan Religious Court, East Bolaang Mongondow Regency, North Sulawesi Province, October 8, 2021.

Number 1 of 1974 concerning Marriage, which states that the marriage referred to in the Marriage Law must be conducted in accordance with the provisions of religious law and belief. It is based on the Islamic teachings and beliefs that have been codified in the form of articles in the Compilation of Islamic Law for the Islamic community.<sup>22</sup>

### **3. KHI as a Special Reference to Laws and Government Regulations in Religious Courts Judges' Consideration**

The Compilation of Islamic Law as a special reference to laws and Government regulations can be seen in the decisions of the Panel of Judges in the Divorce Case Number: 330/Pdt.G/2021.PA.Mdo. In the law, it is regulated that if someone wants to get a divorce, in both talaq divorce and litigation, there must be sufficient reasons for the Panel of Judges to decide in the court, both the District Court and the Religious Courts, to accept or reject the application for divorce. In this case, Article 39 paragraph (2) of Law Number 1 of 1974 has been regulated: "To divorce, there must be enough reason, that the husband and wife are not able to live in harmony as husband and wife."<sup>23</sup>

In the Panel of Judges' decision on the divorce case above, the Panel of Judges has adjudicated the decision "accepting the petitioner's application for the Convention." In granting the petition of the petitioner, the Panel of Judges considered that the household of the petitioner and the respondent was completely broken, and there was no hope of living in harmony in the future. This was because the respondent had reverted to Christianity (apostasy), and the petitioner insisted on a divorce. The Panel of Judges believed that there was sufficient reason for the petitioner to divorce and that it was in accordance with the reasons for the divorce.

The consideration of the Panel of Judges was based on the facts of the trial by listening to the Petitioners' statements, hearing the witnesses' statements, and reading written evidence so that the Panel of Judges concludes. Based on the facts mentioned above, the Panel of Judges was convinced that between the Petitioner and the Respondent, there had been a problem in the bond spiritually as husband and wife, as a result of the dispute resulting in the separation of residence, and there was no hope of getting back together. They no longer care about each other; even the petitioner was determined to divorce the respondent. This type of household cannot be expected to realize the purpose of marriage, namely to form a happy and eternal household, according to the purpose of Article 1 of Law Number 1 of 1974 concerning Marriage, and the realization of

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<sup>22</sup> Interview with Asmawati Sarib, the Deputy Chairperson at the Tutuyan Religious Court, East Bolaang Mongondow Regency, North Sulawesi Province, October 8, 2021.

<sup>23</sup>Putusan Pengadilan Agama Manado, Nomor 330/Pdt.G/2021.PA.Mdo.

a *sakinah* family, according to the goal of Article 3 of the Compilation of Islamic Law, even in such a household, husband and wife are no longer able to perform their respective rights and obligations.

On the basis of the facts discovered by the Panel of Judges during the trial outlined above, the Panel of Judges granted the petitioner's divorce request. The decision was based on Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which states, "Divorce may occur for the following reasons: f. There are constant disputes and quarrels between the husband and wife, and there is no hope of living in harmony again in the household."

Regarding the completeness of the reasons for the approval of the Petitioner's divorce application, the Panel of Judges based their decision on the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which is the problem in the inner bond as husband and wife resulting from disputes leading to a separation of residence. There was no chance of reconciliation because none of them cared about the other anymore; even the petitioner was resolved to divorce the respondent because she had converted to Christianity (apostasy).

The breakdown of family bond due to a dispute caused by the wife (the respondent) converting to Christianity (apostasy), the Panel of Judges, in addition to making Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage the basis for making decisions, also used Article 116 letter (h) of the Compilation of Islamic Law as the basis for making decisions specifically.

The provisions of Article 116 of the Compilation of Islamic Law strengthen the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which rearranges the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 as described in Article 116 letter (f) of the Compilation of Islamic Law that "Divorce may occur for reason or reasons in letter (f) between husband and wife, there are continuous disputes and quarrels and there is no hope of living in harmony in the household anymore." The Compilation of Islamic Law, in addition to strengthening the provisions of Article 19 letter (f) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, the Compilation of Islamic Law also specifically regulates the spirit of Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage. Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage regulates the validity of marriage, namely, "Marriage is legal, if it is performed according to the law of each religion and belief."

Based on Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, marriage cannot be performed if it is not based on each other's religion and beliefs. Therefore, marriages of different religions and beliefs are not justified in the Republic of Indonesia. If one of the two husbands or wives apostates and causes disharmony in the household and if one of them wants to divorce, then the divorce application is granted because it is in accordance with the provisions of article 116 letter (h) The Compilation of Islamic Law regulates the reasons for divorce as follows: "Divorce may occur due to the reason or reasons described in letter h, a religious convert or apostasy which causes disharmony in the household."

The petitioner's application for *talaq* divorce on the primary request letter is granted because the wife (respondent) has reverted to Christianity. Then in the decision number 330/Pdt.G/2021.PA.Mdo, the Panel of Judges grants it because it is in accordance with the provisions specifically regulated in article 116 letter (h) of the Compilation of Islamic Law, namely "Divorce may occur for reason or reasons: h conversion of religion or apostasy which causes disharmony in the household".

The Panel of Judges grants the Petitioner's request for divorce and makes Article 116 letter (h) of the Compilation of Islamic Law one of its foundations. The article stipulates that if someone converts his or her religion, the household of a husband and wife is no longer harmonious. Then, specifically for Muslims filing for divorce in the Religious Courts, the provisions on the reasons for divorce are regulated in article 116 letter (h) of the Compilation of Islamic Law. In this case, the Compilation of Islamic Law becomes a special reference to the Law and Government Regulations.

Suppose that the lawsuit's grounds are not clearly specified by the law or government regulations. In such a circumstance, The Compilation of Islamic Law becomes a specific reference to the Laws and Government Regulations when the Religious Courts of North Sulawesi make their decisions. Nevertheless, if the rules are particularly regulated in the Compilation of Islamic Law, the Panel of Judges should add the special provisions as the legal foundation for making decisions.

According to Uten Tahir, the Judge and Deputy Chairman of the Bolaang Uki Religious Court, the consideration of the Panel of Judges is based on the explanation that there are three pillars of Judicial Power: 1) an organized judicial body founded on the power of the law; 2) implementing organs; and 3) legal means as a guideline. The Religious Courts, as one of the Institutions of Judicial Power, already have these three pillars. Based on the power of the law, it has been legally and officially recognized as one of the implementers of judicial power in the State of Law of the Republic of Indonesia. Its position, authority or jurisdiction, and organization have been regulated and described in the law. Religious courts have also had implementing organs. Since their



establishment until now, they have had legal means as a reference, such as the Marriage Law and Government Regulations, the Endowment Law, and the Compilation of Islamic Law.<sup>24</sup>

In addition, Uten Tahir highlighted that the Religious Courts are for Muslims and have the responsibility and authority to analyze, decide, and resolve disputes between Muslims. Therefore, a Judge, Registrar, Bailiff, or Chief must be a Muslim and a sharia scholar or legal expert who is proficient in Islamic law, as the applicable law is Islamic law as outlined in the Compilation of Islamic Law. The Compilation of Islamic Law is used as a special legal basis in making decisions by the Panel of Judges if the reason for submitting an application or lawsuit is not regulated by law and government regulations related to the provisions of Islamic law, but is regulated in the Compilation of Islamic Law.<sup>25</sup>

Uten Tahir's statement regarding the Panel of Judges' consideration of the Compilation of Islamic Law as a special reference to laws and government regulations in decision-making is consistent with Article 1 paragraph 1 of Law Number 7 of 1989 related to Religious Courts. It is explained in the article that religious courts are Muslim courts. This is further clarified in Article 2, which was amended in accordance with Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 pertaining to the Religious Courts, with the stipulation that the Religious Courts are one of the actors of judicial power that handle certain cases involving Muslims seeking justice, as stated in this law.

The provisions of Law Number 7 of 1989 concerning Religious Courts are as regulated in Article 49 paragraph (1) in conjunction with Article 49 of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Prior to the amendment, there were 6 (six) fields of law, namely: marriage, inheritance, wills, grants, endowments, and sadaqah; and after the amendment to the law, 3 (three) fields of law were added, namely: *zakat*, *infaq*, and sharia economics. So, the total number of legal fields under the authority of the Religious Courts institution is 9 (nine) and all of them are sourced from the Qur'an and al-Hadith.

Because the Religious Courts are courts for Muslims and the legal fields under their authority are based on the Qur'an and al-Hadith. Then, the explanation of Uten Tahir in which Judges, Registrars, Bailiffs, and Chiefs are required to be Muslim and a sharia scholar or a legal scholar who has mastered Islamic law is in accordance with the provisions of Article 13 paragraph (1) letter b, article 27 letter b, and article 39 paragraph (1) letter b of Law Number 7 of 1989 concerning Religious Courts.

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<sup>24</sup> Interview with Uten Tahir, a Judge at the Bolaang Uki Religious Court, South Bolaang Mongondow Regency, September 17, 2021.

<sup>25</sup> Interview with Uten Tahir, a Judge at the Bolaang Uki Religious Court, South Bolaang Mongondow Regency, September 17, 2021.

#### **4. KHI does not become a Reference at all in Judges' consideration in the Religious Courts**

As previously stated, the Compilation of Islamic Law may serve as the primary reference, a reinforcing reference, or a special reference for Government Laws and Regulations. In some instances, however, the Compilation of Islamic Law is not even considered as a reference at all.

One of the cases in which the Compilation of Islamic Law is not a reference can be seen in Decision number: 141/Pdt.P/2021.PA.Mdo related to the Marriage Dispensation case. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage regulates the age of women who are allowed to marry.<sup>26</sup>

In Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, there is only 1 (one) article that changes the provisions of Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage. The change is in the age for women to be allowed to marry, which is from the age of 16 (sixteen) to the age of 19 (nineteen) years. Meanwhile, there is no change in the provisions related to the age of man. A man must be 19 (nineteen) years old in order to get married. This is based on Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage: "Marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years". However, suppose there is a deviation as stipulated in Article 7 paragraph (1) of Law number 16 of 2019 concerning marriage amendments to Law number 1 of 1974. In that case, a dispensation application can be made to the Court with urgent reasons and supported by evidence that requires the submission of a dispensation to the Court to carry out the marriage. This is based on the provisions of Article 7 paragraph (2) of Law number 16 of 2019 concerning Amendments to Law number 1 of 1974 concerning Marriage, "In the event of a deviation from the age provisions as referred to in paragraph (1), the parents of the male and/or the woman may request a dispensation from the Court on urgent grounds accompanied by sufficient supporting evidence."

Regarding decision number 141/Pdt.P/2021.PA.Mdo in the case of Marriage Dispensation, Petitioners I and II were the biological parents of the prospective bride, who was 15 (fifteen) years old, and Petitioners III and IV were parents of the prospective groom, who was 16 years old. According to the petitioners' statements, the prospective bride and groom were not working at that time. The Petitioners' Application for Dispensation for Marriage by the Petitioners was due to the Rejection Letter from the District Office of Religious Affairs. The application for dispensation for marriage filed by the petitioners

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<sup>26</sup> Putusan Pengadilan Agama Manado, Nomor 141/Pdt.P/2021.PA.Mdo.

was a suggestion from the District Office of Religious Affairs because the prospective bride and groom were still under age for marriage, which meant they had not reached the age of 19 years based on the provisions of Article 7 paragraph (1) of Law number 16 of 2019 concerning Amendments to Law number 1 of 1974 concerning Marriage.

After advising the prospective couple and the parents of the prospective bride and groom on the risks of underage marriage and listening to the comments of the two candidates who have asked a marriage dispensation, the Chairperson of the Assembly grant the dispensation. Based on the terms of Articles 12 and 13 of the Regulation of the Supreme Court of the Republic of Indonesia Number 5 of 2019 about Guidelines for Adjudicating Applications for Marriage Dispensation, the parents of the two prospective brides still intend to marry their children. In addition, the Assembly's chairperson listened to the testimony of witnesses who stated that the prospective wed couple had no familial or professional ties to the petitioners.

Based on these statements, the Chairperson of the Assembly found legal facts and concluded that the petitioners wanted to marry off their children but were still under the minimum age limit for marriage according to the law. The families of the two prospective married couples had no objections to the marriage, and the prospective bride and groom also loved each other and had no obstacles to getting married.

The Chairperson of the Assembly saw that, physically and mentally, the two prospective brides were ready for marriage. The Chair of the Assembly considered that the relationship between the two prospective married couples was so close and feared that a sinful act (adultery) would occur. Therefore, "to avoid the *mafsadat* and problems for the two families of the prospective bride and groom, the Chairperson of the Assembly concluded that it was necessary to carry out the marriage immediately" with the consideration "that the marriage of the petitioners' children was not hindered according to the provisions of Sharia and applicable laws and regulations and can be justified by law. Therefore, the petition of the petitioners deserves to be granted." The conclusion of the Chairperson of the Assembly is in accordance with the provisions of Article 7 paragraph (3) of Law number 16 of 2019 concerning Amendments to Law number 1 of 1974 concerning Marriage, namely "The granting of dispensation by the Court as referred to in paragraph (2) must listen to the opinions of both parties of the prospective bride and groom who will marry."

Based on these considerations, the Chairperson of the Assembly decided to "accept the petition of the petitioners and stipulate to grant a marriage dispensation to the two children of the petitioners."

The decision of the Chairperson of the Assembly to grant the petitioner's request to allow the marriage was not covered by any article in the Compilation of Islamic Law, which was used as the legal basis for decision making, so it can

be said that the Compilation of Islamic Law was not a reference at all in this instance.

As explained in consideration, the Panel of Judges made the Compilation of Islamic Law the Primary Reference because in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, the Panel of Judges did not find a legal basis as a basis for making decisions. Similarly, the Panel of Judges did not use the Compilation of Islamic Law as a reference in making decisions because the consideration was that the Panel of Judges did not find the legal basis in the Compilation of Islamic Law as the legal basis for making decisions. As stated by Alfian Muhammdy (Judge at the Lolak Religious Court), they did not find any legal basis for the Compilation of Islamic Law in making decisions on the considerations in the Decision of the Panel of Judges because no legal basis was found in the Compilation of Islamic Law. Thus, they had to look for the legal basis for these considerations in Law Number 1 of 1974 on Marriage and Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage. This may happen, for example, on the legal basis for making decisions related to cases of marriage dispensation. The amendment to Article 7 paragraph (1) of Law Number 1 of 1974 concerning Marriage related to the age of the prospective bride, in which the girl should be 16 (sixteen) years old to be allowed to marry. In Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the age of the prospective bride changes to the age of 19 (nineteen) years. This provision is not found at all in the Compilation of Islamic Law as a reference for making the legal basis for making decisions by the Panel of Judges.<sup>27</sup>

Alfian Muhammadiyah's explanation can be seen in Decision Number: 141/Pdt.P/2021/PA.Mdo on the Marriage Dispensation case described in the fourth form of application of the Compilation of Islamic Law. It is said that the Compilation of Islamic Law was not used at all by the Panel of Judges of the Religious Courts in North Sulawesi when making decisions.

## Conclusion

The considerations of the Panel of Judges of the Religious Courts in North Sulawesi on the Application of the Compilation of Islamic Law as the basis for Decision-making lead the Compilation of Islamic Law to have four forms of application: *First*, the Compilation of Islamic Law as the Primary Reference in the Decision-making of the Panel of Judges, if the basis for consideration of its decision is not found in Laws and Government Regulations, especially related to Article 49 of Law Number 3 of 2006 concerning

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<sup>27</sup> Interview with Alfian Muhammadiyah, a Judge at the Lolak Religious Court, Bolaang Mongondow Regency, North Sulawesi, September 24, 2021.

Amendments to Law Number 7 of 1989 concerning the Religious Courts. *Second*, the Compilation of Islamic Law is a reinforcement reference for laws and government regulations. One of the considerations is that the rules in the Compilation of Islamic Law, especially in the field of marriage law, are provisions that reaffirm problems regulated in Law Number 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 concerning Implementation of Law Number 1 of 1974 concerning Marriage; *Third*, the Compilation of Islamic Law is a special reference to the Laws and Government Regulations for the Panel of Judges. One of the considerations is that in a case where the Panel of Judges considers the reasons for a lawsuit to make decisions that are not specifically regulated in the Law and Government regulations, while the provisions are specifically regulated in the Compilation of Islamic Law, the Panel of Judges adds these special provisions as the legal basis for making decisions. *Fourth*, the Compilation of Islamic Law is not used as a reference in the decision-making of the Panel of Judges, considering that no legal basis related to cases is found in the Compilation of Islamic Law.

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