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Compilation of Islamic Law: The Face of Responsive Legal Products as the Accommodative Politics of the New Order Government

Ahmad Faiz Shobir Alfikri¹ , Maziya Rahma Wahda² 

^{1,2} Universitas Islam Negeri Maulana Malik Ibrahim, Malang, 65114, Indonesia

*Corresponding Author: 230201210028@student.uin-malang.ac.id

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ABSTRACT

The compilation of Islamic law is a product of the codification of Islamic law produced during the New Order government. The Compilation of Islamic Law contains legal marriage, inheritance, and waqf provisions. In addition, this research analyzes the Compilation of Islamic Law as part of the accommodative politics of the New Order government. This research is a normative legal research using conceptual and historical approaches. The primary legal source of this research is the Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. The results of this research are the Compilation of Islamic Law reflects the character of responsive legal products because it fulfills three indicators, namely the law-making process that involves community participation, the nature of legal functions that contain materials that are generally by aspirations, and the low level of possibility of interpretation of a legal product. The Compilation of Islamic Law is part of the accommodative politics of the New Order government to attract the potential of Muslims as a source of legitimacy for the political system, support in elections, and the success of national development. KHI can be a valuable example for the formation and drafting of legislation in the Reformation era, especially in encouraging the presence of laws that are more responsive, participatory, and follow the needs of society.

Keywords: Compilation of Islamic Law, Responsive Law, Accommodative Politics, New Order, Politics of Law

ABSTRAK

Kompilasi Hukum Islam merupakan produk kodifikasi hukum Islam yang dihasilkan pada masa pemerintahan Orde Baru. Selain itu, penelitian ini menganalisis Kompilasi Hukum Islam sebagai bagian dari politik akomodatif pemerintah Orde Baru. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan konseptual dan sejarah. Sumber hukum primer penelitian ini adalah Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam. Hasil penelitian ini yaitu Kompilasi Hukum Islam mencerminkan karakter produk hukum responsif karena memenuhi 3 indikator, yaitu proses pembuatan hukum yang melibatkan partisipasi masyarakat, sifat fungsi hukum yang memuat materi-materi yang secara umum sesuai dengan aspirasi, dan rendahnya tingkat kemungkinan penafsiran atas sebuah produk hukum. Kompilasi Hukum Islam merupakan bagian dari politik akomodatif pemerintahan Orde Baru dalam rangka menarik potensi umat Islam sebagai sumber legitimasi sistem politik, dukungan dalam pemilu, dan menyukseskan pembangunan nasional. KHI dapat menjadi contoh berharga bagi pembentukan dan penyusunan peraturan perundang-undangan di era Reformasi, khususnya dalam mendorong hadirnya hukum yang lebih responsif, partisipatif, dan sesuai dengan kebutuhan masyarakat.

Kata Kunci: Kompilasi Hukum Islam, Hukum Responsif, Politik Akomodatif, Orde Baru, Politik Hukum

1. Introduction

The Compilation of Islamic Law (KHI) in Indonesia is essential in codifying Islamic law, officially recognized through Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. This initiative reflects the state's commitment to providing clear and structured legal guidance on essential aspects of Muslim life, such as marriage, inheritance, and waqf law. With the primary purpose of being a reference for religious courts, KHI provides a legal basis that can be used to resolve various disputes related to Islamic law.¹ Before the presence of KHI, Islamic law had long been practiced by Muslim communities in Indonesia, both in customary traditions and religious practices. However, the absence of an official codification made implementing this law more local and not bound by state-recognized legal standards. Through KHI, previously not officially documented rules are finally recognized and can be used as guidelines by authorized institutions, especially religious courts.²

The Compilation of Islamic Law is a critical guideline for religious courts in Indonesia. Religious courts have jurisdiction over cases relating to Islamic law, such as marriage, divorce, inheritance, and waqf, and use the KHI as the primary reference in resolving disputes.³ With the KHI in place, religious courts have a standardized legal framework for adjudicating such cases, thereby reducing the potential for inconsistencies and differences in interpretation among various courts. Before the KHI, religious court decisions could vary widely depending on each judge's interpretation, which could create legal uncertainty for the public. KHI provides clear and uniform rules (unification), which help provide legal certainty for the community, especially Muslims.⁴

In a broader context, KHI also plays a role in harmonizing Islamic and national laws. By recognizing KHI as part of the Indonesian legal system, there is an integration between Islamic values and national legal principles. This not only strengthens the position of Islamic law in the Indonesian legal system but also helps to create a legal environment that is more inclusive and responsive to the needs of the Muslim community. Overall, KHI plays a crucial role in supporting the functioning of religious courts in Indonesia. As such, KHI contributes significantly to efforts to deliver justice following Islamic principles and the needs of Muslim communities in Indonesia.⁵

The drafting process of the KHI involved broad participation from various parties with authority and expertise in Islamic law. Ulema, scholars, and practitioners of Islamic law were intensively involved in this process to ensure that KHI truly reflects Sharia's teachings, which Muslims widely recognize and accept in Indonesia.⁶ In 1991, this long and intensive drafting process was formalized through Presidential Instruction No. 1 of 1991, which established KHI as the official guideline for religious courts in Indonesia. This ratification was an essential step in ensuring that Islamic law is recognized and consistently applied in Indonesia's national legal system, as well as demonstrating the government's commitment to accommodating and respecting the religious aspirations of Muslims.⁷

Previous studies have discussed the Compilation of Islamic Law in terms of legal politics. First, the research conducted by Ajidin describes KHI as a legal product that appears to need legal unification. The emergence of KHI is also not separated from the existence of different legal practices in the community and differences in judges making legal decisions in Religious Courts.⁸ Second, research conducted by Keri discusses KHI legislation in terms of three aspects: constitutional aspects, content aspects, and aspects of Islamic law enforcement.⁹ Marpaung, in his research, discusses the Compilation of Islamic Law in the Indonesian legal

¹ Amrul, A., Jumadil, J., & Baskam, A. (2021). Kedudukan Kompilasi Hukum Islam dalam Penyelesaian Perkara di Pengadilan Agama: Perspektif Sistem Hukum Indonesia. *Al-Azhar Islamic Law Review*, 3(1), 11-23.

² Sa'diyah, F., Islamiyah, I., Najib, M., & Fattah, A. (2023). Genealogi Hukum Islam di Indonesia. *Al-Thiqah: Jurnal Ilmu Keislaman*, 6(2), 86-111.

³ Mustafa, M. (2022). Eksistensi Kompilasi Hukum Islam Problematikan Penerapannya Di Indonesia. *Abdurrauf Journal of Islamic Studies*, 1(1), 55-79.

⁴ Riadi, H. (2021). Sistem Hukum Keluarga Islam Di Indonesia. *Minhaj: Jurnal Ilmu Syariah*, 2(1), 77-90.

⁵ Sholichah, I. U. (2021). Eksistensi Legal Drafting Hukum Islam Di Indonesia. *Syar'ie*, 4(2), 95-107.

⁶ Shofi, U., & Septiani, R. (2022). Eksistensi dan Penerapan Hukum Islam Dalam Hukum Positif Indonesia. *Jurnal Sosial Teknologi*, 2(8), 660-669.

⁷ Mustafa, M. (2022). Eksistensi Kompilasi Hukum Islam Problematikan Penerapannya Di Indonesia. *Abdurrauf Journal of Islamic Studies*, 1(1), 55-79.

⁸ Ajidin, A. (2022). Politik Hukum Kompilasi Hukum Islam (KHI) dalam Sistem Hukum Nasional. *Mediation: Journal of Law*, 45-54.

⁹ Keri, I. (2019). Legislasi Hukum Keluarga Islam Berdasarkan Kompilasi Hukum Islam. *Ekspose: Jurnal Penelitian Hukum dan Pendidikan*, 16(2), 361-375.

system.¹⁰ Misnan researched the history of codifying Islamic law (*taqnin*) in Islamic countries.¹¹ Of the previous studies, not a single study has discussed the Compilation of Islamic Law in terms of the theory of legal product characteristics put forward by Mahfud MD or as an accommodative politics of the New Order government. Thus, these two aspects are the novelty in this research.

This research aims to analyze the compilation of Islamic law (KHI) as a legal product from the perspective of the political theory of law proposed by Mahfud MD. With this approach, the research seeks to reveal how KHI was produced as a response to the social and political needs of Muslims in Indonesia, as well as a reflection of the dynamics of the relationship between religion and the state. In addition, the research highlights KHI as part of the accommodative political strategy pursued by the New Order government. The legal gap in this research lies in the gap between forming a responsive legal product, in this case the Compilation of Islamic Law (KHI), amid the New Order government, which is generally known to be repressive in the legislative process. This phenomenon shows a paradox in Indonesian legal politics, where on the one hand, the government tends to be centralized and authoritarian. On the other hand, it can produce participatory regulations that reflect the community's aspirations. This gap has not been widely discussed in normative legal studies, especially in how a model of legal formation, such as KHI, can be used as a reference in formulating responsive legislation in the Reformation era, which is more procedurally democratic but often lacks substantive participation.

2. Method

This research is normative legal research using conceptual and historical approaches. These two approaches are combined to explore the concept of legal politics contained in the Compilation of Islamic Law by tracing its preparation history.¹² This research uses primary and secondary legal materials as its data sources. The primary legal materials are the Compilation of Islamic Law and Presidential Instruction No. 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law. The secondary legal materials are books, journals, and other literature related to the topic of discussion.¹³ Data is collected through documentation or document study. Legal materials are analyzed through data reduction, analysis, and conclusions.¹⁴

3. Results and Discussion

3.1 *Compilation of Islamic Law as the Realization of Responsive Law*

The Compilation of Islamic Law is a monumental effort to integrate Islamic values with the national legal system. This initiative was born out of the need to harmonize religious rules with the state's legal framework, enabling the application of Islamic law in a broader and more structured context, particularly in the religious courts.¹⁵ As a legislative product, the Compilation of Islamic Law reflects the desire to codify Islamic law and the aspiration to create laws responsive to the Indonesian Muslim community's social dynamics and needs. This is important given that Indonesia is a country with a predominantly Muslim population.¹⁶

Speaking of responsive law, it can be seen that the typology of responsive law was born by legal sociology figures, namely Philippe Nonet and Philip Selznick, in a book he wrote entitled *Law and Society in Transition Toward Responsive Law* (published in 1978). The book outlines three conditions regarding society's fundamental laws: repressive, autonomous, and responsive. First, repressive law is defined as a tool of repressive power; law is subject to power politics, disobedience is seen as deviation, criticism is seen as disloyalty, and maintaining the status quo of the ruler. Second, autonomous law means law as an institution that can neutralize or tame repression and protect the integrity of the law itself. The purpose of law is legitimacy, and law is independent from politics, and there is a separation of powers where legal criticism arises. Third, responsive law means law as a means of responding to social provisions and community

¹⁰ Marpaung, W. (2023). Diskursus Kompilasi Hukum Islam (KHI) dalam Sistem Hukum Indonesia. *Al-Ussrah: Jurnal Al Ahwal As Syakhsyah*, 11(1), 1-21.

¹¹ Misnan, M. (2021). Sejarah Kodifikasi Hukum Islam (Taqnin) Di Negara Islam. *Al-Ussrah: Jurnal Al Ahwal As Syakhsyah*, 9(1), 72–82.

¹² Marzuki, P. M. (2005). *Penelitian Hukum*. Jakarta: Kencana Prenada Media, p. 35.

¹³ Susanti, D. O., & Efendi, A. (2022). *Penelitian Hukum: Legal Research*. Sinar Grafika., p. 48.

¹⁴ Bahtiar, B. (2018). *Metode Penelitian Hukum*. Tangerang Selatan: UNPAM Press, p. 76.

¹⁵ Husaini, H., Mariani, M., Hasan, A., & Jalaluddin, J. (2023). Peran Hukum Islam dalam Pembangunan Hukum Nasional di Indonesia. *UNES Law Review*, 6(2), 4285-4292.

¹⁶ Ajidin, A. (2022). Politik Hukum Kompilasi Hukum Islam (KHI) dalam Sistem Hukum Nasional. *Mediation: Journal of Law*, 45-54.

aspirations. The purpose of law is competition, and legitimacy lies in substantive justice; there is integration between politics and law.¹⁷

According to Nonet and Selznick in their book, the definition of responsive law provides an understanding of the ideals of law that function in a dynamic society. According to them, responsive law is a legal framework designed to respond to society's needs and aspirations, not just as a rigid instrument of social control. It emphasizes the importance of law as a reflection of society's evolving social provisions and expectations, which continue to change along with the times. According to Nonet and Selznick, the primary goal of responsive law is to achieve substantive justice, which means that the focus is not only on fulfilling formal procedures but also on outcomes that are fair and beneficial to society. Responsive law seeks to go beyond the rigid implementation of rules and pursue the broader goal of ensuring that the law contributes to justice and social welfare.¹⁸

Mahfud MD later adopted the theory of responsive law, which Nonet and Selznick put forward in their book entitled *Political Law in Indonesia*. He divides the character of legal products into two: responsive/populistic legal products and conservative/orthodox/elitist legal products. Responsive/populistic legal products are legal products that reflect a sense of justice and meet community expectations. Making it provides a significant role and full participation of social groups or individuals. The results are responsive to the demands of social groups or individuals in society. Conservative/orthodox/elitist legal products are legal products whose contents reflect more the social vision of the political elite, more reflective of the government's wishes, positivist-instrumentalist in nature, which is a tool for implementing state ideology and programs. Contrary to responsive law, orthodox law is closer to the demands of groups and individuals in society. The role and participation of the community are relatively small in making the law.¹⁹

To qualify a legal product in the responsive or conservative category, the indicators used are the law-making process, the nature of legal functions, and the possibility of interpreting a legal product. The three indicators proposed by Mahfud MD regarding the characteristics of responsive law, namely the participatory law-making process, the aspirational nature of legal functions, and the limited possibility of interpretation for the government, can be used to analyze the Compilation of Islamic Law in Indonesia. This approach can assess the extent to which the Compilation of Islamic Law reflects the principles of responsive law.

The first indicator concerns law-making. Legal products responsive in character are participatory, which invites as much community participation as possible through social groups and individuals in the community. Meanwhile, the law-making process with an orthodox character is centralized because it is more dominated by state institutions, especially holders of executive power.²⁰

The Minister of Religious Affairs, Munawir Sadzali, first announced the idea of compiling Islamic law in Indonesia in February 1985 in his lecture in front of the IAIN Sunan Ampel Surabaya students. Since then, various parties have warmly welcomed this idea.²¹ The idea of formulating the Compilation of Islamic Law arose after two and a half years of the Supreme Court (MA) fostering the judicial technical field of Religious Courts. This task was based on Law No. 14 of 1970, which stipulated that the existing courts' personal, financial, and organizational arrangements were left to their respective Departments. While the Supreme Court handled the technical judicial arrangements. Although the law was enacted in 1970, its implementation within the Religious Courts was only possible in 1982 after the signing of a Joint Decree (SKB) by the Chief Justice of the Supreme Court and the Minister of Religious Affairs. The SKB was a shortcut without waiting for the issuance of the Law implementing Law No. 14 of 1970 above for the Religious Courts.²²

Based on this information, the idea to compile Islamic Law only emerged around 1985 and resulted from a compromise between the Supreme Court and the Ministry of Religious Affairs. The move to realize this activity received the support of many parties. In March 1985, President Soeharto took the initiative so that a SKB (Joint Decree) was issued by the Chief Justice of the Supreme Court and the Minister of Religious Affairs

¹⁷ Philippe, N., & Selznick, P. (1978). *Law & Society in Transition: Toward Responsive Law*. Edited by Rafael Edy Bosco. Jakarta: Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), p. 13; Saifullah. (2007). *Refleksi Sosiologi Hukum* (Edisi Revisi). Bandung: PT. Refika Aditama, p. 90.

¹⁸ *Ibid.*

¹⁹ Mahfud, M. (2009). *Politik Hukum Di Indonesia*. Jakarta: Raja Grafindo Persada, p. 33.

²⁰ *Ibid.*

²¹ Salim, A. S. (2022). *Formulasi Hukum Keluarga Sebagai Positifisasi Hukum Islam Di Indonesia*. *Syariati: Jurnal Studi Al-Qur'an dan Hukum*, 8(2), 231-242.

²² Shofi, U., & Septiani, R. (2022). *Eksistensi dan Penerapan Hukum Islam Dalam Hukum Positif Indonesia*. *Jurnal Sosial Teknologi*, 2(8), 660-669.

which established the Islamic Law Compilation project, which means that from an early age this activity has received full support from the Head of State.

Through the Joint Decree of the Chief Justice of the Supreme Court and the Minister of Religious Affairs dated March 21, 1985 No. 07/KMA/1985 and No. 25 of 1985 concerning the Appointment of Implementers of the Project for the Development of Islamic Law through Jurisprudence, the project activities began which lasted for 2 years. The implementation of this project was then supported by Presidential Decree No. 191/1985 dated December 10, 1985, for Rp230,000,000.00. This money did not come from the state budget but directly from President Soeharto himself. The President's commitment to the project's success is also evident here.²³

The implementation of the compilation of the Compilation of Islamic Law was carried out through four stages, namely the preparation stage, the data collection stage, the stage of drafting the Compilation of Islamic Law from these data, and the stage of refinement by collecting final inputs from Muslim scholars or scholars throughout Indonesia who were referred through workshops. The preparatory stage was established by establishing a project implementation committee consisting of a chief executive and field executives, including the kitab/yurisprudence field, the interview field, and the data collection and processing field. The project implementation committee comprised the representatives of the Supreme Court and the Ministry of Religious Affairs.²⁴

In the data collection stage, four channels were used: the ulama channel, the fiqh book channel, the religious court jurisprudence channel, and the comparative study channel. First, the ulama route was pursued by interviewing 181 respondents throughout Indonesia in 10 locations, namely Banda Aceh, Medan, Palembang, Padang, Central Java, West Java, East Java, Ujung Pandang, Mataram, and Banjarmasin.²⁵ Second, the path of fiqh books is pursued by reviewing and examining as many as 38 pieces/types of fiqh books that are divided into 7 IAINs that have been appointed, namely IAIN Ar-Raniry Banda Aceh, IAIN Syarif Hidayatullah Jakarta, IAIN Antasari Banjarmasin, IAIN Sunan Kalijaga Yogyakarta, IAIN Sunan Ampel Surabaya, IAIN Alauddin Ujung Pandang, and IAIN Imam Bonjol Padang. In addition, it is also taken from the results of fatwas that were developed in Indonesia, such as the fatwas of the Indonesian Ulema Council (MUI), the Tarjih Council of Muhammadiyah, Nahdatul Ulama (NU), and so on.²⁶

Third, the path of jurisprudence was conducted through research on jurisprudence compiled in 16 books. The books were issued between 1976 and 1984 and consist of a collection of decisions of the Religious Courts, Religious High Courts, Fatwas of the Supreme Court, Jurisprudence of the Religious Courts, and Law Reports. Fourth, the comparative study route was carried out by conducting comparative studies in the Middle East, namely Morocco, Turkey, and Egypt.²⁷

After the specified schedule was completed, the data collection was continued with data processing and the preparation of a draft compilation of Islamic Law by a predetermined team, and this draft was then submitted to a National Workshop held specifically for its improvement. This National Workshop was held in Jakarta on February 2-5, 1988. The workshop was attended by 124 participants from all over Indonesia, consisting of the Chairmen of the Provincial Councils of Ulama, the Chairmen of the Religious High Courts throughout Indonesia, several IAIN Rectors, several Deans of IAIN Sharia Faculties, several representatives of Islamic organizations, several scholars and several Muslim scholars, both in the region and in the center, not to forget the representatives of women's organizations.²⁸

Encouragement to the government to immediately legalize the Compilation of Islamic Law emerged from various parties. However, there were still different views about the legal product that would accommodate the compilation. Ideally, it should be set out in one law. However, it was feared that if we had to re-draft an Act,

²³ Imanuddin, S. S. (2020). Kedudukan Kompilasi Hukum Islam (KHI) Sebagai Normative Considerations Hakim Pengadilan Agama. *Jurnal: Waqfa*, 11(3), 1-16.

²⁴ Sumitro, W., Wahyudi, S., & Basuki, I. (2005). *Perkembangan Hukum Islam Di Tengah Dinamika Sosial Politik Di Indonesia*. Malang: Bayumedia Publishing, p. 180.

²⁵ Riyawi, M. R., & Nelli, J. (2021). Reinterpretasi Hukum Keluarga Dalam Hukum Nasional (Studi Tentang Kompilasi Hukum Islam Di Indonesia). *HUKUMAH: Jurnal Hukum Islam*, 4(2), 137-160.

²⁶ Mahkamah Agung RI. (2011). *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya*. Jakarta: Mahkamah Agung RI, p. 25.

²⁷ Shofi'i, E. N. (2023, November). Legalitas Talfiq Dalam Kompilasi Hukum Islam: Studi Buku I KHI Tentang Perkawinan. In *AICOLS: Annual International Conference on Law and Sharia*, 7 (1), 33-69.

²⁸ Mahkamah Agung RI. (2011). *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya*, p. 31; Sumitro, W., Wahyudi, S., & Basuki, I. (2005). *Perkembangan Hukum Islam Di Tengah Dinamika Sosial Politik Di Indonesia*. Malang: Bayumedia Publishing, p. 181.

the process would be protracted and take a long time.²⁹ In the end, on June 10, 1991, Soeharto signed Presidential Instruction No. 1 of 1990. Since then, the compilation of Islamic law has formally been applied throughout Indonesia as the material law used in the religious courts. As a follow-up, on July 22, 1991, the Minister of Religious Affairs issued Decree No. 154 of 1991 concerning the implementation of Presidential Instruction of the Republic of Indonesia No. 1 of 1991 dated June 10, 1991.³⁰

The Compilation of Islamic Law in Indonesia is a clear example of a participatory law-making process, which starts from the community's aspirations and involves various parties in its preparation. The process of drafting the Compilation of Islamic Law was not done unilaterally by the government, but through consultations and discussions involving ulama, academics, scholars, and the government. This initial step marked that this regulation was indeed born from the aspirations of the Indonesian Muslim community, who longed for legal certainty in Islamic law. Various workshops and public discussions were held to gather views and input from various parties. In addition, this process also received the full support of President Soeharto, who demonstrated the government's commitment to realizing this project. The Joint Decree of the Chief Justice of the Supreme Court, the Minister of Religious Affairs, and the Presidential Decree on this project demonstrate the coordination and collaboration between government institutions and community leaders in realizing the Compilation of Islamic Law.

By involving various elements of society in the drafting process, the Compilation of Islamic Law fulfills the criteria of responsive law as stated by Mahfud MD. This participatory process ensures that the rules produced are relevant and acceptable to the broader community. This shows that the Compilation of Islamic Law is not just a legal product, but the result of a dialogical process that reflects the aspirations and needs of the Indonesian Muslim community.³¹

The second indicator is the nature of the legal functions. Judging from its function, the law with a responsive character is aspirational. This means that it contains materials generally aligned with the aspirations or will of the community it serves. Thus, legal products can be regarded as the crystallization of the community's will. Meanwhile, the law with an orthodox character is positivist-instrumentalist. This means that it contains material that reflects the social and political vision of those in power or is more of a tool to realize the will and interests of government programs.³²

Based on its function, the Compilation of Islamic Law in Indonesia can be analyzed as an aspirational legal product. It contains materials following the aspirations and wishes of the community it serves. This regulation is designed to answer the real needs of the Muslim community in Indonesia in various aspects, such as marriage law, inheritance, and waqf.³³ The compilation of Islamic law seeks to provide clear rules based on Sharia relevant to Indonesian society's social context. The drafting process involving Islamic scholars and jurists ensures that the resulting rules are based on Sharia values and society's expectations and practices.

In its preparation, various contemporary issues of concern to society, such as women's rights in marriage and divorce and the management of inheritance property, were discussed in depth. This reflects an effort to include material relevant to Indonesian Muslim society's conditions and needs today. The extensive involvement of the community in the drafting process of the Compilation of Islamic Law shows that this legal product can be seen as a crystallization of the will of the community. The drafting of rules involving broad participation from various segments of Indonesian Muslim society ensures that the resulting rules reflect the values, needs, and aspirations championed by the community itself.

The third indicator is the possibility of interpretation of a legal product. Regarding interpretation, legal products that are responsive/populist in character usually provide little opportunity for the government to make its interpretation through various implementing regulations, and even that narrow opportunity only applies to truly technical matters. Meanwhile, legal products with an orthodox/conservative/elitist character provide ample opportunities for the government to make various interpretations with various follow-up regulations based on

²⁹ Sjaiful, M., Alwi, I., Sukring, S., Haris, O. K., Jabalnur, J., & Rahman, A. S. (2022). Analisis Hukum Eksistensi Kompilasi Hukum Islam (KHI) tentang Waris dalam Pembagian Harta Warisan di Indonesia. *Halu Oleo Legal Research*, 4(2), 342-355.

³⁰ Mahkamah Agung RI. (2011). *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya*, p. 34.

³¹ Sulfanwandi, S. (2020). *The Kompilasi Hukum Islam in Indonesia: Compilation and Its Relation to Islamic Jurisprudence [Kompilasi Hukum Islam di Indonesia: Penyusunan dan Kaitannya dengan Ushul Fikih]*. *Legitimasi: Jurnal Hukum Pidana dan Politik Hukum*, 9(2), 219-236.

³² Mahfud, M. (2009). *Politik Hukum Di Indonesia*. Jakarta: Raja Grafindo Persada, p. 34.

³³ Sumarta., & Edy, S. (2022). Analisis Eksistensi Reformasi Hukum Islam Keluarga Dalam Kompilasi Hukum Islam di Indonesia. *Jurnal Hukum Pelita*, 3(2), 155-175.

the government's unilateral vision. Not just technical issues. Therefore, legal products with a responsive character usually contain important matters in sufficient detail, making it difficult for the government to make its interpretations. Meanwhile, legal products with an orthodox character usually tend to contain brief and basic material and then provide ample opportunities for the government to regulate based on its vision and political power.

This indicator states that responsive legal products tend to provide little opportunity for the government to make its interpretations, and these opportunities only apply to technical matters. The Compilation of Islamic Law regulates private or civil relationships, such as marriage, inheritance, and waqf. Because this regulation governs civil relationships, the government's intervention ability is limited. The government does not have much room to make its interpretations or establish implementing regulations that could change the essence of the rules in the KHI. The government's role is more in administration and technical implementation, such as marriage registration, document verification, and implementation of religious court decisions.

Table 1. Legal Product Indicator Analysis of the Compilation of Islamic Law

Indicator	Implementation	Conclusion
The Law-Making Process	It is made with the participation of the community, including scholars, academics, intellectuals, and the government. There are seminars or workshops as part of the drafting process.	Responsive
Nature of Law Function	It contains materials following the aspirations or will of the community it serves, namely the provisions of Islamic law governing marriage, inheritance, and waqf that are acceptable to the community. Broad community involvement also crystallizes the community's will.	Responsive
Possible Interpretations of a Legal Product	The government has little room for interpretation or intervention because the Compilation of Islamic Law regulates private or civil matters. The open space for the government's role in compiling Islamic law is more available for administrative and technical issues.	Responsive

Based on the analysis of the three indicators put forward by Mahfud MD, the Compilation of Islamic Law (KHI) can be categorized as a responsive legal product. The process of making it is participatory, involving various elements of society such as ulama, academics, scholars, and the government, reflecting the broad involvement of the community in preparing the law. The nature and function of KHI are aspirational, accommodating the needs and aspirations of Muslims in Indonesia so that its legal material crystallizes the will of the Muslim community. In addition, KHI is compiled in detail and specifically, which limits the space for the government to make broad interpretations and only provides opportunities for interpretation in administrative technical aspects. Thus, KHI fulfills all three indicators as a responsive legal product, reflecting participation, aspirations, and restrictions on government interpretation by the principles of responsive law.

3.2. *Compilation of Islamic Law as Part of Accommodative Politics*

During the New Order era in Indonesia, the relationship between the state and Islam experienced dynamics that were divided into three main phases: the antagonistic period, the critical reciprocal period, and the accommodative period. Each phase reflected changes in the government's political strategy and approach towards Islamic groups, influenced by various political, social, and economic factors. At the beginning of the New Order government, the relationship between the state and Islam was characterized by tension and conflict. The government under President Soeharto suspected Islamic organizations as potential threats to state stability and security. This was mainly due to the involvement of some Islamic groups in political movements that were considered contrary to the vision of the state that the New Order wanted to build.³⁴

During this period (1966-1981), the New Order government attempted to control and limit Islamic political activity through various means. One prominent example was the dissolution of the Masyumi Party in 1960, which the New Order supported as it was considered to have the potential to oppose government policies. The

³⁴ Thaba, A. A., & Gaffar, A. (1996). *Islam Dan Negara Dalam Politik Orde Baru*. Jakarta: Gema Insani Press, pp. 240.

Masyumi Party, as an Islamic-based political party that was once one of the significant forces in Indonesian politics, was considered by the New Order as a threat due to its vast influence among Muslims and its potential to mobilize opposition to the regime. The dissolution of Masyumi became symbolic of the New Order's efforts to eliminate independent Islamic political forces and integrate all political activities under state control.³⁵

This antagonistic period reflected the New Order's heavy-handed approach to dealing with political opposition, including religious-based ones. The government sought to consolidate its power by reducing Islam's political role and ensuring that all political and social activities were under state control. These measures aimed to create the political stability necessary to implement an ambitious economic development program, although often at the expense of political freedoms and civil rights.³⁶

During the critical reciprocal period (1982-1985), the relationship between the New Order government and Islamic groups entered a more complex and dynamic phase. The government began to realize that a completely antagonistic approach to Islam could lead to greater resistance. Therefore, the New Order shifted to a more dialogic approach but still with strict supervision and control. One of the most significant policies during this period was applying the single principle of Pancasila to all community organizations (CSOs) and political parties. Applying the single principle of Pancasila caused various reactions from Islamic organizations. However, in the end, most Islamic organizations chose to accept the single principle of Pancasila as a strategic step to survive in a very tight political climate. More intense dialogue between the government and Islamic groups characterized this critical reciprocal period.³⁷

The accommodative period in the relationship between the state and Islam lasted from 1985 until the end of the New Order government in 1998. This accommodative relationship began to appear when the government's policy, through the Minister of Education and Culture, removed the ban on Muslim dress (jilbab) in schools. When Dr. Daded Joesoef became the Minister of Education and Culture, through Government Regulation No. 052/C/Kep/D.82, which was officially enacted on March 17, 1982, prohibited wearing Muslim clothing (jilbab) in public schools. Since the issuance of this government regulation, many cases have arisen because the treatment of Principals in schools in Indonesia is not uniform. Some allow it, but some prohibit it. Many of these cases went to court. Meanwhile, among Muslims, there was criticism of the regulation. After the cabinet change, especially after Prof. De Hasan Walinono held Dikdasmen, consultations were held with MUI and Islamic leaders, looking for the best solution to this jilbab issue.³⁸

These positive developments continued, for example with the passing of the National Education Bill; the settlement of the Monitor case, the passing of the Religious Courts Bill, the sending of preachers to transmigrant areas, the establishment of ICMI, increasing the work of the Pancasila Muslim Charity Foundation led by President Soeharto; the establishment of Bank Muamalat, "greening" the DPR/MPR, the VI Development Cabinet, and the 1993/ 1998 Golkar DPP board; organizing the Istiqlal Festival, resolving the SDSB case, handling the Bapindo case; operations to eradicate crime and pornography; and most recently the Darul Arqam Case and the Pandeglang Group.³⁹

The drafting process leading up to the presidential instruction to disseminate the Compilation of Islamic Law through Presidential Instruction No. 1 of 1991 was in an accommodative period. This initiative aimed to ease tensions between the state and Islamic groups and show that the government appreciated and accommodated the needs and aspirations of the Muslim community. This move demonstrated the government's accommodative policy in Indonesia. By recognizing and accommodating Islamic law in the national legal system, the government is trying to show that it is not antagonistic towards Islam, but instead, is willing to cooperate and meet the needs of the Muslim community. This helps to create a more conducive and harmonious atmosphere in the relationship between the government and Islamic groups.

The Compilation of Islamic Law was a strategic step taken by the New Order government as part of its accommodative politics towards Muslims in Indonesia. This step can be understood by looking at the state's perception of Islam, including the potential of Muslims as a source of legitimacy for the political system, votes

³⁵ Imawanto, I., Yanto, E., Fahrurrozi, F., & Erwin, Y. (2021). Pengaruh politik dalam pembentukan hukum di Indonesia. *Media Keadilan: Jurnal Ilmu Hukum*, 12(1), 163-183.

³⁶ Najib, A. (2021). *Dialektika Politik Hukum Islam Dalam Pembangunan Sistem Hukum Nasional*. HUKMY: Jurnal Hukum, 1(1), 109-131.

³⁷ Syam, S., Syahrul, S., & Ameliyah, S. (2023). *Pembangunan Politik Hukum Islam pada Masa Orde Baru, Reformasi dan Pasca Reformasi*. *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, 17(2), 1069-1086.

³⁸ Suryana, C., Khijami, Z. M., Ambarwati, N., & Muhaimin, M. (2024). *Dinamika Politik Islam Di Indonesia: Pandangan Politik H. Asep Komarudin, S.Ag., M.Ud.* Gunung Djati Publishing. Bandung: Gunung Djati Publishing.

³⁹ Thaba, A. A., & Gaffar, A. (1996). *Islam dan Negara dalam Politik Orde Baru*. Jakarta: Gema Insani Press, p. 63.

in elections, and their contribution to the success of national development. Muslims make up the majority of Indonesia's population and have an essential role in providing legitimacy to the political system implemented by the government. By drafting and disseminating the KHI, the government sought to show that it was serious about accommodating Muslims' values and legal needs. This helped to reduce tensions and increase Muslims' trust in the government, thus strengthening the legitimacy of the existing political system.

During the New Order era, Muslim votes were crucial to the government's electoral success. The government realized that by paying special attention to the aspirations of Muslims, they could gain significant political support.⁴⁰ KHI served as tangible evidence that the government was not just making promises, but also taking concrete steps to address the legal needs of the Muslim community. As such, Muslims were more likely to lend their political support to a government that was perceived to be responsive to their interests.

National development was the main agenda of the New Order, and the participation of all elements of society, including Muslims, was necessary for its success.⁴¹ By accommodating Islamic law through the KHI, the government not only eased potential conflicts and social tensions but also created more harmonious conditions that supported national development programs. When Muslims feel valued and recognized by the government, their active participation in various development fields becomes more likely. Thus, KHI is a political tool to achieve more inclusive and sustainable national development goals.

4. Conclusion

The Compilation of Islamic Law (KHI) reflects the character of responsive legal products because it fulfils the three indicators mentioned by Mahfud MD. First, the drafting process involved the active participation of various elements of society, including ulama, academics, scholars, and the government, thus creating an inclusive and representative law. Second, KHI contains materials that reflect the aspirations of the Indonesian Muslim community, especially about marriage law, inheritance, and waqf, indicating that this regulation is the crystallization of the community's will. Third, there is a low possibility of interpretation by the government. The role of the government is more directed in terms of administration and technical implementation. KHI was also part of the accommodative political strategy of the New Order government. Under President Soeharto's leadership, the government realized the importance of attracting support from Muslims, who comprise most of the population. By accommodating the legal aspirations of Muslims through KHI, the government sought to strengthen the legitimacy of its political system, gain significant support in elections, and create conditions that were more conducive to the success of the national development agenda. Thus, KHI not only functions as a responsive legal product but also as an effective political tool in maintaining stability and supporting national growth. KHI can be a valuable example for the formation and drafting of legislation in the Reformation era, especially in encouraging the presence of laws that are more responsive, participatory, and follow the needs of society.

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⁴⁰ Effendy, B. (1998). *Islam Dan Negara: Transformasi Pemikiran Dan Praktik Politik Islam Di Indonesia*. Jakarta: Paramadina, p. 319.

⁴¹ Rosa, D. V. (2022). Pancasila Dan Politik Toleransi Orde Baru. *Jurnal Ilmu Sosial dan Ilmu Administrasi Negara*, 6(1), 1-16. <https://doi.org/10.30737/mediasosian.v6i1.2330>

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