BEYOND HARMONIZATION: CONFLICT RESOLUTION AS A LEGAL BRIDGE OF INDONESIAN ISLAMIC FAMILY LAW REFORM IN KOMPILASI HUKUM ISLAM

Cipto Sembodo
Universitas Cokroaminoto Yogyakarta

Zainul Arifin
Universitas Cokroaminoto Yogyakarta

Supriati Hardi Rahayu
Universitas Cokroaminoto Yogyakarta

Ahmad Syafi'i Rahman
Universitas Cokroaminoto Yogyakarta

Mualimin Mochammad Sahid
Universiti Sains Islam Malaysia

Abstrak

Artikel ini mengkaji pola resolusi konflik hukum Islam- hukum adat dalam formasi Kompilasi Hukum Islam (KHI) di Indonesia. Penelitian ini menegaskan: KHI adalah entitas hukum dan jembatan reformatif genuine dalam relasi pluralisme hukum, bukan objek harmonisasi dua sistem hukum, sekaligus menyatakan bahwa konflik hukum Islam–adat bukan anomali. Melalui pendekatan yuridis-normatif dan analisis konseptual, peneliti menelusuri bagaimana KHI merepresentasikan ijtihad institusional negara dalam merespons ketegangan antara norma syariah, praktik adat, dan kebutuhan sosial masyarakat Muslim Indonesia. Temuan penelitian membuktikan KHI dibangun melalui tiga pola utama resolusi konflik: (1) kompromi normatif antara fikih dan praktik adat yang memunculkan konsep wasiat wajibah khas Indonesia; (2) adopsi institusi adat yang disepadankan dengan prinsip hukum Islam, seperti pengaturan harta bersama dalam perkawinan; dan (3) penyesuaian adat dalam bingkai syariah, seperti konsep ahli waris pengganti. Pola-pola tersebut menegaskan bahwa resolusi konflik dalam KHI bersifat metodologis dan reflektif. Akhirnya, KHI merupakan model resolusi konflik normatif aktif dan produktif di tengah pluralisme hukum Indonesia. Inilah kontribusi teoretis bagi kajian hukum Islam kontemporer sekaligus tawaran arah kebijakan reformasi KHI yang lebih inklusif, kontekstual, dan berorientasi pada maqashid al-shari'ah.

Kata Kunci: Resolusi konflik, Reformasi Hukum Islam, Kompilasi Hukum Islam, Pluralisme Hukum Hukum Adat.

Abstract

This article examines conflict resolution patterns between Islamic law and customary law in the formation of Compilation of Islamic Law (KHI) in Indonesia. KHI constitutes a legal entity and a genuinely reformative bridge within legal pluralism, not mere an object of harmonization, and affirms that such conflicts are not anomalous. Employing a juridical-normative approach and conceptual analysis, the study traces how KHI represents the state's ijtihad in responding to tensions among sharia norms, customary practices, and Indonesian Muslim society. The findings demonstrate three principal patterns of conflict resolution: (1) normative compromise between classical fiqh and customary practices, giving rise to the distinctly Indonesian concept of wasiat wajibah (mandatory bequest); (2) the adoption of customary institutions aligned with the principles of Islamic law, as the marital joint property showed; (3) adjusting customary norms within a sharia framework, exemplified by the concept of substitute heirs. These patterns underscore methodological and reflective nature of conflict resolution within KHI. KHI emerges as a model of active and productive normative conflict resolution within Indonesia's legal pluralism. This constitutes a theoretical contribution to contemporary Islamic legal scholarship while proposing a policy-oriented direction for a more inclusive, contextual, and maqāṣid al-sharīʿah-oriented reform of the KHI.

Keywords: Conflict Resolution, Islamic Legal Reform, Compilation of Islamic Law, Legal Pluralism, Customary Law.

A. Introduction

Family law is perpetually engaged in a process of dialectical interaction with religious values, customary traditions, and the social realities of society. This is precisely why it constitutes one of the most dynamic fields among legal disciplines. The applicability of family law is not derived solely from the normative teachings of Islamic law but is also shaped by the diversity of living customary norms that develop within society. This condition renders Islamic family law in Indonesia pluralistic and contextual in character, while simultaneously opening spaces for conflict and tension between the norms of Islamic law and customary law.[1]

[1] Maskur Rosyid and Dhani Dwi Afrizal, "Integrasi Hukum Adat Dalam Pembaharuan Hukum Keluarga Islam Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 2 (2025): 1792–1812, https://doi.org/10.62976/ijijel.v3i2.1170; Rr Dewi Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraint," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 25–48, https://doi.org/10.15408/ajis.v23i1.32549; M Nasution, "Analisis Kompilasi Hukum Islam Tentang Tipologi Pelaksanaan Hukum Keluarga Islam Di Mandailing Natal," *Al-Manahij: Jurnal Kajian Hukum Islam* 9, no. 1 (2015): 31–49, https://doi.org/10.24090/mnh.v9i1.510.

The Compilation of Islamic Law represents the state's effort to codify and unify Islamic family law. It is intended to serve as a primary reference for the Religious Courts in resolving Islamic family law cases, ranging from marriage and inheritance to waqf.[2] From the outset, however, it has been acknowledged that the KHI is not entirely free from normative relational problems between Islamic law and customary law.[3] A number of its provisions reveal processes of negotiation, accommodation, and even compromise between classical fiqh norms and the customary norms and social realities that prevail in Indonesian society.

As a form of Islamic family law reform in Indonesia, the KHI therefore cannot be disentangled from the resolution of conflicts between Islamic legal norms and customary law. Such conflicts manifest in various forms, including differences in normative principles, divergences in social practices, and tensions between religious values and demands for social justice. It is within this context that examining the patterns of conflict resolution employed in the formation and development of the KHI becomes particularly significant, especially with regard to legislative approaches and the contextual reinterpretation of Islamic law.

Uncovering the patterns of conflict resolution between Islamic law and customary law in the reform of family law is essential for understanding the direction and character of Islamic legal reform in Indonesia. This analysis contributes to the enrichment of Islamic law and family law scholarship, while also providing a descriptive account of the dialogical interaction between Islamic law, customary norms, and the national legal system. Ultimately, this research is expected to elucidate

[2] Sofyan A P Kau, "Akomodatif Kompilasi Hukum Islam (KHI) Indonesia Terhadap Hukum Adat," *Al-Mizan (e-Journal)* 12, no. 1 (2016): 26–46, https://doi.org/10.30603/am.v12i1.123.

[3] Hikmatullah, "Selayang Pandang Sejarah Penyusunan Kompilasi Hukum Islam Di Indonesia," *Syakhshia* 19, no. 1 (2018): 39–52, https://doi.org/10.37035/syakhsia.v17i1; Anna Muwaffika, "KHI : Upaya Transformasi Hukum Keluarga Islam Ke Dalam Sistem Hukum Nasional," *ALWAQFU: Jurnal Hukum Ekonomi Dan Wakaf* 3, no. 1 (2025): 1–17, https://doi.org/10.30821/alwaqfu.v1i1; A P Sofyan and Zulkarnain Suleman, "Eksistensi Hukum Adat Dalam Kompilasi Hukum Islam Indonesia (KHI)," *Al-'Adalah* 13, no. 2 (2016): 165–78, https://doi.org/10.24042/adalah.v13i2.

the dynamics of Islamic law–customary law conflict resolution and its implications for the reform of the KHI as a living legal product that is responsive to social change.

A substantial body of scholarship has examined the interaction between Islamic law and customary law in Indonesia. However, such studies tend to focus on empirical manifestations of legal conflict at the micro level or on specific legal fields such as inheritance or customary social practices, often "without developing a comprehensive theoretical model" of normative conflict resolution patterns within formal legal documents such as the KHI. Research on Islamic law–customary law conflicts in various communities, for instance in Bali and Kalimantan, highlights social negotiation and practical coexistence among norms, yet primarily emphasizes social practices and field evidence rather than systematically reconstructing normative patterns of legal compromise within the KHI.[4]

Several normative studies have also explored the harmonization of Islamic law, customary law, and national law—particularly in inheritance law or the construction of family law—but these remain largely confined to juridical analyses of statutory provisions and legal doctrines, without conceptualizing conflict resolution patterns as a coherent analytical structure. For example, studies on the harmonization of Islamic inheritance law and customary law tend to elaborate differences and normative relationships, yet fail to frame them as methodological patterns of compromise or adoption that could serve as a theoretical model.[5]

Fortunately, scholarship on legal pluralism in Indonesia has mapped the tensions among national law, customary law, and Islamic law, especially in the field of inheritance and structural pluralism. Nevertheless, such studies generally interpret limited pluralism either as a social reality or as a source of normative conflict within

[4] Irawan et al., "Negotiating Legal Pluralism: Syncretism of Islamic Law and Balinese Adat in Pegayaman Village," *El-Mashlahah* 15, no. 1 (2025): 149–64, https://doi.org/10.23971/el-mashlahah.v15i1.9072.

[5] Maizidah Salas, Susilo Wardani, and Teguh Suroso, "Harmonisasi Hukum Waris Islam, Hukum Adat Dan Hukum Nasional Telaah Normatif Terhadap Kompilasi Hukum Islam, Hukum Adat Dan KUHPerdata," *Jurnal Penelitian Serambi Hukum* 18, no. 2 (2025): 275–86, https://doi.org/10.59582/sh.v18i02.1339.

particular contexts, without demonstrating how conflict resolution patterns are explicitly articulated in positive legal instruments such as the KHI.[6]

Moreover, although some literature emphasizes that the KHI is a product of Indonesian *ijtihad* reflecting the accommodation of social realities and customary norms—such as customary legal values embodied in the concept of *wasiat wajibah* or the regulation of marital joint property—these analyses remain largely descriptive of normative adoption rather than identifying systematic conflict resolution patterns capable of constituting a normative framework.[7]

This brief academic mapping reveals several significant gaps in the existing literature. First, there is a lack of conceptual and methodological analysis of conflict resolution patterns within the KHI as a normative legal entity. Most studies remain descriptive or sectoral, situated either in social contexts or in normative-juridical analysis. Second, there is insufficient integration between legal pluralism theory and the normative patterns constructed within the KHI—particularly regarding how compromise, adoption, and adjustment are determined and formulated within legal documents as outcomes of *ijtihad*. Third, there are very few—if not virtually no—studies that position the KHI as a "normative bridge" between customary practices and sharia principles within the framework of national legal harmonization, rather than merely as an "object of juridical harmonization."

This study deliberately positions the KHI as the central case study to identify patterns of conflict resolution that are normative, conceptual, and methodological in nature. By approaching the KHI as a product of contextual *ijtihad* that mediates tensions among Islamic law, customary law, and national law, this research demonstrates inter-systemic legal relations while constructing a theoretical framework of normative legal compromise that significantly enriches the study of

[6] Anggraeni, "Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraint."

[7] Sofyan and Suleman, "Eksistensi Hukum Adat Dalam Kompilasi Hukum Islam Indonesia (KHI)."

legal pluralism in Indonesia. This position seeks to fill existing academic gaps while offering a methodological contribution to the reform of Indonesian Islamic law within the context of a pluralistic, multicultural, and dynamic society. It is here that *the state of the art* and *novelty* of this research becomes clearly evident.

B. Reformation and KHI as Conflict Resolution Legal Bridge

The reform of Islamic law in Indonesia constitutes a historical inevitability. The demand for reform in Islamic law had emerged long before the country's independence and gained increasing prominence alongside the rise of national-scale independence movements. This reformist impulse continued to develop across different historical periods, extending into the Reformasi era and the post-Reformasi period, taking diverse legal forms and institutional mechanisms. Throughout these phases, the reform of Islamic law has reflected ongoing efforts to respond to changing social realities, political configurations, and legal demands within Indonesian Muslim society.[8]

The objective of Islamic legal reform is to restore the actuality and relevance of Islamic law amid ongoing social contestations. This reflects an internal legal consciousness within Islamic law to continuously provide normative and practical responses to contemporary social dynamics and transformations.[9] The objective of Islamic legal reform is to restore the actuality and relevance of Islamic law amid ongoing social contestations. This reflects an internal legal consciousness within Islamic law to continuously provide normative and practical responses to contemporary social dynamics and transformations.[10]

[8] Andi Herawati, "Perkembangan Hukum Islam Di Indonesia (Belanda, Jepang, Dan Indonesia Merdeka Sampai Sekarang)," *Ash-Shahabah: Jurnal Pendidikan Dan Studi Islam* 3, no. 1 (2017): 49–58, https://doi.org/10.59638/ash.v3i1.70; Jamilah Rizka, Faisar Ananda Arfa, and Ibnu Radwan Siddiq Turnip, "Hukum Keluarga Islam Pada Masa Reformasi," *Al-Usrah: Jurnal Al Ahwal As Syakhsiyah* 12, no. 2 (2025): 1–15, https://jurnal.uinsu.ac.id/index.php/alusrah/article/view/25223.

[9] Said Syaripuddin, "Implikasi Perubahan Sosial Terhadap Perkembangan Hukum Islam," in *Progres Hukum Keluarga Islam Di Indonesia Pasca Reformasi*, ed. Ahmad Raja (Yogyakarta: Istana Agency Publishing, 2020), 239.

[10] Marzuki Wahid, *Fiqh Indonesia: Kompilasi Hukum Islam Dan Counter Legal Draft Kompilasi Hukum Islam Dalam Bingkai Politik Hukum Di Indonesia* (Bandung: Penerbit Nuansa Cendekia, 2021); Eko Setiyo

Methodologically, the trajectory of Islamic legal reform as reflected in the formulations of the KHI remains faithful to the foundational frameworks of *uṣūl al-fiqh*. At the same time, the KHI has integrated contemporary scholarly methodologies into its law-making process. Its formulation is oriented toward addressing present-day legal and social issues through a contextual reading of the Qur'an and the Sunnah. In this regard, the KHI employs the method of *istiṣlāḥ* and adopts a compromise-based approach to conflict resolution in negotiating established and living institutions of customary law (*adat*) within Indonesian society.

The character of legal reform itself, on the one hand, consists of elements that are genuinely new within the landscape of Islamic legal thought and have no direct precedent in classical *fiqh* literature. On the other hand, such reform fundamentally represents a process of development and renewed interpretation of existing Islamic legal materials, undertaken to address concrete social problems or to resolve conflicts between Islamic legal norms and contemporary cultural and customary practices (*adat*) that are socially operative, empirically grounded, and endowed with normative force and legal values.

The term *adat* is derived from the Arabic word *ʿādah*, which denotes recurrence or repetition.[11] In the Indonesian legal context, *adat* has developed into a juridical concept referring to customary practices within a community, encompassing both moral conduct and other social domains.[12] Anwar Harjono equates *adat* with the concept of *ʿurf* in *uṣūl al-fiqh*,[13] insofar as patterns of behavior within a particular community that are regarded as good are repeatedly practiced and eventually

Ary Wibowo, "Aktualisasi Hukum Islam Dan HAM Dalam Kompilasi Hukum Islam Modernisasi Hukum Counter Legal Draft-Kompilasi Hukum Islam Implementasi Maqasid Assyari'ah," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam* 1, no. 2 (2019): 1–33, https://jurnal.staialhikmahdua.ac.id/index.php/khuluqiyya/article/download/34/27.

[11] Musa Ibn Muhammad Ibn al-Mulyani Al-Ahmadi, *Mu'jam Al-Af'al Al-Muta 'addiyah Bi Harfin*, 1st ed. (Beirut: Dar al-'Ilm Li al-Malayin, 1979), 251.

[12] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, 2nd ed. (Jakarta: Balai Pustaka, 1989), 6.

[13] Anwar Harjono, *Hukum Islam Keluasan Dan Keadilannya* (Jakarta: Bulan Bintang, 1989), 132.

crystallize into social customs. As such practices become established, they function as societal norms which, over time, may evolve into legally binding norms.[14]

The focus on conflict resolution *vis-à-vis* customary law (*adat*) represents an effort to achieve a legal settlement between Sharia values that remain *ẓannī*—or are not explicitly regulated by the *naṣṣ*—and the cultural values embedded within a given social environment. In other words, Sharia norms derived from the *naṣṣ* are often positioned in tension with customary legal values. Such conflicts cannot be allowed to persist indefinitely, as they risk rendering Islamic law ineffective in practice. It is for this reason that mechanisms of adaptation and resolution become necessary to ensure the continued functionality and social relevance of Islamic law.

Conflict resolution with respect to customary law (*adat*) is pursued through a compromise-based approach.[15] in the formulation of the KHI, particularly to address legal values for which no explicit textual basis (*naṣṣ*) can be found in either the Qur'an or the Sunnah. At the same time, such values have long taken root and evolved as customary norms and social practices, demonstrably contributing to public benefit (*maṣlaḥah*), social order, and communal harmony within broader society.

It should be noted that compromise does not entail disregarding the fundamental principles of Sharia. Rather, this approach is grounded in the recognition of *al-ʿādah al-muḥakkamah*—the legal maxim affirming the normative authority of established custom—whereby living legal values within society may be accommodated so long as they do not contradict the *naṣṣ*. Such values, although not explicitly regulated in the Qur'an or the Sunnah, are assessed through the lens of *maqāṣid al-sharīʿah*, particularly in terms of their contribution to public welfare (*maṣlaḥah*), social order, and legal effectiveness.

[14] Djaenab, "Hukum Adat Dalam Pembentukan Hukum Islam Di Indonesia (Konsep Dan Implementasinya)," *Ash-Shahabah: Jurnal Pendidikan Dan Studi Islam* 7, no. 1 (2021): 1–14, https://doi.org/10.59638/ash.v7i1.405.

[15] Departemen Pendidikan dan Kebudayaan, *Kamus Besar Bahasa Indonesia*, 433.

The history of the formation of Islamic law (*Tārīkh al-Tashrīʿ*) likewise demonstrates that compromise-based conflict resolution with customary practices took place from the earliest periods of Islamic legal development.[16] The Prophet Muhammad did not seek to abolish the formal structures of existing customs merely for their own sake; rather, his principal concern was the transformation of the moral and normative spirit of society, allowing many pre-existing customs to continue outwardly while altering their underlying ethos in accordance with Islamic values.[17] This historical dynamic underscores that Islamic legal formation has never occurred in isolation from the socio-cultural environment in which it was articulated, encouraging use of *ʿurf* (custom) as a valid consideration in legal reasoning when it does not contradict the *naṣṣ* of the Qur'an and Sunnah.[18]

Similarly, the difference between Imam al-Shāfiʿī's *Qawl al-Qadīm* and *Qawl al-Jadīd* was shaped by variations in local custom and changing socio-historical contexts. This illustrates that compromise-based resolution with customary practices in the process of Islamic legal reform possesses clear and empirically grounded historical precedents within the practice of Islamic legal history it self. From another perspective, the formulation of new legal rules on the basis of custom is also theoretically justified within *uṣūl al-fiqh*, provided that such customs do not contradict the Qur'an and the Sunnah. KHI stands within this Shāfiʿī legal tradition of contextual ijtihād.

In light of this historical precedent, the KHI can be seen as a contemporary institutional continuation of the early Islamic approach to legal pluralism—rekindling

[16] Arif Maftuhin, "The Historiography of Islamic Law: The Case of Tārīkh Al-Tashrīʿ Literature," *Al-Jami'ah: Journal of Islamic Studies* 54, no. 2 (2016): 369–91, https://doi.org/10.14421/ajis.2016.542.369-391.

[17] Dedisyah Putra, Martua Nasution, and Sabrun Edi, "Reviving the Past: The Role of Sharia in Preserving Forgotten Customs within Islamic Culture," *Al-Ras Kh: Jurnal Hukum Islam* 14, no. 1 (2025): 30–50, https://doi.org/10.38073/rasikh.v14i1.2367.

[18] Afifi Fauzi Abbas et al., "The Political Dimension of Prophethood on Civilizing the Moral Ethics, Justice, and Class Reform," *Perwakilan: Journal of Good Governance, Diplomacy, Customary Institutionalization and Social Networks* 3, no. 1 (2025): 119–34, https://doi.org/10.58764/j.prwkl.2025.3.98.

the same ethos of negotiation and contextual responsiveness in the modern Indonesian socio-legal context. As such, the KHI does not merely compile normative rules; it functions as an active bridge between Islamic legal principles and living customary norms, reflecting a methodologically rooted tradition of compromise and integration that dates back to the formative era of Islamic legal history.

Accordingly, the compromise between Islamic law and customary law in the formulation of the KHI is firmly supported by principles that are well established within Islamic legal maxims. The principle of *maṣlaḥah*, for instance, allows for the incorporation of new matters that are not explicitly regulated in the Qur'an and the Sunnah to be elevated into legally recognized norms within the Sharīʿah framework, including institutions derived from customary law. Customary law may thus be integrated into Islamic law following a process of adequate compromise, provided that the resulting norms embody a form of public interest (*maṣlaḥah*) that is acceptable in light of the general objectives and spirit of the *naṣṣ*. Similarly, the legal maxim *al-ʿādah muḥakkamah* serves as a doctrinal basis for incorporating customary legal institutions into Islamic law, insofar as such customs function as living norms that contribute to social order and legal effectiveness.

Within the context of the formulation of the KHI, the possibility of compromise with customary law is not confined merely to the selective adoption of the moral values of *adat* to be elevated into Islamic legal provisions. Rather, such compromise is also directed toward integrating and harmonizing the moral values of Islamic law—already grounded in the *naṣṣ*—with the moral values embedded in customary practices. According to Yahya Harahap, this approach aims to ensure that Islamic legal norms gradually become more attuned to the lived legal consciousness of society.[19] This process signifies a consciously pursued and incremental cultural

[19] Muhammad Yahya Harahap, *Informasi Kompilasi Hukum Islam" Dalam Cik Hasan Bisri, Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional* (Bandung: Penerbit Logos, 1999), 47.

strategy through which customary law is progressively Islamized, while at the same time Islamic law is brought closer to the normative structures of customary law.[20]

This effort is considered essential in order to complete the structure of Islamic legal norms in the fields of marriage, gifts (*hibah*), wills (*waṣiyyah*), and inheritance within Indonesian society. This is because Indonesian society—long before the arrival of Islam—was not a culturally vacant society, to borrow Roeslan Abdulgani's expression, but rather one that had already developed and practiced its own systems of customary law (*adat*). Moreover, from both philosophical and sociological perspectives, values of justice and humanity, as well as the influences of modernization and globalization, normative customary values are widely regarded as highly relevant to fostering social cohesion, balance, harmony, and legal order in human life more broadly.

C. Mapping the Indonesian Reform of Islamic Family Law in KHI

The reform of Islamic law essentially departs from what already exists and subsequently undergoes qualitative transformation as a product of sociological interaction within society. It must be acknowledged that reform in Islamic law reflects an internal dynamism. At the same time, externally, it interacts with other social elements, resulting in relations of mutual interdependence. When Islamic law engages with social life, it is inevitably confronted with various challenges, both internal and external. Consequently, the concept of Islamic legal reform requires an adaptive posture toward the social conditions in which it operates.[21]

In this regard, the realization of the legal maxim *al-muḥāfaẓah 'alā al-qadīm al-ṣāliḥ wa al-akhdh bi al-jadīd al-aṣlaḥ* (preserving what is good from the past while adopting what is new and better) becomes imperative. This is particularly important

[20] Harwis Alimuddin and Tahani Asri Maulidah, "Implication of Local Wisdom in Islamic Law Compilation Legislation," *Mazahibuna: Jurnal Perbandingan Mazhab* 3, no. 2 (2021): 142–58, https://doi.org/10.24252/mh.v3i2.24982.

[21] Amiruddin Aminullah and Muh. Sudirman, "Aspek Sosiologis Dalam Pengembangan Hukum Islam Di Indonesia," *Ash-Shahabah: Jurnal Pendidikan Dan Studi Islam* 11, no. 2 (2025): 11–22, https://doi.org/10.59638/ash.v11i2.1885.

because the conduct of the *mukallaf*, which constitutes the object of the law, is understood as a continuum that is constantly evolving.[22]

Islamic legal reform is driven by changes in conditions, circumstances, place, and time. One typology of such reform is reformist in nature, aiming to introduce new and more vibrant interpretations that are better suited to the demands of the age.[23]

Meanwhile, studies of Islamic family law in Indonesia have developed considerably, albeit with shifts in focus and approach. Scholarly interest in this field remains high, in parallel with changes in the global social setting, technological advancements, and evolving international legal standards.

Following the view that Islam may be understood as both knowledge and practice, Islamic family law has increasingly been examined through the lens of the social sciences. Rather than relying solely on historical and political perspectives, as was common in earlier stages of development, contemporary studies now incorporate sociology, anthropology, psychology, gender studies, and other disciplines. Nevertheless, these approaches have been subject to debate and critique, resulting in the continued dominance of normative or juridical approaches that tend to be dogmatic and doctrinal. Practical contributions are often perceived as more immediate and effective in resolving issues of legal application, whereas theoretical contributions—aimed at advancing legal knowledge and informing relevant authorities in addressing problems or shaping appropriate responses—receive comparatively less emphasis.[24]

In Indonesia's religious society, individual religious belief constitutes an essential element in nation-building and national character formation. Accordingly,

[22] Fitriyani Fitriyani, "Aspek-Aspek Pembaruan Hukum Islam Dalam Hukum Keluarga Di Indonesia," *Tasamuh: Jurnal Studi Islam* 11, no. 2 (2019): 249–70, https://doi.org/10.47945/tasamuh.v11i2.162.

[23] Muhammad Syafaat, Akbarizan Akbarizan, and Azzuhri Al Bajuri, "Pembaharuan Hukum Keluarga Islam Indonesia," *Hamalatul Qur'an: Jurnal Ilmu Ilmu Alqur'an* 5, no. 2 (2024): 597–606, https://doi.org/10.37985/hq.v5i2.348.

[24] UIN Sunan Kalijaga, "Peta Kajian Hukum Keluarga Islam Di Indonesia," 2022, https://ilmusyariahdoktoral.uin-suka.ac.id/id/liputan/detail/2117/peta-kajian-hukum-keluarga-islam-di-indonesia.

religious life is an indispensable component of Indonesian society, which is founded upon Pancasila as the state ideology. Pancasila functions as a state doctrine that is practiced in order to realize an orderly, secure, and prosperous social and political life, both materially and spiritually.[25]

Islamic law has, in fact, been operative since the introduction of Islam to Indonesia. In its subsequent development, Islamic law has been recognized as one of the foundational sources of national law, alongside customary law and Western law. As noted by Ratno Lukito, philosophically the sources of Indonesian national law derive from three legal systems that coexist in Indonesia: customary law, Western law, and Islamic law. Given the significant role of Islamic law in shaping and maintaining social order among Muslims and influencing various aspects of life, the most viable path forward has been the transformation of Islamic legal norms into national law, insofar as they are consistent with Pancasila and the 1945 Constitution and relevant to the specific legal needs of the Muslim community.[26]

In Book I of the KHI, which contains provisions on marriage, numerous reforms in Islamic legal thought can be identified. These reforms take the form of introducing new legal materials by utilizing institutions of customary law and principles of "maṣlaḥah", as well as developing contextual reinterpretations of existing doctrines. Such new provisions include:

1. Marriage registration (Articles 5–6);
2. Legal capacity and minimum age for marriage (Article 15);
3. Prohibition of marriage with non-Muslims (Article 40);
4. *Ta'līq ṭalāq* (Article 45);
5. Permissibility of marriage during pregnancy (Article 53);
6. Restrictions on polygamy (Articles 55–59);
7. Regulation of marital joint property (Articles 85–97);
8. Technological fertilization or in vitro fertilization (Article 99); and
9. Divorce before a court of law (Article 115).

[25] Cipto Sembodo et al., "Penyebaran Islam Di Nusantara Antara Kultur Dan Struktur," *Ulumuddin: Jurnal Ilmu-Ilmu Keislaman* 11, no. 2 (2021): 237–54, https://doi.org/10.47200/ulumuddin.v11i2.913.

[26] Syafaat, Akbarizan, and Al Bajuri, "Pembaharuan Hukum Keluarga Islam Indonesia."

Two aspects of these reforms—namely the restriction of polygamy and the prohibition of interfaith marriage—represent new developments and interpretations that differ from provisions found in classical *fiqh* literature. The remaining reforms constitute new legal materials in Islamic legal thought, adapted from established customary law institutions or formulated on the basis of *maṣlaḥah* principles.[27]

Reform in Islamic legal thought is also evident in Book II of the KHI, which regulates inheritance. The new provisions include:

1. Settlement by mutual agreement in the distribution of inherited property (Article 183);
2. Substitute heirs (*plaatsvervulling*) for orphaned grandchildren (Article 185);
3. Division of inherited land measuring less than two hectares (Article 189);
4. *Wasiat wajibah* for adopted children and adoptive parents (Article 209); and
5. Parental grants to children considered as inheritance (Article 221).

These inheritance reforms appear to be largely inspired by well-established and living customary law institutions within society. Nevertheless, the methods of resolution and accommodation (compromise) applied to customary law—resulting in new provisions within Islamic law—constitute a remarkable intellectual achievement of Indonesian Islamic legal scholars. At the same time, some observers have criticized these reforms as being overly liberal.[28]

By contrast, reforms in Islamic legal thought in the field of *waqf*, as contained in Book III of the KHI, appear to be more limited. In this domain, most provisions on waqf law do not significantly differ from those found in classical *fiqh* texts. The reforms that do exist, albeit fewer in number, include:

1. The inclusion of *nāẓir* and witnesses as essential elements (*rukn*) of waqf (Article 218);
2. The regulation of *waqf* administration (Articles 223–224); and
3. The alteration or substitution of *waqf* property (Article 225).

[27] Ratno Lukito, *The Struggle Between Islamic Law and Custom in Indonesia (INIS Series XXXV)* (Jakarta: INIS, 1998), 77–84; Ahmad Imam Mawardi, "Socio-Political Background of the Enactment of the Compilation of Islamic Law in Indonesia" (Montreal: Institute of Islamic Studies, McGill University, 1998), 155.

[28] Cik Hasan Bisri, *Kompilasi Hukum Islam Dan Peradilan Agama Dalam Sistem Hukum Nasional* (Jakarta: Logos, 1999), 14; Mohammad Atho Mudzhar, *Membaca Gelombang Ijtihad: Antara Tradisi Dan Liberasi* (Yogyakarta: Titian Ilahi Pres, 1998), 157–67.

Although quantitatively limited, the qualitative dimension of these reforms is expected to address contemporary challenges and problems. This is evident, for example, in provisions permitting flexibility or modification of *waqf* assets and land.[29] In this context, reform primarily takes the form of developing and reinterpreting Islamic waqf law as articulated in classical *fiqh* texts, in order to anticipate and respond to the dynamics of contemporary life.

These, then, are the substantive reforms in Islamic legal thought introduced through the KHI. In accordance with the aforementioned methodological framework, the reforms of Islamic law within the KHI thus far appear to have proceeded consistently by applying *maṣlaḥah* principles and accommodating well-established customary law institutions through mechanisms of compromise.

Broadly speaking, the map of Islamic family law reform in Indonesia reveals an evolution from traditional *fiqh* toward a more adaptive, gender-just, and socially relevant legal system, sustained through ongoing in-depth inquiry employing diverse methodological approaches.[30]

D. Patterns of Conflict Resolution in KHI and the Islamic Family Law Reform

The objective patterns through which the KHI formulates law in a compromise with customary law may be outlined as follows: The *first* pattern emerges when a legal rule is explicitly grounded in the naṣṣ yet encounters values embedded in customary law. In such cases, the formulation of the KHI adopts a middle-path approach, not by negating the normative authority of the naṣṣ, but by contextualizing its application so as to allow both Islamic law and customary norms to coexist within a shared legal space.

[29] Muhammad Yahya Harahap, "Informasi Materi Kompilasi Hukum Islam: Mempositifkan Abstraksi Hukum Islam," in *Kompilasi Hukum Islam* (Jakarta: Logos, 1999), 73–75.

[30] Masodi, "Pembaruan Hukum Keluarga Di Indonesia Melalui Kompilasi Hukum Islam," *Jurnal Kolaboratif Sain* 6, no. 10 (2023): 1394–1401, https://jurnal.unismuhpalu.ac.id/index.php/JKS.

This middle-path approach does not negate the normative authority of the *naṣṣ*, but rather contextualizes its application at the level of implementation (*taṭbīq*), particularly where the textual indication is *ẓannī al-dalālah*. Within this framework, customary norms (*ʿurf*) may function as a contextual qualifier (*qarīnah*) that allows Islamic legal norms and living social values to coexist without doctrinal contradiction. Such an approach is consistent with the objectives of Islamic law (*maqāṣid al-sharīʿah*), especially the preservation of social order (*ḥifẓ al-niẓām*) and the avoidance of undue hardship (*rafʿ al-ḥaraj*), and is further supported by the Prophetic practice of tacit approval (*sunnah taqrīriyyah*), whereby pre-existing customs were maintained insofar as they did not conflict substantively with Islamic principles.

This first pattern, then shoud be regarded as methodologically legitimate. This pattern simply represents a form of contextual legal reasoning deeply rooted in the classical tradition of Islamic jurisprudence rather than a modern deviation or mere project of harmonization.

The issue of adopted children (adoption/*tabannī*) provides a salient example. Qurʾān, Sūrat al-Aḥzāb (33:4) regulates adoption by recognizing adopted children only insofar as their relationship with their biological parents is not severed. As a consequence, adopted children are not entitled to inherit from their adoptive parents, since inheritance in Islamic law is predicated upon blood (*nasab*) relationships. This provision, however, stands in tension with customary law, which recognizes the right of adopted children to inherit from their adoptive parents.[31]

In response to this tension, the KHI introduces the concept of *wasiat wajibah* as a solution. Article 209 of the KHI continues to recognize the existence of adopted children, but their entitlement is not framed in the same manner as under customary inheritance law. Instead, their share is provided through a compulsory bequest (*wasiat wajibah*).

[31] Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia* (Bandung: Mandar Maju, 1992), 214.

The concept of *wasiat wajibah* is indeed a relatively new phenomenon in Islamic legal thought. It was first introduced in Egypt to secure inheritance rights for orphaned grandchildren from the estate of their deceased grandparents. However, the extension of *wasiat wajibah* to adopted children within the KHI represents a novel and innovative contribution of Indonesian Islamic law.[32] While it substantively grants adopted children a form of inheritance akin to customary law,[33] this compromise remains, from an argumentative standpoint, consistent with the foundational principles of Islamic law on adoption. This is because the *wasiat wajibah* as regulated in the KHI does not:[34] (1) equate the legal status of adopted children with that of biological children; (2) confer upon adopted children inheritance rights equivalent to those of the *ahl al-farāʾiḍ*; or (3) grant adopted children a share exceeding one-third of the total estate.

The *Second* Pattern. This pattern occurs when a legal rule is not found in the *naṣṣ* but exists as a living law within society. In such circumstances, customary law—provided it does not conflict with the principles of the Sharīʿah—is elevated into a provision of Islamic law that applies positively within society.

This second pattern exemplifies the principles of juridical accommodation and gradualism within Islamic jurisprudence, wherein *ʿurf* (customary law) is formally recognized as a secondary source of law through the maxim *al-ʿādah muḥakkamah* (custom is a basis for legal judgment).

In this framework, Islamic law does not operate in a vacuum; rather, it assimilates the "living law" inherent within society, provided that such practices align with the *Maqāṣid al-Sharīʿah* (the higher objectives of the Shari'ah) and do not contravene its universal tenets. The elevation of customary norms into positive law constitutes a form of *ijtihad* predicated on *maṣlaḥah mursalah* (the public interest), aimed at ensuring legal certainty while maintaining social cohesion by preserving

[32] Mudzhar, *Membaca Gelombang Ijtihad: Antara Tradisi Dan Liberasi*, 160–63.
[33] Mudzhar, 164.
[34] Lukito, *The Struggle Between Islamic Law and Custom in Indonesia (INIS Series XXXV)*, 85–81.

functional traditional structures and imbuing them with a renewed ethical-religious ethos.

This pattern is evident in articles 85–97 of the KHI, which regulate marital joint property. As is well known, the concept of joint marital property is not found in the Qurʾān, the Sunnah, or classical *fiqh* literature. Rather, it originates from customary law and has long been practiced within society in the context of marriage.[35]

To address this reality, the KHI incorporates this customary institution into Islamic law by identifying its conceptual equivalent within Islamic legal doctrine. In the context of marital joint property, the KHI aligns it with the concept of *shirkah ʻabdan*.[36] This analogy is drawn from the lived reality of family life, in which both spouses contribute to the management of family assets—the husband typically earning income and the wife managing expenditures. Moreover, the incorporation of this customary legal institution into Islamic law is further justified by the legal maxim *al-ʻādah muḥakkamah* (that custom is authoritative to be regard as law).[37]

The *third* Pattern. This pattern emerges when a legal rule is present in the *naṣṣ* but does not grant a particular right, while customary law does grant such a right. In this situation, the formulation of the KHI proceeds through compromise with customary law, articulated in the form of "adopting customary law with adjustments to Sharīʿah principles"

This third pattern illustrates a sophisticated model of legal synthesis, where the *Kompilasi Hukum Islam* (KHI) functions as a bridge between scriptural silence—or the absence of specific entitlements within the *naṣṣ*—and the robust rights-based structures of customary law. By adopting the mechanism of "compromise through

[35] Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, 197–99; Ratno Lukito, *Pergumulan Antara Hukum Islam Dan Adat Di Indonesia* (Jakarta: ININ, 1998), 82–85.

[36] Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: Rajawali Press, 1998), 201.

[37] Muhammad Hasbi Ash-Shiddieqy, *Falsafah Hukum Islam* (Jakarta: Bulan Bintang, 1989), 475–79.

adjustment," this approach transcends a literalist reading of the text in favor of a teleological interpretation of the Shari'ah.

It suggests that when custom grants a right that is inherently just yet not explicitly mandated by scripture, the law may undergo a process of "Indigenization" (*Pribumisasi*). Through this lens, customary norms are not merely tolerated but are integrated as a substantive component of Islamic law, provided they are refined to align with the overarching ethical framework of the faith. This pattern ultimately reflects the dynamic nature of *Siyasah Shar'iyyah* (Shari'ah-based policy), where the law evolves to address the specific socio-legal needs of a community while maintaining its religious integrity.

An illustrative example concerns the legal status of orphaned grandchildren in inheriting from their deceased grandparents. Under classical Islamic inheritance law, orphaned grandchildren are not entitled to inherit from their grandparents because they are classified as *dhawī al-arḥām* rather than *dhawī al-furūḍ*, and are thus excluded by surviving uncles or aunts (the siblings of the deceased parent). By contrast, Western customary law recognizes inheritance rights for such grandchildren through the doctrine of *plaatsvervulling* (substitute heirs)

In the context of contemporary society, which increasingly gravitates toward a nuclear family system, such inheritance rules are often perceived as failing to satisfy contemporary notions of justice. Responsibilities for family welfare are no longer borne by the extended family, as in the traditional extended family system, but instead fall primarily upon the nuclear family itself.[38]

To address this difficulty, the KHI introduces a solution by adopting the customary law institution of substitute heirs (*ahli waris pengganti* or plaatsvervulling). This approach differs from reforms undertaken in other Muslim-majority countries

[38] Al Yasa Abu Bakar, "Fiqh Islam Dan Rekayasa Sosial", in Ari Anshori & Slamet Warsidi, Fiqh Indonesia Dalam Tantangan" (Surakarta: FIAI Universitas Muhammadiyah Surakarta, 1991), 9–20.

such as Egypt, Morocco, Tunisia, or Pakistan, where similar issues have been addressed through the mechanism of *wasiat wajibah*.

By positioning grandchildren in the legal place of their deceased parents, the KHI allows orphaned grandchildren to inherit from their deceased grandparents. This provision is directly derived from the juridical concept of substitute heirs, both in form and formulation. However, it is not adopted wholesale; rather, it is modified and reconciled with the principles of Islamic inheritance law.

The compromise embodied in the KHI is articulated through two key provisions. First, the right and legal status of substitute heirs are recognized in accordance with customary law. Second, the quantum of the inheritance share is adjusted to conform to the rules of *farā'iḍ*. The share of a substitute heir may not exceed that of the heir whom they replace or of other heirs of an equivalent degree.

E. Epilogue

This study affirms that the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) cannot be understood merely as a normative codification of Islamic law, but rather as a product of contextual *ijtihad* that emerged from processes of conflict resolution between Islamic law and customary law within Indonesia's landscape of legal pluralism.[39] By positioning the KHI as a normative bridge, this research demonstrates that the reform of Islamic family law in Indonesia has proceeded through conscious and calibrated mechanisms of negotiation, compromise, and methodological adaptation.

From a theoretical perspective, this research makes a significant contribution by shifting the understanding of the KHI from being merely an object of legal

[39] Krismono Krismono, "Pemikiran Hazairin Tentang Ahli Waris Pengganti Dalam Kompilasi Hukum Islam," *Indonesian Journal of Shariah and Justice* 4, no. 1 (2024): 1–22, https://doi.org/10.46339/ijsj.v4i1.107.

harmonization[40] to serving as a framework for normative conflict resolution within the context of legal pluralism. This approach enriches contemporary Islamic legal studies by demonstrating that legal pluralism does not inevitably lead to fragmentation, but can instead generate adaptive and contextual legal formulations grounded in the principles of legal change within Islamic legal theory and an understanding of law as a tool of social engineering.[41]

Based on the foregoing analysis and findings, this study also advances several academic recommendations. *First*, in an academic sense, studies of legal pluralism should move beyond mere descriptions of conflict or normative harmonization and develop theoretical frameworks of normative conflict resolution as an integral component of analysis. *Second*, Indonesia's experience as a laboratory of pluralism-based Islamic legal *ijtihad* should be integrated into contemporary *uṣūl al-fiqh* scholarship in order to enhance both its local and global significance. *Third*, future research should be directed toward an analysis of Religious Court jurisprudence to examine how the conflict resolution patterns embodied in the KHI are operationalized by judges in judicial practice.

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[40] Rauf Likuwatan and Fatum Abubakar, "Perkawinan Beda Agama: Disharmoni Norma Hukum Di Indonesia," *Indonesian Journal of Shariah and Justice* 3, no. 2 (2023): 169–95, https://doi.org/10.46339/ijsj.v3i2.53.

[41] M Yusuf Yahya and Harwis Alimuddin, "Roscou Pound: Hukum Sebagai Alat Rekayasa Sosial (Keterhubungannya Dengan Kaidah La Yunkaru Tagayyur Al-Ahkam Bi Tagayyuri Azzaman)," *Indonesian Journal of Shariah and Justice* 2, no. 2 (2022): 141–61, https://doi.org/10.46339/ijsj.v2i2.22.

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