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Normative Dimensions of the Compilation of Islamic Law within Indonesia's National Legislative Framework

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Abstract
This article examines the formal legal status of the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) and the sources of its practical legitimacy in Indonesia's Religious Courts. Although Presidential Instruction No. 1 of 1991 directed the dissemination of the KHI, the instrument is not included in the hierarchy established by Article 7 of Law No. 12 of 2011, as amended by Law No. 13 of 2022. The study applies normative legal research using statutory, conceptual, and case approaches. Ten purposively selected final Religious Court judgments issued in 2019–2024 are examined as illustrative evidence of institutional use. The analysis combines Kelsen's hierarchy of norms, Hart's rule of recognition, and Ehrlich's concept of living law. The findings distinguish the KHI's limited formal legislative status from its institutional applicability through judicial reliance. Its relationship with socially embedded Islamic family law norms provides additional interpretive context, although this study does not empirically measure public acceptance. The article proposes an integrated analytical framework for understanding how formal legal status, institutional recognition, and sociological relevance may coexist without being conflated.

Abstrak
Penelitian ini menganalisis kedudukan Kompilasi Hukum Islam (KHI) da-lam hierarki peraturan perundang-undangan Indonesia serta mengkaji dasar legitimasi yang menyebabkan KHI tetap berlaku dan digunakan dalam prak-tik Peradilan Agama. Kajian ini berangkat dari paradoks normatif bahwa KHI, yang diberlakukan melalui Instruksi Presiden Nomor 1 Tahun 1991 dan secara formal tidak termasuk dalam hierarki peraturan perundang-undangan sebagaimana diatur dalam Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan sebagaimana te-lah diubah dengan Undang-Undang Nomor 13 Tahun 2022, tetap digunakan secara konsisten sebagai hukum materiil dalam penyelesaian perkara hukum keluarga Islam. Sebagian besar kajian terdahulu cenderung menempatkan persoalan KHI hanya dalam perspektif validitas formal, sementara hubungan antara kedudukan normatif dan legitimasi institusional dalam praktik peradi-lan masih jarang dibahas. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan dan pendeka-tan konseptual. Hasil penelitian menunjukkan bahwa meskipun KHI tidak memiliki kedudukan formal dalam hierarki peraturan perundang-undangan, keberlakuannya

memperoleh legitimasi melalui tiga sumber yang saling terkait, yaitu praktik peradilan, penerimaan sosial masyarakat Muslim, dan fungsinya sebagai instrumen unifikasi hukum keluarga Islam. Temuan ini menegaskan bahwa validitas suatu instrumen hukum dalam sistem hukum nasional tidak semata-mata ditentukan oleh posisinya dalam hierarki nor-matif, tetapi juga oleh legitimasi sosiologis dan pengakuan institusional yang terbangun melalui praktik peradilan yang konsisten.

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NTRODUCTION

Indonesia's national legal system recognizes a hierarchy of legislation to ensure legal certainty, coherence, and consistency among legal norms. Hans Kelsen's Stufentheorie conceptualizes the legal order as a layered structure in which the validity of a norm derives from a higher norm. In Indonesian positive law, this hierarchy is regulated by Article 7 of Law No. 12 of 2011 on Lawmaking, as amended by Law No. 13 of 2022. Nevertheless, certain legal instruments operate in practice without being expressly listed in that hierarchy. The Compilation of Islamic Law (Kompilasi Hukum Islam, KHI) exemplifies this issue. Although disseminated under Presidential Instruction No. 1 of 1991, the KHI is not formally included among the legislative instruments enumerated in Article 7.[123]

In practice, Indonesian law draws not only on statutory legislation but also on a plural legal environment encompassing state, customary, and religious law. This configuration allows substantive legal sources to inform adjudication even when they do not occupy an express position in the statutory hierarchy. The KHI is a prominent example. Disseminated through Presidential Instruction No. 1 of 1991, it is regularly consulted by the Religious Courts when examining and deciding Islamic family law disputes, particularly those concerning marriage, inheritance, and waqf (Islamic endowments).[45]

The KHI emerged from the need for a more consistent legal framework in Religious Court proceedings. Before its introduction, judges consulted diverse classical fiqh texts, whose differing interpretations could produce inconsistent outcomes in similar cases. The KHI therefore consolidated relevant legal principles into a practical reference to promote uniform adjudication and legal certainty. Over time, its significance has extended beyond judicial guidance to the institutional incorporation of Islamic legal norms into Indonesia's national legal practice.[6]

The KHI consequently raises an important doctrinal question about its legal position and binding force. Presidential Instruction No. 1 of 1991 is not among the legislative instruments listed in Article 7 of Law No. 12 of 2011, as amended. Yet judges continue to use the KHI in Islamic family law disputes. This reveals a tension between its formal legislative status and its

[1] S H Jimly Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indones*ia (Sinar Grafika, 2021).

[2] Monika Zalewska, "Empowerment and the Act of Will in Hans Kelsen's General Theory of Norms," in *Legal Power and Legal Competence: Meaning, Normativity, Officials and Theories* (Springer, 2023), 305–16.

[3]Simamora, Janpatar. *"Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945."* Jurnal Dinamika Hukum Vol14. No.3 2014: DOI: http://dx.doi.org/10.20884/1.jdh.2014.14.3.318, h. 550.

[4] S H I Yusup, *Kompilasi Hukum Islam Pilar Hukum Perdata Islam Di Indonesia (Perkawinan, Kewarisan, Dan Perwakafa*n). (PT Penerbit Qriset Indonesia, 2026).

[5]Sumarta, Jendri Heri, dkk. "*Politik Hukum Pengembalian Ketetapan Majelis Permusyawaratan Rakyat dalam Hirarki Peraturan Perundang-undangan Berdasarkan Undang-undang Nomor 12 Tahun 2011 Tentang Peraturan Perundang-undagan di Indonesia".* Vol. II No. II Riau University, 2015. H. 2

[6] Fina Wildaniyah and Ahmad Muktafi, "Politik Hukum Dalam Pembentukan Kompilasi Hukum Islam," *ASA* 7, no. 2 (2025): 49–58, https://doi.org/https://doi.org/10.58293/asa.v7i2.154.

practical operation in adjudication. The central issue is therefore not merely whether the KHI belongs to the hierarchy, but what forms of legitimacy sustain its use as a source of substantive law.[7]

Previous scholarship falls into three broad strands. The first addresses the codification and unification of Islamic law. Herawati (2011) describes the KHI as a product of collective Indonesian scholarly ijtihad that helped standardize Islamic family law, but focuses primarily on its formulation rather than its place in the national legal order. Umam (2017) similarly highlights the KHI's unifying function and its contribution to legal certainty in the Religious Courts, paying less attention to its formal and institutional legitimacy.[8][9]

Azqiana and Jaidi (2025) examine the adaptation of Islamic law within the national legal system without systematically linking the KHI's formal position to its application in court. A second strand addresses its juridical status within the legislative hierarchy. Such studies generally note that a compilation disseminated by presidential instruction does not have the same formal standing as statutes or government regulations, because presidential instructions are absent from Article 7 of Law No. 12 of 2011. However, this scholarship has not adequately explained why judges continue to rely on the KHI despite its limited formal status.[10][11][12]

A third strand examines judicial implementation and acceptance. Hariati (2024, 2025) discusses the KHI as applied law for Religious Court judges, while Bilalu et al. (2022) analyze its use in judicial reasoning in North Sulawesi. Although these studies demonstrate the KHI's practical importance, they are largely descriptive and do not fully explain the mechanisms through which it acquires legitimacy outside the formal legislative hierarchy. The relationship among formal status, institutional recognition, adjudicative practice, and normative acceptance therefore requires further analysis.[13][14][15]

The literature thus tends to treat formal legal status and practical applicability as separate issues. Such a division leaves the relationship between these dimensions insufficiently theorized. This study addresses that gap by developing an integrated framework for explaining why the KHI

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[7] Sri Hariati, "Kompilasi Hukum Islam Sebagai Dasar Hukum Putusan Di Pengadilan Agama," *Unizar Law Review* 7, no. 2 (2024): 147–62, https://doi.org/https://doi.org/10.36679/ulr.v7i2.76.

[8] Khairul Umam, "Penyerapan Fiqh Madzhab Syafi'i Dalam Penyusunan Kompilasi Hukum Islam," *De Jure: Jurnal Hukum Dan Syar'i*ah 9, no. 2 (2017): 117–27, https://doi.org/https://doi.org/10.18860/j-fsh.v9i2.6991.

[9] Andi Herawati, "KOMPILASI HUKUM ISLAM (KHI) SEBAGAI HASIL IJTIHAD ULAMA INDONESIA," *HUNAFA: Jurnal Studia Islami*ka 8 (December 17, 2011): 321, https://doi.org/https://doi.org/10.24239/jsi.v8i2.367.

[10] Muhammad Sjaiful et al., "Analisis Hukum Eksistensi Kompilasi Hukum Islam (KHI) Tentang Waris Dalam Pembagian Harta Warisan Di Indonesia," *Halu Oleo Legal Research* 4, no. 2 (2022): 342–55, https://doi.org/https://doi.org/10.33772/holresch.v4i2.72.

[11] Muhammad Helmi, "Kedudukan Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam Menurut Peraturan Perundang-Undangan di Indonesia," Mazahib: Jurnal Pemikiran Hukum Islam 15, no. 1 (2016): 139–150, https://doi.org/10.21093/mj.v15i1.616.

Muhammad Helmi, "Kedudukan Instruksi Presiden Nomor 1 Tahun 1991 tentang Kompilasi Hukum Islam Menurut Peraturan Perundang-Undangan di Indonesia," Mazahib: Jurnal Pemikiran Hukum Islam 15, no. 1 (2016): 139–150, https://doi.org/10.21093/mj.v15i1.616

[12] Nazila Naura Azqiana and Muhammad Jaidi, "This Kompilasi Hukum Islam (KHI) Sebagai Wujud Adaptasi Hukum Islam Dalam Sistem Hukum Nasional Indonesia," *An-Nahdhah| Jurnal Ilmiah Keagamaan Dan Kemasyarakatan* 18, no. 2 (2025): 56–71, https://doi.org/https://doi.org/10.63216/annahdhah.v18i2.505.

[13] Naskur Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022): 514–36, https://doi.org/https://doi.org/10.22373/sjhk.v6i2.12441.

[14] Hariati, "Kompilasi Hukum Islam Sebagai Dasar Hukum Putusan Di Pengadilan Agama"; Sri Hariati, "Eksistensi Kompilasi Hukum Islam Sebagai Dasar Kekuatan Mengikat Putusan Pengadilan Agama," *Journal Kompilasi Hukum* 10, no. 1 (2025), https://doi.org/https://doi.org/10.29303/jkh.v10i1.204.

[15] Hariati, "Kompilasi Hukum Islam Sebagai Dasar Hukum Putusan Di Pengadilan Agama."

remains a reference for substantive law in Religious Courts despite its exclusion from Article 7 of Law No. 12 of 2011, as amended by Law No. 13 of 2022.

The study asks three questions: (1) What is the KHI's formal position within Indonesia's legislative framework? (2) How does it acquire legitimacy as a source of substantive law in Religious Court proceedings despite its absence from the statutory hierarchy? (3) How do formal status, institutional recognition, and social acceptance interact to explain its continued application? Accordingly, the study examines the KHI's status under the relevant legislative framework, identifies the foundations of its institutional legitimacy, and analyzes the relationship between formal validity and its institutional and social operation.

The article contributes an analytical framework combining three jurisprudential perspectives. Kelsen's Stufentheorie explains the position and validity of norms within a hierarchical legal system. H. L. A. Hart's rule of recognition illuminates how institutional practices identify and accept sources of law. Eugen Ehrlich's concept of living law helps explain the role of social practices and acceptance outside formal legislation. Their combined use shifts the inquiry from whether the KHI formally belongs to the hierarchy to how and why it continues to function within Indonesia's legal system.

LITERATURE REVIEW

1) Hierarchy of Norms and Legal Validity

This study employs three complementary theoretical perspectives to examine the KHI's position in Indonesian law: Kelsen's Stufentheorie, Hart's rule of recognition, and Ehrlich's living law. Each addresses a distinct analytical dimension: formal normative status, institutional recognition, and the relationship between legal norms and social practice.

First, Kelsen's theory of hierarchical norms treats legal validity as dependent on the authority and procedures established by higher norms. In this framework, a legal instrument cannot acquire the status of legislation merely because its substantive provisions are used in practice. The KHI's formal position must instead be evaluated by examining the legal character of Presidential Instruction No. 1 of 1991, the authority underpinning that instrument, and its relationship to the statutory hierarchy. This perspective provides a basis for distinguishing the formal status of the instruction from the normative content of the compilation.[16][17]

Second, Hart's rule of recognition directs attention to the criteria employed by legal officials to identify valid sources of law. Recognition is reflected not solely in written legislation but also in the practices of institutions responsible for applying legal rules. For the KHI, repeated judicial reliance may indicate institutional recognition as a reference in resolving Islamic family law disputes. However, such recognition does not automatically confer the formal rank of a statute or regulation. Hart's approach therefore clarifies how the KHI may operate within adjudication without changing its position under Article 7.[18][19]

Third, Ehrlich's living law emphasizes norms that operate through the social practices and expectations of communities. In this perspective, a legal norm's continued relevance cannot be explained exclusively by its formal enactment. The KHI's relationship with established Islamic family law traditions and the social contexts in which marriage, inheritance, and waqf

[16] Helmi, "Kedudukan Instruksi Presiden Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam Menurut Peraturan Perundang-Undangan Di Indonesia."

[17] Suhenriko, Muhammad. "Implementasi Teori Hierarki Hans Kelsen Terhadap Perumusan Kebijakan Di Indonesia." Jurnal Ilmiah Multidisiplin 1, no. 2 (2023): 64–71. https://ejournal.lumbungpare.org/index.php/jim/article/view/191.

[18] Hariati, "Kompilasi Hukum Islam Sebagai Dasar Hukum Putusan Di Pengadilan Agama."

[19] H. L. A. Hart, "Postscript," in The Concept of Law, 2nd ed., ed. Penelope A. Bulloch and Joseph Raz (Oxford: Clarendon Press, 1994), 238–276, https://www.ebsco.com/research-starters/literature-and-writing/concept-law-h-l-hart/.

are practiced may contribute to its continued use. This theoretical perspective does not establish universal acceptance of the KHI, but provides a means of interpreting its sociological dimension.[20]

These perspectives are operationalized through three dimensions. Formal validity concerns the status of the instrument disseminating the KHI under Articles 7 and 8 of Law No. 12 of 2011, as amended by Law No. 13 of 2022. Institutional recognition concerns how Religious Court decisions cite and apply KHI provisions. The sociological dimension concerns the correspondence between the KHI's substance and legal values and practices within Muslim communities. The dimensions are analytically distinct but jointly inform an explanation of the KHI's practical applicability.

2) Legal Pluralism and the Concept of Living Law

Beyond normative analysis, contemporary legal scholarship considers law a social phenomenon. Ehrlich argues that the norms governing social life are not always identical to rules formally enacted by the state. Everyday practices and socially accepted rules may also shape legal conduct. Accordingly, the operation of law must be examined through both formal recognition and the extent to which norms are accepted and observed in social relations.[21]

Living law is closely associated with legal pluralism, which recognizes the coexistence of multiple normative orders, including state, customary, and religious law. Griffiths (1986) describes pluralism as the presence of multiple sources of normative authority within a social setting. Indonesia's legal development demonstrates the relevance of this perspective, particularly where religious and customary norms intersect with state institutions and dispute-resolution mechanisms.[22]

Indonesian positive law also acknowledges aspects of normative plurality. Article 18B(2) of the 1945 Constitution recognizes customary law communities and their traditional rights, subject to constitutional conditions. Article 5(1) of Law No. 48 of 2009 on Judicial Power instructs judges to explore, follow, and understand the legal values and sense of justice living in society. These provisions illustrate why judicial reasoning cannot always be understood solely through formal statutory texts. In relation to the KHI, however, the social relevance of Islamic family law norms must not be conflated with the KHI's formal legislative status.[23][24]

3) The Compilation of Islamic Law in Indonesia's Legal System

Debates over the KHI's legal position involve three connected issues: the status of a presidential instruction as the instrument used to disseminate the compilation; the distinction between Presidential Instruction No. 1 of 1991, the KHI as substantive legal guidance, and Minister of Religious Affairs Decree No. 154 of 1991 as an administrative follow-up; and the interaction between Articles 7 and 8 of Law No. 12 of 2011, as amended by Law No. 13 of 2022.

First, the KHI was introduced and disseminated by Presidential Instruction No. 1 of 1991, but a presidential instruction does not appear in the hierarchy set out in Article 7. That hierarchy includes the 1945 Constitution, decrees of the People's Consultative Assembly, statutes and

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[20] Eugene Ehrlich and Klaus A. Ziegert, Fundamental Principles of the Sociology of Law (Routledge, 2017), https://doi.org/10.4324/9780203791127.

[21] Ahmad Auri Aji Zarianto and Nadhira Wahyu Adityarani, "Eksistensi Sosiologi Hukum Pada Masyarakat Indonesia (Literature Review Atas Teori Living Law Eugen Ehrlich)," *Juridische: Jurnal Penelitian Huk*um 2, no. 3 (2025): 203–19, https://doi.org/https://doi.org/10.65945/juridische.v2i3.89.

[22] John Griffiths, "What Is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial L*aw 18, no. 24 (1986): 1–55, https://doi.org/https://doi.org/10.1080/07329113.1986.10756387.

[23] Ahmad Kamil, Nurasiah Nurasiah, and Faisar Ananda Arfa, "Teori Pemberlakuan Hukum Islam Di Indonesia," *ANDREW Law Journ*al 4, no. 2 (2025): 924–43, https://doi.org/https://doi.org/10.61876/alj.v4i2.143.

[24] Besse Sugiswati, "Perlindungan Hukum Terhadap Eksistensi Masyarakat Adat Di Indonesia," *PERSPEKTIF: Kajian Masalah Hukum Dan Pembangun*an 17, no. 1 (2012): 31–43, https://doi.org/https://doi.org/10.30742/perspektif.v17i1.92.

government regulations in lieu of statutes, government regulations, presidential regulations, and provincial and regency or municipal regulations. This absence is relevant to the KHI's formal status but does not, by itself, resolve questions concerning its role in adjudication.

Article 8, by contrast, recognizes certain regulations issued by authorized institutions or officials where they are required by higher legislation or grounded in lawful authority. It does not expressly assign presidential instructions a position within the hierarchy. This distinction has generated debate about the legal nature of presidential instructions and their effects. It is therefore necessary to examine their function and legal basis rather than assume that every instrument outside Article 7 automatically qualifies as binding subordinate legislation.[2526]

Second, the relevant instruments perform different functions. Presidential Instruction No. 1 of 1991 directs government officials to disseminate the compilation; the KHI itself contains substantive guidance in Book I on marriage, Book II on inheritance, and Book III on waqf; and Minister of Religious Affairs Decree No. 154 of 1991 provides administrative implementation. Their interconnected operation does not make them identical in legal form or hierarchy. Distinguishing these instruments prevents the administrative dissemination of the KHI from being misinterpreted as formal statutory enactment.[27]

Third, the KHI's position as a reference for substantive law involves two approaches. A formal approach emphasizes that its dissemination through presidential instruction does not confer the status of a statute or government regulation. A practice-oriented approach observes that judges routinely refer to the KHI when reasoning through family law disputes. The latter indicates that the KHI is institutionally recognized as a legal reference, but it does not alter the statutory hierarchy. The two approaches therefore explain different aspects of the same phenomenon.[2829]

This article does not treat formal status and practical applicability as mutually exclusive. The KHI's exclusion from the hierarchy concerns the form and legal authority of the instrument introducing it, whereas its continued use in the Religious Courts concerns recognition and acceptance of its substantive provisions. Kelsen's framework identifies the normative limitation; Hart's rule of recognition explains institutional practice; and Ehrlich's living law illuminates links to socially embedded norms. Together, these perspectives explain why the KHI remains relevant without formally becoming a legislative instrument.

RESEARCH METHOD

This study adopts normative legal research to examine legal norms, principles, doctrines, and judicial practices concerning the position of the KHI in Indonesia's legal system. It distinguishes two dimensions: the compilation's formal position in the legislative framework and its operation in Religious Court proceedings. The research design addresses the KHI's formal

[25] Fajrul Falaakh, "Peradilan Agama dan Perubahan Tatahukum Indonesia," Unisia 13, no. 16 (1992): 21–26, https://doi.org/10.20885/unisia.v0i16.5601.

[26] Suny, Ismail. "Hukum Islam dalam Hukum Nasional." Jurnal Hukum & Pembangunan 17, no. 4 (2017): 351. https://doi.org/10.21143/jhp.vol17.no4.1348.

[27] Mustafa Mustafa, "Eksistensi Kompilasi Hukum Islam Problematikan Penerapannya Di Indonesia," *Abdurrauf Journal of Islamic Studies* 1, no. 1 (2022): 55–79.

[28] Adeng Septi Irawan, "Latar Belakang Munculnya Kompilasi Hukum Islam di Indonesia, Sejarah, dan Tujuannya," MARINews, https://marinews.mahkamahagung.go.id/artikel/latar-belakang-munculnya-kompilasi-hukum-islam-di-indonesia-0oT (diakses 8 November 2026).

[29] Sugianto, Fajar, Denny Ardhi Wibowo, and Tomy Michael. "Kedudukan Instruksi Presiden Republik Indonesia Nomor 1 Tahun 1991 tentang Penyebarluasan Kompilasi Hukum Islam dalam Sistem Hukum Kewarisan Indonesia." Jurnal Aktual Justice 5, no. 1 (2020): 19–37. https://doi.org/10.47329/aktualjustice.v5i1.518.

legal status, the foundations of institutional recognition, and the relationship between legal validity and institutional and social applicability.[30]

The study combines statutory, conceptual, and case approaches. The statutory approach examines Presidential Instruction No. 1 of 1991; Law No. 12 of 2011, as amended by Law No. 13 of 2022; Law No. 48 of 2009 on Judicial Power; and Law No. 7 of 1989 on Religious Courts and its amendments. The conceptual approach draws on Kelsen's hierarchy of norms, Hart's rule of recognition, and Ehrlich's living law. The case approach examines how judges refer to and position the KHI in their legal reasoning. Together, these approaches distinguish formal validity from institutional and sociological applicability.[31]

The legal materials comprise primary and secondary sources. Primary materials include relevant legislation, Presidential Instruction No. 1 of 1991, and Religious Court judgments that cite the KHI in their reasoning. Secondary materials include academic books, journal articles, previous studies, and legal scholarship on legislative hierarchy, legal validity, Islamic law, family law, and Indonesia's legal system. Materials were collected through library research and systematically identified, selected, classified, and catalogued according to their relevance to the research questions.

To provide an empirical-juridical basis for the examination of judicial practice, the study purposively selected ten Religious Court judgments according to four criteria: (1) the case concerned Islamic family law, particularly marriage, inheritance, or waqf; (2) the judgment expressly cited KHI provisions; (3) the decision had acquired final legal force; and (4) it was issued between 2019 and 2024. The decisions were located through the Indonesian Supreme Court Decision Directory and the Religious Courts' Case Tracking Information System (SIPP). These criteria followed the established research design.

The 2019–2024 period was selected to examine contemporary judicial practice, not to compare outcomes before and after Law No. 13 of 2022. The ten judgments serve as illustrative material for identifying patterns of reasoning and citation, rather than a statistically representative sample of all Religious Court decisions. The study does not estimate population-wide citation frequencies, measure judicial disparities, or draw statistical conclusions concerning the KHI's effectiveness. Its analysis instead focuses on three dimensions: formal validity, institutional legitimacy, and sociological relevance.

Table 1. Analytical Framework for Assessing the KHI

Analytical Dimension	Theoretical Framework	Analytical Focus	Indicators
Formal validity	Hans Kelsen, Stufentheorie[32]	Status of the KHI and its disseminating instrument within the legislative system.	Type of instrument, issuing authority, legal basis, and consistency with Articles 7 and 8 of Law No. 12/2011, as amended by Law No. 13/2022.
Institutional legitimacy	H. L. A. Hart, rule of recognition[33]	Recognition and use of the KHI in legal practice.	Judicial references to the KHI, provisions cited, their role in judicial reasoning, and their

[30] Marzuki, Peter Mahmud. Penelitian Hukum: Edisi Revisi. Jakarta: Prenada Media, 2017. ISBN 978-602-7985-16-2. https://books.google.co.id/books?id=CKZADwAAQBAJ.

[31] *Peter Machmudz Marzuki, "The Essence of Legal Research Is to Resolve Legal Problems*," *Yuridika* 37, no. 1 (2022): 37–58.

[32] Hans Kelsen, *General Theory of Law and State* (Routledge, 2017), https://doi.org/https://doi.org/10.4324/9780203790960.

[33] Truth Law and H L A Institutional Reality Hart, "*The Concept of Law*" (Oxford: Oxford University Press. Dworkin, 1961).

			relationship with other legislation.
Sociological dimension	Eugen Ehrlich, living law[34]	Relationship between the KHI's substance and socially embedded legal norms.	Connections with Islamic family law practices and values and social acceptance supporting continued application.

The theoretical frameworks serve distinct purposes. Kelsen addresses the KHI's formal position; Hart explains why judges continue to recognize and use its provisions; and Ehrlich helps interpret the relationship between those provisions and norms embedded in social life. Their complementary functions prevent distinct aspects of validity and applicability from being treated as interchangeable.

Legal materials were examined qualitatively through descriptive and analytical methods in four stages. First, the materials were inventoried and classified by formal validity, institutional legitimacy, and sociological dimension. Second, the statutory framework was examined to identify the legal position of the KHI and Presidential Instruction No. 1 of 1991. Third, the selected judgments were analyzed for references to KHI provisions and their relationship with other legal sources in judicial reasoning. Fourth, the normative and case findings were synthesized using the three theoretical perspectives. This approach examines formal validity and practical applicability as distinct but related dimensions rather than contradictory findings.

RESULTS AND DISCUSSION

3.1. Legislative Hierarchy in the Indonesian Legal System

Indonesian legislation follows a hierarchy of legal norms that has developed through MPRS Decree No. XX/MPRS/1966, MPR Decree No. III/MPR/2000, Law No. 10 of 2004, and Law No. 12 of 2011. The latter was amended by Law No. 15 of 2019 and Law No. 13 of 2022. The 2022 amendments did not alter Article 7 on the types and hierarchy of legislation or Article 8 on regulations issued by authorized bodies or officials. These provisions therefore remain the normative basis for assessing the status of presidential instructions and the KHI.[35]

Article 7(1) of Law No. 12 of 2011 establishes the following hierarchy: (1) the 1945 Constitution; (2) decrees of the People's Consultative Assembly; (3) statutes and government regulations in lieu of statutes; (4) government regulations; (5) presidential regulations; (6) provincial regulations; and (7) regency or municipal regulations. Article 7(2) provides that their legal force corresponds to this hierarchy. The provision therefore differentiates the formal standing of legislative instruments within the national legal order.[36]

Presidential instructions are absent from this list. This omission is significant because Presidential Instruction No. 1 of 1991 disseminated the KHI and directed the Minister of Religious Affairs to circulate its three books on marriage, inheritance, and waqf. A distinction must therefore be drawn between the KHI's substantive rules and the presidential instruction used to disseminate them.

Article 8 complicates this assessment. Article 8(1) recognizes additional categories of regulations issued by legally authorized institutions or officials. Article 8(2) recognizes their

[34] Ehrlich and Ziegert, *Fundamental Principles of the Sociology of Law*.

[35] Setiawan Wicaksono, Bintang Bagas, and Agung Reyhansyah, "Penyelesaian Sengketa Dan Konflik Pertanahan Di Indonesia: Kajian Politik Hukum: Resolution of Land Disputes and Conflicts in Indonesia: A Study of Legal Politics," *Dialogia Iuridi*ca 16, no. 1 (2024): 68–95, https://doi.org/https://doi.org/10.28932/di.v16i1.9993.

[36] Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan, Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82, Tambahan Lembaran Negara Republik Indonesia Nomor 5234, sebagaimana telah diubah dengan Undang-Undang Nomor 15 Tahun 2019 dan Undang-Undang Nomor 13 Tahun 2022.

binding force insofar as they are required by higher legislation or enacted on the basis of legally conferred authority. Recognition under Article 8 therefore depends on the legal character of the instrument and the basis of the issuing authority.[37]

Article 8 cannot be interpreted to mean that every instrument excluded from Article 7 automatically acquires equivalent hierarchical standing. It imposes conditions concerning delegated authority or authorization by higher legislation. Accordingly, an instrument outside Article 7 must first be examined to determine whether it is legislation within the meaning of Article 8 or an administrative act serving a different governmental function.

For presidential instructions, the distinction between administrative operation and binding legislative force is particularly important. The President may use instructions to direct public officials in the administration of government. Such instruments do not appear among the legislative categories enumerated in Article 7, while Article 8 regulates the recognition of other legally authorized regulations. Mere exclusion from Article 7 does not automatically establish that a presidential instruction holds a particular position within the legislative hierarchy.[38]

Presidential Instruction No. 1 of 1991 directed the Minister of Religious Affairs to disseminate the KHI's provisions on marriage, inheritance, and waqf for use by relevant government institutions and members of the public. Its function was to provide an administrative basis for dissemination and use, not expressly to incorporate the KHI into the hierarchy in Article 7.

Kelsen's Stufentheorie explains this distinction in terms of formal normative validity. Legal validity depends not only on a rule's substantive content but also on the competent authority and the procedure established under higher norms. Accordingly, the KHI's position must be assessed by examining the instrument used for its dissemination, its authorizing basis, and its relation to the national legislative structure. The distinct question of its practical use requires a separate analysis.

The absence of presidential instructions from Article 7 prevents the KHI from being formally equated with statutes, government regulations, or presidential regulations. This limitation, however, does not establish that the compilation lacks practical relevance. Formal validity concerns an instrument's recognized place in the hierarchy, whereas practical applicability concerns whether and how its norms are used and accepted. The next analytical task is therefore to explain the KHI's continued use in Religious Court decisions through Hart's concept of institutional recognition and Ehrlich's account of living law.

3.2. Historical Development and Characteristics of the Compilation of Islamic Law

The KHI was developed in response to the need for more systematic Islamic legal guidance in the Religious Courts. Previously, judges relied on various classical fiqh books as substantive legal sources. Differences in the selection and interpretation of these sources could affect decisions in comparable cases. The compilation was intended to establish a more consistent point of reference rather than create an entirely new body of Islamic law.39

An early initiative was the Circular Letter of the Head of the Religious Courts Bureau No. B/1/735, dated 18 February 1958, which recommended thirteen fiqh books as judicial references. This initiative attempted to limit variation in substantive legal sources, but differences remained possible because judges could still select among competing juristic opinions. The

[37] Asas W A Tandhim, "*Peraturan Perundang-Undangan Indonesia*" 4 (2025): 233–48, https://doi.org/https://doi.org/10.47200/awtjhpsa.v4i2.2868.

[38] Ayu Nur Fatimah, "Analisis Yuridis terhadap Instruksi Presiden Nomor 7 Tahun 2014 tentang Pelaksanaan Program Simpanan Keluarga Sejahtera, Program Indonesia Pintar dan Program Indonesia Sehat Berdasarkan Hierarki Peraturan Perundang-Undangan di Indonesia," Novum: Jurnal Hukum 2, no. 1 (2015): 185–189, https://doi.org/10.2674/novum.v2i1.12072.

[39] Wojowasito, *"Kamus Umum Belanda-Indonesia"* (Jakarta : Ichtiar Baru van Hoeve, 1981), h. 123

subsequent development of the KHI therefore responded to the diversity of existing sources and the need for a common judicial reference.[40]

Table 2. Fiqh Texts Recommended as References for Religious Court Judges

No.	Fiqh Text	School or Description
1	Al-Bājūrī	Shafi'i school
2	Fatḥ al-Muʿīn	Shafi'i school
3	Syarqāwī ʿalā al-Taḥrīr	Shafi'i school
4	Qalyūbī/Maḥallī	Shafi'i school
5	Fatḥ al-Wahhāb and its commentaries	Shafi'i school
6	Al-Tuḥfah	Shafi'i school
7	Targhīb al-Musytāq	Shafi'i school
8	Qawānīn al-Syarʿiyyah li Sayyid ʿUtsmān bin Yaḥyā	Shafi'i school
9	Qawānīn al-Syarʿiyyah li Sayyid Ṣadaqah Daḥlān	Shafi'i school
10	Al-Syamsūrī fī al-Farāʾiḍ	Shafi'i school
11	Bughyah al-Mustarsyidīn	Shafi'i school
12	Al-Fiqh ʿalā al-Madhāhib al-Arbaʿah	Comparative study of four schools
13	Mughnī al-Muḥtāj	Shafi'i school

Source: Circular Letter of the Head of the Religious Courts Bureau No. B/1/735, 18 February 1958. The thirteen texts are also identified in studies of the KHI's historical development.

Further institutional support emerged through Joint Decrees of the Chief Justice of the Supreme Court and the Minister of Religious Affairs No. 07/KMA/1985 and No. 25 of 1985, issued on 21 March 1985. These decrees established a project for developing Islamic law through jurisprudence and brought judicial and governmental institutions into the drafting process. Rather than adopting a single fiqh text, the project assessed multiple sources and sought to organize them into a systematic framework.[41]

The drafting process was not confined to a single book or legal school. It involved reviewing thirty-eight fiqh texts, interviewing 185 scholars across ten Indonesian regions, examining Religious Court jurisprudence collected in sixteen volumes, and conducting comparative studies involving Morocco, Türkiye, and Egypt. The KHI therefore emerged through a process that combined Islamic jurisprudence, judicial experience, scholarly perspectives, and Indonesian legal needs.

A National Conference of Islamic Scholars held on 2–5 February 1988 marked a major stage in the process. It organized the compilation into three principal areas: marriage, inheritance, and waqf. These were subsequently presented as Book I, Book II, and Book III, respectively. This structure reflected the intention to provide practical guidance in fields central to Religious Court jurisdiction.[42]

The KHI differs both from classical fiqh treatises and from formal legislation. It does not represent the opinion of a single scholar or school, nor was it enacted through the ordinary legislative procedure applicable to statutes. Instead, it systematically selects and formulates juristic positions to assist the Religious Courts. Although Shafi'i jurisprudence strongly influenced its sources, the drafting process also considered other schools and the needs of Indonesian society.

[40] Naskur Bilalu, Ridwan Jamal, Nurlaila Harun, and Syahrul Mubarak Subeitan, "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia," Samarah: Jurnal Hukum Keluarga dan Hukum Islam 6, no. 2 (2022): 514–536, https://doi.org/10.22373/sjhk.v6i2.12441."

[41] Amran Suadi dkk, *"Abdul Manan Ilmuan dan Praktisi Hukum: Kenangan Sebuah Perjuangan"*, (Jakarta: Kencana Prenada Media Group, 2016), h. 64

[42] Indah Abbas, "Islamic Law in the Legal Political System:(Descriptive Study of the Islamic Law Histories in Indonesia)," *Al-Mizan (e-Journal)* 13, no. 2 (2017): 156–84.

The compilation consequently represents a limited form of legal unification rather than an entirely closed codification. It provides judges with a common point of reference without eliminating the possible relevance of other legal materials, applicable statutes, or judicial interpretation. Its authority in practice must therefore be understood within the broader framework of Indonesian Islamic family law.[43]

The KHI's historical development supports the distinction developed in this article. Its formulation involved substantial scholarly, judicial, and governmental participation, which contributed to its practical credibility and institutional adoption. Nevertheless, this process did not independently transform the KHI into legislation within the hierarchy set out in Article 7. Historical institutionalization and formal legislative validity remain analytically different.

3.3. Juridical Status of the Compilation of Islamic Law in Indonesia

The KHI emerged through efforts to systematize substantive Islamic family law and provide consistent guidance to Religious Court judges. Its introduction through Presidential Instruction No. 1 of 1991, followed by implementing administrative measures, gave it a recognized place in legal practice. The juridical issue is whether this practical position also amounts to formal status within the hierarchy of legislation.[44]

The question arises because the instrument disseminating the KHI is a presidential instruction, not a statute or one of the regulations expressly listed in Article 7 of Law No. 12 of 2011. This formal limitation must be identified without overlooking the fact that KHI provisions continue to inform judicial decisions. The two dimensions require different legal criteria.

Presidential Instruction No. 1 of 1991 and Minister of Religious Affairs Decree No. 154 of 1991 must likewise be distinguished from the substantive content of the KHI. The former concern dissemination and administrative implementation; the latter supplies legal guidance on marriage, inheritance, and waqf. Their distinct forms and functions mean that administrative recognition should not be mistaken for statutory enactment.[45]

The exclusion of presidential instructions from Article 7 does not imply that all substantive norms referenced in the KHI are irrelevant to judicial practice. Judges may consider doctrinal materials and other legally pertinent sources when resolving cases. Nevertheless, such use does not independently determine the KHI's formal legislative status.

The KHI is frequently referred to in disputes involving family status, marriage, inheritance, and related matters. Such use illustrates its role as a source of substantive guidance in Religious Courts. The relevant analytical question concerns how its provisions are positioned alongside applicable statutes and other sources in judicial reasoning.

The KHI also operates alongside legislation concerning marriage and Religious Court administration, including Law No. 22 of 1946, Law No. 32 of 1954, Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and Government Regulation No. 28 of 1977. These connections show that its substantive provisions function within an existing legal environment. They do not, however, make the KHI formally equivalent to instruments listed in Article 7. Judicial reliance and formal legislative rank remain separate matters.

Under Hart's rule of recognition, repeated citation of the KHI by judges may indicate its institutional recognition as a reference for Islamic family law disputes. Judicial officials incorporate its provisions into legal reasoning, thereby giving them a practical role. However,

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[43] Muhammad Imam Maghudi, Qadir Gassing, and Kurniati, "Dinamika Perkembangan Hukum Islam di Indonesia: Menyoal Kemandirian Peradilan Agama dan Kodifikasi Kompilasi Hukum Islam," Al-Tafaqquh: Journal of Islamic Law 5, no. 2 (2024): 69, https://doi.org/10.33096/altafaqquh.v5i2.1106.

[44] Yusup, *Kompilasi Hukum Islam Pilar Hukum Perdata Islam Di Indonesia (Perkawinan, Kewarisan, Dan Perwakafan*).

[45] Andi Herawati, *"Kompilasi Hukum Islam (KHI) Sebagai Hasil Ijtihad Ulama Indonesia." HUNAFA:* (Jurnal Studia Islamika, Vol. 8, No.2, 2011: DOI 10.24239/jsi.v8i2.367.321-340, h. 332

such institutional acceptance does not authorize the conclusion that judges have transformed the KHI into legislation under Article 7. Its formal position continues to depend on positive law governing legislative formation.[46]

Social factors also help explain the KHI's continued use. Marriage, inheritance, and waqf have close connections with Indonesian Muslim religious and social life, and parts of the KHI draw on established Islamic legal traditions. Ehrlich's living law provides a perspective for interpreting this relationship between legal rules and social practices. However, the analysis does not establish that every Muslim community uniformly accepts the compilation; social acceptance is treated as a contextual explanatory factor.

The KHI should therefore not be classified simply as either legally valid or invalid. It does not appear among the legislative categories listed in Article 7, yet its provisions are used as substantive guidance in Religious Court proceedings. Formal validity, institutional applicability, and social acceptance are distinct dimensions. The KHI is best understood as a legal instrument operating outside the formal legislative hierarchy while acquiring practical significance through institutional judicial use.

3.4. Sociological Legitimacy and the KHI's Effectiveness in Religious Court Practice

The KHI's continued application cannot be explained solely by the formal status of Presidential Instruction No. 1 of 1991. It also depends on how its provisions are recognized, applied, and sustained in legal practice. This study distinguishes institutional legitimacy, reflected in judicial recognition and use, from sociological legitimacy, associated with the KHI's relationship to legal values and practices within Indonesian Muslim communities. Neither dimension should be conflated with the hierarchy of legislation.[47]

3.4.1. Institutional Recognition through Judicial Practice

The study examined ten purposively selected Religious Court judgments issued between 2019 and 2024, identified through the Supreme Court Decision Directory and the Religious Courts' SIPP system. These cases were selected using the criteria described in the methodology. The analysis aims to identify patterns of judicial reasoning and reliance on the KHI, not to generalize statistically to all Religious Court decisions.

The decisions reviewed show references to the KHI in Islamic family law matters, particularly marriage, inheritance, and family status. In these decisions, KHI provisions appear not merely as supplementary information but as part of the judges' reasoning alongside statutes and other legal materials. This pattern indicates a practical role for the compilation in establishing legal grounds for adjudication.[48]

These findings are relevant to Hart's rule of recognition because they illustrate how legal officials identify and use legal sources in institutional practice. Repeated reliance on the KHI suggests that judges recognize it as a relevant reference. Nevertheless, such recognition does not confer the formal status of a statute or government regulation. The ten judgments indicate practical applicability within the selected cases, not that every Religious Court judge invariably applies the KHI in every dispute.[49]

3.4.2. The KHI as Guidance for Dispute Resolution

The analyzed judgments also demonstrate the KHI's role in standardizing substantive Islamic family law. Before the compilation, judges relied on a wider range of fiqh texts, allowing divergent references and interpretations. The KHI organizes rules on marriage, inheritance, and

[46] Fernando Campos. "The Inescapability of Law and the Duty of the Rule of Recognition." KRITERION – Journal of Philosophy 2025: https://DOI.org/10.1515/krt-2025-0010, h. 1.

[47] Helmi, "Kedudukan Instruksi Presiden Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam Menurut Peraturan Perundang-Undangan Di Indonesia."

[48] Hariati, "Kompilasi Hukum Islam Sebagai Dasar Hukum Putusan Di Pengadilan Agama."

[49] Hart, "Postscript" to The Concept of Law."

waqf in a more systematic form, and judges may employ these provisions alongside other applicable legislation. It is therefore an important, but not exclusive, legal source.[50]

Judges continue to assess statutes, facts established at trial, legal principles, and considerations of justice. The KHI thus operates within a broader ecosystem of legal sources. Its sustained use is not a direct consequence of presidential instruction having legislative rank; rather, its substantive content has gained a place in the working practices of the Religious Courts. Judicial practice accordingly contributes to the KHI's continued institutional applicability.[51]

3.4.3. The Sociological Dimension of the KHI as Living Law

Beyond institutional recognition, the KHI's continued relevance can be interpreted through its relationship with values and practices within Indonesian Muslim communities. Marriage, inheritance, and waqf are closely connected to social and religious life. The compilation transforms legal ideas previously expressed through fiqh doctrine, religious practice, and community legal traditions into more systematic judicial guidance. Ehrlich's living law draws attention to the operation of socially embedded norms alongside formally enacted rules.

This perspective helps explain why the KHI's provisions may acquire social relevance even though the instrument disseminating them has limited formal legislative standing. Such relevance cannot, however, be inferred as uniform acceptance by the entire Muslim population. Establishing the extent of social acceptance would require independent empirical research. In this normative study, living law functions as an interpretive framework rather than proof of universal sociological effectiveness.

3.4.4. Interactions between Formal Validity and Institutional and Sociological Legitimacy

Taken together, the three theoretical perspectives clarify the KHI's distinctive position. Kelsen explains why its dissemination through presidential instruction does not confer hierarchical legislative standing. Hart explains the significance of judicial recognition and reliance on its provisions. Ehrlich provides a framework for understanding their links with socially embedded Islamic family law. These explanations complement one another without merging the distinct criteria of formal legal validity, institutional applicability, and social acceptance.

Table 3. Interrelationships between Three Dimensions of KHI Legitimacy

Dimension	Analytical Focus	Research Finding	Explanatory Function
Formal validity	The KHI's position in the legislative hierarchy	Presidential Instruction No. 1/1991 is not listed in Article 7 of Law No. 12/2011, as amended by Law No. 13/2022	Explains the limits of the KHI's formal legal status
Institutional legitimacy	Judicial use of the KHI	The ten judgments examined cite the KHI as a legal reference	Explains the KHI's operation in judicial practice
Sociological legitimacy	Links with legal norms operating in society	The KHI's substance relates to Islamic family law practices and values	Provides a context for its continued social relevance
Interaction among dimensions	Relationship between formal status and legal practice	The KHI has limited formal status but remains in use	Explains the paradox of the KHI's practical applicability

Note: Author's analysis based on Kelsen, Hart, and Ehrlich.

The table demonstrates that exclusion from the formal hierarchy does not necessarily prevent the KHI from operating as substantive guidance. Its continued use in the ten judgments provides evidence of institutional reliance, while its relationship with Islamic family law

[50] Bilalu et al., "Compilation of Islamic Law as Judge's Consideration at a Religious Court in North Sulawesi, Indonesia."

[51] Andi Arfan Sahabuddin et al., Hukum Indonesia (Sebuah Pengantar) (Makassar: Tohar Media, 2023), https://play.google.com/store/books/details?id=U3HEEAAAQBAJ.

traditions offers a sociological context. The latter remains a theoretical interpretation rather than a measured level of public acceptance.

The findings also address the central research problem: formal legislative status and practical use should not be treated as a single measure of legal existence. An instrument may have limited hierarchical status while still functioning as a reference for judicial reasoning. The KHI exemplifies this distinction within Indonesia's plural legal system.

Accordingly, the KHI is best situated at the intersection of formal legal limitations, institutional recognition, and social relevance. This approach avoids both equating it with legislation listed in Article 7 and dismissing it as merely optional fiqh literature. Its continuing significance lies in the ways its substantive norms are employed within Religious Court adjudication.

CONCLUSION

The analysis demonstrates that the KHI occupies a distinctive position within Indonesia's legal system. Presidential Instruction No. 1 of 1991, which directed its dissemination, is not among the legislative instruments listed in Article 7 of Law No. 12 of 2011, as amended by Law No. 13 of 2022. Consequently, the KHI cannot formally be equated with statutes, government regulations, or presidential regulations in that hierarchy. This conclusion concerns formal legislative status rather than the complete absence of legal relevance.

The ten Religious Court judgments examined indicate that KHI provisions continue to be used in judicial reasoning in Islamic family law cases. From Hart's perspective, this practice supports an account of institutional recognition, while remaining insufficient to establish a change in formal legal rank. The study therefore differentiates judicial use from legislative validity.

The analysis does not claim that all Indonesian Muslim communities accept the KHI uniformly. Instead, Ehrlich's concept of living law offers a framework for understanding its connections to Islamic family law values and practices. Determining the breadth and degree of social acceptance requires empirical investigation beyond the present normative study.

Integrating Kelsen, Hart, and Ehrlich demonstrates that formal position and practical applicability can differ while remaining related. Kelsen clarifies hierarchical limitations, Hart identifies institutional recognition through judicial practice, and Ehrlich situates the KHI in a social-normative context. The combined approach explains its continued legal significance without assigning it a legislative status that positive law does not provide.

Several limitations should be noted. The analysis covers only ten purposively selected judgments from 2019–2024 and does not support statistical generalization across Religious Courts. Moreover, the study does not independently measure public acceptance of KHI provisions or establish their effects across all regions and types of disputes. Future studies should expand the case material, compare judicial reasoning across courts, and employ field-based methods to examine the sociological dimension.

In the longer term, lawmakers and relevant institutions may consider clarifying the KHI's normative and institutional position to strengthen legal certainty, while taking account of its established practical role. Such clarification should distinguish between the legal instrument authorizing dissemination and the substantive Islamic family law norms applied by judges. Further research can assess whether current practices remain consistent across different jurisdictions and categories of cases.

The study's principal contribution is an integrated analytical framework that distinguishes and connects formal validity, institutional recognition, and sociological applicability. The KHI is neither formally situated within the hierarchy of legislation nor adequately understood as merely optional fiqh literature. Rather, it is a legal instrument with a limited formal position

whose practical applicability is sustained through judicial institutional recognition and its relationship to Islamic family law in Indonesian society.

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